THE LIMITS OF THE UK DISCLOSURE LAWS WITH RESPECT TO THE INTERESTS OF EMPLOYEES

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Abstract

Transparency has been demonstrated as one of the efficient strategies in many areas. It is also used by governments to regulate corporate entities. The UK government may be an important example in this regard. The government implements disclosure requirements in different fields of law, such as corporate law, employment law and human rights law. Employees are significant stakeholders mentioned in these disclosure schemes. Undoubtedly, disclosure plays a role in improving and protecting the interests of employees in the UK. However, to what extent can disclosure regime in the UK improve the interests of employees? In response to this question, the current paper sheds light upon different areas of law to discover the role of disclosure regulations in improving and protecting the interests of employees. By doing this, the paper aims to show how most disclosure requirements in the country fall short in making corporations respect employees.

Keywords: Transparency, disclosure laws, corporations, employee rights, corporate law, employment law, human rights

BİRLEŞİK KRALLIK ŞEFFAFLIK YASALARININ ÇALIŞAN HAKLARI AÇISINDAN SINIRLARI

Özet

Şeffaflık birçok alanda etkin bir denetim mekanizması olarak karşımıza çıkıyor. Bu yöntem hükûmetler tarafından şirketlerin çalışanlarına karşı sorumluluklarının denetlenmesinde de sıkça kullanılıyor. Bunların arasında Birleşik Krallık hükûmeti en önemli örneklerden. Birleşik Krallık'ta bilgi ifşası üzerine kurulu şeffaflık kanunları, şirketler hukuku, iş hukuku, insan hakları hukuku gibi bir çok alanda kullanılıyor. Şirket çalışanları bu kurallarda adı geçen en önemli paydaşlardan. Şüphesiz şeffaflık kuralları çalışanların çıkarlarının korunması ve iyileştirilmesi acısından önemli bir role sahip. Ama daha da önemlisi bu kuralların çalışanların çıkarlarına ne ölçüde hizmet ettiği. Aşağıdaki çalışma bu soruya cevap ararken Birleşik Krallık'ta şirketlere uygulanan bilgi ifşası/kamuyu aydınlatma üzerine dayalı

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hukuk kurallarının, çalışanların çıkarlarının korunması ve iyileştirilmesindeki rolüne odaklanıyor. Bunu yaparken farklı alanlarda konulmuş bilgi ifşasına dayalı birçok hukuk kuralının eksikliklerini çalışan hakları perspektifinden teorik olarak irdeliyor.

Anahtar Kelimeler: Şeffaflık, bilgi ifşası kanunları, kamuyu bilgilendirme, çalışan hakları, şirketler hukuku, iş hukuku, insan hakları

1. Introduction

Companies have been required to disclose information since the 1800s (Villiers, 2006: 16). However, these disclosure requirements were limited with some basic information such as the names and addresses of the investors (Villiers, 2006: 16-17). Even though mandatory disclosure requirements improved in early 1900s, it was only in late 1980s non-financial issues became a part of disclosure regimes (O'Rourke, 2004: 11).

Today, in western European countries, corporations are required to disclose information about employees (Lydenberg and Grace, 2008: 14-17). The UK can be one of these countries with many disclosure requirements in respect of employees. The UK disclosure regime may be seen as a direct consequence of the developments within the EU, in particular judicial and legislative reforms (Horrigan, 2012: 25). There are already a number of scholars who provide a good coverage of existing UK disclosure obligations (Gray, Kouhy and Lavers, 1995; Friedman and Miles, 2001; Parkinson, 2003; Stittle, 2004; Goulding and Miles, 2005; Villiers, 2006). However, disclosure rules with respect to the interests of employees in different fields of UK law have not been analysed yet. The present paper will focus on various disclosure rules in different fields of law. More importantly, this paper shall demonstrate whilst national disclosure initiatives can accomplish meaningful improvements, and may compel corporations to disclose information, many initiatives fall short of achieving the level of disclosure required to protect the interests of employees.

The paper is organised as follows: section two shall demonstrate the brief background of the corporate disclosure regime in the UK. Then, section three highlights the current state of the UK corporate transparency regime. For this purpose, the legal requirements of company law shall be analysed. Section three shall also aim to show how the corporate disclosure rules under the UK company law favour shareholders. Subsequent

sections shall touch upon other statutory measures under different fields of law. Section four looks at disclosure requirements under employment law. Section five examines the Modern slavery Act 2015 (MSA). In this section, the shortcomings of the MSA are also listed. Afterwards, in section six, the paper briefly mentions some other disclosure rules in other fields. Notably, none of the sections aims to offer a comprehensive summary of all disclosure norms. Indeed, these sections shall not cover all of those measures available in the UK that aim to offer provision of corporate transparency for the benefit of employees. Rather, this paper shall use a number of significant transparency schemes as examples in order to demonstrate the argument that foreshadows the limitations of national/regional initiatives, as referred to above. Having done this, section seven shall finally conclude the paper by observing a greater need for an international system of transparency, in order to address the gaps and shortcomings apparent within the UK dısclosure system.

2. Background of Disclosure Rules in the UK

Developments in relation to mandatory disclosure programmes in the UK can be analysed from two perspectives. On the one hand, disclosure reforms represent, or are a consequence of, the domestic social needs and developments of the UK. On the other hand, disclosure reforms may be made a direct consequence of developments within the EU, in particular judicial or legislative reforms that impose a requirement for change.

In the first instance, the corporate scandals that occurred during the early 1990s created a need for better corporate governance, which led to number of developments in the UK (Giles, 2015: 147). These developments are corporate governance reports created by such as Cadbury, Greenbury, Hampel, and Turnbull Committees (Mallin, 2010: 26-29). Although these committees did not pay specific attention to disclosure as a tool for improving the interests of employees, they triggered a debate on "expanded non-financial disclosure" of materials which may be linked to employees (Williams and Conley, 2005: 511). Accordingly, the role of stakeholders in good corporate governance was highlighted (Boeger, Murray and Villiers, 2008: 212). One of these committees, Hampel Commitee, noted in relation to information disclosure, "proposed that public companies should be required by the London Stock Exchange's listing rules to disclose

in their annual report how they applied principles of good governance (including CSR [Corporate Social Responsibility] principles)" (Voiculescu, 2009: 252).

In the second instance, disclosure requirements may be seen as a result of reforms or developments made within the EU. Notably, most of the mandatory disclosure requirements in place in the UK have originated from the EU. Company law may be seen as the first such area EU requirements have impacted upon the UK disclosure regime. EU directives have constituted a direct impact on the UK corporate law (Horrigan, 2012: 25). For example, it may be said that ''the Companies Act [2006] is, in part, an expression of the EU modernisation project'' (Clark and Knight, 2009: 262). Indeed, the reporting requirements within the CA 2006, examined below, can be seen as well as it is the implementation of the EU directives.

Outside of the realm of company law, within a number of spheres, the EU is still one of the key influential actors. Disclosure requirements under the EU laws such as these effect health and safety or collective redundancies for example have significantly influenced the UK's approach to disclosure. In this respect, the implementation of the Directive 2002/14/EC (Information and Consultation of Employees Directive), which draws upon the general framework insofar as informing and consulting with employees is concerned may be seen as an important example in this respect. In accordance with the article 4(2) of directive 2002/14/EC, employees must be informed of financial and strategic developments within a corporation, along with potential structural changes that may occur within the organisation.

In summary, it is apparent from this discussion there are many incumbent mandatory disclosure requirements that have been created response to developments in the EU and the UK, domestically. The following sections shall examine some of these requirements in greater detail.

3. Disclosure Obligations under UK Company Law

In the wake of several crises in relation to corporate governance, during the 1990s UK government accelerated its modernization of the company law (Company Law Review Steering Group, 1999). These efforts resulted in the enactment of the Companies Act

(CA) 2006. In relation to information disclosure specifically, s. 417 of the CA 2006 required corporate directors to ensure that a *Business Review* (BR) was included in their annual reports. This requirement was further reformed by the Companies Act 2006 (Strategic Report and Directors' Report) and Regulations 2013 (SRDRR). SRDRR replaced s. 417 of the CA 2006, and made a number of other, mostly subtle, and modest, changes to the social reporting requirements placed upon companies in the UK.

Within the following sections, discussion and analysis consider the latest disclosure requirements in the field of company law and the critique of these requirements in relation to employee interests.

3.1. Strategic Report and Directors' Report Regulations 2013 (SRDRR)

In keeping with the former *business review* requirements of s. 417 of CA 2006, the SRDRR stipulates that directors of listed companies, with the exception of some smaller companies, are required to prepare a "strategic report" as part of their annual report. In doing so, company directors are required to use the report to present ''a fair review of the company's business [and] a description of the principal risks and uncertainties'' in s. 414C (2)(a)(b). According to s. 414C (7)(b)(ii) and (iii) of CA 2006, the strategic report must include "information about the company's employees" and "social, community and human rights issues", "including information about any policies the company has in relation to those matters and the effectiveness of those policies". However, these disclosure requirements are grounded in a voluntary commitment by the company to share such information, as required by the former BR component of the CA. Notably, none of these provisions imposes a mandatory requirement to report, and where these matters are not included in the Strategic Report, then this must merely be stated.

Ultimately, the main purpose of the Strategic Report requirements is to ensure that directors disclose to shareholders material information on issues that may affect the development and performance of the company (Financial Reporting Council [FRC], 2014: ss. 5.6-5.11). Thus, insofar as information in relation to the employees of the company is concerned, this should only be disclosed ''to the extent necessary for an understanding of the development, performance or position of the company's business''(CA 2006: s. 414C [4]).

The introduction of SRDRR brought about some new disclosure requirements, which signified a new approach to corporate disclosure, in difference to the mere repeat of requirements listed under the former BR approach. First, in accordance with s 414C (7)(b)(iii) CA 2006, listed companies were now required to disclose their approach to human rights issues. Accordingly, even if the company covered the subject of employee or human rights issues in a separate CSR report, it must now also include this information in its annual report (Deloitte, 2013: 20). The provision on the disclosure of human rights information may be interpreted as requiring companies to afford greater attention to supply chain matters (FRC, 2014: 7.31). Second, according to s 414C(8)(c)(i), the strategic report must include "the number of persons of each sex who were directors of the company" and (iii) "the number of persons of each sex who were employees of the company". Hence, the SRDRR specifically introduced requirements that touch upon the gender diversity of the board and the employees.

In addition to above requirements, the Financial Reporting Council (FRC, 2014) published its "Guidance on the Strategic Report" in order to help company directors with the requirement of *narrative reporting.*[9] This guidance is grounded in voluntary roots. The guidance on the Strategic Report provides a general framework how directors are expected to disclose information with respect to employees, whilst it further elaborates upon the meaning of s 414C (7)(b) of the CA 2006, which requires directors to include the information that may relate to the "development, performance, position or future prospects of the entity's business"(FRC, 2014: 7.29-7.37). According to the Guidance, the information included in the Strategic Report may depend upon the sector in which the company conducts its business (FRC, 2014: 7.30). In this respect, if a company pays attention to worker conditions through its suppliers, in order to reduce the risks that may be detrimental to its reputation, this information may be included in the strategic report (FRC, 2014: 7.31).

Notwithstanding, all of the information disclosed in accordance with the strategic report should be material only to shareholders. As such, the next section shall now examine the importance of shareholders with respect to disclosure.

[9] Narrative reporting refers to a report which "complements accounting reporting with discussions on the management's take of future prospects and risks and the planned management response besides additional commentaries on corporate social responsibility (CSR) and brand equity considerations, which may impact upon corporate valuation"(Yeoh, 2010: 211-212).

3.2. The Role of Section 172 of the CA 2006 in terms of Disclosure

When considering disclosure in relation to employee interests, this consideration ought to be evaluated within the frame of directors' duties, as defined by s. 172 of the CA 2006. According to s. 414C(1) of CA 2006, "the purpose of the strategic report is to inform members of the company and help assess how the directors have performed their duty under s. 172 (duty to promote the success of the company)". Accordingly, directors are obliged to provide shareholders with information in relation to their performance, in accordance with their *duties,* to enable shareholders better understand the issues relating to the business of the company.

However, the exact prescription of these duties warrants further examination. S. 172 (1)(b) of the CA 2006 conceptualises the duties of the directors as follows:

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to— ...the interests of the company's employees...

With the above in mind, it is evident s. 172 itself does not detail any requirement with respect to information disclosure. Nevertheless, as highlighted in the discussion above, SRDRR underlines directors' duties in relation to disclosure. Thus, one may thereby ask whether directors owe any duty to consider the interests of stakeholders of the company, other than those of the shareholders.

One might argue that section 172 has a particular importance in relation to stakeholder interests, since "it posits a relationship between the pursuit of shareholder wealth maximization and the obligation to consider the impact of decisions on various stakeholders" (Goddard, 2008: 472). However, it is apparent that s. 172 (1)(b) requires directors to "have regard to the interests of the company's employees" only with respect to the company's success. As such, s. 172 regards employees, alongside other stakeholders, as means of playing a role in the long-term success of the company, for the benefit of its shareholders, and thus requires company directors to consider the interests of employees instrumentally.[10] Therefore, one can see that s. 172 requires

[10] Although s. 172 uses the word of "members," the company members are defined as shareholders whose names are entered in the company's register of members. (See CA 2006: s. 112).

directors to consider employee interests, only if they are important when considering the success of the company. Thus the information that should be disclosed in accordance with SRDRR is likely to remain limited to the interests of employees other than shareholders.

As the above analysis outlines, s. 172 does not include any disclosure requirements. However, it is through disclosure requirements outlined in the SRDRR that members of a company are empowered with the necessary information to understand whether directors comply with the requirements prescribed in s. 172. Yet, critically speaking, is disclosure necessary for this purpose? For example, would company law be reformed to require directors to act in a proper way without disclosure requirements?

Even where company law some way requires directors to act in *a proper way* towards ensuring the success of a company, without disclosure, it would appear directors would be free from accountability or having to respond accounting for their actions, whether or not these were in a proper way. Therefore, it would appear that there is a need for additional provisions specifically addressing disclosure in relation to directors' duties.

Indeed, even with disclosure, the attitude of a manager who acts in *a proper way* is unlikely to be challenged since in addition to disclosure, any provision addressing the core duties of the directors ought to be clear enough (Aiyegbayo and Villiers, 2011: 707). In this respect, for example, s. 172 of the CA 2006 may be criticised since in accordance with this section, it is difficult to challenge the directors' decisions as long as they are taken in "good faith" (Aiyegbayo and Villiers, 2011: 707; Keay, 2012: 93-106).

Crucially, even where disclosure requirements under company law consider employee interests, insofar as these requirements only detail a section which frames the duties of directors in relation only to the interests of both shareholders and the success of the company. In this respect, the SRDRR, for example, merely aims to ensure shareholders are more informed, and to assess the performance of directors under CA 2006 s. 172 (FRC, 2014: para. 4). The regulations pay attention to the importance of considering stakeholders, however doing so only instrumentally. With this in mind, the critique of company law shall be furthered in 3.3. below.

3.3. A Critique of Company Law in the UK

3.3.1. Shareholder Value and the Limited Scope of Disclosure Requirements

From the outset, the interests of stakeholders are often subordinate to the interests of the shareholders insofar as disclosure requirements under company law are concerned (Villiers, 2006: xii). As has highlighted above, disclosure requirements under SRDRR are largely based upon the idea of maximizing the wealth of company members, namely shareholders. Therefore, one of the shortcomings apparent within the UK disclosure regime can be said to be its instrumentalist/consequentialist focus upon the interests of employees, in order so they may contribute to the improvement of shareholder wealth. This instrumentalist perspective of the UK disclosure regime may be criticised for "viewing employees and human capital only in terms of the company's needs and subject only to an efficiency calculus" (Villiers, 2006: 290). Although the reform process in company law and the CA 2006 in particular adopted the concept of the enlightened shareholder value[11] – emphasizing a focus upon long-term company success – the interests of employees are often not taken in to account in their own right within laws of the UK. The shareholder value maximisation model of corporate governance adopted in the UK is principally grounded in the notion of ensuring company directors are held responsible for disclosure to its shareholders (Campbell and Vick, 2009: 246). For example, according to s. 414C(1) of the CA 2006, whilst it is required that employee issues are considered in the strategic report, such information has to be material to shareholders. The scope of directors' reports encapsulates only how directors consider employee interests in relation to shareholder value.

In keeping with the above analysis, Clark and Knight (2009: 262) argue that "[t]he Disclosure requirements of the Companies Act are entirely consistent with Anglo-American investor expectations with regard to the premium on the free-flow of market-sensitive data". Nonetheless, favouring only shareholder interests limits the scope of disclosure in improving the behaviour of the corporation towards employees -as well as other stakeholders (Ruggie, 2013: 3).

[11] The term of *Enlightened shareholder value* (ESV) was first used by the Company Law Review Steering Group in the UK. ESV considers other stakeholder interests instrumentally in terms of maximizing long-run shareholder value. According to this theory, stakeholder interests are seen as material in maximising financial performance (Company Law Review Steering Group, 1999: para. 5.1.11).

1. 3.3.2. Lack of Clarity

Another aspect of the transparency requirements under company law that may be subject to critique is the relative lack of clarity, namely of what kind of information must be disclosed by company directors (Aiyegbayo and Villiers, 2011: 707). Even the Guidance on the Strategic Report for the latest regulations, SRDRR, fails to improve the clarity detailing specifically what directors must disclose when it comes to issues such as human rights and employees (Aiyegbayo and Villiers, 2011: 5).

One might therefore suggest that reporting requirements in company law are in need of reform, with a view to improving the clarity regarding ''the issues to be covered (i.e. how to go about assessing relevance); the amount and type of information required (i.e. how to go about assessing materiality); and the indicators by which performance is to be measured ('KPIs')'' (Corporate Responsibility Coalition [CORE], 2011: 9).

2. 3.3.3. Weak Auditing and the Lack of Possibility to Challenge the Directors' Discretion

As discussed earlier in 1.2.1, the issues that require inclusion in corporate annual reports is often interpreted by directors of the company, since the non-financial disclosure under UK company law permits *narrative reporting*. Therefore, although information with respect to employee issues requires the attention of directors, this is only matter when it is deemed material in the eyes of the directors. Accordingly, this perspective affords directors too much discretion with respect to disclosure. Where the information relating to employees is not disclosed by the company directors, then CA 2006, s. 414C (7) only requires that directors highlight which issues are not included in the report. Even where directors choose to disclose information, the comprehensibility and credibility of the information may still remain limited, as directors cannot be challenged as if they are acting in breach of their duties (Aiyegbayo and Villiers, 2011: 707). Indeed, in the present case, employees do not have the right to present a complaint to any authority, nor are they able to challenge a director's report, if the information is vague or it does not pay adequate attention to employee interests (Goulding and Miles, 2005: 99).

3. 3.3.4 Lack of Dialogue

As the aforementioned discussion highlights, directors are the sole actors in deciding what information ought to be disclosed with respect to employee issues when dealing with UK company law. However, full transparency may require a dialogue between the users/recipients of information. This dialogue can make the content of the disclosure more legitimate and credible (Adams, 2004: 733). In other words, companies may need to consult with employees and other stakeholders regarding the information disclosed since this can be seen as an obligation for proper disclosure (Williamson, 2003: 524). To this end, the employees' role is essential in respect of the reporting process. For example, employees provide feedback and inform companies of "what issues are important" to them (Williamson, 2003: 524). Therefore, for the quality of the information disclosed by the company, employees should be consulted (Williamson, 2003: 524). However, disclosure requirements under company law, do not pay specific attention to the role of employees, or any other stakeholders in this regard.

In summary, the transparency regime within UK company law would appear to contain several shortcomings with respect improving the interests of employees. As such, the shortcomings highlighted require improvement in order so greater transparency may be achieved.

4. Disclosure Obligations under Employment Law

Labour rights have a great significance within the EU. As one Commission report (2001: 416 final 10) highlights, "respect for labour standards is an integral element of the European social model". Labour law in the EU is regulated by "treaty provisions, fundamental rights and general principles of EU law, secondary law, collective agreements at EU level, case law from the Court of Justice, and soft law measures" (Rönnmar, 2014: 591). For example, article 136 of the Treaty Establishing the European Community (TEC) encapsulates social objectives such as "...the promotion of employment, improved living and working conditions..." Accordingly, transparency constitutes one of the primary strategies within EU labour law. This aspect of the EU directly affects disclosure rules under UK employment law. As such, the following sections shall briefly focus on some of the disclosure requirements apparent within the

UK, which predominantly stem from EU laws.

4.1. Information and Consultation of Employees Regulations 2004

Much like in company law, EU Directives constitute one of the most crucial tools to ensuring change within the frame of EU labour law (Rönnmar, 2014: 594). To this end, one of the most important directives to have been implemented with respect to informing employees is Directive 2002/14/EC, also known as Information and Consultation of Employees Directive. This was transposed in to UK law through the Information and Consultation of Employees Regulations 2004 (ICE Regulations).

The ICE regulations apply to undertakings in companies where there are at least 50 employees (regulation [1][a]). The regulations give employees (or their representatives) the right to request the negotiation of an agreement on information and consultation (regulation [reg.] 7). However, this request is only valid if the agreement represents a minimum threshold of 10 per cent of all employees (reg. 7). Employers must start the negotiations with employee representatives within three months of the request being made by employees (reg. 14[3]). Although employees can themselves make a request for information and engage in consultation, employers themselves may also decide to start a negotiation process by issuing a written notification to its employees (reg. 11).

Whereupon the employer fails to initiate negotiations upon the employees' request for information, or an agreement cannot be reached during negotiations, then the employer must provide the information and engage in consultation with representatives (ICE Regulations, 2004: reg. 18). Employers must inform the employees, or their representatives, with respect to certain issues such as "the recent and probable development of the undertaking's activities and economic situation" (reg. 20[1][a]) and "decisions likely to lead to substantial changes in work organization or in contractual relations" (reg. 20[1][c]).

When it comes to enforcement, the Central Arbitration Committee (CAC) plays a key role in this respect. For instance, where the negotiation process fails, then employees have a right to complain to the CAC, which may order the employer to take such steps as necessary to implement action (ICE Regulations, 2004: reg. 22[4]). In some

circumstances, where the employee has a reason to do so, he or she may apply to the Appeal Tribunal for a penalty notice (reg. 22[6]).

In spite of their overall ethos, the regulations arguably contain a number of shortcomings. First, they do not affect undertakings with companies where there are less than 50 employees. Thus more than 90 percent of undertakings in the UK are exempted (Department of Trade and Industry [DTI], 2004: para. 4). Secondly, the regulations "bypass" the unions' role in terms of the representative mechanisms usually employed when disseminating information and engaging in consultation (Davies and Kilpatrick, 2004: 140-141). From the perspective that claims collective action is more powerful than the individual causes, the regulations can therefore be critiqued (Trades Union Congress [TUC], 2014: 1). Under the regulations, the role of the unions is thereby limited (Hall, Purcell and Adam, 2015: 1). Third, another shortcoming may relate to the narrow definition of the word of "under the ICE Regulations. According to regulation 2 of the ICE regulations, an employee is conceptualised as "an individual who has entered into or works under a contract of employment". From this perspective, a part-time worker does not qualify as an employee (Ewing and Truter, 2005: 629).

In summary, although the ICE regulations contain a few shortcomings, they afford a number of statutory rights to employees in relation to the disclosure of information and consultations concerning issues that may directly affect their working lives.

4.2. Disclosure Requirements on Health and Safety

Under UK law, employers have a duty to ensure the health and safety of their employees at work (Health and Safety at Work etc. Act 1974). Health and safety law in the UK is also predominately based upon the implementation of the EU law, where the Health and Safety Framework Directive (89/391/EEC) has largely been implemented through the Management of Health and Safety at Work Regulations 1999.

Information disclosure constitutes a significant aspect of health and safety regulations both within the UK and across the EU. Firstly, regulation 4(1) of the Health and Safety Information for Employees Regulations 1989 requires employers to ensure employees

are informed by displaying a health and safety law poster, and providing a leaflet which gives information on the UK's health and safety laws.

Secondly, according to regulation 10(1) of the Management of Health and Safety at Work Regulations (MHSWR) 1999, employers have a duty to provide comprehensible health and safety information to employees, such as possible health and safety risks, and "preventive and protective measures". In accordance with such provisions, health and safety information should be understandable for everyone. There is no doubt, information disclosure ought to be clear and understandable for effective transparency (Mock, 1999: 1081). Accordingly, for example, the provision of interpretation or translation of information on health and safety materials information signs should be available in other languages (Trades Union Congress, 2007: 8).

Thirdly, the UK laws aim to improve the management of the health and safety issues at workplaces through consultation with the employees. For example, according to the UK regulations, employers must also consult with employees or employee representatives specifically in relation to health and safety matters (Safety Representatives and Safety Committees Regulations 1977; Health and Safety (Consultation with Employees) Regulations 1996).

Fourthly, employers are required to inform employees about specific hazardous substances that may pose a risk to workers' health or safety. According to reg. 12(1) of the Control of Substances Hazardous to Health Regulations (COSHH) 2002, "every employer who undertakes work which is liable to expose an employee to a substance hazardous to health shall provide that employee with suitable and sufficient information, instruction and training". According to regulation 12 (2)(a) of COSHH, employees need to be informed on issues such as (i) the names of those substances and the risk which they present to health and (ii) any relevant occupational exposure standard, maximum exposure limit or similar occupational exposure limit.

However, in addition to risk related information, details regarding the health and safety performance of companies may also prove helpful. The next section will examine the regulation of this information.

4. 4.3. Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013

Although disclosure with respect to health and safety issues, and consultation with employees, have a key role to play in the protection of employees' health and safety, it is also crucial to monitor the performance record of a company's health and safety. This kind of information may aide the Health and Safety Executive in maintaining relevant and important statistics that identify health and safety risks, and plays a role where there is a need for further investigations in to serious accidents (HSE, n.d.a: 1).

The law in the UK requires employers to record the occurrence of any incidents any incidents that are linked to employees' health and safety (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 [RIDDOR 2013]: reg. 12). In accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013, employers must report incidents such as deaths and injuries caused by workplace accidents, occupational diseases (reg. 8), exposure to carcinogens mutagens and biological agents (reg. 9), specified injuries to workers (reg. 4[1][a] to [h]), dangerous occurrences (reg. 11), and gas incidents (reg. 11). Moreover, if an accident renders a worker incapable of doing work for more than seven days, it must be reported even if it is not a ''specified injury'' (reg. 4[2]). However, the disclosure of the information regarding the death or injury of a worker needs to be work-related. For example, where an employee commits suicide, this information does not need to be disclosed (HSE, n.d.b). Indeed, in some circumstances, an employee suicide might be work-related, which would require further explanation by the employer (Chan, 2013).

4.4. Disclosure through Whistleblowing Rights

Whilst whistleblowing may improve transparency in the immediate sense, it may also result in unwelcome consequences for the employee (Cover and Humphreys, 1994: 89). Where the employee is likely to be dismissed or treated unfairly because of the whistleblowing, she or he may be reluctant to disclose information. However, whistleblowers are protected by the law. The Employment Rights Act 1996 (ERA 1996), which was amended by the Public Interest Disclosure Act 1998 (PIDA 1998),

encapsulates provisions with respect to whistleblowing. Unlike a majority of other legal strategies in the UK, whistleblowing forms part of domestic law, and was not the result of the implementation of EU laws.

In accordance with the laws in this area, if an employee is dismissed owing to his/her whistleblowing, she/he may claim unfair dismissal (Employment Rights Act 1996 [ERA 1996]: s. 103A). Indeed, within the legislation, there is a specific criteria detailing whistleblowing protections. In accordance with s. 43B(1) of the ERA 1996, an employee may blow the whistle if there is "a criminal offence, breach of a legal obligation, danger to health and safety, a miscarriage of justice, damage to the environment". All these circumstances constitute the conditions for what is termed ''protected disclosure''(s. 43C).

The employee can convey information on the wrongdoing to her employer, or a prescribed person (ERA 1996: s. 43C[1]). Indeed, in 2013, the Enterprise and Regulatory Reform Act (ERRA) updated PIDA 1998 and a provision on the legal protection of whistle-blower employees for bullying or harassment from co-workers was included in the act. Crucially, the disclosure of wrongdoing must be in the public interest (Enterprise and Regulatory Reform Act 2013 [ERRA 2013]: s. 19).

Whistleblower protection laws in the UK can be seen as more comprehensive than the laws in other countries (Worth, 2013: 83). However, one may also assert that whistleblowing laws are still insufficient enough to protect employees (Lewis, 2008: 497). In order to improve the protection of the whistle-blowers in the UK, research by Lewis has detailed a number of recommendations. Accordingly, he argues that employees should be protected even if they are found to be whistleblowing in respect of actions that do not breach legal obligations (Lewis and Uys, 2007: 88). For example, employees should be protected against any victimisation and discrimination based upon whistleblowing, and should have a right to reinstatement or reengagement in case of dismissals owing to whistleblowing itself (Lewis and Uys, 2007: 89).

Interestingly, according to the Public Concern at Work's (PCaW) survey, most workers did not even know whether there is a law to protect whistle-blowers (Public Concern at Work, 2011: 17). Even if they knew of their rights, whistleblowing is subject to cultural

and political factors which play a significant role in the reduction of whistleblowing as an effective tool (Osterhaus and Fagan, 2009: 7).

However, irrespective of the limitations highlighted, the concept of whistleblowing has a prospective role to play in detecting wrongdoings that might affect employee interests. Therefore, it constitutes one avenue among others that encourages corporations to be transparent.

4.5. Information Disclosure with regard to Dismissal and Collective Redundancies

Employees must be provided a minimum period of notice before dismissal (ERA 1996: s. 86[1]). According to the ERA 1996 s 86(2), employees, who have been working for at least one month, must be informed in advance of the dismissal.

In difference to most dismissal notices, some employees may also be entitled to receive a written statement about the reasons for their dismissal (ERA 1996: s. 92). Accordingly, employees who have completed at least 2 years of employment[12] can request a written statement detailing reasons of dismissal (ERA 1996: s. 92[3]). Some employees, such as those on statutory maternity leave, for example, must be given a written statement about the dismissal, even if they do not request it, and irrespective of how long they may have worked at the company (ERA 1996: s. 92[4]).

Where there are to be redundancies, also have a number of further obligations. The Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) requires employers consult with employee representatives on the nature of the collective redundancy itself. A collective redundancy refers to the dismissal of "20 or more employees at one establishment within a period of 90 days or less"(s. 188[1]). In accordance with s. 188(4) of TULRCA, employers, who proposed to dismiss employees, are required to disclose information on matters such as; (a) "the reasons for his proposals", (b) "the numbers and descriptions of employees whom it is proposed to dismiss as redundant" and (d) "the proposed method of selecting the employees who may be dismissed".

[12] Or 1 year if the employee started to work before 6 April 2012. (ERA 1996: s. 92).

If the employer fails to disclose the information required by the trade union representative, then the trade union "present a complaint to the Central Arbitration Committee" in accordance with s. 183(1)(a).

Doubtless one can also find some further disclosure requirements within the domain of employment law.[13] However, as has already been highlighted in introduction, this paper shall not cover all of those measures available in the UK that aim to offer provision of transparency for the benefit of employees.

In summary, disclosure requirements constitute an important aspect of employment law. It is apparent these requirements improve the transparency of companies towards both employees and the public. Where the requirements outlined mostly consist of minimum workplace standards, they also in part play a role in improving employee interests. In light of the RIDDOR statistics, for example, the Health and Safety Executive (HSE) points out that the UK benefits from very low rates of accidents or fatal injuries to workers, which makes it a relatively safe place for workers when compare to other industrialized countries (HSE, 2016: 8). Although one may argue that workers still suffer from mistreatment in the workplace, such as forced labour, comparatively speaking, the UK may be seen as one of the safer places to work (see Human Rights Watch, 2014).

4.6. Critique of disclosure rules under Employment Law

Employment law appears as a field of law that aims more directly towards improving the basic interests of employees. Thus, disclosure requirements under employment law can be demonstrated as more robust to accomplish meaningful improvements to compel corporations to act transparently. However, it is arduous to say that disclosure rules under employment law are flawless. For example, the role of unions is acutely limited under the ICE Regulation (Hall, Purcell and Adam, 2015: 1). ICE regulation is also criticised due to its definition of employees in which a part-time worker does not

[13] For instance, according to s. 8 of the Employment Rights Act 1996, employees must be provided with a written statement, outlining the total amount of wages or salary and deductions made in their pay in that tax year. Another example may be found in s. 181 and s. 182 of the TULRCA 1992, which requires employers provide information to the trade union representatives in relation to collective bargaining.

qualify as an employee (Ewing and Truter, 2005: 629). Another critique may be related to the inadequate education of employees with respect to their rights. As it is highlighted above, it is alleged that many employees in the country do not even know their rights (Public Concern at Work, 2011: 17).

There is no doubt; one can find some other shortcomings. However, it is worth emphasising one of them. Disclosure requirements listed above are mostly limited with the activities of the corporations in the UK. Although there are many UK companies conducting businesses and have employees in different parts of the world, the regulations under UK employment law consider only the activities conducted in the UK. However, the age of economic globalization enables companies that seek to reduce labour costs to mobilise their operations to poorer countries, where protective labour laws are less comprehensive (Collins, 2015). As such, economic globalization reduces the capability of those requirements dictated by domestic labour laws. Therefore, whilst such national initiatives can accomplish meaningful improvements to compel corporations to act transparently, they fall short of achieving the sufficient level of disclosure at the international level. Nevertheless, the UK government also seek to employ other means to ensure transparency requirements are adhered, such as supply chain transparency provisions, included in the Modern Slavery Act 2015, for example. Next section shall focus on this Act.

5. Modern Slavery Act 2015

Modern Slavery Act 2015 (MSA) is one such strategy employed by the UK government to eradicate forced and slave labour in the supply chains of UK companies. Although it is not specifically designed as piece of company law legislation, the MSA incorporates elements that relates to company management. In this respect, the MSA uses transparency to ensure corporations to take steps to eliminate modern slavery. Section 54 of the MSA in particular aims to ensure forced labour and trafficking for labour exploitation are made visible.

5.1. Disclosure Requirements under the MSA 2015

The *transparency clause* used within the UK's MSA is inspired by the California's Transparency in Supply Chains (CTSCA) Act in the US (Home Office, n.d.:10). However, in spite of this, there remain subtle differences between two acts. Most notably, the CTSCA applies only to those businesses producing goods for sale, whilst the transparency clause contained in the MSA also applies to those companies that supply both goods and services (Home Office, 2014: 2). Indeed, the MSA covers both British companies and foreign companies conducting business in the UK.

Interestingly, s. 54 of the MSA requires corporations with a specified turnover,[14] who are either incorporated or conduct their business in the UK, to disclose information about their operations. In this respect, the MSA disclosure requirements apply only to those companies supplying goods or services in the UK (MSA, 2015: s. 54[1]).[15] According to s. 54(1) of the MSA, these companies "must prepare a slavery and human trafficking statement for each financial year". Principally, s. 54(4)(a)(b) requires companies to disclose what they have done, as well as what they have not, in order to ensure that there is no slave labour in their supply chains.

In keeping with the MSA, companies have to include in their statement how they have "verified its supply chains to evaluate and address risks, audited suppliers, certified goods and services purchased from suppliers, maintained internal accountability standards, and trained staff" in their strategic reporting with respect to modern slavery (Joint Committee on the Draft Modern Slavery Bill, HL 2013-2014: para. 184). In accordance with s. 54(5) of the MSA, the information on slavery and human trafficking statement may include;

(a) the organisation's structure, its business and its supply chains;

(b) its policies in relation to slavery and human trafficking;

(c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;

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14 "Companies with a turnover or group turnover of £36 million". (Modern Slavery Act 2015, (Transparency in Supply Chains) Regulations 2015: regulation 2)

15 Modern Slavery Act 2015: section 54(1).

(d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;

(e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;

(f) the training about slavery and human trafficking available to its staff.

Such statement "must be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent)" (MSA, 2015: s. 54[6][a]). Furthermore, s. 54(7) of the MSA also highlights the publicity of the statement. In this respect, if the company has a website, it must publish the slavery and human trafficking statement. If it does not have a website, then the company must provide a copy of the statement to the parties who make a written request of information in 30 days (MSA, 2015: s. 54[8]).

When it comes to the sanctions being imposed upon companies that do not comply with the requirements under the MSA, even though there are some legal risks, the sanctions are weak. For instance, although the Secretary of State has power "bringing civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988" in accordance with s. 54(11)of the MSA, the real risk for companies is largely reputational. Indeed, companies may risk their reputation unless they ensure their supply chain has no obvious links to slave labour. In fact, some stakeholders may pay significant attention to the issues such as slave labour and ethical practises (Guilbert, 2015). Thus, the sanctions imposed upon companies may largely be imposed by corporate stakeholders.

5.2. Critique of the MSA

Before looking at the critiques of the MSA, it is crucial to note that the MSA only pays attention to issue of slave labour, and does not encapsulate other issues that may affect the interests of employees. Therefore, it confines its impact upon improving corporate transparency towards employees that analysed in this thesis. In addition to this limitation, the MSA also contains a number of features worthy of critique.

First, the MSA does not require companies to report on the supply chains of subsidiary companies registered abroad, if their goods and services are not coming to the UK (Chandran, 2015). Therefore, some companies may continue with an attempt to conceal their transactions within supply chains within some developing countries, unless such goods were to end up being supplied in the UK.

Second, another critique may be levied upon the enforcement of the supply chain transparency provision contained within Act. The MSA does not contain any "monetary or criminal penalties" with respect to the noncompliance with such provision (Fortado, 2016). Disclosure requirements are therefore based upon voluntary foundations. According to the MSA 54(4)(b), companies may even disclose that they have not done anything to make its supply chain free from modern slavery. The Act therefore only enables market actors, insofar as urging companies to eradicate modern slavery in concerned, to impose pressure as required. However, companies may not be reluctant to say that they have done nothing where the negative reaction of consumers or shareholders is likely to prove insufficient. Indeed, although stakeholder groups may be influential upon the behaviour of companies, this influence might be limited (Graham and Woods, 2006: 872-873). In other words, the "levels of concern among consumers about labour standards" or their limited impact to change in supply chain conditions, might be the crucial shortcoming of the MSA (Phillips, 2013).

Third, the difficulty encountered when comparing statements disclosed by the companies in accordance with the MSA may be another critiques, since MSA does not have a provision requiring companies upload their statements to a central repository (Falconer, 2016). This situation may therefore reduce the ability of the corporate stakeholders to carry out a critical review.

Fourth, the MSA does not specifically state what corporations are required to disclose. Indeed, the MSA is grounded in flexible requirements, which may fit differently according to different corporate actors. Even if the government intends to support companies by creating a statutory guidance for what kind of information they may include in their disclosure, the statutory guidance is largely based upon voluntary elements, which leave it to companies to disclose necessary information it feels obliged to share with consumers and shareholders (Home Office, n.d.: 17). Thus although such

a provision is flexible, rather than one size fits all, corporations may require further guidance to ensure greater transparency.

Fifth, the MSA may also be criticised in terms of the grievance mechanisms and remediation of abuses. The MSA "...does not specifically refer to information about companies' remediation processes where negative impacts have taken place and the company has caused or contributed to them" (Shift, 2015: 3).

In summary, as the above discussion highlights, transparency requirements under the MSA contain a number of shortcomings. Nevertheless, the MSA may be hailed as a significant development towards ensuring companies include cross border activities within their disclosures. Although extraterritorial regulation of corporate activities in host countries may encapsulate several obstacles, it would seem the MSA plays a pioneering role towards ensuring parent companies consider supply chain issues through the lens of transparency.

6. Other Disclosure Requirements by the UK government

Although the primary concern above is to consider the disclosure obligations as these are imposed upon companies and employers, there are also other indirect statutory measures that may be used to ensure corporations operate transparently. Although these strategies mainly affect a small number of companies, the following paragraphs will briefly demonstrate them.

First, corporations may be required to disclose information by the government in terms of public procurement since the government is one of the major consumers of goods and services provided by national corporations. Indeed, global privatisation movement over the past few decades has made a number of different corporations important providers of public services (Goodman and Loveman, 1991). In this respect, UK companies carrying out public services are now expected to consider a number of good employment practices. For this end, different government agencies in the UK have published a variety of relevant policy documents (see Department for Environment, Food and Rural Affairs [DEFRA], 2011). Indeed, in accordance with the EU legislation in this area, the UK government pays attention to the performance of the contractor

companies under the "obligations in the fields of environmental, social and labour law established by [European] Union law, national law, collective agreements or by the international environmental, social and labour law provisions"(Directive 2014/24/EU of the European Parliament and of the Council, 2014: art. 18[2]). According to the EU Directive (2014/24/EU), also known as the Public Contracts Directive, purchasers can now take into account factors such as social issues when deciding upon whether to award a contract to a company (art. 18). The Public Contracts Regulations, which transposes the Directive in to UK law, came in to effect in February 2015. Notably, although the regulations do not force companies to disclose a great degree of information, they encapsulate a provision highlighting the importance of social and environmental labels in terms of public procurement (Public Contracts Regulations 2015: reg. 43). Such labels which are symbolic schemes such as Fairtrade, provide a significant amount of information on the performance of the contractor companies in relation to employee standards (Hiscox and Smyth, 2006). In fact, the use of labels in terms of public procurement has already been practiced by several public institutions in the UK. Universities, for example, have been committed to "supporting, promoting and using Fairtrade goods" (Durham University, 2016).

Second, even though it mainly affects a small number of companies, the Freedom of Information (FOI) Act 2000 can be another way towards ensuring companies act more transparently. Disclosure requirements under the FOI are limited only to public companies, and companies carrying out public services (FOI, 2000: s. 6). In this respect, the freedom of information laws require expansion in order to other companies are captured in the attempt to make corporate transparency more widespread (Zerk, 2007: 30). However, although both the FOI act constitutes an alternative strategy aim at ensuring companies conduct public service more transparently, it does not oblige companies to ensure greater transparency with respect to employee interests.

Third, another mandatory scheme of transparency may be said to be requirements within Socially Responsible Investment (SRI). Indeed, disclosure requirements with respect to SRI, which require investors to disclose information in relation to whether they consider social issues, such as employee conditions, when investing in companies, may indirectly urge companies to disclose information (White, 2005: 1). In this respect, disclosure requirements for pension funds can be an important example. Indeed, the UK is the first country that requires occupational pension fund trustees to disclose their

investment policies on environmental, social and governance (ESG) issues (UK Sustainable Investment and Finance [UKSIF], 2010: 2). According to reg. 2 (3)(b)(vi) of the Occupational Pension Schemes (Investment) Regulations 2005 trustees must disclose to what "extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments". However, as other strategies examined in this section, disclosure requirements with respect to SRI affect a small number of companies (Umlas, 2008: 1020).

Conclusion

Through the discussion in this paper, the aim has *not* been to provide a comprehensive, textbook like, description of all the norms that require disclosure. Rather, the aim was to use the examples cited demonstrate what already exists, and to illustrate limited effectiveness of such norms. The first focus was on company law. Instrumentalist approach of the UK company law, viewing employees as means, the lack of clarity and dialogue with employees and impossibility to challenge the directors' discretion with respect to disclosure about employees were listed as the main shortcomings of the transparency requirements under company law.

Both domestic reforms and developments within the EU have helped shape the nature of the mandatory disclosure laws employed in the UK. However, UK company law predominantly considers the interests of employees in terms of corporate/shareholders' ends. Although the disclosure requirements under company law were criticised for being insufficient to improve the interests of employees, disclosure requirements under other laws, especially under employment law, were depicted as more robust to accomplish meaningful improvements to compel corporations to act transparently. Employment law appears as a field of law that aims more directly towards improving the basic interests of employees. Whilst such national/regional initiatives can accomplish meaningful improvements to compel corporations to act transparently, they also suffer from some limitations and fall short of achieving the sufficient level of disclosure at the international level. Thus the UK disclosure rules under employment law would appear to fall short when judged in relation to the global activities of UK

corporations. From this conclusion, it is worth saying that further research may focus on international/global disclosure rules for corporations.

In addition, this paper has only focused on the theoretical aspects of the disclosure rules in the UK. Therefore, another suggestion for future work may be quantitative methods to prove the pros and cons of the disclosure rules in the UK.

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