



# Information and consultation practice across Europe five years after the EU Directive

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*This report provides an overview of the extent, practice and impact of employee information and consultation (I&C) in 26 European countries five years after the implementation date of Directive 2002/14/EC. Procedures for establishing I&C arrangements and the scope for organisation- or sector-specific I&C models via collective agreement vary considerably between countries. The incidence and coverage of I&C bodies is less than comprehensive in all countries, with a marked size effect (larger undertakings are more likely to have an I&C body than smaller ones). Trade unions are the main vehicle for employees' statutory I&C rights in a number of countries and tend to be influential within works council-type I&C bodies in others. The social partners generally support their national I&C frameworks, but in some countries, employers and/or unions reportedly have little enthusiasm for implementing I&C procedures. The patchy evidence available makes it difficult to reach a measured assessment of I&C practice.*

## Introduction

This comparative report aims to assess developments in employee information and consultation (I&C) across the EU over the five years since the implementation date of **Directive 2002/14/EC**. The focus is on the extent and practical application/experience of I&C rather than the legal implementation of the directive, which was the subject of an earlier study (TN0710029S).

At the time the previous report was being compiled in 2007, most European Industrial Relations Observatory (EIRO) national correspondents reported that it was too early to identify the directive's practical impact on the ground. The present study revisits this question based on the responses of EIRO national correspondents in 26 countries (EU27 excluding Finland and Latvia, plus Norway) to a questionnaire.

The report looks at a range of issues, including:

- procedures for establishing I&C bodies;
- sources of I&C bodies' constitutional provisions (whether statutory requirements or organisation-specific agreements/arrangements);
- available data on the incidence of I&C bodies;
- practice of I&C (as opposed to statutory requirements) in terms of the main subjects covered, the nature and extent of the process and practical outcomes;
- relationship between I&C bodies and other forms of employee voice;
- views of the social partners.

### What is meant by an 'I&C body'

The term 'I&C body' used in this report refers to the undertaking- and establishment-level representative institutions/employee representatives that are the vehicle for the I&C rights guaranteed by the directive. In a number of countries these are based on national legislation that predated the directive.

National practice varies and such bodies include works councils, employee councils, cooperation committees, representative trade union structures and elected employee representatives. Bodies/representatives whose role is confined to health and safety issues are excluded.

## Procedures for establishing I&C bodies

Procedures for establishing I&C bodies vary considerably between countries. In some countries, I&C bodies are mandatory, in that employers above the relevant employment threshold are (at least technically) obliged by law to establish them. Elsewhere, employees or trade unions need to take steps to trigger the establishment of I&C bodies. Brief details are provided in Table 1.

Table 1: National I&C bodies and procedures for establishing them

Country	Employee bodies/representatives with I&C rights	Procedures for establishing I&C bodies
Austria	Works councils	Works councils technically mandatory but in practice left to initiative of employees.
Belgium	Works councils	Mandatory in that employers are legally required to hold social elections for works councils but may halt proceedings if no candidates.
Bulgaria	Elected representatives or trade unions	10% of employees, trade unions or employers can initiate general assembly of employees to elect representatives or delegate I&C role to trade unions.
Cyprus	Employee (in practice trade union) representatives	Trade union representation may be established by employees. Employee councils may be triggered by at least one third of employees.
Czech Republic	Trade unions or, where no unions present, employee councils	I&C mandatory but no particular body specified. Law not applicable where collective agreement requires equivalent level of I&C. Under collective agreements, cooperation committees may be initiated by management or majority of employees, but mostly established by agreement.
Denmark	(Union-based) cooperation committees	I&C mandatory but no particular body specified. Law not applicable where collective agreement requires equivalent level of I&C. Under collective agreements, cooperation committees may be initiated by management or majority of employees, but mostly established by agreement.
Estonia	Employee trustees	I&C mandatory but I&C bodies not. Election of employee trustees can be initiated by trade unions, the majority of union members or at least 10% of employees.
France	Works councils	Works councils mandatory.
Germany	Works councils	Works councils not mandatory. Employees or trade unions have right to initiate.
Greece	Trade unions or, where no union is present, works councils	Dependent on employee initiative.
Hungary	Works councils	Creation of works councils obligatory where requested by trade unions or employees.
Ireland	Agreed, company-specific I&C arrangements or statutory I&C forums	Dependent on voluntary employer action or 10% of employees triggering statutory procedures.
Italy	Representative trade union bodies at the workplace. Separate I&C bodies possible	Workplace trade union bodies mandatory for employers applying collective agreements. Establishment of I&C bodies obligatory if requested by workplace trade union bodies but very uncommon.
Lithuania	Trade unions or works councils	I&C mandatory. Where trade union or works council representatives do not exist, law requires employers to inform employees directly.
Luxembourg	Staff delegations or joint committees	Staff delegations/joint committees mandatory above relevant employment thresholds (15/150 respectively). Employer's responsibility to hold social elections.
Malta	Trade union/employee representatives	I&C mandatory for all relevant undertakings. Employees not required to trigger the introduction of I&C procedures.
Netherlands	Works councils	Works councils mandatory. Employees/trade unions can go to court to oblige employers to comply.

Table 1: National I&C bodies and procedures for establishing them (*cont'd*)

Country	Employee bodies/ representatives with I&C rights	Procedures for establishing I&C bodies
Norway	Trade union or other elected representatives	I&C mandatory. Employees' rights to I&C guaranteed by law but in practice most I&C arrangements regulated by collective agreements.
Poland	Works councils	Establishment of works councils obligatory where requested by 10% of employees.
Portugal	Workers' commissions	Dependent on initiative of 100 workers or at least 20% of the workforce.
Romania	Trade union representatives or, where no union is present, elected employee representatives	I&C mandatory by law.
Slovakia	Trade unions or works councils	Trade unions/works councils obligatory where requested by employees.
Slovenia	Employee councils	Establishment of employee councils not a duty on employers. Depends on employee initiative – usually from trade unions.
Spain	Workers' committees (workers' delegates in undertakings with <50 employees)	Workers' committees/delegates may by law be established by employees or representative trade unions.
Sweden	Trade union representatives	I&C mandatory but specific I&C bodies are not. I&C practice and procedures generally regulated by collective agreements.
United Kingdom	Agreed, company-specific I&C arrangements or statutory I&C representatives	Agreed, company-specific I&C arrangements or statutory I&C representatives

Source: EIRO national correspondents

In some countries, including Austria, Belgium, France, Luxembourg and the Netherlands, the establishment of works councils is technically mandatory, although in Austria their formation is in practice left to employees to initiate and in Belgium employers may discontinue works council elections if no candidates emerge.

In a second group of countries, EIRO correspondents report that, while the processes of I&C are mandatory by law, specific institutional arrangements are not. In Denmark, for example, the widespread incidence of cooperation committees stems from the application of central collective agreements. Similarly, in Norway and Sweden, employees' rights to I&C are guaranteed by law but in practice most I&C arrangements are regulated by collective agreements. In Estonia, I&C is mandatory but the election of employee trustees requires the initiative of employees. In Cyprus too, I&C is technically mandatory, but its practical implementation is reported to depend on trade union pressure. In Lithuania, where trade union or works council representatives are not present, it is mandatory for employers to inform employees directly. It is also mandatory in Malta and Romania for employers to inform and consult employees, but the law does not stipulate particular mechanisms.

But the largest group of countries is those where the application of the I&C rights guaranteed by the EU Directive is dependent on employees or trade unions taking steps to initiate the establishment of I&C bodies or procedures. The national provisions of Bulgaria, the Czech Republic, Germany, Greece, Hungary, Ireland, Italy (in respect of separate I&C bodies in addition to workplace trade unions), Poland, Portugal, Slovenia, Spain and the UK fall into this category.

In Bulgaria, for example, trade unions or 10% of employees can initiate a general assembly of employees to elect representatives or to delegate the I&C role to trade unions. The establishment of works councils is obligatory in Hungary where requested by trade unions or employees, and in Poland where requested by 10% of employees. In Ireland and the UK, statutory procedures exist enabling 10% of an undertaking's employees to trigger statutory negotiating procedures leading to agreed, company-specific I&C arrangements or the application of default standard arrangements. A higher threshold of employee support is required in Portugal where the establishment of workers' commissions is dependent on the initiative of 100 workers or at least 20% of the workforce.

Few EIRO correspondents reported the existence of data on the extent to which I&C bodies have been requested by employees or trade unions, or initiated unilaterally by employers.

- In Bulgaria, I&C bodies are reported to have been requested by trade unions in 206 cases compared with 11 cases initiated by employers and none requested by employees.
- In Hungary, 91% of I&C bodies have been requested by trade unions and 9% by employees.
- In Slovenia, the picture is similar with reported figures of 90% and 10% respectively.
- In Poland, 69% of works councils have been established in unionised companies at the request of trade unions, while 31% exist in non-union organisations. Research cited by the Polish EIRO correspondent suggests that, in non-union organisations, the initiative to establish works councils often came from employers.
- In Lithuania and Slovakia, works councils are usually initiated by employee representatives, though the Slovakian EIRO correspondent reported that trade unions believe that some employers are actively encouraging the establishment of works councils in preference to trade unions.
- In Greece, the establishment of works councils is dependent on employee initiative only.
- In Ireland and the UK, there is very little reported employee use of the statutory provisions enabling them to trigger negotiations over the establishment of I&C arrangements. There is evidence to suggest that, in both countries, the most recently introduced I&C arrangements have been employer-initiated.

## **Constitutional provisions**

While all the countries covered by this report have established a statutory framework governing the constitutional provisions of I&C bodies, there is notable variation in the scope available for (and relative importance of) organisation-specific (and, in some countries, sector-specific) agreements or arrangements. Brief details are provided in Table 2.

Table 2: Scope for agreement-based I&C provisions

<b>Country</b>	<b>Source of I&amp;C bodies' constitutional provisions</b>	<b>Nature/extent of agreement-based provision</b>
<b>Austria</b>	Statutory requirements	All aspects of works councils regulated by law. Organisation-specific arrangements rare.
<b>Belgium</b>	Statutory requirements; agreement-based provision	Structure, rights and functioning of I&C bodies determined by detailed statutory requirements. Some aspects further elaborated in national sector agreements and local arrangements.
<b>Bulgaria</b>	Statutory requirements	NA
<b>Cyprus</b>	Statutory requirements; agreement-based provision	In practice, design of I&C bodies and processes more informal than statutory requirements.
<b>Czech Republic</b>	Statutory requirements; agreement-based provision	Most company-level collective agreements make provisions for information (69%) and consultation (60%), but proportion going beyond statutory requirements is lower (22% and 12% respectively).

Table 2: Scope for agreement-based I&C provisions (*cont'd*)

<b>Country</b>	<b>Source of I&amp;C bodies' constitutional provisions</b>	<b>Nature/extents of agreement-based provision</b>
<b>Denmark</b>	Statutory requirements; agreement-based provision	Legislation applies only in areas not covered by cooperation agreements. Agreements always provide better rights than those established by law.
<b>Estonia</b>	Statutory requirements; agreement-based provision	Scope for agreement-based provision is very small. Organisation-specific agreements may define subjects and processes of I&C.
<b>France</b>	Statutory requirements; agreement-based provision	Agreements may only improve upon statutory requirements. Examples include agreements at <b>BNP Paribas</b> and <b>EADS</b> .
<b>Germany</b>	Statutory requirements	NA
<b>Greece</b>	Statutory requirements	NA
<b>Hungary</b>	Statutory requirements; agreement-based provision	Labour Code is 'decisive' but provides only a framework. Agreements possible between employers and works councils on I&C rights and mode of operation.
<b>Ireland</b>	Statutory requirements; agreement-based provision	Agreed I&C arrangements, whether pre-existing agreements or negotiated agreements reached under statutory procedures, not subject to minimum statutory standards. Latter apply only where negotiations under statutory procedures fail (no cases reported to date).
<b>Italy</b>	Statutory requirements; agreement-based provision	Law establishes right to I&C but not structure and functioning of I&C bodies. Collective agreements elaborate and extend legal provisions.
<b>Lithuania</b>	Statutory requirements; agreement-based provision	Basic I&C provisions established by Labour Code. Collective agreements may build on these, for example, providing more detail on topics and procedures for I&C.
<b>Luxembourg</b>	Statutory requirements; agreement-based provision	Scope for agreement on organisation-specific modalities of I&C provided these do not infringe core principles established by law.
<b>Malta</b>	Statutory requirements; agreement-based provision	Organisation-specific agreements can depart from statutory requirements.
<b>Netherlands</b>	Statutory requirements; agreement-based provision	Statutory requirements the main regulatory instrument, but sectoral collective agreements and company-level agreements between employers and works councils can make improved provision.
<b>Norway</b>	Statutory requirements; agreement-based provision	Collective agreements the most important source of regulation. Statutory requirements mainly relevant to companies not covered by collective agreements. Law not specific on I&C process or types of I&C body. Agreements lay down guidelines.
<b>Poland</b>	Statutory requirements; agreement-based provision	General structure, rights and functioning of works councils determined by statute. Organisation-specific arrangements (concluded in 36% of enterprises with works councils) regulate issues left open by the law. Research suggests some agreements decreased works councils' prerogatives compared to statutory position.
<b>Portugal</b>	Statutory requirements; agreement-based provision	Some collective agreements (mostly at company level) specify additional I&C rights for employee representatives.
<b>Romania</b>	Statutory requirements; agreement-based provision	I&C rights are set out by law and by collective agreements.
<b>Slovakia</b>	Statutory requirements; agreement-based provision	Structure, rights and functioning of I&C bodies specified by Labour Code. I&C provisions can be improved by company-level collective agreements or agreement between works councils/employee trustees and company management.
<b>Slovenia</b>	Statutory requirements; agreement-based provision	Minimum basis for employee councils set by law which also envisages 'participative agreements' between employers and employee councils to specify I&C rights in more detail.
<b>Spain</b>	Statutory requirements	NA

Table 2: Scope for agreement-based I&C provisions (*cont'd*)

Country	Source of I&C bodies' constitutional provisions	Nature/extent of agreement-based provision
Sweden	Statutory requirements; agreement-based provision	Rights to I&C set by law but practical arrangements delegated to sectoral collective agreements and company-level agreements. Common for collective agreements to go further than stipulated by Codetermination Act.
United Kingdom	Statutory requirements; agreement-based provision	Agreed I&C arrangements, whether pre-existing agreements or negotiated agreements reached under statutory procedures, not subject to minimum statutory standards. These apply only where negotiations under statutory procedures fail. Statutory I&C bodies rare.

Source: EIRO national correspondents

Some countries rely solely on statutory regulation. This is reported to be the case in Bulgaria, Germany, Greece and Spain.

In other countries, the constitutional provisions of I&C bodies derive from both the statutory framework and relevant agreements at sectoral and/or undertaking level. The balance between statutory and agreement-based provision varies between countries.

- In a number of countries, the statutory framework is the most important source of I&C bodies' detailed constitutional provisions with only a limited role for organisation-specific or sectoral variation. In the Netherlands, for example, statutory requirements are the main regulatory instrument, but sectoral collective agreements and company-level agreements between employers and works councils can make improved provision. In Belgium too, while the structure, rights and functioning of I&C bodies are determined primarily by statutory requirements, some aspects are further elaborated in national sector agreements and local arrangements.
- At the other end of the scale, collective agreements are the dominant regulatory instrument in a number of countries. Examples include the Nordic countries (Denmark, Norway and Sweden) where national and sectoral collective agreements routinely provide more extensive I&C rights than the statutory provisions. In Italy too the law delegates the regulation of the structure and functioning of I&C bodies to sectoral collective agreements which are used to clarify, operationalise and extend the minimum rights to I&C granted by law.
- Reflecting their 'voluntarist' industrial relations traditions, the statutory frameworks of Ireland and the UK envisage organisation-specific agreements as the principal means of regulating I&C. In both countries, employers or 10% of the workforce may trigger statutory procedures intended to lead to 'negotiated agreements'. These give considerable latitude to the parties to agree organisation-specific I&C arrangements, as do 'pre-existing agreements' reached in a voluntary context. Only in the event that the statutory procedures are triggered but no agreement is reached will standard I&C rules become enforceable. This has not happened yet in Ireland. In the UK, the default provisions have been imposed in only three cases between 2005 and mid 2010.

### Nature and extent of agreement-based I&C provisions

Few EIRO correspondents were able to supply data on the extent and substantive provisions of agreed arrangements that differ from the national statutory requirements on I&C. One was the Czech Republic, where most company-level collective agreements include provisions on information (69%) and consultation (60%) but the proportion going beyond the statutory requirements is lower (22% and 12% respectively). In Poland, organisation-specific agreements regulating issues left open by the law were reported to have been concluded in 36% of enterprises with works councils.

As shown in Table 2, in most countries where there is scope for agreement-based I&C provisions, the substantive content of agreements focuses on elaborating or adding to the statutory I&C requirements which, in many countries, establish

only a framework or floor of employee rights. In some countries, agreements seek to deal with issues left open or unregulated by the legal framework. The Hungarian EIRO correspondent reported that, although not obligatory, such agreements are important for the effective operation of works councils, dealing with their rights and relationship with the employer. Similarly, the Polish correspondent commented that, if no organisation-specific arrangements are concluded, ‘the actual functioning of works councils is impeded’. In some countries, such as Italy, Norway and Sweden, the law establishes the right to I&C but issues like the structure and functioning of I&C bodies are left to collective agreements for determination.

#### Examples of agreement-based provision

In the Netherlands, some sectoral collective agreements have lowered the employment threshold for the establishment of works councils to 25 or 35 employees. Some company-level agreements between employers and works councils improve on the statutory provisions in areas such as the scope of I&C rights and training and time off for employee representatives.

In Portugal, some collective agreements (mostly at company level) specify I&C rights on such issues as disciplinary action against employees, the organisation of working time, and the opening hours of company nurseries/crèches. Most also provide protection for employee representatives against discrimination.

In Slovenia, participative agreements, signed mainly in larger companies, define rights to participation in more detail than the law and lay down additional rights. They often cover ways of financing employee councils’ activities, especially expenses involved in consultation, education and legal assistance, and the scope of their involvement.

A widely applied principle is that agreements must respect the statutory I&C requirements so may only add to or improve on them (from an employee point of view), not derogate or detract from them. This is the case in many of the countries covered by this report. Exceptions include Ireland and the UK, where pre-existing and negotiated agreements are not required to meet minimum standards concerning their substantive content, other than covering all employees. The Irish correspondent reported ‘significant variation’ between organisation-specific arrangements (notably those based on direct forms of I&C) and the Irish legislation’s standard rules. In contrast, a UK research project based at the University of Warwick found that, among larger organisations participating in the research, the UK legislation’s standard I&C provisions had exerted a notable indirect influence on the wording and content of the I&C agreements or the constitutions of I&C bodies – particularly in terms of the subject matter for I&C and to a lesser extent on the nature of the consultation process. In Poland, research suggests that some organisation-specific agreements have had the effect of decreasing works councils’ prerogatives compared to the statutory position by limiting the scope of information provided, placing constraints on sharing information with employee representatives and restricting access to independent experts.

#### Enforcement of agreement-based I&C provisions

Most EIRO national correspondents who provided information on the enforcement of agreement-based I&C provisions reported that procedures were available for referring complaints to external administrative or judicial authorities, typically a labour inspectorate or a labour court, on the basis of national laws on I&C or on the application of collective agreements. In the UK, however, pre-existing agreements, which enable employers effectively to pre-empt the legislation’s procedures for triggering negotiations on I&C arrangements, are exempt from the legislation’s enforcement provisions (unlike in Ireland) and are unenforceable unless they provide voluntarily for legal enforceability or other dispute resolution procedures.

For more details of the enforcement procedures and sanctions used in each country, see the previous EIRO comparative study of the legal implementation of the I&C directive (TN0710029S). The available data on the numbers of complaints and the use of legal sanctions are discussed in the next section.

## **Incidence of information and consultation bodies**

It is rare for national-level statistics to be collected on the incidence of I&C bodies and trend data are largely non-existent. A starting point is provided by the [European Company Survey 2009](#) carried out by the European Foundation for the Improvement of Living and Working Conditions (Eurofound). This is based on interviews conducted with 27,160 managers at the establishment level in 30 countries with the results weighted. (The analysis in this report excludes the candidate countries of Croatia, the Former Yugoslav Republic of Macedonia and Turkey. Norway was not included in the survey.)

The survey asked about the presence of ‘legally established or institutional forms of employee representation at establishment level, which can be a trade union representation and/or a general works council type, depending on the country’ and also at company level in multi-site companies where there was no formal representational system in the workplace. This broad coverage of employee representative arrangements will in many countries, but not all, exceed the scope of I&C bodies. This is especially the case where I&C bodies and union workplace representatives can exist in the same establishment as discussed earlier. It is also important to note that the baseline for the inclusion of an establishment in the survey was the employment of 10 or more employees. Since the directive applies either to establishments with 20+ or enterprises over 50+ employees, the inclusion of small establishments below the threshold will lead to an underestimate. As discussed later, the very smallest of establishments are more numerous and much less likely to have forms of representative participation.

Table 3 combines establishment and company-level data, since the categories are mutually exclusive, to provide an estimate of the proportion of workplaces with 10 or more employees that have a union and or a general works council representing some or all of the employees. The second column shows the proportion of employees covered by these arrangements. This is always higher than establishment coverage because of the predominance of larger companies in employment terms.

Table 3: *Incidence and coverage of institutional forms of employee representation*

<b>Country</b>	<b>% establishments/companies</b>	<b>% employees covered</b>
<b>EU27</b>	37	63
<b>Sweden</b>	73	85
<b>Denmark</b>	72	88
<b>Finland</b>	68	90
<b>Belgium</b>	64	83
<b>Spain</b>	58	71
<b>France</b>	56	81
<b>Luxembourg</b>	53	83
<b>Romania</b>	52	77
<b>Netherlands</b>	49	77
<b>Slovenia</b>	43	68
<b>Slovakia</b>	43	60
<b>Latvia</b>	39	48

Table 3: *Incidence and coverage of institutional forms of employee representation (cont'd)*

<b>Country</b>	<b>% establishments/companies</b>	<b>% employees covered</b>
<b>Cyprus</b>	38	47
<b>Poland</b>	38	65
<b>Italy</b>	38	65
<b>Bulgaria</b>	36	50
<b>Ireland</b>	33	69
<b>Hungary</b>	29	49
<b>Germany</b>	28	59
<b>Lithuania</b>	26	49
<b>United Kingdom</b>	24	45
<b>Estonia</b>	23	39
<b>Austria</b>	22	59
<b>Czech Republic</b>	19	43
<b>Malta</b>	15	33
<b>Greece</b>	4	17
<b>Portugal</b>	3	15

Notes: Baseline = all establishments with 10 or more employees.

The table shows the incidence and coverage of legally established or institutional forms of employee representation at establishment and company level (where there is no establishment body), which can be trade union representation and/or a works council. Ad hoc and health and safety arrangements are excluded.

Source: European Company Survey 2009 management interviews

### Differences between countries

There are marked differences between countries in terms of the incidence and coverage of institutional forms of employee representation. For example, while the incidence of employee representation in establishments in Austria and Germany, both with long-established works council systems, is well below the EU27 average of 37%, the proportion of employees covered is 59%, just below the EU average of 63% (Table 3). Around two thirds or more of establishments/enterprises in Belgium, Denmark, Finland and Sweden with over 80% of employees are covered by representational arrangements, and Norway fits this pattern. In contrast, representational systems are least well-developed in Greece, Malta and Portugal with less than one in five establishment/enterprises covered and one third or fewer of employees benefiting from representation in the workplace. Overall, in 10 countries (Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Portugal and the UK), less than half of employees work in establishments/enterprises with representational arrangements.

### Extent of coverage

It proved extremely difficult to obtain more accurate data on the extent to which I&C bodies had been established. EIRO correspondents used whatever survey material was available, and in eight countries there was none. Many surveys were partial, for example, union estimates in Austria and Italy covered only the private sector or were undertaken before the directive was implemented. It was unclear how far the data strictly related to bodies that complied with the directive as transposed in each country. For example, for the highly respected 2004 Workplace Employment Relations Survey (**WERS**) in the UK, all joint consultative committees were included but only some of these would have covered all employees or been endorsed by the representatives or an employee ballot as subsequently required by UK regulations. Table 4 summarises the available information.

Table 4: Estimates of the coverage of I&C bodies

Country	Estimate of coverage	Notes
Austria	14% of establishments	2004, union estimates
Belgium	43%–47% of establishments	2008, social election data
Bulgaria	10%	Source not given
Denmark	56% of establishments	Cooperation committees + combined cooperation committees/health and safety committees
France	46% of establishments with 20+ employees	2005, works council + <i>délégation unique du personnel</i>
Germany	10% of establishments with 5+ employees covering 38%–45% of employees	2010, survey of private sector
Greece	2%	1998, declined since
Hungary	22% of companies with 50+ employees	2004
Ireland	16% of private sector companies	2009, formal partnership committees
Italy	40% of undertakings	Union only – <i>Rappresentanza sindacale aziendale</i> (RSA) + <i>Rappresentanza sindacale aziendale</i> (RSU)
Lithuania	30%	Rough estimate, works council + trade unions
Netherlands	70% of establishments with 50+ employees	2008
Norway	79%–81% of private sector companies with 50+ employees	2009
Poland	9% of enterprises with 50+ employees	2008
Slovakia	23% of companies had a works council; 42% with trade unions	2009, companies with 10+ employees
Slovenia	20% estimate of companies with 20+ employees	Association of Employees' Councils of Slovenian Companies ( <b>ZSDS</b> )
Spain	58% workers' delegates or committees	2008, question concerned collective bargaining
United Kingdom	38% of establishments with 10+ employees	2004, covers all types of joint consultative committee – workplace and higher level combined

Source: EIRO national correspondents

In all but four countries, the estimates in Table 4 are, as would be expected, lower than those in Table 3. Although this would suggest that Table 3 overestimates the incidence of I&C arrangements by between 10 and 20 percentage points, it remains the most comprehensive data available.

### Effect of company size

What is most noticeable from the various data supplied is the effect that size of establishment has on the take-up of I&C bodies. This is shown in Table 5.

Table 5: Estimates of the coverage of I&amp;C bodies or equivalents by establishment/enterprise size

Country	Small	Medium	Large
Austria	20–49: 27% 50–99: 60%	100–199: 77% 200–499: 87%	500+: 100%
Belgium	50–99: 52%	100–199: 85% 200–499: 93%	500+: 63%
Bulgaria	50–99: 23 companies	100–199: 45 companies 200–499: 86 companies	500+: 63 companies
Czech Republic	10–49: 12%	50–249: 46%	250+: 74%
Denmark	25–49: 31%	50–249: 46%	250+: 61%
France	20–49: 26% 50–99: 72%	100–199: 90% 200–499: 95%	500+: 96%
Germany*	5–50: 6%–7% 51–100: 36%–37%	101–199: 57%–64% 200–500: 71%–77%	500+: 90%–89%
Hungary	50–99: 27%	100–249: 52%	250+: 84%
Ireland	20–99: 21%	100+: 37%	
Lithuania	10–49: 10%	50–249: 25%	250+: 33%
Luxembourg	‘small’: 6%	‘medium’: 22%	‘large’: 66%
Netherlands	10–49: 15% 50–74: 62% 75–99: 72%	100–199: 81%	200+: 95%
Norway**	10+: 64%–76%	50+: 79%–81%	
Portugal	Less than 50: 0.1%	50–249: 6%	250+: 40%
Slovenia	‘Small’: 20%	‘Medium’: 30%	‘Large’: 75%
Spain	11–49: 49%	50–249: 70%	250+: 83%
United Kingdom	10–24: 30% 25–49: 40% 50–99: 53%	100–199: 63% 200–499: 72%	250+: 83%

Notes: \* German data divided between eastern Germany (first figure) and western Germany (second figure).

\*\* Data from Norway distinguishes between union coverage (first figure) and non-union works councils (second figure).

Source: Country surveys reported by EIRO correspondents (for notes on and dates of some surveys see Table 4)

In every country where data are available, the largest categories of establishments, whether with 500+ or 250+ employees, are much more likely to have an I&C body: in many countries over three quarters of establishments are covered.

The Bulgarian data only provide numbers of companies by size but the evidence of the size effect can be inferred. There were 23 I&C bodies among the smallest enterprises but 63 in the size range of 500+. The number of such large enterprises must be considerably less than in the smallest range.

The Austrian data are especially interesting given that, in the previous tables, the take-up of employee representation seemed low compared with other ‘mature’ industrial relations systems. It is in the smallest range of establishments that the coverage is low while three out of five workplaces with between 50 and 99 employees, and over three quarters with 100 or more, have an I&C body.

Table 5 suggests a general conclusion that the non-adoption of I&C arrangements is especially acute in small workplaces. A more nuanced conclusion would be that, in countries with well-established systems of representation, the ‘problem’ of very low rates of adoption is more often found in workplaces with fewer than 100 employees, while among newer EU Member States it is in small and medium-sized enterprises (SMEs).

The industrial structure of countries varies considerably across the EU as seen in the concentration of employment in small economic units. This affects the proportion of employees covered by I&C arrangements reflecting the directive. For example, in Romania, 89% of ‘economic operators’ have nine or fewer employees while only 1.7% have 50 or more. Similarly, in Greece, private enterprises with 20 or more employees constituted only 3% of the total number of companies. Estimates in Cyprus suggest that the I&C legislation covers only 1.3% of undertakings. It is hardly surprising that little attention is given to the legislation in these and other countries with a high proportion of small enterprises.

### **Differences between sectors**

The varying size distribution of establishments and enterprises is probably the main explanation for what patterns there are in the incidence of I&C bodies from one sector to another. A second factor will be the rate of unionisation since I&C arrangements are more likely in unionised companies, whether through existing collective bargaining arrangements or the creation of works councils.

Both these factors combine in the public sector or public services. For example, in Ireland, 40% of public sector enterprises have partnership committees compared with 16% in the private sector. A number of countries (Bulgaria, Estonia, Poland, Slovenia and Spain) exclude public administration from I&C arrangements.

Construction and private services commonly have lower I&C coverage than average. Manufacturing or ‘industry’ is higher than average in some countries (France, Italy, Netherlands, Norway and Slovakia) and lower in others (Belgium, the Czech Republic, Estonia and the UK).

The financial services sector is similarly mixed with, for example, coverage being high in the Netherlands, while in its neighbour, Belgium, it is relatively low.

### **Changes since directive’s transposition into national legislation**

Some indications were provided by EIRO correspondents on changes in the incidence of I&C bodies or arrangements since the transposition of the I&C directive into national legislation. As noted earlier, it was very rare for there to be any measurement of trends but informed opinion seems to indicate three patterns: stability, growth and decline.

#### *Countries with a stable pattern of I&C arrangements*

Austria, Belgium, Denmark, Germany, Netherlands, Norway and Sweden show a stable pattern of I&C arrangements.

Stable patterns were present in those countries with ‘mature’ arrangements for consultation, normally through works councils, which had been established long before the directive was introduced. It would appear that in these countries there is a cultural acceptance on the value of partnership and participation. The directive has had relatively little impact except in the small non-union sector while it may have ‘sharpened interest’ in I&C as noted by the Danish EIRO correspondent.

### *Countries with a growing incidence (or use) of I&C arrangements*

I&C arrangements appear to be on the rise in Estonia, France, Luxembourg, Poland, Slovakia, Slovenia, Spain and the UK.

While none of these countries had dramatic growth in the incidence of I&C arrangements, there was evidence of improved take-up. Poland provides an interesting example. Between 2007 and 2010 the number of works councils increased from 1,900 to 3,048, but the growth in the economy in this period and the inclusion of enterprises with between 50 and 99 employees in 2008 meant that the percentage coverage declined. The need for consultation in economic restructuring was an explanatory factor in Estonia and France, while in Slovenia employees have a growing awareness of worker participation particularly following the failure of the act concerning the financial participation of workers. In the UK, developments in I&C arrangements have been largely management-led, as allowed by the regulations, and have been particularly noticeable in multinational companies. The position in Slovakia, where dual systems exist, is instructive. Here, there has been a decline in union-based arrangements from 57% in 2005 to 42% in 2009, but an increase in non-union works councils from 14% to 23% in the same period once the new law came into force.

### *Countries with declining incidence, or very low take up, of I&C arrangements*

A number of countries show a declining or low take-up of I&C arrangements – these are Bulgaria, Cyprus, the Czech Republic, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Portugal and Romania.

Where trade unions are the exclusive vehicle for the implementation of I&C arrangements, as in Italy, or play a dominant role as in many of these countries, the decline in union membership and the coverage of collective bargaining has reduced the incidence of I&C arrangements. Much depends on the view of the unions. The problem was summed up by the EIRO correspondent from Malta (where there are only two companies with I&C bodies):

*Trade union officials tend to be wary of (such) bodies at the enterprise level fearing that they can be used by employers as proxy representatives of workers, thereby undermining the activity and legitimacy of trade union power.*

Union ambivalence combined with employer indifference can result in ‘extremely restricted adoption’, as in Cyprus. This appears to be the case, too, in Romania.

In Portugal, it is the lack of employer interest which is specified, though the unusually high threshold of employee support required to trigger I&C arrangements may also be a factor.

In Hungary, it is reported that there is ‘ambivalence and competitive relationships between works councils and trade unions’, with the unions having no interest in the adoption of I&C arrangements (though recent legislation on the operation of sectoral dialogue committees may indirectly promote greater union engagement with works councils as the criteria for union representativeness include unions’ performance in works council elections).

### **Explanations for ‘missing’ I&C bodies**

As already explored above, a key issue affecting the incidence of I&C bodies in different national contexts concerns the procedures for their establishment and whether employers, employees and trade unions actively initiate the introduction of I&C bodies.

Most EIRO correspondents report little by way of government or social partner promotional activity to encourage the establishment of I&C bodies. In many countries, other than the publication of official guidance on the I&C legislation (as in Ireland and the UK), the government is reportedly not actively involved in promoting I&C bodies. In the Czech

Republic, Denmark and Sweden, for example, such activity is not seen as the government's role, and in most countries is regarded as primarily a matter for the social partners. Exceptions include:

- publicity by the Belgian government urging workers to stand as candidates in works council elections;
- a project by the Ministry of Social Affairs and Employment in the Netherlands to improve the quality of co-determination, which included a network of employer 'ambassadors' to promote works councils.

In Ireland, a state agency, the National Centre for Partnership and Performance (**NCPP**), was the 'strongest advocate' of I&C bodies but was disbanded in April 2010. In Poland, support for works council members (such as training and legal advice) is provided by a non-governmental 'think tank' co-financed by the Polish government and the European Economic Area (**EEA**).

Of the social partners, it is mostly trade unions that are reported to have engaged in promotional activity. Strong trade union support for the establishment of works councils is reported in Austria, Estonia, France, Portugal and Slovenia. In the manufacturing sector in Denmark, there is a joint umbrella body, **TekSam**, which promotes the establishment and operation of cooperation committees, while the Cooperation Board, supported by the Danish Confederation of Trade Unions (**LO**) and the Confederation of Danish Employers (**DA**), performs a similar role more generally. In Slovenia, the establishment of employee councils is a core interest of the Association of Employee's Councils of Slovenian Companies (ZSDS).

EIRO correspondents put forward a number of reasons for the absence of I&C bodies in significant numbers of undertakings despite them being mandatory or capable of being initiated by employees. Alongside a lack of enthusiasm on the part of trade unions in a number of countries for establishing I&C bodies, national correspondents identified the following possible explanations, many of which particularly apply in smaller undertakings:

- indifference or reticence among employees (cited in respect of Denmark, Germany, Hungary, Lithuania, the Netherlands, Poland, Slovenia, Slovakia and the UK);
- negative employer attitudes towards I&C bodies (Austria, Belgium, Bulgaria, Germany, France and Slovakia);
- the challenging role of being a representative and problems with finding candidates for elections (Belgium, Germany, France and the Netherlands);
- absence of trade unions/low levels of unionisation (Denmark, Hungary, Luxembourg, Norway and Sweden);
- lack of information about employees' right to establish an I&C body (Denmark, Estonia, Ireland and Poland);
- weak or non-existent sanctions for failing to establish I&C bodies (Austria, Estonia and Malta);
- weakness of I&C bodies' rights or the legislative framework more generally (Greece, Slovenia and the UK);
- high threshold of employee support required to trigger procedures for establishing I&C bodies (Ireland, Poland and the UK);
- employee satisfaction with informal reconciliation of interests (Austria);
- a preference for trade union representation (Greece);
- absence of employee representatives (Lithuania).

## Practice of I&C

In many countries, there was either no or insufficient evidence available to throw light on the practice of I&C, beyond listing the relevant statutory provisions. Since Eurofound's previous report (TN0710029S) covered the legal provisions, these are not reproduced here. Despite these limitations, there are some data in a number of countries from national surveys on the practice of I&C.

### Subject matter covered by I&C

Two conclusions can be drawn on the provision of information to I&C bodies and representatives and the issues dealt with via consultation.

First, it is rare for information exchange to be a near universal practice. There is always a minority, and in some countries a majority, of companies that rarely provide information.

- In Ireland, depending on the topic, the proportion of enterprises providing information on a regular basis ranged from one third to a half. The most frequent subject covered in private sector enterprises was the level of competition (46%), closely followed by plans to develop new products and services (44%). The least mentioned topic was plans to reduce staff (25%), although in 15% of cases the topic had not arisen even although the survey of employees was conducted in 2009. There appeared to be a consistent quarter to one third of enterprises which 'hardly ever' gave information. The picture in the public sector was much the same.
- The experience in Estonia was similar. A survey in 2005 showed that the topics of information sharing tended to be less concerned with company strategy and performance than issues directly related to employment. Information on annual leave was provided in 60% of cases, work organisation 49%, remuneration 56% and working time 38%.
- In the UK, according to WERS 2004, information provision was very common; for example, in 81% of establishments with a consultative body, information was given on future plans and work organisation matters while financial results were provided in 65% of establishments.
- The provision of information in the Netherlands is very common but, according to the country correspondent, 'many works councillors complain that they get insufficient information and/or it is provided too late.'
- Belgium provides a unique case of very high levels of information provision with less than 5% of employers not complying with requirements and 17%–19% not being in full compliance. One reason for this is the quality assurance role of the external auditor, appointed jointly by the employer and employee delegation. The auditor attests to the completeness and fairness of the information provided to the works council, and can help members of the works council to understand and interpret the economic and financial information, including at representatives' preparatory meetings.

The second main conclusion is that consultation (defined at its minimum as 'social dialogue') is much less likely to take place than information exchange. The following examples can be given.

- Belgium: According to research in 2003 of establishments with an I&C body, while health and safety was a central issue in 61% of cases and a side issue in a further 10%, strategic issues such as the introduction of new technology or new products or services were a central issue in 28% and 20% of cases respectively and were never discussed at over half of works council meetings (52% and 55% respectively).

- Estonia: Consultation on business issues is rare, covering only around 10% of cases. A survey in 2005 showed that, in around one fifth of cases, the works council was informed about investments, technologies and general strategy before decisions were taken but the I&C body was rarely asked for its opinion.
- Poland: Consultation is limited to a small number of companies.
- Sweden: Despite its mature system of consultation, ‘most company management usually supply information rather than consult’, at least within the local authority sector cited by the correspondent.
- Czech Republic: Some employers substitute consultation with the provision of information after a decision has been taken.

In some countries where consultation was well-established, it tended to cover operational issues of direct relevance to the workforce such as health and safety, welfare, working time and working conditions. This focus on human resource (HR) policy and practice does appear to be associated with more effective consultative machinery, even though many of these issues are not covered in the statutory provisions. Consultation on business strategies would appear to be rare, although examples of good practice were provided in Hungary, Malta and the UK. In Greece, consultation ‘does not happen’, while in Portugal, according to a worker representative, ‘management is not open to real consultation’.

Where employee representatives raised items at meetings of the I&C body these were often ‘housekeeping’ matters in the UK. In other countries, they typically concerned employment contracts, working time, internal procedures, criteria for performance assessment and welfare matters – items that were close to workers’ immediate concerns.

### **Nature and extent of I&C process**

#### *Frequency of meetings*

Many countries specify how many meetings of the I&C body should be held each year but practice can vary widely, often from once a month to once a year.

UK data collected in 2004 showed that three quarters of consultative bodies met four times a year or more frequently, a fifth met three times a year while 4% met once a year or not at all. There is no legislative specification for the number of meetings in the UK. This pattern is evident elsewhere. For example, in Austria, meetings are meant to be quarterly but practice is highly variable. In Hungary, the range is between once a month to once a year. The attitude of the employer to the consultation process is cited as the main explanatory factor for this variation. This was evident in Poland. It was suggested that meetings were held ‘only when necessary’. Employers, it was suggested, would call a meeting only when extensive organisational change was being proposed or had been announced, and management wished to reassure employees. In Lithuania, ‘I&C bodies meet with management only to discuss urgent matters or when it becomes necessary. An I&C body is usually not a standing consultation body’. In Slovenia, meetings are held at the request of the employer or the works council, typically on a monthly basis.

#### *Meetings of representatives without management*

There are very little data on the arrangements for employee representatives to meet without management to formulate their response to management proposals and consider items on the agenda. These ‘pre-meetings’ are often seen as fundamental to the effective operation of consultation.

The arrangements in Germany and the Netherlands are instructive. In these two countries, the works councils are employee bodies, not joint management-worker committees. In Germany, the works councils usually meet twice a month with only the representatives present and once a month with management. There is a similar pattern in the

Netherlands although the frequency of meetings is greater. In Sweden, it is usual for I&C bodies to meet once a month with additional meetings of other work-related bodies. Case study research within the UK revealed that in organisations classified as ‘active consulters’, pre-meetings of representatives were common, while in others, where I&C bodies had a more limited remit focused on communication, the representatives hardly ever met by themselves.

### *Special meetings*

Special meetings outside the usual schedule are an important feature of consultation since management proposals for major change cannot be expected to be delayed until the next meeting of the I&C body. In the UK, it was common for special meetings to be held by the ‘active consulters’ among participating organisations in the Warwick-based research. Special meetings were hardly ever called where the I&C bodies were limited to a communication role. The use of special meetings was mentioned in the reports from Belgium, the Czech Republic, France, Luxembourg and Sweden, and probably happens elsewhere. In France, special meetings took place in 56% of I&C bodies. In Belgium, an extra meeting is held when one third of the employee representatives request it.

### *Confidential information*

A characteristic of special meetings is that management will often require the representatives to consider the information provided as confidential. In most countries, it is common for confidentiality rules to apply, and in some instances these are reflected in legislation.

In France, while there is no general duty of confidentiality, where there is high trust between management and representatives it will happen. A number of country reports (Denmark, Hungary, Poland, Slovenia, the Netherlands and the UK) noted that there is some evidence of employers avoiding meetings of I&C bodies to protect the confidentiality of sensitive information.

### *Informal contacts between management and representatives*

Correspondents in Denmark, Germany and Norway mentioned the widespread practice of informal contacts and discussions between representatives and managers between meetings. This probably happens elsewhere in the more effective consultative bodies since it is symptomatic of high-trust relationships.

### *Process of consultation*

The use of pre-meetings of representatives, special meetings to consider pressing and important matters, and the extent of informal contact between managers and representatives are indicative of a robust consultation process. But much depends on management’s approach: it is ‘highly dependent on the aspirations of the individual employer’, as the Swedish correspondent put it. If, as specified in the I&C directive, representatives have time to prepare a considered view of managements’ proposals and management gives a reasoned response, it can only happen with strong support for the process by management. It implies a sequential process that requires a period of weeks.

As the Belgium correspondent noted, how far this happens can vary substantially, influenced by ‘political opportunities, cultural framing and access to resources for investigations’. At one level, a management response can be mere posturing. In Lithuania, there is no requirement to take account of representatives’ view (which is often true elsewhere) and ‘a mere calling of a meeting and documenting it in a minute is enough for the employer to say that the duty of consultation has been discharged’. In Spain, while consultation does take place in larger companies, in small enterprises it is often limited to ‘bureaucratic procedures’.

An employer is required to supply written material in advance of meetings in some countries. In Austria, the works council needs to actively request this since it is not the responsibility of the employer to deliver it beforehand. The EIRO correspondent for France noted that in practice it is common for management proposals to be made at the start of consultative meetings and not beforehand.

Very little is known about how often management gives a ‘reasoned response’ to representatives’ views. In Hungary, it was thought not to be common even among the more effective I&C bodies, while in the ‘worst cases information is provided after the decision has been taken without any consultation’. This was reportedly the case too in the Czech Republic where employers sometimes avoid consultation by providing information after the event. Employee councils in Slovenia have the right to delay management decisions and institute dispute resolution proceedings if I&C has not taken place. This is the only tool to start the consultation process in some companies, according to the EIRO correspondent.

Survey evidence from two countries is a little dated but is still indicative of practice. In the Netherlands, with its long tradition of works councils, research in 1998 indicated that in 42% of cases the works council was given information in advance and was able to make a considered response. In 32% of cases the council was only involved in the final stage, in 18% it was restricted to considering the consequences of the management decision and in 15% it had no involvement. A UK survey in 2004 classified management approaches to the consultation process. In 43% of cases the management respondent (usually the HR manager) said that their usual approach to consultation was to ask the representatives to suggest solutions; in a further 45% of cases feedback was requested on a range of options suggested by management, while in the 11% of cases, management sought feedback on its preferred option.

#### ***Protections and facilities for representatives***

To be effective, representatives have to be confident that their participation in the consultative process will not risk their employment and pay. This seems to be universally accepted and rules against detriment and ensuring release from the ‘day job’ with pay are common.

Guaranteed access to training is less common and relatively few country reports make reference to the provision of facilities such as offices, telephones and information technologies such as email. Much depends on company practice, sometimes specified in a collective agreement.

No information was provided on how representatives meet with their constituents in order to obtain employee views on issues or items to raise and brief them on the outcomes of meetings. The one exception was Portugal where it was noted that representatives have the right to hold meetings with constituents for up to 15 hours each year.

#### ***Access to external advice***

Access to external advice can be an important resource since representatives are usually employees with little or no experience of employment relations or a professional understanding of management. Experience varies across countries as summarised in Table 6.

Table 6: *Access to external advice*

<b>Country</b>	<b>Arrangements for external advice</b>
<b>Austria</b>	Chamber of Labour/consultants able to attend meetings, paid for by works council levy.
<b>Belgium</b>	External auditor – as described above. Local union officers can act as coach and play expert role.
<b>Bulgaria</b>	Employee representatives reportedly do not seek external advice.
<b>Czech Republic</b>	Trade unions provide consulting and legal services, and occasionally pay for consultant.
<b>Denmark</b>	Cooperation Boards composed of representatives from the main union and employer federations. Advice can be sought from trade unions which may hire consultant.
<b>Estonia</b>	Inclusion of external experts is allowed but no rules on who pays. Subject to local agreements.
<b>France</b>	Access to accountant and technology expert in companies with workforce of 300+. Paid for by employer. Advice on EU commercial and legal matters, paid for by I&C body from own budget.
<b>Germany</b>	With employer agreement works council can call on advice of experts, paid for by employer.

Table 6: Access to external advice (*cont'd*)

Country	Arrangements for external advice
Greece	Experts, especially lawyers, often asked for assistance. Union officers provide advice and can use experts at union's expense.
Hungary	'Not explicitly excluded' but needs special agreement. Rare in practice due to cost. Sectoral unions provide support via lawyers and experts.
Ireland	Unions provide expertise. Consultants rarely used by unions. Informal group ( <b>Dell Redundant Workers' Association</b> ) offers advice to non-union I&C bodies.
Italy	Unions can provide advice and consultancy and can hire consultants at union expense.
Lithuania	Sectoral and central unions provide high-quality assistance. Non-union works councils prohibited from joining any external body and do not have resources to seek assistance.
Luxembourg	Provision for staff delegates/most representative trade union to designate a consultant for specific issues (larger organisations) or for issues to be jointly referred to employer organisation and external union(s) for examination.
Malta	Representatives can resort to legal office of union but no evidence that they have done so to date.
Netherlands	Provided works council informs company, it can seek external advice. If council has budget it pays; if not the company pays. Payment disputes increasingly go to court.
Norway	Provided employer is informed, external consultants can be used and should be provided with necessary information. Employer usually pays. Unions also provide expertise.
Poland	Works councils can seek advice from external experts, from 2009 paid for by employer. 91% of representatives believe that external advice is necessary.
Portugal	Trade unions provide advice and support at union's expense.
Romania	Assistance provided by union federations and confederations
Slovakia	Provided by unions to unionised I&C bodies at their expense.
Slovenia	Employee councils may invite management and union experts. Councils belonging to ZSDS can obtain advice, especially on legal matters.
Spain	Unions provide advice and use of experts for special topics.
Sweden	Unions provide advice from regional and central offices. Experts can be consulted on work environment or legal issues.
United Kingdom	Trade unions can provide advice to union-based I&C bodies. Rare for non-union bodies to have access to external advice but can if agreed with employer.

Source: EIRO national correspondents

## Outcomes of consultation

It is hard to assess the outcomes of consultation since, unlike collective bargaining, no agreement is either expected or required. The employer is free to ignore suggestions made by the I&C body even where the full, sequential process of consultation has been adhered to. But just because there is no outcome in terms of changes to management decisions or modification to implementation plans does not mean that consultation was worthless. Yet it must be assumed that representatives will often have some influence either on the decision itself or in encouraging senior management to take account of the needs and views of the workforce.

While some EIRO national correspondents were able to provide information on this, the only systematic evidence comes from Eurofound's European Company Survey 2009. This asked employee representatives nominated by their company

to rate, on a four-point scale, the influence of the employee representation on management decisions. Nine decision subjects were specified. Four of these are directly relevant to the topics expected to be discussed at I&C meetings:

- employment and HR planning;
- changes in working time regulations;
- changes in the organisation of work processes and workflow;
- the impact of structural change such as restructurings, relocations or takeovers.

Table 7 groups together estimates of ‘very strong’ and ‘strong’ influence given by the respondent representatives themselves. This self-evaluation and relatively low response rates mean that the data should be seen as indicative. Countries where the degree of influence was greater than the EU average in all four areas are listed at the top of the table (Germany, UK and Romania) followed by countries where there was stronger than average influence in three out of four decision topics (Denmark, Ireland, Austria and Hungary). In the Netherlands, Lithuania, Sweden, Slovakia and Bulgaria, representatives had more influence than the EU average in two areas while in Finland, the Czech Republic, Poland, Latvia and Spain representatives reported strong influence in one topic area.

Table 7: *Employee representatives expressing strong influence\* on management decision (%)*

Country	Working time regulations	Work processes	Employment and HR planning	Impact of structural change
EU average	62	54	50	37
Germany	80	60	56	44
United Kingdom	63	67	56	47
Romania	63	75	77	43
Denmark	64	73	62	30
Ireland	61	65	55	55
Austria	65	56	46	46
Hungary	61	63	63	45
Netherlands	61	61	46	51
Lithuania	67	53	60	26
Sweden	59	51	54	37
Slovakia	49	64	60	17
Bulgaria	58	55	63	33
Finland	55	55	42	12
Czech Republic	70	37	42	36
Poland	56	56	38	29
Latvia	46	55	44	29
Spain	50	58	40	34
France	49	43	34	27
Slovenia	58	47	32	17
Italy	55	48	44	33
Luxembourg	55	53	40	27
Belgium	55	45	35	32

Table 7: Employee representatives expressing strong influence\* on management decision (%) (cont'd)

Country	Working time regulations	Work processes	Employment and HR planning	Impact of structural change
EU average	62	54	50	37
(Greece)	(64)	(69)	(82)	(38)
(Cyprus)	(56)	(47)	(52)	(35)
(Estonia)	(63)	(61)	(45)	(18)
(Malta)	(31)	(55)	(64)	(33)
(Portugal)	(64)	(16)	(19)	(66)

Note: \* Data reflect combined scores of 'very strong' and 'quite strong' influence.

Figures in parentheses are from countries where there was a small sample size and a tendency for respondents to be restricted to particular sectors. The UK data should be treated with particular care as only 166 employee representatives were interviewed constituting 35% of representatives in the 31% of establishments where there were representatives. The overall response rate in the UK was 26%.

Source: European Company Survey 2009

The area of management decision-making which representatives were most likely to influence concerned working time regulations. This presumably covered hours of work and flexibility in hours, although it was not specified in the questionnaire. Around half or more of representatives reported 'strong' influence. Similar levels of influence were exerted over changes in the organisation of work processes and workflow, with representatives in Denmark and Romania having 'strong' influence in three quarters or more of establishments. These two types of management decision typically have an immediate impact on employees. It was noted earlier that the topics most often covered in consultation were those of direct relevance to workers.

Influence on employment and HR planning decisions was less evident with only a minority of representatives in 14 countries claiming to have 'very strong' or 'quite strong' influence. It is in the area of the impact of structural changes such as restructuring, relocation and takeovers that influence is weakest. In only two countries, Ireland and the Netherlands, did a majority of representatives claim 'strong' influence. The average across the EU was only 37%.

EIRO correspondents in some countries were able to make estimates or give attitudinal indications of positive outcomes to consultation. These are summarised in Table 8.

Table 8: Impact of consultation on management decisions

Country	Comments
Austria	In large establishments with a strong, powerful works council, consultation processes regularly lead to changes of management decisions (for example, shift schedules, data protection and performance-related pay).
Belgium	In 2008, surveys of employees and employers revealed the social dialogue system to be satisfactory.
Denmark	Both sides satisfied with the outcome of consultation.
France	In practice, employers try to give time when beginning consultation so that representatives can influence the final decision.
Germany	In very many cases there will be a modification of timetables. Codetermination rights over some 'social' issues mean that management cannot unilaterally implement decisions but has to compromise.
Hungary	30% of works councils are estimated to be proactive. Only in a very few cases do works councils influence strategic decisions.
Italy	Only in large undertakings where unions are able to credibly threaten action are their opinions taken into consideration by management.
Lithuania	There are very few cases where employers change their decision or implementation plans.

Table 8: *Impact of consultation on management decisions (cont'd)*

Country	Comments
<b>Netherlands</b>	A 1998 survey showed in respect of strategic decisions that in 21% of cases the decision had been modified and in 68% the works council had endorsed management proposals. In social areas, where works council consent is required, in 36% of cases the decision was cancelled and in 50% modified in line with the councils' wishes.
<b>Norway</b>	A survey in 2009 asked management and representatives to rate whether consultation affected the outcome. The average answer for both sides was '3' where '1' represents 'little or no effect' and '5' is a 'major influence'.
<b>Poland</b>	A 2008 study in the metal sector concluded that 'the involvement of works councils in the process of the management of change has so far been very limited' and particularly weak in non-unionised companies.
<b>Portugal</b>	Management rarely changes its strategy and practice as a consequence of consultation, according to a respondent from the General Workers' Union ( <b>UGT</b> ).
<b>United Kingdom</b>	The 2004 WERS survey showed that, where management allowed representatives to engage in problem-solving, 63% of management respondents rated the consultative body as 'very influential'. Where they had to consider only management options the rating fell to 19%, and where the role of the consultative body was only to look at the management decision it was 'very influential' in only 11% of instances.

Source: EIRO national correspondents

### **Use of legal sanctions**

It would appear from the 11 countries which provided data that only a small number of complaints about the establishment or operation of I&C arrangements are made to the judicial or government authorities. This may be a function of the relative novelty of consultation under the I&C directive in some countries, especially in smaller undertakings or establishments newly coming within the scope of I&C.

It was suggested in the case of Slovenia that the very low number of cases was due to drawn out and ineffective court proceedings and insufficient sanctions.

In Poland, of 34 cases up to February 2007, seven had led to a reprimand from the National Labour Inspectorate (**PIP**), five were heard in court and two companies were fined a total of PLN 2,000 (about €498 as at 2 December 2010).

Labour inspectors in the Czech Republic issued 29 'fault notices' in 2009 but none of these proceeded to the courts since the procedure is 'very demanding, complicated and lengthy'.

Only 12 complaints were filed in the UK over a five-year period. Of these, three led to fines below the maximum figure of GBP 75,000 (€89,537 as at 2 December 2010). One reason for this very low level of complaints in the UK is that most consultative bodies either fall outside the I&C regulations because they have been set up by employers without negotiations with employee representatives or are 'pre-existing agreements'. In neither case do representatives have access to legal redress via the regulations' enforcement procedures.

EIRO correspondents in two countries, France and the Netherlands, reported more extensive experience of legal enforcement. Brief details are provided below.

#### **Enforcement of I&C rights in France and the Netherlands**

In France ‘litigation is not commonplace’ but it would appear that there are many more cases in that country than any other. In the period 2002–2006, there were around 100 judgements a year against employers ‘who had restricted the role of employee representatives’. In 2008, there were 92 judgements, 69 at the first level of court (*Tribunal correctionnel*) and 25 at the Appeal Court (*Cour d’appel*). The average fine in 2008 was €1,953 but it is possible for a jail sentence to be imposed. Cases can be brought by the works council or by workplace representatives. Often the threat of court action is enough to gain resolution of the problem. The French EIRO correspondent reports that ‘employers don’t like appearing in court’ due to the fact that they will ‘sit alongside people who are charged with criminal offences ... and court proceedings are long.’

In the Netherlands, there have been around 200 cases since 2005, half of which led to a court ruling. Employers won about 60% of cases and works councils 40%. When the works council wins a case on a strategic issue, over which there is a ‘right of advice’, in most cases the employer is not allowed to take the decision. Where implementation has already begun in most cases these measures must be undone. In social arrangements where there is a ‘right of consent’ the employer is not allowed to implement a decision without gaining consent. The employer also may challenge an adverse decision of the works council in court.

#### **Relationship between I&C bodies and other forms of employee voice**

The questionnaire sent to national correspondents sought to elicit information on the relationship between national I&C bodies and other forms of employee voice, notably trade unions but also direct forms of employee involvement. National correspondents’ responses relating to the relationship between I&C bodies and trade unions are summarised in Table 9.

The table highlights the high degree of trade union involvement in and influence over the I&C process, including in those countries where separate I&C bodies exist alongside trade unions.

- Trade unions are the primary vehicle for employees’ statutory I&C rights in a number of countries (Cyprus, the Czech Republic, Greece, Italy, Lithuania, Malta, Norway, Romania, Slovakia and Sweden). Notably, in the Czech Republic and Lithuania, employee/works councils may only exist in undertakings without a trade union presence. A similar rule applied in Slovakia until 2003.
- Union members also tend in practice to dominate (or be strongly influential within) the works councils or similar bodies that are the designated I&C bodies in other countries. This is the case, for example, in Austria, Belgium, Bulgaria, Denmark, France, Germany, Hungary, the Netherlands, Luxembourg, Poland and Slovenia. In Belgium, union representatives monopolise the composition of works councils. In Poland too, unions appointed all works councillors until a change in the law in 2009 enabling all employees, including non-union members, to nominate candidates for election.

Table 9: Relationship between I&C bodies and trade unions

Country	Trade union involvement in I&C bodies	Overlap between remit of I&C bodies and union-based collective bargaining?	Channel for consultation over redundancies/transfers
Austria	90% of works councillors are union members. Works council elections are a key organising focus for unions. Scope for union full-time officers to sit on works councils.	Clear distinction in law. In practice, works councils can conclude works agreements on pay-related issues.	Works councils.
Belgium	Works council composed of union delegates. Unions present list of candidates for works council elections.	Bargaining legally assigned to union delegation. Works council restricted to consultation.	Consultation on restructuring plans via works councils. Negotiations on redundancies (social plan) via unions.
Bulgaria	80%–90% of I&C representatives are union representatives. General assembly of employees may delegate I&C role to trade unions.	No – bargaining a right for unions only.	Unions or specially elected employee representatives.
Cyprus	I&C usually via union representatives/officers.	NA	Unions.
Czech Republic	Unions usually the I&C body. In workplaces where union is present, no other employee representatives exist.	No	Unions or other employee representatives.
Denmark	Most members of cooperation committees are union members but non-union members possible, especially in SMEs.	Cooperation and collective bargaining clearly separated.	Cooperation committees or union representatives.
Estonia	Union representatives involved in I&C process where they exist.	Collective bargaining confined to unions. Only where no union exists can non-union employee representatives conclude collective agreements.	Union representatives, employee trustees or directly with employees.
France	Representative unions allowed one seat on works council. Significant proportion of works councillors are union members. Scope for involvement of external union officers as experts.	Formally differing functions of works councils, workplace representatives and trade union delegates – latter having bargaining role. But in practice roles are often similar.	Works councils or, if absent, workplace representatives. Unions not involved.
Germany	Unions play a role in establishing works councils. Most works councillors are union members.	Separation of roles between external collective bargaining and works councils as main workplace representative bodies. Many collective agreements enable works councils to negotiate local variations.	Works councils, but sometimes covered by collective agreement.
Greece	I&C body is usually the undertaking-level union. External union officials often involved.	Works council has significant role only if no union. Confined to issues not regulated by collective agreement.	Union representatives or, if absent, works councils or specially elected representatives.
Hungary	Some 70% of works council members belong to unions.	Works councils consulted about collective agreements negotiated by union body and have observer status in negotiations.	Works councils, but unions can also initiate consultation about decisions influencing economic situation of employees.
Ireland	Varies according to organisation-specific arrangements.	Often an overlap in unionised workplaces.	For unionised employees, via unions. In non-union situations, via employee representatives appointed for this specific purpose.
Italy	I&C role attributed to trade union representative bodies at workplace level.	Complete overlap.	Workplace union bodies.

Table 9: Relationship between I&amp;C bodies and trade unions (cont'd)

Country	Trade union involvement in I&C bodies	Overlap between remit of I&C bodies and union-based collective bargaining?	Channel for consultation over redundancies/transfers
Lithuania	Works councils can only be established in undertakings without trade unions.	Typically both collective bargaining and I&C are via same employee representatives – either unions or works councils.	Unions or works councils, or directly with employees.
Luxembourg	In 2008, 46% of staff delegates elected were put forward by unions.	Respective roles of unions and I&C bodies ‘clearly defined’ by law.	Employee representatives.
Malta	I&C is trade union-based. All representatives in only two known works councils are union members.	Collective bargaining is the sole prerogative of trade unions.	Unions.
Netherlands	Overall, >50% of works councillors are union members but with large variation – from completely non-union to completely unionised.	Some overlap. Collective agreements may contain framework provisions (especially on working time) requiring further discussion by works councils. Conflicts reportedly very rare.	Both unions and works councils.
Norway	I&C based on company-level trade union representatives. Non-union representatives uncommon.	Both collective bargaining and I&C via unions.	Union representatives.
Poland	Since 2009 unions no longer appoint all works councillors in unionised companies but involvement of non-union employees is rare so far.	Partial overlap. Unions normally dominant but some works councils have limited autonomy.	Unions or, if absent, specially appointed representatives,
Portugal	Union strategy to create and work inside workers’ commissions.	Formal separation between workers’ commissions and unions respected. Collective agreements the preserve of unions but workers’ commissions may negotiate complementary regulation.	Workers’ commissions or, in their absence, trade union representatives.
Romania	Trade union representatives principal channel for I&C.	No I&C bodies established.	Union representatives or, if no union present, elected employee representatives.
Slovakia	I&C most commonly via unions. Works councillors or employee trustees may be unionised employees.	Unions and works councils rarely coexist in same establishment, but where they do unions have right to collective bargaining and co-decision and works councils/employee trustees the right to I&C.	Unions or works councils/employee trustees.
Slovenia	Unions play important role in establishing employee councils and nominating candidates.	Unions accorded collective bargaining role by law but recent legal case by employee councils’ umbrella body means that in absence of unions, possibility for employees to participate via other representatives must be ensured.	Employee councils, with more general role for unions.
Spain	Close working relationship between unions and workers’ committees/delegates. Very high proportion of representatives belong to unions.	Union-dominated workers’ committees/delegates have bargaining as well as I&C role.	Workers’ committees/delegates.

Table 9: Relationship between I&C bodies and trade unions (*cont'd*)

Country	Trade union involvement in I&C bodies	Overlap between remit of I&C bodies and union-based collective bargaining?	Channel for consultation over redundancies/transfers
Sweden	Trade union-based system.	Both collective bargaining and I&C via unions.	Unions.
United Kingdom	Law does not guarantee union involvement in I&C bodies. In 2004 survey, union representatives involved in >75% of I&C bodies in unionised workplaces.	I&C and collective bargaining kept largely separate, but with some exceptions.	For unionised employees, via unions. In non-union situations, via elected employee representatives (either standing I&C body or specially elected representatives for this purpose).

Source: EIRO national correspondents

Broadly speaking, in undertakings where trade union representation and I&C bodies coexist, collective bargaining rights are assigned by law to unions only, with I&C bodies being restricted to a consultative role. This formal separation of roles is, however, blurred in a number of countries. There is scope for I&C bodies to become involved to some degree in bargaining issues.

For example, in Austria, the Netherlands and Germany, works councils can negotiate and conclude local agreements within parameters set by sectoral collective agreements. In Portugal too, workers' commissions may negotiate 'complementary regulation' to that set by collective agreements, while in Spain union-dominated workers' committees/delegates have a bargaining as well as I&C role. In some countries, non-union employee representatives can become involved in bargaining in undertakings without trade unions, as in Estonia, Lithuania and Slovenia. In countries where trade unions are the sole or principal channel for employee representation, both collective bargaining and I&C are conducted through unions, for example in Italy, Norway and Sweden.

A mixed picture exists in relation to whether the consultation required by the collective redundancies and transfer of undertakings directives is carried out via I&C bodies, trade unions or other employee representatives. For the most part, information and consultation on these issues is via the employee bodies or representatives identified in Table 1 that are the vehicle for the I&C rights guaranteed by the more general I&C directive. However, in a number of cases where these are works councils or similar bodies, there is also scope for union involvement in discussions concerning redundancies/transfers, for example in Belgium, Denmark, Estonia, Germany, the Netherlands and Portugal. In the UK and Ireland, consultation on these issues must be via unions recognised in respect of the workers concerned, or in non-union situations via elected employee representatives.

### **Relationship between representative-based I&C and direct forms of employee involvement**

The questionnaire also asked whether the use of employee involvement by management through such things as team briefings were seen as complementary to, or in competition with, I&C bodies. National correspondents' replies provided a mixed picture.

Union suspicion of direct forms of employee involvement was highlighted by only two national correspondents (for Spain and Ireland) whereas unions in Belgium are reportedly 'less opposed' to direct employee involvement than in the past. Some correspondents noted employers' use of direct means of communication and employee involvement as the equivalent or a preferred alternative to representative-based I&C arrangements, especially in smaller enterprises (as in Belgium, Ireland and the Netherlands). But in broad terms the most common response was that the relationship between representative-based I&C and direct forms of employee involvement is generally seen as being complementary.

In some countries, the use of direct forms of employee communication is regulated by law. In Lithuania, informing and consulting employees directly is possible under the law only in the absence of trade unions and works councils, but is a legal requirement in such circumstances. In Estonia too, employers are obliged by law to inform and consult employees directly where there are no union or non-union representatives. In Ireland and the UK, controversially, direct I&C arrangements are capable of satisfying the requirements of the relevant national legislation if set out in ‘pre-existing agreements’ or negotiated agreements between employers and employees.

In the UK, the use of direct forms of employee involvement is widespread across the economy. Research generally supports the view that a combination of direct and indirect, representative-based I&C arrangements produces the most effective organisational outcomes. However, the University of Warwick research on the operation of I&C bodies suggests that, where the I&C body is used primarily for communications purposes, there is the danger that its role becomes ‘crowded out’ by direct communication mechanisms used within the company.

## Views of the social partners

Many EIRO correspondents reported general social partner support for national I&C frameworks. This is particularly true of those countries with ‘mature’ systems of I&C.

For example, in Austria, where works councils have traditionally been supported by trade unions, the two main employer organisations also highlight their ‘positive impact’. In Germany, the value and necessity of works councils is ‘neither questioned by unions nor employer associations’, and a similar consensus is reported in Denmark where all the main trade union and employer organisations ‘regularly stress the importance of cooperation at [the] workplace’. But similar approaches are also reported in a number of the newer Member States whose national I&C legislation is more recent. Strong social partner support is reported in Estonia, Slovakia and Slovenia. In Lithuania, both unions and employer organisations reportedly see I&C as a ‘positive phenomenon’, even if in practice I&C procedures are largely confined to undertakings where employee representatives are able to insist on exercising the right to I&C.

However, such positive views are reportedly not universal. Both employer organisations and unions are reported to be ‘lukewarm’ or unenthusiastic about implementing I&C in countries such as Bulgaria, Ireland, Malta and the UK. Little employer interest in I&C is reported in Portugal and Romania, while trade union scepticism is reported in Italy. In Poland, while the social partners initially showed limited support for works councils, the ‘sceptical attitude of employers towards works councils has changed very slowly’ and unions have begun to view works councils as ‘potentially useful as an institution providing more extensive rights to information’.

Only a minority of EIRO national correspondents reported that the social partners, either jointly or separately, had conducted any review of the operation of the national regulatory framework governing I&C or were otherwise pressing for reform. The most notable debates about reform appear to be concentrated in countries with ‘mature’ I&C systems rather than in those whose I&C legislation is more recent (see below). In the Netherlands and Norway, while there is no major pressure for reform, some more limited amendments of the I&C framework have recently been under discussion. In Sweden, issues and problems to do with I&C are solved within the framework of collective agreements.

### National debate about reforming I&C arrangements

In Austria, while the Federation of Austrian Industry (**IV**) sees no need to change the legislative framework for I&C, the Federal Economic Chamber (**WKÖ**) favours limited reform, notably to limit codetermination in relation to performance-related pay and plant shutdowns. The Austrian Trade Union Federation (**ÖGB**) and Chamber of Labour (**AK**), both favour stronger sanctions for I&C failures, arguing that the existing level of fines may not meet the criteria

specified by the EU Directive. They also consider that the directive's requirement for I&C on 'decisions likely to lead to substantial changes in work organisation or in contractual relations' includes management activities that are not sufficiently covered by national I&C rights.

In Belgium, key points of debate between the social partners on the I&C framework include: the employment threshold at which I&C rights apply (which the unions want to lower); the resources and protections available to employee representatives (which employers want to limit); and works councils' powers (on which employers want fewer formal rules and unions want to strengthen). A review of the 2007 implementation agreement was planned for 2010, focusing on the process of social elections.

In Germany, recent policy statements by the Confederation of German Employers' Associations (**BDA**) and the Confederation of German Trade Unions (**DGB**) make competing proposals for the reform of the Works Constitution Act. Among other things, BDA wants company-level agreements to take precedence over collectively agreed provision and works councils to be established only if one third of employees take part in the necessary elections. DGB wants the establishment of works councils in SMEs to be facilitated by wider use of a simplified election procedure that currently applies to establishments with up to 50 employees; enhanced codetermination rights in the context of relocation and restructuring, and group works councils to be mandatory.

In 2010, the French social partners launched an interprofessional negotiation on reforming the structure of I&C bodies and their remit. The employer organisation for the metal industry, **UIMM**, wants clarification on the articulation between different levels of I&C body but this is opposed by the General Confederation of Labour (**CGT**) and the General Confederation of Labour – Force Ouvrière (**FO**) who say they would not accept a reduction in the number of levels of I&C bodies or their rights under the Labour Code. The talks are ongoing.

Elsewhere, discussions between employers and unions in Bulgaria have focused on making I&C obligatory, eliminating the duplication of functions between different employee representatives and regulating the provision of time off and training for employee representatives. In the Czech Republic, while trade unions are broadly satisfied with the I&C framework, employers would favour some simplification but I&C is not a 'hot issue' for them. In Greece, trade unions want stronger sanctions against employers failing to inform and consult. In Poland, an initial assessment of the operation of I&C legislation was carried out by a tripartite commission in 2007. Recent amendments to the legislation in May 2009 were the result of pressure from employer and trade union bodies. The **Employers of Poland** referred the previous union monopoly of appointing works council members to the Constitutional Tribunal which ruled against this practice, favouring universal elections, while the metalworkers' secretariat of the Independent and Self-Governing Trade Union Solidarity (**NSZZ Solidarność**) sought clear rules requiring employers to bear the costs of works councils' operation. Both these changes featured among the May 2009 amendments. Finally, in Slovenia, trade unions are in favour of stronger I&C rights and extending the right to establish employee councils irrespective of the size of an undertaking's workforce.

## Commentary

This report provides an overview of information and consultation practice across the EU and Norway in the light of Directive 2002/14/EC, the national implementation date of which was some five years ago.

As set out in a previous EIRO comparative study (TN0710029S), in some countries, particularly those with 'mature', long-standing works council or trade union-based systems of workplace representation, the directive did not drive major regulatory or institutional change. This group includes Austria, Belgium, Germany, France, Italy and the Netherlands. It

also includes Denmark, Norway and Sweden whose I&C arrangements are based largely on centralised (intersectoral or sectoral) collective agreements and trade union representation. Despite legal changes being required in a number of cases, I&C practice in these countries cannot be said to have been significantly shaped by implementation of the directive. In such countries, as pointed out in the reports from a number of EIRO national correspondents, there is a strong cultural acceptance of the value of partnership and participation, and the directive does not provide a strong point of reference for national assessment or debate about the reform of national I&C arrangements.

In other countries, statutory I&C systems are more recent, either dating from around the time of EU accession or having been introduced in direct response to the directive. This group includes many of the newer EU Member States, including those in central and eastern Europe, and the UK and Ireland with their ‘voluntarist’ industrial relations tradition. Broadly speaking, such countries have traditionally accorded primacy to trade unions as a representation channel. Implementation of the directive has required extensive regulatory and institutional adaptation, often leading to greater institutional diversity in terms of the types of employee representatives designated as the channel for statutory I&C and, in some countries, the creation of a secondary channel of workplace representation alongside the trade union, sometimes in competition with the union. As a result, in some of these countries, one outcome has been considerable trade union ambivalence about actively engaging with the I&C provisions driven by the directive for fear of undermining their own representational role and influence.

Against this background, practice varies considerably between countries in terms of procedures for the establishment of I&C bodies. In some countries, including a number of those with mature works council systems, I&C bodies are mandatory in that employers above the relevant employment threshold are (at least technically) obliged by law to establish them. Elsewhere, employees or trade unions need to take steps to trigger the establishment of I&C bodies.

Similarly, while all the countries covered by this report have established a statutory framework governing the constitutional provisions of I&C bodies, there is notable variation in the scope available for (and relative importance of) organisation-specific (and, in some countries, sector-specific) agreements or arrangements. The countries with mature I&C systems include both those which rely principally on statutory regulation as the source of constitutional arrangements for I&C bodies as well as those where central collective agreements are the most dominant influence. Elsewhere, a number of central and eastern European countries enable agreement-based I&C provisions at company level to elaborate or add to the statutory requirements. The UK and Ireland stand out as the only countries where organisation-specific agreements are the principal source of regulating I&C.

Throughout Europe the incidence and coverage of I&C bodies is considerably less than comprehensive, with less than half the relevant establishments/enterprises being covered in 10 countries. There is a marked size effect in all countries with larger enterprises being much more likely to have an I&C body and the problem of the non-implementation of I&C rights guaranteed by the directive being particularly acute in small workplaces.

Three broad patterns (stability, growth and decline) in the establishment of I&C bodies since 2005 are identified. One group of countries, all of which have mature I&C systems, have seen little change. In others there is evidence of a growing incidence of I&C arrangements, albeit often from a low base. In the largest group, incidence has either declined or there has been very low take-up. In this latter group, trade union ambivalence towards establishing I&C bodies is a frequently cited explanation. Moreover, most EIRO correspondents reported little by way of more general government or social partner promotional activity to encourage I&C.

In terms of the practice of I&C, it seems rare for information exchange to be a near universal practice. There is always a minority, and in some countries a majority, of enterprises that do not, or only rarely, provide information of the sort specified in the directive. In some countries where information is often provided, it tends to be more about work

organisation and working conditions rather than business strategies or companies' economic situation. Consultation is much less likely to take place than the provision of information. It generally takes place in only a minority of enterprises. Where it does happen it is more likely to be about work-related issues and not wider business matters as specified in the directive.

Measures of the outcome of the consultative process are hard to come by. Eurofound's *European Company Survey 2009* reported that those employee representatives interviewed thought they exerted 'strong' influence on management decisions in 62% of working regulation matters, 54% of work process issues, 50% of HR planning matters and only 37% on structural change decisions. There was wide variation between countries.

In terms of the relationship between I&C bodies and other forms of employee voice, as well as being the primary vehicle for employees' statutory I&C rights in a number of countries, trade unions also tend in practice to dominate, or be strongly influential within, the works councils or similar bodies that are the designated I&C bodies in other countries. The formal separation between union-based collective bargaining and I&C can be blurred in practice, with scope in a number of countries for (formally non-union) I&C bodies to become involved to some degree in bargaining issues. Direct consultation with employees is allowed in some countries either as a fall-back if no union or I&C body is established or as an alternative means of satisfying the requirements for I&C. The experience of management communicating directly with employees is generally seen as complementary to collective consultation.

Finally, many EIRO correspondents reported general social partner support for national I&C frameworks. This was particularly true of those countries with mature systems. Strong or growing social partner support was also reported in some central and eastern European countries, in some cases overtaking earlier scepticism. In some countries, however, there is a reported lack of enthusiasm for or interest in implementing I&C procedures on the part of employers or unions or both. Only rarely were the social partners reported to have conducted any review of the operation of the national regulatory framework governing I&C or to be pressing for reform, with the most notable debates about reform being concentrated in countries with mature I&C arrangements.

Overall, the evidence from EIRO national correspondents on the extent, operation and impact of I&C arrangements is patchy and it is difficult to provide a measured assessment of the overall impact of the I&C directive. One general conclusion is the need for a more comprehensive research programme to generate a fuller picture of the role and significance of I&C among EU/EEA Member States. It is apparent, however, that the flexibilities built into the directive are widely reflected in national legislation giving effect to its provisions, particularly outside the group of countries with mature systems of I&C systems, as reflected in national provisions that make I&C procedures dependent on employee initiative and provide scope for agreement-based variation. This flexible regulatory approach, coupled with the absence of active promotion of I&C on the part of the social partners in a number of countries, appears to have limited the impact of the directive in driving the diffusion of I&C arrangements and in establishing clear standards for I&C practice.

Although the data available on the incidence of I&C bodies are far from comprehensive, it is apparent that those countries with a higher coverage of I&C bodies (Tables 4 and 5), including Austria, Belgium, Denmark, France, Germany, the Netherlands and Norway, tend to be those with mature and embedded I&C systems, where in most cases the establishment of I&C bodies is technically mandatory. In countries enabling specific proportions of employees to initiate the establishment of I&C arrangements, there is little indication of the widespread uptake of I&C arrangements via this route. More generally, the reported absence of social partner enthusiasm for implementing I&C procedures in a number of countries underscores the call in the European Parliament's January 2009 **resolution** for the social partners 'to take proactive, positive steps to influence implementation at national level, for example through the dissemination of good practices'.

This report also identifies a range of practices that are important in underpinning effective consultation, including the scope for calling special meetings of the I&C body, protections and facilities for employee representatives, and access to external advice. It is notable that provisions on such issues in the I&C directive are very limited compared with those contained in the ‘recast’ European Works Council directive. The latter provides representatives of European Works Councils (EWCs) with the rights to paid time off and the necessary financial and material resources to carry out their duties, to undertake training, to call special meetings, to hold pre-meetings without management being present and to seek external advice. In any upcoming review of the I&C directive, EU policymakers and legislators might consider incorporating similar rights and facilities for I&C representatives so as to encourage robust processes of consultation, particularly in those Member States with relatively recent statutory I&C frameworks.

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