



Operation and effects of information and consultation directives in the EU/EEA countries

'Fitness Check'

Final Synthesis Report

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1. Executive Summary

1.1. Purpose and scope

In its Work Programme for 2010, the European Commission announced that it would be reviewing EU legislation in selected policy fields through 'fitness checks' in order to keep current regulation 'fit for purpose', including identifying excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time.

Commitments were made to undertake pilot exercises in four policy areas – employment and social policy, environment, transport, and industrial policy – with DG EMPL deciding to carry out its fitness check in the area of employment and social policy on Information and Consultation of Workers.

In this field, the European Commission chose to review a 'family' of three Directives which share the objective of establishing minimum standards in information and consultation (I&C) of workers at national level throughout the EU/EEA, namely:

- Directive 98/59/EC on collective redundancies that requires an employer who envisages collective redundancies to consult with workers' representatives and provide them with specified information concerning the projected redundancies;
- Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of the transfer of undertakings or businesses, which provides, among other substantive rights, for the information and consultation of employees by both the transferor and/or transferee company;
- Directive 2002/14/EC which aims to establish a general framework for informing and consulting employees in order to strengthen dialogue within enterprises and ensure employee involvement in advance of decision-making, with a view to better anticipating problems and preventing crises.

While a number of other EU directives contain information and consultation provisions, or address information and consultation at EU level, the three directives chosen for this study can be considered as a package of related EU legislation specifically focused on I&C at national level.

The first two directives date back originally to the 1970s but the third directive is more recent, having come into force in 2005. It extended the scope of EU I&C legislation from covering often difficult specific workplace situations to a broader spectrum of situations as part of the EU's efforts to promote a social market economy.

This study covers the fitness for purpose of the three directives for the EU-27 Member States and EEA countries. It is an input to the EC's fitness check on I&C, and in its context, 'fitness for purpose' is understood as the extent to which the package and individual directives, as transposed, currently meet their objectives, based on the operation and effects generated, and can be expected to continue to do so without excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures.

1.2. Context

The study is required to clarify the notion of 'fitness for purpose', and enable meaningful conclusions to be drawn and possibly recommendations to be made in circumstances where the context and usage of the legislation is evolving and affecting millions of workers throughout the EU/EEA.

While the three EU directives are incorporated into the national legislation of the Member States in the conventional way, it should be noted that:

- Some Member States considered that their existing legislation already met the requirements of the directives and did not modify existing legislation;
- In certain Member States, implementation of the directives was dealt with, not only or mainly through legislation, but through collective agreements negotiated between the social partners;
- The national legislation forms part of each country's industrial relations systems, whose structures and practices vary considerably between and even within Member States, and which have generally been significantly determined by history and culture.

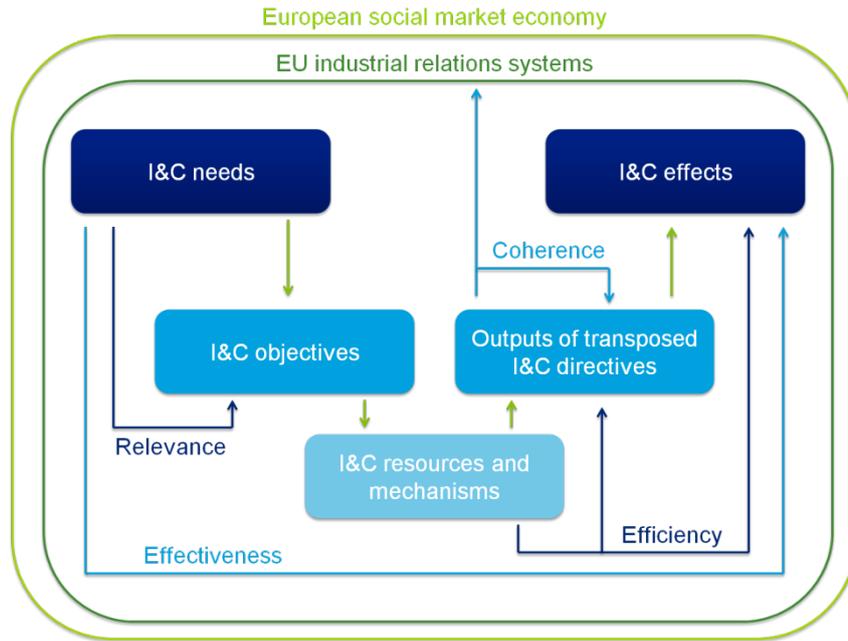
This complexity and diversity of I&C practices at national level may partly explain the paucity of information previously collected on the effects of the legislation.

Despite the diversity in the structure of legislation and in the operation of the industrial relations systems across countries, all national systems and arrangements serve similar economic and social goals with industrial relations systems providing the frameworks for social partners to address and negotiate their respective interests. This underlies the existence of the three EU I&C directives, and their objective to establish minimum standards in I&C at national level throughout the EU/EEA.

1.3. **Methodology**

In this report, the concept of 'fitness for purpose' is decomposed into, and evaluated on, the basis of four criteria:

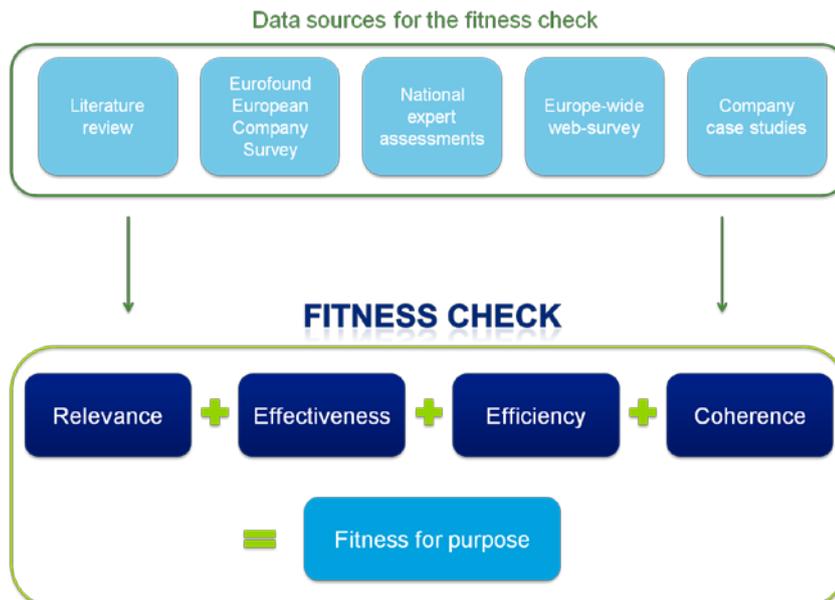
- **Relevance:** the extent to which the contents of the directives address the needs of employers and employees in the EU social market economy;
- **Effectiveness:** the extent to which the above needs are met in practice by the directives;
- **Efficiency:** the extent to which the needs are met in the most cost-effective way;
- **Coherence:** the extent to which the needs are met in a comprehensive and compatible way.



Judgements in relation to each of these criteria are based on an analysis of information gathered from the following sources, with the data cross-verified between sources throughout:

- An analysis of relevant national and EU-level research;
- An analysis of EU-wide data from the latest European Company Survey (ECS);
- Assessments made by national I&C experts who interviewed key national stakeholders and reviewed relevant literature in all 30 EU/EEA countries;
- Direct enquiries through a web survey of employer and employee representatives at company level organised in co-operation with the European-level and national social partners;
- A series of company case studies undertaken by the national experts.

The figure below summarises the study approach.



While the evidence in the report and the national expert assessments are based on all the qualitative and quantitative information available from research, case studies and interviews, much of the information available in this field is in the form of subjective preferences given the inherent difficulty of linking information on I&C to objective economic and social effects, and the corresponding dearth of such information.

Our overall judgement on the fitness for purpose of the three directives is then based on an expert analysis of the qualitative and quantitative information on these four criteria at EU/EEA level. The directives' fitness for purpose relies on them being relevant, effective, efficient and coherent, based on their operation and on the effects generated.

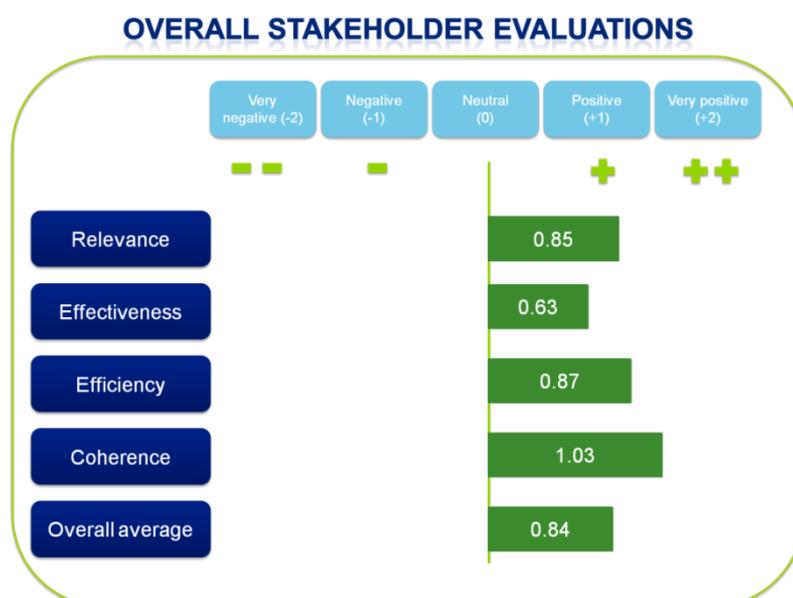
1.4. Findings

In order to indicate, not only the overall findings of the study, but also the diversity of experiences and perspectives across countries and stakeholders, the evidence is provided in various ways:

- An **overall assessment** of the fitness for purpose of all three directives in terms of relevance, effectiveness, efficiency and coherence;
- An analysis of the differences in the assessment of the **individual directives** as seen by all stakeholders in all EU/EEA countries;
- An analysis of the differences between the **stakeholder responses** in all countries in relation to all three directives;
- An analysis of the differences between the **country responses** of all stakeholders in relation to all three directives;
- An assessment of **I&C in Small and Medium Enterprises (SMEs)** even though they are generally not covered by I&C legislation.

1.4.1. Overall assessment of the three directives

This study finds that the relevance, effectiveness, efficiency and coherence of the three EU I&C directives taken together are evaluated positively. When viewed in detail, however the directives are assessed notably lower in terms of their effectiveness compared to their relevance and efficiency, while their coherence is somewhat more



positively assessed.

Relevance

The **relevance** criterion measures the extent to which the contents of the directives address the needs of employers and employees in the EU social market economy, noting that this covers both social and economic objectives.

In terms of social objectives, the legislation is viewed positively in terms of guaranteeing the **fundamental right** of workers to be informed and consulted, as reflected in national expert assessments, with the great majority of company level employers and employees agreeing in the web-survey. Both sources show equally strong positive agreement from both employees and employers regarding the contribution of I&C to increasing **trust and partnership**.

With respect to the more economic and labour market objective of **increasing adaptability and employability**, results from the web-survey indicate that the legislation is seen as more relevant by employees than employers – around 65% and 50% respectively - with similar results in terms of improving **company performance** and improving the **quality of management decisions**.

There is some recognition, particularly by stakeholders in the 'new' Member States, that EU I&C legislation makes a contribution to ensuring a **level playing field** for business across the EU, not least in discouraging a competitive 'race-to-the-bottom' in relation to I&C/labour standards. This is not a strong finding, however, possibly because the stakeholders contacted see I&C legislation mainly from a social dialogue and industrial relations perspective rather than a broader economic one, or simply because they are unaware of the situation in other countries.

Effectiveness

The **effectiveness** criterion measures the extent to which the employer and employee needs that are addressed by the directives are met in practice.

One of the most significant findings in the report is that **the legislation is assessed less positively in terms of its effectiveness** than its relevance, efficiency or coherence. This implies that, while stakeholders may see the legislation as being relatively well-designed for its purpose, it tends to deliver less than hoped for in practice. Moreover, this short-fall is not seemingly due to a lack of coherence between the directives.

Effectiveness can itself be broken down into different aspects, with some assessed as achieving more results than others. The social and economic benefits of avoiding **conflict** are, for example, seen as a positive material effect of I&C by some 85% of employers and employee representatives at company level through the web survey.

On the other hand, both the web survey and the European company survey results indicate that while the **involvement of employees** in company decisions is seen as being a relevant objective of I&C legislation by employers and employees (70% and 80% respectively in the web survey) the assessments of the benefits in practice are lower (50% and 70%).

In terms of the more economic objectives of increasing **adaptability and employability** and improving the **effectiveness of management decisions**, the overall assessments from the web-survey are much lower, with differences between employers and employees (35% positive against 50%). However the positions of

employers and employees are both more positive and closer regarding the contribution of I&C to **managing change** (50% and 55%).

This is consistent with evidence that employee representatives are more likely to be consulted on specific workplace issues than on matters relating to the management and performance of the company, with many employers, especially in industry, seeing **company performance** as largely determined by market conditions and their own operational effectiveness.

For their part, employee representatives argue that the contribution of I&C to improving human resource management within a company is limited if managers fail to **anticipate change**. Employees surveyed also believe that managers commonly express support for I&C and its benefits, but fail to use it effectively in practice, in part because of a lack of **expertise** in doing so.

In terms of practical experiences with the directives, the assessments at company level from the web survey are disappointing. Half of employers and employees report practical problems, with a demand for more **information** about the legislation from 50% of employers and 80% of employees.

In this respect, a number of areas of **uncertainty** have been identified in different countries in terms of: the content and scope of the legislation; the extent to which there is adequate awareness of employer obligations and employee rights; issues concerning employee representation, general procedures and practices; and questions with regard to enforcement arrangements and the adequacy of sanctions.

While such specific issues in different countries may not appear particularly serious when viewed from an overall policy perspective, the extent and range of such uncertainties appear to be contributing to the relatively poorer ratings of the directives in terms of their effectiveness.

Efficiency

In terms of **efficiency** – measured as the extent to which the needs of employers and employees are met in the most cost-effective way – the national expert assessments indicate a widespread recognition by all parties of the benefits of current I&C arrangements based on the EU directives, with benefits generally seen to exceed, or at least cover, the costs of these I&C arrangements. The relatively lower perception of the effectiveness of the legislation suggests that its efficiency could be improved when brought in line with its potential.

These expert assessments are confirmed by the findings from the company level web survey where more than half of employers see benefits exceeding costs, a quarter see benefits and costs as similar, and the remaining quarter see costs exceeding benefits. Nearly three-quarters of employee representatives see benefits exceeding costs.

Employers nevertheless report some costs as high – with nearly half mentioning the costs of allowing time off work, and a third mentioning the costs of holding I&C consultations, or costs resulting from delays to decisions. However these costs will have been taken into account when making their overall assessment of benefits and costs as either positive or equal.

Coherence

The **coherence** of the three directives is assessed positively in terms of the extent to which they meet employer and employee needs in a comprehensive and compatible way, with no evidence that the most recent directive is in conflict with the earlier directives.

However it is not possible to make these judgements specifically for the EU I&C legislation as such: they may relate more to the I&C practices to which they contribute, especially in countries with long-standing legislative provisions or collective agreements.

Public authorities are particularly positive about the coherence of the directives. Most high level stakeholder representatives in the majority of countries do not see the need for a consolidation of existing EU I&C legislation, taking account of the fact that it is generally integrated in appropriate (but not always the same) parts of national legislation.

However, the company level web survey results provide very different, and also very divergent, perspectives with 40% of employee representatives expressing strong support for changes or additions to I&C legislation, while employer support for change is almost wholly lacking (just 4%).

1.4.2. Assessments of the individual directives

As the three directives concern I&C in different situations, it was important to assess whether the above overall findings held true for the individual directives.

In this respect, and taking into account the different approach between the two older and more prescriptive directives and the more recent general and proactive directive, the key element assessed was whether the effectiveness of the specific legislation was also less highly rated than its corresponding relevance, efficiency and coherence, and whether similar explanations could be found for this.

More generally, in developing our overall EU/EEA-level analysis we have also analysed the evidence in relation to the different dimensions of the directives, the stakeholders

and the countries, in order to both better understand the determinants of the overall findings, and also to identify possible implications for action.

With regard to affording protection to employees in cases of **collective redundancies**, the **directive 98/59/EC** is rated reasonably highly overall – closer to positive than neutral – although this is tempered by some employee dissatisfaction about the extent of consultation, and disappointment that the legislation cannot stop redundancies taking place¹. In this respect, however, the web survey indicates divergent views between employees and employers, with 40-45% of employers assessing the legislation as especially ineffective, compared with only 10-15% of employees.

At the same time research evidence from Eurofound² suggests that the legislation helps employers, employees and public agencies to work together in managing re-deployment and re-training as part of the wider process of structural adjustment.

The overall assessment of the **transfer of undertakings** directive is reasonably positive. However, in terms of the directive effectively contributing to smoother transfers of undertakings, the assessment is mid-way between neutral and positive, and lower again among employers. There are also a number of uncertainties concerning the implementation of the directive in a changing commercial environment, implying that attention to the details of its practical application is needed in order to ensure or increase its continuing effectiveness.

The latest **general directive** 2002/14/EC is rated only mid-way between neutral and positive, i.e. lower than the two others. This may partly reflect divergent experiences in terms of its take-up and impact across countries (where the two older directives are more established), as indicated in a research report³ using the European Company Survey 2009 data.

That report distinguished three situations: no changes in countries with mature industrial relations systems; modest growth in I&C practices in some countries (but from a very low base); and some decline in others. However it is not clear whether this slow progress is because the directive lacks the means to support its objectives, or whether it will simply take time to achieve its full effects given its relatively recent adoption and the complexity and diversity of national circumstances.

In respect to the above it should be noted that there are differences in terminology concerning the enforcement of the three directives, with the latest 2002/14/EC directive being much more precise – sanctions are required to be ‘effective, proportionate and dissuasive’ – compared with the wording used in the two earlier directives⁴.

1.4.3. Differences between stakeholders

Another of the subsidiary analyses performed at EU/EEA level concerns variations in stakeholder perspectives and assessments.

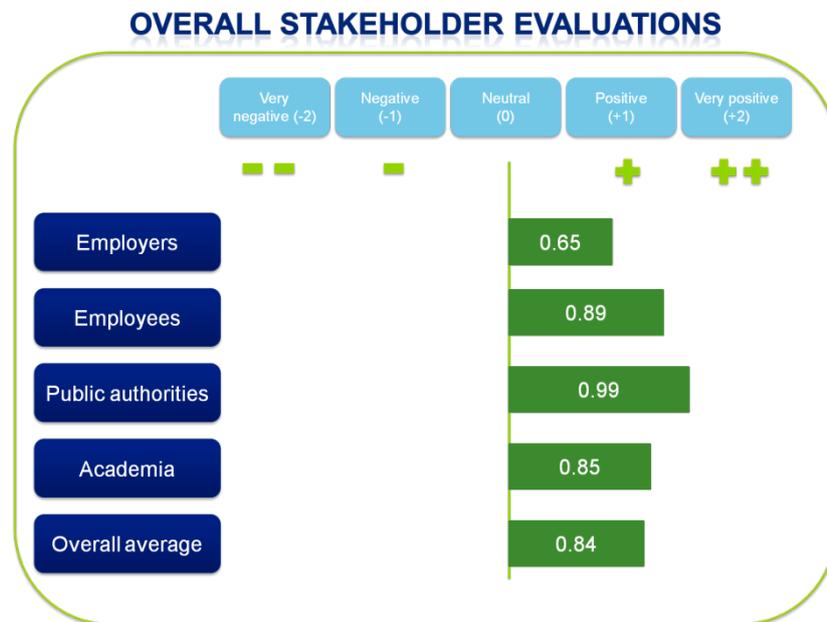
¹ Which is not, of course, the direct purpose of the directive.

² Cf. (1) Eurofound EMCC (2008): *ERM case studies: Good practice in company restructuring*, 53 pp. (2) Eurofound EMCC (2010): *Legal framework for restructuring*. (3) Eurofound EMCC (2010): *Restructuring: job creation measures*. (4) Eurofound EMCC (2010): *Restructuring: support measures for affected workers*. (5) Eurofound EMCC (2010): *Social partner and government agency involvement in the restructuring process*.

³ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, 32 pp.

⁴ This strengthening of the terminology resulted from an ECJ clarification of the earlier texts.

The views of different stakeholders – employer representatives, employee representatives, public authorities and academics – sometimes converge, and sometimes diverge. The assessments of employee representatives are generally more positive than employer representatives, with public authorities the most positive of all. These assessments also provide insights into which stakeholder (sub) groups are least positive about the legislation and its effectiveness.



In terms of contributing to increasing trust and partnership, the company level web survey evidence indicates that over 90% of employers and employee representatives consider I&C legislation as both relevant and effective to some degree.

The evidence from the European Company Survey suggests that dealing directly with employees, rather than through their representatives in an I&C system, is not necessarily seen as attractive by many employers apart from those in some ‘new’ Member States, as well as in companies with fewer than 50 employees, where this is already common practice.

With respect to the need for additional legislation, on the other hand, the web survey shows a clear divergence – at company level 40% of employee representatives are in favour, as against only 4% of employers.

The general assessment of the effectiveness of the I&C legislation as lower than its relevance, efficiency, and coherence, is also the case for employees, public authorities and academics (but not for employers). The latter are more worried about the efficiency of the legislation than about its effectiveness. They identify effectiveness as the second weakest evaluation dimension. While some might see advantages in operating without any of the ground rules, and associated costs, of I&C legislation, the company level web-survey evidence indicates that 85% of both employers and employees see positive effects from I&C in terms of reducing conflict and creating a more favourable climate for change.

Throughout, and particularly with regard to those benefits of the general directive 2002/14/EC that relate to productivity and flexibility, public authorities have a much more positive view than employers.

In some of the assessments, notably regarding coherence, the evidence is mixed in that the national expert assessments report that the directives are seen as coherent relative to each other by the stakeholders even though, in terms of effectiveness, half of employer and employee representatives contacted through the web-survey reported practical problems in using I&C legislation.

Overall, these assessments by the different stakeholders confirm that effectiveness is the weakest of the four evaluation criteria, although employers consider efficiency as even weaker.

1.4.4. Differences between countries

The third dimension examined by our EU/EEA-level analysis concerns differences between the overall evaluations of I&C legislation across countries.

Attempts were made to bring together the evidence from groups of countries using different industrial relations systems for categorisation, or on the basis of more general economic evidence, but this produced little in the way of useable results. Differences in the overall responses of all stakeholders in all dimensions do vary between countries, but not always for the same reasons, and not according to clearly defined patterns.

In terms of the overall assessments by the national experts, a mix of countries – the Czech Republic, Spain, France, Poland and Sweden – are closest to the EU/EEA average assessment by all stakeholders on all evaluation criteria. Given the variations across the different criteria and stakeholders, as well as the different national situations, this does not, however, indicate that these countries are representative of an EU/EEA average situation. The above indicates that national differences play a large part in explaining the scores obtained and it is difficult to draw general conclusions and make corresponding straightforward recommendations on this basis.

Those countries showing the highest positive rating for the directives are Germany, Denmark, Italy, Latvia, Liechtenstein, the Netherlands and Slovakia – all of which have positive employer evaluations well above average compared with employers in other countries.

The least positive assessments come from Estonia, Ireland and Portugal among EU members, and Iceland and Norway in the EEA. Among this group, the results are mainly influenced by particularly low estimates of the relevance of the directives in Iceland, Norway and Portugal, and low or negative results regarding their effectiveness in Estonia, Ireland and Portugal. The directives are also rated very low in terms of efficiency in Estonia and Norway.

Culture, traditions and history clearly influence such assessments, but recent events also play their part. This appears to be particularly the case in Estonia, Ireland and Iceland, given that these countries have suffered badly in the crisis, and may be sceptical about the protective benefits of EU I&C legislation which may have been over-estimated in some of the 'new' Member States.

Other explanations include the fact that the views of the stakeholders may differ in countries where national legislation existed *before* the adoption of the EU directives, and which may also influence their assessment of the contribution of the directives as such. In this respect particular weaknesses are reported in a number of 'new' Member States with regard to enforcement and the effectiveness of sanctions.

Given that some of the variations in stakeholder responses to I&C legislation seem very country-specific, and given the diversity of the national contexts, it has proved

impossible to group countries for purposes of analysis. This suggests that EU I&C legislation is viewed in terms of EU-wide minimum standards, possibly to be complemented by further measures at national level.

1.4.5. I&C in SMEs

I&C needs and practices in SMEs are not well documented, and a large share of EU/EEA firms fall below most EU I&C legislative thresholds. Evidence from the European Company Survey 2009 suggests that, while smaller companies lack formal representational structures with low trade union density, there is nevertheless a co-operative social dialogue between management and employees and their representatives in many cases. However it is difficult to compare such direct face-to-face contact with the more structured discussions taking place in larger firms which are covered by the directives.

The availability of the resources needed for effective I&C (information, training, time) in SMEs is seen to be associated with the development of a cooperative culture, including a positive involvement of employees and representatives. In this respect, local networking has proved an effective way to spread good practice among SMEs.

1.5. Conclusions

On the basis of the extensive evidence collected and analysed for this study, first at national, then at EU/EEA level, we conclude that the EU I&C legislation can be seen as broadly 'fit for purpose' in terms of promoting a minimum level of I&C throughout the EU/EEA, consistent with the EU social market model, as none of the four key evaluation criteria used to assess its fitness for purpose are negatively assessed.

However, none of the four key evaluation criteria are very positively assessed.

I&C legislation and practices are an accepted and established part of the industrial relations landscape across the whole of the EU/EEA (albeit with some 'work in progress' in several 'new' EU Member States, and a fair degree of unevenness elsewhere particularly regarding general I&C as per directive 2002/14/EC), but the national expert assessments of stakeholders' positions in the EU/EEA are merely "positive", rather than "very positive" (on a five point scale from very negative to very positive).

Moreover, in practice the legislation's overall effectiveness is evaluated somewhat less positively than its relevance, efficiency and coherence. In other words, it is delivering below its potential.

Such judgements do vary across countries, however, with notable differences between those where the EU legislation is the main driving force behind I&C practices, as compared with countries with prior legislation and/or a developed national social dialogue culture.

Support for the legislation from the principal parties concerned – notably employers and employees – is furthermore not necessarily a reflection of a deep ideological enthusiasm for the processes or institutional arrangements as such (although stakeholders in countries with long established and co-operative industrial relations systems tend to be committed in this respect). Rather it should be seen more as a pragmatic acceptance of the realities and compromises of industrial relations.

Thus, while the objectives of the EU I&C legislation are widely recognised, they are not as widely respected or enforced in practice.

The degree to which the legislation is effective depends to a large extent on the activities of national stakeholders, acting separately and together, albeit with a general oversight at EU level, given the way that EU I&C legislation is integrated in national legislation or even collective agreements, and applied across a range of countries with different economic, social, cultural and historical experiences.

Despite the lower evaluation of the legislation's effectiveness, a clear conclusion from all parties, including employers, is that the benefits of information and consultation generally exceed its costs. Costs are acknowledged, but seen as worth paying as part of the actions to promote cooperation rather than conflict. One could conclude, therefore, that, if the effects of the legislation were fully aligned with its potential, its efficiency would likewise increase.

There is no indication of major gaps or incoherencies between the three EU I&C directives, and the directives can therefore be seen as coherent and comprehensive.

Taken individually, each directive is also seen to perform sufficiently well to be judged 'fit' rather than 'unfit' for purpose, bearing in mind the diversity of situations across the EU/EEA.

In one sense the assessment is clearest in the case of the two earlier directives: directive 98/59/EC and directive 2001/23/EC, which invoke specific actions when collective redundancies or changes of company ownership arise, although there are concerns that changing commercial practices may be creating growing uncertainties in the latter case. In contrast, the latest directive, 2002/14/EC, is designed to promote the general establishment of I&C bodies and procedures within companies rather than to enforce compliance in specific circumstances. Its rate of adoption is seen as uneven across countries, which may account for its current, somewhat lower assessment by national stakeholders – midway between neutral and positive – although it is possible that its effectiveness will develop over time of its own accord.

While the EU I&C legislation, collectively and individually, is viewed broadly positively overall by employers, employees, public authorities and academics, employers are much more convinced of the contribution of the legislation to improving the climate of industrial relations than they are of its contribution to improving company performance or even the adaptability and employability of their employees. Public authorities, on the other hand, are much more positive about the perceived economic benefits.

The greatest divergences between stakeholders emerge in relation to the contribution of the legislation to reducing redundancies: employee representatives see this as a relevant objective to which the directive should contribute, while employers tend to see redundancies as being essentially determined by market conditions, rather than by I&C.

The evaluation of the degree of fitness for purpose of the legislation also differs across the EU/EEA countries, taking into account that it establishes standards for I&C in countries whose pre-existing situations were drastically different and that this study, in line with other research, finds that 'there is extensive variation both between and within countries in the extent and nature of workplace social dialogue'⁵.

In terms of differences between smaller and larger establishments, while formal systems of employee representation are much more common in large establishments, smaller companies can have their own forms of direct social dialogue, using networking with other SMEs serving to offset the lack of resources at individual company level.

⁵ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, p. 57.

The crisis has, of course, had a significant negative impact on employment and the labour market generally, although not necessarily on co-operation as shown in the widespread adoption of flexible short-time working as an alternative to redundancies in the early stages of the crisis. However, in countries that have suffered particularly badly, whether in the east (such as Estonia) or in the west (such as Ireland) or the EEA (Iceland), the assessments of the I&C legislation are rather neutral or even negative, which may reflect disappointment due to excessive expectations concerning the help that the directives could have brought.

Studies of the effects of the crisis on the operational effectiveness of I&C legislation suggest that it has not triggered particular problems with the directives as such, although it may have brought to the surface or heightened concerns and uncertainties about a number of pre-existing issues.

In this respect a number of issues are reported for each of the directives that may warrant being addressed.

In most cases, while the issues are important for those affected, and some involve deliberate attempts to circumvent the objectives of the directives, they do not appear to undermine the directives as such at EU/EEA level, although they may well explain why the assessments of the directives are at best positive on average, rather than very positive.

In general the weaknesses appear to call for specific responses at national level, although a more rigorous oversight and encouragement from EU level would also appear to be important and useful.

At present there is no systematic reporting to the European Commission from national government sources concerning the operational usage of the directives, which hampers the Commission's ability to monitor developments and pursue corrective action where relevant.

In terms of tackling weaknesses in the existing legislative arrangements (including the existence of three separate but related directives, with different operational conditions in terms of scope, procedures and enforcement arrangements) there is uncertainty concerning the aspirations of different stakeholders.

For example, 'high level' national stakeholders appear to see no need to consolidate the three directives, while company level employer and employee representatives responded positively to the idea of a 'rationalisation' of existing legislation. At the same time there is no support from company level employer representatives for additional legislation, but a strong demand (also from employees) for more information about the legislation.

This suggests that, while there are clearly issues to be addressed, it could prove very costly and time consuming to seek to improve the performance of the present directives through a major legal overhaul. This report therefore finds that it may be more opportune to pursue non-legislative action seeking especially to raise awareness and ensure adequate enforcement of existing legislation in order to improve the practical effectiveness of the existing legislation and achieve its full potential.

In this respect it can be noted that the level of awareness of the legislation is reported as being low in more than half the countries covered, including both 'old' and 'new' Member States. Moreover, slow, complex or otherwise inadequate enforcement procedures *and* insufficiently dissuasive sanctions are reported in a third of the countries covered, notably but not exclusively in many 'new' Member States.

At the same time, in a more forward-looking perspective, national academic experts as well as ELLN experts raise some concerns about the need to ensure that EU labour law legislation maintains its relevance in the face of cultural, social and economic challenges to workplace practices resulting from the new European and global business and financial environment with increasing cross-border ownership of companies.

1.6. Recommendations

The aim of developing positive and fruitful workplace relationships in the European social-market economy in the context of the EU2020 strategy calls for a multi-disciplinary and pragmatic approach. Recognising that I&C can serve multiple purposes, including dealing with economic challenges such as managing change and restructuring, and raising levels of productivity and performance, as well as improving relations between employers and employees by investing in workplace cooperation and training linked to I&C, the I&C directives evaluated are clearly relevant contributors in this perspective, and aligned to EU social market objectives.

The multiple purposes which I&C can fulfil require different approaches, as testified by the different EU directives. Yet given their links, the directives must be coherent, as they are currently perceived to be, and equally importantly, they must each function effectively in their specific context, also recognizing the diversity of Member States' situations.

Despite the EU I&C legislation being evaluated as broadly "fit for purpose", there is clearly scope for improvement, mainly in terms of its effective implementation at national level.

This report therefore finds it may be more opportune to pursue non-legislative action at national level seeking especially to raise awareness and ensure adequate enforcement of existing legislation in order to improve the practical effectiveness of the existing I&C legislation and achieve its full potential rather than seek to modify or develop the legislation as such. Its recommendations therefore focus on addressing such effectiveness-related problems at national level, but seen and supported within an overall EU context. The recommendations that have been identified are presented at EU/EEA-level, and could be seen as a first step based on the report's findings and conclusions. They could, however, be followed up by further research to detail appropriate actions at national level taking into account the particular contexts of the various Member States.

Specific recommendations include:

- **Regular monitoring** by the European Commission of national information and consultation systems and practices as part of a general initiative to improve the effective use of I&C legislation in all countries, and not just those with the longest experience.
- More routine country-level actions to **review the usage of the legislation at national level** with a focus on practical issues, including those arising from issues of gaps, uncertainties or inconsistencies in the implemented legislation, as indicated, as well as reviewing the adequacy of the provisions in place to **ensure effective enforcement** of the legislation, with a focus on simplifying and accelerating procedures, as well as ensuring appropriate sanctions.
- A better and more consistent **provision of information and guidance** at country level, through governments and social partners, concerning the scope and objectives of the directives, presented in terms that are readily understandable by employer and employee representatives.

- The establishment of a EU level framework for the exchange of good practice experience between countries in which **peer-group pressure and mutual learning** could play their part, drawing on the EU's experience of the 'open method of coordination' of employment and social policies.
- Helping address uncertainty in the use of the legislation by asking the independent European Labour Law Network to identify specific changes in **national legislation or practices** that might improve the overall effectiveness of the EU legislation.
- Support for I&C activity within **SMEs** nationally, notably by supporting the spread of good practice experiences in line with commitments made by the EU-level social partners ETUC and UEAPME.

The effective implementation of these recommendations would require both a tailored approach, taking into account the specificities of each of the EU/EEA countries, and a strengthened EU-level policy framework.

It is not possible to estimate with any degree of precision the likely scale of the benefits of such actions. However, given the widespread recognition of the benefits and potential of the legislation, despite its frequently inadequate implementation in practice, there is every expectation that a sustained effort by Member States governments, social partners at all levels, and the European Commission, could bring significant improvements, in particular but not exclusively in the new Member States, and thereby contribute in a timely way to the achievement of the EU's wider social and economic goals in a period of continuing stress and uncertainty.

2. Introduction

2.1. Document overview

This document is the final synthesis report for the ‘fitness check’ evaluation of the operation and effects of information and consultation directives in the EU/EEA countries. It presents:

- An executive summary presenting the study findings in a concise way (**Chapter 1**);
- An introduction providing an overview of the policy background as well as the purpose and scope of the present ‘fitness check’ study (**Chapter 2**);
- The main pillars of our approach to the fitness check, the methodology and tools, study approach, the research questions and tasks carried out for the study (**Chapter 3**);
- The findings of the fitness check study (**Chapter 4**), including:
 - An overall assessment of the three I&C directives;
 - An assessments of the individual Directives; and
 - A summary of findings;
- The conclusions of the fitness check study (**Chapter 5**); as well as
- Recommendations for future action (**Chapter 6**).

Chapter 7 of the synthesis report includes the following annexes:

- A list of literature sources used at EU level (**Annex 1**);
- An EU-level glossary (**Annex 2**);
- A discussion of the I&C directive’s background (**Annex 3**);
- A detailed presentation of data collection tools and an explanation of how the contractor built answers to the evaluation questions in the terms of reference (**Annex 4**);
- A generic list of persons, institutions, enterprises that were contacted and/or interviewed as part of the information collection process (**Annex 5** and **Annex 6**);
- A list of illustrative company case studies conducted (**Annex 7**);
- The detailed results of the Europe-wide web-survey (**Annex 8** – separate document);
- An overview of stakeholder assessments by evaluation criteria (**Annex 9**);
- An overview of the I&C indicator analysis undertaken based on ECS 2009 data (**Annex 10**);
- An overview of specific issues relating to the national-level I&C legislation (**Annex 11**).

2.2. Purpose and scope

In its Work Programme for 2010⁶, the European Commission announced that it would be reviewing EU legislation in selected policy fields through ‘fitness checks’ in order to keep current regulation ‘fit for purpose’, including identify excessive regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time.

Commitments were made to undertake pilot exercises in four policy areas – employment and social policy, environment, transport, and industrial policy – with DG EMPL deciding to carry out its fitness check exercise in the area of the Information and Consultation of Workers at national level.

In the area of employment and social policy the European Commission decided to review a ‘family’ of three Directives linked to information and consultation (I&C) of workers in the EU/EEA, namely:

⁶ European Commission Work Programme 2010, COM(2010) 135 final.

- Directive 98/59/EC on **collective redundancies** that requires an employer who envisages collective redundancies to consult with workers' representatives and provide them with specified information concerning the projected redundancies.
- Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of the **transfer of undertakings or businesses**, which provides, among other substantive rights, for the information and consultation of employees by both the transferor and/or transferee company.
- Directive 2002/14/EC which aims to establish a **general framework for informing and consulting employees** in order to strengthen dialogue within enterprises and ensure employee involvement in advance of decision-making, with a view to better anticipating problems and preventing crises.

The first two directives date back originally to the 1970s but the third directive is more recent, having come into force in 2005. While a number of other directives contain information and consultation provisions, these three were proposed for the study as being related and specifically focused on information and consultation at national level.

This study is an input to the EC's fitness check on I&C. It draws on several Europe-wide sources of data in order to assess the legislation's fitness for purpose, and provide synthesis findings across the EU-27 Member States and EEA countries (Iceland, Liechtenstein and Norway) from which meaningful conclusions can be drawn in order to make corresponding suggestions for any potential future actions if the legislation is not deemed fully fit for purpose.

In this context, 'fitness for purpose' means the extent to which the directives, as transposed, meet their objectives, based on the effects they have generated and can be expected to generate. Fitness for purpose is assessed by analysing the relevance, effectiveness, efficiency and coherence of the legislation, as explained below, and as defined in detail in the overall intervention logic developed for the study.

The main output of the study consists of this EU/EEA level synthesis report on the fitness for purpose of the three EU I&C directives from an overall EU/EEA perspective based on evidence from the countries covered.

The need to assess whether these Directives are producing their intended effects and whether the definitions and rules are mutually consistent has been expressed several times by the Commission and the European Parliament. The Social Agenda 2005-2010⁷ provided that 'in the context of better regulation, as outlined in the Lisbon mid-term review, the Commission will propose the updating of Directives 2001/23/EC (transfers of undertakings) and 98/59/EC (collective redundancies), and the consolidation of the various provisions on worker information and consultation'.

The European Parliament subsequently commissioned a study on the 'Impact and assessment of EU Directives in the field of Information and Consultation', which was published in 2007⁸. In a subsequent European Parliament report of 19 February 2009⁹, the Parliament called on the Commission to consider the need to coordinate the EU

⁷ EC (2005): *Communication from the Commission on the Social Agenda*, COM (2005) 33 final, 11pp.

⁸ European Parliament, Policy Department (2006): *Impact and Assessment of EU Directives in the field of 'Information & Consultation'*, IP/A/EMPL/FWC/2006-03/SC1, 71 pp.

⁹ European Parliament (2009): *Report on the implementation of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community*, 2008/2246(INI), 18 pp.

Directives in the area of information and consultation¹⁰ with a view to determining what changes may be required in order to eliminate duplications and contradictions.

The recent financial and economic crisis is moreover seen, by the Commission services, as having created a further need for the relevant legal provisions to be tested in practice with respect to their relevance, effectiveness and the level of protection they provide to the workers concerned, including:

- Reporting on the existence of eventual gaps, legal uncertainties, inconsistencies or overlaps in the directives (taking into account their scope, their links/interaction) as well as on eventual practical problems and obstacles and best practices in their application;
- Identifying any unnecessary administrative burdens and other difficulties of application that EU legislation, or the national measures of transposition, may be causing for businesses, national authorities or workers' representatives.

2.3. Context

The study is required to assess the fitness for purpose of three I&C directives in order to be able to draw meaningful conclusions and make possible recommendations in circumstances where the usage of the legislation is evolving and affecting millions of workers throughout the EU/EEA

With regard to 'purpose', we consider the three EU I&C directives studied in this fitness check as seeking to ensure respect for certain minimum standards in I&C throughout the EU across various workplace situations. The 'fitness' of the directives is assessed on the basis of their stated purposes in the different national situations in the light of overall development of the EU social market economy in a global context.

While the three EU directives are incorporated into the national legislation of the Member States in the conventional way, it should be noted that:

- Some Member States considered that their existing legislation already contained or met the requirements of the EU legislation, and did not modify that existing legislation.
- In certain Member States, at the time of the implementation of the directives, I&C was dealt with, not only or mainly through legislation, but through collective agreements negotiated between the social partners.
- The national legislation into which the EU I&C legislative requirements are integrated, forms part of each country's industrial relations systems, whose structures and practices vary considerably between and within Member States, and which have generally been significantly determined by history and culture.

In line with the indications provided in the Commission's information note¹¹, this fitness check is based on empirical evidence concerning the economic and social effects of the existing legislation. Existing studies, including those from industrial relations, managing change and legal perspectives, are exploited and complemented by additional research and stakeholders' consultations including case studies.

¹⁰ Directives 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC, 2002/14/EC, 2003/72/EC and Regulation (EC) No 2157/2001

¹¹ EC (2011): *Information Note: 'Fitness check' on EU acts in the area of Information and Consultation of Workers*, 5 pp.

Industrial relations systems are commonly categorized according to the institutional arrangements in place within companies – notably the presence or otherwise of Works Councils and/or trade union representatives for employees – with countries grouped or classified according to the dominant systems in place within their territories.

However, industrial relations systems are not the sole factor affecting the economic and social impact of the EU Directives, and may not be the dominant one in many cases. Hence the study faces the challenge of identifying the specific effects, and associated costs and benefits, that the information and consultation legislation has had, directly and indirectly, in circumstances where the influence on outcomes of contextual factors – such as the wider economic, labour market and social environment, in addition to differences in industrial relations systems - may be both significant and inter-related.

To evaluate the coherence of the effects of the directives it is necessary to assess the separate and joint contribution of the three Directives, recognizing that the most recent Directive is primarily intended to encourage the development of general and permanent information and consultation arrangements between employers and employees' representatives within companies, while the two long-standing Directives are intended to trigger specific I&C actions in response to specific events – the decision by a company to consider making collective redundancies or to take actions that could involve a change of employer.

In this respect it is important to note that the industrial relations systems that encompass I&C are complex and vary significantly between countries, sectors and firms, being influenced by history and tradition, by the relative influence, aspirations, and wider social and economic concerns of the parties concerned, as well as by the willingness or otherwise of governments to intervene in relations between the social partners¹².

This complexity and diversity of information and consultation practices may partly explain why so little information has previously been collected or published concerning the effects or effectiveness of the legislation, with existing research on I&C being largely descriptive, assessing outcomes mainly in terms of coverage and usage rather than effects. Moreover, the relatively short period since the latest directive came into force limits the possibility to assess its findings in terms of fitness for purpose, bearing in mind its progressive implementation, its reliance on achieving a transformation in attitudes and behaviour at the workplace, and the impact of recent economic difficulties in Europe.

Nonetheless, despite the diversity in the structure of national legislation and in the operation of the national industrial relations systems into which the EU's I&C directives have been integrated, all national systems and arrangements can be seen as serving similar economic and social goals in terms of helping to improve economic performance and improve working conditions in line with general EU economic and social objectives.

EU directives serve to integrate economic and social objectives within different national industrial relations as well as to create a level playing field in terms of I&C practices, as part of the wider objective of maintaining minimum standards in EU internal market competition.

National industrial relations systems likewise provide the frameworks within which the social partners address and negotiate issues concerning their joint interests in ensuring the success of the employing company, as well as their separate interests in terms of obtaining their share of the rewards of that success.

¹² Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, 86 pp.

Within these national industrial relations systems, the EU has sought to establish minimum standards of I&C throughout the EU while accepting that the directives contain thresholds such that the legislation only applies to companies or establishments with a minimum number of employees, or in circumstances where the issues covered by the directives affect at least a minimum number of employees.

It is against these objectives that the effects of the legislation have been measured in a practical way: assessing fitness for purpose in an evolving global economy, and recognising that nuanced answers are appropriate given the ambitions and complexity of the EU social market economy model and the diversity of national situations.

2.3.1. General background

Labour law is a body of legislation that defines the rights and obligations of workers and employers in the workplace. At Community level, labour law covers two main areas: (1) working conditions, including working time, part-time and fixed-term work, and posting of workers and (2) information and consultation of workers, including in the event of collective redundancies and transfers of undertakings.

The European Union has worked towards achieving a high level of employment and social protection, improved living and working conditions and economic and social cohesion. To this end, the EU adopts legislation defining minimum requirements at EU level in the fields of working and employment conditions including the information and consultation of workers. The Member States then transpose the Community law into national law, and implement it, in order to ensure a similar level of protection of worker's rights and obligations throughout the EU.

National authorities, including courts, are responsible for the enforcement of the national transposition measures. The Commission controls the transposition of EU law and ensures through systematic monitoring that it is correctly implemented. The European Court of Justice plays an important role in settling disputes and providing legal advice to questions formulated by national courts on the interpretation of the law.

Initially, EU labour law was designed with the aim of ensuring that the creation of the Single Market did not lead to a lowering of labour standards or distortions in competition. Today, labour law also has a key role in ensuring that a high level of employment and sustained economic growth is accompanied by continuous improvement of the living and working conditions throughout the European Union.

The justification for adopting legislation at EU level - as opposed to leaving the information and consultation of employees as an issue of choice for individual Member State governments or national or sector social partners - is seen to be related to the common desire of Member States to achieve social and economic progress and to ensure that the basic conditions of the EU internal market are respected. In these respects:

- The **social** motive reflects the political commitment to develop the European Community as a social as well as an economic union ('giving Europe a social face') from the time of the 1973 enlargement through to the Charter of Fundamental Rights.
- The **economic** motive reflects the desire to improve economic performance by developing positive workplace practices that encourage co-operation, strengthen workforce motivation and morale, and boost human resource investment, not just in response to economic difficulty, but in all economic and labour market circumstances.
- The **internal market** motive reflects the concern to maintain an 'even playing field' in terms of competition within Europe's social market economy, including avoiding any risk of a

‘flight to the bottom’ in terms of labour market standards generally, and the information and consultation of employees in particular.

More generally the provisions of the directive are intended to assist in ensuring success in the on-going restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy and particularly to new forms of work organisation, including the anticipation of employment developments within undertakings, increased opportunities for employees to improve their employability, and improved performance and competitiveness generally.

In these circumstances, the assessment of the effects of this EU-wide legislation needs to take proper account of the economic, social, industrial relations, legal and political and cultural environment in which it operates at national level, as well as the specifics of its transposition at national level.

In assessing the effects of EU Information and consultation legislation on national industrial relations systems, it is important to note that the relationships between employers and employees cover both issues of common interest – the efficient performance of the employing company in terms of generating revenue and jobs with processes performed by employees – and issues where interests diverge – the sharing of the proceeds of that economic performance.

With respect to the development of EU legislation in this area, all the relevant parties are present and active at EU level – the trade union confederations, the employer organisations, many of their national counterparts or individual members, as well as political bodies, notably the European Parliament but also the EU consultative committees. All of these make extensive and active interventions in the debate and in policy making and legislative activities.

2.3.2. Background of the individual directives

This section briefly presents the background of three I&D directives under scope of the study. A more detailed discussion of the directives’ background can be found in annex 4.

2.3.2.1. DIRECTIVE 98/59/EC

This Directive consolidates the Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies and its amending Directive 92/56/EEC. The aims of the Directive are to afford greater protection to workers in the event of collective redundancies while ensuring a level playing field for companies through approximating the national laws in this field.

These aims are to be met through information and consultation procedures for employees as well as notification procedures with respect to public authorities. The first aims to avoid or contain the negative social impact of collective redundancies, whilst the second is intended to encourage and permit public authorities to seek wider support and solutions to the problems that arise.

Directive 98/59/EC has been transposed by all Member States with an implementation report published by the Commission in 1999 regarding EU15¹³. In 2007 a

¹³ EC (1999): *Commission report on the implementation in Austria, Finland and Sweden of Council Directive 98/59/EC and Commission report on the implementation of Council Directive 98/59/EC*, 24 pp.

See also: EC (2006): *Termination of employment relationships: Legal situation in the Member States of the European Union*, 141 pp.

complementary study followed covering the ten new Member States¹⁴ with a further study covering Romania and Bulgaria in 2009¹⁵.

2.3.2.2. DIRECTIVE 2001/23/EC

This Directive on safeguarding employees' rights in the event of transfers of undertakings codifies the original Directive 77/187/EEC of 14 February 1977, as amended by Directive 98/50/EC of 29 June 1998. A 2007 Commission Report¹⁶ clarifies that two conditions must be met for a transfer to be deemed to exist: (1) there must be a change of employer and (2) the transferred entity must retain its identity.

All Member States have transposed this Directive into their national legal systems. The Commission adopted its latest report thereon in 2007¹⁷. After thorough examination, it found that it was not necessary at that stage to propose any amendments to the information and consultation provisions of the Directive (Article 7). A study was also commissioned on the implementation of this Directive (including the provisions regulating information and consultation) in the EU-25, which was published in 2007¹⁸ and complemented by country studies for Romania and Bulgaria in 2009¹⁹.

The main objective of Directive 2001/23/EC is to safeguard employees' rights and jobs in the event of transfers of undertakings. In accordance with case-law, the Directive is intended to safeguard the rights of workers in the event of a change of employer by making it possible for them to continue to work for the new employer – the transferee – on the same conditions as those agreed with the previous one – the transferor – and to protect the transferee's existing employees as well as the transferor's employees who are being transferred from the impact of the transfer through information and consultation.

2.3.2.3. DIRECTIVE 2002/14/EC

Directive 2002/14/EC has a more general scope of application than Directives 98/59/EC and 2001/23/EC with the aim of establishing a general framework relating to information and consultation of workers. Its main objective is to consolidate a general and permanent right to I&C of employees at national undertaking/establishment level by establishing a general framework for information and consultation of workers in the European Community. This is expected to promote dialogue, partnership and mutual trust between management and labour and improve anticipation, management of change, adaptability, employability, workers' commitment and performance, and competitiveness.

The Commission analysed the legal transposition²⁰ of the Directive in the national legal orders of the Member States in its communication of 17 March 2008²¹. In addition to the

¹⁴ Kresal (2007): *Termination of Employment Relationships – Legal situation in the following Member States of the European Union: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia*, 148 pp.

¹⁵ Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 98/59/EC in Bulgaria and in Romania*.

¹⁶ EC (2007): *Commission Report on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*, p. 3.

¹⁷ EC (2007): opt. cit.

¹⁸ Human European Consultancy (2007): *Implementation Report: Directive 2001/23/EC on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses*, 96 pp.

¹⁹ Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 2001/23/EC in Bulgaria and in Romania*.

²⁰ The deadline of its transposition in the EU-25 was 23rd March 2005.

legal aspects, it examined also the practical application of the Directive in the Member States.

²¹ Communication on the review of the application of Directive 2002/14/EC (COM(2008) 146 final). See, in particular, section 3 thereof.

3. Methodology

The methodology for this study was developed in the light of the overall objectives and the context indicated above. It comprised four steps which are described below.

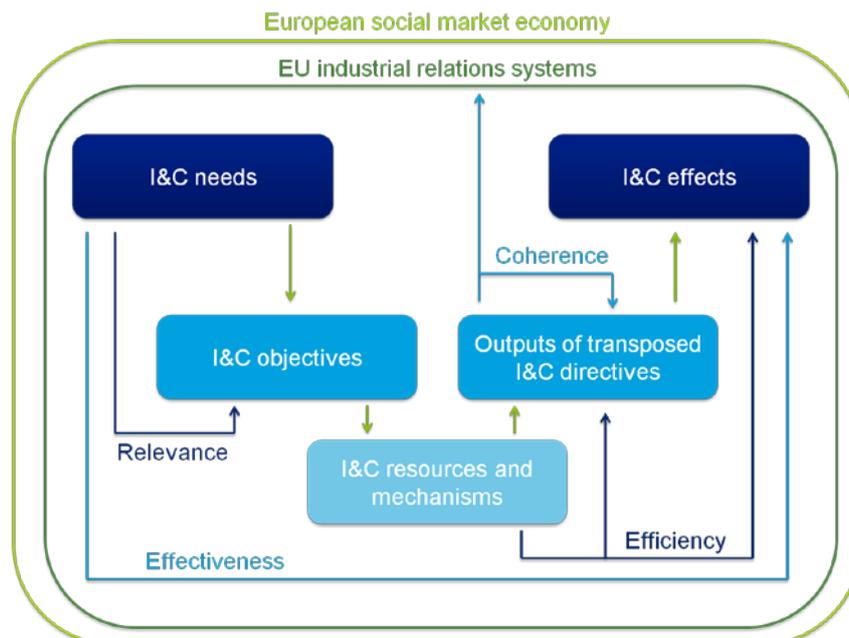


3.1. Step 1: Definition of the intervention logic and analytical framework

The first step involved breaking down the notion of fitness for purpose into understandable components for purposes of assessment i.e. specifying the various **dimensions** of the study, and the **links** between them, in a so-called intervention logic²². The dimensions considered were:

- The employee and employer **needs** for I&C that the legislation is designed to address;
- The general and specific **objectives** of the three I&C directives in relation to those needs;
- The **mechanisms and resources** put in place in order to achieve the desired objectives;
- The expected **outputs** or results, and their respective **effects**, as a result of the implementation of the directives.

The strength of the **linkages** between these dimensions corresponds to the **relevance, effectiveness, efficiency and coherence** of the directives based on the intervention logic, as indicated in the diagram below.



In this context, the terms are defined as follows:

²² See Annex 4 for a detailed description of the intervention logic and the study methodology more generally.

- **Relevance:** the extent to which the content of the directives address the needs of employers and employees in the EU social market economy;
- **Effectiveness:** the extent to which the above needs are met in practice by the directives;
- **Efficiency:** the extent to which the needs are met in the most cost-effective way;
- **Coherence:** the extent to which the needs are met in a comprehensive and compatible way.

3.2. Step 2: Data collection

The next step involved identifying appropriate data or **indicators in order** to define the dimension and measure the strengths of the links between them. These indicators were chosen on the basis of judgement criteria concerning **what information was needed** balancing against the practical possibilities, namely **what was available** or could be obtained through specific enquiries, as detailed in the analytical framework prepared for the study.

In assessments of this kind, there is usually a preference for 'objective' rather than 'subjective' indicators based on quantitative rather than qualitative measurement. In this study that would have suggested using indicators such as reduction in days of work lost through disputes, reductions in labour turnover, or changes in levels or rates of growth of productivity linked to information and consultation activities (provided they could be attributed to the legislation).

However, it was recognised that existing research had already demonstrated problems with this approach: the difficulty of establishing links between different industrial relations systems and economic and social performance given the range of factors at play (let alone concerning the impact of legislation within that context); the possible ambiguity in interpreting some of the data (should high labour turnover be viewed positively or negatively; how best to document involuntary as well as voluntary redundancies?); plus the fact that some of the concepts on which information was sought – notably trust and partnership – were essentially subjective.

Further, the lack of quantitative research evidence on the costs and benefits of legislative interventions in the field of industrial relations (the main examples being research in Germany concerning co-determination and works council systems²³, and a broad ex-ante evaluation of the most recent directive in the UK²⁴) demonstrated the challenges and limitations of such approaches.²⁵

Hence it was decided that the most reliable and comprehensive assessments were likely to be obtained in the following ways:

- Firstly by asking national experts to identify the views of key stakeholders involved in the information and consultation processes and systems at national level (namely, employee representatives, employers, and public authorities) as well as from those with an overall perspective (academics) based on existing research knowledge, and interviews with appropriate representatives;

²³ For a literature overview, please refer to: Jirjahn (2010): *Ökonomische Wirkungen der Mitbestimmung in Deutschland: Ein Update, Hans-Böckler-Stiftung Arbeitspapier 186*, 71 pp.

²⁴ UK Department of Trade and Industry (2004): *Final Regulatory Impact Assessment: Regulations to establish a general framework for informing and consulting employees in the UK*, 41 pp.

²⁵ For a cross-country literature review and a proposition of a model for assessing links between employee representation and firm performance, please refer to: Van den Berg, A. & van Witteloostuijn, A. & Boone, C. & Van der Brempt, O. (2011): *The impact of representative employee participation on organisational performance, A comparison of four neighbouring countries – Belgium, Germany, the Netherlands and the United Kingdom*, Antwerp, 60 pp.

- Secondly by posing a series of detailed questions to employee and employer representatives across the EU through a web survey, organised in conjunction with the European level social partners;
- Thirdly by undertaking an analysis of appropriate questions that had been put to employer and employee representatives in the European Company Survey 2009.

It is recognised that most of the information available in this field reflect subjective preferences given the difficulty of linking I&C to economic and social effects, and the corresponding dearth of such information.

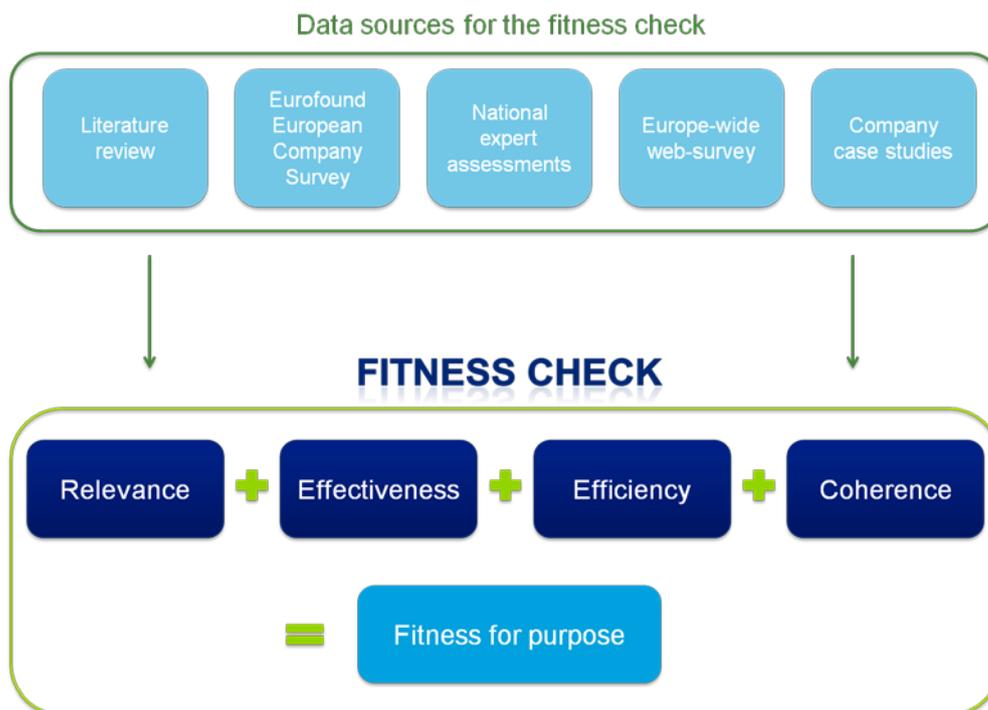
In this exercise, the difficulties involved in obtaining comparable assessments across different countries and regions of the EU were not overlooked or underestimated. Considerable guidance was therefore given to national experts, with a view to gathering qualitative and quantitative information and in making assessments in as standardised and systematic a way as possible.

Whatever techniques, or combination of techniques, are used to elicit responses in such investigations – questions, responses to statements, assessments of ‘revealed preferences’, assessments of subjective well-being²⁶ – there are inevitable limitations in measuring effects and tracing causality in a study of this complexity, with the emphasis on providing a comprehensive overall judgement of ‘fitness for purpose’.

Particular efforts are nevertheless made to ‘explain’ outlying or unexpected results even though excessive emphasis should not be placed on individual indicators or individual aspects of I&C experience as seen by individual stakeholders in individual countries since the objective of the study is to provide an assessment of the ‘fitness for purpose’ of I&C legislation across the EU/EEA as a whole, and not to pass judgement on the situation in each individual country.

Moreover, assessments need to recognise that information and consultation experiences that are judged to merit positive responses in some ‘new’ Member States might not be assessed in the same way in some of the older Member States, just as negative experiences in the latter cases might provoke stronger reactions than they would in countries where their industrial relations systems are in a process of development.

²⁶ UK Treasury, Department for Work and Pensions (2011): *Valuation Techniques for Social Cost-Benefit Analysis: Stated Preference, Revealed Preference and Subjective Well-Being Approaches*, 74 pp.



Responses to the assessment questions were therefore gathered through:

- Assessments made by a network of national experts established for the project who interviewed key stakeholders, undertook case studies and reviewed relevant literature;
- Direct enquiries through a web survey of employer and employee representatives at company level organised in co-operation with the European-level social partners;
- An analysis of EU-wide data from the latest European Company Survey (ECS);
- An analysis of relevant research reports as listed in the literature appendix and as exploited by national experts;
- A series of company case studies undertaken by national experts.

These data sources for the fitness check are further discussed in annex 4 of this report.

3.3. Step 3: Analysis of the collected data

The third step in the methodology consisted of analysing all data collected from the above sources in the light of the intervention logic and analytical framework, as well as taking into account certain contextual factors identified as potentially important, and for which data was available.

In the case of the **national expert assessments** and the **European Company Survey responses** a standardised five point scale was used in order to develop quasi-quantitative average ranking assessments.

The **comparative rankings** in the national expert assessments cover the full range of specific questions posed, including the positions of the different stakeholders with respect to the I&C directives, collectively and individually, against the chosen criteria of relevance, effectiveness, efficiency and coherence. In this way it has been possible for the national experts to incorporate, or embody, the full range of quantitative and qualitative information obtained from their interviews and research.

The database established on this basis includes the positions of different stakeholders in different countries in relation to the detailed range of questions raised in conducting the overall assessment. These synthetic findings have been analysed and presented from different perspectives – namely country, directive, stakeholder, evaluation criteria – in order to identify relevant conclusions from across the EU/EEA.

These quasi-quantitative findings form the backbone of this report given their depth, breadth and representative nature. In addition, however, these findings have been compared with, or cross-examined²⁷ against, findings from other sources, namely the web-survey of employer and employee representatives that was undertaken specifically for this study in co-operation with the European level social partners, and the findings of the European company survey 2009, which had been used for some parallel research, but where it has been possible to analyse the data in greater depth in relation to certain specific issues addressed in this study.

In the case of the **web survey responses** from company level employer and employee representatives, the results have been summarised on the basis of the overall percentages of positive, neutral and negative responses of employers and employee representatives to the different questions relating to the core evaluation criteria. Given the uneven responses between countries and stakeholders, however, only the EU average data has been used in the above comparisons.

In addition, some of the detailed qualitative evidence obtained by the national experts has been used, where appropriate, to illustrate and explain, where possible, any specific findings, notably for different countries, that appear to be out of line with expectations or otherwise seem unusual.

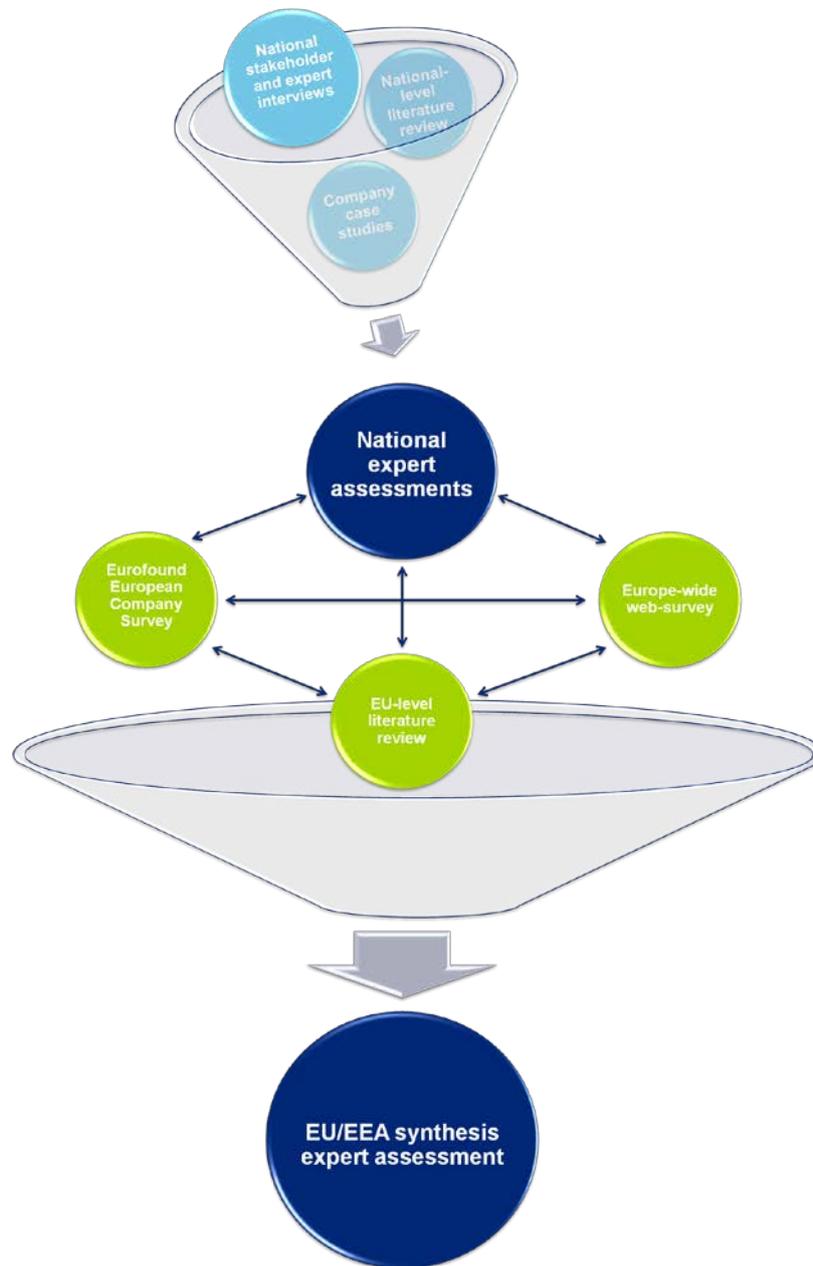
Finally, the possibility of addressing countries in pre-assigned groups (using one or other of the a priori categories commonly used by industrial relations and other social science analysts) has been explored on the grounds that it might simplify the task of weighing the evidence from 30 different countries.

National expert assessments were compared with two types of **industrial relations country categorisations**, and also more general evidence of **general economic or social contextual factors**, ranging from levels of economic development (measured by income per head) to a country's length of membership in the EU, in order to test whether such groupings might offer appropriate ways of presenting the overall findings.

The figure below summarizes the approach to the fitness check assessment which comprises a combination and cross-examination of a variety of different sources as indicated above.

²⁷ The term 'triangulation' is sometimes used in this respect, referenced from work undertaken in the field of education.

COMBINATION AND CROSS-EXAMINATION OF RESEARCH METHODOLOGIES AND QUANTITATIVE AND QUALITATIVE DATA SOURCES



3.4. Step 4: Findings, conclusions and recommendations

The output of the study consists of an EU/EEA level synthesis report on the findings with respect to the fitness for purpose of the three EU I&C directives, collectively and individually, from an overall EU/EEA perspective, drawing on the evidence analysed.

This synthesis process was progressive, as the diagram above demonstrates, beginning with the development of comparable national expert assessments of different country experiences based on a series of questions, and drawing on all qualitative and quantitative information available to the experts: existing research findings, analyses of

national data, the results of interviews with specified stakeholders, the results of case studies.

This core data, collated and structured in terms of the assessment criteria of relevance, effectiveness, efficiency and coherence, and available by stakeholder groups for each country, was compared with, and supplemented by, responses to the specific web survey addressed to company level employer and employee representatives across the EU, supplemented further by relevant data from the European Company Survey 2009 and from EU-wide research from various sources.

This body of evidence was then compared, cross-examined and combined in order to provide a synthesis assessment that does not simply provide a 'fit' or 'unfit' assessment, but indicates rather a degree of fitness for purpose based on the subjective 'preferences' of those most directly concerned.

Further account has also been taken of detailed national experiences in using this legislation, based on information collected and collated by an independent European labour law network (ELLN) from their network of national experts.

Taking account of the assessments of the directives (together and individually) drawn from the above evidence, together with detailed findings regarding issues arising at national level in relation to the practical experiences with the different directives, it has been possible to draw general and specific conclusions, and to make recommendations that could enable the effective performance of the directives to be improved against the overall criteria of contributing to the advancement of the European social market economy, as well as the achievement of the specific needs of employers and employees.

There are inevitable limitations to the degree of precision that can be expected in this type of wide-ranging assessment of the effects of three distinct, if related, directives across all EU/EEA countries in all their diversity. Nevertheless, the findings appear robust and look to be a sound basis on which policy assessments and decisions can be reliably made.

4. Findings

As set out in the methodology chapter, the findings of this assessment are based on the following sources:

- An analysis of relevant national and EU-level research;
- An analysis of EU-wide data from the latest European Company Survey (ECS);
- Assessments made by national I&C experts who interviewed key national stakeholders, undertook company case studies and reviewed relevant literature in all 30 EU/EEA countries;
- Direct enquiries through a web survey of employer and employee representatives at company level organised in co-operation with the European-level and national social partners;
- A series of company case studies undertaken by the national experts for their national reports.

The evidence in the report is largely drawn from stakeholder responses from different sources. The national expert assessments, which represent the core of this study, are based on all the qualitative and quantitative information available to them from research, case studies and interviews.

Our overall judgement on the fitness for purpose of the three directives is based on these findings, measured in terms of their relevance in addressing needs, their effectiveness in achieving effects, their efficiency in doing so, and their coherence in addressing needs and achieving their results.

The evidence from national expert assessments and the findings from the European Company Survey 2009, are presented on a five point scale – very positive (2) positive (1), neutral (0), negative (-1) and very negative (-2). The company level web survey findings are presented in terms of percentages.

The national expert assessments are available for all four stakeholders separately (employer representative, employee representatives, public authorities and academics) as well as collectively, with respect to each of the four evaluation criteria (relevance, effectiveness, efficiency, coherence) in all 30 EU/EEA countries. The average assessment in each 'cell' is derived from the average finding from all relevant sub-questions. The European Company Survey and the web-survey cover both employer and employee representatives at company level, although some of the questions in these surveys were only put to one or the other group. These surveys cover all 30 EU/EEA countries individually²⁸, but the web survey data is only presented for all EU/EEA countries as a whole because of imbalances in responses between and within countries.

The summary of the 'fitness check' findings is presented in the following format:

- An **overall assessment** of the fitness for purpose of all three directives based on the various data sources in terms of the chosen indicators and judgment criteria. The findings are presented in terms of their relevance, effectiveness, efficiency and coherence (**section 4.1**);
- An analysis of the differences in the assessment of the **individual directives** as seen by all stakeholders in all EU/EEA countries (**section 4.2**);
- An analysis of the differences between the **stakeholder responses** in all countries in relation to all three directives, including appropriate information in

²⁸ The EEA countries Iceland, Liechtenstein and Norway are, however, not covered by the Eurofound European Companies Survey 2009.

terms of the perceived relevance, effectiveness, efficiency and coherence of the directives (**section 4.3**);

- An analysis of the differences between the **country responses** of all stakeholders in relation to all three directives, including appropriate information in terms of the perceived relevance, effectiveness, efficiency and coherence of the directives (**section 4.4**);
- An assessment of **I&C in SMEs** with a specific focus on I&C coverage, characteristics and preferences in SMEs (**section 4.5**).

While the findings are based on the evidence collected, this has been obtained in the light of the dimensions identified in intervention logic originally outlined, namely:

- The employee and employer **needs** for I&C that the legislation is designed to address;
- The general and specific **objectives** of the three I&C directives in relation to those needs;
- The **mechanisms and resources** put in place in order to achieve the desired objectives;
- The expected **outputs** or results, and their respective **effects**, as a result of the implementation of the directives

In these respects, the strength of the **linkages** between these dimensions are measured in terms of the **relevance, effectiveness, efficiency and coherence** of the directives in relation to the objectives identified in the intervention logic, namely:

The **needs of employees** seen in terms of:

- Being informed and consulted about changes at work;
- Having their interests protected in cases of collective redundancies and/or transfers of companies; and
- Being citizens of the workplace.

The **needs of employers** seen in terms of:

- Improving the business performance and climate through social dialogue; and
- Seeing a level playing field in I&C across the EU.

More **general objectives**, seen as being to:

- Establish standards and systems for information and consultation of employees through smart regulation;
- Set minimum standards for information and consultation of employees in cases of collective dismissals and transfers; and
- Promote co-operative rather than adversarial dialogue through information and consultation of employees.

Resultant **effects**, seen in terms of:

- Increasing trust and partnership;
- Increasing flexibility, adaptability, commitment and productivity; and
- Decreasing the number of redundancies.

4.1. Overall assessment of the three directives

This study finds that the relevance, effectiveness, efficiency and coherence of the three EU I&C directives taken together are evaluated positively to varying degrees, though not very positively.

The following sections present the findings with respect to the overall impact of the three I&C directives based on the qualitative and quantitative evidence derived from all sources, with the evidence presented systematically under the four evaluation criteria.

4.1.1. Relevance

The relevance of the three EU I&C Directives is assessed in terms of the extent to which the content of the directives meet the needs of employers and employees in the EU social market economy with respect to the following concerns:

- Employees' fundamental rights to I&C;
- Increasing trust and partnership between employees and employers;
- Employees' involvement where there are changes at work;
- The needs of employees in cases of collective redundancies and transfer of undertakings;
- The objective of increasing employee adaptability and employability;
- The objective of improving the productivity and performance of employees and undertaking.

Detailed findings with respect of each of these concerns are presented below drawing on the various sources of information available, with the primary source being, in each case, the national expert assessments.

4.1.1.1. EMPLOYEES' FUNDAMENTAL RIGHT TO I&C

National expert assessments

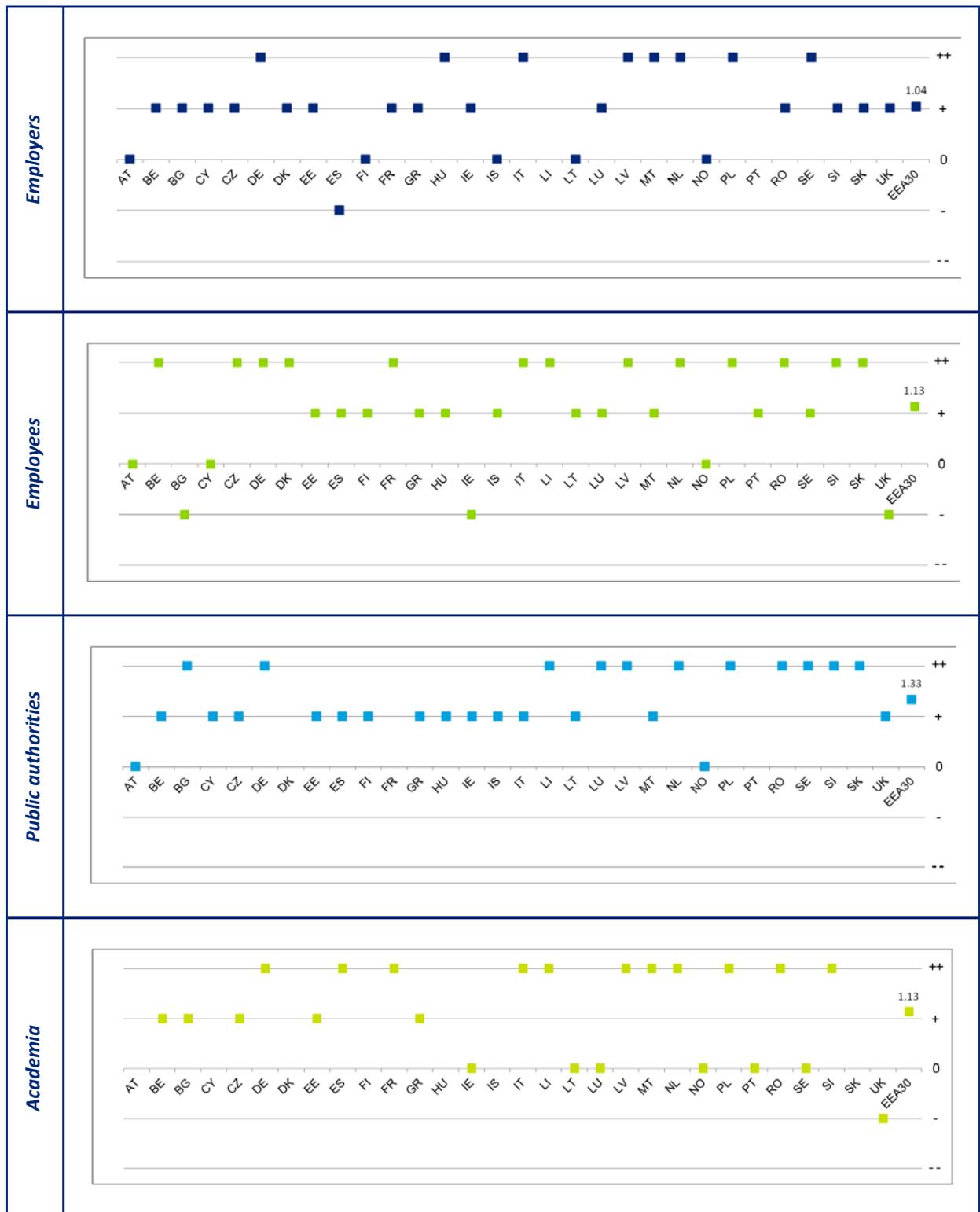
In terms of the Directives guaranteeing fundamental rights to I&C, the average positions of **all stakeholders** based on the assessments of the national experts are positive (1.26) – highest among public authorities (1.33) and academics (1.13) on average, but with employers (1.04) as well as employees (1.13) not far behind. With the exception of Austria and Norway, where the position is judged to be neutral, all **public authorities** are positive or very positive.

Most **employers** are also either positive or very positive, although the position of employers in Austria, Finland, Iceland, Latvia and Norway are neutral, and those in Spain negative.

Most **employees** are, likewise either positive or very positive, although some are neutral – Austria, Cyprus, Norway – and three as negative – Bulgaria, Ireland and the United Kingdom.

The positions of **academics** tend to be polarised between those with a very positive view, including those in Germany, Spain and France, and those who are neutral, as in Ireland, Latvia, Luxembourg, Norway, Portugal and Sweden, or negative in the case of the United Kingdom.

Are the I&C directives relevant to guaranteeing employees' fundamental right to I&C?



Web survey results

Additional information concerning employee rights to I&C for the EU/EEA area as a whole was obtained through the company level web-survey.

Here the directives are seen as relevant or very relevant by 91% of **employees** and 78% of **employers** in terms of guaranteeing workers' fundamental right to be informed

and consulted. Less than 2% of employees and only 7% of employers consider the directives as not relevant in this respect.

Employee representatives	Relevance	Employer representatives
<i>To guarantee workers' fundamental right to be informed and consulted</i>		
56.8%	Very relevant	38.3%
33.9%	Relevant	39.7%
7.6%	Somewhat relevant	15.0%
1.7%	Not relevant	7.0%
-	Not applicable / Don't know	-

European Company Survey results

Some further information was obtained from some specific questions asked of management in the European Company Survey 2009 regarding the **direct consulting of employees**.

The European Company Survey 2009 asked employers to respond to the statement: 'We would prefer to consult directly with our employees'.

In so far as I&C is normally managed through employee representatives, we consider that responses to this question can be interpreted as indicating the degree of satisfaction or dissatisfaction concerning the relevance of I&C legislation in addressing the needs of employees.

The ECS survey uses the same five-point scale assessment as the national expert assessments. On this basis, the overall EU27 response of employers is seen to be midway between neutral and positive (score of 0.47²⁹).

The most positive responses came from Estonia and Latvia, while the average response in Austria, France and Sweden is marginally negative, with average employers in a number of countries – Germany, Italy, Greece, Portugal and Slovenia - being very lukewarm (only a little above neutral) in their responses.

It should be noted that the Eurofound presentation of its findings in its own overview report³⁰, it did so in terms of those who stated a positive preference for dealing with employees directly³¹ rather than in the balanced form we have used.

An important caveat to this finding, moreover, is that it takes no account of the size of firms in the responses. However, as is shown in the section on I&C in SMEs³², there are

²⁹ The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under MM702 of the management questionnaire. The indicated scores have been calculated according to the following formula:

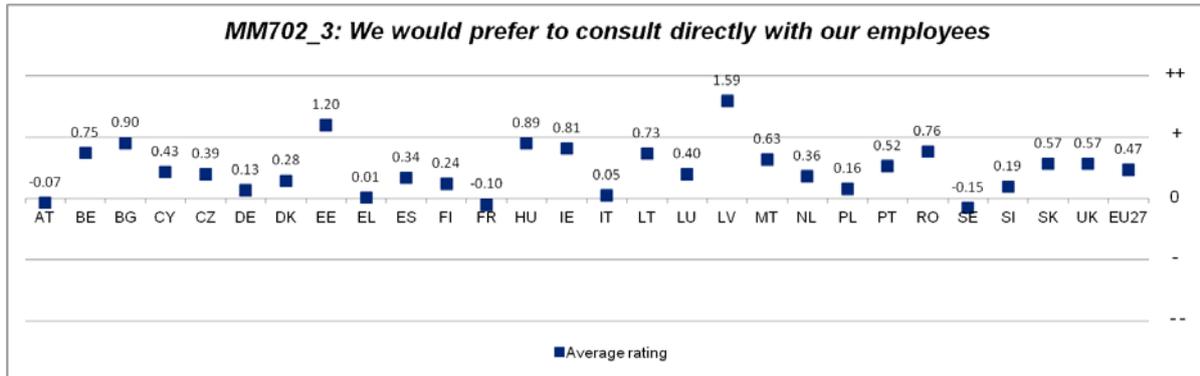
$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

³⁰ Eurofound (2010): *European Company Survey 2009*, 135 pp.

³¹ It should be noted that the results presented for certain countries such as France and Sweden in the Eurofound European Company Survey 2009 overview report (p. 66) appear to be largely incorrect when compared to the European Company Survey raw data (MM702_3).

³² See section 4.5 of the present report.

very significant differences between large and small firms in these responses, indicating that much of the apparent enthusiasm for consulting directly with employees is found in small firms who do not have formal I&C structures.



4.1.1.2. INCREASING TRUST AND PARTNERSHIP

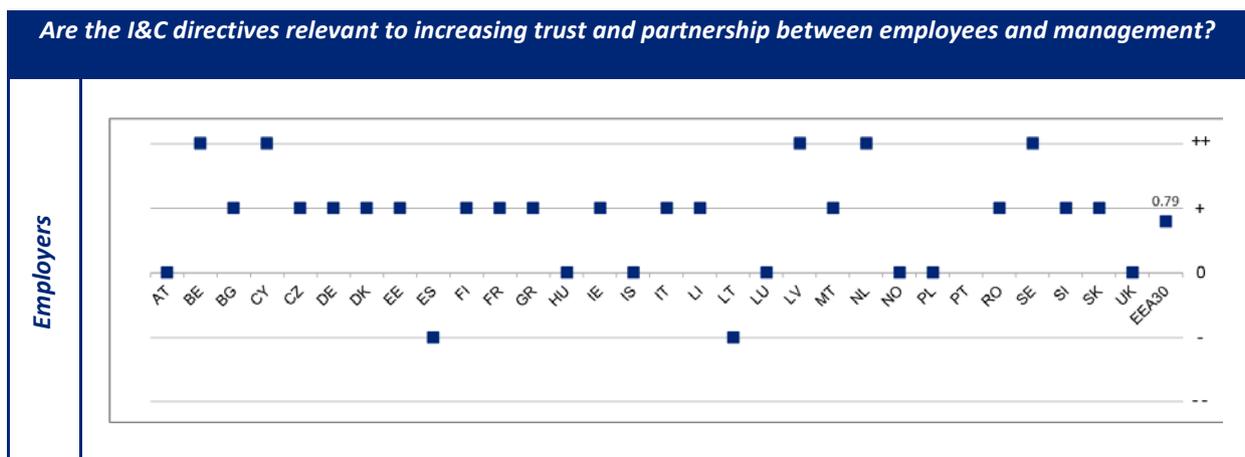
National expert assessments

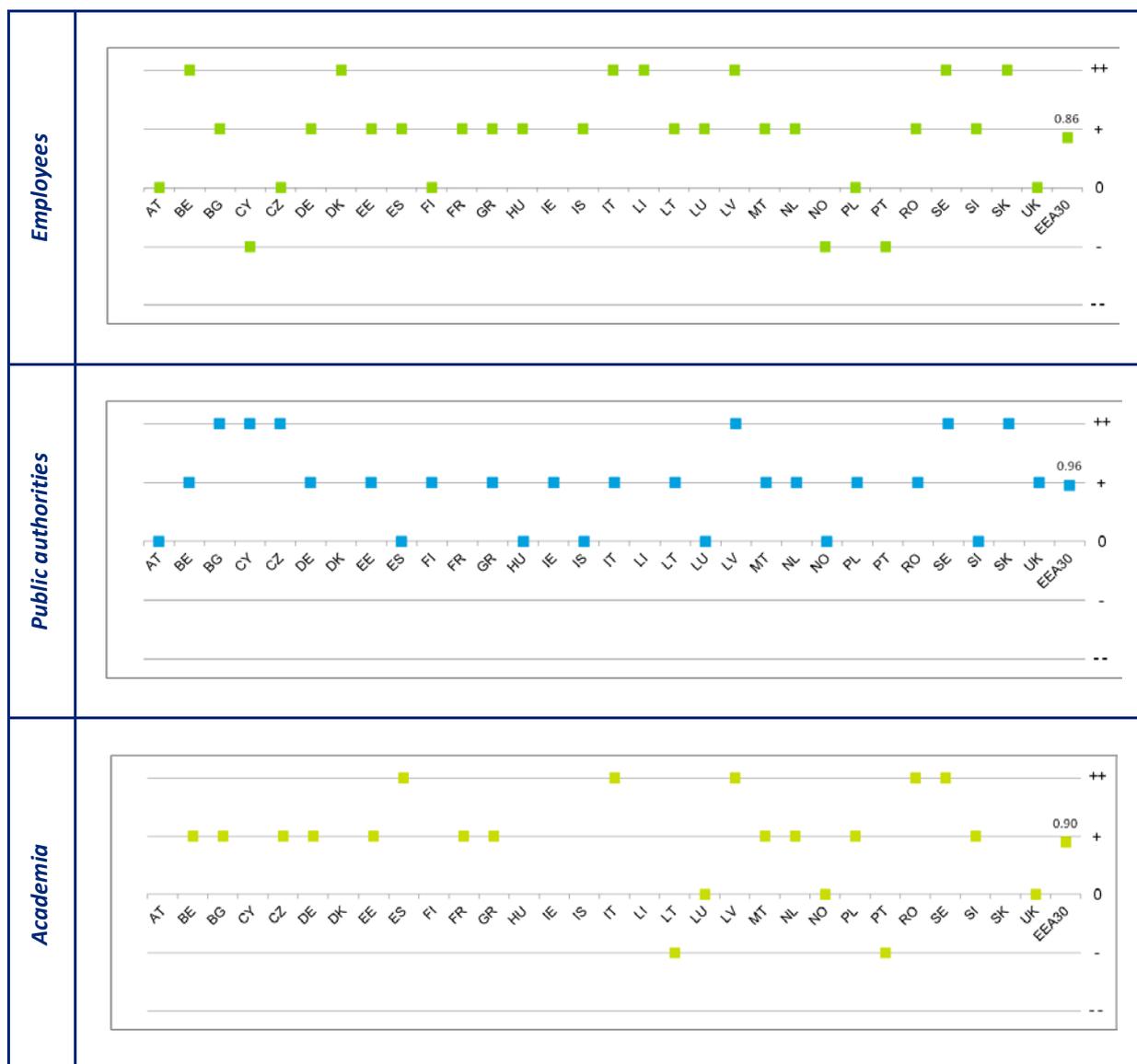
In terms of I&C increasing trust and partnership, the national expert assessments of **all stakeholder** positions are relatively positive on average (0.87), with public authorities very close to positive (0.96), and with employees (0.86) and academics (0.90) not far behind.

Employers are a little less positive (0.79) than other stakeholders overall, although employers in Belgium, Cyprus, Latvia, the Netherlands and Sweden are very positive.

Employees in Belgium, Denmark, Italy, Liechtenstein, Latvia, Sweden and the United Kingdom are very positive, with those in Austria, Finland, Poland and the United Kingdom neutral.

In some countries **employees and employers** have similar views. This is the case in Austria, Poland and the United Kingdom, where the views of both parties are neutral, but also in Latvia and Sweden, where both sides have very positive views.





Web survey results

Based on the company level web-survey results, the directives are seen to be relevant or very relevant in terms of increasing trust and partnership between employees and management by 70% of employees and 76% of employers. If those who consider the directives as being somewhat relevant are included, these figures rise to over 90% for both employers and employees.

Employee representatives	Relevance	Employer representatives
<i>To increase trust and partnership between employees and management</i>		
35.7%	Very relevant	37.2%
34.6%	Relevant	38.9%
22.5%	Somewhat relevant	15.0%
7.2%	Not relevant	9.0%
-	Not applicable / Don't know	-

4.1.1.3. EMPLOYEE NEEDS FOR INVOLVEMENT WHERE THERE ARE CHANGES AT WORK

National expert assessments

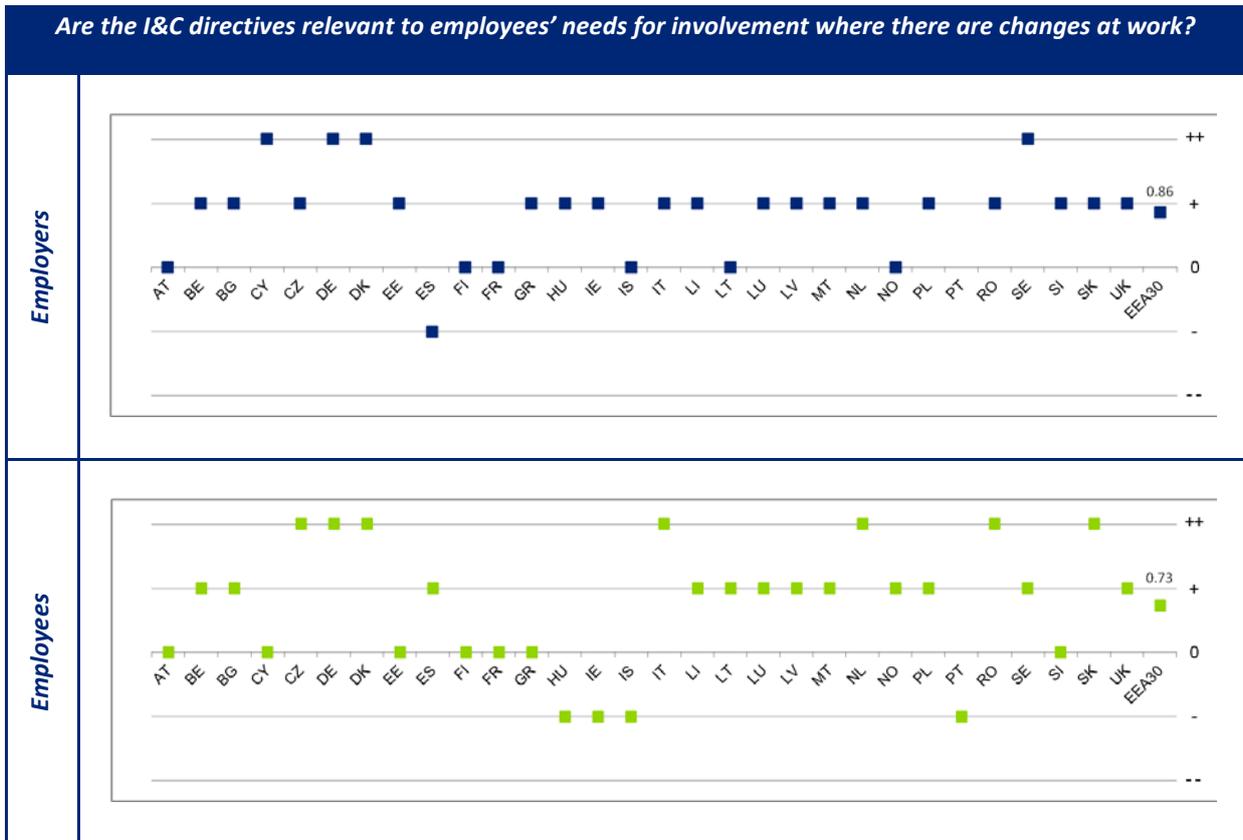
In situations where there are changes at work, all parties have a reasonably positive view on average, with **public authorities** having most faith in the relevance of the directives (1.32). The overall average of **all stakeholders** is 0.94.

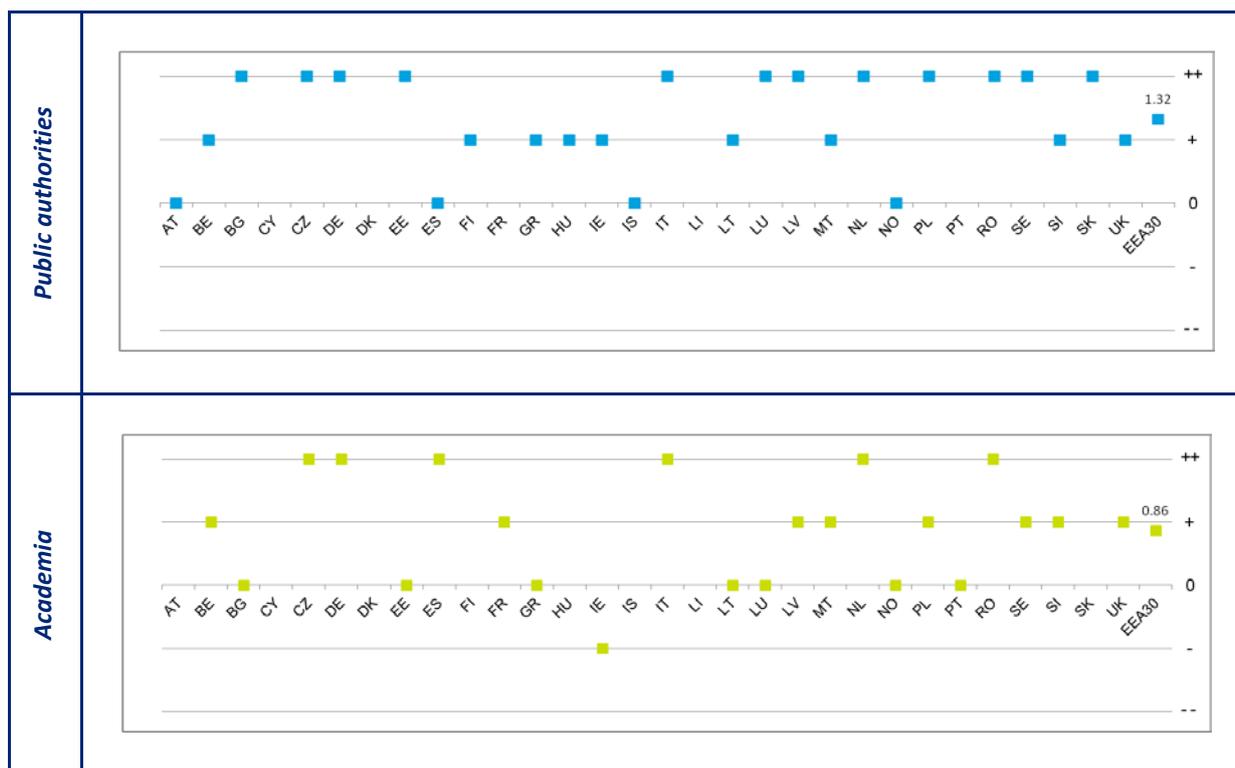
While four public authorities, in Austria, Spain, Iceland and Norway, are seen to be neutral, the remainder are seen to be balanced between positive and very positive.

The average **employer** in the EU appears to have a reasonably positive view (0.86) concerning the directive’s relevance in situations of change at work (0.73), with the exception of Spain, where the assessment is negative.

This negative assessment is shared by **employees** in Hungary, Ireland, Iceland and Portugal and, on average, employees hold the lowest assessment of the relevance of the directive in this respect, although it still remains relatively positive overall (0.73).

Some significant differences are observed between countries. In Spain, the assessments vary: employers are seen as negative, public authorities as neutral, employees as positive, and academics as very positive in respect of involvement when there are changes at work. In Germany, by contrast, all stakeholders seem to agree that the directives are very relevant in these circumstances.





Web survey results

In the company level web-survey results, the directives are seen to be relevant or very relevant in terms of increased involvement of employee representatives in workplace issues by 78% of employees and 68% of employers – figures that rise to 96% and 88% if those who consider the directives as somewhat relevant are included.

Employee representatives	Relevance	Employer representatives
<i>Increased involvement of employee representatives in workplace issues</i>		
27.3%	Very large	13.1%
41.9%	Large	36.1%
23.7%	Some	39.8%
7.1%	None	11.1%
-	Not applicable / Don't know	-

4.1.1.4. EMPLOYEES' NEEDS IN CASES OF COLLECTIVE REDUNDANCIES OR TRANSFER OF UNDERTAKINGS

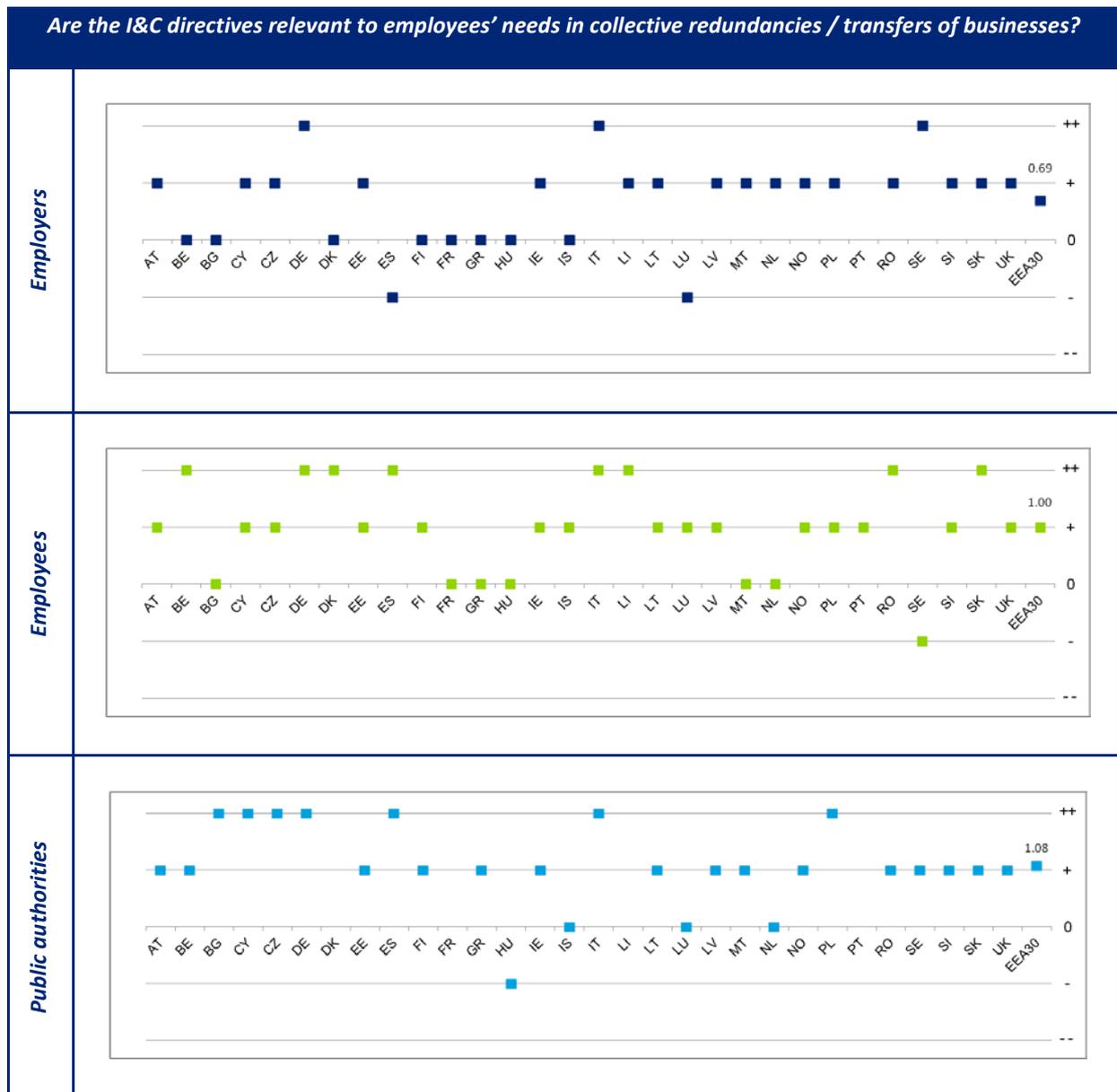
National expert assessments

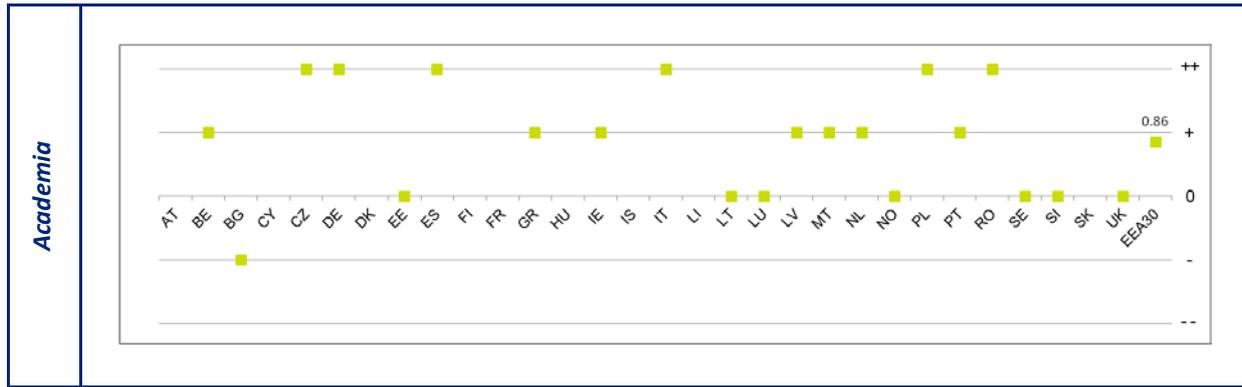
In specific circumstances - where jobs are at risk or there is uncertainty about the future ownership of companies – **employees** and **public authorities** judge the contribution of the directives to be positive overall.

The overall average of **all stakeholders** is 0.91. **Academics** appear to be somewhat less convinced, and **employers** seem only partly convinced (0.69).

Some negative average views exist – among employers in Spain and Luxembourg, employees in Sweden, public authorities in Hungary, and academics in Bulgaria – but, on balance, most stakeholders are positive, with some very positive assessments more or less off-set by neutral assessments.

In Germany and Italy all stakeholders are reported as very positive. In contrast, the assessments by public authorities and academics in Poland are very positive, but employers and employees are only positive. In Romania academics are also considered to be very positive (along with employees) while public authorities (and employers) have only a positive view.





Web survey results

In the company level web-survey results, the directives are seen to be relevant or very relevant in reducing the number of redundancies in cases of restructuring by less than 35% of employers as against 71% of employees, although the employer results do rise to over 60% if those who consider the directives as somewhat relevant are included.

Employee representatives	Relevance	Employer representatives
<i>To reduce the number of redundancies in cases of restructuring</i>		
43.0%	Very relevant	12.8%
27.9%	Relevant	21.8%
18.6%	Somewhat relevant	27.4%
10.6%	Not relevant	38.0%
-	Not applicable / Don't know	-

4.1.1.5. INCREASING EMPLOYEES' ADAPTABILITY AND EMPLOYABILITY

National expert assessments

Overall, the views of the stakeholders are much less positive overall with regard to the contribution of the directives to improving adaptability and employability compared with other findings.

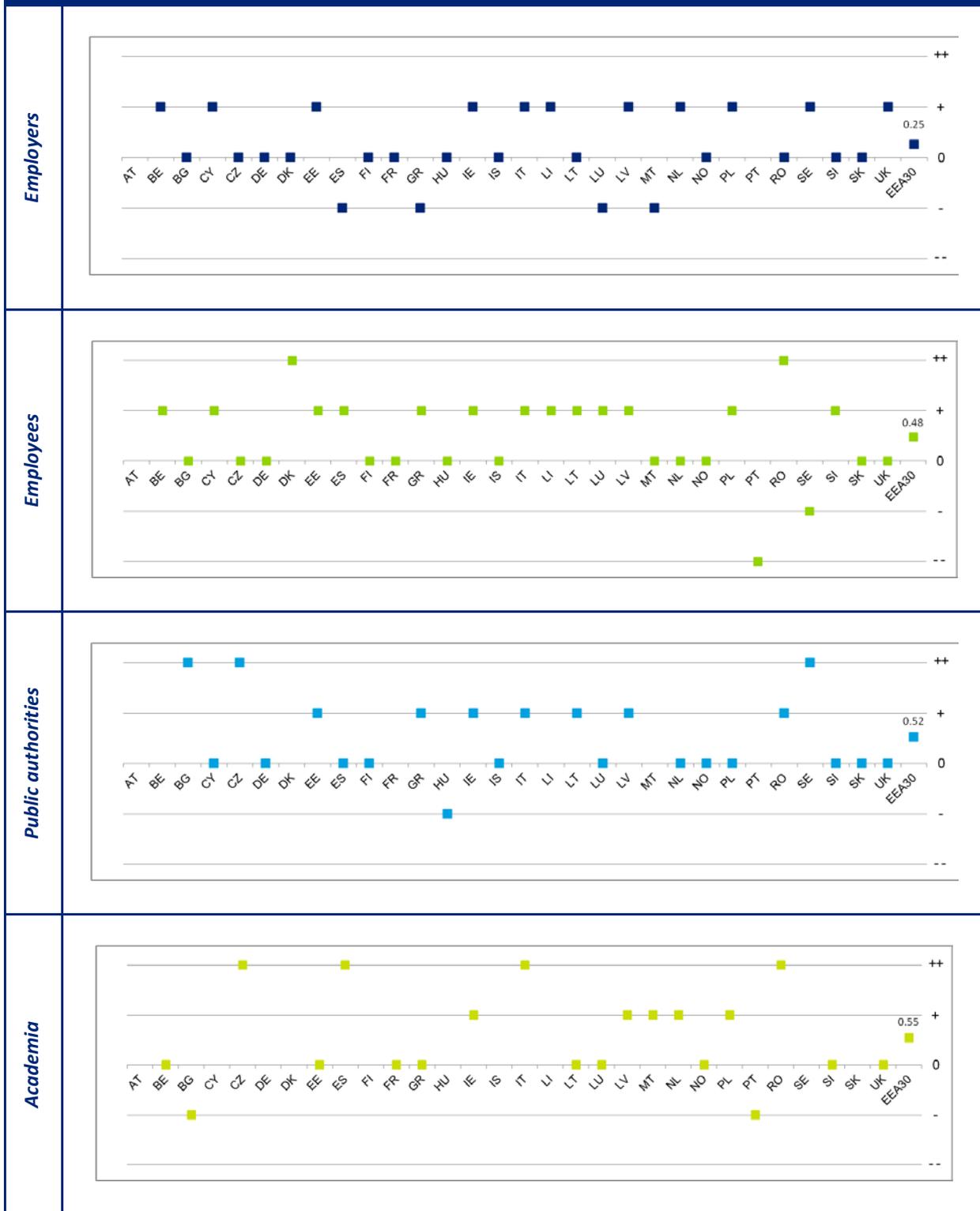
The average assessment for **employees**, **public authorities** and **academics** is mid-way between neutral and positive (0.5) while the position of **employers** is much lower again (0.25) – much closer to neutral than positive. The overall average of **all stakeholders** is 0.45.

The position of employers in Spain, Greece, Luxembourg and Malta are viewed as negative, which serve to pull down the average employer assessment.

Some differences of views between stakeholders in specific countries are seen: In Denmark employees are seen as very positive while employers are neutral. A similar position is reported for Romania.

And while both employers and employees are reported as positive in Belgium, Cyprus, Estonia, Italy, Liechtenstein, Latvia and Poland, employees in Sweden and the United Kingdom do not appear to share the positive views of employers in their country, and are reported as being neutral.

Are the I&C directives relevant to increasing employees' adaptability and employability?



Web survey results

In the company level web-survey results, the directives are seen to be relevant or very relevant in increasing the adaptability and employability of employees by 51% of employers and 64% of employees – figures that rise to 78% and 89% if those who consider the directives somewhat relevant are included.

Employee representatives	Relevance	Employer representatives
<i>To increase the adaptability and employability of employees</i>		
31.2%	Very relevant	16.6%
32.5%	Relevant	34.6%
24.9%	Somewhat relevant	27.2%
11.5%	Not relevant	21.6%
-	Not applicable / Don't know	-

4.1.1.6. IMPROVING PRODUCTIVITY AND PERFORMANCE OF EMPLOYEES AND UNDERTAKINGS

National expert assessments

A notable feature of the assessments regarding productivity and performance is that public authorities and academics are significantly more positive about the relevance of the directives in these respects than employers and employees.

Employers and **employees** hold views midway between neutral and positive (0.5), with the former somewhat more positive, while **academics** score higher (0.7) with **public authorities** closer to a positive average assessment (0.78). The overall average of all stakeholders is 0.63.

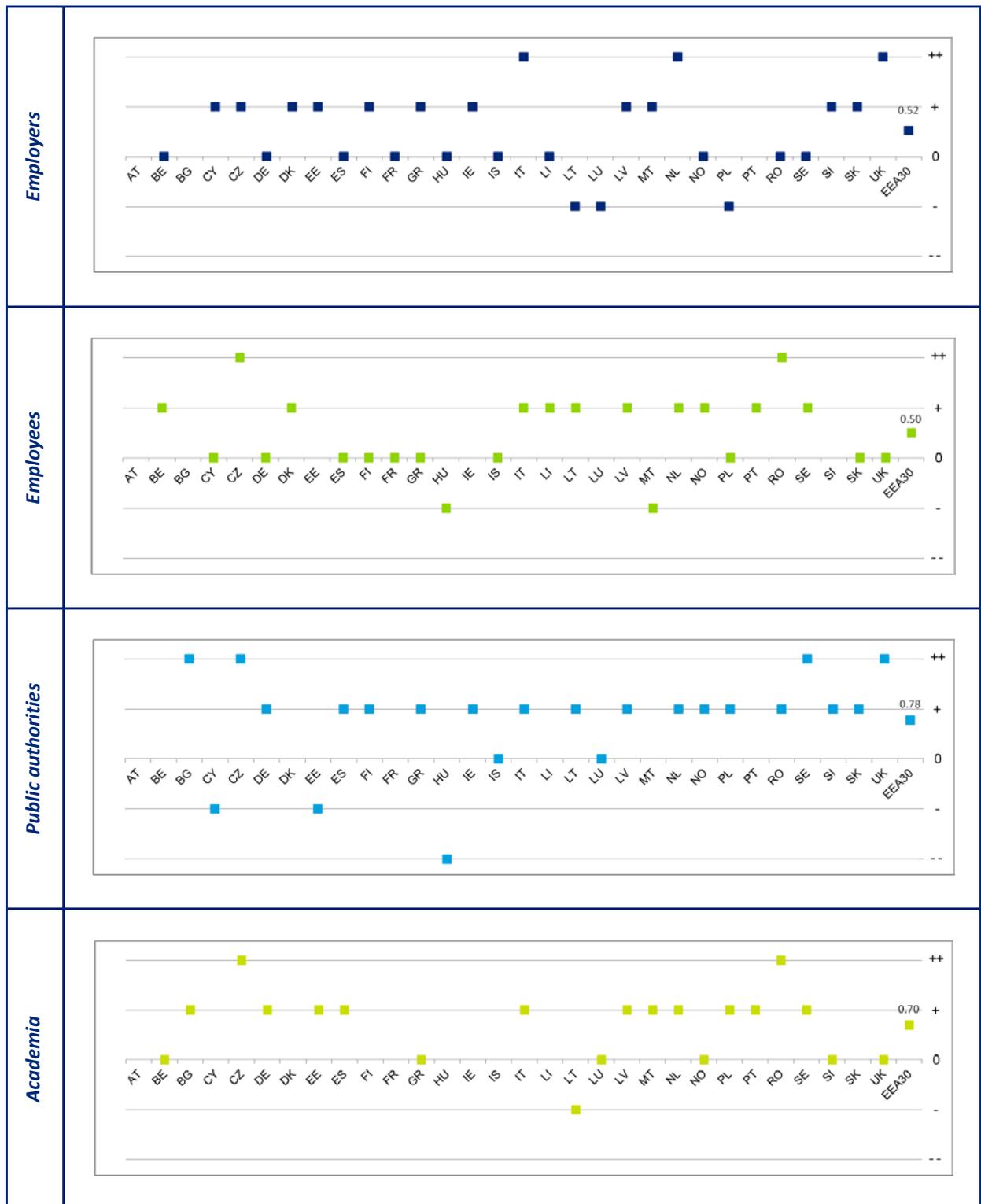
In general, differences between public authorities and academics on the one hand, and employers and employees on the other, reflect the fact that two-thirds of the country assessments are positive in the former case, while there is more of a balance between neutral and positive among the latter.

In three countries, Italy, the Netherlands and the United Kingdom, the relevance of the directives in this respect are rated as very positive by employers, while two very positive results from the employee perspective are reported in the Czech Republic and Romania.

It is notable that, in both Germany and Spain, the assessment of the contribution of the directives is seen to be neutral by employers and employees, but positive by public authorities and academics. In the United Kingdom, in contrast, the employer assessment is seen as very positive while that of employees is seen as neutral.

Negative views appear somewhat randomly distributed across stakeholders and countries. Public authorities in Cyprus, Estonia and Hungary are seen as having negative or very negative views, with similar views found among employers in Lithuania, Luxembourg and Poland, employees in Hungary and Malta, and among academics in Lithuania.

Are the I&C directives relevant to improving productivity/performance of employees and undertakings?



Web survey results

In the company level web-survey results, the directives are seen to be relevant or very relevant in improving the performance of the company or the undertaking by 53% of employers and 62% of employees.

A question was also asked as to whether the directives were relevant to improving the quality of management decisions, to which 57% of employers replied that they were relevant or very relevant, with 67% of employees sharing these assessments.

Employee representatives	Relevance	Employer representatives
<i>To improve the performance of the company or undertaking</i>		
27.6%	Very relevant	22.8%
34.6%	Relevant	30.6%
28.3%	Somewhat relevant	22.1%
9.6%	Not relevant	24.6%
-	Not applicable / Don't know	-

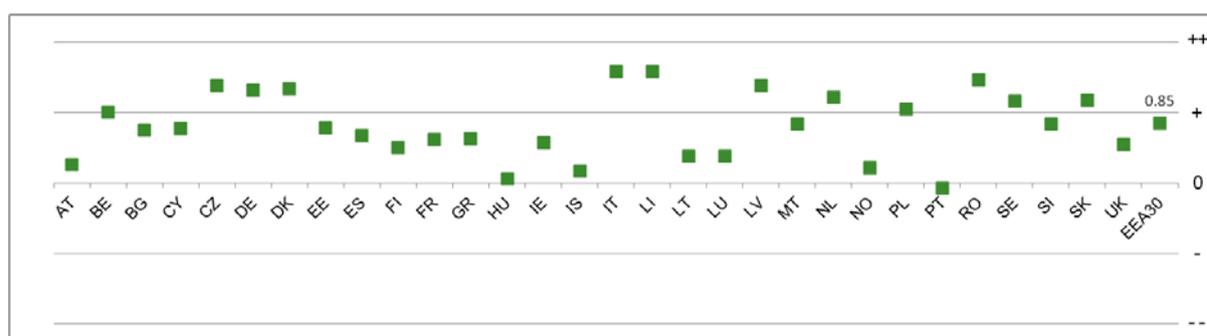
Employee representatives	Relevance	Employer representatives
<i>To improve the quality of management decisions</i>		
37.4%	Very relevant	19.9%
29.7%	Relevant	36.9%
23.2%	Somewhat relevant	22.6%
9.7%	Not relevant	20.6%
-	Not applicable / Don't know	-

4.1.1.7. SUMMARY OF EVIDENCE ON RELEVANCE

The national expert assessments indicate that the average overall evaluation assessment of all stakeholders regarding the relevance of the directives is rather positive (0.85). The lowest ratings – at or a little above neutral are found in Hungary, Iceland, Norway and Portugal, with the highest in Italy and Liechtenstein.

Among the pre-enlargement Member States, Germany, Denmark, Italy, the Netherlands and Sweden are assessed as more than positive (around 1.25), while Austria, Spain, Finland, France, Greece, Ireland and the United Kingdom are assessed as being, on average, midway between positive and neutral (0.5).

Average of all 'relevance' evaluations by all stakeholders



Explanations for the differences in assessment include the fact that the views of the stakeholders may differ in countries where national legislation existed *before* the adoption of the EU directives (such as in Austria, France or Germany) or, in the case of EEA countries, already exists. In such cases the relevance of the EU legislation may be considered as low, even though its content may be judged as relevant.

More generally, culture, traditions and history can be seen to play a significant overall role in explaining differences in assessment, but recent events may also play their part. This appears to be particularly the case in Estonia, Ireland and Iceland, given that these countries have suffered particularly badly in the current financial and economic crisis, and may be sceptical about the protective benefits of EU legislation.³³

In terms of social objectives, the legislation is viewed positively in terms of guaranteeing the **fundamental right** of workers to be informed and consulted, as reflected in national expert assessments, with over 90% of company level employers and employees agreeing in the web-survey. Both sources show equally strong positive agreement from both employees and employers regarding the contribution of I&C in increasing **trust and partnership**.

With respect to the more economic and labour market objective of **increasing adaptability and employability**, results from the web-survey indicate that the legislation is seen as more relevant by employees than employers – around 65% and 50% respectively – with similar results in terms of improving **company performance** and improving the **quality of management decisions**.

4.1.2. Effectiveness

The effectiveness of the three EU I&C Directives is assessed in terms of the extent to which the needs that the directives are intended to serve, are met in practice. The issue of whether the effects of the three I&C directives met the common objectives are addressed in a number of different respects:

- Increasing trust and partnership between employees and employers;
- Employees' involvement where there are changes at work;
- The needs of employees in cases of collective redundancies and transfer of undertakings;
- The objective of increasing employee adaptability and employability;
- The objective of improving the productivity and performance of employees and undertaking.

Detailed findings with respect of each of these concerns are presented below drawing on the various sources of information available, with the primary source being, in each case, the national expert assessments.

4.1.2.1. HAVE THE EFFECTS OF THE THREE I&C DIRECTIVES MET THE COMMON OBJECTIVES?

National expert assessments

In the national expert assessments concerning the extent to which the three Directives meeting the common objectives, the positions of **public authorities** are seen as more positive (0.78) than those of **employers**, **employees** and **academics**, who each have an assessment that is midway between neutral and positive (0.5).

A positive assessment is the most common among **all stakeholders** (resulting in an average of 0.55) with very positive ratings in Germany and Romania, brought down by several neutral or negative ratings.

³³ Differences across Member States are further discussed in section 4.4 of the present report.

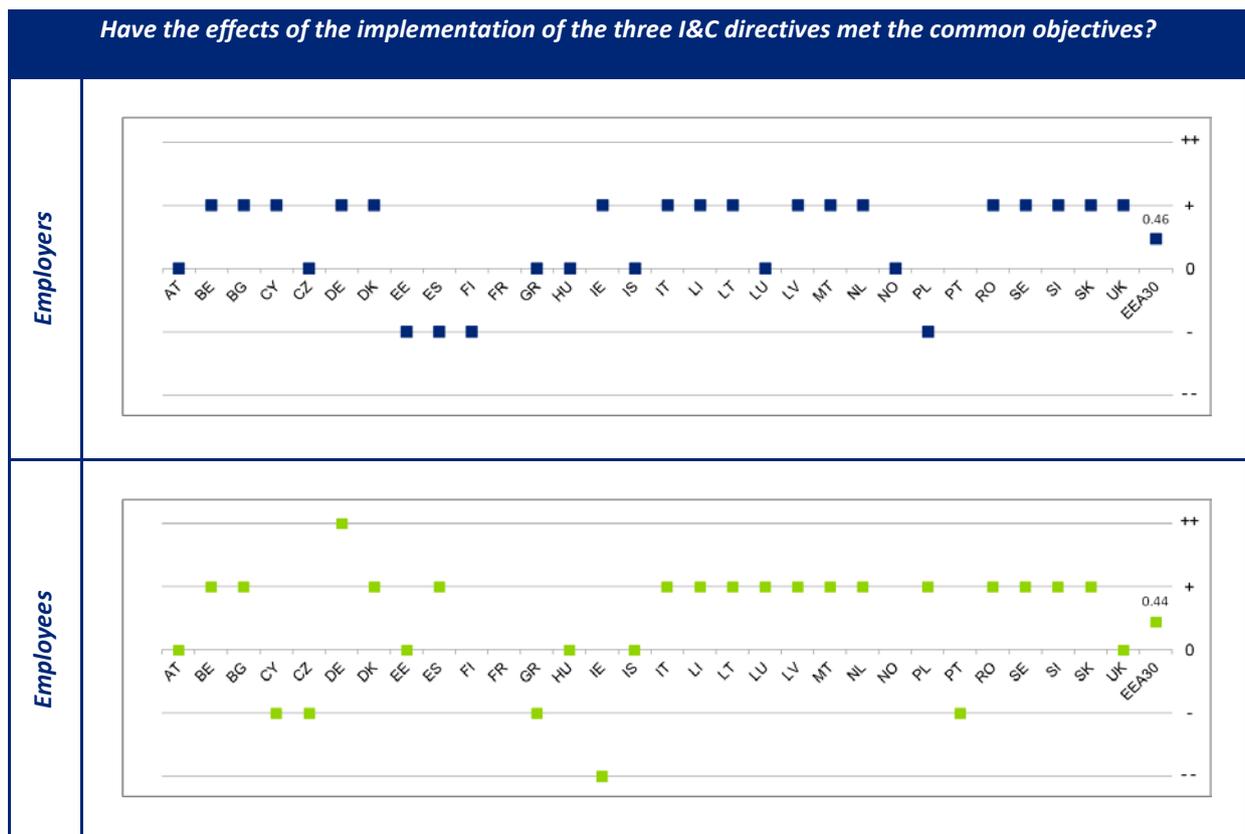
Employers in four Member States (Estonia, Spain, Finland and Poland) are assessed as having a negative view, although these are out of line with the position of employees or public authorities in the countries concerned. There are negative employee assessments however in Cyprus, the Czech Republic, Greece and Portugal, with a very negative assessment from employees in Ireland.

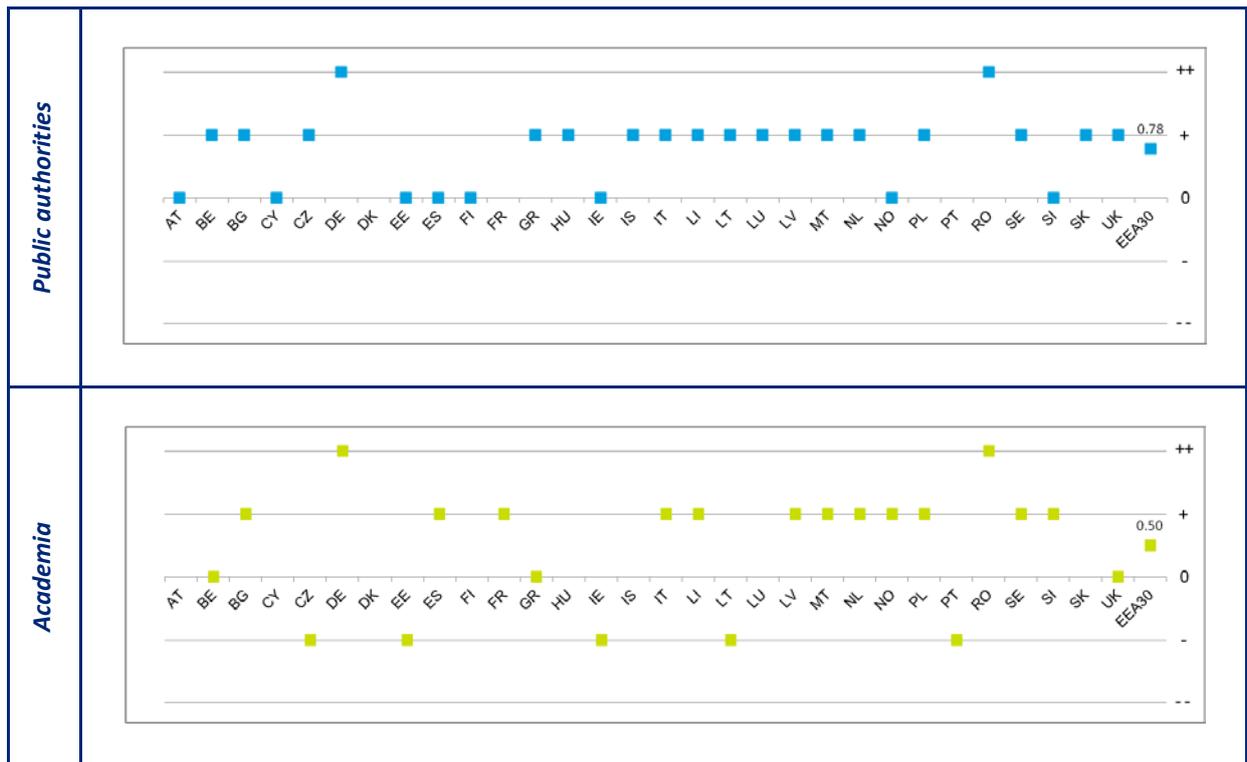
Germany is the only case where employees are seen to be very positive, matching the view of public authorities and academics, but where employers are seen as only positive.

Academics in some 'new' Member States (Czech Republic, Estonia and Lithuania) have a negative overall assessment of the effectiveness of the directives, as do those in Portugal and Ireland.

The negative assessments by stakeholders in certain Member States may be explained by excessively high expectations – for example by employees in some of the 'new' Member States with regard to the protection offered by the collective redundancies directive – with the resulting disappointment in practice.

As further discussed and analysed in section 4.4, culture, traditions and history can be seen to play a significant overall role in explaining national differences in assessment, but recent events may also play their part. Stakeholders in the Member States that particularly suffered in the current financial and economic crisis may be more sceptical about the protective benefits of EU legislation.





Web survey results

The web survey findings cover a range of questions addressed to company level employer and employee representatives concerning the benefits of the directives in practice in terms of:

(1) Employee rights and relations between employers and employees:

- Increasing awareness of the rights of employee representatives to be informed and consulted about matters that affect their working lives;
- Increased trust and partnership between management and employee representatives;
- Improved quality, frequency and timeliness of information and consultation;
- Increased involvement of employee representatives in workplace issues;
- Greater acceptance of management decisions by employees;
- Less conflict between employer and employees.

(2) Management issues:

- Better anticipation of change;
- Better management of change;
- Improved management decisions;
- Improved company performance.

(3) Labour force issues:

- Increased adaptability and employability of employees;
- Increased company awareness of the importance of investing in its workforce;
- Fewer redundancies.

(1) *Employee rights and relations between employers and employees:*

Increasing awareness of the rights of employee representatives to be informed and consulted about matters that affect their working lives

As expected, this question resulted in a stronger response from employees – 38% seeing a large effect – against a third of that response from employers. Nevertheless, over 95% of both employers and employees gave a positive response of some degree.

Employee representatives	Benefits of I&C	Employer representatives
<i>Increased awareness of the rights of employee representatives to be informed and consulted about matters that affect their working lives</i>		
38.0%	Very large	12.8%
42.5%	Large	39.7%
18.0%	Some	41.7%
1.5%	None	5.8%
-	Not applicable / Don't know	-

Increasing trust and partnership between management and employee representatives

With respect to trust and partnership, both employers rate the contribution of I&C in a similar way, but lower in terms of its effectiveness (57% and 56%) than had been reported concerning its relevance (70% employee representative, 76% employer).

Employee representatives	Benefits of I&C	Employer representatives
<i>Increased trust and partnership between management and employee representatives</i>		
18.5%	Very large	15.6%
38.7%	Large	40.2%
34.2%	Some	35.2%
8.6%	None	9.0%
-	Not applicable / Don't know	-

Improved quality, frequency and timeliness of I&C

In terms of increasing the quality, frequency and timeliness of I&C, the responses from both employers and employees are positive overall, with less than 10% of employers seeing no positive effectiveness, though the strength of their conviction on this is somewhat less than that of employees.

Employee representatives	Benefits of I&C	Employer representatives
<i>Improved quality, frequency and timeliness of information and/or consultation with employee representatives</i>		
25.4%	Very large	10.4%
39.6%	Large	41.1%
28.9%	Some	39.4%
6.1%	None	9.1%
-	Not applicable / Don't know	-

Increased involvement of employee representatives in workplace issues

The effects of I&C in ensuring the involvement of employees is assessed as large or very large by 69% of employees, and 49% of employers – significantly below the comparative scores concerning their relevance (78% employee and 68% employer).

Employee	Benefits of I&C	Employer
----------	-----------------	----------

representatives		representatives
<i>Increased involvement of employee representatives in workplace issues</i>		
27.3%	Very large	13.1%
41.9%	Large	36.1%
23.7%	Some	39.8%
7.1%	None	11.1%
-	Not applicable / Don't know	-

Greater acceptance of management decisions by employees

In terms of greater acceptance of management decisions, views are similar between employers and employees, with 55% of employers considering it has a large or very large effect compared with 50% of employees.

Employee representatives	Benefits of I&C	Employer representatives
<i>Greater acceptance of management decisions by employees</i>		
14.8%	Very large	10.6%
34.8%	Large	44.1%
35.8%	Some	32.2%
14.5%	None	13.1%
-	Not applicable / Don't know	-

Less conflict between employer and employees

With respect to the effectiveness of I&C in reducing conflict between employers and employees and accepting management decisions (only question on effectiveness were put), the results are similar between employee and employer (averaging 54% and 53% across two questions).

Employee representatives	Benefits of I&C	Employer representatives
<i>Less conflict between employer and employees</i>		
23.0%	Very large	12.9%
34.8%	Large	38.8%
28.8%	Some	33.8%
13.5%	None	14.6%
-	Not applicable / Don't know	-

(2) Management issues:

Better anticipation of change

In terms of anticipating change, only 10% of employers see I&C having a very large impact, but a further 35% think it has a large effect and another 35% consider it to have some effect. The assessments of employees are somewhat higher, especially in terms of having a very large effect – nearly 20% against 10%.

Employee representatives	Benefits of I&C	Employer representatives
<i>Better anticipation of change</i>		
19.5%	Very large	10.0%
37.9%	Large	35.4%
31.2%	Some	35.4%
11.4%	None	19.2%
-	Not applicable / Don't know	-

Better management of change

In terms of ensuring a better management of change, the results are, perhaps not surprisingly, somewhat similar to those concerning the better anticipation of change –

with 49% of employers considering it to have a large or very large effect, against 55% of employees.

Employee representatives	Benefits of I&C	Employer representatives
<i>Better management of change</i>		
18.7%	Very large	12.7%
36.3%	Large	35.9%
35.2%	Some	30.8%
9.8%	None	20.7%
-	Not applicable / Don't know	-

Improved management decisions

With respect to I&C having a large or very large impact on the effectiveness of management decisions, the differences between employees and employers are much the same as they had been in relation to relevance, but at a lower level (45% against 36% compared with 67% and 57%).

Employee representatives	Benefits of I&C	Employer representatives
<i>Improved management decisions</i>		
18.2%	Very large	9.3%
27.6%	Large	27.0%
34.7%	Some	38.8%
19.5%	None	24.9%
-	Not applicable / Don't know	-

Improved company performance

With respect to company performance, while the relevance of the legislation was assessed reasonably highly (62% and 53% respectively for employees and employers) this falls away sharply when it comes to effectiveness, down to 48% and 29% respectively.

Employee representatives	Benefits of I&C	Employer representatives
<i>Improved company performance</i>		
13.7%	Very large	6.5%
34.2%	Large	22.4%
36.4%	Some	40.9%
15.6%	None	30.2%
-	Not applicable / Don't know	-

(3) Labour force issues:

Increasing adaptability and employability of employees

With respect to the effectiveness of I&C in increasing adaptability and employability the legislation is seen as having a large or very large effect by 49% of employees and 33% of employers respectively – again significantly below the assessments in terms of relevance (64% and 51% respectively).

Employee representatives	Benefits of I&C	Employer representatives
<i>Increased adaptability and employability of employees</i>		
13.8%	Very large	8.1%

35.1%	Large	25.4%
41.0%	Some	39.0%
10.1%	None	27.5%
-	Not applicable / Don't know	-

Increasing company awareness of the importance of investing in the workforce

In terms of raising awareness of the importance of investing in the workforce, somewhat different importance is attributed by employees and employers. In terms of I&C having a large or very large effect, the positions differ quite considerably (56% against 38%) but that difference narrows if those who consider it has some effect in rising awareness are included (raising the figures to 86% for employees against 81% for employers).

Employee representatives	Benefits of I&C	Employer representatives
<i>Increased company awareness of the importance of investing in its workforce</i>		
23.4%	Very large	8.2%
32.4%	Large	29.6%
30.3%	Some	43.3%
13.9%	None	18.9%
-	Not applicable / Don't know	-

Fewer redundancies

With respect to reducing redundancies, the biggest differences emerge between the social partners. While twice as many employees as employers had considered the legislation relevant (71% against 35%), these assessments fall to 47% for employees and a very low 14% for employers in terms of the effectiveness of the legislation in practice.

Employee representatives	Benefits of I&C	Employer representatives
<i>Fewer redundancies</i>		
20.9%	Very large	4.9%
26.5%	Large	8.9%
36.0%	Some	42.4%
16.5%	None	43.8%
-	Not applicable / Don't know	-

European Company Survey evidence

(1) Evidence from the employee representative survey

The European Company Survey 2009 contains a range of questions about workplace issues, not all of which are put to both employer and employee representatives.

A recent research report commissioned by Eurofound has focused on social dialogue in the workplace based on this data³⁴, drawing on responses from management and employee representatives, using sophisticated statistical techniques to investigate associations between outcomes and specific workplace characteristics.

In its conclusions it argues that the provision of paid time-off for representatives, the provision of information and the character of the management-representative relationship are associated with greater levels of influence on the part of representatives, although it cautions that the direction of causality cannot be proven. For example, while

³⁴ Eurofound (2012): *Workplace employee representation in Europe*, 86 pp. as well as Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, 86 pp.

it acknowledges that there are theoretical arguments to support the view that, by giving workers a 'voice', systems of employee representation can reduce the 'quits rate' (the rate at which people are leaving their job), which would be viewed as positive by employers in so far as average labour costs are reduced by avoiding the costs of re-hiring and training, it concludes that the evidence is 'somewhat tentative'.

The report states that 'if worker representation is regarded as a public good because it extends democracy into the working environment, one may wish to mandate worker representation in EU countries to ensure this mechanism for democracy exists'. However, given the limited and somewhat tentative nature of the evidence it goes on to argue that 'any new interventions should nevertheless be minimalist and rolled out slowly, with their impact evaluated and reappraised on a continuing basis'.

The authors acknowledge that legislative support for workplace employee representation can be influential in guiding practice, citing instances where the institutional environment or the legislative framework itself are associated with the extent and nature of workplace social dialogue, but again emphasising that policy makers have a limited capacity to be prescriptive on this issue given that the extent and nature of workplace social dialogue is clearly related to a wide range of workplace and workforce characteristics.

In this respect, the report notes (in line with the findings of this study) that 'one of the most striking findings is the degree to which the incidence of workplace representation varies within and across EU countries'.

Indicators developed for this study from the employee representative data

Partly in the light of this research, and partly in pursuit of more general findings about the impact of I&C legislations and the circumstances surrounding its use, this study has undertaken a detailed analysis of the ECS 2009 data in order to provide some comparative composite indicators that can be used to measure or assess factors relevant to the enquiry.

These include the development of the following indicators based on the responses from employee representatives:

- A **cooperative culture indicator** – assessing the extent to which the relationship between employers, employee representatives and employees is seen as positive and supportive or, alternatively, hostile – based on responses to four questions put to employee representatives;
- An **employee involvement indicator** – assessing the extent to which employee representatives feel themselves to be involved in establishing rules and procedures concerning matter such as working time, the use of temporary workers, or access to training – based on responses to ten questions put to employee representative;
- A **strategic influence indicator** – assessing the extent to which employee representatives feel they are able to influence management decisions – based on responses to nine questions put to employee representatives;
- An **I&C resources indicator** – assessing the extent to which employee representatives consider that they have the resources to do their job (notably the provision of appropriate information by the employer, time-off work and specific training to carry out their duties) – based on responses to six questions put to employee representatives.

All these indicators are provided for EU27 and individual countries. Assessments are based on the five-point scale covering very negative (-2), negative (-1), neutral (0), positive (+1), and very positive (+2) as used elsewhere for the analysis of the data from this survey, as well as the national expert assessments.

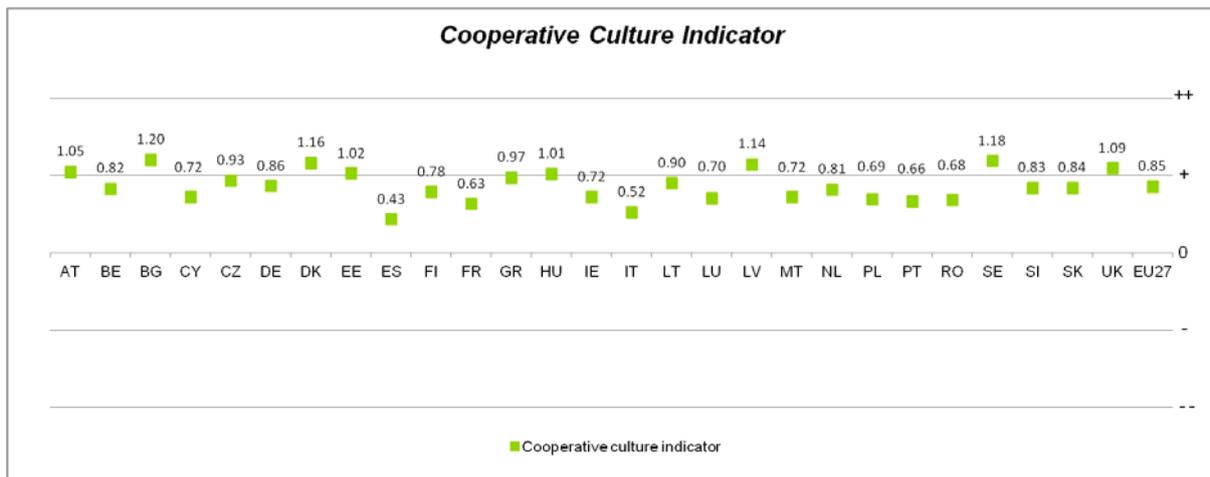
This section provides the summary findings. Details of these analyses are provided in **Annex 10**.

Cooperative culture indicator

The overall finding with respect to the existence of a cooperative culture is reasonably positive (0.85) with most countries reasonably close to that average. Only in Spain does the assessment fall below the mid-point between neutral and positive (0.45). On the other hand, only in Austria, Denmark, Latvia and Sweden and Bulgaria are responses more than positive (1.10).

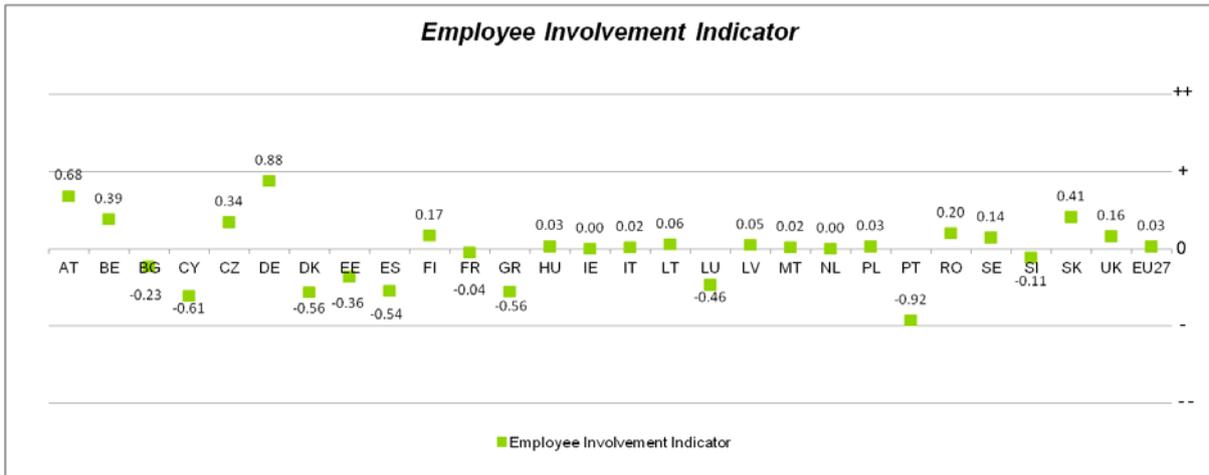
There are differences in responses to different questions, however, with two negative questions eliciting very different (negative) responses. When employee representatives were asked whether employees expressed interest in the outcomes of their consultations, the responses were much closer to neutral than negative (-0.21). On the other hand, when asked whether the relationship of their employee representatives with management was hostile, the response was strongly negative (-1.13).

In other words, employee representatives do not think that employees show much interest in the outcome of negotiations they conduct, but those employees nevertheless see their representatives as having a positive relationship with management.



Employee involvement indicator

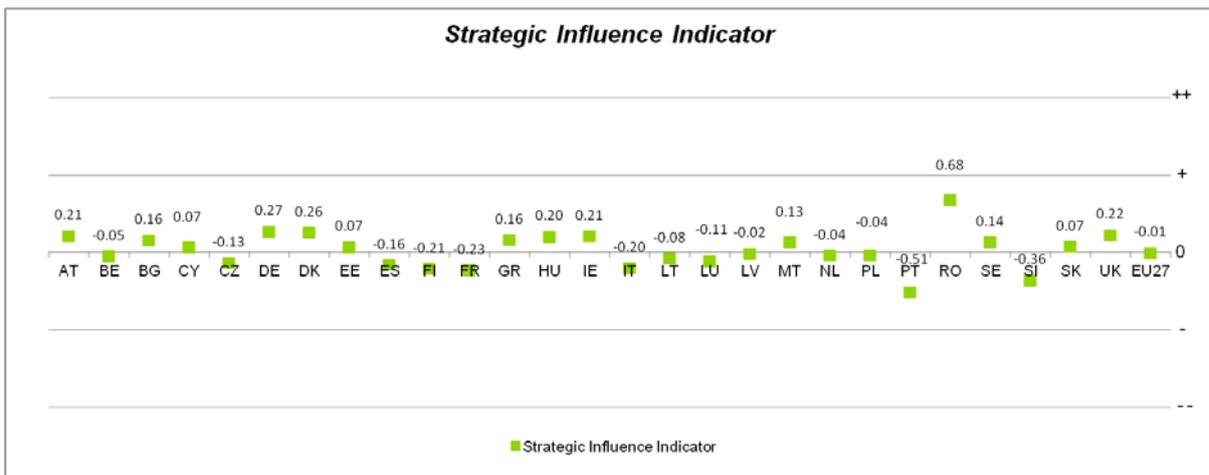
This indicator suggests that, on average, employee representatives do not feel they are really involved in policy making about matters that affect them directly at the workplace. The overall assessment for EU27 is effectively neutral (0.03) but the responses vary widely across countries. These range from a positive (0.88) position in Germany down to a negative one in Portugal (-0.92), with results half way between neutral and negative in Cyprus, Spain, Greece (and perhaps more surprisingly in Denmark and Luxembourg).



Strategic influence indicator

The strategic influence indicator results – which measure the extent to which employee representatives see themselves influencing management decisions on broader organisational issues such as human resource development or responding to structural change – are again neutral (-0.01). In other words, employee representatives, on average, they do not see themselves as having any real strategic influence.

An unexpected exception is Romania, where employee representatives believe their influence is rather strong (0.68) followed by Germany (0.27), Denmark (0.26), and United Kingdom, Ireland and Hungary (around 0.20). At the other end of the scale, the response in Portugal is half way between neutral and negative (-0.51) followed by Slovenia (-0.36).



I&C resources indicator

The Eurofound ECS 2009 overview report states that “resources are considered as being crucial for a well-functioning employee representation. In order to have an impact and to be able to enter into discussion with management, the following ‘triangle’ of resources is deemed important for an employee representation: information, training and time.”³⁵

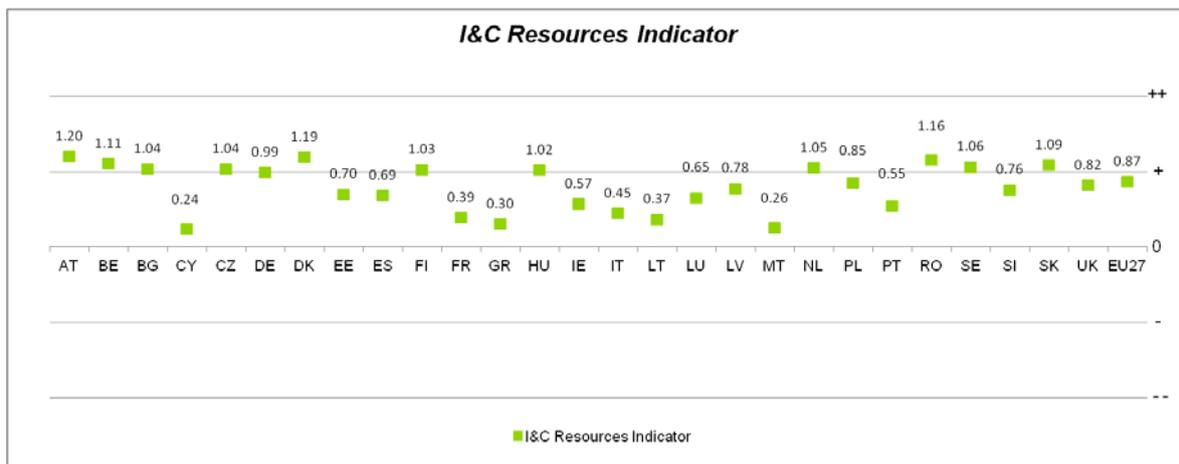
In order to address and measure this issue, an I&C resource indicator has been compiled in this report based on responses concerning the following:

³⁵ Eurofound (2010): *European Company Survey 2009*, p. 51.

- Time available to carry out duties;
- Availability of regular training;
- Provision of information on economic, financial and employment situations;
- Timeliness of information;
- Information on overtime hours.

Overall responses vary quite widely between countries. Some are reasonably high: (1.19) in Denmark and (1.16) in Romania. However, six countries are below the half-way point between neutral and positive: Italy (0.45), France (0.39), Latvia (0.37), Greece (0.30), Malta (0.26) and Cyprus (0.24).

In terms of the detailed elements making up the I&C resource indicator, we found the following: a positive response with regard to making sufficient time available for employee representatives to carry out their duties (1.07); a largely positive response concerning the provision of regular training (0.92); a reasonably positive response regarding the provision of information on economic and financial developments, and on the employment situation (0.74 and 0.86 respectively); a reasonable result likewise concerning timely information (0.70); but a much less satisfactory one concerning information on overtime hours (0.13).



Cross-tabulations

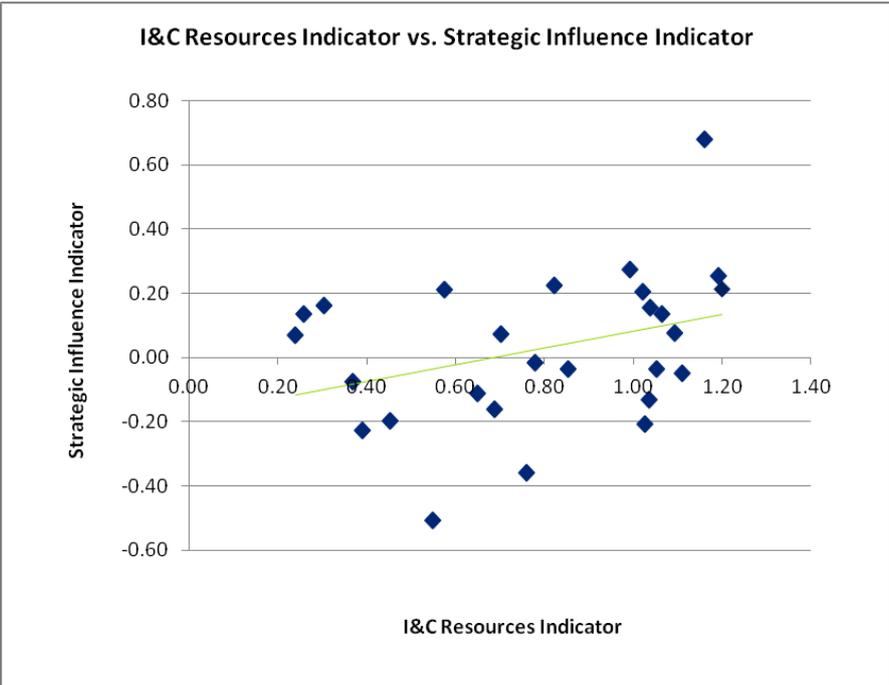
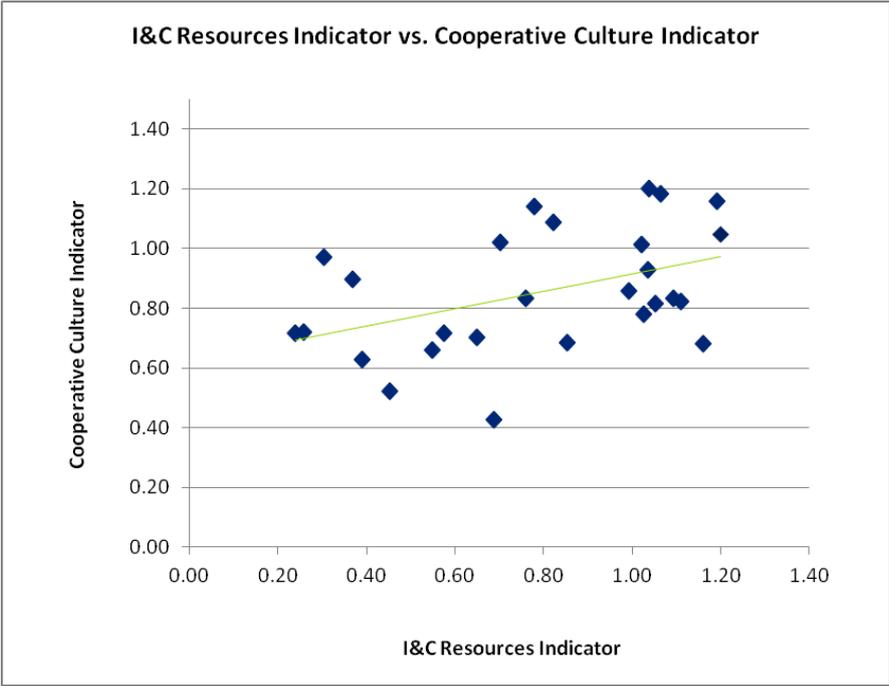
On the basis of the above evidence, and in order to test for any relationship between:

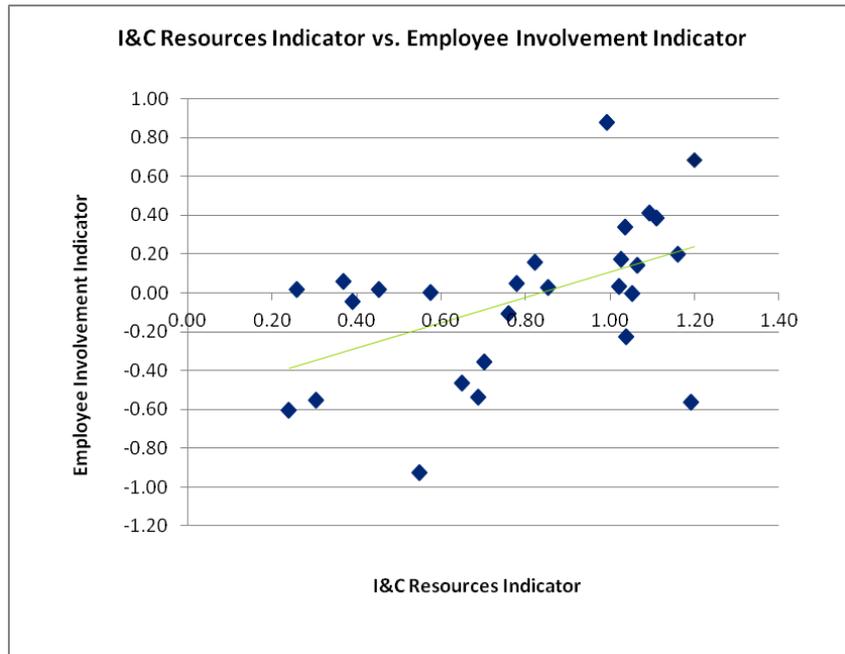
- the indicator scores concerning the provision of the I&C resources on which well-functioning employee representation is seen to depend³⁶
- the indicator scores concerning the presence of a cooperative culture with appropriate degrees of employee representative involvement and influence

a series of cross-tabulations (cross-sectional analyses) were prepared, as illustrated below, based on the country data.

These analyses do suggest a positive 'virtuous circle' relationship between the I&C resources indicator and the indicators of cooperative culture, employee involvement and strategic influence, albeit with different average score levels and gradients.

³⁶ Eurofound (2010): *European Company Survey 2009*, p. 51.





(2) Evidence from the management survey

Some questions were put to employers in the management survey concerning their views on their employee needs for involvement where there are changes at work, and improving productivity and performance of employees and undertakings, and these provide useful indicators of the perceived effectiveness of I&C (equivalent questions were not put to employee representatives).

The overall finding is that employers across the EU27 appear to have a rather positive view concerning the benefits of working with employee representatives in order to improve workplace performance and manage change, based on employer responses to two statements (rather than questions as such) in the survey.

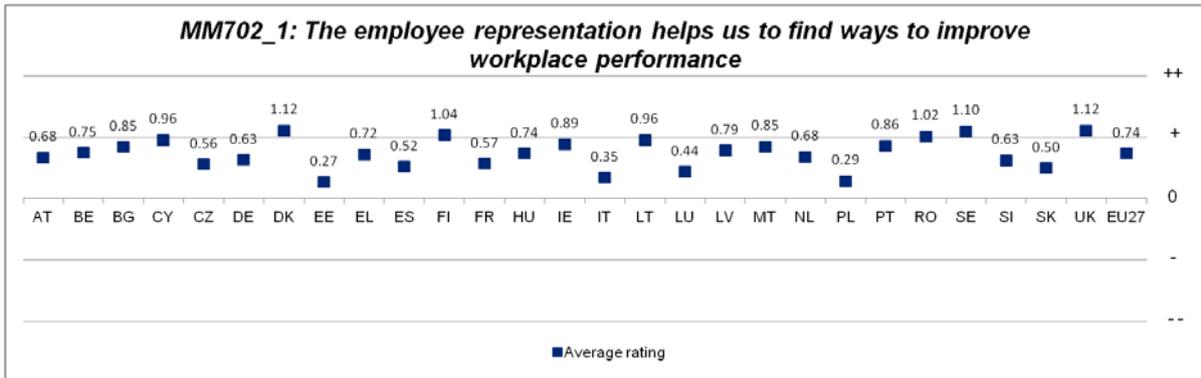
Statement 1: 'The employee representation helps us to find ways to improve workplace performance'

In response to the statement that 'employee representation helps us find ways to improve workplace performance' the overall EU27 response of employers is rather positive (score of 0.74³⁷) with Cyprus, Denmark, Finland, Lithuania, Romania, Sweden and the United Kingdom all reporting positive or very positive responses.

The least positive responses came from employers in Estonia, Italy and Poland with scores around 0.3 (more neutral than positive).

³⁷ The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under MM702 of the management questionnaire. The indicated scores have been calculated according to the following formula:

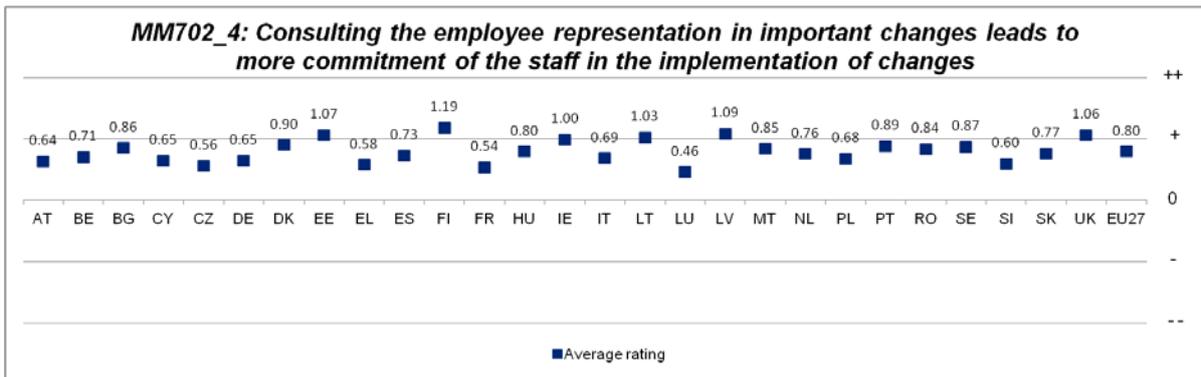
$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$



Statement 2: 'Consulting the employee representation in important changes leads to more commitment of the staff in the implementation of changes'

In response to the statement that 'consulting the employer representation in important changes leads to more commitment of the staff in the implementation of changes' the overall EU27 response of employers is rather positive (score of 0.80) with Estonia, Latvia, Lithuania, Ireland and the United Kingdom all reporting positive or higher.

The least positive responses came from employers in the Czech Republic, Greece, France and Luxembourg, but even here the scores are around 0.5 (midway between neutral and positive).



Case studies examples

National case studies undertaken by the national experts illustrate some of the varied experiences in different countries and sectors with respect to the effectiveness of I&C in relation to the survey evidence on the effectiveness of I&C. These cover:

- Reducing conflict between employer and employees and acceptance of management decisions;
- Improving adaptability and employability and ensuring a better anticipation of change;
- Improving the quality of management decisions;
- Improving company performance;
- Reducing the number of redundancies.

Reducing conflict between employer and employees and acceptance of management decisions

In a large Slovak service sector (banking) company case study, I&C is reported as having had a positive impact in terms of the acceptance of management decisions and the avoidance of industrial actions or conflicts in the company.

In a Latvian public transportation company, I&C is reported to have helped in establishing consensus, and to have contributed significantly to reducing the number and severity of industrial actions or conflicts, despite the presence of a number of competing trade unions.

Improving adaptability and employability and ensuring a better anticipation of change

In the case of a large Slovak service sector (banking) company case study, I&C is not seen by the management as having contributed to a better anticipation in terms of managing change and restructuring, or improving management decisions.

Improving the quality of management decisions

In the case study of a large Spanish based automobile company, the management does not consider that I&C can help improve management decisions, with discussions between employers and employee representatives being focused primarily on issues such as work organisation rather than corporate strategy.

In a large Slovak service sector (banking) company case study, I&C it is not perceived as contributing to improving management decisions either.

Improving company performance

In the case study of a large Spanish based automobile company, the management does not consider that I&C can help raise productivity, which is largely embodied in the production processes).

In a large Slovak service sector (banking) company case study, I&C is seen to have a positive impact in terms of improving the productivity of employees.

Likewise, in the Swedish National Transport Authority case study, I&C is seen as contributing to improved performance.

In the Latvian public transportation case study, on the other hand, I&C is not considered to have led to an increase in productivity of employees, or an improved performance by the company.

Reducing the number of redundancies

In the large Slovak service sector (banking) company case study, I&C is not considered to be effective in reducing the number of redundancies, which are seen to be caused by economic circumstances outside the control of the companies.

In the Latvian public transport company, while employees are consulted about collective redundancies the company itself does not consider that redundancies have been reduced because of I&C.

In the Swedish National Transport Authority, on the other hand, the I&C system is seen as contributing to minimising redundancies as well as to improving performance.

4.1.2.2. SPECIFIC ISSUES RELATING TO THE EFFECTIVENESS OF NATIONAL-LEVEL I&C LEGISLATION

Despite the general satisfaction reported with the legislation in terms of it supporting the addressing of I&C concerns in a positive way, there are, nevertheless, practical shortcomings relating to the effectiveness of national-level I&C legislation, as indicated both by the replies to fairly general questions put in the web survey, as well as the much more detailed findings reported by the European Labour Law Network (ELLN). The results are complemented and confirmed by additional evidence from the national expert reporting.

While the results of the web survey and the synthesised national expert reporting are presented below, the detailed results of the ELLN assessment of issues in the national-level I&C legislation are discussed in section 4.2 relating to the individual I&C directives as well as in Annex 11.

Web survey results

The web-survey enquiry focus was put on obtaining insights into the practical experiences of employers and employee representatives, as seen from their company level perspective.

These company level results throw light on the way the legislation is viewed 'from below' as opposed to 'from above', indicating the extent to which they face difficulties or practical problems in using the legislation.

In addition, the employer and employee representatives at company level were questioned about the need, in their view, for additional legislation, a rationalisation of the existing legislation, as well as whether they considered that they needed more information about the I&C legislation.

Generally speaking, the social partners at local company level were found to have some similar views about the problems they face, but rather different views about solutions.

Participants in the web survey were asked about:

- Uncertainties and inconsistencies in the legislation;
- Gaps in the coverage of the legislation;
- Practical problems in using the legislation;
- Enforcement of I&C rights;
- Awareness and guidance.

Uncertainties and inconsistencies in the legislation

Some 40% of both employers and employees state that they see occasional or (much less frequently) serious problems in terms of uncertainties or inconsistencies in the legislation.

Employee representatives	Legislative issues	Employer representatives
<i>Uncertainties or inconsistencies in the legislation</i>		
13.6%	Yes, serious	11.8%
37.0%	Yes, occasional	28.0%
31.2%	No	45.2%
18.2%	Uncertain	15.1%

-	Not applicable / Don't know	-
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Gaps in the coverage of the legislation

In terms of gaps in the legislation, however, the views of employers and employee representatives diverge – only 22% of employers see occasional or serious gaps in the legislation, as against nearly 55% of employees.

Employee representatives	Legislative issues	Employer representatives
Gaps in the coverage of the legislation		
18.8%	Yes, serious	6.1%
35.5%	Yes, occasional	15.5%
30.7%	No	64.6%
15.1%	Uncertain	13.8%
-	Not applicable / Don't know	-

Practical problems in using the legislation

In terms of practical problems in using the legislation, a large number of employers and employee representatives report occasional or serious practical problems in using the legislation – 45% in the case of employers and 55% in the case of employee representatives.

Employee representatives	Legislative issues	Employer representatives
Practical problems in using the legislation		
21.7%	Yes, serious	15.3%
33.0%	Yes, occasional	29.2%
31.1%	No	41.1%
14.2%	Uncertain	14.4%
-	Not applicable / Don't know	-

Enforcement of I&C rights

A significant number of respondents – 15% in the case of employers and 28% in the case of employee representatives – have experienced claims been brought before administrative or judicial bodies for the non-respect of employee rights regarding I&C in their company. Further, both a majority of employers (55%) and a majority of employee representatives (56%) indicate that in cases of claims or disputes the enforcement measures were *not* effective.

Employee representatives	Enforcement of I&C rights	Employer representatives		
Have you experienced claims been brought before administrative or judicial bodies for the non-respect of employee rights regarding I&C in your company?				
102	28.3%	Yes	39	14.8%
258	71.7%	No	225	85.2%
79	-	Not applicable / Don't know	41	-
If there have been claims or disputes, were the enforcement measures seen as effective?				
63	43.8%	Yes	28	45.2%
81	56.3%	No	34	54.8%
272	-	Not applicable / Don't know	215	-

Research by Eurofound and the ELLN confirms these concerns with regard to the effectiveness of national-level enforcement mechanisms for I&C rights. State authorities in some countries lack the necessary tools to enforce the obligations that arise from the Directives and/or are not able to control whether, and to what extent, the Directives'

provisions have been fulfilled.³⁸ In some countries, although certain enforcement mechanisms do exist, they do not seem to be much used in practice.³⁹ Moreover, in several countries, there seems to be a lack of effective remedies, with sanctions often perceived as too low, i.e. not effective and not dissuasive.⁴⁰ Indeed, issues with regard to the *practical* effectiveness of sanctions have been reported by 16 of our national experts.

The low *practical* effectiveness of enforcement mechanisms and sanctions is confirmed by our national experts in a majority of Member States. The table below summarizes the national expert reporting for the 30 EU/EEA Member States, with a synthesis of the results contained in an I&C Enforcement and Sanctions Indicator. This indicator measures the practical effectiveness of enforcement mechanisms and sanctions on a five-point scale ranging from +2 (effective enforcement *and* sanctions) to -2 (ineffective enforcement *and* sanctions).⁴¹

Country	Enforcement and sanctions	Total score
AT – Austria	<ul style="list-style-type: none"> • Very few court cases; infringements are rare (+1) • The very low sanctions undermine the effectiveness of the enforcement system; redundancies can be declared null and void (-1) 	0
BE – Belgium	<ul style="list-style-type: none"> • Few court cases; low degree of abuse or circumvention of the Belgian law on I&C; several complaints about legal uncertainties with regard to enforcement (0) • Sanctions are considered as effective and dissuasive; redundancies can be declared null and void (+1) 	+1
BG – Bulgaria	<ul style="list-style-type: none"> • No court cases; no complaints; some enforcement controls by labour inspectorates; enforcement legislation is partially not implemented in practice (0) • The low sanctions undermine the effectiveness of the enforcement system (-1) 	-1

³⁸ Barnard (2010): Labour Law and the Crisis: Summary of the main issues, *Paper on the occasion of the 3rd Annual Legal Seminar European Labour Law Network*, 9 pp.

³⁹ ELLN (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, p. 41.

⁴⁰ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, pp. 7f and 23f.

⁴¹ **Methodology:** The national expert reporting with regard to enforcement mechanisms and sanctions has been summarized for each of the 30 EU/EEA Member States to produce two intermediate scores:

- One score for the practical effectiveness of national enforcement mechanisms: (+1) effective; (0) neither fully effective, nor fully ineffective; (-1) ineffective.
- One score for the practical effectiveness of sanctions: (+1) effective; (0) neither fully effective, nor fully ineffective; (-1) ineffective.

For each country, the final score of the I&C Enforcement and Sanctions Indicator is the sum of both intermediate scores. This leads to a five-point scale on the practical effectiveness of enforcement mechanisms and sanctions in the Member States: (+2) effective; (+1) mostly effective; (0) neither fully effective, nor fully ineffective; (-1) mostly ineffective; (-2) ineffective.

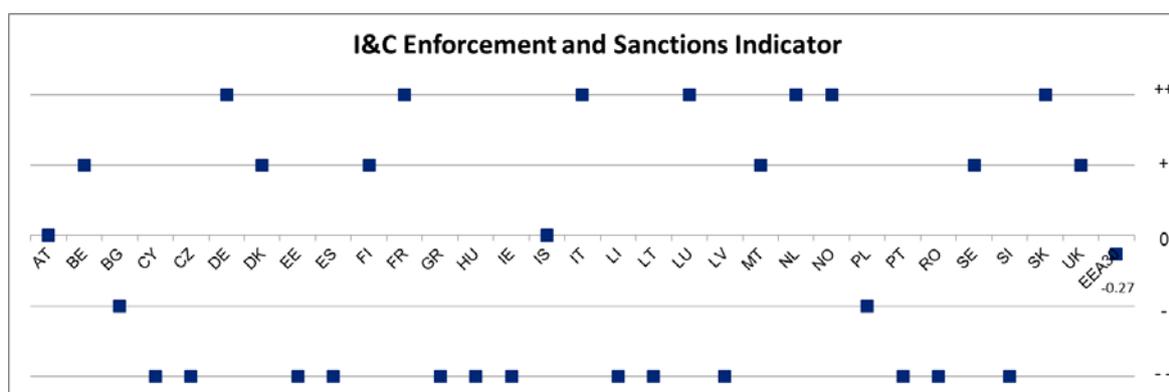
Note: this is an overall assessment, across three I&C directives, based on experiences as reported and interpreted by the national experts. While these judgements have been used in order to develop an indicator that can provide some quasi-quantitative overall assessments of the extent to which there are good or bad experiences, and where such problems are concentrated, it is recognised that there may well be divergent experiences within individual Member States depending on the specific circumstances.

CY – Cyprus	<ul style="list-style-type: none"> • Ineffective and lengthy enforcement procedures make it very difficult to enforce I&C rights; no court cases; labour inspectorate is not monitoring I&C (-1) • Sanctions are low and not applied in practice due to the ineffective enforcement procedures (-1) 	-2
CZ – Czech Republic	<ul style="list-style-type: none"> • Very slow procedures in courts lead to ineffective enforcement; no court cases; I&C is not a priority for the labour inspectorate; circumventions of the legislation are reported (-1) • Sanctions are low for large companies and not applied in practice due to the ineffective enforcement procedures (-1) 	-2
DE – Germany	<ul style="list-style-type: none"> • Effective mechanisms to enforce I&C rights individually and collectively (+1) • Sanctions are considered as effective and dissuasive; redundancies can be declared null and void (+1) 	+2
DK – Denmark	<ul style="list-style-type: none"> • Effective mechanisms to enforce I&C rights collectively via social partners; no individual enforcement possible for employees; court cases are very rare; no monitoring of I&C by labour inspection; high degree of compliance (+1) • Sanctions (unspecified) can be imposed by labour courts (0) 	+1
EE – Estonia	<ul style="list-style-type: none"> • Existing enforcement mechanisms are reported to be slow and rarely used due to a lack of awareness of I&C rights; very few court cases; I&C practices are not checked routinely by the labour inspectorate (-1) • The low sanctions are often not dissuasive for companies (-1) 	-2
ES – Spain	<ul style="list-style-type: none"> • Existing enforcement mechanisms are reported to be rarely used due to a lack of awareness of I&C rights (-1) • The relatively low sanctions are often not dissuasive for companies; redundancies can be declared null and void (-1) 	-2
FI – Finland	<ul style="list-style-type: none"> • No tangible evidence of abuse/circumvention; the Ministry of Labour and the ombudsman supervise compliance; enforcement mechanisms are reported to be underfunded (0) • Sanctions are reported to be effective and dissuasive (+1) 	+1
FR – France	<ul style="list-style-type: none"> • Enforcement mechanisms are reported to be effective; works councils often make use of the threat of litigation in order to enforce their I&C rights; about 100 court cases per year; relatively high compliance rate (+1) • Sanctions are reported to be effective and dissuasive (+1) 	+2
GR – Greece	<ul style="list-style-type: none"> • Enforcement mechanisms are reported to be ineffective and rarely used, inter alia due to high costs, lengthy procedures and potentially unsatisfying results (too low sanctions); low compliance with I&C legislation (-1) • Sanctions are low and not applied in practice due to the ineffective enforcement procedures; redundancies can be declared null and void (-1) 	-2
HU – Hungary	<ul style="list-style-type: none"> • Enforcement mechanisms are weakly developed and not used (-1) • There are no clear sanctions; potentially redundancies can be declared null and void (-1) 	-2
IE – Ireland	<ul style="list-style-type: none"> • Existing enforcement mechanisms are rarely used and reported to be slow; few court cases (-1) • Sanctions are reported to be insufficiently dissuasive (-1) 	-2

IS – Iceland	<ul style="list-style-type: none"> Formal enforcement mechanisms exist, but are very rarely used; conflicts are typically resolved informally; monitoring of I&C by tripartite body (0) Sanctions are foreseen in cases of breaches, but have never been used yet due to informal conflict resolution modes (0) 	0
IT – Italy	<ul style="list-style-type: none"> Enforcement of I&C rights by trade unions before courts is reported to be effective; larger number of court cases; individual workers cannot enforce I&C rights (+1) Sanctions are reported to be effective and dissuasive; ; redundancies can be declared null and void (+1) 	+2
LI – Liechtenstein	<ul style="list-style-type: none"> Legal enforcement of I&C rights is limited to civil action; no court cases; enforcement mechanisms are considered to be ineffective and not used in practice, inter alia due to their inadequacy in the Liechtenstein societal context and potentially unsatisfying results (only damages and interest) (-1) No penal sanctions or administrative fines are foreseen by the law (-1) 	-2
LT – Lithuania	<ul style="list-style-type: none"> Enforcement mechanisms are reported to be ineffective in practice; very few complaints at the labour inspectorate due to missing representative bodies and low awareness; no court cases (-1) Sanctions are low and not applied in practice due to the ineffective enforcement procedures (-1) 	-2
LU – Luxembourg	<ul style="list-style-type: none"> Enforcement mechanisms are reported to be effectively designed, but rarely used; few complaints at the labour inspectorate; no court cases; relatively high degree of compliance (+1) Sanctions are reported to be effective and dissuasive; redundancies can be declared null and void (+1) 	+2
LV – Latvia	<ul style="list-style-type: none"> The existing enforcement mechanisms are reported to be ineffective in practice; very few complaints at the labour inspectorate due to missing representative bodies and low awareness; very few court cases (-1) Sanctions are low and not applied in practice due to the ineffective enforcement procedures (-1) 	-2
MT – Malta	<ul style="list-style-type: none"> The effectiveness of existing enforcement mechanisms is partially hampered by low awareness levels; few court cases; I&C is monitored by the labour inspectorate (0) Sanctions are considered as effective and dissuasive (+1) 	+1
NL – Netherlands	<ul style="list-style-type: none"> Effective enforcement mechanisms; about 30 court cases a year (+1) Sanctions are considered as effective and dissuasive (+1) 	+2
NO – Norway	<ul style="list-style-type: none"> Effective enforcement mechanisms including non-judicial conflict resolution; monitoring of I&C by labour inspectorate (+1) Sanctions are considered as effective and dissuasive; redundancies can be declared null and void (+1) 	+2
PL – Poland	<ul style="list-style-type: none"> Some non-compliance has been reported; several court cases and complaints at the labour inspectorate; enforcement mechanisms are reported to be partially ineffective (0) Sanctions are considered as not sufficiently dissuasive (-1) 	-1

PT – Portugal	<ul style="list-style-type: none"> Some non-compliance has been reported; larger number of complaints submitted to the labour inspectorate; enforcement mechanisms are reported to be ineffective, inter alia due to low general awareness and limited resources (-1) Sanctions are considered as not sufficiently dissuasive (-1) 	-2
RO – Romania	<ul style="list-style-type: none"> Ineffective enforcement mechanisms due to legal uncertainty; absence of collective agreements laying down specific I&C arrangements pre-empt employee representatives from enforcing some of their I&C rights (-1) Sanctions are non-dissuasive and not applied in practice due to the ineffective enforcement procedures; redundancies can be declared null and void (-1) 	-2
SE – Sweden	<ul style="list-style-type: none"> Effective enforcement mechanisms; most conflicts are resolved by mediation procedures (+1) Sanctions (unspecified) can be imposed by labour courts (0) 	+1
SI – Slovenia	<ul style="list-style-type: none"> Enforcement mechanisms are reported to be ineffective in practice due to lengthy court proceedings and potentially unsatisfying results (too low sanctions); few complaints at the labour inspectorate; very few court cases (-1) Sanctions are considered as not sufficiently dissuasive and rarely applied in practice (-1) 	-2
SK – Slovakia	<ul style="list-style-type: none"> Effective enforcement mechanisms; high degree of compliance; low number of complaints and court cases; I&C is monitored by the labour inspection (+1) Sanctions are considered as effective and dissuasive (+1) 	+2
UK – United Kingdom	<ul style="list-style-type: none"> Effective enforcement mechanisms; few court cases; many employees cannot enforce I&C rights due to pre-existing agreements (0) Sanctions are considered as effective and dissuasive (+1) 	+1

With an average score of -0.27, the I&C Enforcement and Sanctions Indicator points to important effectiveness issues in a majority of Member States. In many countries, I&C rights are not effectively enforceable in practice through the existing tools and mechanisms. In addition, sanctions are perceived as not sufficiently dissuasive in many countries, thereby further weakening the effectiveness of the transposed I&C Directives.



In order to complete this synthetic view, some illustrative evidence on the *practical* implementation of enforcement mechanisms in the Member States is provided in the boxes below.⁴²

Enforcement of I&C rights in Liechtenstein

As in Switzerland, the legal enforcement of I&C rights is limited to civil action in Liechtenstein. Thus, no specific penal sanctions or administrative fines are foreseen by the law and parties can only enforce their rights by civil court action.

In cases of non-compliance with the MWG, the employer, the employees and the employee representation can file a complaint at the Liechtenstein Court of First Instance (*Landgericht*). The trade union LANV is also entitled to sue. However this is limited to action for a declaratory judgment (Art. 12 MWG in combination with § 1173a Art. 71 para 1-3 ABGB). Based on such a declaratory judgement in favour of LANV, the employees or employee representation can then engage in court action with the certainty to win the judicial proceedings.

No single court case on I&C and employees participation in undertakings is known to have taken place in Liechtenstein. This has been confirmed by all interviewed experts and stakeholders as well as the President of the Liechtenstein Court of First Instance (*Landgericht*).

The interviewed academic expert explained that the non-use of enforcement mechanisms is not due to a deficiency in the drafting of the Directive or in its implementation, but a *problem of factual law enforcement*. The social partners further argued that confrontational judicial conflict is not part of the industrial relations tradition in Liechtenstein. Conflicts are generally solved informally in personal discussions. In a small country like Liechtenstein, “where everybody knows everybody”, judicial action against an employer may also cause serious reputational problems for an employee endangering his/her “employability”.

Enforcement of I&C rights in the Netherlands

There are instances where employee representatives have gone to court with the claim that their I&C rights have been violated, but the number is relatively low: there are approximately 12000 to 15000 works councils but the annual number of court cases is around 30. These cases tend to reflect conflicts or differences of opinion rather than abuse, although they may involve attempts to circumvent the I&C obligations.

⁴² A detailed review of the *legal* enforcement instruments and sanctions in the different Member States is provided in the transposition reports for the three directives. See inter alia:

- Directive 2002/14/EC: Eurofound (2008): *Impact of the information and consultation directive on industrial relations*, pp. 11ff. Labour Asociados (2007): *Synthesis Report – Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community*, 77 pp. Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 2002/14/EC in Bulgaria and in Romania*.
- Directive 98/59/EC: EC (1999): *Commission report on the implementation in Austria, Finland and Sweden of Council Directive 98/59/EC and Commission report on the implementation of Council Directive 98/59/EC*, 24 pp. Labour Asociados (2006): *National implementation reports (Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia) for Directive 98/59/EC on the approximation of the laws of Member States relating to collective redundancies*. Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 98/59/EC in Bulgaria and in Romania*.
- Directive 2001/23/EC: EC (2007): *Commission Report on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*, 27 pp. Human European Consultancy (2007): *Implementation Report: Directive 2001/23/EC on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses*, 96 pp. Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 2001/23/EC in Bulgaria and in Romania*.

Works councils have the right to go to court, even though they have no legal personality. The costs of court cases are met by the employer. Individual employees and unions do have a legal personality and can go to court, but they pay their own costs. For I&C conflicts between unions and employers on mergers and acquisitions a special procedure and arbitration committee has been established. However, the legal effect of this procedure is restricted to a public warning.

In case of a serious violation of I&C rights, the unions can go to court to try to initiate an inquiry procedure. This has happened only very rarely (in cases comparable to Renault Vilvoorde).

In the case of a violation of I&C, either the employer goes to court to challenge the 'veto' of the works council, or the works council claims the right of consent. However, in this type of conflict, the central issue is usually the content of the contested arrangement, not the I&C procedure.

The sanctions depend on the issue, the parties to the conflict and the court. In conflicts on strategic issues that are brought before the Enterprise Chamber of the Amsterdam Court, the court may rule that the decision by the employer may not be carried out (or even has to be rolled back, if the execution of the decision has already started). During the procedure, an interim ruling of the same type is also possible. An employer that does not comply with this ruling faces a fine. Since this has never happened, the procedure can be judged to be sufficiently effective and dissuasive. Moreover the procedure has not led to major complaints by employers (now or in the past) so it also seems proportionate.

Enforcement of I&C rights in France

Works councils in France have a legal personality and can go to court. The failure of an employer to inform and consult the works council is an unlawful curtailment of rights ("*délit d'entrave*") because it interferes with the functioning ("*entrave au fonctionnement*") of a representative body. The rules governing the establishment and functioning of the institutions of employee representation within the enterprise all carry penal sanctions. Interference with the information and consultation process (for example, a failure to communicate information on time, or a failure to consult) is an unlawful curtailment of collective rights, punishable by imprisonment of two months to one year and/or by a fine of 3700 Euros. If the offence is repeated, the maximum term of imprisonment is increased to two years and the maximum fine to 7000 Euros (Labour Code Articles L2328-1 to L2328-2).

Employees' representatives are also entitled to make a claim for damages. If the employer does not comply with the information and consultation procedure, the Works council can enforce the right to information and consultation with an action for specific performance, and an injunction with regard to the measure the employer wants to undertake. If the employer fails to meet an obligation, he can be ordered to fulfil the obligation or not to perform a certain action. Such judgements are normally enforced by interim measures ("*astreintes*") if the employer does not comply with the judgement. A tribunal could also suspend the measure challenged until the information and consultation is carried out. This is an effective sanction but, of course, it requires the works council to act at an early stage of the decision-making process.

The number of judgements against employers who had restricted the role of employee representatives ("*délit d'entrave*"), as reported by the Ministry of Justice, is around one hundred per year from 2002 to 2006 (99 in 2002, 63 in 2003, 102 in 2004, 95 in 2005, 104 in 2006). Another report from the Ministry of Justice shows that, in 2008, there were 92 judgements, 25 pronounced by Court of appeal ("*Cour d'appel*") and 69 by first level court ("*Tribunal correctionnel*").

As a comparison, the total number of sentences relating to labour and social security matters rose to 6,835 for the same year with a large majority of the judgements relating to illegal work (5,374). When employers are punished, it is mostly with a fine (75 cases) but sometimes with a prison term (4 cases) even if it is always a suspended sentence. The average amount of fine was a little under 2000 euro in 2008. In general, the claimants are the I&C bodies: the works council itself (the works council has a legal status) or the workplace representative.

To summarise, litigation is not commonplace, but the threat of taking an employer to court is a common weapon used by employee representatives to resolve issues, including not consulting over collective wage bargaining. Employers do not like to be seen going to court. Moreover the procedure for being granted a hearing can be long (40 months before sentencing of the first level court) and the social partners generally prefer to find a solution before the legal process has been initiated, or immediately after.

Enforcement of I&C rights in Austria

Works councils can file complaints with the district administrative courts (*Bezirksverwaltungsgerichte*). Dismissals are void when the works council is not informed at least five days before a measure is taken. This applies to all dismissals and not just mass redundancies, and the law also includes the possibility for individuals to fight a dismissal.

The Labour Constitution Act punishes the infringement of I&C rights – but with a maximum fine of only 2,180 euro - but it does not provide for the possibility to demand for an injunction or compensation.

In the view of the Ministry of Employment, Social Affairs and Consumer Protection, the Chamber of Labour, and the PROGE trade union, the lack of effective sanctions with the very low financial penalties for infringements of I&C rights, explains why managers tend not to act speedily.

Enforcement of I&C rights in Cyprus

The law transposing Directive 2002/14/EC gives the Minister the power to appoint inspectors to ensure its effective implementation. However no inspectors have been appointed from the Industrial Relations Department of the Ministry of Labour and Social Insurance, as a result of which very few complaints have been submitted concerning the general right to I&C.

In case of any reported violations of the general right to information the Industrial Relations Department would advise employers on their obligations and, if they still did not conform, they would be reported to the Police for prosecution for what is a criminal offence punishable with a maximum penalty of either 3,450 or 8550 euro, depending on their legal status.

According to the Industrial Relations Department no such prosecutions have taken place and, hence, no penalties imposed. In the view of the Department, the imposition of administrative fines (rather than the launching of criminal investigations) would be more effective, dissuasive and proportional.

Another gap in the enforcement mechanism is that the Court of Labour Disputes is the competent court to hear any civil disputes arising out of the implementation of the law. However there is no case law on violations of information and consultation rights and it is doubtful whether these procedures would enable employees to successfully enforce I&C rights through the Court procedure since the claimant will have to prove the damages suffered from the violation of his/her rights. Moreover, the Court does not have jurisdiction to declare rights, but only to decide on compensation claims in labour dispute cases.

In short it can be argued that employees should have access to a remedy that allows for the enforcement of their right to I&C, irrespective of whether any damages or loss has been suffered, because of its fundamental character in labour relations, and that is currently not the case.

Awareness and guidance

Research from 2008 by Eurofound has highlighted that, in a number of Member States, the possible lack of awareness among workers of their rights with respect to I&C and the existence of enforcement mechanisms may limit the *practical* impact and effectiveness of the transposed I&C directives.⁴³ Even though awareness of I&C rights and obligations has increased since then in most Member States, several of our national experts have reported that the persistent lack of awareness still hampers the *practical* implementation and effectiveness of the transposed I&C directives.

Indeed, our national experts have reported a serious lack of awareness in many EU/EEA Member States, primarily those which do not have longstanding I&C traditions, despite the fact that some degree of guidance and training on I&C is seen to be available in most of these countries.

⁴³ Eurofound (2008): *Impact of the information and consultation directive on industrial relations*, p. 32.

The level of awareness typically decreases with the level in the industrial relations governance: While social partners at national level are generally well aware of the EU I&C directives and the I&C rights and obligations as transposed in national-level legislation, social partners at company-level are generally only aware of national rules, if at all. Usually, awareness of I&C rights and obligations is very low among non-unionised workers.

The table below summarizes the national expert reporting for the 30 EU/EEA Member States and synthesizes the results in an I&C Awareness and Guidance Indicator. This indicator measures the general level of awareness of I&C rights and obligations (as transposed in the national-level legislation) and the availability of guidance for stakeholders on a five-point scale ranging from +2 (high awareness and effective guidance) to -2 (low awareness and no guidance).⁴⁴

Country	Awareness and guidance	Total score
AT – Austria	<ul style="list-style-type: none"> • Low levels of awareness of individual I&C rights among workers (-1) • Social partners provide training and support to their members (+1) 	0
BE – Belgium	<ul style="list-style-type: none"> • High level of awareness of I&C rights and obligations across the layers of society (+1) • Guidance is provided by public authorities (+1) 	+2
BG – Bulgaria	<ul style="list-style-type: none"> • Low levels of awareness impede the practical implementation of I&C legislation and complaints in cases of infringements (-1) • Guidance is provided by trade unions to their members; guidance material has been developed in the framework of externally funded projects (+1) 	0
CY – Cyprus	<ul style="list-style-type: none"> • Awareness of the I&C legislation is very low (-1) • Some guidance has been made available by public authorities, but the uptake is very low (0) 	-1
CZ – Czech Republic	<ul style="list-style-type: none"> • The low level of employee awareness allows employers to circumvent their I&C obligations (-1) • Training and advice are provided by public authorities and trade unions (+1) 	0

⁴⁴ **Methodology:** The national expert reporting with regard to awareness and guidance has been summarized for each of the 30 EU/EEA Member States synthesizing the results in two intermediate scores:

- One score for the general level of awareness of I&C rights and obligations: (+1) high; (0) intermediate; (-1) low.
- One score for the availability of effective guidance: (+1) effective guidance available; (0) few guidance available, but not fully effective; (-1) no guidance.

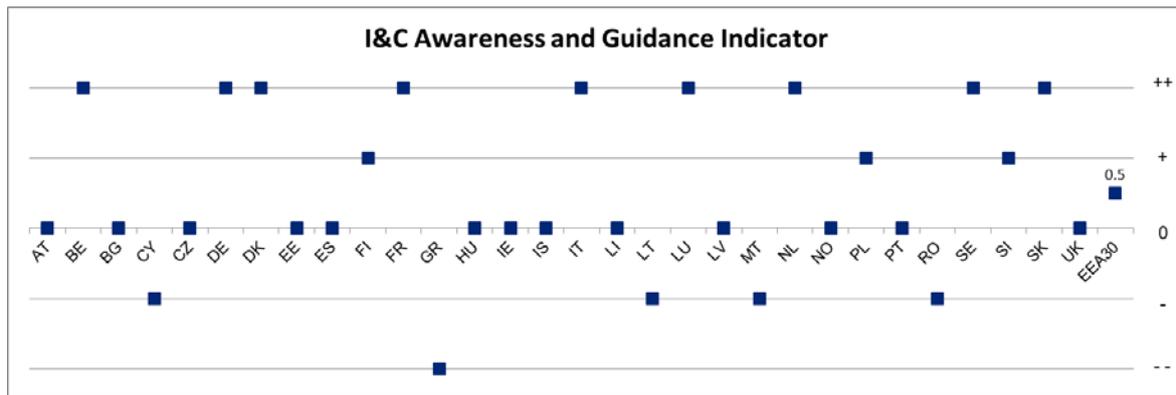
For each country, the final score of the I&C Awareness and Guidance Indicator is the sum of both intermediate scores. This leads to a five-point scale with regard to awareness and guidance in the Member States: (+2) very positive; (+1) mostly positive; (0) neither fully positive, nor fully negative; (-1) mostly negative; (-2) negative.

Please note that this is an overall assessment, across three I&C directives, based on experiences as reported and interpreted by our national experts. While we have used these judgements in order to develop an indicator that can provide us with some quasi-quantitative overall assessments of the extent to which there are good or bad experiences, and where such problems are concentrated, we recognise that these are overall assessments and there may well be divergent experiences within individual Member States depending on the specific circumstances.

DE – Germany	<ul style="list-style-type: none"> • High level of awareness of German legislation on I&C and co-determination rights (+1) • Social partners provide training and support to their members; works council members have a right to internal and external training (+1) 	+2
DK – Denmark	<ul style="list-style-type: none"> • I&C is well-established in the Danish industrial relations system with a high degree of general awareness (+1) • Social partners provide training and support to their members (+1) 	+2
EE – Estonia	<ul style="list-style-type: none"> • General awareness of I&C rights and obligations is very low (-1) • Guidance and training is provided by social partners and public authorities (+1) 	0
ES – Spain	<ul style="list-style-type: none"> • Awareness of I&C rights in collective redundancies is high; awareness of general and permanent I&C rights is low (0) • No specific guidance on I&C is available; some guidance documents on industrial relations cover I&C (0) 	0
FI – Finland	<ul style="list-style-type: none"> • About 60% of employees and their representatives are aware of the Finnish I&C legislation according to a recent survey (0) • Guidance and training is provided by trade unions (+1) 	+1
FR – France	<ul style="list-style-type: none"> • General awareness of I&C in France is high among employees and employers (+1) • Guidance is provided by public authorities and trade unions (+1) 	+2
GR – Greece	<ul style="list-style-type: none"> • Awareness of I&C rights and obligations is low; social dialogue in Greece is often ignored (-1) • There is no guidance material available (-1) 	-2
HU – Hungary	<ul style="list-style-type: none"> • General awareness of I&C is low (-1) • Guidance is provided by trade unions; guidance material has often been co-funded by the government and the EU (+1) 	0
IE – Ireland	<ul style="list-style-type: none"> • General awareness of I&C is low among employers as well as employees and their representatives (-1) • Guidance on I&C is available from public authorities and social partners (+1) 	0
IS – Iceland	<ul style="list-style-type: none"> • General awareness of I&C rights and obligations is limited (-1) • Guidance on I&C is provided by trade unions (+1) 	0
IT – Italy	<ul style="list-style-type: none"> • General awareness of I&C is high in Italy (+1) • Trade unions provide guidance on I&C to their members (+1) 	+2
LI – Liechtenstein	<ul style="list-style-type: none"> • Even though the transposition of the framework directive has increased awareness of I&C rights and obligations, awareness levels remain relatively low (-1) • Guidance and training on I&C are provided by the social partners; public authorities inform employers about I&C in the framework of regular labour inspections (+1) 	0
LT – Lithuania	<ul style="list-style-type: none"> • General awareness of I&C is very low (-1) • Very few guidance is available from public authorities (0) 	-1
LU – Luxembourg	<ul style="list-style-type: none"> • General awareness of I&C is high (+1) • Guidance material is provided by public authorities (+1) 	+2
LV – Latvia	<ul style="list-style-type: none"> • General awareness of I&C is low (-1) • Guidance and training are provided by social partners (+1) 	0

MT – Malta	<ul style="list-style-type: none"> • Even though the transposition of the framework directive has increased awareness of I&C rights and obligations, awareness remains at low levels (-1) • Very little guidance material is available; assistance by trade unions is provided on an informal basis (0) 	-1
NL – Netherlands	<ul style="list-style-type: none"> • Awareness of I&C is high (+1) • A wealth of guidance material and training is provided by social partners; advice available from specialized law firms (+1) 	+2
NO – Norway	<ul style="list-style-type: none"> • General awareness of I&C rights and obligations is reported to be low (-1) • Guidance and training is provided by the social partners (+1) 	0
PL – Poland	<ul style="list-style-type: none"> • Intermediate level of awareness of I&C (0) • Guidance and training is provided by social partners and public authorities (+1) 	+1
PT – Portugal	<ul style="list-style-type: none"> • General awareness of I&C rights and obligations is reported to be low (-1) • Guidance and advice is provided by trade unions (+1) 	0
RO – Romania	<ul style="list-style-type: none"> • Even though the transposition of the directives has increased awareness of I&C rights and obligations, awareness remains at low levels (-1) • No guidance material is available; trade unions provide advice (0) 	-1
SE – Sweden	<ul style="list-style-type: none"> • Awareness of I&C and co-determination rights and obligations is relatively high (+1) • Guidance material and training are provided by the social partners (+1) 	+2
SI – Slovenia	<ul style="list-style-type: none"> • Intermediate level of awareness of I&C (0) • Guidance, training and advice are provided by the social partners, public authorities and specialized consultancies (+1) 	+1
SK – Slovakia	<ul style="list-style-type: none"> • High level of awareness of I&C rights and obligations (+1) • Guidance is provided by trade unions (+1) 	+2
UK – United Kingdom	<ul style="list-style-type: none"> • Awareness of I&C is relatively low, especially among employees (-1) • Guidance material is provided by social partners and public authorities (+1) 	0

With an average score of 0.5, the I&C Awareness and Guidance Indicator points to an unsatisfyingly low levels of general awareness of I&C rights and obligations in a majority of countries, despite the high performance in a third of countries. While guidance is available in most countries, this appears to have been insufficient to raise awareness to levels that would allow for the effective exercise of I&C rights by employees and their representatives.



In order to complete this synthetic view, some illustrative evidence on the general awareness of I&C, as well as the provision of guidance and training in the Member States, is provided in the boxes below.

Awareness of I&C and guidance in Belgium

There is a high awareness of information and consultation rights at the workplace in Belgium. The closing of the Renault factory plant in Vilvoorde in the 1990s resulted in several legislative revisions and has continuously pushed information and consultation high on the social agenda, particularly in cases of collective redundancies. The recent closure of the Opel factory plant in Antwerp has refreshed the minds of workers in Belgium with regard to I&C.

The “Works Council Pocket”, which is published every year by the Ministry of Labour, contains some 350 pages explaining the structure, rights and functioning of I&C bodies. Some other aspects are specified in national sector agreements, e.g. the structure of the trade union delegation, and the rights in relation to time-off and training.

Awareness of I&C and guidance in Estonia

The general awareness of I&C rights and obligations in Estonia is relatively low and employers as well as employees and their representatives often do not even recognize when relevant I&C laws might have been breached.

Guidance is available mainly to union representatives from their Trade Union Confederation which also provides training and guide materials for employee representatives. While written material is available on their web site, so everyone can access them, advice and trainings is limited to union members.

Employers can seek advice from Employers’ Confederation, but there have been no trainings on the matter. There is also the possibility to contact the Labour Inspectorate by phone, e-mail or through a meeting, but generally in relation to specific cases.

Awareness of I&C and guidance in Finland

The report ‘Research 2010’ found that, with regard to awareness of I&C rights and obligations, almost 50% of the employees’ representatives had some knowledge of the new ACO regulation while 12% had a good level of knowledge. On the employers’ side 40% had some knowledge while 19% had a good level of knowledge of the Act.

The trade unions run courses for their own shop stewards. The Ombudsman is charged with supervising compliance with the Act. There are also informative web-sites for union members.

Awareness of I&C and guidance in France

The general awareness of I&C in France is reported as high among employees and employers. In general, actors are aware of their rights and obligations, but the awareness is weaker in small undertakings.

The French Labour Ministry has a website with information on the French I&C bodies, and publishes every year a general guide on Labour law ("*Guide pratique du droit du travail*"⁴⁵). In some French regions, the labour administration also publishes guidance material for workplace representatives. Trade unions have their own guidance material for their members.

Awareness of I&C and guidance in Hungary

According to the interviews and experiences of other authors⁴⁶, only the most active I&C actors (employers and employees in companies where unions or works councils at company level exist) are really aware of I&C rights and obligations, with countrywide awareness of I&C estimated to be low. Given that only about 14 % of employees are members of a union, this figure may indicate roughly with the awareness level.⁴⁷

Trade Unions, Works Councils, educational institutions and employer organizations have, however, produced and distributed a large number of brochures and hand-outs since 2004 mainly as a result of publicly co-financed EU actions with the social partners. Following Hungary's accession to the EU, there have been some professional books which provided guidance, but these mainly provide mainly guidance for lawyers.

Most Trade Unions have websites with information about labour rights (e.g. www.mszosz.hu, www.liganet.hu, www.vdsz.hu) and there is also a Works Council training and consulting company, which provides guidance and written materials (www.etosznnet.hu).

Between 2009 and 2011 there have been a social partnership project co-funded by the European Commission and the Hungarian government aimed at establishing a network of public consulting offices run jointly by trade unions and employer associations to provide employees with individual guidance. Some of this material provides some guidance on I&C (www.jogpont.hu).

Finally, in view of the results discussed above, it is probably not surprising that over 80% of employee representatives and nearly 50% of employer representatives participating in the **web-survey** called for more information about I&C legislation (cf. section 4.1.4.1).

4.1.2.3. SUMMARY OF EVIDENCE ON EFFECTIVENESS

Effectiveness reflects the degree to which the effects of the three EU I&C directives achieve their objectives, as seen in relation to the relevance of the legislation in meeting the needs of employees and employers and the European social market economy more generally.

Overall the evidence indicates that the legislation is assessed less positively in terms of its effectiveness than it is in terms of relevance. In other words, while stakeholders may see the legislation as being well-designed relative to its purpose, it tends to deliver less than hoped for in practice.

This is seen most clearly in the **national expert assessments** regarding the effectiveness of the directives. This gives an indicator measure of effectiveness of 0.63, which is significantly lower than it is for relevance (0.85).

The lowest ratings are in Austria, the Czech Republic, Estonia, Ireland and Portugal, with the highest ratings in Germany and Sweden.

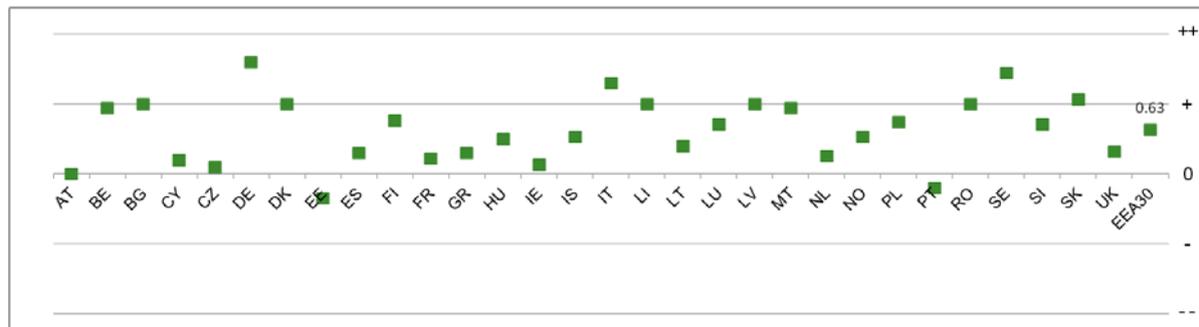
⁴⁵ <http://travail-emploi.gouv.fr/documentation-publications,49/editions-du-ministere,50/catalogue,1864/guides-pratiques,1865/collection-les-indispensables,660/guide-pratique-du-droit-du-travail,13313.html>

⁴⁶ Kisgyörgy Sándor, Pataky Péter, Vámos István, Helyzetkép az üzemi tanácsokról, Az üzemi tanácsokról készített interjúk feldolgozása, Budapest: 2003.

⁴⁷ Neumann László, Grajczjár István, Tóth András, Szakszervezeti képviselő, kollektív szerződés - In: „Munkahelyi foglalkoztatási viszonyok 2010” Koordinátor: Budapest 2010.

Among the pre-enlargement Member States, Belgium, Germany, Denmark, Italy and Sweden are assessed as positive or somewhat higher, while Austria, Spain, France, Greece, Ireland, the Netherlands, Portugal and the United Kingdom are closer to neutral than to positive.

Average of all 'effectiveness' evaluations by all stakeholders



In terms of the effectiveness of the directives meeting their common objectives, the views of public authorities are more positive than those of employers, employee representatives and academics, with a positive score (0.78) as against a position for the latter group midway between neutral and positive (0.5). A positive assessment is the most common among all stakeholders, but with no very positive rating other than in Germany and Romania.

Employers in four Member States (Estonia, Spain, Finland and Poland) have a negative view, in contrast with the position of employee representatives or public authorities in these countries.

There are, however, negative employee representatives assessments in Cyprus, the Czech Republic, Greece and Portugal, with a very negative assessment in Ireland. Germany is the only country where employee representatives are found to be very positive, matching the view of public authorities and academics, but where employers are only positive.

Academics in some new Member States (Czech Republic, Estonia and Lithuania) have a negative overall assessment, as do those of Portugal and Ireland.

These differences are seen to be explained largely by excessively high expectations with regard to the protection offered by the I&C directives – with the resulting disappointment in practice. National culture, traditions and history as well as the impact of the current financial and economic crisis may be considered as other explanatory factors for differences in assessment.⁴⁸

The **web survey results** on effectiveness generally confirm the national expert assessments. There is common agreement between employer and employee representatives concerning the benefits of trust and partnership – at over 55% in both cases (effective or very effective) – but with typically lower scores by employers (50% as against 60%) on other issues.

There is a particularly low score by employers in terms of I&C increasing adaptability and employability (33% against 50%) and improving management decisions (35% against 45%).

⁴⁸ Differences across Member States are further discussed in section 4.4 of the present report.

The biggest differences between employers and employees occur, however, in relation to their assessment of the effectiveness of I&C in reducing the number of redundancies – a view supported by less than 15% for employers against over 45% for employees.

With regard to I&C reducing conflict or ensuring greater acceptance of management decisions, on the other hand, both employers and employees are in broad agreement, with a 50% average in terms of seeing large or very large benefits in these respects.

The avoidance of conflict is seen as a particularly positive benefit of I&C by some 85% of employers and employee representatives interviewed at company level through the web survey.

In terms of practical experiences with the directives, half of employers and employees report practical problems, with a demand for more information about the legislation from 50% of employers and 80% of employees.

In this respect, the ELLN has identified a number of areas of uncertainties in different countries in terms of: the content and scope of the legislation; employer obligations and employee rights; issues concerning employee representation, general procedures and practices; and questions with regard to enforcement arrangements. While specific issues in different countries may not appear particularly serious when viewed from an overall policy perspective, the extent and range of such uncertainties appear to contribute to the relatively poorer ratings of the directives in terms of effectiveness.

With regard to enforcement, both a majority of employers (55%) and a majority of employee representatives (56%) answering the web survey indicate that in cases of claims or disputes the enforcement measures were *not* effective. Eurofound and ELLN research confirms this perception pointing to ineffective enforcement mechanisms and non-dissuasive sanctions in many Member States.

In terms of increasing adaptability and employability, the web survey results indicate that the assessments of employees and employers are very different (49% as against 33%). The results are somewhat closer in terms of I&C improving the effectiveness of management decisions (45% against 36%) and closer again in terms of managing change (55% against 49%).

Results from specific questions put to employers in the European Company Survey 2009 indicate that employers in general have a rather positive view about the benefits of working with employee representatives in order to improve workplace performance and to manage change (0.74 and 0.80 respectively).

The **indicator analysis** of **European Company Survey** data yields mixed results with regard to the directive's effectiveness.⁴⁹ The *cooperative culture indicator* indicates a positive (0.86) relationship between employers, employee representatives and employees with most countries reasonably close to that average. On the other hand, the *employee involvement indicator* suggests that, on average, employee representatives do not feel they are really involved in policy making about matters that affect them directly at the workplace. Overall, the EU27 is effectively neutral (0.03) but the responses vary widely across countries.

In line with these results, the *strategic influence indicator* –measuring the extent to which employee representatives see themselves influencing management decisions on broader organisational issues such as human resource development or responding to

⁴⁹ Please refer to annex 10 for detailed methodological explanations and results of indicator analysis based on European Company Survey 2009 data.

structural change – indicates that employee representatives, on average, they do not see themselves as having any real strategic influence (EU27 average score: -0.01).

Finally, with an EU27 average score of 0.87, the *I&C resources indicator* suggests that employee representatives, on average, consider that they have the necessary resources to carry out their job (notably the provision of appropriate information by the employer, time-off work and specific training to carry out their duties). However, the results with regard to available I&C resources vary widely across Member States and specific types of resources.

Company case study evidence (which is already embodied in the national expert assessments) serves to highlight some specific points:

- Information and consultation cannot do much to improve human resource management within a company if managers fail to look ahead and anticipate change;
- Managers like to feel that they are in charge and generally see the workforce contributing more on workplace issues than they do on more wide-ranging issues;
- Managers see company performance and the resultant employment created as being largely determined by market conditions and production technology, except in some very people-centred service sector organisations;
- Managers and employee representatives often lack the expertise necessary to use I&C effectively, implying a need for better training on the side of management as well as employee representatives;
- Legislation does not, of itself, ensure any reduction in the number of redundancies, but the associated processes of discussion and negotiation may do so, or encourage redeployments and retraining.

Enforcement & sanctions and awareness & guidance

In the context of general concerns about the relatively poor performance of the directives in terms of their effectiveness as against their relevance, the web survey responses and the findings of the recent ELLN review report shortcomings that appear to relate, not just to the practical ways in which the legislation is used, but to the legal and administrative frameworks that surrounds its use, and the extent to which stakeholders are aware of their rights and obligations.

In order to investigate these concerns further, we have reviewed the detailed evidence provided by the national experts with respect to two specific sets of issues: the effectiveness of the enforcement arrangements in place, including the scale and appropriateness of sanctions; and the degree of awareness of stakeholders of the coverage and usage of the legislation, including the extent to which adequate guidance information is available.

Based on the **evidence provided by the national experts**, two indicators have been developed – one for enforcement and sanctions, and another for awareness and guidance - each based on a 5-point scale (as employed elsewhere in the report) with values ranging from -2 to +2.

The I&C Enforcement and Sanctions Indicator produces an EU/EEA average score of only -0.3, pointing to significant weaknesses in a majority of Member States, with I&C rights not effectively enforceable in practice through existing tools and mechanisms, and with financial sanctions that are generally inadequate as deterrents.

The I&C Awareness and Guidance Indicator suggests a somewhat better performance in these respects, but still with an average score of only 0.5, indicating unsatisfactory levels of general awareness and guidance regarding I&C rights in a large majority of countries, despite the very good performance in a third of countries covered (mainly but not exclusively 'old' Member States).

The fact that details and problems vary considerably between EU/EEA countries underlines the need for national governments to address these issues primarily in the context of their legal and administrative systems in co-operation with their social partners, but it is clear that, in a majority of cases, a great deal of detailed work needs to be undertaken by all concerned if the effectiveness of the directives is to be improved.

It can be noted here that an unsatisfactory situation regarding both enforcement *and* sanctions is reported in 7 'new' Member States compared with 3 in 'old' Member States, while the level of awareness of the legislation is reported as being low in the same number of 'old' Member States as 'new' Member States – 8 in each case.

4.1.3. Efficiency

Efficiency, as a criterion, measures the extent to the needs of employers and employees are met in the most cost-effective way in the context of the European social market economy. This is largely assessed on the basis of the balance of benefits and costs as seen by stakeholders.

The balance of benefits and costs evidence, as presented in the national expert assessments of stakeholder positions, is supported by further detailed evidence on the experiences of employers and employee representatives from the web survey.

Assessments of the sources and extent of costs for both employers and employees are also reported in the web survey, together with an assessment of the extent to which I&C may cause delays in company decision-making, as seen by employers, also reported in the 2009 ECS.

4.1.3.1. HOW DO THE BENEFITS AND COSTS GENERATED BY THE I&C DIRECTIVES RELATE FOR EMPLOYEES, EMPLOYERS, AND SOCIETY AT LARGE?

Cost-benefit assessments aim to ensure that all the indirect as well as direct consequences of economic or legal decisions or actions are taken into account, and not just those that are the most readily measurable in financial terms.

The biggest problem with cost-benefit assessments is not with the concepts, which have been developed and refined for more than a century and provide, in theory at least, much better assessments of economic and social costs and benefits that are obtained from narrow financial calculations.

The problems with cost benefit exercises have always been with the practical difficulty and high cost of assembling all the evidence, much of which will not be readily available and need to be collected or estimated from a variety of sources.

The literature review at EU and Member State level indeed revealed the general lack of quantitative research evidence on the costs and benefits of legislative interventions in the field of industrial relations; the only examples being research in Germany concerning

co-determination and works council systems⁵⁰ as well as a broad ex-ante evaluation of the most recent directive in the UK⁵¹.

In this particular assessment it was recognised it would be quite unrealistic to attempt to estimate the full economic and social costs and benefits of three labour law directives, hence the decision to focus primarily on the experiences of the stakeholders most directly concerned (and who serve in effect as proxies for wider interests in society) and to identify their preferences and assessments on the basis of structured questions within a rigorous analytical framework.

The issue of whether it was possible to assess the benefits and costs of the fundamental right to I&C based on the Charter of Fundamental rights was raised early in the enquiry, but proved not to be an obstacle to obtaining such assessments from stakeholders since the Charter does not create new rights, but only serves to guarantee those contained in the directives.

National expert assessments

The average assessment of the position of all stakeholders regarding the efficiency of the directives – essentially their subjective assessment of the balance of the benefits of the legislation compared with the costs – are rather positive (0.87) in line with the assessment of the relevance of the legislation (0.85). The lowest ratings are for Estonia, followed by Greece and Norway, and the highest for Germany, Italy and France, with the majority of other assessments being either somewhat below positive, or midway between positive and neutral.

While the overall assessment of the efficiency of the I&C legislation is reasonably high, there are, as expected, significant differences between employers and all other stakeholders – with an average assessment of only 0.32 by employers, including negative assessments by employers in the Czech Republic, Estonia, Spain, Norway, Poland and Sweden but with very positive assessment by employers in Cyprus and Italy.

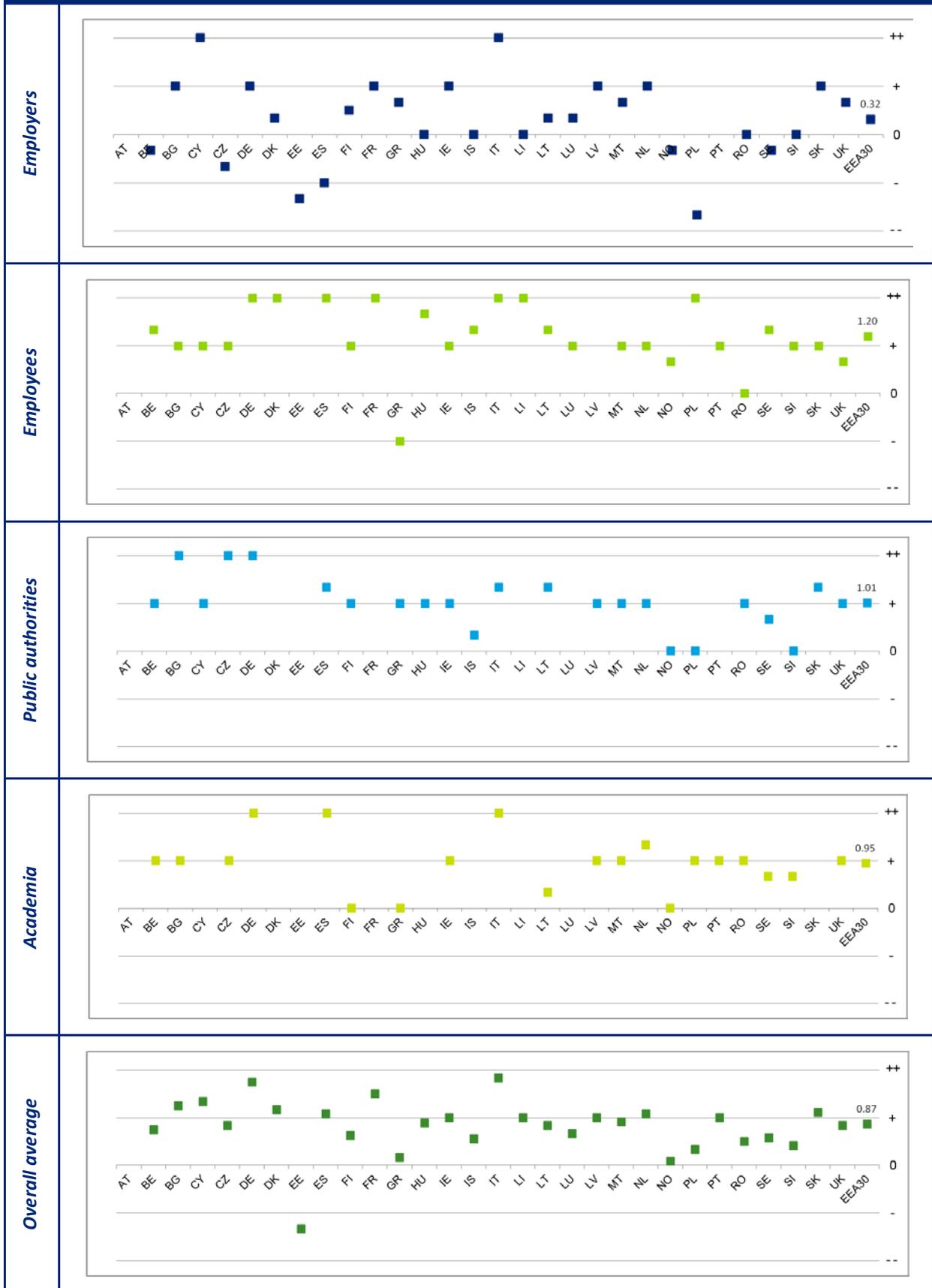
Against this, most employees are seen to be somewhere between positive and very positive, with an overall average rating of 1.20. The main employee exceptions are Greece, where there is a negative assessment, and Romania where the assessment is neutral.

Public authorities and academics have generally high assessments of the balance of benefits and costs (1.01 and 0.95 respectively) but with considerable variations between countries. Academics in Spain and Italy, along with Germany, rate the efficiency of the legislation as very positive, with public authorities in Bulgaria, the Czech Republic and Germany giving a very positive rating.

⁵⁰ Please refer to the text box “Benefits and costs of social dialogue and I&C in Germany” below.

⁵¹ Please refer to the text box “Benefits and costs of social dialogue and I&C in the United Kingdom” below.

Efficiency (averages by stakeholder groups)



The boxes below provide illustrative evidence on the benefits and costs of social dialogue and I&C in Germany and the United Kingdom and present the quantitative research undertaken in both countries.

Benefits and costs of social dialogue and I&C in Germany

As Germany has a long tradition of information and consultation, as well as co-determination rights for employees, there has been a long-running scientific debate about how best to measure the costs and benefits of these rights (Addison et al. 2004⁵²; Greifenstein/Kißler 2010⁵³; Hauser-Ditz et al. 2008⁵⁴; Jirjahn 2010⁵⁵; Niedenhoff 2004⁵⁶; Priddat 2011⁵⁷; Schäfer 2005⁵⁸) in so far as it is considered possible to do so. The answers from national experts, as well as from employee representatives and managers in the case studies in Germany, have to be seen in this light. In general, among social partners and politicians as well as academics, there is a general consensus about the relevance and efficiency of the German system of industrial relations, with the discussion focused more on the specific influence of these rights on management decisions.

The German scientific debate about costs and benefits of co-determination concentrates on aspects of company performance which might be influenced by Works Councils' rights. These studies draw on data for companies which are seen as representative for the German economy or at least for a defined cluster or sector.

Whereas some studies find positive impacts of Works Council's involvement in specific management issues and decision (e.g. a positive impact of Works Councils on firm-provided further training and thus qualification, adaptability and employability of employees; see Stegmaier 2010⁵⁹), other studies find negative impacts of Works Councils on company performance (e.g. on productivity of companies; see Müller 2009⁶⁰). At the same time some authors find a positive impact of co-determination rights on productivity of companies (see Jirjahn 2003⁶¹; Jirjahn 2010; Addison et al. 2004; Frick 2005⁶²).

Data from Addison et al. (2000)⁶³ could not, however, demonstrate a statistically relevant influence of the existence of a Works Council on the number of dismissals. As the number of redundancies is correlated with the number of overall employees of an establishment, and as the existence of Works Councils is also strongly correlated with the size of the undertakings, it could be assumed that Works Councils do not, and could not, prevent individual or collective dismissals, but they guarantee a comparatively high level of information,

⁵² Addison, Bellmann and Kölling (2004): Unions, Works Councils and Plant Closing in Germany. In: *British Journal of Industrial Relations*, Vol. 42, pp. 125-148.

⁵³ Greifenstein and Kißler (2010): *Mitbestimmung im Spiegel der Forschung. Eine Bilanz der empirischen Untersuchungen 1952-2010*, Berlin: Sigma.

⁵⁴ Hauser-Ditz, Hertwig and Pries (2008): *Betriebliche Interessenregulierung in Deutschland. Arbeitnehmervertretung zwischen demokratischer Teilhabe und ökonomischer Effizienz*, Frankfurt a.M./New York: Campus, 299 pp.

⁵⁵ Jirjahn (2010): Ökonomische Wirkungen der Mitbestimmung in Deutschland: Ein Update, *Hans-Böckler-Stiftung Arbeitspapier 186*, 71 pp.

⁵⁶ Niedenhoff (2004): *Die direkten Kosten der Anwendung des Betriebsverfassungsgesetzes*, Köln: Deutscher Instituts-Verlag.

⁵⁷ Priddat (2011): *Leistungsfähigkeit der Sozialpartnerschaft in der Sozialen Marktwirtschaft. Mitbestimmung und Kooperation*, Marburg: Metropolis Verlag.

⁵⁸ Schäfer (2005): Die WSI-Befragung von Betriebs- und Personalräten 2004/05 - Ein Überblick. In: *WSI-Mitteilungen*, Vol. 58 (6), S. 291-300.

⁵⁹ Stegmaier (2010): Effects of workplace representation on firm-provided further training in Germany, *IAB-Discussion Paper*, 14/2010.

⁶⁰ Müller (2009): The productivity effect of non-union representation, *BGPE Discussion Paper*, No. 74, Friedrich-Alexander-Universität Erlangen / Nürnberg.

⁶¹ Jirjahn (2003): Produktivitätswirkungen betrieblicher Mitbestimmung – Welchen Einfluss haben Betriebsgröße und Tarifbindung? In: *Zeitschrift für Betriebswirtschaft*, 73, Ergänzungsheft 4, pp. 63-85.

⁶² Frick (2005): Kontrolle und Performance der mitbestimmten Unternehmung. Rechtsökonomische Überlegungen und empirische Befunde. In: *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, Sonderheft 45, pp. 418-440.

⁶³ Addison, Schnabel and Wagner (2000): Die Mitbestimmungsfreie Zone aus ökonomischer Sicht. *Diskussionspapiere des Lehrstuhls VWL der Friedrich-Alexander-Universität Erlangen-Nürnberg*, No. 1, 29 pp.

consultation and co-determination in such cases.

Other authors find positive influence of Works Councils on the number of dismissals (Jirjahn 2010; Rehder 2003⁶⁴). Other issues under study are the effects of Works Councils and co-determination rights on the job satisfaction of employees, where the authors find positive effects of the Works Councils (see Stracke 2006⁶⁵; Hassel 2005⁶⁶; Müller-Jentsch 2005⁶⁷), or positive effects of Works Councils and their co-determination rights on innovation (see Handy 2003⁶⁸; Sacher/Rudolph 2002⁶⁹; Addison et al. 2005⁷⁰; Pries 2006⁷¹; Hübler 2003⁷²; Zwick 2003⁷³).

In general, the scientific position concerning the feasibility of measuring the costs and benefits of co-determination rights and Works Councils can be summarised as follows:

- First, there is no clear, and scientifically proven, direct effect of employee participation through Works Councils and their corresponding information, consultation and co-determination rights on the overall economic performance of companies (Hauser-Ditz 2008; Jirjahn 2010; Stracke 2006).
- Second, the studies point to the problematic issue of identifying direct and indirect effects of employee participation. The German national experts therefore pointed out that the findings from the three companies that had studied, together with the judgements from other experts, should only be seen as illustrative examples, with no indication as to whether they are representative for Germany or for information and consultation more generally.

Hence the experts from the DGB (trade union federation), the BDA (employer federation) and the Ministry of Employment did not feel themselves able to provide specific answers to the questions concerning the costs and benefits of the I&C-Directives. However the DGB experts do believe that the information and consultation of employees has positive financial effects for management as decisions are implemented by employees more efficiently if the decisions are transparent for them. Furthermore, information and consultation helps to balance the interests of employers and employees e.g. in the case of transfers of undertakings through social plans. For the experts of the DGB, information and consultation rights are part of the democratic principle of participation. Following this opinion, DGB points out that it is a general principle to engage employees in the establishments and companies where they work.

Experts from the Ministry of Employment mentioned problems in estimating costs and benefits of the I&C-Directives as well. First, the costs and benefits of the Directives cannot be separated from the costs and benefits of the pre-existing German legislation. Second, costs are related to the special circumstances and situations of the companies in which the information and consultation of employees takes place. Costs differ widely between different companies. Thus generally accepted statements about the costs of employee participation cannot be drawn. In general, experts from the Ministry of Employment highlighted that benefits of employee participation exist which can be assigned to the I&C-Directives on information and consultation.

⁶⁴ Rehder (2003): *Betriebliche Bündnisse für Arbeit in Deutschland. Mitbestimmung und Flächentarif im Wandel*. Frankfurt/Main: Campus

⁶⁵ Stracke (2006): *Betriebsräte und Innovation. Empirische Befunde, Beschäftigungsorientierung und mögliche Aufgabenfelder*. Arbeitspapier Nr. 3 aus dem Projekt „Transfer innovativer Unternehmensmilieus. Universität Rostock.

⁶⁶ Hassel (2005): Wie weiter mit der Mitbestimmung? In: *Berliner Republik*, 1/05, pp. 76-81.

⁶⁷ Müller-Jentsch (2005): Welche Zukunft hat die Mitbestimmung? In: *WSI-Mitteilungen*, 58(7), p. 354.

⁶⁸ Handy (2003): Wofür arbeiten wir? In: *Harvard Businessmanager*, 25(3), pp. 96-107.

⁶⁹ Sacher and Rudolph (2002): *Innovation und Interessenvertretung in kleinen und mittleren Unternehmen*. Düsseldorf: Edition der Hans-Böckler-Stiftung, 65.

⁷⁰ Addison, Schnabel and Wagner (2005): *Do works councils inhibit investment?* IZA Discussion Paper, No. 1473, Forschungsinstitut zur Zukunft der Arbeit.

⁷¹ Pries (2006): *Kostenwettbewerb oder Innovationswettbewerb? Die Zukunft von Produktion und Arbeit in der europäischen Automobilindustrie*. In: ders./Bosowski (Hrsg.), *Europäische Automobilindustrie am Scheideweg. Harte globale Herausforderungen und weiche lokale Erfolgsfaktoren*. München/Mering: Hampp Verlag, S. 7-24 Bochum.

⁷² Hübler (2003): *Zum Einfluss des Betriebsrats in mittelgroßen Unternehmen auf Investitionen, Löhne, Produktivität und Renten – empirische Befunde*. In: Goldschmidt, N. (Hrsg.): *Wunderbare Wirtschaftswelt – die New Economy und ihre Herausforderungen*. Baden-Baden: Nomos, pp. 77-94.

⁷³ Zwick (2003): *Work Councils and the productivity impact of direct employee participation*. *ZEW-Discussion Paper*, Nr. 03-47, Zentrum für europäische Wirtschaftsforschung.

All experts interviewed underline that the indicators set out in the expert questionnaire of this study are not suitable for estimating costs and benefits, and thus the efficiency of employee participation in detail.

Representatives of the Confederation of German Employers' Associations (BDA) underlined that the prevailing norms of information and consultation, according mainly to the BetrVG, are useful or very useful in all aspects of general benefits of information and consultation rights: increase trust and partnership between management and employees, adaptability and employability of employees, productivity/performance of employees and the undertaking, improve quality and acceptance of management decisions and new employment or working conditions by employees, reduce severity of industrial actions and conflicts and number of redundancies, increase support for employee mobility from national authorities in collective redundancies, protection of employees in transfers of undertakings and involvement in changes of working conditions as well as smoother transfers of undertakings.

At the same time, BDA representatives pointed to the very high annual costs of operating Works Councils, of holding I&C consultations and of delays in decisions. Some or high costs were mentioned for familiarizing, further training, putting in place of Works Councils, producing and transmitting information, confidentiality breaches and handling legal or administrative disputes.

Benefits and costs of social dialogue and I&C in the United Kingdom

The general consensus amongst employers, unions and other experts interviewed by the national expert was that the benefits of I&C in UK workplaces usually outweigh the costs.

However, there has been little attempt to quantify these costs and benefits; the only known attempt has been through the Department for Trade and Industry's regulatory impact assessment prior to the implementation of the ICE Regulations, from October 2004.⁷⁴ They list the key benefits for employees as earlier access to, and rights to be consulted on, information that could directly affect their working lives, as well as increased job security. They list the main benefits for employers as enhanced competitiveness through potentially higher productivity, lower labour turnover, and possibly a more skilled workforce through higher levels of training.

It was estimated that affected businesses would incur total one-off costs of between £24 million and £53 million between 2005 and 2012. This includes the costs of becoming familiar with the legislation, establishing that there is sufficient support amongst the workforce to adopt an I&C procedure, electing worker representatives where necessary, negotiations between employers and employees on the type of I&C arrangement to be adopted and holding a meeting to set up the I&C arrangement. They estimated additional running costs in holding I&C meetings at between £20 million and £46 million each year by 2012. In terms of the potential costs to the Exchequer, the DTI estimated extra costs for Acas in advice provision, peaking at £2,600-18,000 a year in 2009. They also factored in additional costs to the CAC, peaking at £47,000 to £1.3m a year. However, given take-up of the Regulations in the UK has generally been lower than anticipated, we would expect actual costs to fall at the lower end of these estimates.

In contrast, the DTI went on to estimate that, "benefits net of costs may be in the order of hundreds of millions over ten years." This conclusion is also reflected in other quantitative and qualitative studies. Addison and Belfield (2001)⁷⁵ used the 1998 WERS survey to demonstrate that UK companies which fostered communication channels and made efforts to enhance employee involvement had higher rates of productivity, lower rates of absence and decreased staff turnover. They also found that the presence of a Joint Consultative Committee in particular led to better management-employee relations.

Dix and Oxenbridge (2003)⁷⁶ report that, although it is often hard for companies to measure the impact of I&C on their 'bottom lines', the results of a number of interviews with Acas advisors suggest that when employees feel they have a 'voice' and are involved in decision-making, they are more satisfied and motivated. Consultation also generally leads to increased staff suggestions, better ideas for improving business

⁷⁴ UK Department of Trade and Industry (2004): *Final Regulatory Impact Assessment: Regulations to establish a general framework for informing and consulting employees in the UK*, 41 pp.

⁷⁵ Addison & Belfield (2001): Updating the Determinants of Firm Performance: Estimation using the 1998 UK Workplace Employee Relations Survey, *British Journal of Industrial Relations*, London School of Economics, vol. 39(3), pp. 341-366.

⁷⁶ Dix & Oxenbridge (2003): *Information and Consultation at Work: From challenges to good practice*, Acas Research Paper 03/03, London: Acas.

performance, higher-quality and more enduring decisions, improved employment relations, more effective change management and more productive employees – contributing to greater organisational effectiveness and efficiency.

Case study evidence also highlights a variety of business benefits of I&C. Several managers and union representatives pointed out that I&C can offer managers practical insights into the way in which policies are likely to work on the ground, and where there could be unintended consequences. For employees, benefits included improved staff morale, and greater protection and support in cases of collective redundancies or transfers of undertakings.

The question which is not addressed by any of the literature is whether employers or employees stand to gain the most from these benefits. Some literature suggests that the widespread use of PEAs in the UK may be more attractive to employers, giving them more room to set the agenda and precluding the ability of employee representatives to complain directly to the CAC if they believe an employer is failing to provide adequate I&C (Purcell and Hall, 2011).⁷⁷

However, it is also important to note that improved I&C has played an important role in mitigating the economic and social impacts of the recent recession. Acas (2009)⁷⁸ points out that the purpose of consultation is to look at ways of reducing the number of employees to be dismissed. Their experience suggests employers are increasingly receptive to thinking about creative ways to retain staff and avoid compulsory redundancies. These might include early retirement, reducing overtime and looking at agency workers, as well as considering new ideas such as short-time working and sabbaticals.

The CBI (2011)⁷⁹ and the TUC (2011)⁸⁰ also highlight the reduced rise in unemployment relative to decline in output during the recent recession. They also focus on the role of negotiated measures such as job sharing, pay freezes, reduced overtime and short-time and flexible working played in securing continued employment. The TUC provides examples of organisations where all staff have volunteered to work fewer hours in the knowledge that trading conditions may well improve in the future. In other workplaces, consultations have led to fairer ways of choosing redundancy, perhaps by improving redundancy payments to the point where there are enough volunteers (TUC 2011). Such evidence suggests that, particularly in times of economic downturn, I&C can bring important benefits for employers, employees and society at large.

Web survey results

In the web survey of employer and employee representatives, both sides were asked to assess the balance of benefits relative to their costs. In addition employers were asked to assess the scale of costs related to different activities, such as holding consultations or providing time-off and materials/facilities. Employee representatives were, likewise, asked about any costs that they incurred that were not covered by their employers.

(a) Overall benefits and costs

As with the stakeholder assessment findings, employees have a significantly more positive assessment than employers concerning the balance of benefits and costs of I&C, but the overall findings from all stakeholders are nevertheless generally positive.

In particular, over half of employers (52%) consider the benefits of I&C to be greater or much greater than costs; 22% consider them to be similar; with the remaining balance of 26% considering that the benefits are less than the costs.

For employees, nearly three-quarters (73%) see the benefits as greater, or much greater, than costs, but with nearly 16% neutral and some 11% negative.

⁷⁷ Hall, Hutchinson, Purcell, Terry and Parker (2011): Promoting Effective Consultation? Assessing the Impact of the ICE Regulations, *British Journal of Industrial Relations*, 27 pp.

⁷⁸ Acas (2009): Collective consultation on redundancies, *Acas Policy Discussion Papers*, 16 pp.

⁷⁹ Confederation of British Industry (2011): *Thinking Positive: The 21st-century employment relationship*, p. 4.

⁸⁰ Trades Union Congress (2011), *Facing Redundancy: Know Your Rights*, London: TUC.

Employee representatives	Benefits and costs of I&C	Employer representatives
37.6%	Benefits much greater than costs	15.9%
35.6%	Benefits greater than costs	36.1%
15.8%	Benefits and costs are similar	22.1%
10.9%	Benefits less than costs	26.0%
-	Not applicable / Don't know	-

(b) Specific costs for employers

Costs and benefits of social dialogue and I&C: the employer's perspective⁸¹

In assessing the net benefits of social dialogue, profit maximising firms will weigh the costs of engaging in dialogue with employee representatives against the potential benefits.

Those benefits may take the form of increased labour productivity, which can arise from social dialogue for a number of reasons.

- First, social dialogue can encourage employees to aggregate and communicate their tacit knowledge about production processes to employers, in order to assist with issues such as work organisation or cost cutting.
- Second, employee quit rates may fall where social dialogue gives effective voice to employees' concerns. Employers thus reduce the costs they face when employees quit and need to be replaced. Moreover, lengthier contracts with employees mean they are able to recoup the costs associated with long-term investments in their human capital, such as training.
- Other benefits of social dialogue may also exist, such as reputational benefits for those who can demonstrate that they deal fairly and reasonably with their employees through social dialogue. This is similar to the way employers might expect reputational benefits associated with other aspects of corporate social responsibility (CSR).

Perhaps chief among the costs of social dialogue are the transaction costs associated with the time and effort employers must put into dialogue with employee representatives. However, one would typically expect these to be lower than the costs incurred through attempts to discuss matters with each employee on an individual basis.

In the web-survey, employers were asked about the scale of their costs under the following headings (which have been ranking and presented in terms of highest to lowest cost):

- The cost of supporting employee representatives (time off and material/facilities);
- Costs of holding I&C consultations;
- Costs due to delays to decisions;
- Costs of familiarising employee representatives with the legislation (training);
- Cost of handling any legal or administrative disputes or claims;
- Costs due to breaches of confidentiality;
- Costs of notifying authorities.

Costs of supporting employee representative (time off work and materials/facilities)

The highest costs with respect to I&C are seen by employers to be in terms of providing time off for employee representatives, as well as providing facilities and material for

⁸¹ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, pp. 11ff.

them to carry out their tasks. While such costs are considered very high by less than 10% of employers, a further 40% consider them to be high compared with the 50% of employers who see them as low or negligible.

I&C costs for employers	Employer representatives	
<i>Costs of supporting employee representatives (time off work and materials/facilities)</i>		
Very high	21	9.3%
High	90	40.0%
Low or no costs	114	50.7%
Not applicable / Don't know	58	-

Costs of holding I&C consultations

The second highest cost in relation to I&C is seen by employers as being in terms of holding consultations with employee representatives. While only 5% consider these costs to be very high, a further third of employers consider these costs to be high. Over 60% of employers see the costs as low or negligible.

I&C costs for employers	Employer representatives	
<i>Costs of holding I&C consultations</i>		
Very high	11	5.2%
High	71	33.6%
Low or no costs	129	61.1%
Not applicable / Don't know	72	-

Costs due to delays to decisions

While close to two-thirds of employers (63%) report low or negligible costs due to delays in making or executing decisions, over 9% consider the costs to be very high, with a further quarter or more (27%) considering these costs to be high.

I&C costs for employers	Employer representatives	
<i>Costs due to delays to decisions</i>		
Very high	9.4%	
High	27.1%	
Low or no costs	63.5%	
Not applicable / Don't know	-	

Costs of familiarizing employees' representatives with I&C legislation (e.g. training)

Over two thirds of employers (68%) report little or no costs in terms of familiarising employees with I&C legislation, such as through training, although over a quarter (27%) report costs as high, with a further 5% reporting costs in this respect as very high.

I&C costs for employers	Employer representatives	
<i>Costs of familiarizing employees' representatives with I&C legislation (e.g. training)</i>		
Very high	4.6%	
High	27.3%	
Low or no costs	68.1%	

Not applicable / Don't know	-
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Costs of handling any legal or administrative disputes or claims related to I&C practices

With respect to handling legal or administrative disputes or claims, three quarters (75%) of employers report low or non-existent costs, with some 17% reporting high costs, and 8% reporting very high costs.

I&C costs for employers	Employer representatives
<i>Costs of handling any legal or administrative disputes or claims related to I&C practices</i>	
Very high	7.6%
High	17.4%
Low or no costs	75.0%
Not applicable / Don't know	-

Costs due to breaches of confidentiality

Less than 5% of employers report very high costs due to breaches of confidentiality in the I&C process, with a further 11% reporting high costs, leaving nearly 85% reporting only low or non-existent costs

I&C costs for employers	Employer representatives
<i>Costs due to breaches of confidentiality</i>	
Very high	4.8%
High	11.4%
Low or no costs	83.7%
Not applicable / Don't know	-

Costs of notifying authorities

Costs associated with notifying authorities in relation to the I&C legislation are reported as low or non-existent by nearly 85% of employers, but with the balance of 15% reporting high or very high costs.

I&C costs for employers	Employer representatives
<i>Costs of notifying authorities (if any)</i>	
Very high	5.3%
High	10.5%
Low or no costs	84.2%
Not applicable / Don't know	-

Overall assessment of employer costs

In terms of relative importance, the cost of providing time off work and providing facilities for employee representatives are assessed most highly by employers, followed by the cost of holding consultations, the costs due to delays, and the cost of familiarising employees with the legislation.

The cost of handling legal or administrative disputes are reported as somewhat less, with significantly lower costs reported concerning notifications to authorities, or breaches of confidentiality in the I&C process.

(c) Specific costs for employees

Costs and benefits of social dialogue and I&C: the employee’s perspective⁸²

The economic cost-benefit framework can also be applied to the choices employees make in deciding whether or not to invest in social dialogue and which form of it to adopt.

In a workplace setting, employees may benefit from social dialogue if it offers opportunities to negotiate with the employer over terms and conditions of employment. The best example might be collective bargaining for higher wages. Other possible benefits include better safety, due process procedures or shorter hours.

The costs for employees might include the disapproval of an employer intent on avoiding social dialogue – particularly if it entails engaging with a third party such as a trades union. Other issues might include the time and effort employees have to devote to the process of communication with the employer through representatives.

The incentives to engage in social dialogue will be higher where there are clear private returns to employees. However, a problem may arise regarding the public benefits of social dialogue, that is to say, benefits that accrue to all workers, irrespective of their personal investments in social dialogue. This creates a problem of collective action whereby it may be rational for employees to benefit from the efforts of others. If all employees make this decision, social dialogue may not emerge because for each individual the costs of pursuing social dialogue outweigh the costs. This incentive problem can provide the rationale for state intervention. Another solution is the closed shop, wherein employees in a unionised environment must either join the union or pay an agency fee to the union in recognition of the fact that collectively agreed terms and conditions apply to all at the workplace.

Many of the costs of I&C are met largely or wholly by employers, in line with legislative requirements or collective agreements. However, not all the costs of employee representatives are met in this way, and the web survey therefore addressed questions to employees in order to obtain further information in this respect.

Proportion of those reporting costs that are not met by employers

Employee representatives were split virtually 50:50 between those who reported that their work as employee representatives involved costs regarding I&C that were not covered by the employer, and those who reported that they were covered.

Costs for employee representatives that are not covered by the employer

Employee representatives	Does your work as an employee representative involve costs regarding I&C that are not covered by the employer (time spent producing documents, organising meetings, consulting other representatives or agencies etc.)?	
177	49.9%	Yes
178	50.1%	No
48	-	Not applicable / Don't know

Scale of costs for employee representatives

⁸² Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, pp. 12ff.

Very few employee representatives report their costs as being very high (less than 3%) although a quarter report costs as high,. Costs are most commonly reported as modest (60% of cases) with some 13 % of employee representatives reporting no costs at all.

Employee representatives		In so far as there are costs for you as an employee representatives, do you see these as ...?
9	2.8%	Very high
78	24.6%	High
188	59.3%	Modest
42	13.2%	None
69	-	Not applicable / Don't know

Details concerning costs for employee representatives not met by employers

Employee representatives were then asked more specific questions concerning the reasons for such costs:

- Cost of training and advising employee representatives;
- Cost of handling legal or administrative disputes or claims;
- Cost of working with other employee representatives;
- Cost of familiarising with I&C legislation;
- Cost of producing and transmitting information to employee representatives.

Those detailed costs are presented in descending order of importance, as reported by the employee representatives.

Cost of training/advising employee representatives

In terms of the cost of training and advising employee representatives, these are assessed as high or very high by over 40% of respondents, but low or non-existent by nearly 60%.

Employee representatives		I&C costs for employee representatives (only costs not covered by the employer)
<i>Costs of training/advising employee representatives</i>		
21	7.3%	Very high
98	34.0%	High
169	58.7%	Low or no costs
100	-	Not applicable / Don't know

Costs of handling legal or administrative disputes or claims related to I&C practices

In terms of the costs of handling legal or administrative disputes or claims, these are assessed as high or very high by over 45% of respondents.

Employee representatives		I&C costs for employee representatives (only costs not covered by the employer)
<i>Costs of handling legal or administrative disputes or claims related to I&C practices</i>		
40	15.7%	Very high
80	31.5%	High
134	52.8%	Low or no costs
135	-	Not applicable / Don't know

Costs of working with other employee representatives

In terms of working with other employee representatives, these costs are assessed as high or very high by two-thirds of respondents (32%).

Employee representatives		I&C costs for employee representatives (only costs not covered by the employer)
<i>Costs of working with other employee representatives</i>		
11	3.6%	Very high
87	28.8%	High
204	67.5%	Low or no costs
88	-	Not applicable / Don't know

Costs of familiarizing yourself with the I&C legislation

In terms of the cost of familiarising themselves concerning I&C legislation, these are seen as high or very high by nearly a third (32%) of respondents.

Employee representatives		I&C costs for employee representatives (only costs not covered by the employer)
<i>Costs of familiarizing yourself with the I&C legislation</i>		
19	6.5%	Very high
74	25.3%	High
200	68.3%	Low or no costs
98	-	Not applicable / Don't know

Costs of producing and transmitting information to employee representatives

In terms of the cost of producing and transmitting information, the costs are assessed as high or very high by some 29% of respondents

Employee representatives		I&C costs for employee representatives (only costs not covered by the employer)
<i>Costs of producing and transmitting information to employee representatives</i>		
11	3.8%	Very high
73	24.9%	High
209	71.3%	Low or no costs
96	-	Not applicable / Don't know

Overall findings concerning employee representative costs

In 60-70% of cases employee representatives report no costs to themselves of fulfilling their responsibilities in relation to I&C with their companies, with only around 5% reporting very high costs in terms of most activities. In terms of handling legal or administrative disputes or claims relating to I&C, however, there is a significant shift with some 16% of employee representatives reporting the costs as very high.

European Company Survey

As noted in relation to the evidence obtained from the European Company Survey 2009 with respect to the effectiveness of I&C legislation⁸³, a recent report from Eurofound specifically focuses on social dialogue in the workplace⁸⁴.

That research report does not directly address the issue of I&C legislation, but does make some observations about measuring the costs and benefits of social dialogue more generally. It notes, rather cautiously, that these costs and benefits may be viewed differently by various parties, and that 'it is difficult to determine in advance what is socially optimal'. It refers to the contribution of research in this area, notably on works councils, and notably conducted in Germany, but its assessment of that work ends with a double negative – that there is no evidence that works councils damage firm productivity or growth, or that costs are exorbitant – rather than a positive statement one way or the other.

The methodology used and the data assembled in this report does not claim to provide an answer in terms of what is socially optimal – a challenge that has largely eluded researchers in economic and social policy generally. Rather it present, in some detail, the subjective preferences of the parties most immediately concerned, namely employers and their employee representatives, on the balance of costs and benefits as far as they see them, as well as the views of public authorities and academics more generally. In this respect it could be argued that it may actually be easier for stakeholders to form a clearer judgement in relation to a question that contrasts and balances two dimensions – benefits and costs – than it is to answer questions such as 'does I&C lead to greater trust?'

Analysis of the ECS management survey data on efficiency

In addition to the questions in the ECS 2009 survey regarding the structure of company level social dialogue arrangements, employers were also asked to respond to the following statement: ***'The involvement of the employee representation often leads to considerable delays in important management decisions'***.

Given that the ECS survey uses a five-point scale assessment, as indicated earlier, it is possible it is possible to assess the average employer response in the individual countries, and for EU27 as a whole, and to add it to the data assembled above in order to assess the efficiency of I&C .

The table below indicates that the overall EU27 response of employers is midway between neutral and negative (-0.47⁸⁵) in response to this question (the response is given as negative because the statement was an assertion, not a question) meaning that, on average, employers disagree somewhat with the statement the employee representative involvement often leads to considerable delays in making important management decision, with most countries clustered near the midway point between negative and neutral.

⁸³ See section 4.1.2.1 above.

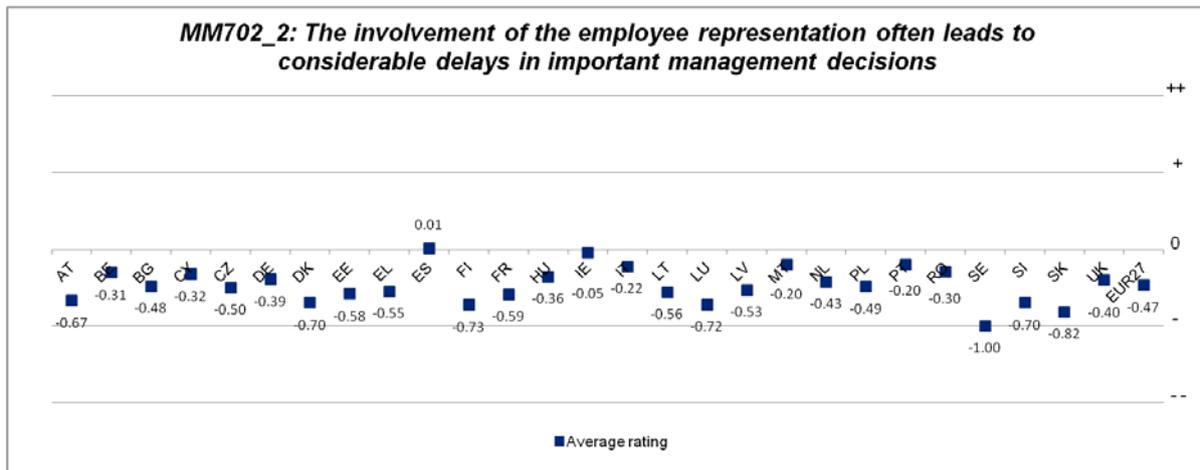
⁸⁴ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, 86 pp.

⁸⁵ The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under MM702 of the management questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The only real outliers in this respect are employers in Spain and Ireland who are, on average, neutral (in other words, as many employers disagree as agree) and those in Sweden who are negative (meaning that, on average, they disagree quite strongly with the statement).

In interpreting the response to the statement it should be noted that the conditions specified are rather strong – *considerable* delays and *important* management decisions. In this respect, however, it can be noted that, in the web survey responses, some two thirds of employers did not see delays to decisions as a result of I&C, with less than 10% judging costs in this respect to be very high.



Case study examples

This section contains selected illustrative company case study examples providing insights with regard to the efficiency of I&C.

Company case study: Liechtenstein – Hilti AG

The Hilti company develops, manufactures, and markets leading-edge technology products for the global construction industry. Founded in 1941, the Hilti Group evolved from a small family company to a global player with more than 20,000 employees and a presence in more than 120 countries. With about 1,900 employees in Liechtenstein it is the country's largest employer.

The manager and employee representatives both agree that the benefits of I&C strongly outweigh the costs. While the costs of I&C are evaluated as relatively low, benefits are identified notably with regard to the following: a common feeling of responsibility for the success of the company; increased trust and partnership between management and employee representatives; improved quality, frequency and timeliness of I&C; better management of change; open and constructive resolution of conflict; greater acceptance of management decisions by employees; and fewer redundancies.

The manager considers that conflict resolution without I&C would be much more expensive, and underlines the central role of I&C for the creation and maintenance of a strong corporate culture.

Company case study: Germany – Food and energy processes provider

This German food and energy provider has worldwide sites, employing around 8500 employees in 46 German plants.

Here both management and employee representatives estimate the benefits of information and consultation rights, linked to an increase of trust and partnership between management and employees, as very large. The benefits linked to an improved acceptance of management decisions and new employment and working conditions as well as benefits linked to a reduction of strikes and conflicts are also estimated as large.

However, neither side see benefits linked to improved management decisions, and only some benefit linked to a better protection of employees in transfers of undertaking. Concerning the benefits of information and consultation rights linked to adaptability, employability, and productivity of employees (as well as a reduced number of redundancies, and a smoother transfer of undertaking) the benefits are rated lower by management than by the employee representatives.

Both management and employee representatives estimate the annual costs for information and consultation rights for the company as very low or non-existent. Whereas employee representatives consider that the benefits of information and consultation significantly outweigh the costs, management felt unable to relate the benefits of information and consultations to their costs.

Company case study: United Kingdom – Insurance company

In the case of a large insurance company employing around 15,000 staff in the UK, which has been involved in a number of rounds of collective redundancies, information and consultation is recognised as beneficial for the employer, on the grounds that the more the employees understand, the more likely they are to accept change and difficult decisions. Further, it provides a good check and balance for the employers: if the employer unintentionally makes a mistake, this can be identified and rectified.

In the case of these arrangements, the company found it difficult to quantify costs and benefits. However, a staff engagement survey that was run recently in the company showed that employee engagement was relatively high, despite a relatively high level of restructuring.

In terms of costs, the management view was that it would be cheaper in the short term not to consult at all, but that having information and consultation arrangements in place had actually saved the company a great deal of money, as it enabled it to take the decision to quickly close down loss-making areas of the business.

Company case study: France – Cosmetics company

In this French cosmetics company, I&C meetings take up about two hours per month with no significant costs seen to be involved given that this type of communication is seen as helping to maintain social dialogue and keep employees aware of what is going on.

However the company considered that the cost would be high and unaffordable if employees opted to involve outside experts (a common practice in France). To avoid this, the management presents all the accounting documents to, and answers all questions raised by, employee representatives.

4.1.3.2. SUMMARY OF THE EVIDENCE ON EFFICIENCY

In terms of efficiency, the national expert assessments, the web survey results, the ECS results and the case study examples demonstrate a generally positive support for I&C in terms of the **overall balance of benefits and costs**.

In the EU27 and the EEA countries, the national expert assessments regarding efficiency are equal to those regarding the relevance of the directives in meeting employer and employee needs (0.87 against 0.85). In this respect they are significantly higher than the assessment in terms of the effectiveness of the legislation (0.63). In other words, the methods used to achieve the objectives of the legislation are rated more highly than the results actually being achieved which suggests that the efficiency – benefits against costs – of I&C would rise still further if effectiveness were increased.

This positive national expert assessment is supported by the Web survey evidence showing that over 50% of employers consider that the benefits of the directives exceed the costs, with the balance of employers divided between those who consider the costs and benefits to be similar, and those who consider the costs to exceed the benefits.

This evidence does not imply that there are no costs associated with information and consultation – for employer or employees. Rather it indicates that, on balance, those stakeholders who are directly concerned with the relationships at work consider that any such costs are more than compensated for by the overall benefits.

In this respect, the most significant **costs for employers** are seen to be in terms of giving time off work – with costs indicated as high by nearly 40% of employers, and very high by a further 10%. On the other hand, the costs of notifying authorities, and those due to breaches of confidentiality, are low – 10% high, 5% very high.

However, costs due to delayed decisions and consulting with employees and their representatives are seen as high by around 25-30% of employers, with a further 5-10% of rating them as very high.

In terms of the **costs for employees**, the heaviest costs not met by the employers are seen to be in relation to the costs of handling legal or administrative disputes or claims related to I&C practice, followed by the costs of training and advising employee representatives, which were considered high or very high by over 40% of respondents.

Costs in terms of familiarising themselves with I&C legislation, working with other employee representatives, producing and transmitting information to employee representatives were seen as somewhat less: high or very high by around 30% of respondents.

4.1.4. Coherence

Coherence is assessed in terms of the extent to which the needs of employees, employers and the EU social market economy are met in a comprehensive and compatible way through the three EU I&C directives.

In this respect it is recognised, however, that the directives serve somewhat different purposes, in that the directives on collective dismissals and transfers of undertaking come into play in particular situations, while the most recent directive is intended to promote I&C more generally at company level, while noting that part of the justification for the latest directive was that its effective usage could help contribute to a more effective implementation of the two earlier directives.

As such, there can be no realistic expectation that the three pieces of legislation will fit or match exactly, even in principle, and that their actual operations will depend in any case on the way they are incorporated into national legislation or collective agreements, and the differing industrial relations practices and traditions between and within countries.

In other words, the assessment of coherence is intended to be strategic, in line with the other assessment criteria used in this report, with a focus on identifying to what extent any worthwhile changes might be considered necessary from an overall EU/EEA perspective, based on the practical experiences of stakeholders in the different countries covered. It is not a microscopic investigation of all the detailed issues that arise and merit attention in individual countries.

The main emphasis in this part of the investigation has therefore been on documenting the experiences and subjective assessments of the stakeholders at national level – employers, employees, public authorities and academics - in order to be able to provide judgements on major issues, such as whether the legislation should be consolidated or adapted in any particular ways, whether there are uncertainties or other weaknesses arising from the legislation, based on the experiences of stakeholders, with a view to suggesting any appropriate action that might be taken at national or at EU/EEA level.

4.1.4.1. ARE THE DIRECTIVES COHERENT AND MUTUALLY REINFORCING?

National expert assessments

It is very notable, from the stakeholder assessments made by the national experts, that all stakeholders have a positive opinion overall concerning the coherence of the existing directives, although employees seem less convinced (0.96) than employers (1.04) and public authorities (1.12), and more in line with academics (1.0).

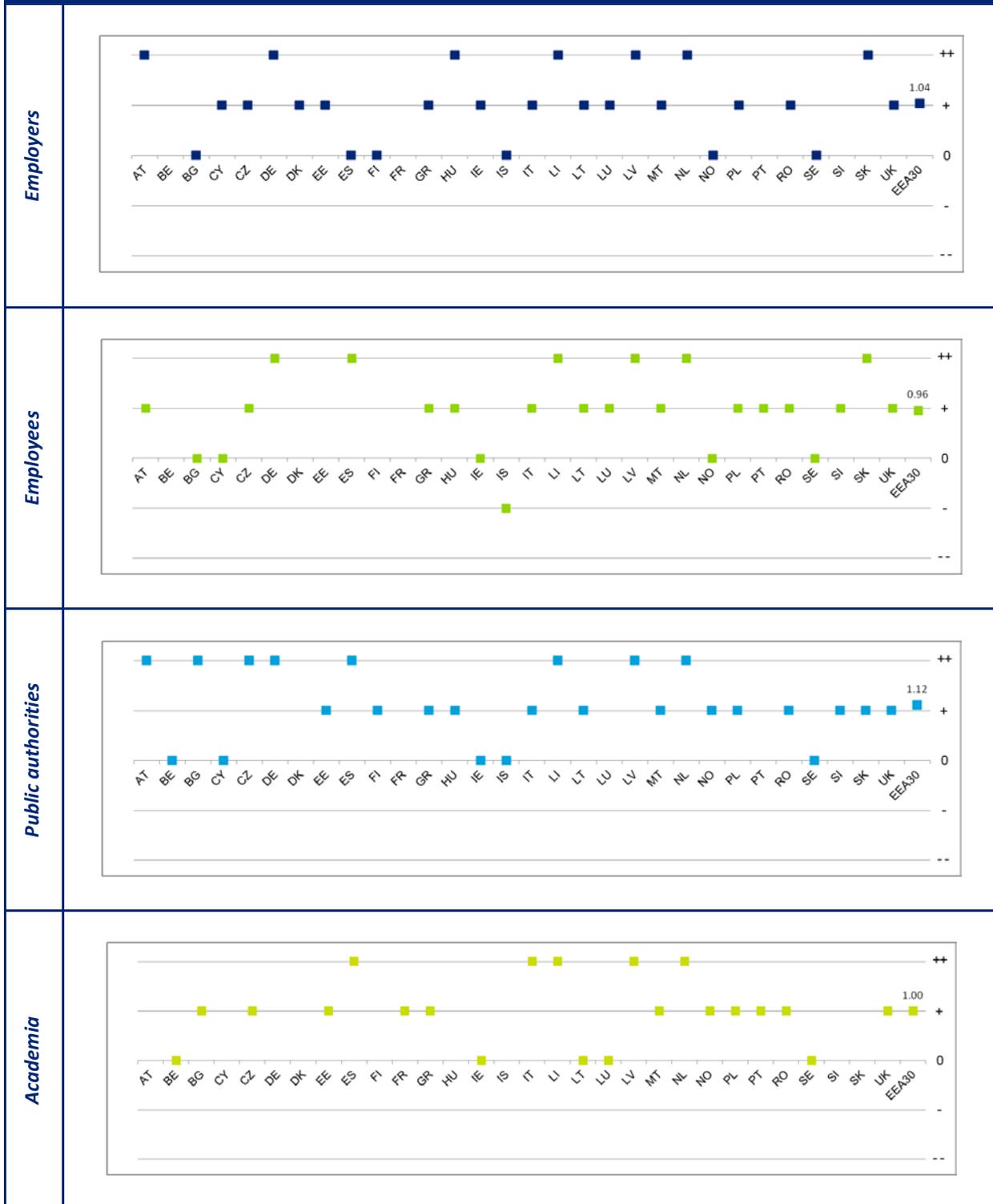
In Germany the main stakeholders all evaluate the transposed directives' coherence as very positive, as they do in Lithuania, Latvia and the Netherlands, while employers in Austria are more convinced than employees (very positive against positive).

There appears to be some uncertainty about coherence in the Nordic countries, possibly given the role played by collective bargaining in relation to I&C and pre-existing national legislation, with employers and employees from Denmark, Finland, Iceland, Norway and Sweden being largely seen as neutral.

Some of the most positive responses from public authorities are seen in countries like Bulgaria, the Czech Republic, Lithuania and Latvia where the legislation has not had much time to become fully effective, while public authorities in Belgium, Cyprus, Ireland,

Iceland and Sweden are seen as neutral on this question – in the last two cases, in line with views of other stakeholders.

Are the three I&C directives coherent and mutually reinforcing?



Web survey

The employer and employee representatives who responded to the web survey had been asked to assess the extent to which they saw gaps, uncertainties and inconsistencies in I&C coverage with, in general, 40-45% of employers and 50-55% of employees seeing serious or occasional problems (although only some 22% of employers noted serious or occasional problems in terms of gaps in the coverage of the legislation).

The same representatives were then asked about possible measures to address these problems. Their responses are indicated below.

Additional legislation

In terms of additional legislation there is a marked contrast between the employee and the employer representative responses. While 40% of those on the employee side favoured additional legislation, only 4% of employer representatives shared this view, although a further 15% did consider this as a possibility.

Employee representatives		Measures to overcome gaps, uncertainties and inconsistencies in I&C coverage		Employer representatives	
<i>Additional legislation</i>					
145	40.1%	Yes	9	4.0%	
101	27.9%	No	181	81.2%	
116	32.0%	Possibly	33	14.8%	
97	-	Not applicable / Don't know	87	-	

Rationalisation of existing legislation

In terms of the 'rationalisation' of the legislation (which we have considered to be equivalent to the consolidation of the legislation) however, the views are much closer, with over 60% of employee representatives and approaching 50% of employer representatives in favour. Moreover, a further 25% of both employee and employer representatives considered that the gaps, uncertainties and inconsistencies might possibly justify such a 'rationalisation'.

Employee representatives		Measures to overcome gaps, uncertainties and inconsistencies in I&C coverage		Employer representatives	
<i>A rationalisation of existing legislation</i>					
229	61.6%	Yes	107	47.6%	
50	13.4%	No	65	28.9%	
93	25.0%	Possibly	53	23.6%	
87	-	Not applicable / Don't know	85	-	

More information about the legislation

When asked if the types of problems referred to above might justify more information being available about the legislation, over 80% of employee representatives and nearly 50% of employer representatives responded to this positively.

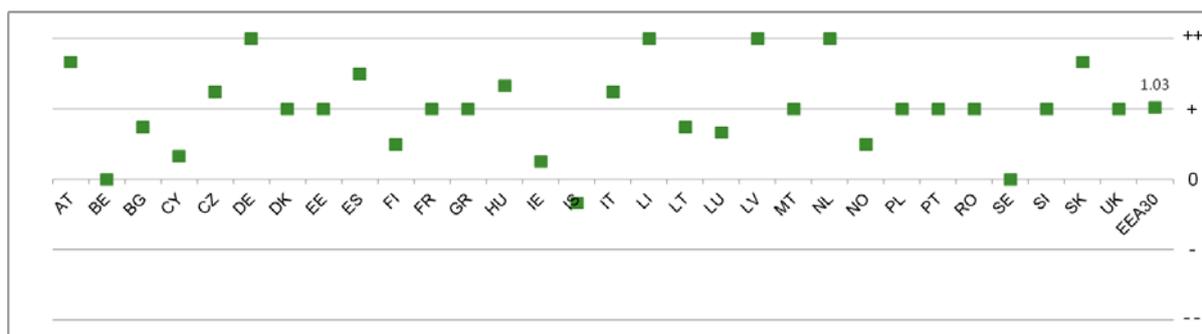
Employee representatives		Measures to overcome gaps, uncertainties and inconsistencies in I&C coverage		Employer representatives	
<i>More information about the legislation</i>					
327	82.0%	Yes	122	49.6%	
25	6.3%	No	64	26.0%	
47	11.8%	Possibly	60	24.4%	
60	-	Not applicable / Don't know	64	-	

This call for more information on the legislation is consistent with the evidence of low levels of general awareness of I&C rights and obligations and the absence of appropriate guidance material in some countries.

4.1.4.2. SUMMARY OF EVIDENCE ON COHERENCE

The average assessment of all 'high level' national stakeholders regarding the coherence of the three Directives is positive (1.03). All share the generally positive opinion overall concerning the coherence of the existing directives, although academics seem slightly less convinced (1.00) and public authorities rather more convinced (1.12) than employers (1.04) and employee representatives (0.96).

Average of all 'coherence' evaluations by all stakeholders



As indicated above, in Germany, Lithuania, Latvia and the Netherlands the overall assessment of all stakeholders is very positive. Only in Iceland is the assessment slightly negative, but with stakeholders in both Belgium and Sweden seen as neutral.

In terms of the overall coherence of the legislation, therefore, the assessment of national level stakeholders is high and reassuring, although with some ambiguity as to whether it is EU I&C legislation, or I&C as such, that is being assessed, especially in countries with long-standing legislative provisions or collective agreements and where the EU legislation may not have induced significant changes.

However the views reported at company level through the web survey appear much less positive, with 45% of employers and 55% of employees reporting practical problems, and with a demand for more information about the legislation from a surprising 50% of employers, as well as 80% of employees.

In this respect, detailed issues concerning the transposed legislation (notably concerning coverage, thresholds, definitions or implementation) in individual countries are regularly reported upon by the European Labour Law Network (ELLN), which has recently reported that the financial and economic crisis has exposed a number of underlying problems that were perhaps less visible in less troubled times and has made a number of suggestions for addressing or overcome specific national issues.

Given that the directives are considered coherent by 'high level' stakeholders in virtually all countries, they are not reported as seeing a need for, or benefits from, a consolidation of existing legislation, not least because EU legislation is generally integrated in appropriate (but not always the same) parts of national legislation.

However, the main stakeholders at company level seem much less satisfied by present arrangements, with some 48% of employers and over 60% of employee representatives expressing a positive view in support of a rationalisation of existing legislation, although with very different views concerning the need for additional legislation, with 40% of

employees expressing strong support in the company level web survey, while employer support is almost wholly lacking (just 4%).

The differences in assessments from different sources are very striking but may need some interpretation in that, in the web survey, 80% of employees, and a surprising 50% of employers, expressed a strong request for more information about the existing legislation, although this may not be surprising if the Eurofound report on the first five years of the general directive 2002/14/EC is correct in its assessment that there has been little by way of government or social partner activity to encourage a more proactive approach to I&C, and the evidence concerning the uneven availability of accessible information about collective redundancies as reported through the Eurofound website.

The overall impression from the above evidence concerning the apparent widespread unfamiliarity with the exact requirements of the current legislation at company level suggests, however, that the priority need is to tackle the information deficit before proceeding to contemplate any legislative action.

4.2. Assessments of the individual Directives

This section presents findings related to the effects of the individual I&C directives covered by this study. This includes some company-level illustrative experiences with collective dismissals and transfers of undertakings as reported by the national experts.

4.2.1. Directive 98/59/EC

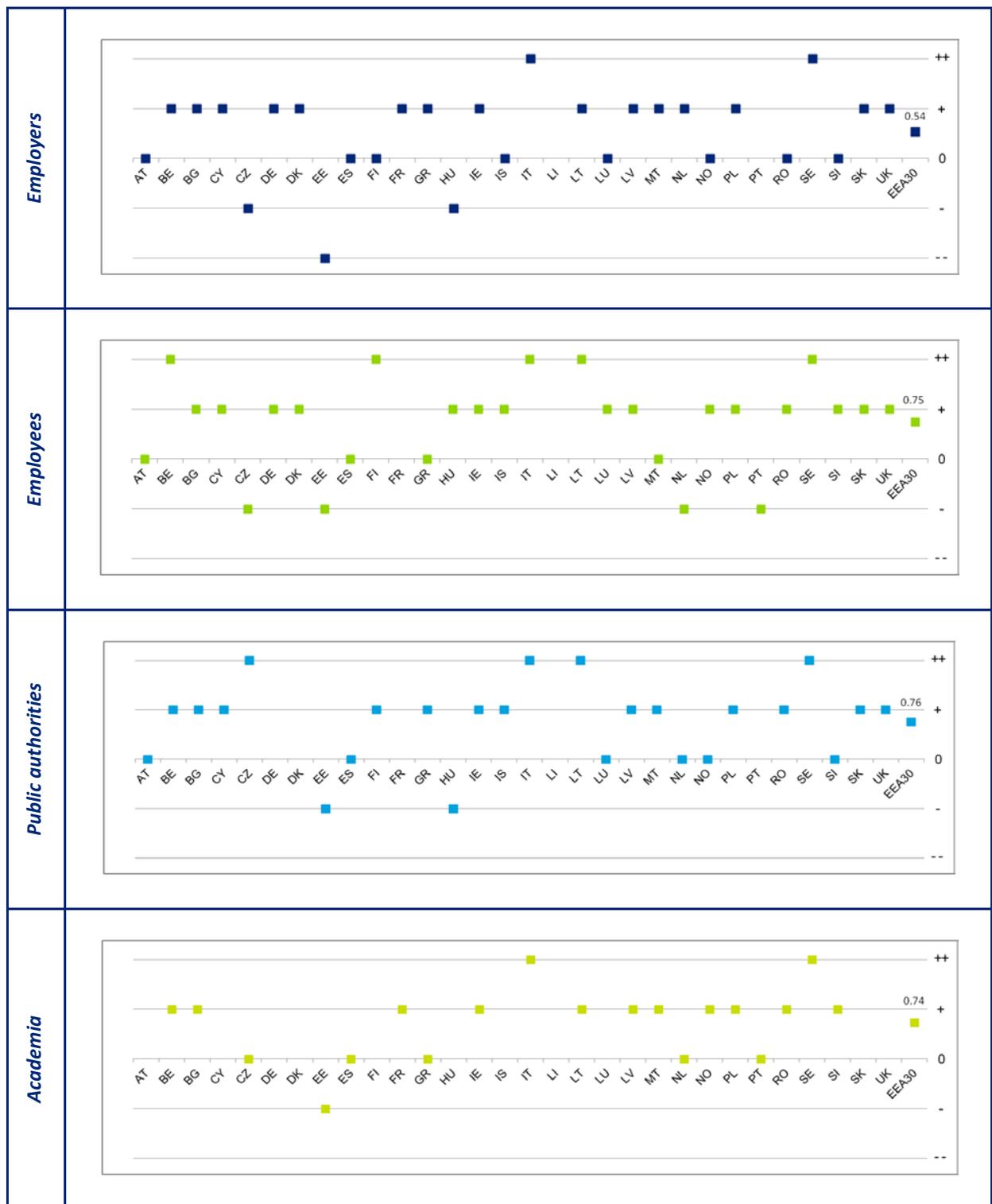
4.2.1.1. HAS DIRECTIVE 98/59/EC AFFORDED GREATER PROTECTION COLLECTIVE REDUNDANCIES?

This directive is the longest standing of all the three considered in this study, having been first introduced in the 1970s, but there is a strong divergence of opinion between employers and all other stakeholders. Employees, public authorities and academics assess the legislation as being closer to positive than neutral (0.75). For employers the assessment of the impact of this directive is slightly more positive than it is for the three directives together - being mid-way between neutral and positive (0.54) compared with the assessment of all three directives (0.46) – but is still significantly lower than for other stakeholders.

In terms of different countries, public authorities in all are generally positive but, among the new EU Member States, there are some differences of view, with authorities in the Czech Republic and Lithuania being reported as very positive, as against Estonia and Hungary where the assessments are negative.

Two countries that diverge from the general pattern of assessments are Italy and Sweden where all stakeholders, including employers, are assessed as being very positive about the directive.

Has directive 98/59/EC afforded greater protection to workers in the event of collective redundancies?



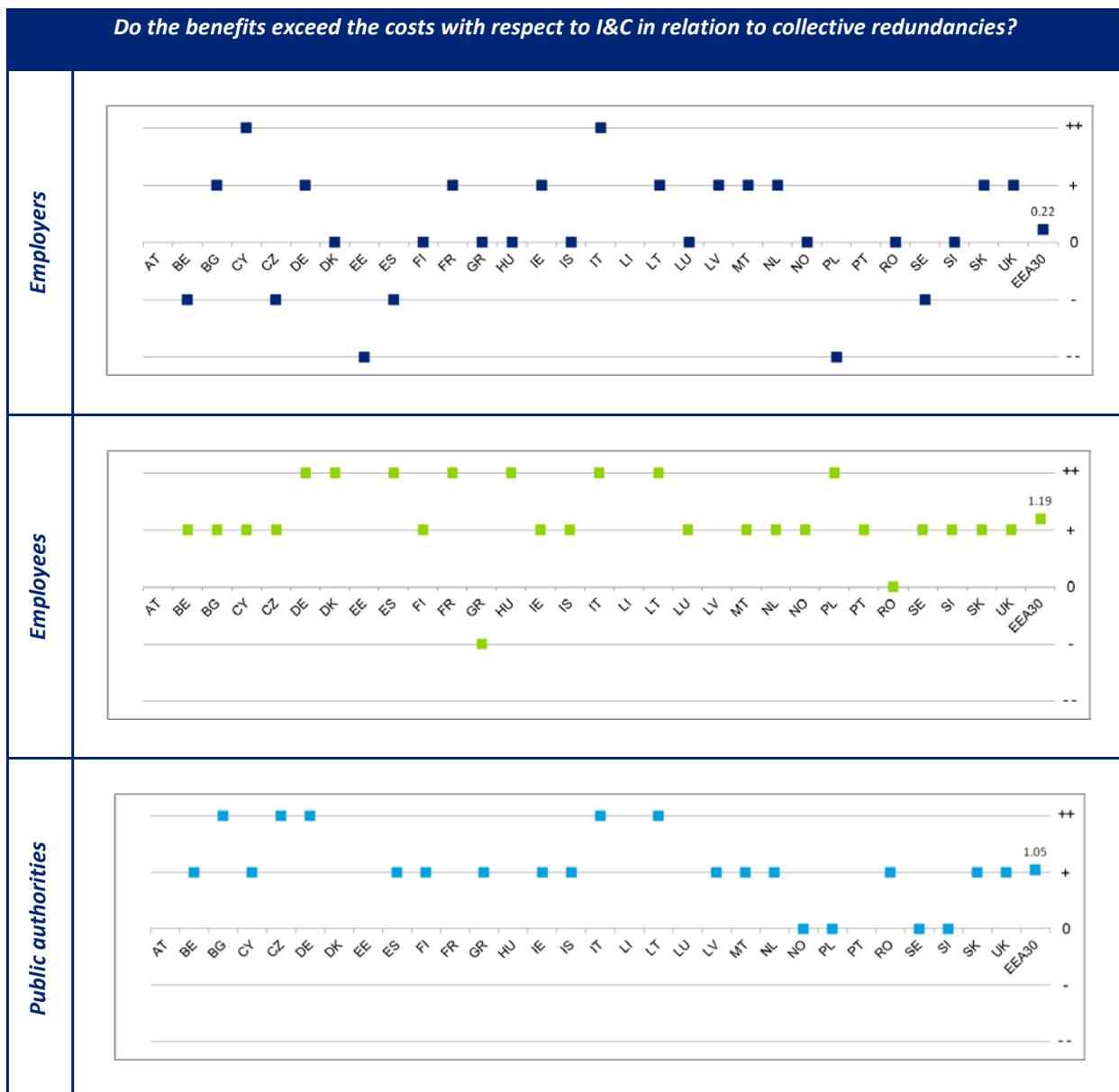
4.2.1.2. DO THE BENEFITS EXCEED THE COSTS WITH RESPECT TO COLLECTIVE REDUNDANCIES?

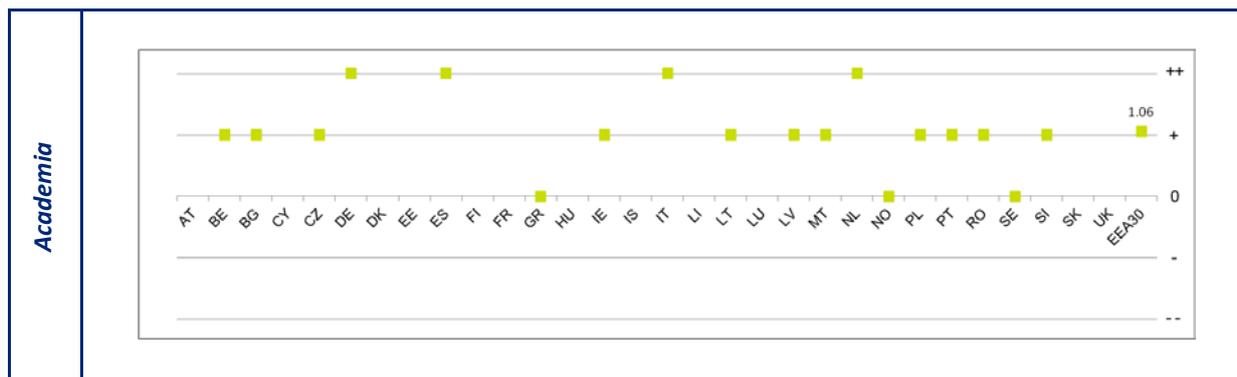
Employee responses to this question are positive, with very positive assessments in larger Member States such as Germany, Spain, Italy, France, Hungary and Poland. Most of the remaining countries are assessed as positive although, again, the assessment of Greek employee representatives is negative, and that of Romanian employee representatives only neutral.

On the other hand, employers record their lowest assessment for this question – above neutral but not by much (0.22) - although opinions differ quite widely. Employers in Cyprus and Italy are reported as very positive while those in Belgium, the Czech Republic, Spain and Sweden are negative, and those in Estonia and Poland very negative.

The assessments of employees are supported, however, by those of public authorities (1.05) and academics (1.06) where, in both cases, the dominant assessment is positive with neutral and very positive assessments off-setting one another.

In Italy all stakeholders are reported as very positive, while in Germany all stakeholders are assessed as very positive with the exception of employers who are assessed as positive. In the United Kingdom and Ireland, employers, employees and public authorities are all reported as having a positive assessment.





4.2.1.3. SPECIFIC ISSUES RELATING TO THE NATIONAL-LEVEL LEGISLATION TRANSPOSING DIRECTIVE 98/59/EC

The ELLN 2010 thematic report on European labour law in time of crisis, restructuring and transition⁸⁶ addresses a number of issues relating to the national-level legislation transposing Directive 98/59/EC that were already recognised, or which had been revealed by the current crisis. The main issues are discussed below; they include:

- Avoidance of the provisions;
- Uncertainty about key provisions;
- Problems with application in national systems;
- Problems in relation to the temporary agency work directive;
- Problems relating to consultation period.

The detailed country-level evidence is presented in Annex 11.

Avoidance of provisions

Some employers are seeking to avoid falling within the thresholds by staggering the redundancies, so-called dissolution agreements are being used by others to avoid terminations as such, and there is some general disregard of the legislation in countries where the sanctions are ineffective.

Uncertainty about key provisions

There are uncertainties concerning the sequence of events concerning consultations, notably as to when employees and public authorities respectively should be consulted, especially in cases concerning groups of companies.

Problems with applications in national systems

There are uncertainties in some countries concerning the specific legal consequences for companies who fail to respect different the rules, there is the more basic problem of how to establish a dialogue about redundancies in countries where such traditions do not exist, public authorities may lack the necessary skills and knowledge, and there may be uncertainty about the legal position in countries where there are job security agreements.

Problems in relation to the temporary agency work directive

⁸⁶ ELLN (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, 51 pp.

The position of agency workers is not clear overall: they are excluded from the coverage of the directive in some countries, but explicitly included in others.

Problems relating to consultation period

Very long consultation periods might seem to serve employee interests, but they can limit their possibility of finding alternative employment in practice.

4.2.2. Directive 2001/23/EC

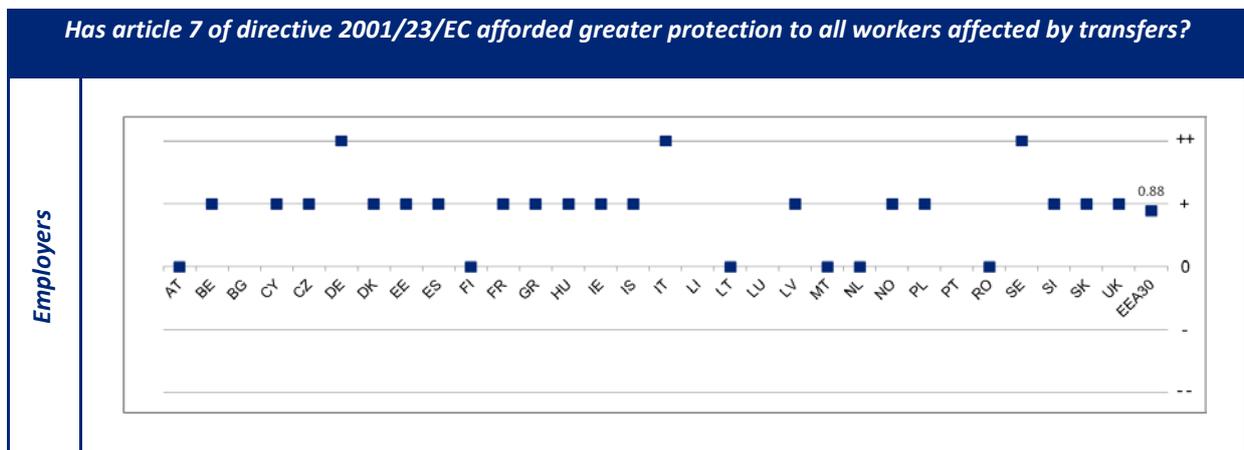
4.2.2.1. HAS ARTICLE 7 OF 2001/23/EC AFFORDED GREATER PROTECTION IN CASES OF TRANSFERS?

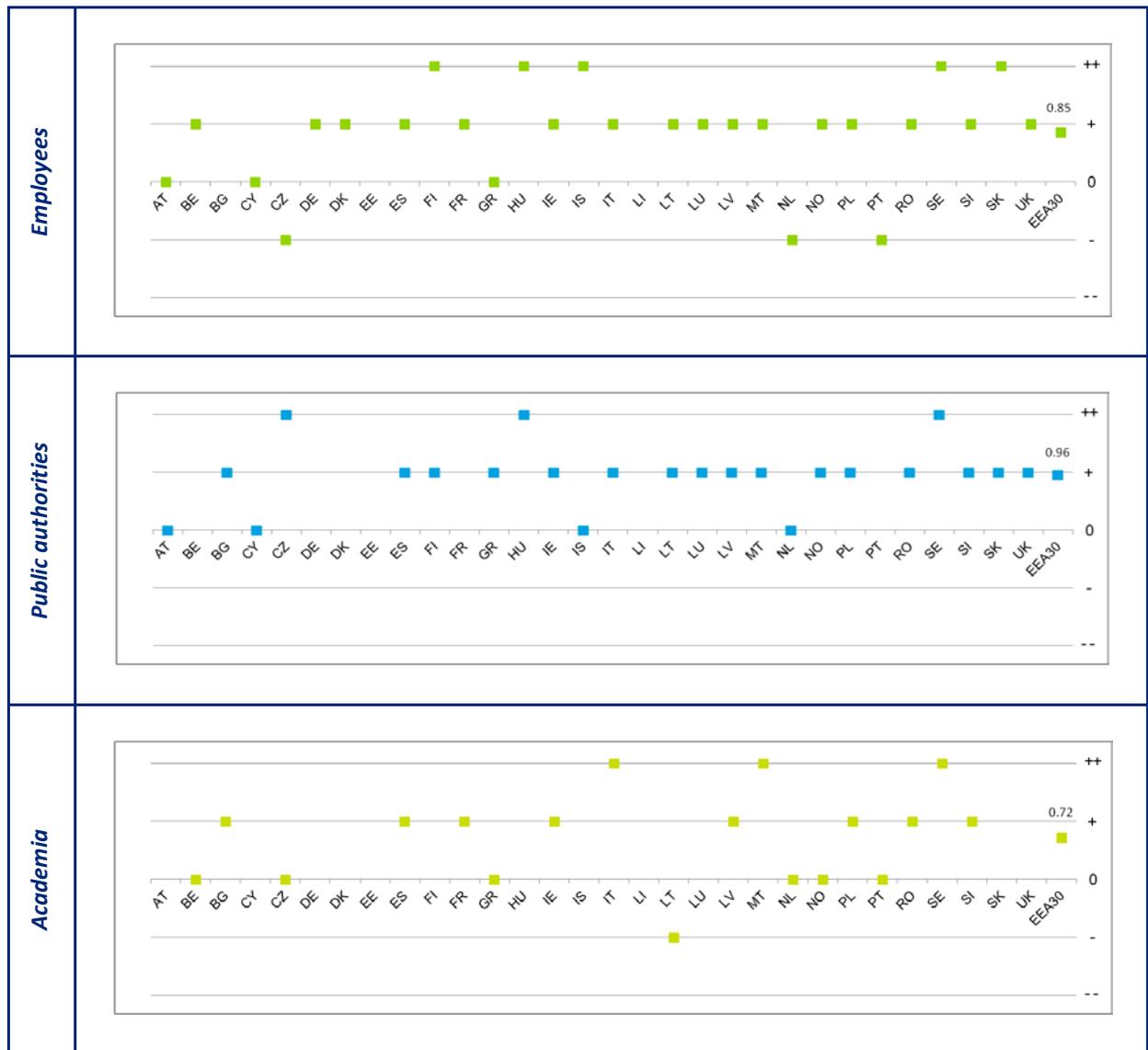
With respect to article 7 of the transfer of undertakings directive, which relates to the protection given to workers through information and consultation provisions, the protection offered to workers is viewed as being high, being positive among public authorities (0.96), and not far off (0.85) among employers and employees. Only academics, at (0.72), have a lower assessment.

In Sweden a very positive assessment is given of the impact of the directive by all stakeholders. This very positive assessment is shared by German and Italian employers, as well as by employees in Finland, Hungary, Iceland and Slovakia. Notably employees in Germany and Italy have only a positive view of the impact.

The lowest assessment of the impact by employers is neutral (in Austria, Finland, Lithuania, Malta, the Netherlands and Romania) while the impact is seen as negative by employees in the Czech Republic, the Netherlands and Portugal.

The majority of public authorities have a positive assessment, with very positive assessment in the Czech Republic, Hungary and Sweden, off-set by neutral assessments in Austria, Cyprus, Iceland and the Netherlands.





4.2.2.2. HAS ARTICLE 7 OF 2001/23/EC LED TO SMOOTHER TRANSFERS OF UNDERTAKINGS?

In relation to the smoother transfer of undertaking in practice, the assessment of the different stakeholders vary considerably from a relatively high of (0.7) among public authorities to a low of (0.38) among employers, with employees at (0.59) and academics lower again (0.47).

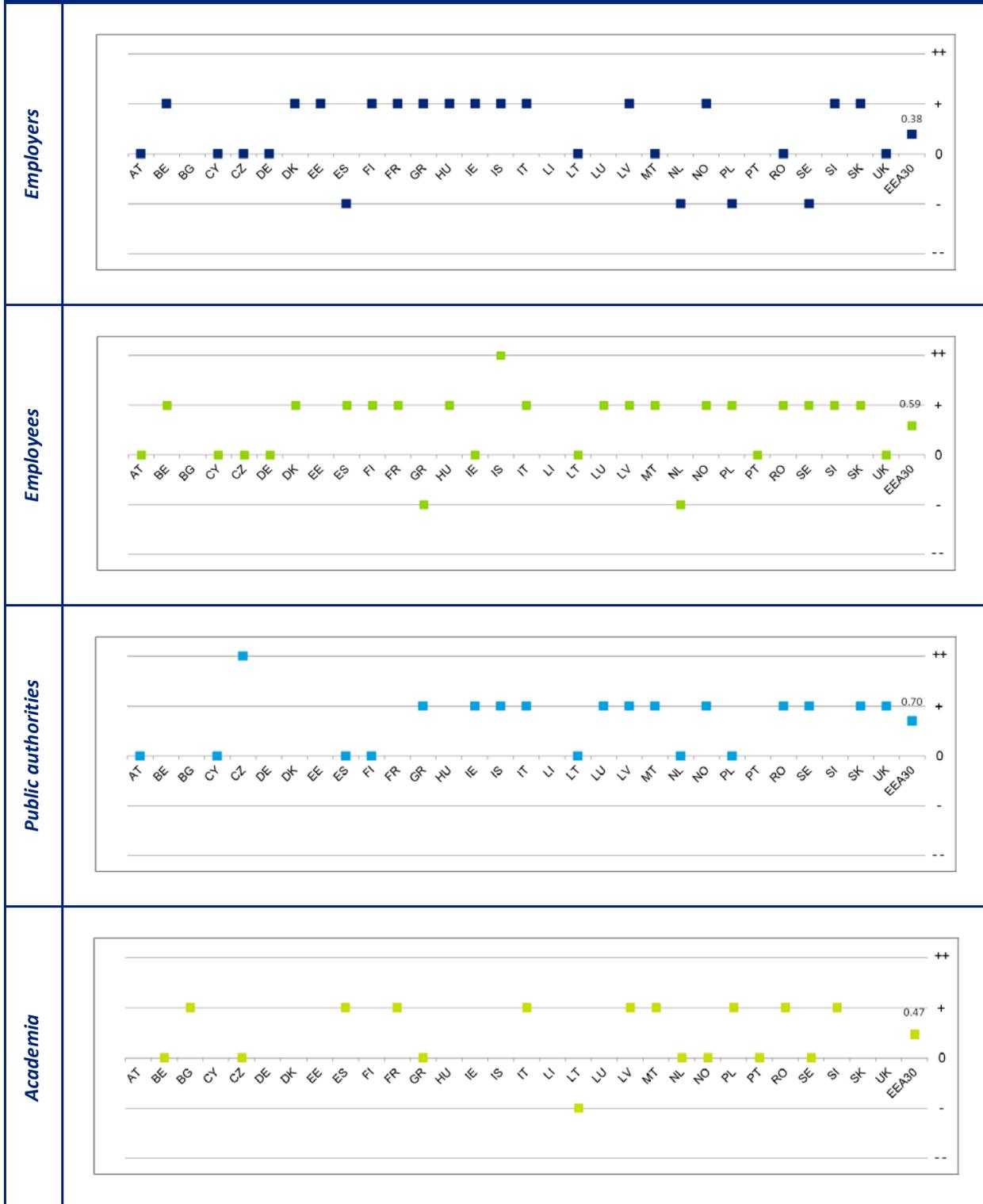
Among employers, the findings are pulled down by the negative assessments of employers in Spain, the Netherlands, Poland and Sweden as well as by the neutral view of employers in Austria, Cyprus, the Czech Republic, Germany, Lithuania, Malta, Romania and the United Kingdom.

Among employees, there are two negative assessments, in Greece and the Netherlands, with a third of the remainder being neutral and two-thirds positive, apart from Iceland where the impact of the directive is assessed as very positive.

Among public authorities, only those of the Czech Republic are assessed as very positive, with a third of the remaining public authorities being neutral, and two-thirds positive.

In the United Kingdom, the directive is assessed as positive by public authorities but neutral by both employers and employees. In Germany the impact is assessed as neutral by both employers and employees.

Has article 7 of the directive 2001/23/EC led to smoother transfers of undertakings?



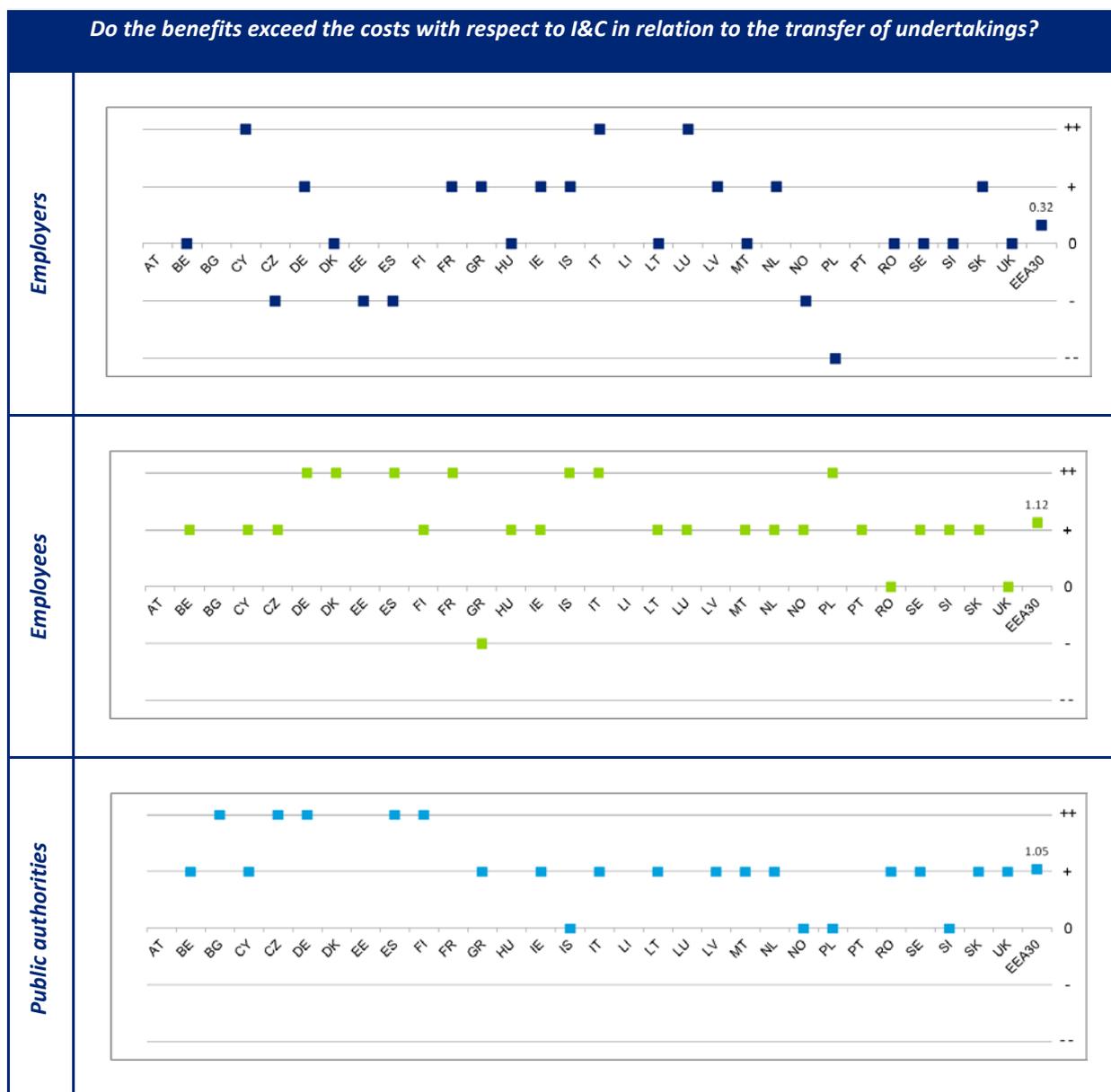
4.2.2.3. DO THE BENEFITS EXCEED THE COSTS IN RELATION TO THE TRANSFER OF UNDERTAKINGS?

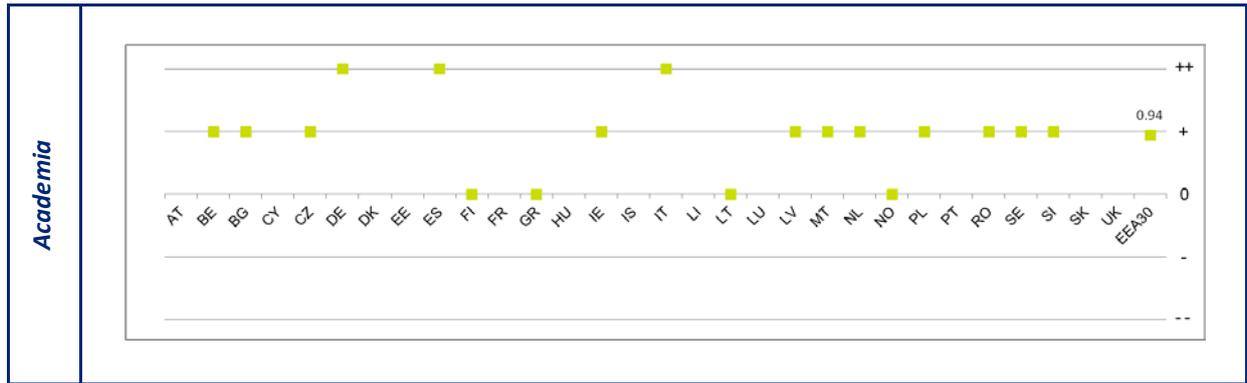
The balance of opinion of the stakeholders is somewhat similar to the reactions to the other directives, with employers significantly less enthusiastic than the others.

Employees again are more than positive (1.12) with public authorities and academics slightly below positive (1.05) and employers closer to neutral than positive (0.32).

In the Czech Republic, Estonia, Spain and Norway the employers are seen as negative and in Poland very negative, although the majority of employers are reported as being neutral or positive, with those in Cyprus, Italy and Luxembourg reported as very positive.

Only the employee representatives in Greece are reported as holding negative views, with employees in Germany, Denmark, Spain, France, Iceland, Italy and Poland reported as very positive, and the remainder mainly positive, apart from Romania and the United Kingdom where employers are seen as neutral about the benefits compared with the costs.





4.2.2.4. SPECIFIC ISSUES RELATING TO THE NATIONAL-LEVEL LEGISLATION TRANSPOSING DIRECTIVE 2001/23/EC

The ELLN 2010 thematic report on European labour law in time of crisis, restructuring and transition⁸⁷ addresses a number of issues relating to the national-level legislation transposing Directive 2001/23/EC that were already recognised, or which had been revealed by the current crisis. The main issues are discussed below; they include:

- Lack of clarity over the scope of the directive;
- Consequences of non-compliance;
- Effects of changing restructuring practices.

The detailed country-level evidence is presented in Annex 11.

Lack of clarity about the scope of the directive

Employers and the courts have had difficulty understanding the intended meaning of some of the terms used, there are issues concerning the coverage of the directive with respect to state-owned companies, there are cross-border uncertainties, the liability over time of the transferor and transferee are not seen as clear, and there are problems as to whether rights to occupational pensions are included.

Consequences of non-compliance

Given the nature and consequences of the directive, it is not always clear what should be appropriate remedies in cases on non-compliance.

Effects of changing restructuring practices

There are concerns that, in a changing commercial environment, with mergers and acquisitions commonplace, and the increased use of more complex financial ownership arrangements, many of the issues that the directive was originally designed to address may no longer fall within its jurisdiction. There are also issues concerning the obligations under this directive and those under directive 89/592/EC which deals with issues of insider trading.

⁸⁷ ELLN (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, 51 pp.

4.2.3. Directive 2002/14/EC

4.2.3.1. HAS DIRECTIVE 2002/14/EC LED TO A GENERAL AND PERMANENT RIGHT TO I&C?

Based on the expert assessments, the most common position of all stakeholders is positive but with some neutral, negative, or very negative, assessments pulling down the average. Overall, employers, employees and academics tend to have a similar assessment, a little below the midpoint between neutral and positive (0.45 on average), while public authorities have a significantly more positive view (0.74).

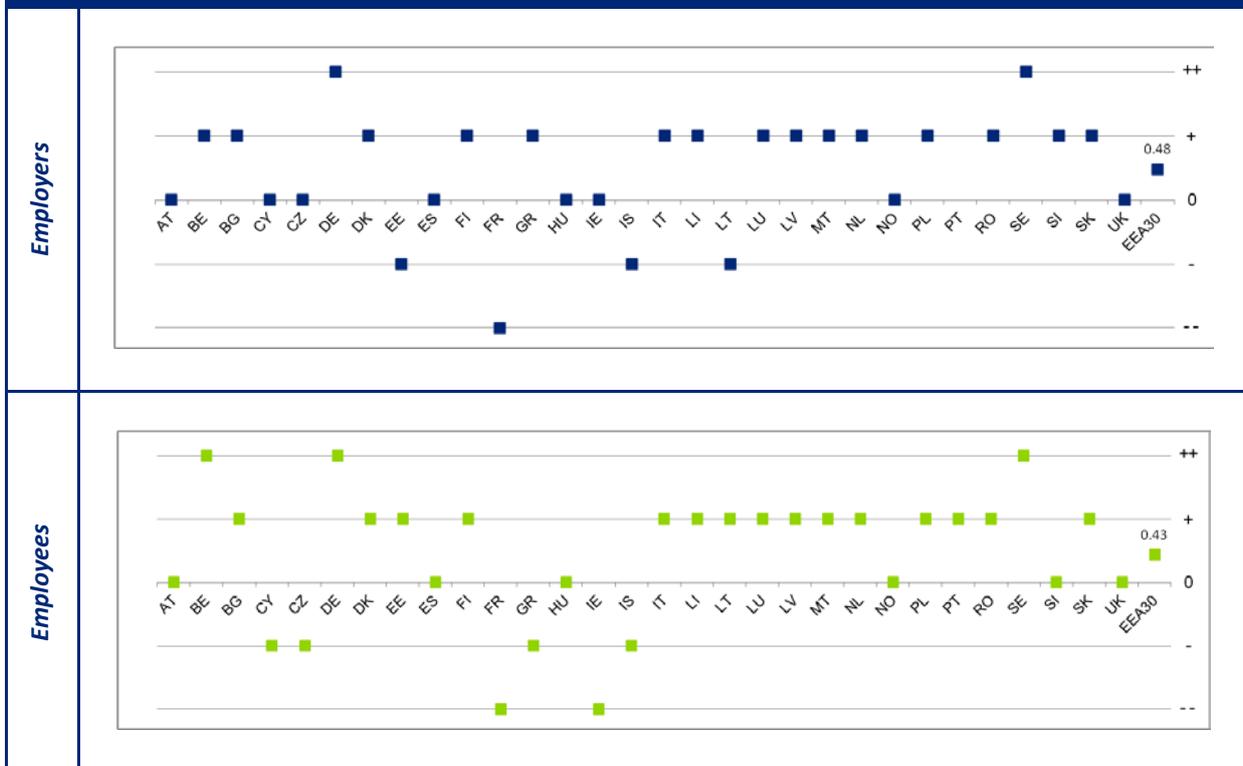
There are some very positive assessments concerning the results of the directive, with all German and Swedish stakeholders assessing the directive as very positive, along with Belgian employees, Romanian public authorities and academics in Malta.

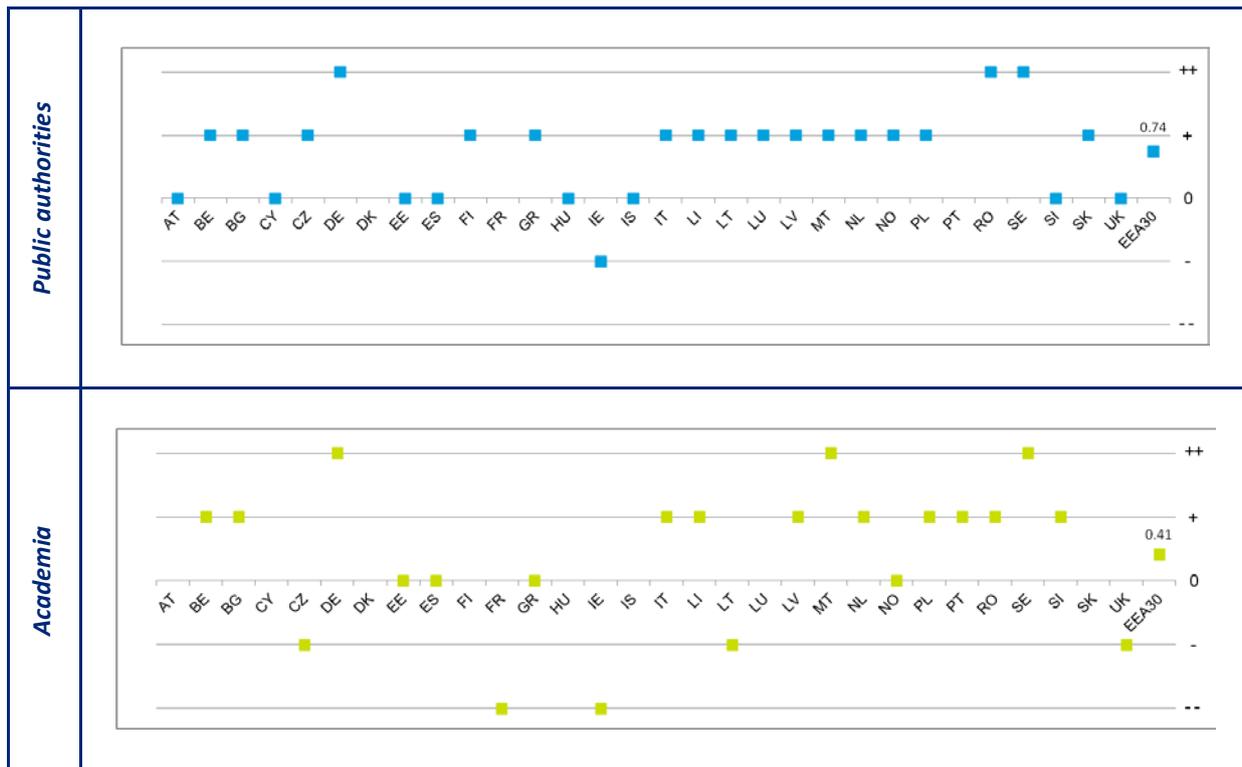
The Italian assessment is positive across all stakeholders, while the assessment in Spain is neutral across all stakeholders. The directive is assessed as neutral in the United Kingdom, except among academics who have a negative assessment.

On the other hand, the positions of employers, employees and academics in France are assessed as very negative. Negative assessments from employers are also found in Estonia, Iceland and Lithuania.

Employees in Ireland are assessed as having very negative assessments, with negative assessments in Cyprus, the Czech Republic, Greece and Iceland.

Has directive 2002/14/EC led to the establishment of a general and permanent right to I&C of employees at national undertaking/establishment level?





What triggers the establishment of a works council?

Recent research by Mohrenweiser et al.⁸⁸ presents evidence for trigger events and trigger agents of establishing a works council which was obtained based on data of the German IAB Establishment Panel 1999–2007.

The authors show that a change of the owner and organizational shocks, such as firm acquisition, the creation of a spin-off, or a restructuring of the firm, lead to a higher probability of establishing a works council. These trigger events support the argument that workers demand works councils as an instrument of protection against uncertainty of deteriorating working conditions and to safeguard workplaces. Moreover, these trigger events extend recent findings that financial distress and declining employment causes the establishment of a works council because organizational shocks can occur in good and bad times. However, sector-wide economic downturn still has an effect on the probability of establishing a works council.

Moreover, the authors show that while the workforce alone is the most frequent trigger agent in about two-thirds of all cases, management is involved in the other third and has motivated workers to establish a works council in a minority of cases. When managers are involved in the process of establishing a works council, intra-firm industrial relations may exhibit less conflict during and after the establishment of a works council.

Yet, the authors underline that their results were obtained based on German data and cannot be extrapolated to countries with fundamentally different I&C and social dialogue traditions and legal frameworks. Indeed, weaker co-determination rights may result in a weaker incentive for workforces to trigger the establishment of a works council. In other countries, management might be a relatively more prominent trigger agent in establishing a works council.⁸⁹ Management incentives for promoting the establishment of works council-type arrangements are likely to be less impacted by these differences. Hence, in countries such as the UK and Ireland, management appears to be a relatively more prominent trigger agent.

⁸⁸ Mohrenweiser, J. & Marginson, P. & Backes-Gellner, U. (2011): What triggers the establishment of a works council?, *Economic and Industrial Democracy*, 22 pp.

⁸⁹ Hall, Hutchinson, Parker, Purcell and Terry (2007): Implementing information and consultation: Early experience under the ICE Regulations, *Employment Relations Research Series*, no. 88.

4.2.3.2. DO THE BENEFITS EXCEED THE COSTS WITH RESPECT TO THE PERMANENT PROCESSES OF I&C?

Responses to the question differ considerably between stakeholders. Employees consider that benefits relative to costs as more than positive (1.15) and public authorities and academics are not far behind in their assessments, being seen to be very close to positive overall (0.95).

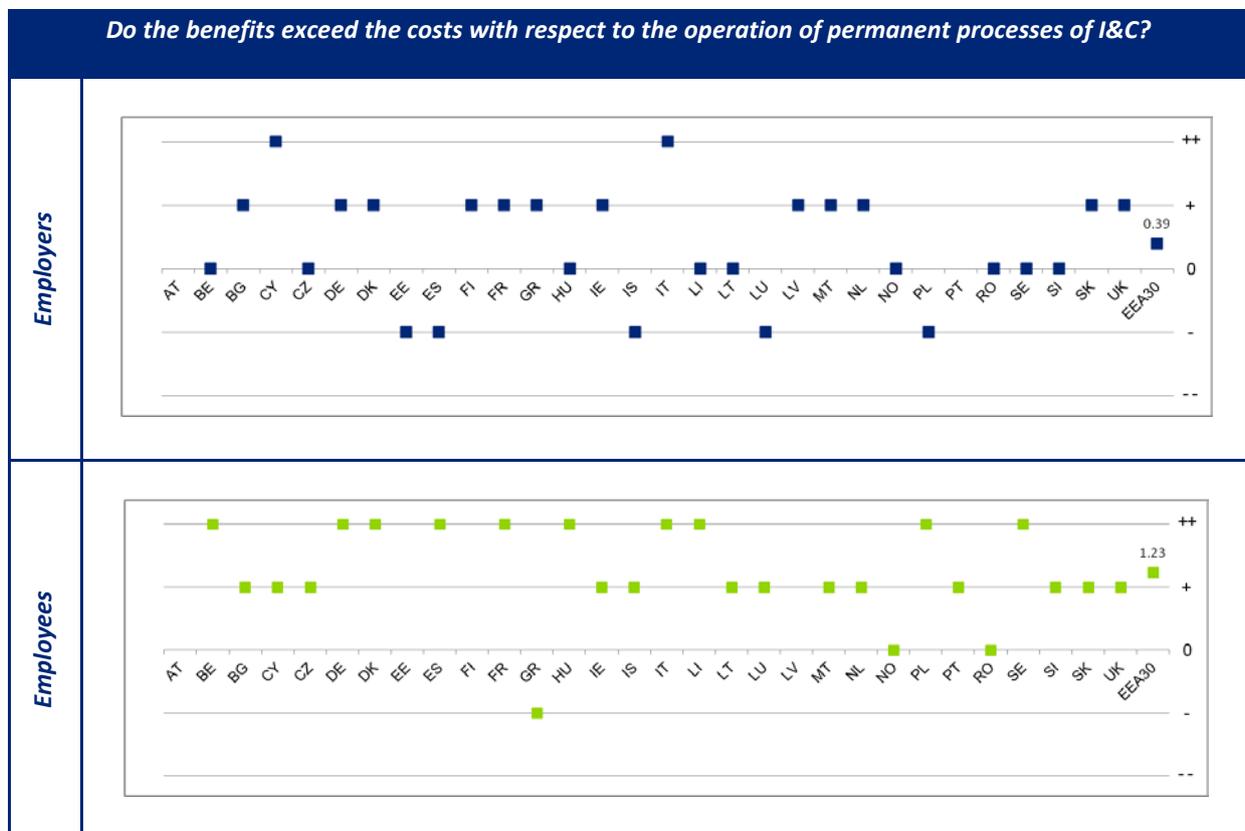
Employees have a very positive view in Belgium, Germany, Denmark, Spain, France, Hungary, Italy, Poland and Sweden with mainly positive assessments elsewhere, with the exception of Greece (negative) and neutral in Liechtenstein, Norway and Romania.

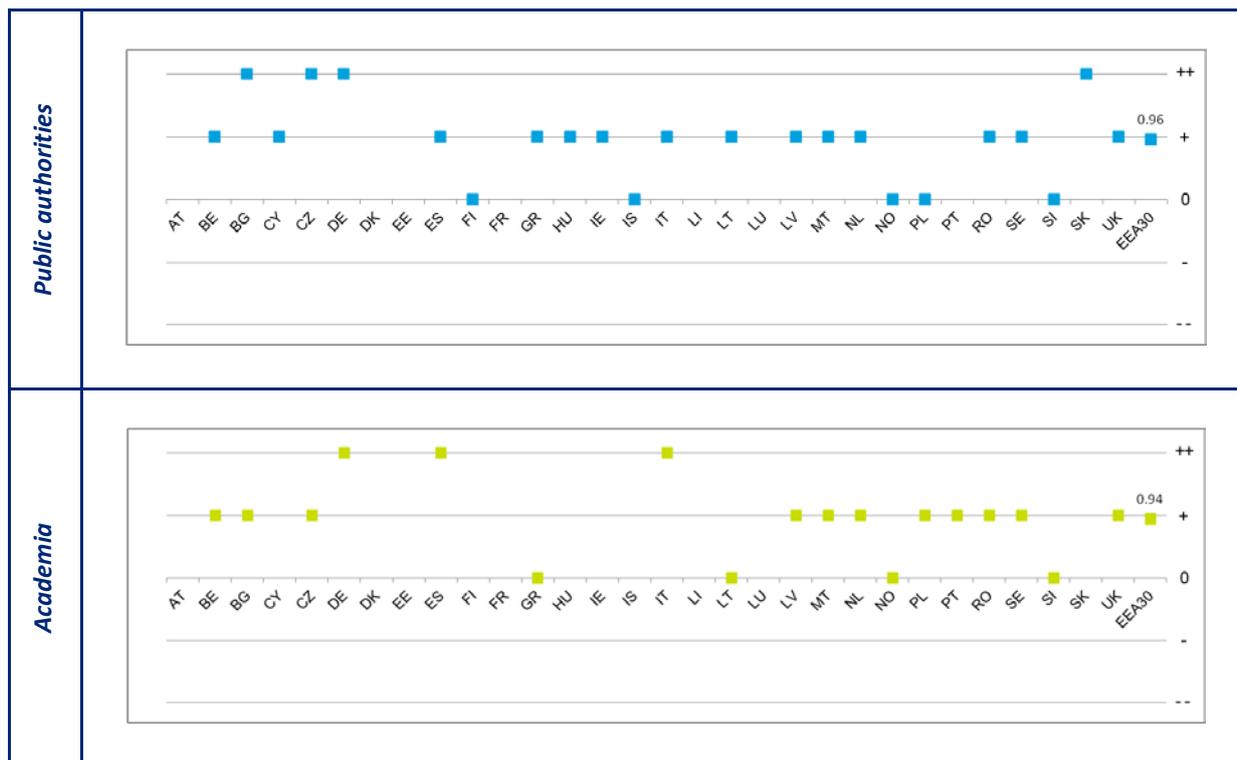
The average views of employers regarding the costs and benefits of operating permanent processes are significantly different from those of other stakeholders, but are nevertheless assessed as mid-way between neutral and positive (0.46).

Within this average position, some employers take a negative view (Estonia, Spain, Iceland, Luxembourg and Poland) while others (Cyprus, Italy and Liechtenstein) have a very positive view. However, most other employers are considered to be either neutral or positive.

Within Germany all stakeholders are very positive except employers – only positive – while in Italy all stakeholders are seen as very positive, except the public authorities – only positive.

Public authorities in Bulgaria, the Czech Republic and Sweden have much higher assessments (very positive) compared with others.





In line with these results and as already discussed in section 4.1.3, the **web-survey** yielded that employees have a significantly more positive assessment than employers concerning the balance of benefits and costs of I&C, but the overall findings from all stakeholders are nevertheless generally positive. In particular, over half of employers (52%) consider the benefits of I&C to be greater or much greater than costs; 22% consider them to be similar; with the remaining balance of 26% considering that the benefits are less than the costs. For employees, nearly three-quarters (73%) see the benefits as greater, or much greater, than costs, but with nearly 16% neutral and some 11% negative.

4.2.3.3. SPECIFIC ISSUES RELATING TO THE NATIONAL-LEVEL LEGISLATION TRANSPOSING DIRECTIVE 2002/14/EC

The ELLN 2010 thematic report on European labour law in time of crisis, restructuring and transition⁹⁰ addresses a number of issues relating to the national-level legislation transposing Directive 2002/14/EC that were already recognised, or which had been revealed by the current crisis. The main issues are discussed below; they include:

- Incorrect implementation;
- Avoidance of the provisions of the directive;
- Relationship between I&C requirements and collective bargaining.

The detailed country-level evidence is presented in Annex 11.

Incorrect implementation

There are problems and issues in terms of coverage and remedies in the implementation, particularly in cases where the social dialogue culture is lacking, along

⁹⁰ ELLN (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, 51 pp.

with problems relating to thresholds obstacles or lack of machinery to ensure that the provisions can be enforced.

In countries where the provisions of the directive have been partially transposed by collective agreements, many employers are not bound by these agreements and not subject to I&C rules, There are also differences between countries concerning the treatment of insolvency, defective drafting concerning the timing of initial consultations in some cases, and a lack of recourse in another.

Avoidance of the provisions of the directive

In some countries it is reported that employers are 'breaking up' or re-defining enterprises in order to keep them under the size thresholds, and there are also issues concerning the definition of establishments.

Relationship between I&C requirements and collective agreements

There are a number of issues in so far as collective agreements deviate from the requirements of the directive, and there are also problems concerning the responsibility of parties in dual channel systems as well as problems where multiple trade unions are present in companies.

4.2.4. Company-level experiences with collective dismissals and transfers of undertakings

The study includes a number of case studies of companies that have undertaken collective redundancies and transfers, and which illustrate successful and less successful experiences. The case studies summarised below provide illustrative indications for companies in different countries, of different size, and operating in different sectors of activity.

4.2.4.1. PRIVATE SECTOR SERVICES

In the large retail group case in **Belgium** significant job losses were experienced in 2007 and again in 2010. In the latter case, when the company had some 15,000 employees, the restructuring included a transfer of part of the company, resulting in some 2000 job losses in 2011. I&C legislation was seen to have helped produce positive results as a result of the negotiations (which had started badly due to poor communication and led to a strike) in allowing alternative business plans to be considered, and a social plan to be developed. This resulted in fewer store closures and fewer job losses, with the impact of those job losses being reduced by early retirements of more than 900 employees.

In the large entertainment industry case in **Portugal**, the I&C body has been in place for more than 10 years (created mostly by trade unionists, with a works council and a shop steward commission) but I&C meetings only occur when collective redundancies or transfer of undertakings occur because management sees I&C as a formal procedure required by law, instead of a means to reach agreements regarding economic/employment issues. According the worker representative, when a collective redundancies and a transfer involving 70 workers took place, all the workers involved accepted compensation packages instead of transfers. According to the works council representative, public authorities and the courts disregarded these forms of illegal acts. Overall, the effectiveness of I&C was seen to be insufficient during collective redundancies and particularly during the transfer of establishments.

In the large **Dutch** office equipment case, two separate businesses have been merged, one of which was covered by collective agreements. In the former Dutch part of the

group (the other part is American), the works council had one member on the supervisory board, and was actively involved in the takeover, at the same time as the trade unions were consulted. Two years after the 2009 merger, the economic crisis hit one part of the business more than the other, resulting in collective dismissals. The normal procedures were followed: the works council was asked for advice, the unions were consulted with regard to the dismissal and the social plan, and the competent authorities were notified. The group is now trying to harmonise the two parts of the company, with the works council of the former Dutch part actively involved, leading to the recent election of a central works council.

4.2.4.2. BANKING

The large banking company in **Slovakia**, now with 4,000 employees, had to dismiss 700 employees in the period 2009-10, which was achieved without serious labour disputes through I&C, but without any significant reduction in the number of redundancies compared with those originally planned. Employees have been represented since the beginning by trade unions, which participate in information and consultation procedures with the management. I&C procedures involve existing general, permanent I&C body and no additional I&C body is established to deal with collective redundancies and transfers of undertakings. According to the HR manager, one general and permanent I&C body allows for easier communication and implementation of I&C procedures and avoids potential conflicting relationships between several I&C bodies.

In the case of a bank in **Italy**, with 160,000 employees worldwide, a new business plan was launched by the company at the end of 2011 in the face of the economic and financial crisis that involved an envisaged staff reduction of in excess of 5,000 in Italy in the period up to 2015. In general the bank applies the collective agreement on restructuring and transfer, which takes account of national legal requirements and adheres closely to the collective agreement, and works closely with a very active European works council on transnational issues.

In the case of a **Greek** bank that was transferred to a French group in 2008, there were no collective redundancies, but the management of the company did introduce a voluntary retirement scheme that effectively reduced the size of the workforce. There had been no separate I&C body before the transfer, with the trade union exercising this function on the basis of a collective agreement which remains in force after the transfer, although the bank's management is seeking to modify this arrangement. While the company at European level regularly invites national representatives to meetings, which it believes fulfils the requirements of the directive; this is contested by the trade union concerned.

In one of the **United Kingdom** banking cases there is a 'hybrid' I&C forum, set up in 2001, with half of the members from management and half from trade unions. The bank has a separate consultative body in place for I&C concerning collective redundancies, which was established in 2005, following significant job losses as the bank began off-shoring certain functions. The forum of managers and trade union reps focuses on assisting in the redeployment of displaced workers, with between 30-40% of displaced staff usually redeployed. In fact the process of I&C around the transfers of undertakings is regarded by both the bank and the union as more straightforward than that linked to redundancies, which are considered as bureaucratic, in part because of long mandatory consultation periods in the UK. The human resource manager considers that, in a large, multi-site company, I&C serves an important role in allowing management an overview of how policies are actually being implemented on the ground, and any unintended consequences.

4.2.4.3. MANUFACTURING

In the case of a small manufacturing company that had been set up in **Austria** by a German manufacturer in 2008, but which then filed for insolvency in 2011 in the face of difficult market conditions, the company failed to inform the works council of its economic problems and intended redundancies until the very last minute, breaching all its statutory obligations. Given the insolvency of the company, support for those who lost their jobs came, not from the company, but from a fund established by the Austrian labour authorities and the provincial government.

Cross-country ownership, and the general internationalisation of businesses, can bring even more complex challenges in practice. A small, previously family owned, manufacturing company in **Germany** was sold to new investors in 2005, who then sold it on two years later to a South Korean company who wanted to make redundancies. The company had a functioning works council able to negotiate reductions in the number of collective redundancies, and help find consensual solutions in difficult circumstances. However there were major problems of communication due to cultural and linguistic differences, including the fact that the new owners did not appear to understand either the legal situation or the custom-and-practice regarding I&C in the country.

In the case of a **Spanish** automobile manufacturer with plants in Barcelona, and currently with some 3000 employees, major redundancies were sought in 2008. These were strongly resisted by the works council and trade unions but objections were apparently 'circumvented' by 'encouraged lay-offs', including early retirement schemes and redundancies with substantial financial incentives. In this company, the links between the works council and the trade unions are strong, and both employer and employee representatives consider that one permanent and experience body in charge of I&C in respect of all three directives is seen as the most effective.

In a French-owned engineering SME operating in the **Czech Republic**, which emerged in 2009 as a result of a merger, there is a single trade union, with employees informed by the company either through the trade union or directly by the employer. While this has proved successful, it took time after the merger for the employees to be convinced that the company was seeking to maintain high social standards. Following the merger, working conditions have been harmonised and, although the company has made redundancies, the parties have negotiated acceptable terms.

In the large **Estonian** manufacturing company, I&C bodies were not able to play a significant role in relation to the transfer of the undertaking due to issues of confidentiality. The union was included in the process, as was legally required, but its contribution was limited. The union was informed but the management also held meetings with the employees who stayed in the old company and the ones that were transferred to the new company. Due to I&C there was a faster and improved acceptance of new working conditions by employees of both the transferor and transferee after the transfer of undertaking, although it is noted that nothing basically changed for the employees after the transfer.

A SME manufacturing precision tools in **Poland** was transformed from a State-owned to a privately-held company, whose two new investors were Polish and foreign, as well as the State Treasury. In 2005, an attempt was made to sell the company, which failed, and in 2010 a decision was made to try to sell the company again, which was successful, and was seen as a transfer in terms of the Directive's provisions. The fact that the company would be put out for sale had been known before with employees expected to be informed since any sale of a state-owned company is also subject to a special Act, which requires that negotiations be conducted between employees and the employer on a social package. When the transaction was finalised, the new owner of the company met with the Works Council, the trade union and the whole staff and informed them that

he did not intend to make any staff changes and had decided to keep the payroll rules and regulations adopted by the previous owner. Although the payroll regulations were later changed, nobody was made redundant during the transfer of the company, and working conditions were not changed.

In a privatisation case in **Romania**, the transfer to manufacturing company to a Japanese group in 1998 led to the progressive loss of more half the workforce over the following decade – from nearly 5,000 to 2,000 in 2008. In 2009 the company then proposed a further reduction of the workforce by 1,000. The company contains five trade unions and the consultation between them and the company was handled through an ad hoc body which eventually produced a restructuring plan involving a reduced number of redundancies – namely 650 employees. During this process the public employment service and others were also involved in providing accompanying social measures to workers affected.

When an Australian group took over a **French** engineering products company with 5,000 employees in 2007 it had to launch a process of I&C concerning the transfer of employees to the new structure, which they did at the first meeting of the works council. While it was accepted by both employers and employees that ‘the transferor does not buy only a business but also men and women’ the process was not seen to have been handled well, provoking the observation by the correspondent that one of the main problems with respect to I&C is the failure of many managements to anticipate change and hence to be in a position to share information with employee representatives.

4.2.4.4. UTILITIES, PUBLIC SERVICES AND TRANSPORT

In the case of a **Romanian** company supplying natural gas that was privatised and sold to a French group in 2005, and which currently employs close to 10,000, the company quickly proceeded, following its purchase, to offer voluntary redundancies with compensation, leaving trade union officials ‘watching helpless’ as employees rushed to take up the offers. The union took legal action in 2010 but the court ruled that voluntary departures were not contrary to the Labour code or the provisions of the collective agreements.

In the **Latvian** case, a public transportation company, currently employing 5,000 people, was established in 2003 as a limited liability company, and has experienced both transfers of undertakings and collective redundancies, with the subsequent merger of four independent public transportation companies. The company has several trade unions, with five involved in collective bargaining. No specific I&C bodies have been established, but the company has established a bipartite body for management of I&C process in special cases. I&C is carried out through meetings between employer representatives and union representatives which are held several times a year. Employers are informed and consulted on decisions with substantial employment or work organisation impacts (working time changes or other), collective redundancies and transfers of undertakings, but other decisions are not discussed.

In the **Swedish** National Transport Authority, I&C arrangements are integrated in a local agreement that states that ‘the purpose ... is to make the decision process more effective ... by the involvement of the employees and the unions in early stages...’ In organisational terms, while the basic I&C representational structure covers all issues, and meets regularly (twice a month at least), a specific redeployment group is organised at central level regarding redundancy and redeployment issues.

In relation to acquisition of an airline in **Italy**, involving the prospect of substantial redundancies, the framework agreement has allowed, in the majority of cases, for the maintenance of jobs, but not the safeguarding of employee’s rights in the event of the transfer of undertakings.

4.2.4.5. SUMMARY INDICATIONS FROM ILLUSTRATIVE CASE STUDIES

The case studies concerning experiences with collective redundancies and transfers of undertakings reflect diverse circumstances and experiences, many of the most recent of which will have been affected by the developing economic and financial crisis. It is not possible to draw general conclusions from case studies, but some common points emerge from the cases summarised above and from the more general information contained in the national reports that accompany this synthesis:

- Collective redundancy negotiations are always likely to be difficult and, while the legislation provides guidelines and a framework, each case is likely to involve **difficult decisions** and choices, particularly in economic circumstances such as at present.
- Large companies undergoing large-scale redundancies need to have appropriate human resource **management procedures** in place, and to work with both public and private sector agencies, if the impact and costs of redeployment are to be minimised.
- Transfers of undertaking may appear to be more clear-cut from a legal perspective than collective dismissals, but the outcomes may involve employees opting for **redundancy packages** rather than the retention of their employment rights, if these appear more attractive.
- Mergers of companies involve much more than respecting rights and it can take time for a **common culture** to emerge, and for working practice and systems of representation to be harmonised.
- Changing patterns of **cross-country ownership**, both within the EU internal market and globally, means that the 'nationality' of a company is increasing difficult to determine, and hence the country of origin, or the country location, of a company does not necessarily provide an indication of the quality of I&C that can be expected.
- I&C arrangements at company level can range from the highly structured and integrated to the more fragmented and informal, as can the **patterns and systems of employee representation**, which inevitably means that the impact of EU legislation in individual company cases is always going to be subject to a wide range of specific factors.
- Company managers commonly express their support in principle for I&C and the benefits it can bring, but appear in many cases to lack the **expertise** necessary to achieve it successfully.

It follows that the evidence suggests that the more effective usage of the collective dismissals and transfer of undertakings legislation will depend on:

- Much better information and consultation practices;
- Appropriate systems of enforcement to focus management attention;
- Greater experience of the benefits of good practice.

This does not mean that there is nothing for the EU level to do. Rather it suggests that the EU level should concentrate on promoting the above through EU-level bodies of all kinds.

In this respect the EU authorities can draw on experiences reported by Eurofound, including a report⁹¹ that presents examples of good practice and effective action in relation to restructuring, based on in-depth company case studies carried out in 25 EU Member States and Norway. It identifies instances where large enterprises not only respected the minimum standards and procedures stipulated in legislation regarding collective redundancies, or as set out in collective agreements, but also made significant efforts to limit the effects of job losses on their workforce and on the local economy. A further important contribution to this is the European Commission's recent report on restructuring.⁹²

4.2.5. Summary findings on the assessments of the individual directives

The assessments of the overall effects of the individual directives – 98/59/EC (collective redundancies), article 7 of directive 2001/23/EC (transfer of undertakings), and directive 2002/14/EC (general framework) – vary somewhat.

With regard to affording protection to employees in cases of collective redundancies, the directive 98/59/EC is rated reasonably highly overall – closer to positive than neutral – but notably lower than the transfer of undertaking directive, which the assessment is much closer to positive. On the other hand, in terms of leading to a general and permanent right to I&C, directive 2002/14/EC is currently rated lower again – only mid-way between neutral and positive.

In terms of directive 2001/23/EC contributing to smoothing the transfer of undertakings, however, the assessment is lowest of all – only mid-way between neutral and positive – and lower again among employers.

National experts consider that employee representatives, public authorities and academics assess the benefits against costs of all three directives, collectively, as positive. However they report employer assessments as much lower - closer to neutral than positive in all cases, with the lowest assessment of all for directive 98/59/EC. This is despite the company level evidence that twice as many employers consider that benefits exceed costs as those who consider the reverse, despite the costs involved.

The company level enquiry among employers and employee sought overall responses to I&C legislation rather than experiences with individual directives. However it did, nevertheless, show how the expectations of employees and employers diverge with respect to collective redundancies, with 40-45% of employers seeing the legislation as not relevant or successful in this respect, compared with 85-90% of employees seeing it as relevant and producing fewer redundancies in practice.

In this respect, evidence from a number of studies conducted by Eurofound based on cases reported through the European Monitoring Centre on Change (EMCC) suggests that the employer expectations of effects may be more realistic. In so far as the legislation does have a positive impact, it appears to be more through creating time and space for the company, public agencies and local government bodies to mobilise support for re-deployment and re-training, although some cases do show reductions in the number of redundancies or delays in execution.

With respect to company level experience of collective redundancies and transfers of undertakings, the case study evidence underlines the fact that in practice the successful management of large-scale redundancies by companies depends on the existence of effective human resource support systems for handling the processes internally, including for I&C and that and that, following company mergers it can take some time

⁹¹ Eurofound EMCC (2008): *ERM case studies: Good practice in company restructuring*, 53 pp.

⁹² EC (2012): *Restructuring in Europe 2011*, 322 pp.

for a common culture and practices to emerge even if the legal provisions for I&C have been met.

In terms of the general directive 2002/14/EC, the Eurofound study of 2008⁹³ concluded that 'if a persistent implementation gap emerges between the statutory framework and actual practice on the ground, the European Commission may eventually face calls for the adequacy of the directive's approach to promoting information and consultation to be re-examined'.

The more recent report of 2011 by the same body⁹⁴ indicates some progress but also notes that evidence from its expert enquiries and the 2009 ECS survey suggest divergent experiences: no changes in countries with mature work-councils or trade union based systems of workplace representation, some modest growth in I&C practices in other countries, but from a very low base, and even some decline in a third group of countries, not least where the options offered by the directive may have undermined trade union traditional roles, and provoked ambivalence if not hostility, by allowing new, competitive, and possibly more 'employer-friendly' channels of employee representation to emerge.

4.3. Differences between stakeholders

In developing our overall EU/EEA-level analysis we have also analysed the evidence in relation to the different dimensions in order to both better understand the determinants of the overall findings, and also to identify possible implications for action.

The first of these subsidiary analyses concerns variations in stakeholder perspectives and assessments.

This section analyses the differences between stakeholders with regard to their assessment of the I&C directives under review. The first sub-section presents the different overall assessments of I&C legislation by the different stakeholder groups (employers, employee representatives, public authorities, and academia). The significant differences of assessment within and well as between stakeholder groups depending on whether they are operating at European, national and local enterprise level are discussed in the second sub-section. Finally, the third sub-section assesses differences between stakeholder groups with regard to their evaluation of specific I&C directives and issues.

4.3.1. Overall assessment of I&C legislation by the different stakeholders

The views of the four stakeholders vary across the different dimensions of the evaluations, with employers the least positive and public authorities the most positive. Nevertheless fewer than 2% of all assessments by the different stakeholders regarding the different questions are negative, with a further 7% assessments being around neutral.

Stakeholder assessments are aligned in relation to some effects of the directives (for example in promoting trust between employee representatives and employers) but their views differ on other dimensions, such as the likelihood that the directive can reduce the level of redundancies or increase the employability or adaptability of employees.

In these latter respects, while the assessments of **employers** are the lowest, they nevertheless above the mid-point between neutral and positive (0.65) but with a

⁹³ Eurofound (2008): *Impact of the information and consultation directive on industrial relations*, 34 pp.

⁹⁴ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, 32 pp.

relatively wide spread between countries. Assessments are reasonably widely spread, with Cyprus, Germany, Italy, Latvia, the Netherlands and Slovakia being more than positive (around 1.25) but with Estonia, Iceland, Norway and Poland neutral and Spain somewhat negative.

Employee representatives are more positive about the effects of the legislation than employers, with an average score of (0.89), but with neutral assessments in two countries. Moreover, on a more general policy level, there is concern among some national trade unions that their role as employee representatives could be undermined in so far as Directive 2002/14/EC encourages the development of dual, or alternative, channels of communication. The lowest scores are in Greece and Ireland (a little below and a little above neutral respectively) with the highest (slightly above the mid-point between positive and very positive) in Germany, Denmark and Lithuania.

Public authorities are generally more positive (0.99) than the social partners, or academics, in terms of the effectiveness of the Directives, with a range that is almost always positive. This may be an accurate assessment, but it could also be optimistic, reflecting their distance from the workplace environment. It could equally be an instinctive reaction in so far as they share the responsibility for ensuring the effective operation of the legislation. Public authorities provide the highest evaluations among all stakeholder groups with a range that is always positive to some degree (apart from Portugal as indicated above), reaching close to very positive in Bulgaria and the Czech Republic, but also in Germany and Lithuania, with most other public authorities fairly close to the average.

Overall assessments by **academia** (0.85) are in line with the overall average, with the highest assessments in Germany, Italy, Spain and Lithuania (from mid-way between positive/very positive to close to very positive). However, the assessments in Finland, Latvia and Luxembourg are no more than neutral, and those in Estonia, Greece, Ireland, Norway and the United Kingdom are only around 0.25-0.35 i.e. closer to neutral than positive.



As described above, the responses of different stakeholders to I&C legislation as a whole, as assessed by the national experts, vary overall, with employee representatives more positive than employers, and public authorities the most positive of all.

In respect of specific questions, however, the assessments of employers and employees can vary from being very similar to very divergent. In terms of contributing to increasing trust and partnership, for example, the company level evidence from the web survey shows that over 90% of employers and employee representatives consider I&C legislation as both relevant and effective to some degree.

At the other extreme, with respect to the need for additional legislation, the company level data shows 40% of employee representatives in favour as against only 4% of employers. As already indicated, however, the views of company employers and employees regarding the costs and benefits of the legislation are closer than might have been expected.

In terms of the balance of costs and benefits, the company level web survey indicates that, while employers may see significant costs in relation to I&C (such as in providing paid time-off for employee representatives), more than 50% of them nevertheless report the benefits of I&C as exceeding costs, with around 25% seeing them as evenly matched, while a further 25% see costs as greater than benefits. Over 70% of employees' representatives, on the other hand, see benefits exceeding costs.

At the same time, there are divergent views, for example between the positive views of public authorities, and much lower assessments by employers, with respect to the productivity and flexibility-enhancing (adaptability/employability) contribution of directive 2002/14/EC.

In terms of alternative ways of managing their workplace relationships, some employers might see advantage in pursuing their interests without any of the ground rules, and associated costs, of I&C legislation. In this respect, however, the company level evidence indicates that 85% of employers see the benefits of I&C in terms of reducing conflict and creating a more favourable climate for change – a view in line with that of employee representatives.

Moreover, the survey evidence from the European Company Survey suggests that dealing directly with employees, rather than through their representatives, is not necessarily seen as attractive by all employers, with the average EU27 employer positioned only midway between neutral and positive concerning such a prospect. Moreover, the results are highly skewed, with more enthusiasm in some 'new' Member States against more negative positions in many 'old' Member States, and with support for direct relations mainly limited to companies with fewer than 50 employees.

In some of the assessments, notably regarding coherence, the evidence is mixed in that the national experts report that senior level stakeholders at national level see the different directives as essentially coherent, while around half of employer and employee representatives at company level who were accessed through the web-survey report practical problems in using I&C legislation.

Equally, an apparent lack of appreciation by stakeholders of the contribution that EU I&C legislation makes in establishing a level playing field so as to discourage competition based on low labour standards – a key factor behind its initial introduction – may be because the stakeholders concerned see I&C legislation mainly from a social dialogue and industrial relations perspective, and are either unaware of its wider economic contribution, or simply take it for granted.

There are significant differences in the way the three directives are assessed overall on the basis of the national expert assessments, but there are also significant differences between stakeholders, notably between employers and others.

The contribution of directive 98/59/EC in affording greater protection to workers in the case of collective redundancies is assessed somewhat higher (0.69) but with a somewhat lower assessment from employers (0.54). In terms of benefits as against costs, however, employers diverge sharply from other stakeholders, assessing the contribution as very low (0.22) against the overall assessment of 0.89).

In the case of Article 7 of directive 2001/23/EC in terms of affording greater protection in cases of transfers, and in leading to a smoother transfer of undertakings, differences of view become even more apparent. Employers assess the protection given to employees very highly (0.88) – broadly in line with other stakeholders – but assess its contribution in terms of ensuring a smoother transfer much lower (0.38) and lower than the average of other stakeholders – the overall average being 0.53.

An overall assessment of the costs and benefits of the transfer of undertakings directive produced, perhaps not surprisingly, an assessment by employers of 0.32 against an overall assessment of 0.85, and the indication concerning the protection offered to employees needs to be interpreted in that light.

The contribution of directive 2002/14/EC to creating a general and permanent right to I&C is assessed overall relatively modestly, at 0.51 but with employers in line with employees and academics in their assessments. Somewhat surprisingly, though, the benefits relative to costs are assessed very highly by all stakeholders (0.88) apart from employers who assess them much lower (0.39).

4.3.2. Perspectives of different stakeholders levels

The evidence above is our best estimate of how the directives are viewed overall in terms of their overall effects by all relevant national stakeholders. It is intended to represent the overall position, while recognising that there may be significant differences of assessment within and well as between stakeholder groups depending on whether they are operating at European, national and local enterprise level.

A comparison of the evidence from the expert assessments and the web-survey suggests, for example, that while there may both offer similar assessments in the case of certain criteria – notably efficiency, where both sources provide a positive endorsement in terms of benefits as against costs - there can be very different views in terms of the coherence of the directives, and whether any additional legislation or rationalisation of existing legislation is required.

The general consensus of the stakeholders in their respective countries, as assessed by the national experts on the basis of their evidence, is that the directives are generally coherent, one to another, and there is little need for further action from either a legal or a practical perspective. However, when company level employers and employee representatives are asked, in the web-survey, whether any gaps, uncertainties and inconsistencies they have encountered justify a rationalisation of existing legislation, nearly 50% of employers (including 50% in Germany, 20% in Sweden, 50% in Denmark) say 'yes', as do over 60% of employee representatives (including 20% in Sweden, nearly 75% in Denmark and over 55% in Italy).⁹⁵

On the other hand, while the European Parliament has proposed additional legislation⁹⁶, when the question was put to employers and employees in the web survey as to whether additional legislation was justified in order to address any gaps, uncertainties and inconsistencies, only 4% of employers agreed (including 0% in Germany, only 2% in Sweden and 3% in Denmark) as against 40% of employee representatives (including over 45% in Italy, 33% in Sweden and 15% in Denmark).

In other words, while *some* differences within countries appear to reflect the differing interests of different groups – notably employers and employee representatives, but also government officials and academics – *other* differences may depend also on the position and perspective of the people consulted within those different groups. In effect the evidence might suggest that those closest to everyday work practices at company level see far more practical problems – judged as serious or, more often, occasional, by 45% of employers and 55% of employee representatives – than do those who are furthest away.

⁹⁵ The country references are selective because of small sample sizes in relation to employers or employees in some countries.

⁹⁶ European Parliament, Policy Department (2006): *Impact and Assessment of EU Directives in the field of 'Information & Consultation'*, IP/A/EMPL/FWC/2006-03/SC1, 71 pp.

On the other hand, this does not necessarily mean that the actions suggested by those closest to ground – namely to rationalise the existing legislation, or to undertake additional legislation – is the most appropriate since the web-survey results also show that 50% of employers and over 80% of employee representatives consider that more information is needed about the legislation. If this is the case then it may be that at least at of the local level problem is simply a lack of knowledge about the scope and contents of the existing legislation.

4.4. Differences between countries

The second dimension according to which our EU/EEA-level analysis looked at variations, concerns differences between the overall evaluations of I&C legislation across countries.

Attempts were made to bring together the evidence from groups of countries using different industrial relations systems of categorisation, or on the basis of more general economic evidence, but this produced little in the way of useable results. Differences in overall responses of all stakeholders in all dimensions do vary between countries, but not always for the same reasons, and not according to clearly defined patterns.

This section analyses the differences between countries with regard to their assessment of the I&C directives under scope. The first sub-section summarises the national assessments with respect to the different evaluation criteria (relevance, effectiveness, efficiency, and coherence). The diversity of national I&C experiences across Europe is illustrated in the second sub-section. The third sub-section analyses the reasons for national differences by assessing different approaches to the clustering of countries as well as the correlation of evaluations with a number of contextual factors. Finally, the fourth sub-section concludes on the differences in the evaluation results across EU/EEA Member States.

4.4.1. Overall assessments by evaluation criteria

The graph below summarises the national assessments (average of all stakeholder groups) with respect to the different evaluation criteria.⁹⁷ Assessments of the effects of the directives differ across EU/EEA Member States in ways that are very apparent, but not easily and rigorously explained.

The most notable differences are in terms of the aggregate scores – only 0.63 for effectiveness compared with 0.85 and 0.87 for relevance and efficiency, against 1.03 for coherence. This should probably be seen as a positive assessment given the diversity of situations across the 30 countries covered, with many facing serious economic and social difficulties, and with industrial relations systems that are often far from mature. On the other hand, the differences in assessment between criteria can be interpreted as a clear message, namely that the directives are not living up to expectations in practice, and this is not seen to be due to any lack of legal coherence.

In this respect there are a few exceptions, notably Germany, Italy and Sweden where effectiveness is seen as even higher than relevance, but this is not the general picture.

In terms of other evaluation criteria, efficiency is rated particularly highly in Germany and Italy, as in the above cases, but is joined by France, whose assessments on all other criteria are rather low.

⁹⁷ Please note that that outliers or missing values are explained by non-response of parts of the or all stakeholder groups (e.g. efficiency in Estonia or Austria).

More generally, Belgium, Denmark, Sweden, Latvia and Malta (along with Germany, Italy and Lithuania) stand out as having more consistent assessments across the criteria of relevance, effectiveness and efficiency compared with countries with very variable assessments (notably Estonia, but also France, the Czech Republic, the Netherlands and the United Kingdom).

In terms of the overall assessments by the national experts, a mix of countries – the Czech Republic, Spain, France, Poland and Sweden – are closest to the EU/EEA average assessment by all stakeholders on all evaluation criteria. Those highest in the ranking are Germany, Denmark, Italy, Latvia, Liechtenstein, the Netherlands and Slovakia – all countries in which employers have well above average positive evaluations of the directives compared with employers in other countries.

The lowest places in these assessments are taken by Estonia, Ireland and Portugal among EU members, along with Iceland and Norway. Among this group, the results are mainly brought down by particularly low or negative estimates of the relevance of the directives in Iceland, Norway and Portugal, and low or negative results regarding their effectiveness in Estonia, Ireland and Portugal. The directives are also rated very low in terms of efficiency in Estonia and Norway.

Evaluation averages – by country – average of all stakeholder groups



4.4.2. Diversity of national I&C experiences

The comparative assessments by different stakeholders in different countries regarding I&C practices and achievements highlight the diversity of experiences at national level. This is in line with recent Eurofound research⁹⁸ which finds that *'there is extensive variation both between and within countries in the extent and nature of workplace social dialogue'*. Many factors are at work, as the analysis shows, but one that has been highlighted by the last enlargement of the Union is the extent to which effective social market systems depend on a mix of economic, social and institutional arrangements that take time to develop.

⁹⁸ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, p. 57.

The following four cases – of Denmark, Poland, Estonia and France – serve as an illustration of the different ways in which countries are working to develop or maintain I&C arrangements that respect the EU legislation within their national contexts.

Denmark – I&C through collective agreements

The arrangement of collective agreements plays a major role for the I&C system in Denmark, and the EU-Directives are usually implemented by means of a combination of statutory legislation and ordinary Danish collective agreements, mainly governed by the Cooperation Agreement between the Central Organisations, i.e. the Confederation of Danish Employers (DA) and the Danish Confederation of Trade Unions (LO). A general rule is that collective agreements are already at least as favourable to the workers/employees as required by the implemented legislation or the underlying directive.

As a result, one of the key findings of the study is that the 3 EU-Directives have had relatively little impact on the systems of I&C in Denmark which is a country with a stable pattern of I&C arrangements and has a “mature” arrangement for I&C, having had an established I&C system long before the Directive 2002/14/EC was introduced. However the legislation may have contributed to a ‘sharpened interest’ in I&C.

Relevance

While collective agreements play a central role in Denmark, the directive mainly benefits employees who are not covered by a collective agreement dealing with I&C. In that respect, the coverage of collective agreements in the public sector is close to 100 %, it is only 70% in the private sector

With regard to redundancies there is a major difference of view between views of employee and employer representatives. The former find that I&C directives are relevant in reducing the number of redundancies for employees because they are involved and consulted and can have an influence. However employers representatives find that the I&C directives are not relevant to reducing the number of dismissed employees, because redundancies are usually caused by an economic situation that results in reduced customer demand and requires internal restructuring of the company.

Unlike the situation in many other countries, I&C directives are generally seen to be relevant to increasing the employability of employees (e.g. through accompanied employee mobility). However, just as representatives of employees find that the I&C directives are relevant to improving the productivity and performance of the employees, the representatives of the employers’ are more sceptical and point out that there are other mechanisms at play for increasing productivity or performance of the employees.

Effectiveness

In terms of measuring the effectiveness of the 3 EU I&C directives one key finding of all expert and stakeholder interviews is that none of them are aware of any court cases concerning I&C failings. This does not stem from a lack of disagreement between the employees and the employers, but because any disagreements are typically discussed, at the level of the collective agreements, with the Danish Employer’s Organisation (DA) and the Confederation of Trade Unions (Danish LO). This arrangement of entering into compromises between both sides could explain the low level of complaints.

All stakeholders and experts generally agree that, in the event of collective redundancies being threatened, I&C procedures contribute to providing an early opportunity for the parties to share problem and explore the options and alternatives, and potentially stimulates better cooperation between employers and employees.

According to the experts and stakeholders, general and permanent I&C provides benefits for both sides, mainly through stable and longer term procedures and communication. However, cooperation between management and trade unions, as employee representatives, is established in the collective agreements, and the implementation of Directive 2002/14/EC does not have a notable effect.

Efficiency

Efficiency is relevant in measuring the degree to which the results and effects of the 3 EU I&C directives transposed are better than any alternatives that might exist. Evaluating the costs and benefits is quite subjective however.

No major costs of I&C have been identified, but there are costs in terms of familiarising employees’ representatives with I&C legislation, putting in place employee representatives, training and advising

employee representatives, holding I&C consultations, and so on.

Looking at costs and benefits together, there is agreement that the benefits outweigh costs, when it comes to the general, permanent I&C. With regard to I&C in collective redundancies, employers and employee representatives hold similar positive views concerning the effects of the legislation, but much lower estimates by employers concerning the benefits. For I&C in transfers of undertakings, there is also a difference with employer representative considering that the benefits are somewhat outweighed by costs, whereas the employees' representatives consider the balance to be the other way round.

Coherence

Coherence is seen as the degree to which the outputs and effects of the 3 EU I&C directives, as transposed, mutually reinforce each other (or at least do not counter each other). This is not entirely clear given that the directives have had a minor impact in a Danish context because the industrial relations system is based on collective agreements.

Theoretically there are coherency problems – between the directives themselves and between the directives and national law. For instance the purpose of the Directive 2002/14/EC is to facilitate a general and regular dialogue, whereas the other two directives regulate the dialogue in specific situations. However all the interviewees agree that, in practice, these coherency problems are not evident and are insignificant in Denmark.

In practice the purposes of the legislation are considered to be interrelated, and the respondents agree that the outputs and effects of the directives do not contradict. According to one of the respondents, the interrelation and mutual enforcement between the directives makes it easier to handle a crisis or a change of process in the company. Hence the high level of coherence is considered to be an advantage.

Social dialogue and EU I&C legislation in Poland

Social dialogue in Poland, both at company level and at the central level, is still under-developed, but some improvement can be noted at company level compared to a decade or more ago when confrontational attitudes and conflict prevailed.

With the completion of the transition from an economy based on the state ownership to market economy, social dialogue at company level has become less heated, and the various provisions of Polish law, including the transposition of the provisions of the three Directives, is seen to have helped Polish companies to begin to appreciate the value of social dialogue at many levels. Only recently, however have they begun to appreciate values such as trust between employer and employees, the sense of partnership and the mutual understanding of interests which leads to greater flexibility, an acceptance of changes in work conditions, and increased productivity.

The model of management most often employed is still hierarchical (top-down) and the decision making process by management still does not take the form of broad consultations, taking into consideration the needs of employees, and little attention is paid to the I&C procedure as an expression of democratic and participation values. However the development of and the right to I&C ensured by legislation is seen as a sound basis for the future.

Relevance

In this light, the adjustment of the three directives and the transposed Polish Acts to the needs of the employees and the employers is seen as positive particularly in relation to Directives 2001/23/EC and 98/59/EC. The implementation of the Directives did not change the law in a fundamental way, but it adjusted the legal provisions to European law and made certain provisions more precise so that they were consistent with the existing provisions.

The function of the employees' representatives is mainly performed by company trade union organisations that are well prepared with regard to the substantive issues and have the infrastructure to performing I&C.

On the other hand, employer representatives still see most of the provisions on the protection of workers as a constraint to the entrepreneur's freedom of operation although, in the end, they say that they accept that the law needs to be implemented correctly. Indeed, an interviewed employers' representative argued that I&C brings most benefits to those companies that already have well developed social dialogue practices. In such a

situation, imposing the I&C provisions of the Directives and the Polish law from the top is perceived by the employer as a constraint. In the companies where social dialogue is at a very low level or it is non-existent, the provisions of the three Directives are perceived as a formal burden and the legal requirements are fulfilled with formalism, often superficially. Such an attitude of the employers' representative shows the desire for the least possible regulation of industrial relations. Most of the provisions are perceived not as an opportunity or stimulus for the development of social dialogue but as a constraint on the freedom of operating and managing the company.

In practice works councils regulated by the Directive 2002/14/EC and the transposing I&C Act usually operate in companies with active trade unions, but they have relatively little influence over the development of social dialogue at company level which is carried out through the trade unions. Initially trade unions were afraid of competition with works councils, but the application of the I&C Act showed that the system strengthen their position in fact, by acquiring new competencies.

It is important to underline that the act of the 7 April 2006 on the Information and Consultation of Employees was revised in 2009 due to the Constitutional Court verdict. The rule under which work councils members were designated by trade union was recognized as unconstitutional. Now work council members can only be elected by employees.

Effectiveness

The effectiveness of the Directive 2001/23/EC and Directive 98/59/EC can only be assessed on the basis of expert opinions as there is not much data available. In opinion of academic experts, trade unions representatives and representatives of the Ministry of Labour and Social Policy, this leads to a decrease in the number of conflicts, and the collective redundancy and transfer processes are smoother, better regulated, and more predictable. However, the representative of employers points out that I&C provisions makes process of collective redundancy and process of transfer longer, more laborious and bureaucratic.

It is difficult to assess the effectiveness of Directive 2002/14/EC and the transposing I&C Act at this stage because of the short time of functioning of works councils in companies in Poland. This law is currently seen as a little 'premature' with only 10% of eligible companies having taken the opportunity to establish a works council. Works councils, however, are much more effective in companies where they are supported by active trade union organisations. The representative of employers assesses works councils as effective tool for social dialogue, but expresses the opinion that, in cases of collective redundancies and transfers, the introduction of a dual I&C path causes confusion and makes processes more complicated as it is necessary. The Directives bring the expected benefits in that they improve the quality of social dialogue at company level, guarantee the right to I&C and gradually increase the level of trust and partnership between employers and employees, all of which bodes well for the future.

Efficiency

The costs of I&C processes are considered as relatively small (including by the representative of employers) even though the financial costs of I&C are to be borne by the employer. What is perceived as the biggest cost in the employers' representatives' view is the time taken up in conducting I&C processes.

Coherence

The coherence of the provisions of the I&C Directives and the relevant Polish legislation is evaluated rather positively by all stakeholders who see the Directives as mutually supporting and serving the development of social dialogue at company level. Yet, the obligation to keep informed both trade unions and works councils is perceived as inconvenient by employers and by trade union representatives.

Social dialogue and EU I&C legislation in Estonia

In regard to Estonia, the legislation regarding I&C is considered to be relevant, but its practice is still relatively weak. Hence I&C procedures do not always function as well as they could.

Membership of trade unions is extremely low in Estonia compared to most other EU member states, but legislation provides an opportunity for the representation of non-union employees. As there is no legal obligation for employees to choose a representative, they are only present in about a quarter of enterprises due to two factors: first, there are a lot of SMEs where the need for representatives has never emerged and

second, employees are not aware of their rights and the benefits of having representatives.

Informing and consulting workers via representatives is not a common practice in Estonia but this does not necessarily mean that employees are not informed or consulted. There is a lot of evidence that informing employees is seen as a normal part of running a business, but often done by management directly.

The experts interviewed for this study all expressed the opinion that there is nothing particular that should be changed with regard to legislation. Rather it is important that the existing legislation actually leads to better I&C practice, which calls for supervision (by the Labour Inspectorate) of I&C in Estonian undertakings.

The most important need is seen to be to change the attitudes of both employers and employees, so that they are mutually interested in actively participating in I&C., which means raising awareness of I&C rights and obligations through training and information days with relevant guidance materials made available to all employers and employees.

In the absence of real consultation it is argued that a first step might be to develop the practice of information: greater awareness by employees of the company situation could make them more competent and equal partners to their employer.

Relevance

The objectives and provisions of the transposed I&C directives are seen as relevant to guaranteeing employees' fundamental right to I&C but there are problems in Estonia. In practice, when employees do not know or understand their rights, they are unlikely to be fully enforced. In practice Estonian employees are used to 'suffer in silence' and assume they cannot change anything. Moreover the general attitude is that management is management and workers are workers.

All stakeholders agreed on the need to keep employees informed about changes at work, so they are motivated and able to give their best performance, which benefits the whole company. However the legislation does not, and cannot, stipulate how much the employer has to apply or consider proposals received from workers during consultation.

In terms of collective redundancies, the representative of the ministry feels that I&C is most important in making it possible for the Unemployment Insurance Fund to help undertakings and employees in the process of collective redundancies. The other stakeholders found that redundancies are "measures of last resort", which means that I&C cannot do much for the employees who are about to lose their jobs.

Effectiveness

In 2007, the new Employees' Representatives Act (ERA) came into force which stipulates that I&C must be carried out in enterprises with more than 30 employees, ensuring that all employees in large, medium and some small enterprises must be informed and consulted. In small enterprises, information spreads more easily, and a need for I&C procedures has not emerged.

All interviews with stakeholders confirmed that the amount of consultation compared to information is relatively insignificant. All stakeholders agreed though that, due to the directives, there have probably been fewer strikes. As the ministry representative put it, I&C provide a 'safety valve' to relieve pressure and thus avoid outbursts.

However, the number of redundancies is not believed by the stakeholders to have decreased, as employees have relatively little say in this matter. The employers' representative pointed out that normally redundancy is the employer's last resort when adapting to altered economic conditions.

Directive 2002/14/EC theoretically could lead to the establishment of a general and permanent right to I&C for employees but awareness is low..

The transposed Directive 98/59/EC has afforded greater protection to workers in the event of collective redundancies but mainly because of the requirement to notify the Unemployment Insurance Fund, helping more dismissed employees have received help, through different social measures, designed to help them find a new job more quickly.

Efficiency

Estimating the cost and benefits of I&C procedures in general, in case of collective redundancies and in case of transfers of undertakings is seen as very difficult. When talking about collective redundancies, the employers'

representative did not think there were any specific benefits from I&C procedure in collective redundancies and that the costs and benefits are balanced.

Coherence

The three EU directives create a comprehensive theoretical framework for I&C, though in the case of Estonia the practice is quite young so there are some difficulties in evaluating the coherence of the directives.

The ministry representative considered that I&C for transfers of undertakings and collective redundancies increases the general and permanent right for I&C, and not the other way around, since people take more interest in their rights and obligations when they are under pressure. Afterwards they are more likely to pay attention to general, permanent I&C, resulting in greater awareness of I&C rights and obligations.

Bigger companies usually have better I&C practices, a permanent I&C system helps in cases of collective redundancies and transfers of undertakings, as illustrated by the case studies.

Social dialogue and EU I&C legislation in France

The French social partners within undertakings do seem to be able to discuss future developments of employment in their company. This is seen as a valuable tool for anticipating changes, and thereby reducing redundancies and industrial relation disputes, and increasing trust and partnership between management and employees.

This has been the case for many years and the EU I&C Directives were not transposed into new laws or legal provisions since the existing legal framework for information and consultation in France provided greater levels of information and consultation rights than those provided for by the directives.

Given this, and the unlikelihood of French I&C provisions regressing below the minimum provisions set out by the EU legislation, the directives were not perceived as key, though they were considered as relevant to consolidating the minimum I&C standards.

The points raised by French I&C stakeholders related essentially to national implementation, and more specifically to effectiveness-related matters. A legislative amendment suggested by Employees' representatives was the introduction of a clear provision in the national legislation – in line with the objectives of the I&C Directives – stating that information must be provided before the management decision in question is taken, and that consultation should be pursued with the aim of taking the employees' representatives' opinion into account prior to a decision being made.

Turning to non-legislative measures, as employers often criticise the low level of economic and business knowledge of employees' representatives, one proposition to improve the quality of I&C – and the social dialogue - within undertakings would be to reinforce the economic training of the employee representatives, with employers required, as in Germany, to cover the training costs for employees' representatives. Increasing the economic awareness of employees' representatives could be also a way to reduce their reliance on experts, the cost of which is regularly criticised by companies, and which could be reduced if employees' representatives developed their own expertise in economic and financial matters.

Relevance

Although the legal framework relating to information and consultation rights in France surpasses the three EU I&C Directives, and is strongly reinforced by case law, the EU legislation is not considered irrelevant. Rather, there is a strong consensus among all key players that information and consultation is important and that the directives help to consolidate minimum standards for this. Thus, while experts estimate the relevance of the content of the I&C-Directives to be very high, in general they hold that the regulatory impact of the I&C Directives on French legislation is low.

Information and consultation rights are rated as relevant for the French system of labour regulation. According to the ECS 2009, about 70% of French employers agree or strongly agree that employee representation is constructive in improving workplace performance. But the stakeholders, in general, consider I&C rights as compulsory and do not think about its relevance. In general, employers therefore apply information and consultation rights since they are a legal requirement, even if they consider them a waste of time and money. Nonetheless, they stress that if these rights are not respected, the social climate within the company could suffer.

However, due to the economic crisis, opinions seem to be changing. During the crisis many employers discovered that strong social dialogue with a good I&C, particularly those that were established before the crisis and where a good relationship had been built up, could help businesses to overcome economic difficulties. It seems that the role of I&C bodies is now recognised by all social partners with the added value of social dialogue in helping preserve or increase competitiveness now being widely acknowledged by employers.

The relevance of the legislation also relates to its coverage. French legislation allows individual rights of information and consultation, but these rights are rarely implemented to any extent in small companies with less than 50 employees, and not at all in companies with less than 11 employees. Hence many workers are not covered by any I&C body. In December 2008, about one million undertakings had less than 9 employees and they represented 85% of private companies and 20% of the French workforce (Dares, n° 2011-064 - Emploi et salaires dans les très petites entreprises entre 2000 et 2009 (août 2011)). Also certain categories of works are often not covered: temporary workers, employees with non-permanent contract, employees from subcontractors. This can be considered as reducing the overall relevance of the legislation, though it may equally be deemed out of scope of the legislation.

Effectiveness

As the I&C-Directives have not been specifically implemented in France due to pre-existing legislation, interviewed experts and social partners found some difficulty in answering the question about the effectiveness of the three directives. As mentioned before, French legislation already defined information and consultation rights before the Directives came into force. Thus, no differentiation can be made concerning the effectiveness of information and consultation before and after the I&C-Directives.

In the cases where employees' representatives exist (employees' delegates, works councils, single body, etc.) the Labour law regulates the issues and situation where information and consultation of the employees' representatives has to take place. If no employees' representatives exist, information and consultation procedures are not regulated.

Company case study: Idéal Production

Idéal Productions was founded in May 1988 in Sens (Yonne). It is an interactive communications agency with a workforce of 17 people. Its turnover is slightly more than one million euro. Despite the lack of information and consultation body, a collective discussion is held every Monday morning, with the team meeting, which is attended by the 17 employees and associates. There are 4 items on the agenda:

- *Information linked to the team (welcoming a trainee, leave, absences, etc.);*
- *New orders;*
- *Orders in progress and key dates in the week (meeting an important client, for example);*
- *Commercial considerations: when the company is approached for a project in Paris / an invitation to tender / getting priorities right.*

From time to time management holds supplementary meetings about specific subjects: internal building work; the new back office; blogs; raising its profile; a new, very ambitious project; rounding off finished projects/feedback.

The general objective of the I&C Directives is to establish standards and systems for informing and consulting employees about workplace issues as well as promoting cooperative rather than adversarial dialogue within the companies in order to improve business performance. Yet, even if the French labour legislation goes beyond the minimum standards laid out in the three Directives, the aim to promote more cooperation within the company between the employer and employees is not fully achieved. As unions traditionally have fears to build a "codetermination" or "co-decision" relationship with employers, the works council is more a place where employers present and explain their policy than a cooperation body where employer and representatives take decision together.

Nonetheless, the objective of consulting employee representatives "to reach an agreement" is no longer just an illusion, as I&C legislation has put pressure on social partners within the company to negotiate over a wide range of topics (salaries, older workers, equal treatment, stress, etc.). As a result of case law, companies seek to reach agreements with their employees' representatives in cases of reorganisation in order to avoid any judicial conflict. This is however not strictly speaking due to EU I&C legislation, though it may have contributed.

Social partners strongly agree that information and consultation rights are effective in both increasing trust

between management, employees and employee representatives and in increasing the adaptability, employability, and productivity of employees. Academics, on the other hand, do not believe there has been an increase in the degree of trust between social partners within undertakings and see no improvements in terms of employability or the reduction of redundancies or industrial disputes. Thus it is national law and practice, rather than the I&C Directives themselves, that can be seen as having an effect on trust and partnership between management and employees and on influencing adaptability, employability and productivity of employees.

As explained, to reach an agreement in the way of the European directives is not compulsory. But in practice, social partners try to reach agreement on the measures including in a social plan ("plan de sauvegarde de l'emploi"). Otherwise, since 10 years social partners have developed a practice of collective agreement on the collective redundancy processes ("accord de méthode") to agree on the schedule and the information and consultation process. But social partners never try to reach an agreement on the grounds of a restructuring.

Company case study: Cosmetic company

The company is a subcontractor of major cosmetic companies and manufactures "make up palette" made either with its own cosmetic products or with customer's products. About effectiveness, the HR managers said that it is difficult to measure the impact of information and consultation on business because it is a legal right of employees which they expect to be respected the employer. If the employer fails to inform and consult the single body, he knows that he will have to face industrial dispute. That means efficiency of information and consultation comes notably from the absence of costs arising from poor communication.

Experts from Ministry of Employment argue that changes due to Directives 2002/14/EC and 2001/23/EC are marginal or non-existent because of the pre-existing French legislation and the long tradition of information and consultation rights for employees' representatives in companies. These well established rights have structured the social dialogue at company and establishment level for many years.

The specific objective of Directive 98/59/EC is to afford greater protection to workers in the event of collective redundancies. Employees have to be informed and consulted through their employee representation bodies before any employees are made redundant. Management shall consult employee representation bodies with a view of reaching an agreement. The purpose is to reduce the number of redundancies and try to assist affected employees through redeployment or re-training. French legislation goes beyond the information and consultation rights of the Directive and gives employees' representatives, where they exist, the right to give their opinion on the so-called job saving plan or any reorganisation, prior to the decision being taken. Due to French labour law and associated case law, the legal framework to protect the employees and to avoid redundancies is strong, and considered to be one of the strongest in the EU.

In practice, a Dares survey that analysed 570 Job saving plans adopted between 2002 and 2004 (DARES, "Les plans de sauvegarde de l'emploi : accompagner les salariés licenciés sans garantie d'un retour vers l'emploi stable", Premières synthèses n°28.2, July 2006, side 7), stressed that the means included in the social plan, the monitoring by the public authorities and the follow-up of the measures within the social plan by the employees' representatives themselves, are "crucial to the quality of the results of employees' reclassification". The survey also stated that, despite the impression given by the media, social disputes about restructuring including judicial action are rare, according to the statistics of the Ministry of Justice.

The aim to reduce collective redundancies is surprisingly not a subject of the study. There is no systematic evaluation of job saving plans by public authorities or by employer organisations. This is because Job saving plans are adopted in case of placement in receivership or liquidation, circumstances that are not favourable to discuss to avoid the number of redundancies (see prec. Dares study). Secondly, the decision taken by management to cut positions seems to be impossible to change. Discussion with the employees' representatives focused on the measures about departures, outplacement, retraining, etc., but rarely of the number of dismissal. This is perfectly illustrated by an article written by Frédéric Bruggeman (Frédéric Bruggeman (2005), "Plans sociaux : l'impossible accompagnement social des licenciements économiques", revue de l'Ires, n°47, 2005/1).

Furthermore, employees' representatives rarely nominate experts to help them understand the reasons behind a restructuring process. Also, despite the rights to information and consultation, the Dares study showed that in less than half of the job saving plans analysed, employees' representative or the public authorities expressed an opinion or nominated an expert. The role of employees' representatives for

negotiating job saving plans within the framework of liquidations is weak, because employees are, in this case, normally only informed and almost never consulted. The first meeting of the works council, in case of liquidation, is to give information about the dismissals and not about the grounds or support measures.

In the case of redundancies, the academic interviewed explained that I&C processes often increased the measures taken that aim to mitigate the negative effects, but that this did not reduce the number of redundancies.

It is also important to mention that the focus on job saving plans often disguises the fact that a lot of redundancies are neither covered by job saving plans nor monitored by employees' representatives. In companies with less than 50 employees a job saving plan is not compulsory in case of collective redundancies with less than ten workers, and "conventional termination" ("rupture conventionnelle") do not count either. This last measure is an alternative procedure to terminate an employment contracts as established by the law of 25 June 2008 (Articles L. 1237-11 to 16 of the French Labour Code (in French)). The procedure, which is quite flexible, allows an employer and an employee, after a number of meetings, to mutually agree on the termination of an employment contract and to negotiate its end. In effect a high proportion of job cuts are not subject to any control of employees' representatives.

In 2011, the Supreme Court (Cour de cassation) has solved a debate on the respect of directive that states that, "for the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies ». But according to the Labour Code (art. L 1233-3), legislation on collective redundancies does not apply to conventional termination. The Court, that refers to the directive, has forbidden any circumvention of the directive, and stated that "when they have an economic ground and are part of a process of downsizing or if they constitute one of the modalities, the conventional termination must be taken into account in determining the information and consultation process of the employees' representatives and the obligations applicable to the employer's plan to safeguard employment" (Cass. soc. 9 March 2011, N° 10-11.581 FS-PBRI). Currently, the difficulty is to determine whether the conventional termination has an economic ground, since the termination agreement did not mention any reasons other than the agreement of the parties. The analysis of the economic environment experienced by the company at the time of signing will be fundamental in any dispute.

Company case study: AirMettal

There is a practice within a US corporation which is helping its subsidiaries to reorganize whenever they have a need. In such a case, provided the reorganisation is financially justified, the headquarters calculate the restructuring cost at division profit & loss level. The ultimate parent company is offsetting the cost of restructuring at its cost level which will not hit its division profit & loss account. As a result the division is only benefiting from the savings incurred by the restructuring. Such processes often take place at quarter end to show better results. Such requests often force divisions to organise reorganisations within a short period of time, which is often forcing management to operate outside the legal I&C processes. It may happen that management tries to avoid I&C rules using individual terminations with settlement agreements which help to speed up such processes and to cope with time constraints.

Social partners began in 2010 to negotiate a "modernisation of I&C bodies" with the aim to simplify the I&C system (i.e. a better definition of the tasks of I&C bodies). The work is ongoing. No results are expected before the next presidential election in May 2012. This work may have an impact on the effectiveness of I&C.

Efficiency

Within this study, efficiency is defined as the degree to which the benefits of the effects of the three I&C Directives as transposed are higher than their corresponding costs and/or than alternatives to the Directives where these exist. This is extremely difficult to assess, and in this report efficiency is approximated by defining the relation between the benefits and the costs of the mechanisms and resources put in place to achieve the I&C objectives based on the judgement of national experts and case study interviewees. No recent academic or official studies could be found on this issue in France.

Because of the anteriority of French legislation to the three directives, costs and benefits of the Directives cannot be separated from costs and benefits of the pre-existing French legislation.

In general the social partners, specifically from the employee side, point out that information and consultation of employees has positive financial effects for management because decisions are implemented by employees more efficiently if the decisions are transparent for them, and they are bought into them. It therefore seems more efficient than alternatives such as no regulated I&C.

Costs are related to the specific circumstances and situations of the companies where information and consultation of employees takes place. Costs differ widely between different companies and their scale, with costs seen as being high in large undertakings with European Works Councils – as employers only complain about the cost of EWC (travel cost, interpreters, translations...) and rarely about cost of other I&C bodies except where employees' representatives bring in high level external expertise.

The first benefit mentioned by the employers is that information and consultation increases the trust and partnership between management and employees. Furthermore, the employers identify the following benefits of information and consultation: it improves the quality and the acceptance of management decisions; it reduces the severity of industrial disputes and conflict; it reduces the number of redundancies; it increases the support for employee mobility from national authorities in collective redundancies, and it ensures a better protection of employees in transfers of undertakings as well as smoother transfers of undertakings.

At the same time, employers pointed to the high costs of establishing works councils, to familiarize employees' representatives with I&C legislation and to the training of employees' representatives. Furthermore, employers also estimate the annual costs of operating works councils, and of holding I&C, as high.

Nevertheless employers in general estimate the benefits of I&C to outweigh the costs.

About the efficiency of I&C bodies, a study that utilizes establishment-level data tried to explore the impact of works councils on firm productivity in France. The researchers estimate the works council effect on productivity in union and non-union settings, and investigate the extent to which alternative forms of worker voice and information sharing might substitute for the works council's impact in production. They find no evidence of a positive impact of works councils on firm productivity in any of their results, and some limited evidence of a negative effect in some of the findings. There is no indication that estimated impacts on productivity vary with union status. However, a notable finding is that worker voice and information-sharing human resource practices are prevalent in French firms regardless of works council status, and are found to have positive and statistically significant effects on firm productivity.

The French Ministry did not want to give its official opinion. Employees' representatives argue that I&C improves the social climate within the company and that it is a benefit for the employer.

Coherence

Regarding the coherence of the implementation of the three Directives, neither problems nor effects could be measured without referring to pre-existing French legislation given that the three Directives have not caused major revisions or modifications of French legislation.

The main difficulties stressed by employers are the articulation between the different information and consultation bodies in undertakings which contain several establishments with more than 50 employees. While employers agree on the benefits of information and consultation, they consider that the obligation to provide the same information to several I&C bodies to be a waste of time.

For example, in the case of the introduction of a new technology which has an impact on employment in two different establishments, the employer has to consult each body affected: the establishment committee; the central works council; the central health and safety committee; and the local health and safety committees where they exist; as well as employees' delegates of both establishments. This complexity increases when major reorganisation affects the entire group, with additional information and consultation processes in the group committee and, where necessary, in the European works council. Employers would also like to see greater coherence between the different roles of each I&C body.

Employees' representatives acknowledge these problems, but are not willing to accept radical changes such as a reduction in the number of I&C bodies, or even a clarification of their roles. As a member of an I&C body, employees' representatives benefit from a higher level of protection against dismissal than do their co-workers. That may be one of the reasons why employees' representatives consider the simplification and clarification of I&C bodies to be less urgent.

It should of course be noted that given that the EU I&C directives do not cover collective bargaining, such

changes go beyond the scope of this study.

4.4.3. Grouping findings across Country clusters

This section presents our findings regarding various attempts to identify clusters of countries with respect to their experience and use of I&C directives, based on different criteria and data.

While it is recognised that such patterns of evidence can be the most effective gateways to overall understanding, the evidence assembled in this study suggests that such patterns are hard to find with respect to I&C.

The notion of addressing countries in groups or clusters, using one or other of the ‘a priori’ categories commonly used by industrial relations and other social science analysts, had been rejected early on in this study on the grounds that, while it might simplify the task of weighing the evidence from 30 different countries, it could equally distort or prejudice findings before the analytical work had begun.

Nevertheless, having obtained the body of detailed data on individual countries, it was decided to test this evidence to see whether the original prejudice against grouping countries was misplaced, and whether use could be made of any pre-existing categorisations as a way of achieving synthetic results.

Categorisation of industrial relations regimes or arrangements

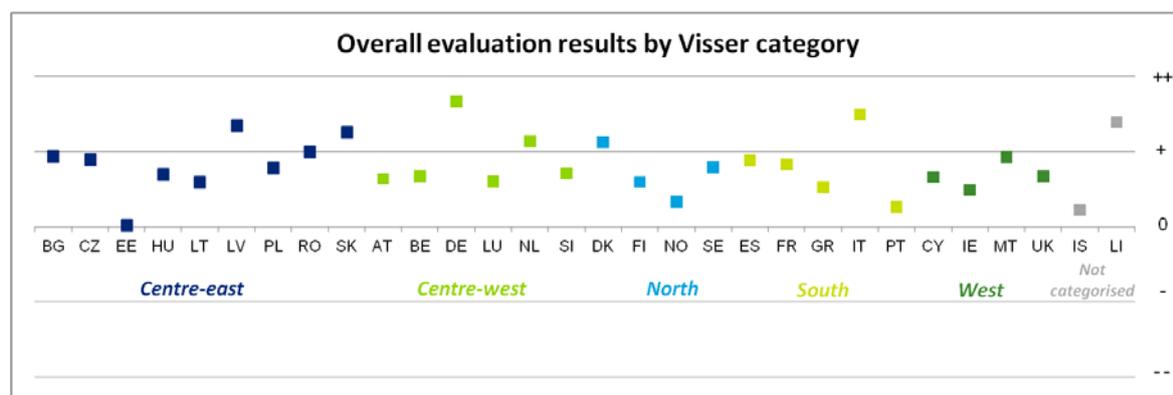
	North	Centre-west	South	West	Centre-east
Production regime	Coordinated market economy		Statist market economy	Liberal market economy	Statist or liberal?
Welfare regime	Universalistic	Segmented (status-oriented, corporatist)		Residual	Segmented or residual?
Employment regime	Inclusive	Dualistic		Liberal	
Industrial relations regime	Organised corporatism	Social partnership	Polarised/state-centred	Liberal pluralism	Fragmented/state-centred
Power balance	Labour-oriented	Balanced	Alternating	Employer-oriented	
Principal level of bargaining	Sector		Variable/unstable	Company	
Bargaining style	Integrating		Conflict oriented		Acquiescent
Role of SP in public policy	Institutionalised		Irregular/politicised	Rare/event-driven	Irregular/politicised
Role of the state in IR	Limited (mediator)	‘Shadow of hierarchy’	Frequent intervention	Non-intervention	Organiser of transition
Employee representation	Union based/high coverage	dual system/high coverage	Variable (*)	Union based/small coverage	Union based/small coverage
Countries	Denmark Finland Norway Sweden	Belgium Germany (Ireland) Luxembourg Netherlands Austria Slovenia (Finland)	Greece Spain France Italy (Hungary) Portugal	Ireland Malta Cyprus UK	Bulgaria Czech Republic Estonia Latvia Lithuania Hungary Poland Romania Slovakia

Source: European Commission (2008): *Industrial Relations in Europe 2008*, Brussels, p. 49.

To this end, the results from this study were compared with two systems of groupings: a quasi-geographic grouping of countries developed by industrial relations expert Visser and included in a recent European Commission industrial relations report⁹⁹ and a grouping of countries based on patterns of workplace representation, notably

⁹⁹ “Visser categorisation” (cf. EC (2008): *Industrial Relations in Europe 2008*, 168 pp.).

distinguishing between works councils-dominated system and trade union-dominated systems, as presented in a recent Eurofound report¹⁰⁰.



Visser category	Countries	Mean	Standard deviation
Centre-east	BG, CZ, EE, HU, LT, LV, PL, RO, SK	0.83	0.39
Centre-west	AT, BE, DE, LU, NL, SI	0.91	0.42
North	DK, FI, NO, SE	0.71	0.33
South	ES, FR, GR, IT, PT	0.83	0.42
West	CY, IE, MT, UK	0.69	0.18
EEA28	All of the above	0.81	0.35

These results using the Visser categorisation indicates some reasonably significant differences between the average results for each of the different zones – ranging from around 0.7 in the West and North, to something close to 0.8 in the South and Centre-East, and 0.9 in the Centre West, around EEA28 average of 0.8.

The Centre-West group (that includes Germany, Austria and the Benelux countries, but also Slovenia) has the highest scores from our assessment, which may conform to expectations since these are countries where works council arrangements are important.

The lowest scores in this study, however, were found to be among countries that fall into two groups: the North (Nordic) countries (Denmark, Finland, Norway and Sweden), and what is called the West in this classification system (which is actually the United Kingdom and Ireland, plus two Mediterranean islands, Cyprus and Malta).

Finally the scores for the countries in the South group (which covers Spain, France, Greece, Italy and Portugal) are average, and a little below the countries in the Centre-East (essentially the Eastern 'new' Member States) who are a little above average.

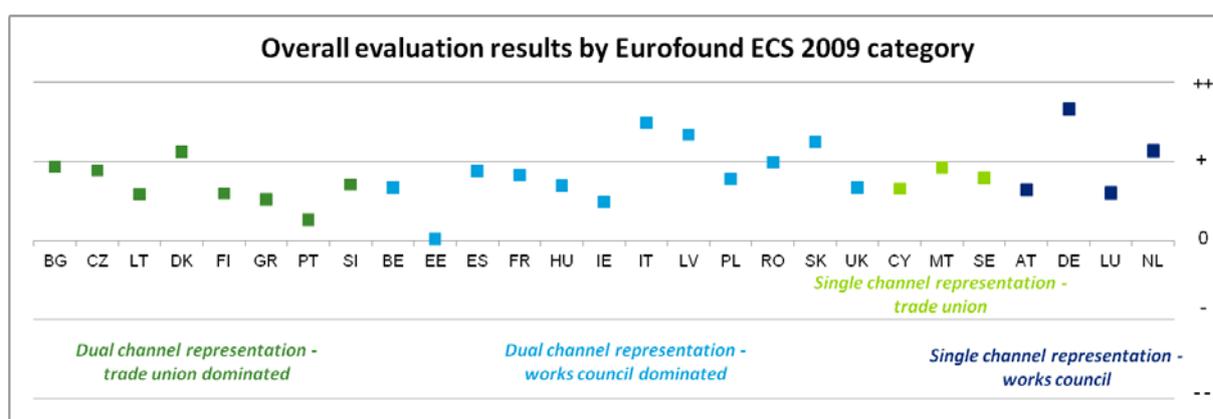
In practice, however, much of the differences between groups appear to be accounted for by the outlying cases – notably Germany and Italy – and it is difficult to know what, if any, conclusions to draw from the findings with regard to the evaluation of the effects of information and consultation legislation.

In particular, differences of assessment *within* the above groups can be very large: the Nordic countries certainly do not all approach workplace relationships in the same way any more than do the Benelux countries, while one of the main common characteristic of

¹⁰⁰ "Eurofound ECS categorisation" (cf. Eurofound (2011): *Employee representation at establishment level in Europe – European Company Survey 2009*, 66pp.).

the West category is that they are all islands (albeit two large and two relatively small). Likewise the findings with respect to stakeholder assessments of the benefits of I&C legislation show large variations between countries in the South category, notably between Italy on the one hand, and Spain and Portugal on the other. In short, no meaningful relationship could be found between the overall evaluation findings of this study and the particular categorisation.

In relation to the second approach, as outlined in the Eurofound report, and which is based essentially on differences between countries with differing levels of influence of trade unions in relation to works councils, there does appear to be an inverse relationship to some degree between overall support for I&C legislation and rates of trade union membership, seemingly reflecting the somewhat divergent views of non-trade union based representative channels reported in the research literature, and recognised in the context of the on-going implement of the framework directive 2002/14/EC.



Eurofound ECS 2009 category	Countries	Mean	Standard deviation
Dual channel representation - trade union dominated	BG, CZ, LT, DK, FI, GR, PT, SI	0.73	0.24
Dual channel representation - works council dominated	BE, EE, ES, FR, HU, IE, IT, LV, PL, RO, SK, UK	0.84	0.40
Single channel representation - trade union	CY, MT, SE	0.79	0.13
Single channel representation - works council	AT, DE, LU, NL	1.01	0.50
EU27	All of the above	0.83	0.35

A wider trawl of contextual economic and social data was also undertaken to see if it could be used to distinguish groups of countries.

A cross-sectional comparison was therefore made between the national expert assessments of I&C legislation and the following national level indicators:

- GDP per head of population – to test whether countries at different levels of economic performance had differing assessments of the value of I&C legislation.

- Percentage of companies with fewer than 50 employees – to test whether different sizes or structures of economies affected assessments concerning the benefits of I&C.
- Density of TU membership – to test whether this was positively or negatively associated with assessments of the benefits of information and consultation.
- Collective bargaining coverage – to test whether this was positively or negatively associated with assessments of the benefits of information and consultation.
- Employee representation coverage – to test whether this was positively or negatively associated with assessments of the benefits of information and consultation.
- Length of membership or the EU or EEA – to test whether familiarity with the EU legislation (this includes EU I&C legislation) might be associated with the degree of acceptance of the legislation.

The analysis produced the following weak results:

- In terms of GDP per head, there is a slight positive relationship, with wealthier countries being slightly more likely to be positive about information and consultation than poorer ones.
- In terms of the importance of small firms, there appears to be little difference in response between countries with a higher or lower percentage of smaller businesses.
- In terms of collective bargaining coverage, there is a slight, but almost insignificant, reduction in assessments as collective bargaining coverage increases.
- In terms of employee representation coverage, however, there is a reasonably positive relationship between the level of coverage and the degree of positive assessment.

However, the results did confirm the inverse relationship between a positive view of I&C and the rate of trade union membership, as opposed to a positive relationship with rate of employee representation. These results point to the complex and often unresolved issues concerning the roles of trade unions and alternative forms of employee representation with respect to information and consultation arrangements as discussed in recent Eurofound research (see box below).

Trade union ambivalence about I&C

A recent Eurofound report on I&C practices across Europe¹⁰¹ clusters countries into three groups:

- **Countries with a stable pattern of I&C arrangements:** Austria, Belgium, Denmark, Germany, Netherlands, Norway and Sweden;
- **Countries with a growing incidence (or use) of I&C arrangements:** Estonia, France, Luxembourg, Poland, Slovakia, Slovenia, Spain and the UK;
- **Countries with declining incidence, or very low take up, of I&C arrangements:** Bulgaria, Cyprus, the Czech Republic, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Portugal and Romania.

In the third and largest group of countries the authors observe that 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.

Trade union ambivalence towards establishing I&C bodies is a frequently cited explanation for the low incidence of I&C arrangements.¹⁰² Many trade union officials tend to be wary of I&C bodies at the enterprise

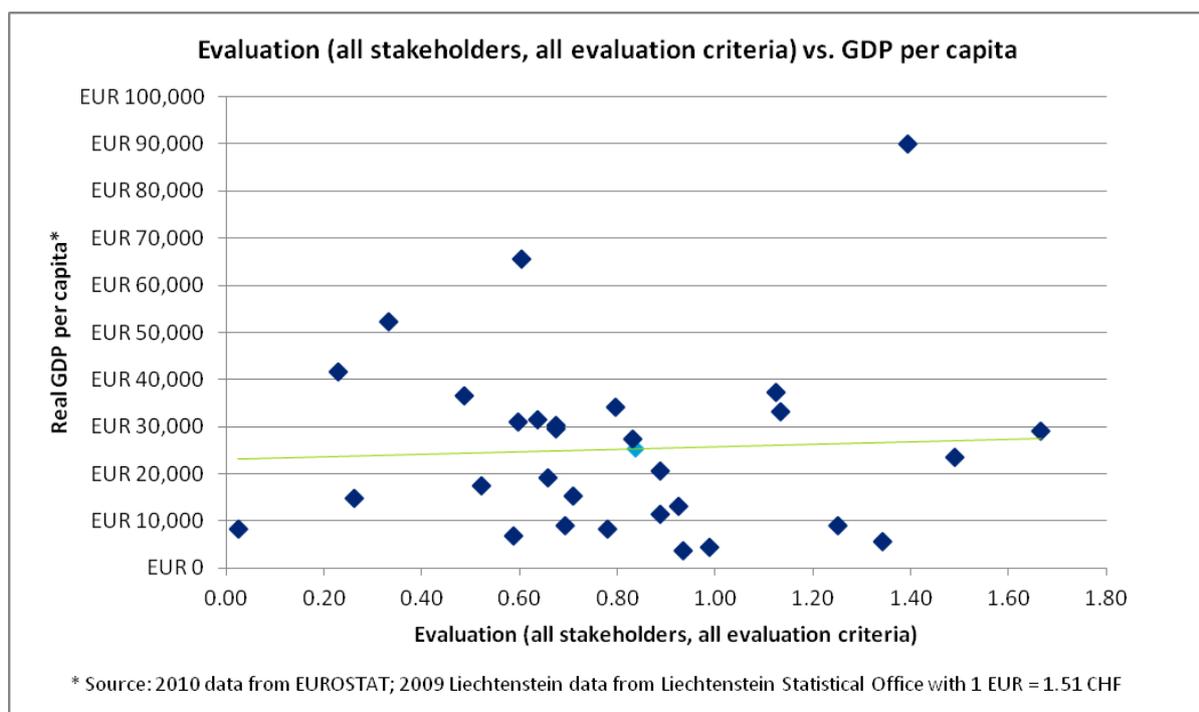
¹⁰¹ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, 32 pp.

level fearing that they can be used by employers as proxy representatives of workers, thereby undermining the activity and legitimacy of trade union power.

The impacts of the trade union ambivalence about I&C in Ireland and the UK have been discussed by Dobbins et al. (2011).¹⁰³ The authors conclude that ambivalence of national unions in Ireland and the UK towards contesting the space opened by the I&C Directive 2002/14/EC has aided employers in occupying space for voice. The upshot is that employer experimentation with highly variable non-union forms of enterprise-based regulation (HRM, employee consultative forums, and direct employee involvement) is a challenge to unions as they struggle to retain receding regulatory space (Barry, 2009).¹⁰⁴ The authors' empirical findings display that the regulatory outcome of the I&C regulations has been 'legislatively-prompted unilateralism', with management dominating I&C arrangements, and employees having little influence. According to the authors, this power imbalance renders most I&C structures unstable and short-term restricting the potential of I&C structures to create enduring mutual gains.

Further, the results also indicate a positive relationship between a positive view of I&C and the length of time that countries had been members of the EU which seems to serve as a kind of proxy for the degree to which the basic principles and practices of EU social dialogue have been absorbed into national industrial relations systems.

The detailed findings are set out in a series of scatter diagrams below, which also contain a simple least-squares regression line.

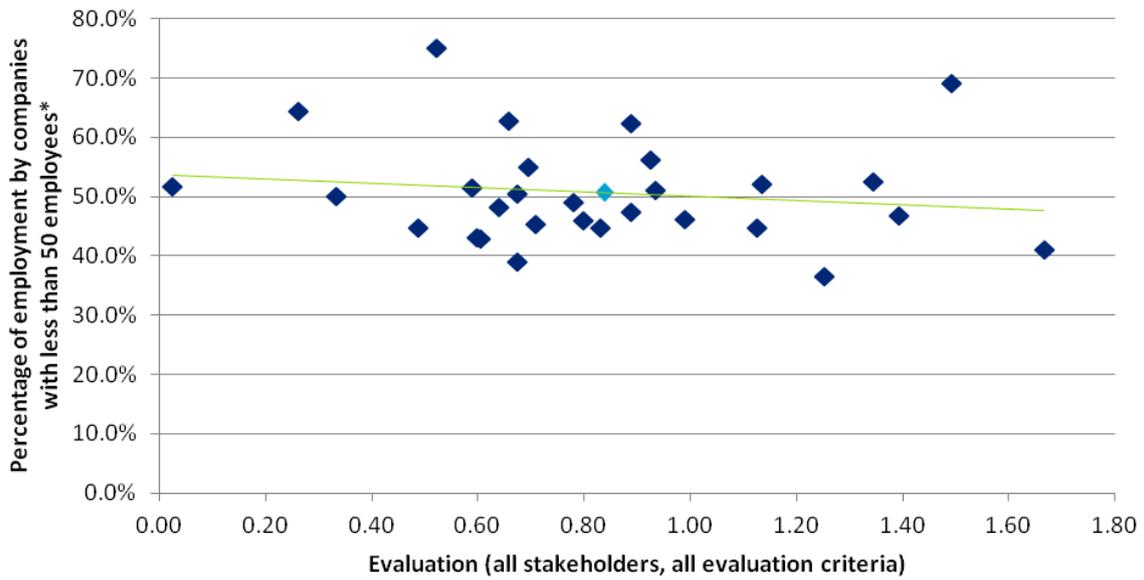


¹⁰² Cf. also CITUB, BIA, ICTU, UATUC, IRES, LMDT (2010): *Information and Consultation in Europe, Analysis of Legislation and Practices in Four EU Member-States and One Candidate Country, Improvement of the Process of Workplace Information and Consultation for a Better Employees' and Workers' Representation in Europe (INFORMIA)*, pp. 27f and 32.

¹⁰³ Dobbins, T. & Dundon, T. & Cullinane, N. Donaghey, J. & Hickland, E. (2011): The Information and Consultation of Employees (ICE) Directive: employer occupation of regulatory space for informing & consulting workers in liberal market regimes, *Bangor Business School Working Paper*, BBSWP/11/007, 30 pp.

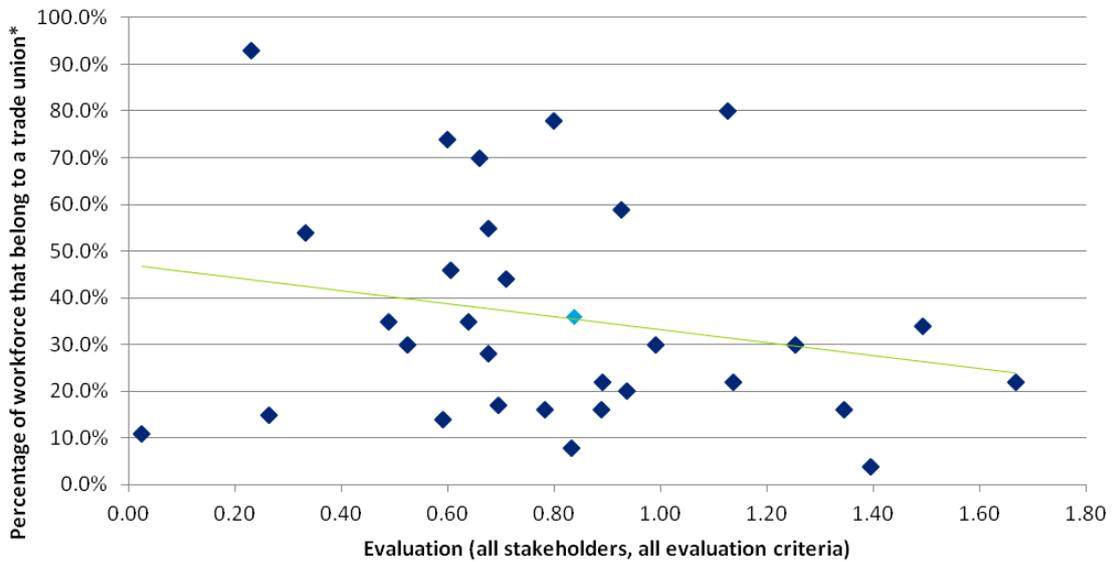
¹⁰⁴ Barry, M. (2009): *The regulatory framework for HRM*, in A. Wilkinson, N. Bacon, T. Redman and S. Snell (eds) *The SAGE handbook of Human Resource Management*. London: SAGE Publications Ltd.

Evaluation (all stakeholders, all evaluation criteria) vs. Percentage of employment by companies with less than 50 employees*

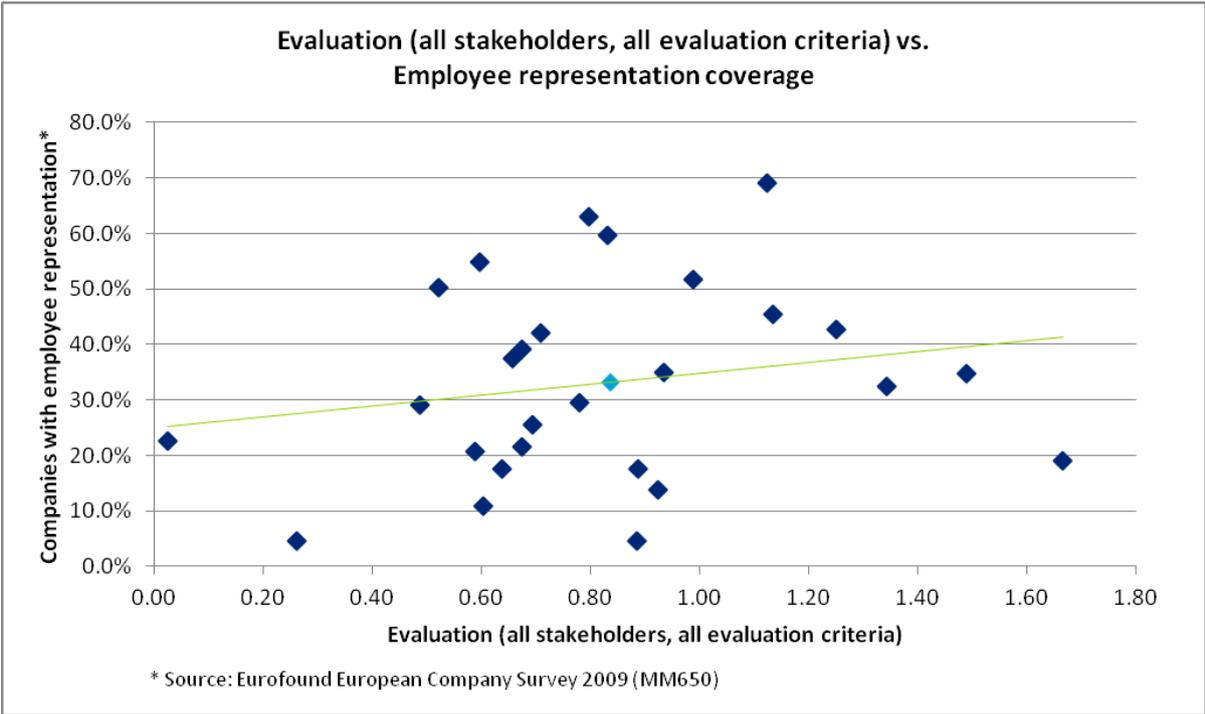
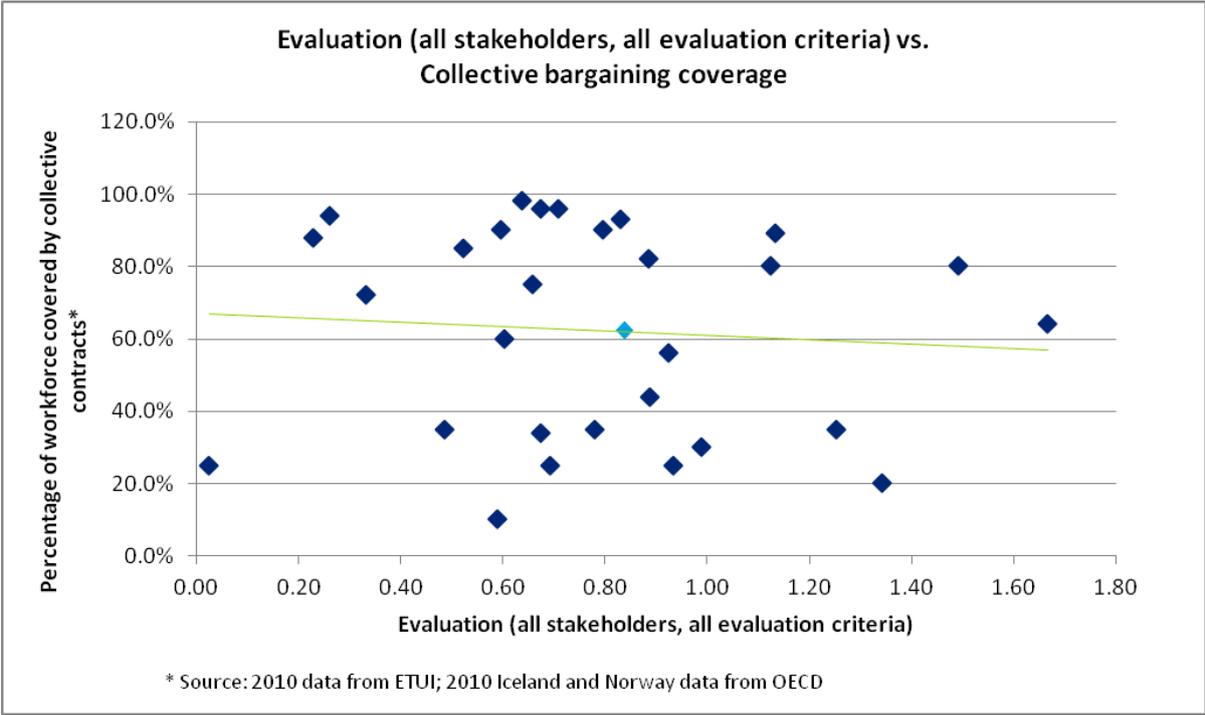


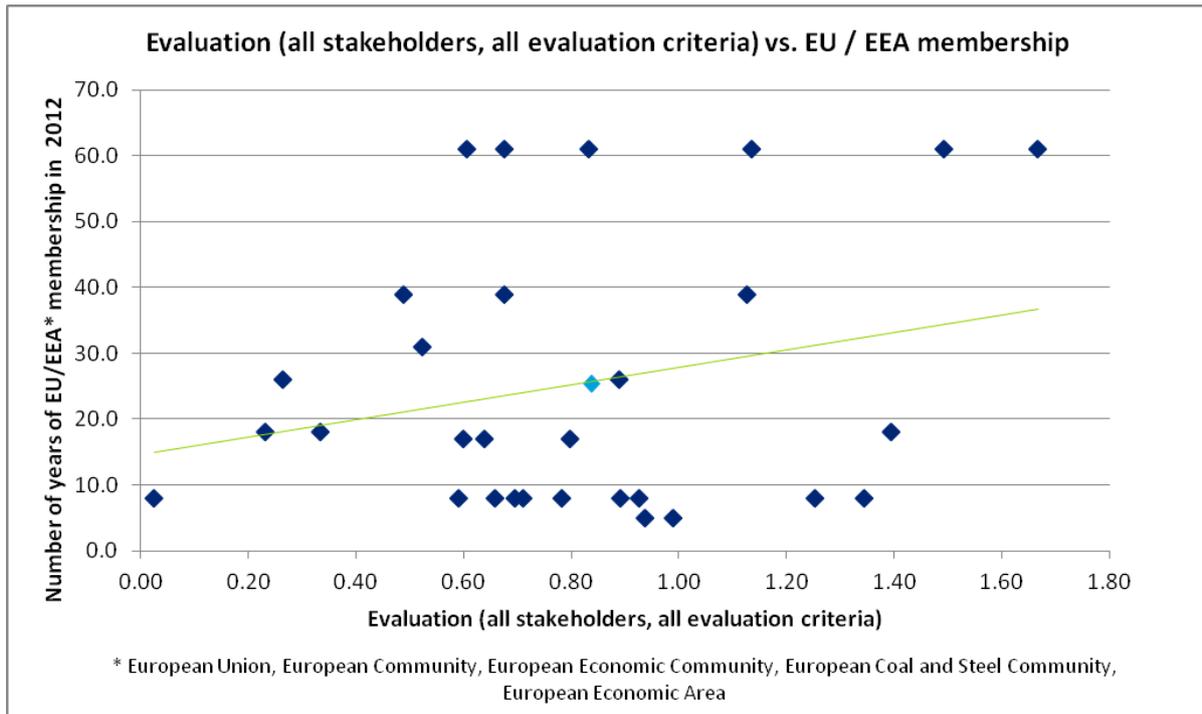
* Source: 2010 data from European Commission DG ENTR, 2010-2011 Report on European SMEs (Estimations based on EUROSTAT's Structural Business Statistics database)

Evaluation (all stakeholders, all evaluation criteria) vs. Trade union density



* Source: 2010 data from ETUI; 2003 Iceland data from OECD; 2011 Liechtenstein data from LANV; 2009 Norway data from OECD





4.4.4. Summary of findings on differences between countries

The most logical overall conclusion from this evidence would appear to be that industrial relations systems, and variations in stakeholder reactions to I&C legislation, are very country-specific and even company-specific in some countries. This is in line with recent Eurofound research¹⁰⁵ which finds that *'there is extensive variation both between and within countries in the extent and nature of workplace social dialogue'*, being influenced by history and tradition, by the relative influence, aspirations, and wider social and economic concerns of the parties concerned, as well as by the willingness or otherwise of governments to intervene in relations between the social partners.

Country groupings commonly used (such as Benelux or Nordic) appear to be inappropriate because differences within many of these country groupings can be as large as the differences between them, and the correct approach is to addressing the situation, needs and challenges of countries individually, taking account of the industrial relations culture and history as much as economic and social conditions.

As a result, there appears to be little justification, or advantage, in seeking to treat individual countries as if they formed part of some wider type or grouping, whether this be geographical or institutional. This is a key finding and supports a view of the EU I&C legislation as a basis for minimum standards, possibly to be complemented by further specific measures at national level, and not necessarily through legislation.

The results of the contextual factor analysis putting more general economic and social data in relation to the national evaluation results were also disappointing, with the only significant findings being an inverse relationship between trade union membership and enthusiasm for I&C legislation, and a positive relationship between support for I&C and the length of time that a country had been in the EU.

¹⁰⁵ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, p. 57.

It is important to note that, while the analysis presented in section 4.4.3 has been based essentially on quantitative or quasi-quantitative evidence, the analysis of the extensive qualitative evidence – contained in the national expert assessments, the national and EU-level literature and the company case studies – has not brought to light any evidence that would appear to openly challenge such findings.

The differences in evaluation responses across countries are not easily explained in a simple way by using measurable indicators and contextual factors. Individual countries do not fit easily into conceptual schema. It is an uncomfortable, but probably exact conclusion, that national systems are sufficiently different from one another that it is not very helpful to try to pigeonhole them.

In general, culture, traditions and history can be seen to play a significant overall role, but recent events may also play their part. This appears to be particularly the case in Estonia, Ireland and Iceland, given that these countries have suffered particularly badly in the current financial and economic crisis, and may be sceptical about the protective benefits of EU legislation.

Other explanations include the fact that the views of the stakeholders may differ in countries where national legislation existed *before* the adoption of the EU directives (such as in Austria, France or Germany) or, in the case of EEA countries, already exists. In such cases the relevance of the EU legislation may be considered as low, even though its content may be judged as relevant.

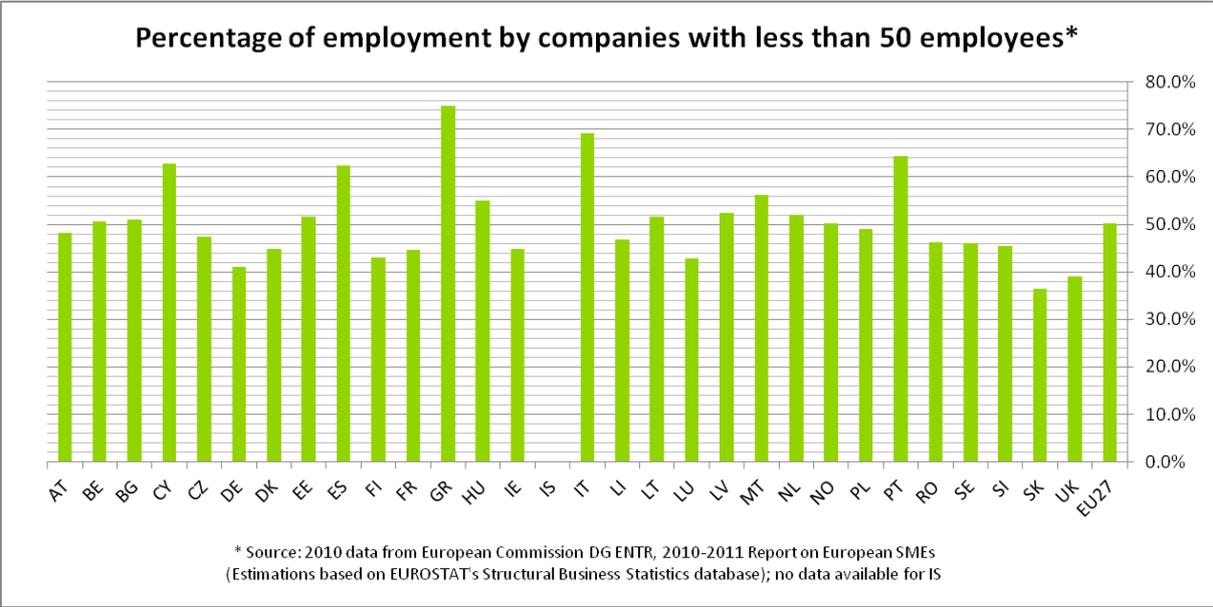
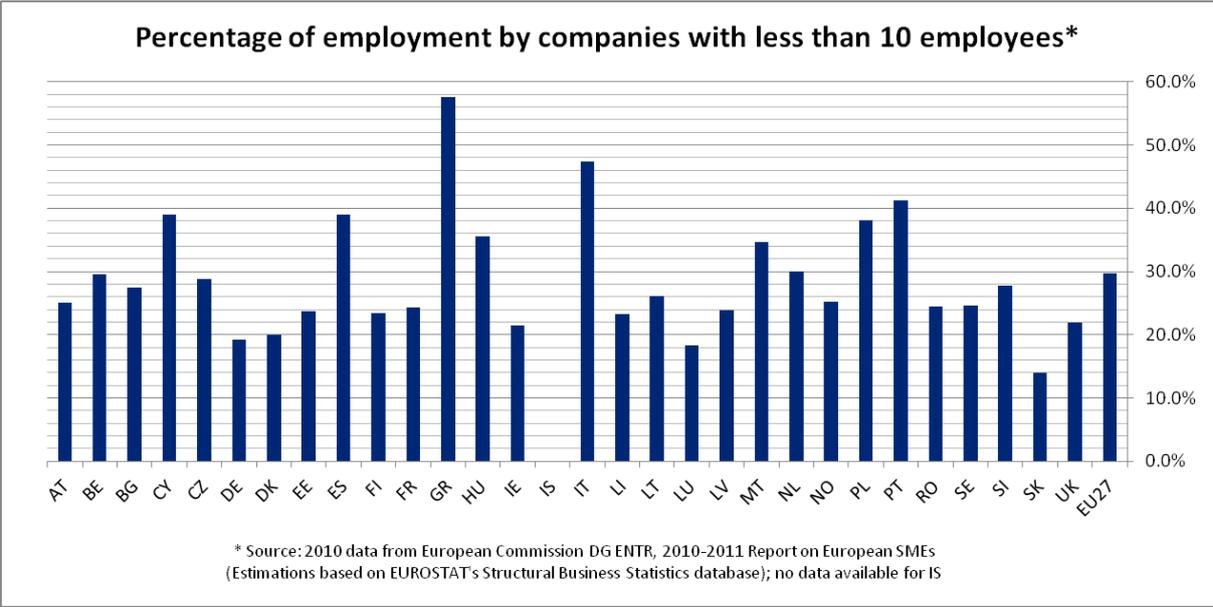
There are also cases where there may have been excessively high expectations – for example by employees in some of the ‘new’ Member States with regard to the protection offered by the collective redundancies directive – with the resulting disappointment in practice. This may explain negative assessments of the effectiveness of the directives by employees in ‘new’ Member States Cyprus, the Czech Republic and Estonia, although this is also the employee assessment in Greece, Portugal and Ireland, but also the Netherlands.

4.5. I&C in SMEs

4.5.1. I&C coverage of SMEs

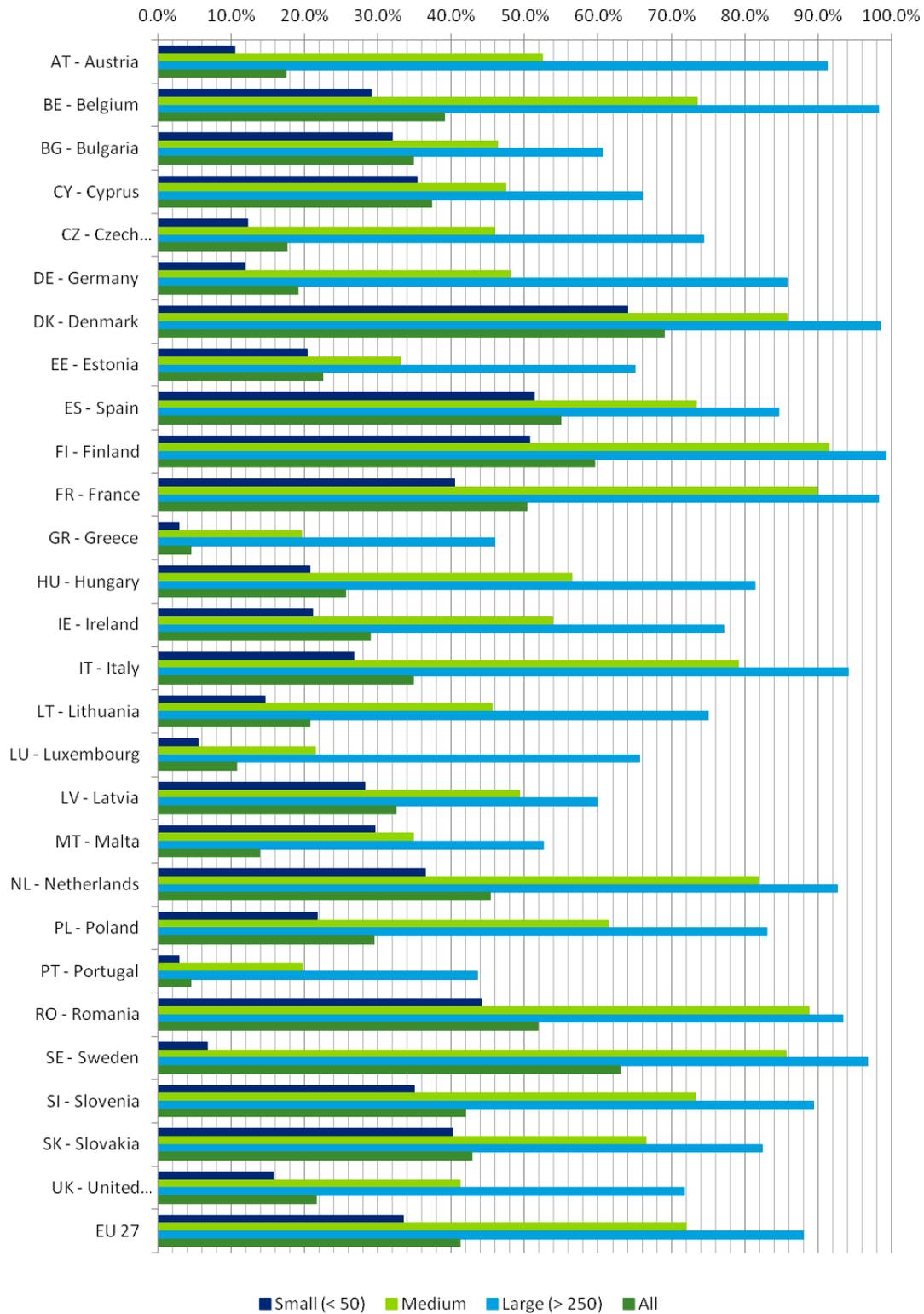
Most European citizens are employed by SMEs. This section therefore specifically focuses on I&C in SMEs analysing I&C coverage, characteristics and preferences in SMEs.

It is recognised that the European Union has specifically set thresholds to legislation in order to minimise costs on SMEs, and the EU representatives of the SMEs, and other employer bodies, have always underlined the importance of maintaining thresholds. However it is also a fact that 30% of EU employees work in companies with less than 10 employees and 50% of employees work in companies with less than 50 employees, which indicates that between 30% and 50% of EU employees are largely excluded in practice from the coverage of the directives.



Based on the European Company Survey data (ECS MM650), the visual below depicts the establishment-level coverage of companies with employee representations.

Employee representation coverage by company size



Source: Eurofound European Company Survey 2009 (MM650)

Note: Companies with less than 10 employees are not covered by the ECS 2009.

While the coverage rates vary strongly across countries, it clearly appears that coverage increases with company size. Employee representation coverage in small companies (10-49 employees) is very low (EU27 average: 33.5%), much higher (EU27 average: 72.0%) in medium companies (50-250 employees), and very high (EU27 average: 88.0%) in large companies (250+ employees). The overall EU27 employee representation coverage is 41.2% according to the ECS. However, it is important to note that the ECS does not cover companies with less than 10 employees – i.e. about 30% of employment in the EU (see European Commission DG ENTR statistics above).

A multivariate analysis with regard to the factors explaining the incidence of employee representations undertaken by Eurofound based on ECS 2009 data confirms that company size is by far the most important explanatory factor. Other relevant factors are country and economic sector.¹⁰⁶

A joint ETUC and UEAPME research project¹⁰⁷ confirms that in many countries micro and small companies in most cases are not covered by institutional structures of interest representation and employee participation is organised in a mostly informal way along personal ties. Medium sized companies differ from these patterns to certain degrees. In general, institutional employee interest representation structures are more widespread (also deriving from the legal frameworks).

Recent Eurofound research¹⁰⁸ further indicates that at the workplace level employee representation and social dialogue/collective bargaining arrangements are not as widespread in SMEs as they are in larger companies. Trade union density is relatively low in SMEs, particularly in the smallest companies, which often tend to be family-owned and/or do not have a strong tradition of employee representation.

Trade union membership in SMEs across Europe¹⁰⁹

In most countries for which statistics are available, union membership tends to rise with increasing company size. Yet, trade union membership data for SMEs should be seen against a general background of overall decline in trade union membership in the majority of countries.

In the UK, according to data from the most recent Workplace Employment Relations Survey (WERS 2004), 7% of employees in small firms (employing fewer than 50 people) and 10% of employees in medium-sized firms (employing 50-249 employees) are trade union members, compared with 28% in larger firms.

In Germany trade union density also rises according to company size. Data from 2004 show that union density was 7.6% in establishments with 1-9 employees and 14.6% in establishments with 10-49 employees, compared with 32.3% for establishments with 500-1999 employees and 33.7% for those with 2000 or more employees.

Likewise, in Estonia, trade union membership in companies with up to nine employees was 9%, compared with 38% in companies with between 200 and 1000 employees (2004 data).

In Norway, trade union density was 30% in companies of 1-9 employees in 2008, rising to 51% in companies of 10-49 employees and 74% in companies of 200 or more employees.

Conversely, in some other countries like Belgium, there is no significant difference in levels of union membership according to company size.

According to the same Eurofound report, trade unions in some countries are making it a priority to try to increase employee representation in SMEs, for example by trying to

¹⁰⁶ Eurofound (2010): *European Company Survey 2009*, pp. 50ff.

¹⁰⁷ ETUC & UEAPME (2009): *Cooperation between SMEs and trade unions in Europe on common economic and social concerns*, p. 15.

¹⁰⁸ Eurofound (2011): *SMEs in the crisis: Employment, industrial relations and local partnership*, p. 17.

¹⁰⁹ Eurofound (2011): *SMEs in the crisis: Employment, industrial relations and local partnership*, p. 18.

encourage the establishment of works councils in those countries where employee representation is based on a system of works councils. This tends to be a strategy that predates the crisis in most countries and there is no direct evidence that the crisis has had a particular impact on trade union strategies in this regard.

Employee representation in SMEs across Europe¹¹⁰

Employee representation in SMEs is a key issue for employee representative bodies and trade unions in some countries. In Austria, trade unions have indicated that they would like to see an increase in employee representation in SMEs, in the form of more works councils, particularly in the smaller SMEs. Employee representation in SMEs is also a concern for trade unions in Spain. Here, unions are trying to resist any attempts on the part of employers to decentralise collective bargaining, in the belief that this would lead to a deterioration in employment terms and conditions for SME employees, which, in the trade unions' view, are already relatively poor. Spanish trade unions also state that low trade union membership and the low number of works councils in SMEs means that it is difficult to monitor whether the provisions of collective agreements are being respected in SMEs. In Belgium, trade unions are suggesting lowering the threshold for the formation of works councils, in order to increase the number of works councils present in SMEs. Hungarian trade unions are also concerned about low levels of representation in SMEs and are working to support the establishment of works councils.

Reports on the national-level transposition of Directive 2002/14/EC¹¹¹ have shown a wide diversity of employee representation arrangements and thresholds for the application of the Directive. In some countries, such as Belgium¹¹², the choice of thresholds has been subject to controversial discussions among social partner. Interviewed stakeholders at national and EU-level acknowledged the trade-off that exists between keeping administrative burden for SMEs low and ensuring that employees in SMEs can benefit of formalized I&C structures.¹¹³ Many stakeholders argued that raising awareness and promoting good practice of I&C in SMEs may be more effective in practice to ensure employees' fundamental right to I&C than legal measures reducing the thresholds of Directive 2002/14/EC.

In sum, employee representation is not as widespread in SMEs as it is in larger companies, but there are considerable differences between different countries.

4.5.2. I&C characteristics in SMEs

As discussed in section 4.1., this study has undertaken a detailed analysis of the ECS 2009 data in order to provide the following comparative composite indicators of I&C: a cooperative culture indicator, an employee involvement indicator, a strategic influence indicator, and an I&C resources indicator.

¹¹⁰ Eurofound (2011): *SMEs in the crisis: Employment, industrial relations and local partnership*, p. 36.

¹¹¹ See for instance: EC (2008): *Communication on the review of the application of Directive 2002/14/EC in the EU*, COM (2008) 146 final, 11 pp.

ETUI-REHS (2006): *Information and consultation in the European Community: Implementation report of Directive 2002/14/EC*, 49 pp.

Eurofound (2008): *Impact of the information and consultation directive on industrial relations*, 34 pp.

¹¹² Eurofound (2006): *Debate on representation thresholds in SMEs*, <http://www.eurofound.europa.eu/eiro/2006/03/articles/be0603019i.htm>.

¹¹³ Note that recital 19 of Directive 2002/14/EC states: "The purpose of this general framework is also to avoid any administrative, financial or legal constraints which would hinder the creation and development of small and medium-sized undertakings. To this end, the scope of this Directive should be restricted, according to the choice made by Member States, to undertakings with at least 50 employees or establishments employing at least 20 employees."

All these indicators are also provided by company size (10-20 employees, 20-49 employees, 50-249 employees, 250-399 employees, 500+ employees) for the EU27, with assessments on the same basis as the other analyses in this report of ECS 2009 data and the national expert assessments of stakeholder positions, namely a five-point scale covering very negative (-2), negative (-1), neutral (0), positive (+1), and very positive (+2).

This section provides a summary of results; more details on the methodology can be found in annex 10 of this report.

Cooperative Culture Indicator

While the overall findings are positive in relation to all questions there are no very significant differences between the results from small, medium and large sized firms in relation to the detailed questions although, overall, smaller firms do score somewhat more highly on the overall cooperative culture indicator. Such differences need to be treated with caution, however, given that the results of the ECS only cover companies with representative structures and it is possible that small companies that have such structures are more likely to be positive than those that do not.

<i>Cooperative Culture Indicator by company size</i>					
<i>Establishment size (number of employees)</i>	<i>ER151_1: Employees support the work of the employee representation</i>	<i>ER151_2: Employees rarely express interest in the outcome of consultations or negotiations</i>	<i>ER151_3: The relationship between management and employee representation can best be defined as hostile</i>	<i>ER151_4: Management and employee representation make sincere efforts to solve common problems</i>	<i>Cooperative Culture Indicator</i>
10 to 19	1.11	-0.26	-1.16	1.19	0.93
20 to 49	1.07	-0.20	-1.19	1.13	0.90
50 to 249	0.95	-0.18	-1.10	1.05	0.82
250 to 499	0.98	-0.24	-1.04	0.97	0.81
500 +	1.00	-0.27	-1.19	1.03	0.87

Employee Involvement Indicator

There is a notable difference with respect to this indicator in terms of size of firm. Employee involvement in this respect is seen as being well below neutral (around -0.40) among firms with fewer than 50 employees, neutral for firms with 50-249 employees, but much more positive for larger firms, with the highest assessment of all in firms with over 500 employees.

Employee Involvement Indicator											
<i>Has the employee representation been involved in establishing rules and procedures for them, be it either by way of consultation or negotiation?</i>											
Size of establishment	ER401_1: The setting of the length of working time	ER401_2: The rules and procedures on doing overtime	ER401_3: Part-time work	ER401_4: Working time accounts or other flexible working time regimes	ER401_5: Shift system	ER401_6: Night work	ER401_7: Weekend work	ER401_8: Deployment of temporary agency workers	ER401_9: Use of fixed-term contracts	ER401_10: Access to training	Employee Involvement Indicator
10 to 19	-0.02	-0.05	-0.55	-0.36	-0.83	-0.96	-0.63	-0.99	-0.64	0.64	-0.44
20 to 49	0.06	0.06	-0.46	-0.28	-0.71	-0.87	-0.56	-0.99	-0.50	0.54	-0.37
50 to 249	0.46	0.39	-0.32	0.06	-0.13	-0.31	-0.12	-0.85	-0.35	0.63	-0.06
250 to 499	0.84	0.86	0.15	0.58	0.49	0.41	0.55	-0.51	0.11	0.77	0.43
500 +	1.20	1.00	0.39	0.87	0.81	0.76	0.86	-0.32	0.40	1.09	0.71

Strategic Influence Indicator

Within this indicator, the issues where there is most common agreement, in a positive way, concern health and safety matter, where average estimates are much closer to positive (0.77 in the smallest firms to 0.94 in the largest firms) followed by issues concerning working time, but at a lower level (closer to 0.20 in smaller firms up to 0.5 in larger firms).

Strategic Influence Indicator										
<i>How large is the influence of the employee representation on management decisions in this establishment?</i>										
Size of establishment	ER207_1: Employment and human resources planning	ER207_2: Equal opportunities and diversity management	ER207_3: Changes in working time regulations	ER207_4: The determination of pay	ER207_5: Health and safety matters	ER207_6: Changes in the organisation of work processes and workflow	ER207_7: The impact of structural changes such as restructurings, relocations or takeovers	ER207_8: Career management (selection, appraisal, training)	ER207_9: Disciplinary or hierarchical problems	Strategic Influence Indicator
10 to 19	-0.03	-0.01	0.27	-0.37	0.77	0.28	-0.34	-0.04	0.03	0.06
20 to 49	-0.06	0.03	0.18	-0.40	0.75	0.20	-0.36	-0.08	0.11	0.04
50 to 249	-0.29	-0.06	0.22	-0.46	0.77	-0.06	-0.49	-0.33	0.08	-0.07
250 to 499	-0.36	0.00	0.45	-0.33	0.86	-0.19	-0.44	-0.43	0.18	-0.03
500 +	-0.20	0.11	0.59	-0.17	0.94	-0.10	-0.37	-0.36	0.25	0.08

Eurofound secondary analysis indicates a curvilinear size effect with regard to the strategic influence of employee representatives. Accordingly, a smaller sized company has a higher chance of stronger strategic influence among the employee representation. The smaller distance to management seems to create more possibilities for influence. However, other important factors which determine this influence are less available in smaller establishments – such as a works council or trade union power and resources. These factors increase with the size of the establishment.¹¹⁴ The Strategic Influence Indicator weakly confirms this curvilinear relationship. A similar pattern can be observed for the Cooperative Culture Indicator.

¹¹⁴ Eurofound (2010): *European Company Survey 2009*, p. 66.

I&C Resources Indicator

The Eurofound ECS 2009 overview report states that “resources are considered as being crucial for a well-functioning employee representation. In order to have an impact and to be able to enter into discussion with management, the following ‘triangle’ of resources is deemed important for an employee representation: information, training and time.”¹¹⁵ Based on this insight the I&C resource indicator has been compiled.

Overall, there are no differences in terms of size of company, but differences on specific issues. In the case of overtime hours, the failure to inform and consult seems to relate particularly to smaller firms. In two respects – timeliness of information and time-off, levels of satisfaction are lower the larger the firm. In the case of provision of training and (to a lesser extent) the provision of economic and employment information, employee representatives in larger firms are more satisfied.

I&C Resources Indicator							
Size of establishment	ER200_1 : Provision of information on the economic and financial situation of the establishment	ER200_2 : Provision of information on the employment situation	ER200_3 : Provision of information on the number of overtime hours	ER203: Employee representatives usually receiving the information timely and unrequested	ER301: Sufficient time-off for fulfilling the representative duties	ER304: Regular training for employee representatives	I&C Resources Indicator
10 to 19	0.64	0.82	-0.07	0.99	1.38	0.70	0.89
20 to 49	0.63	0.78	-0.02	0.85	1.26	0.65	0.82
50 to 249	0.69	0.78	0.07	0.67	1.13	0.90	0.86
250 to 499	0.86	0.96	0.33	0.58	0.91	1.08	0.89
500 +	0.95	1.08	0.45	0.51	0.62	1.35	0.91

The literature provides further insights on the characteristics of I&C in SMEs. Eurofound secondary analysis shows that small enterprises have more difficulties in providing information at least once a year on the financial and economic or employment situation: One out of four small establishments with fewer than 50 employees fails to provide one of these types of information on a yearly basis.¹¹⁶ With regard to time-off, the same report indicates that while the group that has as much time as necessary is evenly spread, the available time resources are more limited in smaller establishments.

In small enterprises (10-49 employees), about 25% of employee representatives indicate that they have no right to time off, whereas in the very large establishments only 9% of representatives state this. Yet, the report notes that with regard to the question whether the available time is sufficient to fulfill the duties, it is the representatives in the larger establishments who report more time problems than those in the smaller establishments. Although the time facilities are better, these representatives of larger establishments still experience more time constraints.¹¹⁷

Diversity of I&C arrangements in SMEs across countries

¹¹⁵ Eurofound (2010): *European Company Survey 2009*, p. 51.

¹¹⁶ Eurofound (2010): *European Company Survey 2009*, p. 51.

¹¹⁷ Eurofound (2010): *European Company Survey 2009*, p. 54f.

The characteristics of I&C arrangements appear to vary with the size of the establishments, but they are also influenced by the national traditions of workers participation.¹¹⁸ The boxes below provide a few illustrative case studies on how I&C is handled in different SMEs across Europe. The selection of cases demonstrates the large diversity of I&C arrangements in SMEs across the EU Member States. Further, it shows that the issues related to I&C in SMEs may differ depending on whether a firm has 10, 50 or 200 employees – and even in firms of the same size, the issues may differ according to whether the employees are qualified or not.¹¹⁹

Company case study: Idéal Production – SME – tertiary sector – France

Idéal Production is an interactive communications agency with a workforce of 17 people with an annual turnover of about 1 million EUR.

As the company has more than 10 employees, it has to organise a ballot for the workers representatives. The management tried to launch such election two years ago, but nobody wanted to candidate. Therefore, no representative could be elected and the company had to send a minute (*Procès verbal de carence*) to the labour inspection.

In November 2011, Idéal tried to organise a new ballot. This time the company took contact with the five union representatives (CFE-CGC, CFTC, CFDT, CGT-FO and FO) to inform them about its intention to organise a ballot. Idéal received only an answer from a local delegate of the CFDT who was invited to meet the workforce. The general manager has also informed each employee about the possibility to meet the delegate after this meeting, in a separate office. But one week before the deadline, no employee wanted to candidate.

According to the general manager there could be two main explanations: (1) there is a good relationship in the undertaking with a good communication between management and employees; (2) working conditions are quite smooth. The feedback from employees confirmed this. Management further underlined that trade unions have less interest in small companies as evidenced by the low response rate.

Asking why he calls for the election of an employees' delegate, the general manager argued that it could be useful to have a force of opposition or "of cooperation" which could have a positive impact on the decision-making process. It also provides an opportunity to hold a monthly meeting on social matters instead of developing individual answers when problems are submitted.

Despite the lack of an information and consultation body, a collective discussion is held every Monday morning, with the team meeting, which is attended by the 17 employees and associates. There are 4 items on the agenda:

- Information linked to the team (welcoming a trainee, leave, absences, etc.);
- New orders;
- Orders in progress and key dates in the week (meeting an important client, for example);
- Commercial considerations: when the company is approached for a project in Paris / an invitation to tender / getting priorities right.

From time to time management also holds supplementary meetings about specific subjects: internal building work; the new back office; blogs; raising its profile; a new, very ambitious project; rounding off finished projects/feedback. Further, from September to December, two associates hold individual interviews to review employees' work over the year and set targets for the coming twelve months.

Company case study: HEIX – SME – secondary sector – Germany

The family-run SME trades and distributes electric goods since 1947. With a little more than 100 employees the company originates almost 30 million EUR sales per year.

¹¹⁸ This aspect has already been demonstrated in more general terms in section 4.4.2.

¹¹⁹ Cf. also: Van Assche (2010): *Dialogue social dans les PME : La directive 2002/14/CE en Belgique*, in: Europe et Société (2010): *Impact de la directive information-consultation sur le dialogue social dans les États Membres : résultats et perspectives*, Les cahiers de la Fondation, n° 75-76, pp. 89-93.

A 'round table' called *Montagsrunde* (Monday meeting round) was established as a kind of an ORB (Other Representation Body) by the owner in 2003, which since then gathers every second week on Monday. It consists of five persons in total, of which three are part of the management. No formal election procedure exists but the group is appointed informally by the owner-manager. There is no formal president of this group. Through this body the management informs to the employees all relevant issues related with investments, human resource questions, recruitment of new personnel and all other relevant questions.

In the view of management there is no need for installing a formal Works Council. For management and the majority of employees installing a Works Council could be interpreted as a signal of mistrust against management.

However, according to some employees, a Works Council could perhaps be a good instrument for dealing in a more seriously with problems like extra-hours. Besides a time management issue that could be solved in the framework of the *Monday meeting round*, no severe tensions or conflicts were reported where employees could have felt insufficiently informed or consulted. As long as the establishment is stable and even expanding the need for I&C seems to be relatively limited.

More generally, numerous SMEs in that do not have a Works Council as formal representative body of employees in place rely on ORBs – like the *Monday meeting round* in this case study – operating 'under the shadow' of the Works Council system. Employers grant information and consultation rights in a similar or weaker way and extend of what is established in the Works Constitution Act in order to prevent the formation of a Works Council.¹²⁰ This normally leads to levels of information and consultation that are equal or even higher than those established in the EC-Directives under consideration in this study.

Company case study: Services company – SME – tertiary sector – Spain

The services company is specialized in the management of social policy programmes and social intervention. Since 1999, when the company was founded, it has had worker's delegates who have concluded a company agreement going beyond the conditions of the relevant sectoral agreement. The workers' delegates were renewed three years ago. They usually meet 4 times a year to exercise I&C rights. Only one of the three members is affiliated to a union. Nevertheless, the worker's delegates usually seek advice from the union. Furthermore, in some meetings, experts of the unions have attended in order to provide support to the works council.

In 2008, the company absorbed another organization. As the workers of the absorbed company had no employee representatives and no company agreement, their workers were incorporated into the company agreement of the transferee enterprise. No conflicts or disputes regarding this process were mentioned.

Currently, the company is facing economic problems which challenge its viability. Accordingly, the company decided to dismiss approximately 8 employees. Although the number of dismissals did not comply with the criteria for applying a redundancy procedure, the commission decided to inform the worker's delegates and consult them on potential alternative measures for some of the workers affected. In the end the company rejected the proposals of the employee representatives and the dismissals were carried out.

The manager pointed out that since some of the workers have been dismissed, the works council insists even more vehemently on being kept informed and consulted about the economic situation. At the same time, the worker's delegates have requested and taken a training course in accountancy in order to ensure that the economic situation is more closely monitored. This finding may suggest that information and consultation regarding the economic situation was not properly provided before.

It is worth noting that neither the manager in charge of industrial relations nor the worker's delegates were aware of the EU I&C directives.

Company case study: Swedtextiles – SME-sized subsidiary – secondary sector – Sweden

Textiles Ltd is a Venture capital owned company with operations in several European countries. The Swedish subsidiary Swedtextiles is responsible for design, sourcing and purchasing as well as warehousing and value

¹²⁰ Hauser-Ditz, Hertwig and Pries (2008): *Betriebliche Interessenregulierung in Deutschland. Arbeitnehmervertretung zwischen demokratischer Teilhabe und ökonomischer Effizienz*. Frankfurt a.M./New York: Campus, 299 pp.

added production for four of the brands in the company's brand portfolio. The Swedish operations employ about 200. Around 85% of the employees are members in one of the two unions: Unionen (white collar) and IfMetall (blue collar). The employer is affiliated to Teknikföretagen, the largest employer organisation in the private sector.

Terms of employment as well as forms for information and consultation and redeployment is set out in the collective agreement for the manufacturing industry. There is no local agreement on I&C but the forms and relations are built upon the so called "Development agreement" (UVA), the Co-determination Act (MBL) and the Work Environment Act (AML). On matters of collective redundancies there is an agreement on redeployment (TSL) with supportive actions for those redundant and the I&C concerning defining and selecting redundancies follow the law on job security (LAS).

The co-operative structure at Swedtextiles is built on the ambition of continuous information from general managers and negotiations based on MBL and UVA. UVA also is used for holding information meetings for the union members, normally twice a year. Twice a year the whole company is gathered for a couple of hours and given information by the CEO and other managers. Unit meetings between first line managers and their employees are held on a regular basis (varying between once or twice a year to every month). These meetings usually contain information on what happens in the company and in the unit, discussions on joint problems etc. Every employee is entitled to a co-worker dialogue between them and their manager. These talks contain joint evaluation, need for development and training. So called "wage talks" between manager and employee are held separately, usually before a local round of wage negotiations.

Both management and union representatives report that the dialogue at the level of the undertaking, works fairly well. Union representatives complain that managers are uncertain and sometimes unwilling to inform and make it possible for the representatives to respond. The employer side defines the I&C problem as a consequence of a blurred and unclear organisational structure going from an old matrix organization to a new geographical/functional organisation. Also the fact that there was a large number projects all with implications for the employees running simultaneously made the I&C more complicated and difficult to handle. Both sides note that most of the strategic and important decisions have global implications as part of a group strategy and are made at headquarter level, thus out of reach for both national management and union representatives.

4.5.3. I&C preferences of SMEs

A high proportion of EU/EEA firms fall below the EU I&C legislative thresholds, but the needs and practices in SMEs are poorly documented since they are commonly excluded from surveys. As a result perceptions range from a belief that they are all happy families in which ideas circulate freely between all concerned, to a conviction that such firms are run by owners who decide, and the employees do what they are told.

However a detailed analysis of ECS data throws interesting and relevant light on the attitudes and relations between employers and employees within SMEs.

European Company Survey 2009 – MM702 – results by company size

Establishment size (number of employees)	MM702_1: The employee representation helps us to find ways to improve workplace performance	MM702_2: The involvement of the employee representation often leads to considerable delays in important management decisions	MM702_3: We would prefer to consult directly with our employees	MM702_4: Consulting the employee representation in important changes leads to more commitment of the staff in the implementation of changes
10 to 19	0.84	-0.60	0.77	0.81
20 to 49	0.75	-0.57	0.60	0.75
50 to 249	0.67	-0.47	0.27	0.75
250 to 499	0.59	-0.32	0.06	0.67
500 +	0.64	-0.29	-0.07	0.69

The indicators calculated based on ECS source data show that the apparent enthusiasm for dealing with employees directly with employees (ECS MM702_3) is very largely confined to firms with fewer than 50 employees, and particularly those with fewer than 20 employees – in other words, those firms who commonly communicate in that way anyway, and who will fall outside the scope of some I&C legislation in some countries – and that larger firms, particularly very large firms, do not agree.¹²²

Further the data shows that, in relation to questions about the extent to which ‘employee representation helps us to find ways to improve workplace performance’ (ECS MM702_1) and ‘consulting the employee representation in important changes leads to more commitment of the staff in the implementation of changes’ (ECS MM702_4), the replies of employers in companies with less than 20 are quite positive on the basis of our assessment calculations, being somewhat higher than in companies of 500+ employees, which are only two-thirds of the way towards positive from neutral.

With regard to a question as to ‘whether the involvement of employees often leads to considerable delays in management decisions’ (ECS MM702_2) the replies are negative across all sizes of firms, but they are twice as negative in firms with below 50 or below 20 employees compared with firms of 500+ employees.

Most telling of all, however, is the reply to the question of whether the company ‘would prefer to consult directly with its employees’. Here the responses are fairly positive in firms with under 50 employees, and even more so in firms with fewer than 20

¹²¹ The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under MM702 of the management questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

¹²² In this context, the data presented in the Eurofound ECS 2009 overview report gives a potentially highly distorted impression of the social dialogue preferences of firms because it inter alia does not differentiate between different company sizes.

employees, which contrasts markedly with the typical 500+ employee firm, where the response is at most neutral or slightly negative.

The box below provides results of social partner surveys on social dialogue characteristics and preferences in Belgian SMEs. These results illustrate and confirm the findings discussed above.

Social dialogue in Belgian (Flanders) SMEs¹²³

The Belgian Union of Independent Entrepreneurs (UNIZO) has recently organized an SME employer survey on the reality of social dialogue in Belgian SMEs yielding interesting insights regarding the I&C practice and preferences in Belgium:

- 58% of the employers said that they sometimes provided the workers with information. When important decisions needed to be taken, 39% of the companies also said that they organized a consultation.
- 36% said that they organized a meeting for all workers once a year only, but 45% said that they did this at least every three months, or even several times a month when necessary.
- 82% of SMEs organize meetings for all their workers. Further, 55% say that they never consult the workers representatives, but always the employees directly, and carry out permanent personal consultation.
- Among the companies that organize a meeting of the personnel, 48% say that they do it in order to provide information and listen to the reactions, and 46% in order to give information and look for a solution together.
- Among the companies who carry out informal debates with the personnel representatives, 85% say that it is not just to provide information, but also to negotiate. Most companies do this on issues such as work organization, working time, salaries, but also anticipated workload, competition from other companies, etc.
- Only 43% of companies said that they inform and consult on the company results.

The results of a survey carried out by the largest Belgian trade union among 3,000 trade union members provides further insights on the I&C practice in Belgian SMEs:

- In SMEs, where there is no trade union delegation, the workers say that there is no less consultation than in other companies.
- The workers of companies of less than 50 employees are just as satisfied as those of other companies, and even think that there is less conflict in the relations between employer and workers in their companies.

4.5.4. Summary of findings on I&C in SMEs

Some 30% of EU employees work in companies with less than 10 employees and 50% of employees work in companies with less than 50 employees, which suggest that some 40% of employees are not covered by the EU I&C directives.

Employee representation is not as widespread in SMEs as it is in larger companies, but there are considerable differences between different countries. The European Companies Survey shows that the EU average rate of employee representation in small companies (10-49 employees) is only 33.5%, compared with 72% in medium companies (50-250 employees) and 88% in large companies (250+ employees). Yet, these figures may be misleading given that the European Companies Survey does not cover companies with less than 10 employees (about 30% of employment in the EU). Further, trade union density is relatively low in SMEs, particularly in the smallest companies, which often tend to be family-owned and/or do not have a strong tradition of employee representation.

¹²³ Van Assche (2010): *Dialogue social dans les PME : La directive 2002/14/CE en Belgique*, in: Europe et Société (2010): *Impact de la directive information-consultation sur le dialogue social dans les États Membres : résultats et perspectives*, Les cahiers de la Fondation, n° 75-76, pp. 89-93.

As a result of less developed institutional structures for social dialogue at the enterprise level in SMEs, notably in micro and small companies, employee participation is organised in a mostly informal way along personal ties. Further, social dialogue practice at other levels – at the level of region and sector as well as at national and European level – is becoming more and more important.¹²⁴

Various indicators that have been developed on cooperative cultures and the degree of influence and involvement of employees suggest that positive results in these respects are positively associated with an overall I&C 'access to resources' indicator (based on such factors as access to information, training and time).

While the overall I&C access to resource indicator scores do not show major differences between company size classes, there are differences on specific issues. In the case of overtime hours, a failure to inform and consult seems to be particularly an issue in smaller firms. In two other respects, however – the timeliness of information provided and the sufficiency of time-off – levels of satisfaction are higher in small firms than they are in larger firm (especially compared with firms with 500+ employees). In the case of provision of training and (to a lesser extent) the provision of economic and employment information, employee representatives in larger firms are more satisfied.

With regard to the I&C preferences in SMEs, an indicator calculated on the basis of ECS data shows that the apparent enthusiasm for dealing with employees directly with employees, as indicated its Eurofound's overview report, is very largely confined to firms with fewer than 50 employees, and particularly those with fewer than 20 employees – in other words, those firms who commonly communicate in that way anyway, and who will fall outside the scope of some I&C legislation in many countries.

Furthermore the data shows that, in relation to questions about the extent to which 'employee representation helps us to find ways to improve workplace performance' and 'consulting the employee representation in important changes leads to more commitment of the staff in the implementation of changes', the replies of employers in companies with less than 20 are more positive than they are in companies of 500+ employees.

Moreover, when asked 'whether the involvement of employees often leads to considerable delays in management decisions', employers in small firms are twice as negative in their responses compared with employers in companies with 500+ employees.

Overall, therefore, we have a picture of the typical small company (under 50 or under 20 employees) where the benefits of involvement with employees are rated notably more positively by the employer than in larger firms, where such involvement is not seen to create significant delays, and where the company is very positive about working directly with their employees, presumably because it is practical to do so.

Analysing the differences between smaller and larger establishments, Eurofound secondary analysis indicates a curvilinear relationship emerges between the size of the establishment and the quality of the workplace social dialogue: The incidence of employee representation is higher in large establishments. However, in relation to social dialogue practices, a smaller organisation size reduces the distance between management and representation, which can encourage an intense, cooperative social dialogue. Resources and statutory channels are, nevertheless, considerably less available, which hampers the further development of the dialogue.¹²⁵

¹²⁴ ETUC & UEAPME (2009): *Cooperation between SMEs and trade unions in Europe on common economic and social concerns*, pp. 15f.

¹²⁵ Eurofound (2010): *European Company Survey 2009*, p. 69.

The extent of I&C activity within small and medium businesses outside the scope of the EU I&C legislation also suggests that support for I&C through non-legislative measures could be foreseen to spread good practice across all such firms. In May 2001, the EU-level social partners ETUC and UEAPME have jointly declared that they intend to develop the "social dialogue as a tool to meet the economic and social challenges of small enterprises"¹²⁶ which provides a basis for further developing awareness in SMEs and promoting good practice.

Many existing examples of good practice and innovative projects at regional and local level, in individual sectors and in different national frameworks, already illustrate a clear added value of social dialogue and active employee participation in SMEs, particularly in restructuring and adaptation to change. Good practice can be found in all types of SMEs without regard to size or sector or territory.¹²⁷

¹²⁶ ETUC & UEAPME (2001): *Joint ETUC/UEAPME Declaration: "Social dialogue as a tool to meet the economic and social challenges of Small Enterprises"*, 2 pp.

¹²⁷ ETUC & UEAPME (2009): *Cooperation between SMEs and trade unions in Europe on common economic and social concerns*, p. 17.

5. Conclusions

The study is required to clarify the notion of 'fitness for purpose' of three I&C directives, and enable meaningful conclusions to be drawn and possibly recommendations to be made in circumstances where the context and usage of the legislation is evolving and affecting millions of workers throughout the EU/EEA.

Fitness for purpose has been addressed in the following terms:

- the relevance of the directives in addressing the needs of employers and employees in the EU social market economy;
- the effectiveness of the directives in meeting those needs in practice;
- the extent to which the directives meet their needs in an efficient, cost-effective, way; and
- the coherence between the three directives.

The judgement on the fitness for purpose of legislation is related to expectations. In the case of legislation that seeks to establish minimum standards of conduct by companies across the European Union and the EEA with respect to their employees, but which is integrated in, and operated through, national legislation or even collective agreements, and which is applied across a range of national industrial relations systems in countries with different economic, social, cultural and historical experiences, it is necessary to be realistic about the likely outcomes.

On the basis of the extensive evidence collected and analysed we conclude that the EU I&C legislation can be seen as broadly 'fit for purpose' in terms of achieving a minimum level of I&C throughout the EU/EEA, consistent with the EU social market model, as none of the four key evaluation criteria used to assess its fitness for purpose are negatively assessed.

However, while I&C legislation and practices are recognised as an accepted and established part of the industrial relations landscape across the whole of the EU/EEA (albeit with some 'work in progress' in several 'new' EU Member States, and a fair degree of unevenness elsewhere particularly regarding general I&C as per directive 2002/14/EC), the national expert assessments of stakeholders' positions in the EU/EEA are merely "positive", rather than "very positive" (on a five point scale from very negative to very positive).

Moreover, the legislation's overall effectiveness is evaluated somewhat less positively than its relevance, efficiency and coherence. In other words, it is delivering below its potential.

Support for the legislation from the parties concerned – notably employers and employees – is not necessarily a reflection of a deep ideological enthusiasm for the processes or institutional arrangements as such (although stakeholders in countries with long established and co-operative industrial relations systems tend to be committed in this respect). Rather it should be seen more as a pragmatic acceptance of the realities and compromises of industrial relations.

In practice, the degree to which the legislation is used effectively depends to a large extent on the activities of national stakeholders, acting separately and together, albeit with a general oversight at EU level.

While the legislation is judged to be delivering well below its potential, a clear conclusion from all parties, including employers, is that the benefits of information and consultation generally exceed its costs. Costs are acknowledged, but seen as worth paying as part of the actions to promote cooperation rather than conflict.

Taken individually, each directive is seen to perform sufficiently well to be judged 'fit' rather than 'unfit' for purpose, bearing in mind the diversity of situations across the EU/EEA. In one sense the assessment is clearest in the case of the two earlier directives: directive 98/59/EC and directive 2001/23/EC, which invoke specific actions when collective redundancies or changes of company ownership arise, although there are concerns that changing commercial practices may be creating growing uncertainties in the latter case .

In contrast, the latest directive, 2002/14/EC, is designed to promote the establishment of I&C bodies and procedures within companies rather than to enforce compliance in specific circumstances. Its rate of adoption is seen as uneven across countries, which may account for its current, somewhat lower, assessment by national stakeholders – midway between neutral and positive – although it is possible that its effectiveness will develop over time of its own accord.

While the EU I&C legislation, collectively and individually, is viewed broadly positively overall by employers, employees, public authorities and academics, employers are much more convinced of the contribution of the legislation to improving the climate of industrial relations than they are of its contribution to improving company performance or even the adaptability and employability of their employees. Public authorities, on the other hand, are much more positive about the perceived economic benefits.

The greatest divergences between stakeholders emerge in relation to the contribution of the legislation to reducing redundancies: employee representatives see this as a relevant objective to which the directive contributes, while employers tend to see the extent of any redundancies as being essentially determined by market conditions, rather than by I&C.

The degree of fitness for purpose of the legislation also differs across the EU/EEA countries, taking into account that it establishes standards for I&C in countries whose pre-existing situations were drastically different and that this study, in line with other research, finds that 'there is extensive variation both between and within countries in the extent and nature of workplace social dialogue'¹²⁸.

In terms of differences between smaller and larger establishments, while formal systems of employee representation are much more common in large establishments, smaller companies can have their own forms of direct social dialogue, with networking with other SMEs serving to offset the lack of resources at individual company level..

The crisis has, of course, had a significant negative impact on employment and the labour market generally, although not necessarily on co-operation as shown in the widespread adoption of flexible short-time working as an alternative to redundancies in the early stages of the crisis. However, in countries that have suffered particularly badly, whether in the east (such as Estonia) or in the west (such as Ireland) or the EEA (Iceland) the assessments of the legislation are rather neutral or even negative, which may reflect disappointment against excessive expectations concerning the help that the directives can bring.

The effects of the crisis on the operational effectiveness of I&C legislation has been documented by the European Labour Law Network (ELLN) which suggests that it has not triggered particular problems with the directives as such, although it may have brought to the surface or heightened concerns and uncertainties about a number of pre-existing issues.

¹²⁸ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, p. 57.

In this respect a number of issues are reported that warrant address:

Directive 98/59/EC Collective Redundancies

- Avoidance of the provisions (use of staggered dismissals and dissolution agreements, inadequate sanctions in some countries)
- Uncertainty about key provisions (uncertainty about when to inform employees representatives and public authorities)
- Problems with application in national systems (uncertainties concerning company liabilities, difficulties in countries due to lack of social dialogue 'culture' and administrative systems)
- Problems in relation to the temporary agency work directive (differences in treatment of agency works between countries)
- Problems relating to consultation period (long consultation periods can inhibit labour market flexibility for employees as well as employers)

Directive 2001/23/EC Transfer of Undertakings

- Lack of clarity over the scope of the directive (unclear interpretation of terminology, coverage of state-owned companies, liabilities of companies, including for pensions)
- Consequences of non-compliance (difficulties in identifying appropriate remedies in cases of non-compliance)
- Effects of changing restructuring practices (uncertainties regarding the application of the directive in a changing commercial environment with new systems of ownership, as well as problems in relation to the insider dealing directive)

Directive 2002/14/EC Information and consultation

- Incorrect implementation (problems of coverage and remedies especially in countries where social dialogue culture is unsupportive or under-developed)
- Avoidance of the provisions of the directive (problem of employers splitting enterprises to avoid thresholds, problems of recourse to courts in some countries)
- Relationship between I&C requirements and collective bargaining (implementation through collective agreements may not meet legal requirements, also issues arising from dual channel systems and multiple union representation)

In most cases, while these issues are important for those affected, and some involve deliberate attempts to circumvent the objectives of the directives, they do not appear to undermine the directives as such at EU/EEA or national-level, although they may well contribute to explaining the rather modest assessments of the effectiveness of the directives.

Particular weaknesses can be observed regarding the effectiveness of the enforcement arrangements in place, including the scale and appropriateness of sanctions and, to a lesser extent, the degree of awareness of stakeholders of the coverage and usage of the legislation, including the extent to which adequate guidance information is available.

In terms of the enforcement of the legislation and the appropriateness of existing sanctions, the overall assessment is unsatisfactory, with as many negative as positive assessments, and with a rather clear divide between more positive assessments in founding members of the Union and much more negative responses from others, with inadequate sanctions being indicated for half of the countries covered.

In terms of awareness of the legislation and the availability of information and guidance, a somewhat similar split is found with a positive assessment from founding members (plus the Nordic countries), on the one hand, and neutral or negative assessments in most other countries, especially those entering in the two most recent enlargements.

The situations vary considerably between EU/EEA countries – underlining the need for governments to address these issues primarily in the context of national legal and administrative systems in co-operation with the social partners. In particular, though, it should be noted that an unsatisfactory situation regarding both enforcement *and* sanctions is reported in a majority of ‘new’ Member States, while the level of awareness of the legislation is reported as low in more than half of all Member States, including as many ‘old’ as ‘new’ members.

While such weaknesses generally call for specific responses at national level, a more rigorous oversight and encouragement from EU level would also appear to be important and useful. It should be noted in this respect that the recent ELLN review, which highlights many of these concerns, is not currently seen as a routine operation, as might be expected.

At present there is no systematic reporting to the European Commission from national government sources concerning the operational usage of the directives, which hampers the Commission’s ability to monitor developments and pursue corrective action where relevant on this basis.

Moreover there is no evidence of any specific recent activity at national or EU level designed to address such concerns, with the risk that the gap between countries in terms of the effective usage of the directives within their industrial relations systems could widen and prejudice the pursuit of the EU’s overall economic and social objectives. In terms of tackling weaknesses in the content of the existing legislative arrangements (including the existence of three separate but related directives, with very different operational conditions in terms of scope, procedures and enforcement arrangements) there is uncertainty concerning the aspirations of different stakeholders, however.

For example, ‘high level’ national stakeholders appear to see no need to consolidate the three directives, while company level employer and employee representatives responded positively to the idea of a ‘rationalisation’ of existing legislation. At the same time there is no support from company level employer representatives for additional legislation, but a strong demand (also from employees) for more information about the legislation.

This suggests that, while there are clearly issues to be addressed, it could prove very costly and time consuming to seek to improve the performance of the present directives through a major legal overhaul, even though this has been argued in the past, and that any action in this area should focus more on issues of enforcement and sanctions, and awareness and guidance.

At the same time, and in a more forward-look perspective, it should be noted that national academic experts as well as ELLN experts raise concerns about the need to ensure that EU labour law legislation maintains its relevance in the face of the cultural, social and economic challenges to workplace practices that are resulting from the new business and financial environment with increasing cross-border ownership of companies.

6. Recommendations

The aim of developing positive and fruitful workplace relationships in the European social-market economy in the context of the EU2020 strategy calls for a multi-disciplinary and pragmatic approach. Recognising that I&C can serve multiple purposes, including dealing with economic challenges such as managing change and restructuring, and

raising levels of productivity and performance, as well as improving relations between employers and employees by investing in workplace cooperation and training linked to I&C, the I&C directives evaluated are clearly relevant contributors in this perspective, and aligned to EU social market objectives.

The multiple purposes which I&C can fulfil require different approaches, as testified by the different EU directives. Yet given their links, the directives must be coherent, as they are currently perceived to be, and equally importantly, they must each function effectively in their specific context, also recognizing the diversity of Member States' situations.

Despite the EU I&C legislation being evaluated as broadly "fit for purpose", there is clearly scope for improvement, mainly in terms of its effective implementation at national level.

This report therefore finds it may be most opportune to pursue non-legislative action at national level to improve the practical effectiveness of the existing I&C legislation and achieve its full potential. Its recommendations focus on addressing such effectiveness-related problems at national level, but seen and supported within an overall EU context. The recommendations that have been identified are presented at EU/EEA-level, and could be seen as a first step based on the report's findings and conclusions. They could, however, be followed up by further research to detail appropriate actions at national level taking into account the particular contexts of the various Member States.

Specific recommendations include:

- **Regular monitoring** by the European Commission of national information and consultation systems and practices as part of a general initiative to improve the effective use of I&C legislation in all countries, and not just those with the longest experience.
- More routine country-level actions to **review the usage of the legislation at national level** with a focus on practical issues, including those arising from issues of gaps, uncertainties or inconsistencies in the implemented legislation, as well as actions to ensure more effective enforcement of the legislation, including simplifying and accelerating procedures and ensuring appropriate sanctions.
- A better and more consistent **provision of information and guidance** at country level, through governments and social partners, concerning the scope and objectives of the directives, presented in terms that are readily understandable by employer and employee representatives.
- The establishment of a EU level framework for the exchange of good practice experience between countries in which **peer-group pressure and mutual learning** could play their part, drawing on the EU's experience of the 'open method of coordination' of employment and social policies.
- Helping address uncertainty in the use of the legislation by asking the independent European Labour Law Network to identify specific changes in **national legislation or practices** that might improve the overall effectiveness of the EU legislation.
- Support for I&C activity within **SMEs** nationally, notably by supporting the spread of good practice experiences in line with commitments made by the EU-level social partners ETUC and UEAPME.

It should be stressed that the effective implementation of these recommendations would require both a tailored approach, taking into account the specificities of each of the EU/EEA countries, and a strengthened EU-level policy framework.

It is not possible to estimate with any degree of precision the likely scale of the benefits of such actions. However, given the widespread recognition of the benefits and potential of the legislation, despite its frequently inadequate implementation in practice, there is every expectation that a sustained effort by Member States governments, social partners at all levels, and the European Commission, could significantly improve the extent and quality of its usage, in particular but not exclusively in the new Member States, and thereby contribute in a timely way to the achievement of the EU's wider social and economic goals in a period of continuing stress and uncertainty.

7. Annexes

7.1. Annex 1: EU-level literature list

7.1.1. EU Directives in the area of I&C

Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, *OJ L 80 of 23.03.2002*, p. 29.

Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, *OJ L 225 of 12.08.1998*, p. 16.

Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, *OJ L 82 of 22.03.2001*, p. 16.

7.1.2. General I&C literature

Barnard (2010): Labour Law and the Crisis: Summary of the main issues, *Paper on the occasion of the 3rd Annual Legal Seminar European Labour Law Network*, 9 pp.

Brunn (2010): Employees' participation rights and business restructuring, *Keynote Paper on the occasion of the 3rd Annual Legal Seminar European Labour Law Network*, 15 pp.

CITUB, BIA, ICTU, UATUC, IRES, LMDT (2010): *Information and Consultation in Europe, Analysis of Legislation and Practices in Four EU Member-States and One Candidate Country, Improvement of the Process of Workplace Information and Consultation for a Better Employees' and Workers' Representation in Europe (INFORMIA)*, 138 pp.

EALCJ (2006): *Corporate re-structuring – striking the balance between flexibility and employee protection*, 28 pp.

EC (2008): *Industrial Relations in Europe 2008*, 168 pp.

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7.2. Annex 2: I&C glossary

This annex provides an overview of core definitions in the different I&C Directives.

7.2.1. Directive 98/59/EC

Collective redundancies means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

- o either, over a period of 30 days:
 - i. at least 10 in establishments normally employing more than 20 and less than 100 workers,
 - ii. at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,
 - iii. at least 30 in establishments normally employing 300 workers or more,
- o or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.

Workers' representatives means the workers' representatives provided for by the laws or practices of the Member States.

7.2.2. Directive 2001/23/EC¹²⁹

Transfer means a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.

Transferor shall mean any natural or legal person who, by reason of a transfer, ceases to be the employer in respect of the undertaking, business or part of the undertaking or business.

Transferee shall mean any natural or legal person who, by reason of a transfer, becomes the employer in respect of the undertaking, business or part of the undertaking or business.

Representatives of employees and related expressions shall mean the representatives of the employees provided for by the laws or practices of the Member States.

Employee shall mean any person who, in the Member State concerned, is protected as an employee under national employment law.

7.2.3. Directive 2002/14/EC

Undertaking means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States.

¹²⁹ For further clarification and discussion of the definitions see EC (2007): *Commission Report on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*, 27 pp.

Establishment means a unit of business defined in accordance with national law and practice, and located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources.

Employer means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice.

Employee means any person who, in the Member State concerned, is protected as an employee under national employment law and in accordance with national practice.

Employees' representatives means the employees' representatives provided for by national laws and/or practices.

Information means transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it.

Consultation means the exchange of views and establishment of dialogue between the employees' representatives and the employer.

7.3. Annex 3: Background to the I&C directives

This annex discusses the background of the three I&C Directives under scope of the study based on the available EU-level literature. Further, this annex provides insights on the collective and individual impact of the three Directives, the recent discussion about a potential consolidation or codification of I&C legislation at EU-level and specific background factors relevant to the evaluation in this study.

7.3.1. Directive 98/59/EC

This Directive consolidates the Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies and its amending Directive 92/56/EEC. The aims of the Directive are to afford greater protection to workers in the event of collective redundancies while ensuring a level playing field for companies through approximating the national laws in this field.

These aims are to be met through information and consultation procedures for employees as well as notification procedures with respect to public authorities. The first aims to avoid or contain the social impact of collective redundancies, whilst the second is intended to encourage and permit public authorities to seek wider support and solutions to the problems raised.

Directive 98/59/EC has been transposed by all Member States with an implementation report published by the Commission in 1999 regarding EU15¹³⁰. In 2007 a complementary study followed covering the ten new Member States¹³¹ with a further study covering Romania and Bulgaria in 2009¹³².

Research undertaken by the European Parliament and Eurofound¹³³ suggests that the requirements of this legislation are generally respected in the Member States. In most cases, companies inform employee representatives and public authorities in advance of dismissals – normally 30 days, but in some cases 60 days or more prior notice – and provide the required information, such as the size and timing of the proposed redundancies, the new organisation structure, the criteria for selecting those to be made redundant, and the various measures to be taken to limit the negative effects on employees.

In some Member States, national legislation goes beyond the minimum conditions prescribed in the Directive. For example, in Austria and Germany works councils have some rights of co-decision over dismissals, whereas the bulk of Member States provide for information and consultation rights only. Legislation in Austria, Denmark, Germany and Luxembourg explicitly states that the consultation procedure with employee representatives should aim to minimise the number of redundancies and to soften the impact of redundancy where it cannot be avoided. Some countries provide for a statutory

¹³⁰ EC (1999): *Commission report on the implementation in Austria, Finland and Sweden of Council Directive 98/59/EC and Commission report on the implementation of Council Directive 98/59/EC*, 24 pp.

See also: EC (2006): *Termination of employment relationships: Legal situation in the Member States of the European Union*, 141 pp.

¹³¹ Kresal (2007): *Termination of Employment Relationships – Legal situation in the following Member States of the European Union: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia*, 148 pp.

¹³² Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 98/59/EC in Bulgaria and in Romania*.

¹³³ See notably EUROPEAN PARLIAMENT, Policy Department (2006): *Impact and Assessment of EU Directives in the field of 'Information & Consultation'*, IP/A/EMPL/FWC/2006-03/SC1, p. 11ff as well as EMCC (2008): *ERM case studies: Good practice in company restructuring*, 53 pp.

obligation to draw up a social plan, while others give trade unions a negotiation right to establish 'employment plans'.

The obligation to notify public authorities – in most cases the local employment centres – of possible redundancies will generally trigger certain actions and activities with discussions between companies (and their employees or representatives) and public agencies commonly enabling the employment services to prepare for redundancies and to intervene when necessary. Typical measures include 'employment programmes' helping redundant employees to find new employment, to start their own company or to obtain training.

A 2007 GHK study¹³⁴ shows that the perceived level of company compliance with reporting requirements was high in almost all Member States. Where some problems with compliance were perceived (e.g. in the UK) this largely related to SMEs who, it was argued, are sometimes unaware of their legal obligations.

There appear to be considerable differences between Member States concerning the recourse available to employees in circumstances where employers fail to comply with the requirements of the legislation and the severity of the sanctions and penalties than can be imposed. In some Member States the intended dismissal of workers may be set aside (declared null and void) by local courts if the legal conditions – notably concerning the period of notice, but also the quality of the information provided – have not been respected. In other Member States financial penalties are foreseen but seem to be rather low and infrequently applied. Moreover, in some cases companies appear to be avoiding their legal obligations by dismissing small numbers of employees in several 'waves' to avoid exceeding the thresholds of the applicable legislation.

The general purpose of consultation is to provide an early opportunity for all concerned to share the problem and explore the options and alternatives. I&C is expected to stimulate better cooperation between managers and employees, reduce uncertainty and lead to better decision-making. When faced with a collective redundancy situation, trade union or employee representatives may be able to suggest acceptable alternative ways of tackling the problem or, if the redundancies prove inevitable, ways of minimising hardship.

Despite the fact that the first Directive on collective redundancies dates back from 1975, there are still several practical issues related to the text of the current Directive. For example, it is still not clear in many instances from which moment in time the employer actually has the obligation to consult the workers' representatives, i.e. the meaning of the obligation to consult and to inform the workers' representatives 'in good time'. Likewise, it is not clear which concrete obligations can be derived from the principle that the parties should 'seek an agreement' as far as the employer and the workers' representatives are concerned.

The Directive also provides a lot of latitude as to the designation of the workers' representatives. Moreover, it foresees consultation with employees' representatives but not directly with employees. This raises the issue of with whom employers should consult for collective redundancies where no general, permanent employee representation is in place.

An incorrect implementation of the Directive 98/59/EC has been reported from some Member States. For instance, in some countries (e.g. Belgium, Denmark, and Italy) the provisions of the Directive have been at least partly transposed by (nationwide) collective agreements. While permitted by the Directive, the effect has been that many employers are not bound by any collective agreement and so are not subject to the rules on

¹³⁴ GHK (2007): *Verification of Collective Redundancy Notification and European Restructuring Monitor Data*, report commissioned by Eurofound, p. 4.

information and consultation. Further, in Italy and Germany executive staff are exempted from the application of the relevant national law; and in Germany flight personnel are also exempted. Finally, in Latvia trade unions and workers' representatives do not enjoy a right to sue and no speedy review is provided.¹³⁵

As pointed out above, in a number of countries employers have sought to avoid the thresholds laid down by the Directive by staggering dismissals. Further, some employers have avoided the provisions of the Directive by using other legal vehicles to bring the contract to an end, thereby avoiding the termination being considered a dismissal. For instance, in Luxembourg and the Netherlands workers are often asked to enter into dissolution agreements which do not qualify as dismissals. On the top of that, some employers simply disregard the provisions of the Directive and assume they will not be sued or simply bear the (low) costs of making protective awards because it is cheaper and quicker than going through the process laid down by the Directive.¹³⁶

Other concerns cover the judicial and/or administrative procedures that the EU Member States have to provide in order to enforce the employer's obligations pursuant to Article 6 of Directive 98/59/EC. Based on national reports from European Labour Law Network experts, Barnard (2010) reports that State authorities in some countries lack the necessary tools to enforce the obligations that arise from the Directive and/or are not able to control whether, and to what extent, the Directive's provisions have been fulfilled.¹³⁷ Another point that is sometimes raised concerns the usefulness of conducting an information and consultation process regarding collective redundancies in cases of bankruptcy.¹³⁸

7.3.2. Directive 2001/23/EC

This Directive on safeguarding employees' rights in the event of transfers of undertakings codifies the original Directive 77/187/EEC of 14 February 1977, as amended by Directive 98/50/EC of 29 June 1998. A 2007 Commission Report¹³⁹ clarifies that two conditions must be met for a transfer to be deemed to exist: (1) there must be a change of employer and (2) the transferred entity must retain its identity.

All Member States have transposed this Directive into their national legal systems. The Commission adopted its latest report thereon in 2007¹⁴⁰. After thorough examination, it found that it was not necessary at that stage to propose any amendments to the information and consultation provisions of the Directive (Article 7). A study was also commissioned on the implementation of this Directive (including the provisions regulating information and consultation) in the EU-25, which was published in 2007¹⁴¹ and complemented by country studies for Romania and Bulgaria in 2009¹⁴².

¹³⁵ Barnard (2010): *Labour Law and the Crisis: Summary of the main issues, Paper on the occasion of the 3rd Annual Legal Seminar European Labour Law Network*, 9 pp.

¹³⁶ Barnard (2010): *opt. cit.*, pp. 4f.

¹³⁷ Barnard (2010): *opt. cit.*

¹³⁸ See notably Eurofound EMCC (2009): *Restructuring in bankruptcy: recent national case examples*, 37 pp.

¹³⁹ EC (2007): *Commission Report on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*, p. 3.

¹⁴⁰ EC (2007): *opt. cit.*

¹⁴¹ HUMAN EUROPEAN CONSULTANCY (2007): *Implementation Report: Directive 2001/23/EC on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses*, 96 pp.

¹⁴² Milieu Environmental Law Consultancy (2009): *Reports on the implementation of Directive 2001/23/EC in Bulgaria and in Romania*.

The main objective of Directive 2001/23/EC is to safeguard employees' rights and jobs in the event of transfers of undertakings. In accordance with case-law, the Directive is intended to safeguard the rights of workers in the event of a change of employer by making it possible for them to continue to work for the new employer – the transferee – on the same conditions as those agreed with the previous one – the transferor – and to also protect the transferee's existing employees.

This objective is expected to be met, inter alia, by requiring transferors and transferees to inform employees' representatives (or employees in their absence) about the reasons for the transfer, the legal, economic and social implications for employees, and the measures envisaged in relation to the employees as a consequence. In relation to the latter, a consultation 'in good time' and 'with a view to seeking agreement' is also required.

According to a 2007 report by HEC¹⁴³, all Member States, except Lithuania, have provisions for information and consultation either with works councils or trade union representatives in respect of this Directive. Most also have arrangements for information and consultation where no such formal organisation exists.

There has been no systematic analysis of the social and economic effects of the information and consultation provisions (Article 7) of Directive 2001/23/EC, but several case studies have been conducted since 2001 by Eurofound's '*European Restructuring Monitor*'¹⁴⁴ (ERM), which provide up-to-date reports.

EIRO national correspondents report a mixed picture as to whether consultations on transfers of undertakings are carried out by I&C bodies, trade unions or other representatives. In general the vehicles used are reported as being much the same as for other I&C contacts, except that trade unions are reported as having more direct involvement regarding issues such as redundancies, especially in countries with Works Councils.

Article 7 of Directive 2001/23/EC is very similar to Article 2 of Directive 98/59/EC. It is therefore not surprising that many of the issues highlighted under Directive 98/59/EC also appear as far as the information and consultation in relation to transfers of undertakings is concerned, such as the exact meaning and scope of "with a view to reaching an agreement", "in good time" etc. The considerable latitude given to the Member States when defining the procedures for nominating employees' representatives has also been observed in this context¹⁴⁵.

Particular problems can be envisaged in cases of cross-border transfers but these have already been addressed by the Commission, and will not be treated further in this report, unless specific issues relevant to its overall purpose are found¹⁴⁶.

Another problem in connection with Article 7 of Directive 2001/23/EC concerns the interpretation of "the legal, economic and social implications of the transfer for the employees". Since this notion is very vague and can be construed very broadly, transferor and transferee already face practical difficulties in fulfilling this obligation in

¹⁴³ HUMAN EUROPEAN CONSULTANCY (2007), op. cit.

¹⁴⁴ EUROPEAN RESTRUCTURING MONITOR:
<<http://www.eurofound.europa.eu/emcc/erm/index.htm>>.

¹⁴⁵ EC (2007): "Commission Report on Council Directive 2001/23/EC", COM (2007) 334, 18 June 2007, p. 9.

¹⁴⁶ B. HEPPLER, "The legal consequences of cross-border transfers of undertaking within the European Union. A report for the European Commission DG-V", Cambridge, Clare College, May 1998, pages 13 and 14; CMS Employment Practice Area Group, "Study on the Application of Directive 2001/23/EC to Cross-border Transfers of Undertakings", Final Report, September 2006, page 47.

the case of a transfer entirely within one Member State. Therefore, it has already been proposed to limit the duty of information to “essential” implications of a transfer and “essential” measures envisaged in relation to the employees¹⁴⁷.

The question of whether the individual employees have to be informed next to the information to be provided to their representatives deserves investigation¹⁴⁸. We also note issues raised in relation to the direct right to information (Article 7.6) and issues relating to the possibility for Member States to limit obligations regarding I&C, as well as the notion of employer in circumstances where there may be a hierarchy of owners (including investment funds), or a transfer of ownership within the same group.

7.3.3. Directive 2002/14/EC

Directive 2002/14/EC has a more general scope of application than Directives 98/59/EC and 2001/23/EC with the aim of establishing a general framework relating to information and consultation of workers. Its main objective was to consolidate a general and permanent right to I&C of employees at national undertaking/establishment level. This was expected to promote dialogue, partnership and mutual trust between management and labour and improve anticipation, management of change, adaptability, employability, workers' commitment and performance, and competitiveness.

The Commission analysed the legal transposition¹⁴⁹ of the Directive in the national legal orders of the Member States in its communication of 17 March 2008¹⁵⁰. In addition to the legal aspects, it examined also the practical application of the Directive in the Member States. The main objective of the Directive is to establish a general framework for information and consultation of workers in the European Community in order to consolidate a general and permanent right to information and consultation of employees at national undertaking/establishment level.

The provisions of the directive are intended to promote dialogue, partnership and mutual trust between employees and management, with timely information and consultation seen as a prerequisite for the success of the on-going restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy and particularly to new forms of work organisation. In this way the legislation is expected to contribute to the anticipation of employment developments within undertakings, to increase opportunities for employees to improve their employability, and to promote employee involvement, performance and competitiveness generally.

In its 2008 Communication¹⁵¹, the Commission concluded that the Directive had not generated its full impact at that time, and that it was premature to propose any amendments, with the main challenge at that stage being to ensure its full and effective transposition and enforcement. The European Parliament subsequently adopted, on 19 February 2009, an ‘own initiative’ report¹⁵² requesting, inter alia, the submission of an evaluation report on the results achieved through the application of the Directive.

¹⁴⁷ CMS Employment Practice Area Group, “Study on the Application of Directive 2001/23/EC to Cross-border Transfers of Undertakings”, Final Report, September 2006, page 79.

¹⁴⁸ EC (2007), “Commission Report on Council Directive 2001/23/EC”, COM (2007) 334, 18 June 2007, p. 9.

¹⁴⁹ The deadline of its transposition in the EU-25 was 23rd March 2005.

¹⁵⁰ Communication on the review of the application of Directive 2002/14/EC (COM(2008) 146 final). See, in particular, section 3 thereof.

¹⁵¹ EC (2008): *Communication on the review of the application of Directive 2002/14/EC in the EU*, COM (2008) 146 final, 11 pp.

¹⁵² European Parliament, Policy Department (2006): opt. cit.

In 2011, Eurofound published a study¹⁵³, based on research and interviews undertaken by a network of national correspondents, as well as the findings of the European company survey of 2009¹⁵⁴, indicating that, so far, the impact of the Directive varies considerably between Member States, largely reflecting differences in the nature and extent of their pre-existing I&C provisions.

This research, on which this assessment is primarily based, indicates that in countries with mature and long-standing works council or trade union-based systems of workplace representation, the Directive does not appear to drive major regulatory or institutional change. This also holds for Nordic countries, where I&C arrangements are largely based on centralised collective agreements and trade union representation. These first two groups of countries are characterised by a strong cultural acceptance of the values of partnership and participation, and hence I&C. Thus, the implementation of Directive 2002/14/EC did not require a profound reform of national I&C arrangements.

In contrast, statutory I&C systems were absent in many of the new Member States and a number of issues caused by that have had to be addressed in direct response to Directive 2002/14/EC. This was likewise the case in the UK and Ireland, with their previous 'voluntarist' industrial relations tradition, and where the implementation process has required extensive regulatory and institutional adaptation.

That report also reported that, on the basis of the evidence from the 2009 European Company Survey covering the whole of EU27, the number of establishments or companies that had I&C bodies averaged 37%, covering 63% of employees, with the highest results found in the Nordic countries (70% and 85%) and the lowest in Greece and Portugal (around 4% and 15%).

The survey also shows that, in four countries, over two thirds of establishments have representational arrangements, while three countries have less than 20% coverage. In ten countries, fewer than half of all employees are covered. It can be noted that the number of establishment covered is reported as only around 15% higher in Germany than the UK (28% against 24%) but the coverage of employees is some 30% higher (59% against 45%).

The 'size effect' was noted as significant in all countries: larger companies are much more likely to have I&C bodies and the non-implementation of I&C bodies is especially acute in small workplaces. Low take-up in small undertakings is explained in the report by various factors: employee indifference or reticence; negative employer attitudes; lack of information; and employee preference for trade union or informal representation. Weak or non-existent sanctions are also mentioned by some EIRO correspondents.

The report also found that in eight Member States the incidence of I&C is growing, albeit often from a low base. However, in the seven countries with long-standing traditions of employee consultation there has been little change, while the incidence has declined, or take-up has been low, in the other Member States under scope.

Variations between sectors are largely influenced by variations in the size structure of enterprises between sectors and by (associated) rates of unionisation. Overall it appears that Works Councils are the representative body for employees in around 25% of the countries; trade unions in around 40% of the countries; employee representatives in other forms of representation such as trade unions or elected employee representatives in around 35% of the countries.

¹⁵³ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, 32 pp.

¹⁵⁴ This survey of management and employee representatives in 27,000 establishments in 30 countries (including the EU Member States) addresses a number of workplace issues, including workplace social dialogue.

The balance of statutory and collective agreement-based information and consultation provision also varies between countries: in some countries (notably Nordic) collective agreements are dominant; in some countries (UK, Ireland) organisation-specific arrangements are the main means; in some countries the statutory framework is the most important; in some countries *only* the statutory framework matters.

The report suggests that most collective agreements respect the minimum statutory I&C requirements – hence these collective agreements can add to, but not subtract from, the terms of the legislation, although the UK and Ireland may be exceptions. Procedures are generally in place to enable complaints to be referred to labour inspectorates or courts with respect to national law or collective agreements. The UK again appears to have exceptions.

In general, few complaints are reported by the researchers concerning the establishment or operation of I&C bodies and in the rare cases where fines have been imposed, the amounts appear to be relatively low although some cases are noted in this study. In terms of the content of the information and consultation exchanges, the study reports that consultation is much less likely than the provision of information. Where consultation does happen, it is more likely to be about work-related issues than wider business matters with the effectiveness of information and consultation arrangements seen to be heavily dependent on management attitudes and behaviour.

Overall, this Eurofound report, published in 2011, concludes that the ‘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’.

Nevertheless, 62% of the employee representatives interviewed in the 2009 European Company Survey thought that they exerted strong influence on management decisions in working regulation matters, 54% on work processes, 50% on human resources planning, and 37% on structural change – but with wide variations between countries.

In terms of issues of concern, Article 1(2) of the Directive states that ‘the practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual countries in such a way as to ensure their effectiveness’. However this appears to pose some difficulties in Member States that lack the necessary institutional framework or suffer from a deficient ‘culture’ of social dialogue. Moreover, a variety of issues and concerns are being raised in the different Member States, which is probably inevitable given the general nature of the Directive and the varied situations in which it is introduced¹⁵⁵.

The promotion of I&C has been advocated by the European Parliament, but in practice, I&C is rarely actively promoted by governments or social partners, although the UK and Irish governments have published information about the implementation of the Directive. In some countries, a trade union ambivalence towards I&C bodies has been observed, reflecting fears that these could undermine unions’ representational role.

Some of the issues identified in the case law of the ECJ are also highlighted in the first evaluation of Directive 2002/14/EC made by the European Commission¹⁵⁶ and the

¹⁵⁵ As noted by members of the European Labour Law Network.

¹⁵⁶ EC (2008), Communication on the review of the application of Directive 2002/14/EC in the EU, COM (2008) 146, 17 March 2008.

European Parliament¹⁵⁷: Despite the case law of the ECJ, there are still national provisions which exclude certain workers – such as young workers or workers with short fixed-term contracts - from the calculation of the thresholds for undertakings and establishments (50 and 20 employees respectively). In some Member States, there is no explicit mention of the employer's obligation to give reasoned opinions to the employees' representatives or to consult with a view to reaching agreement. There are also doubts as to whether the sanctions in place in some Member States to react to infringements of the information and consultation regulation are effective, proportionate and dissuasive.

In some countries, there is no legal duty for the employer to establish a representative body where the employees did not request it, as noted in the study by independent experts that served as an input for the first evaluation of Directive 2002/14/EC by the European Commission¹⁵⁸. Further, in some Member States the transposition legislation provides only for information and not for consultation on issues regarding the employment situation and its probable development, and related anticipatory measures.

The protection of confidential information is also an issue of concern. Some implementing legislation does not seem to provide adequate safeguards to discourage employers from abusing this provision. For instance, it was reported that in Romania employers have made increasing use of the possibility not to communicate certain information to the employees' representatives, arguing that disclosure would seriously harm the operation of the undertaking.¹⁵⁹

In some countries (e.g. Liechtenstein), some employers circumvent the provisions of the Directive by splitting establishments artificially in order not to reach the threshold fixed by national legislation.¹⁶⁰ It has also to be noted, however, that a majority of Member States failed to transpose the Directive 2002/14/EC on time which is partly attributed to some of its fundamental concepts not being defined precisely enough¹⁶¹.

7.3.4. Collective and individual impact of the three Directives

This evaluation assessed the separate and joint effects of the three Directives, recognising that the most recent Directive.2002/14/EC is primarily intended to encourage the development of information and consultation arrangements between employers and employees (through their representatives) within companies, in line with broad human rights objectives, while the two long-standing Directives are intended to trigger specific actions in response to specific events with social and economic effects – the decision by a company to consider making collective redundancies or to take actions that could involve a change of employer.

An assessment of the collective effects of the three Directives needed to include an assessment of the extent to which the presence of a permanent developed general-purpose information and consultation system in a company does, or does not, make it easier to ensure that the objectives of these two earlier Directives are fully met in the specific circumstances in which they apply, whether its presence makes the earlier Directives redundant, or whether there is a case for consolidation.

¹⁵⁷ European Parliament, Report on the implementation of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, A6-0023/2009.

¹⁵⁸ E. ALES, "Studies on the implementation of Labour Law Directives in the enlarged European Union: Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community. Synthesis Report", October 2007.

¹⁵⁹ Barnard (2010): opt. cit., p. 7.

¹⁶⁰ Barnard (2010): opt. cit., p. 7.

¹⁶¹ LABOUR ASOCIADOS, "Studies on the implementation of Labour Law Directives in the enlarged European Union: Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community. Synthesis Report", October 2007, p. 6.

From a more detailed textual and legal perspective, the three directives share common elements concerning the information and consultation of employees. Many of the concepts used are already aligned – for example, the definitions of the key concepts of ‘information’ and ‘consultation’ are similar or analogous, and the goal of seeking an agreement between labour and management is always accentuated.

On the other hand, there are differences. The concept of ‘undertaking’ is defined in a somewhat circular way in Directive 2002/14/EC and not further detailed in the other Directives. There are other detailed differences between the three directives: e.g. the term ‘worker’/‘employee’ is an EU concept in Directive 98/59/EC, while Directives 2002/14/EC and 2001/23/EC refer this definition to national law. Directive 98/59/EC focuses on ‘establishments’, while Directive 2002/14/EC offers the option of ‘establishment’ or ‘undertaking’. Directive 2001/23/EC, on the other hand, applies only in specific situations when an economic entity which retains its identity is transferred.

Directive 2002/14/EC allows a right to information and consultation directly to employees as such, but only if they do not request to be informed and consulted through their representatives. In this respect, Directive 98/59/EC and Article 7 of Directive 2001/23/EC only provide for employees’ representatives to be consulted although the latter Directive does provide for the direct information of workers where there is no representative body through no fault of their own.

The provisions of the three European Directives on the workers’ right to information and consultation have also been clarified in the courts and the relevance of these rulings were taken into account in the national and European context in this study. Further, the transposing laws of the three directives in one legal system may also result into differences, for example as regards the representative bodies or as regards the sanctions, or if national legislation goes further, or is enforced more rigorously, than the terms of the Directive.

A range of studies have been undertaken that address the impact of I&C legislation using a variety of methodologies and in a variety of ways, sometimes separately and sometimes in the context of more wide ranging industrial relations assessments, for example on the contribution of Works Councils. The following indicates just some of the national studies that have undertaken.¹⁶²

The impact of different managerial approaches to information and consultation of employees is analysed by Hall et al.¹⁶³ based on a longitudinal analysis of 22 company case studies from the UK (SMEs and large companies). This evidence suggests that approaches to consultation are related to the way senior management envisages the role of an I&C body. It also suggests that, when management took employees or representatives into their confidence, this produced a virtuous circle response, even in addressing difficult circumstances such as redundancies. When this occurred, membership of the I&C bodies was generally stable – in contrast to situations where I&C

¹⁶² This section is mainly based on research from the UK and Germany. Further relevant national and EU-level studies are provided in the literature list in annex 1 of the present report.

¹⁶³ Hall, Hutchinson, Purcell, Terry and Parker (2010): Information and Consultation under the ICE Regulations: evidence from longitudinal case studies, *Employment relations research series*, no. 117, 110 pp.

Hall, Hutchinson, Purcell, Terry and Parker (2009): Implementing information and consultation: developments in medium-sized organisations, *Employment relations research series*, no. 106, 48 pp.

Hall, Hutchinson, Purcell, Terry and Parker (2009): Implementing information and consultation: evidence from longitudinal case studies in organisations with 150 or more employees, *Employment relations research series*, no. 105, 78 pp.

meetings were essentially formal, with only limited exchanges, where there was generally a high turnover of representatives and difficulty in getting replacements.

A survey of the views of Eurofound national correspondents¹⁶⁴ reported that, in practice, trade unions are the primary vehicle for ensuring I&C statutory rights in many countries, either directly or through their position in Works Councils or other designated I&C bodies. In some countries, a trade union ambivalence towards I&C bodies has been observed reflecting fears that these could undermine unions' representational role.

Based on UK case study evidence, Hall et al. have also shown that the influence of unions on the consultation process where they were recognized for collective bargaining was similarly shaped by the importance they attached to consultation. Where they were the dominant player on the employee side they added consultative activities to their collective bargaining role. Where they had low membership among the workforce and only one or two seats on the 'hybrid' consultative body, they tended to stick to their collective bargaining role and play little or no part in the consultative process.

None of the organizations analyzed had undertaken any evaluation of the impact of I&C on business results or process, or even on the quality of employment relations and employee engagement. It had not occurred to them to do so since, by now, the practice of consultation, in whatever way it was carried out, was embedded and part of organizational life. However, the employee survey in nine of the organizations shows that, in many cases where I&C is performed, improvements in employees' perception of the effectiveness of employee representation, and knowledge that the I&C body existed and was helpful in expressing their views ensued.

In terms of costs and benefits, a comprehensive literature review by Jirjahn on the economic effects of co-determination (that includes I&C but is broader than it) in Germany¹⁶⁵ presents mixed, but predominately positive, evidence from various studies with regard to the link between the existence of Works Councils and co-determination arrangements, and increased productivity. Recent studies also indicate that Works Councils might have a positive impact on profitability, employment, and shareholder value. Jirjahn concludes that co-determination has an important potential to increase the economic performance of a company and also points to the importance of dynamic learning processes for worker's participation. The longer an I&C body exists the greater its productivity effects and influence on corporate decisions grows over time. At the same time the probability of hostile conflicts between management and the employee's representatives diminish, although this may prove cyclical rather than permanent.

Such studies nevertheless suggest that consultative processes allow companies to better align their human resource policies with the preferences of their employees and create mutual trust between labor and management leading to a potentially higher willingness of employees to cooperate when restructuring or flexibility measures are planned. Recent studies also show that Works Councils have positive effects when it comes to the support of equal opportunities and the compatibility of family and work. Further, studies show that worker's participation does not only lead to higher employee loyalty, but also yields higher success rates when recruiting staff. Our review of the relevance of this research to our study sought to assess the extent to which successful outcomes can be attributed to I&C legislation, the presence of Works Councils, the role of trade unions, or more general economic and social factors in the country concerned, and whether this affects the likelihood of good practice being transferable between Member States.

¹⁶⁴ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, 32 pp.

¹⁶⁵ Jirjahn (2010): *Ökonomische Wirkungen der Mitbestimmung in Deutschland: Ein Update*, Hans-Böckler-Stiftung Arbeitspapier 186, 71 pp.

According to Hall et al., however, although I&C legislation had been influential to varying extents in prompting the introduction of the I&C arrangements and shaping their remit, there seems little evidence that it has generally affected managements' approach to the consultation process, or that it has been widely used by employee representatives as a point of reference for what they are entitled to expect by way of I&C. On the other hand, in the author's view, the more direct statutory requirements of legislation governing collective redundancies and transfers of undertakings have shaped I&C practice in a number of cases¹⁶⁶.

One notable finding of this research is that formal methods of direct communication and involvement with employees are less well developed in smaller organizations while reliance is placed on informal contact between line managers and their staff. This lack of formality, which can be expected in small to medium-sized organizations, is also reflected in managements' approach to the design of the I&C bodies. Management, often a single dominant manager, is generally the driving force in establishing the I&C body and drawing up the constitution. However only a minority of smaller companies are – or come close to being – 'active consulters' of their employees.

7.3.5. Consolidation or codification of legislation

The issue of a potential need for consolidation or codification of the three European directives on workers' right to information and consultation has been raised, particularly by the European Parliament. For instance, in its report of 19 February 2009, the European Parliament called on the Commission to consider the need to coordinate Directives 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC, 2002/14/EC and 2003/72/EC and Regulation (EC) No. 2157/2001 with a view to determining what changes may be required to eliminate duplications and contradictions.

Earlier the study of the Policy Department of the European Parliament on the impact and assessment of EU Directives in the field of Information and Consultation encouraged the Commission to consolidate Community information and consultation legislation¹⁶⁷. There are, however, a range of practical issues to be addressed given that different Directives are often incorporated into different parts of national legislation in the Member States. The assessment in this study has taken account of the likely balance of benefits and costs of consolidation, as seen from both a national and European perspective.

7.3.6. Factors relevant to the evaluation

The following specific factors are particularly relevant to understanding the approach used for the evaluation of the effects of the three Directives under review:

7.3.6.1. TRANSPOSITION OF THE DIRECTIVES

EU Directives concerning the information and consultation of employees¹⁶⁸ may be:

- **Integrated in existing national legislation;**
- **Accepted by governments, but with no action taken in so far as existing legislation already contains similar provisions;**

¹⁶⁶ Hall et al. (2010): opt. cit., p.56

¹⁶⁷ EUROPEAN PARLIAMENT, Policy Department Economic and Scientific Policy, "Impact and Assessment of EU Directives in the field of Information and Consultation", 2007, p. vi.

¹⁶⁸ The three studied I&C Directives deal with I&C at national level; others deal with I&C at transnational level, in particular the European Works Council Directive (2009/38/EC), Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees, Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, etc.

- Accepted by governments, but with no action taken since the issues are seen to fall under the responsibility of the social partners (collective bargaining) rather than governments.

Moreover, it should be noted that in terms of their operational experience, two of the three evaluated Directives are very long-standing:

- Directive 98/59/EC consolidates Directive 75/129/EEC of 1975 and the amending Directive 92/56/EEC;
- Directive 2001/23/EC codifies Directive 77/187/EEC of 1977, as amended by Directive 98/50/EC of 1998;
- Directive 2002/14/EC dates from 2002, with implementation in 2005.

Such differences in the “lifespan” of the Directives play a role in their integration and effectiveness.

7.3.6.2. THRESHOLDS FOR APPLICATION OF THE DIRECTIVES

In most cases, the Directives under review only apply in establishments or undertakings above certain size thresholds in terms of number of employees:

- In order to focus on the most significant events and to keep administrative burden on SMEs low, the Collective Redundancies Directive is only invoked when a minimum number (or proportion) of employees are affected.
- In order to avoid placing undue burdens on small and medium-sized enterprises, the most recent general Directive only applies to undertakings or establishments with a minimum number of employees (between 20 and 50).

7.3.6.3. THE NATURE AND SCOPE OF THE DIRECTIVES

While the three Directives can be seen as a closely related ‘family’ because they deal with I&C at national level, a number of other Directives include provisions concerning the information and consultation of employees, but are not covered in this review.

Moreover, despite the close relationship between the three Directives, they operate in somewhat different ways – two (collective redundancies and transfer of undertaking) come into play when specific and imminent situations arise, while the most recent Directive is designed to encourage I&C more generally.

7.3.6.4. DIRECTIVES IN THEIR WIDER POLICY CONTEXT

While the terms of the studied EU Directives have, in principle, been transposed into national laws or collective agreements in ways that should provide for similar usage (given that the Directives provide for minimum requirements), the practical outcomes and consequences in the individual Member States can be significantly affected by differences in their economic, social, labour market, industrial relations, legal, and political and cultural environments.

In this respect it is important to note that the industrial relations systems that encompass I&C are complex and vary significantly between countries, sectors and firms, being influenced by history and tradition, by the relative influence, aspirations, and wider social and economic concerns of the parties concerned, as well as by the willingness or otherwise of governments to intervene in relations between the social partners¹⁶⁹.

¹⁶⁹ Eurofound (2012): *Workplace social dialogue in Europe: An analysis of the European Company Survey 2009*, p. 57.

It is also important to recognise that relationships between employees and employers at the workplace involve issues where there are common interests – the efficient performance of the employing company in terms of generating revenue and jobs – but also issues where interests diverge – notably the sharing of the proceeds of that economic performance. Hence some tensions are inevitable between these parties. Some of the consequences of these tensions are that:

- Divergent opinions may be expressed by stakeholders – notably between employee and employer representatives, but also between governments and analysts – regarding some of the effects of the EU legislation in this field.
- Proposals to extend, curtail or consolidate the coverage of the Directives have, over the years, been presented by different stakeholders, including with respect to issues such as the thresholds, enforcement arrangements at national level, and more detailed points.

More generally the Directives address issues that form part of wider social and economic concerns (such as workplace democracy, economic performance, or competitiveness conditions) in the context of the European social market economy, making it necessary to adopt a multi-disciplinary approach to the development of the ‘fitness check’ analysis.

This approach can be described as more strategic than academic as its purpose is not to test or demonstrate a theory but rather to pragmatically evaluate whether the each of three studied I&C directives, and the overall package of the three directives, fit with the EU’s strategy in this area as part of a coherent whole. Its added value indeed lie in its focus on seeking to assess, in both a quantitative and qualitative way, the social and economic costs and benefits related to employees’ information and consultation at national level based on the effects of the directives as transposed, as well as the coherence of these effects, and to come up with meaningful conclusions and eventual suggestions for future actions including on the potential need to simplify or adapt the directives.

7.4. Annex 4: Study methodology

This annex provides an overview of the study methodology. Please refer to the inception report for a detailed presentation of the study methodology including a full version of the analytical framework as well as data collection tools (desk research guide, interview guides, web-survey questionnaires, etc.).

7.4.1. Introduction

The methodology for this study has been developed in the light of the overall objectives and the context indicated above. It draws on a large and multi-disciplinary body of knowledge, and is based on expert inputs from dedicated experts throughout the 27 EU Member State and 3 EEA countries as well as at EU-level¹⁷⁰. It thereby answers a comprehensive set of structured questions from which concurring findings have emerged allowing us to draw conclusions on the fitness for purpose of the EU I&C directives, and make corresponding recommendations.

Fitness checks can be seen as a new methodology for the assessment of EU legislation, looking at its actual and perceived past performance to inform EU decision makers of its future prospects (fitness for purpose) based on identified strengths, weaknesses, gaps and issues, objectivised using rigorous evaluation criteria and methods.

In this fitness check, the effects of the three studied EU I&C directives over the last six years, and perceptions of related stakeholders with regards to these effects, enable us to draw conclusions concerning the operation and effects of the three Directives both historically and prospectively along three broad axes:

- **Social:** such as increasing partnership and trust between employees and employers; employment involvement in issues concerning employment and the work-place; reducing redundancies, assisting redeployment and retraining, and maintaining acquired rights for employees
- **Economic:** such as improving productivity and adaptability of employees and workplaces, ensuring effective outcomes to management decisions affecting employment and work structure, including collective redundancies and transfers of undertakings
- **Competition:** helping maintain a level playing field across the EU internal market in terms of labour market standards, by ensuring minimum standards of I&C.

The study covers the separate and joint contributions of three I&C Directives, recognizing that the most recent Directive is primarily intended to encourage the development of information and consultation arrangements between employers and employees' representatives within companies, while the two long-standing Directives are intended to trigger I&C actions in response to specific imminent events – the decision by a company to consider making collective redundancies, or to take actions in cases that involve a change of employer through the transfer of the undertaking.

By using this approach, the study aims to produce meaningful conclusions and SMART¹⁷¹ recommendations for future actions regarding the directives.

For this study we started from a common theoretical basis by identifying and describing the mechanisms linking the employee and employer needs which the three directives

¹⁷⁰ Please refer to annexes 5 and 6 for a list of national and EU-level experts.

¹⁷¹ SMART = Specific, measurable, actionable, realistic and time-bound.

address to their objectives, to the types of provisions put in place to implement them, and finally to the types of outputs and effects generated by these provisions.

This theoretical basis has been completed at national level for each country through findings from the national literature review, providing a first factual view of the operation and effects of the directives at national level. The power of this basis lies in its transversal and pragmatic structure which then allows for the production of consistent national reports and overarching strategic analysis at EU level.

We will illustrate the national findings with observations from case studies, interviews and web surveys allowing a detailed view into the specific mechanisms in each country, and most importantly, into the cross-cutting effects of the different directives on which less evidence exists to date compared to the individual effects of each directive. Conclusions at national level will be drawn from findings and illustrations of these.

In line with the terms of reference, we will finally consolidate the country results at EU level based on the national reports and identify conclusions and eventual suggestions for future actions with regards to the three studied I&C directives across the defined strategic criteria at EU level, including the possible need to simplify or adapt these, but the study will not make policy recommendations as such.

This approach can be qualified as more strategic than academic as its purpose is not to test or demonstrate a theory but rather to pragmatically evaluate whether the each of three studied I&C directives, and the overall package of the three directives, fit with the EU's strategy in this area as part of a coherent whole. Its added value indeed lie in its focus on seeking to assess, in both a quantitative and qualitative way, the social and economic costs and benefits related to employees' information and consultation at national level based on the effects of the directives as transposed, as well as the coherence of these effects, and to come up with meaningful conclusions and eventual suggestions for future actions including on the potential need to simplify or adapt the directives.

This annex presents the details of our methodological approach to carry out the fitness check of the three I&C directives, taking into account feedback received from the European Commission.

It includes:

- the intervention logic defined for the examined I&C legislation (the single common theoretical basis);
- the analytical framework used to structure the evaluation questions across strategic dimensions (the overall guidelines for the evaluation activities within our approach) (shortened version in this annex – full version available in inception report);
- the work plan (the sequence of activities within the study);
- an overview of data sources used for the fitness check.

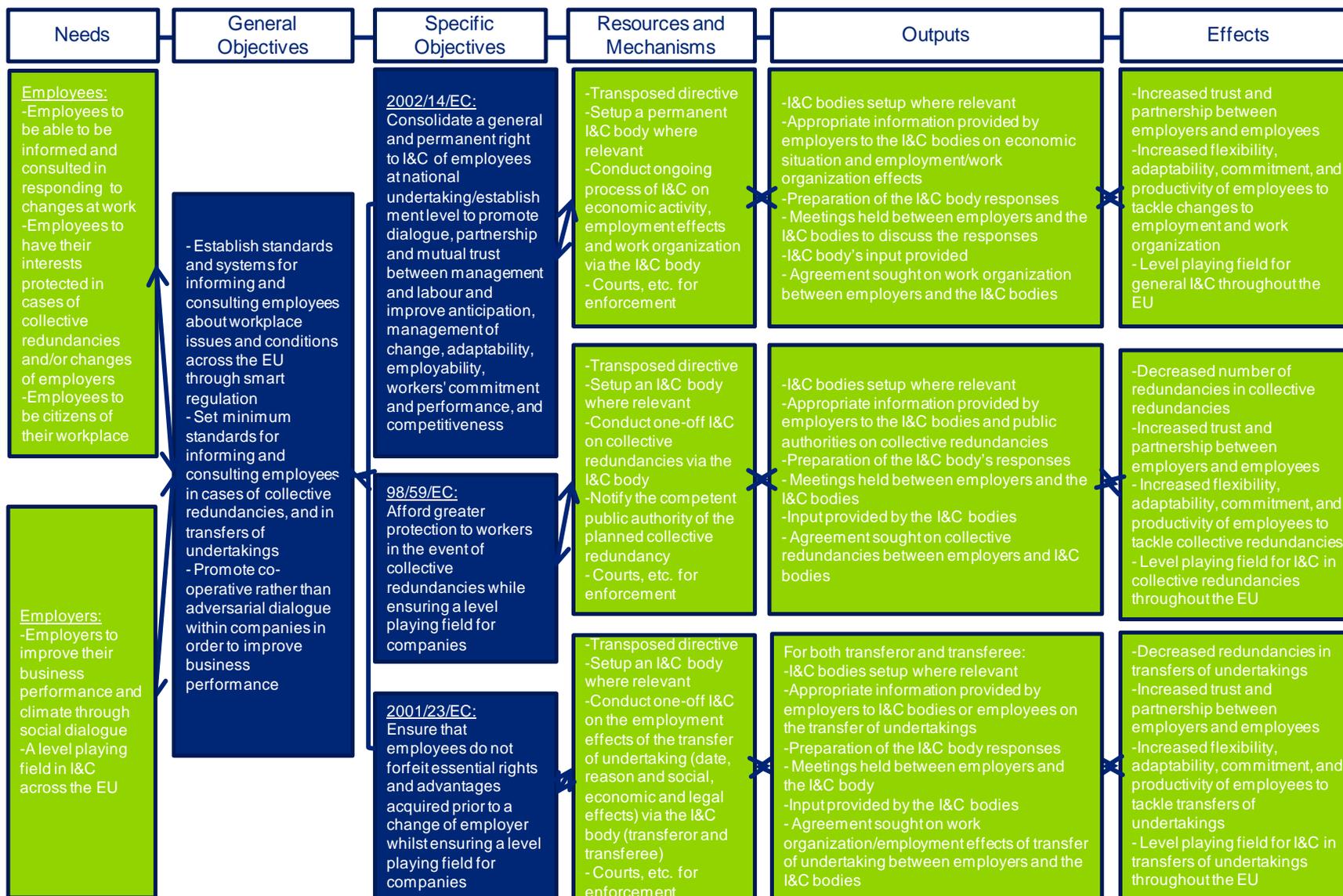
7.4.2. Intervention logic

The theoretical basis of our fitness check evaluation approach is our understanding of the intervention logic for the examined I&C legislation. Its premise is that in order to be fit for purpose the package of directives must be relevant, effective, efficient and coherent. These are therefore the strategic criteria which must be evaluated in a fitness check evaluation.

We present our understanding of the intervention logic for the examined I&C legislation below.

A first diagram (see below) highlights the logical links between the employee and employer needs for I&C addressed by the directives, the general and specific objectives of the three I&C directives, the mechanisms and resources put in place to achieve these objectives, the expected outputs of these mechanisms and resources, and the expected effects due to these outputs.

I&C intervention logic



Based on this understanding of the logic behind the studied I&C legislation, the strategic criteria used for this fitness check evaluation can be detailed as follows:

- **Relevance:** is the degree to which the objectives of the 3 EU I&C directives as transposed are related to the I&C needs of employers and employees. This is of course subjective and depends on numerous factors, such as the economic and political context, the belief in different conceptual corporate governance models, or the current situation of the countries in terms of I&C and more broadly of industrial relations. It is assessed by comparing the stated objectives of the directives with the expressed needs for I&C of employees and employers. In as much as employee and employer needs are taken into account and synthesized in strategic EU policy orientations, the relevance of the directives can also be addressed by comparing their objectives to these orientations.
- **Effectiveness:** is the degree to which the effects of the 3 EU I&C directives as transposed are related to their objectives (and thus to the I&C needs of employees and employers). This essentially depends on the adequacy of mechanisms and resources put in place to achieve the objectives of the directives to do so given the context in which they are put in place. It is assessed objectively by comparing the measured effects of the provisions put in place for the 3 EU I&C directives with the stated objectives of the directives. In cases where certain effects cannot be easily measured, proxies may be taken using the outputs of the I&C directives.
- **Efficiency:** is the degree to which the outputs (and thus the effects) of the 3 EU I&C directives as transposed are better achieved by the mechanisms and resources put in place to achieve the objectives of the directives than by alternatives where these exist. This is subjective and essentially depends on the beliefs of employees and employers in the ability of alternatives to more cost-effectively achieve the outputs (and effects). It is extremely difficult to assess but can be approximated by defining the relation between the outputs (and effects) described as benefits, and the mechanisms and resources put in place to achieve the objectives, described as costs, and subjecting this ratio to expert judgement.

The I&C directives cover a fundamental right, namely the right of employees to I&C, such that the benefits (describing the outputs or effects) related to this right must be included when assessing efficiency. As the Charter of Fundamental Rights of the European Union provides that 'Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices' (under chapter 4 solidarity, article 27 entitled 'Workers' right to information and consultation within the undertaking'), it can be deduced that the right of employees or their representatives to be informed and consulted in relation to issues at the place of work is well established in the EU, but it is not limitless, but rather determined by national laws and practices which indicate, in general or specific terms, where, how and in relation to what, such rights can be exercised. This implies (for the purpose of this fitness check) that the value to be ascribed to the right to be informed and consulted in relation to various aspects of working life (or the loss to be assigned in cases where such rights are denied) in the various Member States should, in principle at least, be indicated by the sanctions foreseen in the relevant legislation, or in the outcome of judgements by the courts. In the absence of any overall judgements on the value of such rights (or the compensation to be made for their non-respect) by a higher court, such valuations could vary substantially between Member States in line with the differences in the conditions that are imposed by national laws industrial relations practice and court judgements. We will assess the efficiency of the I&C directives in the light of their fundamental rights dimension using this proxy amongst others (sanctions for non-respect of the fundamental right) to determine benefits.

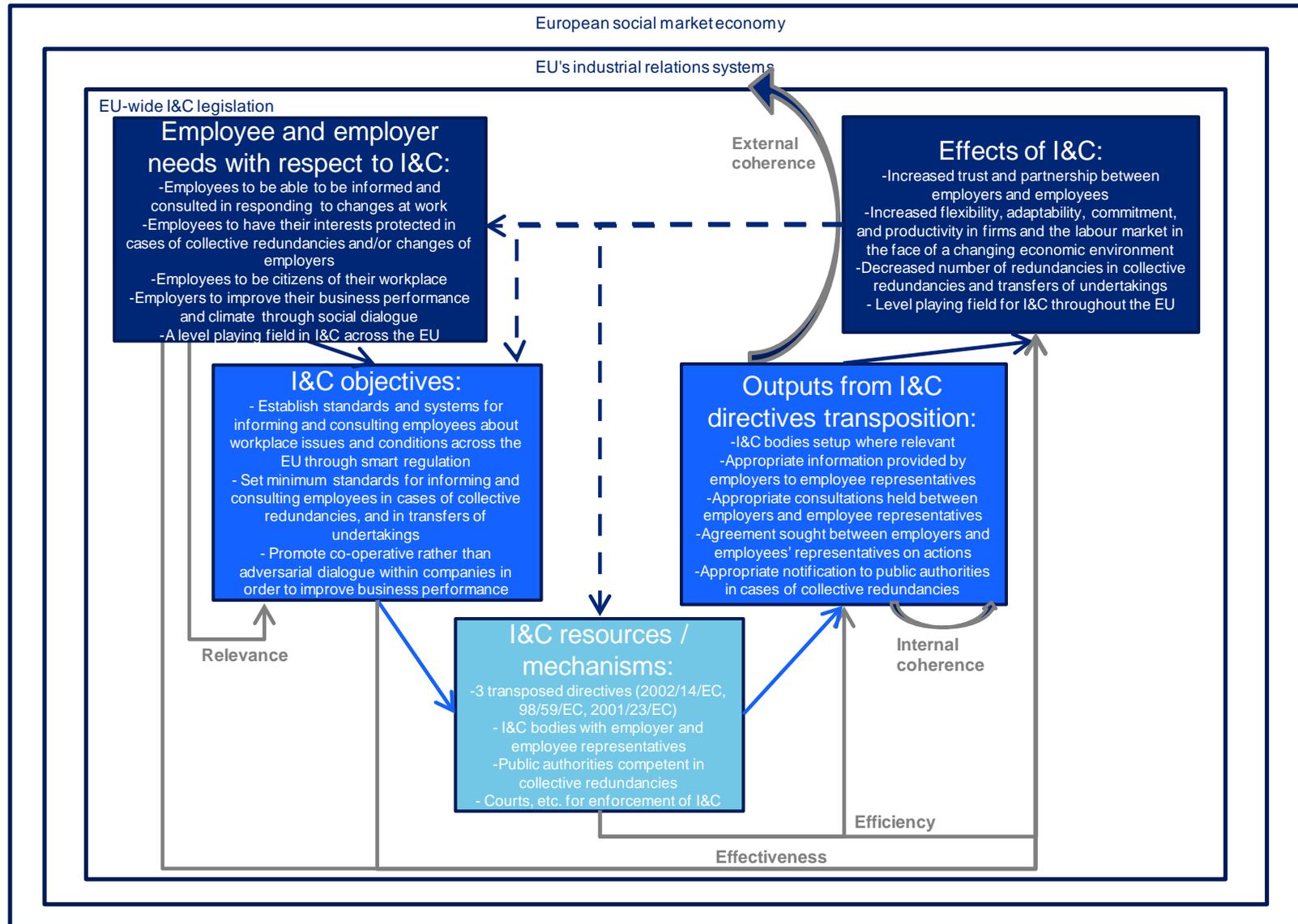
- **Coherence:** is the degree to which the outputs (and thus the effects) of the 3 EU I&C directives as transposed mutually reinforce each other (or at least do not counter each other). This is assessed by comparing the measured outputs (and effects) of the provisions put in place for the 3 EU I&C directives with each other to identify their interactions. The intervention logic moreover highlights the complexity of the evaluation of the three I&C directives, showing that their outputs (and effects) cannot be considered in isolation, but should be seen in the context of each Member State's industrial relations system, and of the European social market economy (external coherence), in which I&C is but a part (and I&C covered by the three directives studied a yet smaller part).

A second diagram (see below) provides an overview of the strategic evaluation criteria used for the study (relevance, effectiveness, efficiency and coherence) and their fit with the needs, objectives, mechanisms and resources, outputs and effects of the package of I&C legislation, giving an overall high-level view on the type of relations to be assessed in order to derive judgements on the criteria.

Furthermore, an EU-level evaluation of the 3 EU I&C directives studied must take into account different starting situations in the countries besides their varying systems of employee representation and industrial relations, combining both representation through local union bodies and works councils – or similar structures elected by employees, or otherwise. Indeed, the directives aim for similar minimum effects in all existing systems, but by nature allow a certain flexibility in their implementation due to the different starting situations and systems. This may also entail a further complication in that certain countries may resort to gold-plating given that the I&C directives in question do not specify maximum conditions.

The diagram below also shows the package of I&C legislation placed in the context of industrial relations and the European Social Market economy.

High-level I&C intervention logic with strategic evaluation criteria



Together, the two diagrams provide a visual representation of the framework of the study which we will further refine if necessary during the next phase of the project.

It must be borne in mind that a graphical representation of the intervention logic cannot include all details as it is by nature a simplification. The national experts will however be expected to detail the actual situation in their country on this basis for consistency, adding specific elements as relevant. Moreover, the analytical framework takes this logic, and the associated strategic evaluation criteria as a starting point, developing these into questions, judgement criteria, and indicators used to identify the specific information which the national experts will aim to collect in order to make their assessments. As with the intervention logic, simplifications must be made at all of these stages in order to be able to produce strategic insights. The good judgement of the national experts will naturally be called on for this.

7.4.3. Analytical framework

This fitness check study was structured and conducted using an analytical framework based on the study objectives and questions derived from the terms of reference and fitness check methodology.

The four strategic assessment criteria used to assess whether the three EU I&C directives are fit for purpose were: relevance, effectiveness, efficiency, and coherence, with each criterion being detailed using the following elements:

- **evaluation questions and sub-questions** allowing a focused approach to the evaluation criterion and main questions/issues;
- **judgment criteria** that allow us to formulate a judgment on the questions and issues;
- qualitative and quantitative **indicators** to feed our judgment on the questions and issues;
- the **methods to be used to collect the necessary information** and the **key sources** of data and other input for indicators. As far as indicators are concerned, it is important to note that these will indeed be collected from the following different sources:
 - EU-level statistics: mainly quantitative information in as far this information is available and relevant for the judgement criteria identified¹⁷²;
 - EU-level studies: mainly qualitative contextual information;
 - Web-based surveys: mainly quantitative information related to the concerned indicators;
 - Case studies: both qualitative and quantitative information related to the concerned indicators;
 - National and EU-level interviews: through the interviews we will mainly collect qualitative information and perception elements to feed our indicators;
 - Desk research: at national level our experts will try to identify existing studies or potential indicators comparable with the main ones identified in the analytical framework, in as far as these data are available and relevant;
 - Experts' opinion: our experts are best placed to provide a seasoned opinion in the absence of other available information.

¹⁷² We have already noticed that very few data are available and/or present time-series; we have identified some interesting data from Eurofound surveys, but only for one year for instance. This information will be used as contextual quantitative information nevertheless.

These elements constitute the columns of the analytical framework defined below, bearing in mind the logical links between these columns whereby data sources feed indicators, which, in turn, support judgement criteria that together provide answers to assessment questions that detail the strategic assessment criteria.

The questions listed in the terms of reference were mostly descriptive, mapping out the details of provisions put in place in undertakings and establishments in different countries in order to implement the three I&C directives. Answering these questions is one step in the fitness check process but it does not provide answers to whether the legislation is fit for purpose. That depends on answers to assessment questions detailing the strategic assessment criteria, which are fed by replies to descriptive questions to the extent that they provide data for the various indicators.

The difference between descriptive and assessment questions is that the latter use judgement criteria and indicators based on robust quantitative and qualitative data collected from the extensive desk research, interviews and case studies with stakeholders for the assessment questions, while the descriptive questions do not rely on judgement criteria and indicators.

Therefore, while descriptive questions will provide quantitative and qualitative data on the implementation of the directives, the evaluation questions will require analyses of this information in relation to the EU strategy in relation to the three EU I&C directives in order to draw conclusions. That analysis must, in turn, take account of the manner in which I&C directives are expected to have their effects in practice.

The analytical framework includes all questions for the study, indicating how these will contribute to the study (their sequencing is detailed in the work plan). Descriptive questions corresponding to those from the terms of reference are included under the evaluation question:

What effects have the transposed directives had as they have been implemented in practice, and how have these been achieved?

This assessment question depends on answers to descriptive questions about how the I&C processes are conducted in practice in each country (which is true for all the evaluation questions in the analytical framework). All top-level evaluation questions can be considered as the headings of the different sections of the national and synthesis reports (see appendices for details), with answers providing relevant specific details.

Linked to the analytical framework are guides and templates for desk research, interviews and case studies (the core of the research manual with the national report template) which will be used to underpin data collection and analysis, and ensure quality and consistency. This method ensured that the outcome of the national data collection brings answers to the assessment questions in a clear and consistent manner within the framework of the strategic evaluation criteria.

This enabled the evaluation team to conduct robust and logical work, and elaborate substantive conclusions based on solid findings.

The table below presents a full version of the analytical framework including the judgement criteria, indicators and data sources gathered.

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
Relevance					
Are the objectives and provisions of the transposed I&C directives in line with the EU strategy in I&C and broader industrial relations?	-	The objectives and provisions of the transposed I&C directives are aligned with those of the Flagship Initiative: "An Agenda for new skills and jobs" for inclusive growth under the EU 2020 strategy	Evidence of alignment of the objectives and provisions of the transposed directives with those from the Flagship Initiative: "An Agenda for new skills and jobs" for inclusive growth under the EU 2020 strategy (evidence to be supported by a check list in the desk research template ¹⁷³)	Desk research and experts' opinion (qualitative assessment)	Yes
Are the objectives and provisions of the transposed I&C directives in line with employee and employer I&C needs (as identified in the directives)?	Are the objectives and provisions of the transposed I&C directives relevant to guarantee employees' fundamental right to I&C (as identified in the directives)?	The objectives and provisions of the transposed I&C directives are relevant for the realization of workers' fundamental right to I&C	Level of satisfaction of employees, employers and other relevant actors (EU-level and national social partners, Member States' representatives, academics) on the guarantee of workers' fundamental right to I&C through the objectives and provisions of the transposed directives ¹⁷⁴	Interviews (qualitative assessment of the level of satisfaction) Web-based surveys (quantitative assessment of the level of satisfaction)	Yes
			Proportion of employees covered by the I&C directives	Desk research and experts' opinion (quantitative assessment)	Yes
			Extent to which the objectives and provisions of the	Desk research and experts' opinion	No

¹⁷³ Which will allow the experts to assess the alignment as objectively as possible.

¹⁷⁴ Any potential comparable indicator at national level will be used as a proxy for this indicator. This is also valid for the other quantitative indicators. This guideline will be clearly communicated to the experts in the desk research template.

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			<p>transposed I&C directives respect the legal norms for fundamental rights:</p> <ul style="list-style-type: none"> • Non-discrimination (e.g. taking into account the minimum thresholds for number of employees in undertakings or) • Effective remedy (e.g. taking into account possible legal recourse for enforcement of workers I&C rights and dissuasiveness of penalties in cases of non-respect of these rights) • Popular participation • Progress within a reasonable time <p>Or comparable existing indicators on the guarantee of the fundamental right to I&C through the provisions of the transposed directives</p>	(qualitative assessment)	
	Are the objectives and provisions of the transposed I&C directives relevant to cover the need for increased trust and partnership between employees and	The objectives and provisions of the transposed I&C directives are relevant to increase trust and partnership between employees and management	Level of satisfaction of employees, employers and other actors (EU-level and national social partners, Member States' representatives, academics) on the degree to which the transposed I&C directives are	Interviews (qualitative assessment) Web-based surveys (quantitative assessment)	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
	management (as identified in the directives)?		<p>relevant to increase trust and partnership with management</p> <hr/> <p>Extent to which the objectives and provisions of the transposed I&C directives promote the underlying drivers of trust, dialogue and partnership between employees and management:</p> <ul style="list-style-type: none"> • Clarity of roles • Communication • Open sharing of information • Shared Purpose <p>Or comparable existing indicators on the promotion of trust, dialogue and partnership between employees and management by I&C through the provisions of the transposed directives</p>	<p></p> <hr/> <p>Desk research and experts' opinion (e.g. European Company Survey 2009 and available comparable indicators at national level)</p>	<p></p> <hr/> <p>Yes</p>

Evaluation questions	Evaluation sub-questions	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
	<p>Are the objectives and provisions of the transposed I&C directives relevant to cover employees' needs for involvement where their interests are affected regarding employment and working conditions in particular where there are changes at work (as identified in the directives)?</p>	<p>The objectives and provisions of the transposed I&C directives allow for increased involvement of employees where their interests regarding employment and working conditions are affected in particular where there are changes at work</p>	<p>Level of satisfaction of employees, employers and other actors (EU-level and national social partners, Member States' representatives, academics) on the degree to which the transposed I&C directives allow for increased involvement of employees where their interests regarding employment and working conditions are affected in particular where there are changes at work (including being informed, consulted, or actively participating in decisions or issue resolution)</p> <p>Or comparable existing indicators on the relevance of I&C directives to allow for increased involvement of employees where their interests regarding employment and working conditions are affected in particular where there are changes at work</p>	<p>Interviews (qualitative assessment)</p> <p>Web-based surveys (quantitative assessment)</p> <p>Desk research (for available comparable indicators at national level)</p>	<p>Yes</p>

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
	Are the objectives and provisions of the transposed I&C directives relevant to cover employees' needs for protection of their interests in cases of collective redundancies and/or transfers of ownership of businesses (as identified in the directives)?	The objectives and provisions of the transposed I&C directives protect employees' interests in cases of collective redundancies and/or transfers of ownership of businesses	<p>Level of satisfaction of employees, employers and other actors (EU-level and national social partners, Member States' representatives, academics) on the degree to which the transposed I&C directives protect employees' interests in cases of collective redundancies and/or transfers of ownership of businesses</p> <p>Or comparable existing indicators on the link between I&C and the protection of employees' interests in cases of collective redundancies and/or transfers of business (including allowing to reduce redundancies and maintain previous working conditions)</p>	<p>Interviews (qualitative assessment)</p> <p>Web-based surveys (quantitative assessment)</p> <p>Desk research (for available comparable indicators at national level)</p>	Yes
	Are the objectives and provisions of the transposed I&C directives relevant to cover the need to improve productivity/performance of employees and the undertaking (as identified in the directives)?	The objectives and provisions of the transposed I&C directives allow to improve productivity/performance of employees and undertakings	<p>Level of satisfaction of employees, employers and other actors (EU-level and national social partners, Member States' representatives, academics) on the relevance of I&C to increase productivity/performance of employees and undertakings</p> <p>Or comparable existing</p>	<p>Interviews (qualitative assessment)</p> <p>Web-based surveys (quantitative assessment)</p> <p>Desk research and experts' opinion (for available comparable</p>	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			indicators on the relevance of I&C to ensure the productivity of employees and undertakings	indicators at national level)	
	Are the objectives and provisions of the transposed I&C directives relevant to cover the need to create a level playing field in I&C across the EU (as identified in the directives)?	The probability of not having a level playing field in I&C across the EU would be high if there were no EU directives on I&C	Perception of EU level stakeholders on the risk of not having a level playing field if there were no EU directives on I&C	Interviews with EU level stakeholders (qualitative assessment)	No
		The degree of flexibility of the I&C directives for minimum and maximum requirements across Member States is low	Degree of flexibility of the I&C directives for minimum and maximum requirements across Member States related to satisfaction of needs re I&C (in terms of scope, coverage, and content or I&C)	Desk research and experts' opinion (qualitative assessment) Consultant analysis of the previous sub-questions relative to employees and employers needs	No
Effectiveness					
Have the transposed directives met their objectives?	Have the effects of the implementation of the three I&C directives met the common objectives set?	There are no complaints that the three I&C directives have not met their common objectives set	Absence or reduction of complaints submitted to legal or administrative ¹⁷⁵ bodies concerning I&C failings, or of court cases on I&C	Desk research and experts' opinion (qualitative and quantitative assessment from e.g. ACAS, ECJ, etc.) Interviews (qualitative	Yes

¹⁷⁵ An example of an administrative body receiving complaints on I&C is Advisory, Conciliation and Arbitration Service (ACAS) in the UK

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
				assessment) Web surveys (quantitative assessment) Case studies (qualitative and quantitative assessment)	
		The provisions transposing the three directives have increased the realization of workers' fundamental right to I&C	Absence of press articles or social partner comments on infringements of the fundamental right of employees to I&C Or comparable existing indicators on the absence of infringement of the fundamental right of employees to I&C	Desk research and experts' opinion (qualitative assessment) Interviews (qualitative assessment)	No
			Increased or high ¹⁷⁶ proportion of employees covered by I&C Or comparable existing indicators on the proportion of cases effectively covered by I&C where I&C is applicable according to the EU	Desk research (e.g. European Company Survey 2009 and available comparable indicators at national level)	No (only static data)

¹⁷⁶ Where possible, benchmarks should be used for all quantitative indicators, being either the levels of these indicators before the existence of the I&C directives, or in cases or countries where there are no such requirements. Where no such benchmarks are available, expert opinion can be relied on.

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			directives		
		The provisions transposing the three directives have increased trust and partnership between employees and employers	<p>Measured or perceived increase¹⁷⁷ in or high level of trust and partnership between employees' representatives and employers due to I&C (e.g. in a majority of cases)</p> <p>Or comparable existing indicators on:</p> <ul style="list-style-type: none"> o Clarity of roles of management and employee representative o Communication between management and employee representatives o Open sharing of information between management and employee representatives o Shared purpose between management and employee representatives o Etc. 	<p>Desk research at EU and national level (e.g. European Company Survey 2009)</p> <p>Interviews (qualitative assessment)</p> <p>Web surveys (quantitative assessment)</p> <p>Case studies (qualitative and quantitative¹⁷⁸ assessment)</p>	Yes (only perceptions)
			Increased or high proportion of employee representatives informed of, consulted on, or		Yes (only perceptions)

¹⁷⁷ Measured through web surveys; perceived thanks to the interviews. This is also valid for other indicators listed below.

¹⁷⁸ Quantitative in as far as quantitative information could be found at companies' level.

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			participating in decisions (making or blocking) or issue resolution on employment and work organization, collective redundancies, and the employment or work organization related consequences of transfers of undertakings		
		The provisions transposing the three directives have increased the adaptability of employees	<p>Measured or perceived increase in or high level of adaptability of employees due to I&C:</p> <ul style="list-style-type: none"> Retraining and redeployment of employees Shared jobs or shorter working hours 	<p>Web surveys (quantitative assessment)</p> <p>Case studies (qualitative and quantitative assessment)</p>	Yes (only perceptions)
		The provisions transposing the three directives have increased the employability of employees	<p>Measured or perceived increase in or high level of employability of employees due to I&C:</p> <ul style="list-style-type: none"> Accompanied employee mobility 	<p>Desk research (quantitative and qualitative information, e.g. from the competent public authorities)</p> <p>Web surveys (quantitative assessment)</p> <p>Case studies (qualitative and quantitative assessment)</p>	Yes (only perceptions)

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
		The provisions transposing the three directives have increased productivity/performance of employees and undertakings	<p>Measured or perceived increase in or high level of productivity/performance due to I&C (e.g. in comparison to undertakings where is no I&C):</p> <ul style="list-style-type: none"> • Employee productivity • Employee commitment • Speedier and improved acceptance of new working conditions by employees during and after employment and work organization restructuring • Reduced number and severity of industrial actions and conflicts • Reduced absenteeism • Improved management decisions <p>Or comparable existing indicators on productivity/performance</p>	<p>Desk research at EU and national level (e.g. European Company Survey 2009)</p> <p>Web surveys (quantitative assessment)</p> <p>Case studies (qualitative and quantitative assessment)</p>	Yes (only perceptions)
		The provisions transposing the three directives have decreased redundancies	Measured or perceived decreased or low level of redundancies due to I&C	<p>Web surveys (quantitative assessment)</p> <p>Case studies (qualitative and quantitative assessment)</p>	

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
		The provisions transposing the directives have created a level EU playing field in I&C	Perception of EU level stakeholders on whether the I&C provisions have created a level playing field in I&C across the EU	Interviews with EU level stakeholders (qualitative assessment)	No
			Reduction in the difference of I&C incidence levels across the EU Or comparable indicators on the closer levels or costs to employers of I&C requirements across Member States related to satisfaction of needs re I&C	Consultant analysis of the previous sub-questions relative to effectiveness	Yes (only perception)
	Has the directive 2002/14/EC led to the establishment of a general and permanent right to I&C of employees at national undertaking/establishment level?	The provisions transposing directive 2002/14/EC have established the general ability of employees or their representatives to exercise their fundamental right to be informed and consulted at undertaking/establishment level, and support for this	Increased or high level of awareness of general, permanent I&C rights by employees since 2005	Web surveys (quantitative assessment) Case studies (qualitative and quantitative assessment) Interviews (qualitative assessment)	Yes
			Increased or high incidence of I&C bodies and coverage of different levels and types of undertaking/establishment since 2005	Desk research (e.g. European Company Survey 2009) Web surveys (quantitative assessment)	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			Increased or high quality, frequency and timeliness of information provided to employee representatives on economic and employment situation of company since 2005	Desk research (e.g. European Company Survey 2009) Web surveys (quantitative assessment)	Yes
			Increased or high number of cases where management of change/restructurings is anticipated through permanent I&C since 2005	Desk research (e.g. European Company Survey 2009) Web surveys (quantitative assessment)	Yes
			Increased or high number of cases where employees' representatives are informed, consulted or participate in decisions or issue resolution regarding employment, working conditions, or work organization since 2005	Desk research (e.g. European Company Survey 2009) Web surveys (quantitative assessment)	Yes
			Increased or high proportion of employee representatives provided with appropriate or sufficient training on information and consultation since 2005	Desk research (e.g. European Company Survey 2009)	Yes
			Increased or high proportion of employee representatives provided with paid time off for information and consultation since 2005	Desk research (e.g. European Company Survey 2009)	Yes (only perception)

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
	Has the directive 98/59/EC afforded greater protection to workers in the event of collective redundancies?	The provisions transposing directive 98/59/EC have reduced the number of redundancies in collective redundancies	Increased proportion or high proportion of collective redundancies in which the number of planned redundancies has been reduced due to I&C	Web surveys (quantitative assessment) Case studies (qualitative and quantitative assessment)	Yes
		The provisions transposing directive 98/59/EC have increased the proportion of collective redundancies in which employment mobility is assisted	Increased proportion or high proportion of collective redundancies in which employment mobility support is provided by competent public authorities		Yes
			Increased proportion or high proportion of collective redundancies in which employment mobility is supported by accompanying social measures such as social plans		Yes
	Has article 7 of the directive 2001/23/EC afforded greater protection to workers of both the transferor and transferee in the event of transfers of undertakings?	The provisions transposing article 7 of directive 2001/23/EC have led to greater protection of employees in transfers of undertakings	Increased proportion of transfers of undertakings in which employees are well protected via: <ul style="list-style-type: none"> o Better awareness of rights acquired prior to transfers of undertakings (transferors' employees) o Involvement in changes of working conditions or organisation with the new employer 	Web surveys (quantitative assessment) Case studies (qualitative and quantitative assessment)	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
	Has article 7 of the directive 2001/23/EC led to smoother transfers of undertakings?	The provisions transposing article 7 of directive 2001/23/EC have led to smoother transfers of undertakings	Increased proportion of smooth transfers of undertakings via: <ul style="list-style-type: none"> o Faster and improved acceptance of new working conditions by employees 	Web surveys (quantitative assessment) Case studies (qualitative and quantitative assessment)	Yes
Efficiency					
How do the benefits and costs generated by the I&C directives relate for employees, employers, and society at large?	-	The measured and perceived benefits from the provisions transposing the three I&C directives outweigh the measured and perceived costs	Relation (by Directive, quantified where information is available, alternatively qualified) between: <ul style="list-style-type: none"> • Identified benefits from the provisions transposing the three I&C directives: <ul style="list-style-type: none"> o Increased or high trust and partnership between employees and employers o Increased or high adaptability and employability of employees o Increased or high productivity/performance o Quicker or fast acceptance of new working conditions by employees o Improved 	Interviews and expert opinion at national and EU-level (qualitative assessment) Web surveys (quantitative assessment) Case studies (quantitative and qualitative assessment)	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			<p>management decisions</p> <ul style="list-style-type: none"> ○ Improved acceptance of management decisions and new working conditions by employees ○ Reduced or low number and severity of industrial actions/conflicts ○ Reduced or low number of redundancies ○ Increasingly level I&C playing field ● Identified costs to employers from the provisions transposing the various I&C directives: <ul style="list-style-type: none"> ○ Putting in place I&C bodies and/or employee representatives (election, etc.) ○ Operating I&C bodies and/or employee representatives (time off and materials/facilities provided) ○ Training/advising 		

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			<ul style="list-style-type: none"> ○ Producing and transmitting information to employee representatives ○ Holding consultations (time-off work for various meetings, time to take into account feedback by management including delays in decision making) ○ Delaying decisions ○ Confidentiality breaches <p>Or comparable existing indicators on the benefits and costs of I&C from the provisions of the transposed directives</p>		
		The specific perceived benefits due to the directive 2002/14/EC outweigh its specific costs	<p>Relation (quantified where information is available, alternatively qualified) between:</p> <ul style="list-style-type: none"> • Identified specific benefits from the directive 2002/14/EC: <ul style="list-style-type: none"> ○ Benefits from the increased exercise 	<p>Web surveys (quantitative assessment)</p> <p>Case studies (quantitative and qualitative assessment)</p>	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			<p>of the right to I&C covering situations other than collective redundancies or transfers of undertakings¹⁷⁹</p> <ul style="list-style-type: none"> Identified specific costs from the directive 2002/14/EC: <ul style="list-style-type: none"> S-1. Operating costs of I&C bodies and/or employee representatives (time off and materials/facilities provided) in situations other than collective redundancies or transfers of undertakings 		
		The specific perceived benefits due to the directive 98/59/EC outweigh its specific costs	<p>Relation (quantified where information is available, alternatively qualified) between:</p> <ul style="list-style-type: none"> Identified specific benefits from the directive 98/59/EC: 	<p>Web surveys (quantitative assessment)</p> <p>Case studies (quantitative and qualitative)</p>	Yes

¹⁷⁹ The types of benefits are the same as mentioned in the cell above but specific to the situations covered only by the directive 2002/14/EC.

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			<ul style="list-style-type: none"> ○ Support from national authorities in collective redundancies • Identified specific costs from the directive 98/59/EC: <ul style="list-style-type: none"> S-2. Informing national authorities of collective redundancies (using SCM) 	assessment)	
		The specific perceived benefits due to the directive 2001/23/EC outweigh its specific costs	<p>Relation (quantified where information is available, alternatively qualified) between:</p> <ul style="list-style-type: none"> • Identified specific benefits from the directive 2001/23/EC: <ul style="list-style-type: none"> ○ Better acceptance by both transferor and transferee employees of work changes due to the transfer • Identified specific costs from the directive 2001/23/EC: <ul style="list-style-type: none"> S-3. Combined processes of 	<p>Web surveys (quantitative assessment)</p> <p>Case studies (quantitative and qualitative assessment)</p>	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			information and consultation in transferor and transferee		
Coherence					
Are the I&C directives coherent and mutually reinforcing?	Are there common outputs or effects between the provisions implementing the different I&C directives at national level?	There are common or complementary outputs between the provisions implementing the three I&C directives at national level	<p>Increasing or high number of complementary or common outputs for the different directives:</p> <ul style="list-style-type: none"> I&C bodies put in place for directives 98/59/EC and 2001/23/EC have facilitated the creation of I&C bodies for directive 2002/14/EC or are the same (or vice-versa) Modalities for conducting I&C in cases covered by the 3 directives are the same (e.g. use of the same format and timing of information provision and meetings in the same bodies, etc.) 	<p>Desk research (qualitative assessment)</p> <p>Interviews (qualitative assessment)</p> <p>Case studies (qualitative assessment)</p>	Yes
		There are common or complementary effects between the provisions implementing the three I&C directives at national level	<p>Increasing or high share of complementary or common effects for the different directives:</p> <ul style="list-style-type: none"> increased trust between employees and management increased adaptability and 	<p>Desk research (qualitative assessment)</p> <p>Interviews (qualitative assessment)</p>	

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
			<p>employability of employees</p> <ul style="list-style-type: none"> • increased productivity/performance • reduced redundancies 	Case studies (qualitative assessment)	
	Are there inconsistencies in the outputs and effects of the provisions implementing the different I&C directives at national level?	There are inconsistencies in the outputs of the provisions implementing the three I&C directives at national level	<p>Observed inconsistencies between the outputs of the provisions transposing the three I&C directives at national level:</p> <ul style="list-style-type: none"> • Confusion or legal uncertainties on which provisions to apply in a given situation • Conflicting provisions from different transposed directives in a given situation 	<p>Desk research (qualitative assessment)</p> <p>Interviews (qualitative assessment)</p> <p>Case studies (qualitative assessment)</p>	Yes
		There are inconsistencies in the effects of the provisions implementing the three I&C directives at national level	<p>Observed inconsistencies between the effects of the provisions transposing I&C directives at national level:</p> <ul style="list-style-type: none"> • Decreased trust between employees and management due e.g. to different or conflicting information from general ongoing I&C and I&C for collective redundancies or transfers of undertakings 	<p>Desk research (qualitative assessment)</p> <p>Interviews (qualitative assessment)</p> <p>Case studies (qualitative assessment)</p>	Yes

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
Are there shared best practices in the implementation of the transposed I&C directives?	-	There are shared best practices between the outputs of the provisions implementing the different I&C directives at national level	Increasing or high number of cases in which the outputs of the transposed directive 2002/14/EC have contributed to facilitating or replacing the outputs of specific I&C in cases covered by directives 98/59/EC and 2001/23/EC	Desk research (qualitative assessment) Interviews (qualitative assessment) Case studies (qualitative assessment)	Yes
Are there gaps in the implementation of the transposed I&C directives?	-	There are gaps in the outputs of the provisions implementing the different I&C directives at national level	Observed gaps between the outputs of the provisions transposing I&C directives at national level: <ul style="list-style-type: none"> Situations not covered by the provisions transposing I&C directives at national level (e.g. certain types of employees not covered, certain situations not covered, etc.) 	Desk research (qualitative assessment) Interviews (qualitative assessment) Case studies (qualitative assessment)	Yes
Would I&C objectives be better served if the directives were consolidated?	-	Consolidating the EU directives would decrease the inconsistencies and/or increase the positive outputs or effects of I&C covered by the three existing directives sufficiently	Qualitative estimate of the cost of consolidating the directives including transposition (expert opinion)	Desk research and experts' opinion (qualitative assessment)	Yes
			Qualitative estimate of the benefits from the decreased number of inconsistencies in the outputs and effects of the three current directives:	Desk research and experts' opinion (qualitative assessment)	No

Evaluation questions	Evaluation questions sub-	Judgment criteria	Indicators	Sources	Indicators and sources gathered?
		to be worth doing (taking into account implementation at the national level)	<ul style="list-style-type: none"> • Decreased confusion or legal uncertainties on which provisions to apply in a given situation • Decreased conflicting provisions from different transposed directives in a given situation <p>Or comparable existing indicators on the benefits of consolidating the transposed directives</p>	Analysis of the replies to the previous coherence question by the consultant	

7.4.4. Work plan

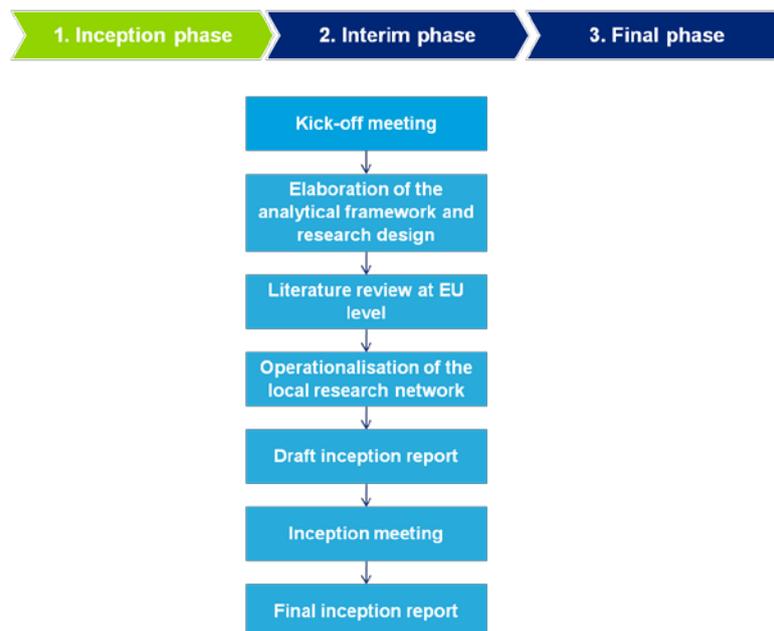
In order to provide a view on how the methodology for this study will be operationalized, this section details the sequence of activities within the study. It also presents the different data collection tools to be used within the methodology.

The study consists of three phases:

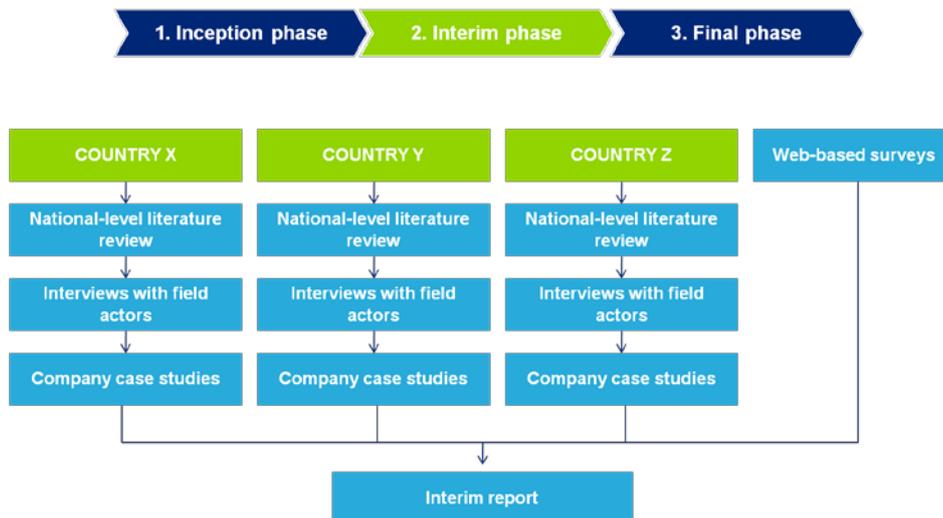
1. **Inception**, which covers the research design, intervention logic definition and analytical framework development, and work planning;
2. **Data collection and initial analyses**, being the national literature reviews, interviews, case studies and web surveys to collect data, followed by a first analysis at national level based on the collected data and resulting in national reports, and a final analysis at EU level based on the national reports and developing overall conclusions and eventual recommendations;
3. **Final report**, transforming the analyses into a readable and incisive final report.

An overview of the study's phased approach is provided in the figures below. A detailed description of the work plan for the three study phases can be found in the inception report.

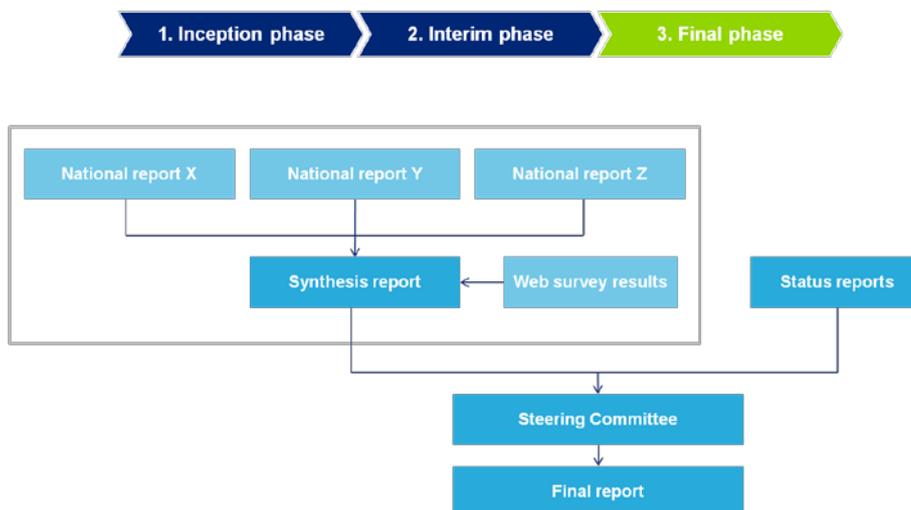
Phase 1: Inception



Phase 2: Data collection and analysis



Phase 3: Reporting



7.4.5. Data sources for the fitness check

The fitness check evaluation was based on five main data sources which are further discussed below:

- An analysis of relevant research reports as listed in the literature appendix and as exploited in the 30 national reports;
- Assessments made by a network of national experts established for the project who interviewed key stakeholders, undertook case studies and reviewed relevant literature;

- Direct enquiries through a web survey of employer and employee representatives at company level organised in co-operation with the European-level social partners;
- An analysis of EU-wide data from the latest European Company Survey (ECS);
- A series of company case studies undertaken by the national experts for their national reports.

7.4.5.1. LITERATURE REVIEW

A **literature review**, both at EU and national levels, that addressed a range of issues from the aims of the directives to their impact to date, including such matters as the extent to which some national legislation or practices went beyond the minimum conditions prescribed in the directives, the extent of company compliance with the legislation, and a range of very specific issues concerning implementation.

An enormous volume of descriptive or conceptual material is available about the industrial relations arrangements and activities that exist in the Member States¹⁸⁰, and there is also, for some Member States in particular, an extensive body of legal evidence, case law etc.¹⁸¹

What is commonly lacking at both national and EU is any consistent and/or comparative evidence about practical experiences with regard to the impact of EU directives on information and consultation within the national economic, social, industrial relations and legal environments that exist within each Member State.

In so far as there is any large scale comparative evidence, it tends to appear under other headings – such as industrial restructuring¹⁸², with the practical effects and potential of the legislation being seen in the context of the wider management of change within economies and labour markets.

With respect to information and consultation, the most frequent references are to the management of collective redundancies where the main concern may not necessarily be the degree to which the formal provisions have been applied (although this is a common issue) but how the various national, regional and local stakeholders work together in response to the challenge¹⁸³.

Developments in industrial relations procedures, and arrangements in place in the Member States, including with respect to I&C, are monitored and reported by the European Foundation for Living and Working Conditions through its European Industrial Relations Observatory (EIRO)¹⁸⁴ and, among the social partners, by the European Trade Union Institute in particular¹⁸⁵. The latter has proposed a “European Participation Index” to measure the extent of worker participation in different European countries.¹⁸⁶

¹⁸⁰ Cf. annexes to the 30 national reports, publications of the Eurofound EIRO network (www.eurofound.europa.eu/eiro/), etc.

¹⁸¹ Cf. inter alia publications of the European Labour Law Network (ELLN) (www.labourlawnetwork.eu), notably: ELLN (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, 51 pp.

¹⁸² Cf. inter alia the publications of the Eurofound European Monitoring Centre on Change (EMCC) (www.eurofound.europa.eu/emcc/) as well as EC (2012): *Restructuring in Europe 2011*, SEC (2012) 59 final, 322 pp.

¹⁸³ Eurofound EMCC (2008): *ERM case studies: Good practice in company restructuring*, 53 pp.

¹⁸⁴ Eurofound EIRO network (www.eurofound.europa.eu/eiro/).

¹⁸⁵ European Trade Union Institute (ETUI) (www.etui.org); cf. also to the ETUI website on worker participation (www.worker-participation.eu).

¹⁸⁶ Cf. Vitols (2010): *The European Participation Index (EPI): A Tool for Cross-National Quantitative Comparison*, 15 pp.

See also: ETUI (2011): *Benchmarking Working Europe 2011*, 112 pp, Chapter 8.

The recent report published by Eurofound on the experience of Directive 2002/14/EC since its implementation¹⁸⁷ - which is based partly on the findings of the 2009 European Company Survey and partly on the responses of EIRO¹⁸⁸ correspondents to a standard questionnaire – provides an overview of the application of the Directive, notably with respect to the procedures for establishing I&C bodies, the incidence and coverage of I&C bodies, the role of trade unions in relation to I&C bodies, the extent to which I&C takes place, on what issues, and with what effects.

From the legal perspective, the European Network of Legal Experts in the field of Labour Law analyses, evaluates and monitors developments in policies, including those involving I&C¹⁸⁹, as part of its role in supporting the implementation of Community law, including by raising awareness, promoting networking, and identifying problems that may need to be addressed.

Their 2010 report focuses on labour law in a time of crisis, restructuring and transition, and provides a valuable and timely commentary on the three Directives covered by this review, focusing in particular on whether the crisis has raised new issues, or accentuated previously existing issues and concerns.

All of this existing work is important in ‘tracking’ developments over time from an industrial relations perspective and from a legal perspective, respectively, and this study has drawn, where possible, on their assessments and judgements in order to supplement, and check, our findings, to assist in explaining differences between Member State experiences, and to provide an indication of possible areas of action in order to optimise the performance of the Directives.

However none of these sources directly addresses the core issue of this project - namely whether the Directives are ‘fit for purpose’ in the sense of meeting the needs of employees, employees and the Union as a whole, in terms of our basic evaluation criteria of relevance, effectiveness, efficiency and coherence.

Moreover, the impact of EU information and consultation legislation, or the more general issue of the economic and social costs and benefits of information and consultation at the workplace, is viewed from a variety of different academic and professional perspectives in circumstances where the amount of pre-existing quantitative data, or even categorised qualitative information, is limited.

There is a vast quantity of descriptive industrial relations literature concerning organisational structures and practices, and a virtually continuous running commentary on developments in these arrangements across different sectors in different countries in different circumstances¹⁹⁰. This provides a great deal of detailed information about the diversity of arrangements that exist, and the directions in which they are evolving, but little of this is available in a form that can be used for evaluation purposes.

A second perspective is that of labour lawyers, whose work is focused and precise, and which is effectively analysed, and reported upon, at EU level, by the European Labour Law Network which highlights issues that can, or should, be addressed by the European Commission. However, and while the Network provides some evidence of the extent to

¹⁸⁷ Eurofound (2011): *Information and consultation practice across Europe five years after the EU Directive*, 32 pp.

¹⁸⁸ Eurofound EIRO (2011): *Information and consultation practice across Europe five years after the EU Directive*, country and synthesis reports available under: <http://www.eurofound.europa.eu/eiro/studies/tn1009029s/index.htm>.

¹⁸⁹ European Labour Law Network (ELLN) (www.labourlawnetwork.eu) (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, 51 pp.

¹⁹⁰ See, in particular, the work of the Eurofound EIRO network (www.eurofound.europa.eu/eiro/).

which the body of legislation concerning information and consultation is being respected, it does not provide overall evaluations as such.

A third perspective is that of the growing number of political scientists who have become interested in compliance with respect to EU legislation, following pioneering empirical work concerning social policy¹⁹¹, and who address issues from a more general policy perspective, with a focus on governance and, to some extent, effectiveness. Some authors have undertaken efforts to measure and the effectiveness of I&C legislation and regulatory capture by employers *across countries*.¹⁹² This is, moreover, an area where serious efforts are being made to develop bibliographical and statistical databases that could contribute significantly to evaluations¹⁹³.

The fourth, and least developed, perspective in this area is that of economists, who are generally deterred by the lack of quantitative data, and who may, in some cases at least, view workplace co-operation with suspicion as potentially interfering with the efficient functioning of labour markets rather than contributing to overall economic and social performance. There is a limited, if intense, academic debate in the German econometric literature on the economic effects of co-determination by Jirjahn¹⁹⁴, Mohrenweiser et al.¹⁹⁵ and others, but it has yet to produce consensus results. Some authors have developed conceptual approaches for measuring the impact of representative employee participation on organisational performance¹⁹⁶ *across several countries* – yet without producing broad quantitative results for the EU/EEA Member States.

With respect of the term ‘cost-benefit’, moreover, there is also a surprisingly common misconception among those who are not familiar with its theory or practice, that it offers a narrow perspective on public policy issues when, in reality, the techniques were developed precisely in order to take account of the full range of public and private externalities and non-market benefits and costs (social, environmental, health etc.) in assessing effects¹⁹⁷, rather than taking account of only private cost factors for which market prices are available.

7.4.5.2. EXPERT ASSESSMENTS

Expert assessments by the project’s national experts who were required to assess the positions of national stakeholders for each Member State in relation to the series of structured questions on the basis of their research documentation, professional knowledge, face-to-face interviews with national level stakeholder representatives, and case-study interviews with employers and employee representatives.

¹⁹¹ Notably the pioneering and prize-winning work “*Complying with Europe: EU Harmonisation and Soft Law in the Member States*” by Falkner, Treib, Hartlapp and Leiber (2005).

¹⁹² Dobbins, T. & Dundon, T. & Cullinane, N. Donaghey, J. & Hickland, E. (2011): The Information and Consultation of Employees (ICE) Directive: employer occupation of regulatory space for informing & consulting workers in liberal market regimes, *Bangor Business School Working Paper*, BBSWP/11/007, 30 pp.

¹⁹³ Cf. Dimiter Toshkov (October 2011): “*The quest for relevance: Research on compliance with EU law*”, Leiden University.

¹⁹⁴ Jirjahn (2010): *Ökonomische Wirkungen der Mitbestimmung in Deutschland: Ein Update*, Hans-Böckler-Stiftung Arbeitspapier 186, 71 pp.

¹⁹⁵ Mohrenweiser, J. & Marginson, P. & Backes-Gellner, U. (2011): What triggers the establishment of a works council?, *Economic and Industrial Democracy*, 22 pp.

¹⁹⁶ Van den Berg, A. & van Witteloostuijn, A. & Boone, C. & Van der Brempt, O. (2011): *The impact of representative employee participation on organisational performance, A comparison of four neighbouring countries – Belgium, Germany, the Netherlands and the United Kingdom*, Antwerp, 60 pp.

¹⁹⁷ A.R. Prest and R. Turvey (1965) ‘Cost-benefit analysis: A Survey’, *Economic Journal* December 1965, pages 683-735.

The national stakeholders consulted by the national experts consisted of at least four relevant in-country I&C stakeholders, and typically:

- Representatives of the Ministry of Labour/Employment;
- Representatives of employees’ organisations (at national and/or sector level);
- Representatives of employers’ organisations (at national and/or sector level);
- Representatives of the Labour/Employment administration such as enforcement bodies (e.g. labour inspectorates) or relevant academics.

The national experts were provided with a large number of questions for their interviews with stakeholders concerning the extent to which the directives were meeting their goals in terms of the four assessment criteria. In order to avoid the risk of simply collecting ‘party-line’ responses from the stakeholders, on the one hand, or being left with only nebulous views, we asked the national experts to take the middle course between a highly structured set of questions, or engaging in an open dialogue, each having both advantages and disadvantages.– seeking answers to key questions through semi-structured interviews, based on check lists of questions, without necessarily obliging stakeholder representatives to complete a formal questionnaire.

Based on these inputs, the experts were required to provide their overall average assessments, based on their various sources in relation to the evaluation criteria and questions as set out in the findings section. The questions supplied covered the four evaluation criteria with issues such as:

- **Relevance** of the directives in terms of guaranteeing employees’ fundamental right to I&C; increasing trust and partnership; meeting employees’ needs for involvement where there are changes at work, or collective redundancies or transfers of businesses; increasing employees’ adaptability and employability; improving the productivity performance of employees and undertakings;
- **Effectiveness** of the directives in meeting their common objectives overall, with specific questions concerning the three directives separately: in establishing a general and permanent right to I&C; in affording greater protection to workers in the event of collective redundancies; in affording greater protection to all workers affected by transfers, and leading to a smoother transfers of undertakings;
- **Efficiency** of the directives in terms of the benefits and costs generated overall, and in relation to the establishment of permanent processes of I&C; collective redundancies; and the transfer of undertakings;
- **Coherence** of the directives in terms of being mutually reinforcing in relation to the overall information and consultation objectives.

The overall evaluation results presented in the report are arithmetic means of country-level results from the 30 EU/EEA Member States. In order to test the robustness of these results, we have weighted the country-level results according to the total employment in the Member States¹⁹⁸.

<i>Evaluation criteria</i>	<i>Arithmetic means</i>	<i>Weighted averages</i>
<i>Relevance</i>	<i>0.85</i>	<i>0.94</i>
<i>Effectiveness</i>	<i>0.63</i>	<i>0.75</i>
<i>Efficiency</i>	<i>0.87</i>	<i>1.12</i>
<i>Coherence</i>	<i>1.03</i>	<i>1.25</i>
<i>Overall</i>	<i>0.84</i>	<i>1.02</i>

¹⁹⁸ Source: 2010 total employment data from EUROSTAT and the Liechtenstein Statistical Office.

The weighting of evaluation results leads to higher overall evaluation scores due to strong weights of large EU Member States such as Germany (17.7% of EEA30 total employment) which have a long-standing experience with I&C and where the transposed I&C Directives were positively evaluated.

7.4.5.3. EUROPE-WIDE WEB-SURVEY

Assessments by a large number of company level representatives – both employers and employees – at national level, in relation to a set of similarly structured questions obtained through an EU-wide web survey organised in co-operation with the European social partners¹⁹⁹ (who channelled the survey to national parties, with a view to obtaining more representative company-level responses). The web survey, which was developed in the light of the initial evidence from the initial research by the national experts, used the same overall approach and criteria, but including a series of statements about the objectives of EU I&C legislation in order to elicit measureable responses from both employer and employee representatives at company level across the EU and EEA countries. It included a number of detailed questions with respect to:

- Costs for both employers and employees related to I&C and their assessment of the balance between benefits and costs;
- Problems or issues relating to everyday experiences with information and consultation in practice.

The full questionnaires are available in annex 8. They were translated by the European Commission services from English to 21 EU official languages. In early November 2011, the European social partners (ETUC, BusinessEurope, CEEP and UEAPME) were asked to distribute the web-survey links among their member organisations as previously agreed. The initial deadline for the closure of the web-survey was mid-December but the deadline was extended to mid-January 2012.

In total, 916 respondents – 539 employee representatives and 377 employer representatives – completed the survey. These responses are concentrated in a few countries with relatively mature industrial relations systems (Belgium, Denmark, Germany, Italy and Sweden).

The detailed results of the web survey are presented in annex 8.

7.4.5.4. EUROFOUND EUROPEAN COMPANY SURVEY

Assessments by a very large number of company level employer representatives at national level in relation to a more limited number of specific questions contained in the latest European Company Survey (ECS)²⁰⁰, including questions on their views concerning systems of employee representation. In order to complement and test results from other data sources, the relevant ECS source data (about 27000 responses) was statistically treated and compiled into indicators.

7.4.5.5. CASE STUDIES

Case study evidence obtained by the national experts in each Member State (four company case studies in France, Germany, Italy, Spain, Poland and the UK, and two all other EU/EEA countries) and which was principally used, where possible, to provide

¹⁹⁹ ETUC, BusinessEurope, UEAPME and CEEP.

²⁰⁰ For a presentation of the Eurofound Company Survey and an introductory presentation of its results, please refer to: Eurofound (2010): *European Company Survey 2009*, 135 pp.

illustrative examples of current practices and experiences, being of a less broad-based, but deeper nature.

The case studies were selected based on the following criteria:

- The size of the enterprise:
 - With regard to the smaller countries (only 2 case studies) we will select one SME²⁰¹ and one large company;
 - With regard to the six large countries, a balance will be sought between large companies and SMEs.
- The concerned country (we will cover all countries above);
- The country of the headquarters of the firm (we will cover both ‘national’ and ‘foreign’ companies);
- The sector of activity: sectors that should be covered by the case studies are the secondary and tertiary sectors:
 - With regard to the smaller countries (only 2 case studies) we selected one company operating in the secondary sector and one in the tertiary sector to the extent possible;
 - With regard to the six large countries, a balance was sought between companies operating in the secondary and tertiary sectors;
 - Where possible, we covered both public and private undertakings active in the secondary and tertiary sectors.²⁰²
 - The link/articulation between I&C regulations (between general I&C, collective redundancies, and transfer): we selected case studies in companies having had either a transfer of undertaking (whether as transferor or transferee) or a collective redundancy where possible in order to be able to assess the operation of at least two of the three I&C directives in the selected cases.

In its coverage of all the EU-27 Member States and the EEA countries (Iceland, Liechtenstein and Norway) the ‘fitness check’ study has included 74 illustrative company case studies in support of its analysis. This is made up of 58 large companies (those with more than 250 employees) and 16 SMEs (less than 250 employees), with a more-or-less even balance between those working in the secondary (largely industry) sector, and those from the tertiary or services sector – 38 companies in the secondary sector as against 36 in the tertiary sector.

Some 52 of these companies have experienced collective redundancies, and 32 of the companies have experienced transfers of the enterprise. Some companies have had multiple experiences, mainly of collective redundancies, and some 24 companies have experienced both collective redundancies and transfers of undertakings.

The full list of case studies conducted for this study is available in annex 7.

While these have served to add to the insights obtained by their national experts from their interviews with stakeholders, the case studies cannot be seen in any general sense as representative.

Finally, data was also collected covering a range of contextual factors, including systems of employee representation, levels of economic performance, rates of trade union membership, length of membership of the EU.

²⁰¹ It should be noted that the definition of a small-medium enterprise (SME) can vary by country. Where possible, we will follow the definitions of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

²⁰² The weight of public undertakings in the national economies varies considerably between Member States. Where possible and appropriate, we will identify – together with the CEEP national experts – case studies of public undertakings that fall under the scope of the Directive(s). Yet, the majority of case studies will cover private undertakings.

7.5. Annex 5: List of EU-level interviewees

Country	Type	Name	Organisation
EU-level	Academic	John Hurley	Eurofound
EU-level	Academic	Christian Welz	Eurofound
EU-level	Academic	Marc Hall	Warwick Business School
EU-level	Employees' organisation	Isabelle Schoemann	ETUI
EU-level	Employees' organisation	Claudia Menne	ETUC
EU-level	Employees' organisation	Wolfgang Kowalsky	ETUC
EU-level	Employers' organisation	Liliane Volonzinskis	UEAPME
EU-level	Employers' organisation	Andreas Persson	CEEP
EU-level	Employers' organisation	Magdalena Bober	BusinessEurope
EU-level	Employers' organisation	Maxime Cerutti	BusinessEurope

7.6. Annex 6: List of national-level interviewees

Country	Type	Name	Function	Organisation
Austria	Ministry of Employment	of Eva Fehringer	Deputy Director of European and International Social Policy and Labour Law	Ministry of Social Affairs and Consumer Protection
Austria	Ministry of Employment	of Susanne Piffli-Pavelec		Ministry of Social Affairs and Consumer Protection
Austria	Employers' organisation	Christa Schweng		Austrian Chamber of the Economy
Austria	Employers' organisation	Christoph Kainz		Austrian Chamber of the Economy
Austria	Employees' organisation	Walter Gagawczuk		Austrian Chamber of Labour
Austria	Employees' organisation	Robert Hauser		PROGE Trade Union
Austria	Academic	Jörg Flecker		FORBA
Belgium	Employees' organisation	Eddy De Decker	Secretary	ACV trade union
Belgium	Academic	Valeria Pugliano	Professor Industrial relations	Catholic University Leuven
Belgium	Ministry of Employment	of Michel De Gols	General Director Individual Labour Relations	Federal Ministry of Labour
Bulgaria	Ministry of Employment	of Vesselin ILKOV	EC ICW Working Group	Ministry of Labour and Social Policy
Bulgaria	Employers' organisation	Snejana SLAVCHEVA	BusinessEurope members - I&C / social affairs	Bulgarian Industrial Association - Union of the Bulgarian Business
Bulgaria	Academic	Prof. Krassimira Sredkova	ELLN national expert	Sofia University St. Kliment Ohridski - Department of Labour and Insurance Law
Bulgaria	Employees' organisation	Tatiana MIHAILOVA	ETUC Worker Participation Working Group	Confederation of Independent Trade Unions of Bulgaria
Cyprus	Ministry of Employment	of Panayiota Arnou	Officer of Labour Relations	Department of Labour relations
Cyprus	Employees' organisation	Nikos Gregoriou	Head of European Affairs Department	PEO (Pancyprian Federation of Workers)
Cyprus	Employers' organisation	Michalis Antoniou	Deputy Director	OEB (Employers and Industrial Federation)
Cyprus	Labour Inspection	Andy Apostolou	Mediator in labour relations	Department of Labour Relations

Czech Republic	Ministry of Employment	of	JUDr. Zuzana Šubertová	Department of collective bargaining - officer	Ministry of Labour and Social Affairs of the Czech Republic
Czech Republic	Ministry of Employment	of	JUDr. Karolína Gritzerová	Department of labour law - officer	Ministry of Labour and Social Affairs of the Czech Republic
Czech Republic	Employees' organisation		JUDr. Vít Samek	Department of law - officer	Czech- Moravian Confederation of Trade Unions
Czech Republic	Employers' organisation		JUDr. Libuše Brádlarová	Employer's Relationship Department - officer	Confederation of Industry of the Czech republic - SPCR
Czech Republic	Labour Inspection		Ing. Michal Ronin	Inspector, former director of Labour Inspectorate for Prague	Labour Inspectorate for Central Bohemia
Denmark	Employers' organisation		Henrik Schilder	Senior Consultant	CEEP
Denmark	Employers' organisation		Flemming Dreesen	Senior Consultant	The Confederation of Danish Employers (DA)
Denmark	Employees' organisation		Ole Prasz	Consultant	Confederation of Professionals in Denmark (FTF)
Denmark	Employees' organisation		Preben Foldberg	Consultant	The Danish Confederation of Trade Unions (LO)
Denmark	Ministry of Employment	of	Anders Levy	EC ICW Working Group	Ministry of Employment
Denmark	Academic		Prof. Jens Kristiansen	ELLN national expert	University of Copenhagen - Faculty of Law
Estonia	Ministry of Employment	of	Mariliis Proos	Chief Specialist	Ministry of Social Affairs of Estonia
Estonia	Employees' organisation		Kaja Toomsalu	Wage Secretary	Estonian Trade Union Confederation
Estonia	Employers' organisation		Tarmo Kriis	Chairman	The Estonian Employers' Confederation
Estonia	Labour Inspection		Niina Siitam	Head of the Labour Relations Department	Labour Inspection
Finland	Ministry of Employment	of	Helena Lamponen	Cooperation Ombudsman	Ministry of Employment and the Economy
Finland	Employers' organisation		Markus Äimälä	Senior Legal Adviser, Labour Law	Confederation of Finnish Industries EK
Finland	Employees' organisation		Inka Douglas	Legal Counsel, Labour Market and Regulation Department	Finnish Confederation of Professionals STTK
Finland	Employers' organisation		Juri Aaltonen	President	Federation of Special Service and Clerical Employees ERTO
Finland	Employers' organisation		Bjarne Andersson	Senior Advisor, Working Life Development	KT Local government employers

Finland	Ministry Employment	of	Jan Hjelt	Senior Officer, Legal Affairs, Labour and Trade Department	TEM
France	Ministry Employment	of	Benjamin MAURICE	Director Collective Negotiation Unit	Ministry of Labour - Direction générale du travail
France	Employees' organisation		Marcel GRIGNARD	Deputy general secretary	CFDT in charge of the negotiation on the information & consultation bodies reform
France	Employers' organisation		Emmanuel JAHAN	European Social Affairs	CEEP - Air France KLM
France	Academic		Hélène TISSANDIER	Professor	University Paris-Dauphine
France	Academic		Jean-Philippe Lhernould	Professor in Labour Law	University of Poitiers
Germany	Employees' organisation		Marie Seyboth	Abteilungsleiterin Mitbestimmungspolitik	DGB Bundesvorstand
Germany	Academic		Prof. Dr. Achim Seifert	Chair of public law, German and European Labour Law	University of Jena
Germany	Ministry Employment	of	Hanna Schelz	EC ICW Working Group	Bundesministerium für Arbeit und Soziales
Germany	Ministry Employment	of	Yvonne Trebinger	EC ICW Working Group	Bundesministerium für Arbeit und Soziales
Germany	Employers' organisation		Thomas Prinz	Lawyer at the BDA	BDA
Germany	Employers' organisation		Stefan Strässer	EC ICW Working Group	BDA
Greece	Employers' organisation		Rena Bardani	BusinessEurope Social Dialogue Working Group	Hellenic Federation of Enterprises - SEV
Greece	Employers'organisation		Sofia Tzortzi	CEEP (I&C) national correspondents	OSK
Greece	Labour Inspection		Alexandros KARAGEORGIU	SLIC Full Member	SEPE - Labour Inspectorate
Greece	Labour Inspection		Elissavet GALANOPOULOU	SLIC Full Member	SEPE - Labour Inspectorate
Greece	Academic		Prof. Costas Papadimitriou	ELLN national expert	University of Athens - School of Law
Greece	Academic		Prof.Savas Robolis		INE/GSEE, Panteion University of Athens
Greece	Employees organisation		Mr Poupkos		GSEE
Greece	Employees organisationElli Varcalama				GSEE

Hungary	Local centre	employment	Anikó Mészáros	Representative of the Managing department for Companies' relation	Labour centre of Komárom -Esztergom county
Hungary	Employees' organisation		Gyula Pallagi	President	Federation of Timber, Building and Wood and Building Material Workers (EFEDOSZ)
Hungary	Labour Inspection		Géza Kovács	Vice-head of department	Social Dialogue Center; Labour Mediation and Arbitration Service
Hungary	Employers' organisation		Adrienn Bálint	Head of International department	Confederation of Hungarian Employers and Industrialists (MGYOUSZ)
Hungary	Employees' organisation		Peter Pataki	President	Hungarian Trade Union Confederation (MSZOSZ)
Iceland	Employees' organisation		Magnus Norðdahl	Chief Lawyer	Icelandic Confederation of Labour
Iceland	Employers' organisation		Hrafnhildur Stefánsdóttir	Legal Adviser	Confederation of Icelandic Employers
Iceland	Ministry of Employment	of	Hanna Sigríður Gunnsteinsdóttir	Director General	Department of Social and Labour Market, Ministry of Welfare (Velferdarráðuneytid)
Iceland	Ministry of Employment	of	Unnur Sverrisdóttir	Head of Department	Directorate of Labour (Vinnumálastofnun)
Ireland	Employers' organisation		Brian Kirwan	CEEP (I&C) National Correspondent	HSE
Ireland	Employees' organisation		Liam Bernie	ETUC Worker Participation Group	Irish Congress of Trade Unions
Ireland	Academic		Anthony Kerr	ELLN National Expert	University College Dublin Faculty of Law
Ireland	Labour Inspection		Paul Cullen	Principal Officer	Department of Jobs, Enterprise and Innovation
Italy	Academic		Gianni Arrigo	Professor	University of Bari
Italy	Employees' organisation		Giulia BARBUCCI	ETUC Worker Participation Working Group	Confederazione Generale Italiana del Lavoro
Italy	Employees' organisation		Beatrice Moretti	CGIL FP	Confederazione Generale Italiana del Lavoro
Italy	Academic		Edoardo Ales	ELLN national expert	University of Cassino - Faculty of law
Italy	Academic		Salvo Leonardi		IRES
Italy	Employers' organisation		Giancarlo Ferrara		ABI Italian Bank Association
Latvia	Ministry of Employment	of	Ineta Vjakse	Head of the Labour relations and labour protection branch of the Labour department	Ministry of Welfare
Latvia	Labour Inspection		Guntars Staune	Head of the Legal department	State Labour Inspectorate

Latvia	Labour Inspection	Vilnis Virza	Leading legal consultant of the Labour rights department	State Labour Inspectorate
Latvia	Employers' organisation	Druvita Irbe	Expert in labour rights	Latvian Employer's Confederation, LDDK
Latvia	Employees' organisation	Kaspars Rācenājs	Consultant in Labour rights	Free Trade Union Confederation of Latvia, LBAS
Liechtenstein	Academic	Prof. Dr. Wolfgang Portmann	Ordinarius für Privat- und Arbeitsrecht	Universität Zürich, Rechtswissenschaftliches Institut
Liechtenstein	Ministry of Employment	Ute Hammermann	Leiterin Stabsstelle Rechts- und Wirtschaftsfragen	Amt für Volkswirtschaft (AVW)
Liechtenstein	Employers' organisation	Brigitte Haas	Stellvertretende Geschäftsführerin	Liechtensteinische Industrie- und Handelskammer
Liechtenstein	Employees' organisation	Sigi Langenbahn	Präsident	LANV Liechtensteinischer ArbeitnehmerInnenverband
Lithuania	Ministry of Employment	Egle Radisauskiene	Head of Social Dialogue, Labour Relations and Remuneration Division of Labour Department	Ministry of Social Security and Labour
Lithuania	Employees' organisation	Jolanta Cinaitiene	Lawyer	Lithuanian Trade Union Confederation
Lithuania	Employers' organisation	Dovile Baskyte	Director of the Department of Business Social Policy and Law	Confederation of Lithuanian Industrialists
Lithuania	Academic	Daiva Petrylaite	Professor Associated of the Department of Private Law of the Faculty of Law	Vilnius University
Luxembourg	Ministry of Employment	Nadine WELTER	EC ICW Working Group	Ministère du Travail et de l'Emploi
Luxembourg	Ministry of Employment	Gary Tunsch		Ministère du Travail et de l'Emploi
Luxembourg	Employers' organisation	Magalie Lysiak	BusinessEurope members - I&C / social affairs	Business Federation Luxembourg - FEDIL
Luxembourg	Academic	Jean-Luc Putz	ELLN national expert	Judge at Luxemburg District Court
Luxembourg	Employees' organisation	Jean-Claude Bernardini	Central Secretary	Confédération Générale du Travail de Luxembourg
Malta	Academic	Saviour Rizzo	Labour Market Expert	University of Malta
Malta	Ministry of Employment	Anthony Azzopardi	EC ICW Working Group	Department of Industrial and Employment Relations
Malta	Employees' organisation	Andrew Mizzi	Section Secretary-Technology, Electronics & Communications Sector	General Workers' Union

Malta	Employers' organisation	Charlotte Camilleri	Lawyer	Malta Employers Association
Netherlands	Academic	Prof. Loe Sprengers		University of Leiden - Dept. of Labour and Social Security Law
Netherlands	Employees' organisation	Klara BOONSTRA	ETUC Worker Participation Working Group	Federatie Nederlandse Vakbeweging
Netherlands	Employers' organisation	Loes van Embden Andres	BusinessEurope Social Dialogue Working Group	Vereniging VNO-NCW (The Hague)
Netherlands	Ministry Employment	of Rosemarie van Daal	EC ICW Working Group	Social Affairs and Employment
Netherlands	Ministry Employment	of Geert van Atteveld		Social Affairs and Employment
Norway	Employees' organisation	Gro Granden	Special Adviser, Collective Bargaining and Health and Safety Department	Norwegian Confederation of Trade Unions
Norway	Ministry Employment	of Maria Sogn-Skeie	Senior Adviser	Ministry of Labour/ Department for Working Environment and Safety
Norway	Employers' organisation	Henrik Munthe	Attorney-at-law	Confederation of Norwegian Enterprise
Norway	Academic	Helga Aune	Post Doctor Research Fellow	Department of Public and International Law, Faculty of Law, University of Oslo
Poland	Ministry Employment	of Marzena Wąsowska - double interview	Department for Social Dialog and Partnership, Legislative Section	Ministry of Labour and Social Policy,
Poland	Ministry Employment	of Robert Lisicki - double interview	Department for Labour Law	Ministry of Labour and Social Policy,
Poland	Employers' organisation	Grażyna Spytek	Deputy Director of the Department for Social Dialog and Industrial Relations	Polish Confederation of Private Employers Lewiatan (PKPP Lewiatan)
Poland	Employees' organisation	Paweł Śmigielski	Law and Intervention Section	The All-Poland Alliance of Trade Unions (OPZZ)
Poland	Academic	Jakub Stelina	Professor	Gdańsk University, Law Department
Portugal	Academic	António Dornelas	Professor	ISCTE - Instituto Universitário de Lisboa
Portugal	Academic	Reinhard Naumann	Researcher	ISCTE - Instituto Universitário de Lisboa
Portugal	Academic	Anonymous	Researcher	New University of Lisbon
Portugal	Employees' organisation	Carlos CARVALHO	ETUC Worker Participation Working Group	Confederação Geral dos Trabalhadores Portugueses
Portugal	Employees' organisation	Vítor Coelho	Legal Director	União Geral de Trabalhadores

Portugal	Ministry Employment	of	Jose MACEDO	EC ICW Working Group	Directorate-General for Employment and Labour Relations
Portugal	Employees' organisation		Joaquim Chora	Trade Unionist/European Works Council	Volkswagen
Portugal	Employees' organisation		Ernesto Ferreira	Coordinator of works councils / Trade union official	Sindicato das Indústrias Eléctricas - Confederação Geral dos Trabalhadores Portugueses
Romania	Ministry Employment	of	Serghei Mesaros	EC ICW Working Group	Ministry of Labour, Family and Social Protection
Romania	Employees' organisation		Bodan Iulian Hossu	President	National Trade Union Confederation Cartel Alfa
Romania	Labour Inspection		Mihai Vanturache	Labour inspector	Labour Inspection Organisation
Romania	Employers' organisation		Mihai Ivascu	General Secretary	Employers Confederation from Industry, Agriculture, Construction and Services from Romania
Slovakia	Ministry Employment	of	Mr. Jozef Toman	Head of Department of Labour Relationships	Ministry of Labour, Social Affairs and Family
Slovakia	Employers' organisation		Mr. Martin Hošták	Secretary	National Union of Employers
Slovakia	Employees' organisation		Mr. Peter Ondruška	Advisor of Unions' Rights and Labour Relationships	Confederation of Trade Unions
Slovakia	Labour Inspection		Mr. Tibor Zádori	Head of Labour Inspection Management	National Labour Inspection
Slovenia	Employees' organisation		Marjan Urbanč	confederal secretary responsible for education and codetermination	Union of Free Trade Unions of Slovenia-ZSSS
Slovenia	Ministry Employment	of	Lilijana Tratnik&Karmen Šterbenc	secretary,	Ministry of Labour, Family and Social Affairs
Slovenia	Academic		Prof. Polonca Končar	Professor	University of Ljubljana - Faculty of Law
Slovenia	Employers' organisation		Anže Hiršl	legal adviser	Employers' Association of Slovenia - ZDS
Spain	Ministry Employment	of	Luz Maria Blanco Temprano	Head of the Normative Ordenation Area	Ministry of Employment
Spain	Academic		Prof. Joaquín García Murcia	Professor	University of Oviedo
Spain	Employers' organisation		Enrique Santos Suarez	Legal Adviser	FELE
Spain	Employees' organisation		Antonio Ferrer	Head of Unity of Action Department	UGT

Sweden	Ministry of Employment	Karin Söderberg	Desk officer	Department of working life
Sweden	Employers' organisation	Kent Brorsson	Vice President	Employer Organisation for Energy Companies
Sweden	Employees' organisation	Ingemar Hamskär	Legal officer	TCO
Sweden	Academic	Tony Huzzard	MBA Senior researcher	Business Administration, University of Lund
United Kingdom	Ministry of Employment	Carl Davies		Department for Business Innovation and Skills
United Kingdom	Employees' organisation	Hannah Reed		TUC
United Kingdom	Employers' organisation	Maxine Cahal		CBI
United Kingdom	Academic	Mark Hall		Warwick Business School
United Kingdom	Employers' organisation	David Yeandle		European Employers' Group

7.7. Annex 7: List of illustrative company case studies

Country	Company name	Company size*	Sector	Transfer undertakings	of	Collective redundancies
Austria	Financial service provider	Large company	Tertiary sector	No		Yes
Austria	Solar cell manufacturing company	SME	Secondary sector	No		Yes
Belgium	DHL Belgium	Large company	Tertiary sector	No		Yes
Belgium	Carrefour Belgium	Large Company	Tertiary sector	Yes		Yes
Bulgaria	Water Supply Company	SME	Tertiary sector	No		No
Bulgaria	Metal Company	Large company	Secondary sector	No		Yes
Cyprus	Cyprus Airways	Large company	Tertiary sector	No		Yes
Cyprus	Drinks sector company	Large company	Secondary sector	No		Yes
Czech Republic	České dráhy, a.s. / ČD Cargo, a.s.	Large company	Tertiary sector	Yes		Yes
Czech Republic	Průmstav, a.s.	SME	Secondary sector	No		Yes
Denmark	Danish wind energy company	Large company	Secondary sector	No		Yes
Denmark	Danish IT supplier	Large company	Tertiary sector	Yes		Yes
Estonia	AS EVR Cargo	Large company	Tertiary sector	No		Yes
Estonia	Manufacturing company	Large company	Secondary sector	Yes		Yes
Finland	HUBBELL	Large company	Secondary sector	No		No
Finland	Elcotecq	Large company	Secondary sector	No		Yes
France	110Bourgogne	SME	Secondary sector	No		No
France	Metal industry company	Large company	Secondary sector	No		Yes
France	Rio Tinto	Large	Secondary sector	Yes		No

		company			
France	IDÉAL PRODUCTION	SME	Tertiary sector	No	No
France	Cosmetic industry company	SME	Secondary sector	No	No
Germany	GEA	Large company	Secondary sector	No	Yes
Germany	Nokia	Large company	Secondary sector	No	Yes
Germany	Heix	SME	Secondary sector	No	No
Germany	HHI-gear	SME	Secondary sector	Yes	Yes
Greece	EMPORIKI BANK	Large company	Tertiary sector	Yes	Yes
Greece	OTE	Large company	Tertiary sector	Yes	No
Hungary	Debreceni Hús Ltd	Large company	Secondary sector	Yes	Yes
Hungary	MTVA, holding group for public media	Large company	Tertiary sector	Yes	Yes
Iceland	Frette ehf	Large company	Tertiary sector	Yes	No
Iceland	Íslandsbanki	Large company	Tertiary sector	No	Yes
Ireland	Catering co	Large company	Tertiary sector	Yes	Yes
Ireland	Concrete co	Large company	Secondary sector	No	Yes
Italy	Airline company	Large company	Tertiary sector	Yes	Yes
Italy	UNICREDIT	Large company	Tertiary sector	Yes	Yes
Italy	Monteco srl	SME	Tertiary sector	Yes	No
Italy	Local health unit	SME	Tertiary sector	Yes	No
Latvia	Aviation company	Large company	Tertiary sector	No	Yes
Latvia	Food industry company	Large company	Secondary sector	No	Yes
Latvia	Public transportation company	Large	Secondary sector	Yes	Yes

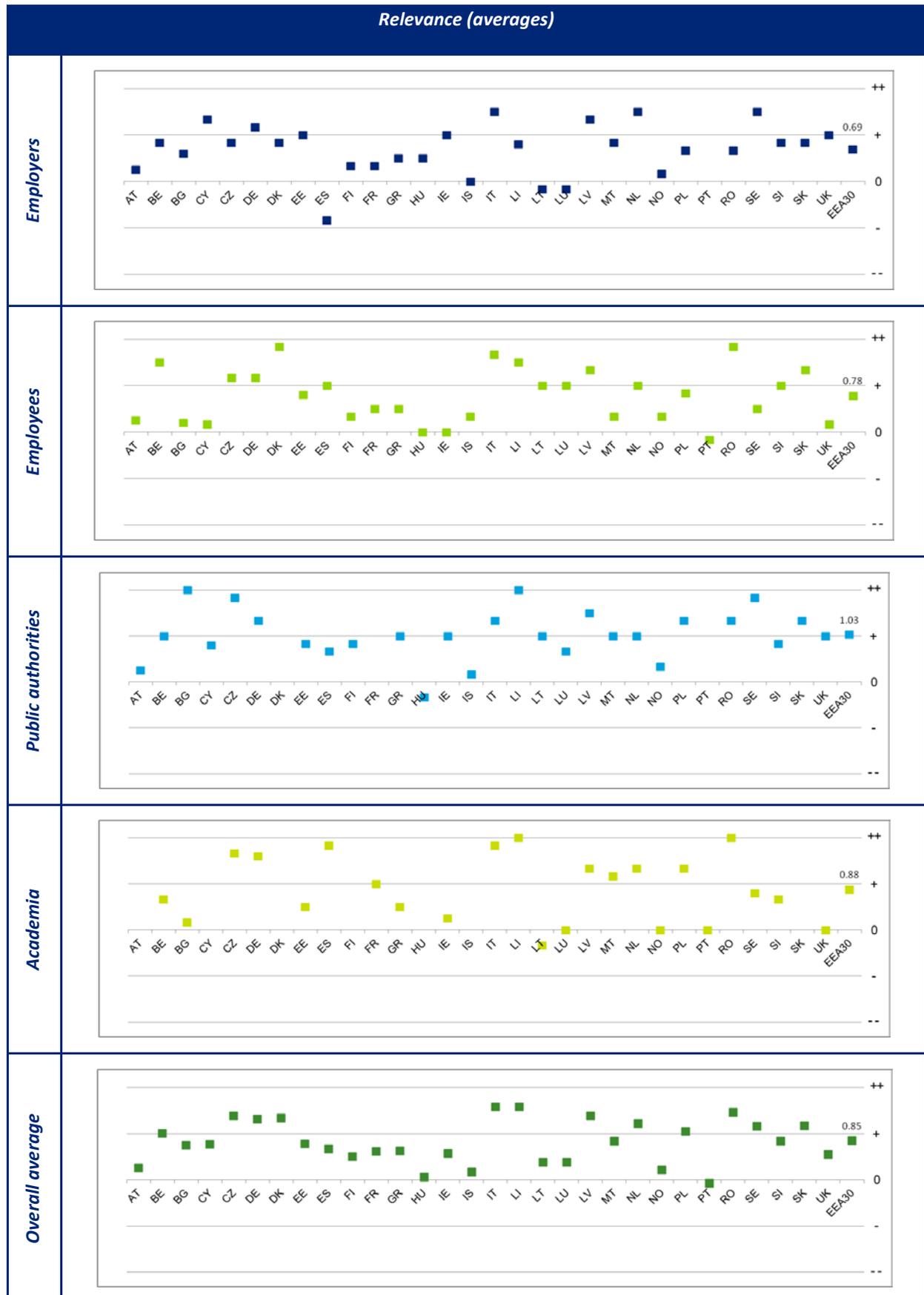
		company				
Liechtenstein	Hilti AG	Large company	Secondary sector	No	No	
Liechtenstein	Consumer products company	Large company	Secondary sector	No	No	
Lithuania	ORLEN lietuva	Large company	Secondary sector	No	Yes	
Lithuania	Vilnius International Airport	Large company	Tertiary sector	No	Yes	
Luxembourg	Cleaning company	Large company	Tertiary sector	No	No	
Luxembourg	Machine company	Large company	Secondary sector	No	Yes	
Malta	GO plc	Large company	Tertiary sector	Yes	Yes	
Malta	Trelleborg Sealing Solutions	Large company	Secondary sector	No	Yes	
Netherlands	Office Equipment Company	Large company	Secondary sector	Yes	Yes	
Netherlands	Cooling Systems Company	Small company	Secondary sector	Yes	No	
Norway	Lift company	Large company	Tertiary sector	No	No	
Norway	Statkraft AS	Large company	Secondary sector	No	No	
Poland	Investment and retail bank	Large company	Tertiary sector	No	Yes	
Poland	Public utility company	Large company	Tertiary sector	No	Yes	
Poland	Manufacturer of specialised tools for industry	SME	Secondary sector	Yes	No	
Poland	Coal mine	Large company	Secondary sector	Yes	No	
Portugal	Entertainment company	Large company	Gambling	Yes	Yes	
Portugal	Electric company	SME company	Electronics	No	Yes	
Romania	Company providing services of distribution and sale of natural gas	Large company	Secondary sector	Yes	Yes	

Romania	Bearing manufacturing company	Large company	Secondary sector	No	Yes
Slovakia	Slovenská sporiteľňa	Large company	Tertiary sector	Yes	Yes
Slovakia	Slovenská grafia	Large company	Secondary sector	No	Yes
Slovenia	Construction company PRIMORJE	Large company	Secondary sector	No	Yes
Slovenia	FRUCTAL	SME	Secondary sector	Yes	No
Spain	Automobile manufacturing company	Large company	Secondary sector	No	Yes
Spain	Savings bank company	Large company	Tertiary sector	No	Yes
Spain	Services company	SME	Tertiary sector	Yes	No
Spain	Cleaning products manufacturer	SME	Secondary sector	No	No
Sweden	SWEDETEXTILES LTD	SME	Secondary sector	No	Yes
Sweden	National Transport Administration	Large company	Tertiary sector	Yes	Yes
United Kingdom	Insurance company	Large company	Tertiary sector	Yes	Yes
United Kingdom	IT Services company	Large company	Tertiary sector	Yes	Yes
United Kingdom	Banking company (1)	Large company	Tertiary sector	Yes	Yes
United Kingdom	Banking company (2)	Large company	Tertiary sector	Yes	Yes

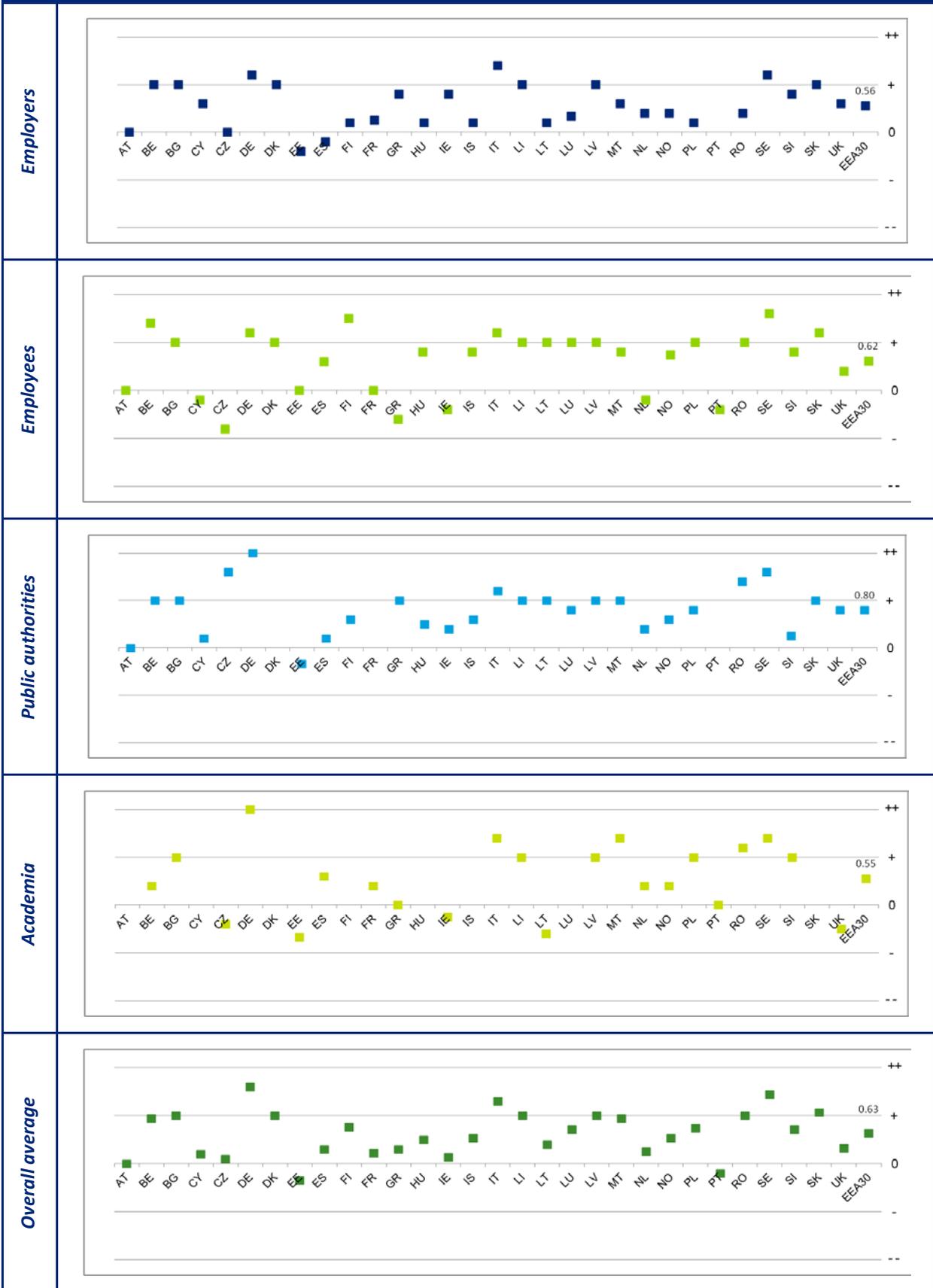
7.8. **Annex 8: Web-survey results**

The results of the Europe-wide web-based survey on I&C conducted among employee representatives and employers / employer representatives at company level are presented in a separate document.

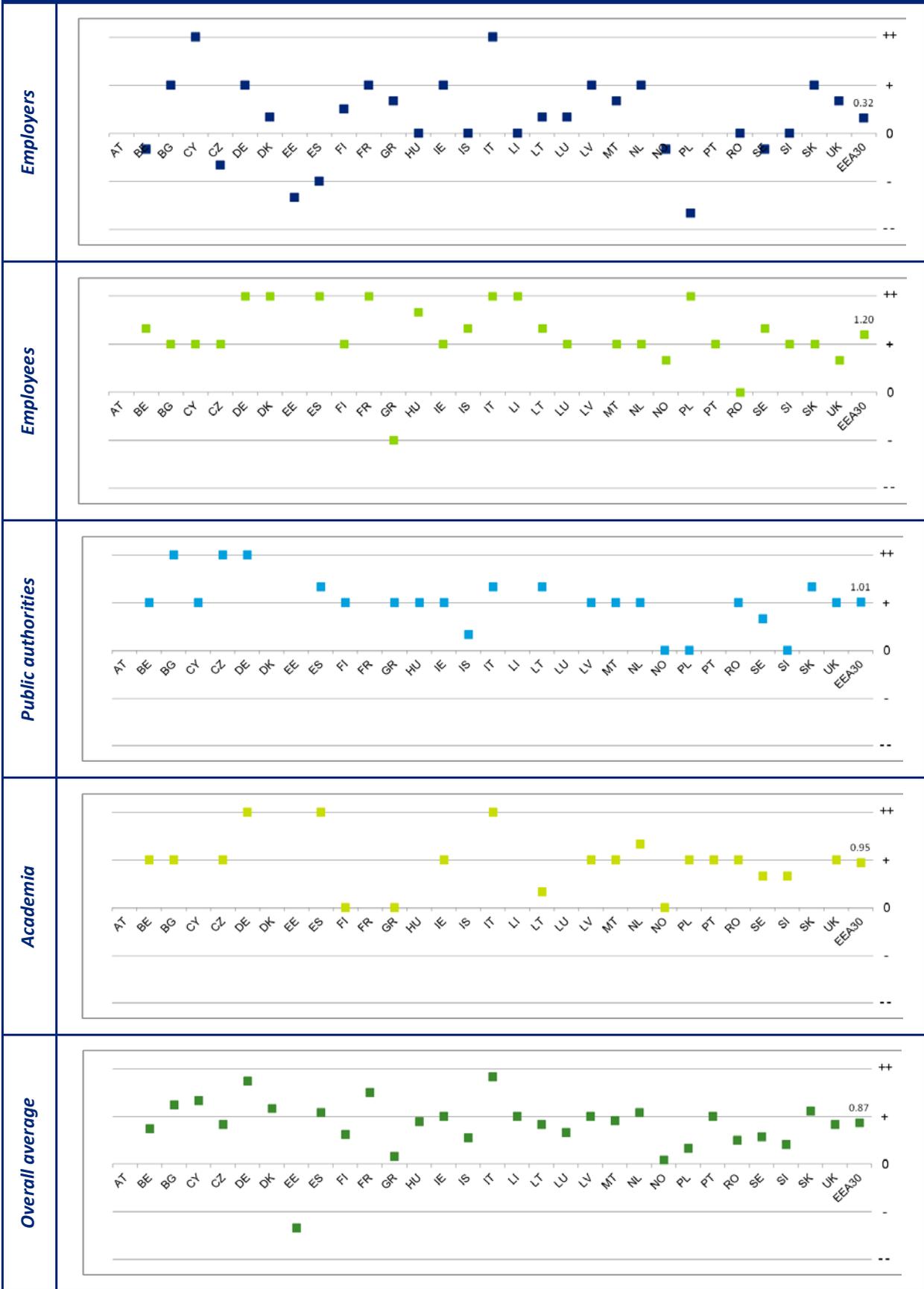
7.9. Annex 9: Stakeholder assessments by evaluation criteria



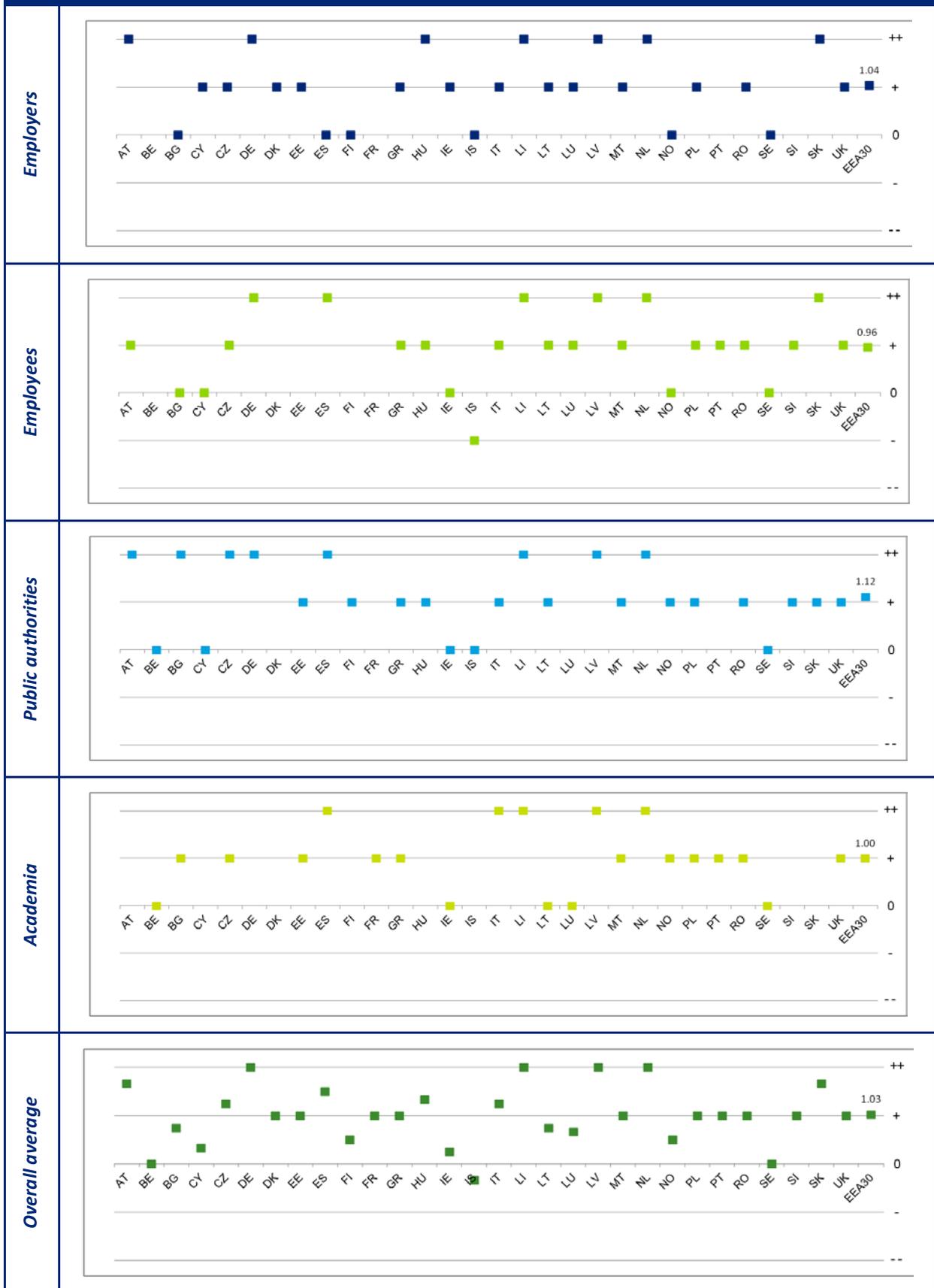
Effectiveness (averages)



Efficiency (averages)



Coherence (averages)



7.10. Annex 10: I&C indicator analysis

The Eurofound overview report of the European Company Survey 2009 notes that '*the ECS 2009 is probably the first survey that presents research-based comparative findings on the nature and quality of workplace social dialogue and employee representation in Europe, albeit with some methodological limitations*'.²⁰³

in pursuit of more general findings about the impact of I&C legislations and the circumstances surrounding its use, this study has also undertaken a detailed analysis of the ECS 2009 data in order to provide some comparative composite indicators concerning the following factors:

- A **cooperative culture indicator** – assessing the extent to which the relationship between employers, employee representatives and employees is seen as positive and supportive or hostile – based on responses to four questions put to employee representatives;
- An **employee involvement indicator** – assessing the extent to which employee representatives feel themselves to be involved in establishing rules and procedures concerning matters such as working time, the use of temporary workers, or access to training – based on responses to ten questions put to employee representative;
- A **strategic influence indicator** – assessing the extent to which employee representatives feel they can influence management decisions – based on responses to nine questions put to employee representatives;
- An **I&C resources indicator** – assessing the extent to which employee representatives feel they have the resources to do their job (notably the provision of information by the employer, time-off work and specific training to carry out their duties) – based on responses to six questions put to employee representatives.

All these indicators are provided for EU27 plus individual countries, with assessments on the same basis as the other analyses in this report of ECS 2009 data and the national expert assessments of stakeholder positions, namely a five-point scale covering very negative (-2), negative (-1), neutral (0), positive (+1), and very positive (+2).

This annex presents the methodological approach and detailed results per country.

²⁰³ Eurofound (2010): *European Company Survey 2009*, p. 68.

7.10.1. Cooperative culture indicator

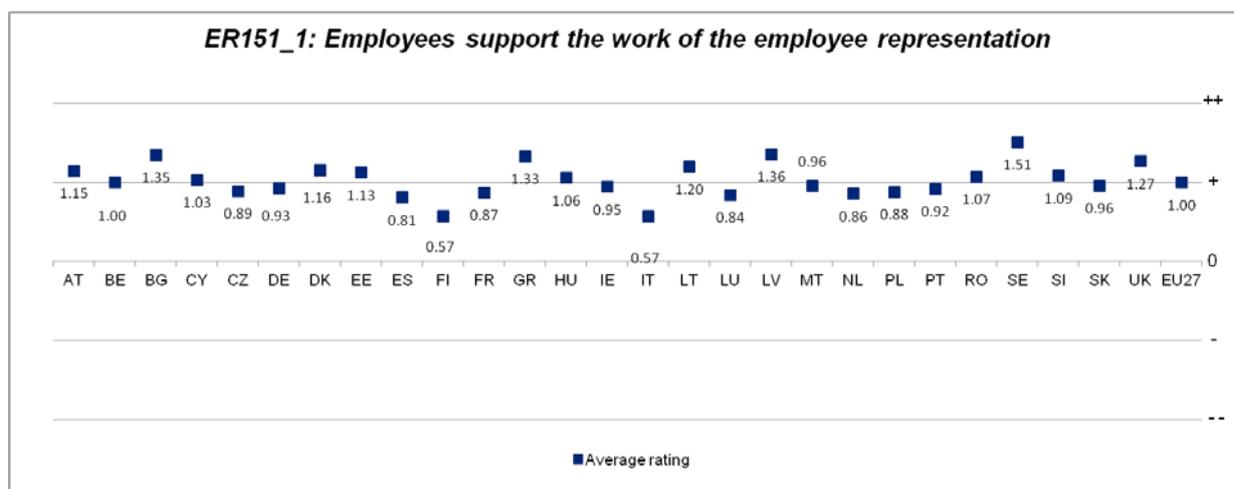
The **cooperative culture indicator** – assessing the extent to which the relationship between employers, employee representatives and employees is seen as positive and supportive or hostile – is based on responses to four questions put to employee representatives:

Statement: ‘Employees support the work of the employee representation’

The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under ER151 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:

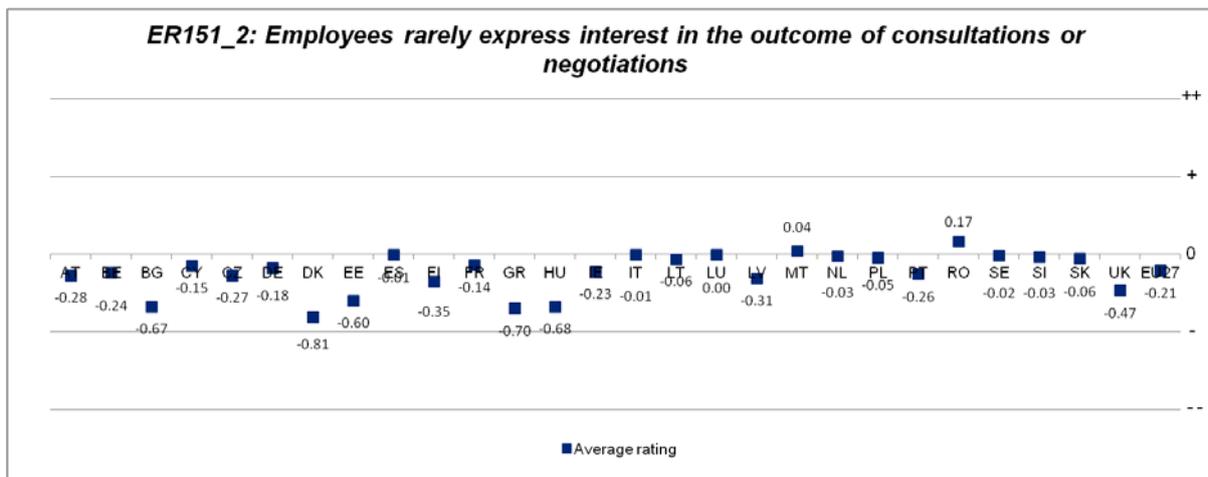


Statement: ‘Employees rarely express interest in the outcome of consultations or negotiations’

The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under ER151 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:

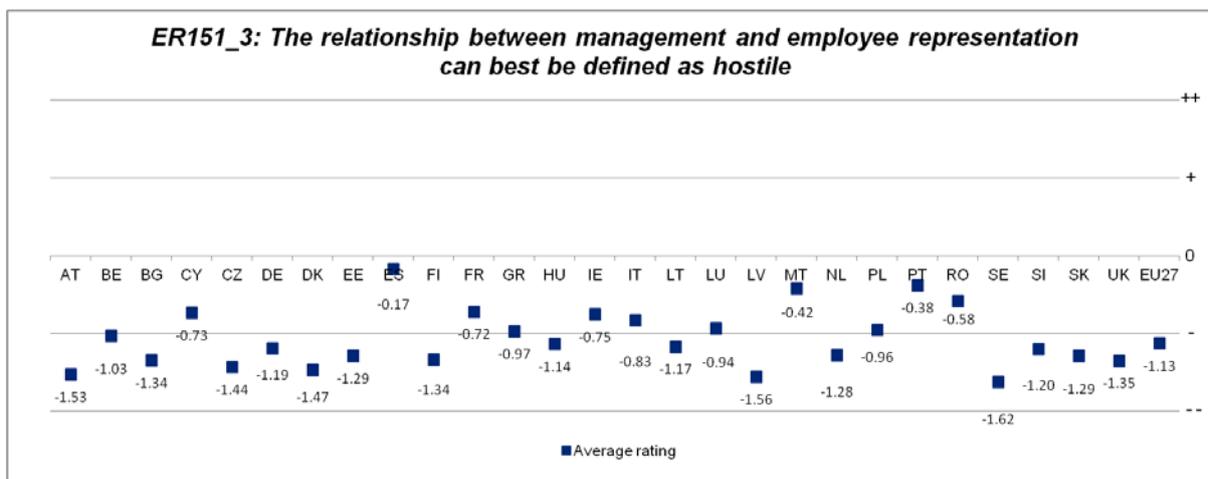


Statement: 'The relationship between management and employee representation can best be defined as hostile'

The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under ER151 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:

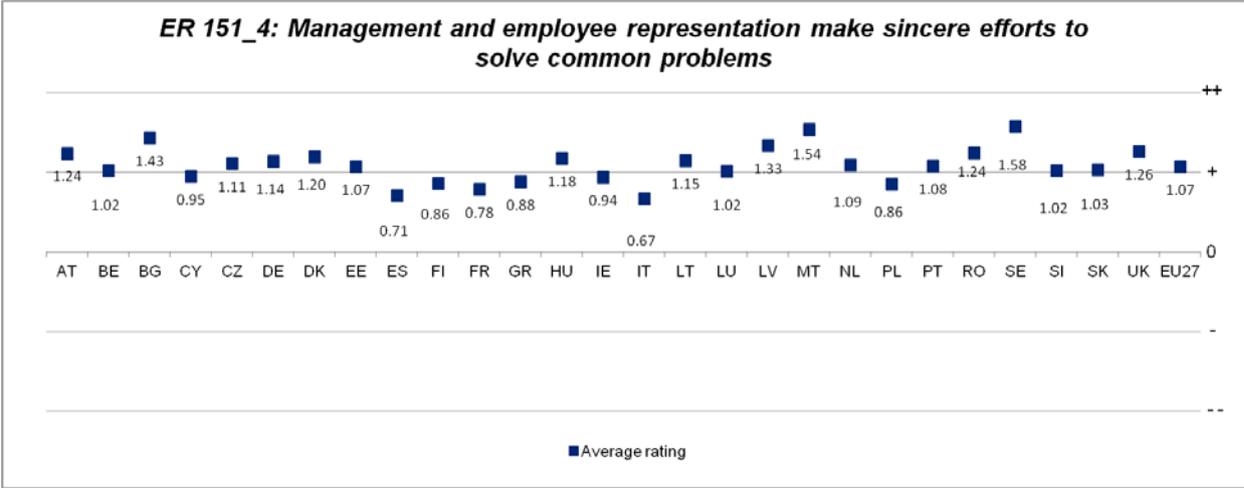


Statement: 'Management and employee representation make sincere efforts to solve common problems'

The 2009 Eurofound European Companies Survey uses a five point scale (which is similar to the evaluation scale used by Deloitte): strongly agree (+2), agree (+1), neither agree nor disagree (0), disagree (-1) or strongly disagree (-2), with respect to the questions under ER151 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:

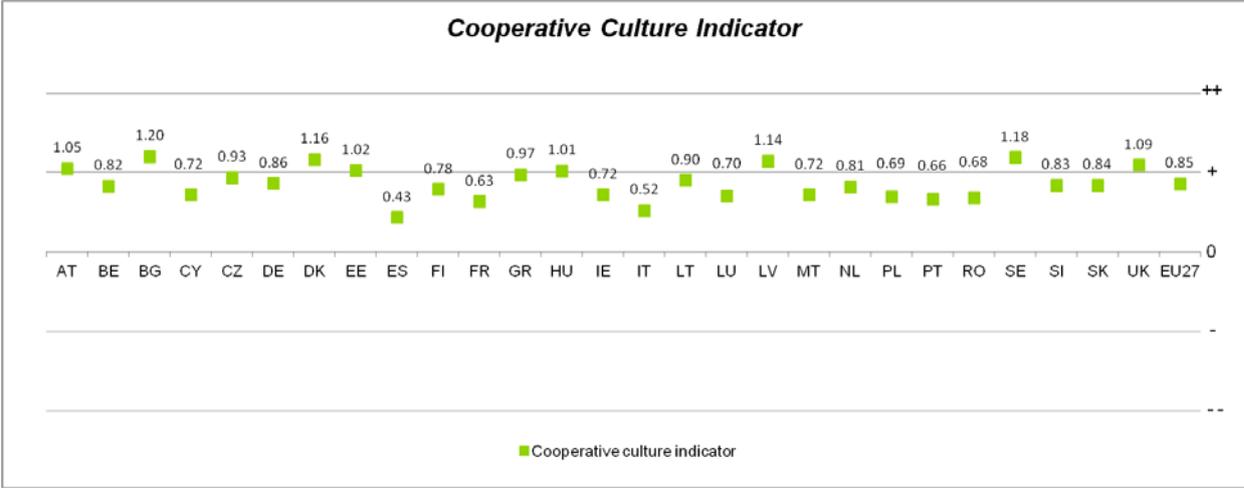


Cooperative Culture Indicator

The Cooperative Culture Indicator is calculated according to the following formula:

$$\text{Cooperative Culture Indicator} = \frac{ER151_1 + (-1) * [ER151_2 + ER151_3] + ER151_4}{4}$$

The results are as follows:



7.10.2. Employee involvement indicator

The **employee involvement indicator** – assessing the extent to which employee representatives feel themselves to be involved in establishing rules and procedures concerning matters such as working time, the use of temporary workers, or access to training – is based on responses to ten questions put to employee representatives:

'Has the employee representation been involved in establishing rules and procedures for them, be it either by way of consultation or negotiation?' (10 issues – cf. table)

The 2009 Eurofound European Companies Survey uses a two point scale: yes (+2) or no (-2), with respect to the questions under ER404 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$\text{Score} = \sum_{i=2}^n (\text{Value of response}_i * \frac{\text{Number of responses}_i}{\text{Total number responses}})$$

The results are presented in the table below:

Employee Involvement Indicator											
<i>Has the employee representation been involved in establishing rules and procedures for them, be it either by way of consultation or negotiation?</i>											
Country	ER401_1: The setting of the length of working time	ER401_2: The rules and procedure s on doing overtime	ER401_3: Part-time work	ER401_4: Working time accounts or other flexible working time regimes	ER401_5: Shift system	ER401_6: Night work	ER401_7: Weekend work	ER401_8: Deployment of temporary agency workers	ER401_9: Use of fixed-term contracts	ER401_10: Access to training	Employee Involvement Indicator
AT	1.43	1.11	0.96	1.11	0.50	0.43	0.72	-0.16	0.00	0.73	0.68
BE	0.93	0.93	0.56	0.61	0.03	-0.05	0.15	-0.11	-0.09	0.90	0.39
BG	0.28	0.25	-0.80	-0.27	-0.16	-0.58	-0.05	-1.05	-0.67	0.75	-0.23
CY	-0.10	0.00	-0.80	-1.00	-1.00	-0.93	-0.53	-0.60	-0.93	-0.17	-0.61
CZ	1.19	1.17	-0.48	0.31	0.55	0.40	0.62	-1.03	-0.09	0.78	0.34
DE	0.97	1.32	0.87	1.32	0.69	0.49	0.80	0.06	1.15	1.13	0.88
DK	-0.32	-0.04	-0.68	-0.43	-1.20	-1.18	-0.78	-0.78	-0.82	0.60	-0.56

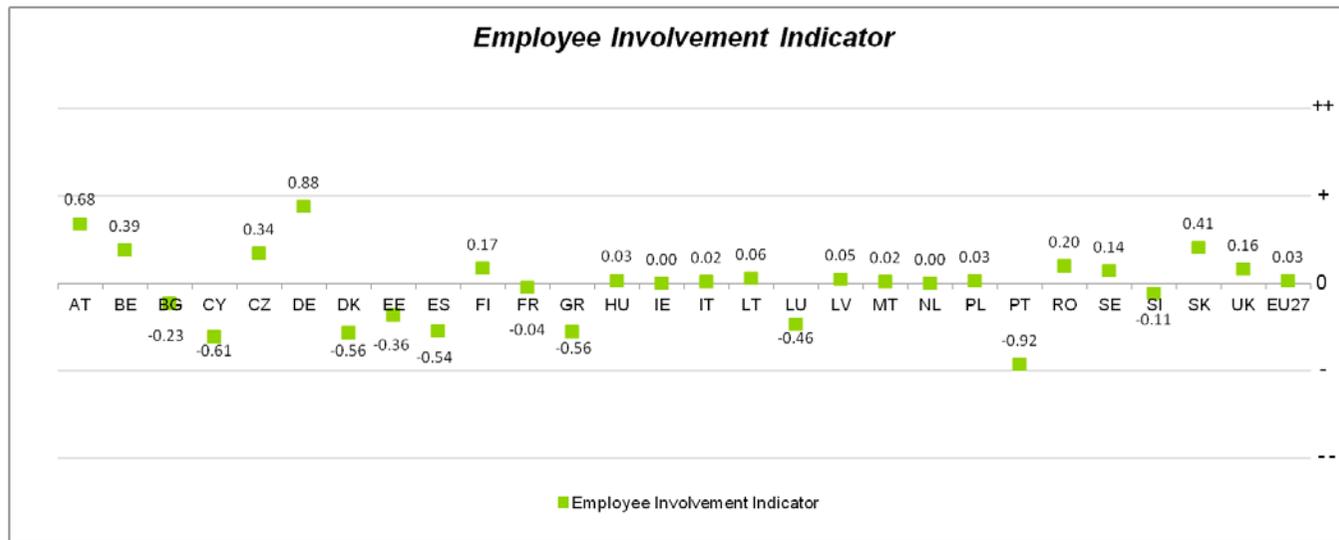
EE	-0.42	-0.05	-0.17	-0.14	-0.47	-0.64	-0.28	-0.94	-0.64	0.17	-0.36
ES	0.27	-0.35	-0.86	-0.59	-0.44	-0.75	-0.74	-1.35	-1.23	0.65	-0.54
FI	0.34	0.45	-0.33	0.75	0.03	-0.17	0.12	-0.35	0.11	0.77	0.17
FR	0.82	0.22	-0.29	-0.11	-0.19	-0.25	-0.06	-1.00	-0.57	1.00	-0.04
GR	-0.37	0.00	-1.18	-1.32	-0.18	-0.34	-0.34	-1.45	-0.68	0.32	-0.56
HU	0.51	0.70	-0.14	0.29	0.01	-0.28	0.04	-1.33	-0.15	0.70	0.03
IE	0.54	0.45	-0.09	0.34	-0.28	-0.32	0.06	-0.97	-0.41	0.67	0.00
IT	0.51	0.52	-0.07	0.54	0.08	-0.53	-0.21	-0.99	-0.26	0.58	0.02
LT	0.72	0.41	0.20	0.09	-0.19	-0.25	0.11	-0.53	-0.33	0.38	0.06
LU	-0.24	0.18	-0.61	-0.57	-0.66	-0.72	-0.41	-0.91	-1.00	0.32	-0.46
LV	0.80	0.11	0.12	0.07	-0.27	-0.23	-0.12	-0.71	-0.34	1.03	0.05
MT	0.17	-0.17	-0.42	-0.58	0.42	0.42	0.25	-0.25	0.00	0.33	0.02
NL	0.30	0.66	-0.10	0.32	-0.24	-0.44	-0.18	-0.58	-0.42	0.68	0.00
PL	0.56	0.37	-0.15	-0.35	0.11	-0.04	0.16	-1.24	0.07	0.80	0.03
PT	-0.67	-1.28	-1.18	-1.33	-0.67	-0.77	-0.87	-1.44	-0.72	-0.31	-0.92
RO	1.21	0.92	-0.44	-0.44	0.29	-0.23	0.22	-1.12	-0.03	1.61	0.20
SE	0.53	0.44	-0.27	0.33	-0.18	0.26	-0.01	-0.54	0.12	0.76	0.14
SI	0.40	0.35	0.00	-0.21	-0.17	-0.34	-0.20	-0.76	-0.31	0.14	-0.11
SK	0.94	0.98	-0.02	0.02	0.78	0.46	0.58	-0.58	0.14	0.80	0.41
UK	0.66	0.46	0.00	0.59	0.22	0.01	0.07	-0.72	-0.36	0.66	0.16
EU27	0.50	0.44	-0.19	0.15	-0.08	-0.22	-0.01	-0.76	-0.22	0.70	0.03

Employee Involvement Indicator

The Employee Involvement Indicator is calculated according to the following formula:

$$\text{Employee Involvement Indicator} = \frac{ER404_1 + ER404_2 + ER404_3 + ER404_4 + ER404_5 + ER404_6 + ER404_7 + ER404_8 + ER404_9 + ER404_{10}}{10}$$

The results are presented below:



7.10.3. Strategic influence indicator

The **strategic influence indicator** – assessing the extent to which employee representatives feel they can influence management decisions – is based on responses to nine questions put to employee representatives:

‘How large is the influence of the employee representation on management decisions in this establishment?’ (9 issues – cf. table)

The 2009 Eurofound European Companies Survey uses a four point scale: very strong (+2), quite strong (+1), quite weak (-1) or very weak (-2), with respect to the questions under ER207 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=1}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are presented below:

Strategic Influence Indicator										
<i>How large is the influence of the employee representation on management decisions in this establishment?</i>										
Country	ER207_1: Employment and human resources planning	ER207_2: Equal opportunities policies and diversity management	ER207_3: Changes in working time regulations	ER207_4: The determination of pay	ER207_5: Health and safety matters	ER207_6: Changes in the organisation of work processes and workflow	ER207_7: The impact of structural changes such as restructurings, relocations or takeovers	ER207_8: Career management (selection, appraisal, training)	ER207_9: Disciplinary or hierarchical problems	Strategic Influence Indicator
AT	-0.11	0.20	0.96	-0.33	1.13	-0.01	-0.06	-0.34	0.49	0.21
BE	-0.31	0.05	0.15	-0.54	0.98	-0.09	-0.36	-0.33	0.02	-0.05
BG	0.30	0.08	0.25	0.00	0.89	0.16	-0.30	0.08	-0.06	0.16
CY	0.08	0.00	0.15	-0.07	0.65	0.08	-0.23	-0.15	0.10	0.07
CZ	-0.50	-0.26	0.35	-0.34	1.22	-0.54	-0.71	-0.64	0.20	-0.13
DE	0.02	0.42	1.05	-0.21	0.93	0.10	-0.13	-0.03	0.30	0.27
DK	0.23	0.08	0.42	0.04	1.01	0.62	-0.31	0.03	0.17	0.26

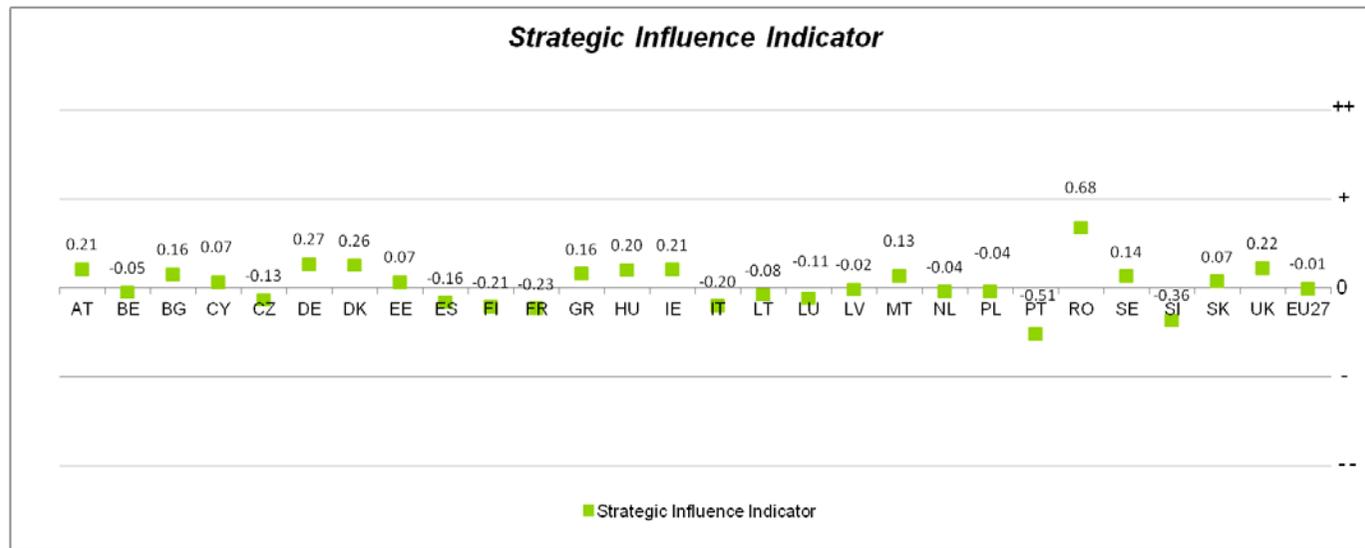
EE	-0.07	0.00	0.18	-0.25	0.86	0.14	-0.39	0.02	0.15	0.07
ES	-0.34	-0.14	-0.05	-0.54	0.69	-0.26	-0.52	-0.35	0.05	-0.16
FI	-0.54	-0.39	0.22	-0.37	0.84	0.02	-1.07	-0.41	-0.19	-0.21
FR	-0.46	-0.34	0.01	-0.94	0.62	-0.13	-0.48	-0.37	0.04	-0.23
GR	0.20	0.18	0.40	0.16	0.95	0.15	-0.63	-0.01	0.07	0.16
HU	0.15	0.40	0.38	-0.10	0.74	0.17	-0.06	-0.27	0.44	0.20
IE	-0.10	0.48	0.25	-0.50	0.87	0.32	-0.01	0.02	0.57	0.21
IT	-0.33	-0.12	0.17	-0.56	0.56	-0.35	-0.51	-0.61	-0.04	-0.20
LT	-0.08	-0.13	0.38	-0.54	0.56	0.08	-0.51	-0.42	-0.02	-0.08
LU	-0.32	0.01	0.13	-0.98	0.79	0.06	-0.49	-0.23	0.01	-0.11
LV	-0.13	-0.15	0.02	-0.50	0.66	0.12	-0.48	-0.03	0.35	-0.02
MT	0.33	0.17	0.00	0.04	0.25	0.08	-0.21	0.00	0.54	0.13
NL	-0.22	-0.03	0.48	-1.08	0.92	0.20	0.16	-0.26	-0.50	-0.04
PL	-0.45	-0.29	0.22	-0.21	0.73	-0.06	-0.49	-0.20	0.44	-0.04
PT	-0.59	-0.72	-0.38	-0.87	-0.28	-0.51	-0.41	-0.51	-0.31	-0.51
RO	0.70	0.66	0.61	0.59	1.13	0.66	0.13	0.78	0.85	0.68
SE	-0.04	0.48	0.44	0.05	0.95	0.02	-0.35	-0.40	0.09	0.14
SI	-0.76	-0.38	0.10	-0.48	0.18	-0.47	-0.78	-0.45	-0.20	-0.36
SK	-0.22	-0.10	0.43	-0.10	0.86	-0.03	-0.40	-0.15	0.38	0.07
UK	-0.12	0.61	0.48	-0.22	1.18	0.15	-0.26	-0.29	0.49	0.22
EU27	-0.21	0.00	0.31	-0.37	0.80	0.00	-0.42	-0.27	0.12	-0.01

Strategic Influence Indicator

The Strategic Influence Indicator is calculated according to the following formula:

$$\text{Strategic Influence Indicator} = \frac{ER207_1 + ER207_2 + ER207_3 + ER207_4 + ER207_5 + ER207_6 + ER207_7 + ER207_8 + ER207_9}{9}$$

The results are presented below:



7.10.4. I&C resources indicator

The **I&C resources indicator** – assessing the extent to which employee representatives feel they have the resources to do their job (notably the provision of information by the employer, time-off work and specific training to carry out their duties) – based on responses to six questions put to employee representatives:

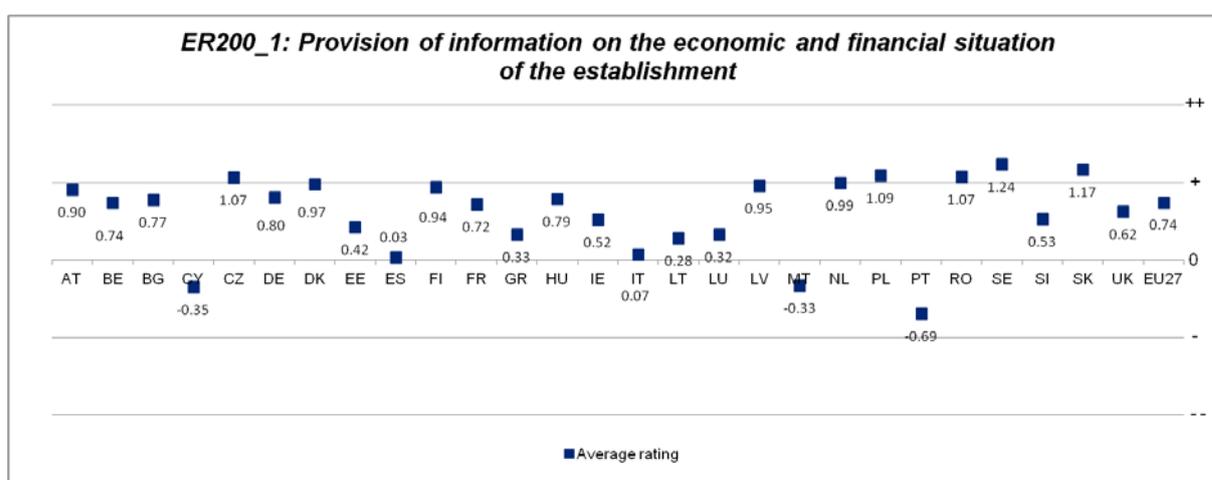
Provision of information on the economic and financial situation of the establishment (ER200_1)

“ER200_1 The economic and financial situation of the establishment / Please tell me for each of the following issues whether the employer provides the employee representation with relevant data on it.”

The 2009 Eurofound European Companies Survey uses a five point scale: at least once a month (+2), several times a year (+1), once a year (0), less than once a year (-1) or never (-2), with respect to the questions under ER200 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:



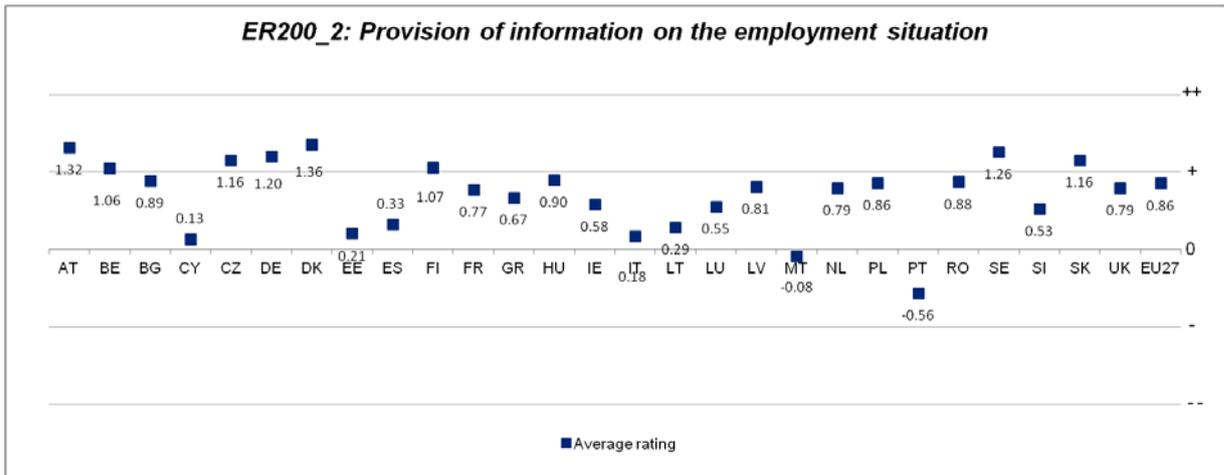
Provision of information on the employment situation (ER200_2)

“ER200_2 The employment situation / Please tell me for each of the following issues whether the employer provides the employee representation with relevant data on it.”

The 2009 Eurofound European Companies Survey uses a five point scale: at least once a month (+2), several times a year (+1), once a year (0), less than once a year (-1) or never (-2), with respect to the questions under ER200 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:



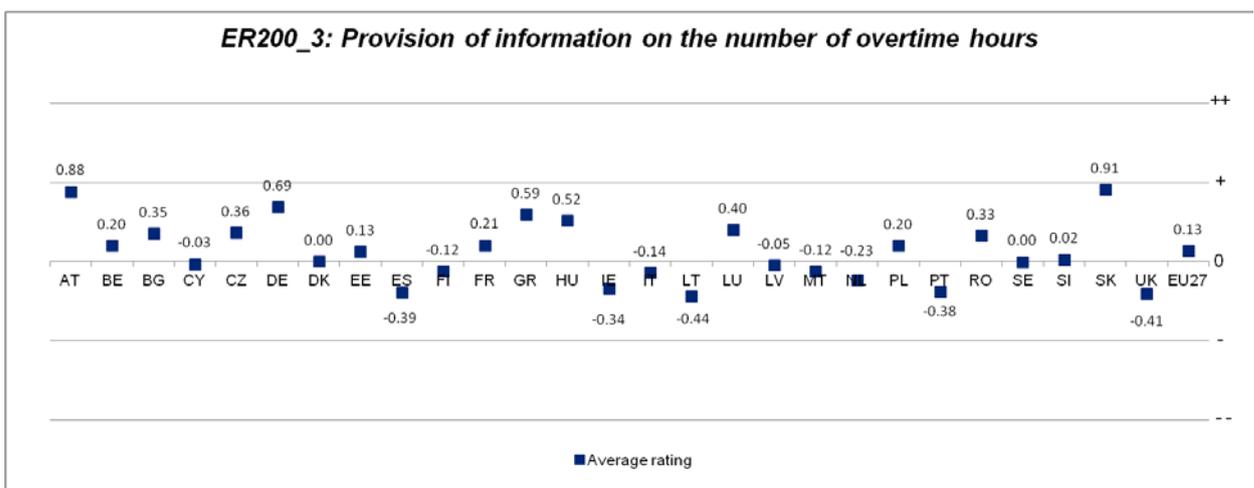
Provision of information on the number of overtime hours (ER200_3)

“ER200_3 The number of overtime hours / Please tell me for each of the following issues whether the employer provides the employee representation with relevant data on it.”

The 2009 Eurofound European Companies Survey uses a five point scale: at least once a month (+2), several times a year (+1), once a year (0), less than once a year (-1) or never (-2), with respect to the questions under ER200 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=5}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:



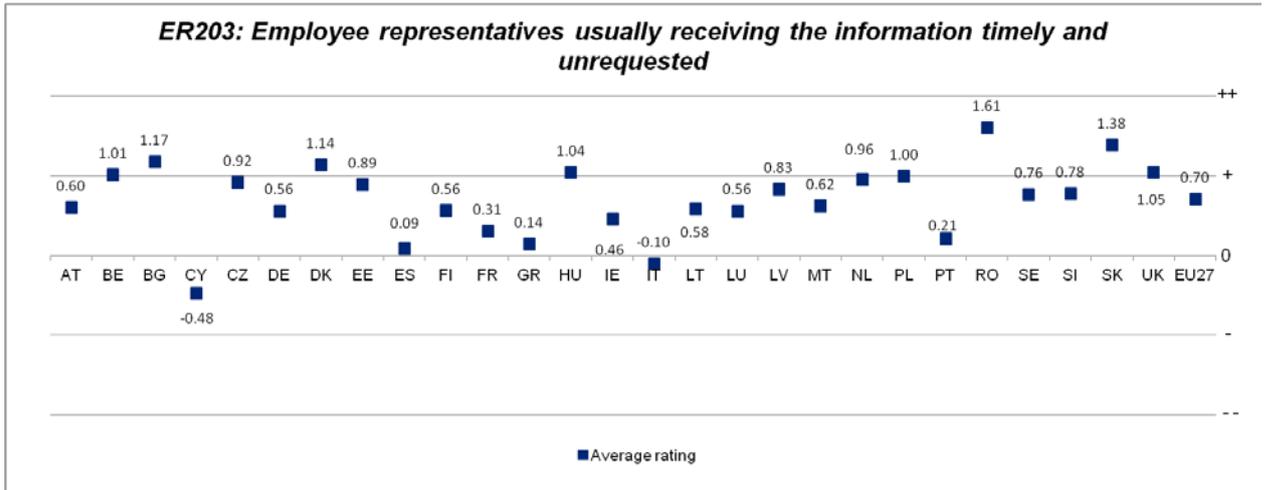
Employee representatives usually receiving the information timely and unrequested (ER203)

“ER203 Do you usually receive the information timely and unrequested?”

The 2009 Eurofound European Companies Survey uses a two point scale: yes (+2) or no (-2), with respect to the questions under ER203 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=2}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:



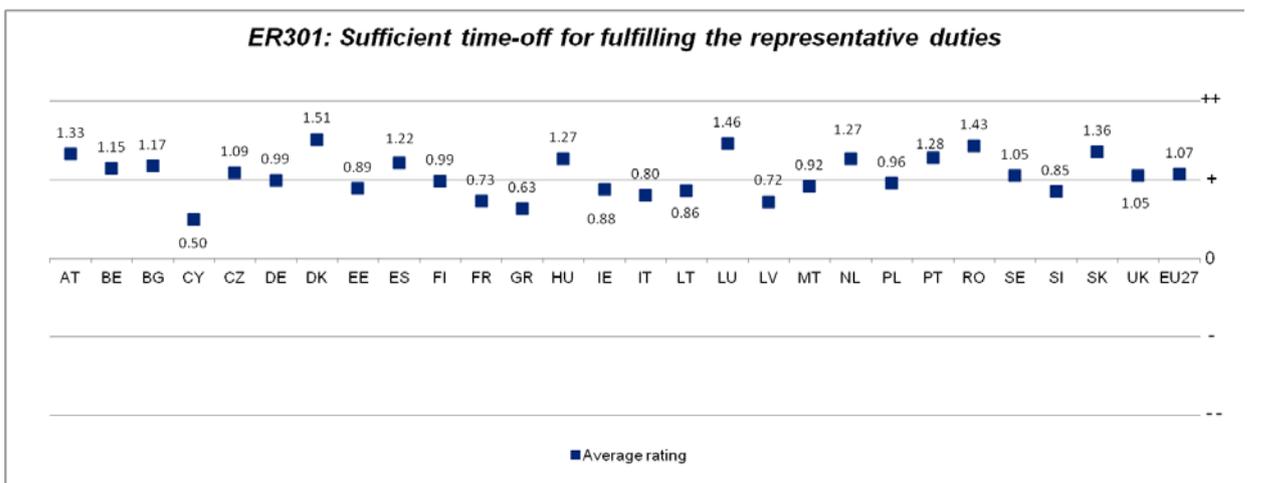
Sufficient time-off for fulfilling the representative duties (ER301)

“ER301 Is the available time usually sufficient for fulfilling the representative duties?”

The 2009 Eurofound European Companies Survey uses a three point scale: yes (+2), it depends (0) or no (-2), with respect to the questions under ER301 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=2}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:



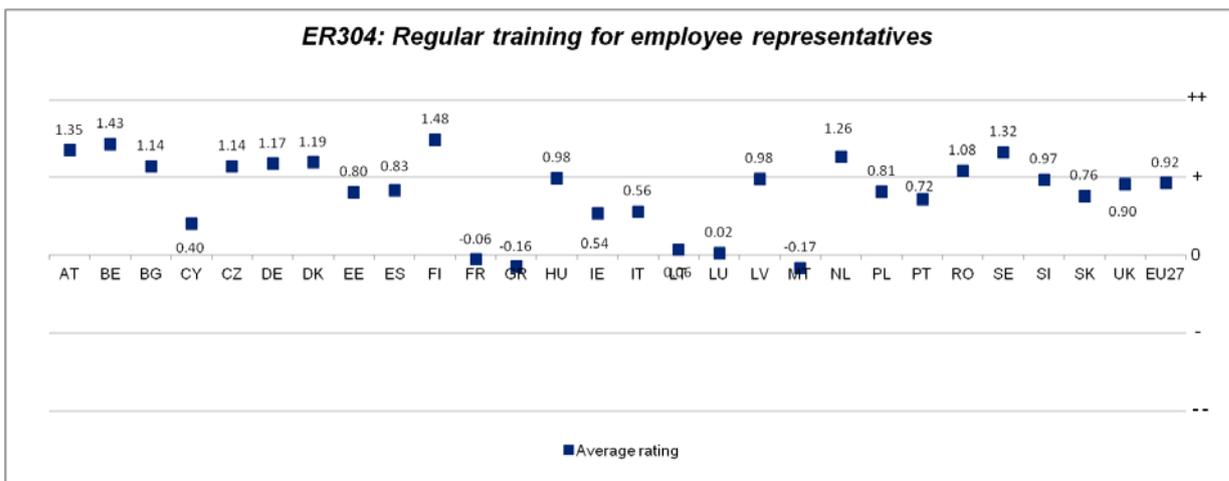
Regular training for employee representatives (ER304)

“ER304 Do the employee representatives on a regular basis get training on issues specific to their role as employee representatives?”

The 2009 Eurofound European Companies Survey uses a two point scale: yes (+2) or no (-2), with respect to the questions under ER304 of the employee representative questionnaire. The indicated scores have been calculated according to the following formula:

$$Score = \sum_{i=2}^n (Value\ of\ response_i * \frac{Number\ of\ responses_i}{Total\ number\ responses})$$

The results are as follows:



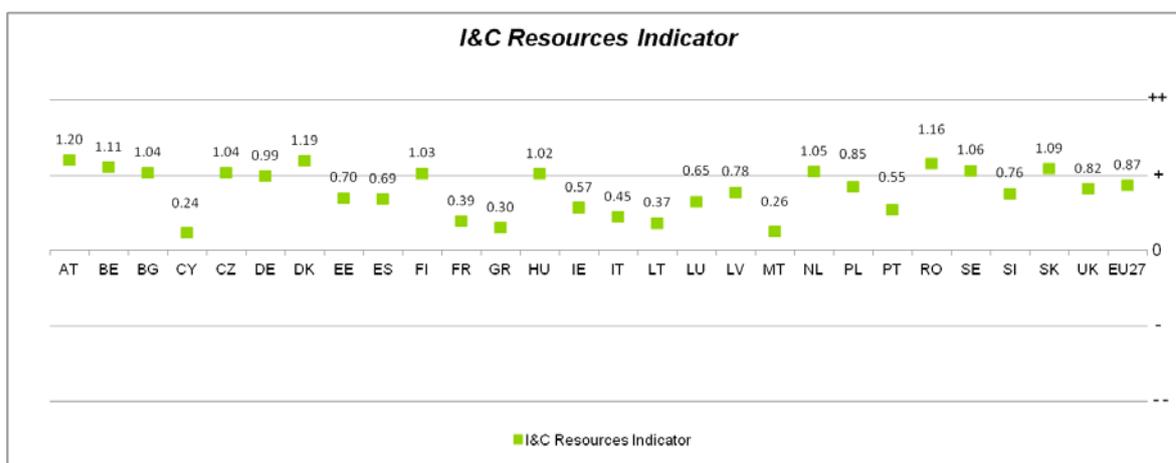
I&C Resources Indicator

The I&C Resources Indicator is calculated according to the following formula:

$$I\&C\ Resources\ Indicator = \frac{InformationScore + TimeOffScore + TrainingScore}{3}$$

$$= \frac{\frac{ER200_1 + ER200_2 + ER200_3 + ER203}{4} + ER301 + ER304}{3}$$

The results are presented below:



7.11. **Annex 11: Specific issues related to the national-level I&C legislation**²⁰⁴

7.11.1. **Directive 98/59/EC**

The ELLN report notes that ‘many countries seem to contend with a high degree of legal uncertainty with regard even to key definitions and concepts in the area of mass redundancies’. The following issues are reported:

Definitions, content and coverage

There is uncertainty in terms of the definition of ‘collective redundancies’ in Slovenia according to the courts and in Germany the meaning of ‘dismissal’ was brought into line with European law only relatively recently.

There is also uncertainty as to the content of the required consultation, which should cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures.

In terms of consultation, the United Kingdom courts consider that the directive implies that employees should be consulted over the reason for the redundancies.

In terms of the ‘timing’ of consultation with the workers’ representatives, this should, according to the directive, be held in ‘good time’. However, interpretations and practices differ:

- In Hungary certain time periods have been fixed.
- In the United Kingdom, consultation shall begin ‘in good time’ and in any event at least 90 days before the first dismissal takes effect (if the employer is proposing to dismiss 100 or more employees) – a period that employers’ representatives consider to be too long.
- However, in the United Kingdom and Ireland some difficulties arise concerning the moment when consultation takes place due to the perceived defective drafting of the implementing legislation concerning the difference between ‘proposing’ (wording of national legislation) and ‘contemplating’ collective redundancies.
- In Germany, there is no explicit provision on the timing but workers’ representatives must be informed at least two weeks before the state authorities are notified. In a recent ruling, however, the Federal Constitutional Court indicated that it was unclear whether the Directive requires consultation to be completed before the employer can notify the state authorities.
- In Luxembourg, the employer and the workers’ representatives have to reach an agreement within 15 days which may be either ‘positive’ or ‘negative’ (the parties ‘agree to disagree’).

Employer obligations

²⁰⁴ Information in this annex has been drawn from Chapters 2-4 of the following report: ELLN (2010): *Protection, Involvement and Adaptation – European Labour Law in Time of Crisis, Restructuring and Transition*, Thematic Report 2010, 51 pp.

- There are differences in national dismissal protection law in terms of the obligation on employers to find suitable employment for workers facing dismissal, criteria concerning a priority list for dismissals, the treatment of temporary agency workers/external staff compared with established staff.
- Uncertainty in certain countries with regard to the issues on which workers' representatives must be consulted, especially where multiple trade unions exist in an establishment, and/or trade union representatives and works councils both have a right to be informed and consulted.

Representation issues

- In Germany, obligations regarding collective redundancies must be 'harmonised' with obligations arising from the German law on workers' representation at plant level (in particular the obligation to inform the works council about every imminent dismissal).
- In Poland, both trade union representatives and works councils have a right to be informed and consulted, resulting in a certain overlap of competences and parallel procedures.
- In Luxembourg, if there are no workers' representatives in a given establishment – which is contrary to the law - elections must take place before the redundancy procedure can start.

Procedures and practical issues

- In the Netherlands, there are two alternatives if an employer seeks to terminate an employment relationship: the employer can dismiss a worker following authorisation by a state agency, or can apply for a court order for dissolution.
- In Denmark, the courts recently ruled that the termination of an employment relationship due to 'force majeure' falls within the area of application of the rules on collective dismissals.
- In Lithuania, the obligations on employers in the context of mass redundancies relate to the enterprise instead of the establishment (as required by the directive).
- In some 'new' Member States, application of the Directive seems to be hampered by practical obstacles. The competent state authorities may not have the means and enforcement instruments available, with a 'general lack of control' seen by ELLN in a number of countries including Slovenia, Latvia, and Lithuania.
- Breaches of obligations by employers may be subject to an administrative fine in principle in Latvia, but they are rarely imposed in practice given the general lack of a social dialogue culture. Likewise the notion of 'consultations with the workers' representatives in good time with a view to reaching an agreement' is seen as a foreign concept in countries like Lithuania.
- In Norway a breach of the procedural rules that are fixed with regard to collective dismissals will not, in itself, invalidate a termination, but may be one element in an overall assessment of whether a termination is valid or not.

Enforcement

- In Liechtenstein and Luxembourg, as well as other countries, it is reported that employers often stagger dismissals so as to avoid the threshold as laid down in the national legislation.

- In Germany, making full use of the right to dismiss within the limits fixed by national legislation is not regarded as an evasion of the law unless an employer takes the decision to completely shut-down an establishment and then starts to implement dismissals little by little.
- In the Netherlands and Luxembourg employers use other instruments than dismissals when seeking to terminate an employment relationship: workers may be asked to enter into dissolution agreements which may or may not fall within the area of application of the directive depending on the legal interpretation.

In terms of enforcement, the directive 98/59/EC states that 'Member States should ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers'.²⁰⁵

Uncertainty regarding the legal consequences for the employer of infringement of certain obligations, some of which may arise during the complex interaction between the employer and the workers' representatives, and the requirement to notify the competent public authorities.

The very general statement in the Collective redundancies directive is seen as enabling some employers in some countries to disregard their legal obligations because the penalties are low, or the costs and time delays are such that employees, or their representatives, are deterred from going to court. Slovenia and the United Kingdom are quoted in this respect.

In some cases, national authorities may lack the operational means to enforce the obligations that arise from the Directive and/or are not able to control whether and to which extent they are fulfilled. This appears to be the case in some 'new' Member States, including Latvia where trade unions and workers' representatives do not appear to have a right to sue and no speedy review is provided.

On the other hand, uncertainties resulting from the complicated relationship between the information and consultation of employees on the one hand, and notification of public authorities on the other, can constitute 'a considerable risk for employers' in terms of potential legal recourse according to ELLN. This can also have unintended effects on consultations in so far as workers' representatives 'threaten' the employer with taking legal action.

- In Lithuania, as well as Belgium, considerable uncertainty is reported regarding the legal consequences that infringement of certain obligations of the employer may have.
- In Hungary, if an employer disregards its obligations towards workers' representatives, the company may be taken to the court. However, a previous law, under which a dismissal was regarded to be null and void, has been abolished.
- In Germany, the courts are reported as 'struggling with both the consequences of notification of mass redundancy to the state agency by the employer in cases where such notification did not contain the relevant statement by the works council and the consequences for individual dismissal of the employers' failing either to consult the works

²⁰⁵ This differs significantly from the terms of Directive 2002/14/EC which requires that: 'Administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations based on this directive'.

council beforehand or to notify the mass redundancy properly to the competent state authorities’.

- In Italy, the courts have had to deal with the consequences of dismissals where workers’ representatives had given their, but where incomplete information was found to have been provided by the employer.
- In Lithuania, a court recently held that a worker affected by a dismissal on operational grounds could claim re-instatement only if able to show a causal link between the lack of consultation and the loss of job.
- In the Netherlands, the legal position if the employer terminates an employment contract by asking the courts for its dissolution remains unclear.

7.11.2. Directive 2001/23/EC

In most countries the Directive is seen to have been transposed correctly into national law²⁰⁶, but there are a number of problems relating to the scope and the concept of the ‘transfer of undertaking’ as a result of which the courts, social partners and employees are unclear about the legal situation.

The economic crisis is seen as having highlighted concerns about the adequacy of arrangements in relation to dismissals, insolvency and bankruptcy, collective agreements, enforcement mechanisms, and employees’ benefits and pensions.

It should be noted that the fitness check concerns only the I&C aspects of the directive as set out in Chapter III, Article 7 of the Directive. However those requirements have to be seen in relation to the objective of safeguarding employees’ rights, as set out in Chapter II, Articles 3, 4, 5 and 6 of the Directive, in the light of the changing business environment and practices indicated above.

Changing business practices may mean that employees are denied their rights to be informed and consulted in the case of a transfer of ownership, not because employers have failed to respect their obligations under the legislation, but because they have found alternative ways of transferring ownership such that the transfer falls outside of the scope of the legislation.

Definitions, content and coverage

With regard to the **concept of a transfer**, the following is reported:

- Reports from several countries - Austria, Belgium, Finland, France, Hungary, Iceland, Ireland, Lithuania, the Netherlands, Romania, Spain and the United Kingdom - indicate that the ambiguity of the concept ‘transfer of undertaking’ has caused problems.
- Criteria laid down by the European Court of Justice - such as the ‘identity of the company’ - are quite general which means that they have to be applied on a case-by-case basis, creating difficulties for the national courts.
- Specific problems also arise with regard to outsourcing, public services and transfers within groups of undertakings.

In terms of the **scope of the legislation**, there are some differences:

²⁰⁶ Lithuania is seen as an exception.

- In Bulgaria, retaining employment relations in cases of transfer of undertakings has been regulated in the case of change of the owner, but also in other cases of restructuring of the undertaking or businesses
- In Spain, the law covers the transfers of undertakings situated outside Spain but belonging to Spanish firms
- In Swedish the legislation applies to all employees in both the public and private sector, with exceptions only for top management and family members.

Extra protection could be provided at statutory levels or through collective bargaining/agreements. Such **additional protection** can be seen in several areas:

- In Bulgaria, Latvia, Spain, Sweden and the United Kingdom, protection at statutory level is reported as broader than required by the Directive.
- In five countries - Germany, Luxembourg, Liechtenstein, Romania and Sweden – there is additional protection concerning information and consultation obligations.
- In nine countries - Bulgaria, Estonia, France, Finland, Liechtenstein, the Netherlands, Norway, Poland and Spain - employees have an option to object to the transfer or to terminate the employment contract.
- Liability, collective agreements and collective bargaining are issues covered by additional protection at statutory level in several countries.
- No additional statutory protection is explicitly provided in Cyprus, the Czech Republic, Greece, Iceland, Ireland, Lithuania, Malta, Slovakia and the United Kingdom.

A transfer does not constitute **grounds for dismissal**, but it does not prohibit dismissals on economic, technological or organisational grounds, which means that it is often hard in practice to draw the line between the two.

- Dismissal law with regard to a transfer is seen as an issue in various countries - Austria, Hungary, Ireland, Liechtenstein, Lithuania, Poland, the Netherlands, Poland and Spain.

In terms of **insolvency or bankruptcy**, one of the problems is the distinction between a bankruptcy (defined as a procedure to close the company) and debt restructuring procedures aimed at the continuation of the company.

- In Ireland, the provisions of the directive do not apply where the transferor is the subject of bankruptcy or insolvency proceedings, but they do apply to transfers affected by receivers or examiners prior to that stage.
- In Austria, the 2010 Insolvency Reform Act aims to remove the distinction between bankruptcy and debt restructuring proceedings by introducing a uniform insolvency procedure.
- In Luxembourg, a compromise has been established between the rules on bankruptcy and the need to protect employees and to avoid misuse, allowing for re-instatement of rights if a business is started up again.
- In the Netherlands, doubts have been raised about the difference between the application of the rules of transfer of undertaking in case of bankruptcy and debt restructuring (a

‘technical bankruptcy’). Rules against abuse exist, but are little used since it is difficult to prove abuse.

- In Norway, a discussion is on-going concerning the application of the rules for bankrupt companies.
- In Spain, labour law rules on transfer of undertaking are applied to the sale of a company during a bankruptcy procedure.

The situation of **civil servants and employees in state owned companies** are not always clear given that the case-law of the ECJ on the applicability of the Directive in this area is complicated, especially in the case of privatisations.

- In Austria, almost all civil servants are excluded from the scope of the implementation legislation.
- In Hungary, the civil servant and public servant relations are included in the implementation of the Directive.
- Norway, did not implement the normal exemptions, as a result of which administrative reorganisations of public authorities and transfer of functions can constitute a transfer of undertaking in Norway.
- In Cyprus, the use of successive contracts following competitive tendering including state-owned companies is widely used.
- In Portugal the identification of employees to be transferred is seen as difficult when they perform their activities either in several departments of the undertaking, or in the central services of an undertaking.

Representation issues

- In Germany there is a general legal obligation to inform all employees affected by a business transfer, irrespective of whether or not workers’ representatives are in place.
- The law in Luxembourg states that, not only the employees or their representatives must receive the required information, but also a public authority.
- In Liechtenstein the Directive provide that the employees’ representatives must be informed and consulted on the transfer, that the information to employees’ representatives be carried out in writing and that, in the absence of employees’ representatives, the information is submitted to employees in writing.
- Swedish law provides for a comprehensive system for information, consultation and co-determination, obliging the employer to negotiate with the trade union on his/her own initiative before making important changes to the employment relationship, but with certain conditions.

The role of **collective bargaining** in relation to the directive varies between countries:

- A significant role of collective bargaining is reported in Austria, Belgium, Cyprus, the Czech Republic, Finland, Iceland, Portugal and Sweden.

- A more limited role of collective bargaining appears in France, Germany, Ireland, Luxembourg, Malta, the Netherlands, Norway, Poland, Spain and the United Kingdom.
- In other countries - Bulgaria, Denmark, Estonia, Greece, Italy, Hungary, Latvia, Liechtenstein, Lithuania, Romania and Slovenia - there is no role of importance for collective bargaining. In Germany, the rights and duties arising from a collective agreement or works agreement become 'implied terms' of the relevant employment relationships instead of the transferee being legally bound to the agreement.
- In the United Kingdom, the role of collective bargaining is limited in this context, with the exception of transfers in cases of insolvency.

Issues concerning the application of the provisions of the Directive regarding **collective agreements** are reported in several countries.

- National laws on collective agreements cause problems in Hungary and the Netherlands. Practical solutions are often found, but the harmonisation of the collective agreements within a company following a transfer creates a problem for many employers.
- In Poland, the legal status of social plans had been a problem, but this has been resolved by the Supreme Court, who decided that they constitute valid grounds for employee claims.
- In Portugal, in the event of a transfer of an enterprise or part thereof, the transferor has responsibilities to the transferee for at least a year, unless another contractual collective labour regulation comes into force, raising issues about vested or acquired rights and equality of treatment.
- In Denmark the transferee becomes a party to a collective agreement unless they inform the trade union that they do not wish to do so.
- In Italy, the collective agreement applied by the transferor may be substituted by the one applied by the transferee under certain conditions.
- The benefit of the former collective agreement in Luxembourg is not limited to one year, but to the normal expiry date of the collective agreement.
- In Norway, additional protection is provided to employees, for instance concerning collective bargaining agreements in the case of bankrupt estates.
- In Sweden, the law provides more far-reaching protection of the collective agreement and safeguarding of its terms and conditions of employment than the directive.

Collective agreements can provide additional information and consultation rights, severance payments etc. in transfer cases. In several countries, social plans provide additional labour conditions.

- In Belgium, collective agreements provide supplementary protection in the case of the transfer of assets in bankruptcy proceedings.
- Some collective agreements in Luxembourg provide a longer notice period or 'periods of grace' in which economic dismissal is not allowed in cases of economic restructuring.
- In Norway, collective agreements often lay down rules concerning the settlement of disputes concerning alleged breaches.

- In Poland social pacts are often used in cases involving the privatisation of state-owned enterprises (and sometimes other types of transfers) which can affect the legal status of the employees affected by the transfer.
- In Portugal and Spain, collective agreements regulate in detail the conditions under which the workers are transferred to the new company in the context of a succession of contracts, such as with cleaning companies.
- In Sweden, with regard to information, consultation and worker participation, the statutory system is supplemented by collective agreements on co-operation and co-determination. Large parts of the Swedish labour market are covered by such agreements.

Employer obligations

Issues of liability are raised in some countries:

- The question of the extent to which the transferor is liable for severance payments, contributions to company pension schemes and other claims of the employee are raised in Austria, Belgium, Hungary, Luxembourg and Portugal.
- Under the directive the transferor is only liable for entitlements in respect of obligations that arose before the transfer of undertaking. In Belgium, however, the possibility of transferor liability in respect of obligations which arise *after* the date of transfer is also being raised.
- In Hungary the rules regarding joint liability have been changed. In certain cases in which the employee's employment relationship is terminated by the transferee within one year, the transferor shall be liable for payments to the employees concerned.

Under the Directive, Member States may provide that, after the date of transfer, the transferor and the transferee shall be **jointly and severally liable** for obligations that arise from a contract of employment or an employment relationship existing on the date of the transfer.

- Estonia, Germany, Liechtenstein and Luxembourg provide for the joint liability of transferor and transferee.
- Austria restricts the liability of the transferee to the obligations that were, or should have been, known to the transferee.
- The Hungarian legislation provides additional protection for the employee.
- In the Netherlands and Portugal, the transferor is jointly and severally liable during one year following the transfer for all obligations that became due up to the date of the transfer.
- In Spain joint liability exists for labour obligations arising before and after the transfer.

The Directive does not necessarily apply to all transfers in the course of **insolvency**.

- In principle, Germany has applied the transfer of undertakings rules fully. However, according to the Federal Labour Court, the law must be interpreted restrictively in order to ensure that all creditors are treated equally when it comes to insolvency.
- A special provision has been provided in Bulgaria for cases of renting, leasing and granting concessions. This states that, after the expiration of the term of such contracts, the employment relationships (the terms of renting, leasing or granting concession) with the employees shall not be terminated, but transferred to their previous employer.

Employee rights

In terms of rights to object to a transfer of employment relationships:

- In Austria, an employee has one month to object to the transfer of his employment relationship if the transferee does not take over guarantees against dismissal in the collective agreement, or entitlements to pensions.
- Bulgaria grants a right to an employee to terminate his/her employment relationship without prior notice if, as a result of the change of the employer, the conditions of work are substantially lower with the new employer.
- In Estonia, an employee can invoke his or her claims against the old or new employer for a period of five years after the transfer has taken place.
- According to French case law, a ‘benefit that has become mandatory as a result of a common practice is binding on the new employer’. However the Supreme Court has ruled that only the employees who were contractually bound to the former employer on the date of the transfer can benefit from such common practice or unilateral undertaking.
- In Ireland, the relevant regulations do not address the situation where an employee objects to a transfer. The High Court has recently ruled that a refusal to transfer amounts to a resignation and not a redundancy.
- In Liechtenstein the employment relationship with all rights and duties is transferred from the transferor to the transferee provided that the employee does not object to the transfer.
- In Poland, within two months of the transfer an employee may terminate an employment relationship without notice, subject to seven days prior notification. Spain also allows similar possibilities.

Enforcement

The Directive requires measures to be in place to enable employees and representatives of employees who consider themselves wronged to pursue their claims by judicial process after recourse to other competent authorities.

- In Latvia, however, employees’ representatives have no access to a court and can only invoke assistance of the Labour Inspectorate, which can issue a warning or impose an administrative fine on the employer. Indeed, elected employee representatives have no legal personality and cannot collectively contest the non-compliance with I&C rights.

Various issues arise in **court proceedings**:

- The main issue is whether or not there has been a transfer of undertaking, with proceedings on this point reported in twenty countries: Austria, Belgium, Cyprus, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Norway, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom.
- The terms and conditions of employment after the transfer are reported in seven countries.
- Relations with trade unions are another area of dispute – cited in six countries.
- Other issues include bankruptcy and insolvency; the duty of consultation and information; re-employment/dismissal after the transfer of undertaking; and the (lack of) consequences of violation of the rules.

- In a number of ‘new’ Member States – Bulgaria, Estonia, Liechtenstein, Lithuania and Slovakia – there have been no court decisions.

7.11.3. Directive 2002/14/EC

As with Directive 98/89/EC, the financial and economic crisis is not seen to have triggered particular problems with Directive 2002/14/EC, but rather exposed problems that existed before.

Definition, content and coverage

- Collective agreements may supplement the information and consultation requirements as laid down in statutes, contain rules on the number of elected representatives in each undertaking, open the possibility for the establishment of different and more flexible structures of information and consultation, or expand the scope of issues on which employees need to be informed and consulted, as in Norway.
- In several countries, collective agreements grant additional consultation and information rights, as in Luxembourg, Liechtenstein, Norway and Sweden. Such agreements may establish additional – and possibly more effective – sanctions in connection with breaches of the information and consultation requirement.

Although the contribution of **collective bargaining** is seen to be largely positive in terms of transposition, it also entails some problems.

- In Belgium, Denmark, Italy, the provisions of the Directive were at least partly transposed by national collective agreements.
- A relatively wide-spread problem is that many employers are not bound by any collective agreement and, as a consequence, not subject to the rules on information and consultation, as in Italy.
- This problem may be worsened if the workforce is not unionised, which is often the case in countries where union density is low, such as Latvia, Lithuania.
- On the other hand, when employees who are not a trade union member are subjected to collective agreements implementing the Directive, the question arises as to whether this is consistent with the requirements of freedom of association – the case of Denmark.

In some countries, it is possible to deviate from the statutory provisions on information and consultation by **collective agreements** under the condition that the collective agreement in question fulfils the requirements of the Directive:

- The above is the case in Belgium, Denmark, Finland, Iceland, Italy, Romania and Sweden.
- The relevant law in Sweden, for instance, is seen as ‘semi-mandatory’ in the sense that it allows for deviations from the statutory provisions by means of a collective agreement entered into by the employer and the trade union. In this way, flexible modifications to accommodate the needs of specific industries and sectors or companies can be achieved.
- It is considered doubtful whether the method for calculating the threshold in Italy is in line with the Directive in Italy in that employees on fixed-term contracts of short duration are excluded.

- Employers may sometimes attempt to split organisations ‘artificially’ in order to avoid reaching the threshold fixed by national legislation, as in Liechtenstein. In any event, it is often difficult to define an establishment for the purpose of information and consultation, as seen in the Netherlands.
- In some countries there is an on-going policy debate on the scope of application of the provisions on information and consultation, as in Iceland, where the legislator opted for the threshold of 50 employees working in an undertaking.
- In Luxembourg and the United Kingdom the thresholds are regarded by many as discriminatory and too high with the result that too many employees are not covered by the relevant legislation.

National laws vary widely when putting the issues of required information and consultation into more concrete terms.

- In several countries, the exact timing of information and consultation as well as the required content of information and consultation are uncertain and controversial - Greece and Norway.
- In the Netherlands, the existing law is likely to be amended in the near future in order to improve the legal position of workers’ representatives within multinational groups of companies.
- In Ireland employees have no automatic right to be informed and/or consulted. Instead, the information and consultation procedure has to be requested in writing by 10 per cent of the workforce.
- The legal situation in the United Kingdom is similar, with the additional issue of whether the use of ‘pre-existing information and consultation agreements’ is compatible with the directive.

Representation

- When implementing the directive in Estonia, it was decided to retain the original ‘dual channel’ model.
- Specific problems seem to exist in countries with a ‘dual channel’ system of employee representation, a system that some countries implemented only in the context of the obligation to implement the Directive - Slovakia, Poland.
- In Poland, the constitutional court had to decide that information and consultation rights were not dependant on being a trade union member.
- In Slovakia and Spain, their legislators only relatively recently arranged a clear division of tasks between works councils and trade unions.
- In Luxembourg, the demarcation between the responsibilities of workers’ delegates and works councils remains ambiguous, leading to conflicts of competence and attributions. The same seems to be true in other countries, including Hungary, Poland.
- In Bulgaria, all trade unions in a given undertaking have to be informed and consulted, irrespective of whether they are representative.
- In ‘single channel’ systems, the issue of a variety of trade unions representing employees in a given undertaking or establishment is ground for discussion.

- In Italy there is concern that employees may be insufficiently protected if there are no workers' representatives. In 'single channel' systems in the absence of trade unions, as is the case in Sweden.
- In Iceland, on the other hand, employees not represented by union representatives have a common representative to serve in this capacity.
- In the United Kingdom, there is the possibility of direct representation. Apart from the question of whether this is compatible with the Directive, it introduces a new element in a country otherwise characterised by a 'single channel' model of employees' representation.
- In Ireland, 'employees' representatives' are elected by the employees. However, unionised employees are entitled to elect their own representatives.
- In some countries, there is an inadequate institutional framework and a deficient 'culture' of social dialogue - Lithuania, Poland. Such a problem is also seen in the United Kingdom.

In general, there are uncertainties surround the issue of **confidential information**:

- Employers in Romania are increasingly refusing to communicate certain information to employees' representatives on the grounds that it would harm business operations.
- Some national legislation puts the protection of business secrets in more concrete terms, as in Finland.
- In the case of Spain it seems doubtful whether the relevant provisions are in conformity with EU law.

Employee rights

- It is considered doubtful whether the legal protection of employees' representatives provided in Luxembourg is in line with EU law but the rights go beyond the scope of the directive in Austria, Czech Republic, Finland, Germany, Latvia, Liechtenstein, Lithuania, Norway, Spain and Sweden.
- In some legal systems workers' representatives enjoy co-determination rights - Austria, Germany, Luxembourg, and Sweden.
- In Hungary, on the other hand, the Constitutional Court recently dismissed as unconstitutional the idea of a 'right to agree' indicating that the parties to social dialogue could not be acknowledged as 'legislative organs' under the Constitution.
- In countries like Latvia and Romania the institutional framework is deficient, with the absence of a 'culture' and tradition of social dialogue in Latvia, Lithuania, Poland.

Enforcement

- In Latvia the courts have ruled that the provisions on information and consultation cannot be enforced by trade unions or other workers' representatives, but only by individual employees. Elected employee representatives have no legal personality and cannot enforce I&C rights collectively.
- In Cyprus, there is no statutory mechanism to record or hear complaints. Implementation of EU-law therefore depends on the cooperation between the social partners and the State.

- In Norway, enforcement of the provisions on information and consultation is the sole responsibility of the labour inspectorate.
- In some countries - Estonia, Latvia, Lithuania- enforcement mechanisms do exist but are not much used in practice.
- In Germany, a discussion is taking place around whether a works council is entitled to demand that an employer refrains from an intended ‘modification of business operations’ until the consultation process with the works council has been completed.
- In the United Kingdom, the employer may be fined when infringing on certain obligations arising from the directive. However the penalties seem modest and the courts can take mitigating factors into account.
- In Norway, violations of the provisions on information and consultation are not subject to judicial review. They trigger administrative proceedings that cannot be initiated by individual employees.
- In terms of enforcement, employers are rarely fined in practice in Estonia or Latvia.
- In the United Kingdom, trade unions regularly prefer formal recognition for the purpose of collective bargaining over ‘mere information and consultation rights’.