



European Foundation for the Improvement of Living and Working Conditions

Impact of the information and consultation directive on industrial relations

Introduction

Main points of directive

National implementation of directive

Views of social partners

Social partner concerns in Ireland and UK

Impact of directive on industrial relations practice

Commentary

Annex 1: Country codes and abbreviations

This report is available in electronic format only.

Wyattville Road, Loughlinstown, Dublin 18, Ireland. - Tel: (+353 1) 204 31 00 - Fax: 282 42 09 / 282 64 56
e-mail: information@eurofound.europa.eu - website: www.eurofound.europa.eu

This comparative report provides a general overview of the steps taken by the 27 EU Member States and Norway to implement the 2002 Directive on informing and consulting employees in the European Community. The extent of the changes required to existing systems of information and consultation and workplace representation has varied considerably between countries. In some countries, the directive has had few, if any, implications, particularly in those with longstanding statutory works council systems; in others, it has prompted only limited amendments. However, in a number of countries, the directive has driven extensive legislative reform, for example in the UK and Ireland, where a 'voluntarist' industrial relations tradition predominates, and in many of the new Member States. Moreover, the transposition process has generated intense debate in some countries, in particular on the workforce-size thresholds above which undertakings or establishments are covered by information and consultation requirements, and on the nature of the employee representatives through which information and consultation takes place; the latter focus is a major issue in those countries where trade unions have traditionally been the sole or main representation channel. However, most EIRO national centres report that national measures which give effect to the directive have, as yet, had little or no impact on industrial relations practice in their countries, or that it is too early for their effects to be fully assessed.

Introduction

Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community was adopted in March 2002. The directive applies to undertakings with at least 50 employees or establishments with at least 20 employees, and provides employees with rights to **information and consultation** on a range of business, employment and restructuring issues. In the 25 EU Member States (EU25), and the other European Economic Area (EEA) countries, the deadline for the directive's implementation was March 2005. In the two newest EU Member States, Bulgaria and Romania, the deadline was the date of their EU accession – in other words, 1 January 2007.

This report reviews the differing impact of the information and consultation directive in 28 countries: the current 27 EU Member States (EU27) and Norway. Based on the responses to a questionnaire by national centres of the European Industrial Relations Observatory (EIRO), the report looks at the extent to which the directive has required legislative change in each country, the nature of the measures adopted in response to the directive, the views of national employer and trade union bodies and the impacts of national implementation measures on industrial relations practice.

Not surprisingly, the impact of the directive has varied considerably between Member States, reflecting the differing nature and extent of their existing information and consultation provisions and the varying industrial relations systems within which they are embedded. The directive has had few, if any, implications for some countries – such as Austria and Germany; in others, it has prompted only limited amendments to legislation. However, in a number of countries, it has driven extensive legislative reform, for example in the United Kingdom (UK) and Ireland, where a 'voluntarist' industrial relations tradition is maintained, and in many of the new Member States. The European Commission has also pursued infringement proceedings at the European Court of Justice (ECJ) against a number of Member States for failing to comply with the directive.

The policy context is that the European Commission is currently undertaking a review of the directive's application; this includes discussions with the Member States and social partners with a view to proposing any necessary amendments. More broadly, the Commission's Social Agenda 2005–2010 envisages the possible consolidation of the existing information and consultation provisions contained in EU legislation. [Subsequent to the finalisation of this comparative study,

the Commission published a communication on its review of the application of the Directive in March 2008.]

Main points of directive

The directive aimed to establish a general framework setting out minimum requirements for employees' right to information and consultation.

Information and consultation are defined as taking place between the employer and employee representatives. The directive requires:

- information on the recent and probable development of the undertaking's or establishment's activities and economic situation;
- information and consultation on the situation, structure and probable development of employment, and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- information and consultation, with a view to reaching an agreement, on decisions likely to lead to substantial changes in work organisation or in contractual relations.

Employers may require employee representatives to treat information as confidential, and need not inform or consult where to do so would seriously harm or prejudice the undertaking or establishment.

The directive is drafted in fairly broad terms and allows Member States considerable flexibility regarding the practical arrangements for implementing its provisions. Thus, among other things, Member States can:

- choose whether to apply the directive to undertakings with at least 50 employees or to establishments with at least 20 employees (Article 3);
- designate the employee representatives who are to be informed and consulted (Article 2);
- require employees to take specific steps to trigger the introduction of information and consultation procedures (recital 15), rather than making conformity with the directive's requirements mandatory for all relevant undertakings or establishments;
- choose whether to enable the social partners, including those at undertaking or establishment level, to agree on information and consultation arrangements which differ from the directive's provisions (Article 5);
- determine the enforcement mechanisms and sanctions that apply in cases of non-compliance, although the latter must be 'effective, proportionate and dissuasive' (Article 8).

National implementation of directive

Member States were granted a deadline of 23 March 2005 to adopt the laws, regulations and administrative provisions necessary to comply with the directive's provisions, or to ensure that management and labour introduced the required provisions by way of agreement. However, countries with 'no general, permanent and statutory system of information and consultation of employees, nor a general, permanent and statutory system of **employee representation** at the workplace allowing employees to be represented for that purpose' were allowed to adopt the directive's requirements on a phased basis. While undertakings with at least 150 employees, or establishments with at least 100 employees, had to be covered by the directive by 23 March 2005, these Member States could delay application until either:

- 23 March 2007 for undertakings with at least 100 employees, or establishments with at least 50 employees;
- 23 March 2008 for undertakings with at least 50 employees, or establishments with at least 20 employees.

The directive's transposition timetable applied to the 'older' 15 EU Member States (EU15) at the time of the directive's adoption, the 10 new Member States that joined the EU in May 2004 (EU10) and – through the workings of the EEA agreement and specifically EEA Joint Committee Decision 172/02 – to Iceland, Liechtenstein and Norway. The two new Member States, Bulgaria and Romania, were obliged to have implementing measures for the directive in place when they joined the EU on 1 January 2007.

Transposition process

Three EU Member States – Austria, Germany and Slovenia – considered that their national legislation already met or exceeded the terms of the information and consultation directive and that no new measures were required to comply with its requirements; Slovenia, nevertheless, later adopted legislation with the stated purpose of transposing the directive, which made some amendments to existing provisions. Of the remaining 22 EU countries covered by the directive's implementation deadline of 23 March 2005, only eight – Finland, France, Hungary, Lithuania, the Netherlands, Portugal, Slovakia and the UK – had clearly taken measures for its transposition. Cyprus, Denmark, Latvia and Sweden joined these countries during 2005 – as, from outside the EU, did Norway.

The European Commission initiated infringement proceedings for non-compliance with the directive against the remaining Member States, with the exception of the Czech Republic – perhaps because of the relatively minor nature of the implementing measures that were required in this country and which were subsequently enacted in 2006 and 2007. The countries Estonia, Ireland, Malta and Poland adopted transposition legislation in 2006, as a result of which the proceedings against them were closed. The proceedings against Belgium, Greece, Italy, Luxembourg and Spain were referred to the ECJ. In a series of rulings issued over the period between March and September 2007, the ECJ found that Belgium (case C-320/06), Greece (C-381/06), Italy (C-327/06), Luxembourg (C-321/06) and Spain (C-317/06) had failed to meet their obligations under the directive. At the time of writing, Belgium, Luxembourg and Spain have still not implemented the directive. [Spain subsequently adopted implementing legislation on 16 November 2007.]

The main reasons for the delay in transposing the directive in the five countries whose cases were referred to the ECJ were as follows:

- in Belgium, disagreements between the social partners, which have a key role in implementing EU employment legislation, prevented them from reaching consensus on how the directive should be implemented by the March 2005 deadline. These disagreements were reflected within the coalition government in office until June 2007, preventing progress on implementation; attempts by the outgoing employment minister to transpose the directive by royal decree when the government resigned were thwarted. The social partners finally agreed on an approach to transposition in November 2007, but delays in the formation of a new government have meant that this has not yet been enacted in law;
- in Greece, no explanation was reportedly given by the government for its failure to implement the directive until December 2006;
- in Italy, the delay in transposition until March 2007 was attributed by the government to a need to respect autonomous bilateral dialogue between the social partners, given that the directive's implementation had an impact on important matters regulated by **collective bargaining**. It was not until November 2006 that the central social partner organisations reached agreement on the approach to implementation;
- in Luxembourg, the government originally wanted to use the directive's transposition as an opportunity to introduce wider reform of the legislation on worker representation, linked to the introduction of a single status for blue-collar and white-collar employees. Work on this general overhaul was delayed and eventually suspended, and a specific transposition bill was issued in September 2006. However, the Council of State opposed the draft and further modifications have since been made to the bill;
- in Spain, the directive's transposition was included in a general tripartite **social dialogue** process on employment issues, launched in 2004, which took longer than expected. Draft implementing legislation – amending the Workers' Statute – was thus not issued until January 2007, and parliamentary approval was due before the end of the year.

Bulgaria and Romania both had transposition measures in place when they joined the EU on 1 January 2007.

Of the countries that have so far transposed the directive, all but one have taken the legislative route, rather than leaving the matter mainly to agreement between the social partners; it should be noted, nevertheless, that this legislation was in some cases based wholly or partly on agreements between the social partners. In Denmark, a 'dual' approach to transposition was taken, as has been the case with many EU employment directives in recent years. Accordingly, the central social partner organisations in the private, public, finance and agriculture sectors amended their existing 'cooperation agreements' – on which information and consultation arrangements are based – to comply with the directive; at the same time, the government enacted legislation to apply virtually the same arrangements to the 15% or so of the workforce not covered by **collective agreements**.

Table 1: Main national measures taken with aim of transposing Directive 2002/14/EC, EU27 and Norway

Country	Transposition measures
AT	None
BE	None
BG	Amendments to the Labour Code, taking effect from 1 July 2006
CY	Law 78(I)/2005 establishing a general framework for informing and consulting employees, taking effect from 8 July 2005
CZ	Act No. 72/2006 amending the Labour Code and new <u>Labour Code (495Kb PDF)</u> that took effect from 1 January 2007
DE	None
DK	Act No. 303 of 2 May 2005 on information and consultation of employees) and amendments to existing 'cooperation agreements' between central social partner organisations
EE	<u>Employee Trustee Act</u> of 13 December 2006 (<u>EE0701039I</u>)
EL	Presidential decree 240/2006 of 2 December 2006
ES	None *
FI	<u>Act 139 (in Finnish)</u> of 10 March 2005 amending the Co-determination Act 1978
FR	<u>Law No. 2005-32 (in French)</u> of 18 January 2005 amending the Labour Code
HU	Law of 17 March 2005 amending the Labour Code
IE	<u>Employees (Provision of Information and Consultation) Act 2006 (371Kb PDF)</u>
IT	<u>Legislative Decree 25/2007 (in Italian)</u> of 6 February 2007 on the implementation of Directive 2002/14/EC, taking effect on 22 March 2007
LT	Law of 11 November 2004 amending the Labour Code
LU	None
LV	Law of 13 October 2005 amending the <u>Labour Law</u>
MT	<u>Employee (Information and Consultation) Regulations 2006 (67Kb PDF)</u>
NL	<u>Act (in Dutch, 21Kb PDF)</u> of 2 December 2004 amending the Works Councils Act
NO	<u>Act</u> of 17 June 2005 amending the Act on Worker Protection and the Working Environment
PL	<u>Act (in Polish, 102Kb PDF)</u> of 7 April 2006 on informing and consulting employees
PT	<u>Law No. 35/244 (in Portuguese, 465Kb PDF)</u> of 28 August 2004 amending the Labour Code
RO	Law No. 476/2006
SE	<u>Act (in Swedish, 29Kb PDF)</u> of 2 June 2005 amending the Co-determination Act 1976

SI	None – however, a law amending the Law on the Participation of Workers in Management 1993 that came into force on 7 April 2007 stated that it represented transposition of the directive
SK	Act. No. 210/2003 amending the <u>Labour Code (574Kb PDF)</u>
UK	<u>Information and Consultation of Employees Regulations 2004 (UK0502103N)</u>

*Note: * Spain subsequently adopted implementing legislation on 16 November 2007.*

Source: EIRO national centres, 2007

Nature of transposition

The extent of the reforms to existing information and consultation systems and workplace representation required by the directive's implementation have ranged from no change to major change – as indicated by the findings shown in Table 2 below.

Table 2: Nature of national measures required to implement Directive 2002/14/EC

Extent of change to existing arrangements	Countries
No change or virtually no change	Austria, France, Germany, the Netherlands, Portugal, Slovenia
Minor change	Czech Republic, Denmark, Finland, Greece, Hungary, Latvia, Lithuania, Norway, Slovakia, Sweden
Major change	Bulgaria, Cyprus, Estonia, Ireland, Italy, Malta, Poland, Romania, UK

Source: EIRO national centres, 2007

As noted above, Austria, Germany and Slovenia considered that no new measures were required to comply with the directive – a view that the European Commission has not disputed – although, as mentioned, Slovenia introduced several amendments in 2007 that it attributed to the directive. France, the Netherlands and Portugal can also be included in this group of countries whose national information and consultation legislation already met or exceeded the terms of the directive, as the changes required for the purposes of transposition were very minor and in most cases essentially technical. Austria, France, Germany, the Netherlands and Slovenia have existing widespread and comprehensive statutory information and consultation systems through works council-type bodies, while Portugal also has a statutory works council system, although this is not reported to be as extensive in practice.

In the Czech Republic, Finland, Greece, Hungary, Latvia and Lithuania, which already had in place a relatively general, statutory system of information and consultation, transposition involved fairly minor adjustments to existing provisions on matters such as: the issues subject to information and consultation, the definitions of information and consultation, confidentiality and the role of collective agreements in this area. Some of these changes were more substantial than others: for example, the Hungarian transposition legislation strengthened appreciably the nature of the obligation on employers to consult employee representatives. Finland's 2005 implementing legislation amended provisions on choosing employee representatives in some circumstances, employers' responsibilities for information provision, information and consultation on staffing and training plans, and enforcement procedures. However, it should be noted that a more

substantial reform of information and consultation rules was enacted in 2007, notably reducing the workforce-size threshold to undertakings with 20 rather than 30 employees.

In a number of Nordic countries – Denmark, Norway and Sweden – transposition measures mainly sought to adapt systems based on collective agreements and trade union representation, to ensure that they apply to all employees, including those not covered by such agreements or not belonging to particular **trade unions**. These changes were generally relatively minor in terms of their practical effect, given the high levels of bargaining coverage and trade union membership in these countries. Nevertheless, the changes may appear more important in formal terms: for example, in Norway, implementation meant establishing, for the first time, a statutory basis for information and consultation arrangements that already existed on the basis of collective agreements. In Denmark, the amendments were somewhat more substantial: more specifically, the implementing measures widened the representation of cooperation committees – the existing information and consultation structures – and extended information and consultation to employees not represented on these committees; at the same time, they gave greater weight to local cooperation agreements and provided for a clearer timescale for information and consultation.

In Italy also, implementation largely meant extending and giving legal force to an existing information and consultation system based mainly on collective agreements. However, while no new structures or representation channels have been created – with information and consultation conducted through existing worker representatives – and collective bargaining is given a key role, the legislation has added considerably to the content and coverage of existing information and consultation rights and may be considered to imply a major change.

In Estonia and Slovakia, amendments were required to the structure of existing statutory systems and especially the relationship between union and non-union based channels of information and consultation. In Slovakia, these changes can be categorised as relatively minor, but in Estonia they were more significant.

In Bulgaria, Cyprus, Ireland, Malta, Poland, Romania and the UK, the directive's transposition has essentially meant the establishment, for the first time, of a general, statutory system of information and consultation (see Table 3). In Bulgaria, this was entirely new, while in Cyprus, Ireland, Malta and the UK, statutory information and consultation rights were previously limited to specific circumstances, notably transfers of undertakings and collective redundancies. In Poland and Romania, statutory information and consultation arrangements were in place, but these were limited to trade unions and a restricted range of issues and circumstances.

Cyprus, Ireland, Malta, Poland and the UK took up the option provided for in the directive for countries with no existing general and statutory system to apply its requirements for smaller undertakings or establishments on a phased basis.

The three countries that have yet to transpose the directive – Belgium, Luxembourg and Spain – have widespread, statutory works council-type information and consultation systems. The changes required in Belgium, Luxembourg and Spain to comply with the directive appear to be relatively minor – relating, for instance, to workforce-size thresholds.

Table 3: New general, statutory systems of information and consultation introduced as a result of transposition of Directive 2002/14/EC

Country	New information and consultation structure/process
BG	At undertakings with 50 or more employees, as well as in ‘organisationally and economically differentiated subsidiaries/branches’ with 20 or more employees, a ‘general assembly’ of employees may be called by 10% of the workforce, company-level trade union representatives or the employer. The assembly may elect employee representatives from among its members to take part in information and consultation procedures on the issues laid down in the directive. Alternatively, it may decide to: delegate the appointment of these information and consultation representatives to company-level trade union organisations; or to appoint as information and consultation representatives those representatives elected to be informed and consulted in the event of collective redundancies and business transfers.
CY	In undertakings with 30 or more employees, from March 2008, employee representatives – those provided for on the basis of law or practice, which essentially means trade unions – have information and consultation rights on the issues laid down by the directive. Agreements at the appropriate level, including the enterprise level, may define the practical arrangements for information and consultation, and their contents may differ from the provisions of the legislation. These may be pre-existing or new agreements.
IE	In undertakings with at least 50 employees, from March 2008, 10% of the workforce – subject to a minimum of 15 employees and a maximum of 100 – may request the establishment of information and consultation arrangements. Employers are not obliged to comply when a pre-existing information and consultation agreement is in place, meeting certain requirements. The negotiations may lead to an information and consultation agreement, which must meet certain requirements, or to the application of statutory ‘standard rules’. Furthermore, if the employer refuses to negotiate or if no agreement can be reached within set time limits, these standard rules apply. They provide for the establishment of an information and consultation forum elected or appointed by the workforce, with information and consultation rights on the issues stipulated in the directive. The legislation lays down rules on the forum’s operation, for example requiring two meetings a year with the employer. Where required by the legislation, the employer is obliged to arrange for the election or appointment of employee representatives, who must be employees of the undertaking. If there is collective bargaining with a trade union that represents 10% or more of an undertaking’s workforce, employees who are members of that union are entitled to elect or appoint from among themselves one or more employee representative. Pre-existing or new information and consultation agreements may provide for information and consultation through representatives or by ‘direct’ means, although employees covered by the latter may, by a majority vote, require the former.
MT	In undertakings with 50 or more employees, from March 2008, the employer must make the practical arrangements necessary to allow its employees to exercise effectively the information and consultation rights laid down in the directive. Information and consultation is conducted through trade union representatives where there is one or more recognised trade union covering all employees in the undertaking. If all employees are not represented by trade unions, information and consultation is carried out through union representatives plus an elected or appointed

	<p>representative of the workers not represented by the union(s). In establishments with no recognised trade unions, information and consultation is conducted through elected or appointed employee representatives. Pre-existing agreements that meet certain requirements and are more favourable to employees than the statutory provisions are protected. Employers and employees may negotiate agreements on the practical arrangements for information and consultation, provided that these respect the minimum requirements set out in the legislation.</p>
PL	<p>In undertakings with 50 or more employees, from March 2008, at the initiative of trade unions, where present, or at least 10% of the workforce where there is no union, an ‘employee council’ must be established, with information and consultation rights based on those stipulated in the directive. Where trade unions are present, they appoint the members of the council or, if this is not possible, nominate candidates for election by the workforce. Where no trade union is present, the employer must organise an election of employee representatives. In the latter case, if a union starts operating in the enterprise, the existing council is dissolved and the union establishes a new one. If there is a pre-existing agreement providing for information and consultation arrangements meeting the minimum statutory requirements, there is no obligation to establish an employee council.</p>
RO	<p>In undertakings with 20 or more employees, the employer must provide information and consultation, based on the directive’s requirements, to employee representatives. The latter refer to representatives of trade unions, where these are present in the enterprise, or, where no union is present, representatives elected by the employees in line with the legislation. The practical arrangements for information and consultation may be defined by collective agreements.</p>
UK	<p>In undertakings with 50 or more employees, from April 2008, 10% of the workforce – subject to a minimum of 15 employees and a maximum of 2,500 – may request negotiations with the employer over an agreement on information and consultation arrangements. Employers may also initiate the negotiation process. Where there is a pre-existing information and consultation agreement and a request for negotiations is made by less than 40% of the workforce, the employer may ballot the workforce on its support for the request for new negotiations. Only if the request is endorsed by at least 40% of the workforce, and a majority of those who vote in the ballot, must the negotiations proceed. Negotiations take place between the employer and elected or appointed employee representatives, and the resulting agreement must meet certain requirements. Agreements may provide for information and consultation through employee representatives or directly. If the employer refuses to negotiate or no agreement can be reached within set time limits, statutory standard provisions apply. These require the employer to provide information and consultation, based on the directive’s provisions, to elected employee ‘information and consultation representatives’; there should be one representative for every 50 employees or part thereof, but a minimum of two representatives and a maximum of 25 employees.</p>

Source: EIRO national centres, 2007

Key transposition issues

As mentioned, the information and consultation directive incorporated a number of ‘flexibilities’ for Member States in drawing up their national transposition measures. Particular issues left to Member States’ discretion concerned the following:

- whether the law applies at establishment or undertaking level;
- the identity of the employee representatives;
- whether information and consultation is mandatory or dependent on employee initiative;
- the scope for agreement-based information and consultation, departing from the statutory provisions;
- the enforcement procedures and sanctions used.

Table 4 gives a brief overview of the approach adopted by Member States in these areas.

Table 4: Transposition of Directive 2002/14/EC – key elements determined at national level, EU27 and Norway

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
AT	Establishment level (five employees)	Works councils	Information and consultation a requirement only where works councils exist. Works councils are technically mandatory in all establishments with at least five employees, but in effect it is left to the employees’ initiative.	Parties to works agreement are free to agree more favourable information and consultation procedures.	Works councils can refer breaches of information and consultation procedures to local administrative authorities, resulting in fines of up to €2,180 per infringement.
BE**	Applies to ‘technical operating units’ (with at least 100 employees)	Works councils	Mandatory	No	Enforced through checks by labour inspectorate; provision for fines
BG	Both (50/20 employees)	Elected representatives or representatives appointed by	Employers, trade unions or 10% of employees have	Agreements possible on activities of employee	Complaints to labour inspectorate. Violation of information and

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
		trade unions	the right to summon a general assembly to elect/designate employee representatives for the purposes of information and consultation.	representatives and on wider scope for information and consultation	consultation rights can result in a fine of €750–€2,500 for the employer and of €125–€500 for the individual managers responsible.
CY	Undertaking level (30 employees)	Trade unions	Mandatory	Yes	Reference to labour courts. Fines for non-compliance of up to CYP 2,000 (about €3,417 as at 14 March 2008) for individuals and up to CYP 5,000 (€8,543) for legal entities
CZ	Applies to all enterprises (some duties do not apply to employers with fewer than 10 employees).	Trade unions, possibly works council if no union present	Mandatory, irrespective of whether employee representatives exist	Yes – but only to provide stronger rights for employees	Complaint by employees/ representatives to labour inspectorate, which can fine employers who breach information and consultation duties a sum of CZK 200,000 (€7,966)
DE	Establishment level (five employees)	Works councils	Information and consultation a requirement only where works councils exist. Establishment of works councils not mandatory. Employees or trade unions have to take the initiative.	Some non-statutory information and consultation arrangements exist but their legality is unclear.	Complaint by works council to labour court. Obstructing or interfering with activities of works council is punishable by fines or imprisonment. Failing to supply information to the works council is punishable by a fine of up to

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
					€10,000.
DK	Undertaking level (35 employees)	Cooperation committees	Mandatory	Yes	Reference to Cooperation Board (or labour court in finance sector). Provision for arbitration in absence of settlement. In cases of a breach of information and consultation rules, fines (unspecified) may be imposed.
EE	Undertaking level (30 employees)	Employee trustees	Mandatory, irrespective of whether employee representatives are present. Direct right to information. Consultation if initiated by employees	Yes (but uncommon in practice)	Complaints by employees or employee representatives to labour inspectorate; fines of up to EEK 50,000 (€3,196)
EL	Both (50/20 employees)	Trade union or, where no union is present, works council	Dependent on employee initiative	Yes	Fine of €1,000–€3,000 for each violation; temporary or permanent closure of enterprise/ establishment
ES***	Undertaking level (50 employees)	Works councils	Mandatory	Yes – collective agreements may set additional information and consultation provisions, as long as agreements respect legislative	Non-fulfilment of legislation implies sanctions, which are established by the procedures and sanctions law (Law 8/1998)

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
				requirements	
FI	Undertaking level (20 employees)	Trade union representatives; elected representatives where no union representatives are present	Mandatory; direct right to information	Yes – where issues are covered by both the Co-operation Act and a collective agreement, negotiations pursuant to the latter take precedence.	On application by employee representatives or ministry of labour, provincial government may order undertakings to meet requirements of Co-operation Act or face a fine of up to €30,000
FR	Undertaking level (50 employees)	Works councils	Works councils technically mandatory in all undertakings over employment threshold	Yes, as long as agreements respect the minimum requirements set out in the legislation	Complaint by works council to labour court. Fines of up to €3,750 per infringement and/or a penalty tax (50% of 1.6% of global salary per year)
HU	Undertaking level (15 employees)	Trade union, works councils/worker representatives	Direct right to information; consultation if initiated by worker representatives	Yes – the parties (i.e. works councils or trade unions and employers) may freely agree on any topics not included in the legislation.	No clear sanctions
IE	Undertaking level (50 employees)	Agreed company-specific arrangements (direct information and consultation permissible). Statutory fallback: elected or appointed information and consultation	Initiative needed by 10% of employees or the employer	Yes – customised ‘pre-existing agreements’ (as at commencement dates of legislation) permitted, as are agreements negotiated via	Disputes over negotiation or operation of agreements may be referred to labour court. Government may appoint labour inspectors to investigate alleged breaches of legislation. Maximum penalty

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
		forum, to include representatives from trade unions representing at least 10% of the workforce		statutory procedure	of €30,000 fine or three years' imprisonment
IT	Undertaking level (50 employees)	Information and consultation rights are granted to worker representatives, as defined by the regulations and by collective bargaining, and therefore to the <u>unitary workplace union structure</u> (<i>Rappresentanza sindacale unitaria</i> , RSU) and territorial trade unions	Mandatory, but implementation may depend on presence and initiative of workplace representatives	Yes	Violations of information and consultation obligations reported to provincial labour directorates. Provision for fines of between €3,000–€18,000. Industry-wide agreements provide for conciliation in disputes about confidentiality and withholding of information
LT	Applies to all enterprises (no thresholds specified)	Trade unions or, where no union is present, elected works councils	Information and consultation mandatory only when employee representatives operate within the enterprise	Yes, but must respect statutory requirements	Complaints to labour inspectorate. Fines of LTL 500–5,000 (€145–€1,450) for non-compliance with information and consultation duties
LU	Undertaking level (15 employees)	Joint committees (undertakings with 150+ employees); employee committees (undertakings with 15+ employees)	Mandatory	Yes, under draft legislation, but must respect statutory requirements	Reference to labour inspectorate for conciliation. If no settlement, is referred to labour court. Fines of €251–€10,000 in cases involving joint committees and of €251–€15,000 in cases involving employee committees

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
LV	Applies to all enterprises (no thresholds specified)	Trade unions or 'authorised employee representatives' who may be elected if an undertaking employs five or more employees	Mandatory	Yes	Complaints by employees or employee representatives to state labour inspectorate, which may initiate further procedures. Violation of employers' information and consultation obligations can result in warnings and fines (maximum fine of €711)
MT	Undertaking level (50 employees)	Trade union representatives or elected employee representatives	Mandatory	Yes, as long as agreements respect the minimum requirements set out in the legislation	Complaints to Director of Industrial and Employment Relations/Industrial Tribunal. Fines of up to MTL 5,000 (€11,647)
NL	Undertaking level (50 employees)	Works councils	Mandatory	Yes, but there may be no downward deviations from the law	Employers, employees, works councils and trade unions apply to the ordinary courts to enforce the relevant provisions. Fines of up to €16,750
NO	Undertaking level (50 employees)	Trade union representatives or other elected representatives, such as working environment representatives or others	Mandatory	Yes, as long as the main principles of the legislation are complied with	Labour inspectorate supervises compliance and may issue orders, impose fines and halt work. Disputes relating to information and consultation may also be referred to the Norwegian Board of Industrial

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
					Democracy
PL	Undertaking level (50 employees)	Employee councils with union-nominated or elected representatives	Employee councils to be established by the trade union or at the initiative of 10% of employees	Establishment of employee councils not required where pre-existing arrangements meet or exceed statutory requirements	Complaints to labour inspectorate, which then represents the employee council in court. The law specifies six actions or omissions which may incur criminal liability. All of these offences carry the same penalty – restriction of liberty (up to one month) or fines of PLN 20–5,000 (€6–€1,416)
PT	Both (50/20 employees)	Works councils or, if none, trade union representatives	Mandatory	Yes	Violation of information and consultation rights is considered a serious or very serious offence. Employee complaints to labour court/labour inspectorate. Fines of up to €57,600 for larger companies
RO	Undertaking level (20 employees)	Trade unions or elected representatives	Mandatory	Yes	Legislation supervised by officials designated by the Ministry of Labour, Social Solidarity and Family (Ministerul Muncii, Solidaritatii Sociale si Familiei, <u>MMSSF</u>) or by other institutions such as the labour

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
					inspectorate. Fines of RON 1,000–20,000 (€270–€5,390) for non-provision of information, RON 2,500–25,000 (€675–€6,735) for failing to consult and RON 5,000–50,000 (€1,345–€13,473) for provision of incorrect or incomplete information
SE	All employers (no threshold specified)	Trade unions and their representatives	Mandatory	Yes	Disputes referred to National Mediation Office (<u>Medlingsinstitutet</u>) and Labour Court. Provision for fines (unspecified)
SI	Undertaking level (generally no threshold specified but 50 employees in special case of ‘sole entrepreneurs’) and establishment level if establishments have legal form	Works councils or, in smaller companies, employee trustees	Initiative from workers’ side required, usually from a trade union	Yes – agreements may provide additional participation rights to those determined by law	Disputes on consultation procedures referred to arbitration. Judicial procedure also foreseen but rarely used. Provides for relatively low penalties (up to €4,000 for individuals and €20,000 for organisations)
SK	Undertaking level (50 employees)	Trade unions, works councils	Mandatory, but usual only where trade unions and works councils have been established	Yes, statutory information and consultation rights can be extended by collective agreements	Compliance supervised by labour inspectorate. Fines of up to SKK 1,000,000 (€30,967)

Country	Law applies at establishment or undertaking level (Employment threshold)*	Identity of employee representatives	I & C mandatory or dependent on employee initiative	Scope for agreement-based I & C departing from statutory provisions	Enforcement procedures and sanctions
UK	Undertaking level (50 employees)	Agreed company-specific arrangements (direct information and consultation permissible). Statutory fallback: elected information and consultation representatives	Initiative to set up information and consultation arrangements needed by 10% of employees or the employer	Yes – customised ‘pre-existing agreements’ and ‘negotiated agreements’ reached via statutory procedure permitted	Complaints to Central Arbitration Committee (<u>CAC</u>). Fines of up to GBP 70,000 (€91,200) can be imposed by the <u>Employment Appeal Tribunal</u>

Notes: * When legislation is fully implemented.

** No transposition measures yet. Information given is on the statutory position prior to implementation of the social partners’ agreement of November 2007.

*** Information refers to position prior to adoption of Spanish legislation on 16 November 2007 to implement the Directive.

Source: EIRO national centres, 2007

Level of application

The only countries where the establishment is the primary level at which the information and consultation legislation applies are Austria and Germany. Indeed, this particular flexibility in the directive was essentially introduced to accommodate the two countries’ establishment-focused works council system. Elsewhere, the vast majority of Member States’ information and consultation measures apply at undertaking level. In a number of countries – namely, Bulgaria, Greece and Portugal – the information and consultation legislation is applicable to both undertakings with at least 50 employees and establishments with at least 20 employees.

In terms of workforce size thresholds for the application of information and consultation requirements or the establishment of works councils, 13 Member States have set the threshold for undertakings at 50 employees, matching that of the directive. Most of the other countries set lower thresholds, and in some countries – for example, Latvia, Lithuania, Slovenia and Sweden – the information and consultation legislation applies irrespective of the size of the undertaking. In Belgium and Luxembourg, controversy over the issue of lowering existing thresholds of 100 and 150 employees, respectively, for the establishment of works councils contributed to the delay in implementing the directive in those countries (see section below on ‘Key issues’).

In some countries, few enterprises reach the required employment thresholds and the potential coverage of the information and consultation legislation is therefore low. The Greek national centre, for example, reports that only 3% of Greek enterprises employ over 20 employees – the threshold for the right to establish works councils if there is no trade union within the enterprise. For this reason, some of the new Member States have introduced lower thresholds than those put

forward by the directive: for example, Estonia and Cyprus have both set the threshold at 30 employees.

Identity of employee representatives

Member States' national provisions identify a range of employee representatives as the participants in the information and consultation process, with works councils or elected employee representatives forming the largest category. In a number of countries – including Cyprus, the Czech Republic, Finland, Greece, Hungary, Lithuania, Malta, Norway, Romania, Slovakia and Sweden – information and consultation takes place through workplace trade union structures; in most of these cases, there is provision for information and consultation to involve works councils or other elected representatives in enterprises where no trade unions are present. As discussed further below, in a number of countries, including Estonia and Poland, trade unions perceived the introduction of new types of employee representation mechanisms for the purposes of information and consultation as a potential threat to their own position in the workplace.

In Ireland and the UK, the law allows for enterprise-specific agreements to determine the identity of the employee representatives involved, as well as allowing for agreed direct information and consultation methods; however, it also establishes statutory fallback provisions to apply in the event that employees trigger negotiations with their employer about information and consultation arrangements, but where these fail to produce an agreed outcome. In Ireland, the statutory fallback is an elected or appointed information and consultation forum, to include representatives from trade unions that represent at least 10% of the workforce. In the UK, the statutory fallback is for the election of information and consultation representatives.

In some cases, for instance in the Czech Republic and Estonia, the law stipulates that employers must inform and consult employees in the absence of designated representatives.

Whether information and consultation is mandatory or dependent on employee initiative

National approaches differ as to whether information and consultation requirements are mandatory on all relevant employers or whether employees have to take the initiative to trigger their information and consultation rights. Member States fall into three broad groups:

- countries in which information and consultation by employers is mandatory, irrespective of whether employee representatives are present. This is the position in a range of countries, including Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Portugal, Romania, Slovakia, Spain and Sweden. In Estonia, employees have a direct right to receive specific types of information, but need to take steps to initiate consultation. A similar situation applies in Hungary;
- countries in which information and consultation is mandatory where works councils, trade unions or other forms of employee representation exist. This is the case in Austria, Germany, Lithuania, and Slovakia;
- countries in which employees have to take the initiative to establish information and consultation arrangements. The national provisions of Bulgaria, Germany, Greece, Ireland, Poland, Slovenia and the UK fall into this category.

Scope for agreement-based variation

A majority of Member States reportedly take up the option included in the directive of allowing the social partners to reach agreements on information and consultation which establish arrangements that differ from the directive's requirements. However, in a number of cases, national legislation stipulates that such voluntary arrangements must at least meet the minimum statutory requirements and may not constitute a downward deviation from the law in terms of the extent of workers' information and consultation rights. This latter approach has been adopted in, for example, the Czech Republic, Lithuania, Malta, the Netherlands and Slovenia.

Enforcement procedures and sanctions

A variety of enforcement procedures and sanctions are used by Member States to encourage compliance with their national information and consultation measures. In several countries, there is provision for complaints to a labour inspectorate, including Bulgaria, the Czech Republic, Lithuania, Norway, Romania and Slovakia. Arbitration is used in Denmark, Norway, Slovenia and the UK. Provision exists for disputes to be referred to labour courts or other specialist tribunals in Germany, Ireland, Malta and the UK and to the ordinary courts in the Netherlands. Where applicable, the level of fines that can be imposed on defaulting employers varies considerably.

Views of social partners

Involvement in transposition process

Except in those countries where no, or only very minor, transposition measures were considered necessary – notably, Austria, Germany, the Netherlands and Slovenia – the national social partners were involved in the directive's implementation process in all cases; these include countries where transposition has yet to be completed. The nature of the social partners' involvement varied in line with national practices and legislation.

In many countries, **employer organisations** and trade unions made an input to draft implementing legislation through consultation exercises – as seen, for instance, in Denmark, Ireland, Luxembourg, Sweden and the UK. In other countries, they contributed through bipartite or tripartite national consultative structures of various kinds – as found in Hungary, Lithuania, Malta, Poland, Romania and Spain – or through involvement in working parties or committees drafting the legislation – as observed in Bulgaria, Cyprus, Lithuania and Norway.

In a number of countries, the social partners' input to formal consultation procedures extended to agreement between themselves on all or some of the provisions of the national transposition legislation. In Bulgaria, the social partners were represented on a working party drafting the legislation and made a joint proposal that was adopted by the government. Similarly, in Poland, trade unions and employer organisations agreed the text of draft legislation within the Tripartite Commission for Social and Economic Affairs (Trójstronna Komisja ds Społeczno-Gospodarczych), which was reportedly approved by the government. In Norway, the social partners were represented on an ad hoc commission that made a unanimous proposal for the implementing legislation.

In the UK, unusually in the national context, the government invited representatives of the Confederation of British Industry (**CBI**) and the Trades Union Congress (**TUC**) to take part in discussions with ministers about how the directive should be implemented 'within parameters set by the government'. This resulted in an agreed 'outline scheme' which set out a framework for regulations to implement the directive.

In Belgium, Denmark and Italy, national social partner organisations reached more autonomous bipartite agreements on the directive's implementation. In Denmark, the central social partners amended their existing cooperation agreements to comply with the directive and the government introduced legislation that essentially applied the provisions of these agreements as amended, albeit with a few variations, to areas not covered by collective agreements.

In Italy, all of the main central social partner organisations reached a 'joint opinion' on the directive's implementation, which set out detailed transposition provisions. The government subsequently enacted legislation that gave this joint opinion legal force, adding only provisions on sanctions.

In Belgium, initial attempts to reach an agreement in the bipartite National Labour Council (Conseil National du Travail/Nationale Arbeidsraad, **CNT/NAR**) failed, and the social partners could produce only a divided opinion on transposition. However, they revisited the issue and agreed an approach to implementation in November 2007, which should form the basis for legislation.

National debate

The extent to which the directive's transposition was a significant issue for debate among the social partners varied considerably; generally, but not in all cases, this was in line with the extent of the changes required to existing provisions.

Little or no specific debate is reported on the subject in countries such as Austria, Finland, France, Germany, Greece, Latvia, Lithuania, the Netherlands, Norway, Portugal, Slovakia, Slovenia and Sweden. However, in Austria, Germany and Slovenia, some trade union disagreement arose with the government's view that existing legislation met the directive's requirements on all points. Although the directive's implementation involved the introduction of new information and consultation structures or processes in Bulgaria, Cyprus, Malta and Romania, it appears that debate on the issue was muted. Debate, while it occurred, was arguably less than high-profile in the Czech Republic, Denmark, Hungary, Luxembourg and Spain.

The largest amount of debate was prompted by the directive's transposition in Belgium, Estonia, Ireland and the UK – and to a lesser extent in Poland. In Ireland, Poland and the UK, this was because its transposition introduced general information and consultation rights that were previously unknown. In Estonia, where trade unions organised protests against the government's initial legislative proposals, transposition was controversial due to its implications for the relationship between union and non-union channels of representation. In Belgium, the question of transposition reignited a long-running debate on worker representation in small and medium-sized enterprises (SMEs).

Key issues

The content of national debate among the social partners, and the views expressed by them, naturally reflected the relationship between the directive's requirements and the current information and consultation provisions in each country. Very broadly, in those countries where there was significant debate, it can be said that employer organisations sought to minimise the changes required, limiting any extension to new undertakings or establishments and restricting new or additional information and consultation rights, while keeping the extra administrative burden and costs to a minimum. Conversely, trade unions generally sought to maximise the categories of undertakings or establishments covered, make information and consultation rights as wide-ranging and effective as possible, and maintain or extend their own role in this area, while in some cases protecting against a perceived threat to their position.

While the specific preoccupations of the social partners depended on particular national situations, some issues were common to a number of countries. Most notably, the choice of applying the directive's requirements to undertakings or to establishments and/or the workforce-size thresholds above which undertakings or establishments are covered by these requirements were of concern to employer organisations, trade unions or both in countries such as Belgium, Cyprus, the Czech Republic, Estonia, Germany, Greece, Luxembourg, Malta, Norway, Spain and Sweden. This debate has been most complex in Belgium and Luxembourg and has contributed to these countries' failure to implement the directive thus far:

- in Belgium, current legislation provides for works councils in 'technical operating units' with at least 100 employees, rather than undertakings with at least 50 employees or establishments with at least 20 employees, as specified in the directive. In initial talks, employer organisations argued that a technical operating unit is equivalent to the directive's definition of an undertaking, and that compliance with the directive required only a lowering of the workforce-size threshold to 50 employees for establishing works councils. Trade unions claimed that a technical operating unit was equivalent to the directive's definition of an

establishment, and that all such units with at least 20 employees should thus be covered by information and consultation rights. The unions suggested that this could be done through a new form of social dialogue body for SMEs, which would combine information and consultation rights with some of the roles of statutory health and safety committees (which must be set up in companies with more than 50 employees) and non-statutory trade union delegations (for which there are varying thresholds set by collective agreement). Representation in SMEs has long been a matter of debate in Belgian industrial relations. In November 2007, the social partners finally agreed a compromise, whereby the directive's information and consultation rights should be exercised by health and safety committees in operating units with 50–100 employees. In relation to units with 20–50 employees, the social partners have agreed that trade union delegations should have the relevant information and consultation rights and that they will make efforts to lower the workforce-size thresholds for establishing such delegations, where necessary. Furthermore, the partners have agreed to work on establishing a 'back-up' information and consultation system to apply where trade union delegations are not present;

- in Luxembourg, information and consultation currently takes place through joint works committees in companies with 150 or more employees and through employee committees in companies with 15 or more employees. Joint works committees' rights largely meet the directive's requirements, but those of employee committees do not, notably because they lack consultation rights and do not deal with economic matters. The government's initial approach to transposition was to maintain joint works committees, with a few additions to their role, and strengthen the rights of employee committees in companies with 50–149 employees. It had considered cutting the threshold for joint works committees to 50 employees; however, employer organisations opposed this, arguing that it might result in an external union presence in smaller companies, have a negative effect on recruitment and introduce an extra administrative burden for SMEs. Employee representatives had concerns that the government's chosen definitions of 'undertaking' and 'establishment' were unclear and did not transpose the directive correctly – they argued that the new rights would apply to establishments with 50 or more employees, rather than 20 employees. In a revised bill, issued following criticisms of the first proposal by the Council of State, the government has changed its approach, giving all employee committees – that is, in companies with at least 15 employees – the information and consultation rights required by the directive, including new consultation rights and extended information rights.

In Germany, trade unions do not share the government's view that there was no need for new measures to implement the directive. They argue that certain information on the company's economic situation is currently provided only to 'economic committees', which can only be established in enterprises with at least 100 employees. Smaller companies are excluded and thus, it is asserted, the directive's requirement for economic information in all undertakings with at least 50 employees is not being met.

A second relatively common issue of debate was the relationship of trade unions to information and consultation procedures, which was raised – generally by trade unions, but also by employers in some cases – in countries such as Bulgaria, Estonia, Ireland, Poland, Slovakia and the UK. The debate was most critical in Estonia. In this country, trade unions were unhappy with the government's initial draft implementing legislation, which would have removed trade union representatives' existing right to information and consultation and transferred it to new 'employee trustees', thus excluding unions from information and consultation unless employees elected a trade union representative as an employee trustee (**EE0512101N**, **EE0604019I**). For their part, employers thought the initial proposals did not go far enough in eliminating a 'dual channel' of representation and argued for a greater primacy of employee trustees. In Poland, trade unions

were initially unenthusiastic about the introduction of new employee councils to implement the directive, fearing that this would decrease the interest of workers at enterprises without trade unions in establishing one, as well as disrupt and sideline trade union activity in enterprises with unions.

Other issues that arose across several countries included the following:

- confidentiality and withholding of information – trade unions in the Czech Republic, Greece, Norway, Poland and Portugal were worried about the directive’s provision allowing employers not to inform or consult where to do so would seriously harm or prejudice the undertaking or establishment; they generally feared that this might be abused by employers as a pretext for withholding large amounts of information. Employer organisations in Hungary (**HU0505102F**), Lithuania and Poland had concerns about the confidentiality requirements on employee representatives;
- exclusions from the scope of the implementing legislation – in Bulgaria and Greece, government proposals to exclude ships’ crews or the civil service were of concern to trade unions. In Slovenia, the government’s decision to exclude certain legal types of company – notably, ‘physical persons’ if these employ fewer than 50 workers – was opposed by trade unions, which regard it as an unjustified limitation on the directive’s application;
- issues for information and consultation – employer organisations in the Czech Republic, Luxembourg and Poland thought that the proposed range of topics for information and consultation was too wide. Slovenian trade unions disputed the government’s view that the existing statutory range of issues fully met the directive’s requirements, claiming that those relating to relocations, takeovers, acquisitions in other countries and the creation of subsidiaries are inadequate. Similarly, Austrian employee representative organisations expressed (unofficially) some concern over whether existing rights were in line with the directive’s requirements for information and consultation on substantial changes in ‘contractual relations’;
- sanctions for non-compliance – trade unions in Germany, Greece and the UK viewed as inadequate the proposed remedies if employers fail to meet their obligations, while Italian employers criticised the potential new sanctions imposed on employers. Spanish employers highlighted a lack of provision for penalties if employee representatives fail to observe confidentiality. Meanwhile, Austrian employee representative organisations questioned (unofficially) whether existing sanctions met the directive’s requirements.

Outcomes

In Belgium, Bulgaria, Denmark, Italy, Norway, Poland and the UK, through various routes, the social partners have reached a full or partial agreement on transposition that was taken up by the government – or which will be, in the case of Belgium. Therefore, the social partners can be said to have clearly influenced the implementation process. Trade unions and employer organisations in these countries generally seem to be fairly content with the final implementing legislation, although to varying degrees and in some cases involving a number of caveats:

- in Bulgaria, trade unions still see some shortcomings in the legislation, while employers are pleased with what they regard as a minimalist approach to transposition;
- in Denmark, the social partners’ satisfaction is largely due to having ensured a key role for collective bargaining in transposition, in line with the traditional Danish industrial relations model;

- in Italy, where the implementing legislation incorporated, word-for-word, an agreement between the social partners, the latter are, unsurprisingly, positive about the law. Employer organisations have particularly welcomed the key role given to collective bargaining in implementing the new information and consultation rights, while trade unions are especially pleased with new rights to prior consultation on major corporate decisions;
- in Poland, neither employer organisations nor trade unions were keen on introducing new information and consultation arrangements, for different reasons; this was reflected in their agreement and the subsequent legislation, which arguably provided for the minimum necessary change. However, trade unions have since become more positive about the new employee councils and have started to call for stronger legislation;
- the UK's TUC expressed satisfaction with the final legislation, nevertheless adding that '[we] did not get everything we wanted out of the process and neither did the CBI.' The CBI argued that 'the government has made sense of a poor piece of EU legislation'. Both the TUC and the CBI have expressed some criticisms of the legislation: for example, the TUC questions the scope provided for agreed arrangements to rely on 'direct' forms of information and consultation.

Outside the countries where agreement was reached, the extent to which the social partners' views influenced the final shape of the legislation varied and is not always easy to discern. In Finland, France, Greece, the Netherlands, Portugal and Sweden, transposition was something of a non-event, with few comments being made by the social partners. In Latvia, Lithuania and Romania, an apparently high degree of consensus among the social partners resulted in a similar lack of comments and demands.

Elsewhere, trade unions and employer organisations obtained some relatively minor concessions during the preparation of implementing legislation – as observed in countries such as Cyprus, the Czech Republic and Hungary. For example, in Cyprus, following pressure from employers, the legislation includes a provision that information and consultation agreements should 'keep to a minimum the burden on enterprises, while ensuring the effective exercise of the rights granted'. Meanwhile, Czech employer organisations succeeded in having some existing information and consultation obligations removed from employers with fewer than 10 employees. However, Czech employers remained unsatisfied with the final legislation and the overhaul of the Labour Code of which it formed part, as they considered that it placed too many regulatory burdens on employers.

Debate was most heated and discontent with the final legislation greatest among trade unions, employers, or both, in Estonia and Ireland. Following a protest campaign, Estonian trade unions won concessions in the final legislation on several of their key complaints (see previous section). Most importantly, where a trade union is present in an undertaking, both employee trustees and trade union representatives may participate in information and consultation – in other words, dual-channel representation has been preserved. The unions also prevented an attempt to reduce the free time granted to trade union representatives by introducing a lower level applying to both union representatives and employee trustees. However, trade unions still see shortcomings in the final legislation. Employers, although they won concessions on training for employee representatives, are unhappy with the legislation, which they see as favouring trade unions over employee trustees, giving them preferential rights; they also object to a lower workforce-size threshold than that specified in the directive.

In Ireland, despite some reservations, employer organisations seem basically content with the implementing legislation, which arguably takes the minimalist approach to transposition that they had lobbied for. Trade unions, by contrast, are highly critical. The Irish Congress of Trade Unions (ICTU) has accused the government of taking a 'pro-business sentiment' in its approach to

transposition and called the legislation ‘untenable in its current form’. It claims that, on all of the key issues, the legislation favours employers’ positions. For the ICTU, ‘the legislation is of no real value ... A significant opportunity to enhance workplace cooperation has been sacrificed to appease business interests.’

Social partner concerns in Ireland and UK

Ireland and the UK deserve a separate mention because, given these countries’ voluntarist industrial relations traditions and the novelty of the changes required by the directive, their national debates were distinctive and high profile.

At the time the directive was adopted, Irish employer organisations were concerned that it could potentially open the door to de facto trade union recognition in previously non-unionised companies. Key employer concerns in the implementation process were to:

- recognise existing direct forms of information and consultation and individualised methods of direct employee involvement;
- ensure that employee representatives would be employees of the organisation concerned, thus excluding a role for external trade union officials;
- avoid placing restrictions on business and management prerogative that would have an adverse impact on investment decisions;
- ensure a trigger mechanism, requiring employee support to introduce information and consultation procedures.

Employers’ opposition to ‘indirect’ representative structures was largely based on a concern that it could deter foreign inward investment, particularly from US multinationals – a point emphasised by the fact that the [American Chamber of Commerce Ireland](#) lobbied on the concerns listed above.

Irish trade unions wanted strong support for collective representation in the directive’s implementation, and argued that the directive’s statutory fallback mechanism should not be watered down at the behest of employers. The trade unions feared that, if there was a dilution of these standard rules, employers might simply opt to take no action until the fallback mechanism was triggered. A key issue for trade unions was to maintain, and indeed bolster, the traditional single channel of collective representation through trade unions. Unions also expressed hopes that the directive’s implementation could act as a catalyst for the diffusion of enterprise-level union-management partnership.

In the UK, the main employer body, the CBI, opposed the directive in principle and campaigned extensively to prevent its adoption. Meanwhile, on the trade union side, the TUC supported the measure. The eventual agreement on the directive was welcomed by the TUC as a ‘major strategic breakthrough’, while the CBI praised the UK government for achieving ‘the least damaging deal available’ during the negotiations on the directive’s final text. In discussions with the government about implementing the directive in the UK, employer groups tended towards a ‘minimalist’ approach to implementation, whereas the TUC called for robust legislation to ensure effective transposition of the directive. The TUC’s aim was to ensure that trade unions were given organising opportunities without being in danger of losing information and consultation systems included in existing collective agreements.

As mentioned above, the CBI and TUC, at the instigation of the government, agreed on an ‘outline scheme’ setting out a framework for legislation to implement the directive. In substantive terms, the aspect of the framework shaped most by the concerns of the CBI and TUC appears to

have been the provisions on triggering negotiations where there are pre-existing information and consultation agreements. The CBI's main objective was to protect existing company practice. Similarly, the TUC did not want to expose existing arrangements, which could potentially include trade union agreements, to 'easy challenge' but argued that arrangements that are not based on genuine agreement with the workforce must be capable of being overturned.

Impact of directive on industrial relations practice

Unsurprisingly, in most countries where the directive has prompted no, or only minor, legislative change, little if any impact on established practice is reported. This is the case, for example, in Austria, France, Germany, the Netherlands, Portugal and Slovenia.

Elsewhere, given the relatively recent implementation of the directive, or in some countries its non-implementation to date, most EIRO national centres report that it has as yet had little or no impact on industrial relations practice in their countries – as seen, for example, in Finland and Latvia – or that it is too early for its effects to be fully assessed – as observed, for instance, in Cyprus, Estonia, Greece, Italy and Poland. Moreover, only few legal cases are reported to have arisen.

Among the countries where only minor legislative change has occurred, in Sweden, it is reported that the amendments have had no noticeable impact, but do have particular implications for companies not covered by a collective agreement where all employee organisations now have the right to information. Similarly, in the Czech Republic, the issue of information and consultation was, to a large extent, covered by national legislation before the directive's implementation, and the detailed amendments that have been introduced have not resulted in fundamental changes in practice.

In Denmark, changes to the Cooperation Agreement have meant that information and consultation now applies to all employees in companies affiliated to the Confederation of Danish Employers (Dansk Arbejdsgiverforening, [DA](#)), and occupational groups not represented on the cooperation committee may now be offered special seats. There is greater scope for local agreements to deviate from the Cooperation Agreement and tighter provisions regarding the timeframe for information and consultation, as confirmed in two recent arbitration cases.

In Latvia, it is reported that information and consultation procedures formally adopted by employers are often circumvented in practice, and that employees have not been actively seeking to use the legislation; this reflects the low levels of trade union organisation and possibly a lack of awareness about their statutory rights. The Latvian EIRO national centre reports that most employees are not able to exercise their right to information and consultation in practice, because fewer than one third of employees have functioning representatives – whether trade unions or works councils – through which the legislation requires that information and consultation takes place.

In Hungary, although the directive has resulted in a requirement for more extensive consultation than was previously the case, anecdotal evidence suggests that this has not succeeded in 'shaking up' the consultation practice of most employers.

In Slovakia, the directive's implementation is reported to have contributed positively to the application of employees' rights to information and consultation at enterprises and workplaces where trade unions do not operate. According to the available information, works councils have been established in only a relatively small number of companies to date – amounting to 'hundreds rather than thousands' of companies, compared with the many thousands of local trade union organisations operating in the country. However, the 2003 legislation that implemented the directive established 'a more competitive environment' for employee representation in Slovakian

enterprises, enabling employees to establish works councils regardless of whether trade unions already operate within the organisation. In some companies, trade unions are seeking a cooperative relationship with the works council and, in certain cases, trade union representatives have been elected as members of the council.

Among the countries where the directive has prompted more extensive legislative change, Romania's recent information and consultation legislation has reportedly been reflected in the introduction of new provisions concerning information and consultation procedures in the single national collective agreement for the period 2007–2010 and in collective agreements at other levels. In addition, ongoing legal action is being taken under the information and consultation legislation by employees of Electrica Oltenia, part of the Czech group CEZ, who claimed that a recent restructuring of the company was not the subject of adequate consultation. In Poland, the EIRO national centre reports that employee councils are likely to become an important vehicle for social dialogue, especially given that the majority of enterprises in Poland do not have any form of social dialogue whatsoever. However, the number of councils is still too small to enable their impact in practice to be assessed.

In Italy, the recent (March 2007) legislative decree has yet to be taken up in collective bargaining agreements. The Italian national centre notes that the 'application of the decree will require a lengthy and complex implementing phase, with the purpose of clarifying how and with what frequency firms must disclose information to the worker representatives'. Significantly, trade union proposals for the renewal of the national collective agreement in the metalworking sector included a claim for information and consultation rights regarding decisions concerning employment and organisational change.

In Cyprus and Malta, the numbers of enterprises meeting the relevant employment thresholds for the applicability of the legislation is small. According to the Malta Employers' Association (MEA), the directive did not prompt any significant institutional innovation, as most of the larger companies already had information and consultation arrangements in place, although a few non-union organisations – such as Vodafone Malta – have had to take action to come into line with the regulations. Employees in some companies, especially in the construction sector, were reportedly reluctant to participate in elections for representatives.

In Bulgaria, it is reported that elected information and consultation representatives exist in some companies. However, other than the state railway infrastructure company, these are mainly subsidiaries of multinational corporations in the building, energy and food industries.

Even in Ireland and the UK, where the directive has resulted in particularly significant legislative innovations in an area of industrial relations which was previously largely unregulated, the new legislation does not appear to have driven widespread institutional innovation. The Irish EIRO national centre reports that the only major information and consultation agreements that have come to light are those at the foreign multinationals Tesco and Hewlett Packard, whose consultative forums both pre-dated and pre-empted the requirements of the Irish legislation. The limited impact of the legislation on the ground may be attributable, argues the Irish national centre, to its perceived 'minimalist' nature, along with a lack of awareness among workers of its existence and apathy, or at least more pressing priorities, on the part of the social partners.

In the UK, the 2004 Workplace Employment Relations Survey (WERS 2004) showed that the prospect of information and consultation legislation had not resulted in an upturn in the proportion of workplaces with consultative committees and that the previous downward trend had continued. However, a number of more recent, albeit less comprehensive, surveys suggest that the UK's legislation has prompted increases in the incidence of formal information and consultation arrangements and modifications to existing arrangements, particularly in the UK's operation of multinational companies. While little litigation has yet arisen under the regulations, a leading case

– namely, that between Amicus and Macmillan Publishers Ltd – demonstrates the scope for employees and trade unions to use the law effectively against defaulting employers ([UK0603039I](#), [UK0706069I](#), [UK0708039I](#)). In October 2007, the UK government published a research report examining the establishment and operation of information and consultation arrangements in a range of organisations, in light of the UK’s recent legislation. The report found that their influence on company decisions is often limited, but that they are taken seriously by management and that consultation practice is evolving ([UK0711019I](#)).

Commentary

The main aim of this report has been to chart the national implementation process of Directive 2002/14/EC in the EU Member States. The directive is the first EU measure to impose a general obligation on employers within the EU to inform and consult their employees on a range of issues. As such, the directive represents a substantial step towards the establishment of a pan-European standard for employee information and consultation as a key element of the **European social model**.

The extent of the changes to existing systems of information and consultation and workplace representation, required in order to implement the directive, has varied considerably, with countries falling into three broad groups (although a few fall outside or between these groups):

- in the first group of countries, existing arrangements were considered to meet the directive’s requirements in Austria, Germany and Slovenia, as were those in France, the Netherlands and Portugal following only minor amendments. Longstanding ‘continental’ statutory works council systems – such as those in Belgium and Luxembourg, where the issues delaying transposition relate essentially to workforce-size thresholds rather than the substance of information and consultation – have thus been largely unaffected by the directive;
- in the second group, changes to the respective countries’ information and consultation systems were required to conform to the directive, but not to reform them radically and/or create significant new structures. Most of the countries in this group fall into two sub-categories. The first sub-category comprises a number of Member States with relatively general, statutory information and consultation systems of comparatively recent origin, which have had to strengthen these systems in certain areas in order to fulfil the directive’s requirements: these are mostly new Member States in central and eastern Europe (the Czech Republic, Hungary, Latvia and Lithuania), in addition to Greece. The second main sub-category is made up of Nordic countries (Denmark, Norway and Sweden) with systems based largely on centralised (intersectoral or sectoral) collective agreements and trade union representation, which have needed to extend these systems to cover all relevant employees;
- the third group consists of those countries that have had to make major changes in response to the directive. In some cases, this has been for specific reasons: for example, Italy has had to extend and give legal force to a model based mainly on collective agreements, while at the same time significantly strengthening its content and coverage; Estonia has had to restructure the relationship between union and non-union based channels of information and consultation. However, for most countries in this group – including Bulgaria, Cyprus, Ireland, Malta, Poland, Romania and the UK – a general, statutory system of information and consultation has had to be introduced for the first time. In legislative terms, the impact of the directive has been greatest in countries with no works council tradition, owing to a combination of elements such as: a history of largely voluntarist industrial relations; the primacy of trade unions as a representation channel; and the relatively recent adaptation of industrial relations systems to EU ‘norms’.

Moreover, it needs to be underlined that the directive is intended to establish minimum standards for information and consultation and not to bring about the harmonisation of national regimes in this area. It thus leaves considerable latitude to Member States to tailor its implementation to national traditions and policy concerns. As shown by the earlier comparison of the approach taken by Member States on key issues left to their discretion, there is considerable variation between national provisions in areas such as employment thresholds for the application of the legislation. The directive also appears to have generated institutional diversity in terms of which employee representatives are designated as the proposed channel for information and consultation. This has been a problematic issue in many of the countries that have had to introduce or modify legislation to meet the directive – particularly those countries where workplace representation has traditionally been provided for primarily through the trade unions, as in many of the new Member States – often leading to the adoption of new institutions or types of representative, or mixed systems. In some countries, compliance with the directive has resulted in the creation of a secondary channel of workplace representation alongside the trade union, sometimes in competition with the union.

In other areas where Member States have options under the directive, they exhibit a range of approaches to: whether information and consultation is mandatory or dependent on employees taking the initiative; whether the social partners can agree on information and consultation arrangements which differ from the statutory provisions; and the enforcement procedures and sanctions underpinning the right to information and consultation.

It might be expected that the intensity of national debate among the social partners on the directive's implementation would match the extent of the changes required to existing information and consultation systems. While this has largely been the case, there have been some exceptions. For example, despite the required introduction of new information and consultation structures or processes in Bulgaria, Cyprus, Malta and Romania, debate was reportedly low-key. On the other hand, debate in Belgium has been lively, as transposition issues have collided with an ongoing discussion on worker representation in SMEs. Overall, in countries where significant debate has been generated, two main issues have come to the fore:

- the first issue relates to whether to apply the directive's requirements to undertakings or to establishments and/or the workforce-size thresholds above which undertakings or establishments are covered by these requirements. This issue has emerged in a number of countries with widespread existing information and consultation systems – notably, Belgium and Luxembourg. In this debate, employer organisations have largely sought to limit any extension to new undertakings or establishments, while trade unions have generally called for the widest possible extension;
- the second issue concerns the relationship of trade unions to information and consultation procedures, a topic that has generated heated debate in those countries where trade unions have traditionally been the sole or main representation channel – such as Estonia, Ireland, Poland and the UK. Trade unions have been the main protagonists in this debate, seeking to preserve or expand their own information and consultation role and, in some cases, expressing concern about the perceived threat to their position from new channels and structures.

It is generally where the changes required have been greatest and/or the debate most intense that the social partners have played the biggest role in shaping national transposition measures – although this has also occurred in countries such as Denmark and Norway, reflecting national industrial relations practices rather than necessarily the importance or contentiousness of the changes required. This has occurred through two routes. The first route has involved reaching agreements on all or some of the implementing provisions, which have been taken up the

government, as has occurred in Belgium, Bulgaria, Italy, Poland and the UK. The second, more conflictual route has involved unilateral lobbying and campaigning. The clearest example of this can be seen in Estonia, where trade unions won important concessions in the final legislation following a protest campaign. In Ireland, trade unions believe that employers' lobbying has had a similarly profound effect on the country's transposition legislation.

Finally, it should be highlighted that it is still very much 'early days' in terms of attempting to assess the practical industrial relations impact of the information and consultation directive. The directive's implementation deadline was March 2005 – only two-and-a-half years ago at the time of compiling this report. Furthermore, of the 28 countries examined, three have still not taken the necessary measures to implement the directive at the time of writing, while four did not do so until 2007 and four did so in 2006. In addition, a number of countries with no existing general and statutory information and consultation system took up the option in the directive to phase in application of its requirements for smaller undertakings or establishments over the period up until March 2008.

Thus, it is not surprising that most EIRO national centres report that national measures giving effect to the directive have, as yet, had little or no impact on industrial relations practice in their respective countries, or that it is too early for its effects to be fully assessed. Moreover, little is reported by way of case law under Member States' implementing legislation. This picture may reflect not only the relatively recent implementation measures in most Member States, but also factors such as trade union ambivalence towards the information and consultation legislation, the need for employees to take the initiative in a number of countries – which may well be difficult in undertakings without trade union organisation – and a possible lack of awareness among workers of both their rights and the enforcement mechanisms.

Clearly, it is far too early for a measured assessment to be made of the overall impact of the information and consultation directive. However, 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.

Mark Carley and Mark Hall, SPIRE Associates/IRRU, University of Warwick

Annex 1: Country codes and abbreviations

Country code	Country name
AT	Austria
BG	Bulgaria
BE	Belgium
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

EU15 – 15 EU Member States before May 2004 (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK)

EU10 – 10 new Member States that joined the EU on 1 May 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia)

EU25 – the EU15 and the EU10

EU27 – 27 EU Member States, comprising the EU15, the 10 new Member States that joined the EU in May 2004, in addition to Bulgaria and Romania, which joined the EU on 1 January 2007

EF/08/32