



Eurofound

# National practices of information and consultation in Europe

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## Contents

Executive summary	<b>1</b>
Introduction	<b>5</b>
1. Analytical framework and methodology	<b>9</b>
2. Impact of the Directive on national practices of information and consultation	<b>17</b>
3. Findings from six Member States	<b>41</b>
4. Conclusions	<b>57</b>
References	<b>59</b>



# Executive summary

## Introduction

The aims of this project are to explore recent experiences in the practice of information and consultation (I&C) at national level, building on the findings of the European Industrial Relations Observatory (EIRO) 2011 report entitled *Information and consultation practice across Europe five years after the EU Directive* (Directive 2002/14/EC). The research analysed the effects of the I&C Directive both on national I&C practice – specifically on employees, trade unions and employers' associations, and companies (in particular, HR managers) – and on national systems of industrial relations. It also explored whether national practices ensure the adequate, effective and timely information and consultation of employees in the interests of both employers and employees.

The research included a literature review and 12 case studies. It should be noted that most pre-existing research focuses on the UK and Ireland, as these Member States have been the subject of most of the published material to date, and this report reflects this limitation.

## Policy context

While many EU Member States have long-established legal frameworks for I&C, Directive 2002/14/EC marked the introduction of workers' general rights to I&C through permanent structures across the European Union for the first time. Arguably, the European Commission's legislative proposal was strongly influenced by a number of high-profile cases of company restructuring involving plant closures and large-scale redundancies, in which the I&C procedures were disregarded or proved ineffective. Most notably, the EU-level I&C debate took on a new impetus in early 1997, when Renault, the France-based automotive multinational, suddenly announced that it would close its plant in Vilvoorde, Belgium, with the loss of over 3,000 jobs. The Commission felt that an EU initiative was necessary to overcome shortcomings in national and EU law – in particular, the fact that while most Member States had a statutory or negotiated legal framework establishing I&C rights at various management levels (establishments, undertakings, groups), these rights were not always respected in practice. The Directive sought moreover to strengthen the role of the social partners in facilitating effective I&C.

## Key findings

In terms of the differing extents to which the Directive has driven changes to national I&C arrangements/regulation, a 2008 EIRO report identified three main categories of change:

1. no change or virtually no change (Austria, France, Germany, the Netherlands, Portugal, Slovenia);
2. minor change (Belgium, the Czech Republic, Denmark, Finland, Greece, Hungary, Latvia, Lithuania, Luxembourg, Norway,<sup>1</sup> Slovakia, Spain, Sweden);
3. major change (Bulgaria, Cyprus, Estonia, Ireland, Italy, Malta, Poland, Romania, the UK).

In a number of countries where there was 'no change or virtually no change' or 'minor change', this reflected the fact that some governments had pre-empted the Directive with legislative change, as was the case in Hungary and Slovenia.

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<sup>1</sup> Even though it is not an EU Member State, Norway is included since it is a member of the EIRO network.

The Directive's impacts on national I&C practices have been very limited in most Member States. The evidence, albeit limited, that exists to date is heavily centred on the UK and Ireland – systems where the greatest level of change was required. There was little or no impact in countries with pre-existing national I&C systems that had no change or virtually no change (Category 1) or which had minor changes introduced through legislation (Category 2). In a number of Member States with no pre-existing statutory systems of I&C (Category 3), the legislation introduced a statutory right of general consultation for the first time. However, in practice, the effect of the Directive was insufficiently strong to generate major institutional change, although institutional adaptation did occur. For example, both Poland and the UK had legislation introduced for the first time; however, the extent to which the national systems underwent major organisational-level changes is limited and it certainly has not changed the character of I&C. This may at least partly explain the widespread indifference of the social partners to the directive's effects following transposition.

The case studies show a wide variety of organisational-level approaches. In those that were the most active in their consultation (DutchAirline, GreekBrewery, UKIT), major organisational changes were tempered by the presence of well-informed workers' representatives who actively engaged over substantive issues such as reducing the numbers made redundant in restructuring. At a less advanced (but nonetheless meaningful) level, while the principle of managerial decisions was not altered in some organisations, the detail on how changes were implemented was subject to changes through consultation. Finally, there was a third trend of micro-operational issues being open to consultation but where the major issues were reserved for managerial determination.

There was no particular pattern in the case studies in terms of country or sector in which the organisation was based; rather, the quality of the consultation depended on the extent to which management were committed to the process. Management that had a culture of supporting active consultation were more likely to engage with the worker representatives over major issues of organisational change.

The legislation has not brought about fundamental change to any national system of industrial relations. Countries with established, legally enshrined systems of I&C that are supported by the prospect of significant sanction in the case of failure to implement the legally required minima are more likely to have companies that actively consult than countries with only weak constraints.

From the scant evidence available, the legislation has not brought about a significant upturn in the quantity and quality of I&C bodies. While the Commission had sought to create a system where significant decisions taken without consultation could be annulled, the lack of meaningful sanctions in the legislation, and the fact that governments with low levels of legal support for I&C (like Ireland and the UK) used the principle of subsidiarity to avoid creating a fundamental right to I&C, have affected the overall efficacy of the legislation. Similarly, for those countries with well-developed I&C legislation, this was generally more protective of workers than what was required by the legislation, making it of little effect all round.

## Conclusions

Directive 2002/14/EC has not played a very significant role in terms of shaping meaningful organisational-level I&C. The research indicates that there is rarely a direct call for general I&C from workers and the request for the establishment of an I&C forum can come after a decision affecting the organisational context has been taken. Creating specific I&C rights around particular organisational circumstances has been much more effective because a specific set of circumstances trigger the necessity for consultation.

While the Directive did not initiate a new wave of meaningful consultation in countries that introduced general I&C legislation for the first time, it did play a 'nudging' role in encouraging some organisations, particularly multinationals

based in the UK and Ireland, to establish and/or strengthen I&C processes. Similarly, the wide flexibilities allowed by the Directive and national legislation to the social partners did not encourage the widespread adoption of I&C practices.

In terms of good practice, it is unsurprising that the Netherlands – held up as a consensus model of industrial relations and which also has significant I&C legislation – produced cases where meaningful I&C took place. Secondly, management commitment regarding resources to support effective I&C and in terms of consulting over difficult issues (as well as low-level operational issues) is both an input to and outcome of meaningful consultation. Thirdly, meaningful I&C requires that parties to the process make a sustained commitment to it rather than viewing it as a mechanism that must be fulfilled due to legal or organisational requirements.



# Introduction

While many EU Member States have long-established legal frameworks for information and consultation, Directive 2002/14/EC (European Commission, 2002) marked the introduction of workers' general right to information and consultation for the first time through standing structures across the European Union. Arguably, the Commission's thinking was strongly influenced by a number of high-profile cases of company restructuring involving plant closures and large-scale redundancies, in which information and consultation (I&C) procedures were disregarded or proved ineffective. Most notably, the EU-level debate on possible legislation on national I&C took on a new impetus and urgency in early 1997, when Renault, the France-based automotive multinational, suddenly and controversially announced that it would close its plant in Vilvoorde, Belgium, with the loss of over 3,000 jobs. The company failed to observe prior statutory I&C procedures over the closure and the case led to an EU-wide furore, with Renault strongly criticised by politicians and trade unions at European and national levels.

One of the issues that arose in the ensuing debate was a perceived need for general EU-wide rules on national I&C arrangements. In March 1997, Pádraig Flynn, the then EU Commissioner for Employment, Social Affairs and Inclusion, made a statement on the Vilvoorde affair to the European Parliament (EP) in which he identified a 'need to complement the existing Community rules with more general rules which make information and consultation compulsory, on a permanent basis, in regard to all relevant aspects of the management of companies at national level'. From 1997 to the Directive's adoption in 2002, a series of other high-profile closures and/or major job losses (e.g. at Levi Strauss, Michelin, Goodyear-Dunlop, ABB-Alstom, Marks & Spencer and Danone), often raising questions about the adequacy of I&C procedures over such restructuring, added to the pressure to adopt the draft Directive.

A consistent expectation of the Commission for a Directive on national I&C was that it would improve the application in practice of the specific I&C provisions in the Directives on collective redundancies (98/59/EC) and business transfers (now enshrined in 2001/23/EC). The Commission argued that the absence of a general framework for national I&C meant that this existing EU legislation had a limited impact. The 'preventive' approach on which the legislation is based was difficult to implement in the context of I&C procedures that were 'isolated, fragmented' and limited to cases of imminent collective redundancies and business transfers. The preventive approach would be consolidated and more effectively developed by more 'stable and permanent' I&C procedures, which are 'the only way of ensuring that employment management is genuinely forward-looking' (in the words of the 1995 Communication on worker I&C).

## Guaranteeing a 'fundamental right' to I&C

The Commission stressed that the provision of I&C to employees in advance of any decisions likely to affect them is a 'fundamental social right'. The Commission argued (in its November 1997 second-stage social partner consultation document) that an EU initiative was required to recognise this right at EU level. The Commission specifically stated that current EU rules made no provision for the annulment of company decisions that affect employment contracts or conditions where these decisions were taken in breach of workers' right to I&C (as occurred, for example, at Renault Vilvoorde). This right therefore did not have the degree of protection normally given to fundamental social rights. Further, the Commission believed that the effectiveness of the right to I&C was sometimes questionable because of the weak sanctions applied in national law where this right was breached, especially as some Member States had no arrangements for rescinding decisions taken in breach of the right to I&C, particularly as regards their effects on employment contracts or conditions.

To address these concerns, the Commission supported a mechanism for annulling the employment effects of decisions taken without correctly observing I&C rights as part of a set of effective, appropriate and dissuasive sanctions for such breaches. This mechanism was an important part of the Commission's initial 1998 proposal for a Directive and was maintained in its amended proposal in 2001. However, it was dropped from the final Directive by the Council and European Parliament. The fundamental right on information and consultation was further strengthened by Title IV of the

Charter of Fundamental Rights of the European Union, which states that ‘workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices’ (Eurofound, 2011b).

### Overcoming shortcomings in existing law

A key justification deployed by the Commission (from its November 1997 second-stage social partner consultation document onwards) was that an EU initiative to define a ‘general and consistent’ framework for I&C at European level was necessary to overcome a series of shortcomings in national and EU law. This was the central argument that, in the view of the Commission, justified EU action on national I&C in light of the principle of subsidiarity. For the Commission, the key national shortcomings included the facts that although most Member States had a statutory or negotiated legal framework establishing I&C rights at various management levels (establishments, undertakings, groups), these rights were not always respected in practice; national arrangements and practices were not always capable of ‘anticipating and forestalling social problems which may arise from changes in the life, organisation and general running of a firm’; I&C often played too weak a role with regard to the social impact of strategic and economic decisions, as consultation on measures to mitigate the social consequences of such decisions occurred ‘too far downstream of the decision-making process’; and sanctions for breaches of employees’ I&C rights were often weak. In addition, the Directive’s approach was to strengthen the role of social partners in facilitating effective I&C.

The Commission argued that in a context of constant change, the adaptability of employees takes on a crucial role, and I&C is ‘an essential tool for adaptability’. This adaptability must be ‘conceived and achieved’ through I&C procedures that allow employees to face and anticipate change. Further, anticipation of problems is essential and implies that a ‘genuine policy of prevention and support measures’ must be put in place to accompany any strategic decisions, including those which might affect employment (training, restructuring, redeployment, etc.) or are intended to increase workers’ employability. Such a policy ‘should not be developed to deal with job cuts or redundancies, but should be seen as a permanent and fundamental factor contributing to the success of the undertaking’.

### Content of the Directive

In terms of the content of Directive 2002/14/EC, which was passed in 2002, Article 3 requires that information be given in such a time as to allow ‘representatives to conduct an adequate study and, where necessary, prepare for consultation’, with Article 4 outlining consultation as being carried out ‘with a view to reaching an agreement on decisions within the scope of the employer’s power’. Thus, the focus of the Directive is aimed at facilitating active consultation that leads to an agreement. Article 4(2) outlines three scenarios to be covered by I&C: ‘information on the recent and probable development of the undertaking’s or the establishment’s activities and economic situation; information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment; information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations’.

The focus of this final report is to highlight how broad regulatory standards determined at EU level in the shape of the Directive have been translated into national-level legal frameworks, tailored to reflect national industrial relations traditions and practices, which in turn provide the regulatory context for organisation-specific approaches to I&C. In order to carry out this analysis, a total of 12 company-level case studies analysing the operation of I&C arrangements in six different national contexts, i.e. two case studies per country, has been undertaken. The selection of countries (industrial relations systems) in which the case studies were undertaken reflects both the range of national industrial relations systems within the EU and the varying national impacts of the I&C Directive. The next section outlines the focus of the research and this report.

## Overall aims of the project

This project sought to map, analyse and assess recent experiences in the practice of I&C at national level in the context of the 2002 I&C Directive and to build upon, complement and deepen the findings of the EIRO report on *Information and consultation practice across Europe five years after the EU Directive* (Eurofound, 2011a). The key themes to cover were identified as trends in the incidence of I&C bodies over the six years since the implementation date of the I&C Directive; the sources of I&C bodies' constitutional provisions (legal requirements or organisation-specific agreements/arrangements); practical arrangements for I&C; national practices in SMEs and public administrations; procedures for the establishment of I&C bodies; the operation/impact of I&C (particularly in the context of the recession); the relationship between I&C bodies and other forms of employee representation/consultation; the exercise of I&C rights (issues, timing of I&C, confidentiality, rights and protection of employee representatives, material and financial resources, etc.); and the enforcement of I&C rights (legal personality of I&C bodies, protection of rights, control of application via labour inspectorates/courts, dispute resolution, sanctions, etc.). In specific terms, the project sought to produce an analytical report of policy and academic literature, alongside 12 company case studies, to investigate what the effects of the Directive are on national I&C practice, specifically for employees, trade unions and employers' associations, companies and national systems of industrial relations, and whether national practices ensure adequate, effective and timely I&C for employees in the interests of both employers and employees.



# Analytical framework and methodology 1

Throughout Europe, Member States' workers and employers have specific rights and responsibilities in relation to I&C organisational-level practices and procedures. These nationally embedded procedures differ considerably in terms of function and form, from the highly juridical practices in systems underpinned by co-determination, e.g. Germany and the Netherlands, to the more voluntarist practices in the UK and Ireland. This research examines the comparative impact of Directive 2002/14/EC on national practices of industrial relations and how these filter downwards to organisational-level practices. Prior to the Directive, I&C rights covered specific issues, for example in terms of collective redundancies or the transfer of an undertaking, or in relation to specific organisational forms, as in the case of the European Works Council Directive. On the other hand, prior to the I&C Directive, there was no right of I&C in relation to general issues surrounding the future and economic performance of an undertaking. While many of the EU15 had established legal rights to I&C, many of the post-2004 accession countries as well as the UK and Ireland had none, other than those legislated for through specific European initiatives. This report outlines the multi-level governance system (Marginson and Sisson, 2004) that has emerged for regulating I&C across Europe. As such, the research looks at the relationship between the European Directive, national implementation instruments and its effect at the organisational level.

To develop the analysis, a framework was developed with a particular conceptual approach to each level affected by the legislation. The first level identified is the national economic system. A particular point of enquiry focuses on the extent to which the legislation is consistent with established practices of employment relations in particular Member States. As will be explained below, a significant literature exists that highlights the effect of national institutional configurations on workplace employment relations. To conceptualise this, the concept of 'path dependency' was used. The second factor identified focuses on the translation of the EU Directive into the national legal framework and the extent to which national governments afford organisations the discretion to shape the forum in specific terms. Thus, the focus of this area is the level of discretion the Directive gives to countries in designing their response to the legislation and the extent to which this legislation allows for varieties of implementation mechanisms – this will be referred to as a 'double subsidiarity trap'. Third, at the organisational level, the effect the legislation has on actual practices comes into focus where the extent to which the case study organisations are 'active consulters' or are 'information only' is examined. Thus, the report builds its analysis around the national environmental level, the national regulatory context and the organisational-level I&C outcomes.

## Path dependency

Since the work of Clark Kerr and colleagues (1960) put forward the 'convergence' theory of industrial relations, industrial relations scholars have focused on the extent to which convergence was occurring or not. In a contribution that is now viewed as overly predictive, Kerr et al argued that industrialisation and technical development, though coming from different starting points, was leading to a convergence on one model. This line of analysis has largely been unproven, with a much greater focus being placed on explaining why divergence still exists. Contemporary comparative industrial relations analysis warns against the assumption that collective institutions and procedures can easily be 'transplanted' from one system of industrial relations to another, or that their impact and outcomes will be similar irrespective of national cultural, economic and institutional context. Rather, comparative industrial relations have often drawn on theories of institutional political economy to explain why common pressures on economies can often prompt highly varied responses (e.g. Thelen, 2010). Pierson (2004) highlights that pressures for change are mediated by the institutional context within which the change is set. Thus, in terms of developing an analytical framework for the research, the starting point is the ways in which national impacts of the Directive have been mediated by existing national industrial relations frameworks and traditions (e.g. the primacy accorded to trade union representation, the extent of social partnership); the key policy choices made by national legislation implementing the Directive (e.g. whether the establishment of I&C bodies is dependent on employee/union initiative); and the attitudes of the social partners towards I&C (with limited employer and/or union interest reported in some countries). In order to do this, the

concept of ‘path dependency’ as applied to industrial relations (e.g. Teague, 2009; Morrison and Croucher, 2010; Morrison et al, 2012) provides a point of reference for explaining divergent national responses to and outcomes of the Directive, based on the extent to which key actors’ strategic choices are shaped by embedded institutional arrangements and pre-existing patterns of behaviour.

Within comparative industrial relations amongst countries, a key explanation of non-convergence is that institutions lead to path dependency, such that despite facing similar pressures, national responses will be different depending on their national institutional framework. As such, path dependency is a core concept to the historical institutionalist school, as it is based on the understanding that actors make investments or absorb transaction costs through certain institutional forms (Penrose, 1959; Skocpol and Pierson, 2002; Kaufman, 2011). To break from such a pattern necessitates writing off such ‘sunk’ costs, which actors rarely wish to do. Paths chosen or designed early on tend to be subsequently adhered to by actors, either due to the difficulty of establishing alternatives or because they simply cannot conceive of an alternative. When change does occur, Teague (2009) argues that two versions of path dependency exist to explain changes. The first views actors as being so deeply embedded in their ways of doing things that changes are exogenous, i.e. actors are incapable of escaping the constraints of existing institutions. The second version allows for actor-initiated changes, but these changes take place in the context of constraints placed by the institutions. Thus, rather than being a tightly executed strategy, institutional adaptation becomes akin to the type of incrementalism that Lindblom (1959) labelled ‘the science of muddling through’. As such, inherited legacies can play a key role in shaping the ways in which industrial relations actors interact with each other (Lindblom, 1959; Teague, 2009). On the other hand, abrupt institutional pressures can lead to ‘discontinuities’ (Hirschman, 1958) that force institutions to adapt, reform or be abandoned in response to these exogenous pressures. A final factor is that the comparative political economy literature stresses that economies with less embedded institutional configurations (generally liberal market economies) adapt quicker to exogenous pressures than those with deeply embedded institutions (generally coordinated market economies) (Thelen, 2009). Schwartz and McCann (2007) highlight that even though critical junctures may occur in terms of the external regulatory framework, internal legacies may exist that persist at the micro level.

Thus, in the context of the I&C Directive, national responses will be heavily shaped by the pre-existing institutions onto which the Directive was superimposed. Yet despite these external pressures, institutional responses may vary at the firm level. As outlined above, within the EU, the Directive had three broad levels of effect on pre-existing institutions. Based on this, the expectation would be that in the case studies within countries that had significant legislative change, as in the UK and Poland, there would be more significant organisational-level adaptations, followed by those that witnessed minor changes and finally to those that did not witness significant change. On the other hand, the extent to which organisations have a wide range of discretion over how they implement I&C regimes may mitigate against a deep level of organisational change. A key point as well is the extent to which the legislation has marked a break with the previous paths. Hence, in economies with deeply entrenched systems of employee representation legislation, the pressure for change will be less than on those whose system is based on voluntarism.

### **Subsidiarity – double or single?**

As with most employment Directives, the role that subsidiarity plays in determining the national response is an important consideration. According to the European Industrial Relations Dictionary, the principle of subsidiarity ‘regulates the exercise of powers in the European Union... The subsidiarity principle is based on the idea that decisions must be taken as closely as possible to the citizen: the Union should not undertake action (except on matters for which it alone is responsible) unless EU action is more effective than action taken at national, regional or local level’ (Eurofound, 2011b).

Today, the principle is defined in Article 5 of the Treaty on European Union (TEU):

*Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*

One might argue that, consistent with the principle of subsidiarity, the I&C Directive provides only a 'general framework' for informing and consulting employees, devolving to the Member States considerable flexibility regarding the practical arrangements for its implementation, e.g. the designation of the employee representatives who are to be informed and consulted, enforcement mechanisms, etc. In many countries, notably the UK and Ireland and a number of the newer Member States, national I&C legislation also incorporates further flexibilities permitted by the Directive, e.g. making mandatory I&C dependent on union or employee initiative, and allowing the social partners to negotiate I&C arrangements that differ from the provisions of the Directive. The possibility of national legislation allowing for firms to locally determine the nature and shape of arrangements effectively constitutes a form of double subsidiarity enabling the adaptation of I&C arrangements to the organisation-specific as well as to national conditions.

The Directive's implications for/impact on national I&C practice will vary according to a range of factors, including the extent of change required by the Directive in national regulatory or institutional arrangements for I&C, key aspects of regulatory design at national level and the attitudes of the social partners towards I&C. As identified by the two existing EIRO comparative studies on the legal and practical impact of the I&C Directive, the I&C regimes of a number of countries, particularly those with 'mature', long-standing works council or trade union-based systems of workplace representation, have been largely unaffected by the introduction of the Directive. In others, however, the Directive has prompted extensive new legislation, notably including a number of countries in central eastern Europe as well as the UK and Ireland. Some other central eastern European countries, such as Hungary and Slovenia, had already embarked on the legislative promotion of works council-type arrangements during the 1990s (Tóth, 1997; Stanojević, 2003). Broadly speaking, trade unions have traditionally been the primary channel of employee representation in these countries, but implementation of the Directive or similar national measures has enabled greater institutional diversity in terms of the types of employee representatives designated as an appropriate channel for statutory I&C, which in some countries has resulted in considerable trade union ambivalence towards national legislative frameworks for I&C.

Yet the transposition of the provisions of the Directive is not straightforward. Thus, one might argue that EU Directives are built, at least to some extent, upon the principle of subsidiarity. According to Article 288 of the Treaty on the functioning of the European Union (TFEU), Directives 'shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. In effect, this means that while general frameworks and results are mandated at the European level, Member States have the discretion to design how they specifically implement the Directives, consistent with their national traditions and institutions. In the UK, the Directive was transposed through the Information and Consultation of Employees Regulations 2004, while in the Republic of Ireland, an act of the Oireachtas introduced the Directive through the Employees (Provision of Information and Consultation) Act 2006. In both, the Information and Consultation Directive was implemented in a 'reflexive' manner where the voluntarist legacy was retained to the maximum extent (Koukiadaki, 2008). In effect, both countries chose to implement the Directive in a minimalist manner that only required the establishment of an I&C forum if workers requested it and which allowed for direct participation rather than representation. However, due to their voluntarist nature, a second level of subsidiarity was involved in that there was a large degree of discretion devolved to the organisation level as to what types of arrangements were put in place at the firm level. Given the loose legal restraints under voluntarism, it is not unexpected that a wide variety of responses were experienced.

### Active consultation or information only

In relation to the organisational-level enquiry, in countries where there are long-standing I&C provisions, the form of what is established may change little; however, even in this scenario, an issue worth exploring is whether the Directive, through the national instruments, affects the quality of I&C. With regard to the analytical framework for assessing the evidence from the case studies, the Directive's 'default' I&C provisions (Article 4) provide an appropriate EU-wide public policy benchmark against which to evaluate organisations' I&C practice, even where organisation-specific, agreement-based I&C provisions apply. This approach has been adopted by Hall et al (2010; 2011) in their analysis of the Directive in the UK.

The Directive envisages that the subject matter to be covered by I&C essentially concerns 'strategic' business issues and the management of major organisational change. Substantively, the Directive's default provisions specify I&C (to varying extents) on:

- 'the recent and probable development of the undertaking's ... activities and economic situation' (information only);
- 'the situation, structure and probable development of employment within the undertaking', including any measures envisaged in relation to prospective job losses (I&C); and
- 'decisions likely to lead to substantial changes in work organisation or in contractual relations', including collective redundancies and transfers of undertakings (I&C 'with a view to reaching an agreement').

Procedurally, the meaning of 'consultation' is defined fairly broadly as 'the exchange of views and establishment of dialogue' between management and employee representatives. However, the default provisions set out a more specific, sequential I&C procedure, essentially providing employee representatives with the right to be informed of planned measures in advance, to have an opportunity to express an opinion and to obtain a reasoned response from management. Hall et al (2012, p. 23) highlight that 'An active approach to consultation required the development of representatives' competence and co-ordination'; that is, active consultation requires investment in providing representatives with the level of support necessary to make meaningful contributions. The commitment of management to a particular depth/breadth of consultation is also highlighted by Hall et al (2012) as being the key determining factor.

According to Eurofound (2011a), six factors are necessary for carrying out effective and active consultation. First, the ability to influence management decisions must be present, entailing that consultation takes place while these decisions are still in a formative stage. Second, both management and workers must be able to bring issues to the forum and the scope must be sufficiently wide to allow this to occur. Third, consultation must take place at all organisational levels, with senior management showing commitment to the process by attending. Fourth, consultation must be complementary to other direct and indirect organisational involvement and negotiation practices. Fifth, worker representatives must have the capacity to build capability, with the support of but independent of management, including training, time off and the ability to communicate with their constituents. Finally, trust must be generated between the parties, up to a level of trust that allows confidential information to be shared.

### Analytical framework

As outlined above, this research focuses on multiple levels and the relationship between different levels in response to the Directive. As such, Table 1 outlines key issues associated with the three factors of the analytical framework. These factors are not discreet, but the table outlines the ways in which they fit together as an analytical framework.

Table 1: *Analytical framework*

Factor	Level	Research questions
Path dependency	National	To what extent does the Directive mark a departure from national traditions? In what ways have national systems influenced the nature of national implementation (e.g. dual or single channel, mandatory right or triggered right)?
Single or double subsidiarity	National organisational	Is there a national template outlined to fulfil the national requirements? How much discretion have organisations devolved in terms of shaping responses?
Active consulter or communicator	Organisational	Do the case studies demonstrate evidence of the exchange of ideas to reach agreement? What is the balance between direct communication methods and representative consultation? How do I&C forums relate to other representation structures that may exist in organisations?

## Methodology

The starting point for the research project is the recent EIRO comparative analytical report on *Information and consultation practice across Europe five years after the EU Directive* (Eurofound, 2011a). This study provided an overview of I&C practice in 26 European countries (the EU27 excluding Finland and Latvia,<sup>2</sup> plus Norway) in light of the implementation of Directive 2002/14/EC. In line with the project specifications, in order to produce the required analytical report on national I&C practice, the research team undertook a literature review covering both academic publications and relevant policy documents produced by the EU institutions, European- and national-level social partner organisations and national governments. The specific focus of the literature review was to identify research-based outputs that map and analyse the practical impact of the I&C Directive in the EU Member States in both quantitative and qualitative terms, particularly in those countries in which the Directive has driven substantial regulatory reform and (potential) institutional innovation.

## Literature review

Evidence on the impact of the I&C Directive on practice was sought in an extensive search of EU-level and national social partner and government/public documents, the academic/research literature and the main international sources of information on industrial relations developments (notably the European Industrial Relations Observatory,<sup>3</sup> Planet Labor,<sup>4</sup> European Employment Review (until 2011) and worker-participation.eu<sup>5</sup>). The EIRO national centres conducted a similar exercise in their countries for the purposes of the 2011 comparative study (Eurofound, 2011a).

The overall picture that emerges is of a general lack of relevant factual data, not least in some of the Member States where the Directive's impact might be expected to be greatest. Information of any kind on I&C practice is generally quite hard to find. Where available, it usually takes the form of surveys and other statistical data (from official bodies, the social partners or researchers) on the incidence of I&C bodies and, less frequently, aspects of the functioning of I&C; smaller-scale and case study-type research; reports in the media or from social partners about how I&C has functioned

<sup>2</sup> No national research centres had been contracted yet at the time of the comparative research in these Member States.

<sup>3</sup> <http://www.eurofound.europa.eu/eiro/index.htm>

<sup>4</sup> <http://www.planetlabor.com/>

<sup>5</sup> <http://www.worker-participation.eu/>

in specific cases (generally related to restructuring and job losses); and statements by and anecdotal evidence from social partner organisations and representatives. Even where such information is present, in many cases it does not allow an assessment of the Directive's effects. In this respect, there is a particular problem with the frequency of statistical and survey-based information. To take the example of surveys of the incidence of I&C bodies, in some countries the most recent relevant statistics predate the Directive's implementation date of 2005, while among countries with more recent data, this often relates only to a single post-2005 date, with no comparable pre-2005 data.

Overall, the most comprehensive – but still patchy – evidence is found in countries such as Belgium, the Czech Republic, Denmark, France, Germany, Ireland, the Netherlands, Poland and the UK. The least is found in cases such as Cyprus, Greece, Italy, Lithuania, Malta, Portugal and Romania. Relevant data are not present to a significant degree in some countries where, in theory at least, regulatory change has made it most likely that the Directive will have had a practical impact. Even where information is available for a particular country, it does not always deal with the area where the Directive might potentially have had an impact. For example, in Member States where the main regulatory effect was on operational issues, there is rarely any information on these aspects of I&C. In general, useful information becomes scarcer the closer the day-to-day operational level is reached.

As for academic research, while much has been written about the role of the EU in terms of attempts to regulate employee voice through European works councils and the European Company Statute, there is a relative dearth of material analysing the I&C Directive and relating it to the wider EU agenda. In a rather exceptional piece, Gold (2010) places the I&C Directive in the wider context of EU legislation on the issue of worker participation. Gold traces a shift in the rationale for encouraging worker participation from one of deepening integration and harmonisation to a more business-case 'productive factor' approach. A recent Eurofound report (2012) provides an overview of the occurrence of social dialogue at the organisational level throughout the EU, though it does not specifically refer to the Directive. As expected, the role of national systems of industrial relations, including mandatory versus voluntary and single- versus dual-voice channels, are identified as important features in shaping organisational-level social dialogue.

It is perhaps unsurprising that much of what has been written from an academic perspective about the implementation of the I&C Directive has concentrated on the UK and Ireland, as implementation potentially fundamentally challenged the voluntarist nature of their industrial relations systems. Initially, the I&C Directive was viewed as a mechanism that could potentially radically alter the nature of employee representation in these 'Anglo-Saxon' economies. In particular, this was based on the fact that for the first time, these two countries had on their statute books mandatory rights for workers to request the establishment of I&C arrangements (Sisson, 2002; Storey, 2006; Gollan and Wilkinson, 2007). Three themes, which will be developed in the next section, emerged from the academic literature dealing with the Directive's implementation in the UK and Ireland: the Directive's relationship with voluntarist systems of employee representation; organisational responses to the Directive; and the implications of the legislation for employment relations actors, principally trade unions.

### Case studies

The focus of this report is to highlight how broad regulatory standards determined at EU level in the shape of the Directive have been translated into national-level legal frameworks, tailored to reflect national industrial relations traditions and practices, which in turn provide the regulatory context for organisation-specific approaches to I&C (to be examined by the company-level case studies; see below). In order to carry out this analysis, a total of 12 company-level case studies analysing the operation of I&C arrangements in six different national contexts, i.e. two case studies per country, has been undertaken. The selection of countries (industrial relations systems) in which the case studies were undertaken reflects both the range of national industrial relations systems within the EU and the varying national impacts of the I&C Directive.

### Selection of countries

EU Member States' national industrial relations systems are commonly divided into five broad groups (European Commission, 2006):

- Anglo-Saxon, comprising Ireland and the UK;
- Continental, including Austria, Belgium, France, Germany and the Netherlands;
- Mediterranean, including Greece, Italy, Portugal and Spain;
- central eastern European, including the Czech Republic, Hungary, Poland and Slovakia;
- Nordic, including Denmark, Finland and Sweden.

In terms of the differing extents to which the Directive has driven changes to national I&C arrangements/regulation, the 2008 EIRO report identified the following categories:

- no change or virtually no change: Austria, France, Germany, the Netherlands, Portugal, Slovenia;
- minor change: Belgium, the Czech Republic, Denmark, Finland, Greece, Hungary, Latvia, Lithuania, Luxembourg, Norway, Slovakia, Spain, Sweden;
- major change: Bulgaria, Cyprus, Estonia, Ireland, Italy, Malta, Poland, Romania, the UK.

To ensure a broadly indicative mix, six Member States were chosen to include at least one country from each group of national industrial relations systems and two from each of the categories reflecting the differing extents to which the Directive has driven changes to national arrangements. Two countries from central eastern Europe were included to take account of the range of experience across this group.

On this basis, the case study countries that were chosen are Denmark, the Netherlands, Slovenia, Greece, the UK and Poland. Denmark and the Netherlands are examples of EU Member States with 'mature', long-standing works council-based (the Netherlands) or trade union-based (Denmark) systems of workplace representation where the Directive did not drive major regulatory or institutional change (though may have 'sharpened interest' in I&C, according to the Danish EIRO correspondent's contribution to the most recent comparative analytical report on the issue – DK1009029Q<sup>6</sup>). In both countries there is a strong cultural acceptance of the value of I&C, and the case studies from these countries may be expected to provide a 'good practice' baseline against which those from the other suggested countries can be compared.

Among the central eastern European countries, Slovenia's I&C arrangements perhaps come closest to western European works council systems (Stanojević, 2003). The Law on the Participation of Workers in Management (LPWM), passed in 1993, provides for employees' councils to be elected by workers in large companies, or a workers' trustee in smaller companies (SI0311102F). The Slovenian government took the view that existing I&C provisions met the requirements of the Directive, but some subsequent amendments were made in 2007 to ensure full implementation (SI0710029Q). Strong trade union support for the establishment of employee councils is reported, and the establishment of employee councils is a core interest of the Association of Employee Councils of Slovenian Companies (ZSDS) (SI1009029Q). Greece is both an example of the southern/Mediterranean group of countries and a country with an economy in which small and medium-sized enterprises predominate. It is also a country that is relatively rarely featured in international

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<sup>6</sup> The report includes coded references to articles on the EIRO website ( e.g. DK1009029Q) – these may be found by inserting the reference into the search box on the top right-hand corner of the index page at <http://www.eurofound.europa.eu/eiro/index.htm>.

comparative research. The Greek case studies were expected to provide some indication of the extent to which the employment consequences of the debt crisis have been the subject of I&C. Greece has a low incidence of employee representation and I&C arrangements, reflecting the fact that only 3% of Greek enterprises employ over 20 employees (GR1009029Q). Under the current legislative framework, works councils may be set up in enterprises employing at least 50 employees, or those with at least 20 employees when there is no enterprise-level union. Where they exist, they are constituted according to statutory requirements, with no scope for agreement-based variation. However, I&C is more typically carried out via trade union representatives.

The UK is a country with ‘voluntarist’ industrial relations traditions where the Directive has driven significant legislative reform, introducing a general statutory right to I&C for the first time, and where there has been emerging academic research on its impact (e.g. Taylor et al, 2009; Bull, 2010; Donaghey et al, 2010; Hall et al, 2010; Koukiadaki, 2010). Organisation-specific agreements or arrangements are the principal means of regulating I&C. The Directive also required major legislative change in Poland. Some statutory I&C provisions were already in place, but were limited to trade unions and a restricted range of issues. Legislation in 2006 provided for the establishment of works councils with I&C rights based on the Directive in undertakings with 50 or more employees, at the initiative of trade unions, where present, or at least 10% of the workforce where there is no union. A union monopoly of appointing works councillors in unionised companies was overturned by a change in the law in 2009 enabling all employees, including non-union members, to nominate candidates for election. The incidence of works councils in Poland has been growing recently, in both unionised and non-union companies, and initial employer and union scepticism appears to be declining. A number of studies of their operation and impact were reported by the Polish contribution to the most recent CAR on the issue (PL1009029Q).

Table 2: *Case studies summary*

Country	Industrial relations systems group	Extent of legislative change
The Netherlands	Continental	None or virtually none
Denmark	Nordic	Minor
Slovenia	CEE-coordinated	None or virtually none
Greece	Mediterranean	Minor
Poland	CEE	Major
United Kingdom	Anglo-Saxon	Major

### Selection of company case studies

Within each of the six countries, two company case studies were carried out. The main criteria guiding the identification of potential case study organisations were as follows:

- in each country, one case study should be from the manufacturing sector and one from services, both drawn from the private sector;
- the organisations concerned should meet the workforce size thresholds specified in the relevant national I&C legislation reflecting the Directive;
- in line with the Directive’s requirement for I&C on major business developments, the aim should be to identify case study organisations in which there has been significant organisational change (restructuring, redundancies, changes in work organisation);
- the organisations should have employee representation arrangements (trade union representatives, works councils, other I&C bodies) that are among those specified or allowed by national legislation as an appropriate channel for I&C.

# Impact of the Directive on national practices of information and consultation 2

This section of the report draws on the findings of the desk based research, as outlined in the methodology.

## Trends in the incidence of I&C bodies since implementation

An exercise in identifying trends in the incidence of such I&C bodies<sup>7</sup> since the Directive's implementation date (March 2005, with phased-in implementation up until March 2008 for smaller establishments/undertakings in Bulgaria, Cyprus, Ireland, Italy, Malta, Poland and the UK) requires both relatively comprehensive national statistics that allow an assessment of the overall incidence of I&C bodies and comparable data for the situation at or around the implementation date and for at least one point since that date. Comprehensive national statistics on the incidence of I&C bodies are absent in many Member States. Such statistics from official surveys or reasonably wide-scale scientific research exist in Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Lithuania, the Netherlands, Poland, Slovakia, Slovenia, Spain and the UK. For some countries, such as Austria, Bulgaria, Denmark and Portugal, figures are available from social partner sources that provide at least strong indications of the incidence of I&C bodies. Elsewhere, there are only estimates or no information at all. Even in the cases of those countries that have relatively comprehensive national statistics, comparable data allowing a comparison of the pre- and post-Directive situations are not available in many cases. In Austria, France, Greece, Hungary and Slovenia, the most recent relevant statistics pre-date 2005. Among countries with more recent data, this relates only to a single post-2005 date (with no comparable pre-2005 data) in cases such as Denmark, Lithuania, Portugal and Slovenia. This leaves relatively few countries – notably Belgium, Bulgaria, Estonia, Germany, Ireland, the Netherlands, Poland, Slovakia, Spain and the UK – where trends in the incidence of I&C bodies since 2005 can be assessed on the basis of national statistics with any degree of confidence.

### New general I&C systems

The Directive's potential impact on the incidence of I&C bodies might be expected to be greatest in those countries where its implementation required the establishment, for the first time, of a general, statutory system of I&C. This was the case in seven Member States: Bulgaria, Cyprus, Ireland, Malta, Poland, Romania and the UK (see above).

In Bulgaria, the Confederation of Independent Trade Unions of Bulgaria (CITUB) collects data on I&C, though only in companies where it has representation. It found that based on the legislation transposing the Directive, elected I&C representatives were introduced at 110 companies in 2007, 34 in 2008 and 73 in 2009, with a total of around 220 by early 2010. A 2010 report for the INFORMIA research project on I&C (INFORMIA, 2010) estimated that at least 50 further companies had elected I&C representatives in addition to the CITUB figure, and that in at least 200–250 companies, the appointment of I&C representatives had been delegated to unions. Around 500 organisations were thus estimated to have Directive-based I&C arrangements, out of 6,500–7,000 covered by the implementing legislation.

According to data from the Polish Ministry of Labour and Social Policy, after the implementing legislation came into force in 2006, the number of works councils rose from 1,900 in March 2007 to 2,120 in April 2008, 2,895 in March 2009, 2,915 in November 2009 and 3,048 in May 2010. The 2010 figure represented 8.9% of all companies potentially affected by the Directive. In addition, the Ministry records that some 4,050 companies reached pre-existing I&C agreements before the national implementation legislation applied to them, bringing the proportion of potentially affected companies with some form of Directive-related I&C arrangement to 20%.

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<sup>7</sup> For the purposes of this report, I&C bodies are defined as the undertaking- and establishment-level representative institutions/employee representatives that are the vehicle for the I&C rights guaranteed by the Directive, depending on the country concerned. These are mainly works councils and similar structures, elected employee representatives, trade union representatives or some combination of these.

In Ireland, the Economic and Social Research Institute, on behalf of the National Centre for Partnership and Performance, conducted large-scale national workplace surveys of employers and employees in 2003 and in 2009. The 2009 employer survey (National Centre for Partnership and Performance, 2009a) covered organisations employing nearly 570,000 employees, while the 2009 employee survey (National Centre for Partnership and Performance, 2009b) covered over 5,000 employees. In 2009, 16% of private sector employers reported that they had formal partnership arrangements involving trade unions (while 2% of employers were planning to introduce such arrangements): this figure was unchanged since 2003. Informal partnership-style arrangements involving employee representatives were reported by 34% of private sector employers in 2009 (and 5% planned to introduce such arrangements); the equivalent proportion in 2003 was 33%. In 2009, 21% of employees indicated that formal partnership institutions were in place at their workplaces in 2009, down from 23% in 2003.

The UK's only relevant genuinely wide-scale, scientific survey (the Workplace Employment Relations Survey) has not been conducted since 2004. However, there are various other sources of relevant smaller-scale survey-based information suggesting an increase in the incidence of I&C bodies, notably in the period between the Directive's adoption and the early years of the UK's phased implementation. Most strikingly, an annual employment trends survey by the CBI employers' body found an increase in employers reporting permanent I&C mechanisms from 35% in 2002 to 57% in 2006 (CBI, 2006). A 2008 survey of HR practitioners by the Chartered Institute of Personnel and Development found that 39% of organisations had introduced new I&C arrangements following national implementation of the Directive in 2005 (CIPD, 2008). There may be signs that the initial (largely employer-led) increase in the incidence of I&C bodies may have faded. In the 2008 CIPD survey, 67% reported that their organisation had representative I&C arrangements, such as a staff forum or council. When the survey was next conducted in 2011, the proportion of respondents with representative I&C arrangements was almost unchanged, at 66% (CIPD, 2011). However, there had been a change in the incidence of different types of I&C arrangement. In organisations with arrangements in 2008, these involved only non-union employee representatives in 42% of cases, only union representatives in 22% of cases, and both non-union and union representatives in 35% of cases. In 2011, the proportion of non-union-only arrangements had fallen to 36% and the proportion of union-only arrangements to 21%, while the share of mixed arrangements was up to 42%.

### Box 1: Multinationals in Ireland and the UK

Academic researchers have looked at issues related to the Directive's effects on the incidence of I&C bodies in multinational corporations (MNCs) with operations in Ireland and the UK. Without explicitly linking this to the UK's implementing legislation, Marginson et al (2010) highlight that in the three years leading up to the Directive's implementation, MNCs in the UK engaged in much work around establishing representative forums. On a similar note, Lavelle et al (2010) identify the Directive as having a positive effect in nudging MNCs in Ireland to establish representative forms of voice. They highlight in particular, though, that the high response rate in terms of MNCs establishing forums in response to the Irish implementation was to be expected, as the active role of the American Chambers of Commerce in Ireland in shaping the legislation meant that they were relatively content with the demands (or lack thereof) that it placed on them. Thus, Lavelle et al (2010) suggest that the Directive had a substantial effect on initiating MNCs based in Ireland to establish representative forums, albeit generally non-union representation.

No statistical data are available on the incidence of I&C bodies in the remaining countries in this group (Cyprus, Malta and Romania). In Cyprus and Malta, transposition of the Directive essentially involved giving new statutory I&C rights to existing trade union representatives. No data are available on trends in the incidence of company-level trade union presence since implementation, or the take-up of the new rights by unions, but what little evidence is available from the two countries does not suggest any significant change in the incidence of formal I&C bodies, which is limited and especially so in Malta. Similarly, no statistics are available on post-implementation trends in the presence of unions or elected I&C representatives in Romania.

In countries with pre-existing statutory systems of I&C, a number of changes in incidence have been identified. Estonia and Slovakia were required to amend the structure of their existing statutory systems and especially the relationship between union- and non-union-based I&C channels. These changes might have the potential to affect the overall incidence of I&C bodies, especially the relative incidence of different types of I&C body. A 2005 survey in Estonia (EIRO, 2006) found that around 20% of respondent employees reported a union representative at their workplace, and 9% reported an employee representative. In 2009, a further survey, while not directly comparable with the 2005 research, indicated a decline in union representation (EIRO, 2012a), with a recognised union reported at 6% of respondent enterprises. Elected employee representatives were reported at 13.3% of enterprises. The Eurofound European Company Survey, also in 2009, found an institutional form of employee representation (an employee representative and/or a trade union) at 23% of establishments with 10 or more employees (Eurofound, 2010). In Slovakia, information from an annual ‘information system on working conditions’ survey of several thousand companies by the Trexima company indicates that the proportion of companies surveyed with any I&C body (trade unions, works councils or employee trustees) stood at 70.6% in 2005, declining to 66.9% in 2006, 64.4% in 2007 and 62.2% in 2008, before rising to 65.3% in 2009. Over the period 2005 to 2009, the share of companies with trade union-based I&C arrangements fell from 57% to 42%, while the share of those with works councils/employee trustees rose from 13.6% to 23.3%.

### Structural change in I&C channels

Transposition measures in Denmark and Sweden mainly focused on adapting existing I&C 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 unions. While this might imply some potential impact on the incidence of I&C bodies in the relatively small parts of these countries’ economies not covered by unions and collective bargaining, no statistical data are available to assess this beyond hints such as estimates from Denmark’s Cooperation Board (Samarbejdsnævnet) in 2010 that the number of work councils (cooperation committees) in its area had increased from 1,100 to 1,300 during the previous three years. Similarly, statistical data appear to be absent from Italy, where implementation also principally meant extending and giving legal force to an existing I&C system based mainly on collective agreements.

Italy’s transposition measures also dealt with matters such as the content of I&C rights, which, along with procedural issues, were the central focus of implementing the Directive in countries with relatively general, statutory systems such as the Czech Republic, Finland, Greece, Hungary, Latvia and Lithuania. A case might be made that such changes could make I&C bodies more or less attractive to employees or employers and thus affect their incidence. However, relevant data on incidence are largely unavailable. One exception is that evidence from the Czech Republic, where trade unions are the primary I&C channel, indicates a fall in the number of companies where a union affiliated to the ČMKOS confederation is present, from 6,793 in 2005 to 6,645 in 2007 and 6,132 in 2009. While not directly related to implementation of the Directive, in 2007 Finland reduced the workforce size threshold for undertakings covered by statutory I&C rights from 30 employees to 20. It was believed at the time that this would bring some 2,800 new undertakings and 66,000 employees within the scope of I&C procedures, but no data are available to assess whether this has been the case in practice.

Belgium and Luxembourg gave new rights to existing I&C bodies, which again might conceivably have an impact on their attractiveness and this incidence, but no relevant data are available. Elsewhere, fairly comprehensive data are available for some countries where the Directive brought no change and was unlikely to affect the incidence of I&C bodies, such as Germany, the Netherlands and Spain. These indicate stability in the proportion of establishments with works councils in Germany from 2004 to 2010, but a slight fall in the proportion of employees working in an establishment with a works council; a moderate fall in the presence of works councils in the Netherlands from 2005 to 2008; and a moderate rise in the proportion of employees reporting the presence of workers’ delegates or workers’ committees in their workplace from 2004 to 2010.

### Sources of I&C bodies' constitutional provisions

The possible impact of the Directive on I&C bodies' constitutional provisions would lie in its implementation changing the extent to which the rules on these bodies' establishment and operation are set by legislation or by agreements – taken here to include national-, sectoral- and company-level collective agreements and other organisation-specific agreements and arrangements.

A key provision of the Directive in this respect is art. 5, which provides that Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. These agreements, and agreements existing on the Directive's implementation date (as well as any subsequent renewals of such agreements), may establish provisions that differ from the Directive's provisions on the minimum content and nature of I&C, and on its timing, procedure and level, while respecting the Directive's basic principles.

#### Existing general legislation-based systems

At the time of the Directive's adoption, relatively general national legislation on I&C existed in 18 Member States. Agreements played a varying role in relation to this legislation. In Germany, Greece and Luxembourg, the legislative framework left virtually no role for agreed provisions (though in Germany, there is evidence that non-statutory, voluntary forms of worker representation, such as joint committees, either substitute for or complement statutory works councils at a substantial minority of companies (EIRO, 2007)). In a much larger group of countries – Austria, Belgium, the Czech Republic, Estonia, France, Hungary, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia and Spain – legislation (including national cross-industry agreements in the case of Belgium) played the predominant role, but with some potential scope for agreements at various levels to adapt or improve on the statutory rules. Agreements were given a wider role in Finland and Sweden, where legislation set general rules or rights, with agreements able to differ from some aspects of these rules, as well as laying down more detailed arrangements.

In implementing the Directive, only a few of these countries made legislative changes of potential relevance to I&C bodies' constitutional provisions (European Commission, 2008). For the first time, Greece and Luxembourg inserted an explicit recognition that agreements could provide for practical I&C arrangements differing from the statutory provisions while respecting its principles. This reflected art. 5 of the Directive. This change would appear to have had no effect in Greece, where agreement-based provision remains virtually non-existent, while no information is available on this issue for Luxembourg. Sweden made somewhat more substantial amendments, in that information rights that previously applied only to trade unions in companies covered by collective agreements were applied to trade unions in all companies. This created I&C arrangements based solely on statutory provisions, rather than the prevalent combination of statute- and agreement-based provisions, in a small proportion of workplaces. No specific information is available on the practical effect of this change.

In practice, the constitutional situation in this group of countries appears to be largely unchanged since the implementation of the Directive. For example, legislation is virtually the only basis for I&C bodies in Germany, Greece and Spain, and the predominant basis, with only very few cases of agreement-based or organisation-specific arrangement, in countries such as Austria and Estonia. Agreement-based provisions play a subsidiary but not insignificant role in cases such as Belgium, the Czech Republic, France, the Netherlands, Portugal, Slovakia and Slovenia. Agreements maintain their key role in Finland and Sweden. Quantitative data are rare in this area. An exception is the Czech Republic, where the Ministry of Labour and Social Affairs' annual 'information system on working conditions' survey examines relevant issues. In 2009, detailed arrangements for the information process were found in 68.5% of collective agreements (mainly at company level), while detailed arrangements for consultation were found in 59.9%. Provisions with a scope exceeding the statutory rules were identified in 22.2% of collective agreements with

regard to information, and in 12.2% with regard to consultation. The proportion of agreements with all these various I&C provisions had increased quite notably since 2007, indicating that in the Czech Republic, agreements are playing an increasing role in constitutional terms, though this is still very much a minority phenomenon.

### Existing general agreement-based systems

At the time of Directive's adoption, Denmark and Italy had general I&C systems based almost solely on collective agreements, and I&C bodies' constitutional provisions were agreement based. Implementation of the Directive in Denmark meant applying legislative I&C rules to the relatively small minority of workplaces not covered by agreement-based provisions meeting the Directive's requirements. The legislative rules obliged employers to inform and consult employees in such workplaces and did not specify the establishment of any I&C body, thus leaving the constitutional situation largely unchanged. In Italy, the implementing legislation established a statutory underpinning for I&C rights, but applied these only in workplaces with I&C bodies, which remain exclusively based on collective agreements. The constitutional situation therefore remains substantially unaltered.

### No pre-existing general systems

Bulgaria, Cyprus, Ireland, Malta, Poland, Romania and the UK had no pre-existing general I&C system. Bulgaria, Poland and Romania allocated limited statutory I&C rights to trade unions. Where I&C bodies were present in Cyprus, Ireland, Malta and the UK, their constitutional provisions were based on agreements or organisation-specific arrangements. In implementing the Directive, these countries took different approaches. Bulgaria created a statutory basis for I&C bodies while allowing agreements to specify many of the details of the arrangements. Cyprus, Malta and Romania established a statutory basis for I&C bodies and followed the Directive in allowing agreements to provide for different practical arrangements if they respect the principles of the legislation. Cyprus and Malta provided specific protection for pre-existing I&C agreements in force on the Directive's implementation date. The three remaining countries gave agreement-based provisions a greater role. The Polish legislation provided a statutory basis for I&C bodies, but its rules on various practical arrangements apply only where an organisation-specific agreement is not reached on the issue. Specific protection is also given to pre-existing agreements that guarantee at least equal I&C provision.

Ireland and the UK went furthest in giving priority to agreements in regulating I&C. In these countries, the implementing legislation created a statutory mechanism for negotiating I&C agreements at the instigation of a certain proportion of employees or of the employer. Statutory provisions apply only where such negotiations fail. Agreements reached under the statutory procedure only need to meet very basic minimum requirements. Where there is a pre-existing I&C agreement, again meeting only very basic requirements, in Ireland, the employer is not obliged to comply with a request by employees to open negotiations under the statutory procedure; in the UK, the employer only needs to comply if requested by at least 40% of employees – if the request is made by at least 10% but less than 40% of employees, the employer can either comply or hold a workforce ballot on the issue. Thus, statutory provisions can apply in only a very limited set of circumstances.

In practice, the constitutional effect of the Directive was very limited in Bulgaria, Ireland and the UK. In Bulgaria, in the relatively small number of companies where I&C bodies have been created, this has been almost exclusively on the basis of statutory provisions, with few or no agreement-based arrangements, as far as is known. In Ireland, I&C bodies (whose numbers have been relatively static since the Directive's implementation) remain based on organisation-specific arrangements/agreements. The statutory procedure has not been triggered in more than a couple of cases and there is no evidence of pre-existing agreements being challenged by employees. In the UK too, there have been few cases where the new statutory procedure has been used and only a handful of organisations in which the legislative fallback I&C scheme has been applied. Instead, in the period up until national implementation was complete, there is evidence of a substantial employer-led increase in organisation-specific I&C arrangements to use the exemption provided for pre-existing agreements.

There was more observable change in Poland, where existing I&C was largely based on statutory provisions. The most striking effect of implementation was a rush to conclude pre-existing agreements before the new legislative provisions came into force. Once the legislation took effect, its provisions took precedence, with the scope for organisation-specific arrangements taken up by only around one-third of I&C bodies created since then. Of all current I&C bodies, around three-quarters are based on agreements. In Cyprus and Malta, there has been formal constitutional change in that trade unions' I&C rights now have a statutory basis. With regard to other, specific I&C bodies, as far as can be established, in Cyprus these largely predate the Directive's obligations and are based on agreements/organisation-specific arrangements, while in Malta the very few known I&C bodies of this type are based on a combination of statutory provisions and agreements/organisation-specific arrangements. No evidence is available for Romania.

The academic literature in this area (as in many others) has focused on assessments of the UK and Ireland's national implementation of the Directive and its potential to alter the voluntarist systems in those Member States. In one of the earliest analyses of the potential of the I&C Directive and its potential effect in the UK, Sisson welcomed its passage, calling it 'well overdue' but warning '(h)ow the government goes about formulating the Regulations that are the most likely means of implementing the Directive will be especially critical' (Sisson, 2002, p. 10). While somewhat prophetically outlining the weaknesses that have now been identified in practice, Sisson (2002) highlighted that perhaps the most valuable contribution may be for the implementation of the Directive to contribute to a culture of consultation, but also that such a culture was necessary for meaningful I&C to take place. Hall (2006) warned against early dismissal of the Directive as a 'damp squib' while highlighting that initial approaches within the UK were that of a 'risk assessment' approach by companies rather than compliance, in that organisations were examining existing structures and the likelihood of workers triggering a request, rather than seeking to establish structures that would comply with the legislation. Gollan and Wilkinson (2007) highlight that while the I&C Directive could have major positive implications in both the UK and Ireland, it could also promote 'weak employer-dominated partnerships' that marginalise collective consultation.

In a similar vein in the Irish context, Doherty (2008) discusses the relationship between the then existing system of social partnership and the Irish government's approach to implementing the I&C Directive. Doherty (2008) highlights the power wielded by employers, in particular US-based MNCs in lobbying the Irish government to reduce the regulatory burden placed on them by the Directive. This is presented as being consistent with the apparent paradox of national-level social partnership and no meaningful regulation of organisational-level voice. Doherty (2008) concludes that the minimalist approach of the Irish government was one that allowed the incomplete gaps in the Irish social partnership to remain.

### Practical arrangements for I&C

This section looks at the content and timing of I&C and procedural aspects. As part of the Directive's transposition, regulations in this area were amended in a number of Member States with existing general systems, such as the Czech Republic, Denmark, Finland, Greece, Hungary, Lithuania and Spain. The countries without prior general systems all had to apply at least the Directive's minimum provisions in these areas. All seven such Member States did so in a minimal way, repeating the relevant wording in the Directive with only a few embellishments. For example, Bulgaria specified timescales for the provision of I&C in some circumstances, while Cyprus specified that I&C must take place before the employer arrives at any decision affecting employees. The relevant provisions were applied to I&C involving (potential) new types of I&C body/representative in Bulgaria, Ireland, Poland and the UK, to existing representatives in Cyprus and to both in Malta and Romania. Bulgaria, Malta and Poland provided that the practical arrangements for I&C should be agreed by the employer and the employee representatives concerned, with the statutory provisions as a fallback. Ireland and the UK provided for practical arrangements to be determined by pre-existing or negotiated agreements, with the statutory provisions applying only in cases where a valid request is made for the negotiation of an I&C agreement, and the negotiations either do not occur or fail.

There is little published data on the Directive's impact on practical arrangements for I&C, which appears to be an under-researched area in most Member States. In countries with pre-existing general systems that made regulatory changes in this area, there is no known 'before and after' evidence by which any impact of the Directive might be assessed. In the countries that introduced general systems for the first time, there is both a general absence of relevant data (notably in Cyprus and Romania) and the problem of the Directive's lack of overall practical impact in some Member States. In Malta, for example, only two I&C bodies are known to have been established on the basis of the national implementing legislation.

With regard to Ireland and the UK, pre-existing and negotiated agreements have virtually a free hand to set the practical arrangements for I&C without having to meet the Directive's minimum requirements (and can even allow purely for direct forms of involvement). There have been few negotiated agreements and even fewer applications of the statutory Directive-based fallback requirements. However, there is some evidence from the UK that indicates the likely effect of the provisions of the Directive and its implementing legislation on pre-existing agreements or arrangements. Hall et al (2007; 2011) examined 25 organisations that had established or relaunched I&C bodies (at the instigation of management) between 2000 and 2007. The research found that the more elaborate agreements or (unilaterally determined) constitutions underpinning I&C bodies found in 13 larger organisations mostly specified the subjects for I&C in terms broadly similar to the national implementing legislation's default provisions. This included business plans, financial performance, employment developments, organisational change, working methods and proposed restructuring. Some arrangements made the same distinction as the statutory fallback provisions between information provision and topics for consultation, and especially where efforts should be made to reach an agreement. Five specified consultation before decisions are taken and five specified that consultation on key matters should occur 'with a view to reaching agreement'.

However, in practice only a minority of the organisations covered by the UK research were 'active consulters' and came near to practising I&C in the way set out in the default statutory provisions. It was relatively rare for consultation to take place before a decision was taken by management and for representatives to have time to consider the information, review alternative suggestions and raise and debate them with senior management. Most companies were 'communicators', rarely giving information before major decisions, or doing so only very shortly before official announcements. It was also quite unusual for financial information to be provided even where listed in the I&C body's constitution.

Bulgaria and Poland both have at least a relatively substantial number of new I&C bodies/representatives established on the basis of the national implementing legislation. In Bulgaria, the evidence available (INFORMIA, 2010; Eurofound, 2011a) indicates a mixed picture of practical arrangements, varying between sectors and companies. In general, the issues for I&C seem largely to be those stipulated by the legislation, such as company strategy, employment levels, new technology, responses to the economic crisis, restructuring, redundancies and work organisation. Some unions (which play the main part in I&C bodies) complain of a lack of information and/or of consultation, while in some cases problems have been identified in terms of duplication of functions between I&C bodies and trade unions. Some cases are reported of purely formal I&C, without real engagement, usually where unions are not actively involved. In Poland, research (Portet, 2008) has found that works councils typically have access to information on the employer's legal status and organisation, employment levels, profit and loss accounts and economic forecasts, with information rarest on matters such as capital transfers between dominant and dependent companies, outsourcing and changes in work organisation. Further case study research (Bednarski, 2010) indicated that consultation often concerns employment-related issues, wages and work regulations. However, the research suggested that consultation takes place only in a limited number of companies and rarely leads to formal agreements. There were cases in which works councils, rather than meeting regularly, were 'activated' only following major organisational changes, when management sought to reassure employees.

## National practice in SMEs and public administrations

### SMEs

The potential of the Directive to have an impact on practice in SMEs is limited by its stipulation of workforce size thresholds for the application of I&C rights to either undertakings with at least 50 employees or establishments with at least 20 employees. If followed by the Member States, these thresholds clearly exclude the vast majority of SMEs. For example, across the EU27, enterprises with 50 or more employees make up only 1.3% of the total (Eurostat, 2011). In some countries, the proportion is considerably lower, notably in Italy (0.6%), Portugal (0.8%), Spain (0.9%), the Czech Republic (1%), Hungary (1%), Sweden (1%) and Belgium (1.1%). In only six countries do more than 2.5% of companies have 50 or more employees: Slovakia (4.6%), Estonia (3.1%), Germany (2.9%), Denmark (2.8%), Latvia (2.7%) and Luxembourg (2.7%).

Among Member States with pre-existing general I&C systems, most already had thresholds for the application of I&C rights or establishment of I&C bodies at or below the Directive's maxima. For example, there were no thresholds in Latvia, Lithuania, Slovenia and Sweden, and a threshold of five employees in Austria and Germany. However, in several cases implementation of the Directive led, at least potentially, to an enhancement of I&C arrangements in some SMEs. Notably, in Belgium, Directive-based I&C rights were extended for the first time to 'technical operating units' with 50–100 employees, through the channel of statutory health and safety committees, and to units with 20–50 employees via trade union delegations. In Luxembourg, I&C rights were raised to the Directive's standards in companies with 15–150 employees by enhancing the role of statutory employee committees.

Information on the practical effects of these changes appears absent in Luxembourg. In Belgium, the changes presumably applied to some 3,000 health and safety committees (subtracting the number of companies obliged to hold works council elections from the number obliged to hold health and safety committee elections). A small amount of evidence on the effect is available from the 2009 activity report of the labour inspectorate (SPF Emploi Travail et Concertation Sociale, 2009). The Belgian implementing legislation provided that in the absence of a works council, the health and safety committee, in the period after the committee has been elected (every four years), should receive basic information about the employer's business and annual information about economic and financial developments. In 2009, the labour inspectorate examined the implementation of these provisions in 285 companies. It found that half of the committees had received both types of required information, while a third had received no information at all (the remainder had received only one type). In the two-thirds of committees that had received and discussed basic information, this information was in writing in 70% of cases and oral in the remainder. The inspectorate judged that the written information was adequate in 80% of cases and ordered the employer to provide more complete information in the other cases (price, productivity and market information were most often missing). Just over half of committees had received annual information, and in 90% of cases this information was found to be adequate. Overall, a third of the committees had received both adequate basic information and adequate annual information, indicating that the effect of the implementing legislation on SMEs – admittedly at an early stage after it came into force – was less than intended. Also in Belgium, with regard to units with 20–50 employees, since the Directive's implementation the social partners have fulfilled a commitment to negotiate sectoral frameworks for the introduction of trade union delegations in such workplaces, but not a commitment to agree on how to organise I&C where delegations are absent.

In transposing the Directive, Denmark applied legislative I&C rules to companies not covered by agreement-based provisions and it set a threshold of 35 employees for the relevant companies, but no information is available on the practical effect of this move. In 2007, Finland reduced its workforce size threshold from 30 employees to 20, thereby potentially extending the application of I&C legislation to 2,800 more SMEs, but this was not directly related to transposition of the Directive.

Of the Member States without existing general I&C systems, Ireland, Malta, Poland and the UK opted to apply their new statutory I&C provisions to undertakings with 50 or more employees. Bulgaria applied its provisions to both undertakings with 50 or more employees and subsidiaries/branches with 20 or more employees. Cyprus chose undertakings with 30 or more employees, while Romania chose undertakings with 20 or more employees. Estonia applied its revised I&C system to undertakings with 30 or more employees. Bulgaria, Cyprus, Ireland, Malta, Poland and the UK took up the option to phase in implementation of the Directive, starting in March 2005 with application only to undertakings with 150 or more employees/establishments with 100 or more employees, then extending to undertakings with 100 or more employees/establishments with 50 or more employees by March 2007, and undertakings with 50 or more employees/establishments with 20 or more employees by March 2008.

As seen above, the impact of the Directive's implementation in countries without pre-existing general I&C systems in terms of leading to the establishment of new I&C arrangements has been limited, as far as evidence is available. Data on the size of the enterprises involved are rarely present. An exception is Bulgaria, where CITUB figures indicate that by early 2010, of the 200 or so companies that had introduced elected I&C representatives based on the transposition legislation, around a third had 50–199 employees (the remainder were larger).

Despite the lack of data, there is little to suggest that anything in the Directive is likely to have an impact on the general tendency for the incidence of formal I&C arrangements to decline with decreasing company size, almost irrespective of the level at which formal thresholds are set. According to data from Eurofound's 2009 European Company Survey (Eurofound, 2010, cited in Deloitte, 2012), on average across the EU, legally established or institutional forms of employee representation (trade unions and/or works council-type bodies) were found in 33.5% of small companies (10–49 employees), 72% of medium-sized companies (50–250 employees) and 88% of large companies (250+ employees). Eurofound found that company size is by far the most important factor explaining the incidence of employee representation. Even countries with low thresholds for the establishment of I&C bodies, such as Austria and Germany, had a very low incidence of employee representation in small companies (despite the fact that in Austria, for example, works councils are supposedly mandatory in establishments with five or more employees).

### Public administrations

Some countries with pre-existing general I&C systems had a separate system of I&C bodies in the public sector, parallel to that in the private sector. Examples are Austria, Belgium, Finland and Germany. In countries with general systems based largely on collective agreements (Denmark, Italy and Sweden) the public sector had its own agreements providing for I&C. However, a number of Member States excluded all or part of the public sector from I&C rights/bodies, including Estonia, Slovenia and Spain. In implementing the Directive, as far as can be established, none of these countries made any changes specific to the public sector.

When Member States without previous general I&C systems implemented the legislation, some made no distinction between private and public sectors. This was the case in Ireland, Malta and the UK. However, Bulgaria and Cyprus excluded all or part of the public sector from their implementing legislation.

In practice, irrespective of the Directive, formal I&C arrangements are more common in the public than private sectors in most Member States. Looking at legally established or institutional forms of employee representation (trade unions and/or works council-type bodies), Eurofound's 2009 European Company Survey (Eurofound, 2010) found that on average across Europe, such representation was found in 54% of public services establishments (covering 75% of employees concerned), compared with an overall average of 37% (63% of employees) for all establishments, 34% (60% of employees) for industry and 30% (52% of employees) for private services. In all EU27 countries, the incidence of representation was higher in public services than in either industry or private services, except in Spain, where it was lower than in both industry and private services, and Austria and Malta, where it was lower than in industry. The

countries where the gap between public services and the other sectors was most marked included Bulgaria, Cyprus, Germany, Hungary, Ireland, Italy, Latvia, the Netherlands, Slovakia and Slovenia.

By and large, no clear evidence has been found of the impact of the Directive in the public sector. No particular effect might perhaps be anticipated in the countries with pre-existing I&C systems, while specific data are absent for those countries that introduced general I&C systems, including the public sector, for the first time.

### Procedures for the establishment of I&C bodies

A key procedural issue related to the establishment of I&C bodies is whether or not they must be set up compulsorily by employers or require an initiative by employees and/or trade unions. A related question is whether relevant employers have a general duty to provide I&C to employees or whether I&C becomes mandatory only where an I&C body (works council, trade union or other form of employee representation) is present.

In implementing the Directive, countries with existing general systems of I&C largely left their current procedures untouched. Thus, the establishment of I&C bodies remains essentially mandatory on employers in Austria, Belgium, France, Luxembourg and the Netherlands, while an employee or trade union initiative remains required to establish such bodies in Germany, Greece, Hungary, Portugal, Slovenia, Spain and Sweden (in the Swedish case, in the sense that employees must be union members before statutory I&C rights take effect). Latvia and Lithuania have retained systems whereby employers are obliged to inform and consult I&C bodies but only where such bodies have been established by employees/unions (in 2008, Lithuania added a requirement on employers to inform employees directly where there is no I&C body). Similarly, the Czech Republic still places a general statutory I&C duty on employers towards employees, but leaves the establishment of I&C bodies to the initiative of employees. Italy's system, as before, requires the establishment of an I&C body only where an employer is covered by a relevant collective agreement.

A few countries with existing general systems did make some changes in this general area during transposition:

- as well as providing for a new type of I&C body, elected at the initiative of employees/unions, Estonia clarified that employers are under a general obligation to provide I&C, even where no such bodies exist;
- Slovakia specified that employees have mandatory I&C rights, exercised by I&C bodies where employees have taken the initiative to create them and by employees themselves otherwise;
- Denmark obliged employers not covered by agreement-based I&C provisions to inform and consult employees, but did not specify the establishment of any I&C body in such cases.

These changes do not seem to have had much practical effect in Denmark and Slovakia, and no evidence is available for Estonia.

The Member States introducing general I&C systems for the first time took a variety of approaches.

Bulgaria, Ireland, Poland and the UK provided for new statutory I&C bodies to be established at the initiative of employees, with all four setting a minimum threshold of 10% of employees for triggering the process. Bulgaria and Poland also allowed trade unions to trigger the procedure, without any specified level of employee support. Further, Bulgaria, Ireland and the UK explicitly gave employers the option of voluntarily establishing the bodies. Malta and Romania imposed mandatory I&C obligations on all relevant employers towards trade unions or, in their absence, elected/appointed employee representatives. Cyprus allocated mandatory I&C rights to existing employee representatives (in practice, trade unions).

In countries where implementation required the creation of new I&C bodies to be triggered by employees/unions, the effect in practice has generally been very limited. Overall, take-up of the bodies has been low, and where they have been triggered, it is notable that employees have played little role. In Bulgaria, the creation of new I&C bodies has (according to CITUB) overwhelmingly been at the instigation of trade unions, with employers and especially employees rarely taking the initiative. In Poland, unions have initiated nearly 70% of existing works councils, all in unionised companies. The remainder are in non-unionised companies, with research suggesting that the initiative often came from employers. In Ireland and the UK, use of the new trigger procedure, which is open only to employees or employers, has been minimal.

The lack of impact has been attributed to a number of factors, notably the nature of transposition and the application of a 10% threshold of support among employees for triggering the procedure, which can be difficult to attain (as in Bulgaria, Ireland and the UK). A linked key reason is a lack of limited information, awareness or interest among employees (as in Bulgaria, Ireland, Poland and the UK), along with concerns among trade unions about losing their existing single-channel role (Bulgaria, Ireland, the UK), employer resistance or indifference (Bulgaria, Poland and the UK) and the existence of employer-initiated alternatives (Ireland). A particular issue in Ireland and the UK is the lack of a tradition of statute-based I&C in these countries' 'voluntarist' industrial relations systems.

In countries where implementation of the Directive means that new or existing I&C rights have been made mandatory, there is little evidence that this has had much impact in practice (though no data are available for Romania). In both Cyprus and Malta, I&C bodies are still largely absent beyond existing trade union representation, despite the formally mandatory nature of I&C. This seems to be mainly due to a lack of interest among the social partners in changing the current situation.

Academic discussion of this issue has centred mainly on the UK case. Hall (2005) argued that this country's implementing regulations were essentially built on a principle of 'legislatively prompted voluntarism' and raised the potential problems of a 'reflexive' approach to the UK's implementation, in that allowing for wide-ranging organisational flexibility in implementation, alongside employees having to 'pull the trigger', placed significant hurdles in the way of implementing the Directive. Hall highlighted the fact that UK implementation primarily gave employers, but also unions and workers, much more flexibility if they had a 'pre-existing agreement' – that is, a voluntary agreement drawn up effectively to pre-empt having to rely on the fallback provisions in the implementing legislation. Koukiadaki (2009) reaches a similar conclusion to Hall and highlights that the in-built 'double subsidiarity' in the UK implementation introduces a level of flexibility that diminishes the impact of the Directive.

### Operation/impact of I&C

Eurofound's 2009 European Company Survey (Eurofound, 2010) provides comparative data on the views of employee representatives across Europe on their influence on management decisions in a range of areas. Overall, the survey found that employee representatives perceived their strategic influence as strongest in Austria, Denmark, Germany, Ireland, Romania and the UK and weakest in France, Finland, Italy, Portugal, Slovenia and Spain. Among four areas likely to be subject to I&C, representatives rated their influence as greatest with regard to changes in working time regulations, followed by changes in the organisation of work processes and workflow. Influence was lower over employment and HR planning and, especially, the impact of structural change such as restructurings, relocations or takeovers. Across the four areas, representatives saw their influence as greatest in Germany, the UK and Romania, followed by Denmark, Ireland, Austria and Hungary.

The ECS data do not shed any light on the potential impact of the Directive in this area. Relevant information from national sources is also largely absent, especially in those countries where transposition of the Directive brought significant regulatory change. The main exception is academic literature relating to the UK and, to a lesser extent, Ireland. Drawing on research into 25 organisations sponsored by the UK's Department of Business Innovation and Skills, Hall et al (2011) highlight that while the national implementing legislation may have prompted these employers to start up an I&C forum, the extent to which the organisations adopt an 'active consulter' rather than 'communicator' role varies considerably. Hall et al found that the managerial approach to the I&C body was a key variable in determining the quality of engagement in the body. In particular, management was generally the key factor in determining the establishment and subsequent operation of an I&C forum. Furthermore, 'communicators' were more likely to utilise direct involvement methods than were 'active consulters'. Hall et al also state that while structures were strongly influenced by the legislative minima, process and outcomes were less influenced by the legislation. Finally, one characteristic of the most 'active consulters' was that the I&C body had influenced management decisions.

Adopting a similar approach, Koukiadaki (2010) classifies UK cases as being either 'active' or 'symbolic' in terms of their ability to deliver deliberative behaviour in I&C forums. In a somewhat more negative assessment of the ability of the UK legislation to mitigate job losses, Taylor et al (2009) examine six instances where redundancies took place without meaningful consultation (termed 'shock redundancies'). In five of the cases, three of which concerned employers with pre-existing I&C agreements, Taylor et al argue that the I&C forum was at best by-passed and at worst weakened by the role of unions in defending jobs. Thus, the approach seems to be that free collective bargaining would be preferable, yet it ignores the reality of what happens in the absence of any meaningful consultation. While less negative, Donaghey et al (2011), drawing on a comparative study on the implementation of the Directive in the UK and Ireland, are also relatively downbeat in their assessment of the extent to which the I&C Directive prompted a 'mutual gains' approach in case study organisations. They conclude that the genesis of the I&C forums in these organisations, which were established either to get over short-term single issues or to counteract a union organising drive, meant that both management and worker representatives were focused on alleviating short-term issues rather than building long-term sustainable relationships.

In Poland, where consultation is generally less developed than information, a study of 11 companies in the metalworking sector conducted by the NSZZ Solidarność union found that the involvement of works councils in the process of managing change had so far been 'very limited' and particularly weak in non-unionised companies (Matla, 2008). One of Malta's two known examples of specific I&C bodies has reportedly been able to influence management decision-making on the order of selection for redundancy.

The crisis that broke out in 2008 and the difficult economic conditions that have prevailed across most of the EU since then have resulted in much change and restructuring at company level, which has often been subject to I&C with employee representatives in line with national regulation and practice. There is considerable evidence on company-level negotiated responses to the crisis, in the form of agreements on issues such as short-time work, other working time arrangements, employment/pay trade-offs, measures to cushion the effects of planned workforce reductions and avoid compulsory redundancies, and compensation/assistance for redundant workers (European Commission, 2011). In some countries, such as Austria, Germany, Ireland, Italy, Spain, Sweden and the UK, the employee-side parties negotiating many such agreements were also the I&C parties, and the two processes are likely to have been closely linked. However, specific data on I&C and the crisis are scarce, and information on any potential impact of the Directive even scarcer. Among Member States where the Directive brought substantial regulatory change, the new or revised bodies/arrangements have reportedly been a vehicle for I&C over crisis-related restructuring in cases such as Bulgaria, Poland and the UK, while meaningful I&C over crisis responses seems to have been rarer in Estonia and Ireland.

## Relationship between I&C bodies and other forms of employee representation/consultation

### Representation channels

Implementation of the Directive brought structural change to the statutory channels of employee I&C and representation in a number of Member States. The main examples were Bulgaria, Estonia, Ireland, Malta, Poland, Romania, Slovakia and the UK. Latvia and Lithuania can also be considered to form part of this group, as they made changes influenced by the Directive, though before its formal implementation.

In brief, the changes were as follows:

- Bulgaria, where unions were previously virtually the sole recipients of I&C, provided a new channel, whereby a general assembly of employees may elect I&C representatives, or delegate the appointment of such representatives to a trade union, or appoint existing employee representatives (who otherwise have an I&C role only in collective redundancies and business transfers) as I&C representatives.
- Estonia introduced a new type of employee representative for I&C purposes, elected by all employees. Previously, trade unions represented unionised employees and statutory elected representatives represented non-unionised employees. Where a union is present, both employee representatives and trade union representatives may participate in I&C.
- Ireland and the UK introduced a new form of statutory I&C body/arrangement, but only where negotiations triggered by employees fail.
- Latvia introduced a new channel in the form of elected 'authorised employee representatives', alongside trade unions.
- Lithuania established a new channel – an elected works council or, in small undertakings, a single employee representative – but only in undertakings without trade union representation.
- Malta allocated mandatory I&C rights to recognised trade unions in respect of unionised employees and to a new channel, in the form of elected or appointed representatives, in respect of non-unionised employees.
- Poland allowed for the establishment of new statutory works councils at the initiative of unions, where present, or of a certain proportion of the workforce. Previously, only unions had I&C rights.
- Romania provided for trade unions to be the channel for I&C, where present, while creating a new channel, elected employee representatives, only in the absence of unions.
- Slovakia provided for the election of works councils or employee trustees, regardless of whether trade unions are present in the undertaking. Works councils/employee trustees were not formerly permitted where unions were present.

These changes were the main controversial aspect of the transposition of the Directive in many of the countries concerned. The potential effect of these changes was to provide a rival I&C channel to trade unions in Bulgaria, Estonia, Latvia, Poland and Slovakia. Trade unions were given the primary role in Lithuania and Romania, while Malta made a distinction between unionised and non-unionised employees. In Ireland and the UK, the issues raised were complex, involving relationships between pre-existing I&C arrangements, trade unions and new statutory arrangements.

In Bulgaria, the effect of the Directive so far has not, in practice, been to create any serious competition for trade unions (which retain sole bargaining rights). Where I&C representatives have been introduced, this has overwhelmingly been at the instigation of trade unions, with little apparent interest or awareness among employees, while a large majority

(reportedly 80%–90%) of the representatives elected have been union members. Further, in around half of the cases where general employee assemblies have been held, they have delegated the appointment of I&C representatives to unions. At the same time, despite support for the new channel at the level of CITUB, unions have not instigated the introduction of I&C representatives in many companies because of lingering worries about losing their position as the sole representative channel. CITUB's rival union confederation, CL Podkrepa, has concerns about duplication of roles between I&C representatives and unions.

In Poland too, works councils have not emerged as a significant rival to trade unions, despite initial concerns on their part, and unions are now generally in favour of the institutions. Around seven out of 10 existing works councils were set up at the instigation of unions in unionised companies, with the remainder set up in non-unionised firms, often at the initiative of employers. Despite legislative change in 2009 that removed their role in appointing council members in unionised firms, it appears they have retained their influence on the selection of candidates for elections, with few non-union members involved. According to recent research (Bednarski, 2010), relationships between unions and works councils in unionised companies range from complete subordination of the latter to the former, to partial and limited autonomy for works councils. In some cases where multiple unions are present, they have used works councils as platforms for joint collective bargaining demands. In helping to shape the implementing legislation (along with employers), unions succeeded in largely neutralising any threat and now appear to see works councils as a useful way of obtaining enhanced I&C rights.

In Slovakia, since 2005 the proportion of companies with trade union-based I&C arrangements has fallen sharply, while the incidence of works councils/employee trustees has risen (though not to the same extent as the decline in union representation, resulting in an overall fall in the share of companies with any I&C body). Trade union membership and presence has been in long-term decline, while works councils/employee trustees were introduced in respect of companies with no union presence in 2002 and allowed in those with a union presence from 2003. However, it is not clear that the increased availability of works councils/employee trustees has itself displaced unions. Works councils/employee trustees and unions are thought to be both present in only 1%–2% of establishments (where this is the case, the works councils/employee trustees alone have I&C rights).

In Ireland, little seems to have changed as a result of the Directive's implementation. Since implementation, the proportion of employers that have formal partnership arrangements involving trade unions has been static, and there has been only a very slight increase in the (larger) proportion with informal partnership-style arrangements involving employee representatives. The new statutory procedures introduced by the implementing legislation have scarcely been used. Unions still seem uncertain about whether I&C bodies are an opportunity or a threat to single-channel union representation through collective bargaining.

In the UK, formal I&C bodies have traditionally been associated with union presence and recognition – though kept separate from collective bargaining arrangements – and had been in long-term decline as union membership and recognition fell. The flurry of company activity in introducing or revising I&C arrangements prior to implementation of the Directive may have accounted at least in part for the halt in this decline in larger organisations observed in 2004 (the last time a major scientific survey was conducted in this area), despite a continuing fall in union membership and bargaining coverage. It is not known to what extent the new or revised I&C arrangements have involved unions, but there is evidence of an increased incidence of 'hybrid' I&C arrangements involving both union representatives and non-union employee representatives over 2008–2011, mainly at the expense of arrangements involving only non-union employee representatives. With some exceptions (see below), unions themselves have not been active in promoting the take-up of employees' I&C rights under the implementing legislation. They fear that employers with I&C arrangements covering their whole workforce may prefer such bodies to collective bargaining arrangements that typically cover only some of their employees.

In Malta, where the Directive appears to have had little effect of any kind in practice, trade unions retain their key I&C role in unionised companies and have been involved in the two known cases of the establishment of specific I&C bodies. No information is available on effects of the Directive on relationships between I&C bodies and other forms of employee representation in Estonia, Latvia, Lithuania and Romania, apart from some indications of a decline in union representation and an increase in other employee representatives since 2005 in Estonia.

From the evidence available, it does not appear that the implementation of the Directive has had a major effect on the relationship between channels of employee representation in the countries where it had the potential to affect them. In Bulgaria and Poland, trade unions have been able to dominate the new I&C bodies (at least in unionised companies, in the case of Poland) and use them as an adjunct to their traditional role; this is also true in Malta to a limited extent. In Ireland and the UK, the minimalist nature of transposition has largely left existing I&C arrangements, and their relationship with unions, untouched. Unions have not been keen to use what space the implementing legislation has given them to seek the introduction of new arrangements; they are more concerned about preserving their bargaining prerogatives. There are some signs in the UK, though, that joint union/non-union arrangements may be spreading since implementation. In Slovakia, unions have been losing ground overall to elected I&C bodies, though the extent to which this results from the Directive's implementation is not clear.

Turning to academic literature on the relationship between I&C bodies and trade union representation (which relates mainly to the UK), Hall (2006) highlights the points made above about the initial reluctance of UK trade unions to meaningfully engage with the national implementing legislation as an organising tool, and their tendency to remain more committed to establishing exclusive bargaining arrangements. He notes, though, that within the first year after its adoption, the Amicus union (now part of Unite) showed a growing openness to engaging with the legislation, particularly in terms of seeking 'negotiated agreements' instead of the recognition of 'pre-existing agreements'. The non-uniform approach of UK unions is confirmed by Koukiadaki (2009), who demonstrates a varied approach – some unions used the legislation to establish consultation rights, whereas others took defensive actions to prevent I&C forums being used to undermine their representation status.

The potential to utilise the Directive as an organising tool is highlighted by Whittal and Tuckman (2008), who argue that British unions should draw lessons from Germany and use I&C forums as a method of trade union revitalisation. However, they acknowledge that this would require a sea change in UK trade union approaches and mean embracing dual channels of representation. In the absence of such union engagement, they argue that I&C forums can become little more than managerially captured, unitarist communication tools. Tuckman and Snook (2010) use a case study to analyse the role of non-union employee representatives in an I&C forum. They argue that the functions of non-union representatives are different from union representatives and that to maintain a high level of I&C, representatives were better served by not attempting to bargain and negotiate. Hall et al (2011) state that senior management commitment to being 'active consulters' had a considerable effect on the quality of employee representation: management that engaged in meaningful consultation required higher levels of employee representation. Koukiadaki (2010) argues that the existence of I&C forums has the potential to give unions access to more information and thereby make them more effective in their representative functions, even where they were previously recognised. In terms of trade union engagement or lack of it with the I&C legislation, Hall et al (2011) highlight that unions in the UK have demonstrated some ambivalence towards using the legislation to form an I&C body as a means of establishing a voice channel, preferring to pursue the more traditional UK voluntarist route. Curran and Quinn (2012) highlight a contrast in the approach of Irish unions to implementing the Directive to their British counterparts – they found that Irish unions have been pursuing an approach that is more open to a dual-channel route than that of UK unions.

### Direct involvement

With regard to direct, non-representational forms of employee involvement by management (e.g. through team briefings), the Directive's scope to have an impact in practice was very limited. A few countries, notably Estonia and Lithuania, introduced requirements on employers to inform and consult employees directly in the absence of I&C bodies, but there is no evidence available on the practical effect of these obligations. Ireland and the UK prove that direct I&C arrangements are capable of satisfying the requirements of the national implementing legislation if set out in 'pre-existing agreements' or negotiated agreements between employers and employees. Existing direct arrangements were thus protected, if agreement based, while it is not known how many negotiated agreements took the direct route. Ireland's national workplace surveys found no major change between 2003 and 2009 in the incidence (nearly two-thirds) of private sector employers reporting 'direct employee involvement in decisions'.

### Exercise of I&C rights

With regard to confidential information – that is, confidentiality requirements on employee representatives and experts, the possibility of employers withholding harmful or prejudicial information, and the provision of review/safeguarding procedures – a number of Member States with pre-existing general I&C systems made regulatory changes to comply with the Directive. Examples were the Czech Republic, Greece, Lithuania, the Netherlands, Portugal and Spain. In some cases, these amendments caused controversy. For instance, Czech, Greek and Portuguese unions feared that the new provisions were too restrictive and open to abuse by employers. Countries without previous general I&C systems largely copied the Directive's provisions into national regulations and identified relevant review procedures.

Evidence on the practical effects of these changes is thin. In Member States with pre-existing general systems that made changes in this area, confidentiality does not appear to have been a major issue, though there was one controversial case in Greece, where an employer withheld information on confidentiality grounds and the matter ended up in court. In countries that introduced new systems where the relevant provisions have come into play, as in Bulgaria and Poland, the legislative provisions are generally being observed. In Bulgaria, information is reportedly often provided on a confidential basis and there are no known cases of I&C not taking place due to considerations of confidentiality. In Poland, there have been several cases of management withholding information on confidentiality grounds on matters such as temporary workers and production forecasts, leading in at least one instance to a court case.

The protection, rights and resources of employee representatives in I&C procedures – in areas such as paid time off to carry out their duties, protection from dismissal and detriment, and access to facilities and training – do not appear to have been the subject of any substantive regulatory change in Member States with existing general systems. Member States without existing general systems provided for a range of protection, rights and resources, including paid time off and protection from dismissal or detriment on the grounds of performing their duties, with additional provisions such as training rare. Little information is available on the practical effects of these provisions, which, it should be noted, have scarcely come into play in cases such as Ireland and the UK because I&C arrangements based on the new statutory requirements are almost non-existent.

In Bulgaria, the implementing legislation provides that I&C representatives' material and financial resources and other facilities should be regulated by agreement with the employer, which has only happened in a few cases so far. Most evidence is available from Poland. Here, research (Portet, 2008) found that 40% of works councils examined had their own offices, 31% had their own computer and 54% had access to a phone line. Of members, 75% had obtained regular pay during their works council activities. Some 11% of works councils had a special budget to pay external consultants, while in 46% of cases the employers had agreed in an organisation-specific agreement to pay for consultants, and in 53% of cases they did so on an ad hoc basis. Since the research was conducted, the Polish legislation has changed. In 2009, employers were placed under an obligation to cover the costs of all works councils' operations (the costs in unionised workplaces were previously the responsibility of trade unions), including the cost of advice from external consultants.

## Enforcement of I&C rights

The Directive requires Member States to provide for:

- appropriate measures in the event of non-compliance with the Directive by employers or employee representatives, ensuring that adequate administrative or judicial procedures are available to enable enforcement of the obligations deriving from the Directive;
- adequate sanctions – which are effective, proportionate and dissuasive – applicable in the event of infringement of the Directive by employers or employee representatives.

Member States with existing general I&C systems generally had to make little change to comply with these requirements, though Italy and Denmark, for example, introduced some new aspects in light of the newly statutory nature of I&C rights in these countries.

Countries without existing general systems generally extended or adapted existing procedures and sanctions to new I&C bodies or arrangements. In the transposition process, there was debate over enforcement issues in several Member States. In Austria and Germany, workers' representatives hoped unsuccessfully that the Directive's implementation (which the Austrian and German governments believed required no change to national legislation) might be an occasion for strengthening, respectively, sanctions on employers failing to comply with I&C legislation and the legal rights of works councils to enforce I&C. Greek unions saw the administrative sanctions used for infringements of I&C requirements as being ineffective, as did UK unions, which sought a legislative provision that would enable the effect of decisions made without proper I&C to be nullified.

From the other side of the debate, Italian employers' representatives opposed the implementing legislation's imposition of administrative sanctions on non-compliant employers, arguing that this would discourage some employers from opening a serious dialogue with unions on the rights arising from the Directive. Spanish employers complained of a lack of applicable penalties if employee representatives fail to observe confidentiality. UK employers had reservations about the identity of the statutory body chosen to adjudicate complaints under the implementing legislation, seeing it as too 'union friendly'.

The Directive's impact in the area of enforcement is potentially greatest in countries that introduced new I&C bodies or arrangements. Up until 2011, there were no known cases in Bulgaria or Malta of complaints to the authorities of breaches of the new I&C rights or of the imposition of sanctions in this area (the same was true of Romania, as of 2009). There has been a higher level of complaints in Poland, at least in the early years following the Directive's implementation. The national labour inspectorate recorded 34 employee-side complaints over application of the implementing legislation by early 2007, usually relating to employers' non-provision of I&C or obstruction of the formation of works councils. The inspectorate reprimanded employers on seven occasions and took five cases to court. Poland's highest-profile case in this area came in 2008, when the works council at the FSO motor manufacturing concern challenged management's refusal – on the grounds that disclosure would be harmful to the company – to provide it with information on the cost of employing temporary workers (EIRO, 2008). A court upheld the works council's argument that this was in breach of the implementing legislation and ordered the company to provide the information requested. The case was seen as setting a precedent for other works councils.

Cases brought under Ireland's implementing legislation have been few and far between. The level of disputes referred to the relevant first resort statutory body, the Labour Relations Commission, has been low, while the Labour Court has so far issued three recommendations based on the legislation. The most notable found that:

- in a case (RIC081) brought by unions, public health service employers had breached a pre-existing I&C agreement and the relevant legislation by failing to consult over a recruitment freeze and other cuts; however, the only remedy specified by the court was a recommendation that the employers give the unions assurances over future I&C;
- in a case (RIC101) brought by the I&C forum at the Nortel telecoms equipment company, the employer was obliged only to provide the forum with reasonable financial resources necessary to perform its duties, and this did not include the cost of legal advice or representation.

Over 2005–2011, the UK's Central Arbitration Committee (CAC) received, under the national implementing legislation, a total of only 40 complaints relating to 22 organisations from employees or trade unions. Of these applications, 18 were withdrawn before reaching the decision stage. Of the remaining complaints, the CAC upheld eight and rejected 14. Seven applications were for orders requiring an employer to arrange the election of I&C representatives under the fallback statutory scheme, with applicants claiming that the employer had failed to respond to an employee request for negotiated I&C arrangements or had not done so within the required timescale. Five of these complaints were upheld by the CAC, most notably in *Amicus Union vs. Macmillan Publishers*, where the CAC ordered the company to arrange a ballot to elect I&C representatives. The *Macmillan* case and two others were followed up with successful applications for a financial penalty to be imposed on the employers concerned. Of five complaints over alleged failure by employers to comply with the terms of either a negotiated agreement or the statutory standard provisions, none was upheld by the CAC. For example, the CAC determined that the proposed dismissal of 12 employees by Bournemouth University was not a 'substantial change' – and thus not subject to consultation under the standard provisions – given that the university had a total of 1,300 staff. Other complaints related to issues such as the alleged failure of employers to provide employment data requested and the nature and approval of pre-existing agreements. Hall suggests (in EIRO, 2012b) that: 'A number of the leading cases, particularly those concerning *Amicus/Macmillan Publishers*, demonstrate that the [UK implementing] regulations are capable of being used highly effectively by unions against defaulting employers.'

In some other countries, enforcement of I&C rights remains an issue. In Lithuania, the low overall implementation of I&C arrangements has been attributed by some trade unions, at least in part, to the small size of fines on non-compliant employers and the lack of further enforcement procedures after the imposition of such a fine. In Estonia, a lack of enforcement and monitoring by the relevant authorities has been cited as contributing to the same lack of dissemination of I&C. Greek unions continue to call for a tightening of the legislation on sanctions, including the nullification of employer decisions taken in breach of I&C obligations.

Elsewhere, to the extent that information is available (as in Belgium, the Czech Republic, Hungary, Slovakia and Slovenia), breaches of I&C rights are rarely a major problem detected in inspections by labour inspectorates and equivalent bodies, and such bodies do not generally receive many complaints in this area from employees or their representatives. However, complaints are more common in Italy. Court cases are also generally infrequent, according to the evidence from countries such as Belgium, the Czech Republic, Hungary, Italy, the Netherlands and Slovenia. France seems to be the country where I&C rights in general are the subject of most litigation and several recent rulings have related specifically to the Directive. Courts have found that employers have breached the Directive's provisions, for example by not setting up I&C structures (Cour de cassation, ruling of 17 May 2011, appeal n° 10-12852), failing to inform and consult properly over a plant closure (Douai court of appeal, ruling of 30 June 2010, No. 1179/10. RG 10/0326) or mistiming information meetings (Cour de cassation, ruling of 15 December 2009, appeal n° 08-17722). Greece saw a notable case in 2008 centring on the refusal of a request, based on the national implementing legislation, made by the trade union at the OTE telecommunications company for information on a planned share sale and transfer

of management to another party. The union lost the case (no. 4904/2008), with the court's judgment, among other matters, restricting the information rights of employee representatives only to information justified by a legal interest of the employees.

## Views of the national social partners

In the run-up to the transposition date in 2005, the social partners in all Member States engaged to some extent with the Directive, in line with national practices and legislation. In most countries, employers' organisations and trade unions made an input to draft implementing legislation through consultation exercises or structures. National social partner organisations in cases such as Bulgaria, Poland and the UK agreed among themselves on all or some of the provisions of the national transposition legislation, while in Belgium, Denmark and Italy, they reached more autonomous bipartite agreements on the Directive's implementation.

Implementation was the subject of social partner debate in the great majority of Member States, though to varying degrees. The least social partner interest was in many of the countries where the Directive required relatively little or no regulatory change (such as Austria, Finland, France, Germany, Greece, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia and Sweden), but was also less than intense in some Member States where transposition meant the introduction of new I&C bodies and processes, such as Bulgaria, Cyprus, Malta and Romania. Debate was most notable in Ireland, Poland and the UK, because transposition introduced new general I&C rights; Estonia, where controversy centred on the relationship between union and non-union channels of representation; and in Belgium, where transposition focused a long-running debate on worker representation in SMEs.

However, since transposition, an active interest in the Directive and its effects has been largely lacking among national social partners in the Member States, as indicated by research into social partner websites and publications conducted for the purposes of this report. What (generally limited, it must be admitted) attention was raised by transposition seems largely to have faded in Member States such as Austria, Belgium, Cyprus, the Czech Republic, Denmark, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Portugal, Slovakia, Slovenia, Spain and Sweden. In some countries, such as France and Germany, I&C is currently fairly high on the social partners' agenda, but not in relation to the Directive's impact. In Austria, unions have reiterated concerns that national I&C legislation does not fully comply with the Directive, while Greek unions have maintained objections to what they regard as inadequate sanctions on employers failing to meet their obligations under the implementing legislation. Hungarian trade unions have been very critical of legislation adopted in 2012 that amends the I&C rules to the disadvantage of trade unions.

Among the countries where the Directive brought major change or intense debate, the current situation varies. In Ireland, employers' organisations and trade unions differed sharply over the transposition measures adopted. Unions saw the legislation as 'pro-business' and a missed opportunity to enhance workplace cooperation, while employers' organisations, despite some reservations, were largely content that their lobbying for a minimalist approach to transposition had succeeded. Since implementation in 2005 (phased in up until 2008), employers have apparently maintained their position, while unions have been relatively muted on the issue. Reportedly, they are caught between seeing opportunities in the implementing legislation, however minimalist it is, and fearing its use by employers to threaten union-based representation channels.

The UK social partners, after reaching agreement on a framework for national implementation (highly unusually in the UK context), have given the matter relatively little prominence since. Having secured minimalist implementation, employers' bodies have been quiet (this does not refer to individual employers, many of which responded to the Directive). Trade unions have generally shown little active enthusiasm for using the legislation to establish I&C arrangements and have focused instead on maintaining collective bargaining.

In Poland, the social partners' consensus on the relatively minimalist implementing legislation was apparently motivated by a shared wish to minimise the Directive's impact – the trade unions because of fears that new I&C bodies might weaken their position in companies, the employers because of concerns about the effect of enhanced I&C rights. Since transposition, unions have come round to a more positive view of works councils and are starting to promote their establishment and criticise the low level of take-up and company-level implementation (Europe et Société, 2010). Employers have been slower to see benefits in the new institutions (although a fairly high number signed 'pre-existing agreements' on I&C to gain exemption from the statutory provisions) and their most noteworthy activity was a court case brought by one employers' organisation that resulted in changes to the implementing legislation in 2009, ending trade unions' right to appoint works council members in unionised workplaces.

In Bulgaria, Estonia and Romania, the issue of the I&C Directive's effects apparently remains 'live', especially for trade unions, which have criticised low levels of take-up and compliance with the new provisions. For example, in 2010, the Confederation of Independent Trade Unions of Bulgaria (CITUB) issued an examination of the Directive's implementation, pointing to the low take-up, raising problems of enforcement and proposing solutions such as the promotion of the establishment of I&C arrangements by the national social partners and the government.

### Fitness check findings

The I&C framework Directive and the Directives on collective redundancies and business transfers have recently been subject to a 'fitness check' on behalf of the European Commission (Deloitte, 2012). The fitness check evaluated the Directives' 'fitness for purpose' in terms of their:

- relevance – the extent to which the content of the Directives addresses 'the needs of employers and employees in the EU social market economy';
- effectiveness – the extent to which the above needs are met in practice by the Directives;
- efficiency – the extent to which the needs are met in the most cost-effective way;
- coherence – the extent to which the needs are met in a comprehensive and compatible way.

The check was based on an analysis of relevant national- and EU-level research; an analysis of EU-wide data from the 2009 Eurofound European Company Survey; assessments by national I&C experts who interviewed key national stakeholders and reviewed relevant literature; a web survey of employer and employee representatives at company level; and a series of company case studies.

Overall, the fitness check found that the existing EU I&C legislation can be seen as 'broadly "fit for purpose" in terms of achieving a minimum level of I&C throughout the EU/EEA, consistent with the EU social market model, as none of the four key evaluation criteria used to assess its fitness for purpose are negatively assessed'. Taken individually, each Directive is regarded as performing sufficiently well to be judged 'fit' rather than 'unfit' for purpose. This was clearest in the case of the collective redundancies and business transfer Directives. The I&C framework Directive received a somewhat lower assessment, 'midway between neutral and positive'. According to the check, this may reflect the 'uneven' rate of adoption of the Directive (which is more recent than the other two) across countries and divergent experiences in terms of its take-up and impact, and 'it is possible that its effectiveness will develop over time of its own accord'. As the report notes, the collective redundancies and business transfer Directives 'invoke specific actions' when the circumstances warrant them, while by contract the I&C framework Directive 'is designed to promote the general establishment of I&C bodies and procedures within companies rather than to enforce compliance in specific circumstances'. (Deloitte, 2012).

Of particular relevance to the practical impact of the EU legislation are the fitness check's findings in relation to stakeholders' perceptions of the Directives' effectiveness – in other words, the Directives' effects in practice in meeting the employers' and employees' needs that they are intended to serve. The check found that the effectiveness of the EU I&C legislation was positively evaluated, but to a lesser extent than the other three criteria (relevance, efficiency and coherence). The evaluation of public authorities was more positive than those of employers, employee representatives and academics. With regard to the effects of the three individual Directives, the check found that evaluations varied, though none was negative. In respect of affording protection to employees in relevant circumstances, the collective redundancies Directive was rated 'reasonably highly' overall but notably lower than the business transfers Directive, while in terms of leading to a general and permanent right to I&C, the framework Directive was rated lower still. The contribution of the business transfers Directive to smoothing the transfer of undertakings was rated lowest.

According to the fitness check, the fact that the effectiveness of current EU I&C legislation is evaluated lower than other aspects means that 'while stakeholders may see the legislation as being well-designed relative to its purpose, it tends to deliver less than hoped for in practice'. The check concludes that the legislation is 'delivering below its potential' (Deloitte. 2012).

### Summary and conclusions

In those countries (for which relevant data are available) where the Directive resulted in the greatest regulatory change and therefore might be expected to have the greatest effect on the incidence of I&C bodies, such an impact can be discerned to some extent in Bulgaria, Poland and the UK. Bulgaria and Poland have seen a rising trend in relevant I&C bodies from a very low base, but these still apply to a small minority of the companies potentially covered by the Directive's implementing legislation. In the UK, there was an increase in incidence in the period between the Directive's adoption and the early years of the UK's phased implementation. In terms of the structure of I&C channels, there are some signs of a trend in the UK towards joint representation through both non-union and union representatives, rather than separate representation. Ireland has seen little change in the incidence of either formal or informal I&C arrangements, while in Cyprus and Malta, there has been no evidence of any significant change in the very limited incidence of formal I&C bodies. In Estonia and Slovakia, where implementation of the Directive involved structural changes to I&C channels, the period since transposition has seen signs of some overall decline in I&C bodies, and at the same time, a fall in union-based representation and a rise in elected representatives.

In Member States without pre-existing general systems, the constitutional impact of the Directive depended very much on the implementation choices made by national governments. Bulgaria, Cyprus, Malta and Romania established a general statutory basis for I&C bodies, while allowing a role for agreements in terms of practical arrangement. To the extent that information is available, this role has not been taken up to any great extent.

Ireland and the UK transposed the Directive in such a way as to give companies' pre-existing organisation-specific arrangements considerable protection. The result has been that such arrangements remain largely untouched, though in some cases they were revised prior to implementation and spread to new companies during this period in the case of the UK. In both countries, I&C arrangements based on the new fallback statutory provisions are virtually non-existent. As in the UK, but from a lower base, the nature of transposition in Poland led to an upsurge in organisation-specific agreements in the run-up to the implementation date. Since then, however, statutory provisions have taken a prominent role. Little has changed in reality in Cyprus and Malta, where I&C rights have essentially been allocated to trade unions that already had a significant role in this area, and there has apparently been minimal activity among employers, employees or trade unions in establishing new I&C arrangements. In Bulgaria and Poland, new I&C bodies have been created on the basis of the implementing legislation, though so far only in a small minority of the companies potentially

covered by the Directive's implementing legislation. In Ireland and the UK, where transposition of the Directive drew the most interest and speculation, the practical impact has been very low.

Bulgaria, Ireland, Poland and the UK all provided for new statutory I&C bodies to be established at the initiative of employees, rather than automatically, with all four setting a minimum threshold of 10% of employees for triggering the process. However, Bulgaria and Poland also allowed trade unions to trigger the procedure, without any specified level of employee support, and unions have initiated the creation of the great majority of new I&C bodies in both countries, with employers responsible for the remainder and employees scarcely involved. Indeed, in these two countries, unions have largely used the new I&C bodies as an additional channel of influence.

Ireland and the UK did not give an initiating role to trade unions and employees have taken the initiative to try to gather the requisite 10% support in only a tiny number of cases. In none of the four countries does there appear to be significant interest in or awareness of I&C among employees. Another aspect of the Irish and UK implementing legislation that has minimised the practical impact is the protection given to pre-existing and negotiated agreements. While many employers (in the UK at least) introduced or revamped I&C arrangements in order to gain this protection, these arrangements are subject to no substantive minimum requirements for their content. This view of the impact of the Directive in Ireland and the UK is borne out by the academic literature, which to date has unsurprisingly focused on these two countries, as the Directive most directly challenged their single-channel voluntarist systems of employment relations. On the whole, the academic analysis is far from being positive in terms of the substantive rights that have been delivered through the legislation. In fact, it would be fair to say that the overall analysis is one of moderate disappointment in terms of the legislation's capacity to develop meaningful voice for employees. This has focused on the weak implementation by the governments of the UK and Ireland in terms of legislating for meaningful representation, as well as the reluctance of unions to use the legislation to establish I&C forums.

In countries where the Directive brought relatively minor or no regulatory change, where evidence is available, it indicates a variety of moderate upward or downward movements in the incidence of I&C bodies and/or the proportion of employees covered by such arrangements. There was no reason to expect any such impact in countries with mature, pre-existing national I&C systems that saw no need for transposition legislation, and no such impact can be detected: the Directive's implementation scarcely caused a ripple in Austria, France, Germany, the Netherlands and Slovenia. In the Czech Republic, Finland, Greece, Hungary, Latvia, Lithuania, Portugal and Spain, implementation brought quite minor and essentially operational regulatory change to relatively well-established national systems. As there seem to be few data allowing an assessment of the everyday functioning of I&C bodies in these countries, it is not known if this has had any impact in practice. In Italy, transposition meant giving a statutory basis to an existing agreement-based system, without extending it at all, and no practical effect of this change has been identified. Denmark and Sweden essentially extended I&C rights to the quite small parts of their economies not covered by collective agreements, and no evidence has been found as to any impact in the companies concerned. In Belgium and Luxembourg, the Directive's implementation has formally enhanced employee representatives' I&C rights in some SMEs, which has had some practical impact in Belgium, at least. Estonia and Slovakia changed the structure and relationship of their existing I&C channels. There is some evidence that the period since implementation has seen a fall in union-based representation and a rise in elected representatives in these two countries, but it is not known if this can be directly attributed to the changes made when transposing the Directive. There was some limited scope for agreements taking on a greater role in cases such as Greece and Luxembourg, while statutory provisions were given a new role in a small proportion of workplaces in Sweden, but no information is available on the practical effects of these changes. In the Czech Republic, since implementation of the Directive, agreements have been playing a more important (though still minority) role in constitutional terms, but there is no evidence of whether this is linked to the relatively minor operational changes that represented this country's transposition measures.

In relation to the analytical framework outlined earlier, it is clear that the effect of the Directive was insufficiently strong to generate major institutional change in any particular country. The variation of national determination allowed through subsidiarity meant that a majority of the Member States had to make little or no change to comply with its provisions, at most having to fill a few small gaps or ‘tidy up’ at the margins, while its flexibilities allowed most other Member States to transpose the Directive in such a way that their existing systems were largely protected from change. This may at least partly explain the widespread indifference of the social partners to the Directive’s effects following transposition. In countries such as Bulgaria, Ireland and the UK, the requirement of workers to trigger the Directive plus the focus on reaching local voluntary arrangements saw a distinct ‘double subsidiarity’ effect, where wide variations of implementing forms was available. This is in contrast to those countries (generally those with pre-existing systems) where a much more prescribed legal framework exists. Thus, within those countries that saw no change or minor changes to implement the Directive, the Directive has not substantially changed the landscape of I&C. In those countries where there were not pre-existing systems, the implementing legislation was designed in methods that retained the core organising principles of the existing industrial relations framework. For example, the UK and Irish legislation was designed and implemented with an emphasis on maximising the voluntary aspect. Thus, the effect of implementation was mediated by the national system and was shaped in line with the existing national framework: path dependency played an important role in shaping the effect of the legislation. On the other hand, the legislation did prompt some institutional change but in ways consistent with the national trajectories.



# Findings from six Member States 3

This section of the report draws on findings and comparative analysis of case studies in differing national and organisational contexts. In terms of its presentation, this section is divided into two subsections: the first prefaces the case study findings for each country with a short discussion of national regulatory contexts and expected/actual impacts of the implementation of the Directive, based on material provided by case study providers, followed by summaries of the case studies in the relevant countries. The second subsection focuses on analysis based on these experiences.

## National contexts and case studies

Within the case study countries, a division exists between those that have legally established and mandated works councils. As outlined above, in three of the countries (Denmark, the Netherlands and Slovenia), legal provisions exist in terms of mandatory works councils; thus, the ‘dual channel’ system of representation exists where legally mandated works councils can operate cheek by jowl with collective bargaining. Greece has legislation covering works councils, but these fall short of being legally mandated. On the other hand, both Poland and the UK have systems based on voluntarism.

### Denmark

Denmark has a long-standing system of I&C based on a set of sectoral ‘cooperation’ agreements between national social partner organisations, with a high degree of coverage across the economy. These provide for cooperation committees involving management and employee representatives (plus trade union representatives as ex officio members) in companies with more than 35 employees, with a wide-ranging role including I&C. The Directive was implemented (as is the norm in Denmark) by a ‘dual method’. This involved amendments to the cooperation agreements, for example to widen employee representation and I&C entitlements, along with the adoption of legislation, setting I&C rules to apply to the relatively small minority of workplaces not covered by agreement-based provisions at least meeting the Directive’s requirements. The legislative rules placed an obligation on employers to inform and consult employees in such workplaces, but did not specify the establishment of any I&C body. The social partners were closely involved in drawing up the implementing legislation. The changes brought about by the implementing legislation were not expected to be major, given that some 85% of the workforce was already covered by relevant collective agreements, and there is no information available about the effect of the law in companies newly covered by I&C provisions. With regard to the amended cooperation agreements, the extension of cooperation committees to include new groups of workers is reported by the Cooperation Board that oversees the main private sector cooperation agreement to have sharpened interest in cooperation, while the number of committees increased by nearly 20% over 2007–2010.

### DenHotel

DenHotel is a large Danish hotel chain that manages hotels, spa centres and conference centres in Scandinavia. In recent years, while the recession has had some impact there have been no redundancies, but restructuring has merged managements in three hotels and developed regional management structures. The cooperation agreement between the central organisations in Denmark (the employers and the unions) establishes the framework for consultation that covers the DenHotel operations. Under the agreement, union shop stewards are deemed the appropriate people to serve on I&C bodies; but where there are no stewards, directly elected employee representatives take their place. Union membership in DenHotel is patchy, at around 30%. This means that only three of the 12 representatives on the central I&C body covering the whole of the company are shop stewards. The hotel industry is notoriously difficult to organise, in part because of high labour turnover. This also influences the operation of the I&C bodies at the local level in the larger hotels (hotels with fewer than 35 staff do not have an I&C body). A study by the labour union 3F showed that only 3% of companies in the hotel sector have an I&C body. Most staff are part time and the high labour turnover reduces the level of interest staff have in I&C. One exception is apprentices, who often ask for issues to be placed on the agenda. Long-serving staff are those most likely to stand for election.

The central I&C body meets three times a year, while local committees meet once every two months. There is overlapping membership and coordination between local and bodies and the central committee. An experiment with a video meeting failed, since it was found that informal face-to-face contact was vital. Central meetings last a day. The main topics for consultation cover working and welfare conditions, personnel policy, training, use of personal data, guidelines on the planning of production and the implementation of change, and consequences of technical change. Most of the items discussed are raised by employees. Strategic decisions are not subject to consultation, but the company provides information on these matters. There has never been a difficulty with this since management are committed to consultation and information sharing. Employees would have more influence on strategy if they opted to have a worker director on the board, but low union membership and lack of interest have meant that this request has not been made.

The agenda for meetings is drawn up jointly by the vice chairperson, representing employees and the chairperson, who is the HR manager. Anyone can suggest items for meetings. Recently they decided to start meetings with straightforward topics to aid discussion before moving on to more complex or principled issues. It is the responsibility of the employee representatives to share information about meetings with their constituents. In practice this is often not done very well and problems with communications are considered to be one of the main challenges to the I&C body. Some hotels are better at this than others. It would appear that the company does little to help with communications beyond sending out a report or minutes after a meeting. According to the HR manager, the main impact of the I&C body has been to help improve the recruitment process for new employees and their induction. The website has also been improved following employee suggestions. Knowledge sharing between staff in different hotels has also been aided by the I&C body since they meet around the same table. However, there has been only limited discussion of strategic issues and no evidence that the I&C body had any influence. This leads the HR manager to think that it is not cost effective and that using employee focus groups on specific issues would be preferable. The employee vice chair points to the need for union shop stewards as a means of improving consultation, especially at board level. Within DenHotel, established structures are very much utilised to provide information in the form of being an organisational communicator, rather than to engage in meaningful consultation. Discussion of strategic issues is thus limited to generally one-way downwards communication, with investment in structures to facilitate meaningful dialogue viewed as being an unnecessary cost.

### DenPharma

DenPharma is a Danish multinational pharmaceutical company with sales in 53 countries and manufacturing plants in six. It employs more than 7,500 people worldwide. The last five years in Denmark have been marked by major reorganisations and the outsourcing of production to lower-cost countries, notably Hungary and China. This led to substantial redundancies, with over 600 dismissed in 2009 and a further group in 2010. During this period, the I&C body made a considerable contribution. It could not change the decision but it did influence the implementation. Management and employee representatives worked in three groups to mitigate the results of the redundancies, for example by encouraging vocational training for dismissed workers even after the public authorities were unable to do so.

Union membership is high, with around 75% in membership. There is an active body of shop stewards; employee representatives on the I&C body are shop stewards. Only shop stewards can stand for election but all workers, whether union members or not, have a vote. Shop stewards receive an annual salary as compensation for their out-of-hours work, as specified in the national cooperation agreement. The agreement also specifies extensive training provision, paid time off and protection from dismissal and detriment. There has been an I&C body in DenPharma for more than 20 years. Initially the I&C bodies were located at plant level, but eight to 10 years ago, following a request from the employees' side, a central committee was established. This consists of the chairperson and vice chairperson of each local committee. The main or central body meets twice a year, while local committees meet more frequently (up to six times or more if there is a need for a special or emergency meeting). The central I&C body deals with general issues, especially concerning management decisions. The local committees focus more on operational matters. The agenda has to be agreed, as specified in the cooperation agreement, by the chairperson (from management) and the vice chairperson, the

senior employee representative. The topics for consultation and information sharing are specified in the cooperation agreement. The outcomes of consultative committee meetings are relayed to employees at meetings.

Some meetings are confidential. This allows for the consideration of management proposals before a final decision is made and gives an opportunity to influence the decision. Where information is given in confidence, there needs to be an explanation provided on why it is confidential and how long the information needs to be kept secret. Confidentiality also applies to opinions expressed by representatives and management at meetings, which aids openness. There has never been any problem with breaches of confidentiality. This reflects the high level of trust between management and the representatives. Team-building sessions have been held in order to build a solid basis for cooperation.

The normal procedure is for management to present their strategy to the I&C body and then allow the representatives to give their input. The shop steward members hold a pre-meeting to prepare their approach. The focus is on the process of implementation. This was especially important in the restructuring. For example, the I&C body had an influence on the selection criteria, the length of the redundancy programme, avoiding a drawn-out process, and vocational training for displaced workers. The restructurings tested management's ability to communicate effectively and the learning continues on how to give all relevant information to employees. The I&C body has proved to be effective for promoting trust and partnership, adaptability of employees, productivity and work performance, reducing conflict and improving management decisions. This has been achieved during a difficult time for the company and its employees. DenPharma is using the typology outlined in the analytical framework (an 'active consulter'). While the consultation has not prevented redundancies, the fruits of meaningful consultation have been demonstrated in terms of shaping the implementation of the restructuring. The company invests resources in developing its consultation structure, demonstrating the necessity of such resources to make consultation active.

## Netherlands

Like in Denmark, the Dutch system of works councils is well established. Councils are mandatory in undertakings with 50 or more employees, while those with 10–49 employees must establish a 'mini-works council' if demanded by a majority of the workforce. Around 70% of undertakings with 50 or more employees have a works council, while 15% of those with 10–49 employees have a works council and 14% have a mini-works council. Works councils have a wide range of I&C rights and also stronger 'consent' rights over some important issues. In transposing the Directive, the Netherlands made only several minor, technical changes, for example relating to confidentiality provisions, as its existing legislation met or exceeded the Directive's provisions. Implementation of the Directive passed almost without debate. It was not expected to have any perceptible impact on I&C practice and has not done so.

### DutchPharma

Following a series of mergers, DutchPharma is owned by an American MNC that has embarked on a global restructuring plan leading to a workforce reduction of 13%. Overall it has 86,000 employees. This impacted on the Dutch operations and led to the active involvement of various works councils. There are eight sites in the Netherlands, with 5,500 employees in DutchPharma. Of these, 3,000 work in one site in Oss. In July 2010 the US owner MNC announced that R&D would be relocated from Oss to New Jersey in the US. This would involve the loss of 1,000 scientific posts and a further 1,175 jobs. At DutchPharma Animal Health Division, with 2,800 employees mainly in one site, the US MNC announced in 2012 that the headquarters' functions would be transferred to New Jersey, with a loss of 81 posts. In both companies, the US MNC instigated the introduction of lean manufacturing, involving some job losses and greater flexibility among staff, but growing demand for the products has reduced the impact on jobs. These events tested the resolve of the two works councils, especially since the American owners do not like employee consultation. While the US MNC keeps to the letter of the law, consultation is done via a lawyer and conducted in English. Most meetings with the works councils are with local Dutch management, but they sometimes lack the authority to take decisions.

Union membership at DutchPharma Animal Health is around 10%, compared to the Dutch average density of 14%. At Oss, membership was much the same until the restructuring, when it jumped to 40%–50%. A recent development has been the negotiation of a collective labour agreement (CLA) with the unions, covering all sites in the Netherlands. Previously the CLA had been negotiated with the works council in DutchPharma Animal Health. This change is part of the company's plan to centralise all the Dutch operations. A 'social plan' concerning how to deal with redundancies was negotiated in 2010 for all the Dutch operations. It led to the establishment of four 'monitoring commissions'. Two members are appointed by the local works council.

Each company has a supervisory board composed of two company directors and three external independent people. The works councils have been able to make recommendations about the directors but do not have power of appointment. Works councils vary in size, related to the numbers employed. At the Animal Health Division, there are 15 members elected by secret ballot. An executive board consists of four office holders (chair, secretary and their deputies). The chairperson works full time on their council duties. The council meets 10 to 12 times a year without management being present, as is normal in the Netherlands. Bi-monthly meetings are held with the CEO and the HR manager. The council can issue advice and recommendations on key intended business decisions and is legally required to approve decisions on social matters or staff policy. There are five standing committees, which have elected works councillors and co-opted employees. These cover specific topics of direct communication, finance and technology, communications and health and safety. The council does not have a budget but can get external advice, paid for by management, whether from a consultant or a lawyer. The council at DutchPharma Oss is bigger, with 20 members, and performs much the same function. In addition, there is a European works council (EWC).

The restructuring decision at Oss involving the closure of R&D was discussed by the supervisory board, but the works council was not consulted. The council took legal action to insist that it be asked for its advice. A campaign involving the unions and the works council involved the press, debates in parliament and demonstrations. Shaken by this, the US MNC invited the board and the works council to come up with alternatives. This led to 'plan B', where a development centre was set up on the site to promote pharmaceutical companies and employment. Some 486 scientists from the US MNC now work there and 80% of the redundant staff have found employment, helped by the outreach programme, a part of the 'social plan'. A second legal action was taken by the works council when management failed to consult it over the abandonment of a merger with another company. The court ordered DutchPharma to consult with the workforce. At the DutchPharma Animal Health company, the works council worked hard to come up with alternatives to the loss of the HQ and made two proposals. The US MNC declined to reply and the closure went ahead. The chairperson of the works council was among the 80 made redundant. The chairperson of the works council at DutchPharma Oss felt that the two most important things the works council did were to take the company to court but simultaneously maintain an open dialogue with management. This is indicative of an essential element of the Dutch works council model in that while consultation is active, the shadow of the law provides a fallback mechanism that parties can rely on in order to enforce consultation rights. In addition, consultation is active at the local level, but as part of a multinational, operating against the background of a corporate headquarters that may take decisions affecting plants, this level of legal restraint becomes an important resource in supporting the consultation process.

### DutchAirline

DutchAirline is one of the biggest companies in the Netherlands, with 34,000 employees. In recent years it has extended its use of agency workers and temporary workers. This is part of the 'keep the family together' policy agreed with the unions and the works council in 2007 as an alternative to redundancy. DutchAirline is number two in the Dutch league table of the best employers. In 2004, DutchAirline merged with Air France to create a company with 108,000 employees. The two companies are run as separate entities as far as possible, though there is an overarching group executive committee. In 2007, an agreement was made between the president of the DutchAirline board and the works council guaranteeing the right of the council to provide advice on intended business decisions. Since the executive board of DutchAirline is the legal entity, this agreement means that the Dutch works council has early sight of business plans that

then go the EWC. When the matter is discussed at the group executive committee, the views of the DutchAirline works council are already available.

The works councils work very closely with the trade unions, which are well organised in the company. Nearly all works councillors are union nominated. There are 25 members, which is the legal maximum. However, with 18 deputies, the council can expand to 43 members. Union membership is high. The unions negotiate the collective labour agreement while the works council seeks to exert influence on the enterprise policy in order to defend workers' interests. The unions and the works council meet quarterly to discuss the state of play and topical issues. There is an important EWC, which brings together the Dutch and French sides. Given the size of the company, it is not surprising that the works council has a complex structure. There are 28 group councils, covering each unit of activity. These report into three divisional councils for different aspects of the business. There are six sub-committees at the group level to cover different functions. In addition, there are six special standing committees covering personnel and organisation, finance and economic affairs, ICT, medical expenses, business facilities, and occupational health and safety. The majority of the members of these special standing committees have to be works council members. The DutchAirline works council has an executive board consisting of the chairperson and secretary and their deputies, known as 'the quartet'. The two lead officers work full time on their council duties.

The 'quartet' of works councillors meets their management partners twice a year. These are the president-director, the executive VP human resources and industrial relations (who also chairs the Air France works council and the EWC) and the management secretary. Senior management designate the managers who attend the meetings of the three divisional and 28 group councils. From time to time, confidential information is provided and this is accepted with the proviso that it must be known when the embargo can be lifted. Meetings of the works council and management are attended by one of the three 'commissioners' on the supervisory board. This is a legal requirement. The scope to extend the powers of the works council under Dutch law has been used with the agreement of the managing director, particularly in defining the meaning of 'important' in a way that is favourable to consultation. All the legal requirements for information provision, consultation and the provision of advice by the works council are complied with. Relationships are very positive.

The DutchAirline model assumes that a consultation meeting takes 32 hours, with less time required for lower-tier meetings. This covers preparations, pre-meetings, the consultation meeting, meetings with local management and time to feed back to constituents. Extensive training is provided in line with a well-formulated training plan. The works council is provided with a quite generous budget and is able to call in expert external advice. There is a strong union-works council interest in promoting the 'keeping the family together' company initiative. This has led to a substantial expansion in temporary or agency labour of around 3,000, described as a 'flexible shell' helping to protect permanent employees. More recently, the DutchAirline executive board asked the works council to set up a working group, 'Securing Our Future'. The working group and the board meet weekly in each business unit to review requirements and explore options. The Dutch consensus style of working is different from the more adversarial French style or advocate style. The Dutch works council concentrates on achieving the best solution. This means working more closely with management in decision-making. French managers see this as hindering the speed of management. DutchAirline provides an interesting example of a situation where management recognise the value of active consultation compared to their French counterpart. Despite a highly complex organisational structure, strong unions and an engaged management have facilitated consultative processes, which are regarded as assets in meeting the demands of an increasingly competitive and turbulent environment.

### Slovenia

Since the early 1990s, Slovenia has had a statutory system of employee councils, based largely on the German works council model. Councils must be elected, if requested by employees, in companies with more than 20 employees. In smaller undertakings, employees have a right to elect workers' trustees. Employee councils have wide-ranging I&C rights as well as stronger 'consent' powers on some issues. Councils are most commonly found in large firms, of which 50%–75% (estimates vary) are thought to have councils in place. The government considered that existing legislation essentially met or exceeded the Directive's requirements, and transposition involved only some minor, technical adjustments, for example with regard to the details of I&C rights. Trade unions disagreed with the government's approach, arguing that some more substantial changes were needed to comply with the Directive, for example in terms of the national legislation's definition of I&C and the coverage of 'physical persons' acting as employers. Unions also had reservations about the confidentiality provisions. Employers' organisations had no such concerns about the approach taken to transposition.

#### SlovRetailer

SlovRetailer is Slovenia's largest company and is one of the largest in south-eastern Europe. It is a major retailer concentrating on fast-moving consumer products, especially goods with a technical content, home products, clothing and sportswear. The SlovRetailer group operates in all counties in the region and has 23,500 employees overall. Half of these (around 12,000) work in Slovenia, dispersed across the country in retail sites and malls. The quality of customer service is central to the group's business model, which recognises that this is achieved through highly motivated employees. The care of employees is a fundamental part of the HR strategy.

The company has a long tradition of employee participation. At the time of the socialist Yugoslavia Federation, the company was a workers' cooperative. There are many employees who still share the view that SlovRetailer is 'their company', which they helped to build. Employees still say 'SlovRetailer is ours' despite it now being a joint stock company. This came to the fore recently when there were moves by outsiders to acquire the company and there was talk of a merger. The unions, worker directors on the supervisory board and representatives in the works council were informed of the threat of foreign acquisition. The outcome of this clear communication was that they joined with management to reject the proposal.

There are two representative unions in the company. For the last 10 years the leaders of the two unions within the company have been employees seconded full time to their union work and are paid by the company. One of these union officers is also the chairperson of the works council. Just under half (45%) of the employees belong to one of the unions. There is one union representative per 25 members, according to the agreement. Representatives serve for four or five years before facing new elections. The company pays the union membership fee. Half goes to the union headquarters, but the other half is used for an internal social and welfare fund.

The works council has been in existence for a long time – from the days when it was compulsory under the socialist regime. At one stage it lapsed for a year, as no elections had been held, but since then the company and the unions have sought to maintain it on a voluntary basis. Management view the council as an important part of the company. All employees are entitled to vote in the postal elections. There are 31 employee representatives. One view held by management is that this is too large to be effective and some members do not get personally involved and do not prepare for meetings. Large meetings require good leadership and chairing skills. Works council members are given five hours per month to attend meetings, three hours for consultation and 40 hours a year for education. They receive an annual award for being a council member, set at one-third of the average monthly salary. Meetings are held with members of the board of directors four times a year and always seven to 10 days after a supervisory board meeting. The chairperson of the board presents the key highlights for 20–30 minutes, followed by questions and the presentation of the business

results. The presentation is identical to the one given at the supervisory board. Works council members can send in questions in advance as well as ask questions from the floor. Half of the members of the supervisory board are employee representatives.

The relationship between the unions and the works council are intertwined. The unions can propose works council members, but it must be signed by 50 employees. Under the Workers Participation in Management Act, the works council has to represent all employees, whereas unions only look after their members. However, in practice the union joins the works council for the formal meetings. The responsibilities of each body overlap both legally and in practice, for example in handling redundancies. Management now takes the view that cooperation and an open dialogue with each and together is essential. The unions also play a major role in communicating to employees alongside company intranet and newspapers. In this case, there is evidence of active consultation but through the union channel rather than through the works council, with the works council existing to fulfil the legal requirements.

### SlovPharma

SlovPharma is part of an American-owned multinational. It has a chequered history of ownership changes. It operates in the chemical and pharmaceutical sectors, focusing on disease prevention and safe, clean environments. The development of innovative technologies is essential and this leads to a focus on employee development, voice and reward. There are around 160 employees, although half of them are temporary workers employed through employment agencies. It is anticipated that employee development activities and the innovative use of informal communities of practice and networks mainly relates to the 80 full-time company (largely scientific) employees.

Given the size of the company and the type of workforce, together with an emphasis on development and networks, it is not surprising to find that I&C arrangements are largely informal. There are no institutions like a works council or a supervisory board. Around half of the employees are members of the representative union. The union representative in the company works closely with management and describes the relationship as 'almost idyllic'. Meetings with management are not pre-determined, but happen quite frequently to consider matters such as the pay rise at the beginning of the year, holiday pay and the Christmas bonus. Other activities have included the development of joint projects to improve employee welfare, workshops on interpersonal relationships and a project with the occupational health doctor on reducing stress.

One of the most significant developments, initially suggested by the union, is an annual company day in the form of a picnic. The aim is to improve information flows and relationships between colleagues. At the beginning of the day, the director presents key business information and talks with colleagues. The trade union representative greets employees, who can bring their family with them. Agency workers are invited too.

Management take the view that what they do complies with Slovenian legislation (the Employment Act and the rules of the enterprise collective agreement), but how they do this is different from other companies. For example, the annual collective bargaining is done without lawyers and involves swapping contract proposals concerning five points. Agreement was reached in half an hour. The company wants to cooperate with the union. They consider it important that the union is informed on all matters. The union is also seen as an important partner in talks with the company board and can be consulted on various aspects of company operations. This does not require formal institutions, but relies on informality, trust and cooperation to achieve consensus. SlovPharma is demonstrative of a structure used to fulfil requirements, but which is secondary to informal managerially led communication.

### Greece

Legislation exists in Greece that can force the establishment of works councils, but its utilisation is rare, with trade unions, which have statutory rights in this area, being the primary I&C channel at company level. Legislation has also provided for a second channel, in the form of works councils, since 1988. Works councils may be set up at the initiative of employees in companies with at least 50 employees where a trade union organisation is present in the company, or in a company with at least 20 employees if there is no trade union. In practice, works councils have only been set up in a few hundred companies at most. Implementation of the Directive mainly involved extending the statutory definition of I&C to match the EU requirements and explicitly allowing agreements to lay down the practical arrangements for I&C. Trade unions criticised some aspects of the transposition, notably the exclusion of ship crews from the legislation, the definition of information, the confidentiality provisions and a perceived lack of appropriate enforcement provisions and sanctions (a subsequent court ruling has given some support to this final criticism). As the implementing legislation did not require the establishment of any new I&C bodies, it was not thought that its adoption would be likely to provide any impetus for a spread of I&C or the creation of new works councils, especially given trade union claims that employers tend to seek to avoid existing I&C obligations. However, one effect is that unions have used the implementing legislation as a basis for complaints to the labour inspectorate and the civil courts, alleging management failures to provide proper I&C on issues such as introducing temporary lay-offs and short-time work.

### GreekBank

GreekBank is a successful organisation owned by its 70,000 members. It was established in the early 1990s and now has 50 branches and 450 employees. Around half of the employees are graduates and the bank promotes professional development through continuous training. Despite the intense economic crisis in Greece, the bank showed significant profits in 2011 and employment has not been affected.

A company trade union was established in 2001 and between 75%–90% of staff are now members. Within a year the union had affiliated to the sectoral union for bank employees, which provided a number of advantages and independence. Management did not actively support the creation of the union. The two full-time officers of the union, who are bank employees, had to go to court in 2008 in order to establish that the bank was under an obligation to pay them. While the relationship between management and the union is described as ‘a good working relationship based on cooperation’, the union had to flex its muscles in 2002 with two bouts of industrial action in order to conclude enterprise-level collective agreements and the application of sectoral agreements.

In general terms, management’s predilection is for unilateral action and consultation is seen as an alien process. Management employs direct methods of information sharing with employees via the company intranet. This includes statements from head office and the management board. Because so much information is given directly to employees, there is no regular information provision directed to the union officers. Indeed, there is no institutional mechanism to do so. There is no I&C body. The emphasis is on informality. What consultation there is takes place on an ad hoc basis with discussions or conversations between the HR manager and the union full-time officers. Sometimes consultation can be with members of the management board. The topics of consultation are restricted to employee benefits such as childcare provision, insurance and other allowances. The union does not seek to intervene in management decisions. Collective bargaining is more formal and is influenced by legal requirements.

One explanation for the lack of consultation is that there has been little to consult about in the bank. The economic crisis has not influenced the bank directly. There have been no salary cuts and the bank is committed to job protection. Externally, however, the crisis has led to a concentration of power in management hands and a withdrawal from forms of joint working such as institutions of collective bargaining. This influences the bank indirectly, as there is a view that uncertainly prohibits discussion between management and the union on the implications of the crisis for the bank.

However, there was one example of joint working when management and the union joined forces to lobby the government over the cooperative bank's exclusion from debt refinancing.

The lack of big issues for consultation is not a complete explanation, since there are instances where management have acted unilaterally on topics that should have been the subject of consultation. This included changes to holiday leave and changes in the contract of employment for two cleaners. These were seen by the union as 'bad faith of the other party because they know that consultation is required in such cases but fail to do so'. The question of holiday leave was only resolved when the labour inspector intervened.

I&C has made no impact on the process and structure of management. The general management view is that there is no need for regular and ongoing consultation and it does not form part of its human resource strategy. Thus, in terms of the framework the company fails even to be categorised as information only. Nationally, the deterioration of the economic situation and the reduction in the institutional role of trade unions at enterprise and sectoral level may further constrain the scope for trade union influence in consultation within GreekBank.

### **GreekBrewery**

GreekBrewery is one of the biggest beer producers and traders in Greece. It was established in the 1960s and now has three production sites in the country producing beer and bottled water. It handles imported beers and exports to 30 countries. It is part of a large multinational company. It has around 1,000 direct employees, but through the supply chain it leads to a further 30,000 being employed. It regularly wins awards for the quality of its employment relations. A distinctive feature of the brewery is that it has both an active trade union in each plant, with 21 representatives, and a works council with five employee representatives. Virtually all employees are union members. There is a clear demarcation of roles and high levels of cooperation between the works council and the unions, and both have excellent, cooperative relations with management. In addition, the company has extensive arrangements to communicate directly with employees and promote open dialogue through two-way mechanisms where employees are encouraged to raise matters. However, informing employee representatives is given priority over general workforce communication.

The trade unions were established in the three production sites in the 1980s and are affiliated to the sectoral trade union. Each union has a seven-member board elected by the general assembly for three years. Their objectives are to safeguard and promote the employment, economic, social and insurance interests of the members and to conclude collective agreements. The works council has been in operation for a number of years and was established under the 1988 law on 'works councils and other provisions' that ratified the ILO Convention 135. The works council was first established in the Athens plant at the request of the employees. This was a legal requirement, as there were over 500 employees, the legal threshold. Now the works council covers the entire company. It represents all directly employed staff on permanent or fixed-term contracts. A separate health and safety committee exists, with overlapping membership with the works council. Representatives are elected by secret ballot and serve for two years. There is a EWC and the president of one of the plant unions is the Greek representative. The EWC meets twice a year.

The role of the works council, which meets each month, is 'participatory' and 'advisory', seeking to improve working conditions and assisting in productivity matters to ensure the competitiveness of the company and the development of employment. It has a right to make recommendations for employment issues and to be informed. The works council provides advice, in cooperation with the union, on training, the use of new technology, works regulations, holiday arrangements, employee monitoring and social and cultural activities. It also suggests ways of increasing productivity. Information on the introduction of technology, changes in employment, investment plans and the organisation of production is provided by management on an annual basis. In practice, information provision is more frequent than this, with a meeting between members of the management board and the trade unions twice a year and monthly meetings with the unions and the works council with the HR manager. The HR manager is authorised to act on behalf of the company.

The provision of information is recognised as being crucial to consultation, since it is only when employee representatives are fully informed that they can make proposals in response. Some information is provided in confidence and this has never caused any difficulty. Agendas are jointly determined and there is frequent contact outside meetings between key management personnel and key representatives. Meetings of the works council and with unions always have an open agenda to allow for issues to be raised. It is common for representatives to receive suggestions from employees concerning working conditions. These are reviewed and can lead to proposals being made to the management board and action plans drawn up.

Management is committed to meaningful consultation. According to a works councillor, it is always along the lines of ‘we are thinking of doing this, what is your opinion?’ In cases where an agreement is not reached, management will provide a reasoned response to the employee representatives. A crucial part of this is ensuring that there is an adequate timeframe for consultation to allow for well-prepared responses. Pre-meetings are held by works councillors to build cohesion among the members and coordinate responses. A further strength is the attention given to informing employees about the outcome of discussions, using a wide variety of communication channels. Both the unions and the works council have developed strong links with employees. This close contact is viewed positively by management.

The financial crisis has not had a dramatic impact on the brewery, but it has led to the emergence of a number of business and employment issues. The company view is that these have required even more regular and effective information exchange and consultation. They approach consultation with the aim of reaching agreement with the representatives. This in turn improves the implementation of decisions. Consultation is a key part of change management. It brings overall better results for all parties. Consultation at the brewery goes well beyond the legal requirements and is a strong example of an ‘active consulter’. In terms of the indicators of active consultation outlined in the analytical framework, all factors are present in GreekBrewery. Management and worker representatives have invested in developing a consultation regime that has led to high trust between the parties and devolution of important decisions to the consultation process.

## Poland

Prior to implementation of the Directive, I&C in Polish workplaces was predominantly through the single channel of trade unions, which had a number of statutory rights in this area. National trade unions and employers’ organisations came to an agreement among themselves on the nature of national transposition, which was taken up as the basis for the implementing legislation by the government. The legislation took a relatively minimalist approach, which was favoured by the social partners for differing reasons – the unions feared that new I&C bodies might weaken their position in companies, while employers had concerns about the effect of enhanced I&C rights. The initial legislation provided that a works council should be established with Directive-based I&C rights in undertakings with 50 or more employees, at the initiative of trade unions, where present, or at least 10% of the workforce where there is no union. Where trade unions were present, they were to appoint the members of the council, or if this was not possible, nominate candidates for election by the workforce. Where no union was present, the members were to be elected by employees. Following a court case brought by an employers’ organisation, the legislation was amended in 2009, ending unions’ right to appoint works council members in unionised workplaces and making workforce elections universal. More than 3,000 works councils have been set up so far, mainly at the instigation of trade unions in unionised workplaces (around 70% of all works councils) and of employers in non-unionised companies. Further, over 4,000 companies reached pre-existing I&C agreements before the national implementation legislation applied to them. The proportion of potentially affected companies with some form of Directive-related I&C arrangement is around one-fifth. Since transposition, unions have come to take a generally more positive view of works councils, while employers have been slower to see the benefits of them.

## PolUC

PolUC is located in a small city west of Warsaw. It is a limited liability company whose capital is wholly owned by the city. It is run by a two-person board with a five-person supervisory board representing the city authorities, with two seats for employee representatives. PolUC is responsible for water and sewerage, waste collection and the production and supply of heated water. It has 148 full-time equivalent employees, with seven others on different contracts.

The company is unionised, with around two-thirds of the workforce in membership. This is much higher than the average union density in Poland of 12%. One union, Solidarity, has 50 members, mainly among the manual workers, while the other, Komunalni, represents mainly administrative staff, with a membership of 38. There is a collective agreement between PolUC and the unions, first signed in 1990, that establishes substantive and procedural matters, many of which are in excess of the national Labour Code that sets minimum standards. The industrial relations climate is positive. PolUC is recognised as a fair and desirable employer in the community. The unions' stance toward management is very cooperative. It helps that the company, as a public utility, is financially stable and there have been no instances of restructuring or reorganisation leading to layoffs or redundancy. Management are generally regarded as employee friendly.

A works council existed in PolUC between 2006 and 2010. Its demise came about because the employees showed no interest in holding elections for a new works council, as required by the revised labour law. The company chairperson recalled what happened when a well-attended general staff meeting was held: ‘“What for?” That’s what they said when we called the meeting to tell them about the works council’s term being nearly over, so a new one should be elected. There are unions; they do what they are supposed to do.’

The works council had been established by management in 2006 directly as a result of the I&C legislation. The view was that it was necessary to comply with the I&C Act. This was accepted by the unions: ‘it had to be done because of the law’. At the time there was no need to hold elections since in unionised enterprises the unions had the right to appoint councillors. Each union appointed two representatives and they agreed that another councillor would represent the non-union employees. The health and safety inspector was also a member. It proved hard to delineate the responsibilities of the works council from the role of the unions in collective bargaining. Senior managers attended works council meetings, including the chair and deputy chair, the legal advisor and the HR director.

The I&C Act literally copied the I&C Directive, which set out the I&C requirements. Meetings were held each quarter, with information provided. This was exactly the same report provided to the supervisory board. The board meets monthly and the unions nominate the two employee representatives on the board. This means that the works council had no opportunity to contribute anything distinctive. Meetings were de facto ritualistic. The view is that it was almost completely ignored after the first six months. As the Solidarity union chairperson put it, ‘Well, the works council existed for four years, but you can say it very much overlapped with what the trade unions were doing. People were not interested in the works council at all, pure and simple’. The distinctive character of PolUC with high levels of union membership, close relationships between unions and management with effective collective bargaining, a supervisory board giving employees comprehensive access to information and a stable economic situation rendered the legally mandated works council irrelevant. Thus, the I&C body is at best classified as an organisational communicator. The lack of interest by both the union and the management meant that the works council operated in order to fulfil legal requirements, rather than because either group wished to use it to engage in meaningful consultation.

## PolManu

PolManu is a state-owned company engaged in production in the Warsaw area. It was commercialised in 1995. There are 1,860 employees across three sites. Around one-third (600) are union members. Union members tend to be longer-serving males compared with the employment profile of the company. The two unions, Solidarity, with 54% of the members, and OPZZ cooperate very closely with each other. The collective agreement with the company was signed in

2003. It provides substantive and procedural benefits in excess of the Labour Code, which sets minimum standards. Relationships with management are cooperative and seen to be better than national standards of social dialogue. The unions are in a relatively strong position in the company since they control, directly or indirectly, all of the three main avenues of representation, namely the works council, the supervisory board and workers' rights defenders. This gives them access to current information and the means to influence important decisions.

The works council was established in 2006 at the time the I&C Act was enacted. There are eight elected members of the works council. Four are the workers' representatives on the supervisory board, two are the workers' rights defenders and two are union leaders in the company. The agreement to establish the works council was signed within the timeframe that allowed unions to nominate representatives rather than stand for election. The agreement establishes that the cost of running the works council is shared between the company and the unions. The unions want to change that, but there is nothing in the Labour Code to help them. However, costs are very low. There is felt to be no need for training, as council members are highly skilled specialists in law and finance and the union federations provide training. Company-level training for union representatives has been organised by the unions but funded by the employer.

The works council meets each month with the board of directors. Most of the meetings are devoted to information exchanges on employment matters and the current financial situation. Information is provided annually on next year's budget. Consultation takes place less regularly and is issue related. It will take place when there are changes in organisational structure, especially if these involve redundancies. Consultation normally takes the form of management providing an information paper and then presenting it to the works council. Following debate, the worker representatives then write a response. Trade unions see the value of the works council as a mechanism enabling them to gain information that they would not have gained otherwise. In addition, it allows them to work alongside the worker representatives on the supervisory board. One criticism of the works council is that it is poor at communicating with employees. Employees know little about what the works council does.

There are four directly elected worker representatives on the supervisory board. Of these, three are union members. There are five owner representatives, nominated by the state treasury. The board meets six times a year. Its function is to appoint and dismiss directors, determine the value of liabilities, approve contracts and provide an opinion on current management decisions. It thus provides the unions with scope for strategic influence, more than via the works council. The two workers' rights defenders are elected by employees. They are non-union. Their role is to represent employees in grievance and disciplinary issues as well as be members of the works council. PolManu is an example of a union-based consultative process where two forms of legally established institutions – the works council and the supervisory board – with overlapping membership provide the basis for information sharing and some consultation on issues beyond the scope of collective bargaining. It falls into the intermediate category between organisational communicator and active consultation: consultation does take place, but as an add-on to the more established channel of collective bargaining.

## United Kingdom

Prior to implementation of the Directive, statutory I&C in the UK was limited to specific areas such as collective redundancies and business transfers, though a large minority of employers had organisation-specific, non-statutory I&C arrangements, involving unions in a minority of cases. Implementation thus required the establishment for the first time of a general statutory framework giving employees the right to be informed and consulted on a range of key issues, potentially a major novelty given the UK's 'voluntarist' industrial relations tradition. The government invited the CBI employers' confederation and TUC trade union confederation to discuss with it how the Directive should be implemented, resulting in an agreed 'outline scheme' that set out a framework for regulations to implement the Directive. The CBI sought a minimalist approach to transposition, while the TUC aimed to provide unions with organising

opportunities while not risking the loss of I&C systems included in existing collective agreements. The implementing regulations provided that in undertakings with 50 or more employees (after a phasing-in period), 10% of the workforce may request negotiations with the employer over an agreement on I&C arrangements.

Employers may also initiate negotiations. Where there is a pre-existing I&C 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. The negotiations must proceed only if the request is endorsed by at least 40% of the workforce, and a majority of those voting in the ballot. Agreements must meet certain basic requirements and may provide for I&C 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 I&C, based on the Directive's provisions, to elected employee representatives. The period up until full implementation of the Directive led to much employer-initiated activity in agreeing or revising I&C arrangements. However, since transposition was completed, the new statutory mechanisms have been little used and the impact has been very limited in practice. Commentators argue that the minimalist nature of the transposition legislation has prevented the potential for enhancing employee voice represented by the Directive.

## UKIT

UKIT is a large multinational providing IT services and solutions to business clients. Worldwide, it employs 175,000 people, while in the UK there are around 10,000 employees in geographically dispersed sites. Much of its growth has come through acquisitions. In two cases, many of the staff transferred in were union members. As required by law, union recognition in these sites continued in what is predominantly a non-union company.

An earlier I&C body set up to conform with the regulations collapsed when employee representatives gave notice of termination that the employer was not consulting over important business decisions. Management disliked the way the council was union dominated. Substantial efforts were made later to create a new council, this time using the regulations' provisions for negotiated agreements, which are legally enforceable, unlike the earlier body, which was a pre-existing agreement. Great care was taken by employee representatives on the negotiating committee, working with management, to design a robust employee forum. The first two years of operation have shown this to have been achieved.

There are four distinct characteristics. First, the two unions put forward a slate of candidates in the elections. The company actively encouraged a high turnout and every one of the 23 seats was contested. The unions won nine seats and can exert a disproportionate influence on the I&C body, or so management believe. Second, the forum is jointly chaired by a senior manager, speaking on behalf of the six management representatives, and the lead employee representative. They are required to work closely together in setting the agenda, producing position papers, liaising with top management, who often attend meetings and make presentations, and dealing with emergencies. The third distinctive feature is related to emergencies. While normal meetings take place for a full day each quarter, the constitution allows for additional meetings on topics that cannot be deferred. One week's notice is required. Ad hoc discussions by teleconferencing can held at 24 hours' notice. Both chairpersons must agree. The only limitation is that no substantive decision can be taken. Both types of special meetings have been called in the last year.

The final characteristic is probably the most important. This relates to the organisation of the employee representatives to form a collective cohesive body. The 23 representatives come from a wide range of occupations and locations; some are union activists while others are more passive. One-day pre-meetings of the representatives alone are held prior to quarterly meetings. 'Expressing an opinion is one thing, but if reps start arguing with each other in the main meeting I think we did not do the pre-meeting carefully enough' (employee chair). There is a three-level dedicated intranet. One is used by all employees and the second is restricted to employee and management representatives, but the third is for employee representatives only. It is extensively used. Each Friday afternoon all the representatives take part in a secure

conference call. This has been extended to one and half hours from the original hour. Now the management representatives have their own conference call. A weekly meeting is held between HR and some representatives. Subcommittees look at specific topics in detail.

Consultation is considered to be working well and can be viewed as being active. Some management proposals have been stopped or significantly modified. There is strong support from the chief executive officers for active consultation. The one problem area has been the extensive use of information deemed confidential by management. At one point, consideration was given to using the legal procedures at the Central Arbitration Committee, thus illustrating the value of legal enforceability. Now every confidential document has to have a front cover specifying why the information is confidential, to whom and for how long it will remain in confidence. This level of information sharing is indicative of an environment where trust has been built to allow for such activity.

### **UKManufacture**

UKManufacture is a family-owned firm in Northern Ireland with around 300 employees. It operates from a single site with manufacturing and operations facilities and the usual administrative areas. Unusually for a medium-sized family-owned firm in manufacturing, it has a well-developed and well-resourced HR function. The company prides itself on the quality of its people management and high-commitment human resource climate. There is extensive communication using a variety of media with shop floor employees. The company has managed to ride out the recession reasonably well. In 2009 and 2010, production increased but costs rose and foreign exchange rate fluctuations added to the difficulty. This squeezing of margins, common in the sector served by the company, led to a number of decisions. Efforts were made to develop new product lines and revenue streams; pressure was placed on manufacturing costs and quality control. The company bonus was suspended while pressure on efficiency led to accusations of work intensification.

The company is non-union despite recruitment efforts in the mid-2000s by one union. I&C arrangements are focused on an employee forum established under the regulations as a pre-existing agreement (PEA). It has seven employee representatives and five members of management. Notionally it meets each quarter, but more frequent meetings are sometimes held. A number of stimuli seem to be associated with the founding of the forum in 2005. An accreditation body had suggested it to improve communications; some suggest it was an alternative to the union; it may have been designed to pre-empt the regulations as a PEA; the growth of the company required more formal communication methods; and, most obviously, it was seen as best practice. The design of the forum was advised by the government expert body and closely resembled the regulations, with a wide range of topics for I&C, including probable decisions that will have a substantial impact on aspects of employment and work organisation. Normally information papers are given to employee representatives three weeks prior to the forum meeting to allow for representatives to consult with employees, formulate their opinions and gain a response. A pre-meeting is held to aide this process. Representatives are allocated time before and after meetings to talk with their constituents. Some use time at the end of the supervisors' team briefing to report on forum matters, but others do not give this part of their role much priority.

Views on the success of the forum vary. It is highly regarded by management, who value the opportunity it gives them to explain the basis of decisions and dispel rumours. It is used to legitimise management behaviour. It can get bogged down with housekeeping matters raised by employee representatives, although the pre-meeting can be used as a filter. It has proved hard to get employees to stand as representatives and it rare for an election to be required. On the other hand, the forum has been used by employees to debate big issues such as the productivity bonus, which did lead to changes in bonus design before it was frozen in the economic crisis. However, this was some years ago and some representatives believe the forum now has no influence over management and is thus seen as an irrelevance. One difficulty for representatives is how to find a distinctive role. Some believe that rather than employees raising matters directly with their supervisor, they should ask the representative to deal with it. The reluctance to do this restricted their role and wider influence. It is not clear whether individual issues are appropriate topics for collective consultation. These ambiguities

may reflect lack of training given to representatives. In UKManufacture, management initiated the process with the goal of reaching active consultation. However, when faced with organisational difficulties there has been a reversion to information/organisational communicator only, indicating that consultation only developed at a superficial level.

## Analysis of experiences across organisations

Table 3 summarises the key features of the case study companies. Within these companies, a wide variety of responses can be discerned. Not unsurprisingly, both of the companies in the Netherlands exhibited the hallmarks of being active consulters. As predicted, this provided a benchmark for other organisations. In DutchAirline, the culture of working to achieve a consensus was held up as being beneficial compared to the company's base in France, where a much more adversarial approach was followed. In addition, the strong legal framework within which Dutch works councils are based provided leverage to ensure that in DutchPharma, the US owner of the company engaged in meaningful consultation. On the other hand, the other country with a long-established system of works councils – Denmark – saw a more mixed picture emerge of both active consulters and a company that engaged in direct participation. What is perhaps more significant is that both cases from Poland and Slovenia, one case from Greece (GreekBrewery) and one case from the UK (UKIT) showed a much stronger commitment to active consultation. Within both Greek and UK cases, there were contrasting approaches in the second case. In the GreekBank case, there was a strong predilection to managerial unilateralism, with little or no support being provided to create meaningful consultation. In the UK manufacturing company, UKManufacture, the company showed some keenness to develop a meaningful consultation mechanism, yet when faced with major issues reverted to managerial determinism and using the forum as a vehicle for information distribution.

Table 3: *Key features of the case studies*

Country	Company	Sector	Union/non-union	Level of consultation	Other notable features
Denmark	DenHotel	Service	Non-union	Information only	Communication channel
	DenPharma	Manufacturing	Union	Active consulter	Supportive infrastructure for consultation
Greece	GreekBank	Service	Union	Information only	Direct communication
	GreekBrewery	Manufacturing	Union	Active consulter	Works council present
Netherlands	DutchAirline	Service	Union	Active consulter	Value of consultation
	DutchPharma	Manufacturing	Union	Active consulter	Advantage of legal support
Poland	PolUC	Service	Union	Hollow shell	Fulfilling legal minima
	PolManu	Manufacturing	Union	Legal minima	Weak works council
Slovenia	SlovRetailer	Service	Union	Weak consultation	Union channel dominant
	SlovPharma	Manufacturing	Union	Communication with union	Informalism
United Kingdom	UKIT	Service	Non-union	Active consulter	Innovative methods across geographic spread
	UKManufacture	Manufacturing	Non-union	Information only	Reversion to information only

Clearly, consultation meant very different things and a wide spectrum of organisational approaches can be identified. At the better end of the spectrum, a common feature of UKIT, DutchAirline, DenPharma and GreekBrewery was a high level of managerial commitment to the process, providing sufficient facilities for meaningful consultation to occur in an atmosphere of relative trust. Within these organisations, and particularly in Greek Brewery, consultation increased as economic difficulties intensified. In DenPharma, the company made substantial redundancies from 2008–2010. Here, consultation led to changes in the way in which these were implemented, rather than changing the decision; thus, strategic decisions around redundancy were not changed, but the operational aspect of their implementation was. These

four cases were also marked by management sharing confidential information on significant and possibly contested business decisions with employee representatives. An interesting contrast on the issue of confidentiality occurred at UKManufacture (UK), in what was previously an adequately functioning forum that saw consultation go into retrenchment as economic difficulties intensified, with a reversion to managerial determinism and some information being provided to workers. What was pertinent about this case was that while management was clearly proactive about establishing a forum that fulfilled the legal requirements and national guidelines, the extent of embedded commitment to consultation over difficult issues in the organisation was lacking. Thus, in many ways, a test of the extent to which there is a meaningful commitment to consultation is demonstrated by either increasing or decreasing intensity when problems arise in the establishment.

Amongst the six countries, only the UK does not have a legally defined works council system, though as outlined earlier, works councils are not mandatory in all. In the Netherlands, Denmark, Greece, Slovenia and Poland, one, if not both, of the case studies saw works councils fulfilling the legislation's requirements. In a number of these cases, the level of commitment to meaningful consultation was lacking by either management or unions, and at times, both. In PolUC, a now defunct works council was established but it was little more than a technocratic exercise to fulfil the demands of the legislation, with both management and unions content to bypass it for meaningful consultation. In a similar vein, at SlovRetailer, while the works council still exists, it appears that there is no great enthusiasm behind it, with the union and management disinterest at one point leading to it becoming moribund. In contrast, the UK cases, consistent with the traditional single-channel approach in the UK, both saw the establishment of the forums as single-channel voice mechanisms, with an I&C forum being viewed as a substitute for, rather than a complement to, union voice. Based on the small number of cases, it cannot be argued that the approach is representative. Nevertheless, in the countries other than the UK, the use of dual channels was a key feature, with union and non-exclusively union representation schemes working alongside each other to varying degrees of success.

In terms of identifying what made consultation more meaningful, support for consultation proved essential in those with well-functioning consultation. The exact support that proved important in the cases, however, varied greatly. In terms of legislating for consultation, in the two Dutch cases, to varying extent, a mix of national legislative framework, culture and managerial engagement was essential to the conduct of meaningful consultation. Within the other cases of meaningful consultation, the internal company environment seemed to be most important, whether that was in the form of works councils or in the UK single-channel I&C forums. Nevertheless, while in terms of the wider picture the way in which the legislation has been implemented across Europe has not brought about a sea change in I&C, the UK legislation suggests that legislation can and does play a 'nudging' role when the organisation itself is in practice receptive to improving how I&C is carried out within its boundaries.

It is difficult to draw conclusions between the service sector on the one hand and manufacturing on the other, as the experiences within the cases varied greatly. Cases within both sectors showed high variability of outcomes, ranging from being active consulters to engaging in marginalisation of the forums. This itself is of interest, as it does not imply that one sector is superior over the other in terms of practicing I&C, but rather that the organisational context, particularly internal organisational dynamics, is of considerable importance.

In terms of good practice in the area of I&C, it is possible to highlight a number of features that seem to aid in increasing the likelihood of good practice. First, it is unsurprising that the Netherlands, which has been held up as a consensus model of industrial relations but which also has significant and strong I&C legislation, produced cases where meaningful I&C took place. Secondly, management commitment in terms of both resources to support effective I&C and in terms of consulting over difficult issues, as well as more low-level operational issues, is both an input to and outcome of meaningful consultation. Thirdly, and related to the previous point, meaningful I&C requires the sustained commitment of parties to the process rather than viewing it as a mechanism that must be fulfilled due to legal or organisational requirements.

# Conclusions 4

While the principle of the Directive opened up the possibility of providing an impetus for improved I&C across Europe, the actual direct effect of the Directive has been difficult to identify. The functioning and outcomes of I&C arrangements are difficult to monitor and assess, and detecting any specific effect of the Directive in this field is doubly difficult for the following reasons. I&C, unlike collective bargaining, might be said to be essentially about process rather than outcome. I&C also differs from bargaining in that it does not generally lead to any public documentation that is open to examination and analysis. Another complicating issue is that I&C cannot always be considered in isolation: it can blur into negotiation – for example, in the case of consultation over collective redundancies, ‘with a view to reaching an agreement’ – or into the other, stronger forms of co-determination-type employee involvement that exist in some countries, such as Austria, Finland, Germany, the Netherlands, Slovenia and Sweden. In countries such as Italy, Spain and Sweden, the employee-side parties to I&C are in many cases also the parties to company-level collective bargaining. Thus, the relationship between collective bargaining and consultation within dual-channel systems may become blurred.

The Directive as implemented across Europe has varied greatly in form, largely dependent on the form of the arrangements for I&C that pre-dated the Directive in the respective Member States. Thus, as outlined in the methodology, three broad patterns of implementation are discernible: no or little change, minor alterations and substantial legislative change. Despite there being three groups of legislative effect, in terms of the analytical framework, the legislation has not initiated substantial change to the characteristics of I&C throughout Europe – paths remain the same and the principles underpinning implementation in each country remains the same, i.e. the implementing Directive did not create significant changes in the path in any country. There has been some extension to consultation rights in Belgium, but the overall shape of the system remains the same. From the rather limited evidence available in published literature, the legislation has not brought about a significant upturn in the quantity and quality of I&C bodies – in the language of path dependency, exogenous factors have not been sufficiently strong to initiate such a change. Similarly, for those countries with I&C legislation that predated the Directive, this was generally more onerous than what was required by the Directive, making the latter of little effect all round. Those systems based around voluntarism and/or single channels of representation have retained this character in implementing the Directive. Where it has brought about increased representation, for example as outlined earlier in multinationals in the UK and Ireland, this representation has primarily been non-union in nature. Thus, the Directive has not prompted any meaningful convergence onto a single model, as the legislation has been sufficiently flexible to allow national systems to remain relatively unchanged.

While the initial drafts of the legislation and policy positions from the Commission did aspire to creating a system where significant decisions taken without consultation could be annulled, the lack of meaningful sanction in the legislation has affected the efficacy of the legislation. In addition, the governments with the lowest levels of legal support for I&C, like Bulgaria, Ireland and the UK, used the principle of subsidiarity to emphasise employees explicitly requesting I&C forums rather than creating a fundamental right to I&C. In these countries, I&C has fallen into a ‘double subsidiarity’ (Koukiadaki, 2008) trap where weak implementing legislation, alongside voluntary agreements retaining primacy, have substantially neutered the effect of the legislation. Alternatively, in those countries where representation channels have become in theory mandatory, like Greece and Poland, it can be observed through the case studies that where organisational commitment from both workers and management is lacking, there has been a failure to develop meaningful consultation mechanisms. The effects of the Directive are such that a wide variety of forms and practices of I&C remain across Europe, with substantively different sanctions.

In terms of the final part of the analytical framework, active consultation has been identified in a number of the organisational case studies. However, the causal links between the Directive, the relevant national implementations and organisational dynamics is rather tenuous. Where active consultation was identified, it was in countries that had significant traditions of I&C pre-dating the legislation, or in organisations that had shown previous commitment to introducing I&C forums in the past. Thus, similar to Hall et al (2011) in terms of developing active consultation, organisational dynamics are key. Even in those countries with strong works council arrangements, like Denmark and Slovenia, organisations and worker representatives may formally participate and side-step the process. As a corollary, in

countries with weak legislation, organisations that show meaningful commitment to active consultation can establish relatively robust consultation. The DutchPharma case is rather exceptional in this regard due to the strength of the Dutch works council legislation.

Thus, what are the implications for employees, trade unions and employers' associations, and companies? Despite being heralded as introducing general rights to I&C for the first time across the EU, Directive 2002/14/EC has not played a significant role in terms of shaping meaningful organisational-level I&C. The fitness check highlighted that perception of the effectiveness of the Directive was lower than that for both the Transfer of Undertakings or Collective Redundancies Directives (Deloitte, 2012). While the fitness check report argues that the effect of the Information and Consultation Directive was expected to be slower, it is also noteworthy that the provisions of the other Directives come into effect in a specific set of circumstances, rather than endowing general rights. The findings indicate that there is rarely a direct call for general I&C from workers, and given the shape of the national implementations, the call for implementation can come after the decision has actually been taken. Creating specific I&C rights around particular organisational circumstances has had much more effect.

There is a lack of national-level data on the effect of the financial crisis on practices of I&C. Once fully analysed, The UK WERS data which was released in January may provide an indication around this sort of data. However, through the case studies two quite polar responses can be discerned. In those organisations that set about establishing robust forms of active consultation (like GreekBrewery or DenPharma), consultation in terms of quality and quantity has increased during the crisis. Management shared highly confidential information with worker representatives in order to establish alternatives and engage in restructuring processes. On the other hand, cases such as UKManufacture and GreekBank demonstrate that firms without strong infrastructure and commitment to consultation reverted to managerial unilateralism in terms of decision-making during the crisis. In this way, forums came to be utilised as a downwards communication channel rather than a meaningful mechanism to evaluate alternatives.

Within the case studies, a wide variety of organisational-level approaches was discernible. It is important to note, however, that two cases from a country cannot be viewed as representative. In those that were the most active in their consultation, major organisational changes were tempered by the presence of well-informed, well-organised workers who engaged actively over substantive issues such as reducing the numbers made redundant in major organisational restructuring and affecting the way in which major changes were implemented. At a less advanced level, but nonetheless meaningful, while the principle of managerial decisions was not altered in some organisations, the detail on how changes were implemented was subject to changes through consultation. Finally, a third trend of micro-operational issues being open to consultation, but the major issues being reserved for managerial determinism, was evident. There was no particular pattern discernible amongst the case studies in terms of country or sector in which the organisation was based; rather, the quality of the consultation often lay substantively in the extent to which management made significant commitment to the process of consultation. Those managements that had a culture of supporting active consultation were more likely to engage meaningfully with the worker representatives over major issues of organisational change.

In terms of policy implications, while the Directive did not initiate a new wave of meaningful consultation in those countries that introduced general I&C legislation for the first time, it did play a 'nudging' role in encouraging some organisations to establish and/or strengthen I&C processes. What the Directive clearly did not do was to introduce a means by which the Vilvoorde scenario will not reoccur. Similarly, it did not provide enough constraints on national implementation or organisational discretion to initiate wide-scale I&C practices. To use Wolfgang Streeck's term, the level of 'beneficial constraint' necessary in the legislation to do this was not present and thus national practices as required by the Directive do not always ensure the adequate, effective and timely I&C of employees in the interests of both employers and employees. This is in contrast to national-based legislation in several Member States, such as Germany and the Netherlands, that pre-dates the Directive. What the Directive did do, however, was to prompt activity amongst some firms that had previously demonstrated strong levels of organisational commitment to meaningful consultation to reinforce this approach.

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