

Worker representation in undertakings in Europe

Introduction

The present presentation on systems for worker representation in undertakings in the countries within the European Economic Area (EEA) seeks to underscore the major differences between these systems. The experience of the European works councils shows that to create effective cohesion between the representatives from the different countries, they must first gain a basic corpus of knowledge about the legal frameworks or the sets of agreements which determine the expectations and working methods of colleagues in other countries. The purpose of this presentation is therefore to introduce these differences, and it targets the trade union players and other stakeholders involved in European works councils and the representative bodies in SEs (European companies). Once again: this presentation lays no claim to supply an in-depth understanding about the staff representation bodies in every country in the European Economic Area. The aim is rather to focus on some fundamental differences in order to prepare the workers' representatives involved in transnational bodies of this type for better cohesion vis-à-vis employers which might attempt to play off workers from one site and one country against colleagues at other sites and in other countries.

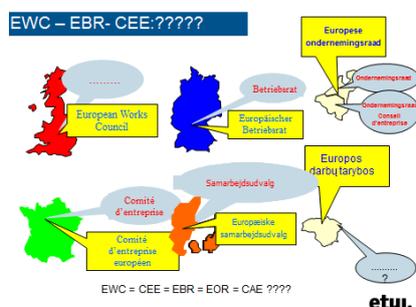
The structures, systems and prerogatives of the various representative bodies in each EU country are described in more detail on the ETUI website, which can be found at the following address:

In English: <http://www.worker-participation.eu/National-Industrial-Relations>

In French: <http://fr.worker-participation.eu/National-Industrial-Relations>

In German: <http://de.worker-participation.eu/National-Industrial-Relations>

Slide 2: Different cultures of representation



Part of the diversity of the various representation cultures is reflected in the very different responsibilities, composition and roles of the representative bodies, which at first sight have similar names.

The French term 'comité d'entreprise européen', for example, is mirrored in several EU languages:

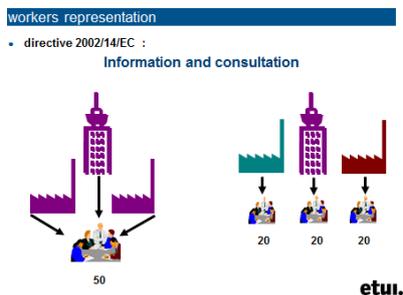
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- In English: 'European Works Council'
- In German: 'Europäischer Betriebsrat'
- In Dutch: 'Europese ondernemingsraad'
- In Danish: 'Europæiske samarbejdsudvalg',

to name but a few. Where a French representative might be tempted to think that a 'European works council' should be a projection at European level of what the French call a 'comité d'entreprise', and operate in a similar way at that transnational level, we might expect that their German colleague would expect it to play the same role, at European level, as their national 'Betriebsrat'. Yet a 'Betriebsrat' and a 'comité d'entreprise' are bodies with relatively different prerogatives, electoral arrangements and composition. The same applies to the 'samarbejdsudvalg' or Danish works committee. As to the 'ondernemingsraad' found in Belgium and the Netherlands, the same term in Dutch actually covers very different realities and practices.

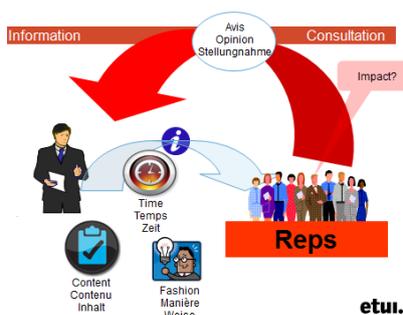
Slide 3: A common minimum framework on information and consultation



Despite these differences, it is important to stress that the European legislator, through directive 2002/14/EC, has imposed a common minimum framework which should apply to all undertakings in the EEA, whether public or private, and whether or not they are run for profit. The Member States can choose to impose this information and consultation procedure either at the level of the

undertaking, where there are more than 50 staff, or at the level of the various establishments where there are 20 staff. This information procedure must be conducted with the decision-maker(s) on the management side.

Slide 4: Defining the information and consultation

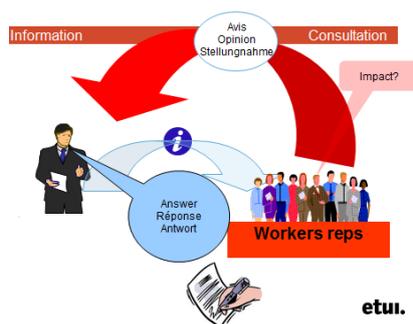


'Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation' (Article 4.3).

Consultation shall take place:

- '(a) while ensuring that the timing, method and content thereof are appropriate;*
- (b) at the relevant level of management and representation, depending on the subject under discussion;*
- (c) on the basis of information supplied by the employer ... and of the opinion which the employees' representatives are entitled to formulate'(Article 4.4).*

Slide 5: Information, consultation and agreement?



The consultation procedure must likewise take place:

- '(d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;*

(e) with a view to reaching an agreement on decisions within the scope of the employer's

powers'(Article 4.4).

While directive 2002/14/EC did not impose any modifications to provisions regarding information and consultation in a number of countries such as France, Germany, Belgium and the Netherlands, because the legislation in those countries already met these conditions, its importance should still be noted, even though in some countries, such as the United Kingdom, Poland and the Czech Republic, the modifications to the legislation transposing this directive were not received enthusiastically by the trade union organisations, given that they sometimes ran counter to the established traditions and structures.

In the framework of multinationals, these local information and consultation bodies should, of course, be in relation with the European works councils or representative bodies of the respective SEs.

Slide 6: The themes of information and consultation

Workers representation - directive 2002/14 - competences



Confidential?

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The information and consultation cover:

- '(a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;*

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(b) 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;

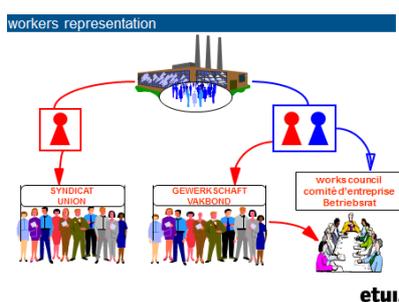
(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1) (Article 4.2).

Confidential information (Article 6)

1. Member States shall provide that, within the conditions and limits laid down by national legislation, the employees' representatives, and any experts who assist them, are not authorised to reveal to employees or to third parties, any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorise the employees' representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of confidentiality.

2. Member States shall provide, in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it'.

Slide7: Works council ≠ trade union representation

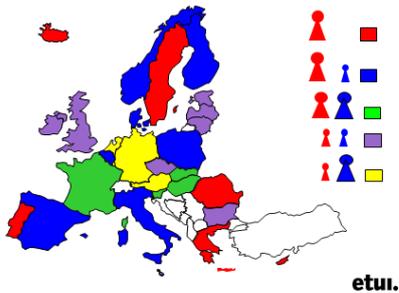


If we analyse the representation systems from the point of view of rights to information and consultation, we may take the example of an undertaking or an establishment with approximately 150 workers. In several countries, these rights to information and consultation are held by the single channel of the trade union representation(s). Historically, this implied that if

workers were not organised into trade unions, there was no representative body to guarantee those rights. Alongside the trade union representation, some countries have a body whose responsibilities include the rights to information and consultation: the 'comité d'entreprise' for example in France, the 'Betriebsrat' in Germany and Austria, the 'ondernemingsraad' in Belgium and the Netherlands, etc. Such cases might be described as a twin representation channel.

This then raises the question of the relationship between such a body and the trade union representation body(ies). As we have seen in slides 3-6, pursuant to directive 2002/14, such bodies should in fact be set up in all establishments or undertakings without trade union representation.

Slide 8: A twin or single channel?



The map in this slide is obviously a gross simplification of the various forms of representation. It seeks only to spotlight some differences stemming from what we can expect either because of the legislation, or the fact that the practice is not always in keeping with the legislation. In Greece, for example, a 1989 law provides for the creation of works councils. But they occur only in some undertakings, because the local trade unions generally tend to oppose

their creation. These local first-tier unions constitute the main body representing workers.



In principle, workers' interests at a given site can be defended via a single channel, namely the trade union(s) present. Where this is the case, the method of electing or nominating the trade union representatives will depend on the trade unions in question: they can choose to have these representatives elected by their members or designate them in some other way. In the present instance, the trade union organisations and their representatives are the only bodies representing workers' interests. This representation can be legitimised in a national law requiring employers to recognise the unions, or in a collective agreement, or simply in the balance of powers imposed by the trade union organisations, as is the case in Sweden, Romania, Portugal and Iceland.



The works council or its equivalent can quite simply represent all the different trade union organisations present in the undertaking, or be a body set up by a collective agreement, elected by all the workers. Each one occupies a certain number of seats on the Council, which may also be, or may only be, an information and cooperation body. In the latter case, the fact that a works council exists does not relieve the employer of its obligation to negotiate with the trade union representatives. The common feature linking these bodies, which are found in Spain, Poland, Belgium, Norway, Finland, Denmark and Italy is that this type of body constitutes more of a supplementary information and consultation forum for the trade union representatives at the level of the undertaking.



The works council can exist jointly with the trade union representations and have its own functions and powers. The trade union organisations have a major influence on the election of the council members. In France, for example, the recognised trade union organisations have a monopoly on the presentation of the candidates in the first round of works council elections. Lists of independent candidates cannot be submitted until the second round if the trade union lists have failed to secure 50% of votes. In Hungary, the Slovak Republic and Slovenia, works councils can be regarded as being bodies which supplement the work of the undertaking's trade union organisations.



This group of countries is actually the most heterogeneous. Rights to information and consultation will be handled either by a trade union representation or by a body elected by all workers, albeit with a risk in many activities of encountering neither one. In several countries, the governments are in the process of trying to set up legislation to reduce the rights of the trade union representations where they exist, for the sake of giving lesser rights to the works councils or their equivalent. UK, IRL, EST, LT, LV, CZ, BG



The works council or its equivalent ('Betriebsrat', 'Ondernemingsraad', etc.) can also be the main body for representing the workers at the company level. The works 'council', elected by all the workers on the basis of lists which may be put forward by any group of workers, whether union members or not, has powers which often extend to include codetermination (Germany, Austria, the Netherlands). The scale of trade union representation within these bodies will obviously depend on the ability of the trade union organisations to put forward lists of candidates allowing their members to choose from among them when the elections are held. In big undertakings in Germany and Austria, for example, in most cases, the works council is dominated by representatives who are members of the trade union federations affiliated to the national trade union confederation.

However, if such works councils exercise their prerogatives at company level on topics delimited by the legislation vis-à-vis the responsibilities of the trade union organisations, the latter negotiate national or regional collective agreements regulating pay and other employment conditions.

Slide 9: The presidency of a works council or committee

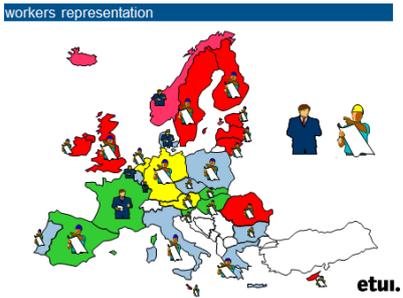
workers representation
chair



A works council based on French law is chaired by the employer, while the secretary acting as 'president' of the group represents the workers.

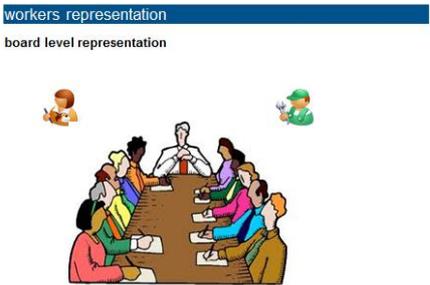
A German works council ('Betriebsrat'), by contrast, is chaired by a worker elected by all employees at the undertaking or establishment. This practice is also reflected in the European works councils based on the respective law of those countries.

Slide 10: The presidency of the works councils and local trade union representations



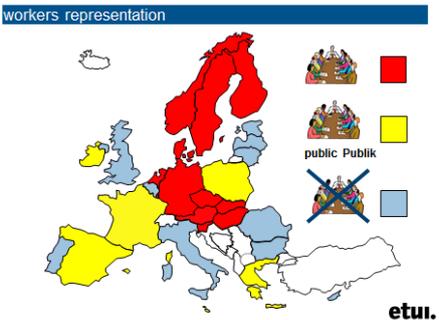
While there are differences regarding the presidency of the works councils or their equivalents, the purely trade union bodies are naturally chaired by a worker who is a trade union member.

Slide 11: Representation of workers on boards or supervisory councils



In some representation systems, the workers enjoy the option to influence the strategic decisions made by undertakings or groups through the presence of their representatives on the boards or supervisory councils.

Slide 12: Representation of workers on boards or supervisory councils(2)



Some systems also provide for worker representation in undertakings' strategic decision-making bodies, for example the board or supervisory councils. This type of representation depends on the thresholds regarding the numbers of workers, and varies widely from country to country (25 in Sweden, 500 in Germany) and may include a minority

representation of the workers' representatives, or, as in Germany, in undertakings or groups with over 2000 staff, virtually joint representation.

Workers can be represented within the undertaking's boards or supervisory councils in all sectors: private or public, as in Germany, Austria, Sweden, Finland, Norway, Denmark, the Netherlands, Luxembourg, France, Romania, Hungary, Slovenia, the Slovak Republic and the Czech Republic.

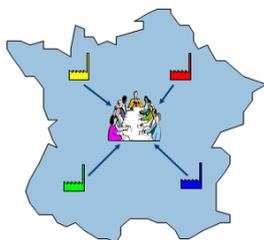
Workers' representatives can be elected direct or appointed by existing representatives. They can have a vote, or simply observer status. It is reasonable to think that by being represented within the management bodies, the workforce will have access to information before any strategic decision is taken by the undertaking. They will thus have more chance to influence such decisions.

It is likewise possible that this type of representation is the sole preserve of the public sector or undertakings in the 'semi-public' sector, in other words undertakings which have once been State-owned but are now partially or totally privatised. These days, we tend to talk about 'opening up the undertaking's capital' rather than privatisation: in Poland, Portugal, Spain, France, Italy, Greece, Ireland and Lithuania.

There is no representation within the undertaking's management bodies in Switzerland, Bulgaria, Romania, Estonia, Belgium, the United Kingdom or Iceland.

Slide 13: Central representation body, central works council – group committee

workers representation
group works council



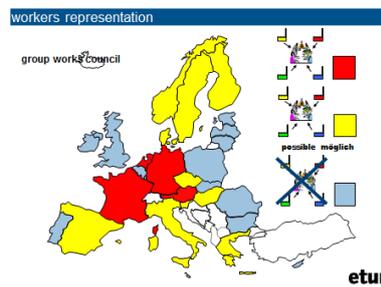
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An undertaking or a group can have several different production sites within a single country. In addition, a group can control several different undertakings in one individual country. To coordinate the workers' representation, it is important to know whether workers from the various sites all have the same coordinated representation vis-à-vis the employer. If there is international cooperation between workers in different countries or different undertakings controlled by the same group in one individual country, it is probable that such joint representation bodies may play a decisive role in the dissemination of the information between all the workers' representatives.

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Slide 14: Central information and consultation body at national level



Central representation at undertaking or group level

France, Germany, Austria, Luxembourg, the Netherlands

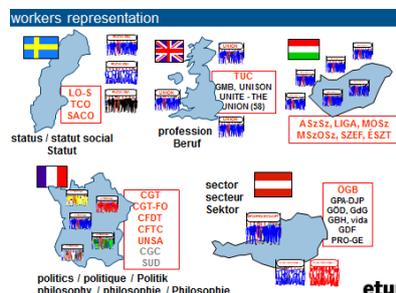
Central representation at undertaking level and sometimes at group level

Spain, Italy, Greece, Denmark, Sweden, Finland, Norway, Czech Republic, Hungary, Slovenia. In these countries, the existence of central representation at undertaking or group level will depend on the initiative of the local bodies or of the national trade union organisations.

No central representation at undertaking level

Portugal, Bulgaria, Romania, Slovak Republic, Poland, Estonia, Lithuania, Belgium, Iceland, United Kingdom, Ireland.

Slide 15: Which types of trade union organisations?



The Scandinavian system, represented here by Sweden: workers are organised on the basis of their socioeconomic status: manual workers are affiliated to the industrial federations in LO, a confederation which has close ties to the Swedish social democrats; white-collar workers and middle executives tend to belong to the TCO federations; graduates are often members of the federations in SACO. Rates of union membership are very high in Sweden (72%) and in the other Scandinavian countries.

The 'Anglo-Saxon' system (United Kingdom and Ireland), represented here by the UK. Under this system, 90% of union members belong to the unions which are members of the TUC. However, several TUC federations can also be represented in the same establishment and sometimes compete with each other to recruit members. These federations tend in general to be organised on the basis of workers' professional categories. However, one aim of the growing number of mergers of federations is to reduce divisions in the ranks of the trade unions.

The 'Germanic' system, represented here by Austria. The vast majority of workers who are trade union members belong to the ÖGB sectoral federations. In Austria, identification with a union tends to be expressed via a federation rather than a confederation. For example, a worker would thus present himself more as a PROGE member than as a member of the ÖGB confederation. Despite the concerns felt by the unions because of the drop in the rates of union membership, the ÖGB member federations remain strongly represented on the boards of big Austrian undertakings.

The 'Latin' system, including 'multiple trade unions', represented here by France. The key feature of this system is the fact that workers are free to choose their trade union depending on their political convictions or, sometimes, their religious beliefs. Five confederations are officially recognised, while a string of trade union organisations based on the category of workers – regardless of or resulting from company splits – have as their members a minority of the workforce. Yet it would be simplistic to try to establish the degree of representativeness of the French trade union organisations merely by comparing the rates of trade union membership in the various countries. On the contrary, a better way to measure their evolution is to examine the results that they obtain in the elections for the various representative bodies, such as labour tribunals and works councils, or their ability to mobilise workers during periods of social unrest.

Multiple trade unions are the rule rather than the exception in the countries of Central and Eastern Europe as is the case in Hungary. The Czech and Slovak Republics differ from their neighbours in their remarkable unity and their relatively high level of union membership.

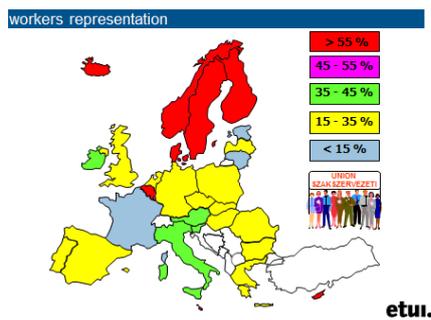
Slide 16: Multiple trade unions, the rule rather than the exception



This map showing the national confederations affiliated to the European Trade Union Confederation (ETUC) gives another way of assessing the level of multiple trade unions. In this framework, Europe is extended in the geographical sense and the ETUC members are found in 35 countries, with 83 confederations in 2011. It is clear that from the point of view of trade union

cooperation around European works councils, this variety of organisation can cause problems. If, for example, an Austrian representative becomes aware that his group has subsidiaries in Hungary or Spain and he plans to contact representatives in those countries to ask for a European works council to be set up, which organisations should he channel his request through?

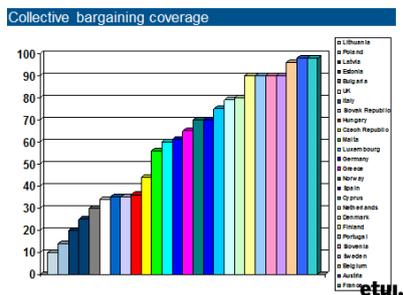
Slide 17: Rates of trade union membership in Europe



Not only are there wide variations in representation systems, but rates of trade union membership also vary massively from country to country, from 90% in Iceland, through the Scandinavian countries (60-75%), with less than 9% on average in France. The general trend has been downwards for several decades. In central and southern Europe, we see that Belgium, Malta and Cyprus differ markedly from their

neighbours. As has already been pointed out, however, we should not make the mistake of measuring the trade union organisations' capacity for intervention simply by reference to their rates of membership. In the systems of representation by a twin or dual channel, workers can give their support to the trade union organisation without becoming members, but by voting for its candidates during professional elections. In such configurations, trade union organisations' strength will also depend on their ability to mobilise workers.

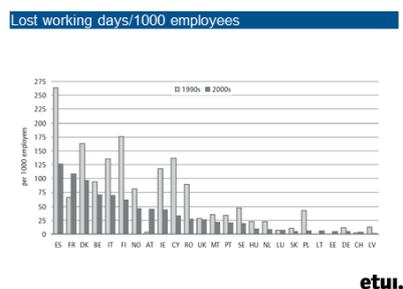
Slide 18: Collective bargaining coverage



Another illustration of the heterogeneity of representation systems can be seen in the great diversity of collective bargaining coverage, in other words the proportion of workers in each country for whom agreements on working conditions (wages, working time, social benefits, etc.) have been negotiated by the trade union organisations. In several countries, such as France, Belgium and

Austria, we see that the rate of coverage of these agreements is far higher than the proportion of workers who are unionised, because the trade union organisations have in the past secured laws imposing the extension of the agreements to all workers in the sectors concerned.

Slide 19: Conflicts in the various systems of representation



Organisations like the ILO or Eurostat regularly publish statistics on the number of working days 'lost' to labour-market unrest: strikes and lockouts. The graph shows the average number of days 'lost' per 1000 workers in the countries of Europe during the 90s compared to the following decade.

Not only do we see a wide diversity between the countries, but the general trend seems to be towards the 'pacification' of industrial relations. Certain systems imply the 'duty of industrial peace' throughout the duration of a sectoral collective agreement. The organisations have made a commitment, on signing up to a collective agreement, not to take any conflict measures during its period of validity.

Slide 20: The linkage between the European works council and the local representations

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Directive 94 45 EC

'Without prejudice to Article 8 of the Directive, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the

information and consultation procedure carried out in accordance with this Annex' (Annexe §5)

Directive 2009/38

'The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees' 12:2

'The members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Directive' 10:2

Slide 21: Want to find out more?

To find out more, go to the site:

In English: <http://www.worker-participation.eu/National-Industrial-Relations>

In French: <http://fr.worker-participation.eu/National-Industrial-Relations>

In German: <http://de.worker-participation.eu/National-Industrial-Relations>

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Annex: The method for designating representatives in the SNB, European works councils and/or workers' representative bodies in SEs

Country	Who first designates the members of the SNB for the EWC and the European company?
Austria	Works council
Belgium	Works council
Bulgaria	Staff (general assembly), but the nomination may be transferred to the trade unions
Cyprus	Trade union present in the workplace
Czech Republic	All workers' representatives (trade union and works council)
Denmark	Cooperation committee (body with trade union majority)
Estonia	All workers (election at a meeting)
Finland	Staff (non-specific legislation)
France	Trade unions on the basis of the results of the works councils elections
Germany	Works council
Greece	Trade union present in the workplace
Hungary	Works council
Ireland	All workers(election)
Italy	Trade unions and single trade-union representation (RSU in Italian)
Latvia	All workers' representatives (unionised and non-unionised)
Lithuania	Trade union present in the workplace–works council only if no trade union
Luxembourg	Works council (delegation of workers)
Malta	All workers(secret ballot)
Netherlands	Works council
Norway	All workers for the SNBof the EWCand the trade unions present in the workplace for the SNBof the European company
Poland	Trade union present in the workplace
Portugal	Trade unions in agreement with the works council
Romania	Trade union present in the workplace –other workers' representatives if no union
Slovakia	All workers' representatives (trade union and works council)
Slovenia	All workers(secret ballot at a meeting)
Spain	Majority trade unions in the works council
Sweden	Trade unions with which the undertaking negotiates
United Kingdom	All workers (secret ballot), except where a committee itself elected by secret ballot is already in place