

Employee representation and information, consultation and co-determination rights in Europe

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This article considers employee representative organisations in the EU, including an analysis of trade unions, works councils, and the relative importance of these organisations in the 27 member states; participation rights in the EU member states, summarising information, consultation and co-determination rights; and employee representation and co-determination rights in selected states (including Belgium, France, Germany, Hungary, Italy, The Netherlands, Poland, Switzerland and the United Kingdom).

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In the EU, collective labour law covers:

- Collective bargaining law.
- Industrial action law.
- The law concerning the right to form employee representative bodies.

At EU level, collective labour law is undeveloped compared to individual employment law. In addition to the historical differences between the member states, there is a lack of legal basis on which collective labour law can be developed further at EU level (for example, the law regarding collective bargaining agreements (CBAs), unions and strikes). However, there are certain common factors within the laws of most of the member states, particularly in comparison to the US. This chapter considers the following:

- Employee representative organisations in the EU, including a summary of:
 - trade unions;
 - works councils;
 - the relative importance of these organisations in the 27 member states.
- Participation rights in the EU member states, summarising information, consultation and co-determination rights.
- Employee representation and co-determination rights in selected states (Austria, Belgium, the Czech Republic, France, Germany, Hungary, Italy, Poland, Spain, Switzerland, The Netherlands and Turkey).

Employee representative organisations

In all EU member states, there are structures in place for employee representation at establishment and company level.

Trade unions

The traditional form of employee representation, arising from the 19th century, is the trade union. However, trade unions vary greatly between member states.

In most member states, trade unions are organised on an industry-wide basis. There is generally no requirement to obtain specific recognition as only one trade union is usually active per industry sector. Trade unions generally conclude CBAs on the main working conditions with industry-wide employers' associations.

EU employee trade union membership figures have declined and EU-wide trade union membership is currently under 24%. However, in continental Europe 62% on average of the employed population is covered by CBAs. This is because:

- CBAs cover employees if the employer:
 - belongs to an association that has concluded CBAs; or
 - operates within a particular industry.
- This applies, for example, in Belgium, France, Spain, Hungary, Poland and Austria (*see below, [Case studies in selected member states](#)*).
- In many member states, for example in Belgium, Germany, The Netherlands or France, the government can declare a CBA to be generally binding on an industry sector.

In some member states (for example, the UK and Ireland) CBAs generally apply at an individual company level and often only regulate salaries and working hours. In these member states, trade union membership is particularly low.

Works councils

In all EU countries, there is employee representation at company or establishment level. In certain countries, the trade union provides this representation, in others it is provided by the works council.

The distinctions between trade unions and works councils are the following:

- Trade unions are voluntary affiliations that exclusively represent the interests of their members. Works councils represent all employees in the company and are constituted by statute.
- Trade unions conclude CBAs which deal with remuneration and the main working conditions. Works councils generally have participation rights regarding operational issues at a company level.

In practice, this dividing line is frequently difficult to draw, with trade unions often exerting a strong influence over works councils.

European works councils can be formed in companies with a transnational, European presence. The German and the French models of works councils formed the inspiration for European legislation.

Relative importance and responsibilities of trade unions and works councils

The relative importance and responsibilities of trade unions and works councils varies between member states. Generally, the member states can be divided into four categories for this purpose:

- **Category one (Croatia, Germany, Luxembourg, Switzerland and Austria).** Trade unions and works councils have separate duties and are not linked at an organisational level. Switzerland differs from the other countries in category one as there are no mandatory works councils or employee representative bodies.

- **Category two (Denmark, Finland, Cyprus, Italy, Czech Republic, Latvia, Lithuania, Malta, Romania, Sweden and Turkey).** Employee representation in the company takes place primarily through trade unions.
- **Category three (Belgium, Bulgaria, Estonia, France, The Netherlands, Greece, Poland, Slovakia, Slovenia, Hungary and Spain).** Both trade unions and works councils have representation rights under relevant laws or binding CBAs. In some of these countries (for example, Greece), works councils exist only in theory. In Spain, the works councils conduct collective bargaining negotiations and are closely linked to the trade unions. In Belgium and France, the trade union predominates, negotiating and signing collective bargaining agreements. In The Netherlands, trade unions usually conduct collective bargaining negotiations, and works councils can have an important role in decisions which influence working conditions or which can lead to redundancies.
- **Category four (UK, Ireland).** Trade unions are the only national employee representative bodies. However, it is possible to establish information and consultation arrangements with employee representatives at company level in those jurisdictions. These bodies are commonly referred to as staff councils or staff forums. The term works council is not used in the UK, except in the context of European works councils.

Trade unions and works councils are considered in greater detail in Austria, Belgium, France, Germany, Hungary, Italy, Poland, Spain, Switzerland, The Netherlands and Turkey (*see below, Case studies in selected member states*). As Turkish law does not recognise the works council, only trade unions are considered in the Turkey case study.

Participation rights in the EU member states

Employee participation rights are structured differently in the individual member states. EU law provides a basic core of rights that apply in all countries, even in member states that do not have works councils or analogous structures, for example, the UK and Ireland (*see box, EU legal minimums*).

However, the member states (except for the UK and Ireland) also have their own, more extensive rights. Generally, participation rights can be divided into the following categories:

- **Information.** This concerns the employer's transmitting data to employee representatives. In many member states, works councils or similar employee representative institutions have rights to information, for example:
 - updates on significant financial and business events (for example, the yearly balance sheet, mergers and takeovers);
 - regular information sessions on the progress of the company.
- **Consultation.** These are rights to be informed of planned measures in advance and to have an opportunity to express an opinion before their implementation. The requirements are structured differently depending on the member state. There are often consultation rights relating to the following:
 - changes to the company's legal status;
 - the removal, expansion or downsizing of areas of the company or business;
 - the introduction of new technologies.
- **Co-determination.** Co-determination rights apply where the consent of the works council is a mandatory requirement for undertaking particular measures. In Germany, enforceable co-determination has developed to a very wide degree. However, in most member states (including Spain and Italy), it does not exist.

It should be noted that, in member states where enforceable co-determination rights do not exist, there are other ways of exerting influence (for example strikes, collective bargaining policy or considerably lengthy negotiations with employers, an option which is favoured in Belgium and France). In addition, information and consultation rights can be structured in a very formal way so that the process leading up to the employer's implementing a measure can take as long as a

co-determination right.

Case studies in selected member states

To further explore the issues raised in this chapter, employee representation organisations and participation rights are considered in the following jurisdictions:

- Austria.
- Belgium.
- Czech Republic.
- France.
- Germany.
- Hungary.
- Italy.
- The Netherlands.
- Poland.
- Slovakia
- Spain.
- Switzerland.
- Turkey.
- United Kingdom.

For an overview of works councils and trade unions in these member states, see box, [Works councils and trade unions in selected member states](#).

Italy

Employees in Italy can be represented in the following ways:

- Trade unions (*Rappresentanza Sindacale Unitaria*) (RSU).
- Collective bargaining agreements (CBAs).

Trade unions. In Italy, trade unions play a central role in employee representation at company level. The most important employee representation body is the unitary trade union delegation (*Rappresentanza Sindacale Unitaria*) (RSU). The RSU represents all trade unions operating in the company and the company's entire workforce. The RSU can be established in all public bodies and in all active private organisations with more than 15 employees (part-time employees, in proportion to the working time, and time-limited employees must be taken into account as far as the company's size is concerned). The RSU performs the usual tasks of a works council. Its main task is negotiating with the employer at company level. It is authorised as a collective bargaining party to negotiate binding agreements concerning the company.

In addition, notification and consultation rights exist in:

- Certain areas required by statute, for example:
 - health and safety at work;
 - the use of public funds for restructuring; and
 - mass dismissals and transfers of business.
- More specific industry and company-wide agreements, covering issues such as:
 - the economic and financial situation of the company;
 - the introduction of new technologies; and
 - company investments.

The CBAs can provide for specific information and consultation obligations towards trade unions. Such obligations include, for example, demergers and corporate mergers that can have an impact on employment, transfer of tender contracts and outsourcing, the use of overtime and the externalisation of ancillary or instrumental processing stages of the production cycle, and the percentage of permissible fixed-term employment contracts.

The RSU is formed by election between competing lists, with personal and secret votes and the possibility to indicate a single preference. The term of office is three years. At the end of the three-year term, the RSU lapses automatically and new elections are required. In case of resignation or a change in union membership, the component of the RSU is replaced by the first non-elected individual from the same list. All employees on fixed-term employment contracts are entitled to vote.

The number of RSU members varies according to the number of employees in each production unit (the production unit is each single autonomous office, factory or plant to which reference is made both in Law 300/70 and in the Inter Union Agreement for Unitary Trade Union Delegation signed on 20 December 1993); in particular it is equal to:

- Three members in case of production units which employ up to 200 employees.
- Three members for every 300 (or a fraction of 300) employees in production units which employ up to 300 employees.
- Three members for every 500 (or fraction of 500) employees in production units which employ more than 300 employees.

The RSUs provide an important communication right for employees to post publications, texts and press releases concerning trade union and work matters in specific spaces, which the employer is obliged to provide.

RSU members also enjoy special protection against transfers (from one productive unit to another one) and against dismissal. This protection is aimed at ensuring the continuity of the exercise of trade union activities and relations with workers.

No genuine co-determination right exists in Italy. Participation rights do not grant as much power to the employees as in France and Germany. The trade union and the RSU are the only means of employee representation in Italy.

Collective bargaining agreements (CBAs). As in France, CBAs are very important. CBAs cover 80% of employees. They are mainly conducted at sector level. It is sufficient for the employer to be a member of the association concluding the CBA for employees to receive its benefits. Under the Italian Constitution (*Art.39*) registered trade unions can declare a CBA to be generally binding. The application of CBAs is requisite to obtain tender contracts from public entities and to obtain social contribution relief.

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