

Europe
Employment and Labor Relations – it is complicated...

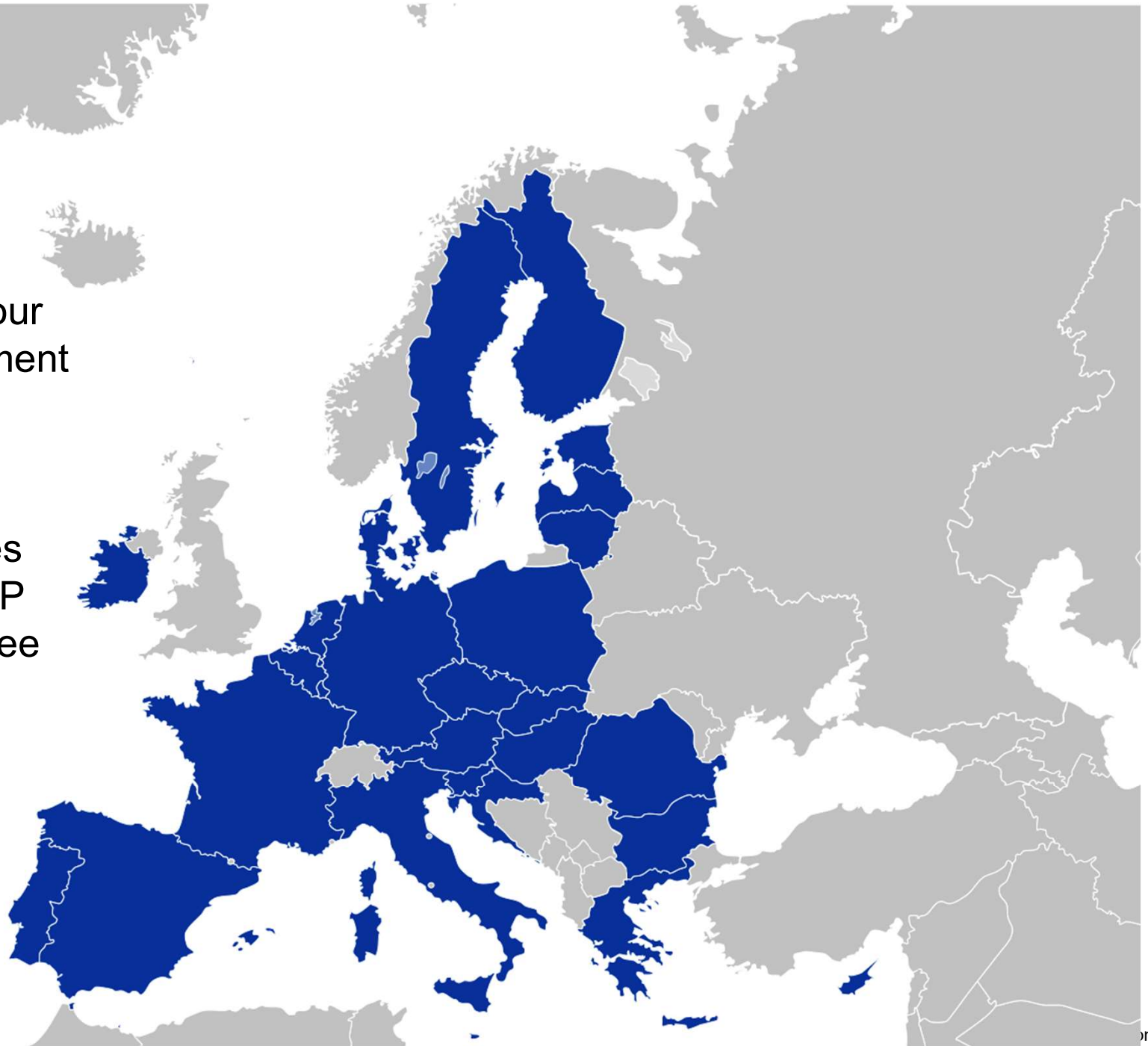


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Fragmented Labour
Relation environment
in the Member-
States of the EU.

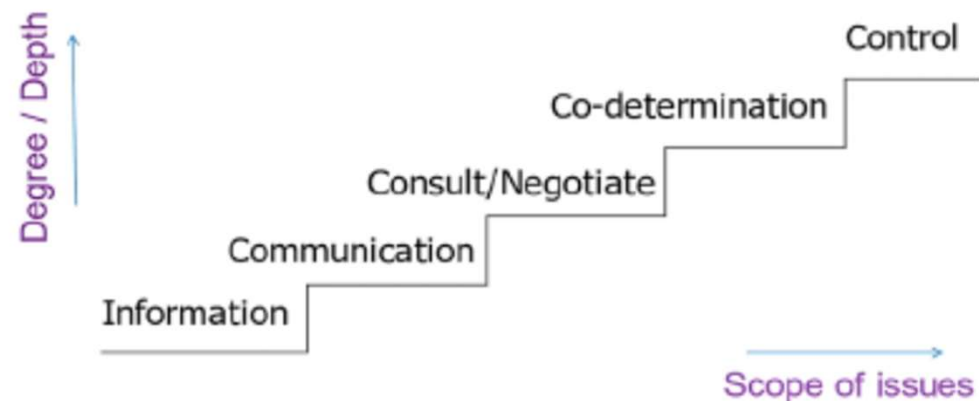
Different principles
both regarding EIP
level and Employee
representation
exists.



Source: Mapping employee involvement and participation in institutional context: Mick Marchington's applied pluralist contributions to human resource management research methods, theory and policy, page 5

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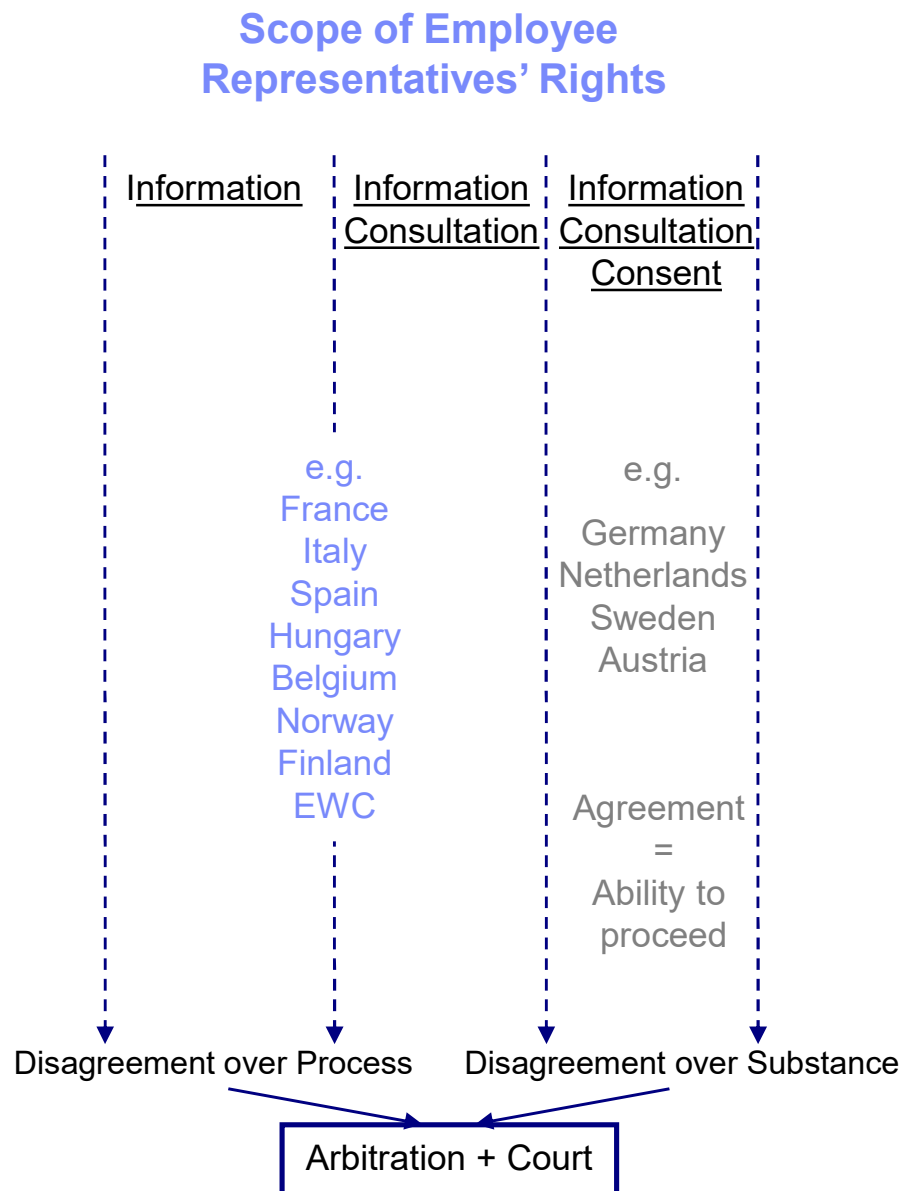
Depth (escalator) of EIP



Source : Marchington et al 1992

FIGURE 1 The Escalator of EIP. EIP, employee involvement and participation. Source: Marchington et al. (1992)

Fragmented EIP level and ER concept



Legal provisions for employee representation as such exist in all EU countries and are required by EU law, based on Directive 2002/14/EC on information and consultation.

Differences in implementation

- ways of organising employee representation
- rights and activities of representatives
- reliance upon unions
- independence from management
- formal and informal involvement in grievance handling
- negotiations in the workplace or enterprise

Fragmented concept of Employee representation

(Source: European Commission, Industrial relation Europe 2014
and <https://www.worker-participation.eu/National-Industrial-Relations/Across-Europe>)

Single channel

Employee representation through union, as in the pure 'single channel' model, is based on election by and or appointment from union members.

It does not pretend to represent the interests of non-union members and derives its powers and competences from the union, though this may be specified by the law or in agreement

- Applicable in strict form in Cyprus, Sweden Malta.

Dual channel

Employee representation based on works councils, as in a pure 'dual channel' model, exists in addition to and is independent from unions.

It is usually elected by and from all employees (with some restrictions on those with temporary or part-time contracts, etc.);

It is held accountable to union and non-union members alike operates within powers and competences defined by the law.

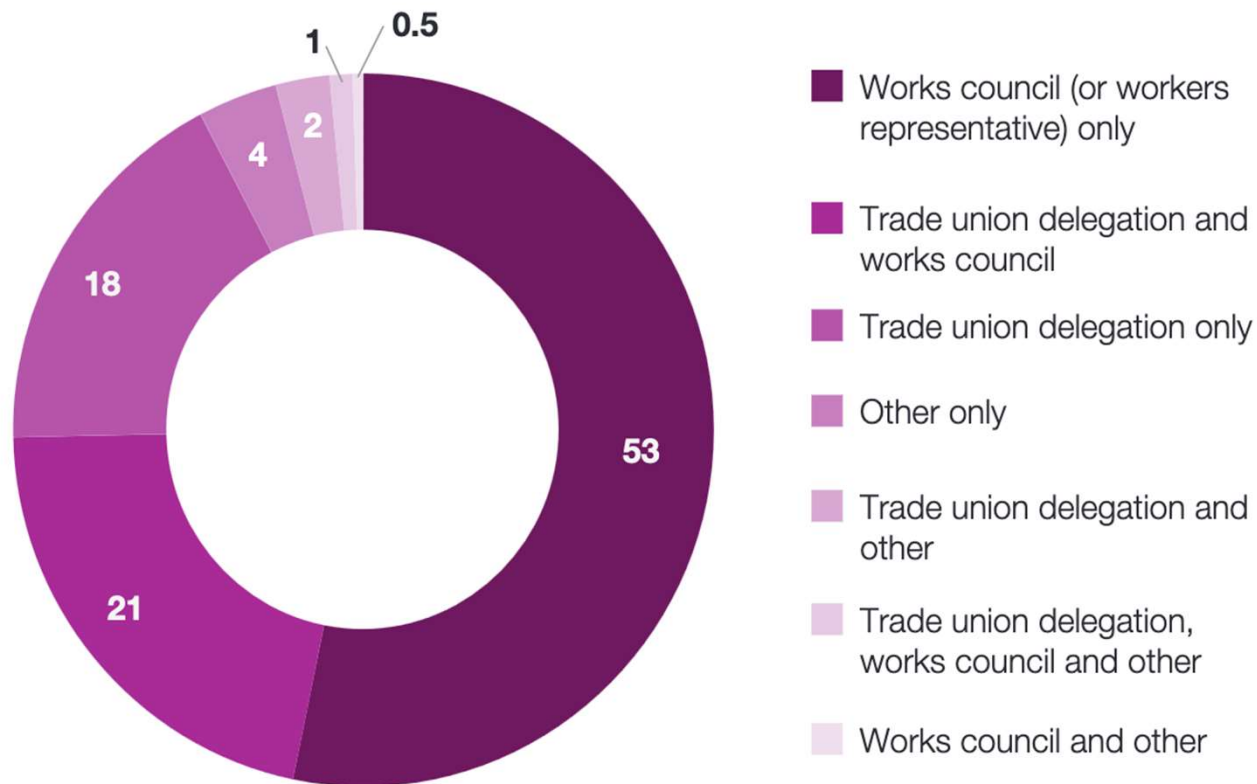
- Applicable e.g. in Germany, Austria, the Netherlands, Belgium, Luxembourg, France, Spain and Hungary

Employee Representation EU - Two general principles

Current practise - a closer look

(Source: Eurofound (2015), Third European Company Survey – Overview report: Workplace practices – Patterns, performance and well-being, Publications Office of the European Union, Luxembourg. Page 99 https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1502en_0.pdf)

Figure 45: Configurations of employee representation structures (%)



Note: Percentage of establishments with an official structure for employee representation.

Source: ECS 2013 – Management questionnaire.

DIRECTIVE 2002/14/ establishing a general framework for informing and consulting employees in the European Community

Expressly accepts fragmented practices in Member States:

- Article 1
Object and principles
 1. The purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community.
 2. The practical arrangements for information and consultation **shall be defined and implemented in accordance with national law and industrial relations practices** in individual Member States in such a way as to ensure their effectiveness.

DIRECTIVE 2009/38/EC of 6 May 2009 on the establishment of a European Works Council (...)

Principles:

- **Autonomy of the parties**

(19) In accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking (..) to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of EWC or other information and consultation procedures so as to suit their own particular circumstances

- **Negative freedom of association**

(31) Employees' representatives may decide not to seek the setting-up of a EWC or the parties concerned may decide on other procedures for the transnational information and consultation of employees.

- **Subsidiary requirement as last resort**

(32) Provision should be made for certain subsidiary requirements to apply should the parties so decide or in the event of the central management refusing to initiate negotiations or in the absence of agreement subsequent to such negotiations.

DIRECTIVE 2009/38/EC

of 6 May 2009 on the establishment of a European Works Council (...)

Principles:

- **Preceding of national laws**

(37) For reasons of effectiveness, consistency and legal certainty, there is a need for linkage between the Directives and the levels of informing and consulting employees established by Community and national law and/or practice.(...) the process must be conducted at both national and European level in such **a way that it respects the competences and areas of action of the employee representation bodies**. Opinions expressed by the European Works Council **should be without prejudice** to the competence of the central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and/or practice.

- **Subsidiary of EU legislation**

(45) Since the objective of this Directive, namely the improvement of the right to information and to consultation of employees (...) cannot be sufficiently achieved by the Member States (...), the Community may adopt measures, in accordance with the **principle of subsidiarity** as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this **Directive does not go beyond what is necessary in order to achieve that objective**.

DRAFT REPORT with recommendations to the Commission on Revision of EWC Directive (2019/2183(INL))

Principles:

- **No Autonomy of the parties**

Irrespective of the existence of an agreement, the extended subsidiary requirements shall apply: “Art. 14 (1), Points (a) and (b) of the first subparagraph shall apply only in so far as **the obligations arising from this Directive have already been fully complied with.**” - Irrespective of what the parties have agreed, it must at least be equal with the subsidiary requirements. Can be challenged at courts.

- **Eliminate the negative freedom of association**

“10. Stresses that the provisions guiding the situations in which the obligations of Directive 2009/38/EC do not apply due to other agreements in force warrant further clarification in order to **improve the functioning and implementation of Directive 2009/38/EC;**”

- **Establish Subsidiary requirement as regular fall back**

“where, after **one year from the date** of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).”;. - Within one year, generally no agreement can be reached, subsidiary requirement will be the rule.

DRAFT REPORT with recommendations to the Commission on Revision of EWC Directive (2019/2183(INL))

Principles:

■ Preceding of EWC consultation over national laws

”Article 1 4. Matters shall be considered to be transnational where they concern, directly or **indirectly**, the Community-scale undertaking (...)

“7a. In order to determine the transnational character of a matter, the scope of its possible effects must be taken into account. This includes matters which, **irrespective of the number of Member States involved**, are of concern to European workers in terms of the scope of their potential impact, as well as matters which involve the transfer of activities between Member States.”

- **Consequence** – EWC is competent for all matters that concern by its impact.

■ Empower EU legislation to stop implementation in national laws

“Art. 11 2 Member States shall establish procedures **to enable the temporary suspension of decisions of the central management** where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements under this Directive or under agreements concluded pursuant thereto.” **Art. 11a introduces penalties of the GDPR.**

- With this, EWC can **suspend decision** of Management with the claim of infringement and the penalties would lead to discussion on EWC level, only.

DRAFT REPORT with recommendations to the Commission on Revision of EWC Directive (2019/2183(INL))

▪ **Conclusion:**

The so call Radtke Report would contradict the main principles of the existing EWC Directive:

It provides EWC rights and claims which are partially not existing under national laws.

Whereas the decision affecting employees is taken by the employer on LOCAL level where there is a well established balance of power, empowering the EWC with rights, creates a significant imbalance. There is no “EUROPEAN EMPLOYER” dismissing employees, changing the structure of the local employing entity etc.

Strengthen the ambiguity of transnational (in contradiction to its own goals #3 of the reasoning of the draft) combined with draconic penalties increases uncertainty of consultation requirements, out of balance when combined with shift of burden of proof.

Disregard confidentiality interests (in clear contrast to the current directive)