

# The concept of representativeness at national, international and European level

## Introduction

The representativeness of social partners provides legitimacy for their various roles in industrial relations, whether through the vehicle of social dialogue, collective bargaining or involvement in government policymaking or implementation. Their representativeness entitles the social partners to act on behalf of their members or, in some cases, all companies and the entire workforce. This report explores the different ways in which the representativeness of social partners is defined at national, European and international level.

## Policy context

Almost all EU Member States have some kind of legal framework that defines how representativeness operates for social partner organisations. The role that legislation plays in national concepts of representativeness, however, differs vastly. This role can include setting the conditions to allow them to engage in collective bargaining or conditions to extend the resulting agreements, making them generally binding. Another way in which legislation can shape representativeness is by imposing thresholds, in terms of membership, organisational density, or as a minimum outcome of elections. There is also great variation in the extent to which legislation can play a role. In some countries, conformity with legal requirements is crucial, while in others mutual recognition is more important, or the only basis for representativeness. Today, while employers and unions in certain Member States still rely on self-regulation through mutual recognition to establish representativeness, most have a legal framework that regulates the representativeness of social partners. In some countries, ongoing clarifications are still taking place.

At EU level, the concept of representativeness was first delineated by the European Commission in 1993 and defined more clearly in 1998.<sup>1</sup> Representativeness forms the basis for allowing European social partner

organisations to be included in the list of organisations to be consulted by the European Commission as set out in Article 154 of the Treaty on the Functioning of the European Union (TFEU), and for providing legally binding implementation of their agreements as laid down in Article 155 of TFEU. An analysis of the European concept of representativeness can contribute to the discussion on whether elements of Eurofound's methodology in its representativeness studies need to be adjusted.

## Key findings

Representativeness has various meanings across the 28 Member States and Norway. In practice, few national systems correspond to an unalloyed form of either mutual recognition or legal conformity. Member States employ a combination of these principles, applying a mix of both formal and informal criteria.

In addition to the fundamental dichotomy of the representativeness concept – based on compliance with legal requirements or based on mutual recognition – the report looks at three elements or drivers with the potential to contribute in different ways to representativeness of social partners: electoral success, organisational strength in terms of the scope of membership, and the capacity to negotiate.

Thresholds, where they exist, are less common for employers than for trade unions. Employer thresholds are either a requirement for the extension of collective agreements or a criterion permitting access to tripartite bodies.

## Four models of representativeness

This report argues that four models of representativeness coexist in Europe:

1. **Social partner self-regulation:** a social partner self-regulated system of mutual recognition, associated with negotiating capacity and social strength drivers and with very little state regulation on representativeness.

<sup>1</sup> European Commission (1993), 'Communication concerning the application of the agreement on social policy', (COM(93)600 final) and (1998) 'Communication from the Commission adapting and promoting the social dialogue at Community level (COM(98)322 final).

2. **Mixed social partner and state regulation:** a mixed model, combining elements of social partner mutual recognition and of state regulation and legal conformity.
3. **State regulation membership strength:** a state-regulated system of legal conformity, where 'social strength' is used as a legal measure of representativeness.
4. **State regulation electoral strength:** a state-structured system of legal conformity in which electoral success primarily determines representativeness.

The discussion regarding the concept of representativeness at international level dates back to an advisory opinion in 1922 of the Permanent Court of International Justice. In 1956, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) evoked the concept of representativeness for the first time, stating that 'the representativeness of the parties must be substantial'. According to the CEACR's current list of conditions for representativeness, the criteria for representativeness need to be: a) objective; b) precise; and c) predetermined. The European Committee of Social Rights of the Council of Europe stipulated in 2006 that criteria of representativeness need to be: a) reasonable; b) clear; c) predetermined; d) objective; e) laid down in law; and f) subject to judicial scrutiny.

### Pre-conditions for representativeness

In 1993, the European cross-sector social partners tabled a detailed list of the conditions to be met by organisations to be consulted by the European Commission. According to this list, they must be:

- organised horizontally or sectorally at European level;
- composed of organisations that are themselves regarded at their respective national levels as representative of the interests they defend, particularly in the fields of social, employment and industrial relations policy;
- represented in all Member States of the European Community and, possibly, of the European Economic Area, or have participated in the 'Val Duchesse' social dialogue;
- composed of organisations representing employers or workers, membership of which is voluntary at both national and European level;
- composed of members with the right to be involved, directly or through their members, in collective negotiations at their respective levels;
- instructed by their members to represent them in the framework of European Community social dialogue.

### Frames of reference

The study identified four different frames of reference for the assessment of the representativeness of the EU social partners:

1. Setting up of the European sectoral social dialogue committees (legal conformity).
2. Consultation based on legal conformity.
3. Negotiation based on mutual recognition/bargaining autonomy.
4. Implementation of European framework agreements by Council decision.

### Conclusions

- There is little debate, by and large, about the concept of representativeness at national level.
- In line with the 1993 Communication on the application of the Agreement on Social Policy, there is still a diversity of practice in the different Member States and no single model has emerged in the past 20 years – hence making a European concept based on common and harmonised criteria difficult to achieve.
- In its assessment of the representativeness of the EU-level social partners based on their membership strength, Eurofound might want to take into greater account the different concepts used at national level.
- In light of the different legal frameworks for representativeness at the different junctures of European social dialogue, the question arises as to whether the transparency of EU social dialogue polity could be improved by harmonising these frameworks.
- In line with the statement from the Presidency of the Council of the European Union, the European Commission and the European social partners at an event in Brussels on 27 June 2016 'Declaration on a new start for a strong social dialogue', the European social partners should work towards improving 'membership and representativeness of trade unions and employers' organisations, and ensure that there is a capacity to enter into agreements with an appropriate mandate'.

#### Further information

The report *The concept of representativeness at national, international and European level* is available at [www.eurofound.europa.eu/publications](http://www.eurofound.europa.eu/publications)

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