

The concept of representativeness at national, international and European level

Annexes

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Annex A1: Survey questionnaire

This annex presents the questions and the aggregate data, averaging the EU28 responses. Questionnaires were distributed to national correspondents in November 2014 and replies gathered between February and May 2015.

Concept of representativeness at national level

Representativeness of employer associations and trade unions at national level

Please answer all **38 questions** (many of them multiple choice) either by writing in your answer or by choosing or entering a number. Not all concepts nor questions may be relevant for your Member State.

In the text boxes please enter as much text as you feel is relevant. In some of them we have suggested an indicative maximum number of words. The boxes will expand as you write. If the question is not relevant to your employment relations system, please insert N/A – not applicable. If you wish to add an attachment (in English or French) that provides further information, please attach it to the email returning this form, and give the attachment file an identifier consisting of your country name and the appropriate question number.

On the tables please use text highlighting to indicate your answer.

The tables refer to ‘peak national’ level ‘representativeness’, which are associations or trade unions that inform, consult and/or collectively bargain with the other side of industry at national level and/or with governments and which cover multiple industries and a wide range of labour market and social issues. They have societal recognition and social significance and weight in shaping industrial relations outcomes.

By ‘sector or branch’ level ‘representativeness’, we mean associations or trade unions that are considered ‘representative’ for the purposes of information, consultation and/or collective bargaining within a specific sector or branch of industry.

By ‘company’ level representativeness, we mean trade union organisations that are considered ‘representative’ across the multiple sites of one company for the purposes of information, consultation and/or collective bargaining.

By ‘workplace’ level representativeness, we mean trade union organisations that are considered representative across a single geographical location (usually of one company) for the purposes of information, consultation and/or collective bargaining.

If in your opinion the arrangements vary significantly between different sectors or companies or workplaces such that it is inadvisable to provide a general reply, then please copy and paste the part of the whole table concerned and fill it in for each discrete category – changing the text to make it clear which ‘sector’ (e.g. public or private sector, or metal working or retailing) requires you to provide a distinct set of answers.

Where questions include the option of ‘Does not apply’ please put an X in the appropriate box.

Q1 Can you please summarise in your own words the meaning of the concept of representativeness or indicate the alternative concept that is most relevant in your country of origin and that deals with the social recognition or social significance and weight of collective organisations (e.g. mutual recognition, election results, membership, mandate, etc.).

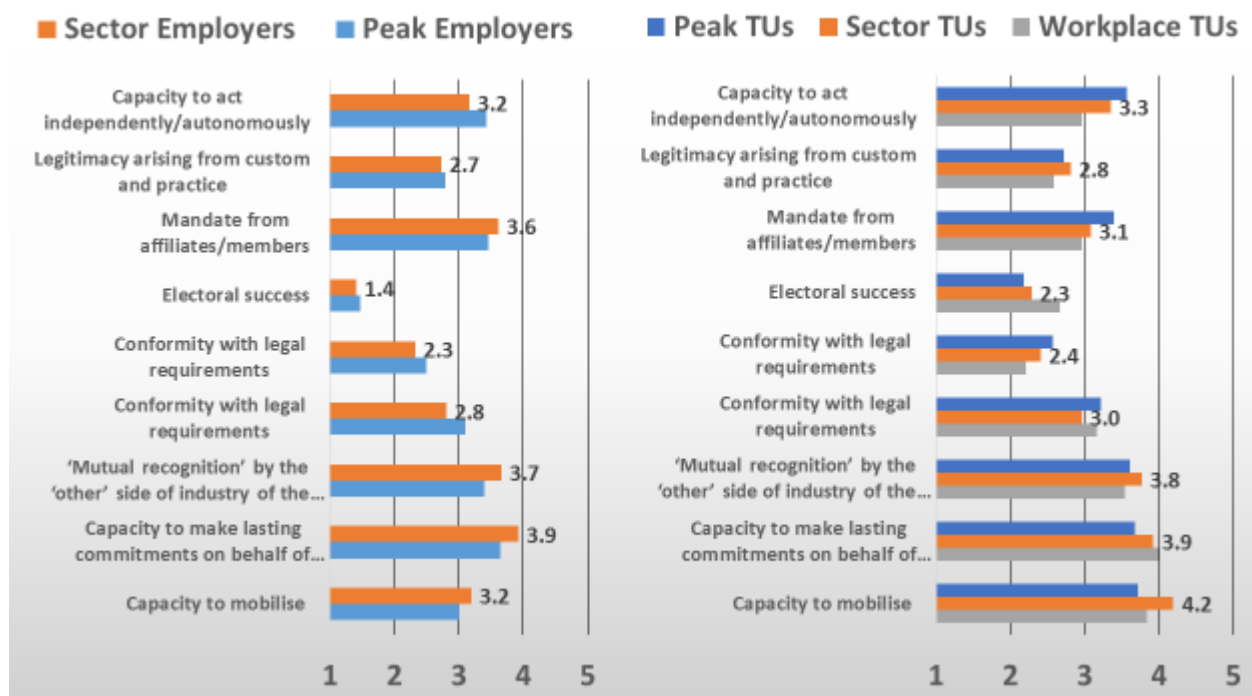
Q2 Provide the year and name of the three main pieces of national labour law that refer to representativeness (or to its alternative notion) in employment relations.

Q3 Is the definition of ‘representativeness’ (or its alternative notion) unambiguous, or have different interpretations been explored or challenged in litigation over the last ten years? If the latter, please give examples.

Q4 Has the concept of or criteria for ‘representativeness’ (or its alternative notion) changed over the last five years? If so, please explain how.

Q5/7/9 Considering peak/sector employer organisations and peak/sector/workplace trade unions at national cross-sector organisational level/sector level/workplace level please answer each question using the scale 1–5. Highlight the most appropriate answer where 1 = not relevant; 2 = slightly relevant; 3 = significant; 4 = important; 5 = the most important determinant, to the question, **what does ‘representative’ mean in your employment relations system?**

Figure 10: Meaning of representativeness across the EU28



Q6/8/10. Please explain why you have identified the elements you have as being the most important for peak/sector employer associations and for peak/sector/workplace trade union organisations?

Q11. If election results define ‘representativeness’ by the % of the total vote received, is it the highest vote that secures the status, or are there thresholds that entitle more than one association or organisation to become representative? If the thresholds to be exceeded vary between sectors, companies and workplaces, please indicate the lowest and/or highest thresholds you are aware of.

Q12. If membership density defines ‘representativeness’ by the % membership of the given workforce, is it the highest density that secures the status if more than one association or organisation is present, or are there % density thresholds to be exceeded that entitle more than one association or organisation to

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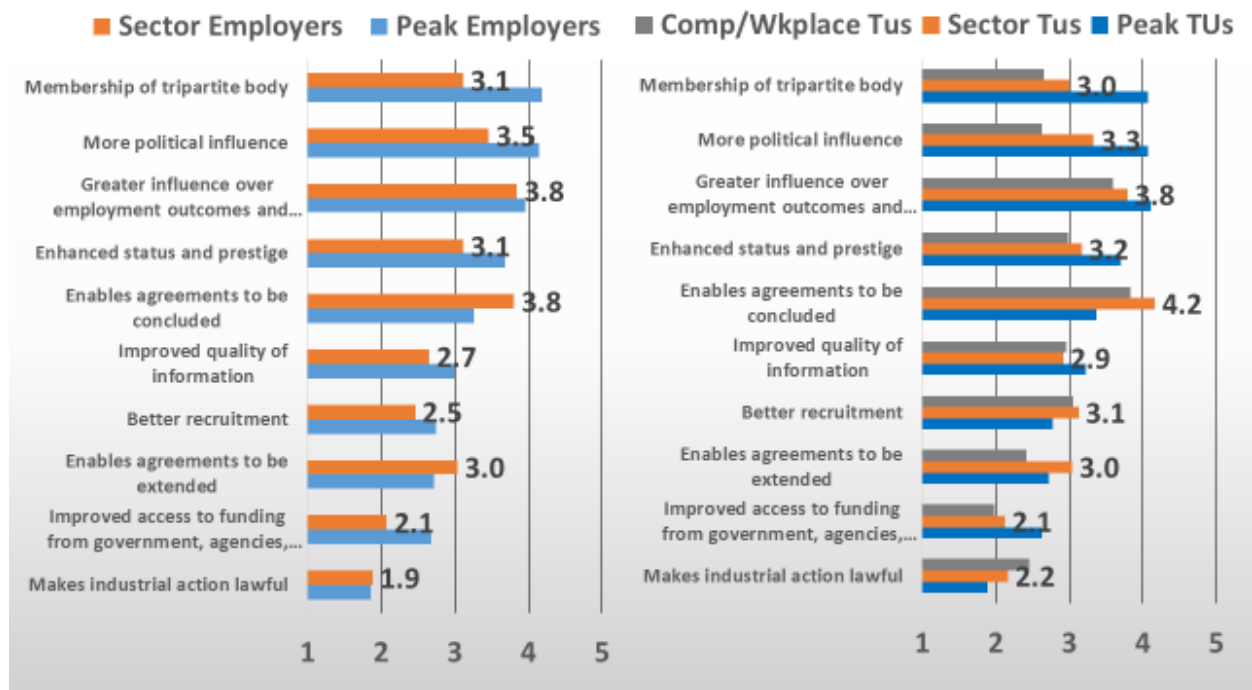
become ‘representative’? If the densities vary between sectors, companies and workplaces, please indicate the lowest or highest density thresholds you are aware of.

Q13. Where proof of trade union membership is a requirement of representativeness at national and/or local levels how is this proved without breaching data protection requirements prohibiting the processing of personal data revealing trade union membership?

Q14. Can you please summarise in your own words the impact or gain of ‘representative’ status for an employer association or trade union organisation?

Q15/17/19. Considering employer associations at national and sector levels/trade union organisations at national and sector levels/trade union organisations at company and workplace / please answer each question using the scale 1-5. Highlight the most appropriate response where 1 = not relevant; 2 = slightly relevant; 3 = significant; 4 = important; 5 = the most important determinant, in **assessing the impact of securing ‘representative’ status** for employer associations/trade unions within your employment relations system.

Figure 11: Assessing the impact of representativeness for EU28 social partners

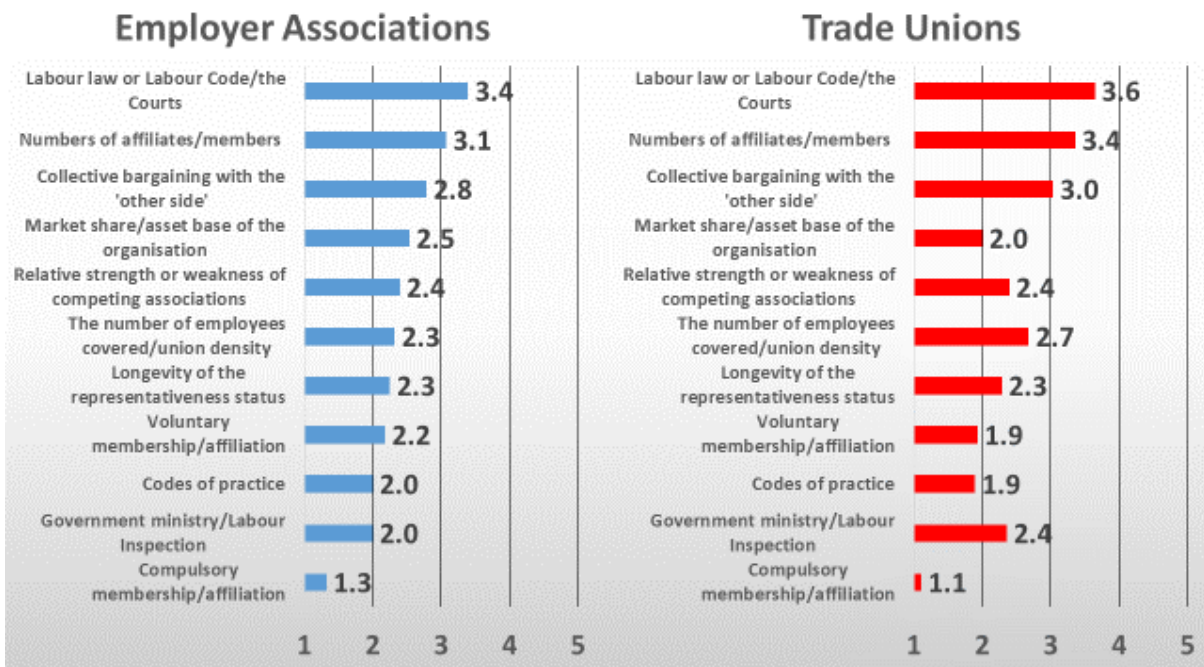


Q16/18/20. Please explain why you have identified the impact(s) you have as being the most important?

Q21. Explain **who are the main agents, actors, and the main processes**, through which ‘representativeness’, social recognition or social significance and weight is determined.

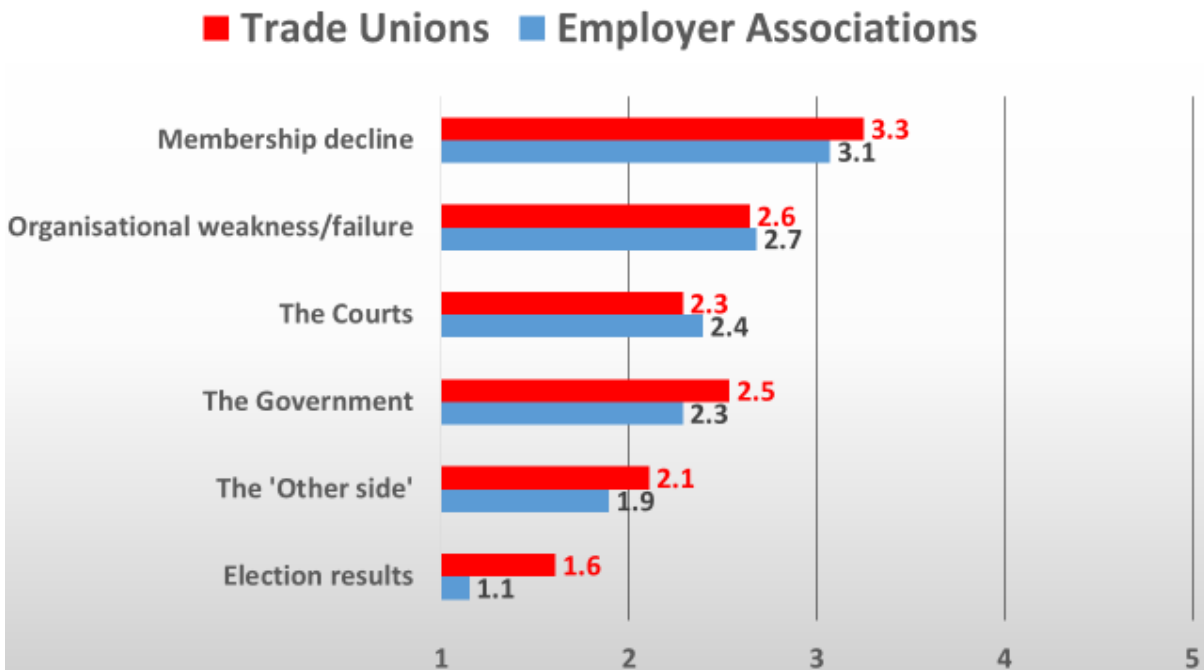
Q22. Identify **the actor, actors or processes most relevant** in determining whether an organisation of employers or workers conforms to the norms of ‘representativity’ for a given population within your employment relations system. Highlight the most appropriate answer where 1 = not relevant; 2 = slightly relevant; 3 = significant; 4 = important; 5 = the most important.

Figure 12: Key actors and processes determining representativeness for EU social partners



Q23. Which actors or processes determine whether an employer association/trade union ceases to be 'representative'?

Figure 13: Key actors and processes ending representativeness for EU social partners



Q24. Have any trade union organisations report problems in proving their 'representativeness'? If YES, please explain.

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Q25. Have any employer organisations report problems in proving their ‘representativeness’? If YES, please explain.

Q26. Do any codes of practice on ‘representativeness’ exist? If YES, please summarise.

Q27. How many ‘representative’ organisations in your employment relations system operate at the different levels indicated, and how many collectively bargain on behalf of their affiliates or members?

Q28/29. What are the current views of employer associations/trade union organisations on the concept of ‘representativeness’ and the criteria/processes used?

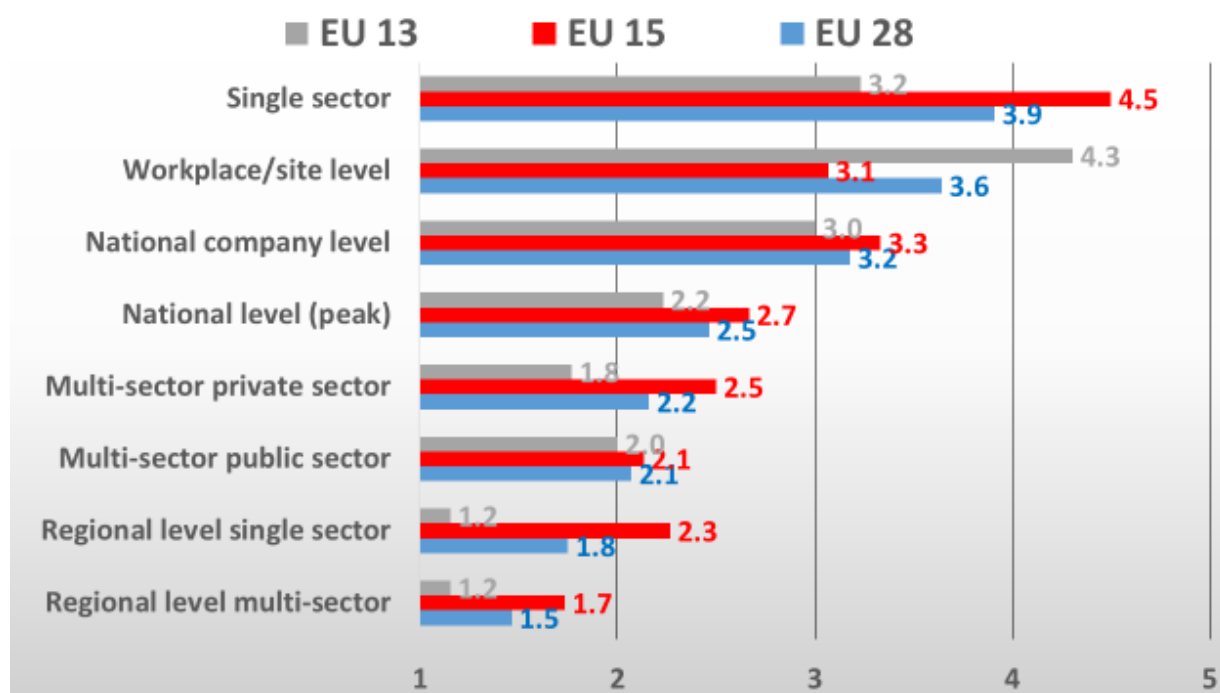
Q30. What are the current views of the government on the concept of ‘representativeness’ and the criteria/processes used? Are there any proposals for change?

Q31. Please identify the employer and trade union peak organisations and the largest sector/branch organisations with ‘representative status’. Name the peak representative employer associations/trade unions at national level and within the five sectors/branches of industry with the highest employment, and provide as much data as is known about them.

Q32. What are the basic data for your country’s employment relations system? Total labour force, numbers of employees, self-employed, unemployed, trade union members, % covered by collective bargaining agreements...

Q33. How important in negotiating collective agreements are the different levels of bargaining? Highlight the appropriate answer

Figure 14: Importance of collective bargaining levels in the EU28, EU15 and EU13



Q34. How many affiliates (employers) / members (trade unions) do the ten largest ‘representative’ organisations of employers and employees have?

Q35. Could you summarise and give the source of any recent academic literature published about ‘representativeness’, social recognition or social significance and weight or organisational legitimacy in employment relations in your country over the last ten years?

Q36. Are there any new trends emerging in relationship to 'representativeness', or is there evidence to suggest the embeddedness of established arrangements?

Q37. Is globalisation and the growing significance of large transnational companies having any impact on national 'representativeness'?

Q38. Is there anything you feel you have left out that is important in understanding the 'representativeness', social recognition or social significance and weight of collective employment relations organisations in your country?

Annex A2: Supplementary tables

Table 8: Representativeness legislation, 1952–2014

| Year | Country | Legislation | Criteria for representativeness |
|------|----------|--|---|
| 1952 | Belgium | (Conseil National du Travail/National Arbeidsraad, CNT/NAR) | National; multi-occupational covering more than half occupations in private and public sectors; on average over previous four years having at least 125,000 paying members (raised from 50,000 in 2009). |
| 1978 | Spain | Constitution | 'Most representative trade union organisations' cover minimum of 10% of elected workers' delegates and works council members at national level or 15% at regional level; other unions are 'representative' if within a specific sector they meet those criteria. 'Most representative' employers cover 10% of employers and workers nationally, or 15% regionally; 'representative' employers meet these criteria at sector level and can sign sector agreements. |
| 1980 | | Statute of Worker's Rights | |
| 1985 | | Organic Law of Trade Union Freedoms | |
| 1993 | Slovenia | Representativeness of Trade Union Act (<u>Zakon o reprezentativnosti sindikatov</u>) | Trade union criteria established: democratic character; at least six months; independence from state bodies and employers; own funding and quantitative thresholds stipulated by the Ministry of Labour – 15% workers per trade, industry or occupation or workers per firm; for multi-occupational trade union (confederation, federation): 10% workers per trade, industry or occupation). |
| 1999 | Latvia | <u>Employer organisations and their associations law</u> | Organisations can sign binding sectoral agreements if they employ over 50% of employees or provide over 60% of turnover. |

| Year | Country | Legislation | Criteria for representativeness |
|------|---------|---|---|
| 2000 | Poland | Labour Code Art. 241(17), Labour Code of 1974, Art. 241(17), 2000; Act on the Tripartite Commission for Socio-Economic Affairs and on voivodship social dialogue commissions, Art. 6, 2001. | <p>Trade unions are representative if they are representative for the Social Dialogue Council¹ ('more than 300,000 member employees and which operates in economic entities whose core activity is specified in more than half of the sections of the Polish Classification of Activities (PKD)'; has 10%+ of all the employees covered and not less than 10,000 members; has highest number of members covered by a given multi-employer agreement – according to Article 217(17) of the Labour Code, which applies to multi-establishment trade union organisations.</p> <p>What is interesting is that there is also a specific regulation governing the representative establishment's trade union (art. 241^{25a} of Labour Code). A collective agreement at establishment level is made between the employer and the establishment's trade union body.</p> <p>A representative establishment's trade union body shall be a trade union organisation which:</p> <ul style="list-style-type: none"> • Is an organisational unit or member organisation of a multi-establishment trade union organisation recognised as representative, provided that its members represent at least 7% of employees employed by the employers; or • Its members represent at least 10% of employees employed by the employers. <p>If none of the establishment's trade union bodies satisfies the above requirements, a representative establishment's trade union body shall be the organisation having the largest number of employees as its members.</p> |
| 2001 | Latvia | Labour Law | A social partner is representative for more than their own members if: it performs the same activity; is recognised as a leader and by reputation; its members make up a significant proportion of the whole group, or produce a significant share; it has the capacity to do so; it is independent. |
| 2003 | Romania | Labour Code – Law No. 53/2003 | Trade unions must have at least 5% of the employed workforce for peak representativity, 7% at sector level and at company and workplace level at least one-third of the total number of employees; organisational and financial independence; confirmed by a court decision and valid for four years. Peak employers must cover 7% of all (non-state) employees. |

¹ In August 2015 the Polish Tripartite Commission was replaced by the Social Dialogue Council.

| Year | Country | Legislation | Criteria for representativeness |
|------|------------|--|---|
| 2004 | Luxembourg | Collective Employment Relationships Act | <p>At national level, trade unions must have won at least an average of 20% of the votes within the Chamber of Employees at the latest social elections, and must be able to prove effective activity in the majority of the economic branches of the country.</p> <p>At sectoral level, trade unions are considered representative as soon as they are powerful in a significant sector; that is, a sector that employs at least 10% of the private employees of the country. They also have to provide candidates at Chamber of Employees' elections and collect at least 50% of the votes of workers who are intended to be totally covered by the CBA or 50% of the votes at the occasion of the elections of staff delegations in the relevant sector.</p> |
| 2006 | Ireland | Employees (Provision of Information and Consultation) Act | Section 7 qualifies an employee threshold of 10% of the workforce for representation to come into effect in respect of negotiations (information and consultation) with an employer. |
| 2008 | France | LOI no. 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail | <p>Seven criteria established: respecting republican values; independence; two years' existence; numbers of members relative to other unions; trade union influence; financial transparency; scores in elections. Trade Unions have to obtain 10% of the ballot votes, at the company level; 8% of the ballot votes and to have a balanced territorial presence at the sector level; 8% of the ballots votes and to have a balanced sectoral presence (in industry, services, building or trade) at the multi-sector national level.</p> <p>Similar criteria are laid down for employer associations without the electoral criteria.</p> |
| 2010 | | LOI no. 2010-1215 du 15 octobre 2010 complétant les dispositions relatives à la démocratie sociale issues de la loi no. 2008-789 du 20 août 2008 [Law no. 2010-1215 of 15 October 2010 supplementing the provisions relating to social democracy from Law no. 2008-789 of 20 August 2008.] | |
| 2011 | Romania | Law on Social Dialogue No. 62/2011 | Threshold for workplace/company representative status raised to 50% of employees. |

| Year | Country | Legislation | Criteria for representativeness |
|------|----------|---|--|
| 2012 | Bulgaria | Labour Code (Art. 34, 35, 36) | Representative trade unions shall: have over 75,000 members; be present in 25% of sectors with minimum of 5 members or have 50 affiliates with minimum of 5 members from different sectors; represent staff in 25%+ of local authorities; have a national governing body; be registered as a non-profit association; have been in existence for three years. Members of representative employer associations shall: employ 100,000+ workers (up from 30,000), and be represented in 25% of sectors, with 5%+ in each sector or a minimum of 10 employers in each; with other criteria similar to that for the unions. Representativity is recognised for four years. |
| | Hungary | Act I of 2012 on Labour Code | Replaces earlier measure of electoral support in works council elections by a minimum 10% union membership density threshold. |
| 2014 | Croatia | Representativeness of Employer Associations and Trade Unions (OG 93/14) | Trade union confederations must have 50,000+ members in affiliated organisations with at least five operating in different sectors, and be present in at least four regions; they must have offices and employ at least five workers. Lists of numbers of members signed by the trade union must be supplied. Employer associations must have been registered for six months; bring together 3,000 employers or have affiliated employers employing at least 100,000 workers; have at least five employer affiliates in different sectors and at least four regional offices and employ at least five staff. |
| | Latvia | Trade Union Law | Government recognition to be given to those trade unions that have the highest numbers of members. |
| | Portugal | Government Resolution 90/2014 | Employer associations requesting extension of agreements must have membership of one-half of all employers or over 30% of all SMEs in sector. |

Notes: Country shading: Strongly mutual recognition; Strongly legal conformity.

This table does not include Lithuania, where a new social model law was being prepared in 2015 that might replace the 2007 declaration of mutual recognition by the three national peak unions and the two employer associations. The draft law defines representativeness criteria for national, sectoral and local trade unions, requiring them to have a base in at least five different companies within the sector or region.

Sources: Eurofound's Network of European correspondents

Table 9: Collective bargaining legislation, 1946–2015

| Year | Country | Legislation | Criteria for collective bargaining |
|------|-------------|---|---|
| 1946 | Ireland | Industrial Relations Act, 1946 | Social partners must be ‘substantially representative’ of workers and employers when registering employment agreements. |
| 1968 | Belgium | Law on collective labour agreements CAO-CCT | Capacity to make lasting commitments; mandates from members before signing; the results of the four-yearly social elections in companies with more than 50 workers, which determine the recognition of their representativeness at national level, and hence their acceptance at sectoral level. Extended to enterprise level in 1972. |
| 1971 | Netherlands | Wage Act (<i>Wet op de loonvorming</i>) | Specifying the social partners who would contribute to discussions on wage setting within the tripartite Social Economic Council. When social partners file a request for extension of a sector collective agreement, the employers that are party to the agreement have to employ 55% or more of the employees in the sector. |
| 1974 | Austria | Labour Constitution Act (<i>Arbeitsverfassungsgesetz</i>), in particular §4 | Capacity preconditions: independence; extensive occupational and territorial membership coverage; major economic importance in terms of the absolute number of members and business activities in order to be in a position to wield effective bargaining power. |
| 1990 | Germany | Reunification Treaty | ‘Collective bargaining capacity’ (<i>Tariffähigkeit</i>) is grounded in the 1949 Constitution (freedom of coalition) and the Collective Bargaining Act from 1949. But it is detailed in court law, where judges apply the term ‘representative’ to collective agreements rather than to the actors concluding them. In September 2012, the Federal Labour Court determined that sectoral agreements covering more than one-half of all employees of a sector were ‘representative’. The acknowledged capacity to bargain therefore rests on various social and political indicators including the criterion of social strength (<i>Soziale Mächtigkeit</i>). This is needed to bring the opposition party to the bargaining table and to guarantee the enforcement of agreements. It can be proven by information on membership figures and organisational and administrative capacity. Other criteria are: compliance with the law; voluntary membership; internal democracy; financial independence; multi-organisation membership. The criterion of social strength is not applied to employer associations, nor is there a minimum number of affiliates required. |

| Year | Country | Legislation | Criteria for collective bargaining |
|------|----------|--|---|
| 1999 | UK | Employment Relations Act | Statutory trade union recognition provisions establish trade union 'recognition' by an employer (usually leading to collective bargaining) where 40% participate in the vote and a majority vote in favour. |
| 2001 | Italy | Legislative no.165/2001 Decree | Unions can participate in national collective negotiations in public administration (university, or health, for example) if they have 5% of representativeness (an average of the membership numbers and of the votes that each union had in the election of RSU). This test was extended by agreement to the private sector in FA 2011 and TU 2014 by the three major union confederations and Confindustria, such that the extension of a sector agreement now requires a minimum of 51% (membership % plus votes %). |
| | Finland | Employment Contracts Act (55/2001) | 'The employer shall observe at least the provisions of a national collective agreement considered representative in the sector in question (generally applicable collective agreement) on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work.' In practice, 'representative of a sector' means about one-half of the employees in the sector work for affiliated employers to ensure the 'normal applicability' (extension) of the agreement. The 'representativeness' needed for a collective agreement to be generally applicable is determined by a commission under the Ministry of Social Affairs and Health and the decisions can be appealed to the Labour Court . |
| 2006 | Ireland | Employees (Provision of Information and Consultation) Act | Employee threshold of 10% of workforce for representation to come into effect in respect of negotiations (information and consultation) with an employer. |
| | Slovenia | The Collective Agreements Act (<i>Zakon o kolektivnih pogodbah</i> – ZKP, Ur.l.RS, No. 43/06) | Regulates social partners, content and procedure for signing collective agreements, its form, validity and termination, settlement of collective labour disputes and the registering of collective agreements; it differentiates between representative and non-representative signatories. |

| Year | Country | Legislation | Criteria for collective bargaining |
|------|----------------|---|--|
| | Czech Republic | 2006: Act No. 262/2006 Coll., Labour Code | When extending high-level collective agreements, social partners have to meet the quantitative criteria of representativeness that also apply to participation in the national tripartite organisation, where the law uses both quantitative and qualitative conditions. The conditions for unions: collective bargaining practice; independence; no political activities; uniting at least three unions from different sectors; nationwide scope; having at least 150,000 members. Only trade unions have the right to conclude a collective agreement. For employer associations the conditions are similar, except that they must represent affiliated firms with at least 400,000 employees. |
| 2009 | Germany | Posted Workers Act | A new concept of 'representative agreements' (<i>repräsentativer Tarifvertrag</i>) appears. The 'representativeness' of a collective agreement can now be proved by the coverage rate of workers in member companies of the employer organisation and by the trade union membership figures in the sector. |
| | Hungary | Act LXXIV on the sectoral dialogue committees and on certain questions of mezzo level social dialogue | Extensions of collective agreements can be applied for by representative employer associations determined by their number of affiliates, their economic importance and the number of employees covered. At workplace level, unions have to demonstrate 10% density to participate in collective bargaining. |
| 2011 | Slovakia | Act No. 341/2011, Labour Code | A law lasting only one year before it was repealed stated that in order to conclude a collective agreement covering all employees at an establishment or in a sector, on request of the management, the trade union(s) should provide evidence that at least 30% of the employees in the bargaining unit were organised by the trade union(s). |
| | Greece | Law 4024/2011, Article 37 'Collective bargaining regulations' | A total of 51% employee coverage requirement for collective agreement extension abolished; in future only employers who were members of the signatory employer association would have to apply an agreement. |
| 2012 | Portugal | Government Resolution 90/2012 | Employer associations requesting extension of agreements must now have membership of one-half of all employers in sector. |

| Year | Country | Legislation | Criteria for collective bargaining |
|------|---------|---|---|
| | Croatia | Representativeness for Collective Bargaining (OG 88/12) | Determines which unions are entitled to bargain and conclude collective agreements. A union is only representative if its membership makes up at least 20% of the unionised employees, to whom the agreement will apply, either in a single company or organisation or in an industry. Where unions cover a specific occupation, the membership threshold is 40% of the unionised employees. |
| | Germany | Public Procurement Act of North-Rhine Westphalia | The representativeness of collective agreements in public local passenger transport is to be based on the membership figures of the collective bargaining partners and only the agreement concluded by the largest trade union and employer organisation are considered 'representative'. The act also stipulates that the minister for labour may decide on the representativeness of given agreements by ministerial directive with advice from a consulting committee of trade union and employer representatives. |
| | Estonia | Collective Agreements Act 1993 amended 2012 | Collective agreements between employers and 'authorised representative of employees'. Extensions possible 'by agreement'. Current reform being proposed suggests extensions of collective agreements only when 50% of more of employees are covered. |
| 2013 | Ireland | Court judgment | 'Substantially representative' aspects of 1946 act (above) are ruled 'unconstitutional'. |
| 2015 | Germany | Act on Collective Bargaining Unity | It is proposed that in the case of competing agreements only the agreement of the majority union shall be applied and that representativeness shall be proved by membership figures. |

Note: Country shading: Strongly mutual recognition; strongly legal conformity.

Sources: Eurofound's national correspondents.

Table 10: Regulations specifying rights to collective voice organisations, 1946–2013

| Year | Country | Legislation | Key criteria |
|------|-------------|--|--|
| 1946 | Finland | <u>Collective Agreements Act (436/1946)</u> | Partners that can conclude a collective agreement are ‘any association whose specific objects include that of safeguarding the employer interests in the matter of employment; and any association whose specific objects include that of safeguarding the employees’ interests in the matter of employment’. |
| 1948 | Luxembourg | Constitution | Guarantees trade union rights and freedom of association. |
| 1970 | Italy | Law 20 May 1970, no. 300 – workers’ Statute (<i>Statuto dei lavoratori</i>), Art. 19 | Three main historic union confederations given ‘major representative’ status entitling them to nominate union delegates (RSA) in all 15+ companies; other unions are also deemed ‘representative’ if they sign collective agreements, and can then have workplace delegates (RSU). |
| 1971 | Netherlands | Works Council Act (<i>Wet op de ondernemingsraden</i>) | Defines right to be represented on works councils. |
| 1976 | Sweden | Employment (Co-Determination in the Workplace) Act, 1976 | Guaranteeing right of negotiation: ‘an employees’ organisation shall have the right to negotiate with an employer on any matter relating to the relationship between the employer and any member of the organisation who is, or has been, employed by that employer. An employer shall have an equivalent right to negotiate with an employees’ organisation’. A significant clause states: An employee who has been appointed to represent his organisation at negotiations may not be refused reasonable leave of absence in order to take part in those negotiations. All members of an employer association that has signed is required to implement the agreement. |
| 1987 | Sweden | Board Representation (Private Sector Employees) Act | Provides for two or three representatives of employees to be appointed to the Board, with trade unions that organise 80% or more of the employees having the right to nominate all the reps. |
| 1990 | Greece | Law 1876/90 ‘Free collective bargaining’ | Specifies that workers and employer collective industrial organisations, and any employer who employs more than 50 workers may conclude collective agreements. For trade unions, the criterion for representativeness is the number of workers voting in the last election for the union executive. The judiciary approves the articles of association and checks their legality, giving them legal personality (the list of founding members, the approval of the articles of association by the constituent assembly, the election of an interim governing body are submitted to the judicial authority). Moreover, the judiciary is present at union electoral procedures. Collective bargaining was extended to the public sector in 1999. |

| Year | Country | Legislation | Key criteria |
|------|-----------|--|---|
| 1991 | Lithuania | Law on Trade Unions | Article 3 of the Law on Trade Unions of the Republic of Lithuania states all trade unions have equal rights. All trade unions are treated as representative and can participate at any level in collective bargaining (as set out in its incorporation documents). |
| 2001 | Latvia | Labour Law | Norms for unions are: mutual recognition by the other social partners; being recognised in terms of leadership and reputation by the employees; having a mandate from the workers; having a certain (unspecified) % of members; having sufficient capacity to fulfil representative function; independence. |
| 2002 | Lithuania | Labour Code | Representativeness is established by the employer association itself in its incorporation documents. To conclude collective agreements at sectoral or cross-sector level, it has to state that it is a sectoral or national employer organisation in its by-laws. |
| 2007 | Finland | Act on Cooperation within Undertakings (334/2007) | Provides for election of a ‘cooperation representative’ in workplaces that have neither a shop steward nor an elected representative covering the majority of workers. |
| 2011 | Greece | Law 4024/2011, Article 37 “Collective bargaining regulations” | In the absence of a trade union, three-fifths of a company workforce can create an ‘association of persons’ with the right to sign collective agreements, derogating from sector agreements. |
| 2013 | Slovenia | Employment Relationship Act (<u>Zakon o delovnih razmerjih</u> – ZDR, Ur.l. RS, No. 21/13) | Extension of role of works councils to active cooperation in employment-related procedures (such as terminations, adoptions of internal acts) on the worker’s request or as a replacement to the trade unions (if they should not exist on the company level or if employees are not their members). |
| | Italy | Constitutional court | Participation in negotiations makes collective bargaining outcomes representative, even if a union does not sign. |

Source: Eurofound’s national correspondents

Table 11: Tripartite legislation, 1990–2013

| Year | Country | Legislation | Key criteria |
|------|----------------|--|--|
| 1990 | Hungary | National Interest Reconciliation Council | Council founded as a wage-determining body, related to works council election results for the unions. |
| 1995 | Czech Republic | Council of Economic and Social Agreement | Participation in the national tripartite organisation, (RHSD), is defined by membership of at least 150,000. Two organisations on each side – KZPS and the Confederation of Industry of the Czech Republic (SP ČR) – and the trade unions ČMKOS and the ASO meet the criteria. |
| 1998 | Latvia | Conception of tripartite cooperation | Trade union and employer representativeness at national level established with one single employees' representative and single employer representative (the Free Trade Union Confederation of Latvia and the Latvian Employer Confederation). |
| 1999 | Croatia | Determining the Representation of Associations of Trade Unions of a Higher Level in Tripartite Bodies at the National Level (OG 19/99) | Criteria for peak unions participating in tripartite bodies established. Amended by acts in 2012 and 2014. |
| 2000 | Netherlands | <i>Verordening representativiteit organisaties</i> [Regulation on representative organisations] | Status awarded since 1945 to peak organisations that then join the tripartite Social and Economic Council and the Foundation of Labour. |
| 2001 | Malta | Malta Council for Economic and Social Development Act Health and Safety Authority Act | Gave the statutory consultative body for social dialogue (the MCESD) that had been operating since 1990 a legal status. Set up a board to regulate and enforce law on occupational health and safety. The Board would have two worker representatives and two employers. |

| Year | Country | Legislation | Key criteria |
|------|----------|--|--|
| | Poland | Tripartite Commission for Socio-Economic Affairs and on voivodship social dialogue commissions, Art. 6 | A representative trade union organisation is an organisation having more than 300,000 member employees and which operates in economic entities whose core activity is specified in more than one-half of the economy. None of the representative organisations (Konfederacja Lewiatan, Pracodawcy RP, Business Centre Club, Związek Rzemiosła Polskiego) is, as such, a party to any collective agreement or any other agreement with trade unions. Even though the Act on Tripartite Commission does provide for a possibility to enter into agreements, such an agreement has never been concluded. The Tripartite Commission has not been working for more than a year now, as trade unions have walked out of it. Before that, there had been frequent signals that its work was just a facade and that the government had not respected the agreements reached by the social partners. Work is now in progress on a new formula for the Commission. |
| 2002 | Malta | Employment and Industrial Relations Act | Part I of Article 3 set up an Employment Relations Board (ERB) of four representatives of employees and four representatives of employers. The representatives are to be nominated by MCESD. This board makes recommendation to national minimum standard conditions of employment as well as to any sectoral conditions of employment. Trade unions are recognised at workplace level when they have 50% membership density. |
| 2007 | Slovakia | Tripartite Act No. 103/2007 | Representativeness of social partners is specified only in relation to the national level tripartite body, the Economic and Social Council (HSR). A representative employer association affiliates employers from several sectors, or employers active at least in five (out of eight) regions (higher territorial units –VUC) that employ at least 100,000 employees. A representative trade union association has at least 100,000 members – employees working in several sectors. Social partner/s should provide evidence on their representativeness on request of the government or the other social partner. |
| 2011 | Hungary | ACT XCIII on the National Economic and Social Council | National tripartite body dissolved. Tripartite discussions only continue in the public sector. |
| | Romania | National Tripartite Council for Social Dialogue (Law No. 62/2011) | The status of national-level representativeness is a requirement to take part in the Tripartite Council for Social Dialogue. |

| Year | Country | Legislation | Key criteria |
|------|---------|--|---|
| 2012 | Croatia | Participation in Tripartite Bodies (OG 82/12) | New criteria for representativeness of the social partner organisations for tripartite consultations, brought about by merger processes among the trade union confederations. Croatian Employer Association (CEA) is the only employer representative within the national Social-Economic Council, the highest tripartite social body for social dialogue in Croatia. |
| 2013 | Romania | Economic and Social Council (Law no. 248/2013) | The status of national-level representativeness is a requirement to take part in the Economic and Social Council. |

Country shading: Strongly mutual recognition; strongly legal conformity.

Sources: Eurofound's national correspondents.

Table 12 presents the rankings of the 29 countries on each of the four drivers after their scores were averaged for trade union representativeness at peak, sector and workplace levels. The countries in dark shades at the top of the table all had average ratings above the EU28 average and except for Belgium, Denmark and Slovenia (which averaged 'significant' in the 'electoral success' column) averaged ratings of between 'important' to 'most important' (from four to five). The countries boxed and lightly shaded at the bottom of the table averaged ratings of between 'not relevant' to 'slightly relevant' (one to two).

Table 12: Rankings for four representativeness drivers for trade unions

(Averaging peak, sector and workplace level ratings)

| Rank | Negotiating capacity | Social strength | Government role | Electoral success |
|------|----------------------|-----------------|-----------------|-------------------|
| 1 | Denmark | Latvia | Belgium | Spain |
| 2 | Hungary | Romania | Bulgaria | France |
| 3 | Slovenia | Austria | Spain | Luxembourg |
| 4 | Cyprus | Portugal | France | Italy |
| 5 | Finland | Hungary | Luxembourg | Belgium |
| 6 | Latvia | Croatia | Austria | Denmark |
| 7 | Italy | Finland | Netherlands | Slovenia |
| 8 | Ireland | UK | Slovakia | Ireland |
| 9 | UK | Cyprus | Ireland | Lithuania |
| 10 | Austria | Denmark | Estonia | Portugal |

| | | | | |
|----|-------------|-------------|-----------|-------------|
| 11 | Croatia | Malta | Hungary | Finland |
| 12 | Sweden | Bulgaria | Malta | Greece |
| 13 | Portugal | Slovenia | Norway | Austria |
| 14 | Malta | Norway | Italy | Croatia |
| 15 | Norway | Ireland | Latvia | Malta |
| 16 | Belgium | Italy | Czech Rep | Netherlands |
| 17 | Netherlands | Poland | Denmark | Bulgaria |
| 18 | Estonia | Estonia | Germany | Czech Rep |
| 19 | Greece | Netherlands | Greece | Germany |
| 20 | Spain | Belgium | Croatia | Estonia |
| 21 | Lithuania | France | Cyprus | Cyprus |
| 22 | Bulgaria | Sweden | Lithuania | Latvia |
| 23 | Germany | Greece | Poland | Hungary |
| 24 | Luxembourg | Luxembourg | Romania | Poland |
| 25 | Romania | Lithuania | Slovenia | Romania |
| 26 | France | Spain | Finland | Slovakia |
| 27 | Poland | Slovakia | Sweden | Sweden |
| 28 | Czech Rep | Czech Rep | UK | UK |
| 29 | Slovakia | Germany | Portugal | Norway |

In terms of ‘negotiating capacity’, the average 3.6 rating for the 10 ‘mutual recognition’ pole countries is clearly stronger than the 1.7 trade union average for the five ‘legal conformity’ pole countries. For ‘social strength’, the ‘mutual recognition’ pole countries average 3.1, compared to 2.5 for the ‘legal conformity’ pole countries. In contrast, while a non-legislative government role averages below ‘slightly relevant’ for the ‘mutual regulation’ countries, at 1.8, in the countries where the state actively structures representativeness, this driver averages 2.5. The differences between the two poles in terms of ‘electoral success’ is not significant. This is because in a few countries elections are important in creating the legitimacy behind mutual recognition, while in other countries elections are a legal requirement.

For employer representativeness, the national correspondent’s ratings were averaged for peak and sector levels. These are shown in rank order in Table 13.

Table 13: Rankings for the four representativeness drivers for employer associations

(Averaging peak and sector-level ratings)

| Rank | Negotiating capacity | Social strength | Government role | Electoral success |
|------|----------------------|-----------------|-----------------|-------------------|
| 1 | Denmark | Hungary | Belgium | Ireland |
| 2 | Latvia | Croatia | Bulgaria | France |
| 3 | Hungary | Romania | France | Denmark |
| 4 | Finland | Austria | Austria | Slovenia |
| 5 | Slovenia | Latvia | Netherlands | Greece |
| 6 | Cyprus | Finland | Slovakia | Italy |
| 7 | Croatia | Denmark | Estonia | Lithuania |
| 8 | Italy | Bulgaria | Ireland | Belgium |
| 9 | Ireland | Spain | Luxembourg | Bulgaria |
| 10 | Spain | France | Norway | Czech Rep |
| 11 | Austria | UK | Hungary | Germany |
| 12 | Sweden | Portugal | Romania | Estonia |
| 13 | Norway | Poland | Italy | Spain |
| 14 | Netherlands | Norway | Latvia | Croatia |
| 15 | Belgium | Estonia | Czech Rep | Cyprus |
| 16 | Portugal | Italy | Denmark | Latvia |
| 17 | Estonia | Belgium | Germany | Luxembourg |
| 18 | France | Ireland | Greece | Hungary |
| 19 | Luxembourg | Greece | Spain | Malta |
| 20 | Greece | Netherlands | Croatia | Netherlands |
| 21 | UK | Slovenia | Cyprus | Austria |
| 22 | Malta | Cyprus | Lithuania | Poland |

| | | | | |
|----|-----------|------------|----------|----------|
| 23 | Poland | Sweden | Malta | Romania |
| 24 | Bulgaria | Slovakia | Poland | Slovakia |
| 25 | Germany | Malta | Portugal | Finland |
| 26 | Lithuania | Czech Rep | Slovenia | Sweden |
| 27 | Romania | Lithuania | Finland | UK |
| 28 | Czech Rep | Luxembourg | Sweden | Norway |
| 29 | Slovakia | Germany | UK | Portugal |

‘Negotiating capacity’ is assessed from ‘important’ to ‘most important’ for the employers in 12 countries, including seven of the 10 ‘mutual recognition’ pole countries, whose average is 3.6 compared to a 1.8 average (below slightly relevant) for the five ‘legal conformity’ pole countries. The only other significant difference is, as with the trade unions, over the non-legislative government role. Here the average 2.7 rating for the five ‘legal conformity’ pole countries, approaching ‘significant’, is much higher than the 1.6 average for the ‘mutual recognition’ countries.

Table 14: Classifying European systems of representativeness

| | MR/LC | SLS | NC | SS | Legal significance | Density or coverage threshold present | Government role | Electoral success | Difference (cols e, f, g, h less cols b, c, d, e) |
|----|-------|-----|----|----|--------------------|---------------------------------------|-----------------|-------------------|---|
| CY | X | X | X | x | | | | | -3.5 |
| UK | X | X | x | X | | | | | -3.5 |
| SE | X | X | X | | | | | | -3 |
| FI | X | X | X | X | | X | | x | -2.5 |
| NO | X | X | x | X | | | X | | -2.5 |
| DK | X | | X | X | | | | X | -2 |
| SI | X | X | X | x | | X | | X | -1.5 |
| MT | X | | x | x | | | X | | -1.5 |
| IE | | X | X | | | | X | X | 0 |
| LT | | | | | | | | X | 1 |
| AT | X | X | X | X | | | X | | -3 |

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| | MR/LC | SLS | NC | SS | Legal significance | Density or coverage threshold present | Government role | Electoral success | Difference (cols e, f, g, h less cols b, c, d, e) |
|----|-------|-----|----|----|--------------------|---------------------------------------|-----------------|-------------------|---|
| PT | X | | x | X | | X | | x | -1 |
| IT | X | X | X | | | | X | X | -1 |
| NL | X | X | x | | | X | X | | -1 |
| HU | | X | X | X | X | X | X | | 0 |
| DE | | | | | X | X | | | 2 |
| HR | | X | X | X | X | X | | | -1 |
| PL | | X | | x | X | X | | | 0.5 |
| LV | | | X | X | X | X | X | x | 1 |
| EE | | X | | | | X | X | | 1 |
| EL | | | | | X | | | | 1 |
| RO | | | | X | X | X | X | | 1.5 |
| BG | | | | X | X | X | X | | 2 |
| CZ | | | | | X | X | | | 2 |
| SK | | | | | X | X | X | | 3 |
| ES | X | | x | x | | | X | x | -1 |
| BE | X | | | | X | X | X | x | 2.5 |
| LU | | | | | X | | X | x | 2.5 |
| FR | | | | x | X | | X | X | 2.5 |

Note: This table seeks to explain the classification in Table 7, based on one expert opinion per country. MR/LC = Mutual recognition to legal conformity; SLS = Social legitimacy significance; NC = Negotiating capacity; SS = Social strength. **Error! Reference source not found.** Table 13 presents the methodology behind the basic classification in chapter 1 (in the section, 'Four main models of representativeness'). Eight of the rankings were taken from the report and divided into those that fell closer to the 'mutual recognition' principle and those that fell closer to the 'legal conformity' principle. The top 14 countries located in the top half of the EU28+Norway were then identified. Those countries that in the top half of a country ranking were awarded a capital 'X'. These countries scored one, in a rough count. Where only one of the two social partners was in the top half of a continuum, the country was awarded a lower case 'x' and was counted as being worth 0.5. The scores for the four continuums

associated with mutual recognition (shaded yellow) were then added up, and their scores subtracted from the totals for the four continuums associated with legal conformity (shaded blue).

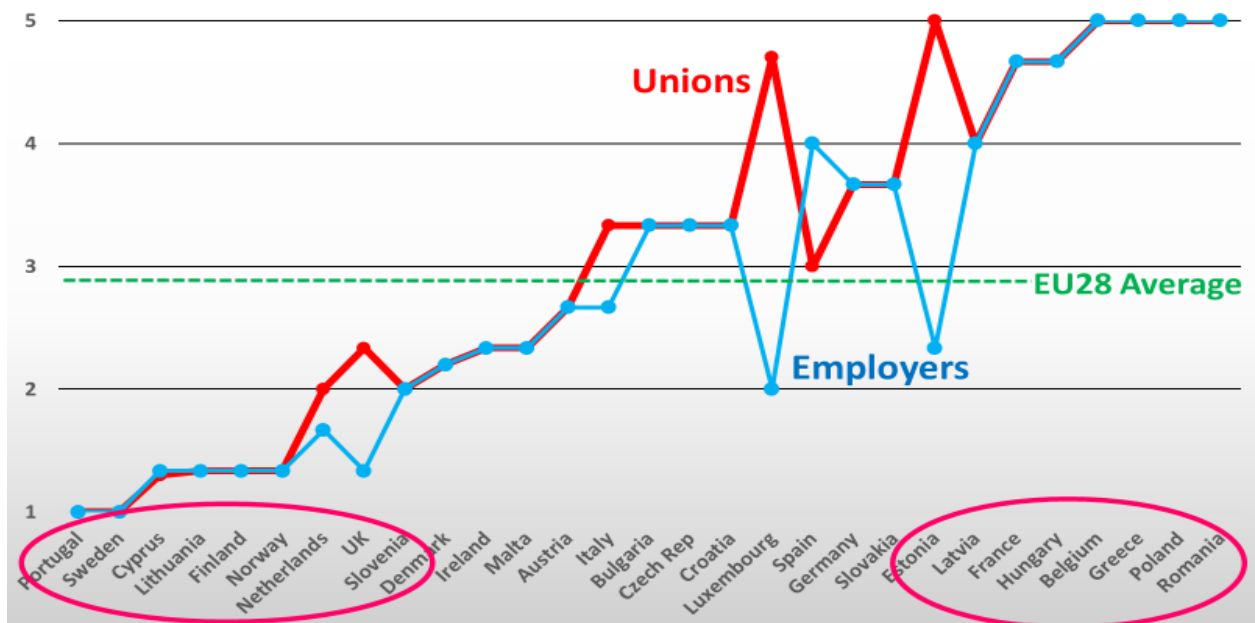
Nothing stronger is claimed for this initial ranking than a highly subjective overview of differences between the assessments made by single Eurofound national correspondents. This crude methodology then permitted a distinction to be made between countries whose scores were between -3.5 and -1.5 (the 'self-regulation' countries), those between -1 and 0 (the 'mixed model' countries), those between 0.5 and 2 (the 'state membership regulation' countries) and finally those scoring 2.5 or higher (the 'state election strength' countries).

In order to develop the final classification, the qualitative data provided by the national correspondents were referred to. The ranking classifications of the seven countries whose heuristic scores are shaded were altered: Ireland, Lithuania, Austria, Germany, Croatia, Slovakia and Spain.

Where there were differences between the representative systems for trade unions and employer association, the 'national' classification presented was that which was closer to trade union system. This is more appropriate than using the employer model, since, as the report confirms, the issue of representativeness is of much greater concern to the trade unions than to the employers. The former are usually constrained to attempt to 'prove' it, while the latter usually 'assume' it.

Annex A3: Supplementary figures

Figure 15: Importance of the ‘legal context’ for representativeness among Europe’s peak unions and employers



The ‘legal context’ presented in Figure 16 takes three of the contextual elements shaping representativeness definitions: the obligation to conform to the law; the significance of labour law, a labour code or the courts in determining representativeness; and whether the courts play a role in ending an organisation’s representative status.

Nine correspondents consider the legal context is on average less than slightly relevant for peak employers and unions in their countries; eight considered it ‘important’ or ‘most important’. There are significant differences over the combined variables between those made for the employers and unions only in Estonia, Luxembourg, Spain and the UK.

Figure 16: Relevance of ‘mutual recognition’ for representativeness of peak and sector level employers’ associations and trade unions

