



Brussels, 26.7.2013
SWD(2013) 293 final

COMMISSION STAFF WORKING DOCUMENT

'Fitness check'

on EU law in the area of Information and Consultation of Workers

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EXECUTIVE SUMMARY

The Commission services reviewed a family of three EU Directives regarding information and consultation (I&C) of workers at national level¹ in order to keep regulation 'fit for purpose' ('fitness check').

The fitness check relies on an evidence based approach covering legal, economic and social themes related to the EU I&C legislation at issue. Stakeholders were closely associated through an ad hoc Working Group on I&C bringing together representatives of the EU/EEA governments and the European Social Partners, and by contributing to an independent external study.

Context

The three EU Directives on I&C were adopted at different times. The Directives on collective redundancies and on the transfer of undertakings date back to the 70's. Each Directive has been amended once and later consolidated. The third (Directive 2002/14/EC) is the most recent and has not undergone any changes.

They implement the fundamental social right to I&C while prescribing minimum requirements and thus allowing Member States to apply provisions which are more favourable to workers.

Findings

With regard to **relevance**, the evidence suggests that the three I&C Directives are relevant in that they address stakeholders' needs. In particular, they can ensure the fundamental social right of workers to be informed and consulted at the workplace. They can increase trust between management and labour, involve workers in decisions affecting them, protect workers, solve work problems, contribute to increased adaptability and employability, improve staff and company performance, and ensure a more level playing field among companies.

However, some stakeholders questioned the Directives' potential to ensure the fundamental right of information and consultation arguing that a significant share of the workforce is not covered due to the exclusion of smaller SMEs, of public administration and of seafarers from the scope of application.

With regard to **effectiveness**, the various sources of evidence suggest that in general stakeholder needs as reflected in the Directives' objectives have been met in practice. I&C seems to have contributed in particular to: increasing trust and partnership; mitigating conflicts at the workplace; involving workers in decision taking; promoting workplace performance; improving management and anticipation of change. The extent to which this has been achieved has varied across the Directives and some of their specific objectives.

¹ In particular, Directives 98/59/EC on collective redundancies, 2001/23/EC on transfers of undertakings and 2002/14/EC on a general framework relating to information and consultation of workers. The fitness check did not include EU acts regarding I&C at transnational level.

In practice employers often provide workers information on the economic or employment situation of the company. Such information is usually timely and sufficiently detailed. Moreover, most representation structures seem to have access to the key resources needed to function effectively (time off work and training). Consultation is nevertheless less likely to take place and tends to cover operational issues of direct relevance to workers rather than business strategies. Employees' involvement at work varies quite widely by Member State and establishment size.

There is evidence to suggest that there are some shortcomings with respect to the effectiveness of the I&C Directives. A large number of the establishments covered by the Directives do not have I&C bodies, since information and consultation are employees' rights that require action on their side in order to be exercised in practice. Sometimes, their involvement seems limited or formal, particularly with respect to consultation on employers' decisions involving contractual flexibility and restructurings. The same holds true for their strategic influence. It seems that there are also shortcomings relating to the enforcement of the national transposing legislation, which mainly falls within the competence of the national authorities. There is also evidence in several countries of insufficient awareness of rights and obligations relating to I&C at company level.

The effectiveness of the Directives depends on several factors: the situation prevailing before transposition, the country's industrial relations system, the size of the establishment, the culture of social dialogue, the attitudes of management and labour, employees' support, etc. Taking into account that I&C is a learning process, there is room for improvement, particularly in countries with less-developed traditions, by promoting I&C culture among social partners, strengthening institutions, promoting agreements on I&C, disseminating good practices and raising awareness of I&C rights and obligations as well as the benefits associated with I&C.

With regard to **efficiency**, the evidence points to several significant economic benefits that can be derived from I&C at the workplace. I&C can have positive operational and organisational outcomes. In particular, it can encourage workers to pool and communicate to employers their knowledge about production processes, and to assist with work organisation and cost cutting. It can contribute to solving problems at work, engage workers in the changes in work organisation and work conditions, appease conflicts, promote trust and partnership and increase the job satisfaction, motivation and commitment of staff. I&C can thus reduce the rate at which workers leave the company, and improve the physical health and wellbeing of workers. The above can have a positive impact on staff and company's performance, reputation and competitiveness.

On the other side, both employers and employees' representatives incur costs. For the former, the highest costs are those for supporting employees' representatives including time off work, for carrying out I&C and from delays to employers' decisions. It was not possible to quantitatively assess the above costs in a representative and reliable way on the basis of the available research. Such costs may considerably vary by country and by company depending on a wide range of factors. Employees' representatives bear mainly costs associated with handling I&C-related disputes and with training to enable them to perform their tasks. Overall, on the basis of the available evidence and stakeholders' assessments, it may be concluded that the benefits are likely to outweigh the costs incurred.

With regard to **coherence**, the three I&C Directives as amended appear coherent and mutually reinforcing. There is no evidence of any duplications or contradictions resulting in problems in their practical implementation.

However, the concerns of some stakeholders relating to possible inconsistencies in particular as regards definitions merit serious consideration and further discussion. The same holds true as regards the gaps related to the scope of application of the I&C Directives.

Conclusion

The evidence that has been gathered suggests that the **EU Directives on I&C are broadly fit for purpose**. They are generally relevant, effective, coherent and mutually reinforcing. The benefits they generate are likely to outweigh the costs. These findings have also been supported by the different stakeholders that were involved in the Fitness Check exercise and by the external study complementing it.

Nevertheless, the evaluation has brought to light a number of issues relating to the scope and operation of the Directives. The SWD sets out a number of possible responses on the basis of good practice of meaningful social dialogue at different levels and by different actors, and points to the areas which need further examination and discussion which may lead to a consolidation of the three Directives following a consultation of the European social partners.

1. INTRODUCTION

As part of the 2010 Work Programme², the Commission has started reviewing EU legislation in selected policy fields through ‘fitness checks’ in order to keep current regulation ‘fit for purpose’. The goal is to identify excessive burdens, overlaps, gaps, inconsistencies or obsolete measures which may have appeared over time since the EU law at issue was first adopted and implemented. Pilot exercises began in 2010 in four areas: employment and social policy, environment, transport and industrial policy.

In the area of employment and social policy, a family of three Directives concerning the Information and Consultation of Workers (ICW) at national/company level were selected:

- Directive 98/59/EC on collective redundancies³;
- Directive 2001/23/EC on transfers of undertakings, in particular Article 7⁴;
- Directive 2002/14/EC establishing a general framework relating to information and consultation of workers in the EC⁵.

The newly recast Directive 2009/38/EC on European Works Councils⁶ was excluded from the fitness check exercise for several reasons: a) it is concerned with ICW in a transnational context; b) it is too recent (the new amendments had to be transposed into national law by June 2011); c) its adoption was preceded by a comprehensive and rigorous *ex ante* impact assessment; and d) it will be subject to a specific *ex post* evaluation in 2016, as imposed by the Directive itself. Some other EU Directives also deal with information and consultation of workers. However, they have also been excluded from the present exercise since they are concerned with specific forms of companies at transnational level and are subject to specific reviews⁷.

Some stakeholders initially expressed misgivings about the fitness check of the I&C Directives. They were concerned that its purpose might be deregulation in the social area. On the contrary, the fitness check aims rather at improving the quality of regulation and at ensuring that it remains relevant despite significant changes in demography, work patterns and technology (in particular against the background of the crisis).

² Commission Work Programme 2010, COM(2010) 135 final, page 10.

³ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. OJ L 225 of 12.8.98, p. 16.

⁴ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82 of 22.3.2001, p. 16. Article 7 deals with information and consultation of workers’ representatives in cases of transfers of undertakings.

⁵ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80 of 23.3.2002, p. 29.

⁶ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 (OJ L 122 of 16.5.2009, p. 28.) recasting Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

⁷ In particular, Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to involvement of employees (OJ L 294 of 10.11.2001, p. 22), and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to involvement of employees (OJ L 207 of 18.8.2003, p. 25).

2. BACKGROUND

This section sets out the context of the fitness check, in particular the previous work of the Commission and the European Parliament regarding the I&C Directives and their review during their lifetime. It highlights the objectives of the Directives and points to their common features and differences.

(a) Context

Since 1975, several Directives have been adopted in the policy area of ICW with different legal bases and responding to different historical circumstances. In anticipation of the social problems created by an increasing number of restructurings as a result of the development of the internal market, the first Directives aimed primarily to provide greater protection for workers across the European Community in specific critical situations (collective redundancies) or change of employer (transfers of undertakings) while establishing a more level playing field for companies within the internal market. The persistence of gaps in national laws and practices⁸ led to the adoption of another Directive in 2002 (the framework Directive) complementing the previous ones and establishing a general, permanent and statutory system of I&C at EU level, with a view to promoting workers' involvement and anticipation of change through permanent information and consultation at the workplace.

The right to ICW within the undertaking constitutes a fundamental social right enshrined in the Charter of Fundamental Rights of the EU, in particular its Article 27, as well as in the 1989 Community Charter of the fundamental social rights of workers, in particular its Section 17.

The exercise of this right at national or company level is currently regulated by three Directives: Directive 98/59/EC on collective redundancies, Article 7 of Directive 2001/23/EC on transfers of undertakings and Directive 2002/14/EC establishing a general framework for informing and consulting employees.

The Directives on collective redundancies and on the transfer of undertakings date back to the 70's. Each Directive has been amended once (in 1992 and 1998 respectively) and later consolidated (in 1998 and 2001 respectively). The third (Directive 2002/14/EC) is the most recent and has not undergone any changes.

The European Commission and the European Parliament have expressed the need to assess the operation of the Directives and their effects. The Social Agenda 2005-2010 provided that 'in the context of better regulation, as outlined in the Lisbon mid-term review, the Commission will propose the updating of Directives 2001/23/EC (transfers of undertakings) and 98/59/EC (collective redundancies), and the consolidation of the various provisions on worker information and consultation.' A European Parliament study published in 2007 encouraged the Commission to pursue the consolidation of Community ICW legislation to identify potential benefits and costs, and clarify the practical options and implications as a basis for consultation.

In response to the perceived need to promote consistency among all Directives in the area of ICW, the Commission examined the option of a recast. However, taking also into account the reluctance of consulted stakeholders with respect to that option⁹, it decided to give priority to revising the European Works Councils Directive, widely perceived as necessary for reasons of effectiveness, legal certainty and coherence. This led to the adoption of recast Directive 2009/38/EC.

⁸ Cf. Renault-Vilvorde case.

⁹ In particular, government representatives did not consider appropriate to reopen the debate at national level on this sensitive matter a short time after the transposition of the 2002 Directive.

Although the Commission had examined the legal transposition of all Directives in the Member States, only Directives 2001/23/EC and 2002/14/EC were subject to reviews of their application and effects following consultations of the Member States and the European social partners. In its review of the former, the Commission found that the existing I&C requirements are sufficient to help employees safeguard their rights and concluded that it was not necessary at that stage to propose any amendments to these provisions (Article 7)¹⁰. However, the Commission did identify an issue which could cause uncertainty to stakeholders, namely the application of this Directive to cross-border transfers of undertakings. Following a consultation of the European social partners in this regard in 2007, it was concluded that in practice there was no compelling need to amend Directive 2001/23/EC to clarify this point. As regards Directive 2002/14/EC, the Commission concluded that this Directive had not generated its full impact at the time of its review (2008), and that it was premature to propose any amendments. The main challenge at that stage was to ensure its full and effective transposition and enforcement¹¹.

In a resolution of 19 February 2009, the European Parliament called upon the Commission to consider the need to coordinate the EU Directives in the ICW area, namely Directives 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC, 2002/14/EC, 2003/72/EC and Regulation 2157/2001¹², with a view to determining what changes might be required in order to eliminate any duplications or contradictions, and to make simultaneously any such changes. It also requested the submission of an evaluation report on the results achieved through the application of Directive 2002/14/EC.

The European Economic and Social Committee in its recent opinion of 20.3.2013¹³ called for a more effective formulation of I&C rights in European law, and suggested that serious consideration be given to the extent to which consolidation in a single European framework directive could at least ensure greater standardisation of the various definitions of information and consultation and, where applicable, participation in company boardrooms as well. The EESC cited in this regard Directives 98/59/EC, 2001/23/EC, 2002/14/EC, 2009/38/EC, 2001/86/EC and Regulation 2003/72/EC¹⁴.

For the sake of completeness, reference should also be made to the application in the maritime sector of the three I&C Directives at issue in the current fitness check. The derogation or exclusion of seafarers from their scope of application has been addressed by the EU institutions on several occasions¹⁵. Following consultation of the European social partners in

¹⁰ Commission Report of 18.6.2007 on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, COM(2007) 334 final.

¹¹ Commission Communication of 17.3.2008 on the review of the application of Directive 2002/14/EC in the EU, COM(2008) 146 final.

¹² Respectively, Directives on European Works Councils, collective redundancies, transfers of undertakings, employees' involvement in the European Company, general framework for informing and consulting employees, employees' involvement in the European Cooperative Society and Regulation on the Statute of a European Company.

¹³ Own-initiative opinion on 'Employee involvement and participation as a pillar of sound business management and balanced approaches to overcoming the crisis', SOC/470 (Rapporteur: Wolfgang Greif).

¹⁴ Respectively, Directives on collective redundancies, transfers of undertakings, general framework for informing and consulting employees, European Works Councils, employees' involvement in the European Company, and employees' involvement in the European Cooperative Society.

¹⁵ In particular, E.P. Resolution of 11.7.2007 (Document 2007/2023(INI)); EESC Document TEN/255 CESE 609/2007. In this regard, see Commission Staff Working Document on Impact Assessment regarding the draft proposal for a Directive on seafarers amending certain EU labour law Directives, including the three Directives on I&C (forthcoming).

this regard in the period 2007-2009, the Commission is currently working on a proposal for a Directive aimed at extending the personal scope of application of a number of EU labour law Directives to seafarers.

More generally, the abovementioned I&C Directives play an important role in framing the legislative institutions and measures governing the national system of industrial relations. In particular, they are decisive in setting up at Member State level the framework for the anticipation and management of corporate restructuring that has been subject to a policy debate at EU level for several years¹⁶. With the recent increase in the number of company closures and restructurings prompted by the financial and economic crisis, the exercise of ICW rights has to face greater challenges now that social dialogue at company level has gained a more crucial role¹⁷. This makes it all the more urgent to examine the relevant legal provisions in practice regarding the attainment of their objectives in terms of relevance, effectiveness, efficiency and coherence. It was considered important to identify any unnecessary administrative burdens and other difficulties of application that EU legislation, as transposed in the Member States, may be causing for businesses, national authorities or workers' representatives.

(b) Objectives of I&C Directives

The fitness of the EU Directives should be assessed in relation to their stated objectives, which are of a social, economic and internal market nature.

The main purpose of Directive 98/59/EC¹⁸ is to afford greater protection to workers in the event of collective redundancies, while ensuring a level playing field for companies through approximating the national laws in this area.

These objectives are to be met through an information and consultation procedure involving employees in decision making relating to collective redundancies as well as a notification procedure for public authorities. The former aims at avoiding or reducing the number of collective redundancies, mitigating their negative social impact, while the latter is intended to allow public authorities to seek wider support and solutions to the problems raised.

The Directive specifies the elements about which employees must be informed and consulted while providing that such consultation should be carried out 'in good time' and 'with a view to seeking agreement'.

Directive 2001/23/EC¹⁹ contains material and procedural provisions. The material provisions aim mainly at safeguarding employees' jobs and rights in the event of transfers of undertakings by making it possible for them to continue to work for the new employer ('transferee') under the same conditions as those agreed with the previous employer ('transferor'). This fitness check focuses only on the procedural provisions (Article 7 on information and consultation of employees), whose main objective is to give greater protection from the legal, economic and social consequences of the transfer to the transferor's employees who change employer as well as to the transferee's existing employees, while ensuring a level playing field for companies through approximating the national laws in this area.

¹⁶ See the Green Paper on restructuring and anticipation of change: what lessons from recent experience? (COM(2012) 7 final of 17.1.2012) and its accompanying Commission Staff Working Document 'Restructuring in Europe 2011' (SEC(2012) 59 final of 17.1.2012).

¹⁷ See 'Negotiating the crisis' Glassner and Keune (ILO, 2010); 'Social dialogue in times of global economic crisis', Eurofound 2012; 'Employment in Europe 2010', European Commission 2010.

¹⁸ As indicated before, this Directive consolidates Directive 75/129/EEC as amended by Directive 92/56/EEC.

¹⁹ This Directive codifies the original Directive 77/187/EEC, as amended by Directive 98/50/EC.

This aim is expected to be achieved by involving employees in in the event of transfers of undertakings. Thus, transferors and transferees are required to inform affected employees (through their representatives or directly) about the date, the reasons for the transfer, the legal, economic and social implications for employees, and any measures envisaged in relation to them. Information must be provided ‘before the transfer is carried out’ and ‘before the employees are directly affected by the transfer’. When measures affecting employees are actually envisaged, a consultation ‘in good time’ and ‘with a view to seeking agreement’ is also required.

The main objective of Directive 2002/14/EC was to consolidate a general and permanent right to I&C of employees at national undertaking/establishment level. This was expected to strengthen dialogue and promote mutual trust between management and labour; improve risk anticipation and management of change; promote workers’ involvement in the operation and future of the undertaking; make work organisation more flexible while maintaining security; increase adaptability and employability; and increase the undertaking’s competitiveness.

It was also expected that a general and permanent I&C mechanism would improve the application in practice of the I&C provisions in the previous Directives on collective redundancies and transfers of undertakings which concerned specific (‘isolated, fragmented’) imminent events and situations. Indeed, Directive 2002/14/EC was based on a ‘preventive/anticipative’ approach in relation to management of business and change through the provision of appropriate information/consultation on the economic and employment situation and perspectives of the company and on the employer’s important decisions.

(c) I&C Directives — similarities and differences

In identifying and evaluating the effects of the three EU Directives, it is important to take into consideration the scope and nature of their requirements.

First, given their legal form (directives), there is some degree of latitude regarding the form and methods which Member States may choose with a view to attaining the results envisaged.

Second, they allow Member States to continue applying, or to introduce, provisions which are more favourable to workers.

Third, they are flexible in allowing Member States to define several concepts and terms in accordance with national law and practices and, thus, adjust the I&C arrangements to the specificities of each country with due respect for the useful effect of the Directives²⁰.

The three Directives differ from each other in a number of respects. While they all lay down procedural I&C requirements, Directive 98/59/EC also provides for a notification procedure to a public authority and Directive 2001/23/EC establishes the material rights of employees. In several aspects the two older ‘specific’ Directives are more precise than the recent ‘general’ one. They specify in more detail the elements of information and consultation which the employer is required to provide and carry out. They use different wording for similar provisions, for example, as regards their scope of application with respect to the public sector²¹. While they apply to public undertakings carrying out an economic activity²², whether or not operated for gain, they do not cover activities of the public administration which fall

²⁰ For example, ‘employees’ representatives’; ‘protection of rights / enforcement’.

²¹ The term ‘public sector’, as used in the present document, includes both public administration and public undertakings.

²² See, in this regard, Articles 1(2)(b) of Directive 98/59/EC; 1(1)(c) of Directive 2001/23/EC and 2(a) of Directive 2002/14/EC.

within the exercise of public powers²³. Directives 98/59/EC and 2001/23/EC exclude seafarers from their scope of application, while Directive 2002/14/EC allows Member States to derogate from it through provisions adapted to the specific features of the maritime sector²⁴. They lay down different thresholds²⁵. Directive 2001/23/EC provides for the case where there are no employee representatives in the undertaking²⁶, while the others do not.

Several of these differences may be explained by their different scope. For example, Directive 2002/14/EC, being general in scope, leaves the more precise definition of I&C arrangements to the national implementing laws and/or agreements between management and labour²⁷. The latter may even define different provisions from the statutory ones (provided that certain principles are upheld, in particular those of effectiveness and cooperation. Another explanation is the legislator's will; for example, the Council did not adopt the Commission's proposal²⁸ to include in Directive 92/56/EEC²⁹ a provision mirroring Article 6(5) of Directive 77/187/EEC which provides for information of workers where there are no employee representatives in the undertaking.

Another important factor to be taken into account in the fitness assessment is the nature and degree of the changes which were required for transposing the directives into the national legal orders of the Member States along with the time elapsed since transposition.

3. PROCESS/METHOD FOLLOWED

This section sets out briefly the process followed during the fitness check. An effort has been made to gather all available evidence from different sources and to gather the views of stakeholders at national and EU levels. The fitness check is mainly based on evidence at cross-industry level. Since 2007 a separate exercise has addressed the issue of the exclusion of seafarers from a number of EU Directives, including those containing provisions on I&C rights³⁰. An *ex-ante* impact assessment was carried out in this regard³¹.

(a) Process

This fitness check was launched in 2010. It was designed to be evidence based covering legal, economic and social themes related to EU I&C legislation. An inter-service group

²³ See judgement of 18.10.2012 in case C-583/10, Nolan. The European Parliament's amendment to extend the scope of application of Directive 2002/14/EC to the 'public sector' (thus including 'civil service and public services') was not acceptable to the Council.

²⁴ See, in this regard, Articles 1(2)(c) of Directive 98/59/EC, 1(3) of Directive 2001/23/EC and 3(3) of Directive 2002/14/EC respectively.

²⁵ Fixed number of redundancies - at least 10; 10%; at least 30- in establishments normally employing between 21-99; 100-299; 300 workers or more respectively (Directive 98/59/EC). 20 or 50 workers in an establishment or undertaking respectively (Directive 2002/14/EC). No threshold in Directive 2001/23/EC (except if a Member State makes use of Article 7(5)).

²⁶ See Article 7(6) of Directive 2001/23/EC. This provision amended Article 6(5) of Directive 77/187/EEC.

²⁷ See recital 23 of this Directive. Some commentators call this 'double flexibility'.

²⁸ COM(91) 292 final.

²⁹ Directive 92/56/EEC amended Directive 75/129/EEC regarding collective redundancies.

³⁰ This exercise concerned the exclusion of seafarers from the personal scope of application of six EU labour law Directives, namely the Insolvency Directive (2008/94/EC), the Posting of Workers Directive (96/71/EC), the European Works Council Directive (2009/38/EC) and the three I&C Directives which are the object of the present fitness check.

³¹ See Impact Assessment accompanying a proposal for a Directive of the European Parliament and Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC, 2001/23/EC (to be published). This impact assessment was based on an external study and on consultations of stakeholders (European social partners and Member States).

representing all relevant departments was set up within the Commission to supervise the exercise.

(b) Studies

A number of studies have been carried out in this area³². The Commission also took into account studies which are not yet finalised (preliminary drafts)³³. In addition, the Commission launched a further study specifically to assess the operation and effects of three information and consultation Directives taking as a reference point the Commission guidance document on the content of fitness checks³⁴. This study was based on research in 30 EU/EEA countries regarding the practices and impact of the Directives in the various contexts and industrial relations systems. It also assessed, as far as possible, the social and economic benefits and costs involved in employee information and consultation at company level. Stakeholders were involved in its preparation through interviews of representatives of social partners (at national and at company levels through case-studies³⁵), public administration (ministry / labour inspection), and academics, as well as through a web-survey³⁶.

(c) Consultation

Discussions involving stakeholders played a very important part in the fitness check exercise. In 2011 an *ad hoc* Working Group on ICW was established bringing together representatives of the Member States and the social partners. Its mandate was to examine and discuss the implementation and effects of the Directives in the EU/EEA, in particular the different national experiences, research and studies thereon, and express its views on any measures which might need to be taken in this area. It held three meetings in 2011 and 2012 and was involved in the discussion of a number of national studies as well as the 2012 evaluation study.

A European Labour Law Network³⁷ seminar was held in The Hague on 11-12 November 2010³⁸. It brought together labour lawyers and academics as well as representatives of the Member States and the social partners to discuss 'Protection, Involvement and Adaptation' in times of crisis on the basis of a thematic report³⁹. The ELLN also prepared a number of papers focusing specifically on the three I&C Directives⁴⁰.

4. FOCUS OF THE FITNESS CHECK

The general aim of the fitness check is to identify excessive burdens, overlaps, gaps, inconsistencies or obsolete measures which may have appeared since the Directives at issue were initially adopted and implemented.

³² See Section 5(a) below.

³³ In particular, 'National I&C practices', Eurofound 2013.

³⁴ Hereinafter: '2012 evaluation study'. The final report by Patrick Wauters, Jean-Jacques Lennon, Lionel Kapff, John Morley (Deloitte) was submitted to the Commission in October 2012 and is available at the following website: <http://ec.europa.eu/social/>

³⁵ See the 2012 evaluation study, in particular the methodology and annexes 5, 6 and 7.

³⁶ The data sources used were: literature review; European Company Survey; national expert assessments; web survey; and company case studies. For more information on methodology, see the 2012 evaluation study.

³⁷ Non-governmental network of legal experts supported by DG EMPL in the framework of Progress.

³⁸ See in this regard the information note and useful links published under 'fitness check' in: <http://ec.europa.eu/social/main.jsp?catId=707&langId=en> .

³⁹ Hereinafter: '2010 ELLN report'.

⁴⁰ See 'Seminar Report 2010', Section 9 Annex (Papers), available at:

http://www.labourlawnetwork.eu/events/archive_conferences/conference_2010/text_conference_2010/prm/174/0/index.html

This general aim has been broken down into four specific criteria:

- **Relevance:** the extent to which the contents of the Directives address the needs of employers and employees in the EU social market economy.
- **Effectiveness:** the extent to which the above needs are met in practice by the Directives.
- **Efficiency:** the extent to which the needs are met in the most cost-effective way.
- **Coherence:** the extent to which the needs are met in a comprehensive and compatible way.

In practice, throughout the fitness check process the four criteria have led to an examination of a number of issues in relation to what the Directives aim to achieve, how they do so, and what impact they have, in particular:

- employees' fundamental right to I&C;
- employees' involvement at work;
- employees protection, particularly in the event of collective redundancies and transfer of undertakings;
- employees' adaptability and employability;
- better management and anticipation of change;
- trust and partnership between employees and employers;
- avoidance of conflict; establishment of a climate of cooperation;
- productivity and performance of employees and undertakings;
- level playing field for companies across the EU.

The 'intervention logic' which was followed during the fitness check exercise is illustrated in a diagram setting out the needs of stakeholders, the general and specific objectives of the Directives, the means to realise these objectives, the expected outputs, and the specific and broader effects of the Directives⁴¹.

5. STATE OF IMPLEMENTATION OF THE DIRECTIVES

Before analysing the evidence in relation to the main fitness check criteria, it is necessary to examine the general framework established by the Directives and how they have been put into effect by the Member States. Thus, this section reviews the situation in the Member States in the light of the actual transposition and implementation of the Directives, focusing in particular on how Member States have made use of the options and flexibility of the Directives regarding certain important issues.

(a) General framework

The three Directives entered into force at different times. The first two were transposed in the EU Member States in the 70's⁴² (notwithstanding later amendments on a number of specific points). The third one entered into force in 2005 (in 2008 for 7 Member States which took advantage of the transitional period).

The legal transposition of the Directives has been described and analysed in depth in several studies and implementation reports prepared for or by the Commission⁴³.

⁴¹ See Annex 1.

⁴² Obviously, the new Member States transposed the directives at the time of their accession to the EU at the latest.

⁴³ See <http://ec.europa.eu/social/main.jsp?catId=707&langId=en> under the relevant Directive.

In contrast, there has been little comprehensive research, especially from primary sources, on the practical operation and effects of the three Directives since their transposition⁴⁴. Prior to carrying out this fitness check, there was also little relevant comprehensive information on the views and policies of stakeholders, in particular the Member States and national social partners, regarding the impact of the three Directives⁴⁵.

Obviously the Directives' impact depends on the situation prevailing before transposition. Some Member States already had similar or equivalent regulations (sometimes going beyond the Directives' requirements⁴⁶); others had to introduce major changes⁴⁷. The latter was often the case with Directive 2001/23/EC. As regards Directive 2002/14/EC in particular, its impact was not the same across the EU. Several Member States already had mature, developed mechanisms of information and consultation at company level so that there was no need to change their systems, except for minor adjustments if any. However, the Directive led to major changes in one third of the Member States⁴⁸.

It should also be emphasised that the two earlier Directives have had plenty of time to generate effects since they were transposed, while this is only partially the case with the more recent Directive 2002/14/EC. This situation was intensified by the more ambitious scope and objectives of the latter involving the setting up general permanent and anticipative I&C arrangements.

(b) Legal transposition

Generally speaking, the three Directives seem to have been properly transposed into the legal systems of the Member States. Albeit there may be some outstanding issues⁴⁹, the number of complaints submitted to the Commission with regard to legal transposition was insignificant.

A number of issues are common to all the Directives. According to some stakeholders, uncertainties remain in relation to specific terms within the Directives, for example, the concepts of 'establishment', 'good time', 'appropriate timing, method and content', or 'with a view to reaching agreement'. While some Member States have defined or further specified these terms in their implementing legislation, others have found solutions through (i) national authorities issuing clarification/guidance, or (ii) social partners addressing issues in collective agreements or guidance. Apart from the above, the European Court of Justice has also provided essential clarifications in a number of important rulings⁵⁰.

As regards collective redundancies (Directive 98/59/EC), concerns have been voiced regarding the length of the consultation period in the event of collective redundancies; some Member States which provided for a fixed period envisage or have already made changes to reduce this period, which is deemed too long⁵¹. However, such issues arise as a result of the

⁴⁴ See, in this regard, '2012 evaluation study'; 'National I&C practices', Eurofound 2013; 'I&C practice across Europe five years after the EU Directive', Eurofound 2011.

⁴⁵ Idem.

⁴⁶ Providing for stronger forms of worker involvement, sometimes negotiation and co-decision of social plans. See, in this regard, the study by Mark Carley: 'EU measure on I&C of workers, anticipation and management of restructuring processes, Draft issues paper, European Parliament, October 2012.

⁴⁷ In particular, UK, IE, and the 2004 and 2007 enlargement countries.

⁴⁸ In particular, BG, CY, EE, IE, IT, MT, PL, RO, UK; see, in this regard, 'I&C practice across Europe five years after the EU Directive', Eurofound 2011.

⁴⁹ See Commission implementation and/or review reports (footnote 43); 2010 ELLN report.

⁵⁰ See in particular the judgments in cases C-188/03, *Junk*, as regards the concept of 'redundancy' and the time at which it takes effect; C-44/08, *Akavan/Fujitsu*, as regards information and consultation in groups of companies; C-270/05, *Athinaiki Chartopoiia* as regards the concept of 'establishment'; C-385/05, *CGT*, as regards the calculation of staff numbers/thresholds.

⁵¹ E.g. LV; UK. With regard to the latter, see 'consultation on changes to the rules concerning collective redundancies', BIS, June 2012, which refers to gold plating of the Directive's requirements at the time

transposing legislation rather than the requirements of the Directive, which merely provides that consultation must be carried out in good time. There have also been complaints that, in the event of collective redundancies, employers, employees and legal practitioners have to implement a set of complex and costly provisions such as those involving the legality of collective redundancies based on specific grounds (e.g. economic problems/viability of the undertaking), the definition of redundancy criteria, or the requirement to provide redundancy compensation. These issues are widely discussed and have been the subject of reforms in several countries recently⁵². However, Directive 98/59/EC concerns I&C procedures and does not cover such issues. The I&C provisions in Directive 2001/23/EC have not given rise to problems. The main issue has been the perceived uncertainty of the concept of ‘transfer of undertaking’ leading to several court cases in the Member States⁵³. Another issue concerns the scope of the Directive, which does not cover transfers of a company’s shares. However, in such cases, the legal position of employees vis-à-vis the employer does not change. Moreover, Directive 2002/14/EC applies where changes in the workplace are generated by a change of control in a company. Consequently, the Commission considered that the revision of Directive 2001/23/EC was not justified⁵⁴.

(c) **Employees’ representation in companies**

According to the Directives, I&C is provided by the employer to ‘employees’ representatives’⁵⁵ in the ‘establishment/undertaking’ concerned. These provisions were implemented in Member States in accordance with their respective systems and practices. Consequently, the scope and extent of I&C vary and this may influence the assessment of the relevance and effectiveness of the Directives across the Member States.

The Directives are flexible with respect to the term ‘**employees’ representatives**’. It is defined with reference to the national laws and practices of the Member States. This respects the rich diversity of national industrial relations systems shaped long ago⁵⁶. For some countries, in particular CY, SE and MT, trade unions are the employees’ representatives for the purposes of I&C at the workplace. Other countries opted in favour of elected bodies (work councils, cooperation committees, work trustees, etc.). A number of countries, such as UK and PL, provided for different I&C bodies depending on the Directive (trade unions for I&C covered by Directive 98/59 and elected I&C body covered by Directive 2002/14/EC).

In some Member States the determination of the system of employee representation was subject to lively debates, sometimes controversial. In some countries this led to ambivalence, reluctance or even opposition on the part of trade unions, which impacted on the effectiveness and, in the final analysis, the coherence of the Directives as transposed at national level.

of transposition (minimum time period of 90 days relating to consultation where 100 or more redundancies are proposed).

⁵² See A. Muller, Labour law reforms at the crossroads of ILO standards and OECD and World Bank’s indexes, 2012.

⁵³ Some of these were referred to the ECJ through preliminary rulings. See in this regard, ‘2010 ELLN report’; ‘Memorandum on rights of workers in cases of transfers of undertakings’ in <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=208>.

⁵⁴ COM(2007) 334 final of 18.6.2007.

⁵⁵ In addition, Article 7(5) of Directive 2001/23/EC provides for *direct I&C to employees* where there are no representatives through no fault of their own. Directive 2002/14/EC is without prejudice to systems of direct involvement, as long as the employees are always free to exercise their I&C right through their representatives. Some Member States provide for direct I&C of employees where there are no representatives, also in cases of collective redundancies or of other issues covered by Directive 2002/14/EC..

⁵⁶ See Annex 2 (extract from ‘Employee representation at establishment level in Europe’, Eurofound 2011, page 10).

In some countries, such as BE, FR and LU, the setting up of elected I&C bodies is mandatory for employers by law. In others, this is regulated by collective agreements. However, in the majority of Member States the establishment of I&C bodies needs to be triggered by employees or trade unions provided that a threshold is reached. This threshold is often 10%, but in some countries it can be 20% or even 1/3 of the workforce of the establishment concerned⁵⁷.

As regards the ‘**establishments/undertakings**’ in which I&C should be provided, while respecting the Directives which merely lay down minimum requirements, several Member States opted to lower the thresholds provided therein⁵⁸. Thus, some Member States have not introduced a threshold, while others have established one at 5, 10, 20, 30, or 35 workers per establishment/undertaking instead of the 20/50 workers stipulated in Directive 2002/14/EC⁵⁹. Moreover, several Member States stipulate a lower number of redundancies than that provided for in Directive 98/59/EC⁶⁰.

6. FINDINGS

This section presents the findings of the fitness check according to the four criteria mentioned above (i.e. relevance, effectiveness, efficiency and coherence). It is based on evidence from studies, reports and surveys and on the views of stakeholders.

6.1. Relevance

(a) *Evidence provided by studies, reports and surveys*

(i) The three Directives consolidate the fundamental social right of workers to be informed and consulted at the workplace⁶¹. I&C constitutes one of the fundamental values in the EU and is an integral component of the European social model. Numerous studies also point to the contribution of I&C in addressing the needs of both employees and employers⁶². This body of work suggests that the voice of employees at the workplace, in particular their involvement in decisions that affect them directly, can produce several effects corresponding to stakeholders’ needs, such as: better protection of workers’ rights and interests; solution of work problems; optimisation of work processes; establishment of a culture of trust.

The Directives are also relevant in ensuring a more level playing field for businesses across the EU. Although they do not fully harmonise national legislation (since they establish minimum standards), they do lay down a common baseline and contribute, thus, to approximating employees’ levels of protection as well as the costs which such protective rules entail for EU companies⁶³.

⁵⁷ See ‘I&C practice across Europe five years after the EU Directive’, Eurofound 2011.

⁵⁸ Regarding thresholds, see, footnote 25 above.

⁵⁹ See Annex 3 (extract from ‘Employee representation at establishment level in Europe’, Eurofound 2011, page 15).

⁶⁰ See, among others, http://www.iuslaboris.com/files/documents/Public%20Files/Publications/2009_Publications/collective-redundancies-guide.pdf.

⁶¹ See, among others, ‘Fundamental Social Rights in Europe: Challenges and Opportunities’, P. Lorber, E. Ales, T. Jaspers, C. Sachs-Durand, U. Wendeling-Schroeder (eds.), 2009; ‘Recasting Workers’ Involvement. Recent trends in information, consultation and co-determination’, T. Blanke, E. Rose, H. Voogsgeerd, W. Zondag (eds.), 2009.

⁶² See in particular the overview of theoretical framework and literature in: ‘HRM practices and establishment performance’, Eurofound 2011; ‘Workplace social dialogue in Europe: An analysis of the European Company Survey 2009’, Eurofound 2012; ‘Work Organisation Innovation’, Eurofound 2012.

⁶³ Regarding Directive 98/59/EC, see the ECJ judgment of 8 June 1994 in case C-383/92, Commission v UK.

(ii) On the other hand, certain issues are perceived as limitations or shortcomings in the Directives. It has been argued that the fundamental right to information and consultation cannot be fully or sufficiently ensured since a large number of SMEs in several countries are excluded from the scope of application of the I&C Directives. Moreover, public administration is not covered. Seafarers (fishermen and merchant navy crew) are not covered either. Another issue is that employers are not obliged to set up I&C bodies (such bodies need to be triggered by employees⁶⁴).

However, while the mandatory establishment of representative bodies and lower legal thresholds may play a role with regard to the incidence of such bodies, research shows that their incidence and coverage depends on a wide range of factors⁶⁵. According to Eurofound reports⁶⁶, there is no clear link between the level of thresholds and the actual degree of representation. Countries with lower legal thresholds are not necessarily those with higher degrees of representation (in terms of incidence and coverage).

BOX A: Scope of application of I&C Directives as transposed with regard to SMEs, public administration and seafarers

The I&C Directives lay down minimum thresholds for the number of workers in the establishments or undertakings concerned, thus limiting their personal scope of application⁶⁷. As regards Directive 2002/14/EC, this could imply that only 1.3% of the total number of undertakings are covered across the EU⁶⁸. However, several Member States provide for lower thresholds (no threshold, 5, 10, 20, 30, or 35 workers)⁶⁹.

The I&C Directives also exclude public administration from their scope of application, in contrast to public undertakings which are covered⁷⁰. However, some countries with pre-existing general I&C systems — such as AT, BE, FI, and DE (based on law); DK, IT and SE (based on collective agreements) — had a separate system in the public sector prior to Directive 2002/14/EC. Among the Member States which did not already have general I&C

⁶⁴ See Section 5 (c) above.

⁶⁵ See Box B below (pages 19-20) for data on the number of I&C bodies and the factors that influence their set up.

⁶⁶ See 'Employee representation at establishment level in Europe', Eurofound 2011; see also 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012, which raises the 'fundamental policy question' why there is variance in incidence between countries where the mechanisms for triggering representation make it easy for workers to do so. According to the report 'National I&C practices', Eurofound 2013, 'there is little to suggest that anything in Directive 2002/14/EC is likely to have an impact on the general tendency for the incidence of formal I&C arrangements to decline with decreasing company size, almost irrespective of the level at which formal thresholds are set'.

⁶⁷ See footnote 25 above.

⁶⁸ Across the EU 27, enterprises with 50 or more employees make up only 1.3% of the total; see 'National I&C practices', Eurofound 2013. However, around 50% of the EU workforce is potentially covered; see study on the 'operation and effects of I&C directives in EU/EEA', Deloitte, 2012 (to be published).

⁶⁹ See section 5(c) above.

⁷⁰ See footnotes 22- 24 above and corresponding text.

⁷¹ See 'National I&C practices', Eurofound 2013.

⁷² See Commission Staff Working Document of 17.3.2008, SEC(2008) 334.

⁷³ BE, CY, DE, DK, EL, IE, LUX, LV, MT and SK excluded seafarers from the scope of application of their legislation transposing Directive 98/59/EC. CY, DK, HU, EL, IE, LV, LUX, MT, NL and RO excluded seafarers from the scope of application of their legislation transposing Directive 2001/23/EC. .

⁷⁴ Croatia is not included because the study was carried out before its accession. Croatia had to transpose EU law by the date of its accession.

⁷⁵ See Impact Assessment accompanying a proposal for a Directive of the European Parliament and Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC, 2001/23/EC (to be published).

systems, some — such as IE, MT and UK — implemented the aforementioned Directive without distinguishing between the public and private sectors whilst others — such as BG and CY — excluded public administration. However, there is a lack of comprehensive data regarding I&C in the public sector across the EU⁷¹.

In addition, the I&C Directives exclude seafarers from their scope of application or allow derogations through particular sector-specific provisions. With regard to Directive 2002/14/EC, some Member States — such as DK, DE, EL and UK — provided for sector-specific provisions in their legislation, while some others — such as CY, MT and RO — excluded seafarers from the scope of their transposing legislation⁷². However, the majority of the Member States have included seafarers within the scope of this Directive. With regard to Directives 98/59/EC and 2001/23/EC, ten Member States⁷³ have excluded the maritime sector from their scope of application. The number of seafarers affected by the exclusion represents 35.7% of the total number of seafarers in the EU-27⁷⁴ in the case of the first Directive and 40.9% in case of the second one⁷⁵.

(b) Evidence provided by stakeholders

The 2012 evaluation study examined the views of national stakeholders across the Member States (public administrations, social partners, and academics) on the relevance of the I&C Directives.

In terms of being able to address employees' and employers' needs, the three Directives were assessed positively, above all with regard to guaranteeing the **fundamental right** of workers to be informed and consulted and increasing **trust and partnership at the workplace**.

Their relevance was also assessed positively with regard to meeting stakeholders' needs for **involvement in decisions implying changes at work** as well as in **cases of collective redundancies or transfer of undertakings**.

As regards the objective of **better adaptability and employability**, the legislation received a somewhat lower assessment and is considered to be more relevant by employees than by employers. Relevance is similarly recognised in terms of improving the **quality of management decisions** and **company performance**.

It is also recognised that EU I&C legislation can contribute to ensuring a **level playing field** for businesses across the EU, not least by discouraging a competitive 'race-to-the-bottom' in relation to I&C standards.

However, there are diverging, even negative, views among a minority of stakeholders about the relevance of the Directives⁷⁶. Some consider the scope of the Directives as limited (invoking, for example, the exclusion of SMEs and seafarers)⁷⁷. Others maintain that trust and partnership cannot be brought about by legislative means; that the number of collective redundancies cannot be influenced by I&C; that adaptability and employability are influenced by other measures and players rather than by procedural I&C rules; or that company performance depends rather on market conditions and other factors.

Nonetheless, stakeholders' overall assessment of relevance is positive. The Working Group on ICW which brings together representatives of the Member States and the European social partners⁷⁸ came to similar conclusions.

Assessment

⁷⁶ See '2012 evaluation study'.

⁷⁷ See section 6.1(a, ii) above.

⁷⁸ See section 3(c) above.

The evidence presented above suggests that the three I&C Directives are relevant in that they address stakeholders' needs. In particular, they can ensure the fundamental social right of workers to be informed and consulted at the workplace. They can increase trust between management and labour, involve workers in decisions affecting them, protect workers and solve work problems, contribute to increased adaptability and employability, improve staff and company performance, and ensure a more level playing field among companies.

Some stakeholders consider that the Directives' potential to ensure the fundamental right of information and consultation could be further enhanced, if the number of I&C bodies were increased through a lower threshold of workers or an obligation for employers to set up I&C bodies. However, there is not enough conclusive evidence to show that lowering the threshold of workers would substantially increase the number of I&C bodies, as that is influenced by several factors that vary across the EU, in particular industrial relations systems and the practices of Member States. This is the case in SMEs in particular, since notwithstanding national legislation which in most Member States establishes lower thresholds than Directive 2002/14/EC, worker representation tends to decline with decreasing company size.

While there is evidence that worker representation is in general more common in the public than in the private sector, more research is needed on the state of play of I&C in the public administrations of the EU Member States, in particular on the role I&C actually plays and could/should play in the context of the public sector restructurings which are taking place in several countries⁷⁹.

The exclusion of seafarers has been questioned on the grounds that it does not fully protect the rights enshrined in the EU Charter of Fundamental Rights. Nor does it ensure a level playing field for companies. In addition, giving seafarers the same rights as all other workers is expected to contribute to the attractiveness of the maritime profession within the EU.

6.2. Effectiveness

(a) Evidence provided by studies, reports and surveys

Practice and effects of I&C

(i) In many countries, comprehensive research on the practice and effects of I&C is relatively limited⁸⁰. Nevertheless, some findings can be drawn from European and national surveys as well as from informed opinion⁸¹.

In practice, information is provided often with varying degrees depending on the Member State concerned. In general, some 85 % of workers' representatives are informed at least once a year on the economic or on the employment situation of the company; some 66 % state that information is usually timely and 75 % that in general it is sufficiently detailed.

Most representation structures seem to have access to the key resources needed to function effectively. Some 75 % of representatives are given sufficient time off to carry out their duties⁸². Some 72 % of representatives receive training on a regular basis.

⁷⁹ Research should take into account specific features of the public sector such as the incidence of I&C bodies and the role of social dialogue including trade union density (see, for example, Eurofound's current project on social dialogue in the public sector; 'Industrial Relations in Europe 2012' available at: <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7498&type=2&furtherPubs=yes>).

⁸⁰ See '2012 evaluation study'; 'National I&C practices', Eurofound 2013; 'I&C practice across Europe five years after the EU Directive', Eurofound 2011.

⁸¹ See 'European Company Survey 2009 — Overview', Eurofound 2010. See also 'I&C practice across Europe five years after the EU Directive', Eurofound 2011; '2012 evaluation study'.

By contrast, consultation is less likely to take place and tends to cover operational issues of direct relevance to workers (such as working time, work organisation and flexibility practices) rather than business strategies. While nearly 66% of the representatives are said to be involved in working time issues, a smaller percentage are involved in decisions related to employment and contractual flexibility (fixed term, temporary agency, part time work, etc.)⁸³. Employees' involvement in decisions on flexible arrangements at work varies quite widely by Member State and establishment size. There is also evidence that the level of employees' involvement is affected by the resources allocated to employees' representatives (i.e. information, training, time-off). The strategic influence of representatives is also quite limited particularly with respect to employment/HR planning and structural changes, such as restructuring, relocation or takeover⁸⁴. It was found that the influence is greater where representatives receive regular training ('competence'), have the support of workers, receive sufficient paid time off and regular detailed information ('resources') and have a constructive relationship with managers in the workplace⁸⁵.

Recent reports point to the positive role that I&C and social dialogue more generally have played during the crisis⁸⁶. Company-level I&C and negotiations helped deliver solutions in a large number of cases by saving costs through shorter working hours and reduced wages in return for a guarantee of employment security and training. In several cases, collective redundancies were avoided or reduced, while cooperation between management and labour was strengthened. However, there were also instances where employers tried to avoid applying the Directives or to circumvent formal social dialogue through informal direct communication with individual workers⁸⁷. On balance, the evidence suggests that the crisis did not bring to light any fundamentally new issues in the implementation of the Directives as transposed. Rather it highlighted or exacerbated previously predictable or existing issues⁸⁸.

(ii) While the above findings concern the provision of information and consultation to employees by their employer, Directive 98/59/EC also provides for a **notification requirement**. The employer has to provide the competent public authorities with information to enable them to seek wider support and solutions to the problems raised by the redundancies. It seems that employers generally comply with this obligation⁸⁹. Otherwise there would be a risk that the redundancies would be declared null and void in several Member States. Public employment authorities play a proactive role in a number of countries such as LU, IE, IT, ES, FI, BE and FR (e.g. through mediation between employers and

⁸² Idem. However, there are wide variations between countries. The question whether paid time off is sufficient may be viewed as a function of the demands placed upon the representatives, their capabilities and the amount of time off which is granted (with regard to the latter, see 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012).

⁸³ Idem.

⁸⁴ See '2012 evaluation study', in particular the results of the composite employee involvement and strategic influence indicators, which are close to neutral; see also 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012.

⁸⁵ See 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012.

⁸⁶ The company level became the main arena for social partner action. See 'Negotiating the crisis' Glassner and Keune (ILO, 2010); 'Social dialogue in times of global economic crisis', Eurofound 2012; 'Employment in Europe 2010', European Commission 2010.

⁸⁷ See papers cited in footnote 40.

⁸⁸ Idem.

⁸⁹ See '2012 evaluation study'; 2007 GHK report.

employees or active involvement in support/accompanying measures). They also take advantage of networks, both local and further afield, in search of constructive solutions⁹⁰.

(iii) As indicated above, several Member States increased the number of enterprises and workers covered by the right to I&C by lowering the thresholds stipulated in the Directives to include **smaller enterprises**⁹¹. Research suggests that in practice the incidence, operation and effects of I&C are affected by the size of the undertaking/establishment concerned. Several studies have found that the incidence of employee representation is generally lower in SMEs than in larger companies⁹². However, there are wide disparities among countries in this regard⁹³. Some stakeholders consider that formal I&C is not needed in SMEs. In a smaller organisation the distance between management and representation is reduced, which can encourage cooperative, informal exchanges of information and consultation based on personal relationships. Managers of SMEs are much more in favour of consulting their employees directly than managers of larger companies are⁹⁴. At the same time, however, they are more convinced than their counterparts in larger companies about the constructive value of employees' representation in improving workplace performance and about the role which consultation of employees' representation plays in increasing the commitment of their staff⁹⁵. As regards the operation of I&C in practice, resources (information about the economic and employment situation, paid time off, training) - and in several countries statutory channels - are significantly less available in SMEs⁹⁶. This can hamper the further development of social dialogue within SMEs. Employees' representatives in SMEs are found to be involved in employers' decisions on employment and work practices to a lesser extent than in larger companies⁹⁷. In some aspects, in particular as regards the cooperative culture between management and employee representation and the strategic influence of the latter, a curvilinear relationship is found to emerge between the quality of the workplace social dialogue and the size of the establishment. Thus, the quality of the workplace social dialogue is higher in the smallest (10-19 workers) and largest (500 or more workers) establishments⁹⁸.

The specific situation of SMEs has again come to the fore during the current crisis. While SMEs are generally seen to be more flexible, more adaptable to change and less inclined to dismiss staff than larger enterprises, they seem to face greater difficulties in times of crisis and restructuring. Their small size is regarded as a limitation in a number of areas, including industrial relations, social dialogue, training and cushioning the impact of the crisis. The evidence shows that large companies with more resources and internal flexibility are generally better equipped to fend off sudden external shocks, while SMEs have fewer alternatives and are more likely to implement redundancies. Considering the fact that formal

⁹⁰ See among others: 'ERM Report 2011 on public instruments to support restructuring in Europe', Eurofound 2011; Commission Staff Working Document 'Restructuring in Europe 2011' with further references (SEC(2012) 59 final of 17.1.2012), accompanying the Green Paper on 'Restructuring and anticipation of change, what lessons from recent experience', (COM(2012) 7 final); 'EU measure on I&C of workers, anticipation and management of restructuring processes', (Draft) issues paper, European Parliament, October 2012.

⁹¹ See Section 5(c) above and related Annex 3.

⁹² See Box B in Section 6.2(a) below.

⁹³ Idem.

⁹⁴ See among others 'European Company Survey 2009 — Overview', Eurofound 2010.

⁹⁵ Idem.

⁹⁶ Idem. SMEs seem to find it more difficult than larger companies to provide workers with information at least once a year on the financial or employment situation, although they seem to be better at providing timely and sufficiently detailed information. The time off available to employees' representatives is more limited in smaller establishments. Employees' representatives in SMEs are involved in employers' decisions on flexicurity practices to a lesser extent than they are in larger companies.

⁹⁷ See '2012 evaluation study', in particular the Employee Involvement Indicator in SMEs.

⁹⁸ See 'European Company Survey 2009 — Overview', Eurofound 2010.

social dialogue is less developed at enterprise level, social dialogue is becoming increasingly important at higher levels. Moreover, in developing innovative solutions in SMEs there are many examples of good practice reflecting employees' involvement and cooperation between public authorities, professional and territorial institutions, and social partners⁹⁹.

⁹⁹ See 'SMEs in the crisis: Employment, industrial relations and local partnership', Eurofound 2011 with further references; 'Cooperation between SMEs and trade unions in Europe on common economic and social concerns', Expert report by E. Voss, Joint ETUC-UEAPME project, 2009.

Enforcement

Comprehensive data on the enforcement of I&C requirements is not kept. Indeed, several Member States do not keep relevant statistics. On the basis of existing evidence¹⁰⁰, the situation regarding enforcement would appear to be the following. Overall, few complaints are made to national authorities, in particular Labour Inspectorates. There are also few judicial cases and court decisions¹⁰¹. In cases of non-compliance, low-level sanctions are occasionally imposed. The situation varies from one Member State to another. It also varies across the three Directives; for instance, there are extremely few I&C-related complaints or court decisions regarding Directive 2001/23/EC.

The low number of enforcement measures in countries where there appear to be shortcomings regarding compliance may raise questions. Several explanations have been advanced¹⁰²: lack of necessary means and enforcement instruments; low priority given to enforcement of I&C requirements; and perceived length and costs of judicial proceedings. In the case of Directive 2002/14/EC, the relative novelty of the I&C requirements and the general wording of some terms¹⁰³ are also invoked. Another explanation is the perceived insignificance of sanctions. Some Member States provide for administrative fines with minimum or maximum amounts which allegedly are not high. In other countries sanctions seem particularly effective. It is possible, for example, judicially to declare as null or void any employers' decisions which are taken without prior I&C¹⁰⁴. This is particularly true of collective redundancies. However, the low number of complaints and the limited data regarding their follow-up make it difficult to assess if sanctions are effective, proportionate and dissuasive in practice.

Some Member States have strengthened their enforcement institutions and mechanisms to deal with monitoring issues regarding compliance with the relevant regulations¹⁰⁵.

Awareness of legal requirements, I&C culture and agreements between social partners

While more effective enforcement may contribute to better application of I&C in practice, compliance with the legal requirements also depends on other factors: awareness of I&C rights and obligations, and existence of an I&C culture at company level.

Research has highlighted the importance of these factors. There is evidence that stakeholders at company level have low levels of awareness of their I&C rights and obligations, particularly in countries which do not have longstanding traditions in this area, notwithstanding some degree of guidance and training¹⁰⁶. The results of the evaluation web-survey also point to the wishes of both employees and employers (some 82% and 50% respectively) to receive more information about the I&C legislation. It has been suggested that low levels of awareness of I&C rights and obligations can be attributed, at least partly, to the general and vague wording of certain provisions or terms, particularly in Directive 2002/14/EC¹⁰⁷. However, this Directive was conceived as a framework directive. The

¹⁰⁰ See '2012 evaluation study'; 'National I&C practices', Eurofound 2013 (forthcoming); 'I&C practice across Europe five years after the EU Directive', Eurofound 2011; 2010 ELLN report.

¹⁰¹ Apart from Member States with developed systems of I&C, such as France, the Netherlands, etc.

¹⁰² See '2012 evaluation study'; 'I&C practice across Europe five years after the EU Directive', Eurofound 2011; 2010 ELLN report.

¹⁰³ This is seen as generating uncertainty regarding their exact content, e.g. 'information on the economic situation' of an establishment/undertaking.

¹⁰⁴ There is no specific provision in the Directives to this effect; the Commission's proposals in this regard were not upheld by the Council.

¹⁰⁵ E.g. the establishment of the Finnish cooperation ombudsman.

¹⁰⁶ See '2012 evaluation study', in particular section 4.1.2.2 on an I&C awareness and guidance indicator.

¹⁰⁷ The same applies in the case of the link between the general wording of the framework Directive and its enforcement; see footnote 103 above and corresponding text.

practical arrangements for exercising the right to I&C were to be determined at national level. In a number of Member States, national legislators or social partners fleshed out the practical arrangements in the national transposing legislation or collective agreements in accordance with their practices and taking their specific needs into account.

Moreover, while the extent and quality of I&C at the workplace depend on a wide range of factors, research shows the importance of management attitudes, trade union commitment and employees' support. A culture of cooperation is necessary for meaningful I&C. At the same time, I&C is a learning process. With increasing awareness of the instruments, of good practice and of the associated benefits¹⁰⁸, more effective and efficient I&C in the workplace promotes a partnership culture and creates a virtuous reinforcing circle.

While legislation may be a determining factor in some respects and contexts¹⁰⁹, the effectiveness of I&C is likely to be enhanced by a range of measures aimed at promoting an I&C culture and raising awareness. Evidence suggests that developing a partnership culture and embedding I&C practices in the industrial relations systems of EU countries, where such traditions do not exist or are not strong, takes time and effort and requires the mobilisation of all stakeholders.

In several Member States, stakeholders have taken action to promote I&C, particularly in the event of restructuring, complementing the existing legislative framework through agreements and joint texts concluded at national, sectoral or company level¹¹⁰. Several transnational company agreements address I&C-related issues with a view to establishing procedural rules for social dialogue, avoiding redundancies or providing for guarantees and other accompanying measures¹¹¹. Directive 2002/14/EC also provides for agreements between management and labour at enterprise level, allowing thus social partners to flesh out specific I&C arrangements tailored to their particular situation and needs. Agreements between the social partners play an important role in the implementation of this Directive in countries such as FI, SE; in other countries, such as BE, CZ, FR, NL, PT, SK, SI, agreements are subsidiary but not insignificant in laying down I&C arrangements¹¹². Collective agreements provide also for additional protection or clarification of I&C-related rights with regard to collective redundancies or transfer of undertakings¹¹³.

¹⁰⁸ Employee engagement, voice and empowerment correlate with a company's performance and innovation. See 'Engaging for Success: enhancing performance through employee engagement', Report to the UK Government by D. MacLeod and N. Clarke, 2009.

¹⁰⁹ More generally, research recognises that there are limits to the extent to which policy makers can be prescriptive in the I&C area, given the inherent complexities and uncertainties. See 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012.

¹¹⁰ Commission Staff Working Document 'Restructuring in Europe 2011' with further references (SEC(2012) 59 final of 17.1.2012), accompanying the Green Paper on 'Restructuring and anticipation of change, what lessons from recent experience', (COM(2012) 7 final).

¹¹¹ Idem.

¹¹² See 'National I&C practices', Eurofound 2013.

¹¹³ See Commission Staff Working Document 'Restructuring in Europe 2011'; '2010 ELLN report'.

BOX B: I&C bodies —figures and factors that influence their set up

While there is no comprehensive EU-level data on the incidence of I&C bodies, that is the extent to which such bodies have been set up, nor by whom (employees, trade unions or employers¹¹⁴), the following picture emerges from a review of different sources of information in the course of developing this document. According to the European Company Survey (ECS) 2009, the incidence and coverage of institutional forms of employee representation in EU 27 amount to 37% of establishments and more than 60% of employees respectively¹¹⁵. Similarly, despite the lack of comprehensive data on trends regarding changes in the numbers of I&C bodies since the transposition of Directive 2002/14/EC¹¹⁶, there is evidence of a certain degree of impact in a few countries¹¹⁷. In particular there was an increase in I&C bodies in BG, DK PL and UK¹¹⁸, as well as in elected workers' representatives in EE and SK (with a concomitant fall in trade union-based representation)¹¹⁹. By contrast, there was little change in IE. For other countries, such as CY, MT, BE, LU, IT and RO, there is insufficient evidence¹²⁰.

Numbers of I&C bodies vary considerably between EU Member States¹²¹. Several factors have been suggested as playing a determinant role: country¹²²; size of establishment¹²³; sector; presence of a trade union; ownership of establishment¹²⁴; and employment structure.

As regards size, only one out of three employees in a small establishment is covered by a formal I&C body; in medium-sized enterprises, this coverage increases to two out of three, while in large establishments almost 90% of employees are covered. As regards ownership, worker representation is more common in the public than in the private sector

¹¹⁴ See 'National I&C practices', Eurofound 2013; 'I&C practice across Europe five years after the EU Directive', Eurofound 2011; 'Employee representation at establishment level in Europe', Eurofound 2011; '2012 evaluation study' with further references.

¹¹⁵ See 'European Company Survey 2009 — Overview', Eurofound 2010. Due to ECS methodology, these numbers overestimate the incidence and coverage of I&C bodies as defined in the EU Directives; see 'I&C practice across Europe five years after the EU Directive', Eurofound 2011.

¹¹⁶ Such measurement requires both comprehensive national statistics on the incidence of I&C bodies and comparable data for the situation on or around the implementation date. These exist in relatively few countries, in particular BE, BG, DE, EE, IE, NL, PL, SK, ES and UK. See 'National I&C practices', Eurofound 2013.

¹¹⁷ Including those a) for which data is available (see footnote 115 above) and b) where the Directive resulted in major regulatory change and therefore might be expected to have the greatest effect (BG, CY, EE, IE, IT, MT, PL, RO and UK; see footnote 48 above).

¹¹⁸ In some countries, such as PL, UK and CZ, company-level agreements between management and labour played a (more) important role in terms of constituting I&C bodies. See 'National I&C practices', Eurofound 2013.

¹¹⁹ However, it is not known if this can be directly attributed to the Directive's transposition.

¹²⁰ See 'National I&C practices', Eurofound 2013, which finds that the Directive's impact has been limited in countries without pre-existing general I&C systems leading to the establishment of new I&C bodies. See also 'I&C practice across Europe five years after the EU Directive', Eurofound 2011; '2012 evaluation study'.

¹²¹ With regard to the points set out in this paragraph and the following ones, see: 'European Company Survey 2009 — Overview', Eurofound 2010; 'I&C practice across Europe five years after the EU Directive', Eurofound 2011; 'Employee representation at establishment level in Europe', Eurofound 2011; '2012 evaluation study'; 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012, with further references.

¹²² See 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012.

¹²³ See 'European Company Survey 2009 — Overview', Eurofound 2010.

¹²⁴ In particular, public and private sectors.

(54% of public service establishments covering 75% of employees compared with an overall average of 37% for all establishments covering 63% of employees)¹²⁵. However, research shows that differences between countries regarding the incidence of I&C bodies are still substantial, even after researchers controlled findings for workplace characteristics including size.

Research suggests that trade unions' attitude¹²⁶ and the decline of trade union membership are factors that influence the numbers of I&C bodies. This is particularly the case in countries where trade unions are defined as employees' representatives, as in CY, SE and MT. In several other countries there has been ambivalence, a lack of enthusiasm or even reluctance on the part of trade unions linked with the establishment of dual channel systems of employee representation¹²⁷. Several other factors have been advanced to explain the low incidence of I&C bodies including: negative employer attitudes; preference for informal I&C mechanisms; employees' lack of enthusiasm; challenging role of the employees' representative; and legal context (including weak I&C rights and framework, high threshold for their establishment, relationship to collective bargaining, etc.).

There is evidence¹²⁸ to suggest that a change of owner and organisational shocks, such as a firm acquisition or a restructuring, lead to a higher probability of establishing a works council (as protection against the risk of deteriorating working conditions and to safeguard employment).

Another factor influencing the incidence of I&C bodies is awareness of I&C rights. Although there is evidence¹²⁹ to show that this awareness did increase with the transposition of the EU Directives, it still seems to be low in several countries, particularly among the non-unionised workforce at company level. Sometimes employers also seem to be unfamiliar with their specific obligations or to lack the expertise to comply with them. In some Member States there is said to be little promotional activity by the government or the social partners to raise awareness and encourage the establishment of I&C bodies. There are, however, good examples in some other countries, such as: information campaigns; guidance including brochures and web-sites; and training. In a number of countries, specific projects were carried out to this effect, sometimes co-financed by the EU under a budget heading for promoting workers' involvement in undertakings including through raising awareness and better application of the EU I&C Directives¹³⁰.

¹²⁵ The ECS 2009 covered private and public sector establishments. The 'public service sector' is defined as including establishments in the sectors of public administration, education and health and social work (NACE L, M and M). Employee representation might be either at the establishment or at company level; see 'European Company Survey 2009 — Overview', Eurofound 2010; 'National I&C practices', Eurofound 2013.

¹²⁶ Existing data shows the important role of trade unions in initiating I&C bodies; however, in some countries I&C arrangements have been employer-initiated.

¹²⁷ See Section 5(c) above.

¹²⁸ See '2012 evaluation study' with further references; 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012.

¹²⁹ See '2012 evaluation study' with further references.

¹³⁰ Under Budget heading 4.3.3.03.

<http://ec.europa.eu/social/main.jsp?catId=630&langId=en&callId=338&furtherCalls=yes>.

For example, INFORMIA (2010), 'Information and Consultation in Europe. Analysis of Legislation and Practices in Four EU Member States and One Candidate Country' available at

http://www.informia.org/language/en/uploads/files/materials_0/events_ccbd95e671b8d8197e080b7cd38b6dd6.pdf; see 'National I&C practices', Eurofound 2013.

(b) Evidence provided by stakeholders

According to stakeholder assessments at national level¹³¹, the effects of the implementation of the three Directives, as transposed, have generally met their objectives in practice.

However, the assessments of the Directives were less positive on effectiveness than they were on relevance, efficiency or coherence. Although the directives are seen as relatively well-designed for their purposes, this implies that national level respondents feel that in practice they deliver less than expected.

Effectiveness is broken down into different aspects, some of which were assessed as performing better than others. Above all, the I&C Directives are seen to contribute significantly to **avoidance of conflict** and **increased trust and partnership** at the workplace.

Stakeholders also assess positively the impact of the Directives in terms of increasing the **involvement of employees** in company decisions on workplace issues, improving the **quality, frequency and timeliness of information and consultation**, and ensuring a greater **acceptance of management decisions**. Information and consultation are seen to make a positive contribution to **better management and anticipation of change** (although there are some differences in the relevant rates of assessment between employers and employees' representatives, the latter expressing a more positive opinion in this regard).

Attaining the objectives of **improved management decisions** and **improved company performance** receives a lower assessment (the views of employers and employees' representatives diverge quite widely on this issue). The same holds true for the objectives of **better adaptability and employability of employees**.

As regards the attainment of the specific objectives of the Directives on collective redundancies and transfers of undertakings, both are positively assessed in terms of **affording greater protection** to employees in the particular situations they address. In this respect, Directive 2001/23/EC is rated higher than Directive 98/59/EC. Employers do not consider Directive 98/59/EC to be largely relevant and effective in **avoiding or reducing the number of collective redundancies**; there is, however, a wide divergence of views between employers and employees' representatives on this issue. Nevertheless, both employers and employees' representatives agree that Directive 98/59/EC contributes effectively to the **provision of increased support to employees** who are made redundant, either within or outside the undertaking. Directive 2001/23/EC is assessed more positively in terms of protection of employees than of ensuring a **smooth transfer of undertaking**¹³². With regard to attaining its specific objectives, national level stakeholders gave the lowest rating to Directive 2002/14/EC. This result is affected by the low rating it receives in relation to the aim of ensuring a **general and permanent right to I&C** in the EU. It should be pointed out that public authorities assessed the Directives more positively than the other stakeholders in terms of effectiveness (as well as relevance). Assessment by academics was also positive, although it varied depending on the Directive (the lowest concerning Directive 2002/14/EC).

These views seem consistent with the evidence from other sources¹³³. Generally speaking, employees' representatives believe that the climate of cooperation between them and the establishment's management is rather favourable. A large majority of them believe that they

¹³¹ The following assessments were carried out in the '2012 evaluation study'.

¹³² This perception may be associated with the expectation, in the literature, that meaningful social dialogue may bring disharmony to the surface particularly in situations of crisis or structural change at the workplace; see 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009' Eurofound 2012.

¹³³ See 'European Company Survey 2009 — Overview', Eurofound 2010.

make sincere efforts with management to solve common problems and that their work is supported by employees¹³⁴. On the managers' side, most are generally positive about the effects of social dialogue and employees' representation at the workplace: they consider that involving employees helps them find ways to improve workplace performance and leads to more commitment of the staff to the implementation of changes.

I&C is found to have a positive impact on establishing a good work climate and mitigating human resource problems. It contributes, thus, to the company's performance¹³⁵.

While the general picture is positive, it is worth highlighting a number of findings which may explain the sometimes reserved perceptions of stakeholders with regard to the effectiveness of the I&C legislation.

In particular, as indicated above¹³⁶, employees' representatives sometimes consider that information is insufficient or untimely. They complain that frequently they are not properly consulted and that their I&C rights are not adequately enforced¹³⁷. Even where consultation does take place, it is often qualified as rather formal and bureaucratic. Both employees' and employers' representatives also refer to gaps in the coverage and practical problems in using I&C legislation¹³⁸.

Furthermore, employees' representatives are concerned about the extent of their influence in employers' decisions which, although seen to be strong with regard to health and safety issues, and to a lesser extent with regard to working time, is seen as rather low when it comes to personnel planning, structural change and company strategy. This being so, it is suggested that stakeholders' perceptions should be interpreted with caution, in particular with regard to the level of influence they actually exercise, as they may be coloured by their expectations, and these are likely to vary from one country to another¹³⁹. The impact of the current crisis is also invoked as another explanation for stakeholders' assessments.

The perception of the impact of Directive 2002/14/EC in ensuring a general and permanent right to I&C may also be explained by the low level of incidence of I&C bodies, particularly in SMEs¹⁴⁰. This Directive is also the most recent and wide-ranging in scope. It will take time for it to become firmly embedded in Member States' industrial relations systems, particularly in those which lack traditions in this area. In addition, Directive 2002/14/EC — like the other two I&C Directives — merely lays down procedural standards. While all the Directives provide for an informed exchange of views and dialogue with a view to reaching an agreement, there is no obligation to attain a certain result, for example that employers should prepare anticipative and forward-looking plans on employment and skills needs or social

¹³⁴ See the composite cooperative culture indicator, based on findings of the ECS 2009, in the '2012 evaluation study'.

¹³⁵ See qualification of employees' voice as a sophisticated innovative work practice in 'HRM practices and establishment performance', Eurofound 2011.

¹³⁶ See Section 6.2(a) above under 'practice and effects of I&C'.

¹³⁷ In their replies to the web survey, some 28% of employees' representatives state that they have experienced actions being brought before enforcement bodies for non-respect of I&C requirements (15% for employers' representatives), while the enforcement measures following such actions were considered not to be effective by 56% and 55% respectively. See '2012 evaluation study'.

¹³⁸ Idem (55% and 45% respectively). See, however, caveats in footnote 176 below.

¹³⁹ See 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009' Eurofound 2012.

¹⁴⁰ See Section 6.2 (a)(iii) above under 'practice and effects of I&C'.

plans in the case of restructurings. Nor do the I&C Directives provide for any requirement for redundancies to be made only as a last resort¹⁴¹.

The European social partners¹⁴² shared the national stakeholders' perception that the Directives are fit for purpose, including with regard to effectiveness. BUSINESSEUROPE added that problems sometimes arise at national level because of the way I&C Directives are transposed. ETUC urged the Commission to monitor transposition in countries where the Directives introduced major changes and take action in the event of problems. It also questioned the effectiveness of the collective redundancies Directive during the crisis, noting that there is room for improvement. UEAPME¹⁴³ pointed out that the existing EU legal framework in the area of I&C is sufficiently robust and does not need to be further expanded.

(c) Assessment

The various sources of evidence suggest that in general stakeholder needs as reflected in the Directives' objectives have been met in practice. I&C seems to have contributed in particular to: increasing trust and partnership; mitigating conflicts at the workplace; involving workers in decision taking; improving workplace performance; and better management and anticipation of change. However, the extent to which this has been achieved has varied across the Directives and their objectives. In particular, the objectives of avoiding or considerably reducing the number of collective redundancies or substantially improving adaptability and employability of workers seem to have been achieved to a lesser degree than the other objectives mentioned above.

Research shows that most workers' representation structures have access to the key resources needed to function effectively: information, paid time off and training. However, their involvement seems more limited in decisions on contractual flexibility and restructurings and their strategic influence. There is also evidence that in several countries there is insufficient awareness of rights and obligations relating to I&C at company level. It seems that there are also shortcomings relating to the enforcement of the national transposing legislation. It is in principle up to the competent national authorities to ensure compliance with the I&C requirements.

This discussion also indicates that the effectiveness of the Directives depends on several factors: the country and its industrial relations system, the size of the establishment, the culture of social dialogue, the attitudes of management and labour, employees' support, etc. Taking into account that I&C is a learning process, there is room for improvement, particularly in countries with less-developed traditions, by promoting I&C culture among social partners, strengthening institutions, promoting agreements on I&C, disseminating good practices and raising awareness of I&C rights and obligations as well as the benefits associated with I&C. Projects promoting partnerships of management and labour at enterprise level contribute to these aims, including through EU funding¹⁴⁴.

6.3. Efficiency

(a) Evidence provided by studies, reports and surveys

¹⁴¹ See the study by Prof. E. Ales in 'EU measure on I&C of workers, anticipation and management of restructuring processes, Draft issues paper, European Parliament, October 2012.

¹⁴² Within the framework of the Working Group on ICW.

¹⁴³ See its position paper in reply to the Green Paper on restructuring and anticipation of change: what lessons from recent experience? (COM(2012) 7 final of 17 January 2012).

¹⁴⁴ See call for proposal under Budget heading 4.3.3.03.

<http://ec.europa.eu/social/main.jsp?catId=630&langId=en&callId=338&furtherCalls=yes>.

The assessment of efficiency in terms of the cost and benefits of I&C legislation has been questioned by a number of stakeholders, particularly government representatives (DE, AT, DK, NL) and ETUC¹⁴⁵. Several arguments were advanced in this regard. The first is a question of principle: I&C is a fundamental social right and, as such, should not be subject to any cost-benefit analysis. Moreover, on the one hand, it is very difficult to quantify the benefits generated by I&C. On the other hand, costs may vary significantly from company to company. Their nature and level depend on the specific measures planned by the employer. It is extremely difficult for companies to quantify them. Furthermore, it is very difficult to differentiate between the benefits/costs generated by the EU Directives and those resulting from already existing national legislation (including legislation providing for works councils having more powers than those stipulated by the Directives).

While mindful of the above reservations, it was nevertheless considered useful, in the context of the fitness check exercise, to proceed with this assessment, at least in terms of mapping the existing research in the EU/EEA countries and gathering stakeholders' views in this regard.

After all, social dialogue at the workplace is seen by some as an economic decision from a double perspective: the firm's and the employees'¹⁴⁶. While it is undoubtedly a fundamental social right¹⁴⁷, issues relating to the costs and benefits it generates are often taken into account by stakeholders when deciding whether, and how, to engage in it in practice. In this connection, it is often argued that it is good for business to promote such dialogue at company level.

The economic effects of employees' representation at the workplace have been described in several empirical studies. However, such studies concern only a small selection of EU countries¹⁴⁸. They generally show that the extent, nature and impact of I&C depend on several factors relating to the particular context of each country at macro, meso and micro levels. This makes it difficult to transfer approaches from one country or firm to another. It is also difficult to identify clearly the direction of causality. Thus, researchers refer to associations rather than causal effects of social dialogue. It is worth noting that the abovementioned studies do not always produce the same findings with regard to costs and benefits, not even in the same country. This is particularly the case with respect to the impact of I&C on the productivity and profitability of companies.

Nonetheless, there is ample theoretical and empirical evidence pointing to a number of economic benefits which can be generated by I&C. In particular, I&C can contribute to solving problems at work. It can encourage workers to pool and communicate their knowledge about production processes to employers, and to assist with work organisation and

¹⁴⁵ These positions were expressed within the *ad hoc* Working Group on ICW.

¹⁴⁶ See 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009' Eurofound 2012. This study points to the origins — and forms — of social dialogue at establishment level: social dialogue as democracy; as a counterweight to power imbalance; *as an economic decision*; and as an institution. It presents an overview of the theoretical assumptions of the literature in terms of benefits and costs of workplace social dialogue and tests them in the light of the findings of the ECS 2009.

¹⁴⁷ Article 27 of the EU Charter of Fundamental Rights enshrines the right to information and consultation under the conditions provided by Union law and national laws and practices. While limitations on the exercise of the fundamental rights are possible in order to meet objectives of general interest or the need to protect the rights and freedoms of others (including the freedom to conduct a business), such limitations must be provided by law, respect the essence of the rights and be in line with the principles of proportionality and necessity, in accordance with Article 52(1) of the EU Charter.

¹⁴⁸ In particular *Germany*; see for instance the overview of relevant literature in: 'Ökonomische Wirkungen der Mitbestimmung in Deutschland: Ein Update' by U. Jirjahn (2010); 'The economics of codetermination' by J. Addison (2009). See also 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009' Eurofound 2012 with further references.

cost cutting, etc. Knowledge sharing, communication and employee involvement are seen as a high performance work practice. I&C also plays an important role in the successful introduction of such innovative practices¹⁴⁹. I&C engages workers in the changes in work organisation and work conditions. It can appease conflicts at the workplace and increase the job satisfaction, motivation and commitment of staff¹⁵⁰. It helps reduce the rate at which workers leave the firm. Staff retention is associated with better skill training in the company. Furthermore, I&C can improve the physical health, wellbeing and self-actualisation of workers¹⁵¹. The above can lead to improved employee performance, which is associated with positive operational and organisational outcomes. I&C may also generate other benefits to do with issues of reputation (associated with other aspects of Corporate Social Responsibility).

Research¹⁵² suggests that the most important costs may be ‘transaction costs’, which are associated with the time and effort employers put into dialogue with employees’ representatives. However, these costs would be expected to be lower than those incurred through direct I&C (to each employee individually). The level of costs, and consequently, the balance between costs and benefits, depends on several circumstances including the size of the company and the composition of the workforce. Typically, engaging in social dialogue is expected to reduce transaction costs more for a large company than for a small one. The costs associated with higher employee departures and turnover are expected to be bigger in companies relying on scarce types of labour. The choice of which type of I&C body to engage in social dialogue with¹⁵³ may also influence costs: ‘buying’ into an existing mechanism, such as a trade union, would incur lower up-front costs than ‘making’ a new I&C body, such as an elected works council. However, the former may incur costs of a different kind, particularly the potential indirect costs of ‘rent-sharing’.

An important part of the abovementioned costs incurred by employers are those for supporting employee representatives in particular for time off work. While there is no comprehensive research at EU level quantifying these costs, research reveals that the national regulations providing for time off vary considerably across the EU Member States¹⁵⁴. The European Company Survey 2009 provides for interesting information as regards their practical implementation: 18% of the employee representatives interviewed indicated that this time resource is limited to one or two hours per week. 13% received half a day per week, while 9% benefited of a whole day. 29% of the representatives indicated that they can take as much time as necessary and 8% that they carry out their representational tasks full time. By contrast, 17% indicated that they are not entitled to any paid time off to carry out their duties¹⁵⁵. Evidently, the costs for paid time off also depend on the number of employee representatives, and this varies per company and per Member State. Furthermore, time off work may be used for other tasks of employee representatives in addition to those related to I&C¹⁵⁶.

¹⁴⁹ See in this regard ‘Work Organisation Innovation’, Eurofound 2012.

¹⁵⁰ See ‘HRM practices and establishment performance’, Eurofound 2011, with an overview of the literature on innovative work practices.

¹⁵¹ See ‘Workplace social dialogue in Europe: An analysis of the European Company Survey 2009’, Eurofound 2012, with further references; ‘Work Organisation and Employee Involvement in Europe’, Eurofound 2013 (to be published).

¹⁵² The following draws on the report ‘Workplace social dialogue in Europe: An analysis of the European Company Survey 2009’, Eurofound 2012, with further references.

¹⁵³ It is up to Member States to define ‘employee representatives’, see Section 5(c) above and Annex 2.

¹⁵⁴ See in this regard Annex 4, Table 1 (extract from Eurofound background paper available at: <http://www.eurofound.europa.eu/pubdocs/2011/78/en/1/EF1178EN.pdf>).

¹⁵⁵ See Annex 4, Table 2 (extract from aforementioned Eurofound background paper).

¹⁵⁶ In several countries works councils have wider tasks and powers.

It is also suggested that I&C may cause delays in decision making. In this regard, it should be noted that only 30% of management believe that employee representatives' involvement leads to considerable delays in taking important management decisions¹⁵⁷. Other costs for employers may include costs for notifying authorities (administrative burden), or costs generated by possible breaches of confidentiality.

Research also points to costs for employees¹⁵⁸. These might include the disapproval of an employer intent on avoiding social dialogue as well as the time and effort employees have to devote to I&C at work.

(b) Evidence provided by stakeholders

The 2012 evaluation study identified and further researched a range of benefits and costs associated with I&C. This study relied on a variety of sources of information including the opinions of stakeholders at national level supplemented by interviews with national experts, a web survey, analysis provided by the ECS 2009, and case studies. The evaluation found that there is generally a positive assessment of I&C in terms of the overall balance of benefits and costs. In particular, benefits were generally seen to exceed, or at least to cover, the costs generated by I&C arrangements.

Although national stakeholders were generally positive, there was some divergence, as had been expected, particularly with regard to the scores awarded by the different stakeholders in different countries in assessing the particular costs and benefits. Thus, the important benefits of increased trust and partnership, avoidance of conflict and employees' increased involvement in workplace issues were generally recognised. However, employers were much less convinced of the benefits in terms of lowering the number of collective redundancies, improving management decisions and increasing the adaptability and employability of employees.

Employers considered some costs as high: costs for supporting employees' representatives including time off work, costs for carrying out I&C (in particular, set-up costs and operational costs for meetings of I&C bodies) and costs resulting from delays to employers' decisions. On the other hand, the costs of notifying authorities (administrative burden) and the costs generated by possible breaches of confidentiality were considered as low. It was not possible to make an assessment of the above costs in a representative and reliable way on the basis of the available studies¹⁵⁹. In particular, it was not possible to quantify costs¹⁶⁰. In Germany, it is even unlawful to quantify such costs¹⁶¹.

In terms of costs incurred by employees' representatives, the heaviest costs — not covered by employers — were seen to be the costs associated with handling legal/administrative disputes or claims relating to I&C practice, followed by the costs of training employees'

¹⁵⁷ While 70% state that employee representation helps in a constructive manner to find ways to improve workplace performance, and that consultation leads to greater staff commitment in implementing changes. See 'European Company Survey 2009 — Overview', Eurofound 2010.

¹⁵⁸ See 'Workplace social dialogue in Europe: An analysis of the European Company Survey 2009', Eurofound 2012.

¹⁵⁹ See '2012 evaluation study'.

¹⁶⁰ Such issues were also voiced with regard to the impact assessment of the (transnational) European Works Councils Directive. For example, costs for meetings varied to a very large degree depending on the country and the company concerned. In any case, national I&C bodies do not generate travel, translation/interpretation or accommodation costs, which account for a large part of the costs related to EWCs.

¹⁶¹ According to the Federal Labour Court, presenting expenditure for works councils, even when true and without any comments, may lead to a breach of the law (i.e. BVerfG) as an interference and obstruction of the discharge of the works councils' duties.

representatives. The costs involved in becoming acquainted with I&C legislation, working with other employees' representatives, producing and transmitting information to workers were seen to be somewhat lower.

Public authorities and academics were also found to have generally high assessments of the balance between benefits and costs generated by I&C.

The European social partners¹⁶² agreed that the Directives are fit for purpose, including as regards efficiency. BUSINESSEUROPE pointed out that there did not seem to be any excessive burdens resulting directly from the EU Directives. However, it supported country-level efforts to evaluate national I&C legislation with a view to identifying such burdens, among others. From the employees' side, ETUC questioned the application of the cost-benefit approach to a fundamental social right of workers for the reasons that have already been indicated above.

(c) Assessment

Notwithstanding concerns about the legitimacy of assessing costs and benefits relating to the exercise of a fundamental social right, and despite practical difficulties with such assessments, the evidence presented above points to several significant economic benefits that can be derived from I&C at the workplace. I&C can have positive operational and organisational outcomes. In particular, it can encourage workers to pool and communicate to employers their knowledge about production processes, and to assist with work organisation and cost cutting. It can contribute to solving problems at work, engage workers in the changes in work organisation and work conditions, appease conflicts, promote trust and partnership and increase the job satisfaction, motivation and commitment of staff. I&C can thus reduce the rate at which workers leave the company, and improve the physical health and wellbeing of workers. The above can have a positive impact on staff performance and, eventually, on a company's performance, reputation and competitiveness.

On the other side, both employers and employees' representatives incur costs. For the former, the highest costs are those for supporting employees' representatives including time off work, for carrying out I&C (in particular, set-up costs and operational costs for meetings of I&C bodies) and from delays to employers' decisions. It was not possible to quantitatively assess the above costs in a representative and reliable way on the basis of the available research. Such costs may considerably vary per country and per company depending on a wide range of factors including the size of the company, the composition of the workforce, the representation body (type, composition, tasks), the regulatory and industrial relations framework, the context, etc. Employees' representatives bear mainly costs associated with handling I&C-related disputes and with training to enable them to perform their tasks.

Overall, on the basis of the available evidence and stakeholders' assessments, it may be concluded that the benefits are likely to outweigh the costs incurred.

6.4. Coherence

(a) Evidence provided by studies, reports and surveys

The three Directives lay down minimum requirements regarding I&C at national/company level while being sufficiently flexible to allow Member States to adapt these requirements to their specific national systems, environments and traditions and offer more protection to workers. Directives 98/59/EC and 2001/23/EC address specific situations, whereas Directive 2002/14 extends I&C by establishing a general and permanent I&C framework with a view to

¹⁶² Within the framework of the Working Group on ICW.

facilitating a ‘preventive/anticipative’ approach and improving the application in practice of the other Directives.

The literature¹⁶³ points to the coherence and consistency of the three Directives on I&C¹⁶⁴. Coherence and clarity have been enhanced through EU legislation and the case-law of the European Court of Justice. For example, the 1992 amendment of the collective redundancies Directive strengthened the effective application of the I&C right by clarifying the timing (adding the words ‘in good time’, thus aligning, this Directive with the 1977 transfer of undertakings Directive), and by inserting a provision on the protection of rights/enforcement. In a similar vein, the 1998 amendment of the 1977 transfer of undertakings Directive clarified the envisaged result of I&C (‘with a view to *reaching* an agreement’¹⁶⁵), the concept of ‘transfer of undertakings’, and the means of protection of rights/enforcement¹⁶⁶.

As indicated above¹⁶⁷, differences between the three Directives may be explained by the particular scope of each Directive. This holds also true as regards the different thresholds¹⁶⁸ for the application of the Directives which aim mainly at keeping to the minimum the burden on undertakings while ensuring the effective exercise of the right to I&C¹⁶⁹. It should also be stressed that the Commission's original proposal to align the text of the 'specific' Directives so that workers are informed even in the event that there are no workers' representatives¹⁷⁰ has not been followed by the EU legislators. The issues of the gaps/inconsistencies relating to the scope of application of the three Directives, regarding namely the public administration and seafarers were discussed in Sections 2, 3 and 6.1 above.

In any case, there is no evidence that the above mentioned apparent inconsistencies / differences cause any significant problems in the practical application of the Directives. Similarly, there is no evidence of any duplications or contradictions within or between the Directives.

A number of alleged incoherencies should be examined at national rather than at EU level. One example is the perceived uncertainty and the practical problems employers in some countries have in identifying employees’ representatives. In some Member States, possible overlaps relating to the employer’s obligation to carry out I&C with more than one representative body¹⁷¹ also fall within the responsibility of national legislators/social partners. The same is true in some countries with respect to the designation of different enforcement mechanisms and sanctions (in terms of nature and/or levels of fines), depending on whether the breach of I&C relates to collective redundancies, transfer of undertakings or the general I&C obligation.

¹⁶³ See, among others, T. Jaspers & R. Meyers ‘The Rocky Path of EU Legislation on Workers’ Involvement: Coherent Codification of the Right to Information and Consultation of Workers in European Law?’, in L. Besselink, F. Pennings & S. Prechal (Eds.), *The Eclipse of the Legality Principle in the European Union*, 2011; ‘Fundamental Social Rights in Europe: Challenges and Opportunities’, P. Lorber, E. Ales, T. Jaspers, C. Sachs-Durand, U. Wendeling-Schroeder (eds.), 2009.

¹⁶⁴ Only the three Directives regarding I&C at national/company level underwent the present fitness check; see Section 1 of the present document. Hence, these Directives were not compared to other I&C Directives (at transnational level). .

¹⁶⁵ Thus aligning this Directive to the collective redundancies Directive.

¹⁶⁶ All three Directives now contain a provision on the protection of rights. Directive 2002/14/EC includes a specific provision on the adequacy of sanctions, which should be effective, proportionate and dissuasive. However, the latter provision reflects a general principle of EU law which has been recognised by the ECJ for some time.

¹⁶⁷ See Section 2(c) above.

¹⁶⁸ See footnote 25 above.

¹⁶⁹ See particularly recital 22 of Directive 2002/14/EC.

¹⁷⁰ See footnote 28 above and corresponding text.

¹⁷¹ See among others 2010 ELLN report.

Another issue discussed in several reports/studies relates to the differences among certain definitions¹⁷² of the three I&C Directives in comparison to the Directives on European Works Councils or European Company¹⁷³. Such differences are mainly due to the legislators' will¹⁷⁴. In any case, differences in the legal drafting technique¹⁷⁵ do not necessarily imply less protection of workers in practice. Arguably, Directive 2002/14/EC goes further than Directive 2009/38/EC (on European Works Councils) as regards 'consultation', since it provides for consultation 'with a view to reaching an agreement' while the latter merely states that the opinion of workers' representatives 'may be taken into account' by the employer¹⁷⁶. However, an extensive definition of the concepts 'information' and 'consultation' in Directive 2002/14/EC, in line with the transnational I&C Directives on European Works Councils and European Company, would arguably improve consistency among all I&C Directives while precluding that social partners reduce the level of protection of I&C rights through negotiated arrangements provided for in Article 5 of the former Directive.

(b) Evidence provided by stakeholders

Stakeholders at national level also gave a positive assessment of the overall coherence of the legislation examined¹⁷⁷. The three Directives were considered to be coherent and mutually reinforcing. The same stakeholders reported that, apart from theoretical considerations, in practice there is no need for, or benefit from, a consolidation or recast of the existing legislation. The 2012 evaluation study noted that the three I&C Directives have been integrated, as is normal for all Directives, in the appropriate part of Member States' national legislation¹⁷⁸. Consolidating them in a single act will not necessarily result in any new legislative change or simplification in the EU Member States particularly where they have been transposed in separate legal acts since long ago.

However, the evaluation also found that the views of stakeholders at company level¹⁷⁹, specifically with regard to uncertainties/inconsistencies¹⁸⁰ relating to I&C legislation appear much less positive. In the web survey some 50% of employees' and 40% of employers' representatives replied that they see uncertainties/inconsistencies in the I&C legislation; Consequently, some 62% of employees' and 48% of employers' representatives are in favour of a rationalisation of existing legislation. However, they have very different views regarding

¹⁷² In particular of the concepts 'information' and 'consultation'.

¹⁷³ Whilst the latter Directives are outside the scope of the current fitness check, this important issue merits to be discussed here. See footnotes 6 and 7 above and corresponding text.

¹⁷⁴ Preparatory work leading to the adoption of Directives 2002/14/EC and 2009/38/EC show the important role of the EU legislators in defining these terms.

¹⁷⁵ Article 2(f)(g) of Directive 2002/14/EC should be read in conjunction with Article 4(3)(4) of the same Directive. Compare, in this regard, with Article 2 1(f)(g) of Directive 2009/38/EC.

¹⁷⁶ See the abovementioned study of T. Jaspers & R. Meyers.

¹⁷⁷ These assessments were carried out in the '2012 evaluation study', which, however, adds a caveat that 'there is some ambiguity as to whether the stakeholders focused only on EU I&C legislation, or were based on national I&C as a whole', especially in countries with long-standing I&C legislative provisions or collective agreements where EU legislation has not induced brought about significant changes. This caveat may also apply to previous evaluation criteria.

¹⁷⁸ In some countries in one law - e.g. the labour code - in others in several laws. See also '2012 evaluation study'.

¹⁷⁹ Reported through the web survey in the '2012 evaluation study'.

¹⁸⁰ Unfortunately, we cannot deduce from the web survey what stakeholders understood by the terms 'uncertainties/inconsistencies' (or by the terms 'gaps' and 'practical problems'). There is also some ambiguity as to whether the stakeholders' assessment concerned EU I&C legislation or national I&C legislation as a whole (see footnote 176 above). In addition, the results of the web survey should be interpreted with caution because of methodological issues (in particular whether the replies were representative). However, they may be useful in conjunction with other sources (triangulation).

the need for additional legislation (some 40 % of employees' representatives express strong support; employers' support amounts to only 4 %).

The reasoning and aspirations of the various stakeholders are open to interpretation. The precise scope and content of the wanted 'rationalisation' cannot unfortunately be deduced from the web survey and are likely to differ depending on the group of stakeholders ('rationalisation' may imply more regulation for employees and less for employers). The authors of the 2012 evaluation study attributed the stakeholders' divergent assessments mainly to an apparently widespread unfamiliarity with the exact requirements of current legislation among players at company level¹⁸¹.

Within the framework of the Working Group on ICW, the European social partners also expressed their views regarding the coherence of the Directives. *BUSINESSEUROPE*'s overall assessment was relatively positive. There did not seem to be any overlaps, gaps or inconsistencies resulting directly from the EU Directives. However, problems can sometimes arise at national level, for example overlapping obligations of employers to inform and consult both trade unions and work councils. From the employees' side, *ETUC* agreed that the Directives are fit for purpose. However, it stated that there are incoherencies and gaps. For instance, there are different definitions of 'information, consultation, transnational and cross-border'. Consequently, *ETUC* considered that it would be useful to examine the possibility of a recast by taking the definitions of the Directives on European Works Councils¹⁸² or *SE*¹⁸³, which they perceive to be better.

(c) Assessment

The three I&C Directives as amended appear coherent and mutually reinforcing. There is no evidence of any duplications or contradictions resulting in problems in their practical implementation.

Each of the 'specific' Directives on collective redundancies and on the transfer of undertakings has been amended once to promote clarity and coherence (in 1992 and 1998 respectively), and subsequently consolidated (in 1998 and 2001 respectively). They both contain, besides procedural, material law provisions. While the three I&C Directives at issue present a number of similarities, they differ from each other in terms of thresholds, scope of application, provision of I&C directly to workers, regulation of the detailed content of I&C, and possibility of social partners to provide for different I&C arrangements. Such differences are mainly due to their different scope and the EU legislators' will.

However, stakeholders at company level hold a more critical opinion about uncertainties or inconsistencies, gaps and practical problems relating to I&C legislation and express the view that some effort of simplification and consolidation might be justified¹⁸⁴. While some of these issues may go beyond the 'coherence' of the three I&C Directives¹⁸⁵ or may relate to the

¹⁸¹ See '2012 evaluation study'; the caveat referred to in footnote 180 may also be valid here.

¹⁸² Directive 2009/38/EC on European Works Councils (see footnote 6).

¹⁸³ Directive 2001/86/EC on involvement of employees in a European Company (see footnote 7).

¹⁸⁴ Notwithstanding the open questions regarding the interpretation of the web-survey results (see footnote 180),

¹⁸⁵ They may touch upon other evaluation criteria, particularly on 'relevance' and 'effectiveness', which were discussed in previous sections.

¹⁸⁶ A number of alleged shortcomings (for example, difficulties in identifying employees' representatives or overlaps/duplication with regard to the representation bodies which have to be informed and consulted) relate to the Directives' transposition and should be examined at national level.

¹⁸⁷ These directives include, besides the three I&C Directives subject to the present fitness check, the Insolvency Directive (2008/94/EC), and the European Works Council Directive (2009/38/EC).

Directives' transposition in the Member States¹⁸⁶, nevertheless, such concerns deserve serious consideration and further discussion.

As regards the gaps related to the scope of application of the I&C Directives, the effects of the exclusion of the public administration require further examination and research. Particular focus should also be placed on SMEs taking into account their specific situation and needs. With regard to seafarers, the Commission concluded a two-stage consultation of the EU social partners and is currently assessing the justification of their exclusion from the scope of application of a number of EU labour law Directives¹⁸⁷ following an evidence-based impact assessment.

7. CONCLUSION

7.1. General assessment

The above discussion suggests that the **three I&C Directives are broadly fit for purpose**. They prescribe minimum requirements and are flexible enough to be adapted to the specific contexts and industrial relations systems of the EU/EEA countries. They are generally relevant, effective, coherent and mutually reinforcing. The benefits they generate are likely to outweigh the costs.

This general conclusion is consistent with the views of the European social partners and Member States' positions expressed in the *ad hoc* Working Group on ICW¹⁸⁸.

Moreover, the Directives seem to have contributed to cushioning the shock of the recession and restructurings during the crisis. I&C at company level has become important for solving problems, including maintaining employment and lowering adjustment costs through the use of internal flexibility¹⁸⁹. At the same time, it has contributed to easing conflicts and promoting a cooperative climate at workplace level. I&C is of crucial importance for developing good practices in anticipating change and preparing and managing restructuring properly. If good practices in anticipating change and restructuring were widely observed, this would contribute significantly to a better application of the I&C Directives and to more effective enforcement of the rights set out in these Directives.

7.2. Specific issues - Gaps and shortcomings

Notwithstanding this overall positive assessment, the Fitness Check exercise also has brought to light a number of issues relating to **gaps** and **shortcomings** in the scope and operation of the Directives.

More specifically, the **exclusion** of smaller enterprises and public administration from the scope of application of the Directives has been questioned on the grounds of the Directives' lack of practical relevance for a significant share of the workforce. Another gap was analysed in the separate exercise involving the exclusion of seafarers from the scope of application of a number of EU labour law Directives including the three I&C Directives¹⁹⁰.

¹⁸⁸ ETUC and BUSSINESSEUROPE confirmed this position in written contributions. ETUC added, however, that it is in favour of: (i) a recast of all I&C Directives, including those with a transnational dimension, to render more coherent the definitions of 'information' and 'consultation'; and (ii) their improvement, particularly Directive 98/59/EC.

¹⁸⁹ See 'Negotiating the crisis' Glassner and Keune (ILO, 2010); 'Social dialogue in times of global economic crisis', Eurofound 2012; 'Employment in Europe 2010', European Commission 2010; COM(2012) 173 final of 18.4.2012, 'Towards a job-rich recovery'.

¹⁹⁰ See Section 3 above.

There is evidence to suggest that there are some **shortcomings** with respect to the effectiveness of the I&C Directives. A large number of the establishments covered by the Directives do not have I&C bodies, since information and consultation are employees' rights that require action on their side in order to be exercised in practice. While most I&C bodies have access to the key resources needed to function effectively (information, paid time off and training), their involvement seems often limited or formal, particularly with respect to consultation on employers' decisions on certain work-related issues such as contractual flexibility and restructurings. The same holds true for their strategic influence. It seems that there are also shortcomings relating to the enforcement of the national transposing legislation, which mainly falls within the competence of the national authorities. There is also evidence in several countries of insufficient awareness of rights and obligations relating to I&C at company level. Some of the Directives' aims, in particular reduction of the number of collective redundancies, improved management and anticipation of change and better adaptability and employability of employees appear not to have been fully achieved.

The fitness check exercise highlighted also stakeholders' concerns, in particular at company level, regarding shortcomings in relation to the coherence of the I&C Directives, more specifically the lack of consistency of the definitions of 'information' and 'consultation'. As a general conclusion, while the overall impact of the Directives is positive, the potential of the Directives has not yet been fully exploited in all Member States.

7.3. Possible responses to the above specific issues

Several issues discussed above had already been identified in the past and legal provisions to address them had been proposed by the Commission or by the European Parliament, but not upheld by the Council. Examples regarding Directive 2002/14/EC include the promotion of social dialogue in SMEs, the application of the Directive's requirements to the public administration, the effective protection of employees' rights through the nullity of employers' decisions taken in breach of the I&C requirements (enforcement), and the clarification of certain terms (for example, 'information on economic situation') through more detailed wording. The Council also redrafted the proposed Directive to clarify that it consolidates a right of workers rather than an obligation of employers to inform and consult.

Legislative intervention at EU level may not be the most appropriate means of tackling all the gaps and shortcomings. In some cases, the evidence is currently not sufficient or compelling enough to justify such intervention. Indeed, research cited in the previous sections highlighted the limits of legislation in some respects, in particular the threshold for setting up I&C bodies¹⁹¹. In any case, Member States may take action where necessary and adopt more protective measures, as appropriate, with due respect for national traditions and EU law, since the latter merely lays down minimum requirements. Several examples of such action at national level are cited in Section 5 above. Research has also shown that the Directives' impact depends on a range of factors including each country's industrial relations system; the culture of social dialogue; the attitudes of management and labour; and employees' support. More EU legislation in the area of I&C cannot influence the above factors.

With regard to I&C in the **public administration**, there is need for further research regarding in particular the state of play in the EU Member States, and, specifically, what role I&C actually plays and could or should play in the light of the current restructurings in the public sector in several countries. This issue could be discussed within the sectoral social dialogue committee which brings together central government administrations.

¹⁹¹ See footnote 66 and corresponding text.

There is also need to look more in depth at the issues related to social dialogue in **SMEs** taking into account the specific situation and needs of the latter. Work is currently under way by Eurofound in this area including on identification of good practice. Further analysis will be carried out on the basis of the results of the 3rd European Company Survey.

With regard to **seafarers**, the Commission is currently assessing the justification of their exclusion from the scope of application of a number of EU labour law Directives¹⁹².

Among the **shortcomings** which came to light through the fitness check, the issue of the **coherence/consistency** of the I&C Directives merits serious consideration and further discussion with the stakeholders. This may lead to a possible **consolidation/simplification** of the I&C Directives. The present SWD could serve as a good basis of such discussion. Social partners should be consulted as foreseen in the Treaty as regards the opportunity as well as the content of an EU initiative, before any decision is taken.

Another finding of the present evaluation is that the potential of the I&C Directives has not yet been fully exploited due to **shortcomings with regard to their effectiveness** in practice. In addressing the latter, research has highlighted the importance of the establishment of a **culture of social dialogue**, of the **awareness of I&C rights and obligations** among both employees and employers at company level, and of the **effective enforcement** of these rights in the event of non-compliance. These areas fall within the competence and responsibility of different actors at European, national and company levels.

There are a number of **agreements and other joint actions between management and labour** dealing with I&C at cross-industry and sectoral level which constitute cases of good practice, already identified in Commission and Eurofound reports¹⁹³. Several transnational company agreements address I&C-related issues¹⁹⁴. Following a public consultation¹⁹⁵, the Commission will continue to promote such agreements with a view to meeting growing concerns about the social aspects of globalisation. The Commission services are currently analysing the 23 replies to the consultation. These replies show the interest of the respondents in transnational company agreements, even if contrasting views remain on the way forward, including the usefulness of a European voluntary legal framework. Respondents also welcomed the Commission regular updating of the database on transnational company agreements¹⁹⁶ which informs the debate at EU level. An own-initiative report from the European Parliament on cross-border collective bargaining and transnational social dialogue will be submitted to the plenary session of the Parliament in September 2013, thus complementing the views expressed in the framework of the public consultation.

Directive 2002/14/EC also provides for agreements between management and labour at enterprise level, which leaves scope for social partners to flesh out specific I&C arrangements tailored to their particular situation and needs. Specifying and clarifying the rights and obligations of each party should make application and enforcement easier.

Given the importance of **I&C culture at company level**, further **research** could be carried out in EU countries to identify the various factors which influence effective and meaningful I&C at workplace level and to deepen the analysis of its operation and its effects on organisations including those in the public sector, on employees and on society as a whole. In

¹⁹² Namely, the Insolvency Directive (2008/94/EC), the European Works Council Directive (2009/38/EC) and the three I&C Directives subject to the present fitness check.

¹⁹³ See footnotes 110 to 113 above.

¹⁹⁴ See footnote 111 above.

¹⁹⁵ Commission Staff Working Document on 'Transnational Company Agreements: fresh perspectives for social dialogue', SWD(2012) 264 final.

¹⁹⁶ <http://ec.europa.eu/social/main.jsp?catId=978>

addition to the fundamental rights aspect, there could be a focus on how I&C is good for business. Another issue worth further exploring is the identification of good and innovative practices relating to different forms of I&C in particular in high performance workplaces and SMEs.

As regards **awareness of I&C rights and obligations**, it could be raised through appropriate guidance by the competent national authorities and social partners clarifying the terms and requirements of the I&C Directives as transposed in the national legal order, thus ensuring its correct application. Trade unions assume an important role in sensitising workers and employers on I&C, facilitating the setting-up of I&C bodies and promoting their operation at workplace level.

Social partnership at workplace level could further be strengthened by action in the areas of **training, dissemination of good practices and studies** including through financial support by the Commission, particularly in the Member States where capacity building in the area of I&C is more needed¹⁹⁷.

With regard to **enforcement** of the I&C rights, the Commission, as guardian of the Treaties, is responsible for monitoring the **correct transposition** of the Directives. The social partners and the Member States assume both a crucial role in ensuring compliance with the I&C requirements at the workplace¹⁹⁸.

In the event of **non-compliance in specific cases**, the social partners may exercise their collective right and seek redress before the national enforcement authorities. The Member States have to ensure compliance with the EU Directives, attainment of their objectives and prevention of abuse, including circumvention of their requirements. Issues related to enforcement and sanctions have to be assessed and reviewed as appropriate at national level. While the Member States are allowed to make use of the Directives' flexibility, they are in fact responsible for guaranteeing the effective application of EU law in practice.

Finally, it is important to underline the significant work carried out by all stakeholders in the area of restructuring. In particular, for some years now, the Commission has been working on **better anticipation and management of change and restructuring**¹⁹⁹. Following its 2012 Green Paper on restructuring and anticipation of change and the adoption by the European Parliament on 15 January 2013 of a Resolution (known as the Cercas Report) on information and consultation of workers, anticipation and management of restructuring asking the Commission to submit a legal act after consulting the social partners²⁰⁰, the Commission envisages to issue a Communication establishing a Quality Framework for restructuring and anticipation of change. This Communication would frame the current EU legislation and initiatives in this field and would present the best practices to be implemented by all stakeholders. The Commission will keep under review the need to revise the proposed quality framework.

¹⁹⁷ See call for proposal under Budget heading 4.3.3.03.

<http://ec.europa.eu/social/main.jsp?catId=630&langId=en&callId=338&furtherCalls=yes>.

¹⁹⁸ On the above, see Commission Communication of 17.3.2008 on the review of the application of Directive 2002/14/EC in the EU, COM(2008) 146 final.

¹⁹⁹ See the Green Paper on restructuring and anticipation of change: what lessons from recent experience? (COM(2012) 7 final of 17 January 2012); Commission Staff Working Document 'Restructuring in Europe 2011' accompanying the abovementioned Green Paper, (SEC(2012) 59 final of 17.1.2012).

²⁰⁰ Cf. in this regard also European Parliament Resolution of 15 January 2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring (2012/2061(INI)); "EU measure on I&C of workers, anticipation and management of restructuring processes, Draft Issues paper, "European Added Value Assessment", European Parliament, October 2012 (prepared to support the work on the legislative initiative report of MEP Alejandro Cercas which led to the aforementioned Resolution).

ANNEX 1

Needs	General objective	Specific aims	Means to realise aims	Possible output/ effects/ consequences	Broader effects
Employees' involvement at work	Establish minimum standards Employees' involvement and protection Promote cooperative dialogue and culture at workplace Level-playing field	98/59 ↳ Employees' involvement and protection in cases of collective redundancies ↳ Avoid/reduce collective redundancies, mitigate their impact ↳ Improve worker's employability	<ul style="list-style-type: none"> • Right to set up a "one-off" I&C body in establishments with more than 20 workers (public administration excluded) • Information and consultation of workers' representatives in good time and with a view to reaching agreement on CR and related protective measures • Information of national administration in good time to provide support to workers at risk of redundancy 	98/59 <ul style="list-style-type: none"> • Set up of "one-off" I&C bodies • Taking account of opinion of, or agreement with, workers' representatives on avoidance/reduction of collective redundancies and/or mitigation of their effects • Support of workers at risk of redundancy by concerted action at national or local level. • Complaints/judgments in cases of violation of I&C rights 	LEVEL PLAYING FIELD <ul style="list-style-type: none"> • Increased trust and partnership at the workplace • Avoidance of conflict; establishment of a climate of cooperation • Increased employees' commitment • Better staff retention • Better problem-solving • Increased acceptance of management decisions • Better management and anticipation of change • Increased adaptability and employability • Improved management decisions • Better business performance • Increased protection of employees in cases of collective redundancies and/or changes of employer • Increased support of employees at risk of redundancy.
Employees' protection		2001/23 ↳ Employees' involvement and protection in cases of change of employer ↳ Smoother transfer of undertakings ↳ Workers' involvement in ensuring changes in work organisation processes in both transferor/transferee	<ul style="list-style-type: none"> • Right to set up an "one-off" I&C body (public administration excluded) • Information of workers' representatives or of workers when such representatives do not exist • Consultation in good time and with a view to reaching agreement on envisaged measures affecting workers in cases of transfers of undertakings. 	2001/23 <ul style="list-style-type: none"> • Set up of "one-off" I&C bodies • Taking account of opinion of, or agreement with, workers' representatives on new work organisation/processes by transferor and/or transferee. • Complaints/judgments in cases of violation of I&C rights 	
Democracy at work		2002/14 ↳ Employer's involvement and protection on general and permanent basis ↳ Better risk anticipation and management of change ↳ Increased adaptability and employability	<ul style="list-style-type: none"> • Right to set up an I&C body on a general and permanent basis in undertakings and establishments with more than 50 and 20 workers respectively (public administration excluded) • I&C arrangements through agreements between management and labour or statutory provisions • In the latter case, information and consultation of WR (or workers in certain cases) at an appropriate time with a view to reaching agreement • Right of WR to meet the employer, formulate an opinion and obtain a reasoned response • Right of WR to resources (paid time-off, facilities) and to protection • Judicial/administrative protection 	2002/14 <ul style="list-style-type: none"> • Set up of general and permanent I&C bodies • Information on economic issues/developments • Taking account of opinion of, or agreement with, workers' representatives on employment-related issues as well as on work processes, work organisation and changes of working conditions. • Complaints/judgments in cases of violation of I&C rights 	
Competitiveness					

Forms of employee representation in Europe

This report on ‘employee representation at establishment level in Europe’ provides an overview of the institutional arrangements at establishment or sometimes company level, if specifically indicated. While the institutions of the national systems of industrial relations are widely known and researched, the picture is evolving to some extent, partly under the influence of the abovementioned EU regulation. The purpose of this exercise is to map the relevant institutions.

The report identifies four categories to describe which form of employee representation institution is more widespread at the establishment level in a particular country:

Single channel of representation - where **works councils are the sole representational structure** for employees. This includes countries such as Austria, Germany, Luxembourg and the Netherlands. In the latter case, trade unions can also operate at the establishment level but this is a rare occurrence. A link with trade unions is, however, possible where some works council members also play a role within trade union structures.

Dual channel of representation - **where both types of employee representation can be found, but the works councils have a stronger role**. This is clearly the case in Belgium, France and Italy. In Spain, the survey only asked about the presence of works councils, not about trade unions and thus, for the purposes of this report, fall into this category. In Belgium, OSH committees play a strong role in informing and consulting employees about a number of issues beyond health and safety. In a particular group of Member States, the ‘traditional’ trade-union-based system, together with recent changes in legislation concerning works councils, appears — according to ECS data — to have fostered the establishment of works councils. Hence, in Estonia, Hungary, Latvia, Poland, Romania, Slovakia and the UK, and perhaps also to a lesser extent in Ireland, the survey detected more single-channel works-council-based establishments and dual-channel forms of representation than would have been expected. Bearing in mind data limitations, it can be tentatively concluded that the single-channel trade union representation which used to be dominant in Latvia, Poland and the UK is eroding.

Dual channel of representation, **but with trade union shop stewards playing a prominent role** - This category covers countries such as Croatia, Denmark, Finland, Portugal and Slovenia.

Single channel of representation, **with the trade unions being the sole employee representation body** - this is the case in Cyprus, Malta, Sweden, the former Yugoslav Republic of Macedonia and Turkey.

Table 2: Classification of different forms of establishment-level employee representation, based on employee coverage

	Establishment level: Single-channel, works council	Establishment level: Dual-channel, works council	Establishment level: Dual-channel, trade union	Establishment level: Single-channel, trade union
AT	x			
BE		x		
BG		(x)	(x)	
CY				x
CZ			x	
DK			x	
EE		x		
FI			x	
FR		x		
DE	x			
EL			x	
HR			x	
HU		x		
IE			x	
IT		(x)		(x)
LU	x			
LT		(x)	(x)	
LV		x	(x)	
MK				x
MT				x
NL	(x)	(x)		
PL			x	
PT			x	
RO		x	(x)	
SK		x	(x)	
SL			x	
TR				x
ES		(x)	(x)	
SE				x
UK		x	(x)	

Source: *European Company Survey, supplemented by national reports.*

(x) refers to cases in which classification is not straightforward

Note: Typology results from the coverage rates as detected using ECS (2009) data. ‘Single-channel’ means having only one form of employee representation at establishment level. ‘Dual-channel’ refers to cases with both forms of employee representation (trade union and works council) at establishment level. Additional country-level information can be found in Chapter 2 of this report.

Links between different forms of employee representation

Table 3 gives an overview of the various minimum thresholds required to set up works councils or trade-union-based representation. Most countries have set up minimum thresholds for works councils, but not for trade unions. In some countries, such as Luxembourg or the Netherlands, the establishment of works councils is mandatory from a certain threshold onwards. In others, in line with the requirement of the EU Information and Consultation Directive, employers have to ensure adequate structures for informing and consulting their employees in establishments with more than 50 employees. Some countries have opted to set lower thresholds for information and consultation (in Estonia, for example, in establishments with more than 30 employees). Thresholds for setting up trade union representative bodies are based on either trade union members or a certain number or percentage of employees requesting it.

Table 3: Minimum *legal thresholds for the establishment of different forms of employee representation by country*

Country	Works councils	Trade unions
Austria	> 5 employees	-
Belgium	WC: >100 employees; OSH >50 <100 employees	TU (threshold depends on collective agreement, in workplaces <50 where neither OSHC then TU delegation)
Bulgaria	> 50 employees	no size thresholds
Cyprus	-	min. of 21 employees
Czech Republic	> 3 employees	min. of 3 members
Denmark	> 35 employees	min. of 5 employees
Estonia	no threshold (employee trustee)	min. of 5 employees
Finland	> 20 employees	no thresholds
France	staff delegates >10 employees: should be elected comite d'entreprise > 50 employees: should be set up	no thresholds
Germany	WC > 5 employees	-
Greece	>50 employees; but >20 employees if no trade union is present	TU >21 members
Hungary	> 50 employees: private sector 15-50: employees private sector (works representative)	no thresholds
Ireland	10% of employees, min. of 15 employees requesting	no thresholds
Italy	RSU >15 employees	no thresholds
Latvia	>5 employees (authorised employee representative)	TU >50
Lithuania	>20 employees	TU >30 members or no less than 3 employees
Luxembourg	Employee delegation: >15 employees and public sector with >15 blue collar workers: compulsory; Employee delegation: >14 employees: in municipalities; Comite mixte: >150 employees (private sector) — compulsory.	
Malta		TU >5 members; in undertakings with >50 employees, structures for I&C must be set up.
Netherlands	Ondernemingsraad: mandatory in establishments > 50 employees Personeelvertegenwoordiging (Mini WC): in establishments <50 employees: obligatory when there are more than 10 employees and the majority asks for a mini works council	no thresholds

Country	Works councils	Trade unions
Poland	WC >50 employees	TU > 10 members
Portugal	no thresholds	no thresholds
Romania	WC >20 employees (elected employee representative)	TU >15 members
Slovakia	WC >50 employees (with request of 10%) WC 5-50 employees (employee trustees)	no thresholds
Slovenia	WC >20 employees (Works council) WC <20 employees (workers' delegate)	TU, Shop steward; no threshold. TU must have >15% of workers in the company in order for them to be representative at company level
Spain	WC >50 employees (works committee) WC 6-50 employees (delegates); WC <6 employees (delegates) (with collective agreement)	no thresholds
Sweden	-	no thresholds
United Kingdom	WC >50 employees	>20 employees

Note: Categories are defined based on a subjective assessment of the information given in Table 2. WC = Works council (type), TU = trade union, OSH = Health and Safety; the table does not include board representation and public sector, and sometimes refers to the establishment, sometimes to the company level.

Classifying countries into 'high', 'medium' and 'low' levels of thresholds for the two forms of employee representation, and then contrasting this classification with incidence and coverage of the different forms, as derived from the survey, shows that there is no clear-cut connection between the level of minimum requirements and the presence of formal structures at the workplace.

Table 4: Relationship between threshold level and formal representation structure

	Criteria for works council	Countries within WC threshold	Criteria for trade union representation	Countries within trade union threshold category
Low	Smallest type of works council: at least >6; (with the exception of Luxembourg — >15 because works council establishment is compulsory)	AT, EE, DE, LV, LU, PT, SK, SI, ES	No thresholds (exception: Czech Republic: 3 members)	BG, CZ, EE, FI, FR, HU, IE, IT, NL, PT, SK, ES, SE;
Medium	Smallest type of works council (>10), with election	BE, DK, FI, FR, EL, HU, IE, IT, LT, NL, RO	>5 employees or members	DK, MT, PL, RO, SI
High	>50	BG, PL, UK	>20 employees	>20 employees

Note: Categories are defined based on a subjective assessment of the information given in Table 2.

While countries with higher thresholds for works councils can be found among those with rather low rates of incidence and coverage (Bulgaria, Poland, United Kingdom), there are still a number of other countries that have low or medium minimum thresholds but far lower coverage rates (Lithuania, Greece, Portugal). Some countries with very low thresholds are among those with the highest degrees of representation. In fact, many countries with high rates of coverage by works councils also have 'medium' thresholds, from which works councils may be established.

Table 1: Time facilities for employee representation foreseen in national industrial relations systems

Country	Time off for employee representatives
Austria	Time off paid if necessary; in plants with more than 150 employees one member is a full time representative, in plants with more than 700 employees two members, in plants with over 3,000 employees three members and per additional 3,000 employees one more employee representative is given full time off.
Belgium	Paid time off
Bulgaria	-
Croatia	1) Works council (WC) meetings and other activities carried out during working hours 2) WC members entitled to compensation for six working hours weekly 3) WC members are entitled to assign each other working hours from point (2) 4) If available, a working hour fund can allow a WC president or members to obtain complete time off
Cyprus	Paid time off
Czech Republic	Paid time off
Denmark	Meetings counted as working hours
Estonia	Paid time off from 4 to 40 hours depending on the size of the workforce
Finland	Paid time off
France	Paid time off up to 20 hours per months
Germany	Paid time off
Greece	Paid time off
Hungary	Paid time off up to 10% of the monthly working hours
Ireland	Time off depending on a collective agreement
Iceland	Time off (only in the public sector)
Italy	Paid time off up to 8 hours per month In addition, unpaid days off: up to 8 per year
Latvia	-
Liechtenstein	Paid time off
Lithuania	Paid time off up to 60 working hours per year
Luxembourg	Paid time off from 2 to 40 hours per week depending on the size of the workforce up to 500 employees per delegation From 500 to 750 employees: 1 full-time employee representative with time off From 751 to 1500 employees: 2 full-time employee representative with time off From 1501 to 3000 employees: 3 full-time employee representative with time off From 3001 to 5000 employees: 4 full-time employee representative with time off Above 5000: one additional employee representative with time off per 2000 employees
Malta	Time off for union related work is normally included in collective agreements
Netherlands	Paid time off, at least 60 hours per year
Norway	Meetings counted as working hours. Time off as 'necessary'
Poland	Paid time off
Portugal	Paid time off up to 25 hours per month
Romania	Time off up to 5 days per month for trade union representatives Time off up to 20 hours per month for employee
Slovakia	Time off up to 4 hours per month for one trade union representative in plants with less than 50 workers, 12 hours for one trade union representative with 50 or more employees and 16 hours for where there are 100 or more employees.
Slovenia	Paid time off up to five hours per month
Spain	Paid time off per months depending on the size of the workforce
Sweden	Paid time off
Turkey	No time off under the law but may be determined in the collective labour agreement
United Kingdom	For recognised unions, 'reasonable' paid time off

Source: Calvo et al. (2008), *Employee representatives in an enlarged Europe Volume 1 & 2*.

Table 2: Time facilities of employee representation (%)

Entitled to paid time off on weekly average basis	%
No right	17
1 or 2 hours a week	18
Half a day a week	13
1 day a week	9
Part time	6
Full time	8
As much time as necessary	29
Available time sufficient to fulfil representative duties	
No	20
It depends	7
Yes	74

Source: *ECS 2009, employee representative interviews*

Not surprisingly, the available time resources are more limited in smaller establishments. The group that has as much time as necessary is evenly spread. However, in the small enterprises, about 25% of employee representatives indicate that they have no right to time off, whereas in the very large establishments only 9% of representatives state this. In these large enterprises, 26% of the employee interviewees are fulltime representatives. Industrial sectors provide the largest time facilities for employee representatives. Time off for representative duties is less available in the education sector, where 34% report having no such right. However, this finding may be related to how working time is accounted for in this sector - that is, only the course time and not the whole workload.