Track 1 : Actors at national and European level

Shifting towards more legal recognition? The national concept of representativeness in 29 European countries

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1 - Introduction

Does the representativeness of social partner organisations legitimate their role in industrial relations systems or is it their historically legitimised role that forms the basis of their representativeness? As Van Waarden (1995) argues, causes and effects are not easily separated. Industrial relation systems are influenced and shaped by the structures and strength of their actors, while industrial relation systems may also determine the organisational structures and values of both trade unions and employers' organisations. Collective actors are not passive players simply following the rules of the industrial relations game (Dufour and Hege 2011: 38), they also influence rule-making. Their 'representativeness' allows them to do this legitimately, securing some autonomy from the represented without completely losing touch (Hyman 1997).

The context of the conduct of employer-employee relations between the key actors today is changing. Membership loss of both trade unions and employers' associations (Ebbinghaus, 2002: 475) raises doubts about their effectiveness and about their democratic legitimacy. Where national-level trade unions exercise less influence over both national politics and employment relations outcomes, there may be less pressure on employers to maintain membership of their own essentially reactive organisations - one of the major motivators in the initial formation of employers' associations (Sisson, 1987). A trend is also appearing towards potentially less consensual employment regulation systems (Welz et al, 2015). The different ways representativeness is conceived are thus key factors (Behrens Helfen 2009: 9) for the functioning of industrial relations (Brandl 2015).

Different meanings of organisational density for representativeness have been analysed separately for both employers (Van Waarden 1995) and trade unions (Vernon 2006), including how they effect mutual legitimacy (Schmitter and Streeck 1999; Silvia Schroeder 2007) and organisational capacity (Brandl 2015). Actors located in their national contexts in different industrial relations systems can also be analysed comparatively (Hyman 2001).

In defining representativeness in 1993 the European Commission argued that:

> For collective bargaining, in most countries mutual recognition is the basic mechanism, but additional formal or legal requirements may have to be fulfilled. In several countries there are mechanisms (for example quantitative criteria established by law or otherwise) to make a distinction between organisations with (the most) substantial membership and those which are less representative (EC 1993:39).

Interest representation, the EU acknowledged, may be constituted and measured in terms of a proportion of a population of employees or enterprises, but may also reflect the capacities of the social partners, and the extent to which these are acknowledged or recognised by others.

By 2015, while employers and unions in certain member states still rely upon self-regulation through mutual recognition to establish representativeness, most have a legal framework regulating the representativeness of social partners. In some countries, like Spain, it is mentioned in the constitution. Some countries have stable legal settings that were established or finalised as long as 40 years ago. This is the case in Belgium (1968-1972), Spain (1978-1985), Austria (1974), Sweden (1976-1987), Norway (1958), and largely in Germany (1949-1990).

Over the last two decades many changes have been introduced in national legal frameworks. This happened in Latvia (2014), Hungary (2102), Ireland (2013), Portugal (2012), Croatia (2012), Greece (2011) and France (2008-2010 / 2014 - 2017). In Germany certain court decisions have created firmer criteria on which to judge the representativeness of agreements. In some countries like Poland ongoing clarifications are still taking place.

With the exceptions of Italy, France and Portugal, there has been relatively little public debate about the intertwined issues of interest representation and the level of collective bargaining. Representativeness, in most Member States, thus, exists without any debate on its terms. Yet the low volume of debate reported doesn't mean that concerns are not being expressed behind closed doors, even in some of the most stable representative systems.

This paper is based on the findings of a Eurofound questionnaire completed by 29 of its national correspondents in all EU Member States and Norway. It aims to examine the different ways in which representativeness of social partners is defined at national level in different countries and at different levels – multi-sector, sectoral and company levels – and how they are changing.

We asked 61 closed questions and four open-ended questions about the definition of organisational representativeness. Most of the closed questions asked for rankings on a 1 to 5 scale (from not relevant to most important) for employers' associations at two levels (peak and sector) and trade unions at three (peak, sector and workplace or company). The impacts of representation were covered in a further 60 closed and four open questions. The actors and processes that determine representativeness were examined with 36 closed questions; the numbers of representative organisations, their bargaining capacities and the relevance of different levels of bargaining in a further 32. The data were then entered into Excel for analysis and graphing.

Four open-ended questions to the same 29 national Eurofound correspondents probed the concept of representativeness. Four more allowed additional comments on the actors and processes that shape representativeness, and another four requested the current views of the employers and unions. All the qualitative text responses were analysed within the NVIVO qualitative data analysis program.

With the data from the 29 sets of questionnaire responses and in the light of responses to open-ended question and to the literature on the topic we could then create a symbolic EU 'average' and suggest associations between different elements of representativeness. Our findings, evidently, may provide only a heuristic guide to interest representation trends in contemporary Europe.

There are some interpretative problems. We tried to ensure that our definition of interest representation and its alternatives was broad enough to enable all national correspondents to feel they could answer all the questions. A few, however, considered that we were only asking about the legal framework of 'representativeness' and its implications. Where there was no such framework, or when there was one which did not fully correspond to the industrial relations reality, the answers were sometimes more narrow than we had hoped. In these cases, we had to ask supplementary questions.

Also, problems arise with using data covering whole countries based on a single correspondent's views. We therefore asked the National Correspondents to provide us with bibliographic references and consulted the comparative literature. Finally, there are the inherent difficulties in generalising across a whole country when representativeness arrangements for the social partners at Peak, Sector and Company levels may be totally or slightly different, and their significance may differ between the employers and the unions, as well as between sectors. Our findings cannot claim completeness. Their added value is that we identify the major trends and different contemporary ways of conceiving representativeness across the European range of national industrial relations contexts.

We first consider the role of legislation in shaping representativeness. Generally speaking we can distinguish countries granting representativeness predominantly through the principle of mutual recognition by social partners from countries where it is about conforming with legal requirements to obtain representative status. Next we consider the three key drivers that contribute to the representativeness of social partners under both of these principles: the presence or absence of electoral success, organisational strength in terms of the scope of membership and, the capacity to negotiate. Finally, we then build a typology of suggesting the presence of four different conceptualisations of representativeness at national level across Europe.

1. PRINCIPLES AND CRITERIA SHAPING REPRESENTATIVENESS

While in some countries mutual recognition is the most important or the only basis for representativeness, in a growing number of others conformity with legal requirements is crucial. Thus today almost all EU Member States do have some kind of legal framework shaping how representativeness is approved to

social partner organisations. The role legislation plays in national concepts of representativeness does however differ vastly. This role can include conditions to allow them to engage in collective bargaining or conditions to extend the resulting agreements, making them generally binding. Another way how legislation can shape representativeness is by imposing thresholds, in terms of membership, organisational density, or as a minimum outcome of elections.

This part outlines the two main principles of legal conformity - where representativeness is shaped by state regulations that refer to a set of formal criteria - and mutual recognition - where representativeness is determined by self-regulation of the social partners on the basis largely of informal criteria. It examines the legislative trends and forms of thresholds, and summarises the formal and informal criteria reported as articulating with the main principles.

1.1 Legal conformity versus mutual recognition

Our first open question to Eurofound's national correspondents was to put in their 'own words the meaning of the concept of representativeness or indicate the alternative concept that is relevant in your country of origin and that deals with the social recognition or social significance and weight of collective organisations (e.g. mutual recognition, election results, membership, mandate,)?' Their responses may be ranged on a spectrum running from an informal process of mutual recognition by the social partners, with little or no legal underpinning, through systems that incorporate more legal conditions and can even appear flexible, to those systems where formal legal requirements specify the preconditions for participation in collective bargaining and binding collective agreements.

This information is complemented by answers to a closed question where we ask the Eurofound national correspondents for estimates of the relative importance in determining representativeness of certain industrial relations approaches. Two of the variables were: *'Conformity with legal requirements'*, and *'"Mutual recognition" by the "other" side of industry of the benefits of information exchange, consultation or bargaining'*. Their answers produce the results shown in **What suggestions** about the nature of representativeness do we draw from this table? First, there appears to be an association between the dominant representativeness principle and trade union density. The 11 stronger 'mutual recognition' countries at the top of the table tend to display higher average levels of trade union density (41%) than do the 11 countries where legal conformity and mutual recognition are scored more or less equally (25%) and the seven stronger 'legal conformity' countries at the bottom (14%). Second, while all the stronger 'legal conformity' countries have legal thresholds determining either whether the social partners are 'representative' or not, or whether the agreements they conclude can be extended to all firms within the sector or region, only half the stronger 'mutual recognition' countries have such thresholds.

Table 1, where the national correspondents in the 11 countries at the top of the table put 'Mutual recognition' as much more significant than 'Legal conformity', and those from the seven countries at the bottom have the opposite view.

What suggestions about the nature of representativeness do we draw from this table? First, there appears to be an association between the dominant representativeness principle and trade union density. The 11 stronger 'mutual recognition' countries at the top of the table tend to display higher average levels of trade union density (41%) than do the 11 countries where legal conformity and mutual recognition are scored more or less equally (25%) and the seven stronger 'legal conformity' countries at the bottom (14%). Second, while all the stronger 'legal conformity' countries have legal thresholds determining either whether the social partners are 'representative' or not, or whether the agreements they conclude can be extended to all firms within the sector or region, only half the stronger 'mutual recognition' countries have such thresholds.

Table 1: **Relative importance of Mutual recognition and Legal conformity**

	Relative importance of mutual recognition and conformity to legal criteria	Trade Union density (% of employees)[4]	Threshold present (EM=Peak & Sector employers TU=Peak, Sector & Workplace trade Unions)	
			Representation	Extension of agreements
DK	11 countries where mutual recognition is scored by Eurofound national experts more important for representativeness than conformity to legal criteria	69		
UK		26	(TU Workplace vote)	
ES		17	TU elections EM coverage	
CY		51		
AT		33		
SE		70		
IT		34	TU membership TU elections	TU membership/ TU elections
PT		19		EM coverage
FI		75		TU/EM coverage
NL		29	EM coverage	
NO		51		
SI	11 countries where mutual recognition and conformity to legal criteria are both given similar importance for representativeness by Eurofound national experts of those countries	23	TU density	
HR		17	TU/EM coverage + membership	
EE		11		EM coverage (proposal 2014)
LT		8		
LU		33	TU elections	
MT		50	TU membership	
IE		28	TU membership	
LV		6		EM coverage
BE		66	TU/EM membership TU elections	
EL		28		EM coverage (annulled 2011)
HU		10	TU membership	EM coverage
PL	7 countries where conformity to legal criteria is scored by Eurofound national experts as more important for representativeness than mutual recognition	17	TU membership	
BG		14	TU/EM membership	
DE		18		TU/EM coverage TU membership
FR		8	TU elections	
CZ		10		TU/EM membership
RO		17	TU membership	
SK		14	TU membership (annulled 2013)	

Source: Eurofound National Correspondents (February-May 2015)
The numbers and ratings summarised in this table are based on one single expert opinion per country

[4] This information was provided by Eurofound national correspondents. For some MS, union density figures shown may vary from other sources that may refer to all workers, rather than employees, or be given at different dates. Other sources indicate for example for Belgium: union density according to ICTWSS is 55% in 2013, and according to European Social Survey 48% in 2012.

1.2 Representativeness in legislation

In some countries the legislator has taken on the responsibility of deciding which organisations may participate in collective bargaining, the mechanisms by which collective agreements are deemed to cover groups of workers and employers[5]. The principle of conforming to the law confers representative status and the rules by which it is achieved on the partners or on the agreements they reach.

The data collected suggest that making detailed demands on the social partners to 'prove' their credentials was rare before 1989. Subsequently, the practice has become more common. This trend has reflected the redesign of industrial relations systems in the Central and Eastern European Member States, and the 'perforations' or 'pull-downs' of sectoral agreements referred to by Marginson (2015). In particular it has responded to unease expressed by some employers at the traditional extension of collective bargaining agreements to cover employers (and workers) who were not directly involved in or who did not mandate the negotiators.

In some countries securing representative status led to the social partner being acknowledged as a competent collective bargaining partner at national or sector level; and in some countries it was either that acknowledgement or the gaining of that status in respect of collective bargaining that then permitted the organisation to participate in tripartite bodies. Having access to (bi-partite) collective bargaining is of course something different from obtaining membership in tripartite bodies, and both outcomes of representativeness can be granted on different criteria, or on similar criteria in different legal sources.

The legal thresholds shown in Figure 1[6] for the 22 countries where they exist are usually required in terms of:

(1) Employer coverage.
The percentage of employees or firms covered within a sector by the members of the employers' associations signing the agreement.[7]

(2) Union elections.
The union election results in works council or other forms of periodic workplace or national work-based or insurance-based social elections.

(3) Union membership or density.
In several countries legislation specifies a minimum number of trade union members or employer affiliates, so to make the data comparable we have converted that into a density rate by dividing the numbers by the country's total number[8] of employees.[9]

Figure 1: **Minimum Thresholds (%) for general representativeness or recognition (R) and for the Extension of a collective agreement (X)**

[5] This is the case in Austria, Belgium, Croatia, Czech Republic, Finland, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Portugal, Slovakia, Slovenia, Spain, UK.

[6] Where two threshold levels are mentioned, we graph the lower one. Thus in Slovenia peak level representativeness for trade unions has a 10% threshold (graphed) while at sector level this is 15%. Different thresholds covering the status of a 'representative social partner' or the 'legitimate extension' of a collective agreement may be required for peak-level and sector-level social partners. This is explored in more details in our report.

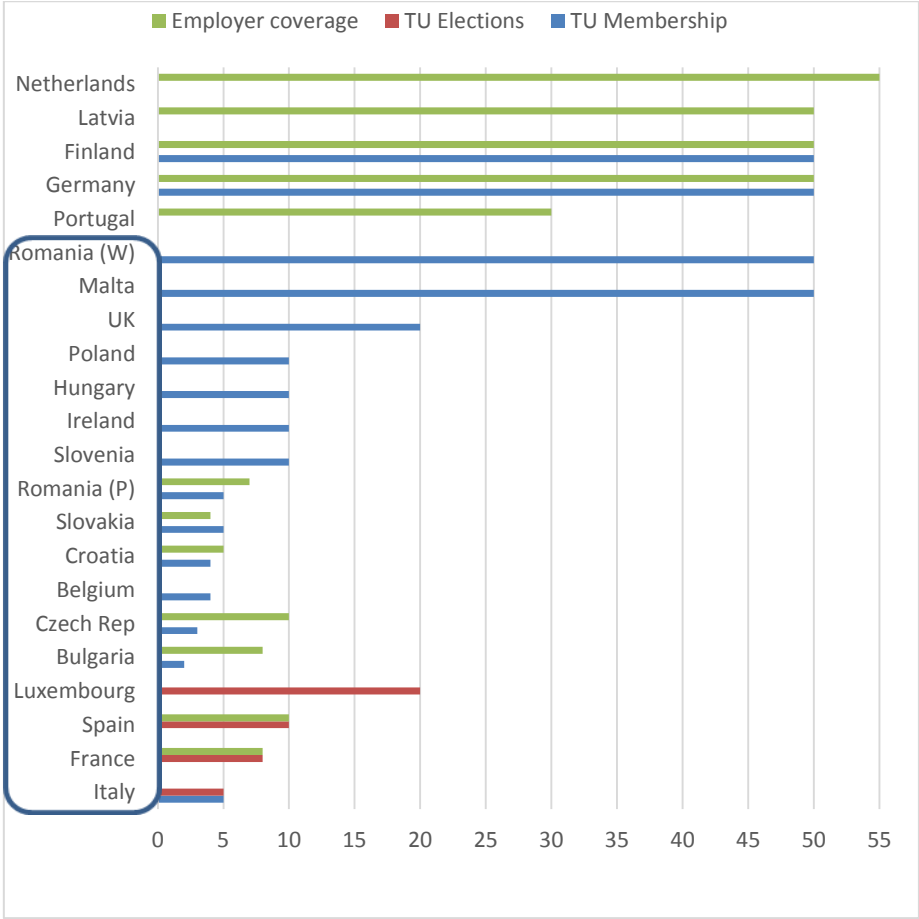
[7] The pre-2011 Greek law specifying that for extension 51% of the employees covered should be affiliates of the signatory employers' association, is not included here This is because the 2015 government promised to restore this situation, but at the time of publication of this report in 2016, this had not yet happened The German 50% coverage for employers reported was a court decision concerning the construction sector.

[8] The number of employees was provided by the Eurofound national correspondents

[9] A 2011 law in Slovakia specifying 30% trade union density for representativeness was repealed in 2013. Thus we omit Slovakia from the graph. The UK 25% figures reflect the requirement where there is a legal ballot for trade union recognition in a single workplace or company, half of the workforce must vote, and those in favour must win a majority.

X

R



Source: Eurofound National Correspondents (February-May 2015)

Specific thresholds are less common for employers than for the trade unions. Where thresholds for employers do exist they are either a requirement legitimating the extension of collective agreements beyond the immediate signatories to all firms within the sector, or a threshold permitting access to tripartite bodies.

It is also important to recall that many of the countries where there is no legal threshold do, in practice, use 'social strength' – and in particular trade union density – as an implicit indicator of representativeness. These tend to be the higher union density, strongly mutual recognition countries such as Sweden, Denmark, Norway and Cyprus.

Analysing the changing legal context it appears that the bulk of changes referred to took place recently. Just one of these detailed threshold specifications referred to was located in the decade following the Second World War; and only one correspondent (for Spain) referred back to legislative changes in the 1970s decade of industrial action. There is also only one country (Slovenia) whose correspondent considered it relevant to refer back to the transforming post-1989 years, when the command economies of Central and Eastern Europe established new political and social arrangements.

In seven countries the national correspondents refer to laws passed since 1999, giving weight to the argument that stability in representative arrangements has given way to instability for a significant number of EU Member States.

In two countries recent changes may limit the ease with which collective agreements can be extended to all employers and employees in the sector. In Portugal the employers must, since 2014, have affiliates of 30% of the SMEs in the sector before the agreement can be extended. In Croatia the proof of union membership for peak unions now requires employers to list the numbers of employees who have instructed them to deduct union dues from their pay.

Reaching agreement in decentralised bargaining has also been made more difficult in Hungary (where membership numbers have replaced electoral support as the measure of representativeness) and in Romania (where the membership density threshold has been raised from 33% to 50%).

1.3. Mutual Recognition

Instead of the state determining which organisations may negotiate and sign binding agreements, mutual recognition involves self-regulation by the social partners. Mutual recognition is a relationship that matures incrementally over time. The perception of other social partners' organisations as useful and effective interlocutor can be the basis of mutual recognition. Though it can also be that it is simply the consequence of the need of a counterpart to engage in social dialogue or collective bargaining. Legitimate or 'mutual recognised' trade unions and employers' associations create their own institutional fora within which they collectively bargain or consult on issues of mutual interest in the employment field. For Hyman (1997: 311) this 'legitimacy' is in part about the historic record of achievement, part about the strength of the available ideological resources, and part about capacity of a social partner to inform, explain and win an argument.

Membership strength is very important to winning this argument. Under the mutual recognition principle, membership numbers are a major means to the end of securing both the acknowledgement of representative status and the substantive or procedural improvements that may follow from concluding collective bargaining agreements. Yet in the strongly mutual recognition countries this is not generally a legal requirement. Thus, the main difference is which party decides most on representativeness; either the state or the other social partner(s).

But what does 'mutual recognition' actually mean? The key elements described by the 13 national correspondents who identify mutual recognition as important or most important in their systems may be summarised in four points:

1. A relatively low level of state regulation of employment relations
2. Organisational capacity to act on behalf of a significant number of social partner organisations or members
2. Sufficient mutual trust with the other side of industry to enable collective agreements to be negotiated and implemented
3. Acknowledgement of the 'other' side as having an equivalent legitimacy as a social actor.

The social partners in 'strong' mutual recognition countries tend to be well embedded, and to possess organisational coherence and capacity linked to associational strength and democratically legitimate forms of policy-making and mandate-delivery. These features are key in determining the role of the 'other side' in acknowledging representative status, whose denial can even be used as a sanction.[10]

Mutual recognition usually reflects more the understanding of each other's capacity to make and keep agreements between themselves than an externally imposed regulation or formula. Mutual recognition is also frequently described as being a key component of a system's DNA, what could be described as an 'industrial relations pathway'.

Legitimacy arising from custom and practice depends upon mutual recognition. Custom and practice refers to the unwritten but respected informal regulations governing relations between employers and trade unions and workers.

2. Three key drivers shaping Representativeness

Three drivers appear to play important roles in determining representativeness: the outcome of workplace elections, membership based on organisational strength, and on the capacity to negotiate.

[10] Two unions that broke away from the main Swedish trade union, LO, for example, were both refused recognition as legitimate representative organisations by the employers and by other unions. They are thus not able to participate in collective bargaining, but are not bound by the industrial peace obligation it entails.

2.1 Electoral strength (representativeness based on election results)

Representativeness can be based on results in workplace employee representation elections. Only for the unions in Belgium, Italy, Spain, Luxembourg and France is it rated 'significant', 'important' or 'most important', and in these same countries, except in France,[11] it has no or little relevance for the employers. In Slovenia, Denmark, Ireland, Greece they are also used in appointment procedures to secure social partner delegates to labour courts or arbitration bodies, but without much relevance for overall representativeness.

The significance of electoral results for representativeness lies in the outcome of workplace elections. Electoral thresholds for peak and sector trade unions, and particularly the recent changes to them are indicators of the way legislation may use balloting procedures to help larger existing trade unions maintain (and even extend) their representativeness, while for smaller or newer actors, such thresholds can hinder them to obtain "representative" status.

2.2 Organisational strength (representativeness based on membership)

The capacity of an organisation to represent the interests of a wider group can depend on the budget, the human resources in terms of staff, the internal structures, the capacity to mobilise and to assemble a mandate from the affiliates. Crucial for the representativeness of most social partner organisations is their membership density. The membership fee based budget of an organisation can provide[12] its capacity to act autonomously. In a context where several social partner organisations on one side may compete for members, the strength of their membership can also affect their capacity to act autonomously and their capacity to mobilise. Organisational weakness or significant membership decline can have an eroding impact on representativeness. Finally, the longevity of being a representative organisation can also enforce representativeness, as legitimacy arises from custom and practice.

Membership strength is obviously significant whenever thresholds have to be reached, but is possibly still more important when there are no thresholds. This is because under the mutual recognition principle, membership numbers are a means to the end of securing both the acknowledgement of representative status and the substantive or procedural improvements that may follow from concluding collective bargaining agreements.

Organisational strength can be provided by high membership, but also by a capacity to mobilise members[13] and non-members. Trade unions with traditionally small memberships may find their organisational strength more in their capacity to mobilise (including among non-members) than in their membership density.[14]

Membership strength and the capacity to mobilise appear to be more important in countries where representativeness emerges with mutual recognition. Among the higher rated eleven countries in responses (of Eurofound national correspondents) to the organisational strength questions (mobilisation *and* membership) there are four (Portugal, Denmark, Finland and Sweden) that also appear among the strongest ten in the mutual recognition scale and just one (Czech Republic) of the seven strongly legal conformity countries.

[11] It has to be noted that the most important elections in which the employers voted by direct universal suffrage, the Prud'hommes elections, were suppressed on 11 December 2014 by the French constitutional court, and replaced by the nomination of employer and employee representatives on the basis of the representativeness of their organisation. From 2017 French employers' associations will have to affiliate 8% of employers within the sector or national constituency they claim to represent to secure representativeness status.

[12] There can be other sources of capacity than the budget, and given the state funding that some unions receive directly or indirectly, membership fees are not the only criteria. This is partly also true of employers.

[13] Social partner organisations can also gain representativeness through their internal democratic decision making structures. Depending on their tradition of consensus building or voting systems where a majority puts their views forward against a minority, or on the way the leaderships of a social partner organisation is elected or appointed, is an aspect of industrial democracy that can enhance its capacity to mobilise, and maybe also its legitimacy. The internal decision making or election of an organisation its leadership, has not been explored in this study.

[14] France is a strongly legal conformity country where the non-member mobilisation capacity of the trade unions is much more important than membership strength for their representativeness.

Not surprisingly, Eurofound national correspondents from Spain, Cyprus, Austria, Hungary, Belgium Portugal, Luxembourg and Ireland all reported that mobilising capacity of the unions is more important for their representativeness than for the employers.

2.3 Capacity to negotiate (enabling representativeness)

Membership strength and mobilising power may not, however, be sufficient for a union to secure representative status. Some employers and some employer associations may deliberately avoid negotiating with or recognising a 'strong' union in favour of a 'weaker' one.

The capacity to negotiate involves access to the bargaining process where an autonomous and independent organisation can be mandated to make lasting commitments on behalf of its members. It can also mean that the negotiating parties are given the right, based on their representativeness, to conclude agreements that are made generally binding (extension *erga omnes*), also for those that are not member of the contracting parties signing the agreement.

Although 'negotiating capacity' is sometimes described as a nearly autonomous element, it is better seen as a combination of factors that lead towards social partner dialogue which, in turn, then lead to collective agreements. The prevalence of comments by Eurofound national correspondents from countries with 'more mutual recognition' based representativeness, would support the argument that such organisational strength-defined 'capacity' is more significant for representativeness for them. Arguably, the criteria of 'negotiating capacity' should be understood as intertwined with both 'organisational strength' and 'social legitimacy', and is therefore more likely to be used in systems based on mutual recognition.

A mandate from affiliates or members was rated by the national correspondents as 'important' or 'most important' at peak and sector level for the trade unions or employers' associations or both in 16 countries. It is 'most important' at peak level for employers' organisations in ten Member States: Denmark, Croatia, Latvia, Hungary, Slovenia, Luxembourg, Germany, France, Italy and Finland. In six countries a specific mandate was irrelevant or only slightly relevant. In some other countries, the act of taking up membership seems to be considered as the moment at which the employee or employer delegates to the union or employers' association the authority to sign collective agreements on their behalf.

3. A typology - Four main models of representativeness

Four models of representativeness thus appear to coexist in Europe ranging between the ideal types of mutual recognition and legal conformity:

1. a social partner self-regulation system of mutual recognition. This is associated with the negotiating capacity and social strength drivers and with very little state regulation on representativeness;
2. a mixed model combining elements of social partner mutual recognition and of state regulation and legal conformity;
3. a state-regulated system of legal conformity where 'social strength' is used as a legal measure of representativeness; and
4. a state-structured system of legal conformity in which electoral success primarily determines representativeness.

We have named these systems of representativeness respectively: Social Partner Self-Regulation; Mixed Social Partner and State Regulation; State Regulation Membership Strength; and State Regulation Electoral Strength. We allocated the countries shown in Table 2 to them according to their positions on our Mutual Recognition to Legal Conformity scale, on their scores on the three driver criteria groupings discussed above, and on the qualitative commentary made by the Eurofound national correspondents.

Table 2: Classification of Member States and Norway by Representativeness model

Representativeness model	Countries
Social partner self-regulation	Cyprus, Denmark, Finland, Ireland, Lithuania, Malta, Norway, Slovenia, Sweden and the UK.
Mixed model	Austria, Estonia, Germany, Hungary, Italy, Netherlands, Portugal and Spain (for employers).
State membership regulated	Bulgaria, Croatia, Czech Republic, Estonia, Greece, Latvia, Poland, Romania and Slovakia.
State electoral strength model	Belgium, France, Luxembourg and Spain (for trade unions).

3.1 Social Partner Self-Regulation model

This model brings together countries where the mutual recognition is far more important than legal conformity at all levels. Here, the implicit criteria of representativeness presented relate to negotiating capacity and social strength drivers. Ten countries (Cyprus, UK, Sweden, Denmark, Finland, Norway, Slovenia, Malta, Ireland and Lithuania) are essentially self-regulating at the moment and six (Italy, Portugal, Austria, Netherlands, Hungary and Germany) are a mixture of self-regulation and state regulation.

The UK is an example of the self-regulating countries where representation is based on the mutual recognition principle (Contrepois, 2015). Its industrial relations system is historically based on voluntarism and single channel representation. There is just one major union confederation, the Trade Union Congress (TUC) and, since 1965, just one major employers' association, the Confederation of British Industry (CBI).

The voluntarism principle implies that the State intervenes very little or not at all in the regulation of relations between employers and employees. The representativeness of the two collective actors are then based on voluntary mutual recognition, where each side recognizes the legitimacy of the other. In a political economy dominated by 'laissez-faire', state regulation traditionally occupied a limited place in structuring employer-employee relations.[15] Industrial relations are thus primarily the product of the balance of power between employers and unions. There are no legal provisions obliging social partners to negotiate collectively, while individual relationships are mainly governed by the employment contract. Collective agreements are now non-existent at national level and, outside the public sector, rare at sector level. Without any obligation to negotiate only a third of employees are now covered by collective agreements.

The single channel representativeness tradition was embedded when UK unions were strong and could enforce a closed shop, often obliging those entering work to join the union. Today it still means that nearly everywhere the trade union is the sole legitimate instance of employee representation. Other institutions and legal structures of employee representation that exist in other European countries are effectively absent in the UK.

Since the late 1970s voluntarism and single channel representation have been strongly questioned without being fundamentally changed. In the 1980s and 1990s the Conservative government took many legislative measures to limit the role of unions, removing the closed shop and restricting their ability to organize effective strikes. Thus the Trade Union and Labour Relations Act (1992) defined trade unions as '*organisations whose principal purposes include the regulation of relations between workers and employers or employers' associations*'.

[15] Nonetheless, the national correspondent pointed to the role of government action in encouraging trade unions to take on representative roles: 'Historically, during the early/mid-20th century and especially during the Second World War and the immediate post-war period, UK governments actively promoted union recognition and the establishment of sectoral bargaining machinery. In the public sector, state influence on the shape and scope of bargaining/consultative arrangements (including pay review bodies) remains a more significant factor'.

The Conservatives' restrictive measures were not repealed under Labour, in power between 1997 and 2010, and still apply today. Besides extending individual employment rights to include the protections of the social chapter of the Maastricht Treaty, Labour did, however, introduce new regulations creating minimal criteria for establishing representativeness. The 1999 Employment Act included trade union recognition provisions, as referred to above. Yet although for the first time the law established a lengthy process to allow workers to secure trade union recognition, it did not go further to require employers to undertake meaningful collective bargaining. Equally, no legislation or legally binding collective agreements exist conferring extensive rights to local trade unions.

In answering the supplementary question concerning actors who are significant in determining representativeness, the UK national expert sees the presence of competitor associations or trade unions as very important, as are their membership density and numbers. The law is significant for the unions but only slightly relevant for the employers, while collective bargaining is viewed as very important for the unions and irrelevant for the employers. Trade union capacity to mobilise, derived from its membership density and numbers, as well as its physical asset base and longevity of being a recognised representative institution, all play a part in establishing recognition by the employers.

3.2 Mixed Social Partner and State representativeness model

This model brings together seven countries where mutual recognition is balanced by some strong elements of legal conformity at different levels. These may include thresholds, electoral targets and some government role. The implicit criteria of representativeness still, however, reflect mutual recognition and self-regulation, and relate to negotiating capacity and social strength. These countries are: Italy, Portugal, Austria, Netherlands, Hungary and Germany.

While some of these countries are former EU15 member state and the other are EU13 member state from the 2004 accession, all illustrate the combination of relatively strong ratings on the non-legislative government role, negotiating capacity and social strength scales. Some other countries in this group, such as Spain, will also place considerable emphasis upon electoral success for the trade unions.

Austria provides a good example of mixed social partner and state representativeness model. In Austria this country employee and employer representation is based on a complex articulation between voluntary organisations and statutory bodies from which representatives are elected. At peak and sector level, social partners come from four institutions that sit together on a joint national committee. These are the Austrian Trade Union Federation (ÖGB), the only peak trade union organisation recognised as representative by the Government; the regional chambers of Labour (Arbeiterkammern), employee representative bodies that have a capacity to negotiate and that are established by statute law for which membership is obligatory; the Austrian Federal Economic Chamber (WKO) and its numerous (sub)sectoral subunits, employer representative bodies that have a capacity to negotiate; and the Committee of Agriculture chamber Presidents.

At company level, employees are represented through a work council for which they elect representatives by direct universal suffrage. These representatives have the capacity to negotiate at company level on the basis of the existing national collective agreements.

Mutual recognition of the social partner organisations is a key element for the functioning of the Austrian social partnership, because – in legal terms – neither party on the employer or employee side can be forced by the other side to enter into collective employment regulation. Since 1945 the social partners, have internalised a strong commitment to the principle of harmonious co-operation; this commitment finds expression in a system of industrial relations free from substantive intervention by the state. The capacity to make lasting commitments on behalf of their respective members is essential for the peak organisations on the two sides of industry, because it means that agreements concluded by the peak-level organisations are binding for all their members.

There is no explicit concept of representativeness for voluntary organisations of labour and business in Austria. However, in relation to the capacity of voluntary organisations to conclude collective

agreements, the Austrian labour law (i.e. the Labour Constitution Act) identifies some general preconditions a voluntary collective interest organisation has to meet: the (financial) independency (in particular, of the other side of industry); an extensive occupational and territorial coverage in terms of membership domain, which means that the organisation must at least be operative above company level; and a major economic importance in terms of the absolute number of members and business activities in order to be in a position to wield effective bargaining power. The criterion of representativeness (whereby this term is non-existing in the Austrian labour law) is thus linked to the capacity of collective interest organisations to conclude collective agreements (the right to conclude collective agreements is conferred by the Federal Arbitration Board) and hence to their recognition as relevant social partner organisation.

When assessing an organisation with regard to its fulfilment of the requirements for obtaining the capacity to conclude agreements, the Federal Arbitration Board does not apply certain across-the-board thresholds in terms of members or densities; rather it always assesses an organisation's 'representativeness' in the context the economic sector/s in which it claims to be a relevant social partner. For instance, although an interest organisation usually needs to have a membership domain and be active in the whole territory of the country in order to be recognised by the Federal Arbitration Board as possessing the capacity to conclude collective agreements, in a few cases also organisations of only regional significance have been granted recognition as possessing it. This is because the economic and/or employment structure of a particular segment of the economy may in a particular province (Land) widely differ from the overall situation in the country, which may, in turn, from the Board's point of view justify the establishment of a separate social partner organisation (which is deemed 'representative' for the employer or employee side of this segment) to be equipped with the right to bargain on behalf of this segment of the economy (in a particular part of the country).

In all those countries where mutual recognition is balanced by some strong elements of legal conformity at different levels, the cross-over between some forms of state structuring of representativeness and strong traditions of self-regulation suggest the possibilities of greater state-social partner tension and in some countries a higher level of social partner political engagement. In all of these countries except Austria the legal context of representativeness has been tightened since 1998.

3.3 State Membership Regulation representativeness model

The State Membership Regulation model brings together nine countries where the law has very considerable significance for representativeness. The state has structured representativeness in such a way that legal conformity is viewed as being clearly more important than mutual recognition. The explicit or implicit criteria of representativeness within this model all relate to definitions of numbers or density of membership or of sectoral or territorial coverage by the social partners.

These countries are: Latvia, Bulgaria, Poland, Czech Republic, Croatia, Romania, Slovakia, Greece[16] and Estonia. All except Greece are EU 13 Member States, reflecting the influence of the EU transition period in recasting their industrial relations systems. A strong non-legislative government role, complementing the legal framework, is common among countries in the State Membership Regulation model.

The Bulgarian national correspondent does not see electoral success as being at all relevant. But alongside formal state membership density requirements for representativeness, there is the question of how this is actually applied in practice. The importance of good relations with the government of the day is not to be underestimated. This, in turn, often depends on the negotiating capacities and social strength of the social partners. But respect and conformity with the law remains a critical requirement.

The Bulgarian system is based on a plurality of social partners, both on employee and employers' side. Two main trade union confederations represent employees, the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour (Podkrepa); three confederations – Bulgarian Industrial Association (BIA); Confederation of employers and Industrialists in Bulgaria

[16] Until 2011 Greece had a law requiring 51% employee coverage of a sector before an agreement could be extended. Since then collective agreements are only binding on their signatories. However, the existing law conferring representative status on trade unions who secure the highest vote in judicially-supervised elections in the separate private and public sectors has not been repealed.

(CEIBG); Bulgarian Industrial Capital Association (BICA) - and the Bulgarian chamber of commerce represent employers.

In January 2012, the legislator adopted stricter criteria for social partners being recognised nationally representative. According to the Bulgarian labour code (art 34), the following criteria apply to peak level trade unions:

- Minimal number of members - at least 75,000 members;
- Representation in the economic sectors - active in more than a quarter of NACE code-defined economic activities, with at least five members in each, or have at least 50 member organisations with at least five members from different NACE code economic activities;
- Territorial representation - represent staff in local authorities in more than a quarter of Bulgaria's municipalities;
- National governing body – have a national managing body
- Length of experience – have the status of a legal entity, obtained by registration as a non-profit association at least three years before the census.

For employers' organisations (art. 35 of the Labour Code), the requirements include:

1. Affiliate sector/branch structures and companies that have a total of at least 100.000 employees for employers organisations[17]
2. Representation in the economic sectors - represent employers in more than a quarter of the NACE code-defined economic activities with no less than 5% of employees in each economic activity, or a minimum of 10 employers in each activity;
3. Territorial representation - represent employers in more than a quarter of Bulgaria's municipalities
4. National governing body – have a national managing body; Length of experience - have the status of a legal entity, obtained by registration as a non-profit association at least three years before the census.

The nationally representative organisations of employers and trade unions can acquire the statute of representative, following their demand, from the Councils of Ministers for 4 years. Once each four years the Council of Ministers carry out procedure for the recognition of the nationally representative peak organisations. The president of the National Council for Tripartite Cooperation (often it is a vice-Prime minister of Minister of Labour) announces the procedure in the State Gazette six months before the expiry of the 4-year term.

At sector and company level, the trade union and employer organisation representativeness is measured in the light of the legal definition and mechanism for verification at national level. But for trade unions and employers' associations that do not belong to a national representative organisation, these criteria do not apply at these two levels, and less formal arrangements may still appear.

3.4 State Electoral Strength representativeness model

This model brings together countries where legal conformity is also far more important than mutual recognition at all levels. But in this model the criteria of representativeness have a degree of ambivalence. They are not fully top-down, but contain within them an element of democratic control: the criteria used relate to social partner, primarily trade union, being electoral success in workplace or special national elections.

The four countries represented within this model are Belgium, Luxembourg, Spain and France. In these countries, electoral success is a huge driver for employee organisations. For the employers, in contrast, it is only nearly relevant in France, and irrelevant in Belgium. The non-legislative influence of the government on representativeness is rated 'most important' for the trade unions in all four countries.

[17] This requirement has been ruled as being unconstitutional by the Bulgarian constitutional court.

The state clearly does not just intervene to frame the structures and rules of representation and of access to them. In the State electoral strength model it also appears to play a much greater role in supporting both social partners.

France, where electoral thresholds were introduced in new legislation from 2008, perfectly illustrates the state electoral strength representativeness model. In this country, representativeness for both trade unions and employers' associations has a precise definition set by Acts of Parliament ever since 1936 (Contrepois, 2011). That definition became even more precise when in 1966 the law decreed that five union confederations[18] would have permanent nationally representative status on the basis of five criteria (number of members, independence, membership fees, level and length of experience, and their patriotic attitude during the Occupation in the Second World War).

In 1982 the same full legal recognition[i] was given to the five confederations at company level, even if they did not have a branch in the firm. Thus until 2008, however many members they had, and however many workers voted for them, the five main legally-recognised confederations effectively held a monopoly over the right to name trade union representatives and to put up candidates in the first round of works council and worker representatives (*délégués du personnel*) elections in all companies, without having to prove that they were representative of a firm's workers. In addition they were officially endowed with a whole range of responsibilities, principally the elaboration and implementation of work regulations, as well as the management of social welfare organisations. As a result of their participation in these missions, the State, the jointly–run welfare organisations and many companies ensured that these unions received the necessary legally-backed means to carry them out: facility time paid by public sector firms and large companies was made available, and some funding through grants.

This legal framework gave representatives of these French unions rights to negotiate agreements on the terms and conditions of work covering most occupational categories or professions and within companies.

The French Constitutional Court decided on November 6 1996 to permit alternative methods of collective bargaining in companies without union delegates, although a union role was maintained. Its Council ruled that 'workers who had been elected or who held mandates guaranteeing their representativeness can also participate in the collective determination of working conditions as long as their interventions has neither the object nor the effect of placing obstacles to the interventions of the representative union organisations.'

In 2008 a new law[19] then abolished the legally-binding representative status for the five main confederations and introduced seven required criteria of representativeness. They are respect for republican values, union independence, financial transparency, the length of time the union has existed, its influence, its number of members and electoral success. This final criterion is the central one for the whole reform, and it will be measured at every election, forcing all the unions to regularly prove their representativeness. The status is acquired at workplace level by the trade unions that obtain a minimum of 10% of all votes in workplace elections; at sectoral level by the trade unions that obtain 8% of the ballots votes and have a balanced territorial presence; and at multi-sectoral national level by the trade unions that obtain 8% of the ballot votes and have a balanced sectorial presence (in industry, services, building, trade, etc.).

The August 20 2008 law also includes a section about the validity of collective agreements. From January 1 2009 company-level agreements are only valid if the unions signing them secured at least 30% of the votes in the first round of the relevant workplace elections. This measure became law in 2012 for sector-level and national-level agreements.

[18] The five confederations were the Confédération Générale du Travail (CGT), the Confédération Française et Démocratique du Travail (CFDT), the Confédération Générale du Travail-Force Ouvrière (FO), the Confédération Française des travailleurs Chrétiens (CFTC) and, only in relation to white collar and management workers, the Confédération Générale des Cadres (CGC).

[19] Act of Parliament issued on 20 August 2008, relating to social democracy renewal and working time reform.

This new legislation, which joined a bottom-up process of establishing representativeness to the existing top-down process was reinforced by two new laws in 2010 and 2014. The 2010 law[20] was aimed at organizing the terms of a specific poll to measure the audience of trade unions in companies employing less than 11 employees at regional level each four years - with special rules for the agricultural sector. The first elections were organized in late 2012 and attracted only 10 % of voters. The second Act of Parliament issued on 5 March 2014 concerned vocational training, employment and social democracy. It established six representativeness criteria for employers: respect for republican values, independence, financial transparency, the length of time the association has existed, its influence, and assistance to its members. A decree on June 13 2015 then specified the organisation had to exist for two years, and regroup at least 8% of the firms within the sector, counting only those who paid their subscriptions in the preceding year. Employers' representativeness in France will thus be measured for the first time in 2017, while 2017 will also be the year during which trade union representativeness will be measured for the second time.

The actors who have most authority in terminating the representativeness of social partner organisations in France are the Government and the Courts. The role of the other social partners in terminating 'representativity' was rated as 'irrelevant'.

4 CONCLUSION

At the outset, we asked: Does the representativeness of social partner organisations legitimate their role in industrial relations systems or is it their historically legitimised role that forms the basis of their representativeness?

We are now in a position to provide a tentative answer. Three of the models described above are largely embedded deeply in their national country histories. The more deeply (and historically) they are embedded, the more likely it is that it is this institutionalisation that forms the basis of their representativeness. Where, as in the 'State Membership Regulatory' model, unions or employers have to 'prove' their representativeness in order to secure a presence in negotiating employment regulations their legitimacy is less secure.

Most employers' organisations and trade unions prefer to refrain from openly discussing the failings or strengths of the ways in which national rules and regulations establish their credentials for participating in bipartite or tripartite social dialogue. The implication is that in some countries tripartite arrangements may not deepen or strengthen citizen involvement in democratically influencing major decisions that affect peoples' working lives.

We have also identified an important trend. At national level there is hardly any open debate about representativeness. Yet, as illustrated in Appendix B and referred to above, many countries are now tightening their thresholds to make it more difficult to legitimate the extension of collective agreements across whole sectors.

[20] Act of Parliament issued on 15 October 2010 completing former law on social democracy issued in law n° 2008-789 issued 20 August 2008.

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Appendix

Table A EU Member States significant criteria of representativeness for the Trade Unions (on a 1-5 scale from 1 = non relevant to 5= most important)

Peak level unions	EU28	Mutual Rec. 10	Legal Conf. 5
Electoral success	2.2	2.0	1.8
Government action	2.4	1.9	2.4
Union density	2.7	3.0	2.0
Financial independence	3.2	1.5	4.6
Union membership	3.4	3.3	3.4
Mandates	3.4	3.6	2.8
Autonomy	3.6	2.8	4.6
Mobilising capacity	3.7	4.0	2.4
Lasting commitments	3.7	4.0	1.6
Sector level unions	EU28	Mutual Rec. 10	Legal Conf. 5
Electoral success	2.2	2.0	1.8
Government action	2.5	1.7	2.4
Union density	2.7	2.7	2.0
Financial independence	2.4	2.0	2.2
Union membership	3.3	3.0	3.4
Mandates	3.0	3.5	2.0
Autonomy	3.3	2.8	3.2
Mobilising capacity	4.1	4.2	3.4
Lasting commitments	3.9	4.0	2.4
Workplace level unions	EU25	Mutual Rec. 10	Legal Conf. 5
Electoral success	2.6	3.0	2.0
Government action	2.5	1.7	2.4
Union density	2.7	3.0	2.0
Financial independence	2.2	1.4	2.8
Union membership	3.4	4.2	2.8
Mandates	3.1	3.8	2.5
Autonomy	2.9	2.0	2.8
Mobilising capacity	3.6	3.6	2.6
Lasting commitments	3.8	3.6	3.0

Ratings by Eurofound National Correspondents. The highlighted cases are those that differ by 0.5 or more from the EU28 average.

Figure B Three most significant laws on European representativeness, 1946-2015