



INCLUSION OF EMPLOYEES INTO DECISION MAKING PROCESSES



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Publication



Association of employers of Slovenia
Dimičeva 9, 1000 Ljubljana, Slovenia
T.: +386 (0)1 5634881
E-mail: delodajalci@zds.si

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A. Introduction

Anže Hiršl

The participation of workers in decision making processes in the company can be somewhat defined as the participation in managing changes, namely in the work that deals with the future position or future rights of workers. Preparing workers to deal with changes or changed circumstances is also the main reason for including employees into the decision making processes. It needs to be highlighted that preparing workers to deal with changes or changed circumstances is not the only reason for including employees into the decision making processes. In addition to the interests of employees, the participation in decision making processes also benefits the company and the employer, which is often forgotten or the employer's interests are not adequately defined by law.

The importance of including workers into the decision making processes is also recognised by the European legal order which defines the purpose of workers cooperating in management processes and determines the minimal operation frameworks of the employee representatives. The directive also directly defines the interests of the company in the framework of workers cooperating in management: a more flexible work organisation and enhancement of the company's competitiveness.

In accordance with the EU values and the needs in industrial relationships it is important to raise the awareness of the significance of employee representatives' role in companies and countries that are in the process of closing in on the EU or are just entering the process. For this purpose, the Association of Employers of Slovenia (ZDS) in cooperation with their project partners from Slovenia (CPM), Montenegro (UPCG), Macedonia (BCM), Croatia (HUP) and with the support of Germany (BDA), carried out the WIM 2 project, the purpose of which is to raise the awareness of potential benefits by implementing the participation of workers in the decision making processes, the identification of challenges and mental barriers which could hinder the implementation of participation models, and the search for specific solutions or possible ways to transfer that part of the European legal order, which addresses the participation of employees, into the decision making processes.

We, the project partners, have prepared this publication in order to show the legal and actual participation frameworks of including employees into the decision making processes, to critically elaborate and present the two participation models in two member states and to form the recommendations for an effective transfer of relevant parts of the European legal order into the national legislation of future members by taking into account the conclusions of research done in countries who are the project partners.

B. EU legal framework for the participation of workers in decision making processes

Anže Hiršl

1. Legal frameworks for the participation of workers in decision making processes

The International labour organisation (ILO) defines the social dialogue as the dialogue which includes every exchange of information, joint consultations, collective arrangements and other mechanisms for a joint decision making which is based on procedures made between the government and the employee representatives or employer representatives regarding topics that concern the economic and social policies which are in the common interest.

The social dialogue brings social peace to the employer, which essentially eliminates conflicts when or before they arise. It is a kind of an institutionalisation of resolving conflicts in industrial relationships.

Solving the diversity of interests between the employer and his employees through a one-way and two-way communication also ensures *transparency* of planned and adopted decisions and by including the employee representatives into decision making processes it also brings *legitimacy* of these decisions. This statement should act as a rule. Unfortunately, every rule has its exceptions. A successful dialogue does not guarantee quality industrial relationships. The social dialogue pursues the responsible and legitimate partners to work for the benefit of those whom they represent. The benefits of the represented need to be the main guide for the legal and contractual management of dialogue on all levels.

The social dialogue is therefore not just a dialogue in the framework of formalised processes, but every communication between social partners regarding economic and social policies in common interest. The social dialogue is not one-way, but two-way, where “way” is understood as two traditional models of dialogue between the employer and the employee representatives; between the union (on the level of companies, sector or state) and the employer, and between the workers’ council (or its equivalent in accordance with national law) and the employer. Both cases include a dialogue regarding subjects of economic and social policy in common interest. However, there is a difference between the two approaches: the role of the trade union is typically based on the static and current definition of employment relationships, whereas the role of the workers’ council (or its equivalent in accordance with national law) is directed towards the future and planned state or addresses the future state and planned or expected changes which lead to such a state - participation at managing changes.

The participation of workers in decision making processes (also in management) can be somewhat defined as the participation in managing changes, namely in the work that deals with the future position or future rights of workers. Preparing workers to deal with changes or changed circumstances is also the main reason for including employees into the decision making

processes. It needs to be highlighted that preparing workers to deal with changes or changed circumstances is not the only reason for including employees into the decision making processes. In addition to the interests of employees, the participation in decision making processes also benefits the company and the employer, which is often forgotten or the employer's interests are not adequately defined by law.

The importance of including workers into the decision making processes is also recognised by the European legal order which defines the purpose of workers cooperating in management processes and determines the minimal operation frameworks of the employee representatives. The directive also directly defines the interests of the company in the framework of workers cooperating in management: a more flexible work organisation and stronger competition.

2. The purpose of the participation of workers in management

The Directive 2002/14/ES defines the purpose of including workers in management in the following way: *“The dialogue needs to be strengthened and mutual trust in companies needs to be encouraged in order to improve the prediction of risks, make the work organisation more flexible and to enable training of workers in the company where safety is maintained, where workers are aware of the need to be flexible, where the competence of workers is increased for the realisation of measures and activities with which they could increase their employability, and where the inclusion of workers into the operation and future of the company is encouraged and its competitiveness is increased.*

What needs to be encouraged is the informing and consultation about the state and possible employment development inside the company and, when the employer predicts that the employability in the company becomes endangered, about possible future measures, especially relating to the training and development of the workers' skills with which they would correct the negative development and its consequences and improve the employability and flexibility of workers who would be affected by such negative development.”

It is important to highlight that the mentioned Directive 2002/14/EC does not consider only one point of view of the participation of workers in management, but two viewpoints: both the interests of employees as well as the company - a more flexible work organisation and enhanced competitiveness of the company.

The purpose of the right to participate in decision making processes is extremely important because it includes the definition of the purpose of the right. The purpose of the right is extremely important for its interpretation because, in accordance with the principles of civil law, rights cannot be exercised in disregard to their legal purpose. When defining rights from the participation of workers in management in the national legislation and its implementation, it is important to consider the following viewpoints which are especially highlighted in the Directive: *“When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due*

regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees.”

The Directive has the following highlights which every national legislation needs to follow:

- Encouragement of mutual trust;
- *a flexible working organisation;*
- the increase in awareness on the needs for flexibility;
- trainings for the purpose of employability;
- *the strengthening of competitiveness of the company;*
- the correction of the negative development and its consequences through training and development of skills;
- the improvement of employability and flexibility of workers; and
- *the reciprocity of (material) rights and (material) obligations.*

When considering the legal aspects of the participation of workers in management, it is important to pursue the purpose and rights of the addressee or the whole legal institute: the employee. The central focus point therefore has to be on the employee and their interests and rights. The rights of employee representatives are in the subordinate position. It is in this part that the deterioration of the institute may take place which places the rights of employee representatives before the rights and interests of employees and the interests and well-being of the company.

The direct or indirect inclusion of employees into decision making processes can also present an effective tool for preventing (potential) conflicts or a tool for their early resolution. The resolution of conflicts in their early phase and the making of decisions “through” employee representatives (communication) ensures transparency and legitimacy of accepted and planned business decisions. This statement needs to be taken as an exemplary model of operating in optimal conditions. There is often the problem of transferring information from representatives to employees and vice versa.

3. The European legal order and participation of workers in management

The participation of workers in management or their rights and their role in case of transfer of undertakings are regulated by two directives:

- Directive 2002/14/ES of the European Parliament and of the Council dated 11 March 2002 on the determination of the general framework for informing and consulting employees in the European community (UL L No. 80 dated 23 March 2002, page 29);
- The Council Directive 2001/23/ES dated 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 (UL L No. 82 dated 22 March 2001, page 16).

In order to regulate the rights of employees regarding participation in management and their representatives, the Directive 2002/14/ES is of vital importance because it imposes member states to establish legal frameworks which allow workers' collective enforcements of their interests in the company. When establishing the framework in regard, the member states need to consider the following goals which were already mentioned:

- Encouragement of mutual trust;
- *a flexible working organisation;*
- the increase in awareness on the needs for flexibility;
- trainings for the purpose of employability;
- *the strengthening of competitiveness of the company;*
- the correction of the negative development and its consequences through training and development of skills;
- the improvement of employability and flexibility of workers; and
- *the reciprocity of (material) rights and (material) obligations.*

Participation of workers in management is not only meant for the protection and inclusion of interests of employees, but also for working for the benefit of the company or employer; through the strengthening of competition, both directly as well as through indirect actions, and a much more flexible working organisation. The latter tends to be somewhat contradictory at first glance because the inclusion of employees into the decision making processes through their representatives normally requires the establishment of additional deadlines. The optimisation, however, is possible through the integration of participation into the decision making process itself. This is the optimal management scenario and can rarely be achieved in practice. Therefore, it is important to include mechanisms into national legislations with which legal limitations regarding the working organisation and working process in general can be surpassed through the participation of workers in management.

It can be summarised that the stress of transferring content of both Directives must not be only on protecting the interests of employees only, but also on the protection of interests of the company. Employee participation (through representation) in decision making processes is not meant to be seen as a liability for the company, but as a model for better management. Regarding the interests of the company it must be said that the decision making of employee representatives is also important "for the good of the company" and on the appropriate implementation of the concept of responsibility for accepted decisions of worker structures.

C. Slovenian model of participation in decision making

Anže Hiršl

1. Legal frameworks for the participation of workers in management - Slovenian model

The international labour organisation (ILO) states that *the social dialogue includes every exchange of information, joint consultations, collective arrangements and other mechanisms for a joint decision making which is based on procedures made between the government, employee representatives or employer representatives regarding topics that concern the economic and social policies which are in the common interest*. The participation of employees in management through elected or appointed representatives also includes *mechanisms for joint decision making, which are based on the procedure between employee representatives and the employer*. The formal social dialogue in Slovenia is therefore two-tier and includes the “classic social dialogue”, which is understood as negotiations between independent social partners regarding collective rights and obligations of workers and employers. In the case of a tripartite social dialogue, the government is also included in these talks. The second “tier” of the social dialogue presents the inclusion of employees through their elected or appointed representatives into decision making processes, both through the workers’ Council as well as through the participation of employee representatives in control and management authorities.

The participation of workers in management is regulated by the Worker Participation in Management Act of 1993 (published in the Official Journal RS No. 42/1993), which was amended twice.

The law was therefore accepted before the acceptance of Directive 2002/14/ES of the European Parliament and of the Council dated 11st March 2002 on the determination of the general framework for informing and consulting employees in the European community (UL L No. 80 dated 23 March 2002, page 29; hereinafter: Directive), but from the viewpoint of the protection and enforcement of rights and interests of *employees* it is completely consistent with the said Directive. This cannot be said about the consistency with the Directive regarding the part which addresses the *interests of the employer* or company. The Worker Participation in Management Act does not address the viewpoints of a more flexible working organisation, the strengthening of competition and the reciprocity of (material) rights and (material) obligations. This part is therefore still inconsistent with the Directive! The comprehensive overlook of the employer’s or company’s interests can also be seen in the lack of obligations regarding decision making by employee representatives for “the good of the company” or at least by taking into account the principles of “not against the company”. The latter is especially problematic if we assume that the employee representatives are not liable for their decisions or the consequences arising from these decisions.

The applicable regulation has uncritically adopted the solutions from the German legal regulation, where it also included the peculiarity of the Slovenian space from “some other times”. An additional peculiarity, which was not consistently considered and carried out in the regulatory framework, is the role of the union and their representatives on the level of the company.

The Slovenian legal regulations on the participation of workers in management regarding the content and items, which provides roles to workers or their representatives, is substantially surpassing the minimal frameworks from the relevant Directive. This namely includes only two forms of participation of employee representatives in decision making processes: informing and consulting with the purpose to reach an agreement.

The Slovenian legislation surpasses the relevant framework and additionally defines the right to participate in decision making of certain organisational or management decisions in the company. In addition, it gives the employee representatives the role in the company’s bodies; the management body and the control body. The latter is the consequence of adopting the German regulation into the Slovenian legal order, whereas the inclusion of employees into management bodies is a peculiarity of the Slovenian regulation.

In accordance with the valid regulation, the employee representative who is a member of a body of the company is completely equal to other members of the board who are appointed by the owners either directly or indirectly through control bodies. The employees therefore have two options to influence the structure of the management bodies: through the appointment of their representative or the worker’s director and through their representatives in the control bodies.

2. Enforcement of employee interests through the worker council

The Workers’ Participation in Management Act defines:

- the threshold (based on the number of employees) for the formation of collective employee representatives in participation procedures in management;
- the procedure of forming the representative bodies;
- the realisation of elections into the worker council, the appointment of employee representatives into the company’s bodies and their recall;
- individual rights of employees in participating in management;
- collective participation rights of employees;
- the frameworks of the operation of the worker council and the obligations of the employer regarding the issue;
- the relationship between the representatives and the employer and the range and content of labour immunity of employee representatives.

2.1 The conditions for a collective organisation of employees under the Workers' Participation in Management Act

The question of defining the entry threshold for the organisation of the collective participation in management is the question on when the company is considered so large that it becomes impossible to communicate with every individual employee and when communication with the employer is only possible through a representative or representatives.

The Directive states that the threshold for the appointment or formation of a collective employee representative is at least 50 workers in a company in any of the member states, or at least 20 workers in an establishment in any member state, where the member states themselves define the means to calculate the threshold of workers.

Regarding the right to form a representative of collective interests of employees, the Worker Participation Management Act is "friendly towards the collective organisation of employees": it states that the worker council may be formed if there are more than 20 workers employed in the company with an active voting right, regardless of whether or not the company is an independent company or just a branch. Even more; the Worker Participation Management Act states that the workers in a company with up to 20 employees with *an active* voting right may participate in management through a trustee. Theoretically speaking, it is possible to choose (elect or appoint) a collective worker representative or trustee in a company with three employees with an *active* voting right. The active voting right is given to all employees who have continuously worked in the company for at least *six* months, but only if they are not managers, procurators or their family members.

In both cases workers need to make a decision at the workers meeting on whether or not they wish to have a representative who shall enforce their collective interests in regards to management. It is not until the majority of workers with an active voting right makes a decision on the election of their representatives (worker council) or representative (trustee) that the tasks are carried out which target the realisation of the employees' decisions.

2.2 Elections regarding the worker council or the trustee

The Worker Participation Management Act clearly defines the entire election procedure, starting with the formation of the election committee and other election bodies who shall carry out the entire voting procedure and make sure the elections are carried out in accordance with the law.

The employer must take any action which would influence the results of the elections. The employer's role is not just passive; he needs to provide the material means and other circumstances with which the elections may take place.

Under the Worker Participation Management Act, the employer or his representatives and procurators are also limited in the right to be elected as the representatives of employees. The

passive voting right is given only to those employees who have continuously worked in the company for at least *twelve* months, but only if they are not managers, procurators or their family members. In addition, the employer or his representatives or procurators and their family members do not have the right to vote, regardless of whether or not they are workers who (may) have a valid employment contract.

One of the basic fundamentals of representing the interests of employees is the legitimacy of the elected employee representatives and also the elections at which these representatives are elected. According to the law, the elections are valid if **more than half of employees** with an active voting right attended them. If half or less than half of employees casted their votes at the elections, new elections may be carried out no sooner than in six months. If the elections were unsuccessful and called by the worker council, whose mandate is coming to a close, new elections may be carried out in 6 months under the analogue usage of rules valid for the elections in a newly created company. In such a case, the mandate has already expired for the worker council (the law states that it must not exceed 4 years and does not predict the circumstances when it could be extended), therefore new elections cannot be called.

The size of the workers' council or the number of the members in the worker council depends on the number of employees in the company, regardless of whether they have the voting right or not. It is determined as follows:

- in a company of up to 50 workers - three members;
- in a company between 50 to 100 workers - five members;
- in a company between 100 to 200 workers - seven members;
- in a company between 200 to 400 workers - nine members;
- in a company between 400 to 600 workers - 11 members;
- in a company between 600 to 1,000 workers - 13 members.

In a company of more than 1,000 workers the number of members in the worker council is increased by two members for every additional 1,000 workers.

2.3. Individual rights of employees in participating in management and the collective participation rights of employees

The Directive states that the right to be informed needs to be ensured based on the most recent and possible development of activity and the economic position of the company or establishment. The right to be informed and the counselling right need to be ensured based on:

- the position, structure and possible development of employment in the company or establishment and based on any estimated future measures, especially when employability becomes endangered;

- the decision which may cause severe changes in the working organisation or in contractual relationships, including decisions included in provisions of the Community from Article 2 of Directive 98/59/ES and Article 7 of Directive 2001/23/ES.

Informing is not an end in itself, therefore the Directive states that the employee representatives need to be given a suitable deadline for the formation of opinions and views, on which the employer needs to submit his answer, or the counselling preparation in order to reach an agreement about decisions which fall in the framework of the employer's authorisations.

The right to an indirect enforcement of collective interests of employees is the right of the employees and must never be assumed. Not at the first elections of their representatives nor later. The employees need to make an independent and voluntary decision on whether or not they wish to have such representation. It is very important that the decision on the formation of the worker council is made by the majority of employees.

The Worker Participation Management Act separates between individual and collective participation rights of employees. In the former, an individual worker has the right to be directly or indirectly notified and to provide direct suggestions and opinions on which the employer needs to provide his answer in less than 30 days:

- towards the initiative and answers on this initiative if they are related to his work place or to his work or organisational unit;
- to be notified in due time about the changes on his workplace;
- to express his opinion regarding questions that are related to the organisation of his work place and work process;
- to demand that the employer or his authorised representative explains the questions regarding the salary and questions in other areas of the working relationship and from the content of this law.

The collective participation rights of employees (rights from the representation in the company's bodies will be discussed separately) are divided into three groups: informing, counselling and the consensus regarding individual and taxative subjects.

The employer needs to *inform* the worker council and allow them access to the documentation which is vital for informing, especially regarding questions that relate to:

- the company's economic position;
- the company's development goals;
- the state of manufacture and sales;
- the general economic position of the industry;
- the change in activity;
- the reduction of economic activity;
- the change in the manufacture organisation;

- the change of technology;
- the annual financial report;
- other questions in mutual agreement from Article 5, paragraph two of this law.

The right to be informed is also protected by the right of the worker council and criminal law provisions, to keep certain decisions of the employer and launch the procedure for resolving mutual disputes if the employer does not inform the worker council about the activity changes, the reduction of economic activity, changes in the organisation of the manufacture process or technology before making the final decision.

Before making a decision, the employer needs to *inform* the worker council and demand a joint counselling regarding questions relating to the status and human resources in the company and to questions relating to safety and health of workers. The questions that deal with the status and human resources in the company include:

- changes in status;
- the sale of the company or its vital part;
- the closure of the company or its vital part;
- significant changes in ownership;
- the status change of the company, defined by law that regulates companies;
- the change in the company management system;
- the need for new workers (number and profiles);
- the systemisation of work places;
- the allocation of a higher number of workers outside the company;
- the allocation of a higher number of workers from one place to another;
- the acceptance of acts in the field of the voluntary pension, disability and health insurance;
- the reduction of the number of workers,
- the acceptance of general rules concerning the disciplinary responsibility.

According to the Directive, the employer needs to give a suitable deadline to the worker council in order for the council to become acquainted with the material and make preparations for the counsel. The Worker Participation Management Act states that the employer needs to forward all relevant information to the worker council at least 30 days before making the decision and the deadline for the suggested counsel has to be set at least 15 days before the decision is made. If the employer does not respect the deadlines and does not demand a joint counsel with the worker council regarding the questions on status and human resources, the worker council may withhold some of the decisions made by the employer and at the same time launch the procedure to resolve the conflict.

The Worker Participation Management Act also includes *participation in decision making* regarding certain questions related to employees and has a relatively intensive effect on their

employment status. The Directive does not predict participation in decision making, therefore the Worker Participation Management Act also regulates the collective participation rights of employees. The Worker Participation Management Act states that the employer needs to receive consensus from the worker council regarding suggested decisions relating to:

- the basics for the decision making on annual work leave and decision making on other absences from work;
- measures for the assessment of the workers' job performance;
- the criteria for the upgrade of innovative activities in the company;
- the free disposal with the housing fund, holiday capacities and other objects concerning the standard of workers;
- the criteria for promoting workers.

Counselling must also take place when there is a reduction of a larger number of employees due to a change in activity, the reduction of the economic activity, a change in the organisation of the manufacture process, the change of technology, a change in status or the sale of the company or its vital part.

The role of the worker council is extremely intensive because irresponsible enforcement of participation rights may lead to unexpected material or non-material damages, therefore the *de lege ferenda* definition of the responsibility of the worker council and its members in decision making is an important step towards making weighted and responsible decisions.

3. Enforcement of employee interests through representatives in the company's bodies

The Slovenian legislation surpasses the framework or intensity of employee participation as defined in the Directive. It additionally creates the right of employees to participate in the decision making regarding some of the organisational or managerial decisions in the company. In addition, it allows the employee representatives to be members in the company's bodies; the management body and the control body. The latter is the consequence of adopting the German regulation into the Slovenian legal order, whereas the inclusion of employees into management bodies is a peculiarity of the Slovenian regulation.

In accordance with the valid regulation, the employee representative who is a member of a body of the company is completely equal to other members of the board who are appointed by the owners either directly or indirectly through control bodies. The employees therefore have two options to influence the structure of the management bodies: through the appointment of their representative or the worker's director and through their representatives in the control bodies.

The participation of workers in management in the company's bodies is realised through employee representatives in the management and control bodies of the company. The number of representatives in the supervisory board is determined with the company's statute, but it must not be less than one third of all members or more than half of all members in the

company's supervisory board. The management board includes at least one employee representative. The number of representatives in the supervisory board is determined with the company's statute, but it must not be less than one third of all members or more than half of all members in the company's supervisory board. In addition, the worker council has the right to appoint an employee representative into committees of the supervisory board and the management board. The number of employees in the company which presents the threshold for the appointment of representatives into control bodies is 50, whereas the threshold for appointing representatives into management bodies is 500.

In the framework of general rights and obligations, which belong to all board members or executive directors in accordance with a special law and statute of the company, the workers' director or employee representative represents the interests of workers in questions regarding human resources and social questions, but he may never be the president of a management body, nor the president of a control body.

4. Challenges and missing elements in the valid Slovenian regulation regarding the participation of workers in management

The valid Worker Participation Management Act correctly regulates the question of worker participation in management processes. However, there were some solutions that proved to be ineffective or have led to conflicts instead of solutions. Whether the participation of employees in management and control bodies, especially in the current scope, is in accordance with the allowed limitation of constitutional rights towards private property and a modern and effective management concept still needs to be discussed.

On the other hand, as the opposite of the oversized participation of employees in decision making processes, we need to think about the status of employee representatives and their authorities: the right to a collective management participation and the right to individual management participation are employee rights and not the rights of their representatives. Having said that, we would need to think about the strengthening of bonds between employees and their representatives, so that there would be a stronger connection between the representatives and the employees and their interests and which would give them the responsibilities for decision making in accordance with them. The employees need to be given the tools of control, with which they would control the work of their representatives.

Considering the bond between employees and their representatives, it is often the case that representatives do not operate as the bridge of communication between the employee and his employer. Therefore, we need to define the ways of a two-way exchange of information between employees and their representatives and the mechanism (also considering the company's interests) for a responsible realisation of employee interests.

The temporal aspect in decision making is considered as a special challenge where, according to the law, employee representatives are given their roles. Considering everything that has been

said, the Directive demands need to be respected, which means that the employer needs to give an appropriate deadline for the familiarisation with the material and the preparation for consultation. In any case, the procedures of collective participation could be regulated in an optimal manner or integrated into the decision making processes.

It is important to keep or even increase the legitimacy of employee representatives, which means keeping the current election standards and give the employees the tools with which they may influence on the operation and decisions of the worker council and employee representatives in decision making bodies. The legitimacy of employee representatives (both from the employer's perspective as well as from the employee's perspective) is not questioned once every four years at the elections, but it has to be clearly articulated at every moment. Employees would also need to be allowed to disband the worker council if they believe that this is not the correct way of enforcing their collective interests or that the worker council is abusing their rights for their own interests. In accordance with the current law, the only way with which employees can communicate their dissatisfaction with the indirect representation of their interests or disagreement with the way of how the council operates is by not going to the elections. They may only recall individual members of the council, which are then replaced by candidates based on the number of received votes. The recall of the entire worker council is not possible. The legitimacy of the worker council and the representation of true interests of employees is of vital importance for the employer because he needs to make sure that the representatives really are talking to every employee in the company. This is the only way for his decisions to be legitimate and to ensure social and actual peace.

Legitimacy cannot be guaranteed solely by the legitimate procedure of choice. Legitimacy can be guaranteed by the operation that may be marked as legitimate and which carries the weight of responsibility for the approved decisions. In the Worker Participation Management Act the word "responsibility" can be found only under two Articles: where the role of representatives and the usage of participation mechanisms in the company with a *limited* responsibility is defined and in the article where it defines the role of the worker council at approving rules on the disciplinary responsibility of employees.

The concept of material responsibility of the worker council or the worker council members for the approved decisions in the valid Slovenian legislation is completely absent. This means that even an irresponsible action at decision making, which, as a consequence, leads to material or non-material damages, cannot be sanctioned. This raises the question on the legitimacy of decisions that were made too lightly or (potentially) irresponsibly. The law does not state that the decisions need to be made for the good of the company, not only considering the short-term interests of employees. I should note that the fate of the company's existence and employability of its employees rests on these decisions.

We would need to think about the transfer of German regulations where the employer, if he does not agree with the council's solutions, may forward the decisions to the court which then

approves or rejects them. Unfortunately, the legitimacy of decision making could not eliminate all bad consequences, therefore the cumulative implementation of the concept of material responsibility must be made.

The Directive clearly states that the participation of workers needs to be regulated in a way that would allow a more flexible work organisation and stronger competition of the employer. The law does not consider these solutions but rather favours the interests of employees or especially employee representatives, regardless of the legitimate company interests and benefits for the company. It can be said that the Worker Participation Management Act is not consistent with the Directive, which is without question the role of the legislator in the next revision of the law.

Additional challenges of the current regulations present the relationship regulation between unions and the worker council. Their role intertwines in certain parts and rights, which puts the employer into an unfavourable position. Certain rights (e.g. the criteria for the annual work holiday) are considered by the working council, whereas on the other hand this is the classic material for collective contracts discussed with unions. The Worker Participation Management Act states that the working council must not interfere with the operations of unions. However, this limit is eliminated by the law regarding certain rights. When changing the law, the responsibilities of unions and worker councils need to be clearly defined.

5. Before transferring of the European legal order into the national legislation

The partner states of the WIM 2 project, e.g. the future members of EU, will need to include the European legal order into their legislation, including Directive 2002/14/ES. The participation of workers into management processes is also a very important topic for the EU, while potential worker participations for a better and more balanced decision making is even more important. Of course, the participation of employees in decision making processes does not raise the quality of these decisions. However, it presents the framework that *allows* for quality solutions. The stress here is that the participation of employees presents an added value if it is accepted by all participants; employees and their representatives and, of course, by the employer as well. In order to accept legal institutes, especially conceptually new institutes, the majority of the people who will have any roles in the process of including employees or their representatives into decision making processes need to provide their consensus.

For this purpose, the employers and employees or their current representatives need to be presented the starting points already in the planning phase, which would then be considered when transferring the content of the Directive into the national legal order. It is of vital importance that the discussion does not begin with rights and obligations of addressees and actual solutions in foreign legal regulations. We often look for solutions in foreign legal regulations and transfer them into our own legal order non-critically or even partially. We forget that the actual legislation may only work if it is included considering the cultural, historical and

legal specialties and traditions which it regulates, or similar institutes that already exist or have perhaps existed somewhere in the past.

The first phase is therefore the widest possible discussion about goals and concepts. Only when these are formed can we start searching for legal solutions in other countries. Even in this case, the transfer should not be made non-critically, even if they are appropriate for the agreed upon goals and concepts. It is always recommended to consider the national peculiarities of the existing legal order, the legal and cultural traditions and other peculiarities.

6. Participation of workers in management and the company's interests

The participation of workers in management can be somewhat defined as the participation in managing changes, namely in the work that deals with the future position or future rights of workers. Preparing workers to deal with changes or changed circumstances is also the main reason for including employees into the decision making processes. It needs to be highlighted that preparing workers to deal with changes or changed circumstances is not the only reason for including employees into the decision making processes. In addition to indirect participation interests of employees, the participation in decision making processes must also include the benefits for the company or the employer, which is often forgotten or the employer's interests are not adequately defined by law.

The importance of including workers into the decision making processes is also recognised by the European legal order which defines the purpose of workers cooperating in management processes and determines the minimal operation frameworks of the employee representatives. The directive also directly defines the interests of the company in the framework of workers cooperating in management: a more flexible work organisation and stronger competition.

It is important to highlight that the mentioned Directive does not consider only one point of view of the participation of workers in management, but two viewpoints: both the interests of employees as well as the company - a more flexible work organisation and stronger competition. The law should follow this when correctly transferring the Directive into the national legal order.

The purpose of the right to cooperate is extremely important because it includes the definition of the purpose of the right. The purpose of the right is extremely important for its interpretation because, in accordance with the principles of civil law, rights cannot be activated in opposition to their purpose. When defining rights from the participation of workers in management in the national legislation and its implementation, it is important to consider the following viewpoints which are especially highlighted in the Directive: *“When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees.”*

The participation of workers in management is not only meant for the protection and inclusion of collective and individual interests of employees, but also for working for the benefit of the company or employer; *through the strengthening of competition, both directly as well as through indirect actions, and a much more flexible working organisation*. The latter tends to be somewhat contradictory at first glance because the inclusion of employees into the decision making processes through their representatives normally requires the establishment of additional deadlines, but the optimisation is only possible through the integration of the participation into the decision making process. This is the optimal management scenario and can rarely be achieved in practice. Therefore, it is important to include mechanisms into national legislations with which legal limitations regarding the working organisation and working process in general can be surpassed through the participation of workers in management.

It can be summarised that the stress of transferring content of both Directives must not be only on protecting the interests of employees, but also on the protection of interests of the company. Co-management is not meant to be seen as a liability for the company, but as a model for better management. Regarding the interests of the company it must be said that the decision making of employee representatives is also important “for the good of the company” and on the appropriate implementation of the concept of responsibility for accepted decisions of worker structures.

7. Resolution

The Slovenian regulation concerning the participation of workers in management follows its primary purpose, that is to include collective interests of employees into the procedures of planning and accepting business decisions which affect the employees. The purpose of allowing employees to participate in decision making processes is not only in the protection and inclusion of their interests, but also the interests of the company as is stated in the Directive. Considering the balance in employee and company interests in the representation process, the law is only partly consistent with the Directive; only the interests of employees are regulated and protected.

Despite this small inconsistency with the Directive, the current law that regulates the participation of workers in management is mostly consistent with the Directive and its purpose. The part that addresses the rights of employees towards collective organising is much wider and presents a huge upgrade to the minimal standards from the relevant Directive. The law also introduces concepts of participation in decision making processes that is not known to any other foreign legislation, not even the Directive. As a peculiarity of the Slovenian regulation I am pointing out the participation in management bodies.

The current law that regulates the participation of workers in management was accepted in 1993 and adequately addresses the enforcement of collective interests of employees. The law needs a small reform, in which all deficiencies that were noted in the last 23 years of its

existence would be addressed and where all terminological upgrades would be carried out. Additionally, the interests of the company would also need to be considered, as stated in the Directive. Considering the latter, the employee representatives and their representative bodies would need to be given clear responsibilities and not just the rights, as well as the obligations in decision making processes and revise the appropriateness of an extensive participation, where the latter is referring to the participation of employee representatives in the company's bodies.

The participation of workers in decision making processes is not the question of "yes and no", but how to solve the matter in the best way possible in regards to the role intensity of employee representatives and the system of their operation. What is *best* is always a matter of perspective. However, the interests of employees and the interests of the employer both need to be taken into account, as well as the legal concept of ownership and its disposal and the purpose of including workers into decision making processes. The responsibility concept for the decisions and process actions need to be included and clearly defined because this is, in most cases, the only way to achieve quality, sustainable, legal, and responsible decisions.

D. Basics of the German system of industrial relations and employee involvement

Paul Noll

1. Introduction

The basic structures of the German system of industrial relations and employee involvement are regulated by the Collective Agreement Act (“Tarifvertragsgesetz”) of 1949, amended 1969, the Works Constitution Act (“Betriebsverfassungsgesetz”) of 1952, amended in 2001 and the Codetermination Act (“Mitbestimmungsgesetz”) of 1976. The Collective Agreement Act stipulates that employers and trade unions can act as collective bargaining parties, i.e. conclude collective agreements. Although there is a trend towards decentralization, the main pattern today remains sectoral collective bargaining. Another characteristic feature of the German industrial relations system is employee involvement, i.e. information, consultation and codetermination of employees, which can take place at plant level and at company level. At their workplaces, employees are often represented by works councils or alternative bodies of interest representation. The establishment, tasks and limitations of a works council are regulated by the Works Constitution Act. In some companies, employee involvement is not only implemented through works councils but also through employee representatives in the supervisory board, which is regulated by the Codetermination Act.

2. Collective Bargaining

In Germany, employers and trade unions negotiate wages, salaries and other working conditions like working hours and holidays without state intervention, and specify them in collective agreements. This procedure is defined as free collective bargaining and is seen as an expression of a market economy. State intervention, e.g. by indexation of wages, is incompatible with this system. The main contents of collective agreements are the regulation of remuneration and working conditions (in particular working hours).

2.1 Freedom to form a coalition

Free collective bargaining is established in Article 9 section 3 of the German Constitution (Grundgesetz). It was substantiated in the Collective Agreement Act of 1949. An essential requirement for free collective bargaining is the freedom to form a coalition, which means the right “to form an association to protect and promote work and economic conditions”. Associations for the employees are trade unions while associations for employers are employer associations. These associations are set up on a voluntary basis. No one can force an employee to join a trade union or a company to join an employer association (freedom to join a coalition).

2.2 Collective agreement parties

According to the Collective Agreement Act trade unions, individual employers as well as employer associations can be parties to collective agreements. The collective agreement lays down rights and duties for employees and employers. As laid down in the Collective Agreement Act both of them are bound to it only on condition that they are either a member of a trade union and employer organisation or an individual employer that has concluded the collective agreement in question. Employees who are not organised in a trade union do not have an automatic right to claim the collectively agreed wage. Nevertheless, for reasons of practicality, employers often voluntarily apply the collective agreements to all their employees.

2.2.1 Trade unions

Out of about ca. 43.5 million employees, 6.095 million are organised in the 8 individual trade unions under the umbrella of the German Confederation of Trade Unions (DGB, “Deutscher Gewerkschaftsbund”). The unions with the most members are the Industrial Metal Workers’ Union (IG Metall: 2.273 million), the United Service Sector Union (ver.di: 2.038 million) and the Industrial Mining, Chemicals and Energy Workers’ Union (IG BCE: 651,181). Trade union density has declined considerably since the reunification of Germany in the year 1990. The decline can be attributed to the shift from union strongholds such as the manufacturing sector to service industries. Workers in the latter sector are harder to organise. However, unions have started to organise these workers. The trend towards declining trade union density reversed slightly in the last years.

2.2.2 Employer organisations

Employer associations look after the social and collective bargaining policy interest of their member companies. Generally, employer associations are more subdivided within sectors than trade unions. The main employer organisation is the Confederation of German Employers (BDA, “Bundesvereinigung der Deutschen Arbeitgeberverbände”) which is based in Berlin. BDA works at national, European and international level for the interests of one million companies which employ 20 million workers, and which are networked with BDA through voluntary membership of employer federations. BDA is not directly involved in collective bargaining. It coordinates the collective bargaining policy of its member associations and can give recommendations on collective bargaining policy. Its members consist of 50 sectoral associations from industry, trade, craft, banks, insurance, etc. and 14 regional associations which comprise all the sectors active in that particular region.

2.3 Collective agreements

Every year in Germany some 6,000 collective agreements are concluded, in total, nearly 72,000 collective agreements are presently in force. In principle, parties to a collective agreement are free to determine which social policy areas should be covered and how. However, the relevant

provisions of labour protection laws must be observed (e.g. the Working Hours Act). The employer can only deviate from these regulations, if the collective agreement is in favour of the employees. It can go below the protection provisions through collective agreements only when the law expressly so allows (legal opening clause). Collective agreements set minimum working conditions which the employer is not allowed to undercut, unless the collective agreement itself stipulates otherwise (collective agreement opening clause). Improvements in the workplace, which are in favour of the employee, are always permitted (e.g. bonuses given on a voluntary basis).

Four types of collective agreements can be identified: wage and salary agreements (remuneration agreements), wage and salary framework agreements (which describe the demands placed on the employee and assign him to a remuneration group), framework agreements (which contain all other working conditions) and special collective agreements (for example on issues like employers' contributions to tax-deductible savings schemes and agreements to protect workers against rationalisation). Remuneration agreements usually have a shorter period of validity than the other collective agreements.

2.4. Peace obligation and industrial action

One of the main features of the German industrial relations system is the ban on industrial action while a collective agreement is still in force (peace obligation, "Friedenspflicht"). Once a collective agreement has been concluded unions are not allowed to organise strikes. Employers have the certainty that they will not be exposed to labour conflicts during the validity of a collective agreement. Employers may also not impose lockouts for the duration of the collective agreement.

Strikes and lockouts are only allowed in the context of collective bargaining. This means that such industrial action can only be staged in order to pursue collective bargaining aims. Political or general strikes where the conclusion of the collective agreement is not its aim are not lawful. The same applies to so-called wildcat strikes which are not organised by the trade unions. Employees do not have an individual right to strike, only trade unions can call and organise strikes. Certain professions, such as civil servants, are prohibited from going on strike altogether. When employees are on strike, employers can defend themselves by using lockout measures using the defence of dispute parity. This measure is used by the employer for both legal and illegal strikes.

Employer organisations and trade unions have in many sectors agreed on certain mechanisms to resolve conflicts, e.g. when collective bargaining rounds fail to produce results. For this case, a joint dispute resolution agreement (Schlichtungsvereinbarung) can be concluded by the employer and union representatives. They agree beforehand on the details of the resolution procedure.

3. The system of employee involvement

The system of employee involvement (information, consultation and codetermination) originated in the 1920s and was re-established and considerably extended after the Second World War. Neither its development nor scope can be seen separately from the overall socio-economic background in Germany. Therefore, its transfer into a different national context is very difficult. The system of employee involvement in Germany takes place at two levels which have to be properly distinguished: the involvement of employees at plant level and at company level.

3.1 Employee involvement at plant level

The most important Act regulating employee involvement at plant level is the Works Constitution Act. It has been in force since 1952 and was substantially extended in 1972 and 2001. Work councils can be set up in a plant with at least five employees. It gives the works councils as the elected representatives of all employees except managerial staff a number of rights to information, consultation and codetermination. However, issues subject to collective bargaining are excluded from its bargaining powers (unless the relevant collective agreement specifically allows for works council involvement).

Only employees employed in the plant concerned are eligible to be elected to the works council. Trade unions have no legal influence on the composition of the works council. Above all, they are not entitled to send trade union officials to the works council. Consequently, the works council is not a union body, although in practice most works council members and particularly those in highly unionised plants are members of a union. Even in this case, however, the trade union is not entitled to give instructions to the works council.

The governing principle regarding the relationship between employer and works council which is explicitly laid down in the Act is that of “working together in the spirit of mutual trust [...] for the good of the employees and the plant“. Above all, this principle prohibits any form of industrial action between the employer and the works council. In fact, all conflicts arising between both sides are to be settled peacefully, i.e. either by appealing to a Labour Court or – and this applies to most matters subject to codetermination – by having recourse to a conciliation board consisting of an equal number of assessors from each side plus an independent chairman.

The following participation rights of a works council can be distinguished: information rights, consultation rights and rights to be heard and codetermination rights. With regard to participation rights the Act distinguishes between social, human resources and economic matters. The most important codetermination rights in social matters relate to maintenance of order and discipline in the plant, starting and finishing daily work, over-time and short-time work, social services, principles of remuneration and performance-related remuneration. The most important consultation and codetermination rights in human resources matters relate to consultation on human resources development, codetermination with regard to the engagement and transfer of employees and hearings in cases of dismissal as a result of which an employee

who has been dismissed may be entitled to continue working in the plant until the Labour Court makes a final judgement on the case. The participation rights in economic matters relate to information and consultation within the economic committee, a committee of the works council and consultation in the event of plant alterations (in particular closure of the whole or of parts of the plant) and codetermination with regard to the creation of a “social compensation plan“ to offset or alleviate any financial disadvantages to the staff as a result of the planned alterations.

3.2 Employee involvement at company level

Employee involvement at company level is particularly regulated by the Codetermination Act which came into force in 1976 following many years of intensive discussions. It entailed an extension of the one-third representation of employees on the supervisory board (which still applies to companies with more than 500 employees and fewer than 2,000 employees) to numerical parity. However, the Act ensures the preponderance of the owners' representatives in the supervisory board.

3.2.1 Scope

The Codetermination Act applies to all companies with more than 2,000 employees. To determine the number of employees in groups, the employees of subsidiary companies are considered as employees of the parent company. Presently, about 750 companies are subject to the Codetermination Act.

3.2.2 The supervisory board

Companies subject to codetermination are required to have two separate bodies in addition to the assembly of the owners: the management board (“Vorstand” or “Geschäftsführung”) and the supervisory board (“Aufsichtsrat”). Codetermination at company level takes place within the supervisory board. The supervisory board has two main functions, which are the general monitoring of the management of the company (which is the sole responsibility of the management board) and secondly, the appointment and dismissal of members of the management board. The supervisory board is composed of an equal number of owners' and employees' representatives. It comprises 12, 16 or 20 members, depending on the number of employees. In principle, all members of the supervisory board have the same rights and obligations.

3.3 The composition of the employee side on the supervisory board

Taking as a model a supervisory board consisting of 20 members, seven out of ten employee representatives must be employees of the company concerned. Three employee representatives who may be nominated exclusively by the trade unions can come from outside the company and are normally full-time trade union officials. Among the employee representatives employed by the company concerned, there must be proportional representation of staff and senior

managerial staff. To simplify the rather complicated definition given by the law, “managerial staff” may be defined as executives from the upper levels of management, but not board members.

3.4. The chairman of the supervisory board

Both the supervisory board's chairman and the vice-chairman are elected by the members of the supervisory board on a two-thirds majority basis. If this majority is not achieved, the owners' representatives elect the chairman and the employees the vice-chairman of the supervisory board. If voting in the supervisory board results in a tie, the chairman of the supervisory board has the casting vote in further votes.

3.5 The Codetermination Act in practice

In 1979, the Federal Constitutional Court (“Bundesverfassungsgericht”) gave its judgement on the Codetermination Act, which was of paramount importance for the practical application of the Act. Even though the Court confirmed that the Act is not unconstitutional, it nevertheless at the same time made clear that the use of the casting vote by the supervisory board chairman is not subject to any particular conditions and, above all, the rights of the General Assembly is restricted by the Codetermination Act only to the extent to which this is expressly provided for in the Act itself. The court has thus clarified that, despite numerical parity representation, the owners have the upper hand on the supervisory board.

However, in practice, the casting vote of the supervisory board chairman has proved to be useful in ensuring that the supervisory board remains capable of decision-making. Up to now, the casting vote of the supervisory board chairman has been used only in exceptional cases. Normally, the supervisory board reaches its decisions unanimously. Practice has also shown that, despite numerical parity representation on the supervisory board, the slight upper hand enjoyed by the owners' side is sufficient to ensure that companies are still able to operate under the conditions of a market economy.

4. Recent developments

The 2008/2009 global and financial crisis showed that the German industrial relations system is very stable. Social partners in various sectors put forward many constructive solutions for dealing with the crisis. Industrial relations in Germany have been vital in mitigating the effects of the recession. Together with monetary and fiscal stimulus policies, negotiation and consultation involving the social partners have played a significant role in limiting negative social consequences of the crisis. The involvement of employers and trade unions in negotiation and consultation has helped companies and workers to adapt to change and their contribution has helped to minimise job losses in Germany.

Furthermore, in the last years the universal collective agreement has been accused of stifling flexibility. It was claimed that it takes insufficient account of the needs of individual companies. However, in recent years, the leeway enjoyed by individual companies has been greatly extended through the introduction of the use of one-off payments that can be decided at company-level, opening clauses for alternative company-level solutions and complementary agreements. Flexible possibilities for organising working time or elements of flexibility in remuneration components helped to secure employment.

E. Survey on understanding and attitude towards employee participation in decision making

Anže Hiršl, Mirza Mulešković, Marina Spaseska

1. Introduction into the interviews and the explanation of the methodological approach

One of the key project activities was to carry out a survey / interview among employers on their view on future employee participation in management. Given the fact that neither Montenegro, nor Macedonia have legal basis for employee participation in decision making processes, a minimum basis for further contemplation was given. A basis for the contemplation in regard was a document that contained a draft of possible legal act, implementing the Directive 2002/14/EC. The draft of possible legal solution included *minimum employee participation framework*, as defined in Directive 2002/14/EC, and procedural provisions on constituting employee representative bodies.

The interviews were carried out by project partners in Macedonia and Montenegro (employers' associations of respective countries) and it included from 10 to 30 companies employing 20/50 or more employees. The questions presented to national partners were not obligatory and could be changed or adjusted to your »national context«. Participating companies could respond to questions in written in person (actual interview) or via telephone.

The questions included were as followed:

How do you estimate your knowledge on the workers' involvement in management and other decision making processes in the company? The question in regard targeted at acquiring an information on the general knowledge on the role of employee participation in management and at acquiring an information on what the informational sources of the company leaders on the subject are.

How would you describe/how do you understand the essence/purpose of workers' participation in management? It was important for the project team to find out whether company' management is aware of the fact that employee participation in decision making is not exclusive benefit of the employees, but also a powerful tool for enhancing the competitiveness of the company and a tool for introducing more flexible work organisation. In addition, it was also very important for the project team to find out if the management sees the actual positive aspects of employee involvement in decision making processes such as communication, legitimacy and transparency of decisions taken. It is important that the management also finds an added value in the concept of letting employees in decision making processes – to internalize the institute and not to consider it as a nuisance.

What is your understanding of workers' participation in management? The question regard was aiming at acquiring an information on employers' understanding of the workers'

participation in management as described in Directive 2002/14/EC. To be more exact: the aim was to acquire feedback the general notion of the employees' representatives' role in decision making processes – management. Additional goal of the question in regard was also to stimulate the debate on the benefits of the employee participation in decision making processes and change management.

Do you find the responsibility of the employees' representatives for their decisions important?

The question is based in the experiences from Slovenian concept of participation of employee representatives in management, according to which direct benefits for the company are not a part of legally protected elements of employee participation model.

In accordance with your opinion, what would be a proper scope of legal-immunity for employee representatives?

The right to exercise employee collective rights is fundamental for the employee right to participate in decision making processes. According to relevant EU framework, employee representatives shall be protected against dismissal and other negative treatment based upon their function and/or status. On the other hand, responsibility for actions and decision of the employee representatives in regard has to be taken into consideration as well. Therefore, the question aims at establishing the acceptable ratio between protection of employee representatives and responsibility for their decisions and actions. The possibilities to choose from were: "full immunity" (even for illegal actions), "functional immunity" (immunity regarding legal actions related to their position) and "other".

Should employee representatives take into consideration only employees' interests or company's benefit as well?

Employee representatives, by definition, represent and execute the interests of employees of the company. It needs to be noted that interests of the company (prosperity and development) often align with the *long term* interests of the employees, but on the other hand, interests of the company only seldom align with *short term* interests of the employees. The question in regard assumes obvious answer of the managers participating in the interview, but the goal of the question was actually to gain the anticipated acceptable (from the company viewpoint) ratio between company and employee interests in the decisions taken by employee representatives.

Do you think that the formation of works councils could result into a conflict with trade unions?

First responses of trade unions at national level in participating two countries (Macedonia and Montenegro) to having a workers' councils in the company, besides trade union(s) was very reserved (mildly said). Trade unions at national level were not prone to establishing workers' councils, as they are seen as a competition. The core of the issue with trade unions is that they position themselves as representatives of all employees in the company, not as an interest organization, exercising interests of their members. The aim of the question in regard was acquire the information or perception of management in regard to possible clashes and conflicts between trade unions, already established in the company and hypothetically established workers' councils.

What number of employees in a company do you consider requires a collective approach to participation (information, communication)? The directive 2002/14/EC states that it should be applied, according to the choice made by Member States, to undertakings employing at least 50 employees in any one Member State, or to establishments employing at least 20 employees in any one Member State. Member States shall determine the method for calculating the thresholds of employees employed. It needs to be said that small enterprises do not need formal channels of communication, since the communication in both directions can be direct and therefore more efficient. As a rule of a thumb, of course. The question in regard was aiming at acquiring an information on managers view on the threshold for establishing formal employees' structure of communication.

The next question was regarded to the ***threshold for the legitimacy of workers' councils regarding the number of valid votes casted. The possibilities were as follows: majority (50%) of the employees cast their vote; 1/3 of the employees cast their vote; only few of the employees cast their vote; other (if answered "other", further explanation was required).*** The question originated from the fact that there already is a representative of (a part of) the employees in the company – trade unions. That is a fact in both participating countries, Montenegro and Macedonia. Trade unions see themselves as representatives of "the workforce" in general, but tend to overlook the fact that they are the interest organization of their members, exercising the will and interests of their members.

The representative of all employees at the company level can be workers' council of similar formation based upon the will of the employees, exercising the will and interests of the employees. Therefore, it has to be formed in accordance with the "general will" of the employees. The will of employees regarding the workers' councils is twofold: it relates to the decision whether the employees want formal collective representation body established or not, and (in case the employees favor establishment of workers' council) who will the members of the workers' council be.

In order to assure the legitimacy of the employee's representative(s), relevant number of employees has to back them up. Not only members of the established workers' council, but also the establishment of the workers' council itself. The question was aiming at acquiring an information on the minimum threshold for legitimacy of established workers' council, as understood by the representatives of the management.

The directive 2002/14/EC does not include employees right to participate in supervising or managing bodies of the company, therefore the draft proposal of the possible legal act, implementing the Directive 2002/14/EC that was given to all interview participants, did not include the possibility of employee's representatives in such bodies of the company. In spite of the basic mechanism implementation model included in the draft of the submitted document, the aim of the question "***Do you consider the employees should have their representative in supervisory board?***" was to find out the attitude of the management towards additional forms

of collective employees' participation in decision making processes. The question was not set as simple *yes/no* question but as an essay question, requiring an explanation.

2. Montenegro

Question #1: *How do you estimate your knowledge on the workers' involvement in management and other decision making processes in the company?*

Based on current the situation, the level of knowledge on the workers' involvement in management and other decision making processes in the company is on average level. Large and medium companies showed very good understanding of current legislation and possible solution of participation of workers in management and other decision making process. On the other side, small companies showed understanding, but not also relevant level of actual intension to implement all of possible technics of involvement in management because of the size of the company. Overall, large companies have regular communication and also regularly inform employees on most of the ongoing decision making processes in company. The main source of their knowledge are education events, conferences and also information provided via employer's federation and other professional institutions/organizations. Also, companies said that their legal departments follow all Directives and try to harmonize situation in company with the EU level. In that context companies are trying to be prepared for following period and obligation that each member state need to implement Directives. So it is crucial for big companies to be in line with following changes, to be prepared. So, legal departments of the companies follow and prepare companies for future transformation. Also, they state that there is need for further improvement of this knowledge and especially for domestic companies, because of the lack of external information.

Question #2: *How would you describe/how do you understand the essence/purpose of workers' participation in management?*

For all participants of the survey in regard, workers' participation in management is related, not just to workers' rights, but it is also very important for companies' interest as well. Also, the companies included in the survey deliver a clear message that it is clear that properly addressed position of workers' councils and also other form of workers' representation in company (trade unions) are crucial for bringing a new decision in the process of consultation and information. Based on interviews, majority of companies inform employees through their representatives about possible changes in company and other relevant cases in companies, already. However, at the moment, trade unions organized at the level of the company are as close as it gets to proper representation of the employees in the company, since there is no legal basis for establishing workers' councils and/or other employees' representative bodies.

Based on that, employers see workers' councils as a future tool for better dissemination of information and also better position of workers in company. The employers did not emphasize the role of the employees' representative bodies as a co-determinative. One can conclude, that

the role of the employees in the company should be informative and consultive in order to enhance the information flow, both upwards and downwards, and to gather legitimate arguments, deriving from the interests of the employees.

Question #3: *What is your understanding of workers' participation in management? (as compared to the purpose of workers' participation in management as described in Directive 2002/14/ES – including the benefits for the company)*

Companies see many benefits related to establishment of workers' councils. However, at the moment it is very evident that there is still a need to define the difference between trade unions and workers' councils in a clearer way. It seems that the concept of the workers' councils (and employee participation in general) is still not fully comprehended and clearly divided from traditional forms of employee representation and participation, such as trade unions.

Nevertheless, employers, participating in the interviews pointed out specific anticipated benefits of the inclusion of the workers' collective representatives in decision making processes, such as:

- Higher relevance of agreed decisions;
- Better motivation of employees;
- Better information and communication process between employees and employers;
- Better involvement of employees in a process of reaching a goals of companies;
- Better familiarization and identification with the company;

Question #4: *Do you find the responsibility of the employees' representatives for their decisions important?*

Even the fact that there is no WC in Montenegro employers said that in future, in case of existing legal framework for establishing workers' councils, it is clear that workers' councils and their members shall have liability for their decision. It is divided opinion about the level of responsibility, so half are for collective and half for individual responsibility. Respondents did not define the scope of the liability, therefore the answer that will eventually have to be given in that regard is the scope of liability: individual labour responsibility or liability for damages as well.

Question #5: *In accordance with your opinion, what would be a proper scope of legal-immunity for employee representatives?*

All of the participants of the survey agreed, that employees' representatives should not enjoy full immunity for their actions. Employers think that employees' representative shall be nor responsible, nor liable for any collective or individual misconduct, legal offence or even criminal act, arising from his or her employment relationship, or their position as an employees' representative.

Question #6: *Should employee representatives take into consideration only employees' interests or company's benefit as well?*

The participants stressed out the position “what is good for the employees is also good for the company” and vice versa as well. However, sometimes there is a discrepancy between long term interests of the employees and their long term interests. Company' benefits usually align to long term interests of the employees, but not necessary to short term interests, therefore, as respondents stressed out, decisions need to be communicated to employees in a proper manner.

Question #7: *Do you think that the formation of works councils could result into a conflict with trade unions?*

Almost all of the participants have trade union organized at the company level. They see some of the possible problems within the share of responsibilities and traditional roles of trade union and workers' councils. However, in case of clear division and description of the role of workers' councils and trade unions, they don't see the possibility for relevant conflicts at the company level, regarding the cooperation with both of them and each of them individually.

Question #8: *What number of employees in a company do you consider requires a collective approach to participation (information, communication)?*

Direct communication with employees in large companies with large number of the employees is somehow difficult. Based on that, it is necessary to have proprietary tools for indirect communication with the employees. Based on that in majority of the companies there is two ways of communication. First one is through trade unions representatives and the other one is direct communication through announcement boards, newsletters, internal magazines etc. Overall, more than 50% of employees must be involved in all processes regarding the participation of employees in the process of bringing some new decisions in the companies. Overall, it is clear that in Montenegro there is just small number of big companies and the number of employees should be lower than 50. So in the case of Montenegro, number of 20 employees should be enough for establishment of working councils.

Question #9: *Would you consider works council to be legitimate (not just legal) if: If the majority (50%) of the employees attend the elections / cast their vote; If the 1/3 of the employees attends the elections / cast their vote; Even if only few of the employees attend the elections / cast their vote; Other.*

It is clear that for all decisions we need 50% of the workers to attend or to show their motivation for worker councils. This is percent for decision making. Also, it is clear that this number cannot be strict because of the fact that in some companies workers don't recognized importance of the working councils. Also, it is clear that employees don't need to be physically present, so in this case electronic involvement will be advantage. So, in the context of participation at the working

councils it is not obligatory to be 50% if the rest of employees vote, provide their opinion via some other communication tool in company.

Question #10: Do you consider the employees should have their representative in supervisory board?

Opinions are shared, half are strong against this and half are OK with this sentence. It is clear that employers have opinion that they should be fully responsible for the business, as they are "mind" of the companies and all decision should be made by management but on the other side, half of the companies see importance of participation in SB because of the legitimacy of the decisions. It is clear that there is lack of the information related to inclusion of employees in the supervisory boards so that should be one of the important topics for the following period.

3. Macedonia - Participation of employees in management - Summary and findings of the interviews

3.1 Introduction to the survey and methodology

The company represents a complex social organism which interests should be different from the interests of various interest groups within the company. Company employees as part of the social structure, have the right to participate in decisions relating to their position in the company and that affect their rights and interests. Participation of employees in management is democratic achievement which reduces inequality based on differences in economic strength and power.

This approach allows direct decision making of employees and their indirect influence through information, counselling, and co-decision processes. It is achieved through different forms and at different levels through which employees are informed or consult.

For the purpose of the business venture of the company, the employees should harmonize and align their own interests to the interests of the company. Starting from this fact, inevitably entails the necessity of participation of employees in decision making of the company, through which will protect their economic and social rights.

The purpose of this report is to present and clarify the legal basis for the practical realization of the right of participation of employees in company management and decision-making processes in Macedonian companies.

Employees are one of the most important factors involved in the realization of the business venture and in the creation of new value of the company (profits). As a real consequence of this fact arises the question of their participation in decisions about the distribution of newly created value, which can lead to a possible conflict with investors and managers of the company.

With the participation of employees in decision-making of importance to the company, they protect their primarily economic and social rights and interests, and with this, they contribute to economic and social peace and stability in the company. Employee involvement enables the organization to have a better insight about the way of functioning and where it can potentially make improvements that would be beneficial for both, the organization and the employees.

In Macedonia there is no association in the form of workers' councils, but workers come together only through trade unions. The role of trade unions in protecting workers' rights, the majority of employees assessed as weak or very weak.

This negative assessment of the role of trade unions is particularly widespread among private sector employees, who are the least unionized and whose employment rights are significantly less protected than the rights of employees in the state administration and the public sector.

The Macedonian legislation provides the frameworks for setting up the European works councils but not the frameworks for setting up and operation of works councils in unrelated companies with no transnational element.

A further problem in Macedonia is the definition of the role of works council vis-à-vis trade unions. Some trade unions fear they may lose the role of employee representatives. It is necessary to point out that a trade union does not represent all employees but only the interests of its members, also forming the trade union's business intention. It is true, however, that a representative trade union, both in Macedonia, may enter into collective agreements of general application, valid for all employees.

It is a challenge to prepare draft legal frameworks in order to set up a body conceptually and actually representing all employees rather than being a membership organisation. Another challenge is to clearly define the areas of participation thus making a distinction between the participation and the regulation of the workers' rights and obligations.

The purpose of this survey is to investigate the relationship between employee involvement in decision making and problem solving, and firm's performance in the Republic of Macedonia.

The questionnaire was constructed, 24 managers on different management levels with some experience in this type of research carried out the first review of the questionnaire form. They were asked to give some suggestions in order to improve the questionnaire and to make it closer to the terminology. The questionnaire was strictly distributed to middle and top level managers and to enterprise owners (mostly in the case of small and medium businesses).

3.2 Survey and responses

According to the interviews carried out with the owners or the managers of the companies, (the interview being about the questions that are considered to be important for the topic - Participation of employees in management), as well as the results from the survey questionnaire

submitted through e-mails to the owners /or managers of small and medium enterprises, we got following results:

Question #1: Regarding the knowledge on the workers' involvement in management and other decision making processes in the company, most of the companies answered that it is hard to give one answer, regarding this issue. Usually it depends of many factors like: company size, industry sector, structure of the company, educational level of the management team, managerial stiles.

Distinguish the importance and inherent value of ensuring employee involvement as much as possible in the decision-making process. From a managerial standpoint, employee involvement is an effective way to leverage human resources and give employees a voice in something meaningful. Employee participation in decisions can lead to increased job satisfaction, organizational commitment, individual motivation, and job performance. To effectively contribute to group decisions, individuals must have relevant skills and experiences.

Group decisions can lead to better decision outcomes by bringing to bear a broader range of perspectives. By delegating a decision to a group, an organization can make effective use of the skills and knowledge of its employees.

Another of the benefits of group decision making in an organization is its effect on employee motivation. Providing opportunities to participate in decisions is a way to give employees a voice in something meaningful. Doing so can have positive effects on job satisfaction, organizational commitment, individual motivation, and job performance.

Most commonly employees are involved in decisions that directly affect how their work is done. For instance, many quality-control practices include opportunities for workers to discuss and select ways to improve how they produce goods or deliver services. Self-managed teams have even broader responsibilities for decisions, such as how their work is organized, scheduled, and assigned.

To effectively participate in group decisions, employees must have the necessary skills and experience. Without relevant knowledge, participants in group decision making may not grasp the issues, know how to analyse alternatives, or be able to determine which option to choose. For instance, it would not be reasonable to expect the same level of contribution from a new recruit fresh out of college as from a more experienced employee familiar with the organization and its business priorities.

Also, there is a lot organized workshop sessions on raising awareness/knowledge that there is a legal, organizational and company possibility regarding workers' involvement in decision making within the companies, but there is lack of flexibility by the SME company owners/managers.

However, the involvement of the workers in decision making process in Macedonia, can be described as almost non existing.

Question #2: The understanding of the essence/purpose of workers' participation in management

The main reason for involvement of the workers in decision making processes is the need for opinion conflict and fluency of different ideas that could be of great benefit for the company growth and company corporative culture. Nevertheless, at this moment, managers of the selected companies, seen Macedonian small and medium enterprises as not comparatively developed and under informed and undereducated for the need of the involvement of the workers in decision making processes. Also, managers use employee involvement in key decision making not only to leverage employees' unique skills, but also to motivate them, signalling that their impact on the company is meaningful.

Question #3: The understanding of workers' participation in management

The company see it as an option to involve some representatives of the workers' unions to be eligible and have the right to impact decision that have strategical or long-term impact for the company.

Question #4: Regarding the responsibility of the employees' representatives for their decisions

It should be very responsible role, because they should emphasize the overall opinion of the workers and their beliefs. The decisions given will however impact the workers' rights, responsibilities and everyday life.

Question #5: Regarding the proper scope of legal-immunity for employee representatives.

Only functional immunity, because they are not the shareholders. The understanding of term *full immunity* of the survey participants is that full immunity means *that employees representatives would be limited to what happens after the adoption of solutions*. Also, there is a danger of this immunity because it could result in an abuse of position and disorder of the work.

Functional immunity would mean that employees representatives will be affected by the consequences of decisions, so that the decisions they made would be more appropriate and responsible. So, the appropriate scope of legal immunity for employee representatives would be only functional immunity.

And also, we must underline that the employee representatives are not shareholders. Shareholders have immunity according to the number of stock or ownership in accordance with relevant Macedonian legal system.

Question #6: Employee representatives take into consideration only employees' interests or company's benefit

Company benefit should on the long-term mean the same and the employee benefit. All aspects should be analysed from all parties involved in the decision making processes.

Question #7: Formation of works councils could result into a conflict with trade unions

All of the involved companies in the survey do not have trade union in their companies. And most of them think that the formation of works councils could result into a conflict with trade unions because of the overlapping of their activities.

Question #8: What number of employees in a company do you consider requires a collective approach to participation (information, communication)?

Most of the managers think that, companies that have more than 20 employees should have mechanism for collective approach to participation.

Question #9: Would you consider works council to be legitimate (not just legal):

All of the managers answered following "If the majority (50%) of the employees attend the elections / cast their vote" because, the majority, not only critical mass will define the meaning of the vote. Common sense and generally used decision model worldwide.

Question #10: Do you consider the employees should have their representative in supervisory board?

Theoretically yes, because they should represent the opinion and interest of the employees, but this is not a practice in Macedonia and probably most of the developing or underdeveloped countries.

3.3 Additional positions of the participating employees

On the meetings with the included companies' representatives, we also discussed other general but also important issues related to the topic (information's and knowledge).

The rules related to trade union recognition

Workers have the right, at their free choice, to establish trade unions and become their members, under the conditions laid down by statute or the rules of that union. Trade unions can constitute confederations or other forms of association in which their interests are connected to a higher level (trade unions at higher levels). The Trade Union of a higher level becomes a legal entity on the day of registration in the Central Register of the Republic of Macedonia, following a previous entry in the register of trade unions or the register of associations of employers. The Trade Unions are registered in the Register of Unions, kept in the Ministry responsible for labour affairs. The registration is done by submitting a request for entry in the register, for which decision from the Ministry is obtained.

The scope of rights trade unions have

The trade union is entitled to represent, promote and protect the economic, social and other individual and collective interests of workers on a general level. The unions can constitute confederations or other forms of association in which their interests are connected to a higher level (trade unions and employers' associations on a higher level). In accordance with the law, the unions have the right to associate and cooperate with international organisations established due to the realisation of their rights and interests. The union may collect a registration fee and membership fee with the purchase, gift or any other legal way to acquire property; forced execution can be implemented on movable and immovable property of the union necessary for holding meetings. A member of the union may seek court protection in case of violation of his or her rights under the statute or other rules of the union or association. A worker must not be placed in a less favourable position than other workers because of trade union membership. The trade unions with members employed by a particular employer may appoint or elect one or more union representatives, who will advocate the worker's right with that employer. The trade union representatives are entitled to expect the employer to protect and promote the rights and interests of the members. The employer is obliged to provide premises for the activity to the trade union representative of the biggest union. The trade union representative is protected from termination of employment without the union's consent as well as the decrease of salary. The representative trade union is also entitled to negotiate and conclude collective agreements and to initiate a strike in order to protect the rights of the workers.

A right or an obligation to establish workers' councils (Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?)

In accordance with the regulation in Macedonia, there is no obligation for employers to set up works councils. But, in the case of informing and consulting with the workers, there is an obligation for a privately owned company, public company or other legal entity having more than 50 workers and institutions that have over 20 workers to appoint a representative from the employer to perform the information and the consultation.

In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The labour regulation does not contain any provisions regarding the matter of co-determination rights of a works council.

How do the rights of trade unions and works councils interact?

The works council's rights are not determined by the labour regulations. The employer or the representative association of the employers are entitled to negotiate and conclude the collective agreement with the representative union of the workers.

Are employees entitled to representation at board level?

The employees are not entitled to representation or any attendance at the board level of their employer.

3.4 Conclusion

The Project WIM2 changed the common mindset of some of the managers in the Republic of Macedonia.

This survey makes a modest contribution to the understanding of the relationship between employee involvement and organizational performance in Macedonian companies.

As a result of these interviews it can be concluded that general hypothesis, which refers to a positive relationship between employee involvement and perceived operational performance, is confirmed. The primary lesson learnt is that change in awareness, attitude, understanding and behaviour is crucial for the sustainable development of the companies. Results indicate that employee participation will have a positive impact on subjective measure of operational performance.

In fact, by increasing the employee participation and empowerment, increases organizational ability to organize work in autonomous teams who make decisions, and vice versa.

These findings point to the conclusion that despite the impact of national culture, there are other situational factors that affect adoption of employee involvement programs. These include employee personality, leader's technical knowledge, decision type, organizational culture. The findings dedicated to exploring the relationship between participation and performance should be taken with caution. They suggest a positive relationship, but also demonstrate that employee involvement has only moderate effect on employee productivity, motivation and job satisfaction variables. Therefore, the conclusion is that participation is beneficial to the organization, but cannot be the only means of improving performance.

In today's competitive business environment, employee involvement in decision - making and problem solving, as well as employee empowerment, become important factors of organizational innovation and effectiveness. Their importance is increasing in those organizations where knowledge workers are dominant and when organizations move towards decentralized organic structure.

According to the aforementioned results, the companies are encouraged to adopt employee involvement programs in order to enhance performance, growth and competitiveness on the regional and global market.

The main goal of this project is to give the legal basis for the practical realization of the right of participation of employees in the management of the shareholders company in the Republic of Macedonia.

Also, there is an increase in interest for additional sources of knowledge and other services provided by project.

BCM should continue to cooperate with the similarly focused projects in the country to integrate their efforts for helping Macedonian economy.

F. Summary of the survey, common findings and recommendations

Anže Hiršl, Mirza Mulešković, Marina Spaseska, Biserka Sladović

1. Summary of the survey and common findings

One of the key project activities was to carry out a survey / interview among employers on their view on future employee participation in management. Given the fact that neither Montenegro, nor Macedonia have legal basis for employee participation in decision making processes, a minimum basis for further contemplation was given. A basis for the contemplation in regard was a document that contained a draft of possible legal act, implementing the Directive 2002/14/EC. The draft of possible legal solution included *minimum employee participation framework*, as defined in Directive 2002/14/EC, and procedural provisions on constituting employee representative bodies.

The interviews were carried out by project partners in Macedonia and Montenegro (employers' associations of respective countries) and it included from 10 to 30 companies employing 20/50 or more employees. The questions presented to national partners were not obligatory and could be changed or adjusted to your »national context«. Participating companies could respond to questions in written in person (actual interview) or via telephone.

The questions included were targeting at getting an information on level of awareness among employers (managerial staff), existing mechanisms of employee participation and legal possibilities for employee participation as defined in regarding Directive 2002/14/EC.

Common positions of both participating countries, Montenegro and Macedonia were similar, but not identical.

The employers have an understanding that they know the mechanisms of employee participation well, whereas the answers to the following questions reveal, that high level of misconceptions regarding the project topic is present.

Employers (management) claims to have an understanding of the benefits of the employees' participation in decision making processes, but the knowledge on possible benefits is mostly derived from theory. There is a sense that the knowledge of benefits of employee participation in decision making processes is somehow inflicted by theoretical benefits. However, there is an obvious lack of idea on how to implement employee participation in decision making processes in actual life and in accordance with the "most benefit for the company" principle. Further answers to more concrete answers reveal that there is a disparity between the "theoretical" approach to employee participation in management and the actual attitude towards it. The management's understanding of employee participation in management can be described as "We are fine with it as long as it does not really concern us in direct manner".

Throughout the project activities and written material (draft outlines of possible legal solutions of employee participation in management), the management got a hold of the fact that employee participation serves the interests of the employees primarily, however it should cover companies' (at least long and mid-term) interests as well. However, the employers could not clearly imagine the model of participation, that would entail the adequate protection of the interests and benefits of the company.

The key benefit of the employee participation that was agreed upon by the majority of the employers, was the changed quality of the decisions taken, considering the anticipated role of the employees and their respective representatives; improved communication as well as better transparency and legitimacy of the managerial decisions adopted.

Somehow unclear, even confusing, attitude towards the level of protection of the employees' representatives and the level of their liability and responsibility for the decisions taken. The respondents did not show any understanding of correlation between the responsibility and liability for the decisions and actions of employee representatives on one hand, and level of immunity on the other hand. The respondents were prone to granting the employees' representatives full immunity, but didn't feel the need to hold them liable / responsible for the possible damaging or otherwise harmful decisions. Such a standpoint can be also the consequence of the lack of information on the full scope of consequences derived from employees' representatives' decisions and should therefore be further examined and crosschecked.

Regarding the benefits of the employees' participation in management for the company, the participants in both participating countries, pointed out, that there will probably be a gap between short-term long-term benefits for the company. The companies expect benefit long term benefit only, whereas on the short-term benefits, the companies took rather reserved position.

Regarding the possible conflict between (already established) trade unions and workers' councils, the respondents stressed out the importance of clear division between the fields of work of trade union and workers' council. The respondents estimate that unclear definition of the roles of both of them could lead to open conflict between of trade union and workers' council, and consequently causing negative effects with negative aftermath in the sphere of the company.

The respondent in both participating countries believe that proper threshold for the right to establish employees' collective (non-trade union) representative bodies should be lower than 50, but not lower than 20 employees. The respondents argue that bare right to establish collective employees' representative body should not rest upon the number of the employees only, but on the correctly declared will of the employees. The respondents feel that the majority of the employees with the voting right should attend the ballots in order to successfully exercise

their right to establish collective all-employees' representative body. The workers' council has to be established in accordance with the "general will" of the employees. The will of employees regarding the workers' councils is twofold: it relates to the decision whether the employees want formal collective representation body established or not, and (in case the employees favor establishment of workers' council) who will the members of the workers' council be.

Pass the minimum requirements of the Directive 2002/14/EC, the respondents weighted the idea of having an employees' representative in supervisory body of the company. The responses were not unanimous. There were some serious "but on the other hand" concerns. On theoretical level, the respondents understood the interest of the employees to be represented in supervisory bodies, however there were some serious considerations regarding the nature and the role of the supervisory bodies. Supervisory body is not a (at least not a direct) decision making body, but a representative of the interests of the capital. None of the respondents did not see any challenge in the level of knowledge of potential employees' representatives in supervisory body, required for effective and responsible execution of supervisory function.

From the acquired responses of the participating representatives of the companies in both participating countries, it can be concluded that companies and their respective representatives are generally prone to implementing relevant directives and adopting legal framework for establishment of workers' councils. However, it needs to be stressed out that this proneness of the companies should not be misinterpreted or even misused. The companies consider employees' right to establish their representative bodies beneficial for the long term interests of the company and for the enhancement of the decision making processes, especially their legitimacy and transparency. However, the companies are rather cautious regarding the support to implementation, since there is no conceptual model of implementation of the instrument officially available. Also in this case, the support of the companies to introduce employees' participation in management right depends greatly on the modus of the execution of the employees' right in regard, as explained in this publication, containing common recommendations.

2. Common recommendations

Although the positions of the respondents in both participating countries were not identical, some basic common outlines can be noted. Neither of the two in the survey participating countries has any legal framework for employees' participation in decision making, however both countries in regard have well organized trade unions, established at all levels - company level, branch level and national level.

Given common or at least akin to situations in Montenegro and in Macedonia, similar challenges are to be overcome in the future. In order to overcome the regarding challenges, common recommendations of the project team were drawn. The recommendations appeal to all the

relevant stakeholders in both in the survey participating countries, to governments, to social partners and to trade unions.

Partners of the project agreed that for the success of the implementation and introduction of actual benefits of the participation of employees in decision making processes, following recommendations have to be taken into considerations:

1. Further raising of awareness on employee participation in Montenegro and Macedonia is necessary.

The employers have general idea of what the results of introduction of employees' participation in management are, however the knowledge is general and, in most cases, can be reduces to one or two sentences. The concept of employees' participation in management is widely still unclear, especially in regard to the role and actual functioning of it. Further activities, for promotion the institute and possible benefits for all stakeholders is necessary.

2. The stakeholders need further help in understanding the benefits of employees' participation in management for the employees and for the company.

The possible benefits of employees' participation in management for the company and the employees' participation in management itself have to be linked together. The companies and their respective managers lack the tangible link between the institute in regard and possible benefits, which may result in reluctance to establish the correct attitude towards workers' councils, established in the future.

3. Stakeholders need to tackle basic questions regarding the establishment of legal framework for employees' participation in management.

Legal framework, implementing relevant directives will have to provide answers to some basic questions regarding employees' participation in management, such as:

- The threshold (in number of employees in the company) for establishing collective employees' representative bodies;
- The way the employees express / manifest their will to establish collective employees' representative bodies;
- The process of establishing collective employees' representative bodies and conditions for the validity and relevancy of the ballot / establishment process;
- Definition and composition of the collective employees' representative body;
- Powers and competences of established collective employees' representative body;
- The rights of collective employees' representative body and its members;
- The level of protection of collective employees' representative body members;
- The level of liability and responsibility of collective employees' representative body and its members for decisions taken;
- The process of cassation of employees' representative body;

- Other relevant issues, including existing practices and customary practices.

4. Role of collective employees' representative bodies and trade unions at the company level have to be clearly defined and delimited.

In earlier stage of this project, interviews with trade unions conducted. Trade unions showed significant level of reluctance to the possibility of establishing collective employees' representative body (workers' councils). Trade unions see workers' councils as a threat to trade unions, established at the company level, by diminishing their traditional role.

Also the representatives of the companies stressed out that they anticipate conflicts between workers' councils and trade unions, if their role shall not be defined and delimited in a clear and precise manner.

5. The government should include all relevant social partners in the process of drafting legal framework.

Social partners represent relevant stakeholders, employers and employees. They have direct insight into the interests of their members and their initial and other positions on the issue. Social partners, especially partners of the project also have the insight and relevant knowledge on the employee participation issue, and can therefore constitute a worthy partner and as valuable asset in the process of implementation. Social partners have the capacities to provide further professional support to their members when employees start to exercise their right to participate in decision making processes.

6. Start with the "directive minimum" and upgrade later if deemed to be necessary or beneficial for both, the employees and companies.

The "system" Directive 2002/14/ES introduces two employees' participation in decision making tools: *information*, as a basic tool, and *consultation with an aim to reach the consensus*, as an advanced participation tool.

Employees' participation in decision making is completely new concept in both participating countries, therefore it has to be applied carefully. The culture of communication (in both directions) and wide understanding of the newly introduced employees' participation in decision making right has to be comprehended first.

G. Croatia - The role of the employee representatives at the introduction of telework (The impact of employees / trade unions / workers' councils in the process)

Biserka Sladović

1. Explanation to separate approach to exploring the role of workers' council

In accordance with the EU values and the needs in industrial relationships it is important to raise the awareness of the significance of employee representatives' role in companies and countries that are in the process of closing in on the EU or are just entering the process. For this purpose, the Association of Employers of Slovenia (ZDS) in cooperation with their project partners from Slovenia (CPM), Montenegro (UPCG), Macedonia (BCM), Croatia (HUP) and with the support of Germany (BDA), carried out the WIM 2 project, the purpose of which is to raise the awareness of potential benefits by implementing the participation of workers in the decision making processes, the identification of challenges and mental barriers which could hinder the implementation of participation models, and the search for specific solutions or possible ways to transfer that part of the European legal order, which addresses the participation of employees, into the decision making processes.

The position of Croatia and Slovenia in this project was somehow different. Taking into consideration the fact that in both fore mentioned counties legal framework for employee participation exists, the course of the activities was different. In accordance with the project the main goal of Croatian project team was to set a series of events, that would explore and promote the role of the employee representatives, workers' councils predominantly, in the process of implementation of autonomous agreements at the company level. Basically: the aim was to explore the role of employees' representative in decision making processes at company level regarding the implementation of autonomous European legislation – implementation of "Telework framework agreement" in particular.

Croatian Employers' Association has launched an extensive process of information, awareness raising and exchange of good practice among employers, within the project WIM 2: Straight to the Challenges, but also balancing the processes that are aimed at changing practices of government bodies regarding the institute of telework. So a number of meetings was organized: with the Ministry of Labour and Pension System, the Croatian Institute for Health Insurance, the Ministry of Finance - Tax Administration, etc. in order to resolve the remaining outstanding issues, prior to the signing of the Memorandum of Understanding in which the social partners would promote telework in Croatia.

At the same time, the influence of trade-unions and works councils in the process of introducing of telework varies from company to company. In general, trade-unions and works councils are more common in large than in small and medium enterprises (SMEs). Therefore, their influence

is greater there. However, the results of the questionnaire show that all employers are willing and know they have to involve the workers themselves in the decision-making process on telework, as *condictio sine qua non* for its introduction.

2. Introduction

The development of modern information technology in recent decades has enabled to perform certain types of work outside the premises of the employer, or remotely. This design may reconcile the interests of both workers and employers, but also contribute to broader social interests.

From the position of workers, this mode (telework) makes it easier to synchronize business and private obligations, the time it takes to travel to and from work, and the associated costs are significantly reduced, and the stress associated with traffic, the worker has a greater ability to manage the work process, which also increases job satisfaction.

For employers, this mode means reducing the costs associated with working space and associated utility costs. Socially speaking, this mode reduces pollution and traffic jams, peculiar to urban areas, reducing the cost of health care (less accidents during commuting to and from work, reduced stress, etc.) etc.

While the proliferation of high-speed and wireless Internet access made telework lot easier, many workers tend to adopt this mode, not only because it is convenient but also because it provides better work - life balance.

As both employees and employers increasingly recognize the advantages of telecommuting, the number of employees who work remotely has increased dramatically. By many indicators, this practice, which is a global phenomenon, is not bypassing Croatia.

As the digitization of work becomes increasingly common phenomenon present in Croatian society, including all its positive (or negative) effects, the intention of this study was to examine the attitude of Croatian employers to the phenomenon of telework and their willingness to include workers / unions / workers' councils in the process of its introduction.

In the Croatian labour legislation, telework is known as "work on separate place of work" ("rad na izdvojenom mjestu rada"), introduced by the Law on Amendments to the Labour Act, 2003. This instrument is almost unchanged and in the current Labour Law (2014), whose Article 17 defines the mandatory content of the employment contract when dealing with a work on separate place of work, with special emphasis on the arrangement of the issues that are a specialty of this kind of work. The law is not limited to telework, which would be carried out exclusively via information technology, but refers to any work on the separate place of work, including work through information and communication technologies. Labour Act affirms the principle of equality of employees working on separate place of work with workers who work in

the premises of employer primarily through: right to the same working conditions (salary and other material rights, the right to work in a safe manner and applying safety measures, the right to education and training, etc.). As a worker in a separate place of work is equal to any other worker with an employer, in relation to all issues pertinent to the Labour Act, the Law on occupational safety and other relevant legislation.

Although Croatian legislation recognizes the institute of the separate place of work - in terms of working from home, with the exact same obligations of employers and employees, in the case of the adoption of this type of work, distance work (telework), a sub-section of this institute, has not yet been fully came to life in the Croatian legislation.

3. Questionnaire results:

Within the project WIM 2: Straight to the Challenges, and this study, Croatian Employers' Association seeks to examine the attitudes of employers to telework, to the inclusion of workers in the decision-making process on telework, as well as the impact of works councils / trade unions / workers in the process of introducing the telework.

After consultation with the Slovenian ZDS a questionnaire for Croatian employers consisted of the following questions:

- a. Does your company have the possibility to work remotely, so-called. telework? (yes / no possibilities)**
- b. If the telework has not yet been introduced, are you interested in introducing it? (yes / no possibilities)**
- c. When introducing teleworking, do you plan to confer/consult with the workers (trade-unions, works councils)? (yes / no possibilities)**
- d. Do you think that works councils should be involved in negotiations on the introduction of telework? (Should they even be involved? If yes, at what level: the level of the company or sector? Should they be works councils or trade unions?)**
- e. Do you perceive the link between teleworking and working hours?**
- f. Do you think that works councils should be involved in negotiations on working hours?**
- g. Do you think that the introduction of telework requires an agreement with employees' representatives / works councils?**
- h. What level of participation of workers would you apply for the introduction of telework? (Information / Consultation / Co-decision / Approval were the possibilities)**

3.1 The results of the study: Croatia

List of companies that participated in the survey:

- 1) Croatian Centre for Vehicles - SME - privately owned
- 2) CEMEX Croatia dd - large - privately owned
- 3) Crocon - SME - privately owned
- 4) Electa C - SME - privately owned
- 5) Ericsson Nikola Tesla dd - large - privately owned
- 6) Ernst & Young - large - privately owned *
- 7) The Croatian Postal Bank dd - large - public - private property
- 8) IBM Croatia - large - privately owned *
- 9) M.E.P. SME - privately owned
- 10) Transmitters and Communications - large – publicly owned
- 11) Vetropack - large - privately owned
- 12) Vinka dd - SME - privately owned

* Note: Although IBM Croatia and Ernst & Young employ fewer than 250 workers in Croatia, they are part of the large multinational companies with large resources and are therefore counted in as large companies.

Total sample: 12 companies (100%) Individual sample: 1 = 8.33%

The distribution of the sample of companies that responded to the questionnaire is 5: 7 between SMEs and large companies, with one company (Vinka d.d.) being on the edge, that is, with 248 employees is very close to the number of 250 employees, the threshold for SMEs, and is the result could easily be a 4: 8

Although SMEs in all European countries are the backbone and foundation of the economy, with over 90% of economic operators, given that the topic of “participation of workers, or workers' councils in the decision making process of telework”, it is not unusual that prevalent responses come from large companies, because the trade-union coverage in SMEs usually very small.

a. Does your company have the possibility to work remotely, so-called. telework?

No 49.98% (6 companies)

Yes - 41, 65% (5 companies)

Something else: 8, 33% (1 company) *

* Explanation: There are technical conditions and occasional use, but there is no systematic use.

b. If the telework has not yet been introduced, are you interested in introducing it?

Of the six companies that you have not introduced, and one that has the technical prerequisites, but it is not used systematically:

Yes - 24, 99% (3 companies) are interested in its implementation, and

No - 33.32% (4 companies) are not.

c. When introducing teleworking, do you plan to confer/consult with the workers (trade-unions, works councils)?

Yes - 41,65% (5 companies)

No - 24.99 (3 companies)

33, 32% (4 companies) do not declare themselves on this issue

d. Do you think that work councils should be involved in negotiations on the introduction of telework? (Should they even be involved? If yes, at what level: the level of the company or sector? Should they be works councils or trade unions?)

Yes - 41,65% (5 companies) responded positively, but with different levels that included:

- workers,
- unions,
- works councils,

The level that prevails is - the level of the company.

No - 33.32% (4 companies) responded negatively, noting that the workers should be included

24.99% - (3 companies) did not give the answer to this question

e. Do you perceive the the link between teleworking and working hours?

Yes - 33.32% (4 companies)

No - 49.98% (6 companies)

No answer - 16.66% (2 companies)

If yes, explain: Employers who see a link between working hours and teleworking, talk about how telework allows employees greater flexibility in carrying out their task, and this in turn contributes to the feeling of satisfaction of the same. Also, employers point out that in the case of teleworking the emphasis is on performing certain tasks, rather than on the mere presence of the employer's premises. Only one employer warns of the need to be careful when determining the tasks for employees who work remotely, so they are not too large to determine the norms that could adversely affect the balance between work and family life.

f. Do you think that works councils should be involved in negotiations on working hours?

Yes - 41,65% (5 companies)

No - 41.65% (5 companies)

No answer - 16.66% (2 companies)

All companies that are considered to be works councils should be involved in negotiations on working hours also believe that this should be on a collective level.

g. Do you think that the introduction of telework requires an agreement with employees' representatives / works councils?

Yes - 24,99% (3 companies)

Explanation: counseling, not necessarily agreement; if it involves most of the workers, the first to include the workers, and then the works councils, etc.

No - 66, 64% (8 companies)

Explanation: SMEs do not have works councils; It is a matter of direct agreement of employers and workers; thing is the confidence of employers and workers to the worker to perform the task and without the direct supervision of the employer; making the employer and the union will be informed, and so on.

No answer - 8.33% (1 company)

h. What level of participation of workers would you apply for the introduction of telework?

- a) Information
- b) Consultations
- c) Co-decision
- d) Approval
- e) Information - 7
- f) Consulting - 1
- g) Co-decision
- h) Consent -3
- i) No answer -3

Note: The companies had opportunities to choose more than one answer, but the most common is to inform.

4. Conclusion

Croatian Employers' Association has launched an extensive process of information, awareness raising and exchange of good practice among employers, within the project WIM 2: Straight to the Challenges, but also balancing the processes that are aimed at changing practices of government bodies regarding the institute of telework. So a number of meetings was organized: with the Ministry of Labour and Pension System, the Croatian Institute for Health Insurance, the Ministry of Finance - Tax Administration, etc. in order to resolve the remaining outstanding issues, prior to the signing of the Memorandum of Understanding in which the social partners would promote telework in Croatia.

Taking into account the fact that in Croatia there is a legal framework that provides the possibility for telework (at home or in another place that is not the employer's premises) and bearing in mind that this type of work is not used to the extent that there is interest of the potential stakeholders, Croatian Employers' Association (employers' association of a higher level) and Independent Croatian Trade unions and the Federation of Independent Croatian unions (trade union higher-level associations) have decided to spread information to their members about the existence of the Framework Agreement on Telework and practical examples in relation to the key issues, as well as the review of appropriate national legislation.

From the questionnaire, as well as from additional discussions with employers that the Croatian Employers' Association carried out, it seems that Croatian employers are very well acquainted with the institute work on separate place of work, and as such is represented in the Croatian Labour Law since 2003, and somewhat less to Telework.

The results of the questionnaire show that employers are aware of the fact that employees who work remotely have the same rights ("the principle of equality of employees working on separate place of work with workers who work in the premises of employer") primarily through right to the same working conditions (salary and other material rights , the right to work in a safe manner and application of safety measures, the right to education and training, etc.), and as a worker at a separate place of work is equal to any other worker with an employer, in relation to all issues pertinent to the Labour Act, the Occupational Health and Safety Act and other regulations.

At the same time, the influence of trade-unions and works councils in the process of introducing of telework varies from company to company. In general, trade-unions and works councils are more common in large than in small and medium enterprises (SMEs). Therefore, their influence is greater there. However, the results of the questionnaire show that all employers are willing and know they have to involve the workers themselves in the decision-making process on telework, as *condictio sine qua non* for its introduction.

H. Recommendations for possible future project activities

Anže Hiršl, Mirza Mulešković, Marina Spaseska, Biserka Sladović

1. Ending of WIM 2 as a starting position for further development of employees' participation in management in candidate countries

In accordance with the EU values and the needs in industrial relationships it is important to raise the awareness of the significance of employee representatives' role in companies and countries that are in the process of closing in on the EU or are just entering the process. For this purpose, the Association of Employers of Slovenia (ZDS) in cooperation with their project partners from Slovenia (CPM), Montenegro (UPCG), Macedonia (BCM), Croatia (HUP) and with the support of Germany (BDA), carried out the WIM 2 project, the purpose of which is to raise the awareness of potential benefits by implementing the participation of workers in the decision making processes, the identification of challenges and mental barriers which could hinder the implementation of participation models, and the search for specific solutions or possible ways to transfer that part of the European legal order, which addresses the participation of employees, into the decision making processes.

The project activities, but mostly the survey that was carried out in Macedonia and Montenegro, showed that the two regarded countries have to work on the raising of awareness. Although the positions of the respondents in both participating countries were not identical, some basic common outlines can be noted. Neither of the two in the survey participating countries has any legal framework for employees' participation in decision making, however both countries in regard have well organized trade unions, established at all levels - company level, branch level and national level.

Given common or at least akin to situations in Montenegro and in Macedonia, similar challenges are to be overcome in the future. In order to overcome the regarding challenges, common recommendations of the project team were drawn. The recommendations appeal to all the relevant stakeholders in both in the survey participating countries, to governments, to social partners and to trade unions.

The survey showed that there is a general idea of what employees' participation in management is, but there is also a severe lack of idea, what kind of actual form of participation can the institute take, what the position and the expected status of employees' representatives shall be, what are the concrete issues workers' council will deal with, what will the process of establishing workers' councils be, etc. This are the questions (and several other), the companies cannot provide even theoretical answer to. The main challenge lies in the fact that even current "employees' representatives" the trade unions cannot provide answers in regard.

Key future challenge, as seen by the project partners, is not merely of legal nature, but a challenge of placing the institute of employees' participation in decision making in existing legal

and cultural industrial relations framework. It is necessary to work with trade unions in this issue in the future, to define their role in anticipated future state, and to consensually redefine the role of trade unions if deemed necessary, and delimit it from the role of workers' council in the future.

The project WIM2 did not include Serbia directly, however all of the outputs of the project were disseminated to Serbian Employers' association (UPS). According to the unofficially gathered information on the topic, the situation is rather similar to the one in Montenegro and Macedonia. Potential follow up project should by all means include Serbian stakeholders in the same manner as in Montenegro and Macedonia.

The project team of WIM2 estimates the result of the executes project activities a success. However, it needs to be said that it is our understanding that most of the executed activities reached the maximum of their potential. The institute of employees' participation in management has to penetrate the existing legal and cultural industrial relations framework, and that can be done with already applied methods, only this far. Additional new approaches are required in order to change existing legal and cultural industrial relations framework and to change the mindset of the relevant actors. Further activities should include concrete activities, involving companies and trade unions and employees, by giving them concrete tasks and to apply a pilot model in at least one of the companies in each participating country.

Concrete events and activities make companies contemplate the role of future employees' collective representative bodies. The debate and potential future project activities have to switch from generally informative to concrete ones.

Based upon the project survey in Macedonia and Montenegro partners of the project agreed that for the success of the implementation and introduction of actual benefits of the participation of employees in decision making processes, certain recommendations have to be taken into considerations:

- Further raising of awareness on employee participation in Montenegro and Macedonia is necessary.
- The stakeholders need further help in understanding the benefits of employees' participation in management for the employees and for the company.
- Stakeholders need to tackle basic questions regarding the establishment of legal framework for employees' participation in management.
- Role of collective employees' representative bodies and trade unions at the company level have to be clearly defined and delimited.
- The government should include all relevant social partners in the process of drafting legal framework.
- Start with the "directive minimum" and upgrade later if deemed to be necessary or beneficial for both, the employees and companies.

2. Recommendations and starting positions for future projects on employees' participation in management in candidate countries

The results of the survey show that there is a continuous need to develop the mindset of employees' participation in management. Leaving things with current situation would cause a slip back in the pre WIM 1 and WIM 2 state. The idea of inclusion of employees' interests in company policies and managerial decisions has to be further nurtured and developed. It is of essence, not to let the candidate countries down and have to continue with activities aiming at spreading EU values and the needs in modern industrial relationships.

1. ***Further raising of awareness on employee participation in Montenegro and Macedonia is necessary, however the actions and activities have to be more concrete and have to involve relevant stakeholders at all levels.***
2. Further ***project activities have to aim at development and, if deemed necessary change, of existing legal and cultural industrial relations framework.*** It is necessary to work with trade unions in this issue in the future, to define their role in anticipated future state, and to consensually redefine the role of trade unions if deemed necessary, and delimit it from the role of workers' council in the future.
3. The awareness raising has to go ***pass the legally-theoretical aspects of the employees' participation in management and has to start building awareness on practical and actual aspects*** of the employees' participation in management.
4. Project partners need to ***strongly engage their respective Governments in order to start a discussion on possible actual solutions, regarding the actual questions regarding the implementation of the directives in national legislation*** (the threshold for the right to establish collective employees' representative bodies; the way the employees practice their will to establish collective employees' representative bodies; the process of establishing collective employees' representative bodies and conditions for the validity and relevancy of the ballot / establishment process; the definition and composition of the collective employees' representative body; the powers and competences of established collective employees' representative body; the rights of collective employees' representative body and its members; the level of protection of collective employees' representative body members; the level of liability and responsibility of collective employees' representative body and its members for decisions taken; the process of cassation of employees' representative body; other relevant issues, including existing practices and customary practices.
5. ***Trade unions have to be included in further concrete activities in order to reach a consensus with other stakeholders on the issue of positioning themselves along workers' councils.*** Trade unions have to be included in the process of redefinition of their role in deemed necessary and in the process of delimitation their powers and the powers of workers' council. Their role in the future project activities has to be strengthened.



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