



### **WIM 3: Workers' involvement in management – awareness, experiment, monitoring**

#### *Regional overview and future trends*

With financial support from the European Union. The responsibility for the contents and opinions expressed rests solely with the authors. The European Commission is not responsible for any use that may be made of information contained.

## Content

Introduction.....	2
Employee involvement in corporate governance.....	5
<b>AWARENESS .....</b>	<b>11</b>
Summary of project work and key findings in Republic of Serbia .....	12
Summary of project work and key findings in Albania .....	16
<b>EXPERIMENT .....</b>	<b>20</b>
Summary of project work and key findings in Montenegro.....	21
Summary of project work and key findings in Republic of North Macedonia.....	24
<b>MONITORING .....</b>	<b>28</b>
Summary of national survey on employee involvement in corporate governance – Slovenia.....	29
Summary of national survey on employee involvement in corporate governance – Bulgaria .....	35
Summary of national survey on employee involvement in corporate governance – Croatia.....	38
Commentary to the Directive on Information and Consultation .....	42

## Introduction

To address all challenges we are facing in an increasing global competition, the productivity and competitiveness of our economies must be enhanced in order to make EU a more attractive place to invest and work in. An integrated framework to bring about all important factors, enhancing innovation, entrepreneurial activity, productivity, and finally growth and jobs, is needed.

Employee involvement can be possible ways to reform the labour markets, to encourage workers to be productive and adaptive to change and to provide for a consultative relationship between management and workers at all levels of the organization. Employee Involvement can be an important tool within a sector or activity, ensuring social peace, strengthening the motivation of workers and thereby creating a favorable environment for profitable activity. Method of worker participation is an expression of HRM, while quality social climate within the company has positive implications for productivity.

In accordance with the EU values and needs in industrial relationships it is important to raise awareness of the significance of employee representatives' role in companies not only in EU Members but also in countries that are in any stage of EU accession process. For this purpose, two projects – »WIM: Workers involvement for better and sustainable management in undertakings in Slovenia, Macedonia, Montenegro and Serbia« and »WIM2: Workers' Involvement – Straight to the Challenges« - were successfully implemented in the past. While the purpose of project WIM was to identify the current situation and existing legislation on employee involvement in undertakings (mainly) in Candidate Countries, as well as to initiate actions to familiarise national social partners, authorities and actors at company level with the content of EU law on employee involvement, project WIM2 was focused on searching the 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.

Projects activities have shown that none of the participating EU Candidates have any legal framework on employee participation in undertakings. But all of them have well organized trade unions, established at all levels - company level, branch level and national level. EU Candidates have to work on the awareness raising of potential benefits of implementing the participation-of-workers model in the decision-making processes, as well as on the identification of challenges and mental barriers which could hinder such implementation. Key future challenge 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 the role of trade unions and works councils in the future.

The project »WIM3: Workers' involvement in management – awareness, experiment, monitoring« helped to deepen the understanding in participating countries of an importance of workers' participation schemes, and served employers' and workers' representatives as a tool to exchange know-how and experience. It was helpful to familiarize all relevant stakeholders with EU law and policies, as well as it served as a facilitator for new developments to prepare/improve new/existing legislation on employee involvement, taking into account EU law and policies.

WIM3 project activities were switched from generally informative to concrete ones. Namely, the experiment in pilot companies was implemented (implementation of draft legislation on employee involvement based on the solutions from the WIM2 draft of “Workers’ Participation in Management Act”) which added value and introduced actual benefits of the employee participation in decision making processes. Activities and results will refer to all relevant stakeholders – governments, employers and trade unions, not only in countries, where the experiment was implemented (Macedonia, Montenegro), but also in other EU Candidates and potential Candidates.

The project WIM2 did not include Serbia directly, neither Albania (it was not the Candidate Country at that time). However, according to the unofficially gathered information on the topic, the situation is rather similar to the one in Montenegro and Macedonia. Follow up project WIM3 included Serbian and Albanian stakeholders in the same manner as Montenegrin and Macedonian stakeholders were included in the frame of WIM2 project. Transfer of know-how and experience helped actors at company level to better involve employees in positive decision management of change in this region.

Slovenia, Bulgaria and Croatia have successfully implemented employee involvement in undertakings model into national law. However, it was time to follow up on the findings of the “Fitness check” on national and EU acts in the state of information and consultation of workers. In this respect, in project WIM3 an online survey was carried out among employers to obtain sufficient information on the state of play of employee involvement and thus to obtain an overview of the adequacy of national legislation. Recommendations for improvements of national law in respective countries were prepared, as well as necessary steps for a modernisation of labour market to facilitate the creation of more and better jobs and promote the competitiveness of the economy. Common opinion on adequacy of EU acts in the area of Information and Consultation of Workers was prepared as well.

Project WIM3 comprised 3 main workstreams:

**Workstream 1: AWARENESS**

Promotion and awareness raising of EU law and policies on employee involvement in undertakings, including more direct actions, e.g. providing expert support for drafting legislation on employee involvement, as well as expert support for creating favourable conditions for the setting up of mechanisms and national information, consultation and participation bodies (implemented in Serbia and Albania).

**Workstream 2: EXPERIMENT**

Further promotion and awareness raising of EU law and policies on employee involvement in undertakings, including more direct actions, e.g. experimental implementation in pilot companies of starting point for legislation on employee involvement based upon the solutions from the WIM2 draft of “Workers’ Participation in Management Act” (mplemented in Macedonia, and Montenegro).

**Workstream 3: MONITORING**

Survey among employers on their view of the existing legislation on employee involvement in undertakings and recommendations for its improvement as well as opinion on adequacy of EU acts in the area of Information and Consultation of Workers (mplemented in Slovenia, Bulgaria and Croatia).

The project WIM3 exceeded the concept of awareness raising on the importance of employee involvement as well as of awareness on EU law from this field, namely through an experiment in pilot companies. Project as such is a complete tool for current and future social partners, both at national and company level, and delivers a contribution to the EU acts in the area of Information and Consultation of Workers. We emphasize the long-term effect of the agreed solutions.

# Employee involvement in corporate governance

*Dr. Valentina Franca*

## ***Introduction***

Employee involvement in corporate governance, or, more broadly, employee participation, is one way of ensuring democracy in the workplace and a mechanism for dealing with employees that implies their (greater) involvement in the decision-making processes of the organization. In practice, we are confronted with different forms and ways of implementing employee involvement in corporate governance, which depend primarily on the legislation and the organizational culture of each organization. Employee participation in Europe is characterized by the codification of employee participation, which means that the legal framework serves as the basis and starting point for putting employee participation into practice. The European Union has also recognized this in its basic acts, emphasizing social dialogue as one of its core values. This is also reflected in the adoption of a number of directives governing specific fields of employee participation. However, given the diversity of industrial relations in Europe, more precise regulation of the participatory rights of workers is left to individual Member States, so there is no single universal model of employee participation. Furthermore, account must be taken of specific characteristics of individual organizations since, for example, the work organization and operating policies in a medium-sized enterprise operating mainly in the national market are completely different from those in a multinational enterprise with tens of thousands of employees. European legislation thus provides national legislators with considerable flexibility to regulate and formulate the employee participation system to best suit their national situation, political, social and historical development and values.

## ***Arguments for introducing employee participation***

Employers often raise questions as to why to involve workers in decision making, since at first glance it seems that the introduction of employee participation implies the reduction of the rights of employers or owners. Nowadays, property and the related rights to manage and supervise are at the forefront of capitalist economic systems. Property constitutes some power, or part of it, and is supported by the legal system that confers certain rights upon the owners. In the economy, this means, among other things, that a company owner can unilaterally run and control the company or leave this to the management. By recognizing employees' privileges in the management of the company, the authority and power of both the owners and

management can be diminished. On the other hand, account should be taken of the findings of various social science studies which confirm that employee participation has been established as a means to achieve democracy, social integration and the effectiveness of organizations. It should be emphasized that positive effects will not only result from the observation of legal norms but also from proper integration of the participatory culture into the way the organization is run, which encompasses both the personnel management system and the values of the organization.

### ***Forms of employee participation***

There are various forms of employee participation in literature that are differentiated on the basis of several factors. Particular mention must be made of the differentiation based on the implementation and the areas of enforcement. Depending on the implementation, we differentiate between direct and indirect participation; while depending on the area of enforcement, we distinguish between the participation in corporate governance or employee participation, financial and ownership participation.

Direct participation means that the employee as an individual is involved in decision-making, which can be realized in smaller organizations (with fewer employees). Consequently, in practice, direct participation is realized individually, which means that it is realized through the employee as an individual in various forms, such as the right to information, (annual) interview, initiatives, complaints, codecision on one's own and group work, etc. Indirect participation means that employees are collectively represented by (elected or appointed) workers' representatives or bodies, carrying out specific and agreed activities of workers' representations on behalf of the employees. They act on behalf of all employees, while direct participation allows an individual employee to express their views and opinions. Typical examples of indirect participation are works councils, various joint committees of employees and employers, workers' representatives in management bodies, etc.

When employee participation is understood in a broader sense, it means employee participation in specific bodies, such as works councils, workers' representatives in management and supervisory bodies, and all forms and methods of cooperation employed by workers regardless of their intensity or the level of cooperation. In the narrow sense, employee participation relates only to the workers' co-decision process. Financial participation means that employees have an opportunity to participate in the financial results of their firm (profit sharing) or in the distribution of savings at the expense of reducing operating costs (gain sharing). The United States has had the most experience in employee financial participation models, and most of the findings and conclusions are that financial participation promotes the

development of participatory management. The financial participation of employees in the form of profit and gain sharing is also promoted by the European Union, for example in EU Council Recommendation no. 92/443/EEC (Official Journal of the EU, No. L 245/92). Ownership participation of employees (internal ownership) is a way of employee participation in profit paid out in the form of a company equity interest; in practice, this is most frequently stocks.

### ***European foundations and forms of employee participation in the EU Member States***

The foundation of the employee participation in Europe is Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community (Official Journal EU, No. L 80/02). The Directive is extremely important for employee participation as it sets out a minimum framework for information and consultation in all undertakings and establishments within the European Union and a framework for employee information and consultation in the European Union on the method and context of employee information and consultation, confidentiality of information, protection of employee representatives and protection of their rights. The adoption of the directive had a particularly significant impact on those Member States that did not previously have a regulatory system of information and consultation of workers. In particular, this was the case in the United Kingdom, Ireland and most of the so called new Member States. Slovenia was an exception as it regulated this area in the Workers' Participation in Corporate Governance Act prior to the adoption of the directive.

The directive and other European Union guidelines formed the basis for developing or re-establishing individual systems of employee participation in Member States. Some followed the existing examples, in particular Germany, while others introduced their own solutions, drawing in particular from their national specificities. It is worth mentioning in this context that European legislation does not impose an obligation on national legislators to regulate the setting up of a certain form of workers' representation such as works councils. This is left to their discretion, and this is why we come across various systems of employee participation in Member States that are based on works councils, trade unions or a combination of both. And in some cases workers appoint or elect other similar representations. Member States also vary according to whether they regulate the right to appoint workers' representatives in management and supervisory bodies. In some Member States this is mandatory, depending on a certain number of employees (France), and in others only state-owned companies have this obligation imposed (Czech Republic). Some countries (Slovenia) have a general regulation regardless of the form of ownership; and some impose the obligation on publicly owned companies only, while in private companies this is a free choice by workers. This is the

arrangement in Croatia. Almost a third of Member States, including Bulgaria, do not have any legislative provisions governing workers' representatives in management bodies.

Although the systems of industrial relations in Europe differ considerably, the systems of employee participation in Member States can be broken down into four main groups depending on the dominant workers' representation at the company level: 1) works councils (e.g. in Austria and Germany), 2) trade unions with the coexistence of works councils (e.g. in Hungary, Slovakia, Slovenia, Croatia, etc.), 3) a combination of trade unions and other workers' representations (e.g. in the United Kingdom, Ireland, Estonia, Bulgaria, etc.), 4) so called 'new options' that emerged in addition to the existing trade unions such as various collaborative committees, etc. (e.g. in Italy, Lithuania, etc.). And workers' representations bearing the same name (e.g. works councils) may include different forms of employee participation in national legislations.

### ***Factors involved in effective employee participation***

There are several factors involved in effective employee participation. Based on numerous research findings and discussions in this field, the regulatory framework should first of all be pointed out. To enforce employee participation, workers need a legal framework, which is the basis for the more precise adjustment and regulation of employee participation in an individual organization. For example, in Slovenia and Croatia this can be laid down in a special agreement; it is also possible to specify certain obligations of the employer in internal acts of the organization. Moreover, the involvement of employee participation in the organization's governance and human resource management processes is very important. This forms the basis for building a participatory culture and can stimulate all stakeholders. In order to develop a participatory leadership style in an organization, it is reasonable to aim for as little hierarchical structure and formalization as possible; working groups should be as equal and homogeneous as possible, which requires a high level of self-control. A less hierarchical structure results in decentralization, including the delegation of responsibilities and powers to lower levels of management. In other words, it relates to the empowering of workers, which brings about more power and freedom to take decisions, and greater responsibility for education and training. Similarly, autonomy at work, i.e. a worker deciding what to do and how to do it, is extremely important for the introduction of participatory principles. Last but not least, the implementation of employee co-management does not only mean that workers discuss various matters but also that they have their own voice in the decision-making process, i.e. they are appropriately involved in the final decision. In turn, proper management is required from employers, which should enable the optimal utilization of the workers' potential and creativity to make progress towards the achievement of the set business objectives of the company. Proper management

also requires good communication and information, which are very important for good relations between workers and the employer as well as employee relations. In other words: adequate information is a prerequisite for quality decision making, but only (one-sided) information is not enough; workers should be given the opportunity to formulate their opinions - both from the legal and managerial point of view.

### ***Competences of workers' representatives and alignment of expectations***

In practice, we are often faced with the challenge of different expectations in the implementation of workers' co-management. Employers often expect workers and their representatives to understand the organization's position and business goals, and to support the plans of the management. Workers, on the other hand, usually have above-average interest in participating in matters that affect them directly or bring about a distinct change in their position in the organization, such as salaries, working conditions, etc. In the absence of adequate communication to overcome such gaps, both parties may grow further apart and jeopardize the achievement of the positive benefits of employee participation. Therefore, the employer should understand the position of the workers' representatives, their role specified by the legislation, and their relationship with other workers. Their knowledge and ability to perform this function should also be taken into account. We can confirm that proper education and training are the duty of workers' representatives in order to be able to perform their role. It is, on the other hand, necessary to have realistic expectations. Workers' representatives are very familiar with the content of the work, problems at the workplace, atmosphere and feelings of the workers, their complaints and desires - all of which may be more difficult for the top management level to perceive. However, they have less contact with the business strategy, more detailed data on financial operations, specific economic and political developments, etc. Therefore, they clearly need more information if the management is to receive an appropriate response from them.

### ***European models and recommendations made to EU candidate countries***

Germany and the Scandinavian countries are often referred to in discussions on the effective implementation of employee participation as countries where the system is well-established. As already mentioned, it is difficult to compare individual systems against each other, mainly due to different arrangements and traditions of industrial relations. Therefore, for example the German system might not work well in another Member State. But it is true that appropriate legal solutions and practices designed by employers and workers' representatives in their day-

to-day cooperation can be highlighted. An agreement between the social partners on a system of employee participation could be regarded as good practice. This includes not only basic legal solutions, but also the principles and the overall developments of the system an individual country wants to introduce. It is very important to clearly delineate the roles of various workers' representations such as works councils and trade unions. For example in Germany, this problem is not so persistent because works councils function at the level of the organization while trade unions conclude collective agreements and negotiate with employers at the sectoral and national levels. Good cooperation between workers' representations, especially trade unions and works councils, can contribute significantly to both more effective cooperation with the employer and a better organizational climate and the well-being of workers in the organization. On the other hand, the functioning of employee participation (and of course other forms of collective bargaining) in the Scandinavian countries is based on trade unions, which is also a result of their historical development and the role in the social security system.

The European Union candidate countries, which will have to transpose Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community into their legal systems, are recommended to make a thorough analysis of existing national practices, social dialogue at the sectoral and company levels, and in particular the existing system of information, consultation and employee participation with workers' representations, if any, of course. This constitutes a sound basis for comparing and clarifying the national specificities that must be maintained and taken into account in the future, and for identifying the European requirements in this field. Furthermore, it is appropriate to examine the systems in countries that are closest to an individual candidate country historically, socially and politically. On the basis of all this information, (public) discussion and coordination between the state as a legislator, employers' organizations and trade unions or other workers' representations are further logical steps. A well-defined system of employee participation results in positive effects for all parties, and for this reason it appropriate to invest more time and effort in it instead of searching for quick solutions in order to meet the requirements of Brussels.

AWARENESS

## Summary of project work and key findings in Republic of Serbia

*Serbian Employers' Association*

The Republic of Serbia was granted the candidate status for EU membership in March 2012 and the accession negotiations started in June 2013. So far (August 2019), 17 out of 35 accession chapters have been opened for negotiations, while 2 were provisionally closed. A lot has been done in bringing the national legislation in line with the *acquis communautaire*, but a lot of work is yet ahead of the Republic of Serbia. The whole process is time consuming, but it also requires financial and other resources and expert support from the EU and other available sources. For positive outcomes and effects, of equal importance is successful practical implementation of new legal regulations and solutions. It depends, to great extent, on ability, willingness and readiness of private and legal entities to understand and follow pace and costs of changes.

Over the past years some aspects of the EU labour law have already been introduced and embraced by those most concerned with them – employers, workers and the Ministry of labour. They particularly related to working conditions - working hours, part-time and fixed-term work, posting of workers. Thanks to “Workers involvement in management 3” project (WIM 3), the second area of the EU labour law, i.e. informing and consulting workers came to focus of the tripartite social partners bringing on table discussion on employee participation in decision making.

The concept of workers’ involvement in management and process of making decisions relevant for company’s doing business has long been known in the Republic of Serbia, as in all republics that made part of the former Yugoslavia, now independent states. The background, motives and forms for involving workers were inspired by the workers’ self-governance, and thus drastically different from those laid down and prescribed by the Directive 2002/14/EC. Nevertheless, the general collapse of the socialist system and its failures still echoes in people’s minds. Even more, these echoes bring mostly negative pictures from the old days and reluctance to understand and embark on positive aspects of the EU Directives on this issue.

The valid Labour Law of the Republic of Serbia came into force in 2005. The current text envisages the possibility of forming the “council of employees”, which brings distinction from the previously known “council of workers”. However, it contains only one article on this issue. This article specifies that workers can form a council if a company employs at least 50 employees. It also defines the council’s role to be issuing opinions and participating in making decisions on the economic and social rights of employees, in the manner and under conditions determined by the law and company’s general act. In this way, wide space was left open for a

range of options related to the scope of the council's work and its interaction with the management. But, on the other hand, paying such a little attention to the council inspired no significant interest on either employers' or employees' side over the past period.

One of the first steps in WIM 3 Project's implementation was to gather the interested parties in order to better understand each other's positions and plans. Initial discussions with both nationally representative trade unions confirmed conducting internal preparations for awaited changes to the Labour Law and interest in gaining more knowledge on Directives related to workers' involvement in management. Inevitably, the memories of "council of workers" from the socialist times were evoked, but without the firm eagerness to proceed on comparison between the two types of the council. On the other hand, Ministry of Labour welcomed implementation of the Project but it restrained from defining more precise timeline for drafting the new labour legislation, so the timeline remained uncertain even though the new legislation has been expected and speculated for quite some time. Equally important, during this initial meeting there were no indications on how the relevant Directives will be introduced to the national legislation – as a part of the Labour Law or through a separate law. Thanks to the financial support of the Project, the draft of the "Workers' Participation in Management Act", as a result from the previous phase of the Project, and relevant Directives were translated and shared with the social partners. This was based on the verbal agreement reached during the initial meeting to use translations as a point of common understanding of the terms and source of useful information.

In order to learn more about employers' knowledge and positions about the workers' involvement in management, SAE conducted a survey. 52% employers confirmed to have knowledge on possibilities / ways to involve employees in decision-making processes in companies. However, when asked about purpose of employees' participation in these processes, 35% of respondents provided affirmative answers, while some consider that such participation is reserved for a trade union (12%). This confirms that some employers still lack the understanding of different principles and roles of workers' council and of a trade union. Actually, ¼ of respondents do not see any difference. Even more, 30% of employers believe that establishing of workers' council would be seen as a competition by trade unions. On the other hand, positive views and answers stated that workers' involvement in management can improve the organization of work and doing business of the company and that It allows for greater connection of the worker with the company, which results in more efficient work.

The survey, as well as separate contacts with employers during the Project implementation period, revealed that half of the employers believes that forms of employee participation should be only those provided for by law. This points to some stubborn attitudes that oppose modern, democratic trends in securing corporate success and even fear and resistance to such employee

participation because of the own inability to recognize benefits of such workers' involvement. The other positions reflect opinions that this role of employees should be treated as a creative impetus and that employers themselves should inspire participation of employees. This presents the encouragement for the Serbian Association of Employers (SAE) to seek the balance between the two opposite standpoints, when lobbying for adequate legal changes.

The workshop, held as one of the Project activities, gave the overview on the EU acquis and its implementation in practice in a vivid and lively way, which induced the active participation of workshop participants. Majority of the participants were from the trade union's side. This reflects, on one side, the lack of employers' willingness to deal with issues that at the moment do not produce legal obligations for company. On the other side, the legislator (Ministry of Labor) plans changes on the Labour Law only after 2020 and pays relatively little attention to expected transposing of Directives relevant for workers involvement in management. Some comments of participants reveal fear of trade union representatives that worker's councils and agency work lead to adjourn of trade unions, while employers find workshop extremely useful considering the opportunity to learn a lot about essential differences between trade union and workers' council and practical examples from Slovenia and other EU countries. The overall conclusion was that the changes in legislation will not come soon, but workshops like this are very useful as an opportunity to learn more, exchange opinions and prepare own position for the transposing relevant Directives and, more importantly, putting them in practice.

In light of the expected beginning of negotiations on Chapter 19 – Social policy and employment, harmonization of the labour legislation is expected to accelerate. Even though during the Project implementation there were no announcements on how Ministry plans to proceed on this issue, i.e. through amendments to the existing Labour Law or through a separate law, as well as to which extent the workers' council will be legally regulated, SAE believes that as many employers as possible should be introduced the expected changes. This is particularly important considering the benefits of employee participation in management and the Project related web page that SAE developed during the Project implementation period will serve as a source of information and support in discovering more on this issue.

The general conclusion is that domestic public is still not sufficiently familiar with the possibilities of establishing the council of employees and the European Directives which regulate workers involvement in management and practice. The confusion in distinguishing workers' council and council of employees in spite of their noticeable differences is still present, along with misunderstanding the general roles of councils and trade unions. It is evident that collecting and promoting examples of good practice is very much needed.

Therefore, as an organization that represents, protects and promotes the employers' interests

and companies' doing business, the Serbian Association of Employers wants to work together with its social partners on raising awareness. In this way, SAE would contribute to the harmonization of domestic legislation with the legislation and acquis of the European Union, while providing sustainability and development to the Serbian economy in the fastest and most efficient way.

## Summary of project work and key findings in Albania

### *BiznesAlbania*

BiznesAlbania in the framework of the project WIM 3 “Workers’ involvement in management – awareness, experiment, monitoring” according to the plan of action, created an expert group with Union of Independent Trade Unions of Albania named Task Force. The creation of Task Force consists of representatives from the Ministry of Finance and Economy (that covers the social dialogue and the National Labor Council), The General Director of National Employment Service of Tirana, representatives of General Inspectorate, BiznesAlbania and the Trade Unions.

Through the organization of a several meetings and workshops the group of Task Force was discusses about legislation given by lead partner of the projects as well as based on the “Albanian “Law on Commercial Companies”, Title IV, “The participation of the employees”. Art.19 and 20 ”Council of the Employees” and “The rights and obligations of the council of employees”.

These two articles include the main issues of the participation of the workers in the council, but the Draft Law explains in detail all the procedures in its 72 articles. The draft legislation was translated in Albanian language and has prepared a survey which was distributed from BiznesAlbania to the companies, members of the organization and to all BSPSH affiliated.

Expert from ZDS Mrs.Maja Skorupan and Mrs.Valentina Franca held workshops in Tirana with all representatives from Task Force and made presentations about “EU legal framework of workers` participation” and “Slovene legislation on participation of workers in management”. They share experiences from countries that accept concept of Workers` Council, and also spoke for difficulties to apply it in other countries. Some arguments about difficulties are:

- According to the philosophy of company owner, the empowerment of Workers` Council prevents development of the business;
- It was an issue that representatives of Trade Unions emphasized and wanted to be clarified in the legislation the role of Trade Unions and the role of Workers` Council. There were questions from participants and then the discussion followed about the Albanian translation of existing “Draft Legislation of Workers` Participations in Management Act”, the methods and conditions for workers` participation in the management of companies, through the right to present an initiative; the right to be informed; the right to give opinions, through the possibility of joint consultations with the employers.

The Albanian Expert, Mr.Edison Hoxha made presentations to Task Force about "Draft legislation on participation of Workers` in management acts". The main issues that were presented were:

- Workers` participation in company management through a special legal regulation defined methods and conditions for Draft legislation on "Participation of Workers` in management acts".
- The right to participate in management should be exercised for both private and public employees.
- The Workers` Council will act in favor of company taking into consideration the interests of employees.

#### ***Formation, composition and mandate of Workers` Council***

- Employers have the right to establish the Workers` Council in the company, the number of members will depend by the number of workers;
- a member from Workers` Council in company with up to 50 workers;
- two members from Workers` Council in companies should be between 51 and 100 workers;
- three members from Workers` Council in companies should be between 101 and 200 workers;
- five members from Workers` Council in companies should be between 201 and 500 workers;
- seven members from Workers` Council in companies should be between 501 and 1000 workers;
- In companies with more than 1000 employees, the number of staff members from Workers` Council will be increased by 2 for every additional 1,000 employees.
- The mandate of workers` Council is every 4 years, and members can be re-elected.
- The number of Workers` Council should not change during the mandate, despite of any change in number of eligible employees in company.
- The Workers` Council stops functioning if the number of eligible employees is under the

minimum number of employees needed to create the Workers` Council.

### ***The Right to Vote and to be Elected***

- The right to vote (elected) for representatives in Workers` Council is the right for all employees without interruption at least six months in company.
- The management staff doesn't have right to vote representatives in Workers` Council.
- The right to be elected to Workers` Council is given to all employees employed in company without interruption not less than twelve months.
- In a newly established company all employees have the right to vote and to be elected, regardless of the length of employment.
- The members of Workers` Council shall be elected by secret and direct voting, each employee shall have one vote. Candidates for election commission can be nominated by employee or by representatives from Trade Union in company.

Also, Union of Independent Trade Unions of Albania have given their comments and suggestions to make some changes in Draft Legislation by taking into consideration "The Law of Commercial Councils", "Labor Code", suggestions have given after consultations with Expert of Task Force and meetings in their affiliates. The suggestions about "Draft legislation of Workers` Participations in Management Acts" consists to be reviewing Art. No 9, 22, 25, 41, 45, 55, 65.

The Union of Independent Trade Unions of Albania has opposed the Albanian "Law on Commercial Companies", Articles 19 and 20 "Council of the Employees" and Art. 21 has concluded that based on European experience the participation of workers in activities of companies has positive sides that helps in strengthening of the role of workers' council, in terms of improving the economic and social status. Also, it should be clarified in Albanian Labour Code , about the rights and duties of the Trade Unions and their role in the companies by making distinction with the Workers` Council.

In current situations of our country, which is lacking in functioning of justice system due to ongoing reforms, difficulties are encountered in labour relations, labour legislation, in organization of employers' association and in organization of Trade Unions on Small and Medium Enterprises. We suggest that "Draft legislation of Workers` Participations in Management Acts" is premature to be implemented in Albania but can be implemented in longer term in the context of Albania's association to European Union.

At the end, it was agreed to further go in details of the draft legislation, and it was agreed about draft- law will pass its stages of recognitions, consultations and legal adjustments. In the framework of European Union directives it may be required a drafting separate law in accordance with European Union directives.

## EXPERIMENT

## Summary of project work and key findings in Montenegro

### *Montenegrin Employers' Federation*

Social dialogue is a complex and stable mechanism, based on the sincere desire of social partners - government, trade unions and employers, to build the dialogue on mutual trust. Compared to other political mechanisms, social dialogue involves a much wider range of actors, that is, engages creative energy from a large number of sources, thus introducing new, essential aspects into political and social life. The Constitution of Montenegro stipulates that the social position of employees is harmonized in the Social Council, which consists of representatives of trade unions, employers and the Government.

International standards in the field of social dialogue are defined by the International Labor Organization - ILO (ILO Convention No. 144 on Tripartite Consultation for the Application of International Labor Standards, in Article 3 states "Employers' and workers' representatives within the meaning of the procedure provided for in this Convention are freely chosen by their representative organizations if they exist"; Convention 87 on Freedom of Association and Right to Organize; Convention No 98 on the Right to Organize and Collectively Negotiate; Recommendation 113 on Sector / Industry and National Level Consultations of 1960, Recommendation 152 on the tripartite consultation of 1976). These documents define that social partners can only be voluntary organizations of workers and employers. Montenegro has ratified all these documents so that we have a complete regulatory system in which social dialogue can be practiced and promoted. Also, when it comes to consulting, informing and involving employees in the decision-making process, the whole institute is regulated by the Labor Law<sup>1</sup> and the General Collective Agreement<sup>2</sup>. There are no workers' councils in

---

<sup>1</sup> Article 158 of the Labor Code provides that an employer shall inform a trade union organization at least once a year of:

- 1) the results of operations;
- 2) development plans and their influence to the position of employees, developments and changes in the wage policy,
- 3) measures for improvement of conditions of work, safety and protection at work and other matters relevant for the financial and social status of employees.<sup>1</sup>

Further, an employer shall inform a trade union organization of:

- 1) measures of safety and protection at work;
- 2) introduction of new technology and changes in organization;
- 3) schedule of working hours, night-time work and overtime work;
- 4) passing of a program of introduction of technological, economic changes and restructuring, and a program for exercise of the rights of redundant employees;
- 5) time and method of payment of salaries.

Montenegrin legislation, which is especially important to note when talking about the implementation of the WIM3 project, as well as the experiment as its part.

When it comes to social dialogue, its development and quality, it is very important to note the structure of the Montenegrin private sector. 99% of the Montenegrin economy consists of micro, small and medium-sized enterprises, of which about 90% are micro enterprises with up to 5 employees. This structure of the economy is one of the reasons that bipartite social dialogue is not at the level at which the tripartite is.

The commitment of the Montenegrin Employers` Federation to promoting social dialogue at all levels was decisive to take part in the WIM3 project, and our role in the project was different from the one we had in previous WIM projects - this time we had to go a step further, which was done by simulating the establishment of a workers' council in a Montenegrin company.

### ***The experiment at „Mitrović & Co“***

Finding a company that would like to take part in „founding“ of the WC experiment was a pretty challenging task. First, it was necessary to find a company with at least 20 employees, which, given the above statistics on the structure of the economy, was not easy. Furthermore, the fact that workers' councils are not legal obligations and that the law does not regulate them at all makes employers and employees not too motivated to take the matter more seriously.

However, both management and employees of a family-owned firm from the south of Montenegro - Mitrovic & Co, recognized the potential benefits and their interest in being the first in Montenegro to be a part of the experiment. Mitrovic & Co operates in the tourism and education sector, they have from 25 to 50 employees (depending on the period of the year), and at the company level they do not have an organized trade union. In preparatory meetings with representatives of the Montenegrin Employers Federation and the Union of Free Trade Unions of Montenegro, the management and employees of the company expressed their interest in workers' councils as a form of social dialogue, which they believe could be applicable in their company in the future. After the election procedure was completed, the conditions for the newly elected council to become operational were met. The employee representative was involved in all significant management activities which was an opportunity to see his company

---

Also, an employer shall timely inform and deliver acts for trade union organization for the purpose of attending meetings of employer's bodies where initiatives and proposals of the employer are discussed.<sup>3</sup> A trade union organization representative shall be entitled to participate in a discussion before relevant employer's bodies.

<sup>2</sup> Article 54 of General Collective Agreement contains detailed regulations concerning the right to information and consultation. An employer shall request and consider the opinions and suggestions of trade unions before making a decision of

from the inside and from a different perspective. Management informed the employee representative about the annual financial statements, short and long-term goals of the company, procedure of preparation for the tourist season, etc. Also, an employee representative was consulted about staff planning for the coming season. However, certain amount of reserve with employees is registered when it comes to the institute of workers' councils, the general view was that they did not expect that such a form of social dialogue would be implemented in the domestic legislation in the future. In addition, the general impression is that employee participation and consultation in the decision-making process could strengthen the overall situation of Montenegrin companies, but that such cooperation would need to be established on healthy and strong grounds. Employees expressed satisfaction that they were enabled, and they are probably the first in Montenegro, to gain some knowledge about this form of social dialogue. They are aware that this was "only" an experiment and that the situation would be different if it was grounded in the positive legal regulations of Montenegro. Whether it is a legal obligation or not, employees have seen the positive aspects of this institute, appreciating the rights it secures, but also the opportunity to view the company from a new angle. In addition to their specific workplace and the day-to-day tasks that need to be accomplished, for the health and growth of the company, every element of it needs to be dedicated to achieving success. The conclusion is that works councils are a formal and orderly mechanism of what every company should have in practice - mutual trust, understanding and respect between social partners at company level.

Undoubtedly, the experiment conducted during the WIM3 project brought with it a new value to the company, especially when it comes to the relationship between management and employees, but interpersonal relationships in general. It also helped them to establish a framework within which they can improve their internal relations in the future and therefore the success of their business, which are values of great importance regardless of whether or not workers' councils formally become part of the legal system of Montenegro.

---

high importance for the professional and economic interests of employees, layoffs due to technological and economic, restructuring and other changes, the jobs classification, etc.

# Summary of project work and key findings in Republic of North Macedonia

*Business Confederation of Macedonia*

## ***Instead of introduction***

Following the successful implementation of the projects WIM 1 and WIM 2, the current state of the existing legislation of non-EU countries, in terms of workers involved in the management process, has been identified and meanwhile activities regarding introducing the social partners and company-level stakeholders with the content of the EU legislation regulating this issue have been initiated.

Following the results of the previous projects, it was concluded that further new activities should be pursued in order to raise awareness and familiarize all stakeholders with the manner of regulation, formation and existence of Workers' Councils, but this time not only by working out the theoretical part, but also by using methods of practical application.

For this reason, the implementation of the project WIM3 began, reflecting a practical presentation of the procedure for the formation of the Workers' Council, its role and its day-to-day operations in a company. Therefore, the focus of this project was on the pilot-experiment in establishing a Workers' Councils within the framework of pre-selected pilot companies

Therefore, several companies from the employers' database were contacted and two companies were pre-selected in which the experiment would be conducted. After the pre-selection, a different profile of companies were selected in order to determine how the experiment would be accepted and implemented and what their views would be on implementing the Workers' Council in the future.

The experiment is regarding two companies, one with a total of 280 employees and another with 350 employees, with different business activities and different organizational structure. Each company is unique in its field and unique in the way of regulating the relationships between the employees and management therefore were selected for conducting the experiment within the project WIM3.

## ***The experiment***

The experiment continued after the selection of the pilot companies. First, in order to familiarize and present the projects' purpose, meetings with the selected pilot companies were held in the presence of: one employers' association – Business Confederation of Macedonia; CEOs and companies' employees' representatives. On these meetings, Business Confederation of Macedonia presented everything about the workers' councils in details including: "What do they mean?"; "How are they formed?"; "How do they function?" and "What is their purpose?".

Furthermore, on these meetings the previously drafted Act on Employee Involvement in

Management was elaborated. In order to implement the establishment successfully, both companies accepted that the establishing of Workers' Councils should be carried out in the act's direction, but by adapting the conditions and capacities of the companies themselves.

Namely, the result was different in the two companies because the existent unionization in the first company and the existent form of workers' union in the second company which is different from unionization on one hand, but very similar to the Workers' Council on the other. This diversity has led to different approaches and different results of the experiment, which therefore this publication will further present the experience of the two pilot companies individually.

### ***Results from the conducted experiment by pilot-company no. 1.***

In the Republic of North Macedonia, in companies with union affiliation, the idea of workers' re-unionizing is generally not accepted. The unions believe that they are sufficient themselves, because they cover every area of the relationship between workers and management, and at the same time they are excellent at connecting the two sides. They somehow fear the possibility of jeopardizing their position by permitting, anticipating and regulating the formation of a new additional model of workers' association. Trade unions still see the Workers' Councils as a model of association that is similar to theirs. Therefore, they still do not change their attitude and consider that such an additional model is unnecessary if there is a Trade Union (s) in the company.

The same opinion is expressed by the Trade Union of the first selected pilot company, which according to the National Classification of Activities carries out: service activities related to air transport. Namely, before conducting the experiment and signing the Cooperation Agreement, there was first discussion in order to change the attitude and perception of trade union representatives regarding the Workers' Council in a way that distinguished them - the Trade Unions VS. The Workers' Councils.

On the other hand, the union representatives, wanted find an additional reason to prevent the conducting of the experiment in their company in a way that there was no need to introduce a Workers' Council into a company where there is a union, although they were familiar in advance that it was for the experiment and that it will produce no obligation for further maintenance. However, with suspicion, in the end they still gave their consent for establishing a Workers' Council, under condition, that they would be involved in the whole process as observers during the whole experiment.

We emphasize that we have achieved great success in raising awareness among all stakeholders, especially trade union representatives, but also in the trade unions in general, as this experiment directly and indirectly involved employees who are also members of their trade union. Through this experiment, everyone involved in the work process had the opportunity to see closely that the Workers' Council is as a completely different model from the Trade Union and as a model of association, in no way endangers the TU's position and that it can only

contribute to all parties involved in the work process in a company if it exists as such.

Furthermore, after the signing of the contract, the process of conducting the experiment began. First the election of the councils' members was carried out. The election was conducted according to the number of employees, and also with the Draft Act on Employee Involvement in Management. The council consisted five members. There were no irregularities observed before or during the elections, nor were there any objections or complaints regarding the conduct of the elections. Therefore, we can conclude that there is willingness in companies to implement such a model, i.e. the procedure of forming a Workers' Council in no way has a negative impact on the workflow of a company.

Concerning the communication between the members of the Workers 'Council and the trade unions, the following conclusion was established: the workers showed particular interest in sharing their demands together with specific steps to improve working conditions and the working process in general, meanwhile the representatives from the union have consistently sought to observe and more frequently had informal meetings and discussions with Council members fearing that their position will not be jeopardized. Most notably the management's relationship with the Council can be evaluated as correct without too much effort and insistence on involving the Council in creation and decision making. It is evident from the foregoing that the members of the Council have succeeded in establishing communication with all stakeholders and successfully carried out their function for which they were elected.

The result of the experiment in this pilot-company definitely indicates the willingness of companies to implement the Workers' Council, but at the same time divided opinions among stakeholders, different level of commitment and involvement in the experiment that does not lead to the conclusion that if the system of organization works satisfactorily they are not always ready to change, even if it might mean improving them.

### ***Results from the conducted experiment by pilot-company no. II***

In the second pilot-company, that according to the National Classification of Activities carries out: production of electric motors, generators and transformers, there is a form of workers' union that is different from the trade union, on one hand, and very similar to the Workers' Council on the other. It is about the so-called "Ethical Circle". Ethical Circle is a model of workers' association with which they as a company first met when they visited another company in another country with a similar activity of doing business, with the aim of upgrading and improving themselves. Since there was a shortage of workers' associations, this company decided to set up an "Ethical Circle" as the ideal solution for them, following the example of the company they were visiting.

Unlike the first pilot company, the enthusiasm for conducting the experiment in this company was at a higher level, as it represented an opportunity to upgrade and refine the existing model. After the successful formation and election of the members of the Workers' Council, the elected members built an effective relationship with the workers on the one hand, but also with the

management who showed a particular interest in cooperation on the other. They were open to their colleagues, listened to their recommendations, criticisms and guidance and successfully communicated with the management.

Furthermore, the Workers' Council set out a framework of areas, which was the starting point for further defining and directing their action as a newly formed body. The members in the Workers' Council, within their powers, decided to act in particular in the following areas: production; safety and health at work; delivery deadlines; transfer of information between management and workers; mediation in a way that receives and proposes measures in the interest of the workers but also in the interest of the company; as well as participating in meetings and negotiations with management.

The experiment in this pilot company was successfully implemented, all parties were involved in it without any doubt and early conclusions about its success. Therefore, we can conclude that in companies like this one, where there is no union, the interest and success of implementing such a model such as the Workers' Council is at a higher level.

### ***Conclusion***

Finally, it has been concluded that despite the split opinions and the different results of the two pilot companies the experiment was successfully implemented. Both pilot companies showed interest in participating and implementing such experiment, and this resulted with realistic results. These results have highlighted the need for further work in terms of raising awareness and encouraging the formation of such a model of workers' association. We would like to point out that bigger efforts should be made in companies where there is already unionization, as the interest in forming a Workers' Council is very low on both the management's and workers' side.

Regarding companies where there is no union, we concluded that the interest, as well as the need awareness for establishing such a model is higher. If there is no trade union or any other form of unionization, it is natural to be aware of the need to establish a model by which information can be easily transferred between the two parties in a simplified way with a better communication among them. However, it should be noted that the awareness of employee involvement in the management of the company itself should be higher anyway. Such models serving only for transmission of information is not enough, they should be involved in the decision making made by the management of the company.

Last but not least, in addition to conducting the experiment in the pilot companies, a particular role was played by sharing the individual experiences of all participants as a result of the implementation of the Workers' Councils. It turns out that in this way we are all moving in a better direction, so we need to continue to cooperate and help each other. We believe that with this project we have made a very important step towards our advancement in this direction and that the goal of WIM3 has been achieved.

**MONITORING**

# Summary of national survey on employee involvement in corporate governance – Slovenia

*Association of Employers of Slovenia*

## ***Purpose and methodology***

In Slovenia, employee participation is regulated under the Workers' Participation in Corporate Governance Act, which was adopted in 1993 and no longer corresponds to the modern business environment. As it is still the only applicable legal basis in this area, we were interested in how the law is exercised in practice. Therefore, we designed our own questionnaire with different sets of questions: demographic characteristics of the respondents (companies and individuals who responded to the questionnaire); cooperation with the works council, workers' representatives in management and supervisory bodies, and generally on the system of employee participation. The respondents were members of the Employers' Association of Slovenia (EAS), who were provided with a link to the online survey. 125 members responded to the survey in the period from 23 October 2018 to 1 December 2018. Basic statistical methods, segmentation analysis, response crossing and correlation analysis were used to analyze the data collected.

## ***Sample***

Most respondents are from limited liability companies, accounting for 72%, followed by joint stock companies (21.6%) and sole proprietors (1.6%). A two-tier governance system dominates in joint stock companies (55.6%). The sample is mostly represented by domestic, privately-owned companies (59%), the second largest group are foreign shareholders (25.6%) and in 15.2% of cases the companies are state-owned. Half of the companies are in primary production. Regarding the size of the companies included in the sample, the distribution is even: 29.6% are large enterprises, 22.6% are medium-sized enterprises, 25.6% are small-sized enterprises, and the remaining ones are micro-enterprises. The questionnaire responses were mainly received from heads of HR departments or divisions (37.1%) and directors or presidents of management boards/boards of directors (24.2%).

## ***Cooperation with the works council***

As there are no official records of works councils and trade unions at the corporate level in Slovenia, we were interested in whether workers are organized in any form of employee representation. The results show that works councils are established in just under half (44.8%) of the involved companies, and similarly trade unions are organized in 48.8% of the companies. In 79% of all the companies with a works council a trade union is also organized. This means

that in a good third of all participating companies workers are organized both in a trade union and a works council. On the other hand, there is no representation of workers in 37.6% of the participating companies.

In addition to legislation, participatory culture and respect for it are also important for the effective implementation of employee participation, which is usually also impacted by the tradition of the works council. In more than half of the participating companies (54%) a works council has been organized for more than 20 years, and in nearly a third of the companies it has been in place for 10 to 20 years; together representing the majority of the companies. It can be concluded from this that the companies covered by the survey have many years of experience with works councils. Their overall rating of the cooperation with the works councils is at 3.47 on the scale of 1 to 5; half of the respondents rate the cooperation as very good (4) or excellent (5). The chart below shows the respondents' satisfaction with the works council by share.

*Chart 1: Overall rating of the cooperation with the works council (N=51)*



When asked what changes they want in the cooperation with works councils, they state that they want changes related to information and communication, engagement and working methods. “Insufficient knowledge within the works council to participate in the governance” was one of the most frequent reasons for the respondents to rate the cooperation with the works council as “unsatisfactory”.

### ***Workers' representatives in management and supervisory bodies***

The legislation also regulates the participation of workers' representatives in management and supervisory bodies, i.e. in the supervisory board and the management board in a two-tier governance system, and in the board of directors in a one-tier corporate governance system. The law does not explicitly specify how this form of employee participation is exercised in limited liability companies (since most of them only have a director as a management body), so this is left to be mutually agreed. Workers' representatives are on the supervisory board in all of

the 11 joint stock companies with a two-tier governance system, but only one also has a workers' representative on the management board. Two of three joint stock companies with one-tier governance system have a workers' representative on the board of directors as a non-executive director, and the third company as an executive director. All of the 11 limited liability companies with a works council have representatives of workers in the supervisory board. In companies with workers' representatives, their usefulness in management and supervisory bodies is in general rated at 3.5 on a scale of 1 to 5. The results showed, however, that there were differences in the assessment of the usefulness of workers' representatives in management and supervisory bodies, depending on the size and legal form of the company. The respondents from joint stock companies rate the usefulness of workers' representatives in the management and supervisory bodies better than the respondents from limited liability companies; and the respondents from small-sized enterprises better than those from larger companies. Moreover, the results indicated a medium-strong positive correlation between the overall rating of the cooperation with the works council and the usefulness of workers' representatives in management and supervisory bodies. Those who rated cooperation with the works council more positively also gave a more positive rating to the usefulness of workers' representatives in management and supervisory bodies.

### ***General information on employee participation***

As the Workers' Participation in Corporate Governance Act lays down the fundamental rights of workers in this field, we were interested in the survey respondents' opinions of the scope of these rights. More than half of the survey respondents (54%) actually indicated that the rights are appropriately regulated by the Workers' Participation in Corporate Governance Act. We further asked the respondents what the existing system of employee participation provides them with. The respondents showed above-average agreement with the statement that the cooperation with the works council enables greater readiness of employees for the introduction of changes and more consideration for the interests of employees as stakeholders, and better communication within the company. However, they agreed less with the statement that employee participation in corporate governance enables the adoption of better business decisions, higher productivity or increased employee innovation. The latter was rated worst. The respondents agreed most that appropriate material conditions are provided for the functioning of works councils, and they agreed least that the works council helps to resolve conflicts with employees.

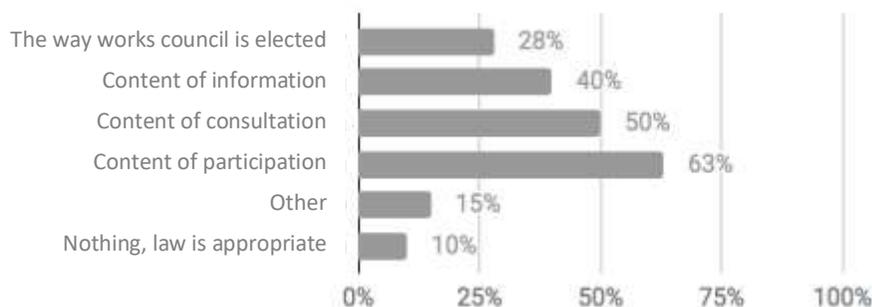
More than half of the respondents mentioned "information of the works council" as one of the forms of employee participation, and "participation of the works council" as the least appropriate. "Joint consultation" (46%) is also perceived as appropriate. The rating of the appropriateness of the forms of participation reflects some significant differences with regard to the demographic characteristics of the respondents. For example, information of the works council is less appreciated in domestic, privately-owned companies ("no" 57%, "yes" 47%) than in state-owned companies ("no" 27%, 73% "yes") or foreign companies (25% "no", "yes" 75%).

The survey finds a statistically significant difference between the participating companies engaged in primary production and service companies: production companies favour information more (“yes” 68%) than service companies (“yes” 45%). Most statistically significant differences relate to the size of companies. Large companies favour representation of workers on management and supervisory bodies most while smaller companies are less in favour of it. Information of works councils is most favoured by large companies, and least by small companies.

According to the respondents, the information is regarded as a meaningful activity when discussing the company strategy, a change of the company’s status, and the issues related to the company's operations. While with regard to human resources issues and health and safety at work, the respondents believe that consultation and participation are meaningful activities. Given the demographics, there are some significant differences related to the respondents’ positions in companies. Most members of management boards/boards of directors opted for information and were followed by the assistants/advisors to the management board/board of directors/director, while information was least favoured by senior associates and accounting. It is also necessary to point out the differences in meaningful activities dealing with human resources issues relating to the organization of work. Respondents from companies with majority foreign ownership are much more in favour of information (64%) than those from domestic privately-owned companies (38%) or state-owned companies (29%).

In the final part of the survey we were interested in what issues are, in the opinion of the respondents, most topical and should be regulated differently in the Act (Figure 2). Almost two thirds of the respondents believe that the issue is participation, half of them mentioned consultation, which is followed by information (39.7%) and the way works council is elected (28.2%). On the other hand, 15.4% of the respondents believe that these issues are properly addressed in the existing act.

*Figure 2: The topics that the ZSDU should regulate differently (respondents N=78, with several possible answers, 161 indications in total)*



Based on the results, several conclusions can be drawn. In general, a favourable position towards the existing system of employee participation can be perceived; the respondents would in particular like to see active involvement of workers' representatives (especially in consultation and participation) when dealing with personnel matters and occupational safety and health. They are less in favour of the consultation on issues related to the company's operations; in this case they believe that informing the works council is sufficient. Not surprisingly, therefore, the respondents would want legislative amendments to participation and consultation. Moreover, the respondents want some changes regarding the informing of and communication with of workers' representatives and changes in the latter's engagement and the method of work. They would also like to see a higher level of competences or more knowledge of workers' representatives concerning participation. The latter can be achieved in a less formal way, for example in agreement with the works council to arrange for appropriate and targeted training with a view to more effective employee participation.

In view of the opinions expressed by the respondents and the professional public, amendments to the Workers' Participation in Corporate Governance Act should be drafted as soon as possible. However, the subject of the debate is part of the social dialogue and should therefore involve all interested stakeholders, i.e. representatives of both employers and workers.

### ***Recommendations for improving the national legislation on workers' participation***

1. The definitions need to be aligned with the Employment Relationships Act (ZDR-1).
2. for the establishment of employee representation (works councils and workers' representatives respectively) laid down in Directive 2002/14/EC should be increased. The existing legislation enables workers to elect a representative in a company with as few as only 3 employees, while Directive 2002/14/EC fixes a threshold of at least 50 employees in an undertaking or 20 in an establishment.
3. Family members of the management should be granted the right to vote and to stand as a candidate in elections, as they have the status of an ordinary worker just as the workers with voting rights.
4. The census representing the threshold for electoral success should be raised, i.e. to 60%.

5. The procedures for re-establishing a works council after failed elections (similar to the creation of a works council in a newly established company) should be clearly defined and the period to re-run the elections should be extended.
6. Clear delimitation of competences between the trade union and the works council or the employers' representative is needed (by individual concept).
7. Coordination of procedures (deadlines) in the case of redundancies according to the competences of the works council and according to the competences of the trade union under the ZDR-1.
8. Only information and consultation should be maintained as forms of cooperation for the purpose of reaching an agreement, but not employee participation.
9. Abolition of the legal institution of the involvement of workers' representatives in the bodies of a company
  - a. The management body: a representative of the employees in the management board is unique in Slovenia, with the tasks of the employee representative and their position in the board respectively not being defined at all and being an end in itself.
  - b. The supervisory body: the applicable law provides for the possibility that ½ of the supervisory body members are appointed by employees.
10. Introduction of the principle of employee representatives acting in the best interests of the company – in conjunction with the concept of the responsibility for appointments.
11. Introduction of a clear concept of the substantive liability for the decisions made by employee representatives; as a rule, the decisions made by employee representatives have significant material implications, but due to the concept of institutionalized lack of responsibility, an employee representative is not held financially or criminally liable despite potentially intentional damage caused.
12. It is necessary to clearly define the obligation of employee representatives to ensure two-way communication with the employees, and the mechanisms of action – the purpose of information is to inform employees, and the purpose of consultations is to align with the interests of the employees, which must not simply be assumed.

## Summary of national survey on employee involvement in corporate governance – Bulgaria

*Bulgarian Industrial Association – Union of the Bulgarian Business*

This section represents the main result of the national online survey on the status of employees and workers representation in enterprises in Bulgaria held in 2019 under the WIM project "Workers Participation - Awareness, Experimentation, Monitoring" and the national recommendations on the employees' involvement in enterprises.

The survey and its report, respectively, include information on the representation of workers and employees in enterprises of all economic sectors in Bulgaria according to the 2008 Classification of Economic Activities (NACE), analysis of this information and general conclusions. The survey was national without pretending to be a representative one. Over 2000 enterprises were addressed, covering different sectors of the economy and various regions of the country. By means of the online survey, data was collected for 103 enterprises.

The survey showed that with the big majority of respondents the predominant part of ownership (over 51%) is of local residents. At the same time, 43.7% of the respondents reported to have a functioning workers and employees' representation in their enterprise or organization.

Around every tenth employer places a sign of equality between the institute of representation and the functioning of a trade union, thus mixing the trade unions powers with the workers' representation.

An impressive majority (nearly 91.5% of respondents) considered that the choice of workers and employees' representatives did not have a negative impact on the employer's activity.

Less than 50% agreed that the legislation regulating employee representation meets the needs of our time but, simultaneously, the prevalent part of respondents did not share such a positive assessment, and some even thought the legislation was obsolete.

Over 58% of respondents indicated that the scope of the competence of employee representation defined by legislation is acceptable, and a fewer percentage considered the competencies too broad and exceeding their perceptions of acceptable scope. The views were that broad competencies of workers and employees' representatives are not tied to relevant responsibilities.

All respondents considered it acceptable and useful to include staff in the management of the enterprise. In fact, none of the respondents rejected, a priori, the inclusion of employees in the management. The differences are only in the perceptions of the appropriate forms of participation.

To the question about "What areas or issues do you think should involve workers and

employees' participation in management?", the most widely accepted view was that workers and employees' participation in management should engage their representatives with rights and obligations arising from employment relationships. A bit more than 37% responded that representation should focus on staff issues (changes in systematization of working places, need for new workers, surplus employees). Some more than 17% would agree on expanding the representation beyond traditional human resources management area by involving representatives in issues related to the activity of the company and its economic situation.

At the same time, around 38% of respondents shared the importance of management actions aimed at popularizing representation but nearly 2/3 of respondents did not consider it appropriate for themselves to promote the functioning and activities of workers and employees' representation in their company and organization. The understanding here was that the commitment lies with the representatives themselves and it is not the job of the employer or even that it creates additional bureaucracy and hinders the processes in the company.

However, respondents are virtually unanimous in their view that participation in the management goes hand in hand with the need to take responsibility for the actions of the representatives, and that representatives must take responsibility for their decisions related to enterprise management.

Some conclusions that we may draw of the survey in Bulgaria are that:

- workers and employees' representation, through information and consultation, is the main instrument regulated by the Bulgarian labour legislation aiming to achieve active inclusion of the employees in the management process of the enterprise;
- information and consultation play an important role in improving enterprise management and enabling workers to express their views both on current conditions and on changes likely to affect their work;
- the big issue for the majority of the interviewed employers is not whether to involve or not workers and employees' representatives, but how to realize their participation in the company management;
- it is crucial to create an adequate responsibility of the representatives for their participation in the decision making process, thus taking joint decisions but assuming more responsibilities.

***Recommendations for improving the national legislation on the representation of workers and employees in enterprises in Bulgaria***

We suggest to discuss the following "set" of definitions and accompanying procedures:

1. Proposal for a definition of the term "information" - "provision of data by employer to workers and employees directly or through their chosen representatives in order to familiarize with the issue under consideration and examine it".

Procedure and format for implementing "information" with a view to allows workers and employees' representatives to carry out a thorough assessment of the potential impact of the envisaged measures and, where appropriate, to prepare their involvement in the consultations with the employer and to familiarize the rest of workers and employees.

- Information shall take place at the appropriate time so as not to delay the decision-making process;
- Information is carried out appropriately and with
- appropriate content.

2. Proposal for definition of the concept of "consultation" - "establishment of dialogue and exchange of views between the employer and the workers and employees"

Procedure and format for implementing "consultation" with a view the employer to provide the information in such a way that the workers' and employees' representatives, on the basis of it, can express in a reasonable time their opinion on the proposed measures and activities - subject of the consultation, which should be taken into account in the decision-making by the employer or his / her representatives:

- Consulting is carried out directly with the staff or through representatives selected by the workers and employees;
- The consultation takes place at an appropriate time, and
- in an appropriate manner

# Summary of national survey on employee involvement in corporate governance – Croatia

*Croatian Employers' Association*

## **Introduction**

The aim of the project – for Croatian Employers' Association - is to familiarize Croatian social partners and stakeholders at the company level with the relevant content of employee involvement and to make them aware of the importance of effective employee representative bodies that contribute to the company's decision-making process, thus enhancing competitiveness and business results in order to face the challenges of global competition more effectively; launch transnational activities and cooperation; promote EU law and policies through the exchange of information, shared expertise and best practice examples in order to create favourable conditions for the establishment of mechanisms and national information, consultation and participation bodies, adapt employer-employee relations to changes in employment and labour-related challenges: modernizing the labour market.

## **The Survey**

The Directive and the principles of the European Pillar of Social Rights stipulate that workers or their representatives have the right to be informed and involved in a timely manner on issues that are relevant to them. In addition to the right to receive information, there is the right to participate in the discussion of all corporate actions is established, which implies the exchange of opinions and the establishment of social dialogue with the employer. The meaning of the election of a works council is a democratic standard, which is expressed through the constructive participation of workers in the decision-making process with management on issues that affect their economic and social working conditions. These can also be various challenges related to demographic change, digitalization and globalization, which affect the strategic development of enterprises. The motive for workers' participation in the decision-making process is to fight for greater workers' rights in determining their working conditions.

Therefore, a survey has been conducted with the membership base of Croatian Employers' Association. The results of the survey are used to produce a report on the workings of the European and Work Councils in practice and employers' views on national legislation regarding workers' participation in project decision making.

An active link was established on a CEA's website in order to ensure greater visibility for the questionnaire:

<https://www.hup.hr/istrazivanje/>

Also, some 600 personalized invitations to complete the survey were sent, yet only 14 responses ( $\Sigma = 14$ ) were received afterwards.

## **Results**

1. **Legal status:** majority of the firms were LTDs – 11; 2 were joint stock companies and 1 sole owner company.
2. **Ownership status:** Majority of companies were privately-owned – 9; only 2 state - owned and 3 foreign-owned companies.
3. **Size:** 6 big, 3 medium, 1 small and 1 micro firm
4. **Respondents:** mainly directors (6) and HR managers (5)
5. **Types of associations:** only one (foreign-owned) company had a work council, EU work council, and a TU within the company. Majority of respondents (7) indicated they had nothing, while 2 companies indicated they had a combination of work council with TU within the company, and 2 indicated they had a work council and a union commissioner. **So, 5 big companies and just 1 medium-sized have some kind of work councils.**
6. **Types of workers participation appropriate for your company:** majority of respondents has chosen first two answers, i.e. **informing** (6) and **consulting** (8) while the numbers decreased with the more demanding forms, i.e. profit sharing and workers internal property of shares got each just one vote. On the other hand, answer “Nothing” as the most appropriate form, was among more popular - with 4 votes.
7. There are interesting examples of **companies with works councils**, where a more detailed analysis reveals that even in companies with work councils with a longer history - more than 10 years - the results show that persons answering the survey do not see benefit from them, nor do they include them in an appropriate way. Some, however, believe that collaboration has led to better communication within the company, or to changes, innovation and increased productivity. But others make very negative statements: *“The Work' Council and the Trade Union are primarily focused on increasing the financial benefits for workers with high school education, while completely ignoring the workers with higher degrees. They also in no way support change, innovation or increase in productivity, and furthermore make it impossible.”* The problem is also perceived in the field of *“transmission of information to all employees and ensuring their understanding of the information obtained ”*, which means that the works councils failed to provide better and faster information transfer. Their *“poor representativity”* is also stated.
8. With regard to **content that would be reasonable for the employer to inform, consult or co-decide with the Works Council / European Work Council**, most respondents seem to consider that for company strategy, changing legal status of the company and

business related issues - information is the most appropriate way, while issues related to HR and work organization are more susceptible to higher forms - most often consultation and less often co-decision.

9. The answer regarding the **most critical issues about the Labor Law and the Law on the Establishment of European Works Councils** contains another interesting point: there is only one answer stating that the Law is good as it is. Other answers include (in two cases) - all four options(!), meaning that all four options in the Labour Law are equally bad, while respondents have the most objections to the content of co-decision.

#### Survey Conclusions:

As the research has shown, the proper implementation of the legal framework is not sufficient for the correct functioning, progress and development of workers participation. It has been observed that workers do not exercise their right to elect work council. Proper legal framework is obviously not enough. Obstacles in the implementation of national rules for the establishment and operation of works councils are insufficient motivation to act, additionally fuelled by employee dissatisfaction with existing few works councils, that predominantly show that workers' representatives act primarily in their own interests and not in the interests of **all** workers they represent.

#### ***Recommendations for improving the national legislation on workers' participation***

HUP/CEA believes that special attention should be paid to the motivation, commitment and training of workers' and employers' representatives in order to develop standards of the right to work in a democratic way. By respecting the lowest standards in the field of work prescribed by directives and national legislation, it is necessary also to stimulate the interest of workers in free association through the institute of the works council. Therefore, it is necessary to motivate both, workers' and employers' representatives to be involved together in decision-making processes. Workers' councils are a mechanism of communication involving higher to lower levels of employees while understanding the challenges faced by an enterprise, they can facilitate strategic management decisions. The greatest obstacle is shown in the application of the Co-decision Institute of the Workers 'Council, since the Workers' Council is given certain power that can interfere with the business policy of the management. It is suggested that on these issues work councils should be consulted. The employer or management should inform the work council on topics related to company strategy, change of legal status and business of the company, and advise on topics related to work organization and human resources.

In order for workers and employers' representatives to understand the functioning and the purpose of the works council, they need to be further trained and educated about the purpose of the works council's scope of work, but also about business challenges. Specifically, as it can

be seen from the survey, the respondents show a misunderstanding of the function and purpose of the works council. Workers and employers' representatives through additional training should understand that the works council is not a negotiating body such as a trade union, and the right to information, consultation and co-decision applies to all topics that may affect their jobs or working conditions. Training should underline understanding the benefits of works councils: improving understanding of the issues raised, initiating discussions on strategic issues, making proposals for action, reasoning for decisions, etc.

The work and activities of the works council should be public and transparent at the company level, since without open and timely communication of workers' representatives with other workers it is not possible to form and create a change within the company. The training should also underline the importance of transferring information to all workers, which is why it should be ensured that all workers are informed in a timely manner by the workers' council representatives. Therefore, we believe that the training and education would encourage motivation and confidence in the work of works councils.

## Commentary to the Directive on Information and Consultation

Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community (Official Journal EU, No. L 80/02) sets out a minimum framework for information and consultation in all undertakings and establishments within the European Union and a framework for employee information and consultation in the European Union on the method and content of employee information and consultation, confidentiality of information, protection of employee representatives and protection of their rights. Article 4 of the Directive stipulates that information and consultation covers three main areas: economic, financial and strategic developments, structure and probable development of employment and related measures, and decisions likely to lead to substantial changes in work organisation or contractual relations. The adoption of the Directive, even though it took place almost two decades ago, should be understood as an important element and a cornerstone of social dialogue in the European Union. The value of social dialogue is also expressed in the basic acts of the European Union, but its implementation in practice expressly requires additional rules and guidelines, such as this Directive.

The Directive does not set out institutional requirements for the formation of bodies for workers' participation in management at the national level, and the rules on employee information and consultation therefore (irrespective of the existing structure of employee representatives) differ from one Member State to another. The scope of the Directive applies to undertakings with at least 50 employees or establishments (subsidiaries) with at least 20 employees. Information and consultation procedures must be of such nature and implemented in such a way as to ensure their effectiveness. Information must be given at the appropriate time and in an appropriate manner. The Directive stresses that the employer and employees' representatives should work in the spirit of cooperation, with due regard for their reciprocal rights and obligations, and bearing in mind the interests of both the undertaking and the employees. The Directive regards as serious breaches of the Member States' obligations a total absence of information and/or consultation of the employees' representatives prior to a decision being taken or the public announcement of such a decision, as well as the withholding of important information or the provision of inaccurate information rendering ineffective the exercise of the right to information and consultation. The latter in particular has caused a lot of difficulties in practice. It should be noted that in exercising their right to participation in management, or more generally in decision-making, employees largely "depend" on the employer. In other words, if the employer fails to communicate timely and appropriate information, employees or their representatives do not have the opportunity to participate in

decision-making. As a result, in such cases employees cannot be expected to provide an appropriate and good response, which could contribute to decision-making. As the Directive does not provide special provisions regarding the information and consultation procedure at the national level, this task is left to the legislators in individual Member States. In so doing, they should ensure that the Directive is implemented in a manner that will allow employees' representatives to participate in practice (and not only in theory). Even though neither the Directive nor national legislations of EU Member States specify the responsibilities of workers' representatives in their operation, this is nevertheless extremely important in practice. The manner in which employees appoint or elect their representatives and how well equipped the latter will be in terms of required skills and competences plays a vital role in the proper development of workers' participation both at the national level and at the level of the respective undertaking.

Their qualifications and conduct are important also in terms of decision-making. In addition, it is important to raise awareness of the fact that the role of workers' representatives in participation is not limited to workers' rights, but extends to the interests of the undertaking, in particular in its long-term existence and development.

From the perspective of the states that are candidates for accession to the European Union, it should in particular be taken into account that the Directive does not impose on the states how they should regulate in their legal acts the requirements for information and consultation with employee representatives in undertakings. It is therefore up to the national legislators to decide which system to implement. Based on the legal regimes and experience in EU Member States this can be implemented in several ways. Information and consultation procedures, for example, can be implemented through trade unions in the undertaking or, in the absence of such, other forms of information and consultation must be ensured, such as ad hoc representatives. Another option is to elect a workers' council that represents all employees working for the employer. It is also possible to establish a one-of-a-kind system of workers' participation that takes into account the characteristics of national industrial relations, e.g. mixed commissions/committees. In conclusion, the choice is left to individual states, but the rules must be implemented so that they can be effectively exercised in practice. The key prerogative is to enable workers and their representatives to cooperate in the manner prescribed by the Directive and provide to employers a qualified, legitimate and responsible "partner" whose involvement in the undertaking's operation will be effective with a view to ensuring competitiveness.

Both research and practical experience have demonstrated that factors other than legislation also have a considerable impact on the implementation of workers' participation, among them in particular the employer's attitude to workers' participation in management or in general to

any form of participation of workers in business decision-making. It has been observed that where the predominating attitude to workers' participation, or more generally to social dialogue, is adverse or even hostile, the implementation of information and consultation procedures is significantly more difficult. Political will in a respective Member State (and in turn at the EU level) is therefore of extreme importance as it can contribute, through various activities, to greater awareness and improved implementation of workers' rights in this area. It is necessary to raise employers' awareness of the importance of complying with the information and consultation procedures as they constitute fundamental workers' rights in the field of workers' participation in the European arena.

There have also been several attempts to change the Directive that should be noted. Most of the activities took place in 2015, when the European Commission launched consultations with social partners at the European Commission level regarding potential changes to the European legislation on workers' participation (so-called "refit" package). The purpose of the consultation was, in particular, to exchange opinions between social partners at the European Union level on possible guidelines for measures looking to enhance the cohesiveness and effectiveness of the existing European legislation in the area of information and consultation of workers at the national level. The information and consultation Directive was also analysed, with an express desire to finalise such a definition of information and notification principles that would ensure these principles are mutually aligned and as clear as possible so as to avoid any confusion. Despite numerous activities and efforts, no amendments to the Directive were adopted, and the European Commission came to the general conclusion that directives in this area (including the information and consultation Directive) were relevant, effective and aligned.