***Co-Determination in Slovenia: An Analysis of Economic, Social and Legal Challenges***

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*1 Introduction*

Co-determination in Slovenia has been built on the German system with a strong influence of socialist values, but with hardly any effect of the European legislation. The core legislative act, The Worker Participation in Management Act, was adopted in 1993 and followed with two non-comprehensive amendments in 2001 and 2007.[1] Similar as in Germany the main body of the Slovenian employee participation system is the works council. In the absence of any official data, there are just various estimation of the presence of works council in companies. According to the Slovene Association of Works Council[2] around 80 per cent of medium and large companies have a works council. Eurofound (2013),[3] however, claims that the number is smaller (between 50 per cent and 75 per cent of large companies), while other authors have found even smaller numbers (Franca 2009).[4] Similarly, there is no official data for board-level employee representatives. Based on own observation it can be assumed that board-level employee representatives are present in bigger (the threshold is 50 employees) and in state owned companies.

The employee participation system in Slovenia in general enjoys support on the academic and political level. As a part of the social dialogue, scholars widely advocate for the development of employee participation system as they see it as a mean for a greater democratization of work. The political parties, especially the left wing, have risen the arguments to support the employee voice, but in practice not much have changed. Thus, the system works on an outdated law, which does not correspond to the current economic and social circumstances. In this contribution we argue that for a greater development of the employee participation system in Slovenia the legal basis has to be changed, taking into account the recent economic and social changes. To present our arguments first the economic changes are presented, followed by the social perspective. In the fourth part of this contribution the legal challenges are analysed and finally we draw some conclusion and recommendation.

*2 Economic changes*

The Slovenian economy, as many others, has experienced turbulent times, resulting in several changes in society and on the labour market. Taking into consideration the period from the independency (gained in 1991) till today there were several changes in the economic structure, which directly and indirectly affected also the employee participation system in Slovenia. The biggest change was the shift from the socialistic to a market economy as this changed also the role of employees in companies. The socialistic system of employee self-management ended and it was replaced by the German co-determination. Although the change was made shortly after the independence (in 1993), still nowadays the old socialist system is confused with the

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[1] Worker Participation in Management Act. 1993. *Official Gazette of the Republic of Slovenia,* No. 42/1993, 61/2000, 56/2001, 26/2007, 45/2008.

[2] The Slovene Association of Works Councils is privately established network that aims to professionaly support works councils and the development of economic democracy in Slovenia; for more information about the association see: http://www.delavska-participacija.com/.

[3] Eurofound. 2013. *National Practices of Information and Consultation in Europe* https://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2013/29/en/3/EF1329EN.pdf (accessed 9 September 2016).

[4] Franca, V. 2009. *Sodelovanje zaposlenih pri poslovnem odločanju: pravni in kadrovski vidiki s primeri iz sodne in podjetniške prakse. Ljubljana: Planet GV.*

present works council.[5] Also management (especially the older generation) often tend to see employee representatives as remnants of the old socialist system (Franca and Pahor 2014).[6]

The privatization, which followed the independence, had a strong influence on the ownership of capital and the extent of corporate restructuring. The process of privatisation greatly affected nearly all aspects of the Slovenian economy[7] and for the employees of privatised companies it meant that they became both shareholders and stakeholders.[8] After joining the European Union in 2004, however, many foreign companies entered Slovenia either by means of a subsidiary or by acquisition. This process generated different market pressures, which resulted in shrinking employee rights in general. Furthermore Slovenia was also hit by the financial and economic crisis of 2007 – 2008. Besides interfering in social rights, the Slovenian government has privatised several companies, including telecommunications, airport and airline.

Although the consequence of the above-mentioned economic changes did not lead to changes of the Worker Participation in Management Act, it has had several effects on the implementation of co-determination: in some companies the employee voice has been reduced to minimum, in others it was subordinated to the system of multinational companies. New forms of work have emerged on the labour market having a negative effect on co-determination. The first reason for this is that the basis of co-determination is the employment relationship (not civil), and secondly, it is the younger generation that mainly works in these new forms of work as further explained in point three of this contribution.

*3 Social perspective*

The growth of precarious work and civil contract, the latter of which are mostly self-employed persons who work as regularly employed, has greatly affected labour law including collective labour rights. Employees' representatives, trade unions in particular, face many challenges as to how to redefine their position in the labour market with the aim not merely to exist, but also to efficiently and legitimately represent employees' interests in a social dialogue. On the other hand, the employers' tendency to decentralize collective negotiations and to have more flexibility in employment relations together with their weakness to associate, presents a serious threat to the existing collective employment relationships. Participatory rights as defined by the Worker Participation in Management Act are not an exemption of this trend. In Slovenia a person deemed as 'not employed' is unable to be involved in the system of employee participation neither exercising individual nor collective participatory rights. Similar applies to agency workers, which could exercise their participatory rights in the agency as their employer, but due to the nature of the sector it is practically unfeasible. Precarious work is thus eroding the system of employee participation. Taking into account that these changes to the labour market disproportionately affect younger workers, the idea of employee participation is viewed very differently by such workers who are most likely not to understand the system at all. The

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[5] This is also due to the similar terminology. The old socialist system was called »*samo*upravljanje« (employee self- management) and the employee representatives were joined in »delavski sveti«. The recent terminology is »*so*upravljanje« (co-determination) and »sveti delavcev« (works council).

[6] Franca, V. and M. Pahor. 2014. Influence of management attitudes on the implementation of employee participation. Economic and industrial democracy vol. 35, no. 1, p. 115-142

[7] More Domadenik, P. 2002. Growth Prospects of Slovenia: Past, Present and Future, *Economic and Business Review* 4(3/4): 227-256.

[8] More Prašnikar, J., Gregorič, A. and Pahor, M. 2006. Corporate Governance in Slovenian Enterprises: From Self-management to Blockholder Control, *Current Politics and Economics of Russia, Eastern and Central Europe,* 21(2):125-148. Authors claim that the larger presence of government control through state-controlled emerged in a »semi-socialist corporate governance structure« that was unattractive to domenstic and foreing minor investors.

*social* perspective can be thus observed in the non-familiarity of younger generations with both co-determination and trade unions.

Another social problem is further exacerbated by weak trade unions' activities in promoting co-determination. In general their opinion is in favour of any kind of employee voice, but in practice they have not developed any strategy in this regard. Especially, there is a lack of strategical development of policies, which would clearly delimit the role of trade union representatives from works councillors. In practice the absence has resulted in different practices, which do not really support the development of employee participation. On one hand in some companies there is a total separation between works councils and trade union with hardly any collaboration; on the other in some companies trade unions and works councils practically perform as one body. Very often in such cases the same employees are both work councillors and trade union representatives and/or presidents of trade union on the company level. Moreover, in many companies, trade union representatives are not just work councillors, but also board-level employee representatives. This multiplicity of functions causes different problems is practice and endangers in some respect the implementation of employee participation, thus it has to be addressed. First, the concentration of information and power is settled in one or few employee representatives and consequently are not or hardly available for many employees. Second, for management this multiplicity of functions makes it difficult to conduct social dialogue. By Slovene legislation the legal positions and the competences of works council and trade unions are different. In some cases, like for example downsizing, the management has to consider both employee representative bodies, but on the other hand in many cases the their (legal) roles are different. This multiplicity of functions can be reflected as the »unionisation« of the works councils.

As it is observed in other countries, like Germany, trade unions present an important pillar for work councils and in many cases they are a base for training and support also for board-level employee representatives.[9] However, the nature of industrial relations in each country has to be taken into account. In Slovenia both works council and trade unions representatives can be present at the company level with, as already mentioned, different legal competences. For example, collective bargaining and the conclusion of collective agreement are the main rights of trade unions, on the other side co-determination is reserved for work councils. Having the same employees in different employee representative functions (the so-called multiplicity of functions) is leading to a confusion and consequently the boundaries between the works councils and trade union are blurred. Very often those employee representatives have difficulties in adapting their behaviour and performance according to the body they are representing. Consequently, they sometimes misuse the trade unions position and power to push their right via co-determination, which often results in management's resistance to collaborate effectively with employee representatives and to build social dialogue. There may be different explanations for this trend. The changes in the labour market has undermined the power and activity of trade unions and they may be looking for alternatives or different ways to reinforce their position. In some companies there is a traditional trade union dominacy; in others trade union just take the main initiave for the works council election and take work council as their conduit. However, we claim that this multiplicity of functions and all the above mention problems are mainly the result of the non-existing strategy and policies of the role trade union have in the employee participation system. Not having a clear strategy, employee

[9] For more see, for example, in Waddington, J. and A. Conchon. 2015. *Board Level Employee Representation in Europe.* New York: Routledge.

representatives on the company level often act intuitively and pragmatically, which leads to legal and organizational troubles.

*4 The urgency for legal change*

The legislation, which regulates co-determination, was adopted much before joining the European Union. As the legislator was inspired by the German system, The Worker Participation in Management Act grants employees more rights than the information and consultation directive[10] and therefore there has been no need to change it. The Worker Participation in Management Act underwent two non-comprehensive amendments in 2001 and 2007. In 2001 the changes concerned the number of employee representatives on the board and in 2007 the changes were a consequence of the changed Companies Act of 2006, which introduced the one-tier system of company boards. After that there were two attempts to change the law, driven by the Slovene Association of Works Councils, but they were not successful.

The law of 1993 with minor changes of 2001 and 2007 does not reflect the current needs of the economy and it is outdated. In general the required legislative amendments could be concentrated in three main areas. First, the contents, about which the works council should be informed, consulted and co-determinate should be revised, especially taking into consideration the digitalisation and its impacts on work organization. Some contents, such as the need of the works council consent for sale of company's holiday facilities, could be omitted as this was more the question of the socialist system. At the same time there are areas, which are very important for employees, like for example changes in working organization due to the digitalization, but are not covered properly by the Worker Participation in Management Act. Second, the interaction between works council and management should be made more flexible. A lot of activities could be done on-line, the decision making process should be built on the premises not to hinder management activity, but to facilitate it. As for the existing requirement of the Worker Participation in Management Act sometimes the decision making process is disproportionally long, thus the employers often tend to circumvent co-determination. Third, the question of precarious workers needs to be addressed. By the current legislation only those having an employment contract with the employer can vote or can be voted for work councillors.[11] All other, especially agency workers and those performing work on a civil basis, are excluded. For example, agency work is not limited in Slovenia, so agency workers can work for an employer – user for several years, but cannot elect the works council. Therefore, they (together with other precarious workers) cannot exercise participatory (and other collective) rights. Additionally, when analysing this question it has to be taken into account that the legislator already excluded board-level employee representatives from banks and the same tendency is now reflected in insurance business. With less workers having the right to be part of the employee participation system, there is a serious threat that the system will be impoverished.

Interestingly, both employers and employees agree on the urge to a new law, there have not been any dialogue about that. The reason probably lies in the sensitivity of the content, especially due to its link to the old socialist regime. Nevertheless, this could not be the reason not to resolve the current situation, thus several activities have to be taken. The first step should be to put the amendment of the Worker Participation in Management Act on the social agenda as soon as possible. Very similar applies also to other laws, which regulates collective labour

[10] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23. 3. 2002, p. 29 – 34.

[11] The minimum of active voting right is 6 months employment and for passive voting right is 12 months.

rights, such as the Representativeness of Trade Unions Act from 1993,[12] and the Strike Act from 1991.[13]

*5 Conclusion*

The changes in the labour market are not in favour of collective labour rights, including the employee participation system. Building on the European union premises, that the social dialogue is a value and it should be promoted, this shall be reflected also in national legislation. For a greater development of the employee participation system in Slovenia the law need major changes as it is outdated in most of its provisions and does not correspond to the current economic and social circumstances.

Collective labor relations, including the employee participation system, should be maintained as there are several positive effects of a solid structure of collective bargaining and, consequently, of the coverage of collective agreements, inter alia, greater wage equity.[14] The lack of organized employee voice promotes the growth of the dualistic labor market, especially if taking into account that the local collective agreements are concluded only in larger companies. Then again the values of decent work and humanity has to be assured and all precarious workers should be guaranteed with better employment and social protection, and thus set them alongside the employment contract.[15]

The social partners together with the government have a very important and challenging task. Based on the economical and social changes the current law, The Worker Participation in Management Act, needs to be revised in order to guarantee a solid development of the employee participation system. The revision should take into consideration the asked flexibility from the employers side as well as the guarantee of employees rights on the other. Together with that the main trade union organization should approach the issue decisively, but with caution. There is a huge need for a trade union strategy how to build the relationship with works councils and board-level employee representative in order to strengthen the employee voice and to build solid relations with management.

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[12] Representativeness of Trade Unions Act, 1993, Official Gazette of the Republic of Slovenia, No. 13/1993.
[13] Strike Act, 1991, Official Gazette of the Republic of Slovenia, No. 23/1991.
[14] Bosch, G. 2015 Shrinking collective bargaining coverage, increasing income inequality: A comparison of five EU countries. *International Labour Review* 154(1): 57 – 66; Hayter, S. 2015. Unions and collective bargaining' v Berg, J. (ur.) *Labour Markets, Institutions and Inequality*. Cheltenham: Edward Elgar; Keune, M. 2015. Less governance capacity and more inequality v Van Gyes, G. in Schulten, T. (ur.) *Wage Bargaining under the New European Economic Governance,* str. 283 – 296. Bruselj: ETUI.
[15] It seems that the Slovenian legislator (the enactment of an economically dependent person in 2013 with the amandment of the Employment Relation Act), as well as the Ministry of labor, family social affairs and equal opportunities (publishing the document Decent Work in 2016; Http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/dpd/21_03_2016_Dostojno_delo_final.pdf; 17 February 2017) is more inclined to this possibility.