

**Worker board-level representation  
in the new EU Member States:  
Country reports on the  
national systems and practices**

edited by

**Social Development Agency asbl  
and European Trade Union Institute  
for Research, Education and Health and Safety**



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Brussels, 2005

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*Prospects for board-level representation of workers under the  
European Company Statute in the new EU member states*



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## FOREWORD

The representation of workers in the highest organs of a company is a common feature not only in many of the former EU-15 countries but also in the majority of the new member states. The right to nominate representatives to the board of directors or to the supervisory board currently exists – to differing degrees – in 18 of the 25 EU member states and in Norway. Of the ten countries which joined the EU in 2004, worker board-level representation is known in seven countries. In the Czech Republic, Hungary, the Slovak Republic and Slovenia these rights are widespread in the sense that they exist in both private and state-owned companies, whereas in Malta and Poland the experience of board-level representation is limited to state-owned or privatised companies.

Via their representatives on the company's board, workers gain timely access to information and influence at the place where company decisions of strategic importance are taken or endorsed. This representation at board level may thereby be one additional means of ensuring that the interests of the workforce are respected, for example during restructuring processes.

This publication presents a number of short reports on the national systems and practices of worker board-level representation in the ten new member states. Each report is divided into two parts: a description of the legislative background is followed by a practitioner report written by a worker board member in the respective country. Although the practice of board-level representation differs significantly not only from one member state to another but also within the countries themselves, these stories provide an interesting insight into the real meaning and practice of board-level representation in a specific country. In Cyprus, Estonia, Latvia and Lithuania the structure of the reports was adapted to the fact that they have (almost) no experience at all with this form of worker representation. Here the emphasis lies, for example, on the question of why board-level representation never became part of the national system of corporate governance and industrial relations.

The reports were written by experts and practitioners who participated in the PRESENS project – Prospects for board-level representation of workers under the European Company Statute in the new EU member states. The project was carried out by the SDA, ETUI-REHS and the European Trade Union Confederation, together with their national partner organisations: Chamber of Labour (Austria), CMKOS (Czech Republic), General Workers' Union (Malta), Hans Böckler Foundation (Germany), Lo-skolen (Denmark), MSZOSZ (Hungary), KOZ SR (Slovak Republic) and NSZZ Solidarnosc (Poland).

With the European Company (SE) Statute, which entered into force in October 2004 and permits companies to choose a supranational company form, participation rights at board level have become an integral part of the negotiations between management and worker representatives from different member states on the question of how workers are to be involved in company decision-making processes. Also, the planned EU directives on cross-border mergers and cross-border transferral of company seats will lead in many cases to

internationally composed “worker delegations” on the board of directors or supervisory board of multinational companies.

Besides providing information on European Company legislation, the PRESENS project was also intended to improve the knowledge of the national systems and cultures of worker participation at board level. The latest developments at European level in the field of worker participation surely represent new possibilities for influencing strategic decisions but they also constitute major challenges for worker representatives and their trade unions.

At its 10th Congress (26–29 May 2003) in Prague, the European Trade Union Confederation (ETUC) committed itself to developing a common strategy for the practical implementation of worker participation in the European Company (SE) and ensuring the European mandating of worker representatives on the company boards of SEs. The PRESENS project is an important step in this direction. An important condition of being able to cooperate effectively both in a so called special negotiating body and later on in exercising a European instead of a national mandate on a company’s board, is doubtless a knowledge of the different national backgrounds and cultures represented by the worker representatives. For this reason, an important part of the project was dedicated to creating a platform for exchanges between practitioners, trade union officials and experts from “old” and “new” member states and to initiating a mutual learning process.

The present compilation of country reports is one of the outcomes of this idea. The information collected under the project will also lead to an update and extension of the booklet *Prospects for board-level representation under the European company statute* which will include short summaries on the situation in all 25 EU member states. A brief project description can be found in the Annex of this publication. More detailed information on the PRESENS project and on the topic is available on the website [www.seeurope-network.org](http://www.seeurope-network.org).<sup>1</sup>

Michael Stollt                      Norbert Kluge  
SDA                                      ETUI-REHS

Brussels, September 2005

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<sup>1</sup> Country reports on board-level representation in the EU-15 (from a former project) can be downloaded at <http://www.seeurope-network.org/homepages/seeurope/countries/cross-borderaspects.html#blreu15>

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## CZECH REPUBLIC

### The Czech system of worker board-level representation

*Denisa Heppnerová, CMKOS (Confederation of Trade Unions of the Slovak Republic)*

Czech legislation on company governance is based on the German-Austrian model, so-called dual governance. This means that two different bodies participate in decision-making within companies. Employee involvement is regulated by the Commercial Code (Act No. 513/1991 Coll.) covering joint-stock companies and by the State Enterprises Act (No. 77/1997 Coll.) dealing with the activities of state enterprises.

A **joint-stock company** is governed by a general assembly, a management board and a supervisory board. The management board is the statutory body of the company which manages its activities and represents it. The supervisory board is called upon to supervise the management board's activities and transactions undertaken by the company in general. Supervisory activities are not restricted to reviewing the books and financial operations but cover all company activities and actions taken by the management board. In joint-stock companies with more than 50 employees with an employment relationship exceeding one half of normal weekly working hours (usually 20 working hours), one-third of the supervisory board is elected by the employees. Company statutes can provide for greater employee involvement in the supervisory board, up to 50%. The statutes can also provide for employee involvement in the supervisory board in companies with fewer than 50 employees. The number of supervisory board members must be divisible by three, with a minimum of three members. Members have the right to inspect all documents and records dealing with the company's activities, and review accounts and the balance sheet. Where company interests so require, the supervisory board is authorised to convene the general assembly and to submit to it any measures it proposes to take. The statutes can extend the supervisory board's powers: for example, provide that the board elects and removes members of the management board. There is no provision in law concerning the frequency of the supervisory board's meetings.

The right to elect and to remove supervisory board members (active voting rights) lies with all company employees, irrespective of type of employment contract. The right to stand for election (passive voting rights) belongs to employees and, in addition, to members of the trade union organisation that is present in the company; the trade union representatives need not necessarily be company employees. A proposal with a view to election as member of the supervisory board (or removal from membership) can be made by the management board, the trade union organisation or the employees' council. In addition, similar action can be taken by at least 10% of the employees (in an employment relationship representing more than half the total statutory weekly working hours). Election to or removal from membership are governed by the election rules, which are proposed and approved by the management board after consultation with the trade union organisation, or with the works' council, or directly with the employees (in companies where there is no employees' representation). In companies with more

than 1000 employees the election rules may admit election to and removal from office by means of an electoral vote, that is, an indirect vote or appointment. Elections are organised by the management board after consultation with the trade union organisation or with the works' council. Voting must be by secret ballot and at least half of the authorised voters or electors must participate in the vote, which is otherwise invalid. Unless otherwise specified by the election rules, those candidates receiving the highest number of votes cast shall be elected.

A **state enterprise** is a company established by the state with the purpose of implementing significant strategic tasks, tasks concerning society as a whole, or fulfilling a generally beneficial role. The state enterprise has no assets of its own; all is state property. The state enterprise's statutory organs are the director and the supervisory board. The director is responsible for all activities undertaken by the state enterprise and is authorised to decide on all business matters. The supervisory board performs supervisory functions over the director's decisions and reviews all enterprise activities. The minimum number of supervisory board members is three, one third of whom must always be elected by the employees from among themselves, irrespective of size of enterprise. The company founder determines the minimum number of supervisory board meetings.

There are no detailed conditions for the election and/or removal of supervisory board members by employees. The modes of voting and removal of members are defined by the election rules, as approved by the employer. If there is a trade union organisation in the state enterprise, the election rules must be co-approved by this organisation and elections are held jointly by the employer and the respective trade union body.

The supervisory board members elected by employees have the same rights and duties as other members, who are elected by the general assembly (in joint-stock companies) or appointed by the state (in state enterprises). They also receive the same remuneration for the performance of their duties. Employee members enjoy no specific protection under labour law. The only exception concerns board employee members who are at the same time trade union officials. As such, they enjoy the protection of the Labour Code and their employment relationship can be terminated only with the approval of the respective trade union organ.

There is also no special relationship between supervisory board members elected by employees and other employee representatives. Where there is a trade union organisation or a works council in the company, these employee representatives enjoy only powers relating to the process of constituting the supervisory board, as described above. The two systems are relatively independent and links can be established only in cases in which an employee is elected who is at the same time a trade union official.

For the sake of completeness we may add that the Act on **banks**, which constitutes a specific regulation related to the Commercial Code, also contains special provisions on employee involvement in company management. In addition to their mandatory one-third on the supervisory board, employees must also be represented in the statutory body, that is, the management board. The banking act provides that the board must consist of at least three members who must perform management duties.

Unfortunately, no up-to-date data are available concerning employees' board-level representation. A survey was carried out in 2003 and at that time the respective legislation covering mandatory employee representation on supervisory boards covered approximately 14,000 companies, or 4.1% of registered legal entities. Thus it can be assumed that the proportion of persons covered by the legislation on board-level representation is not large. (According to the Statistical Survey 2004 there were 3,224,900 employees in the Czech Republic.)

## Practitioner Report

*Jan Klimeš, Member of the supervisory board of Česká rafinérská*

The supervisory board of Česká rafinérská a.s. has 9 members, three of whom are elected by the employees and the others by the general shareholders' meeting. I was elected by the employees on the basis of the electoral regulations agreed by the company board of directors and the union organisation on the basis of rules contained in the Commercial Code. I was proposed as a candidate by the union committee. The law determines that if a joint-stock company employs more than 50 employees for a working period exceeding half the weekly working hours as determined by the labour regulations, the shareholders' meeting elects two thirds of the members of the supervisory board, while the other third are elected by the company employees with active voting rights, unless the company statutes determine that the employees shall elect a greater number of supervisory board members (*this is probably not the case in any joint-stock company in the Czech Republic*). However, the law does not allow the number of supervisory board members elected by the employees to be higher than the number of supervisory board members elected by the shareholders' meeting. However, the statutes may establish a parity principle in relation to elections. If a company employs more than 50 employees for a period exceeding half the weekly working hours laid down by the labour regulations, the company statute cannot restrict the number of supervisory board members whom employees are entitled to elect to less than the one-third minimum.

The law also permits that the company statute determine that some supervisory board members are elected by the employees, even if the company employs a smaller number of employees for a working period exceeding half the weekly working hours, as determined by the labour regulations.

The decisive date on which the number of employees employed for a working period exceeding half the weekly working hours, as determined by the labour regulations, is established, is not – effective from 31 December 2001 – the day of the shareholders' meeting (that is, the day of the election of supervisory board members), but the first day of the accounting period in which the shareholders' meeting which is to elect the members of the supervisory board takes place. If the accounting period corresponds to the calendar year, then the decisive date is 1 January. If the number of employees employed for a working period exceeding half the weekly working hours, as established by the labour regulations, increases, new members are elected not by the shareholders' meeting, but by the employees. The same applies if the number of employees is reduced.

According to Section 171, paragraph 1, letter c), Section 172, paragraph 3, Section 200n, paragraph 2 and Section 220t, paragraph 2 of the Commercial Code, the provisions regarding the election of supervisory board members by the employees are not applied during the establishment of an AS (joint-stock company), nor during merger or division. The members of the supervisory board, giving their name and surname, address and personal

identification number, or date of birth, and the beginning and end of their term of office, are entered into the commercial register and each candidate for membership of the supervisory board is required to present documents proving fulfilment of the conditions and expectations applying to supervisory board members and election or appointment and the signature card of the supervisory board member in two copies.

The supervisory board meets six times a year (approx. once every two months), according to the work plan.

The supervisory board has practically no decision-making authority. However, the supervisory board is required to give its consent to the conclusion of contracts for the acquisition or alienation of property by the company, if during the course of a given accounting period the value of the acquired or alienated property exceeds one third of the company's own capital based on the most recent annual accounts or, if the company compiles them, from the consolidated accounts.

Furthermore, it is authorised to view all documents and records concerning the activities of the company and to inspect whether the accounting records are properly kept and also whether the business activities of the company are conducted in compliance with the general regulations, the statutes and the resolutions of the shareholders' meeting.

The company supervisory board examines the due, extraordinary and consolidated, or the intermediate or final accounts and proposals for the division of profits or payment of losses and presents its opinion to the shareholders' meeting on the determined date. Beyond this, it takes a standpoint on the report drawn up by the controlled entity concerning its relations with the controlling entity and its property participation.

The supervisory board presents the results of its auditing activities and the relevant conclusions to the shareholders' meeting.

Furthermore, the supervisory board has the authority to summon a shareholders' meeting if the interests of the company require this and to propose the necessary measures, including a change in the statutes, to the shareholders' meeting.

The right and duty to represent the company in disputes initiated against members of the board of directors in proceedings before courts and other bodies, lies within the extraordinary competence of this auditing body.

The shareholders' meeting decides on the remuneration of supervisory board members, as in the case of members of the board of directors. The supervisory board members elected by the employees have the same rights and are practically always members of all ad hoc committees and working groups.

All information necessary for performance of the supervisory board's auditing function has to be provided. Such information shall include regular information and reports on economic results (monthly reports), the status of debts (once every two weeks), the transformation of the company into a so-called "reprocessing refinery" and its functioning, the measures and decisions taken by the board of directors, sale of property, investment plans and their

fulfilment, the technological stability of manufacturing facilities, health and safety at work, the results of internal audits, decisions by relevant courts and bodies of the state or regional administration and measures agreed by the company management for removal or prevention of violations established by such bodies, sponsorship and advertising expenses. The supervisory board approves, takes a standpoint or, more precisely, expresses an opinion on the report drawn up by the company's financial management for the given accounting year, and examines the annual and consolidated final accounts, the report on non-tax deductible expenses, the report on relations between interconnected entities, the continuous information provided by the external auditor and the proposal for the division of profits/payment of losses.

I consider relations with the other members of the supervisory board (shareholders' representatives) to be very good: we are bound by a common aim, namely the prosperity of the company. After all, the employees' job satisfaction, including their job security, is a result of company profitability, which also benefits shareholders. A creative atmosphere prevails within the supervisory board due to the common effort to increase efficiency and develop the business. If conflict occurs – if we can call it conflict – it usually concerns the attempt to agree on a standpoint in relation to removing or surmounting the imperfections of domestic or European legislation and the interpretation of individual provisions of laws and other generally binding legal regulations.

With regard to proposals from supervisory board members elected by the employees, the initiator usually has a discussion with the other two members at informal meetings held before the meeting of the supervisory board. This is probably the best approach: having prepared for the supervisory board meeting we can support each other when presenting our thoughts during the decision-making process, influencing the agenda of meetings and the formulation of audit body resolutions.

I am the chairman of the plant's union organisation, ECHO, which is a member of the employees' labour union in the power supply and chemicals sector, the biggest branch union association in the Czech Republic. In my dual role I am able to obtain much more information, which can then be used in negotiations with employers – for example, collective negotiations. Work in the supervisory board gives me a much broader view, including knowledge of business plans and shareholders' opinions, much earlier than would be the case merely in accordance with the Labour Code and, as I have already emphasised, in much greater detail and with an understanding of all the interconnections and mutual relationships and interests of the individual company owners.

The company supports the development of all its employees and members of company bodies. The supervisory board members elected from among the employees have the option of participating in a number of specialised seminars and courses. One employee supervisory board member regularly participates in sessions of the club for supervisory board members, which works with the Institute of Directors in the Czech Republic, led by the chairman of the supervisory board of Autoškola a.s. The Institute of Directors is now holding the third cycle of

its training programme for members of boards of directors and supervisory boards and our employee-elected members are able to participate.

An employee-elected supervisory board member should have at least a basic knowledge of economics and understand the needs of the company as a whole, not just those of its employees. In my work as a supervisory board member I endeavour, with the help of specialists from our company and specialists and consultants from ECHO and ČMKOS (Czech-Moravian Confederation of Labour Unions), to analyse the materials discussed by the supervisory board and to prepare appropriate questions and proposals. I have initiated several demands presented by the supervisory board concerning the effectiveness of maintenance as regards manufacturing facilities and investment structure and the reduction of company manufacturing costs in general. Employee-elected supervisory board members do not have any special tasks and responsibilities in the decision-making process. Their position is practically equal to the other members, with the exception of members appointed and withdrawn on the basis of legal regulation. It makes a difference whether one is responsible to the shareholders' meeting, and consequently to the shareholders, or to the employees. At our meetings the interests of the individual shareholders are not expressed, but rather those of the company as a whole.

I must confess that early on my predecessors in the supervisory board encountered distrust and were not provided with complex informational material.

We do not encounter conflicts of interest in decision making – for instance, redundancies – because this is not within the competence of the supervisory board. The union takes over in this instance. The participation of union officials in the supervisory board provides an obvious opportunity to influence the management and the decision-making process.

From the employees' viewpoint, the added value of having employee-elected supervisory board members consists in the opportunity to obtain normally inaccessible information on the basis of which the union may react more effectively to management actions. On the other hand, the company benefits from the employees' practical experience of manufacturing and other areas of the company.

As far as the possibilities and limitations of representation on the supervisory board are concerned, I would mention the emphasis on the details of accounting and other economic procedures.

Česká rafinérská, a.s. is one of the largest processors of crude oil and manufacturers of crude oil products in the Czech Republic, with refineries in Litvínov and Kralupy nad Vltavou. It was founded in 1996. Česká rafinérská is a joint venture with four shareholders: the Czech refinery-petrochemical holding Unipetrol and the well-known foreign companies ENI International, ConocoPhillips and Shell.

Česká rafinérská is one of the most important national companies as it has a significant influence on the national economy. It also has an important regional (central Europe) role.

In 2004 our company processed in excess of six million tons of crude oil. In comparison with the previous year it increased its production of raw materials for the petrochemical industry. Production of aviation fuels, light heating oils and asphalts also increased. The shutdown in Kralupy nad Vltavou was connected with the maintenance of technical equipment, while in Litvínov it was aimed at completion of the project "Clean fuels". As a result of this project, since October of last year Česká rafinérská has been supplying specifically low-sulphur motor fuels with a sulphur content below 50 ppm (milligrams per kilogram). This is in response to EU regulations transposed into Czech law according to which only fuels with a reduced sulphur content can be sold on its territory from 2005. (The previous standard was 150 ppm for petrol and 350 ppm for motor diesel.) In relation to part of its production Česká rafinérská even fulfils the European standards slated for implementation in 2009 which determine a maximum sulphur content of 10 ppm.

According to its unaudited results, the company made a pre-tax profit of 37 million CZK through financial investment in 2004. Turnover was 8.9 billion CZK. In 2003 Česká rafinérská recorded a profit of 416 million CZK with turnover of 32.8 billion CZK. However, the results of the last two years are not comparable because Česká rafinérská operated under various regimes during this period. For most of 2003 (January to end of July) it operated as a manufacturing business unit, while last year it functioned as a reprocessing refinery. Česká rafinérská adopted this new regime on 1 August 2003, when company activities – the purchase of crude oil and the sale of finished products – were taken over by the national companies of its shareholders. This modified regime has influenced both the profit level and the turnover of Česká rafinérská, in which the price of refinery products is no longer reflected, only the reprocessing fee for crude oil processing.

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## HUNGARY

### **The Hungarian system of worker board-level representation**

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#### **1. The national corporate governance system**

By and large, Hungarian company law takes the relevant German legislation as model, and thus the customary form of corporate governance for domestic undertakings is the two-tier system. According to Act CXLIV of 1997 on Business Companies (hereafter: company law) along with the management board, a supervisory board must be established at all joint stock companies and at limited liability companies above a certain size, regardless of whether it is a state-owned or a private one. The role of the supervisory board, however, is limited to monitoring management activities on behalf of the shareholders, characteristically the relevant title in the Act reads as “Controlling Business Companies”. Thus, the legal entitlements of Hungarian supervisory boards are rather weak, especially compared to their German counterparts equipped with far-reaching decision-making prerogatives. Nonetheless, the Hungarian supervisory board exceptionally can make decisions on the appointment, dismissal and remuneration of the management board, and approve any other legally binding agreement concluded by the management, if the company’s founding statutes adopted by the shareholders’ meeting definitely authorised it to do so. Such an entitlement is deemed as a solution for an emergency situation and the supervisory board is obliged to provide an account of such activities at the next shareholder’ meeting. The usual business of supervisory boards is limited to meetings once or twice a year for the approval of all important reports put on the agenda of the shareholders’ meeting (including the annual financial account required by Act XVII of 1991 on Book-keeping) and business plans, as well as exercising some control function over the organisation through requiring information and inspection or reviewing the books and documents of the company. The strongest right of the supervisory board is to call a shareholders’ meeting if it views the management’s actions as contradicting the legal regulations, the company statute or any decision of the shareholders’ meeting, or harmful to the interests of the company or the shareholders.

As to possible future legislation, obviously the government wants to make use of the experience obtained while working on transposition of the SE directive. In March 2004 the expert group of the Ministry of Justice issued a paper for debate on the new concept of company law and procedures of courts of registration. (See in Hungarian: <http://www.im.hu/adat/letoltes/GtKonceptcio.doc>) By and large, it outlines future legislation on deregulation and makes it possible for company statutes to opt for new tools to meet various needs. Among other things, it proposed the optional one-tier system and the possibility of setting up a German-style supervisory board with strong decision-making powers. At the

same time, under certain conditions setting up a supervisory board would be optional in the current two-tier system too.

This draft also questions the very existence of board-level employee representation. The conceptual framework document for the legislation issued by the Ministry of Justice reveals more details on the envisaged changes. (See in Hungarian: <http://www.im.hu/adat/letoltes/tarsasagitorveny.doc>) As far as the future regulation of board-level employee representation is concerned, it does not definitely propose the revision of the current rules, but it still contains two alternative proposals. One of them would make employees' board representation as such voluntary, and it would be up to the shareholders whether they want to provide employees with seats on company boards when they make a decision on the company statute. As a compensatory measure this proposal envisages the possibility of issuing special "employee shares" with certain representation rights. During the consultations with the social partners these initiatives were welcomed by the representatives of the Hungarian Chamber of Commerce and Industry and the Budapest Stock Exchange. The alternative proposal would basically maintain the present regulation on board-level employee representation, that is, it would remain compulsory if the number of employees exceeds 200.

Legislation on new company rules is expected in the second half of 2005, and they are to come into force in autumn 2006.

## **2. Existing legislation on board-level representation**

According to Articles 36 and 37 of Act CXLIV of 1997, in companies with at least 200 full-time employees one-third of the supervisory board must consist of employee representatives. If one-third of the number of board seats is a fraction, rounding up must be done in favour of employee delegates. Such board-level representation is obligatory in both state-owned and private companies regardless of whether the business operates as a joint stock company (Rt.) or a limited liability company (Kft.). Employee representatives are nominated by the company's works council or central works council, but prior to the nomination, the works council is obliged "to listen to the opinions" of company trade unions. Any employee can be nominated, and contrary to the Labour Code's regulation on works council elections company law does not rule out the delegation of a manager who is in a position to hire, fire and sanction employees (to exercise employer's rights – in legal terms). The shareholders' meeting is obliged to appoint the nominees of the works council, if they meet the legal criteria defined by the law. In theory this is an automatic procedure, i.e. it is a legal obligation to set up a supervisory board with employee representatives, which should be a formal prerequisite of company registration. The supervisory board members' term of office is not limited by the law. Only the nominating works council is in a position to propose dismissal or replacement of a current employee representative by another person. A new nomination by the works council is necessary if the representative's employment relationship is terminated for any reason.

In practice employee representatives in the supervisory board are local trade union leaders and/or the chairperson of the (central) works council, or their deputies. The personal overlapping between board representation and other company-level channels of employee representation provides representatives with a certain legal security (against dismissal, discrimination, and so on), which is otherwise not guaranteed by company law.

The rights and duties of employee delegates are basically the same as those of other non-employee supervisory board members elected by the shareholders. There is only one extra entitlement of employee representatives: should the supervisory board fail to reach a consensus, the shareholders' meeting must be informed about the minority position of the workers' representatives. In turn, the employee representatives' duty is to inform the "community of employees" through the works council about all issues with the exception of those restricted by business confidentiality.

Remuneration of board members is not regulated by the law, but the relevant decision of the shareholders' meeting usually takes equality of the members into account. Nonetheless, remuneration practices vary widely across companies; while some foreign-owned subsidiary companies do not pay anything (for the board members elected by the shareholders are managers from headquarters), the majority of companies pay very well in proportion to the workload of the members. (The common argument in favour of high remuneration is that the board members bear personal financial responsibility for the impact of their mistakes as board members, that is, they can risk their personal property.)

### **3. Board-level representation within the national system of industrial relations**

By default the powers of Hungarian supervisory boards are rather weak. They have a controlling function over managers' actions, act as a body on behalf of the shareholders, and usually have meetings fairly rarely. It is up to the shareholders' meeting whether it extends the competence of the Supervisory Board.

The appointment procedure and the everyday functioning of employee representatives is in line with the Hungarian dualistic system of workplace industrial relations. (In 1992 the Labour Code introduced statutory works councils, and they were integrated into a national industrial relations system based on decentralised workplace-level bargaining, traditionally carried out by company chapters of unions. No wonder the new institution met with fierce opposition from union confederations at top-level political negotiations. As a result of political compromises between the government and the social partners, the responsibilities of works councils and workplace trade unions became rather confused in Hungarian labour law. In the course of the 1990s, unions developed a controversial relationship with works councils: at the majority of companies unions successfully tried to dominate works councils or made them largely redundant bodies. Recent surveys show that works councils operate only in larger companies where workplace trade union organisations are in place, and they do not function as an institutionalised channel of employee representation at non-unionised firms. The union–works council relationship took a new turn in the period between 1998 and 2002

when the right-wing government reinforced the legal position of works councils, which was seen by the unions as an attempt to weaken them. After winning the 2002 elections, however, the Hungarian Socialist Party-led coalition – which enjoys the support of a large number of important unions – repealed the amendment of the Labour Code that had extended the rights of works councils in the face of trade union protests. On the other hand, the amendment created almost complete overlap between the responsibilities of works councils and those of workplace trade unions (See András Tóth, Youcef Ghellab and László Neumann, 'Works councils examined', <http://www.eiro.eurofound.eu.int/2004/01/feature/hu0401106f.html>).

In practice personal overlapping prevails, not only between trade union leaders and works councils, but also between board members and other channels of employee representation. On the other hand, if neither a union nor a works council exists at a company, there is nobody to enforce the law effectively. While in theory the setting up of board-level representation is an automatic process, practically there is no state agency (labour inspection, courts of registration) in a position to monitor company practices in relation to employee board-level representation.

To sum up the role of board-level representation in Hungary, regrettably we have to say that it is not a key element of Hungarian industrial relations. Taking into consideration the overlapping of personnel, many view board-level representation is nothing more than an opportunity to provide local union leaders and works councillors with extra income. Knowing its relatively weak position in the national corporate governance system, at best we can assess them as an additional channel of representation which may support the functioning of company trade unions and perhaps works councils, if the latter has obtained an influential position at the relevant company.

## **Practitioner Report**

*László Kanizslai, member of the Bunge supervisory board*

I joined in the trade union in 1977, starting my career as a shop steward and later rising to become its president. I have been a member of the works council since 1992, and in 2002 I was elected president of the trade union and the works council. This was when I became a member of the supervisory board. I have international experience with the works council: after becoming a member of the European Works Council, in 2004 I was elected EWC secretary.

Bunge is a multinational company, one of the three largest in the world in the edible oil sector. Headquarters are in New York; the European HQ is in Geneva.

Our main areas of activity are agribusiness and vegetable oil production. Bunge Europe has many plants and trade offices, from Portugal to Russia. The largest plants are in Spain, Italy, Germany, Poland and Hungary. I work at Martfű in Hungary, which is one of the largest Bunge factories. We produce sunflower oil. The company has just over 330 workers in Hungary, including a head office and research institute in Budapest.

After this brief introduction, some words about Bunge Hungary's supervisory board.

### **How big is the board and how many worker board members are there?**

#### **Who selected you?**

As already mentioned, the company has around 330 employees, so the board must have three members according to Hungarian regulations. In addition to the workers' representative the other two members come from Bunge's European head office. I was nominated by the works council with a four-year mandate.

In the Hungarian system there are two boards, the board of directors, which has the right to make decisions, and the supervisory board, which has the right to make recommendations.

### **How many meetings are there? How much time do you dedicate to this task per month?**

Our board has one scheduled meeting per year. However, if circumstances arise extraordinary meetings are also held: for example, some years ago, the board met three times in a single year. I work with the supervisory board more or less continuously and so it is difficult to determine precisely how many hours that comes to.

**What kinds of issue does the board address?**

We study different kinds of data (financial, economic, headcount, etc.), on the basis of which we make recommendations to the board of directors concerning modifications or improvements. I would like to underline that we can only make recommendations, which the board of directors may act upon or not.

**Who decides on the remuneration of board members? Do worker members have the same rights and duties as the other members of the board?**

The competencies and remuneration of members is very important. According to Hungarian law, the competencies and remuneration of worker's representatives are the same as those of the other members. Of course, the rights and duties of employee members correspond to those of the other members of the board.

**What kind of information do you receive and when (also between meetings)?**

Information is particularly important: without it, it is not possible to work. We must therefore receive all the relevant information before meetings, and between meetings. I receive information from the Board of Directors or from the CEO. I often receive information from the administrative and financial directors, too. This information concerns the company's financial situation, efficiency, profits, sales situation, etc.

**What is your relationship with the other board members (shareholders' representatives)?**

I have good contacts with the other board members. We keep in touch by telephone or in person. We sometimes meet at head office in Geneva. As I mentioned, our board has three members, so the shareholders are not represented.

In companies whose shareholders are exclusively Hungarian, supervisory board members are invited to the shareholders' meeting. If the workers' representative has a dissenting opinion, this must at least be presented to the shareholders.

**How do you interact with other worker board members? Do you have an internal meeting before or after official meetings?**

Between regular meetings, we have no other kinds of meeting, such as preparatory meetings. As mentioned in the introduction, I am the head of the union organisation and the works council, and both are kept fully informed about my activities on the board.

**What qualifications are needed for worker board members? What about training?**

Qualifications are very important. There are no official regulations regarding the qualifications of worker representatives, but my personal opinion is that continuous training is indispensable, mostly in relation to economics and human resources. Without adequate training representatives would not be able to understand reports, data and accounts. Fortunately, in Hungary a lot of training for workers' representatives is organised and financed by the Friedrich Ebert Foundation and my trade union confederation MSZOSZ. The quality of the training varies, however, and this can be problem. We are open to any kind of help as far as training is concerned.

**What are your role and duties as a worker board member?**

My position on the board is very special because I am the only Hungarian. The others have no personal experience of the country, coming to Hungary only once or twice a year. I have the possibility to consult with experts on problems of all kinds and I am able to represent the collective opinion of the workers on the board. The other two members are often not interested in social problems, which unfortunately is a general experience at companies whose owner or main shareholders are foreign.

My main task is to pursue the workers' wishes, which is difficult, but not impossible.

**What challenges or problems are you faced with (confidentiality, information, decision-making processes, and so on)?**

The issue of confidentiality is difficult. Generally speaking, confidentiality is at the discretion of the owner. Unfortunately, the relevant regulations change frequently.

The decision-making process is also very difficult: I am alone against two foreign board members who live and work in a different cultural environment.

**What do you think is the added value of having worker representatives on the board?**

It is difficult to say. The board has no right to make decisions, just recommendations. As a result, the added value from my side is representing the interests of employees as social partners. For example, some years ago, the company management wanted to shut down a factory situated in an underdeveloped part of Hungary where the unemployment rate is around 20%. I was able to bring this to the attention of the management who postponed the shutdown. Unfortunately, this factory eventually had to be closed down for economic reasons, but at least the workers had time to prepare themselves.

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## MALTA

### **The Maltese system of worker board-level representation**

*Dr Charmaine Grech LL.D., General Workers' Union Malta*

#### **1. The national corporate governance system**

Maltese company law is based on UK company law. In Malta there are different types of company, including private companies, which are of three types: the partnership *en nom collectif*, the partnership *en commandite* and the limited liability company. The main difference between them is the extent to which the partners/members are liable.

In the case of the partnership *en nom collectif* there are two or more members and the partnership's obligations are guaranteed by the unlimited, joint and several liability of all the partners. In the case of the partnership *en commandite* – also known as the limited partnership – there are two types of partner. This partnership has its obligations guaranteed by the unlimited, joint and several liability of one or more partners, who are called the general partners; it is also guaranteed by the liability limited to the amount, if any, unpaid on the contribution of one or more partners, called the limited partners.

While the two partnerships described above can only be private partnerships, the limited liability company can be either private or public. A limited liability company is formed by means of capital divided into shares and held by its members. Its members' liability is only limited to the amount, if any, unpaid on the shares held by each of them. In the case of private companies the authorized share capital shall not be less than LM 5,000 (approx. €12,000), while in the case of public companies it shall not be less than LM 20,000 (approx. €48,000).

#### **The annual general meeting**

Under Maltese company law the only recognised corporate structure is the one-tier system: the two-tier structure has never been recognised. An annual general meeting (AGM) is required by law, and no more than fifteen months may elapse between one AGM and the next. The law also stipulates that if a company holds its first AGM within eighteen months of its registration, it need not hold it in the year of its registration or the following year. All other general meetings held during the year which are not an AGM are considered to be extraordinary general meetings.

## **The board of directors**

Every public company must have at least two directors, and every private company at least one. The role of the directors is to manage the business and exercise all the powers of the company. The Companies Act, which regulates companies, states that “the directors shall promote the well being of the company and shall be responsible for the general governance of the company and its proper administration and management and the general supervision of its affairs”. There is no statutory obligation on how often the board has to meet; rather it is up to the board of directors itself to decide this, depending on any urgent matters which may arise, the situation of the company, among other things.

## **2. Existing legislation on board-level representation**

The current trend in Malta seems to be the reduction of workers’ board-level representation. At the moment only 11 companies provide it, and unfortunately two other companies which used to have a worker director abolished this post this year as part of their privatisation process. Worker directors are mostly found in state-owned enterprises or corporations: of the 11 companies in question, only four are privately owned, three by the GWU, the largest trade union on the island, the other by the Labour Party. In total there are 13 worker directors: four in the companies owned by the GWU and one at One Productions, the television station owned by the Labour Party.

Board-level representation has also been introduced by means of a legal notice supplementing the Employment and Industrial Relations Act. The passing of regulations by means of legal notices in parliament is preferred to amending the principal Act itself. Legal Notice 452 of 2004 deals with employee involvement in the European Company. In this case board-level representation is a way of furthering worker participation, while the original concept, involving worker directors, was based on the Yugoslavian model of self-management.

In the case of the above mentioned legal notices, board-level representation is introduced automatically, as a legal requirement. However, in the other cases of board-level representation there is a mixture of legal obligation and workers’ initiative. If one looks at the history of board-level representation, in the 1970s the newly elected government pledged to end the island’s ‘fortress economy’ mentality by making its economy dependent on its own initiative rather than on annual subsidies from the British government and NATO allies. The new government vowed to seek a new economic direction and to adopt a new form of industrial relations, in which workers’ participation was to play a leading role.

In relation to a number of corporations owned by the government and the University of Malta legislation provides for a worker director. In a number of other companies, especially those owned by the GWU, the relevant provision is to be found in the collective agreement, while in some other companies an agreement was reached and is still observed.

Worker board members have the same rights and duties as the other directors. In fact, the Companies Act makes no reference to worker directors or to any distinction in terms of their rights and duties. When it comes to remuneration, this depends on the other directors. For example, the Legal Notice which makes provision for the election of a worker director at Maltacom plc states that “The remuneration payable to the Worker-Director shall be that established for the other members of the Board of the Corporation.” The Enemalta Act also stipulates that the members of the board shall receive such remuneration as the Minister may from time to time determine. This remuneration is to be paid out of the funds of the Corporation (Enemalta Corporation supplies electricity and is government-owned).

The Bank of Valletta plc has a very interesting system: 3% of the shares are owned by the employees and since, as shareholders, they have the right to appoint a Director, lobbying is often used. Although the resulting director does not have the title of worker director he or she is still the choice of the employees.

Unfortunately, board-level representation is not very widespread and, as already stated, on the decrease. No protection is afforded to worker directors over and above that provided by law to all directors. Nonetheless, *de facto* worker directors have the backing of the trade union and the employees, which affords them some level of protection.

Who can become a worker director?

Only employees of the company can become worker directors. At Maltacom plc an employee who is also a trade union shop steward can stand for election as worker director, although if he is elected he must resign as shop steward. Nevertheless, this requirement can be said to exist merely on paper since it has never been enforced. On the other hand, in other companies there is no mention of this requirement: the worker director need only be an employee of the company.

Employees of Maltacom plc may stand for election as a worker director if their nomination is supported in writing by no fewer than ten employees who are entitled to vote. Elections are by secret ballot and the candidate who receives more than fifty per cent of all valid votes is elected. Should more than two candidates stand for election and no candidate obtains more than fifty per cent of the votes, another round of voting is held involving the two candidates who received the greatest number of votes. The election is conducted and supervised by the Election Commission, established under the Maltese Constitution.

Although the Enemalta Act states that the Minister may regulate concerning the election of worker directors, including which employees may or may not vote or stand for election, no such regulations have been enacted.

The same is true of the other companies which have a worker director. For example, in relation to the Bank of Valletta the Prime Minister appoints the worker director on the nomination of the bank’s employees, who nominate more than one candidate, so that the worker director is always their choice.

### **3. Board-level representation within the national system of industrial relations**

Maltese industrial relations law follows the British system of industrial relations, with the shop steward representing the trade union at shop-floor level. The shop steward is the link between trade union officials and management. It is impossible for trade union officials to monitor what is happening in every workplace and so the role of the shop steward is vital. Collective bargaining is conducted at enterprise level.

The Maltese industrial relations system is based on conflict and negotiation. To be honest, board-level representation has never really functioned in Malta as it does not fit into the current industrial relations system. Worker directors have been regarded with suspicion by both management and employees. The total failure of the system introduced at Drydocks did not help the system at all.

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## Practitioner Report

*Ray Arpa, Worker Director Air Malta plc*

I am the worker director at Air Malta plc. Air Malta is the national airline, with about 1,750 staff and a fleet of 12 aircraft (increasing to 14–16 during the summer). The board of directors consists of a non-executive chairman and six non-executive directors, one of whom is the worker director.

The post of worker director was established at Air Malta after an agreement between the General Workers' Union and the chairman in 1984/1985. I was elected by the workers in 1991 and soon afterwards appointed as board member by the government, which owns the company. The norm in most other companies is that the worker director is subject to re-election every two years or so. However, I have remained worker director since 1991 without any further elections. In 1993 I approached the general secretary and the section secretary of the General Workers' Union to advise them that the two-year period was about to elapse and that if elections were to be held the union should make all the necessary preparations to ensure that one of its members won. I was told that if I was tired of the responsibility an election would be held; otherwise I should simply stay on. Well, here I am in 2005 writing this report as the worker director of Air Malta.

In a twelve-month period there are usually twelve or thirteen scheduled board meetings. However, at the end of the year one generally finds that many more board meetings were held. For example, during March 2005, three board meetings were held to deal with delicate and urgent business. On average a board meeting lasts about four or five hours. It is very hard to calculate the amount of time taken up by this kind of work. There is a great deal of preparatory reading. Furthermore, one must obtain as much information as possible about the projects and other matters being considered by the company.

For board meetings I receive the agenda and all relevant documents about 4–5 days beforehand. While as a board member I have a right to receive all official information, I prefer to obtain it through confidential channels. That reduces the risk of receiving incomplete information and increases the possibility of getting information beyond what is contained in the official documents while protecting the source of my information. If I decide that the information is worth bringing up I ask questions at the board meeting, leading to a discussion.

As a general rule the board discusses issues related to company policy. It also monitors the financial and sales figures on a monthly basis. Issues of substantial importance are also considered by the board. Without going into detail, issues which have been on the agenda include:

- cost cutting measures;
- fuel hedging;
- currency hedging;

- Azzurraair;
- Avro RJs;
- keeping/selling subsidiaries and investments;
- restructuring of company top management ;
- the CEO's contract;
- the Manchester operation;
- leasing of aircraft;
- the effects of fuel prices;
- the network;
- the business plan.

Remuneration is decided by the government as owner. The Companies Act of 1995 does not recognise a right to worker directors; nor does it differentiate between directors generally and worker directors. All directors are bound by the same laws and have the same rights and obligations. In previous boards, I sat on two committees: product quality and health and safety. Since the new minister took over responsibility for the company, a number of policies have changed. Company workers were not allowed to sit on company committees, with some exceptions: for example, the audit committee and the purchasing committee. Other directors sit on these committees. At the present time, I do not sit on any committee. Also, company employees are not allowed to sit on a board of a company subsidiary. Previously, I sat on the board of three of Air Malta's subsidiaries (Malta Air Charter, Peregrine Aviation Leasing Company, Malta Falcon Finance).

I have very good working relations with all the other directors, including the chairman. Notwithstanding our good relations, we do have different opinions. However, we can discuss any issue without getting on the defensive: we can disagree but still respect each other's decision. Naturally, depending on the matter in question, we board members lobby and discuss informally to get an overview of what other directors think about a specific issue.

My relations are also very good with the staff in general, shop stewards and the trade unions, especially with the officials of the General Workers' Union (I am a member of the executive committee of its Maritime and Aviation Section).

Recently, a works council was set up: everyone is still very much in the learning phase. To the best of my knowledge, Air Malta's works council is the first in Malta. Most members are people I know personally and with whom I am on good terms. That will make it much easier for me to maintain good relations with the works council.

While academic qualifications in such subjects as accounting, economics and human resource management definitely help a worker director to perform better, the same applies to all board members. The main advantage the worker director has over the rest of the board is that they come to the company just for board meetings, and perhaps a few other meetings,

while the worker director is “on the job” all the time, has more access to people and information, knows the company and its staff much better and, also very important, he knows the culture of the company.

The company has never offered me any training related to my responsibilities as a board member. I obtained a diploma in industrial relations from the University of Malta due to the encouragement and support of both the General Workers’ Union and the Workers’ Participation Development Centre of the University of Malta.

I do not officially receive any time off for my duties as a board member, although over the last thirteen and a half years I have never had a problem in relation to attending board meetings or any other commitments related to my work as worker director.

I am aware of the Companies Act of 1995 and my rights and responsibilities as a board member. I am also aware that, besides being a board member, I am also an employee of the company. I am aware that I represent a different stakeholder (the workers) from the other directors. Enough time has passed for it to have become clear to myself that I am not intimidated by anyone. I think I have earned the respect of those around me, too. In my day job of airport duty manager I keep as much of a low profile as possible as far as my directorship is concerned and do not mix the roles. This helps both my superiors and my subordinates in performing their duties. It also helps me in my role as airport duty manager. That does not mean that colleagues do not ask me questions on many issues which I try to answer to the best of my knowledge without compromising the confidentiality of the board.

It is a fact that we are living in a market economy and therefore the financial strength or weakness of the company depends on its performance. Nevertheless, I unfailingly keep reminding my fellow directors that every business decision, even if expressible in an abstruse mathematical formula, ultimately affects the employees, and at the end of the day they make the difference, for better or worse, depending on how they are treated by their employer. On the other hand, whenever I get the chance I remind the employees that they have no future without the company. In short, I make everyone aware of their interdependence.

Decisions are taken only after discussion at a board meeting. Sometimes, it is quite straightforward; at other times a long and argumentative discussion takes place. However, a vote is seldom taken because of a disagreement. Sometimes I have to ask for a vote but sometimes other members insist on one.

The aviation industry is going through a very tough time due to various factors, including security risks, fuel prices and the global economy. The redundancy issue is my most worrying concern at present and so far we at Air Malta have managed to avoid compulsory redundancies. Recently, Air Malta and all four unions reached an agreement in which the employees accepted a number of cost cutting measures, including a three-year wage freeze, with the company guaranteeing employment.

Confidentiality applies to all board members. However, it does not stop at the board but also covers anyone else with whom you cooperate. In the past, some directors used to question

me about this issue but now that I am a “veteran” on the board it is no longer mentioned. On the other hand, experience has taught me how to handle confidentiality.

Similarly, conflicts of interest may apply to all directors and not solely to the worker director. While a worker director might encounter a conflict of interest in issues directly related to the employees, other directors might have a conflict of interest in relation to other issues, for example in relation to a commercial decision. Most of the directors are businessmen themselves or high ranking officers of other companies.

Having a worker director on a board of directors gives a wider perspective and a better understanding of the full range of effects related to a particular decision, as he is probably the only one able to anticipate real effects rather than the projected results of calculations. Furthermore, having a worker director on the board gives more legitimacy to decisions as all stakeholders are able to participate.

My most recent challenge in respect of trying to strike a balance between my legal responsibility as a board member and my obligations to those I represent was when I was involved in helping to reach an agreement between the company and the four trade unions. Agreement was finally achieved thanks to the efforts of many people who clearly understood the situation and the possible consequences. I was just one of many who gave a helping hand.

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## POLAND

### The Polish system of worker board-level representation

*Jakub Stelina, Gdańsk University (Chair of Labour Law)*

#### 1. Introduction

Business can be run in a variety of forms. Up to a certain size, it is, as a rule, run by individuals in their own name, autonomously or jointly with others (as so-called civil law partnerships or general partnerships). As far as larger businesses are concerned, they are usually run as companies with legal personality. As of the end of 2003, over 3.5 million business entities were registered in Poland, of which almost 2.8 million were the enterprises of individuals and over 300,000 civil law partnerships and general partnerships (without legal personality). The number of organisational units with legal personality was over 186,000 (limited liability and joint stock companies), including about 1,700 state-owned enterprises and some 18,500 cooperative societies.

Clearly, the dominant form of association is the limited liability company (about 177,500). The other main type of company with legal personality is the joint stock company (about 8,500).

It is worth noting that in the period 1990–2003 more than 7,000 state-owned enterprises (that is, 80% of all state-owned enterprises as of 1990) underwent privatisation. As of the end of 2003, almost 700 of these were single-shareholder companies of the State Treasury (with the state being the sole shareholder).

#### 2. The national corporate governance system

It would seem that the characteristics of the system of governance of business enterprises with legal personality should be discussed in relation to limited liability companies, joint stock companies and state-owned enterprises. Corporate structure is laid down in the Code of Commercial Partnerships and Companies of 2000 (modelled on the Commercial Code of 1934). State-owned enterprises whose privatisation has not yet started are subject to legal provisions contained in the Act on State-Owned Enterprises of 1981.

##### 2.1 Limited liability companies

The main body of such companies is the management board which manages the affairs of the company and represents it externally. The management board comprises one or more members, who may also be shareholders. Members of the management board are appointed and removed by a resolution of the shareholders, unless the company statutes provide otherwise (for example, by giving such powers to the supervisory board).

As far as supervision is concerned, the following mechanisms are possible:

- a) supervision by the shareholders;
- b) optional establishment of a specific supervisory body;
- c) obligatory establishment of a specific supervisory body.

a) Each shareholder has a right of supervision. To that end the shareholder may (on his/her own or along with persons authorised by him/her) review, at any time, the accounts and documents of the company, draw up a balance-sheet for his/her own use or request explanations from the management board (which explanations can, however, be refused where there are substantial grounds to believe that as a result action may be undertaken against the interests of the company). Where a supervisory board or an audit committee is appointed, individual supervision by shareholders can be ruled out or limited by the company statute.

b) The establishment of a supervisory body (supervisory board or audit committee) is, in principle, optional. As the Code of Commercial Partnerships and Companies provides, a supervisory board or audit committee – or both – can be set up in the company statute. Each body should be composed of at least three persons. The supervisory board exercises permanent supervision of the company's operations, while the audit committee commences its activities upon completion of the fiscal year (unless there is no supervisory board in the company and the powers of the audit committee have been extended by the company statute).

c) In companies in which the starting capital exceeds PLN 500,000 (about EUR 125,000), and the number of shareholders is greater than 25, a supervisory board or audit committee must be established.

## **2.2 Joint stock companies**

The main body of a joint stock company is the management board (to which rules similar to those governing the limited liability company apply). However, in contrast to the limited liability company, in the joint stock company it is obligatory to establish a supervisory board. The supervisory board exercises permanent supervision of the company's operations, in all aspects. The powers of the supervisory board also include suspension, on good grounds, of some or all members of the management board, and the delegation of supervisory board members, for a period not exceeding three months, to temporarily perform the duties of management board members who have been removed from office, have resigned or are unable to perform their duties for other reasons.

The supervisory board is composed of at least three, and in public companies of at least five, members, appointed and removed by the general meeting. The term of office of a supervisory board member must not exceed five years. Membership of the board is not open

to: members of the management board, the company signatory, liquidators, managers of company branches or plants, the chief accountant, legal counsellors or lawyers employed by the company, and persons reporting directly to a member of the management board or liquidator.

### **2.3 State-owned enterprises**

Organs of state-owned enterprises include: the employees' general meeting, the works council and the manager of the enterprise.

The manager of a state-owned enterprise is appointed by the works council, except for newly established enterprises where the first manager is appointed by the company founder.

The works council of a state-owned enterprise is composed of 15 members elected by the workers in general, direct and equal elections, by secret ballot. Powers of the works council include: adoption of amendments to the annual business plan, adoption of the annual statement and approval of the balance sheet, adoption of resolutions on capital expenditures and on changes in the course of enterprise operations, and appointment and removal of the manager and other persons performing managerial functions in the enterprise. In addition, the works council has the right to give an opinion on all affairs of the enterprise and its management.

### **3. Existing legislation on board-level representation**

Clearly, employee representation is most developed in state-owned enterprises. This is based on the idea of employee self-management introduced in 1981 in reaction to the disastrous results of enterprise management under the planned economy. Due to privatisation, the number of state-owned enterprises is shrinking, as a result of which employee self-management is being eroded. Still, worker participation continues, albeit in an altered fashion, even after the privatisation of a state-owned enterprise has commenced. Workers' participation now consists in the staff's right to elect members of the supervisory and management boards of commercialised – privatised – enterprises.

In companies established by privatisation from a state-owned enterprise a supervisory board is established. The number of supervisory board members is determined by the articles of association: it should be five in the case of the initial supervisory board, two of the members being elected by the staff. During the period in which the State Treasury remains the sole shareholder of the company which has emerged as a result of commercialisation, members of the supervisory board are appointed and removed by the general meeting. Staff representatives are elected to the initial supervisory board by the general meeting of the employees (employee delegates).

The rules for the appointment of supervisory board members can be amended when the State Treasury ceases to be the sole shareholder of the company. Nevertheless, the staff

retain their right to elect two, three or even four members of the supervisory board (depending on board size).

Employee-appointed supervisory board members are elected in general and direct elections, in a secret ballot. Candidates must pass an exam for supervisory board members. The law does not distinguish between supervisory board members and consequently the rights of employee representatives are equal to those of other board members.

A company employee sitting on its supervisory board cannot be given notice during his/her term of office nor for one year thereafter. Nor may the company change the terms of his/her employment and remuneration in an unfavourable way during that time. Supervisory board members' remuneration must not exceed the amount of the average monthly salary.

In commercialised companies with more than 500 employees one member of the management board is elected by the staff (this right being retained by the employees even after more than half the shares have been disposed of by the State Treasury). This rule does not apply to companies in which a management board comprising only one person has been established.

In addition, employees have the right to acquire, free of charge, up to 15% of the shares (stock) held by the State Treasury when the company is registered.

As of 31 December 2003 there were about 700 single-shareholder companies of the State Treasury in which the employees had retained their right to delegate representatives to company bodies. Added to that should be the – difficult to estimate – number of entities in which the State Treasury retains shares or stock.

In other kinds of enterprise there are no legal grounds for employees to claim the right to participate in managing their workplace. There are no general legal regulations securing for employees the right to information and consultation. This situation will change after the legislation implementing EU Directive 2002/14 comes into force.

#### **4. Board-level representation within the national system of industrial relations**

According to Polish law, in addition to national and branch level, trade unions are active also at enterprise level. In order to have a say in matters affecting the employees, a trade union must establish an organisation at an employer. Branch or national trade unions must therefore establish company organisations. However, employees often form single-company trade unions (covering the operations of only one employer).

Trade union powers at the company level cover, among other things, participation in determining company-level regulations (collective labour agreements, work regulations, wage regulations), supervision of labour law observance, giving opinions on employer actions towards employees (for example, when an employee is dismissed). However, trade union powers within the company do not include the right to appoint representatives to sit on company bodies. Only the employees themselves have this right. In principle, the trade union

influence on an enterprise through company bodies is practical rather than legal in nature. It often happens, however, that in the so-called welfare pacts negotiated by trade unions the latter are also granted the right to delegate representatives to supervisory boards.

To complete the picture, we must not omit to mention trade union fears regarding the contemplated implementation of EU Directive 2002/14. In the opinion of the main trade union organisations, the Polish legislators should rest on the assumption that enterprise trade union organisations will play the role of employee representatives within the meaning of the directive, and thus neither works councils nor employee delegates (shop stewards) should be appointed in companies with a trade union. Only in the absence of trade unions should a non-trade union system of employee representation (works councils or representatives) be established. Meanwhile, the bill drafted by the government provides for the obligatory establishment of works councils at companies with a workforce of 100 or more, whether trade unions are present or not. At smaller companies (20 to 100 employees) the appointment of so-called staff representatives is contemplated.

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## Practitioner Report

*Krzysztof Jasek, member of the supervisory board of Żywiec Group*

The transformation of the political system in Poland brought about numerous economic changes which in turn caused fundamental changes in the way employees are represented at board level.

Together with these changes employees obtained the right to organise themselves into free trade unions which really represent their interests. The Privatization Act and the Act on Commercialization and Privatization (30 August 1996, as amended) gave employees the right to representation at board level.

The Act gave employees the right to elect representatives to supervisory boards (approximately 30% of the members) and boards of directors (one person) in order to encourage employees to look more favourably on the privatisation of their companies. While representatives were often elected to supervisory boards during the period of ownership change, elections to management boards were rare. We should add that after companies were taken over by new owners the newly acquired rights to board-level representation were often abolished. It was often the case that, together with the changes in ownership, parallel changes were introduced into the company statutes deleting the provisions granting the right to sit on company boards.

I would like to concentrate on presenting employee participation in the supervisory boards of two companies: the Żywiec Group (Grupa Żywiec SA) and Famed SA in Żywiec. The Żywiec Brewery was transformed into a state-owned partnership in 1990; in 1991 shares were sold to individuals as well as to institutional investors in a public offering.

The first General Meeting of shareholders brought an attempt to reduce employee representation from 30% of all members to a single representative. This attempt was unsuccessful because the employees owned 12% of the stock and so were one of the major shareholders at the time.

During the first term of office there was a significant increase in confidence between the employee representatives on the Żywiec Group management board and the shareholders' representatives. As a result, all the employee representatives remained in place for a second term of office. The next term of office brought even better results: one of the major institutional investors appointed an employee as its representative, meaning that five out of the 12 members of the supervisory board were employee representatives.

When the Dutch beer company Heineken acquired a major shareholding the total number of management board members was reduced considerably, as a consequence of which the number of worker representatives was also reduced: in fact, only one employee representative elected by the workforce remained.

This regulation remains valid and accepted all shareholders. Every three years there is an election in accordance with the regulations which state that each employee may cast one

vote. An employee has the right to stand for the supervisory board only after a minimum of three years' employment. The management board has seven members. The supervisory board meets four to six times per year. The board makes decisions on company strategy, development and investments, approves the reports of the management board, and so on. I receive the same information as the other board members. Since I work in a multinational my contacts with other members are limited to management board meetings because of the distances involved.

In the course of several terms of office a number of changes in the attitudes of the employees and candidates could be observed. The first election was treated by some candidates as an opportunity to move up the career ladder rather than as a possibility to have a direct influence on the development and strategy of the company with a view to improving the working and wage conditions of the workers. The employees, in turn, did not believe that their representative could have a real influence on the company. The next election showed that attitudes had changed. The candidates found that their duties were exacting: one has to spend long hours in preparation for meetings, in discussions with both employees and members of the management board, as well as lobbying the management. Employees, on the other hand, became convinced that a proper representative could do a great deal of good for the company and its workforce. These days candidates are aware that without a thorough knowledge of the company, its line of business, management theory, and some knowledge of how to operate within the organizational structures of Heineken, a multinational beer concern with operations in about 100 countries, it is impossible to even dream about exerting an influence on the decisions of the supervisory board. Similarly, the employees are fully aware of the opportunities offered by having a representative at board level and treat the election seriously and assess the candidates very rigorously. Candidates who were unprepared for the task would lay themselves open to ridicule and criticism. Such a mature attitude towards the election makes it likely that the best candidate will be selected.

The Żywiec Group trade unions have played a significant part in elections for several years. The six trade union organisations were able to organise themselves into a joint trade union representative body for the Żywiec Group which elects a common representative, significantly improving the chances that the trade union candidate will be elected. In fact, this has been the case for several years. The establishment of a joint trade union body for the Żywiec Group and the election of a group consisting of five trade union leaders created opportunities for negotiations with the management board and laid the ground for a workers' representative on the supervisory board. This is very important in a multi-plant company like Grupa Żywiec SA.

In my opinion, the method selected on the one hand guarantees implementation of democratic rules, and on the other the election of a candidate who best represents the employees' interests.

Another positive example is Żywiecka Fabryka Sprzętu Medycznego Famed SA. In the wake of the political changes in Poland, this company was on the brink of bankruptcy: the company

supplied hospital beds to COMECON countries and did not anticipate that the system would fall apart. Within three or four years the workforce was reduced from 1000 to 400. Heating and electricity were cut off and the banks foreclosed. Only thanks to the enormous determination of the employees did this company survive. In 1998 an employee-owned company was established, together with an external investor. The new company leased the whole plant. To begin with the employees owned just under 50% of the shares, but this proportion has decreased over time, although it remains significant at approximately 20%. This means that the employees can influence decision-making. In the privatisation negotiations the trade unions obtained the right to representation on the supervisory board. Because of the great interest in the election among the employees the trade unions took the initiative to choose their candidate. Solidarność and OPZZ backed one another's candidates to the supervisory board. As a result, the leaders of both trade union organisations are sitting on the supervisory board for their third term of office. Because of their deep involvement in company affairs and their understanding of business processes the external investor also appointed employees as his board representatives. As a result, five out of six board members are employees. During board meetings not only is strategy discussed, but also production and sales, costs and foreseen profits, as well as bonuses and pay increases. This provides board members with extensive knowledge of the company and its possibilities, and enables them to contribute to the proper planning of development.

Summing up, both these cases of companies with employee representation on their supervisory boards are very positive. In both cases, synergies are generated by employee involvement in company operations and the opportunity to cooperate. The information received by the employees plays an enormous role. Although frequently subject to confidentiality, this information nevertheless gives the trade unions a real opportunity to influence the company in accordance with the law. The trade unions are able to act with full awareness and in good time.

Finally, I would like to express my sincere regret that at present only a few companies cooperate with their employees in the manner described here. The current provisions of the Commercial Code mean that such relations are fragile and dependent on the goodwill of the main shareholders. I think that if the law included an obligation to introduce employee representation on boards the effects would be beneficial for both employees and employers.

## SLOVAK REPUBLIC

### **The Slovak system of worker board-level representation**

*Peter Ondruška, Confederation of Trade Unions of the Slovak Republic (KOZ SR)*

*and Peter Krajčír, member of Slovnaft's supervisory board*

Employees have a right to information on the employer's economic and financial situation and on planned development. This information must be presented in a way they can understand and in good time. Employees have the right to voice their comments and make suggestions concerning such information and planned decisions.

Employee representatives can be the trade union organisation, works council or works trustee. Employee representatives also include a representative for occupational health and safety pursuant to special regulations.

Employees participate, via the trade union, works council or works trustee, in establishing satisfactory working conditions by means of:

- a) joint decision-making;
- b) negotiation;
- c) right to information;
- d) inspection.

Employees have the right to collective bargaining only through the relevant trade union organisation. If at a particular employer there is both a trade union body and a works council, the trade union shall have the right to collective bargaining, overseeing implementation of obligations arising from collective agreements and information, and the works council shall have the right to joint decision-making, negotiating, information and supervisory activities.

### **The legal criteria for workers' participation at board level**

In every state company, regardless of size and activity, a supervisory board is established, except in state companies engaged in activities in the public interest and in whose company statute this is laid down (for example, railways, post office).

In commercial companies established in accordance with the Commercial Code a supervisory board is compulsory only in incorporated companies with fixed assets of at least SKK 1 million. The number of employees determines the number of supervisory board members elected by the employees. If the company has more than 50 employees in full-time

employment, one third of the members of the supervisory board are elected by the employees. However, the company statute can lay down a higher number of supervisory board members to be elected by the employees.

**In state companies the supervisory board:**

- decides on profit distribution and settlement of losses;
- recommends, on good grounds, management dismissals;
- submits reports on the merger or division of the company;
- submits a financial report every six months or annually;
- approves the appointment of the auditor;
- approves credits, loans, transfer of company property, allocation of company property to the general manager, “procurist” or other person authorised by the enterprise to use it or to deal with various matters.

**An absolute majority of votes is required for the approval of board decisions.**

**In private companies the supervisory board:**

- audits the extraordinary and consolidated annual accounts and planned income distribution or settlement of losses and presents a report to the general assembly;
- designates a representative to act in tribunals and other organs in cases involving members of the board of directors;
- supervisory board members are authorised to view all accounts and documents concerning the activities of the company, and oversee whether the accounts reflect the facts and company operations are conducted in accordance with the law, the company statute and the decisions of the general assembly;
- approves the ordinary, extraordinary and consolidated financial reports.

**In state companies** the number (always odd) of supervisory board members is determined by the company founder. The chairman is appointed on a competitive basis and shall not be an employee of the company. Half of the other members of the board are elected (and may be withdrawn) by the workers or their delegates by secret ballot; if there is trade union representation at the company, it nominates one member representing the workers. The manner of their appointment or election by trade union members will be laid down by the statutes of the trade union organisation or a meeting of the members. The other half of the supervisory board is nominated on a competitive basis from non-employees.

The general manager and the assistant general manager cannot be members of the supervisory board.

**In incorporated companies the supervisory board comprises at least three members. If the company has more than 50 employees two thirds of the members are elected (and**

**may be withdrawn) by the general assembly and one third by the employees. The company statutes can determine a higher number of members of the supervisory board, but this number cannot exceed the number of members elected by the General Assembly; the company statutes can also lay down that the employees elect supervisory board members in companies with a workforce of fewer than 50.**

In incorporated companies supervisory board elections by employees are organised, and the electoral rules drawn up, by the board of directors in cooperation with the trade union organisation. If there is no trade union organisation, supervisory board elections are carried out by the board of directors in cooperation with those employees who have the right to elect supervisory board members. The trade union organisation or at least 10% of those with the right to vote can submit candidates or propose the withdrawal of supervisory board members. Election of a candidate or withdrawal of a supervisory board member requires the approval of at least half of those with the right to vote or their representatives.

## Practitioner Report

*Peter Krajčír, member of Slovnaft's supervisory board*

In this part of the report on the co-participation and representation of employees in company boards I would like to mention some of the practical experiences gained as an employees' representative working in the supervisory board of a joint stock company.

The company is a refinery which, for the last 10 years, has gone through significant changes in structure and ownership. At the same time, the role of the supervisory board has changed as well. In accordance with the legislation of the Slovak Republic the company employees elect one third of the supervisory board members, with the remaining two thirds being elected by the general shareholders' meeting. The total number of supervisory board members is laid down in the company statute. In this company this number has gradually been reduced from 12 in 1995 to six at present. The term of office is also laid down in the company statute: it has been increased from four years to five. Up to 2000 the legislation did not deal with drawing up the list of candidates and the board of directors had the right to approve the nomination and election procedure. At the refinery an agreement was reached between the board of directors and the trade union organisation on the final list of candidates. On the basis of this agreement, the trade union proposed half and the board of directors the other half of the candidates. As a result of the legislative changes in 2000, at present the trade union has the right to approve the nomination and election procedure. The conditions determining who may be put forward as a candidate were also laid down: the trade union organisation may propose candidates and it is also possible to stand if one obtains the approval of a minimum of 10% of the voters. In the last election there were four trade union candidates and one candidate who won the approval of the required number of voters. (The election was won by two trade union candidates.) All current employees have the right to vote in an election. The abovementioned legislative change eliminated previous problems caused by the fact that existing legislation did not deal with the proposal of candidates. In many cases this resulted in situations in which the board of directors, which organises elections, decided on the candidates as well.

The tasks and role of the supervisory board are laid down by the Commercial Code and the company statute. In the past at the refinery the supervisory board elected and recalled the members of the board of directors, approved the business plan and had the right to decide on all fundamental issues. Gradually, supervisory board competencies were restricted and at present its main task is to supervise the company's activities. Supervisory board members have the right to look into all documents and records of the company and to control the accounting, as well as to oversee whether the business activities of the company are being pursued in accordance with legal regulations, the company statute and the instructions of the general shareholders' meeting. For employees' representatives, supervisory board membership provides an opportunity to obtain information on the company's activities, submit proposals and require the company directors to address employees' problems. The

election of trade union candidates to the supervisory board constitutes a significant strengthening of the union position. The trade union organisation gains an important source of information and the opportunity to submit its own proposals and requirements to the board of directors.

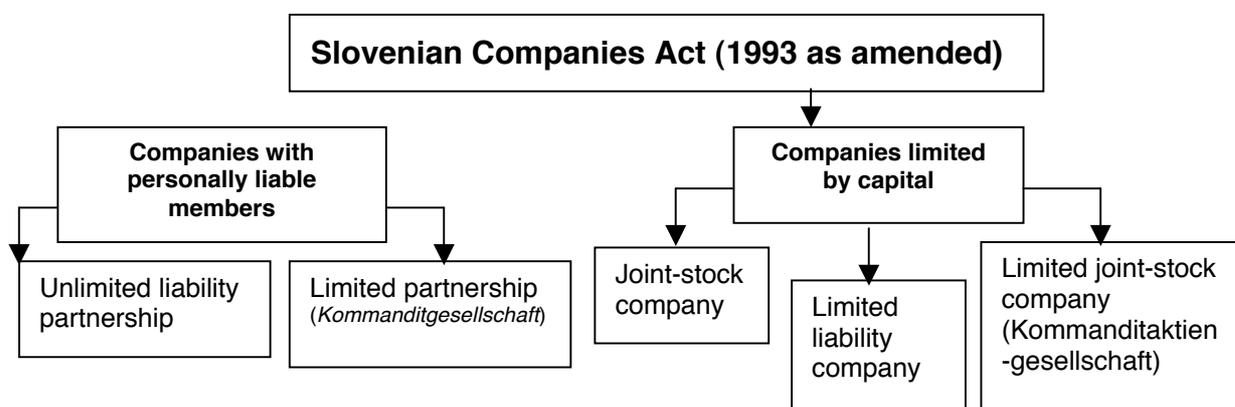
## SLOVENIA

### The Slovenian system of worker board-level representation

*Janja Bedrac, University of Maribor (Law Faculty)*

#### 1. The Slovenian corporate governance system

In 1993 the Slovenian Parliament adopted the Companies Act (ZGD), which represents a codification of company law in Slovenia. The Act mostly took German company law as a model, but other European legislation was also taken into consideration. The Companies Act makes a basic distinction between companies with full liability and those with limited liability.



As a principle the Companies Act adopted a two-tier structure, with a management body and a supervisory board. However, according to the Companies Act (Art. 261) the company statute determines whether the company shall have a supervisory board or not, although a board is obligatory in the following circumstances:

- when the company's subscribed capital is SIT 410 million (approx. EUR 1.7 million) or more;
- when the company employs more than 500 employees;
- when the company has been established progressively (the founders of the company must raise the necessary capital by selling shares);
- when the company's shares are traded on the stock exchange;
- when the company has more than 100 nominated shareholders.

In this regard it is important to emphasise that the proposal for amendments to the Companies Act, which will transpose the SE Regulation into Slovenian law (ZGD-I), foresees

the possibility of a one-tier system not only for European companies (SEs) but also for purely domestic companies. Discussions are taking place regarding employee involvement in future administrative organs.

## **2. Existing legislation on board-level representation**

Slovenian law on employee involvement is based on Article 75 of the Slovenian Constitution of 1991 which guarantees workers the right of codetermination. On this basis, the Act on the Participation of Workers in Management (APWM) was passed in 1993. This Act again was drafted primarily on the basis of German legislation, but also took note of other European legislation. It is a general act and guarantees a variety of participation rights, individual and collective, in the form of information and consultation rights, including participation at board level. According to the APWM (Art. 2) workers have a right to:

- make proposals and receive a response to these proposals;
- obtain relevant information;
- give their opinion and receive a response;
- consultations with the employer;
- codetermination;
- veto the employer's decisions;
- other forms of participation, if agreed between workers' representatives and the employer.

Workers' participation in decision-making is most effective if workers' representatives participate in the company supervisory or management board.

The Companies Act provides that workers have a right to participate in the supervisory board, if there is one, providing that the workers are organised so as to exercise collective participation.

The works council can elect – and recall – supervisory board members who represent employees' interests. The number of workers' representatives is determined by the company statute, but may not be lower than one third or higher than one half of all the members of the supervisory board (Art. 79). This provision was established in 2001 after a judgement of the Slovenian Constitutional Court which ruled in 2000 that the previous provision, stating that the number of workers' representatives on the supervisory board must not be lower than one third in companies with fewer than 1,000 employees and not lower than one half in companies with more than 1,000 employees, was in breach of the Constitution. The methods of election and recall are determined by the works council's rules of procedure. It must be

stressed, however, that the president of the supervisory board is always a representative of the shareholders and has the casting vote.

Workers' representatives on the supervisory board have the same rights as representatives of the owners/shareholders and participate fully in decision-making. At the same time, they are accountable to the works council and, indirectly, to all the workers. By its very nature, the supervisory board is necessarily a forum for differing interests and views, on the basis of which it must reach the optimal solution.

The works council is also entitled to propose a workers' director, who is a full member of the management board. On the proposal of the works council the supervisory board (or in the absence of a supervisory board the shareholders) appoints the workers' director. A workers' director is appointed in companies with more than 500 employees. In companies with fewer than 500 workers a workers' director may be appointed by mutual agreement of employer and employees. The workers' director represents employees' interests in human resource management and in social matters.

The rights of workers' representatives are protected by the Act on the Participation of Workers in Management (Art. 67), which states:

*A workers' council member who during the discharge of his duties behaves in accordance with the effective laws, collective agreements and the agreement provided by this Law may not without the consent of the workers' council:*

- *be assigned to another work post or another employer;*
- *be included among any redundancies.*

*If a workers' council member behaves as cited in the preceding paragraph it shall not be possible to lower his salary, institute disciplinary or indemnification proceedings against him or place him in any other way in a less favourable or subordinate position.*

Another important protective provision is stated in Article 113 of the Employment Relationships Act:

*(1) The employer may not terminate the employment contract:*

- *of a member of a works council, a workers' representative, a member of a supervisory board representing workers, a workers' representative in the council of an institution, or*
- *of an appointed or elected trade union representative, without the consent of the body whose member he is or without the consent of the trade union, if this person acts in accordance with the law, the collective agreement and the employment contract, except in the case of termination due to business reasons, rejection by the employee of appropriate alternative employment, and so on.*

*(2) The protection against termination of employment for the persons referred to in the previous paragraph shall apply for the entire period of their term of office and for a further year after its expiry.*

There are specialised labour courts that are competent to rule on disputes in this regard.

There are no official statistics in Slovenia on the number and proportion of Slovene companies with board-level participation, although there have been some initiatives in this direction. The Slovenian Association of Works Councils has, however, prepared a skeleton list of workers' directors in Slovenia, according to which there are currently 27 companies with workers' directors. In contrast, there is no information on supervisory board members; however, it is probable that this number approximately matches the number of works councils because the existence of a works council generally goes together with the election of employees' representatives to the supervisory board. According to research this is true of about 85% of companies with a supervisory board.

### **3. Board-level representation within the national system of industrial relations**

The current Slovenian system of employee participation in enterprise decision-making has evolved since the beginning of the transition to a market economy, during which time previous values have been turned upside down, the former social functions of enterprises have been eschewed and capital owners have come to dominate (Bakovnik, 'Slovenski model delavske participacije', *Industrijska demokracija* 3/2003). This situation is extremely burdensome for Slovenian workers, whose rights have been distorted and even put to one side.

As already mentioned, the Slovenian APWM guarantees a wide range of codetermination rights, both collective and individual.

Collective participation of employees can be realised by a works council or works representative, a workers' assembly or workers' representatives on the company management and supervisory boards.

The works council is a central employees' representative body at a company, directly elected by the employees. It is formed at companies with more than 20 workers and the number of members depends on workforce size, ranging from three members in companies with fewer than 50 workers to 13 members in companies with up to 1,000 workers. Above that, two additional members may be elected for every additional 1,000 workers. Management employees do not have the right to vote for works council representatives. This prohibition also refers to the family members of management personnel. All workers continuously employed by the company for one year have the right to vote, except for new companies where length of employment is not a decisive criterion. In companies with fewer than 20 workers the works representative carries out the function of the works council.

According to Article 87 of the APWM, works councils:

- ensure that laws and other legal provisions, collective agreements and agreements between employer and works council are respected;

- 
- propose measures that benefit the workers;
  - receive proposals and initiatives from the workers and, in appropriate cases, put them forward when negotiating with the employer;
  - promote the employment of disabled, older and other special-category workers.

Individual participation is regulated in Article 88 of the Act on the Participation of Workers in Management (APWM) which states that the employer must grant employees as individuals the right to participate in management. Accordingly, an employer must grant each worker the right to:

- initiate proposals and receive a response in relation to their workplace or work unit;
- be informed in good time regarding all changes in relation to their workplace;
- express their opinion regarding the organisation of their workplace and work processes;
- request an answer to questions on wages and other labour relations matters.

The works council has the right to convene a workers' assembly – which consists of all company employees, except for management employees – to discuss issues within the council's competence. Experts, management personnel and employers' and trade union representatives may be invited to assembly meetings. The assembly is normally convened outside working time, but once a year may also be convened during working time. The company's managing director must be informed of the assembly and a company representative may participate in the meeting (Art. 70).

The Act on the Participation of Workers in Management (APWM) introduced elected employees' representatives, who exist in addition to trade union representations (regulated by the Act on Trade Union Representation of 1993). These two forms of representation are institutionally and functionally separate: while trade unions have a so-called "conflict function" (collective bargaining, infringement of rights), workers' representatives perform a "cooperative function" and are not entitled to resort to, for example, strike action (Gostisa, "Primerjalno o slovenskem modelu delavske participacije", *Industrijska demokracija* 4/1997).

In the course of EU accession, Slovenia was obliged to implement Directive 94/45/EC on the establishment of European Works Councils. This was realised by a special Act on EWCs of 2002 (O.G. RS No. 59/2002) that came into force on 1 May 2004. The special law was needed because of the differing concept of the general law on the participation of workers in management.

The special law is applicable to:

- companies with their seat in Slovenia and which conduct their business in the European Union;

- groups of companies which conduct their business in the European Union and whose “controlling undertaking” has its seat in Slovenia (Art. 2/1).

However, its provisions are applicable also to subsidiaries and establishments in non-EU member states if an agreement between the central management and the special negotiating body so provides (Art. 12).

Slovenia is obliged to implement the second important piece of workers’ involvement legislation, Directive 2001/86/EC, supplementing the European Company Statute with regard to employee involvement. However, Slovenia is somewhat behindhand in this respect.

The Slovenian Ministry of Labour, Family and Social Affairs has competence in the preparation and monitoring of the application of legislation in the field of employees’ involvement rights.

Theoretically, the Slovenian system of workers’ participation is one of the most advanced in the world, guaranteeing workers a wide range of participation rights. In practice, however, the law has been implemented slowly and infringements of workers’ rights are still numerous, while workers are often unaware of their rights and of enforcement mechanisms.

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## Practitioner Report

*Branko Sparavec, supervisory board member of Telekom Slovenije*

### Introduction

I began working for the PTT company (Postal, Telegraph and Telephone services) in 1978; at the time, self-management and social property were still present in Slovenia. The company became a public limited company in 1995, with the government holding 62% of the shares, the rest being distributed among authorised investment companies, pension fund management schemes, domestic legal persons, the Slovene Compensation Corporation, and small shareholders. This also led to the separation of the Postal Services section.

On 9 July 1993, the National Assembly adopted the Worker Participation in Management Act. From the formal and legal point of view, this meant the implementation of the article of the Slovene Constitution which stipulates that ways and means should be laid down under which workers participate in the management of economic organisations and institutions.

The Companies Act stipulates that the company statute shall determine whether the company has a supervisory board. The company shall have a supervisory board if:

- its subscribed capital is SIT 410 million (approx. EUR 1.7 million) or more;
- its average annual number of employees exceeds 500;
- the company was established as a legal successor;
- its shares are listed on the stock exchange or the number of nominal shareholders exceeds 100;
- the company does not have a supervisory board and, if not stipulated otherwise in the act or in the company statute, the assembly carries out the responsibilities of the supervisory board.

The supervisory board consists of at least three members. A maximum number of members is not set: the company statute can determine the number of supervisory board members. Size of supervisory board membership should reflect the size and composition of the limited company.

Besides the members of the supervisory board, who represent the shareholders' interests, the Act also foresees supervisory board members who represent other interests. This is the case of the Worker Participation in Management Act, which, modelled on comparable legislation (the German law), defines mandatory participation of workers' representatives in the supervisory board. If a company has 1000 employees the number of participants may not be less than one-third of the supervisory board members, while above 1000 employees it may not be less than half the members. Members of the supervisory board are elected for a maximum term of four years and can be re-elected.

In 2003, due to problems arising in relation to the supervisory board, the rules were changed governing the proportion of employee representatives on the supervisory board.

The employer argued that labour prevails over capital. However, while this may be true theoretically, in practice it is not. Employees who are aware of the situation and of business decisions are also aware that our jobs also depend on this. We, as workers' representatives, were always present at meetings, while representatives of capital, due to different official engagements and interests, did not attend them regularly. In these circumstances we could exercise a decisive influence over the work of the supervisory board. If all members were present at the meeting the vote of the president, which counts double, would be decisive and thus labour could not prevail over capital.

The result of the rule changes was that in state-owned companies the employees obtained only one-third of the seats on supervisory boards. On the other hand, a number of privatised companies took the view that the employees play an important role in the stability of the company and therefore preserved the parity rule in supervisory boards.

The state is likely to recognise the importance of workers' representatives only in private or privatised companies. New owners will appoint their representatives to supervisory boards, at which point employees will once again become important and the state will shift its focus to the national interest.

## **Contents**

Before the changes to the Worker Participation in Management Act, the Telekom supervisory board consisted of ten members, five of whom were employers' representatives and five workers' representatives. The amended Act reduced the number of supervisory board members to nine: six employers' representatives and three workers' representatives. The former are appointed by the owner (in this case, the state), while the European Works Council appoints the workers' representatives (including persons who are not members of the works council).

The employer's representatives elect the president of the supervisory board; they also elected one of the two vice-presidents, the other being elected by the workers' representatives.

The supervisory board can appoint one or more committees to make proposals or to supervise their implementation. Committees cannot decide on issues that fall under the competencies of the supervisory board, but rather are intended to help the supervisory board in its work through the use of experts on individual technical questions. The supervisory board may, at any time, dissolve a committee. At the moment, there are two committees of the supervisory board: the staff and the audit committees. Both employer and employees are represented equally and coordinate their interests, which results in a favourable outcome for the company, the shareholders and the employees alike.

At most companies supervisory board meetings are held every three months. However, the telecommunications sector is subject to rapid changes, and so meetings are held on a monthly basis.

Material for consideration at meetings must be submitted, in accordance with the board's rules of procedure, at least seven days in advance. Usually the employees go through the material over a weekend. If necessary, we ask the management board for additional explanations and we can also convene a meeting of the staff committee.

It is particularly important that the employees have managed to achieve a high level of communication with the management and the supervisory board. The supervisory board adopts all of its decisions by agreement and unanimously.

The work of the supervisory board comprises the following:

- discussion and adoption of the company's business plan;
- discussion and adoption of the annual report, statements of account and annual accounts;
- determining the remuneration of members of the management board;
- adopting the rules of procedure;
- discussion and decision-making on all other issues over which it has competence;
- discussion of the report on the company's activities; may determine structure and contents of the report;
- preparation of employment contracts, loan contracts and other contracts with management board members;
- approval of rules of procedure for the management;
- in accordance with the company statute it gives its assent in various matters and to the general acts of the company, which can be decided by the management only with the prior consent of the supervisory board.

Remuneration for supervisory board members has been agreed with the owner and approved by the assembly, in accordance with a proposal from the Association of Supervisory Board Members. The management must provide any additional explanations required by the supervisory board. In case of insufficient information being provided an agenda item may be postponed to the next meeting, making it possible to supply supplementary data and additional information. Relations between the members of the supervisory board – employer's and employees' representatives – are exemplary. Members of the supervisory board are personally responsible and act autonomously when adopting their decisions. This means that they must make their decisions according to both their conscience and sound business principles, bearing in mind the good of the company as a whole.

External influences should not be a factor. When the supervisory board is constituted its members do not know each other, as the owner usually proposes his own candidates. Confidence among members grows through individual contributions, that is, through quality of work. This leads to mutual respect. Cooperation is extremely important between the works council, the trade unions and the members of the supervisory board, who represent the employees.

After a certain period working in a trade union and in the works council, where we proved ourselves, we were elected to the supervisory board. Our knowledge, respect for principles, communication skills and the self-confidence gained during our previous work were decisive factors. Naturally, no amount of knowledge is ever enough and every new member is confronted with an abundance of material different from that discussed at the meetings of the works council or the trade unions. Therefore every new member takes part in several training seminars on the work of the supervisory board. This exposes them to the different kinds of document they are likely to encounter in the course of their work in the supervisory board.

I have never encountered restrictions being placed by the management board or employer on the work of the members of the supervisory board. This work is carried out over the weekend because our regular jobs also require our full attention. Members of the supervisory board are aware of their considerable responsibility and the increased workload outside regular working hours.

The management board of Telekom consists of five members, one of them being the current labour director. The board has its own coordinating body with a consultative character and which coordinates work between members of the works council, the trade unions and the members of the supervisory board. Members of the collegiate body are the president and vice-president of the works council and the president and vice-president of the trade union organisation.

## **Conclusion**

Why should workers' representatives participate in the supervisory board? In my opinion, workers' representatives in the supervisory board are essential in assuring stability within the company. Their knowledge of the system in which they work and spend most of their life can contribute significantly to the success of the company. As they build their 'own' company, their loyalty and initiative can head off management board actions that in the long term might obstruct company success.

Some at Telekom were opposed to the sale of the company's mobile telephone operations, but in the event it proved a good decision, as both foreign experts and experience have testified.

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## CYPRUS

### **Worker board-level representation in Cyprus**

*Dr Christos A. Ioannou, Athens University of Economics and Business (CIRN)*

#### **1. The national corporate governance system**

The national corporate governance system in Cyprus assigns companies operating on the basis of the one-tier system an administrative organ (board) in which management and supervisory functions converge.

With regard to board-level representation the practice in state and semi-state companies has been for the government to appoint high-level trade union officials, mainly from the confederations, to the administrative boards, although this is not strictly in accordance with the law, rather a legacy of state management. Indeed, after having been appointed frequently they do not mainly represent their confederation but act as independent personalities.

#### **2. Exceptional practice of board-level representation in Cyprus**

In Cyprus there are no legal rules concerning worker board-level representation. Neither in corporate governance legislation nor in industrial relations legislation has there been any formal right of workers' participation at board level, and therefore workers' participation at board level has not been compulsory, even as an institutionalised option.

The only case of workers or their representatives being able to nominate a member to a company board is in the semi-government sector, namely the Human Resources Development Authority (Arxi Anaptyxis Anthropinou Dynamikou), which deals with the funding of training and human resource activities. The workers' representative here does not represent the workers employed by the Authority, but participates in tripartite consultation with regard to human resource policy. Representatives are drawn from the main trade union confederations.

Apart from this, no other companies have worker board-level representation and this explains the difficulties in tracing worker board members in Cyprus.

#### **3. Board-level representation within the national system of industrial relations**

The fact that board-level representation is rather insignificant in Cyprus is related to the main features of the national system of industrial relations and the existing channels of worker interest representation.

Although Cyprus has no tradition of labour participation at board level, it does have a tradition of social dialogue and tripartite cooperation on a voluntary basis. In that broad sense we may say that workers' participation exists in Cyprus, mainly taking the form of collective bargaining and the participation of labour representatives in tripartite bodies and committees.

Overall, industrial relations have evolved in the context of voluntary agreements and cooperation, in accordance with the Industrial Relations Code.

The Industrial Relations Code is a joint agreement between the two major labour confederations – the Pancyprian Federation of Labour (PEO) and the Cyprus Workers' Federation (SEK) – and the Cyprus Employers' Federation, signed in April 1977. The 1977 Agreement replaced an agreement of 1962.

The Code has four parts. Part 1 regulates Substantive Provisions, such as the right to organise, collective bargaining, collective agreements and joint consultation, issues proper for collective bargaining and joint consultation and management prerogatives. It also regulates announcement procedures and provides for the implementation of ILO Conventions and Recommendations. Part 2 deals with Procedural Provisions, such as the procedure for the settlement of disputes about interests through direct negotiations, mediation, arbitration and public inquiry, the procedure for the settlement of grievances through direct negotiations, mediation and arbitration and the regulation of dismissals. Part 3 concerns the registration of copies of demands and collective agreements with the Ministry of Labour and Social Insurance, and Part 4 clarifies the indefinite duration of the Industrial Relations Code and lays down the principles for its modification.

In this context the social partners in Cyprus are well organised and play an active role in the development and implementation of social and economic policy.

The trade unions are mainly organised at industry level and belong to strong federations or confederations, the most important of which are the:

- Cyprus Workers' Confederation (SEK), affiliated to ETUC;
- Pancyprian Federation of Labour (PEO);
- Democratic Labour Federation (DEOK).

There are also powerful individual unions, some of which represent specific sectors, such as the Public Employees' Union (PASYDY), the Bank Employees' Union (ETYK) and the two teachers' unions (POED and OELMEK).

Employers are organised in industry or branch-level associations, most of which are members of the Cyprus Employers' and Industrialists' Federation (OEB) (a member of UNICE) and the Cyprus Chamber of Commerce and Industry (KEBE) (affiliated to UEAPME).

Given the tradition of social dialogue and voluntarism Cyprus not surprisingly has a set of national tripartite bodies, such as the Labour Advisory Board, dealing with the main issues of

industrial relations and an equally important Economic Advisory Committee dealing with economic policy issues. A Redundancy Board and a Central Board for Annual Holidays with Pay complete the set of national tripartite bodies. The tripartite bodies function as an integrated part of the Ministries.

## **Practitioner Report**

*Christos Charalambous, Cyprus Union of Bank Employees*

Late in 2004 Cyprus joined the group of EU member states which have transposed the SE Directive into national law.

Almost all companies in Cyprus have a single-tier structure of corporate governance and there has been no formal right of workers' participation at board level.

Nevertheless, there is a tradition of social dialogue and tripartite cooperation.

The main forms are collective bargaining and the participation of labour representatives in tripartite bodies and committees.

With regard to board-level representation, it has been government practice in state-owned and semi-state-owned companies to give seats on administrative boards to high-level trade union officials. However, this is a tradition of public management and the officials, after having been appointed, do not mainly represent their confederation but act as independent personalities.

Our Union is the only trade union of financial institutions of Cyprus, (most financial institutions are bank assurance organisations).

Cypriot, Greek and other foreign financial institutions in Cyprus have the potential to become SEs. Although they have the potential, there appears to be no inclination on their part to do so and we are not even sure that they have looked at the possibility or are aware of the options.

Participation is not experienced in financial institutions in Cyprus and there is no legal or contractual obligation for companies to introduce employees' participation.

Only in the National Bank of Greece is there board-level participation.

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## ESTONIA

### Worker board-level representation in Estonia

*Dr iur. Merle Muda, University of Tartu*

*(Faculty of Law, Chair of Labour and Social Security Law)*

#### 1. The Estonian corporate governance system

##### 1.1 General remarks

The Estonian Commercial Code (available in English at <http://www.legaltext.ee>) provides for several types of company: general partnership, limited partnership, private limited company, public limited company and commercial association. In practice, companies are usually established as private limited companies or public limited companies: there are approximately 40,600 private limited companies and 5,000 public limited companies in Estonia. The share capital of a private limited company must be at least EEK 40,000 (EUR 2,670) and a public limited company must have share capital of at least EEK 400,000 (EUR 25,640).

##### 1.2 Governance of private limited companies

The governing bodies of a private limited company are the shareholders' meeting, the management board and the supervisory board. Private limited companies may have a one-tier or a two-tier system of management: in general, the election of a supervisory board is not obligatory.

**A shareholders' meeting** is called by the management board at least once a year in order to approve the annual report. The shareholders' meeting is also competent to amend the company statute; increase or reduce share capital; elect or remove members of the supervisory board, or, if the private limited company does not have a supervisory board, elect or remove members of the management board; distribute profits; and so on.

**The management board** may have one member (director) or several members. A member of the management board is elected for a term of three years by the shareholders' meeting. If the private limited company has a supervisory board, the members of the management board are elected or removed by the supervisory board.

A private limited company must have a **supervisory board** if the share capital is greater than EEK 400,000 and the management board has less than three members, or if prescribed by the company statute. If a supervisory board has been established in a private limited company, the provisions concerning the supervisory board of a public limited company are applied.

## **1.2 Governance of public limited companies**

The governing bodies of a public limited company are the general shareholders' meeting, the management board and the supervisory board. As a public limited company must have both a management board and a supervisory board, all public limited companies have a two-tier system of management in Estonia.

**The general shareholders' meeting** is the highest body of a public limited company and must be held once a year. The general meeting is competent to amend the company statute; increase or reduce share capital; elect or remove members of the supervisory board; approve the annual report; distribute profits; and so on.

**The management board** may have one member (director) or several members. A member of the management board is elected for a term of three years by the supervisory board.

**The supervisory board** plans the activities of public limited companies and supervises the activities of the management board. The supervisory board has at least three members elected by the general shareholders' meeting for a term of five years.

## **2. Board-level representation in Estonia**

Estonian law does not provide employees with a right to elect or appoint representatives to the management board and/or the supervisory board. Based on the principle of freedom of contract, however, a trade union and an employer may agree on such a right in a collective agreement. Although the social partners can conclude such agreements at enterprise, branch or national level there are no agreements on board-level representation in practice.

The national-level Estonian social partners – the Confederation of Estonian Trade Unions (EAKL) and the Estonian Employers' Confederation (ETTK) – have different positions on board-level representation. At the beginning of 2004, EAKL initiated a debate on the need for employee representation on supervisory boards in order to ensure that employees are aware of decisions being taken which affect their interests (for example, collective redundancies, transfer of an enterprise, and so on). EAKL based its opinion on the fact that the compulsory information and consultation procedures provided by the Trade Unions Act (available in English at <http://www.legaltext.ee>) do not operate effectively in practice.

In contrast, ETTK takes the view that employee involvement is not necessary at board level. According to ETTK, the main task of a supervisory board is to plan and develop the company's business activities. Moreover, as employees usually do not have the requisite management know-how, the participation and representation of employees at board level would not be reasonable in Estonia.

The debate on board-level representation has halted for the time being. However, as the Ministry of Social Affairs has a plan to reform Estonian collective labour relations in the near future, the question of employee representation at board level may arise once more.

### **3. Board-level representation in Estonian industrial relations**

#### **3.1 General remarks**

Estonia has a one-channel system of employee representation, that is, the trade unions. Under the Trade Unions Act, the trade unions may act at enterprise, branch or national level. In practice, collective labour relations are most developed at enterprise level. The number of collective agreements entered into at national or branch level is not significant. The reason the social partners do not play a significant role in shaping labour relations in Estonia is that the reputation of the trade unions is still suffering from their close ties to the Communist Party during the Soviet period.

At enterprise level, employees participate in labour relations via shop stewards or trade unions. A shop steward is an employee of a company who represents the employees in relations with the employer. He or she is elected by the members of the trade union or by a general meeting of employees who are not trade union members. In practice, shop stewards are usually elected in companies with a trade union. The rights and obligations of shop stewards are regulated by the Employees' Representatives Act (available in English at <http://www.legaltext.ee>). Shop stewards monitor compliance with the terms of collective agreements, employment contracts and labour law; mediate between the parties in labour disputes; freely examine working conditions and work organisation; and so on. The legal status of a shop steward elected by a trade union is detailed by the Trade Unions Act.

#### **3.2 Information and consultation**

In addition to general competences (collective bargaining, occupational health and safety issues, and so on), the Trade Unions Act lays down provisions on the right to be informed and consulted for representatives elected by a trade union. According to the Trade Unions Act, the employer shall inform trade union representatives of the following:

- basic financial data, labour costs and significant company investments;
- changes in the basic objectives of work organisation, production, technology or activities, as well as fixed-term and part-time employment contracts;
- merger, division, transformation or dissolution of the company; transfer of the enterprise or parts thereof;
- other issues pertaining to employees and work.

Before making a decision, an employer must previously consult trade union representatives in the following cases:

- termination of employment contracts for economic reasons, including in the event of collective redundancy;
- changing or establishment of working time and work regimes, wage conditions, holiday schedules, rules governing internal work procedures and other working conditions which affect a considerable number of employees;
- issues related to in-service training and re-training, qualifications, occupational health and safety;
- other issues agreed between the parties or provided for by law.

It is important to note that only about 13% of employees are trade union members and so the right of information and consultation is guaranteed for only a few employees. Furthermore, the information and consultation laid down by the law does not actually take place in all the organisations where trade unions exist: often the trade union has few members and they are not competent to engage in dialogue on issues concerning labour relations and the labour market, or the employer's activities. As the information and consultation of employees is a new area in employment relations in Estonia (the Trade Unions Act entered into force only in 2000) and requires additional knowledge and skills on the part of both trade unions and employers, information and consultation is not common practice.

#### **4. Concluding remarks**

A trade union can affect an employer's management decisions concerning the rights and interests of employees via the information and consultation procedures provided by the Trade Unions Act. Thus, the obligation to inform and consult employees is only effective in respect of employers where there is a trade union organisation. In practice, few employees are trade union members and in any case do not have the know-how to engage in effective consultations with the employer. As a result, in Estonia the employees' influence on the employer's activities is not considerable.

In 2004, the Estonian social partners discussed the introduction of employee representation on supervisory boards. The trade unions were in favour, while the employers took the view that the presence of employees on supervisory boards would merely obstruct its smooth functioning. Currently, the main obstacle to employee involvement at board level is the lack of knowledge and skills of the social partners.

## Practitioner Report

*Milvi Ilves, shop steward at Tallinna Küte, Estonia*

Activities of the trade union of Tallinna Küte in cooperation with the Estonian Federation of Energy and Electrical Workers, the Estonian Trade Union Confederation and GSN Veolia Environnement

Tallinna Soojus (AS Tallinna Küte since 1 January 2002) has been operating in Tallinn for 91 years. The power plant was built to supply Tallinn, and later the Estonian national grid, with electricity.

At the beginning of the 1960s, the transfer of housing in Tallinn to a district heating system began, while small boiler plants were closed down. This resulted in an increase in heat energy production, and uneconomical electricity generation was phased out.

Tallinna Küte is currently the largest heat energy supplier in Tallinn. The trade union, which has been active uninterruptedly for over half a century, has developed together with the company (originally at the employer's instigation).

When the Republic of Estonia became independent once again the trade union movement underwent major changes. Workers were now free to become members or not, and to determine the statutes and objectives of their trade unions. The trade union at Tallinna Küte is the employer's partner and develops together with the company.

The activities of the trade union at Tallinna Küte are based on the Trade Unions Act, the Non-Profit Associations Act and its own statute. The trade union is an independent union initiated by the workers with the aim of representing and defending their rights and interests in relation to employment and work, as well as their economic and social rights and interests.

The trade union has legal personality and is independent of the employer, the state, municipal bodies and other organisations. In accordance with this, we arrange our activities and manage on our own. We have established our own structure, and elect representatives both of our own organisation and to the Estonian Federation of Energy and Electrical Workers (EFEEW), of which we are a member.

I am the Chairman of the trade union of Tallinna Küte (shop steward). I am also a member of the Council of EFEEW and an auditor of the Estonian Trade Union Confederation.

The trade union's main task is to be the employer's partner in information and consultation and collective negotiations. The trade union represents the entire workforce, both members and non-members. Negotiations with the employer enable the workers to participate in the settlement of issues arising in relation to working conditions, job positions, supplementary training and re-training, full-time employment, socio-economic guarantees and other working conditions. A Work Environment Council has been established to improve work health and safety, in which trade union representatives participate.

The Trade Unions Act gives us the right to obtain information related to work and social matters, as well as matters affecting the workers' interests in general, and also to make proposals to the employer.

The trade union has the possibility to participate in company management, to some extent, through collective bargaining. It is acknowledged that the workers are loyal to their employer. In our view, a contented workforce makes a decisive contribution to company success.

### **Have we achieved anything through collective agreements?**

In 2004 average wages increased by 9.3%, while the consumer price index (CPI) grew by 3%. This wage rise was above the national average, as well as that of the City of Tallinn.

Our company also offers a range of bonuses and forms of social support (a length-of-service bonus, a Christmas subsidy, a subsidy to parents when a child goes to school, a funeral subsidy, and so on), as well as support for cultural and sports activities. Training is also well developed. Sustainable development has enabled both company and workers to become more competitive.

An optional employee representative has been proposed who would not be a trade union member. However, in today's conditions, when the trade unions are rather weak, the election of a non-trade union member as employee representative would threaten the Estonian trade union movement as a whole.

Tallinna Küte, as a modern and successful company, is very much in favour of the trade union presence in the company since it is a reliable partner in communications with the workers. Furthermore, just as the company has long-term experience with the trade union, so the trade union has accumulated experience in business management and appreciation of the company's interests. As a result, no problems have occurred in practice in relation to the reconciliation of trade union and company interests.

### **Participation in the European Works Council of Veolia Environnement**

The European Works Council of Veolia Environnement is the workers' representative body which deals with information, cooperation and social dialogue concerning relevant company activities, including both domestic and international issues.

AS Veolia Environnement and its four sub-units Connex, Dalkia, Onyx and Veolia Water belong to the European Works Council of Veolia Environnement. At present, an agreement on employee involvement is being worked out for the European Works Council of Veolia Environnement as Tallinna Küte has been leased to Dalkia International, the French concern.

The employer appointed me to represent Tallin Küte as the company shop steward. Thus our company is represented by the trade union representative.

These developments represent a new challenge to both the company and the trade union. According to the agreement, participation in the European Works Council, which represents the workers, implies a social dialogue that takes into consideration specific requirements on confidentiality arising from the stock exchange listing and Veolia Environnement's listing on the French, European and international share indices.

In relation to the requirement to apply EU Directive 94/45/EU of 22 September 1994 and French Act 96-985 of 12 November 1994, connected with information and consultation of workers, negotiations for the planning and coordination of the European Works Council activities of Veolia Environnement are now under way.

Veolia Environnement's European Works Council is a flexible institution whose effectiveness is measured primarily in terms of the quality of social dialogue rather than the number or frequency of meetings. For instance, an issue becomes relevant to the European Works Council when it affects at least two states covered by the agreement.

The principal working language at European Works Council meetings is French, although an interpreter can be provided for all participants and documents are translated into all necessary languages.

Veolia Environnement's social partners accept the importance of quality social dialogue. Mutual respect is valued at every level.

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## LATVIA

### **Worker board-level representation in Latvia**

*Agnese Puntuža, Latvian Trade Union of Construction Workers*

#### **1. Employment relations in Latvia**

Employment relations in Latvia are essentially based on the employment contract, governed by such legal acts as the Latvian Constitution (Satversme), the Labour Act, international laws applicable to Latvia, other national legal acts, collective agreements and procedural rules.

The main law regulating individual and collective employment and industrial relations is the Labour Act (in 2002 it replaced the Labour Code in force since 1972) which transposes many aspects of EU employment law.

In all cases of termination of the employment contract, if an employee is a trade union member the employer must obtain the agreement of the relevant union. However, the details of this procedure are somewhat unclear in the Act.

The state-regulated wage, which is below the subsistence level, is used as the basis for wage increases in general, which makes it difficult for the trade unions to meet workers' demands for increased wages, which tend to lag behind real economic growth.

There are two types of collective agreement: enterprise and sectoral. Sectoral collective agreements are extended where the employers subject to the agreement employ more than 60% of all employees in the sector. In practice there is no sectoral agreement that could be legally extended. The sectoral agreements that have been concluded are very general (21 general agreements in all sectors, five of them in the private sector).

Company collective agreements apply to all employees, unless the parties have agreed otherwise in the collective agreement.

About 2,400 collective agreements have been concluded, covering 153,000 workers.

Trade union organisations are small: 75% of them have fewer than 50 members and only 9% have more than 100 members.

The Law on Collective Bargaining does not set any time limit on negotiations, thus allowing employers to drag them out indefinitely. The Labour Act has been amended to include an obligation on employers to conduct collective bargaining. Collective bargaining and information and consultation rights are often not respected in practice.

#### **2. History of workers' representation**

Latvia has long trade union traditions, with the first unions emerging in 1905–1907. The functions of the early unions were similar to those of today, but they also conducted

'ideological education'. Unions were repeatedly closed down by the state (in 1905, 1915, 1918 and 1934), but were always reconstituted afterwards.

During the period when Latvia was part of the Soviet Union (until its declaration of independence in 1990), trade unions were present in all enterprises and organisations, and were grouped in sectoral unions (21–25 in total). The unions performed functions such as providing and distributing goods in short supply and owned property such as sanatoria and convalescent homes.

After Latvia's independence at the beginning of the 1990s, trade unions experienced a sharp fall in influence and membership. However, they are still important and are significant social partners, although they represent only 20% of the workforce.

Sectoral and large enterprise unions survived, while in newly formed enterprises unions were established reluctantly, if at all. The number of union members fell after independence not only because many enterprises became bankrupt, but also because workers gave up their membership: they did not see what benefits they would receive and did not want to pay membership fees. The government makes no effort to promote the formation of strong and independent trade unions as the basis for stable social partnership and social dialogue. Opposition to the formation of trade unions is strongest in the private sector, and in some enterprises trade unions are banned.

### **3. Development of social dialogue**

Social dialogue in Latvia continues to be based essentially on the tripartite model and is not organised specifically by sector. However, when a sector-specific matter arises within the National Board of Tripartite Cooperation, the relevant trade union takes part as a consultant based on its membership of the Free Trade Union Confederation of Latvia.

In principle there is tripartite social dialogue; however, the social partners cannot always respond adequately to events. Bilateral agreements in advance between the social partners might increase their influence, but this would require better cooperation.

In industrial relations, while the legal basis for social dialogue is in place, there is still hardly any dialogue at sectoral and none at regional level. While bilateral and tripartite dialogue at national level have been a success so far, the number of collective agreements concluded at enterprise level remains low. The coverage of collective agreements is still below 20% and trade union membership is 20% of the total number of workers (membership in the public sector is 38% and only 8% in the private sector).

There is one national trade union centre, the Free Trade Union Confederation of Latvia (LBAS) which groups 25 trade unions or professional employees' associations in various sectors, which themselves represent 3,000 union organisations in state and municipal institutions and private enterprises, with about 170,000 members. The trade unions are

severely fragmented and orientated to representation at company level rather than a broader solidarity.

In 1993 the largest employers' organisation, the Latvian Employers' Confederation, was founded. Currently, it unites 50 large enterprises covering 30% of total employment. In 1998 the Law on Employers' Organisations was adopted which determines the legal status of such organisations, and their rights and duties in relations with trade unions, and public and local government institutions. In some sectors there is no employers' organisation and so the conclusion of collective agreements is limited to enterprise level.

#### **4. Forms of employee representation**

The Labour Act ensures freedom of association for employees and employers so that they can defend their social, economic and occupational rights and interests.

Employees may defend their social, economic and occupational rights and interests directly, or indirectly through the mediation of employee representatives. According to the Act, employee representatives are: a trade union on behalf of which a trade union organisation or an official authorised by the union's articles of association acts; or an authorised employee representative elected by the workforce in accordance with the Act in enterprises with five or more employees (including employees on fixed-term contracts).

Under the Labour Act trade unions have certain advantages in comparison to employee representatives. If there is both a trade union and an authorised employee representative in the same company, the trade union has the right to conclude a collective agreement.

Inhabitants of the Republic of Latvia who study or work have the right to establish a trade union. They can be established on trade, sectoral, territorial or other lines.

The Company Register is responsible for registering and listing trade unions. A trade union can be registered if it has at least 50 members or its members represent at least one quarter of the employees of a particular company, institution, organisation, profession or sector.

A union can be formed at a workplace if this is supported by at least three other people. A decision on organising a union at a workplace is adopted by a meeting of workers, and this is then registered with the relevant sectoral union.

Today, trade unions act as "social organisations" that express workers' views, and represent and defend their employment, social and economic interests and rights by concluding general and collective agreements. Their activities are governed by the Law on Trade Unions, other relevant legislation and the union's own articles of incorporation. The rights of unions to defend their members are specially regulated by the Employment Disputes Law. Unions follow the principles and norms set out in the UN Universal Declaration of Human Rights and other international treaties and documents.

In practice, employee representation is developed in companies where trade unions are present because there has to be somebody who takes the initiative to organise employees'

meetings. Official trade union representatives are involved in the majority of labour conflicts. The Employment Disputes Law (2003) stipulates the arbitration of labour conflicts.

The Labour Safety Law (2002) stipulates employee representation in health and safety issues. In companies with more than five workers, one or more health and safety representatives are elected (depending on the number of employees).

## **5. Competence of employee representatives**

The Trade Unions Act of December 1990 states that unions shall be independent of state governing and administrative institutions or other organisations.

They have the right to:

- conduct social dialogue with government and employers' organisations;
- represent employees' interests in state and municipal institutions and courts of law;
- provide expert consultations for drafts of laws and other legal acts and prepare proposals for amendments;
- protect the interests of employees in relations with employers;
- propose legislation through their national institutions (however, this is not done in practice);
- call strikes, under the conditions set out in the Law on Strikes.

Under the Labour Act employee representatives, both trade unions and authorised employee representatives, have the right to:

- demand and receive information from the employer about the company's economic situation and social affairs;
- information and consultation before the employer takes a decision which concerns the interests of employees and which may substantially affect wages, working conditions and employment. For the purposes of this law consultation is the exchange of opinions and dialogue between employer and employee representatives;
- participate in the determination and improvement of wage regulations, work environment, work conditions and labour and safety issues;
- access to workplaces;
- arrange employee meetings on company premises;
- supervise how legislative acts are implemented in employment relations, collective agreements and procedures.

Furthermore, the Employment Act stipulates that an employer may not terminate an employment contract with an employee who is a union member without the agreement of the union.

Trade unions are unable to bring greater pressure to bear in pursuit of their demands because of their inability to organise strikes (lack of strike funds) or even to convince employers that they might be capable of doing so. The right to strike is recognised, but the limitations contained in the 1998 Law on Strikes remain in place. A quorum is required for a strike vote, pre-strike procedures are too long and solidarity strikes are prohibited.

## **6. Board-level participation and representation of employees**

Council Regulation 2157/2001 on the European Company (SE) was transposed into Latvian law on 8 October 2004; Directive 2001/86/EC was also adopted. The original text of the Directive was adopted as far as was possible. The draft law was adopted at its second reading and will soon be adopted at its final reading.

During preparation of the draft law there were consultations with the Free Trade Union Confederation and the Employers' Confederation. They broadly supported adoption of the draft law, with the addition of a number of proposals, some of which were introduced into the text.

Employee participation in decision-making processes pursuant to forming an SE will establish authentic social partners. No direct consultation took place on this topic, but Danish experience was taken into consideration.

There are several Latvian representatives on EWCs, but it is not common.

## **7. Conclusion**

Since gaining independence Latvia has continued to rely on existing representation structures in companies, namely trade unions.

As a result of the weak interest representation structures in most enterprises, it is difficult to apply EU regulations on the information and consultation of workers. As an additional tool of workers' representation European Work Councils were introduced, although without full acceptance from the trade union side, which limits fruitful cooperation between the institutions of workers' representation.

Lack of information, interest and experience in employee representation are still characteristic of Latvia, although new legislation might change this at some point.

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## Practitioner Report

*Pjotr Taran, Trade Union of Scandinavian Tobacco SIA, Riga*

The most valuable asset in the world is people. Unfortunately, employers in Latvia do not always agree with this. They try to buy labour as cheaply as possible. The workers, on the other hand, try to obtain a higher price for their labour. This is absolutely normal. There is always a conflict between labour and capital, which generally results in the gradual creation of a system of partnership between workers and employers, based on mutual respect and trust. This comes about when both parties meet their obligations, and employees' representatives regularly receive information on the company's finances, business situation and prospects. However, I discovered from the director of external communications of ST SIA Riga (Scandinavian Tobacco SIA, Riga), Marite Jansone, that options for worker participation in control or supervision had not been taken up, with the exception of the European Works Council of Scandinavian Tobacco. A representative of our company has been a member of this committee since 2003.

I have worked in the tobacco sector for 20 years, beginning when our company was known as RTF (Tobacco Factory of Riga). In that distant time in the USSR there was a multistage system which purported to allow workers to supervise management activities and to participate in decision-making. There were Party Committees, the Trade Union, and later the Councils of Labour Collectives. During the final reform years there was even the possibility for workers to elect directors of enterprises from several nominees.

After the USSR disintegrated and Latvia became independent, many enterprises which had earlier belonged to the state were forced to seek new forms of ownership. Many became joint-stock companies. Our company belonged to the state. Costs were high as all raw materials were imported. Therefore in 1992 a controlling interest of 51%, with pre-emption rights in subsequent privatisation, was sold to HOP Denmark (House of Prince, Denmark). Later, HOP Denmark acquired the remaining 49%. The only channel by which workers might influence decision-making and oversee management activities was the trade union, which at that time had 100% membership. However, the weak legislative basis, the unwillingness of the Danish management to conclude a collective agreement with the workers, the later refusal by the company's account's department to handle trade union membership dues centrally, and the loss of a court case by the trade union of the food-processing industry combined to cause workers increasingly to leave the trade union. By 1998 only 10–15 members remained, and the following year it ceased to exist. It would seem that in this situation it would no longer be possible to influence the employer, but we managed to find a way forward. If we considered any decision unfair, disputable or wrong, the workers instigated non-violent resistance. After a while the employer invited workers to negotiate, from which we usually benefited.

The alternative channel for influencing the employer's decisions is the trade union. In the new Labour Code a trade union can conclude a collective agreement with an employer which

can be amended only to the advantage of the workers. I emphasise this because at ST SIA Riga (Scandinavian Tobacco SIA, Riga), all workers have always had individual labour contracts, modified by the employer in accordance with amendments to national legislation. The last time the contracts were modified it led to a deterioration of the position of the workers. Up to 1 January 2004 in the case of an absence from work instigated by the employer, workers received LVL 63 a month. Subsequently, however, the law shifted in favour of the employers, enabling them to pay wages for idle periods on the basis of average earnings over six months. Individual contracts were consequently altered so that workers were not paid in the case of idle time.

In my opinion, if our company had a strong trade union organisation the issue of idle time would be one of the items we would change when concluding a collective labour contract with the employer.

At present, the company trade union is still in its early stages, dealing only with work organisation issues. Membership currently stands at 60 workers. However, one result of this is that in autumn 2003, in connection with Latvia's EU accession, our company acquired the right to send a representative to the company EWC.

I was fortunate enough to be elected. On 1 December 2003 I was invited to Copenhagen to the meeting of the ST (Scandinavian Tobacco) EWC. During that meeting I discussed the situation which had arisen at our company ST SIA Riga. This interested and surprised the participants (why, in connection with the arrival of ST in Latvia and Poland, had the trade union organisations been dissolved in Riga and Javornik). In 2004, the executive committee of the ST EWC (once) and NNF (Danish Food and Allied Workers Union) representatives (three times) visited Latvia and our company with the purpose of rendering assistance in the reconstruction of the trade union at ST SIA Riga.

On 6–7 December 2004 Valentina Ozola (chairman of the trade union of the food-processing industry) and myself were invited to the annual assembly of the NNF (19–21 February 2005). One year before this – 5 February in Poland and 12 February 2004 in Riga – the trade union organisations had been re-established. Membership has increased from an initial 12 to 60.

I have informed the ST EWC about this, as we keep in contact, mostly via e-mail. I primarily communicate with Kjersti Langseth from Norway, co-chairman of the executive committee of the ST EWC, Rene Struijk, secretary of the executive committee, and Erna Lange, NNF coordinator of the ST EWC. Their advice is extremely helpful.

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## LITHUANIA

### Worker board-level representation in Lithuania

*Dr Tomas Davulis, Vilnius University (Law Faculty)*

#### 1. The Lithuanian corporate governance system

Lithuanian company law allows the establishment of several types of business entity: partnership, general partnership, state or municipal enterprise, agricultural company or cooperative society. However, but the most important forms of association in Lithuania are private and public share companies, that is, limited liability enterprises with capital divided into shares.

The Law on Companies requires that a private company (*uždaroji akcine bendrove*) have authorised capital of at least LTL 10,000 (app. EUR 2,900), whilst the authorised capital of a public company (*akcine bendrove*) should not be less than LTL 150,000 (app. EUR 43,450). The Law does not set a maximum number of shareholders for public companies, but in a private company they may not exceed 250.

The company organs comprise the general shareholders' meeting, the supervisory board, the management board (collegial executive body) and the head of the company. Several years ago there were restrictions regarding the structure of public companies, but today all companies may have either a one-tier or a two-tier system because the law allows them to choose not to have a supervisory board or a management board, but a single administrative board.

**The general shareholders' meeting** (*Visuotinis akcininkų susirinkimas*) is the supreme decision-making body of a company. Ordinary general meetings shall be convened by the board within four months of the end of the fiscal year. The general meeting adopts and amends the company statute, elects or removes from office and determines the remuneration of members of the supervisory board (where there is no supervisory board, members of the board, or, where there is no board, the head of the company), approves annual fiscal statements and business reports, distributes profits, and so on.

**The supervisory board** (*Stebėtojų taryba*) consists of 3–15 members and is elected by the general meeting for a term of up to four years. The supervisory board appoints and dismisses the board (if a board is not formed, it elects or removes from office the head of the company), supervises the activities of the board, the head of the company and the company management and reports to the general meeting.

**The board** (*Valdyba*) has a minimum of three members and is formed for a period of up to four years by the supervisory board, or, in a company with no supervisory board, by the general meeting. Where a board is not formed its statutory functions and competences are taken over by the head of the company.

**The head of the company** (*Bendrovės vadovas*) shall have the status of an employee of the company. He is appointed by the board, or, in the absence of a board, by the supervisory board or the general meeting.

## 2. Exceptional practice of board-level representation in Lithuania

National legislation neither provides the right for workers (or their institutionalised representatives) to elect/appoint members of the board or supervisory board nor imposes an obligation on the shareholders to discuss the possibility of employee involvement in the formation of company organs.

However, there are a number of ways, at least in theory, to get employees' representatives elected to those organs:

- Company statutes may provide the option of workers' participation. This is unlikely at present, however, because it would formalise employee involvement to a degree which would not be acceptable to the majority of companies.
- The shareholders' meeting may elect workers' representatives to the supervisory board or board (or the supervisory board may elect workers' representative to the board) proposed by employees or shareholders (or members of the supervisory board). In some new or former state enterprises employees hold a significant number of shares which gives them the possibility of influencing election results in favour of particular candidates. However, in such cases (few in number) the employee usually does not consider himself as a representative of the workforce but as representing the individual or collective interests of the shareholders.
- Shareholders (or members of the supervisory board) may elect workers' representatives to the supervisory board (or board) in accordance with an old regulation on the compulsory involvement of employees in state stock companies.<sup>\*</sup> Up until 2000 there were few state controlled companies with employees' representatives making up one-third of the members of the supervisory board. However, these were nominated by the board and their primary task was not to represent the workers but to some extent to counterbalance the influence of the representatives of the state in the operations of the company.
- It is not totally excluded that in Lithuania there may operate companies, especially having foreign investors as a shareholders, which – inspired by the principles of

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<sup>\*</sup> During the early stages of transition (1990–1994) the Law on State Enterprises established the right of enterprises to elect up to two-thirds of the members of the supervisory board. One half of these members were elected by the higher administrative staff and the other half by the general meeting of the other employees. However, since workers' participation at this time could not prevent corruption or safeguard the interests of the state and the employees it was abolished.

modern effective corporate governance – invite workers’ representatives to take seats on the supervisory board or board. However, even major employers’ organisations could not identify any cases.

### **3. Board-level representation within the national system of industrial relations**

#### **3.1 The national system of industrial relations and existing channels of workers’ representation**

##### **3.1.1 Strong domination of enterprise-level bargaining**

The Lithuanian system of industrial relations can be described as strongly oriented towards the enterprise level. Although collective bargaining at higher levels (for example, national, regional or sectoral) is allowed and regulations governing the procedure, scope of application and even extension of agreements to third parties are laid down in the Labour Code of 2002 (in force since 1 January 2003), in practice there are no significant collective agreements regulating remuneration, working hours and other working conditions at higher levels.

Institutionalised industrial relations are present in large enterprises which are on the decline, while in the growing private sector with its many small and medium-size enterprises the structures of social dialogue are missing. The major obstacles to bargaining at higher levels are not only those related to economic conditions but also the institutional weaknesses of the social partners. Trade unions still face structural problems reinforced by their strong tough political differences and the post-Soviet scepticism of the employees about the idea of trade unions (trade union membership remains extremely low, at 6–10%), whilst employers do not enter into binding negotiations, preferring uncontrolled enterprise-level bargaining or no collective bargaining at all, resulting in the “autocratic” determination of working conditions by the employer.

The situation in the public sector clearly illustrates the ambiguous and formal attitude of the state towards collective bargaining. The government and municipal authorities refuse to enter into collective bargaining at higher levels. Furthermore, legislation on strikes does not provide a supportive general context for collective bargaining. Strict rules on strikes, bordering on minimum international labour standards, make it very difficult to engage in industrial action at higher levels.

##### **3.1.2 Representation of workers’ interests at enterprise level**

###### **Institutions of workers’ representation**

Until 2003 Lithuanian labour law clearly followed the single-channel approach to workers’ representation in an enterprise. The exclusive right of representation of all workers in an enterprise for the purposes of collective bargaining or industrial action was vested in the trade union (enterprise-level trade union) or the joint negotiating body of several trade unions acting in one enterprise. The exclusiveness of trade union rights meant that in the absence of

trade unions there was no collective representation. There are no official data but it is obvious that only a very small percentage (3–5% or even less) of enterprises had valid collective agreements since trade union membership covered less than 10% of the workforce.

In order to increase the number of valid collective agreements in enterprises the Labour Code of 2002 introduced two new institutions of workers' representation. First, according to Section 19 of the Labour Code of 2002 the general meeting of employees may transfer the right of collective representation to the sectoral trade union (to my knowledge, this option has never been exercised since its introduction), or, alternatively, it may elect a works council. The Law on Works Councils was adopted on 11 November 2004 allowing their establishment in enterprises without trade unions.

The existing system can now be described as single-channel representation with a supplementary channel for non-unionised workplaces. If a trade union is established in an enterprise, it enjoys exclusive rights of representation of all workers and no works council can be established.

### **Principle of general representation**

Lithuanian labour law recognises a uniform conception of workers' representation. In relation to the introduction of works councils into the industrial relations system, the Lithuanian legislator has started to use the term "workers' representatives" to cover enterprise-level trade unions, sectoral trade unions if endowed with the right of representation by the general meeting of employees, or works councils (Section 19, Labour Code of 2002).

The principle of general representation is used in two respects.

1) General representation means that once a trade union or works council is considered to be the workers' representative, it is entitled to represent all the employees of the enterprise irrespective of their trade union membership or participation in works council elections. Consequently, the collective agreement concluded by the union or works council shall be applicable to all employees.

2) The legislator generally does not divide the competences of workers' representatives. If an enterprise trade union, sectoral trade union or works council is considered the workers' representative it is entitled to all rights of collective representation: the right to enter into negotiations, the right to conclude collective agreements, the right to strike (this right is still not recognised for works councils, however) and participation rights. However, the legitimate realisation of some of these rights (conclusion of collective agreement and right to call a strike) depends on the approval of the general meeting of employees.

However, in practice the principle of general representation causes many problems, for example, in relation to the duration of the mandate of workers' representatives, and

unregulated interrelations of several institutions of workers' representation acting in one enterprise.

### **3.1.3 Competences of workers' representatives with particular regard to participation**

The application of the principle of general representation in Lithuanian labour law has resulted in the concentration of the powers of representation in one institution.

The notion of participation is not understood as the right of workers' representatives to influence the election or appointment of members of the company's supervisory or administrative organ. Participation refers here to information and consultation and "other forms" of participation.

As far as information and consultation is concerned, the Labour Code establishes the right of workers' representatives to be informed and consulted about the general situation in the enterprise (Section 47 (4) Labour Code), on dismissals of employees on economic or technological grounds, as well as due to the restructuring of the workplace (Section 130 (4) Labour Code), but the law does not go into details. However, very often the absence of procedural rules leads to their being ignored.

Other forms of participation established by law require the employer to obtain the consent of workers' representatives or to consider their opinion in relation to certain actions. For example, the decision of the employer to modify internal work regulations (Section 230 Labour Code) or the approval of work (shift) schedules (Section 147 (1) Labour Code) require the consent of workers' representatives. Some decisions of the employer, for example on employment in elective positions, qualification examinations, and so on (Sections 101–103 Labour Code) require merely the "consideration" of the workers' representatives' opinion.

Additional participatory rights, including the right to elect or appoint members of the company's supervisory or administrative body, may be established in collective agreements or in agreements concluded by employer and works councils (the latter agreements are recognised by the Law on Works Councils but they have no normative force). However, no such agreement has been registered so far.

### **3.2 Obstacles to board-level representation**

**There are several factors that hinder the establishment of board-level representation. To the majority of Lithuanians, board-level representation is still to some extent considered as a restriction of the employers' initiative and a foreign body or even a hindrance in a market-oriented economy. The rather negative experiences with such rights in the socialist past mean that there is little interest among employees in reviving them. Evidently there is no experience and little knowledge concerning modern board-level representation.**

## **Positions of the stakeholders**

### **Trade unions**

The majority of trade unions would assert the need to introduce board-level representation. However, it is doubtful whether this reflects their practical needs. Their passivity as regards the legislation transposing Directive 2001/86 illustrates that perhaps the tasks, purposes and benefits of board-level representation are not yet fully realised by the trade unions.

### **Employers**

It should be obvious that the employers are quite satisfied with a situation which allows them to govern their enterprise without interference from the employees. Shareholders still do not consider the involvement of workers' representatives as an effective control mechanism over managers and directors. The fear of workers' representatives divulging confidential information was also mentioned by a significant number of employers.

### **Government**

Experience with workers' representation in state-owned enterprises in 1991–1994 was not successful: their presence on the supervisory boards of state enterprises could not prevent abuses, corruption and manipulation in the early stages of privatisation. Since international or European regulations had no influence at that time, there was nothing to link the issue of workers' representation with the modernisation of Lithuanian company law. For the last ten years there have been no demands in this regard from either side of industry nor a public debate. No research on the positive and negative aspects of workers' representation on company boards has been undertaken either.

The prospects of the possible introduction of board-level representation are not favourable. Government policy in this regard is likely to be guided by those promoting the liberal principles of a free market: why should we tamper with our desirable investor-friendly climate if there is no binding European legislation on this issue? Only broad agreement based on an understanding of modern board-level representation and focused efforts may change this attitude. Until the legislator takes the initiative, the social partners must make use of collective bargaining or negotiations on works agreements.

## Practitioner Report

*Vilhelmas Cekuolis, “workers’ union” chairman at the brewery Švyturys-Utenos alusa;  
vice-chairman of the Lithuanian Labour Federation (LDF)*

I am very glad that such a project as PRESENS exists and very grateful for the possibility of taking part in it. I would like to thank the instigators of this project and everybody taking part in its implementation.

The representation of workers at international level, and the chance to participate in company supervisory boards and influence decision-making is something new for trade unions in Lithuania. The activities of European Works Councils (EWC) are also new and unknown. It would be very useful to hear about practices in these areas and on that basis to try to do something in our company or even in Lithuania as a whole.

For a better understanding of workers’ representation in our company I will briefly recall the history of the company.

The Utena brewery was built in 1897. After Lithuania regained its independence, the state-owned enterprise became a share company. Enterprise profits were used for starting capital, and shares were bought from the state and distributed among the workers. The enterprise became the share company Utenos gėrimai, in which the workers had a controlling interest.

At that time there was a trade union in the company left over from Soviet times: it did not represent the interests of the employees. A couple of workers took the initiative and created the “Workers’ Union”, of which I am the President. We managed to get one workers’ representative included on the company board. In this way the workers can influence company decision-making. One such decision was to find foreign investors.

Two companies – Carlsberg Breweries and Baltic Beverages Holding (BBH) – wanted to invest. At the shareholders’ meeting BBH was chosen to be an investor in 1997.

After the foreign company became an investor it began to invest in new technologies, leading to redundancies. Our trade union conducted negotiations concerning the retraining of workers, bigger redundancy payments, and so on. There were many consultations and disputes about redundancies and we were able to avoid major negative social consequences.

At the end of 2001 the two main breweries – AB Utenos alus and AB Švyturys – were merged. BBH controls 80% of the shares, while Carlsberg Breweries and Scottish & Newcastle own BBH (50% and 50%). For this reason we need to have representatives on the European Works Councils of these enterprises. Alternatively, an EWC could be established at Baltic Beverages Holding.

I hope that the PRESENS project will help us to solve the problem of workers’ representation in EWCs. In 2003 I participated in the conference “Collective negotiations in Carlsberg/BBH companies” in Vilnius. Forty representatives from 12 Eastern and Central European countries

from Carlsberg and BBH companies took part in the conference. We have links with the trade unions of the Latvian Aldaris and Saku breweries, which also belong to BBH.

We have a joint trade union delegation with the Švytutys brewery in Klaipėda. Its purpose is to negotiate collective agreements and supervise their implementation.

We represent our workers on the health and safety and industrial dispute committees.

# ANNEX

## Project Description – PRESENS



### Participation and Representation of Employees at Board Level, and the opportunities offered by the SE - European Company, in the New EU-Member States

As well as the former EU-15 member states, the 10 new member states must **enable companies to set up a European Company** on their territory as from 8<sup>th</sup> October 2004. It is important to emphasize the new potential for employee involvement coming from the SE-directive, not only in terms of transnational information and consultation rights, but also in opening the possibility to monitor management decisions. The SE-legislation provides worker representatives in an SE with **the right to sit in company boardrooms (board-level representation)**.

In 2003, the Hans Böckler Foundation (Germany), SYNDEX (France) and the European Trade Union Institute - together with their partners the Labour Research Department (GB) and Sindnova (Italy) - carried out a **project which pooled information about systems of board-level representation of workers throughout the 15 EU member states at three transnational seminars and in 15 country reports**.

A first glance on the existing national laws to the issue in the new member states shows nearly the same level of diversity as in the first 15. But there is a notable **lack of information about real practices and the meaning of worker involvement concerning the new member states**. When European Companies are set up, it can be assumed that some will either take their seat in one of the new member states, or parts of the SE will be located on their territories. It is therefore important that the real situation and the possible existing links to European legislation should be examined in more detail by organising and evaluating an exchange of experiences. This project will be the first to take a **pan-European approach to board-level participation** that will include the new member states.

#### The project aims

- to improve awareness of the SE Directive in the new member states,
- to improve knowledge of national systems and cultures regarding worker participation at board level and to create a platform for exchange between “old” and “new” member states
- to develop an ongoing process of improving and increasing knowledge on the topic to a fixed group of experts coming specifically from the new member states.

Therefore, the project aims to give space for listening and learning from each other, not only among concerned actors in the new member states.

**The project takes place from December 2004 to December 2005. It consists of two seminars concentrating on exchange of national law and practice, one seminar to develop expert resources on the SE in the trade unions of the new member states, and a final conference that is structured on similar lines to the seminars.**

Finally, the knowledge gathered will be made available electronically in **executive summaries to be translated into the languages of the new countries** and will be also used to create a new publication which will add to and **enhance existing material in the publication, ‘The European Company: Prospects for Board-Level Representation’ (ETUI, HBF: 2004), especially by including information on the new member states.**

The project is carried-out by the **Social Development Agency asbl** (Brussels) together with its partners **European Trade Union Confederation (ETUC), European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS), Chamber of Labour** (Austria), **CMKOS** (Czech Republic), **General Workers Union** (Malta), **Hans Böckler Foundation** (Germany), **Lo-skolen** (Denmark), **MSZOSZ** (Hungary), **KOZ SR** (Slovak Republic) and **Solidarnosc** (Polen).



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Project title: Prospects for board-level representation of workers under the European Company Statute in the new EU member states

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**Further information on the project and on worker participation can be found at [www.seeurope-network.org](http://www.seeurope-network.org)**