

WZMOCNIENIE
Strengthen board level participation

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COMMON ADVOCACY PLAN

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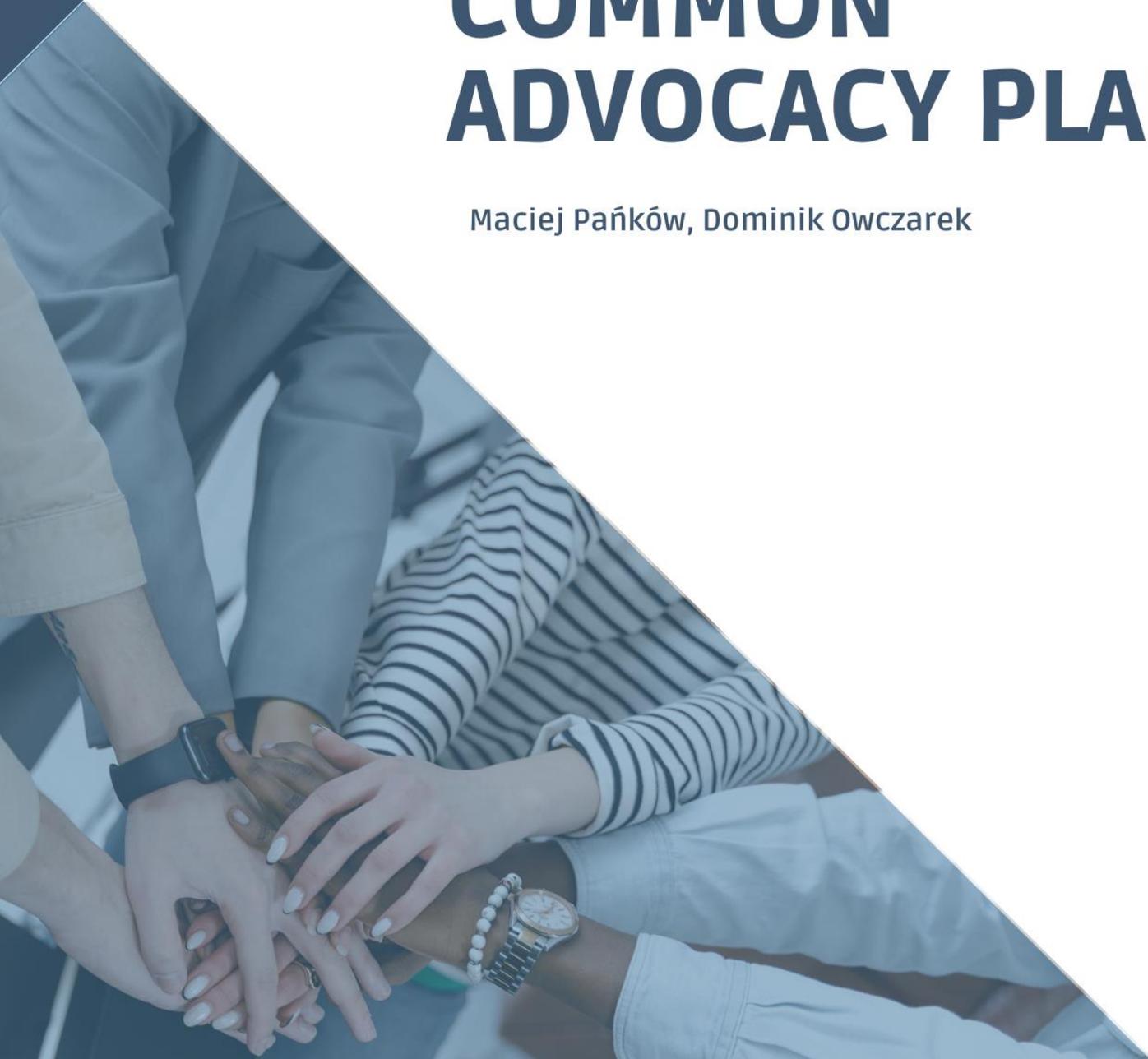


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Introduction

The participation of board-level employee representation (BLER) representatives in management is an important element of labour relations in the countries of the European Union. BLER is a form of democracy in the workplace that can be seen as a response to contemporary challenges such as democratic deficits, social inequalities, dispersion of decision-making centres, climate crisis, digitalization and automation of work, as well as fragmentation of the labour market and the crisis caused by the COVID-19 virus. This project is another response of trade unions to the huge and universal problem of social partners in the EU, which is the lack of a high representative of employees in companies. The overall objective of the project is to promote transnational cooperation between social partners from Bulgaria, Poland, Serbia, Slovakia, Slovenia, Spain, Turkey in supporting employee participation in anticipation and management of change by enabling employee representatives to participate in the decision-making process at the administration level, to have a voice and to have open access to key information.

Solutions concerning the participation of representatives of employees in management can be expressed through the right of employees and employee representatives to elect, recommend, and/or oppose the appointment of certain members of the supervisory or administrative bodies of the company. The mechanisms for the election of representatives of the Supervisory Board serve not only the interests of individual employees but also their general interests. They express the values of cooperation and integration and fit into the already-existing structures of dialogue and cooperation. The participation of employees' representatives in management not only brings about the expansion of the right to information and consultation but also changes the quality of participation, entails new possibilities of influence, and also imposes obligations. BLER was first recognised as a distinctive feature of industrial democracy – a key mechanism supporting the integration of the economic and social dimensions of the EU – in Directive 2001/86/EC on the participation of employees in European companies. However, a single European model of BLER has not yet been established in other organisations, which would be applicable in all Member States. In response to this gap, it is proposed to develop solutions that are conducive to the Europeanization of employee relations and to develop a minimum standard for regulating employee relations at the European level, which implies support for the establishment and good functioning of transnational companies, the establishment and good functioning of transnational information, consultation and participation mechanisms.

This document was developed with the aim of offering an action plan to promote the board-level employees representation (BLER) in seven countries: Bulgaria, Spain, Poland, Serbia, Slovakia, Slovenia, and Turkey. It was created as part of a project called "BLER 2.0. Strengthen the board level participation", co-financed by the Directorate-General for Employment, Social Affairs, and Inclusion of the European Commission. The project is implemented from 2022-2024 under the leadership of the Trade Union of Copper Industry Workers.

The document begins with a concise introduction to the issue of BLER, including the definition of this participation mechanism and an indication of its main conditions in the European context. Then, legislation and practice in the field of BLER in the countries covered by the project are analysed. This is important because there is no single European participation model: different Member States have adopted different solutions regarding the subjective scope of the obligation to provide employees with BLER opportunities and the rules for that participation. In addition, the broader context of participation varies from country to country, determined by factors such as the national model of collective labour relations, the degree of socio-economic development and membership in the European Union or the lack of these factors. The analysis covers not only the general structural characteristics of national systems of participation of representatives of employees in management, but also the benefits arising from their existence from the point of view of employees and employers and the wider public interest, limitations and challenges related to participation, examples of good practice in the field of their application, as well as the problem of qualifications and skills to be possessed by representatives of employees in management and supervisory bodies in the company.

The diagnostic part is followed by a chapter dedicated to the recommendations for changes developed during the BLER 2.0 project, both in terms of national legislation and practice in the use of BLER, formulated for the countries covered by the project with reference to the current differences that exist between them in this area. Then, a plan of public advocacy activities is presented, i.e., activities aimed at disseminating knowledge about the participation of representatives of employees in management and encouraging various actors (especially social partners and public policy makers) to strengthen and expand this mechanism. In particular, activities that have already been undertaken or are yet to be undertaken within the BLER 2.0 project are described, and above all, potential future initiatives that go beyond the scope of this project are recommended, broken down into the European Union level, national level, sector level, and company level.

Practices in the domain of board-level employee participation

Practice in the field of employee participation in management varies among the countries covered by this study. There are no regulations relating to this form of participation at the level of the European Union – determining their form remains the responsibility of the Member States. Thus, within the European Union, we have countries that have adopted different solutions regarding the subjective scope of the obligation to establish BLER. This issue has been extensively analysed in a comparative report prepared under the BLER 2.0 project (Owczarek 2023). It should only be noted here that among the countries covered by the project, Slovakia and Slovenia are characterised by a wide scope of mandatory creation of BLER, which equally includes state-owned enterprises (enterprises owned by the state treasury) and private companies, although in some cases there are some additional criteria. When it comes to Slovenia, a company that is a joint stock company (both private and state-owned) must employ at least 50 workers, have an annual turnover of more than EUR 8.8 million, or have assets of more than EUR 4.4 million. In the case of Slovakia, the requirements are less stringent: any state-owned enterprise and any private enterprise employing at least 50 workers may establish BLER.

In the case of Poland, Spain and Serbia, the subjective scope of BLER is narrower. When it comes to an EU candidate country, employees in all companies owned by the state or local self-government have the right to have representatives in the statutory bodies. In Spain, the conditions are public property and 1000 employees (500 in the metal sector). In Poland, participation refers to joint stock companies owned by the State Treasury, established as a result of the commercialization of former state-owned enterprises.

In Bulgaria, on the other hand, there is no mechanism for mandatory BLER – employee representatives can speak only at the general meeting of shareholders under certain conditions. There is also no obligation in Turkey to provide participation. In addition, the system of collective labour relations in this country creates strong restrictions on all forms of employee participation (there are no sectorial collective agreements, company collective agreements can only be negotiated in companies where trade union membership is above 50%).

When it comes to the scope of participation in the company, the most typical practice is the possibility for employee representatives to participate in the supervisory board – they usually make up one-third to half of the members of that body. Less often, and usually provided that the company meets additional criteria, it is also possible for an employee representative to participate on its board of directors. For example, in Slovakia, such a condition means that the company must have its own capital worth over EUR 25,000. In Poland, one person on the board of directors may represent employees of a company in which the State Treasury holds a stake, provided that it employs at least 500 people. The same threshold applies in Slovenia, but the presence of employee representatives on the board of directors is already ensured in the event that a company with a monistic management model employs at least 50 workers (if more than 500 people work in that company, employees additionally acquire the right to have an executive representative on the board).

The law governing the principles of BLER has recently been quite stable in the countries covered by the project. The legislation of the countries of Central and Eastern Europe underwent significant transformations in the period of political transition, so the main changes in the law on workers' participation occurred in the 1990s, during the period of the most intense ownership changes. However, this does not mean that the law does not change at all: in the period from 2016 to 2018, i.e. before the implementation of the BLER 2.0 project, the rules for the appointment of members of the statutory bodies of state-owned enterprises contained in the Law on Principles of State Property Management in Poland were changed. Initially, stricter requirements were introduced (including a compulsory university degree), which were later relaxed (in addition to the withdrawal of the above mentioned criterion, the obligation to take an exam confirming competencies to work in the supervisory authority was also removed). Already during the implementation of the first BLER project, an amendment to the Companies Code in Slovakia (2019) entered into force, which imposed the obligation to draft a rulebook on remuneration of members of statutory bodies for a period of up to four years and an annual report on the remuneration of these persons – therefore, rules were introduced to ensure transparency in the

functioning of management and supervisory boards, which also include representatives of employees in the aforementioned bodies.

Participation at board level and trade unions

The countries we analysed differ in the role played by trade unions in the field of BLER. For example, in Spain, employee representatives are appointed by representative company unions (Owczarek 2020). Meanwhile, in Serbia, we have the opposite situation: employee representatives on the board of directors (the state has a monistic governance model) are appointed by the government or local self-government. Employees therefore have no real influence on who will represent them. This person must not be a member of a political party or affiliated with an entity performing an external financial audit. In Poland, however, persons who have certain functions in the trade union are excluded from the group of employee representatives. On the other hand, trade union organisations of companies play a leading role in the selection of employee representatives under the BLER mechanism (Pańków 2020). It should be noted here that, in general, trade unions in this country are de facto the only representatives of employees in enterprises (both public and private). However, the principles by which employee representatives are selected – including the universal, secret ballot of employees – mean that only a person with union support can count on success. Significant financial resources, dedication and time are needed to receive sufficiently high support among employees.

Benefits arising from participation at board level

By reviewing the literature, we reveal significant benefits that both employees and the board of directors can derive from the participation of employees' representatives in the management of the company. When it comes to the positive sides of BLER from the point of view of employees, we can primarily talk about direct benefits related to the possibility of influencing decisions on employment conditions such as the amount of salaries, rules for awarding bonuses and calculating working hours, occupational safety and health and various solutions in the field of work organisation (Owczarek 2020: 28). They are especially highlighted by representatives of employees in Central and Eastern European countries (Owczarek 2020, Zybala 2019). Representatives of Spanish workers value the very possibility of participating in the decision-making processes of the company's board of directors as a value in itself that contributes to the development of industrial democracy. BLER also has a positive impact on the relationship between employees and the employer, in various aspects. Therefore, it contributes to the better functioning of the company and can strengthen its position in the market. Greater transparency of the decision-making process, the ability of the board of directors to take into account both the opinions of employees and a better mutual understanding of the arguments of both sides contribute to alleviating tensions and conflicts in the company. This, in turn, can result in greater motivation of employees and greater efficiency of their work, a stronger sense of responsibility for the fate of the company and loyalty to it, a reduced number of protest activities, and even less absenteeism and more efficient resource management.

At the macro-social level, BLER can contribute to strengthening civil society (learning democracy in the workplace), but it can also have a positive impact on the functioning of

the economy. Jasiiecki's (2014) analyses showed that stronger employee representation (including in supervisory and management bodies) was associated with better economic performance of countries; they also coped better with the effects of the 2008 financial crisis. The research of Fabo et al. (2014) leads to the conclusion that in companies where trade unions are strong, faster growth of both wages and productivity is observed, and the authors point out that the participation of trade unions in BLER was an important factor. Greater resilience to crises was confirmed in a study conducted during the BLER 2.0 project: in Poland, respondents reported that LNG mechanisms in state-owned enterprises facilitated adaptation to new, unexpected circumstances related to the COVID-19 pandemic and the restrictions that followed. Thanks to BLER, the necessary changes in the organisation of work could be implemented very quickly; employee representatives have proven to be a competent partner, ready for compromise, and at the same time with a social mandate. Later, after the Russian aggression against Ukraine and in a period of significant inflation increase (in Poland, the level of inflation was among the highest in Europe), trade unions used BLER as an effective channel for negotiating wage increases due to the increase in the cost of living.

Weaknesses and limitations of participation at board level

The basic, systemic limitation of BLER in a large number of countries (in the case of the countries covered by the survey, it does not apply only to Slovakia and Slovenia) is a strongly limited subjective scope of the obligation to implement the participation mechanism in the company. This means that in countries such as Spain, Poland and Serbia, the scope of BLER is limited (basically to public sector enterprises, but we often have to deal with additional criteria that narrow the scope of entities). This also results in a limited role in the economy (both in terms of impact on the economy and the extent of impact on the position of employees and their representatives) and social perception of this form of employee representation. Knowledge of BLER in society is quite insufficient, which is why advocacy activities are necessary, the plan of which will be presented in a separate chapter. On the other hand, in Bulgaria and Turkey there is no legal obligation to establish an BLER for any type of enterprise, which is why it can very rarely be introduced in practice only when the employer shows goodwill. However, several corporations apply existing good practices in the field of participation (such as the joint decision mechanism existing in German companies) to the country where their subsidiaries are located. The overriding principle, mentioned by Adamczyk (2019) is “act like the Romans” – this means that companies use lower national standards in applying employees' rights, adapting their policies to local practice.

Another systemic limitation – in countries where a dualistic governance model prevails – is the prevailing situation in which the SSMP is limited to the supervisory board. It is not a body that performs management functions, but only supervises the work of the board of directors, where the main decision-making processes take place. It is also a rule that employee representatives make up less than half of the members of the supervisory and management bodies (especially in the latter case their quantitative share is modest, often

limited to the presence of one representative). Therefore, they cannot count on forcing the HR position by gaining an advantage in voting. The practice observed in the Polish BLER study (Pańków 2020) also entrusts the employee representative on the board of directors with a rather marginal role, unrelated to key aspects of the company's operations. This can be a sphere of human resources or even such a narrow area as relations with trade unions. The BLER study also reveals a strong link between the functioning of this form of participation and the wider context of social dialogue in a given enterprise. If the relations between the employer and the employee representatives are unfavourable, if there is a lack of culture and trust, and if conflicts and mistrust prevail, the relations between the employee representatives and the employer in the management and supervisory bodies will also not be correct. Instead of constructive cooperation, misunderstandings can even escalate. In light of Zybala's (2019) conclusions, this type of problem is particularly characteristic of the Visegrad Group countries, which Owczarek (2020) extends to other Central and Eastern European countries. The reason is specific cultural factors: the presence of a strong hierarchy combined with the separation of administration from those they manage also at a symbolic level. This results in a low degree of mutual trust and frequent disrespect shown by managers to employees.

Research within the BLER 2.0 project also revealed a widespread phenomenon of alienation of employee representatives: when they become members of supervisory bodies, employees immediately begin to look at them with different eyes: employees cease to perceive them as "their own", and at the same time, in the eyes of the employer's representatives, they are still only employee representatives. The aforementioned limitations on the role of the supervisory board may not be sufficiently recognized by employees, which in some cases leads them to formulate unrealistic expectations regarding their representatives. Some tensions can also be caused by the need to keep the company's trade secrets, which means that employee representatives cannot share with employees all the information they have received; this can make it more difficult for them to justify certain decisions in which they have participated. This is an additional potential cause of distrust towards them. All these difficulties make the role of representatives of employees in supervisory/management bodies a source of frustration and psychological burden. In extreme cases, disagreements between the trade union and employee representatives within the BLER can lead to permanent conflict and the perception of employee representatives as competition to the trade union.

Good Participation Practices at Board Level

The scope of election campaigning in some state-owned enterprises can be considered a good practice observed in Poland. Candidates conduct an election campaign and are very committed to persuading employees of their candidacy. Election rallies are organised, leaflets are shared, and activities on social networks are carried out. Election commissions are formed, and strictly defined procedures are applied (e.g., consideration of election protests). All this makes the elections look like state parliamentary or presidential elections, which is a school of democracy and civic activism for employees.

The recently adopted amendment to the Companies Code in Slovakia is an example of introducing significant changes from the perspective of transparency of the work of supervisory and management bodies: companies are obliged to introduce regulations on remuneration of members of statutory bodies and annual reporting on their earnings.

At the most general level, the Slovenian BLER model should be considered the most favorable from the point of view of exercising the rights of employees to self-advocacy at the level of administration. First, this right is expressly guaranteed by the constitution. Secondly, the subjective scope of the obligation to establish an BLER is one of the broadest among the countries we have analysed (although an even more universal right to BLER applies in Slovakia – which should be particularly emphasized in the context of recognizing good practices).

Qualifications and competencies of employee representatives

On the one hand, the first error (Owczarek 2020) indicates that the countries we have analysed are dominated by regulations that do not bring with them the obligation to meet formal requirements regarding the competencies that employee representatives should possess. On the other hand, respondents from individual countries formulated different expectations regarding the need to introduce such criteria. In the countries of Central and Eastern Europe, the positive sides of these criteria are often highlighted, while Spanish respondents emphasized that the only essential requirement is that employee representatives be elected democratically. Poland is an example of a country where for a long period it was necessary for each candidate for a member of the Supervisory Board to pass an examination in legal and economic knowledge. In 2016, an additional requirement for a candidate to possess a university degree was introduced, which was opposed by national representative trade unions. Therefore, in the following amendments to the law in 2018, this criterion was abolished, and the obligation to take the exam was abolished (which was negatively assessed by the respondents from the ranks of trade union representatives, as a potential lowering of the BLER criteria). It should be noted that the issue of the competence of employee representatives in some cases is the subject of a game of the boards of directors of companies in which BLER can be introduced, aimed at weakening the mechanisms of employee participation in management (ibid.).

Recommendations of changes in the domain of legislation and practice of board level employee participation

Legal recommendations – at national and EU level

Currently, the legal solutions in force in the different countries covered by the project differ in terms of the subjective scope of the obligation to introduce BLER and the principles on which the representation of employees in the statutory bodies of the company should function. In addition, these countries are very diverse in terms of the model of collective labour relations (both in the regulatory aspect and on the basis of a number of parameters, such as the scope and degree of concluding collective labour agreements, the degree of trade union association or the presence of other forms of employee representation than trade unions), the socioeconomic model, the degree of development of the economy and

civil society, the dominant model of management of commercial companies (monistic vs. dualistic) or membership in the European Union (the sample also includes the EU-15, three new Member States and two candidate countries). Therefore, it is not possible to propose common legislative recommendations for all these countries; it is necessary to take into account the stage in which the development of the system of collective labour relations, the culture of social dialogue, and in particular the existing institutions of BLER is located. Below will be presented recommendations, divided into three groups of countries regarding the degree of regulation of the last of these characteristics. It should be borne in mind that this is still somewhat arbitrary, as even within these three clusters there are significant differences in the context in which participation at the management level operates. Significant differences between individual countries in each group will be indicated and listed in the descriptions of the proposed solutions.

Slovakia and Slovenia

In the case of Slovakia and Slovenia, it should be borne in mind that the subjective scope of compulsory BLER is wide and that there is no point in lowering the currently assumed employment thresholds of 50 workers. As for Slovenia, it seems desirable to eliminate additional financial criteria regarding the value of the company's turnover or assets. The formula to be recommended should provide for the obligation to introduce BLER in each enterprise employing at least 50 workers, provided that it has a statutory body responsible for supervision. The acceptable share of employee representatives is from 1/3 to 2/5. When it comes to enterprises with a monistic management model, employees should have a representative on the board of directors, or two such persons in the case of larger enterprises (the threshold of 500 employees adopted in Slovenia seems reasonable and worthy of popularization in other countries – such as the principle that in such a larger enterprise one of the employee representatives has an executive function). If the company has a dual management model, an additional threshold (which can also be 500 employees) should provide employees with the opportunity to have their representative on the board of directors.

Spain, Poland, Serbia

What these countries have in common is that the obligation to introduce an BLER is limited to enterprises that are (partially or wholly) owned by the state treasury or - additionally - a local self-government unit (Serbia). Therefore, the basic recommendation – following the example of Slovak and Slovenian solutions – refers to the extension of the mandatory BLER to all entities, public and private, which have management/supervisory bodies and employ at least 50 workers. The desired share of staff representatives on the supervisory board is from 1/3 to 2/5. In the dual model, an additional employment threshold of 500 people should give employees the right to have their representative on the board of directors. In the case of a monistic management model, companies that employ at least 50 workers should have the obligation to introduce one employee representative to the board of directors, and when they employ more than 500 people – two representatives, one of whom has executive powers. The extension of the right of companies to BLER can take place

gradually, from larger companies to smaller ones, for example according to the following schedule:

- large firms employing more than 250 workers: from the moment of entry into force of the law
- medium-sized firms employing from 50 to 250 workers: three years after the entry into force of the law

Additional, more detailed recommendations for this group of countries relate to: 1) in Serbia – giving employees the right to elect their representatives in statutory bodies (rules and selection procedures similar to those in Poland or Slovenia can be introduced) and 2) in Poland – trade unionists request the return of the obligation to take an exam confirming the competencies of candidates for a member of the supervisory board of the company and specifying the procedure for the selection and dismissal of representatives of employees in supervisory or management boards in order to increase the transparency of these procedures (the current fairly general regulations leave room for abuse). Moreover, trade unions are asking to regulate the issue of payment of employee representatives, which is currently subject to conflicts and tensions. A good point of reference can be solutions introduced in Slovakia in 2019 that require these issues to be transparently regulated in the regulations on fees and the publication of executive reports. In addition, based on the requests of the Spanish partners, it is worth considering – both in Spain and in other countries covered by the project – the development of a list of issues that should in particular be the subject of control activities within the supervisory boards (digitization, green transition, demographic issues, financial condition of the company) or that fall within the competence of representatives of employees on the board of directors/board of directors. In Spain, in May 2022, Minister of Labour Yolanda Díaz announced the launch of a public debate with the participation of social partners and experts on the extension of the right of employees to participate in management on the basis of the provisions of Art. 129.2 of the Spanish Constitution¹. Since then, however, no specific regulatory proposal has emerged. Only in October 2023, after the PSOE-Sumar coalition won the parliamentary elections, a government agreement was presented aimed at extending the current rights regarding the participation of employees in governance². This proposal has met with a critical response from employers' organisations. According to CEOE President Antonio Garamendi, it will lead to interference in the autonomy of companies, a potential threat to competitiveness, and a source of conflict between the social partners. Events in Spain will be followed on an ongoing basis by BLER 2.0.

Bulgaria, Turkey

In these two countries, there is no BLER mechanism at all. In addition, in Turkey, we are dealing with a particularly weak position of trade unions and a lack of social dialogue. Therefore, in this country, all demands to strengthen the system of collective labour relations should be made by trade unions, especially in the context of EU membership

¹https://cincodias.elpais.com/cincodias/2022/05/04/economia/1651652951_308150.html

²https://www.eldiario.es/politica/politica-directo-ultima-hora-negociaciones-nuevo-gobierno_6_10624422_1103705.html

candidacy. The threshold of 50% of the company's employee unionization should be considered particularly questionable and should be abolished to allow for collective bargaining. In both Turkey and Bulgaria, the introduction of the obligation to introduce BLER should be advocated, even if the prospects of success in this matter (especially in the first of these two countries) are distant. The target form of regulations should be similar to the one indicated for the previous two groups of countries. However, it should be borne in mind that changes that are less progressive are more likely to occur. A gradual introduction of mandatory BLER can be assumed. Countries in the second group could serve as a source of inspiration here. The intermediate phase would consist, for example, in the introduction of compulsory participation only in public/state and/or local enterprises. It can also be imagined to introduce higher employment thresholds at the beginning or to implement compulsory participation in selected sectors, in cooperation with the social partners from the industry.

Recommendations in the field of practices and mechanisms of board level employee participation

In the case of all countries covered by the project, there is, albeit to a varying degree, a need to disseminate knowledge about BLER among employees, trade unions representing them, as well as entrepreneurs and employers' organizations behind them. Among other things, examples of good practice and benefits arising from the functioning of BLER should be presented, both from the point of view of employees and employers, as well as the public interest. It is also important to disseminate knowledge about the rights of employees in the field of participation at different levels, including participation in statutory bodies of the company to the extent required.

As the case of Slovakia shows, it is necessary to tighten the law and provide mechanisms to comply with it. In this country, well-constructed regulations that provide a wide subjective scope of compulsory public health insurance are sometimes circumvented, and especially companies with foreign capital try to circumvent them, for example by changing the statute. Appropriate harsh sanctions for non-compliance and effective mechanisms to detect/report irregularities should be envisaged.

Measures should be taken to prevent the marginalization of employee representatives in statutory bodies, by, for example, entrusting them with secondary thematic areas that are less significant from the point of view of the company's operations. This can be solved to some extent by concrete legal solutions (as already proposed, there could be a list of issues falling within the competence of the member of the board of directors representing the employees). It is also necessary to prevent cases of abuse of recourse to professional secrecy in order to limit the possibility of communicating certain matters to trade unions or employees by employee representatives (although such cases were not reported during this research). In addition, it is important that employee representatives have high knowledge, so that their level of competence does not represent the employer's argument for limiting their role in the statutory body.

Advocacy Activity Plan

Advocacy activities within the BLER 2.0 project

The objectives of the BLER 2.0 project include launching a broad public debate on the importance of employee representation in management in partner countries, as well as promoting employee rights in terms of information, consultation and participation at the company level. The previous chapters present the main conclusions from the research of practices related to employee participation and recommendations for changes – including legal changes that need to be introduced in order for employee democracy to take full shape. These conclusions are gaining importance, and the need to implement the recommendations is becoming increasingly urgent in the context of a long series of crisis situations (pandemic, economic crisis caused by Russia's attack on Ukraine, deepening climate crisis, growing economic inequality, and in recent weeks the war in the Gaza Strip). These crises affect the working conditions and quality of life of workers in Europe, and sometimes lead to a serious restructuring of companies. The effectiveness of workers' participation in governance within national industrial relations systems can be crucial to conclude whether workers and employers in the EU are able to meet these challenges and whether companies are able to maintain their productivity and global competitiveness.

The goal thus set is realized in the BLER 2.0 project through specific activities. After the diagnostic activities have been carried out (the results of the research are presented in the national reports, the comparative report and the first chapters of the "Joint Advocacy Plan"), public advocacy activities are planned.

First, national partners were asked to make recommendations to improve the regulation and practice of employee participation in governance at the level of their countries. In the two partner countries (Bulgaria and Turkey), where there is no legal basis, the researchers were asked to express the opinions of the social partners regarding the proposal to introduce a participation mechanism. These recommendations were presented and discussed during the "Idea sharing and Decision Making Meeting" on June 5-6, 2023. Moreover, during that meeting, the project partners exchanged proposals for advocacy activities in their countries that they would like to undertake in order to implement the aforementioned recommendations. An important reference point in that discussion was the presentation of details of the German model of employee participation in management (co-determination/Mitbestimmung), which are often cited in the public debate as solutions that should serve as an example.

Based on the collected material (recommendations for changes and advocacy activities included in national reports and group discussions during the project meeting), the Institute of Public Affairs has developed this "Joint Advocacy Plan"). The next chapter will present the key proposals of the partners that go beyond the scope of this project and relate to medium and long-term strategies. The report was presented during an online project meeting on October 23, 2023.

economic model. An external expert selected by the project leader will be responsible for drafting the articles. The articles will be translated into the languages of the partners, and the partners will be responsible for their publication in their respective countries.

- **Viral Campaign**

For the middle of 2024, it is planned to publish and widely distribute short films/videos aimed at promoting the idea of employee participation in management (including knowledge of the practice of BLER included in the comparative report and project recommendations included in the "Joint Advocacy Plan"). The campaign will answer the most common questions raised during the meetings and discussions, present good practices and draw attention to the topic of BLER. We hope that the campaign conducted on social media (Tik-Tok, Twitter, partner websites) will go viral and will be widespread on the Internet. The content of the recordings will be prepared by the expert team based on the scenarios developed by the project experts. The proposed viral campaign is a promotional technique aimed at rapid and wide dissemination of content. The content will be created to encourage sharing by the initial target group (trade unions, employee representatives, experts). The goal is to make it attractive and accessible enough to inspire as many people as possible to get involved. A viral campaign should be able to harness the emotions of users (stakeholders). With the help of professionals (external companies with whom the contract will be signed), the partners plan to engage social partners, policy makers and relevant stakeholders in an interactive way. The use of new techniques will help to disseminate the results of the project to a much greater extent than the unions can usually perform.

- **Closing conference in Spain**

The last activity of the BLER 2.0 project will be an international closing conference, during which the most important results of the project will be presented – both in terms of the effects of public advocacy activities and the dissemination of the idea of the board-level employee representation in each of the partner countries, as well as at the European level. In addition, the partners will also continue the discussion on what activities can be undertaken to promote the BLER after the completion of the project.

Advocacy activities in the future

Advocacy activities planned under the BLER 2.0 project should only be a starting point for broader strategic activities aimed at strengthening the participation of management employees in Europe. This chapter presents a list of proposed activities that indicate the directions for the implementation of the recommendations formulated by the project partners. The “Joint Advocacy Plan” therefore represents a wide range of approaches that can be used in public advocacy activities to strengthen information, consultation and participation processes and legislative changes in the field of BLER, including the harmonisation of BLER regulations at EU level. Social partners can use it as a source of

inspiration to build their advocacy strategies. From the open catalogue of proposals, partners can select those that seem to them to be the most appropriate, relevant and effective in their national, sectoral and company context. This list is not exhaustive – the social partners are free to develop and supplement the proposals listed below.

EU level

When it comes to the EU level, it is crucial to strive to establish legislation that establishes minimum standards in the field of employee participation in management, which would also harmonize the existing solutions in this field at the level of legislation of EU Member States. The first attempt to reach consensus in this regard at EU level occurred when the form of the Fifth Company Law Directive was discussed, which, however, was abandoned in 1988. Since then, Member States have agreed to protect existing BLER rights only in European companies (SEs)³, European cooperatives (SCEs)⁴, and in the case of cross-border transformation, mergers and business divisions in the European Union⁵.

The right of employees to participate in management is unfortunately not included in the European Pillar of Social Rights⁶, which from the moment it was established in 2017 should have been a compass of Community social policy and a response to the criticised *austerity* policy implemented by the European Commission and Member States during the economic crisis of 2008+.

In recent years, the European Parliament (in particular Member of the European Parliament Gaby Bischoff) and the European Trade Union Congress (ETUC) have called for the establishment of a new European framework for the right to information, consultation and representation of employees at board level. *European Framework for Information, Consultation and Board-Level Representation Rights*^{7,8}. ETUC has dedicated a sub-page to the topic of workers' democracy, where you can find the latest events, views and documents related to this topic: <https://www.etuc.org/en/more-democracy-work>. In addition, the European Trade Union Institute (ETUI) has been running a knowledge repository on employee participation in governance for many years. <https://www.worker-participation.eu/>.

However, so far, although the requirements for the establishment and harmonization of EU law regarding participation in governance have existed for at least three decades, it has still not been fully implemented. The main braking factor is the lack of will of the EU Council to

³Council Regulation (EC) 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to employee participation.

⁴Of the Council (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive 2003/72/EC of 22 July 2003 amending the Statute for a European Cooperative Society as regards employee participation

⁵Article 133 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of companies' rights and information obligations resulting from recitals 12 and 13 of Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions of companies

⁶<https://ec.europa.eu/social/main.jsp?catId=1226&langId=en>

⁷<https://www.etuc.org/en/pressrelease/ep-ramps-pressure-more-democracy-work>

⁸<https://www.etuc.org/en/document/daring-more-democracy-work-etuc-offensive>

introduce changes. In addition, it can be pointed out that BLER is not on the list of priorities in the trade union community. This is especially true of low interest or even total disinterest in this topic among trade unions from Central and Eastern Europe, which are unwilling to support the initiatives of their Western counterparts in this domain.

The BLER 2.0 project aims, among other things, to highlight the issues of SSP in the countries of Central and Eastern Europe, in the hope of increasing the importance of this mechanism in the programs of trade unions and employers' organizations in this region. At this point, it should be recalled once again that the BLER 2.0 project partners representing trade unions and employers' organizations from Bulgaria, Spain, Poland, Serbia, Slovakia, Slovenia and Turkey clearly formulate the requirement to establish uniform EU legislation regarding employee participation in governance.

Recommendations regarding the representation activities of the social partners at European level are therefore reduced to the requirement to increase the importance of the participation of management employees in their agendas and to seek to establish appropriate legislation using the advocacy initiative mechanism used by these entities. In this regard, it will be useful to develop a repository of BLER knowledge, including the creation of an index of countries and companies that would enable them to position and evaluate each other.

National level

At the national level, a key challenge is the implementation of the recommendations for legislative changes formulated for each partner country individually, which will strengthen the rights regarding the mechanism of participation of employees in management – even if there is not yet an appropriate framework in European legislation (details – recommendation chapter). From this point of view, activities aimed at lobbying in legislative bodies are crucial. However, these are not the only initiatives that can be taken. Listed below are other supporting options that support and demonstrate the determination of the social partners.

Constitutional initiatives:

- Regulatory lobbying: individual and larger body meetings with members of parliament (lower and upper house) and key political parties. These meetings can be enhanced by submitting a signature or a petition (also in electronic form). Public advocacy activities can be particularly effective during election campaigns, social crises, labour shortages and the like, when the party in power is more willing to win over voters or make certain social concessions.
- In the pre-election period, election boards and individual candidates may be asked to complete a questionnaire on specific reform proposals. The issues include the issue of extending the law in the field of BLER. OPZZ regularly undertakes such activities in pre-election periods.

- Pressure to form a problem/consultative team or commission in the Republic Parliament to deal with amendments to the law and increase the rights of employees in management (or incorporate the topic of BLER into the work of existing competent/consultative bodies). The Committee/Committee must have an established objective, composition and schedule of activities. Its members (especially presidents) should also be responsible for their effectiveness.
- Establishment of a working group at the tripartite body of social dialogue at the national level, which will include a tripartite representation dealing with the board-level participation of employees' representatives.

Autonomous initiatives of social partners

- Establishment of a working group at a trade union or employers' organization dealing with UMP.
- Development of information and programming materials containing a short presentation of the diagnosis and recommendations regarding the extension of the right of BLER (inter alia, on the basis of this research project), which are described with an indication of the benefits for employees, employers and the common good. This can be a report, a political document, a draft law amendment/proposal to amend the law, a brochure, a leaflet (or all these forms at the same time), which are presented in various forums. These materials can be supplemented with videos for social networks, media statements and newspaper articles that communicate the content of the request and build public support for BLER.
- Preparation of expert opinions that show the possibilities and advantages of strengthening BLER, e.g. by a renowned lawyer specializing in company law or an expert in collective labour relations.
- Introduction of requirements to strengthen employee participation in strategic/program documents of trade unions and employers' organizations.
- Creating employee participation index to assess practices in companies eligible for BLER. The development of the methodology of such index can be entrusted to academic experts, research centres or non-governmental organizations.
- Determining the award in the category: a company with BLER and a representative of employees in management bodies to increase the prestige and recognition of the mechanism of board-level participation of representatives of employees. The evaluation and awarding of prizes should take place in appropriate representative circumstances.
- Organizing events during which the idea of BLER and recommendations for changes in this area are promoted, for example: press conferences (together with allies), seminars, round tables, gatherings/demonstrations, appearances in the media. It is

worth making a plan/schedule of such events in advance and providing appropriate funds for their organization.

- Establishing coalitions with other trade unions, employers' organizations, academic centres, think-tanks, non-governmental organizations, activists, journalists, public intellectuals, etc. – building social support and shaping public debate. Establishing coalitions with other trade unions, employers' organizations, academic centres, think-tanks, non-governmental organizations, activists, journalists, public intellectuals, etc. – building social support and shaping public debate.
- Obtaining external funds for the implementation of research and advocacy projects. A good example of the implementation of this postulate is the BLER 2.0 project.
- Evaluation of the practice of board-level employee participation. In the phase of advocating for amendments to the law, it is a good idea to develop an impact assessment document.

Sector level and company level

Advocacy activities at the sector and company level should focus on providing information on existing rights and improving practices in the field of board-level employee participation. National legislation can only be supplemented by agreements and regulations. Nevertheless, advocacy initiatives at this level are crucial, as the implementation and enforcement of rights takes place in workplaces. Moreover, unlike at EU or national level, advocacy activities should take place on a permanent basis. We propose the following advocacy activities:

- Promoting knowledge of existing rights regarding participation, but also regarding the right to information and consultation. These rights are enshrined in European Union and Member State legislation. Many studies show that the lack of sufficient dissemination of knowledge about legal provisions is a significant problem and that – despite the easy availability of this information – many employers and employees are not yet aware of it. The dissemination of knowledge about existing rights to information, consultation and participation can be carried out by trade unions and employers' organizations using their usual information channels: newsletter, e-mail list, bulletin board, newsletter, face-to-face or online meetings, etc.
- Use of rights in the field of information, consultation and participation in accordance with the company's articles of association and regulations.
- Development of regulations at the company level that specify the statutory rules for the selection and operation of representatives of employees in a given company. Such regulations may contain arrangements regarding the election schedule and the functioning of the representation of employees in the statutory bodies of a given company.

- Building support for BLER among employees by demonstrating the benefits of representation in the statutory bodies of the company for employees, employers, employee democracy, the public good and the natural environment. You can also indicate the so-called alternative costs, i.e. what the situation of the company/team of employees would be if there were no BLER or one of its activities.
- Using the support of external experts, for example from trade union headquarters or employers' organizations, universities, think-tank organizations (including from other countries) in order to provide information on the BLER and the benefits arising from this mechanism.
- Lobbying at the workplace level: exercise the right to BLER in agreement with the employer (in companies that do not yet have extended rights to BLER). This type of activity can be effective, for example, in companies based in a country with broader rights in the field of public health insurance. In such a situation, employees of a branch in another country may request that the right to participation of employees be extended to their branch within the framework of a single corporate policy.
- In the transitional period before the introduction of regulatory changes extending the rights of BLER to new entities, it is recommended to organize company-level meetings of the trade union organization with the management and supervisory boards in order to create an atmosphere conducive to dialogue and to get the opportunity to get to know each other before the employee representative takes up his/her duties to the full extent.
- Participate in social research on board-level employee participation practices (and other research on collective labour relations and working conditions) to demonstrate good company practice in a broader national and European context. Remember! Expert reports can be useful in your advocacy work at the enterprise, sector and national levels! The authority of research centres is your ally in shaping public opinion!
- Evaluation of BLER practice at the company level. It can be internal, carried out by a trade union or an employer (employer organization) independently or with the help of external experts (usually in combination with the advice they provide).
- In case of violation of employees' rights regarding board-level participation, efforts should be made to exercise them – primarily through warnings (e.g. by trade unions, employers' organizations, representatives of social dialogue bodies), and if this does not bring appropriate results, the case should be reported to the competent court (or possibly to the labour inspection).

References

Adamczyk, S. (2019). *Niewyśniony sen o europejskich radach zakładowych: jak związki przegrywają z korporacjami nadnarodowymi*. "Praca i Zabezpieczenie Społeczne" 2019, nr 10.

Fabo, B., Kahancová, M., Martišková, M. (2014). *Industrial relations and inclusive development:*

the Case of Slovakia. Report prepared for the International Labour Organization (ILO).

Jasiecki, K. (2014). *Partycypacja pracownicza w Polsce w europejskiej perspektywie porównawczej*. "Dialog. Pismo dialogu społecznego" 4/2014 (43), s. 6-12.

Owczarek, D. (2020). *Board-level participation. Final report*, Warsaw: All-Poland Alliance of Trade Unions.

Pańków, M. (2020). *Partycypacja pracowników w zarządzaniu*. National report produced within the BLER project. Warsaw!

Zybała, A. (2019). *Board-level employee representation in the Visegrád countries*. "European Journal of Industrial Relations", vol. 25, issue 3.



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Strengthen board level participation



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