



Country report: (2) National Debates

Slovenia

**Dilemmas arising from the impact on board-level participation rights of the
one-tier management system**

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Dilemmas arising from the impact on board-level participation rights of the one-tier management system in Slovenia

Implementation of the European Company Statute in Slovenian law

The process of SE Statute implementation in Slovenia began in November 2004 when the Slovenian government announced amendments to the Companies Act (amendment ZGD-H). However, in December 2004 the amending law was passed without provisions on the European Company.¹ Implementation of the SE Directive has so far made no visible progress. Slovenia is now one of the most backward Member States as regards implementation of the SE Statute and earlier this year was warned by the European Commission to speed up the implementation process.

The reasons for this delay lie in the major impact of the SE Regulation and the SE Directive on Slovenian law. The Slovenian Companies Act has hitherto not regulated one-tier management: this was supposed to be dealt with in the new chapter on SEs.² However, more important in this regard is that the proposed Companies Act amendments allow national companies to apply the provisions on one-tier management, reflecting the wishes of the business community in Slovenia. That is, the amendments foresee the **inclusion of one-tier management for domestic companies alongside the existing dualistic system**. It is anticipated that this system would enhance Slovenian competitiveness and establish a friendly legal environment for both domestic and foreign investors.³ In this connection the Slovenian business community looks admiringly at the Baltic states, where the lack of employee involvement has proved a major attraction to foreign capital.⁴

The introduction of the one-tier system alongside the existing two-tier system would significantly affect the current regulation and practice of workers' involvement. Those potentially concerned have reacted strongly, as a result of which regulation of the

¹ The proposal for implementation of the SE Regulation foresaw the addition of a chapter to the Companies Act (Chapter 4A) after Article 398. The chapter would consist of 63 articles (398a–398bl), divided into five main sections: General Provisions, Transfer of an SE's Registered Office, Formation, Management and Winding Up.

The proposal provided for regulation of matters mandatory for harmonisation of Slovenian law with the SE Regulation, as well as optional matters related to corporate affairs, capital structure of minority shareholders and SE management. The proposal did not anticipate the regulation of employee involvement, but merely referred to the need to reach agreement on employee involvement before an SE is registered and to the future act implementing the SE Directive.

² M. Kocbek, *Podjetje in delo*, 6–7/1005.

³ B. Bratina, *Gospodarski subjekti na trgu*, 2005.

⁴ A. Gregorič, *Finance*, 32/2005.

European Company and the introduction of the one-tier system have so far made no progress.

Since the Slovenian government is under some time pressure to implement the SE Statute, a new draft of the Companies Act amendments can be expected in the near future. Intensive discussions are proceeding on whether the one-tier option is realistic, how it should be regulated and what impact it would have on employee involvement in general.

In autumn 2004, when the draft of the Companies Act amendments was being prepared, the Slovenian “Manager” Association conducted a survey among Slovenian directors concerning the proposed one-tier system. More than half of them were very satisfied with their supervisory boards, stressing that their role was not just supervisory but consultative. As many as two-thirds thought that the introduction of the one-tier option would be a positive development, but only one-fifth said that they would actually propose this option to shareholders.⁵

Influence of the SE Statute on Slovenian participation

While some argue in favour of a stronger role for workers in supervisory boards, others favour other forms of involvement.

2.1 What do the employers want?

There are two main proposals from the employers’ side: first, there are demands to make the one-tier management system available to domestic companies, in which employee participation at board level (administrative organ) would be abolished; second – and at first sight less dramatic for employees – there are demands that it be left to the social partners to negotiate the management system rather than making it mandatory.⁶

Slovenian managers and many business and legal experts consider that the one-tier system facilitates quicker and more effective decision-making, improves the quality of management and coordination of the administrative board, and gives rise to lower management costs than the two-tier system.

⁵ Summary in Večer, 1 October 2004.

⁶ A. Gregorič, *Finance*, No. 32, 2005, p. 27.

While there is some evidence of a high degree of management satisfaction with employee representation, on the other hand, there have been many negative experiences with workers' board-level participation. Critics cite a lack of professionalism on the part of workers' representatives, unclear aims, dependence upon works' councils or management, irregular external communication, and so on.⁷ Research (Prašnikar and Gregorič, 2002) has also shown that workers' representatives on supervisory boards constrain management innovation and attempts at internationalisation. For these reasons the employers advocate a rethinking of Slovenian regulations on workers' involvement and the introduction of the one-tier system, as stated in the SE Statute.

In contrast to the first years of Slovenian independence when the legislature turned to Germany and Austria for models, the employers take the view that adopting German and Austrian regulations on workers' participation is something of a liability, citing criticisms of their systems as too complicated and as hindering management effectiveness.⁸ Needless to say, the combination of the one-tier and the two-tier systems would require a great deal of care on the part of the legislature.

2.2 What do the workers say?

The only workers' representatives with a clear position on one-tier management is the Association of Works Councils of Slovenian Companies (henceforth: Association).⁹ They take the view that since this system is by far the most widespread management system in Europe and beyond it is not surprising that its introduction is foreseen also for Slovenia. However, the Association considers it crucial that administrative organs in the one-tier system consist of both executive and non-executive members, with the latter performing a supervisory role similar to that of the supervisory board under the two-tier system and also having more intensive involvement in business matters. According to the Association this division of roles inside the administrative board means that the one-tier system does not require the removal of workers' representatives from management boards.

⁷ L. F. Peklar, *Finance*, 32/2005.

⁸ Ibid.

⁹ Published in *Industrijska demokracija*, 4/2005. See also Gostiša, *Industrijska demokracija*, 3/2005.

The position of the Association of Works Councils is that the exclusion of workers' representatives from administrative boards would represent a major retrograde step for workers' involvement in Slovenia.

A highly developed system of workers' involvement is therefore a *conditio sine qua non* of participatory corporate governance, based on the idea of corporate social responsibility. Referring to the Lisbon strategy and the Commission's Recommendations on workers' participation of 2001 and 2002 the Association states that management trends in Europe expressly accept this idea and Slovenia should be no exception.

In addition, the Association disagrees with the employers that the one-tier system necessarily excludes workers' representatives at board level, referring to Denmark, Finland, Norway and other states in which workers' representation at board level is legally regulated.

The Association emphasises that German problems with parity-based supervisory boards are not relevant as an argument against workers' board-level representation because, since the amendment of Article 79 of the Act on Workers' Participation in Management which abolished obligatory parity in the supervisory board, only a small number of supervisory boards have a parity structure.

The Association of Works Councils also objects to the introduction of the voluntary principle, under which board-level workers' representation would be subject to negotiation. The Association stresses that the principle of negotiation was introduced into the SE Directive as a compromise between various national systems, whereas overall the SE Directive foresees standard rules guaranteeing workers' participation.

Another argument raised by the Association against the exclusion of board-level workers' representation in the one-tier system and the introduction of the voluntary principle is that this would lead to an unacceptable situation in which board-level representation for employees at companies with the one-tier system would be at the discretion of the management, while remaining an entitlement for employees at companies with the two-tier system.

According to the Association, the only acceptable solution would

be to regulate board-level workers' representation under the one-tier system in a similar way to existing workers' representation on supervisory boards under the present two-tier system. The optimum solution would be to give workers the right to nominate one-third of the members of the administrative organ under the one-tier system.

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There is no official trade union position on the introduction of the one-tier management system. In general, however, trade unions are against changing the system of corporate governance. They hold that even if there were workers' representatives on the administrative organ, their role would be less meaningful for workers than that of a representative on the supervisory board. This is also a question of workers' perceptions. The general reluctance of Slovenian trade unions regarding workers' representatives on the administrative organ is based on workers' perceptions of the (few) existing worker directors on management boards as 'bosses' men' or 'collaborators' who generally do not make the workers' interests their overriding priority.

2.3 What does the Ministry of Labour say?

The Slovenian Ministry of Labour is responsible for implementation of the SE Directive. The Ministry is also dealing with the adaptation of workers' participation under the one-tier management system, which is also foreseen for domestic companies. However, this issue also depends on amendments to the Companies Act being prepared by the Ministry of the Economy. The Ministry of Labour favours strengthening the role of works councils and workers' representation on administrative boards.¹⁰

Conclusions

Slovenia is one of the few EU Member States which regulates employee participation at board level. The process of EU accession, the establishment of the European Company and general globalisation trends have put the Slovenian workers' participation model "on probation". The debate on the one-tier and two-tier systems

¹⁰ M. Štrovs, *Industrijska demokracija*, 4/2005, pp. 10–14.

continues to be controversial. However, comparative law and practice indicate that both systems can work effectively, providing that they are well implemented.¹¹ From the point of view of workers' representatives, the two-tier system has proved successful. On the other hand, the employers want more effective and faster decision-making and favour the option of the one-tier system.

Consequently, the Slovenian legislator has the difficult task of enhancing the effectiveness and economic rationality of the current management system. However, since employee involvement is a constitutional issue in Slovenia it must be properly addressed.

¹¹ See note 3 above.