ALTOGETHER
Employers and employees developing effective consultation and participation system to address the COVID19 impact

NATIONAL REPORT FROM: GERMANY

"COUNTRY- SPECIFIC ANALYSIS FOR WORKERS' INFORMATION

CONSULTATION AND PARTICIPATION RIGHTS AND THE COVID19 CRISIS (MANAGING OF THE CRISIS, IMPACT, RECOVER)"

EN

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CONTENT

1. Introduction 1

2. Mapping of the current state 2

3. Assess other possible effective mechanisms 3

4. New identified drivers for improved worker representation and consultation 4

5. Participatory workplace arrangements 6

6. Survey analysis 8

7. In-depth interview analysis 12

8. Case Studies 13

9. Conclusion 14

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1. INTRODUCTION

The COVID-19 pandemic is having an impact on companies and their employees worldwide. In this context, national and European legislatures have taken measures to strengthen employee participation in corporate governance and protect the rights of employees.

National and European legislatures have enacted various provisions to protect employees and promote employee participation in corporate governance. The following is a summary of the most important provisions.

In April 2020, the German government passed a law[1] to mitigate the consequences of the COVID-19 pandemic in civil, insolvency and criminal procedure law, which also includes provisions to strengthen the rights of employees. The law obliges employers to inform works councils and staff representatives in good time and comprehensively about planned measures and to hold consultations. This obligation applies in particular to planned operational changes or short-time working (Kurzarbeit). In addition, employee representatives can participate in employer decisions in certain cases. For example, they can be involved in determining working time models, workplace design or the organization of occupational health and safety measures.

In addition, some companies in Germany have set up crisis committees to support employees during the COVID-19 crisis. These committees consist of representatives from the employer and employee sides and are intended to help ensure that measures to combat the pandemic can be implemented in the companies and that the interests of the employees are appropriately taken into account.

These laws and regulations are intended to ensure that workers are appropriately informed and consulted and that their interests are appropriately considered in decisions made during the COVID-19 crisis.

At the European level, there are various laws and directives that strengthen workers' information, consultation and participation rights and promote crisis committees during the COVID-19 crisis.

For example, in 2020, the European Commission published a recommendation on coordinating measures to maintain jobs and support the economy during the COVID-19 crisis[2]. The recommendation provides guidance for member states to put in place measures to support businesses and workers during the crisis, including making working hours and conditions more flexible, access to finance, and the creation of crisis committees.

[1] https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/DE/FH_AbmilderungFolgenCovid-19.html, 24.04.2023.
[2] https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52020DC0505&from=EN, 25.04.2023.

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National and European legislatures have taken measures to strengthen workers' participation rights and protect workers' rights during the COVID-19 crisis. At the European level, there are directives and policies such as the Recommendation on the Maintenance of Employment and the European Works Council Directive that promote workers' rights. At the national level, countries such as Germany have passed laws to strengthen workers' rights to information, consultation and participation and to establish crisis committees to support workers during the COVID-19 crisis.

Overall, national and European regulations are of great importance in giving workers a strong voice in corporate governance and protecting their rights and interests, even in times of crisis.

2. MAPPING OF THE CURRENT STATE

In Germany, various measures were taken in the context of the COVID-19 crisis to strengthen employees' rights to information, consultation and participation and to mitigate the impact of the crisis on employees. Here are some examples.

In December 2020, the federal government passed an Occupational Health and Safety Control Act (Arbeitsschutzkontrollgesetz)[3] that requires companies to protect their workers from infection with COVID-19. The companies' occupational health and safety committees must be involved in this.

An initiative by works councils, trade unions and employees in the meat industry resulted in a law to improve enforcement in occupational health and safety (Occupational Health and Safety Control Act / Arbeitsschutzkontrollgesetz)[4] being passed in June 2020. Among other things, the law stipulates that works councils must be established in slaughterhouses.

Another example is the "Communication with Heart" project initiated by the works council at Bosch in Stuttgart[5]. As part of the project, employees have the opportunity to contact a team of associates online or by phone to discuss questions or concerns about job security during the COVID-19 crisis.

On the other hand, cases also came to light in which employee participation was not implemented or not implemented sufficiently. For example, employees and unions criticized the information policy of the car manufacturer Daimler at the beginning of the crisis. The works council criticized that it was not sufficiently informed about the planned measures and demanded more

[3] https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/arbeitsschutzkontrollgesetz.html, 26.04.2023.
[4] https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s3334.pdf#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl120s3334.pdf%27%5D__1683552957041, 27.04.2023.
[5] "Betriebsrat und Unternehmensleitung bei Bosch in Stuttgart arbeiten in der Krise eng zusammen" Artikel aus der Stuttgarter Zeitung vom 24.04.2020.

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say. As BW24 reports, Daimler was criticized more often. The company would have terminated a temporary employee because they were allegedly on sick leave due to COVID-19. For this reason, other temporary employee would have been afraid of getting a positive rapid test result. The working atmosphere, according to the other temporary employee, were quite bad and negative.[6]

Thus, there are both positive examples and critical voices regarding the measures taken in relation to workers' information, consultation and participation rights during the COVID-19 crisis in Germany.

3. ASSESS OTHER POSSIBLE EFFECTIVE MECHANISMS

There are several effective mechanisms for exchanging opinions between management and employee representatives in the governance context of the recovery from the COVID-19 crisis. Here are some examples.

Regular meetings: Regular meetings between management and worker representatives can be an effective way to share views and information. These meetings should generally be structured and also allow time for an open discussion.

Joint working groups: Joint working groups can be established to discuss specific issues and work together to develop solutions. Such working groups can address both short-term and long-term issues.

Feedback systems: Feedback systems, such as employee surveys or regular feedback rounds, can be an important mechanism for collecting opinions and feedback from employees and incorporating them into management decisions.

Transparency: Transparent communication from management is critical to building trust and encouraging the participation of employee representatives. Transparency also means that employee representatives have access to information relevant to their work.

Training and training materials: Training and training materials can help employee representatives better understand their roles and responsibilities in corporate governance. Better training can help employee representatives be more effective and successful in their roles.

These mechanisms can help improve the exchange of views between management and worker representatives, and thus also contribute to the successful management of the recovery from the COVID-19 crisis.

[6] https://www.bw24.de/stuttgart/daimler-ag-stuttgart-rastatt-leihmitarbeiter-corona-erkrankung-kuendigung-test-angst-kritik-autobauer-90356914.html, 28.04.2023.

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There are a variety of consultation mechanisms used in different sectors that have achieved positive results during the COVID-19 pandemic. Here are some examples.

Social Partner Dialogue: the EU Commission launched a social partner dialogue as part of its COVID-19 measures, bringing together employer and employee organizations at the EU level to develop joint recommendations for supporting employment and businesses during the pandemic.

Works agreements: company agreements are agreements between employers and employee representatives at the company level. During the COVID-19 pandemic, many companies entered into works agreements to ensure worker protection and business continuity.

Workgroups: workgroups can be established to foster collaboration between employers and employee representatives to discuss specific issues related to the COVID-19 pandemic. For example, workgroups can be formed to plan and monitor safety protocol compliance measures.

Online consultations: with the increasing spread of remote work, many companies and worker representatives have used online consultations to maintain an exchange of opinions during the COVID-19 pandemic. Digital tools such as videoconferencing, online surveys, and email feedback can be used for this purpose.

Establish crisis committees: some companies have established crisis committees to involve worker representatives in decisions that affect business continuity and worker health and safety. These committees may also develop and monitor recommendations to address the COVID-19 pandemic.

There is no one-size-fits-all solution as to which consultation mechanisms are most appropriate, as this will depend on a number of factors, including the size and industry of the company, the type of worker representation, and the specific challenges related to the COVID-19 pandemic.

4. NEW IDENTIFIED DRIVERS FOR IMPROVED WORKER REPRESENTATION AND CONSULTATION

In recent years, various new forms of employee representation and consultation have developed that can help improve employee participation in decision-making processes.

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Initiative	Workers' individual influence, strength of their position in the labour market and labour process		Collectively influence through workers representatives		New other forms?	
	Strength (positive aspects)	Weakness (negative aspects)	Strength (positive aspects)	Weakness (negative aspects)	Strength (positive aspects)	Weakness (negative aspects)
1. Employee representatives (e.g. churches or diaconia)			have the right to information and consultation by the employer and can thus actively participate in decision-making processes in the company	Are incompetent, question at all levels the activities for which they are not responsible for, can't keep up with their work		
2. Webseite: coworker.org (online Petitionen und Kampagnen)					Mechanism of influence and voice to express their opinion	Often the petitions do not affect anything in fact
3. Der Schnellcheck Digitaler Betriebsrat					Use the platform and the questionnaire in the accompaniment of digital transformation	The works or staff councils do not want to digitize the processes
4. Employee interview	The employee can talk openly and describe own strength and weakness, demand a wage increase, share his worries and thoughts	Individual instrument, manager does not have to increase the salary, the conversation remains in private				

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These new forms of employee representation and consultation can help to increase employee participation in decision-making processes and better represent the interests of employees. Companies can also benefit because greater involvement of employees in decision-making processes can give them a better understanding of their needs and concerns. As a result, companies can ultimately develop better business and corporate strategies that also take workers' interests into account.

5. PARTICIPATORY WORKPLACE ARRANGEMENTS

The participation of employee representatives in decision-making processes and the establishment of crisis committees can help to mitigate the impact of the COVID-19 crisis on employees. However, this requires that employee representatives have the appropriate skills and knowledge to effectively perform their role. These include knowledge of labor law, corporate governance, and crisis management, as well as good communication and negotiation skills.

There are several ways in which worker representatives can participate in and promote workplace COVID-19 crisis. These include, for example, establishing regular meetings and exchange forums between employers and employee representatives, creating open channels of communication, training employee representatives in crisis management and governance, and establishing crisis committees.

It is important that employers and employee representatives work together to take appropriate measures to manage the COVID-19 crisis and minimize the impact on employees. In doing so, employee representatives should be actively involved in decision-making processes and be able to contribute their experience and knowledge. This can not only help protect workers' rights, but also help companies succeed in the long term and ensure sustainable job security. To encourage the participation of trained representatives in the workplace during the COVID-19 crisis, it is important that employers recognize and promote the importance of employee participation. Training and information sessions for employee representatives, as well as regular meetings between employers and employee representatives, can help achieve this.

Greater engagement in influencing management structures and procedures to address new COVID-19 crisis issues requires several skills. Here are some important skills.

Knowledge of business and management strategies: Employee representatives should be aware of their company's business and management strategies. Only then can they assess how these strategies affect workers and what changes are needed to better serve workers' interests.
Communication skills: employee representatives should be able to express their opinions and viewpoints clearly and concisely and present them in a way that management can understand and accept.

Negotiation skills: employee representatives should be able to negotiate with management to advance their concerns and interests. This includes the ability to compromise and find solutions that are acceptable to both sides.

Analytical skills: employee representatives should be able to analyze and interpret complex data and information to make informed decisions. This is especially important when assessing the impact of COVID-19 on the company and workers.

Social skills: employee representatives should have strong social skills to effectively interact and build relationships with others in the organization. These include empathy, respect and the ability to work constructively with others.

Strategic thinking: Employee representatives should be able to think strategically and consider the long-term impact of decisions and changes on the company and employees. This is particularly important when dealing with COVID-19 crisis problems, as short-term measures can also have long-term effects.

In the survey conducted, in response to the question "What skills according to you contribute to greater engagement with management structures and influencing procedures, tackling new COVID-19 crisis issues?", there was majority agreement, 27 respondents, for "rethink ways of working". This was followed by agreement for "speed up and delegate decision making" with 22 respondents, and for "reshape talents" and "introduce hybrid work model" with 20 respondents each.

The graphic shows that the least agreed for variants such as "Frontline employees need to take more responsibility for execution, action and collaboration" and "Decision making - processes and procedures for decision making, documentation and record keeping". It means that respondents find these less effective or useful to implement. As employees, they might be afraid to take on even more responsibilities at the time that managers, as decision makers and accountable, actually have to take them on. It can be seen that the majority agreed more for more flexible options, which shows the tendency that employees want to work more mobile and want more flexibility. At the same time, this means that the arrangement with flexible working models is not very common and the majority of companies in Germany (from the respondents) opt for

Picture 1

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conservative management. Nevertheless, as the official statistics show, many have good experiences with the flexible working models and would like to keep them partially, especially the employees are satisfied with them.[7]

The concerns of the employers would be that if the employees work from home, they would be less productive or not really work, because the employers in the time lose control and do not see what they are doing at the moment. For this reason and in such companies would be advisable to organize activities that will strengthen team spirit and more trust between the employer and employees.

6. SURVEY ANALYSIS

As it was mentioned once above, a survey was conducted using Microsoft Forms. In this section of the report, the results are presented and analyzed.

There were 50 people surveyed who were given the link to a Microsoft Form. In the survey group there are 20 men, 18 women and 12 people did not want to specify the gender. Among this group there are 46 employees, 1 employer and 3 people who ticked other.

Respondents entered the following variant for the question Industry and Sector. The most frequent answers are tourism, restaurant business and economy. There is also an answer as "area", which doesn't exist, most likely it was entered to anonymize their field of work.

In the question of size from the company, 17 people have ticked SME, 14 50-100 employees, 13 100-1000 employees and 6 over 1000 employees. This shows that among the respondents there were more representatives of small and medium-sized enterprises, which is the majority in the economy in Germany.

As to whether a company is a member of a trade union, 49, or 99%, answered that their companies are not members of a trade union.

Respondents were also asked if they were familiar with legal and/or regulatory initiatives. The majority are not familiar with any initiatives or are unsure and only 10 respondents are familiar of them.
When asked about knowledge of European legislation, the majority answered that it is unknown to them and only 5 respondents answered "yes".

Similarly, on the next point, whether there is representation at the board level, the majority also answered "no" or "I don't know" and only 3 respondents answered "yes".

[7] https://moneytransfers.com/de/news/2023/01/30/homeoffice-statistik, 26.04.2023.

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8. 1.1 Kennen Sie rechtliche und/oder regulatorische Initiativen in Ländern, in denen Anpassungen im Zusammenhang mit COVID-19 üblich waren?
- nationale

Weitere Details | Einblicke

ja	10
nein	32
ich weiß nicht	8

9. - Europäische Gesetzgebung/Richtlinien zur Regulierung der Beteiligungsrechte von Arbeitnehmern im Zusammenhang mit COVID-19

Weitere Details | Einblicke

ja	5
nein	39
ich weiß nicht	6

10. - Vertretung auf Vorstandsebene

Weitere Details | Einblicke

ja	3
nein	36
ich weiß nicht	11

When asked whether there are any regulations or agreements on employee participation specific to the public sector in Germany, regardless of the Labor Code or general laws, the majority voted for "no" or "I don't know". It means that these laws are unknown to employees or that the information campaign with the aim of informing the population was not conducted or didn't reach respondents.

31 of respondents do not have the right to elect or appoint a member or a number of members of the company's supervisory board/board of directors. Still 9 are unsure if they can do it and only 4 are allowed to do it. This shows at which business organizations they work, because depending on the organization either there is a supervisory board or not, they may or may not elect the board of directors. Since the majority are from rather smaller companies, it is understandable why they answered this question this way.

16. 2.4 Haben die Arbeitnehmervertreter auf Vorstandsebene in Ihrem Unternehmen eine relevante Rolle bei der Bewältigung der COVID-19-Krise und der Erholungsphase nach der Krise gespielt?

Quite interesting will be the next question, whether the employee representatives at board level in your company played a relevant role in the management of the COVID-19 crisis and the recovery period after the crisis. There the majority agreed with 32 votes for "no", 15 are unsure and only 3 agreed for "yes". As it results from the questions before, there are different business organizations and size. For these reasons sometimes the companies do not have employee representatives or a board of directors, which excludes their activity in the company.

The situation is similar for the next questions, which also ask about the role of employee representatives. There the majority has evaluated these questions quite negatively, since these do not address or concern them.

The absolute majority believes that employees are passive recipients of information. It means that the management only communicated the news in the company and did not ask for opinions or discuss new measures.

However, what seems surprising is that the same respondents were more positive about the "processes of consultation". This means that employees are more or less satisfied with the way of communication.

When asked whether managers communicate with workers individually, respondents have answered exactly 50%/50%. In some companies, meetings are more common and in the others, more individual conversations are practiced. Similar to the question about satisfaction before, the majority is more or less satisfied with this type of communication/consultation processes. Compared to a group collective conversations, we can see that the majority agreed for collective conversations. And the satisfaction with the communication here is even higher than with the question before, which shows the tendency to receive the news and messages impersonally or collectively and not to be addressed personally.

Here you can see more graphics where the possibilities of influence are shown and how the respondents reacted to these statements. You can see that employees believe that individual influence on employers is possible despite collective communication. In the case of Collective Influence, it is equally very interesting that the majority agreed with "yes" because just as the majority do not have employee representatives in their companies. It means they think that they generally help without having their own experience or evaluating the experience from the past.

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27. - individueller Einfluss der Arbeitnehmer

28. - kollektive Einflussnahme durch Arbeitnehmervertreter

29. - andere Formen - welche?

30. 4.1 Gibt es auf Unternehmensebene (geschulte) Vertreter, die den Erholungsprozess nach der COVID-19-Krise unter den Arbeitnehmern fördern?

On the question of having trained or untrained representatives in the company who participate and stimulate workplace, the majority ticked "no". It means that the companies consider such representatives irrelevant or this possibility and the need itself is unknown to them.

In summary, some questions are formulated in such a way that they exclude the self-employed employees or, if they do not have employee representation in the company, they have to answer other questions that are irrelevant for these employees. Many questions have the goal of asking the knowledge of the employees, which varies from case to case and not everyone knows, for different reasons, what laws or regulations there are. Nevertheless, such a survey helps to make an average picture of how the situation looks in Germany and where more or less need for information or training exists.

7. IN-DEPTH INTERVIEW ANALYSIS

10 in-depth interviews were conducted online and also entered into the Microsoft form by the moderator. Most of the participants were men and all of them were employees. It must be said that it is a challenge to motivate people to complete the survey and especially to give in-depth interview. Most of the reasons are that the participants are very busy with work and do not have time to give an interview. Nonetheless, we managed to reach the number of 10 interviews.

The sectors of interviewees are: Education sector, Tourism, Hospitality, Business, Services and Logistics. The votes in the size of enterprises such as micro, small and medium enterprises are almost evenly distributed.

Unanimously, all 10 respondents have answered that the companies where they work do not belong to any trade union and from this results the next answer, also unanimously, that they have no presence of trade unions. It means that among the respondents, the workers' rights to consultation and advice at the level like trade union are not protected. It also means that the workers who were interviewed are not members at the trade unions.

According to the statements of the interviewed participants, the economic situation in the recovery phase has recovered or improved either slowly or quickly, or is still in the process of doing so. Those who said that the situation is developing rather slowly, they are from the companies where they have to plan the services in the long term, which makes the business difficult in the short term. In the industries such as tourism or hospitality, the respondents said that the business started either quite quickly or rapidly and they had a lot of customers immediately. What almost all respondents confirm is that due to rising energy costs, services are also becoming more expensive and therefore not affordable for everyone or not as before. In these industries, the shortage of skilled stuff is particularly noticeable: during the lockdown, many people were fired or quit themselves and found new job. This makes ongoing day-to-day operations more difficult, as new staff cannot be found. Another problem with supply chains was also cited for the recovery phase. Just as much staff has left from areas such as logistics and transportation and they cannot keep up with the orders.

It can be summarized that the economic situation is still recovering, depending on the industry, the speed of recovery is different. One has not come to the pre-pandemic indicators, however, one is on the way. The forecast of the situation is at least positive.

All respondents are not aware of any legal or regulatory initiatives to protect workers or these measures have already been lifted. We are in the spring of 2023 and the last restrictions were lifted

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house meeting. There were companies where such meetings were organized regularly and sometimes in a hybrid format. In some there was an opportunity to discuss the news and in others workers were purely passive recipients of information. There were also voices where workers were gathered within the framework of a department and discussed among themselves the issues and concerns. There was also an example where consultations took place, where workers could talk quite openly and their voice was listened to.

The question about consultation mechanisms to achieve results in different sectors was answered rather by almost everyone. The tendency is that workers in Germany only want to speak for themselves and cannot judge other sectors. For this and other reasons, some simply communicated "no" they are not aware of any consultation mechanisms. Other respondents have said that there should be or is a contact person in each sector.

Two other questions were answered negatively by all. The question about whether one knows of other forms of engagement and all said that they do not know of such. Similarly, the question about (trained) representatives to promote certain skills among workers was answered negatively. It is said that there are no trained or even untrained representatives among them as it was mentioned once above.

The last question on skills has given very similar feedback. Everyone feels that communication plays a very important role. It should encourage open dialogue, not monologue, so that all parties can share their honest opinions and certain issues can be discussed so that everyone will be satisfied with the decision. The team meetings and team actions can increase the trust in the whole team and the flexibility should always be there.

8. CASE STUDIES

A case study analyzing best practices versus unsuccessful initiatives to exercise workers' rights to information, participation and consultation in the German context can provide valuable insights.

Successful practices:

Transparent communication: a company has established an open communication culture where workers are regularly informed of relevant information related to the COVID-19 crisis. This includes providing updates on company performance, job security, and new policies.

Recommendation: other companies should adopt transparent communication as a best practice and ensure that information is communicated regularly and clearly to workers.

Active employee participation: one company has involved employee representatives in the decision-making process and held regular consultations with them. Employee representatives

have been involved in the development of policies and measures to ensure that the interests of employees are appropriately taken into account.
Recommendation: companies should actively involve employee representatives and take their opinions and suggestions into account in decision-making. This can lead to greater acceptance and support for measures.
Unsuccessful initiatives:
Insufficient information dissemination: in another company, information dissemination to workers was neglected. Workers received no or insufficient information about the impact of the COVID-19 crisis on the company and their jobs. This led to uncertainty and mistrust.
Recommendation: companies should ensure that information is provided to workers in a transparent and timely manner. Clear communication about the impact of the crisis and the planned measures is crucial to avoid uncertainty and mistrust.
Lack of involvement of employee representatives: In another company, employee representatives were not sufficiently involved in decision-making. Decisions were made by management without taking employees' opinions and concerns into account, leading to dissatisfaction and resistance.
Recommendation: companies should ensure that employee representatives are actively involved in decision-making processes. Their experience and insights can provide valuable input for developing policies and managing crises.
Lack of employee representatives at the company level: employees should organize themselves into a works council so that their rights can be represented and protected at the decision-making level. Collective influence is more effective than individual influence.
The case study illustrates that transparent communication, active employee participation and appropriate information sharing are crucial to successfully exercising employees' right to information, participation and consultation. Companies should adopt best practices and ensure that they protect workers' interests.

9. CONCLUSION

The report addresses the issues of worker participation, information and consultation, and good governance in the midst of the COVID-19 crisis and recovery period. Through the analysis of research findings, surveys, and in-depth interviews, important insights were gained.

The analysis shows that transparent communication, active worker participation, and appropriate information sharing are critical to effectively exercising workers' rights to information, participation, and consultation. Companies should establish an open communication culture and provide regular updates to avoid uncertainty and mistrust. Employee representatives should be actively involved in decision-making processes to ensure that their opinions and suggestions are properly taken into account.

In addition, initiatives and agreements have been identified that have the potential to protect workers and companies during the recovery phase of COVID-19. Social partner dialogues at the European level, as well as national agreements, have been identified as ways to address real problems faced by workers and businesses.

The European Commission and national authorities should put more emphasis on the publicity campaign to reach the beneficiaries. Without it, workers will not know if and how they can protect their rights or use certain influence mechanisms.

The conclusions emphasize that companies should adopt best practices to promote worker participation and engagement. Good corporate governance based on transparent communication, active worker participation, and appropriate information sharing is critical to managing the impact of the COVID-19 crisis and achieving a successful recovery phase. Mechanisms such as worker representation, crisis committees, and social partner dialogues can help address issues and strengthen worker participation in decision-making.

Overall, the report provides a comprehensive analysis of the issues of worker participation, information and consultation, and corporate governance in the midst of the COVID-19 crisis. It provides valuable insights and recommendations for companies to improve their work environment and successfully emerge from the crisis.

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