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**Atypical**

employee involvement of atypical  
workers – example of service sector

# COMPARATIVE REPORT

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**A COMPARATIVE STUDY BASED ON THE REPORTS OF THE SOCIAL PARTNERS FROM THE FOLLOWING COUNTRIES:**

BULGARIA

SPAIN

POLAND

SERBIA

SLOVAKIA

ITALY

**TABLE OF CONTENTS:**

<b>1. Introduction .....</b>	<b>2</b>
<b>2. Characteristics of atypical employment .....</b>	<b>2</b>
<b>3. Analysis of survey results.....</b>	<b>6</b>
<b>4. Conclusions from the qualitative research .....</b>	<b>23</b>
<b>5. Conclusion.....</b>	<b>31</b>



## **1. Introduction**

The main objective of the project “Atypical. Employee Involvement of Atypical Workers – Example of Service Sector” is **to diagnose and understand the needs of atypical (flexible) workers and to find appropriate solutions to enable them to exercise their rights to information, consultation and participation at national and international level.** In particular, the group working in services is concerned, as the diversity of activities and the multiplicity of industries in this sector of the economy make it possible to choose different ways of working together. Atypical, flexible forms of work are currently developing as a result of the radical changes in the way the European economy and society operate. The network of links in international markets for goods, services, capital and labour is expanding rapidly. Trade is increasing, foreign investment is expanding, and production processes are being decentralised to take advantage of cost differences between regions. Strong business linkages and networked organisational structures based on intellectual potential and digital advances are emerging. Demographic, technological and cultural changes are transforming the labour market. The existing order and system of labour law must now find itself in a unified transnational model, subject to various transformations (competition, globalisation, computerisation) and phenomena (COVID-19 pandemic, war in Ukraine).

Given the speed and scale of the impact of many processes, it makes sense to focus on the issue of atypical employment, which in many cases is becoming standard and taking on the characteristics of normality. The complexity of forms of work and the different ways in which they are valued justify the need to consider the aspect of employee participation in matters relating to a company's personnel policy. This report presents a comparative overview of the main issues related to atypical work and employee participation. The analysis is based on national primary sources (legislation, documents, specialist literature) and the results of empirical research: quantitative (questionnaires) and qualitative (interviews) carried out among employers and employees in the service sector, complemented by the positions of the social partners.

## **2. Characteristics of atypical employment**

Employment in the countries of the European Union has undergone significant changes in recent years. Alongside the traditional model of work, alternative, atypical forms have begun to emerge, with varying degrees of similarity to the previous understanding and use of

the employment contract as an open-ended, full-time contract, performed at a fixed place and time, in a manner subordinate to the employer. The flexibilisation of employment is now widely seen as an integral part of the modernisation of the labour market and as an effective response to current problems such as rising unemployment, the shrinking number of jobs, the need for lifelong learning, the upgrading of professional skills and the longer working lives of an ageing population. In addition, technological innovation, a faster business cycle and other people's expectations have contributed to the development of atypical forms of work. They are attractive not only to employers, who see them through the prism of lower costs and higher productivity but also to workers who want to reconcile work and private life and organise their time more freely. While not always attractive, they provide access to previously unknown opportunities that generate income and allow experience to be gained.

Even though the term atypicality is used, the increasing application of some solutions fully justifies the argument that they are considered to be a normal way of working. **In order to clarify which forms of employment are considered atypical, it is necessary to identify the basic characteristics that define the classical employment relationship. These are indefinite duration, full-time employment, fixed working hours, fixed location (company premises), and direct management by the employer.** Different countries have different, sometimes identical or similar, types of contracts. They can be grouped according to certain criteria, such as legal basis, work organisation, duration, intermediation by a second party, and work tools (digital technologies). The table below gives an overview of the selected forms and their general characteristics.

### Selected forms of atypical work identified by the project partners

Form of atypical employment
temporary employment: fixed-term contracts, project- or task-based contracts, seasonal contracts
part-time and order (on-call) work: regular part-time (marginal) work; zero-hour contracts i.e. without fixed (guaranteed) working time
multilateral employment relationship: hiring out of workers by temporary employment agencies to user employers, provision of subcontracted services
hidden (bogus) employment: self-employment based on economic dependence; subordination to a single employer and the actual performance of tasks for him, with a much narrower scope of rights compared to a typical employee
freelancing: independent, actual carrying out of economic activity, professional (freelancing) - without being tied to a specific employer, performing work for freely selected contractors
working on digital platforms, i.e. performing services (individual tasks) via dynamic websites,



various forms of cooperation: B2B contracts, own business, commercial partnership, "offline" status, i.e. contract with an intermediary (logistics partner) rather than directly with a digital platform
remote working (teleworking), working at a distance using electronic means of communication to communicate and perform tasks
performance of works, project work, i.e. performance of tasks that are not the object of the activity of the employing employer, independent production, processing or repair of a specific physical or intellectual object

It should be noted that some atypical employment occurs in the grey area as informal cooperation between parties. Negative perceptions then arise as workers experience insecurity, economic instability, and inadequate working and pay conditions, while employers face more frequent staff turnover, lack of loyalty and reduced productivity. Disguised self-employment is problematic as a cheaper and less burdensome way for employers to carry out tasks assigned to people who should be bound by an employment relationship. This is evidenced by the conditions to which they must conform (fixed working hours and place of work), their subjection to the work process and the instructions given on an ongoing basis. The creation of a legal relationship other than a typical employment contract is unjustifiable in these circumstances and leads to unfair competition.

In Spain, everyone with an employment contract is covered by labour regulations, mainly collective agreements that cover entire occupational groups and regulate working conditions and participation rights. The complementary role of guarantor of workers' rights is played by the provisions of the Labour Code. In the absence of an employment contract, as in the case of freelancers or bogus self-employed workers, there is no minimum labour protection. According to the Spanish Employers' Confederation, atypical employment is only that which, by its nature, differs from the familiar and common models of work. In Italy, the difference between standard and atypical contracts is determined not only by the level of social protection of workers, but also by taxation (type of rate, deductions), the level and rules for collecting social security and health contributions, and regionalisation (promotion of specific employment). In Slovakia, flexibility is subdivided according to the legal basis on which contracts are concluded (employment contracts, commercial contracts) how work is organised and its duration. The most frequently mentioned are: fixed-term, short-term, task-based, subcontracting, and agency-based (agency contracts, orders). Self-employment is a special category and a manifestation of its abuse - bogus self-employment. The portfolio of atypical forms is completed by mobile work (telework), which, like platform work, depends

on modern ICT technologies. There is also staff sharing, which is a variant of part-time work. All these solutions are associated with different levels of stability, job security and the involvement of people in social dialogue processes.

The status of the worker gives the right to equal treatment, regardless of the type of contract used. This principle is violated when the differentiation of the situation of different categories of workers is due to the adoption of an inadmissible criterion by the employer. If decisions are based on objective considerations, there is no discrimination. This right cannot be exercised by persons who are not in an employment relationship, which formally worsens their legal position and excludes them from participation.

In Serbia, there are forms of employment that are regulated separately from the traditional employment relationship. These include casual and seasonal work. As a rule, they do not exceed 120 days and are used in certain industries (agriculture, forestry). They are subject to simplified rules defining the rights and obligations of the parties. Another type is temporary work, where the employing organisation is an agency that hires workers to provide work for the user employer for a fixed period. An open-ended contract is also allowed. Remote work, home-based activities or a shortened working week are examples of modifications of classical employment that intensified during the COVID-19 pandemic and made certain behaviours so widespread as to be considered typical. Extra work is a response to the need to earn money and develop one's skills. A different type of work contract is characterised by the independent production or processing of a specific physical or intellectual product. A specific form is dependent self-employment.

Platform work is very controversial as it is not regulated at the EU level and interest in it is growing due to the attractiveness of its provision (speed, availability, wide range of services), competitiveness (low costs, lack of social protection of contractors), use of modern digital technologies (usable computer software).

In Poland, the concept of atypical work is increasingly used to define different, flexible employment bases and forms of activity organisation. The terms and conditions of cooperation are set out in contracts, which may be named and regulated by law, or unnamed and freely drawn up by the parties. They are subject to two regimes: civil law and labour law, which govern the situation of employees. In the case of civil law contracts (contract of mandate, contract for the performance of a specific task), they are characterised by the autonomy of will and freedom to define mutual obligations. In practice, the principle of the

equality of the subjects gives way to the power of competition, mainly of the employers, who dictate the requirements and the possibilities of payment to their contractors. They provide work in a way that is typical of an employment relationship, even though formally there is a civil contract between the parties. When characterising employment contracts, their basic feature is the subordination of the worker in terms of place, time and manner of carrying out the assigned tasks. Due to the management and dominant position of the employer, the conditions of cooperation are subject to legal rationing. The general principle of freedom of contract is curtailed in favour of the mandatory protective provisions of labour law, which prescribe privileged treatment for the employee, guaranteeing him security in the broad sense of the term and at the same time transferring economic, production and personal risks to the employer.

### **3. Analysis of survey results**

One of the research activities of the project was to survey three freely chosen groups of respondents: atypical workers, trade union representatives and employers. A total of 377 responses were received, including 61 from Bulgaria, 61 from Spain, 62 from Poland, 80 from Serbia, 100 from Slovakia and 13 from Italy. The main issue was the recognition of atypical work. **This is still a major problem for most** (Table 1).

#### **1. Is it difficult to define the category of atypical workers (%)?**

Answer	Bulgaria	Spain*		Poland	Serbia*		Slovakia	Italy
		E	W		E	W		
Yes	52.5	74.2	63.3	56.5	43.6	93.3	30.0	69.2
no	26.2	6.5	20.0	32.2	30.9	3.3	55.0	30.8
I have no opinion	21.3	19.3	16.7	11.3	25.5	3.4	15.0	0.0

*\* In the case of Spain and Serbia, there are two organisations involved in the project, which have surveyed their members separately: employers (E) and workers and trade union representatives (W)*

**The forms of work that can be considered atypical are mainly those related to digital platforms, commission-based and service-based, casual (seasonal) and temporary agency work.** On the other hand, a fixed-term contract is considered atypical to a small extent - except for Slovak respondents (Table 2).

## 2. Which forms of work should be considered atypical and assigned to the category of atypical workers (%)?

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W		P	Pr		
Fixed-term (temporary) employment	32.8	19.4	13.3	14.5	14.5	20.0	73.0	4.0
agency work	44.3	41.9	60.0	56.5	40.0	76.7	92.0	12.0
teleworking (using electronic means)	45.9	54.8	20.0	35.5	34.5	43.3	42.0	8.0
work at home	55.7	41.9	5.0	45.2	30.9	40.0	59.0	8.0
work on digital platforms	63.9	54.8	40.0	64.5	43.6	66.7	94.0	12.0
part-time jobs	41.0	19.4	20.0	25.8	29.1	40.0	67.0	4.0
self-employment (based on B2B contracts)	52.5	48.4	40.0	54.8	29.1	46.7	86.0	6.0
casual (additional) seasonal jobs	27.9	54.8	46.7	58.1	34.5	40.0	73.0	22.0
contract work, provision of services	60.7	6.5	23.3	48.4	47.3	60.0	82.0	20.0

*The sum of percentages exceeds 100% as respondents could select more than one answer.*

Criteria of a legal, organisational and economic nature can help establish and share the definition of atypical workers. Respondents claimed that the most helpful way to identify atypicality is to **define the legal relationship between the parties**, i.e. to identify whether it is the legislation that applies to employees or whether it is civil (commercial) norms that apply to service providers. For some Serbian and Polish interviewees, the way work is managed in terms of place, time, organisation and independent cooperation with several entities is also very important in identifying atypicality. The Spanish representatives paid particular attention to the independence (autonomy) of the work, the Italian ones to the dimension of the employee's involvement (part-time) and the Bulgarian ones to the type (specificity) of the work (Table 3).



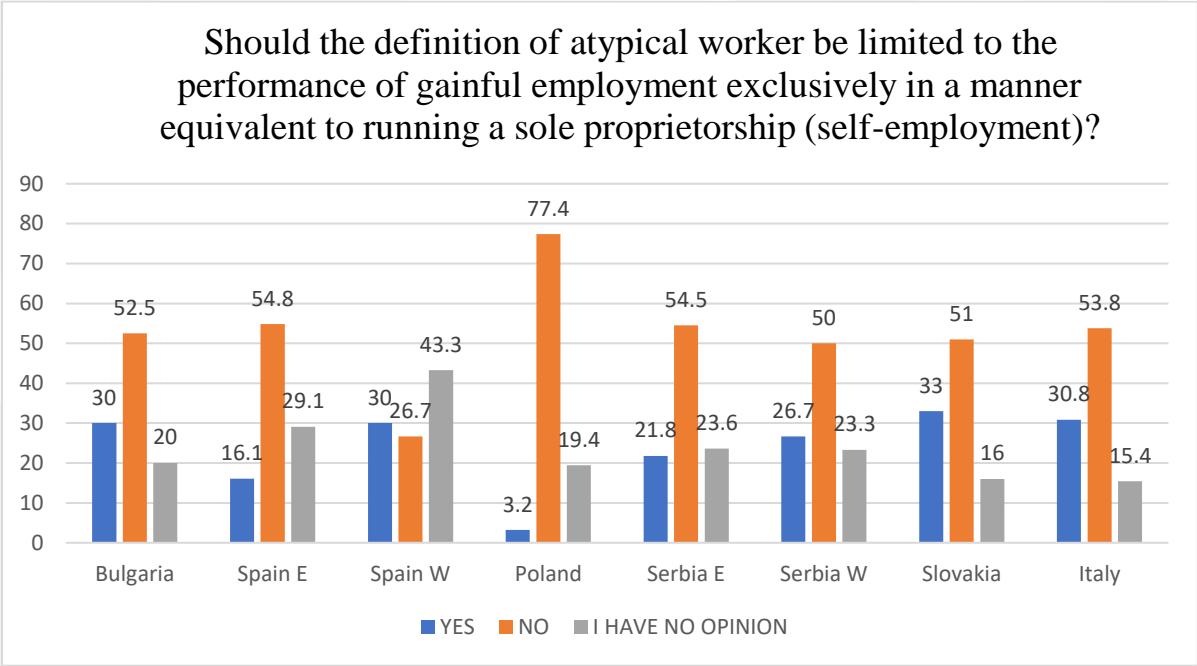
### 3. Which criteria can help define atypical workers (%)?

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W*		E	W		
type of legal relationship between the parties (labour law or civil law applicable to the contractor, service provider or work)	59.0	64.5	56.7	50.0	52.7	70.0	78.0	17.1
autonomy (independence) of work, no subordination to management, self-employment	47.5	58.1	50.0	50.0	32.7	23.3	53.0	8.6
type of work (specific nature of activities)	62.3	25.8	-	43.6	30.9	26.7	34.0	17.1
the way the work is organised in terms of place, time, organisation	49.2	41.9	30.0	54.8	52.7	50.0	67.0	17.1
extent of employee involvement (part-time; casual, complementary)	55.7	32.3	-	45.2	41.8	53.3	59.0	25.7
cooperation with several entities (no exclusive economic dependence on the employer)	27.9	41.9	30.0	59.7	20.0	26.7	43.0	5.7
free choice (autonomous decision) of the two parties to the cooperation agreement	24.6	29.0	30.0	38.7	29.1	13.3	65.0	8.6

*The sum of percentages exceeds 100% as respondents could select more than one answer. \* No calculations available.*

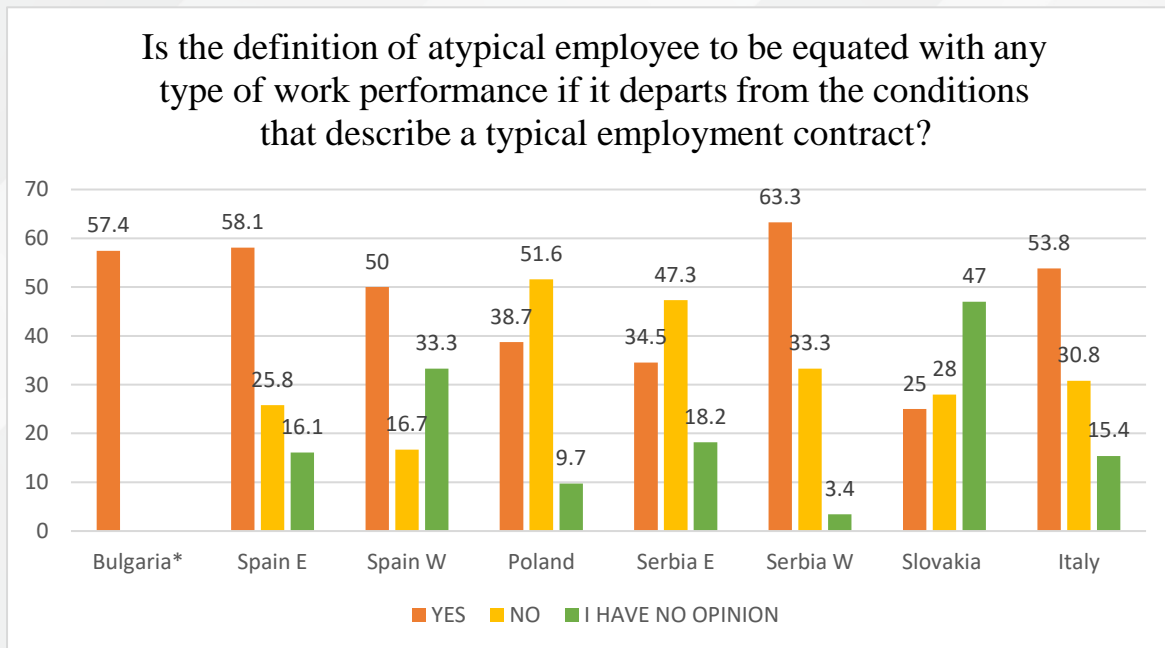
**The definition of an atypical worker is difficult to make unambiguous and at the same time universal.** It should certainly not be limited to the performance of paid work exclusively in a way that corresponds to the running of a one-person business (self-employment), with the contractor bearing the costs, risks and responsibilities. This is the view of the majority of respondents, especially Polish respondents (Figure 1).

**Figure 1**



There was no clear position on identifying the definition of an atypical employee with any type of work performance if it deviates from the conditions characterising a typical employment contract, i.e. it is for an indefinite period, full-time, at a fixed location, usually the registered office of the enterprise, under the direct supervision of the employer. The highest number of positive responses recognising such a distinction came from Bulgarian respondents, Spanish employers, and Serbian workers' representatives (Figure 2).

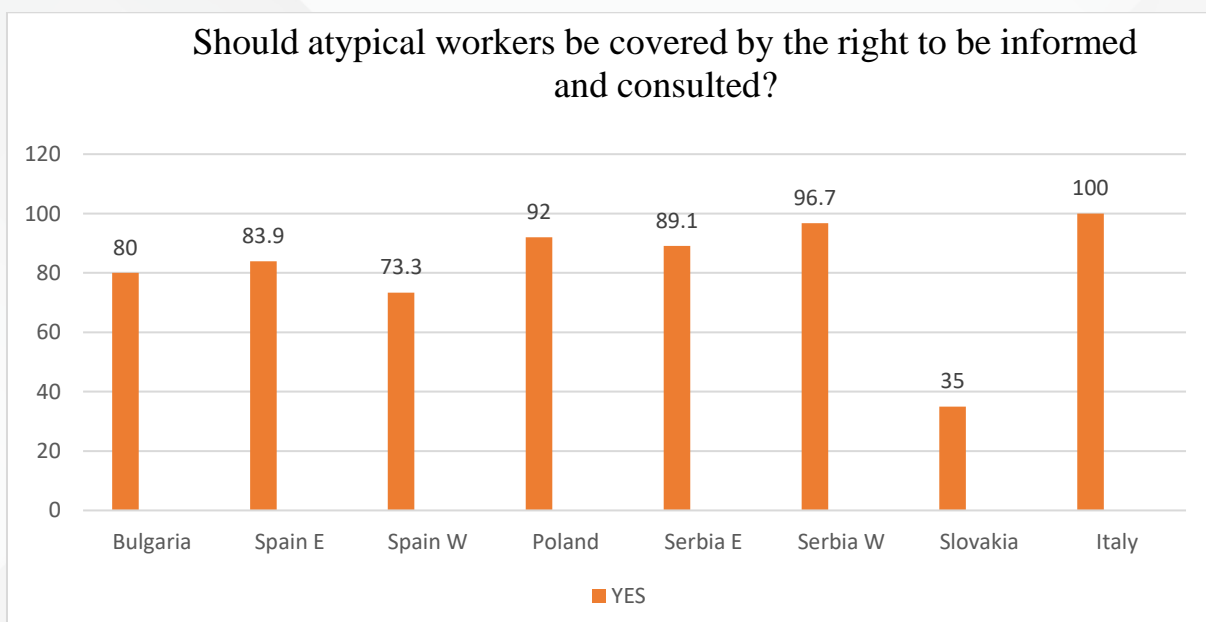
**Figure 2**



\* No calculations.

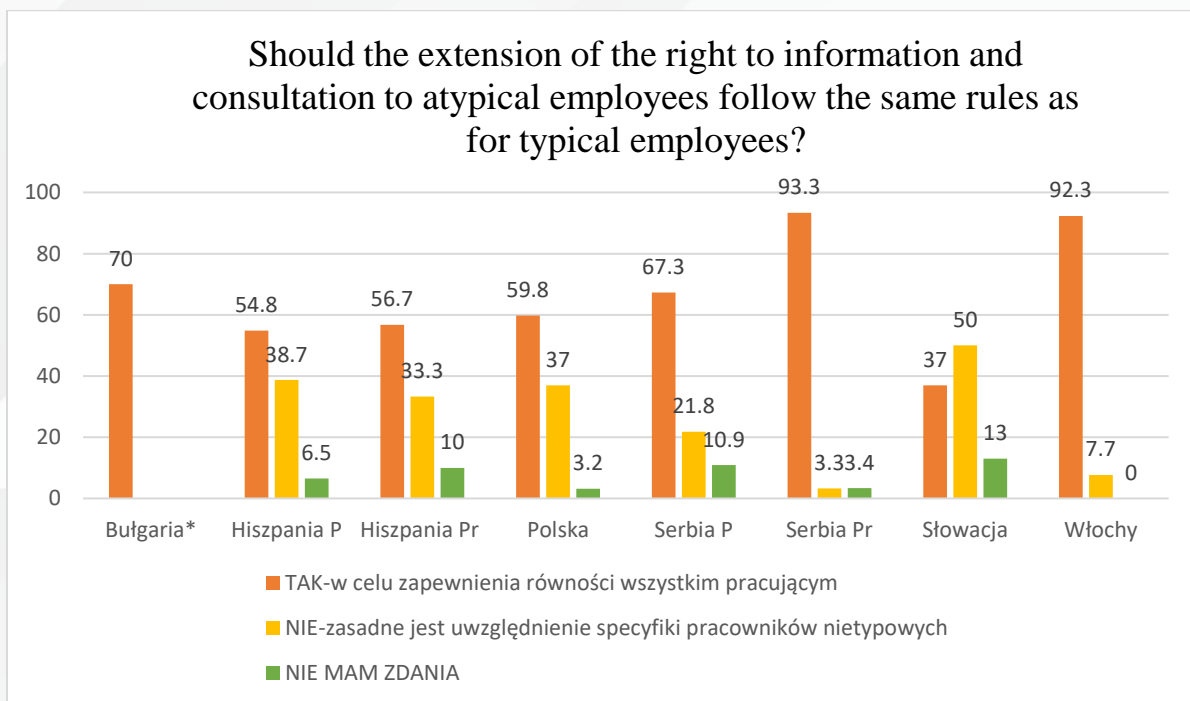
Despite doubts about how to correctly define the group of atypical workers, the vast majority of respondents felt that **they should be given the right to be informed and consulted**, and Italian respondents were unanimously in favour of this. Slovak respondents were 46.0% against it (Figure 3).

**Figure 3.**



Regarding **extending the same information and consultation rights to all, respondents felt that this was the right way to treat atypical workers.** They should be guaranteed participation under the same conditions as standard workers. By creating common norms, social dialogue is strengthened and a space is created for improving relations with the employer, regardless of the nature of the relationship between the parties. The Slovak respondents had a different view (Figure 4).

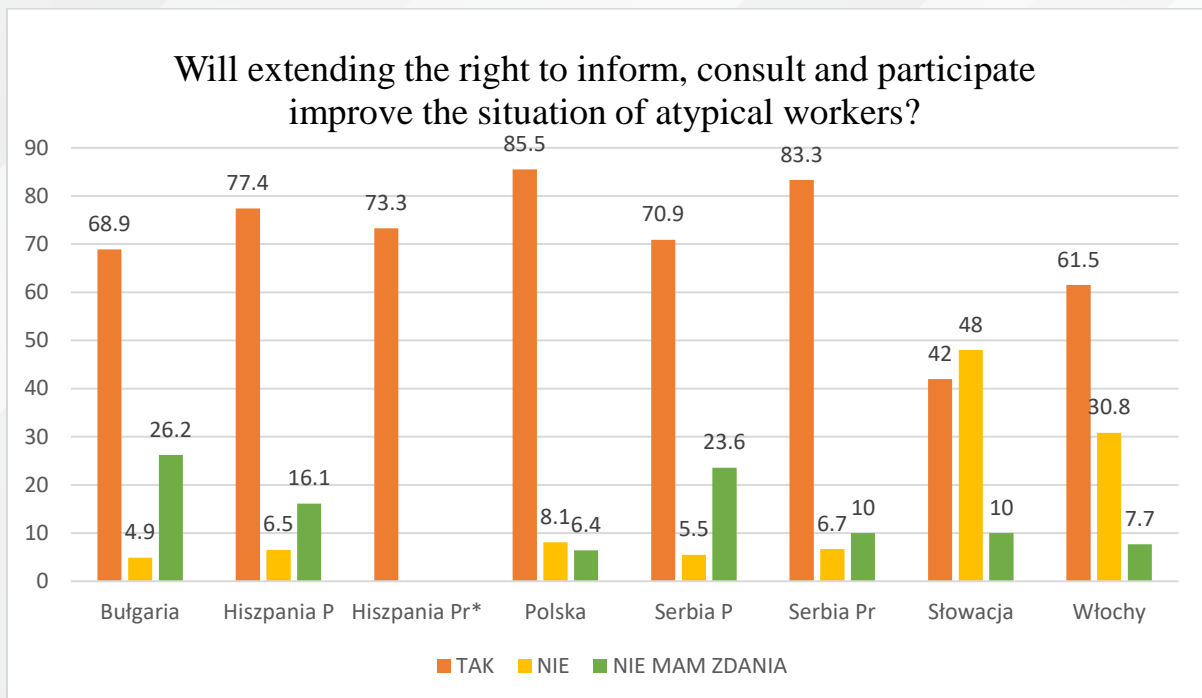
**Figure 4.**



\* *No calculations.*

The respondents were in no doubt, except for the Slovak group, **that the implementation of such participatory solutions would improve the situation of atypical employees in employment** (Figure 5).

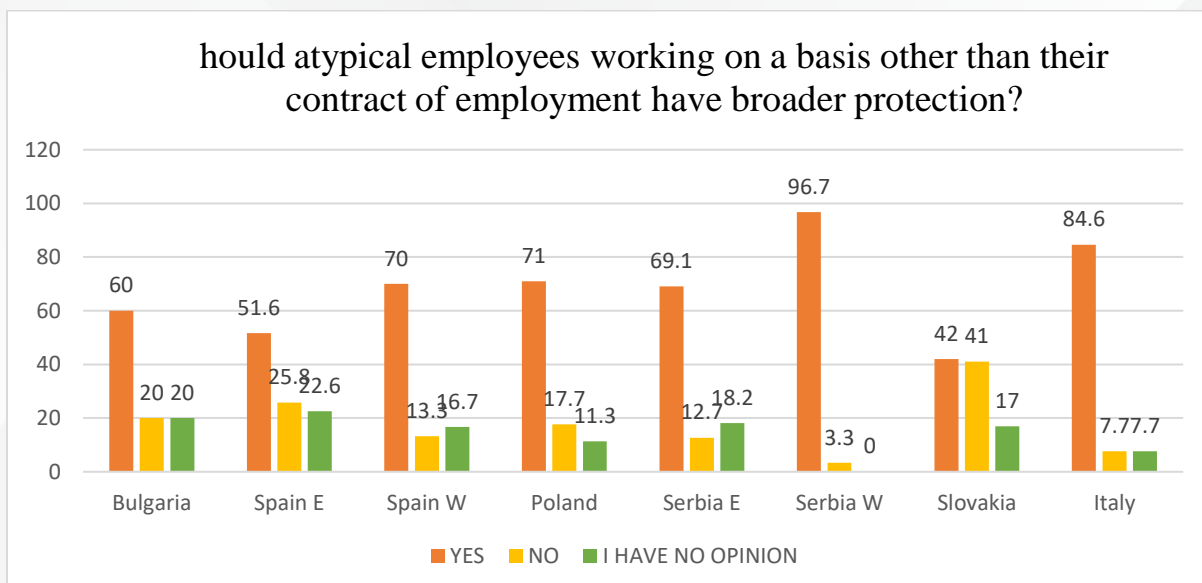
**Figure 5.**



\* No calculations.

The vast majority of respondents thought that **atypical workers working on a basis other than an employment contract should be given more employment protection than just the right to information and consultation**. Only in Slovakia was there a 50/50 split, which may indicate a different approach to granting rights to different groups of workers (Figure 6).

**Figure 6.**





As regards the range of information to be exchanged, if at all, between the employer and atypical workers, there was no single position. Italian, Serbian and Spanish respondents favoured a wide range of topics concerning the company's business and economic situation and expected changes in this respect. Bulgarian and Slovak respondents favoured a narrow range of topics, limited to the state, structure and expected changes in employment, if only about atypical workers. Polish respondents, on the other hand, opted for a standard approach referring to the activity and economic situation of the enterprise and planned changes concerning the employment of all employees (Table 4).

**4. Which matters should be covered by the right to inform atypical employees, i.e. to provide them with data enabling them to know about the matter (%)?**

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W		E	W		
all matters concerning the company's business and economic situation and anticipated changes in it (broad scope of issues)	21.3	45.2	46.7	33.9	41.8	63.3	33.0	41.2
matters concerning the company's activity and economic situation and the anticipated changes therein as far as they are related to the employment of the entire workforce (the typical form of the issues)	36.1	29.0	40.0	58.1	41.8	40.0	43.0	41.2
matters relating solely to the state, structure and anticipated changes in employment if they are related only to atypical employees (narrow scope of issues)	49.2	32.3	36.7	45.2	38.2	20.0	62.0	5.9
cases involving only activities that may result in significant changes to the work organisation or employment basis of atypical workers only (narrow scope of issues)	29.5	22.6	23.3	43.5	34.5	30.0	23.0	11.8

*The sum of percentages exceeds 100% as respondents could select more than one answer.*

When asked about the issues that should be discussed during consultations, understood as an exchange of views and dialogue between the employer and atypical workers, a **significant proportion of respondents** tended to adopt a narrow categorisation. They referred to activities that could lead to significant changes in the organisation of work or the employment base and affect the protection of the interests of atypical workers, rather than the entire workforce. A significant percentage opted for the standard approach, i.e. a catalogue of issues relating to the company's operations that have an impact on the situation of atypical workers (Table 5).

**5. Which matters should be covered by the right of consultation understood as an exchange of views and building a dialogue between the employer and atypical workers (%)?**

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W*		E	W		
all matters concerning the company's business and economic situation and the changes envisaged in this respect, if they are related to the employment of all employees - regardless of the type of cooperation established with them (broad coverage of matters)	23.0	32.3	36.7	29.0	38.2	60.0	31.0	69.2
matters relating to the business and economic situation of the enterprise and anticipated changes, if these are related to the employment of atypical workers only (standard coverage of matters)	36.0	45.2	46.7	42.0	34.5	20.0	30.0	23.1
matters related only to activities that may result in significant changes in work organisation or employment bases affecting the protection of atypical workers' interests (narrow coverage of matters)	41.0	22.5		29.0	27.3	20.0	39.0	7.7

\* 16,6% no answer.

The vast majority of respondents felt that **atypical workers should be able to participate through agreements or arrangements with their employer but to an extent commensurate with the size of their employment in the company and their impact on the business**. This is because it is very different when they are a small percentage and very different in terms of the realities and problems when they become a significant workforce resource (Table 6).

**6. Should atypical workers be able to co-determine, i.e. make agreements, and agree on activities with the employer (%)?**

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W		E	W		
yes - the participation role of atypical workers should be strengthened	14.5	35.5	40.0	35.5	36.4	63.3	32.0	38.5
no - the participatory role of atypical workers should not be strengthened; their level of participation should be low	20.0	9.7	20.0	8.1	16.4	3.4	37.0	15.4
the participatory role should be appropriate to the size of the atypical workforce and their impact on the business	65.5	54.8	40.0	56.4	47.3	33.3	31.0	46.1

According to the respondents, **several matters may be of interest to atypical workers and subject to social dialogue with the employer**. No single most desirable issue was singled out, which may reflect the complexity of the topic and the many areas that need to be addressed (Table 7).

**7. What specific matters are likely to be of most interest to atypical workers in terms of information, consultation and participation (%)?**

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W		E	W		
development of the company's activities and opportunities for transition to atypical employment	32.8	64.5	53.3	48.4	40.0	63.3	73.0	10.3
the economic situation of the enterprise and the	34.4	61.3	30.0	53.2	52.7	50.0	68.0	5.2

possibility of improving atypical working conditions								
employment situation and structure, including anticipated reductions in atypical workers	41.0	51.6	30.0	64.5	40.0	56.7	65.0	12.1
increasing the level of protection of the legal relationship (basis of atypical employment) against dismissal	41.0	54.8	66.7	50.0	40.0	60.0	53.0	8.6
improving pay conditions (minimum wage guarantee)	47.5	51.6	56.7	66.1	43.6	60.0	54.0	12.1
ensuring higher health and safety standards	44.3	48.4	50.0	48.4	45.5	66.7	38.0	10.3
changes in work organisation, management of atypical workers	52.5	61.3	30.0	56.5	40.0	30.0	69.0	6.9
increase in social advantages (benefits)	34.4	38.7	36.7	40.3	41.8	36.7	43.0	3.5
access to training and upgrading of professional skills	49.2	67.4	40.0	56.5	54.5	60.0	77.0	8.6
equal access to employee entitlements, combating discrimination	26.2	48.4	40.0	66.1	50.9	56.7	38.0	10.3
representing the collective rights and interests of atypical workers	13.1	29.0	40.0	40.3	38.2	70.0	32.0	12.1

*The sum of percentages exceeds 100% as respondents could select more than one answer.*

When asked about the level of regulation that would be most beneficial to meet the expectations of atypical workers in terms of information, consultation and participation, respondents indicated that national regulations were **the best guarantee for the application of minimum standards**. Only the Slovak and partly Bulgarian respondents were in favour of regulations adopted at the company level considering that they best identify the needs of the parties in the company (Table 8).

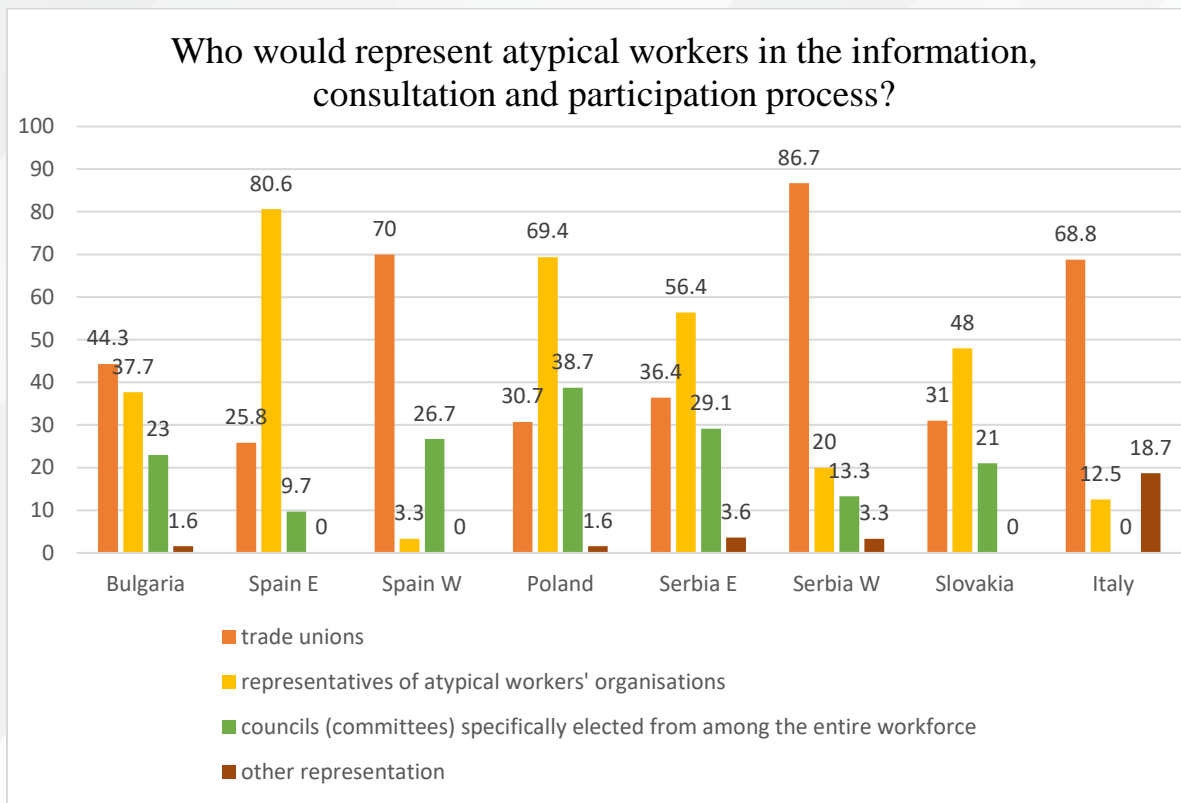
**8. At which level of regulation can atypical workers' expectations of information, consultation and participation be best met (%)?**

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W		E	W		
general national regulations that generally set minimum (general) requirements for the right of participation, taking into account the situation in the country	36.1	41.9	46.7	46.8	43.6	60.0	15.0	53.8
specific regulations (agreements, contracts) at branch or regional level by representative trade unions and employers' organisations	26.2	25.8	40.0	37.1	29.1	30.0	42.0	38.5
company-based solutions identifying the needs of company stakeholders	37.7	32.3	13.3	16.1	27.3	10.0	43.0	7.7

The representation of the interests of atypical workers should be the trade unions. This is the overwhelming view of Italian, Spanish and Serbian employee respondents. The remainder favour separately elected representation for this group of employees (Figure 7).

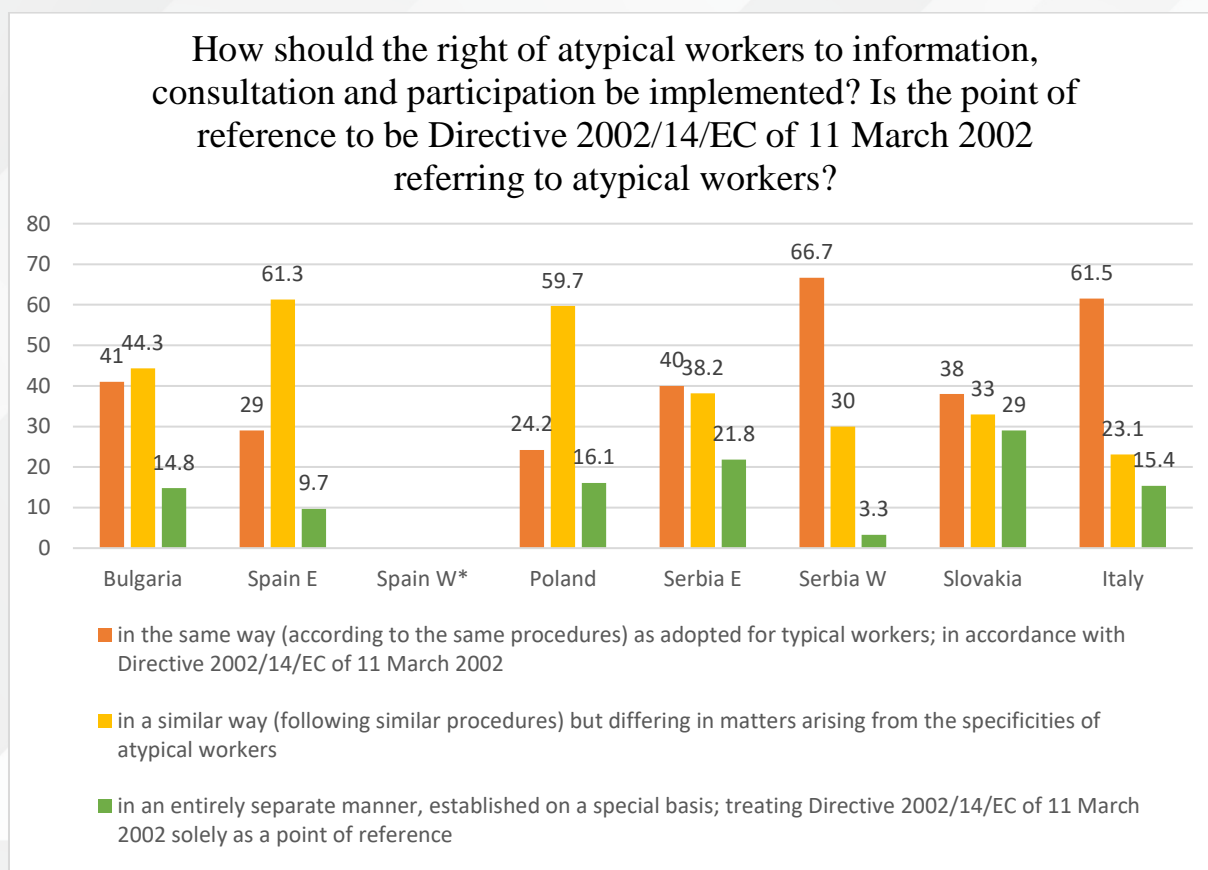


**Figure 7**



The legal instrument that normalises the right to participation is Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. Concerning atypical workers, the question arises as to whether this can be the starting point for the adoption of solutions specific to this group. Italian, Slovakian and Serbian respondents believe that it is justified to regulate participation in the same way as in the Directive (with analogous procedures) and to cover all employees with a single piece of legislation. For Polish and Bulgarian respondents, it is necessary to take account of atypicality and to establish the right to information and consultation according to similar, but not identical, rules. This was also the view of the Spanish employers' representatives. The fewest statements were in favour of adopting completely separate, specific standards (Figure 8).

**Figure 8**



\* No data available.

Concerning **the obstacles to the realisation of the right to participation of atypical workers, the main reason is the lack of regulations setting out the rules for exercising this right.** According to Slovak respondents, ineffective social dialogue is also a problem, while Spanish respondents also highlighted the lack of adequate representation of atypical workers (Table 9).

**9. What barriers might hinder the realisation of atypical workers' right to information, consultation and participation (%)?**

Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W*		E	W		
lack of legal regulations defining the rules for the participation of atypical workers	52.5	64.5	70.0	77.4	72.7	93.3	60.0	38.2
lack of adequate representation on the part of atypical workers	41.0	64.5	70.0	51.6	36.4	40.0	48.0	0.0

ineffectiveness of social dialogue (employer's failure to keep agreements, entering into collective dispute)	37.7	12.9	17.0	32.3	34.5	63.3	67.0	11.8
lack of good practice	50.8	19.4	-	43.6	43.6	60.0	57.0	11.8
lack of interest in the right to information and consultation by atypical workers	32.8	41.9	23.0	38.7	36.4	46.7	59.0	5.9
limited knowledge and experience of atypical workers	26.2	29.0	30.0	41.9	34.5	30.0	45.0	8.8
the unfavourable attitude of the employer, fear of additional duties	24.6	25.8	30.0	58.1	32.7	46.7	37.0	11.8
specific nature of atypical employment (flexibility, job instability)	34.4	41.9	17.0	48.4	36.4	16.7	57.0	5.9
lack of trust, reliability, responsibility	19.7	9.7	-	25.8	27.3	33.3	45.0	5.9
additional costs, risk of duplication of the employee representation system	19.7	32.3	-	25.8	21.8	16.7	64.0	0.0

*The sum of percentages exceeds 100% because respondents could select more than one answer. \* No calculations available.*

**When analysing the strengths of participation**, the majority of Spanish, Polish and Serbian respondents considered that **one of the qualities encouraging its implementation is the impact on improving the conditions of atypical work**. Mutual responsibility for the activities and development of the company is important, which was also pointed out by the Spanish group. In addition, there is the integration of all employees and the levelling of opportunities, which was emphasised by the Italian respondents. In contrast, the Bulgarian representation was in favour of a better understanding of the parties' interests, not only of labour but also of an economic nature. The least appreciated incentive to encourage participation was found to be the role of trade unions and support for their activities (Table 10).

#### **10. What can encourage the realisation of atypical workers' right to information, consultation and participation (%)?**



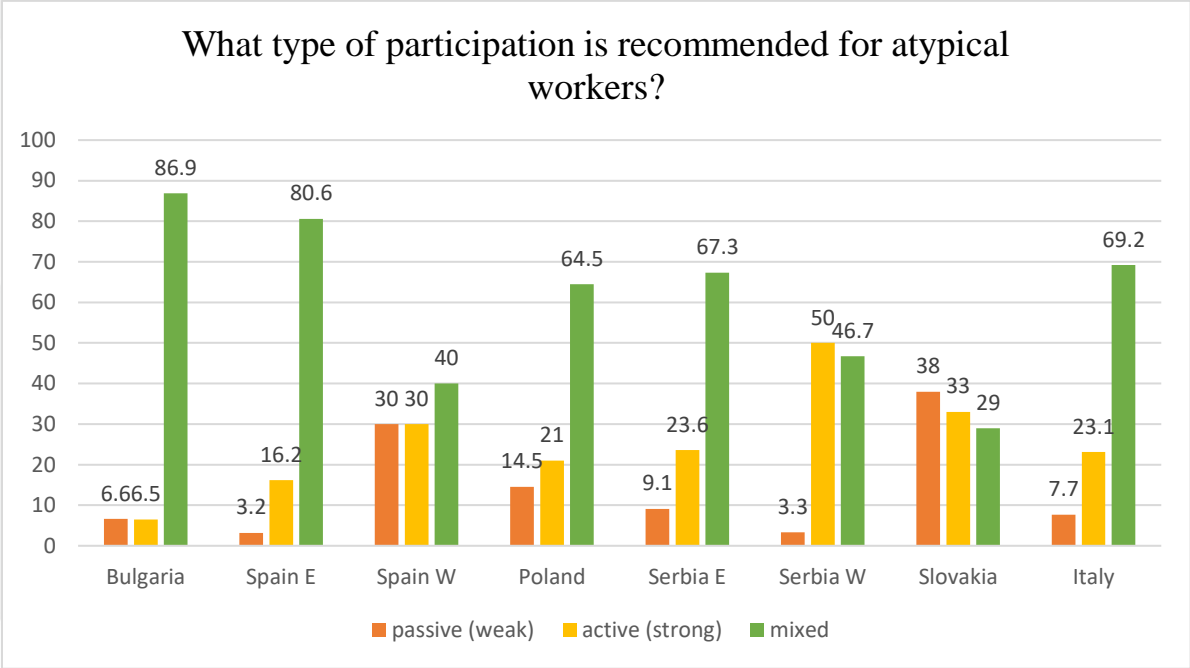
Answer	Bulgaria	Spain		Poland	Serbia		Slovakia	Italy
		E	W		E	W		
mutual responsibility for the operation and development of the company	36.1	58.1	55.0	40.3	34.5	30.0	54.0	14.3
impact on the improvement of atypical working conditions	39.3	48.4	55.0	69.4	50.9	60.0	61.0	17.1
integration of all employees, equal opportunities, empowerment of atypical workers in employment	54.1	41.9	55.0	48.4	45.5	60.0	42.0	20.0
better understanding of the parties' interests, not only of a labour nature but also of an economic nature	55.7	51.6	24.0	54.8	47.3	56.7	68.0	11.4
preservation of social peace, transparency and prioritisation, strengthening of dialogue	29.5	45.2	24.0	41.9	29.1	33.3	43.0	5.8
greater influence of atypical workers on the functioning of the company, provision of ideas, innovations	23.0	22.6	24.0	58.1	23.6	23.3	41.0	8.6
support of trade union activities, strengthening of social control	11.5	9.7	24.0	22.6	14.5	60.0	32.0	11.4
acquisition of knowledge and experience by atypical workers	36.1	48.4	24.0	41.9	34.5	30.0	59.0	11.4

*The sum of percentages exceeds 100% as respondents could select more than one answer.*

**The recommended type of participation is mixed**, thus depending on the type of issue and the achieved position of atypical workers in the company. The greater their number and impact on productivity, the stronger should be the power to influence the employer. Conversely, a small scale justifies limited cooperation. In second place is the active (strong)

model, understood as participation in decision-making, and agreement-making. The least attractive is the passive (weak) model consisting of exclusive information transfer (Figure 9).

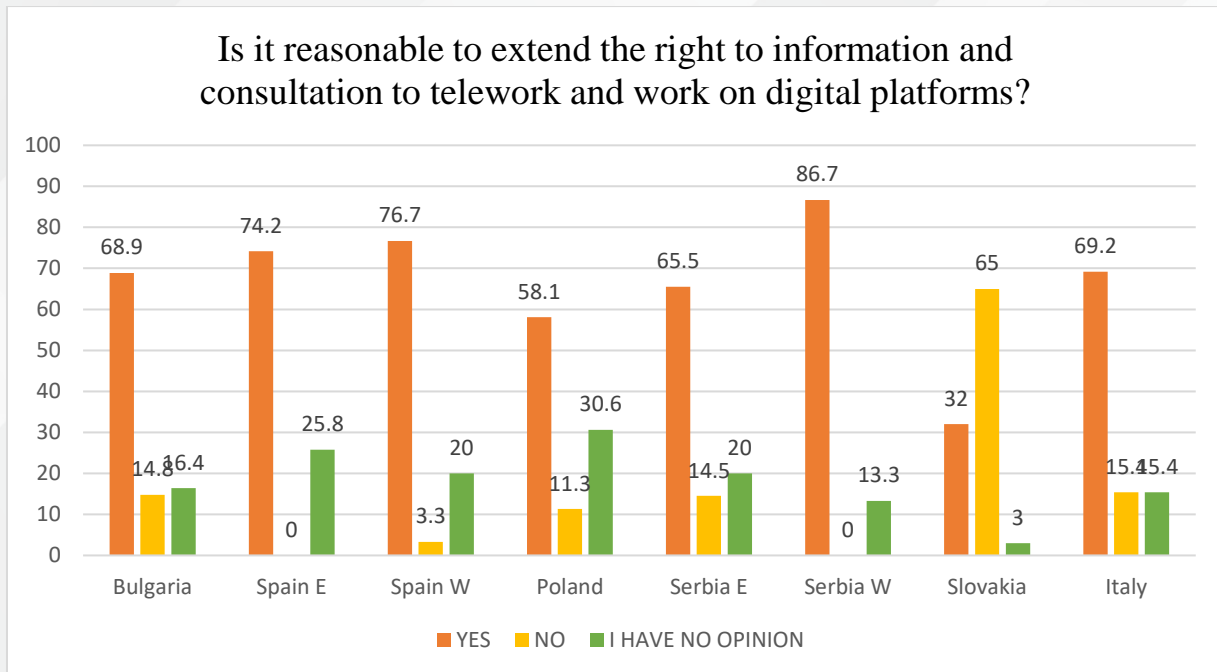
**Figure 9.**



In light of the recent growth in remote working and work on digital platforms, it was interesting to find out respondents' views on the appropriateness of extending the right to information and consultation to those employed in these forms of work. Although they are not standardised at the Community level, practice shows how rapidly they are developing as a result of technological advances, in particular digitalisation, and the changing business environment. According to the vast majority of respondents, the **participation of those working at a distance and through dynamic websites should be ensured**, as in many cases contractors should be subject to the rules on the employment of workers. Only the Slovakian representation took a different view (Figure 10).



**Figure 10.**



#### **4. Conclusions from the qualitative research**

In the first half of 2002, interviews were conducted with representatives of the social partners in all the participating countries. According to the methodology adopted, at least 10 interviews were carried out in each of the eight organisations based on a standardised questionnaire covering five thematic areas, i.e.: a) identification of the concept of atypical workers; b) implementation of the right to information, consultation and participation; c) extent and manner of identifying the needs of atypical workers; d) establishment of the right to information, consultation and participation; e) good practices, recommendations.

##### **a) Identifying the concept of atypical worker**

Respondents confirmed that the term "atypical worker" is known (associated) but raises questions due to its ambiguity. For some, the term sounds even more foreign because it does not appear in the legislation. Different criteria justify the recognition of atypicality, which causes problems when trying to make a classification. Certainly, the will of both parties and the agreed terms of employment are important. If they deviate from the standard employment relationship associated with indefinite and full-time employment, a fixed location and strictly defined working hours, then one can speak of a different, flexible employment formula. Moreover, the economic, social, technological and organisational changes of the modern world are giving rise to entirely new and innovative ways of

performing tasks. The existing legal concepts no longer correspond to the current reality and there is a need to revise the work paradigm.

According to Serbian interlocutors representing the labour side, all those who have unstable work, despite the systematic need for it, should be treated as atypical employment and not often function in the grey zone, as exemplified by services provided through digital platforms (drivers, suppliers). One criterion that should be taken into account when trying to create a definition is the precarious nature of the work. What is meant is precariousness, so it should not be confused with the temporality of the contract (temporary, casual, seasonal). According to the Serbian employers' representatives, the category of atypical workers consists of people who do not have a permanent job, have a temporary job, casual work, platform work, project work, work at home and as a group of unregistered people. The Serbian trade union representative stressed that some jobs are not necessarily atypical, as they have become popular and there is still a visible tendency to spread them further (remote working). So it is not just about new, emerging forms of employment, but also about existing ones that can easily be adapted to the needs of the modern market. How they should be regulated remains an open question. Trade unions believe that all types of atypical work should be covered by an employment contract. Employers, on the other hand, advocate the existence of several bases, depending on the specificities and criteria that identify the type of work and the group of people doing it (young people).

Italian respondents considered the definition irrelevant, although they identified atypical workers as those who are not guaranteed the rights and benefits available in the company where they work. They gave the example of people who work from home using modern technology. On the other hand, Slovakian interviewees associated atypicality with tasks provided by temporary work agencies, online platforms and electronic means of communication. On the other hand, they did not identify fixed-term or part-time work because of its widespread use by employers. This means that some forms of work that until recently were considered substandard are becoming the norm and warrant a more comprehensive approach to worker protection. However, it is not easy to reconcile the interests of the social partners in the face of differing expectations, in particular the reconciliation of flexibility and short-term employment with job security, the provision of benefits and involvement in dialogue processes. The uncertainty of companies' operations in a difficult business environment (COVID-19 pandemic, fuel crisis and inflation) is not conducive to investment in and care for ever-better working conditions. Hence the emerging accusations from

employee representatives that the negative effects of change are being passed on to them. At the same time, certain solutions are desirable from their point of view (remote working, flexitime, part-time work to reconcile work and private life).

**b) The implementation of the right to information, consultation and participation**

Respondents unanimously confirmed that atypical workers should have the right to information, consultation and participation. A reservation was made by employers, who felt that participation in the dialogue should be linked to the nature of the work. Polish respondents were in favour of participation for those with longer, more permanent contracts, when the parties know each other better and trust each other more. On the other hand, it is not appropriate for short-term employment or employment based on marginal contractor involvement or high contractor turnover. The Spanish respondents had a similar view. In their view, it is necessary to define participation specifically and to adapt it to the permanence and duration of cooperation with different groups of workers. For Slovak interviewees, atypicality is a certain threat to the quality of information and consultation processes, as it is associated with less loyalty, responsibility or belonging to a team that is a permanent resource of the company. The lack of ability to monitor the situation of atypical workers makes it difficult to develop employment strategies and assess long-term effects. It is not clear to what extent the right to information and consultation would be appropriate, interesting and useful for them. The Slovak trade union representatives saw a risk of weakening the power of the general workforce to influence the employer, as divisions and differential treatment of selected groups are dangerous, and unnecessary (harmful) competition arises. At the same time, they saw an opportunity to argue for the inclusion of atypical workers in standard contracts with the rest of the workforce. However, the downside could be that they would benefit too much from social dialogue, which would weaken their motivation to demand stability and improvement of working conditions. The employers' side argued that the form of cooperation, which is often dictated by the interests of both parties (cost reduction, flexibility, easier organisation of private life), is less important than the long-term professional development plans of employees linked to the tasks they perform for the company. There is therefore no obstacle to extending information and consultation procedures to the entire workforce, not excluding atypical workers. Flexible working arrangements (reduced hours, homeworking) can be long-term and be seen as a new employment model, i.e. excluding turnover due to short-term, ad hoc contracts, but rather as a conscious choice of employees for personal reasons, agreed by the employer. According to the Serbian interviewees, the right to information should be

extended to all, regardless of the nature of the relationship between the parties, as recognised by the trade union representation, while the majority of employers pointed to a more demanding and accountable consultation process in which unidentified persons cannot participate. The exchange of views and decision-making implies a closer relationship with management, which expects employees to understand and act constructively.

Participants in the national interviews confirmed that atypical workers should benefit from participation on the same basis as permanent workers with stable employment. However, some thought that the basis for determining the extent of participation should be the identified type of cooperation, i.e. its intensity, permanence, and dependency. Quite a divergence was shown by the Slovak employers' representatives, who wondered about the effectiveness of the implementation and application of information and consultation processes in a situation of a cavalier approach and even lack of interest of the employees themselves in participating in the development of the social dialogue. A different position was taken by trade union activists, who expected an equalisation of the status of both categories of workers and pressure to transform atypical forms into standard ones, to increase the number of workers, influence collective labour relations and promote trade union activity. There were also voices in favour of legislation, but not at the expense of reducing flexibility and disrupting established corporate governance.

Among the arguments in favour of strengthening participation was the need to protect workers, whatever their legal status, and to make them aware of the extent of their rights so that they can effectively claim them. In addition, integration, equal treatment and standardisation within the organisational structure of the company are important. If atypical workers are put on an equal footing with the rest of the workforce, there is a risk of conflicts of interest, unfavourable changes in working conditions and even restructuring and downsizing.

**c) The extent and manner in which the needs of atypical workers are identified**

According to the Spanish interviewees, a key role is played by the general legal framework and collective agreements as the main source of legislation, which should promote social dialogue, while always respecting the autonomy of the parties. They note that the role of independent (autonomous) arrangements by the partners in identifying the needs of atypical workers is still insufficient, especially as labour relations are changing and current legislation does not cover all cases that may arise. According to the Polish respondents, the top-down



imposition of specific solutions by the national legislator is not advisable, given the variety of types of flexible working arrangements. It is appropriate for the company level, or possibly the sectoral or regional level, to adopt provisions acceptable to the parties concerned. An autonomous (bipartite) model of social dialogue should be sufficient to correctly identify the needs of atypical workers and match them with opportunities (solutions) to meet them. However, this requires a strong representation of the partners and a high level of awareness of the effectiveness of cooperation and consensus rather than rivalry or the imposition of particular solutions. A similar position was expressed by Slovak employers, who strongly advocated company-level agreements to ensure flexibility and individualised approaches to employees within various forms of atypical employment. It is at this level that decisions are best taken based on mutually agreed views. National and even regional (sectoral) solutions are too one-size-fits-all and not adapted to the specific problem. They unnecessarily increase the financial and administrative burden, leading to much more difficult management of labour resources and less freedom to respond to unexpected situations. Putting all types of employment on the same footing could paradoxically lead not only to the threat of withdrawal (elimination) of atypical work, which is often preferred by workers themselves but also to a re-evaluation of stable jobs. Some interviewees distanced themselves from the idea of imposing (extending) participation, seeing no added value in the additional involvement of people in explaining and advising on issues related to flexible employment once it is accepted. Many people do not see the need to be more represented in front of the employer because of their job. The Slovakian trade union representatives had a different view. They were strongly in favour of a stronger impact of sectoral agreements, preferred bipartite social dialogue and saw the need to professionalise it to better understand the expectations of atypical workers and build trust, but also wanted to involve the government authority in participation procedures, which they saw as guaranteeing the adoption of minimum standards. At the same time, they were convinced that autonomous discussions would become increasingly important given the changes in the labour market and the growing demand for a skilled workforce that would demand better pay and organisational conditions.

The Italian interviewees did not take a clear position, recognising the strengths of regulation at all levels: company, sectoral, national. In their view, it is important to have information and the possibility of consultation, and the question of how to oblige the social partners to fulfil this obligation to look after the interests of atypical workers remain secondary. A continuous dialogue on the situation in the company is needed, and the



government side can be helpful in properly implementing the legislation and top-down instruments to encourage the parties to cooperate constructively and to raise awareness in the area of employee participation. The Serbian representative argued in favour of a general legal framework at the national level based on international standards (conventions, directives). It affirmed that the involvement of the government was necessary to reconcile divergent interests and to find a compromise between the social partners, otherwise, it would be difficult to ensure the protection of atypical workers, whose status is heterogeneous. They do not have strong representation, which makes dialogue difficult. Some of the employers who spoke stressed the need to adapt the common law to collective agreements, taking into account the specificities of each company's activities.

**d) Establishing the right to information, consultation and participation**

Polish and Slovak respondents stated that a minimum catalogue of issues should be adopted which should be the subject of information (transfer of data) and consultation (exchange of views). In specific situations, the parties can always adapt the scope of participation rights at the company level to their needs and interests arising from the cooperation. On the contrary, Italian interlocutors pointed to the need to provide comprehensive support for atypical workers to give them greater protection and equality and to lay the foundations for a more sustainable working environment. It is important not only to provide them with all the necessary information on their working situation, to consult them, i.e. to allow them to participate actively in decisions that affect them and to express their opinions, but also to ensure that they are granted the same rights as workers with standard employment contracts and that they are protected, in particular against unequal treatment. It is important to promote stability and security for atypical workers by limiting flexible forms of employment, including rapid termination of contracts. Access to benefits and selected types of insurance (health, accident), training, tools to facilitate professional development and collective bargaining are legitimate. Similarly, the Spanish interviewees stressed the importance of the right to information and consultation as tools to facilitate the improvement of working conditions, integration, the creation of equal opportunities and the transition to permanent and secure employment. The joint action of the partners should be the development of standards of conduct to strengthen the company and mutual responsibility for its market position.





For the Serbian interviewees, the whole issue of participation needs to be regulated as the best way to safeguard the interests of atypical workers. Among the issues covered by information, health and safety and wages emerged as the most important. On the other hand, consultation should cover working time, absenteeism, leave and redundancy. Employers said that information on social security, health and safety, opportunities for permanent employment, additional training, promotion and development plans were also important while working practices could be linked to counselling.

Almost all respondents felt that trade unions were the best organisation to represent and defend the interests of atypical workers. Alternatively, there could be representatives deliberately chosen from this group as they are better informed about the issues that concern them. Finally, there may also be councils, committees or other consultative bodies operating within the company, particularly in the context of declining union density and the marginalising role of collective bargaining, as observed in some countries (Poland, Slovakia, Bulgaria).

#### **e) Good practices, recommendations**

According to the Polish, Italian and to some extent Slovak interviewees, it is currently sufficient to use factual measures such as marketing activities, publications (commentaries, guides), training, the creation of e-learning platforms, information and counselling points, the organisation of information campaigns to adequately raise the awareness and involvement of atypical workers in company affairs and to strengthen the impact on ensuring decent work in those activities where abuses occur. Targeted trade union sections, advice and expert support for atypical workers can be helpful. The Italian speakers recommended any practice, as long as it can serve to promote the representation of this group and their inclusion in collective bargaining, according to the specificity of the work and circumstances, and the protection of rights appropriate to the type of flexibility. Indeed, it makes sense to maintain a certain balance (equilibrium) between security and freedom of action based on contractual diversity. This was the recommendation of the Polish respondents. In their view, privileges should serve rather than hinder competitiveness. This means that the participation of atypical workers should be within reasonable limits, taking into account the nature of the cooperation and the will of the parties. It is possible that in some sectors atypical workers will become a basic (dominant) element of the company structure, as current developments indicate, in which case



they will be granted full information and consultation rights as a natural element of social dialogue.

Popularisation and education activities are desirable but insufficient for Spanish and Serbian respondents. Adequate legislation and collective bargaining tools need to be put in place so that atypical workers can acquire knowledge, receive as much information as possible, exchange views and engage in dialogue. They do not accept arbitrary working conditions but expect constructive proposals to protect their status. Atypical employment should not mean precariousness, insecurity and deprivation of legal protection, and workers should not be seen as external (foreign) labour, treated as auxiliary rather than primary capital. The interviewees understood that a lot depends on the specifics, size and condition of the company, the policies pursued and the management methods. They therefore stressed the role of legislation in facilitating or speeding up information and consultation processes.

According to the Spanish partners, there is a need to review atypical forms of employment, which are developing not only because of the expected flexibility but also because of technological changes, especially digitalisation. Work on digital platforms, based on economically dependent self-employment and independent forms, where a commercial contract is concluded and remuneration is based on the number of clients and profits made. In the face of increasing competition, globalisation and sustainability, it is necessary to define atypical work so that it is concretised and adapted to the current reality. Remote work, which is growing in popularity, and similar platform work, which combines some features of temporary work, should be properly regulated so that they can provide contractors with a minimum of legal protection, including access to information and consultation. A model could be Directive 2019/1152 of 20 June 2019 on transparent and predictable working conditions in the European Union, which highlights that, in the face of profound economic changes, there is a greater need to inform workers about the basic conditions of their work. There is a need for transparency and predictability in employment, as the new forms are very different from traditional employment relationships.

For Serbian interviewees, the main regulator of labour relations is the law (laws, collective agreements). Therefore, laws, including defined sanctions, are the best way to overcome abuses. If there are no defined new forms of work, they need to be put into a legal framework immediately, as a vacuum encourages exploitation of the weaker position of workers. The development of atypical forms of employment is inevitable and therefore a

comprehensive approach to the changes taking place in the world of work is needed. There is no point in dividing work into conventional and atypical forms. The causal power of the law was pointed out by Slovak trade union representatives who advocated specific formal solutions. They believed that if the norms are well structured, it is not easy to circumvent them. This creates stability and certainty in industrial relations, which can help to strengthen social dialogue. However, it should not be forgotten that guarantees alone are not enough if there is no interest and motivation on the part of the parties to develop good practices through their actions.

## **5. Conclusion**

The legislation in force in the countries analysed does not reflect the changes that are taking place in socio-economic life and does not fully take into account the diversity of forms of work that are becoming more common. The atypical and precarious nature of employment is at odds with the models of participation provided for in legislation and established in practice. It is therefore useful to monitor the changes taking place and to seek solutions to ensure that people working in atypical forms of employment are adequately protected and that they can influence the shaping of employment conditions through information and consultation.

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