# Revisiting worker representation on boards

## The forgotten EU countries in codetermination studies

Edited by
**Sara Lafuente**

etui.

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European Trade Union Institute (ETUI)

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# Chapter 4
# Board-level employee representation in Portugal: a process (slow) in the making*

**Hermes Augusto Costa and Raquel Rego**

## 1. Introduction

A broad range of concepts can be applied to the theme of board-level employee representation (BLER): 'labour/industrial/workplace democracy' (Hyman 2016; Conchon and Waddington 2015; Stoleroff 2016); 'labour participation' (Conchon and Waddington 2015); co-management or codetermination; 'representativeness' (Costa and Rego 2021); and 'information and consultation' (Estanque et al. 2020), among others (see also the introductory chapter in this volume). It is doubtful if any of these concepts can be analysed in isolation and so it is admissible (even desirable) to stimulate a 'dialogue' between them as a means of empowering the forms of worker representation in companies.

Alongside this conceptual diversity, there is an institutional diversity inherent in workers' rights to representation in the governing bodies of companies and which may be broad, limited or simply non-existent (Conchon 2011: 11). The scope and extent of what is at stake for worker representatives also differs: a minimum employment limit in many countries where BLER applies to public and private companies alike; rules that restrict their proportion on boards of directors; mechanisms for their election/selection (via trade unions or works councils); access to information and voting rights for them on an equal footing with the representatives of shareholders (Vitols 2021: 6-7); and negotiated BLER provisions within the supranational framework of the European Company (Societas Europaea or SE) (Lafuente Hernández 2019). Such variables as gender, age, qualifications, the work experience of representatives and which issues fall within the scope of BLER (Carley 2005) are also aspects to be considered, always bearing in mind that a crucial issue is the perception of the role and effectiveness of board-level employee representatives in companies as part of a strategy to convert partial labour participation into full participation (Conchon and Waddington 2015).

In Portugal, worker representation as an essential element of economic democracy is enshrined at the highest possible level; that is, in the Constitution of the Republic. However, the normative framework is not as yet fully in place. In particular, there is a problem with the position and function of worker representatives in positions of power in companies. Indeed, representatives occupying such positions (and carrying out the functions inherent in them) have met sustained resistance from political leaders and the

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managers of public companies to the point that one can speak of a 'pattern of hostility' (Addison and Teixeira 2017). In fact, the 2019 European Company Survey showed Portugal to be one of the countries in which social dialogue is most widely considered to have little influence and the relationship between employers and employees is viewed as fragile (Eurofound and Cedefop 2020: 119).

The aim of this text is to present the problems faced by BLER in Portugal by approaching the matter from various points of view: the normative angle; the debate in public opinion; and the positioning assumed by the social partners. Case studies of two public companies illustrate the small steps that are being taken.

Methodologically, this text is based on interviews and documentary analysis carried out in the second half of 2021. We held eight interviews: with the social partners represented in the tripartite body of national social dialogue and government consultation known as the Standing Committee on Social Concertation of the Economic and Social Council, to whom six questions were emailed; with the representatives of the workers of the companies SATA Air Azores (SATA), TAP Air Portugal (TAP) and Rádio Televisão Portuguesa (RTP; Portuguese Radio and Television) by videoconference; and, also by videoconference, with a former trade unionist who is additionally an expert and a social researcher (a full list of interviews is set out in the Appendix).[1] As far as document analysis is concerned, in addition to the existing legislation and literature on the subject, we included newspaper articles and the presentations given at an innovative and pioneering seminar promoted by the association Práxis.[2]

This text is divided into three main parts. Section 2 briefly discusses the characteristics of the Portuguese system of labour relations and the institutional framework of worker representation in Portugal which, as far as BLER[3] is concerned, is only provided in public companies. Section 3 offers an account of the (exiguous) public debate on the subject in Portugal and of the position assumed by the social partners on the matter. Finally, Section 4 presents two case studies: the national airlines SATA and TAP, two public companies in which it is possible to observe the relatively recent implementation of worker representation, in non-executive functions, on boards of directors. In the concluding Section 5, we reflect on these and other cases and offer avenues for future exploration.

1. The quotes used in this chapter are the authors' own translations from Portuguese.

2. Práxis – Reflexão e Debate sobre Trabalho e Sindicalismo (Práxis – Reflection and Debate on Labour and Trade Unionism) was founded in 2019 by more than 30 individuals including trade unionists, activists and researchers. It promotes regular seminars aiming to contribute to a plural debate on sociopolitical issues strengthening the trade union movement. One such seminar was held on 7 October 2021 under the title 'Empresas públicas: a representação dos trabalhadores nos órgãos sociais é um direito!' ('Public companies: the representation of workers in governing bodies is a right!').

3. The term 'codetermination' is frequently used to express the degree of participation at corporate governance level, namely converted through worker representation with the right to vote. Considering that there are no rights to vote in the Portuguese cases, we adopt the expression 'BLER' instead.

# 2. Portugal's system of labour relations and institutional framework

## 2.1 The system of labour relations

The current system of labour relations is inseparable from the process of establishing democracy, a process that started on 25 April 1974, some 50 years ago, following nearly 50 years of dictatorship. At macro level, the relationship between competing worker organisations[4] and organisations of employers[5] stands out, especially within the domain of the Standing Committee on Social Concertation (a consultative body of the government, created in 1984). At sectoral or company level, mention should be made of the binary relationship between 'capital' and 'labour'; that is, the relationship between, on the one hand, employer organisations and company boards (beyond executive functions) and, on the other, organisations representing workers (particularly trade unions, but also works councils, occupational health and safety committees and even, in the case of companies of community-scale, the representatives of European Works Councils) (Costa 2021).

On these levels of analysis – given a configuration of production in which micro, small and medium companies predominate,[6] characterised by structurally low salaries, a connection between employment and intensive labour, low qualifications levels and a high incidence of various kinds of 'atypical' employment – it is possible to identify a set of distinguishing characteristics in Portugal's labour relations system. The salient features of this are: the centrality of the state in the capital-labour relationship; a high degree of juridification in labour relations; low unionisation rates; low participation and representation in the workplace; collective bargaining primarily focused on updating the pay scale; a scarcity of company agreements; and a low level of articulation between levels of negotiation, meaning the non-existence of formal procedures for the implementation of sector agreements (Stoleroff 2016; Távora and González 2016; Eurofound 2017; Estanque et al. 2020).

## 2.2 The sociolegal framework of BLER in Portugal

Since the 1980s, the place and function of worker representatives on the governing bodies of public companies have been guaranteed by the Constitution of the Portuguese

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**4.** Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional (CGTP-IN; the General Confederation of the Portuguese Workers) and União Geral de Trabalhadores (UGT; General Union of Workers).

**5.** Confederação Empresarial de Portugal (CIP; Confederation of Portuguese Business), Confederação dos Agricultores de Portugal (CAP; Confederation of Portuguese Farmers), Confederação do Comércio e Serviços de Portugal (CCP; Portuguese Commerce and Services Confederation) and Confederação do Turismo de Portugal (CTP; Confederation of Portuguese Tourism).

**6.** More than 95%, according to the Contemporary Portugal Database (Pordata) 2023. This value was corroborated in a debate (May 2023) on corporate governance held at the Order of Economists, bringing together trade unions, employers, workers, economists and specialists in the Labour Code. In this debate, several participants emphasised that, in Portugal, large companies (with more than 250 workers) numbered only 1,300 in 1995 (a number that has not changed since then), representing only 0.1% of the total Portuguese business fabric (information available on https://expresso.pt/sustentabilidade/2023-05-07-Cogestao- nao-e-trazer-os-sindicatos-para-dentro-da-administracao-da-empresa-f7107478).

Republic (CRP). Its 1982 revision stipulates the right of workers to have a representative on the governing bodies of state companies or other public entities (Article 54) and, since 1989, there has been a right to have effective participation in management (Article 89). In fact, infra-constitutional legislation had already recognised these principles in the immediate aftermath of the 1974 Revolução dos Cravos (the Carnation Revolution) that, as mentioned above, established a democratic regime in Portugal.[7]

The labour legislation, gathered in the Labour Code of 2003, makes reference to this function and assigns the right of representation and regulation to the comissões de trabalhadores; that is, to works councils (and not to trade unions). Indeed, Article 428 of Law 7/2009 – which implements the revision of the 2009 Labour Code – determines that it is up to the works councils to deal with the entire election of BLER and the subsequent communication process with the respective ministry, leaving the specification of the corporate body on which labour will be represented, as well as the number of representatives, at the discretion of the articles of association of each public company.

According to several legal experts, the normative framework – systematised in Table 1 and which also includes Decree-Law 133/2013 – poses a number of problems (Quental 2012). To begin with, the terminology is not always clear. Article 89 of the Portuguese Constitution speaks of effective participation in management, but this leaves room for dubious interpretation in that, although management is, indeed, mentioned, it is also stated that the relevant governing body is to be specified in the company's articles of association. This allows for the existence of non-executive worker representatives, as is the position in the two case studies presented below.

As to the existing legislation, it appears to be unconstitutional. As Quental (2012) points out, the 1989 constitutional principle which stipulates the right of workers to have effective participation in management (Article 89) is not being complied with because it does not allow for the existence of non-voting members, although this is the practice. Monteiro Fernandes argues to the same effect: 'Article 89 is a no-brainer, it does not play around with vague notions or fuzzy concepts, it is a constitutional guarantee aimed at ensuring that workers effectively participate in managing public sector companies.' As it is, however, 'we have ordinary legislation that limits the scope of that constitutional guarantee'.[8]

In this regard, let us consider the legal framework of a selection of state-owned companies in particular. In the case of the health units that make up the National Health Service (under Decree-Law 18/2017), of Comboios de Portugal (CP; Portuguese Railway Company, Decree-Law 137/2009) and of Metropolitano de Lisboa EPE (Lisbon underground public company, Decree-Law 148/2009), it is specifically stipulated that the advisory board is to include one employee representative alongside others from outside the company – as is the case in the area of health, where service users and

**7.** See, in particular, Decree-Law No. 260/76 of 8 April 1976 on the General Bases of Public Companies; and Law No. 46/79 of 12 September 1978 on works councils.

**8.** See his intervention at the seminar on 'Empresas públicas: a representação dos trabalhadores nos órgãos sociais é um direito!', 7 October 2021.

volunteers have one representative each. Participation in the public management of such bodies, therefore, does not ensure effective intervention in their decision-making processes as provided by the Constitution (Quental 2012: 246-247).

Furthermore, at the time of privatisation processes, although the obligations remained unaltered, the role of worker representatives was dropped in many cases, whether by omission or by being revoked. Again to quote Quental:

> [O]nce dozens of state-owned companies were turned into public limited liability companies (whether owned entirely or in majority by public entities), employee participation in their corporate bodies was no longer allowed or feasible. (...) [T]he legislative acts based on which public or majority-owned state companies were (and continue to be...) established fail to mention board-level employee representation in such companies' (2012: 252).

Hence the author concludes, along with other jurists quoted by him, that the pieces of legislation, on the basis of which companies owned entirely or in the majority by public entities are converted and/or established, must be considered unconstitutional.

Table 1 **Portugal's main legal instruments underpinning BLER rights**

| Instrument | Descriptor | Text |
|---|---|---|
| Article 54(5)(f), CRP | Constitution of the Portuguese Republic | 'To promote the election of worker representatives to the governing bodies of enterprises that belong to the state or other public entities, as laid down by law.' |
| Article 89, CRP | Constitution of the Portuguese Republic | 'The workers of units of production in the public sector shall be ensured an effective participation in the respective management.' |
| Article 428, Law 7/2009 | Labour Code | '1. The works councils of a public corporate entity shall promote the election of worker representatives to its governing bodies, applying the provisions of this Code in matters relating to the electoral roll, polling stations, voting and tabulation of results.<br>2. The works councils must communicate to the ministry responsible for the sector of activity of the public business entity the result of the election referred to in the previous number.<br>3. The governing body in question and the number of worker representatives are regulated in the articles of association of the public business entity.' |
| Article 2, Decree-Law 133/2013 | Legal framework for public sector companies | '1. (...) public sector companies include the business sector of the state and the local business sector.<br>2. The state business sector includes public companies and participating companies.' |

Source: authors' own elaboration and translation from Portuguese.

The normative path of employee representation in Portugal has been marked by breakthroughs and setbacks. In fact, it has been the object of revision – or, in some instances, attempts thereof – since it first made it into the Constitution or into legislation and company articles of association in general. That was also the case with the legislation on municipal and other local companies given that the legal instrument in question was revoked in 2006, only eight years after it was introduced (Quental 2012: 228).

## 3. The (scant) public debate and the position of the Portuguese social partners

### 3.1 Echoes in the scholarly field and the press

In Portugal, the field of law displays few reflections and opinions on this subject. In this context, Quental (2012) deserves special mention as he highlights the unconstitutionality of some pieces of legislation and the lack of clarity of the legal framework as a whole. There is also a social researcher point of view, from someone who has been paying deep attention to the topic, according to which the government's policies have been inconsistent: 'Barring a few exceptions, the state is failing to enforce fundamental constitutional rights regarding board-level employee representation in public companies. (...) As we all know, when rights fail to be exercised, the usual corollary is that those rights end up being extinguished.'[9]

We would also like to highlight the argument of Hamann (2018) to the effect that 'politicised trade unionism' is a greater impediment to the implementation of BLER than the normative framework itself. On the other hand, he seems to believe that the efficacy of the governing bodies is best ensured if employee representation takes place on an advisory body. According to him, workers have a vested interest in perpetuating the company and, therefore, 'they serve as a counterweight to the management's temptation to pursue short-term profit-driven policies (which go against society's larger interests and, therefore, against the interests of workers)' (Hamann 2018: 189).

Analysis of the print media shows that the topic has drawn some attention. This has partly to do with the dissemination of an international study by Addison and Teixeira (2017) which reported that, in 2013, only 5% of Portuguese companies had employee representatives on their governing bodies whereas the average of the countries covered by the study was 30%.

Helena Lopes, an economist and university professor herself, has also addressed this topic in the print media. Thus, for example, in April 2017 she shared the findings of a number of international studies showing that BLER was linked to an increase in innovation: 'BLER has no effect on financial efficiency indicators, little or no effect on productivity, and a significantly positive effect on innovation' (Lopes 2017: 54). More recently, the same author has advocated the widespread adoption of BLER as one of the measures conducive to the strengthening of social ties in the digital age (Lopes 2021: 27).

Several academic studies and scientific publications point to a symbolic link between the case of Autoeuropa (the Volkswagen (VW) plant in Portugal) and the discussion over BLER rights (in turn spurred by the so-called 'VW law' which dates from as far back as 1960). But the most consequential outcome of this 'German influence' has been the commitment to a culture of specific/unique social dialogue between worker

**9.** Henrique Sousa, seminar on 'Empresas públicas: a representação dos trabalhadores nos órgãos sociais é um direito!', 7 October 2021.

representatives and company management. In the case of VW's Portuguese factory, the preferred interlocutor in dealing with the management has been the works councils. Although Portuguese laws give trade unions the monopoly on collective bargaining, at Autoeuropa informal company-level agreements (meaning that there are no documents with legal value) are established with the works councils (Costa et al. 2020). This case is thus considered an exception and anyway does not seem to provide much input into the BLER perspective.

## 3.2 The position of the social partners[10]

Two observations should be made on the position of the Portuguese social partners with regard to BLER (summarised in Table 2). First, both the trade unions and the employer organisations, but especially the latter, appear to see this as a secondary issue. Second, the positions of the two sides on the subject appear to be deeply divergent. This is clearly apparent in the appeal of the union organisation UGT to strengthen worker empowerment processes in the 'strategic vertex' of organisations.

Looking at the normative framework associated with the representation of workers on the governing bodies of public companies, while Confederação do Turismo de Portugal (CTP; Portuguese Confederation of Tourism Employers) goes as far as recognising that such participation 'is beneficial in the case of public companies' (INT7), Confederação do Comércio e Serviços de Portugal (CCP; Portuguese Confederation of Commerce and Services Employers) does not endorse BLER models. This is either because it considers that they have no tradition in Portugal or because it believes that the participation of workers in the life of companies should be restricted to works councils and to trade union committees. On the trade union side, UGT argues that the recognition and enactment of the rights of effective participation in the management of companies 'should cover all public companies and entities' (INT6). CGTP-IN, for its part, is of the opinion that, 'in order for the current regulatory framework to contribute effectively to enforcing this right, it is imperative to regulate this matter both in the law and in the articles of association of public companies' (INT8).

As to the extension of the current regulatory framework to the private sector, the employer confederations interviewed reject this possibility while UGT, on the basis of the campaign of the European Trade Union Confederation (ETUC) – 'more democracy at work' – advocates an expansion of the participatory model of having elected representatives of workers on management, administrative and supervisory bodies, as is the case in 'at least 13 Member States of the European Union'. CGTP-IN, on the other hand, is critical of such a scenario as it considers that there are no guarantees that the function in question can be exercised in an independent manner: in a context in which 'true political power over companies belongs to the shareholders rather than

**10.** Following prior contact by telephone, questions were submitted by email to the four employer confederations (Confederação Empresarial de Portugal (CIP; Portuguese Business Confederation), Confederação dos Agricultores de Portugal (CAP; Confederation of Portuguese Farmers), CCP and CTP) and the two trade union confederations (CGTP-IN and UGT) in October 2021. We obtained employer responses only from CCP and CTP alongside trade union responses from both UGT and CGTP-IN (see Appendix).

to the workers, (...) turning worker representatives into decorative figures of business administration, devoid of real power – since they do not have the weighty support of capital – would certainly seem to be gravely irresponsible and to deflect attention from the real causes of the problems affecting workers', besides causing worker organisations to 'lose independence and autonomy' (INT8).

With regard to the possibility of European Union (EU) regulation in this domain, the employer confederations believe that this would amount to 'violating the specificity of each country' (INT7) and showing disregard for the 'tradition and autonomy of national regulations' (INT4). UGT, again in line with the ETUC, is of the opinion that 'this regulation is a must', while CGTP-IN has the same the position of the employer confederations on this issue. The rationale behind its position is that, 'since this is a labour matter, it is not up to the European Union to regulate it, but the principle of subsidiarity applies instead', as well as the principle of sovereignty as a 'basic condition of freedom and democracy' (INT8).

When the two employer organisations interviewed were asked if they thought it was significant that there are only two instances at national level (SATA and TAP), their position was to restate that BLER only makes sense in large companies (which constitute only 5% of Portuguese businesses) (INT7); and, at the same time, to appeal for respect for the autonomy and supposed traditions that exist in each company (INT4). In contrast, UGT's position was to point to the obstacles placed in the way of recognition in the RTP case and, at the same time, to argue for the adoption of measures to enforce the law in order to recognise these functions and make them effective. CGTP-IN deplores 'the attacks against workers' rights (INT8) currently happening in these companies' which bring to light the limitations of the legal-institutional framework.

The importance attached to this topic, over time, by each of the social partners remains a question. While CTP says it has only participated in debates on the subject when pressed to do so by national governments, CCP says that it has always maintained the same position on the subject although it recognises that 'in Portugal this issue once had an acuity that it doesn't have today' (INT4). UGT, on the other hand, regrets not having given the matter 'the attention, intervention and reflection that it clearly deserves' (INT6). This lack of attention, which it sees as extending to the entire Portuguese trade union movement, also calls attention, in the opinion of UGT, to the role of works councils, 'the rights and duties of which put them on the frontline in this domain' (INT6). CGTP-IN reiterates that the topic 'has been losing importance in terms of collective discussion, especially since the period of mass privatisations' (INT8) which, in its view, makes it inevitable to resort to traditional forms of worker mobilisation (strikes, right of assembly, public denunciations and critical expositions of the issues at stake).

Finally, when indicating the most important factors that have limited and favoured the election of worker representatives to the boards of public companies in Portugal, the employer organisations interviewed answered minimally: only CCP referred the decision to adopt BLER models to the 'management tradition' of companies. In its turn, UGT identified a diversified set of limiting factors: a lack of political will on the part of governments; the focus of trade unions 'on the essential concerns of workers related

to wages and working conditions in a country of low wages and high inequality and poverty'; 'the relative weakness of the works councils, which have special constitutional and legal responsibilities in this field'; and also the 'political-ideological prejudices (...) that tend to distrust participation in the corporate bodies of companies as conflicting with the autonomy and interests of workers' (INT6).

Table 2 **Summary of the views of the Portuguese social partners**

| Views on... | Trade unions | | Employer associations | | | |
|---|---|---|---|---|---|---|
| | CGTP-IN (oldest and largest) | UGT (the first to participate in tripartite social dialogue) | CIP (industry and services) | CCP (services) | CAP (agriculture) | CTP (tourism) |
| Existing normative framework | Needs to be regulated | It is restrictive | N/A | It is highly favourable | N/A | It is highly favourable |
| Extending to private sector | N/A | N/A | N/A | Opposed | N/A | Opposed |
| EU regulation | National sovereignty must be safeguarded | Urgent | N/A | National autonomy must be safeguarded | N/A | National autonomy must be safeguarded |
| Case studies | The shortcomings of the law are to be regretted | There should be compliance with the law | N/A | The autonomy of each company needs to be respected | N/A | Low rate of implementation confirmed |
| Degree of importance attributed by the organisation being asked | Losing importance | Unfulfilled expectations | N/A | Losing importance | N/A | Reactive |
| Factors inhibiting BLER | Counterproductive, as it discredits representatives | Several – e.g. lack of political will; unions' focus on other issues; weak workscouncils | N/A | N/A | N/A | N/A |
| Determining factors | Access to information; management transparency | N/A | N/A | Management style | N/A | |

Source: authors' own elaboration, based on their interviews with social partners (2021).

Although recognising that sitting on the governing bodies might 'improve access to information and lead to more transparency in how public companies are managed', CGTP-IN is more critical in this regard. Most importantly, it insists that the problems

with which workers are faced cannot be solved by having their representatives sit on the boards of directors of companies, whether public or private, and that such a presence may even be 'counterproductive as it discredits those very representatives' (INT8).

## 4. Case studies

On 31 December 2020, there were 123 state-owned companies in Portugal, in more than 93% of which the state has a 100% holding (Ministério das Finanças 2021). The majority of these were in the sector of health, but infrastructure management, urban regeneration, communications, culture, transport and many other companies were also included. Although all these companies are expected to have a BLER, there is no organised information on the practice; thus, this chapter looks more closely at two cases which have been in the public eye, specifically in the sector of air transport, incidentally a sector particularly affected by the Covid-19 pandemic starting in 2020. It first looks at the case of SATA, whose election of a representative to the board of directors created a conflict only resolved through the courts; and then, it considers the case of TAP, whose election of a representative to its own board was essentially a political decision. A summary of the interviews can be found in Table 3, at the end of this section.

### 4.1 SATA – The right that was won in court[11]

The company's origins date back to the 1940s, but it was in 1980 that it acquired the status of a public company.[12] Like other air transport companies, SATA Air Azores, the parent company of the SATA group, was badly affected by the Covid-19 pandemic as can be seen in the reduction of more than 50% in passenger numbers in 2021 compared to 2019 (SATA Azores Airlines 2021: 5). It is important to place the case of SATA, one of the pioneer companies in Portugal in establishing a worker representative on the board of directors, in this context of adversity even though an attempt to suppress the function has occurred.

#### 4.1.1 Experience, seniority and proximity

A company employee for 30 years, the representative on the SATA board is, therefore, one of the most senior workers in the company in which he started as a computer systems analyst, rising by the end of his career to operations officer. He has almost always worked on the Azorean island of Santa Maria where he was born and on which he had, for several years, been a member of the SATA Works Council. Despite being unionised, he was never a particularly strong trade unionist. He resigned from the works council because he considered that there might be a conflict of interest and because of the obligation of secrecy imposed on members of the board of directors. His candidacy for the role of worker representative was encouraged by fellow workers and

**11.** The content of this section benefits extensively from an interview conducted in virtual format on 21 October 2021 with the current non-executive member of the board of directors of SATA Air Azores (INT2), who was elected as a worker representative in October 2020.

**12.** See https://www.azoresairlines.pt/pt-pt/institucional/historia (accessed 16.07.2025).

in particular by his predecessor with whom, as he reports in the interview, he had 'very close contact'. He and one other candidate deposited at least 100 signatures in support of their respective candidacies (a third candidacy never got off the ground as it fell short of the required number of signatures). That he had worked for so long at the company and was well known on several islands appears to have given him an edge over the second candidate, as he directly stated:

> She knew her way around and had direct contact with the works councils; as a matter of fact I think that she had already been part of a workers list. However, she is a few years younger than me in the company, and I think my knowledge of the company and my performance as a worker were decisive for my election. (INT2)

#### 4.1.2 Priority to dialogue with the works councils

Although the exercise of this function is recent, it has been punctuated by a series of initiatives aimed at establishing dialogue with all the representative structures of workers, which ended up pleasing the company's management since it allowed it to present a consensual position to Brussels in the context of ongoing restructuring initiatives:

> My first action was to sit down at the same table with the workers and create a dialogue, without management intervention, in which I was not seen as a part of management, but as a worker, which is exactly what I am within the company. So a dialogue could be generated – a consensual counterproposal to the board, based on an analysis of its proposal, from all workers in all sectors and from all areas within the company. (INT2)

Dialogue with workers tends to privilege the works councils at the expense of trade unions (despite this representative also being a union member). In his words:

> My actions are not purely independent; they are always worked on with the works council because I will not isolate myself from the workers just because I am part of the board. I have to have a connection with the workers and there is no better way than the works councils to establish this. Contact with trade unions is less frequent; it is more on the basis of when there is really a need on the part of trade unions. Trade unions themselves create this distance. (INT2)

But direct dialogue with workers is also practised and encouraged: 'With regard to other workers, situations have arisen that call for this; one of the concerns I had right at the beginning of my duties was to send a message addressed to each employee clearly making myself available for personal contact.'

#### 4.1.3 Main obstacles: government interference

The process that led to the implementation of this function in the company was not straightforward and, in the end, involved legal action. More than ten years ago, the worker representative was stripped of the capacity to represent workers in governing bodies, and the case was taken to the courts. In the words of the current representative:

'when SATA was taken over by a totalitarian shareholder which, in this case, was the National Government of the Azores, the greatest conflict took place and that included an attempt to annul the existence of the function. (...) When the regional government becomes a totalitarian shareholder, what that is in fact is an attempt to obliterate the function.'

The representative who preceded him on the board of directors had been exercising the functions of worker representative for 11 years and at least two other workers had held the function before her. The previous representative had left because she was offered a position in the company's human resources department; in the current representative's opinion, this invitation was mainly due both to the academic training she had acquired in the meantime and to the company's perception that she had the right profile: 'Her performance in this role showed the current management that she had exactly the profile required to perform her current roles. (...) If she had not had access to direct contact with the management, maybe the invitation would never have arisen.' (INT2)

That troubled moment that ended up in the court system, triggered by the works council,[13] seems to have passed. Indeed, SATA's current board is receptive to the participation of workers and social dialogue is described as 'serene'. As the current worker representative points out: 'The board that exists now is a board that recognises the important place of worker representation, and this board is no longer a political board but one that is interested in overcoming the company's difficulties and making it viable.' (INT2)

#### 4.1.4 The added value of worker representation on the board of directors: vigilance and diplomacy

The worker representative sees himself as on a 'watchdog' mission: 'It is a place I am very happy with and one in which our role is, in a way, to be watchful of the interests of the workers within the company, as part of the board of directors'.[14] (INT2)

This function, he adds, is essential for good economic management of the company. The company went through and is still going through 'serious financial difficulties', in part because of a management that acted 'in disregard of the interests of the workers'. As he reports in the interview, his role requires 'diplomacy' and, if the intention is to defend the interests of workers, those interests cannot be limited to what is immediate:

> The function is to carry through employees' interests with the board; this is fundamental. However, the interests of the employees often may not be what an employee demands at a given time. This may turn out to be a rather delicate situation. A person has to be careful because he also has an obligation. The employee's best interest is also, of course, often the company's best interest. An employee's best interest is that the company continues to exist. (...) Sometimes, at certain moments, the immediate interest of an

**13.** The Constitutional Court Ruling (47/2006) upheld the claim of the works council against the Government of the Autonomous Region of the Azores as what was at stake was the request for recognition of workers' 'right to have a representative in the company's governing bodies (Board of Directors and Supervisory Board)'.

**14.** SATA's full collective agreement was published in 2020 and makes no reference to BLER.

> employee may not be what is the best for him, without him even realising it, but it is necessary to be able to convey this to the employee in a way that does not shock and does not create a business conflict. (INT2)

His influence may be low but, as he says, it is recorded, it is heard: 'Another of the facts is that I am present in the decision-making process, I am consulted, asked for my opinion regarding the decision-making process and my opinion is recorded in the minutes. I'm a minority, I sit there in a minority of one. (…) Ultimately, responsibility falls, of course, on the executive board and eventually justifications may or may not have to be given' (INT2). And, in any case, no BLER position has yet been taken contrary to the vote of the board of directors.

#### 4.1.5 Results

Although the representative has worked at SATA for more than three decades, the current representative is still short of experience in the role of worker representative on the SATA board. This enjoins a degree of prudence in identifying specific results arising from his occupation of this position and the capacity for influence inherent to his role as non-executive member. However, some aspects mentioned by the respondent deserve attention, including with regard to management control over the company's debt situation and having knowledge of a decision before it is executed.

To sum up, the role of worker representative at SATA goes back more than ten years. During this period, there was an attempt by the board to do away with this right, which led to legal action being taken, while there was also a successful experience that contributed to the promotion of the then worker representative in the company. For a climate of dialogue to exist, it is imperative – at least according to the worker representative interviewed – that management has the right attitude. Representatives tend to be well-established workers in the company and independent of the various trade unions with whom there is a distant but cooperative relationship. The function does not have the right to vote but the assessment made by the representative is of a positive role. It is, from his point of view, a function that requires diplomacy and vigilance with regard to the interests of workers. Preparing for the role mainly involves contacting the previous representative.

### 4.2 TAP – The impact of the government's decision[15]

Established in March 1945, TAP (originally known as Transportes Aéreos Portugueses) repeatedly brought to light the 'centrality of the State and its decision-making power' (Pinto 2010: 364). In 1953, it became a limited liability company, owned in majority by the state. It has been subject to several privatisation processes, especially at the time of the right-wing 19th constitutional government which ruled the country from 2011 to

**15.** The content of this section benefits extensively from an interview conducted in virtual format on 25 October 2021 with the current non-executive member of the board of directors of TAP (INT3), who was elected worker representative in June 2021.

2015. That notwithstanding, in the political environment of 2015-2019 – that is, in a period of a left-wing parliamentary coalition – it was possible to reverse this process so that TAP remained a largely state-owned company.[16]

#### 4.2.1 A politically induced election process with an external candidate backed by trade unions

The election of the representative to TAP's board of directors was not organised by the works council as stipulated in the Constitution and the Labour Code. As the current worker representative pointed out in the interview, there had been incipient experiences of worker representation on TAP's board of directors and supervisory board during the 1970s, but he himself was not elected until 2021, in a relatively short period of time and not without media attention. In fact, TAP has often been in the media spotlight as a result of the restructuring process (involving staff reductions and new routes, among other things) to which it has been subjected by successive recapitalisations aimed at making sure that it has a viable future as a company. According to the representative, the company's difficult situation was the pretext used by the government to initiate an election and thereby involve the workers in addressing those difficulties:

> It is possible that, at a difficult time for TAP, the government wished to involve the workers in the decisions being taken and somehow also share some difficult issues with them and include them in the decision-making process, in which I am obviously only one member out of 11 on the board. Something like a hint. But it's like I tell you, it's just a feeling I have; I have no clear indication. (INT3)

The interviewee, who has been with the company since 1992 – for 30 years now, as a cabin crew worker, cabin steward and purser – recalled that, in 2017, when he was vice president of Associação Portuguesa dos Tripulantes de Cabine (APTCA; Portuguese Association of Cabin Crew), he questioned the president of Sindicato Nacional do Pessoal de Voo da Aviação Civil (SNPVAC; National Union of Civil Aviation Flight Personnel) about taking a stance with regard to the government's offer of 5% of the company's shares. The company's pilots seemed to have their eyes on those shares, which led him to believe that the worker representative would come from this particular professional group. But, on 21 May 2021, he was told by the SNPVAC leadership that 'the leaders of our trade union would be working with other union leaders towards reaching a comprehensive platform to choose a name that all workers could agree on' and that, in addition, the entire process would take only two weeks. What was surprising, however, was that this trade union platform turned out to be smaller than expected (it consisted of only four unions although the company has more than 14) and, most of all, that it was about to endorse someone who was not a worker in the company. And that led the representative to decide to stand as a candidate for the position himself:

> The day before the candidacies were supposed to be submitted, we learned that the trade unions – or rather four of them, not the whole 14, because there were unions

**16.** This case study focuses on the post-Covid period although recent news reports the beginning of TAP reprivatisation in 2025 (see https://www.portugal.gov.pt/pt/gc25/comunicacao/noticia?i=iniciado-processo-de-privatizacao-da-tap – accessed 16.07.2025).

> that wanted nothing to do with it – had decided to support Professor Ricardo Paes Mamede. Many of us, myself included, were taken aback because he did not work at TAP. Although he is highly regarded, not least academically, and his CV is certainly deserving of attention, and he always speaks well of TAP and recognises its importance for the country, I was of the opinion, as were many of my fellow workers, that no matter how qualified he was, there was something wrong about the whole thing, which was the fact that he was not a worker. So there we were, faced with a situation in which two of the main trade unions, representing a majority of workers [SNPVAC and SITAVA[17]], were backing someone who was not a worker. It was inconceivable and it made no sense at all. So, within 24 hours, I was a candidate myself. (INT3)

### 4.2.2 The various pillars of worker representation

TAP's main structures of worker representation are the 14 trade unions, the works council and the board of directors.[18] According to the current representative of TAP's workers on the board, those are the company's three pillars. They are to be taken into due account as collective actors and he takes pride in having a good relationship with all three of them. However, even after 12 years as vice president of APTCA – an association that 'complements the representation of cabin crew workers, not in a trade unionist or labour sense exactly, but rather in a professional capacity' – the TAP representative sees the works council as taking pride of place. That is because 'its functions are highly specific and clearly defined by law, as is the case with collective dismissals and the company's relations with its workers (…), for they confer on it a special status unmatched by any other entity.' (INT3) Despite having been a member of SNPVAC, he left the union once he was elected.

Even though his candidacy did not have union support, including from his own trade union, and despite the rate of union membership in the company being high, he was elected with 42.5% of the vote whereas the academic backed by the main TAP unions obtained only 18.9%. This suggests that having experience with the company and being well known among his peers was what got him elected. The collective legitimisation of his candidacy was largely explained, in his own words, by his independence, his having no political affiliation and that he is not belligerent by nature:

> Mine was an independent candidacy which in a way lacked union support and had no partisan links, and the way we saw it was that what the TAP workers want is for their representative to be someone who is not excessively associated with the trade unions, because I ended up obtaining more votes than the three union-backed candidates combined (…) The worker representative should always be a worker and also, in a way, one of the three pillars, alongside the representation by the unions and the works councils. (INT3)

**17.** Sindicato dos Trabalhadores da Aviação e Aeroportos (Aviation and Airport Workers Union).

**18.** TAP's full collective agreements were settled with different trade unions and date back to 2010 and 2011, although with partial updates. No reference is made to BLER in these documents.

### 4.2.3 A rushed electoral process

Not only was there a media-boosted attempt to have a non-worker elected, but the whole way in which the election process was rushed, within a brief period of two weeks, showed that there should have been more preparation time: 'We all thought that time was a little short; that there should have been a little more time to reflect and take all the appropriate steps', says the worker representative (INT3). And this also ended up having an impact on the position of the trade unions given their decision to support another candidate:

> It all happened so quickly that I understand the unions may have lacked the time to reflect on the best option or even take the pulse of their members, and of the workers in general, to get a sense of what their sentiment was. Had they had the time to talk to more people and realise that there were reservations with regard to this outsider, maybe they would have made a different choice. (INT3)

A further obstacle is the inability, in his capacity as representative, to influence the decisions to be taken by the company:

> I am just one voice among eleven. There are things about which we agree and other things about which we do not. Of course, being one vote among eleven, my disagreement may not be enough to influence the outcome. By taking an opposing position, I lose the ability to influence. But this is only normal, it's the rules as they have been set (...). I still have my say, it's just that I cannot set the agenda of the board of directors. (INT3)

### 4.2.4 Management control, surveillance, being heard

At the opposite end of the obstacles and lack of influence are the factors that allow for the position of the TAP non-executive director to be put to the best possible use. Among such factors are those (already mentioned) that have to do not only with the representative's profile – not being directly associated with political parties or trade unions, being independent, not assuming a belligerent posture, favouring consensus and having a solid knowledge of the company – but, first and foremost, with the consultation dynamics and the level of trust that are expected to characterise the position in question. The following excerpt is a good illustration of what is gained by exercising this function:

> The greatest asset is that the workers have a voice, are able to be heard. And not just during the meetings of the board of directors, because sometimes it's also being able to talk to some of your colleagues on the executive committee, to gather information, make sure that certain viewpoints do not go unnoticed, convey suggestions, try to make sense of certain situations. Although this sort of dynamic runs parallel to the meetings of the board of directors, sometimes it proves useful to workers. It is extremely positive to have someone who is a worker (...). This way I get to convey my position and, whenever I take a contrary position on some matters, I leave my statement of intent, so that it is recorded in the minutes, for future memory, why I have expressed myself along those lines. (INT3)

### 4.2.5 Results

Given the lack of experience with regard to exercising the role of worker representative on TAP's board, it is not easy to point to specific results that can be said to have benefited workers. Added to this is the confidentiality of the processes in question. However, according to this non-executive, a number of initiatives carried out since June 2021 – with the aim of 'regaining rapport with workers and building confidence and trust in the company' – are worth mentioning, given that our interviewee regards them as small achievements: a session devoted to bringing together the executive committee and workers; the sharing of information on future priorities; and efforts towards building a more inclusive company.

Table 3 **Summary of the case studies**

| | Case studies | |
|---|---|---|
| | SATA | TAP |
| Professional trajectory of worker representative | Company worker for >30 years; member of works councils; unionised but not active in union | Working at company for 29 years; vice president of APTCA; left the union to exercise the position |
| Election process | 2 'freelance' candidacies; 31% participation rate; winner elected with almost 100% of the vote (250) | 6 candidates, 5 of whom were workers, 1 not a worker; 3 backed by unions, the other 3 without union support |
| Existing normative framework | Restricted information; 3-year term of office | Restricted information; 4-year term of office |
| Composition of the board of directors | One president; 2 executive members; 1 non-executive member (workers) | One president; 5 executive members; 5 non-executive members (one of them being the worker representative) |
| Framework for the worker representative | Full-time dedication to the job, with director-level pay; started December 2020 (board of directors' term started February 2021) | Full-time dedication to the job; functions not specified; started June 2021 |
| Relationship with trade unions | Cooperation while keeping distance; 4 trade unions | Member of a trade union that did not support the representative's candidacy |
| Relationship with works councils | Privileged cooperation; representative left the works council | Cooperation with the works council |
| Relationship with workers | Individual contacts | Contacts with worker organisations and individual contacts |
| Influence on decisions | Positive ('vigilant' and 'diplomatic' stance); has no influence on decisions but gets to be heard | Positive ('vigilant' stance); has no influence on decisions but gets to be heard |
| Limiting factors | Management's position, particularly when it decided to resort to the courts | Too little time to prepare the election |
| Favouring factors | Support from all workers; company's management style | Support from all workers; company's management style |

Source: authors' own elaboration, based on their interviews with worker representatives on the boards of directors of SATA and TAP (2021).

In conclusion, although there is nothing new about the function of worker representative on the TAP board, it is nevertheless one that is undeveloped. Its reactivation was a

political gesture on the part of the government which can be interpreted as a strategy aimed at passing down more responsibility to workers so that they 'share the pain' of the troubled economic times with which the company is faced. As in the case of SATA, the current worker representative has long been a company employee. The most relevant fact in the entire election process, however, was the support given by two of the company's largest unions to an outside candidate (an academic, as opposed to a company employee). That move failed but ended up highlighting the importance of choosing representatives who are known in the world of labour and who keep close to the workers and away from an active role within the trade unions, in addition to being capable of building bridges between management and workers. Even though the influence exerted by the representative is a limited one, oversight of the company's activities and the possibility of being heard (not as a trade union or works council representative) in order to become an information broker can be viewed as a potential source of power.

## 5. Conclusion

Although BLER has long been enshrined at the highest level of the Portuguese legal framework, with a remit exclusively restricted to public companies, there is a significant deficit as far as implementation and debate are concerned. The social partners have shown little interest in the matter,[19] especially when compared to the interest of worker representative organisations at company level (works councils and trade unions). It is, therefore, not surprising that, because of the scarcity of data, the lack of public debate and the low rate of implementation of legal norms, some authors tend to think that BLER has had a marginal impact in the country and has somehow been sidelined if not altogether abandoned (Lafuente Hernández 2019; and see the introductory chapter in this volume; Conchon and Waddington 2015).

There is, nonetheless, a potentially vast field of application, even in terms of public companies alone (the private sector certainly lying far behind). It is therefore important that a more comprehensive study be carried out in the future, aimed at arriving at a better grasp of the rate of actual implementation of BLER in Portuguese companies, mapping and describing its objective procedures and impact on companies, and on economic democracy in particular, and accurately identifying the obstacles and challenges, including for the union movement and works councils, which still need to be overcome.

As it is, these two case studies show that the period after Covid-19, thanks to the influence of left-leaning government policies, was one of cooperation between worker representatives – who are well-established with the company and who have distanced themselves from the trade unions – and management. It is also possible

**19.** In the list of interviews (see Appendix at the end of this chapter), those conducted by email to the social partners generally showed that BLER is perceived as being a loss, falling short of the desirable, and that it is seen in a reactive manner. It is not surprising that, above all, the trade union organisations (CGTP-IN and UGT) are concerned with compliance with the law while respect for the autonomy of each company may emerge more clearly in the employer discourse.

that the economic crisis that resulted from the impact of the Covid-19 pandemic on the air transport sector helps explain the political shift towards involving workers in the responsibilities of corporate restructuring. Further research is needed to know if this environment of cooperation is sustainable.

It is worth pointing out that there were also women running for the position of worker representative on the boards of the two companies covered by our case studies. But theirs were not winning candidacies, at least not in the current term. This aspect appears, in itself, to signal an opportunity for a kind of participation less bound by the strategies of such well-established structures as trade unions and works councils, thereby allowing a richer diversity as regards the voice of workers. To have this hypothesis confirmed could be another objective of future research in the area.

The two representatives interviewed in the case studies seem to be aware of the degree of complexity inherent in their role. In addition, they also seem conscious that this is likely to require skills already found within the aforementioned well-established structures: yet, familiarity with similar experiences as these (whether national or foreign) is uncommon beyond the occasional and superficial mention of failed attempts to implement the process. In other instances the courts are yet to decide on the election of worker representatives.[20]

Understanding the extent to which management style plays a role in promoting BLER should probably be an additional objective of a future study in other public companies.

Although incipient, the experience of SATA and TAP, according to the interviewees in 2021, seems to indicate that employers are open to BLER – which, in turn, seems to be a precondition for considering further steps in this regard. It remains to be seen what can be gained, not only by the workers, but by the company as a whole, by having a worker representative on the board of directors, bearing in mind that the function has been exercised without voting rights. In fact, there are other instances of worker representatives sitting on governing bodies that are merely advisory in nature. This much had already been suggested by the information collected by Conchon and Waddington in 2016.[21]

In short, BLER plays a small role in the Portuguese context. It is above all a mechanism of worker recognition and empowerment that operates mostly at a symbolic level and is to be found primarily in the public sector. It should be noted that the possibility for

**20.** That is the case with RTP, where an election to the company's board of directors took place in February 2021. Here, too, there is evidence of stagnation in the political discourse given that, while the electoral process was approved in the case of a company like SATA, a different situation unfolded at RTP. The RTP case is not addressed in this text, but the authors are aware that the administration argues that the refusal to recognise BLER is due to the existence of an Opinion Council in the company that already fulfils that role.

**21.** To quote the authors: 'A preliminary census revealed that 49 state-owned Portuguese companies, mainly in the health sector, had one employee representative that sat on one of its corporate bodies. The corporate body on which the employee representatives sit is neither a board of directors (conselho de administração) nor a supervisory board (conselho geral e de supervisão). In contrast, it is an advisory committee (conselho consultivo), with only a consultative remit, rather than a decision-making body within which worker representatives have power to influence outcomes and thus was not in the scope of our research.' (2016: 221).

Portuguese representatives to access BLER in other countries with stronger BLER rights in the context of EU integration, thanks to the rules of the transnationalisation of BLER rights stemming from the directives supplementing the European Company Statute (SE Directive) and on cross-border mergers, is a possibility (albeit perhaps marginal). But in theoretical terms, it may trigger new debates and experiences in the industrial relations landscape in Portugal at company level and raise awareness among trade unions themselves.

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## Appendix
## List of interviews

| Identifier | Date | Name, role and/or organisation | Place or means |
|---|---|---|---|
| INT1 | 9 June 2021 | Former trade unionist and social researcher, Práxis | videoconference |
| INT2 | 21 October 2021 | Worker representative and non-executive member of the board of directors of SATA Air Azores | videoconference |
| INT3 | 25 October 2021 | Worker representative and non-executive member of the board of directors of TAP | videoconference |
| INT4 | 3 November 2021 | Employer representative, CCP | email |
| INT5 | 8 November 2021 | Worker representative, RTP | videoconference |
| INT6 | 8 November 2021 | Worker representative, UGT | email |
| INT7 | 4 December 2021 | Employer representative, CTP | email |
| INT8 | 17 December 2021 | Worker representative, CGTP-IN | email |

## Abbreviations

| | |
|---|---|
| **APTCA** | Associação Portuguesa dos Tripulantes de Cabine (Portuguese Association of Cabin Crew) |
| **BLER** | board-level employee representation |
| **CAP** | Confederação dos Agricultores de Portugal (Confederation of Portuguese Farmers) |
| **CCP** | Confederação do Comércio e Serviços de Portugal (Portuguese Commerce and Services Confederation of Employers) |
| **CGTP-IN** | Confederação Geral dos Trabalhadores Portugueses - Intersindical Nacional (General Confederation of the Portuguese Workers) |
| **CIP** | Confederação Empresarial de Portugal (Portuguese Business Confederation) |
| **CP** | Comboios de Portugal (Portuguese Railway Company) |
| **CRP** | Constitution of the Portuguese Republic |
| **CTP** | Confederação do Turismo de Portugal (Tourism Portuguese Confederation of Employers) |
| **ETUC** | European Trade Union Confederation |
| **EU** | European Union |
| **N/A** | not available |
| **Pordata** | Contemporary Portugal Database |
| **REP** | 'Representativeness of Social Partners and the Impact of Economic Governance' project ref. FCT PTDC/SOC-SOC/29207/2017 |
| **RTP** | Rádio Televisão Portuguesa (Portuguese Radio and Television) |
| **SATA** | SARA Air Azores |
| **SE** | Societas Europaea (European Company) |
| **SITAVA** | Sindicato dos Trabalhadores da Aviação e Aeroportos (Aviation and Airport Workers Union) |
| **SNPVAC** | Sindicato Nacional do Pessoal de Voo da Aviação Civil (National Union of Civil Aviation Flight Personnel) |
| **TAP** | Transportes Aéreos Portugueses, originally; then, TAP Air Portugal |
| **UGT** | União Geral de Trabalhadores (Portuguese General Union of Workers) |
| **VW** | Volkswagen |