Revisiting worker representation on boards

The forgotten EU countries in codetermination studies

Edited by
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Cite this publication: Lafuente S. (ed.) (2025) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Print: ETUI Printshop, Brussels

D/2025/10.574/33
ISBN: 978-2-87452-781-4 (print version)
ISBN: 978-2-87452-782-1 (electronic version)

The ETUI is co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the ETUI. Neither the European Union nor the ETUI can be held responsible for them.

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Foreword

For anyone involved in the European trade union movement and committed to advancing workers' participation rights, the German model of codetermination serves as the benchmark when it comes to worker participation on company boards. As a trade unionist with partly German roots, this reference comes almost naturally to me. The German model, like the Swedish one, has stood as a major source of inspiration, shaping our collective imagination of, and serving as an orientation for, more democracy at work well before the European Union even existed. It symbolises not only a legal framework but a culture of dialogue, demonstrating that workers' voices must be at the heart of company decision-making. It is a model that many of us take as a given reference point when it comes to shaping democracy at work.

Yet, the reality of industrial relations within the European Union offers a wide range of models of worker participation. In some national contexts, codetermination at company level – or board-level employee representation (BLER) – is viewed with hesitation. In some Member States, trade unions face very different traditions of industrial relations, as well as legal barriers or political cultures that make the idea of workers having a seat on a company board of directors seem distant or controversial. These differences have often made it challenging for the European trade union movement to build the necessary shared understanding to reach a joint strategy on democracy at work. This has been particularly evident when engaging constructively on EU corporate governance and company law; for instance in the debates that led to the adoption of the ETUC's position on a harmonised framework for information, consultation and participation rights for European company forms. These experiences show that democracy at work is multifaceted and that it is essential to build upon the diverse histories and power relations of all trade unions in the European Union.

This is why *Revisiting worker representation on boards: the forgotten EU countries in codetermination studies* is such a milestone. It addresses a genuine blind spot in both academic and trade union debates: those industrial relations systems in which board-level employee representation is limited, overlooked or absent. The European debate has understandably focused on the most successful models, aiming to protect and promote the highest standards. This book sheds light on the 'silent corners' of Europe, where BLER has struggled to emerge or to find political resonance. It explores why that is the case, what barriers exist and what levers could help advance the cause. The contributors – high-level scholars, professors and practitioners – offer insightful diagnosis from within their respective national contexts. Their analyses are both critical and constructive, showing that even in less hospitable environments seeds of participation can be found. Moreover, the European Trade Union Institute's initiative to accompany this research with public debates in the countries concerned has added a practical and activist-oriented dimension. The European Trade Union Confederation welcomes and commends this effort, which illustrates how research and trade union action can reinforce each other to move the agenda of board-level worker participation forward.

It is, however, impossible to ignore that the current political climate in the European Union seems less favourable to the promotion of democracy at work than it was when this project began in 2021. We are witnessing renewed attempts to weaken existing workers' participation rights, with initiatives such as the announced '28th Regime' threatening to undermine established rights and bypass national systems of worker representation. In several Member States, pressure from corporate interests, combined with broader political shifts, risks relegating worker participation to the margins of the policy agenda. This makes it all the more urgent to defend, rethink and revitalise the role of workers' representatives in corporate governance.

It is precisely in this context that this book offers hope and direction. By shedding light on the forgotten countries in codetermination studies, it helps us understand the roots of resistance and the mechanisms of exclusion while also pointing to opportunities for improvement. It identifies actors, networks and moments of potential change that can serve as building blocks for stronger workers' participation rights. For researchers, it opens new comparative perspectives; for policymakers, it offers evidence and insight to design better, more inclusive frameworks; for trade unionists, it provides tools and inspiration to chart a new course of action.

I recommend you all, especially colleagues from countries where BLER is already a reality, to read this book with curiosity and solidarity. Understanding the diversity of our European landscape is one of the first steps toward building a truly common strategy for more democracy at work. This is precisely what this book helps us to do: it reminds us that codetermination is not a finished model, but an ongoing European project that needs all our voices.

Isabelle Schömann
ETUC Deputy General Secretary

Introduction
The significance of worker representation on boards in Europe: ideas, debates and practices

Sara Lafuente

> 'Since the birth of the labour movement (...) [the problem of participation] represents, like that raised around political democracy, a question destined to remain eternally open, in the sense that no formula will ever be considered definitively decisive.'[1]
> (Weiss 1978: 210)

1. Introduction: why this book?

Industrial relations scholars and trainers have two important missions in European or global trade union settings: translation and framing. This was revealed when a colleague and I received an explicit request from the Select Committee of a European Works Council (EWC) in a large German multinational to provide training on 'Codetermination in Europe' for their EWC. Only after a full day of presentations about institutional diversity and the uneven practice of board-level employee representation (BLER)[2] across Europe could the German members – highly unionised and used to strong social dialogue in Germany – put into words what they had actually expected from the training: an overview of the systems of workplace representation in Europe, including of all the kinds of rights practised at company-level (i.e. information, consultation, trade union representation), instead of a course strictly focused on BLER. Unknowingly, they had beautifully used a synecdoche by which 'codetermination' (as one part) had become a catch-all term for 'workplace representation systems at company-level' (as the whole thing). This was not a simple figure of speech or a linguistic misunderstanding: it revealed a particular ideational preconception of what worker participation is.

This anecdote illustrates the quid pro quos that lurk in the concepts of industrial relations in cross-border comparative settings, particularly notions of codetermination, worker participation or industrial democracy, and thus lends itself perfectly as an introduction to the motivations for this book.

As the very concept of worker participation is multidimensional and its institutional forms are dynamic and differ across time and countries, this book aims to capture the social and political significance of worker representation in corporate governance.

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1. Author's own translation from the original in French: 'Soulevé dès la naissance du mouvement ouvrier (...) [le problème de la participation] représente, à l'instar de celui soulevé autour de la démocratie politique, un sujet destiné à rester éternellement ouvert, dans le sens qu'aucune formule ne pourra être considérée comme étant définitivement déterminante.'
2. This form of participation broadly refers to the representation of employees or trade unions on corporate bodies with strategic decision-making power in company policy.

Its goal is to examine how the idea of worker representation on boards or other corporate governing bodies has developed socially and culturally in order to uncover the ideas and beliefs, attitudes and concrete practices associated with it in different European countries. This endeavour entails revisiting its historical contexts (Kärrylä 2021), the institutional channels available and the public, political and activist debates on workplace democracy, with the aim of mapping the actors involved, examining their rationales, understanding the power relations underpinning the contexts in which they are embedded and thus, how this idea and institution is being used. Only by examining these elements can we understand the state of development of worker representation on corporate governing bodies as a policy area, how it has been shaped and how far we can expect it to be favoured or hindered as a mechanism for workers' control in the near future.

This book makes contributions in three different areas. First, it addresses worker representation on governing bodies primarily as a dependent variable. Namely, it aims to understand how this topic is treated as a subject of public discussion and trade union policy and practice. Such a perspective on worker representation on boards is barely found in previous comparative studies which frequently deal with this subject as an independent variable, taking it as an institutional given, and analysing its organisational inner workings (e.g. Rosenbohm and Kuebart 2022) or its economic effects on different variables such as productivity and economic performance, innovation, transparency and social responsibility (see, for an overview, Telljohann 2022). Conversely, this book is driven by an attempt to look into the dynamics, factors and rationales that shape worker representation on governing bodies as an idea and area of policy.

This leads to the second contribution of the book, which is to look at countries generally excluded from observation in codetermination studies. Naturally, when the scientific interest is oriented towards analysing the effects and inner functioning of worker representation on boards as an existing institution, it tends to focus on those countries where the latter is well-established and observable to allow detailed institutional cross- country comparison. The literature on codetermination is filled with studies on the models in Germany (e.g. Telljohann 2022), Sweden (e.g. Levinson 2001), Norway (e.g. Hagen 2020), Denmark (e.g. Krüger Andersen 2004; Rose 2008), Austria (e.g. Kalss 2004), the Netherlands (e.g. Cremers 2018) and France (e.g. Conchon 2014; Crifo and Rebérioux 2019; Aubert and Hollandts 2022), countries which are also covered in comparative research (Waddington 2018). But little is known about those other countries where speaking about a 'model of worker voice in corporate governance' would certainly sound exaggerated. Why this is the case has never been examined in much detail. Interesting debates, diffuse practice and ambiguous positions surround the notion of worker representation on governing boards in these countries. The change of perspective proposed in this book allows us to (dis)cover the realities of these countries and better understand the nuances of meaning, obstacles and grey zones encountered in the circulation of ideas of industrial democracy, filling a glaring gap in comparative codetermination studies.

As a result of this novel perspective and geographical coverage, the book takes stock of the diverse hegemonic discourses and political sensitivities regarding the idea of worker

representation on boards in the Member States of the European Union (EU), which constitutes its third major contribution. It revisits (even at times helps to revive, thanks to the fieldwork conducted) local discussions on workplace democracy at a period which has come as a timely one in terms of preparation for potential related policy developments.

Indeed, after increasing concern over the crisis of (representative) democracy and the economic and social consequences of the 2008 financial crisis, the Covid-19 pandemic further contributed to the creation of new political momentum. As several of the chapters point out, voices across borders and disciplines converged around claims for more democracy at work, with different emphases in terms of economic democracy (Cumbers 2020), workplace democracy (ETUC 2021) and human rights, political and industrial democracy (see, among many others, Baccaro et al. 2019; Gumbrell-McCormick and Hyman 2019; Martínez Lucio and Mustchin 2019; Ferreras et al. 2020; McGaughey 2021; Dukes and Streeck 2022).

This added up to the apparent revival of Social Europe initiated in 2017 with the European Pillar of Social Rights. While the EU economic model has remained substantially unchanged, a new generation of labour law instruments has been implemented since the adoption of the Pillar, including some which attempt to reinforce workers' voice and EU industrial relations and to reactivate public investment (Sabato et al. 2025; Keune and Pochet 2023). A resolution on democracy at work by the European Parliament (2021) and an exploratory opinion on democracy at work adopted by the European Economic and Social Committee (EESC 2023) pulled in the same direction. But opportunity is not just about 'variance in political institutions and the relationship among political actors'; it also has to do with 'a strong cultural component' (Gamson and Meyer 1996: 279). Therefore, the social actors must engage in framing the policy areas to create a political environment in which their collective action can deploy and successfully bring about political change. This book intends to contribute to that endeavour, at a time when a new European security and competitiveness agenda is in the making and democracy is being tested across the EU and beyond (Lafuente et al. 2025:153).

Drawing on the EU acquis on worker participation and previous research, the book seeks to advance comparative knowledge about worker representation on corporate governing bodies in Europe by looking at the sociopolitical significance of this idea, institution and policy in different national contexts. The intention is to provide a deeper and more contextualised assessment of the state of play of debates and practices and to identify the opportunities and constraints for a more successful development of worker participation in a post-Covid recovery scenario.

After this initial overview, situating the aims of the book in its policy context, Section 2 of this Introduction provides a perspective on advances in worker participation on company boards in Europe, while Section 3 revises extant comparative research on the topic. Then, pointing to some of its limitations, Section 4 argues for a renovated and contextualised approach to the study of this issue, leading to a presentation of the methods and the structure of the book in Section 5 and 6, respectively.

2. In search of an EU structuring concept for worker representation on company boards

The trigger for this international comparative study originates at EU policy level and from the observation that developing harmonised legislation in the area of worker representation on corporate boards has proven particularly difficult despite repeated attempts (Gold 2010).

Comparative institutional interest in BLER in Europe emerged in the context of developments in EU corporate law, particularly the European Company (Societas Europaea, SE) framework in 2001 (Kluge and Stollt 2006).[3] More recently, the Company Law Package has reactivated the topic at EU level while two relevant cases have brought German codetermination before the Court of Justice of the European Union (CJEU), questioning the capacity of current EU frameworks to extend and even fully safeguard national codetermination rights.[4] The protection of the German system of codetermination, in which worker representation on supervisory boards is a structuring and highly developed component, was the catalyst of these EU level discussions.

After diverse mismanagement scandals in the 2000s – the era of financial capitalism – BLER reappeared on research policy agendas and corporate reform debates as one of many solutions to redirect 'shareholder value' short-termism towards more sustainable corporate models based on stakeholder approaches (Conchon 2011; Kluge and Vitols 2011; Vitols and Heuschmid 2013; Vitols 2015). However, national corporate reform programmes disappointed in their capacity to bring about progressive change, as was the case in the United Kingdom (UK) and France (Fulton 2019; Rehfeldt 2019). Until today, codetermination has remained largely anchored in national policy and is underdeveloped as a dimension of EU industrial relations.

Yet, the Treaty on the Functioning of the European Union (TFEU) refers to codetermination in Article 153 (f) of its social policy section, and a notion of worker representation on company boards was developed in Directive 2001/86/EC of 8 October (the SE Directive) as equivalent to 'participation' (Lafuente Hernández 2019a). Employee 'involvement' was the key point of contention in the process towards this novel European corporate form: some Member States strongly opposed any mechanism of codetermination (a concept foreign to their liberal political economy) while others, especially Germany, searched for a way to prevent the SE framework from becoming

3. The European Company is a type of public limited liability company established under EU law to facilitate corporate mobility within the EU internal market, allowing businesses to operate in different Member States using a single set of rules.

4. Judgement of the CJEU (Grand Chamber) of 18 July 2017 (C-566/15 *Konrad Erzberger vs TUI AG,* ECLI:EU:C:2017:562) declared that an interpretation of German law as excluding workers in foreign subsidiaries from the right to participate in the election of representatives to their parent company supervisory board in Germany was not in breach of EU equal treatment and free movement rules. And that, in the absence of EU harmonisation of codetermination rights, Member States were fully sovereign in determining the scope of their participation systems. In the more recent case C-677/20 *IG Metall/ver.di vs SAP SE*, the CJEU confirmed that the reservation of trade union seats on parity supervisory boards of German companies was a core element of the German codetermination system and thus had to be safeguarded in cases of SE transformation, in line with the SE Directive. The CJEU even clarified that, in the context of an SE and for the sake of equality, such trade union rights should belong to all trade unions represented in the SE, irrespective of their country.

a tool to circumvent national codetermination, considered a defining element of their ordoliberal economic model. In other words, EU regulation should prevent companies subject to German law from searching for ways to avoid codetermination as a possible means of gaining competitive advantage.

As a compromise solution, the SE Directive did not harmonise BLER but left it to negotiations and default standard rules dependent on how the SE had been established (i.e. whether by means of transformation, merger, holding or subsidiary constitution) and on the pre-existence of codetermination rights (the so-called 'before-after' principle). Codetermination was thus incorporated in the SE Directive as one dimension of the EU's approach to 'employee involvement', additional to information and consultation rights, understood as the exercise of workers' influence on company decisions by way of:

1. The right to elect or appoint some of the members of the company's supervisory or administrative organs; or
2. The right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organs (Article 2(k)).

In the standard rules of the SE Directive, 'participation' was further conceptualised as a specific right for employees to become full members of the board with the 'same rights and obligations as the members representing the shareholders, including the right to vote' (Annex, Part III. B of the SE Directive). They were, however, excluded from a casting vote in the event of a tie (Article 42 of Regulation 2001/2157/EC of 8 October on the Statute of a European Company), which meant they could never collectively veto a consensual decision on the shareholder side. This wording attempted to reconcile the different institutional approaches to codetermination that needed safeguarding. In so doing, the SE framework captured and reproduced in EU policy a notion of participation that echoes specific national industrial democracy frames (primarily, those of Germany, the Nordic countries and the Netherlands). It became the reference for other EU corporate law instruments[5] and was largely shaped by German practice and experience too, as most of the SEs negotiating BLER were de facto registered in Germany (Lafuente Hernández 2019b).

This policy context and institutional solution has produced a certain bias in discussions on worker participation in corporate governance at EU level, orienting comparative research and shaping European trade union strategy, as we will see in the next sections of this Introduction.

3. Previous comparative research on worker participation in corporate governance in Europe

Comparative research on worker representation in corporate governance was conducted primarily to understand the impact of the transpositions of the SE Directive into existing national frameworks of employee participation in the corporate governance

5. Directive 2003/72/EC of 22 July on European cooperatives (Societas Cooperativa Europaea, or SCE Directive), Directive 2005/56/EC on cross-border mergers (CBM) of limited liability companies (CBM Directive) and Directive (EU) 2019/2121 of 27 November as regards cross-border conversions, mergers and divisions.

of for-profit companies. For this, research efforts were oriented towards mapping and analysing existing hard law establishing the rights for workers to be represented, with a distinctive voice and a right to vote, on the governing bodies of such companies (Conchon 2011, 2015; Munkholm 2018). The endeavour to retain a common definition of BLER that would allow cross-border comparison led, above all, to the exclusion of public administration, worker-owned companies, cooperatives and other non-profit organisations from the scope of observation, despite them sometimes having a meaningful role in framing worker participation perspectives and experience in some southern European and Anglo-Saxon traditions (Holmström 1985; Clarke 1987; Mora Cabello de Alba 2003; Chomel 2004).

This research resulted in two main findings. First, 19 countries in the European Economic Area (EEA) were identified in 2015 as having adopted laws or enforceable regulations securing BLER rights (ETUI 2015). Among them, one group of countries was considered to have 'widespread participation rights' which in fact meant a 'wider scope of application of the rights', these being applicable not only to certain companies in the public sector but also to some in the private sector (Conchon 2015: 12). A second group was considered to have 'limited participation rights', meaning that the rights were only applicable to some companies in the public sector. And finally, a third group was characterised as having no (or very limited) participation rights. The country categorisation according to the 'width' or 'limitation' of the scope of application was thus unrelated to the actual number of companies falling under the obligation to have worker representatives on corporate boards, the specific criteria that such companies had to meet and the degree or quality of such mandatory participation or its impact on actual worker influence on company policy. These categories were only a first filter for analysis, aimed at highlighting that workers' voice had successfully forced itself on private company boards in some countries and was not exclusively limited to the public sector. But laws are obviously not static: they have evolved and gone through modifications over time, sometimes even being repealed, with implications in terms of the depth and coverage of participation rights.[6]

Second, it was observed that national codetermination was often governed both by company and labour law. Moreover, its institutional settings varied greatly across countries around a range of characteristics: the coverage or scope of application of the rules (depending on factors such as ownership, size, form and structure of corporate governance of the company); the powers of the body on which workers were represented;[7] the powers of workers within such a body and the extent of their participation (ranging from one member to parity, sometimes even with possible collective voting rights on certain issues); the modalities of appointing or nominating representatives (by recommendation, election or appointment by employees, works councils or trade union

6. The evolution of key laws governing BLER rights in EU Member States and of other instruments institutionally underpinning those rights is displayed by country and year in the Annex at the end of this book, based on Waddington and Conchon (2016), Waddington (2018) and the national chapters of the book. The original excerpts and their translation into English, for information purposes, can be found at: https://www.worker-participation.eu/legislation

7. For instance, in Germany, worker representatives' relative influence may come from their significant proportion on supervisory boards but, most importantly, from the extended powers of such bodies in corporate governance decision-making (Hopt 2016).

choice, with in some cases a role for shareholders or managers); and the enforceability of the legal provisions (directly enforceable, subject to negotiations or to workers' demand) (Conchon 2011, 2015; Waddington and Conchon 2016). Diversity in terms of the rights and obligations of the representatives with such a mandate completes the picture. All these characteristics determine the range of institutional resources and the room for manoeuvre of worker representatives with which to gain influence on the decision-making of corporate boards and company policy.

This cross-country systematic comparison provided an intelligible analytical framework to overcome the 'fairly common prejudice' (Conchon 2011) according to which worker representation in corporate governance was exclusively a German idiosyncrasy. The conclusion was functional to the strategic advance of the idea that BLER was a dimension of the 'European Social Model' (Kluge 2005) and, as such, deserved the full attention of the EU and European Trade Union Confederation (ETUC) policies.

Yet, the findings of a groundbreaking 2009 European Trade Union Institute (ETUI) survey which collected the responses of more than 4,600 board-level employee representatives across the EEA (Waddington and Conchon 2016) uncovered that most of them (88%) were concentrated in five countries; namely, Germany, Sweden, Norway, Denmark and Austria. Such an uneven cross-country distribution indicated the highly diverse embeddedness and social practice of BLER, particularly among trade unions. No data were found for Portugal, while the findings for Greece, Ireland, Spain and Finland were barely significant due to the small number of questionnaires collected in these countries (Waddington and Conchon 2016: 224-229). Drawing on the survey findings, the authors proposed a more insightful categorisation of countries according to variations in BLER systems based on de jure but also de facto variables. Such variables included the intensity of articulation among BLER members and between them and trade unions or works councils. Articulation was indeed considered a key power resource for labour representation and a crucial factor for effective strategic decision-making. In this way, the authors could identify a Germanic cluster, a Nordic cluster, a Francophone cluster and two miscellaneous clusters, one for 'new' EU Member States and another for Ireland, Greece and Spain. Overall, the first two clusters outscored the others in terms of coverage, articulation and the number and proportion of representatives on boards.

In a way, these empirical findings supported the initial 'prejudice', even if rephrasing and complexifying it: BLER rights were indeed not a German exclusive, but still lived and functioned best in Germanic and Nordic countries. Even in these countries, the survey indicated that codetermination operated in very different economic and political contexts compared to those in which codetermination laws were adopted. BLER systems have since faced multiple challenges (e.g. globalisation, financialisation, cross-border corporate mobility, trade union decline and fragmentation of the workforce, as well as the trade-offs involved in these), which could result in the original systems gradually changing their social functions across time (Hoffmann 2004; Mahoney and Thelen 2010). The same caveats were again pointed out in a later study which examined

the same survey data from a national contextualised perspective for seven countries (Waddington 2018).[8]

Nevertheless, this research contributed to a new consensus within the ETUC. After an initial resolution in 2014 (ETUC 2014), the ETUC adopted a more concrete position paper proposing an EU directive to establish an integrated architecture for workers' 'involvement' in European company forms, including high minimum standards on information and consultation but also 'participation' rights in the EU sense as previously described. Among other things, the companies concerned would have to include worker representatives on their boards according to an escalator approach – from two to three members in companies of 50-250 employees; one-third participation in companies of 251-1,000 employees; and parity in companies larger than 1,000 employees (ETUC 2016 and 2020). However, this harmonising proposal remained limited to cross-border company forms or instruments governed by EU law, such as SEs, cross-border mergers or cross-border conversions. Therefore, a more ambitious claim of pan-European worker participation rights in any multinational group operating in Europe, regardless of country or corporate form (e.g. in line with the scope of application of the EWC Directive), was ruled out. In that regard, no consensus could be found among the ETUC's affiliated organisations to go beyond European corporate forms in terms of coverage.

In sum, looking at the empirical implementation of BLER allows an understanding and comparison of practice in countries with embedded systems of BLER fitting the EU definition. However, the realities of worker participation in countries without an established or observably effective BLER regulation have passed under the radar; and likewise, the social, political and trade union debates around this potential, or already practised, policy area.

4. Renovating the approach to accommodate European diversity

In parallel, less systematic country observations in other studies revealed that, in certain Member States with limited or no regulations on BLER, the idea of codetermination[9] had circulated and gradually permeated the public agenda, furthered in recent years by certain trade unions, civil society players and often, although not exclusively, social democratic parties in government (Fulton 2015; Hoffmann et al. 2017: 64). A contextualised and more dynamic approach to worker representation on governing bodies allows the capture of these interesting developments in Europe. As the chapters of this book address, voluntary practice and significant debates took place in some countries in the absence of legal regulations on codetermination. The practice there was covered by company-level negotiations or by the unexpected effects of EU legislation on cross-border mergers or SEs (i.e. in Belgium and Italy).

8. Again, countries for which the survey data were meaningful and representative; that is Germany, Denmark, Norway, Sweden, France, Slovenia and Hungary.

9. This is in the sense of worker representation with voting rights on corporate governance bodies, particularly boards.

In other countries, the public debate on worker participation stagnated for a long time, despite some institutional underpinning for BLER which remained incomplete or which, at times, was even repealed: rules were rarely implemented in the few remaining publicly-owned enterprises, but trade unions generally did not pursue this level of representation, focusing rather on information, consultation and collective bargaining (e.g. as in Greece, Portugal and Spain).

In yet others, codetermination rights were reintroduced or extended (i.e. in the Czech Republic and Lithuania in 2017), even if the dynamics of implementation did not live up to the initial expectations, leading to deviated experiences – which some policy attempts aimed to redress (e.g. in Finland) – or ones which were exposed to the consequences of a political volte-face.

Last but not least, some countries stood out for their scattered regulation, resulting in fragmented and weak implementation, partly due to the strong impact of privatisation processes but mostly to (neo)liberal market economy structural and cultural imprints (e.g. as in Ireland and Poland).

Discussions at a series of ETUI itinerant events co-organised with local actors in Spain, Poland, Ireland, Portugal and Greece between 2018 and 2020[10] revealed the necessity of framing worker participation on company boards within the larger institutional and ideational national frameworks of industrial relations. To remain significant in those countries, discussions on worker participation have had to take into account: the central impact of privatisation and deregulation processes in the public sector; trade unions' position in power relations; head-on opposition by employers to participation; the characteristics of productive systems dependent on foreign capital, small enterprises or self-employment; the hegemony of neoliberal discourse and its implications; trade unions' general prioritisation of (sector) collective bargaining as a regulatory mechanism; and some past experiences of trade union malpractice on company boards.

The approach adopted in earlier research has significantly contributed to knowing more about the institution of BLER and the experiences of the employees involved in it; but it is insufficient to grasp why BLER did not develop in a number of countries, even where some regulatory coverage was in place or where trade unions rhetorically supported it.

In terms of theory, earlier research reveals little about the social significance of BLER in countries that did not regulate it or where practice was brief or unsatisfying. Neither

10. Public and private events were co-organised by the European Worker Participation Competence Centre (EWPCC) of the ETUI, together with local actors, with the aim of promoting local networks, debate and the exchange of experience around worker participation in corporate governance: 'Participación de los/as trabajadoras en el gobierno corporativo', with Comisiones Obreras (CCOO; Workers' Commissions) confederation, 23 April 2018, Madrid (Spain); 'Workers' participation in corporate governance in central and eastern Europe', Łódź University, 27-28 March 2019, Łódź (Poland); 'Reviving economic democracy in Ireland after the crisis' and 'BLER – A European perspective and exchange of experience', with the Irish National Worker Directors Group, 23-24 January 2020, Dublin (Ireland); 'Democracia no Trabalho: O que é – para quê-como – com quem', with Práxis, 9 December 2020, online (Portugal); 'Reviving economic democracy in Greece in the context of the Covid crisis' and 'BLER – A European perspective and exchange of experience', with the Labour Law Centre of the National and Kapodistrian University of Athens and the Greek Society for Labour and Social Security Law (Edeka), 15-16 December 2020, online (Greece).

does it have much to say about how the institution had evolved through time, has been used and debated by actors and with which attitudes and perceptions, or how deeply it is embedded in larger industrial relations systems, ideational frameworks and discourses of industrial democracy. Thus, it proves insufficient to be a basis for a sound assessment of perspectives on the advance of worker participation. Comparative industrial relations scholars have repeatedly underlined the importance of discourse and ideas in explaining institutional change (e.g. Frege 2005; Morgan and Hauptmeier 2021). After all, German codetermination itself was also originally 'the result of a political compromise between competing projects and conceptions' (Conchon 2011: 7). Reorienting questions towards understanding how BLER has been forged and has existed in contextualised practice entails a shift from a deductive to a more inductive and longitudinal approach. This allows the integration of historical path-dependencies, power relations considerations and other factors in the analysis – factors that might have a more significant explanatory value and meaningful contribution to the understanding of the diverse practice of BLER in Europe, and also of the prospects for change.

Methodologically, a conventional term-by-term matched comparison and country categorisation based on pre-established analytical templates assumes that institutions can be studied as universal objects and understood in isolation, removed from the social relationships in which they are embedded; and thus, from their societal coherence and history. Societal coherence does not refer here to an essentialist, static or mechanical notion of society or culture but to a dynamic notion of society based on social and institutional interrelations, continuous systematic change and the '[accumulation of] internal inconsistencies' (Streeck 2001). Overemphasising the relevance of structures in comparative research orients theory towards a dissection of institutional diversity that hides the relational, constructed and ideational dimensions of institutions, as well as their plasticity and dynamism, thus limiting 'the interest and heuristic reach of comparative research' (Maurice et al. 1979: 333). In contrast, 'the analysis of an observable phenomenon in the company must lead to the *discovery* of the social relationships that are significant with regard to this phenomenon' (Maurice et al. 1979: 333) so that commonalities can be identified using a more meaningful 'contextualized comparison' (Locke and Thelen 1995).

Politically and strategically, a contextualised analysis can more effectively expose the opportunities for, or blockades to, policy intervention and institutional change at local level as it takes account of actors' situated biases, predispositions and capacities. It can in this way support and reinvigorate European and national debates on worker participation and sustain political mobilisation and action to advance workers' voice in corporate governance. Ultimately, 'workers' world views shape their ideas of what is worth fighting for, and (…) industrial struggles, in turn, can change their original world views' (Sabel 1984: 14). In this sense, 'ideas have to be made relevant to the particular context and shaped in ways that make them a motivating force for actors' (Morgan and Hauptmeier 2021: 774).

In brief, an inductive and contextualised insight into BLER as an area of policy is central to this book's approach. Our assumption here is that this will allow a deeper and more accurate understanding of the current state of play of BLER in Europe, which is an

essential (though of course not sufficient) condition for a pan-European political strategy on worker representation on boards to succeed, be it on the side of policymakers or that of trade unions. Such a perspective has been missing from comparative research on BLER so far. In this sense, the book is guided by a comparative approach in industrial relations that departs from 'fast' or 'thin' research strategies and seeks to adopt a 'slower' and 'deeper' pace, closer to a 'contextual understanding of national society/history/culture' (Almond and Connolly 2020: 71) when approaching worker representation on governing bodies in Europe.

5. Concepts and methodologies: dealing with convergence and divergence

Involving workers in the top strategic decision-making processes of their companies links overall with an ideal of democratisation and the redistribution and rebalance of power and control in the workplace and the economy. But when this is to be specifically delineated into institutions, worker participation becomes a far more complex matter. While it is a multidimensional and socially constructed notion, broadly referring to 'the participation of workers, and their representatives, in the decision-making processes which govern their working lives' (Fetzer 2010: 7), it incorporates very different forms and meanings depending on history; cultural, political and legal factors; national context; disciplines; and the actors using it (Wilkinson et al. 2010; De Spiegelaere et al. 2019).

Generally, these meanings have been influenced by hegemonic discourses on the relationship between the state, society and the firm which underpin industrial relations systems (Frege 2005). The concepts of participation or industrial democracy are the historical result of 'a mixture of traditions, economic fortune, experimentation and political struggles and compromises' (Houwing et al. 2013: 277), which explains how worker participation came to be defined as a 'semantic imbroglio' in which 'linguistic difficulties are grafted on to ideological problems'[11] (Weiss 1978: 25-26). This means that, apart from the diversity in institutional designs, the terms 'worker participation' or 'codetermination' are the distillation of ambiguity. They do not cover the same ideas in every country and their demarcations are not easy to establish. Hyman makes a similar reflection about industrial relations more widely: 'Not only are systems of production, and the rules of employment with which they are associated, socially embedded, so are the ways in which those involved *think* about industrial relations' (Hyman 2004: 272). This means that the very '*object of inquiry* varies cross-nationally' (Hyman 2004: 271), and so it goes for worker participation and codetermination as objects of research.

When examining worker representation on corporate governing bodies in international comparison, we need to consider that the object of inquiry is culturally bound: the terms used hardly keep the same meaning when translated across languages and require previous conceptual and contextualised analysis (Šarčević 1989; Desmarez 1991). As

11. Author's own translation from the French : '[l]es difficultés linguistiques viennent se greffer sur les problèmes idéologiques'.

this book aims to uncover the different existing sociocultural meanings, given the implications for any attempt at public action or institutional change in this policy area, it has chosen a reasonably flexible approach rather than stricter pre-defined concepts to which not all the national realities might be expected to relate.

As a result, the editing process has been challenging. On the one hand, the original terms used in each country had to be maintained as far as possible to engage with local debates and understandings. In the Portuguese or Spanish contexts, for example, the English term 'codetermination' remits to the highest level of worker representation on corporate governing and administrative bodies, as equivalent to 'cogestão' or 'cogestión', which would literally translate as 'co-management'. Similarly, in the Belgian context, 'codetermination' equates to 'cogestion' (in French), covering a larger range of possibilities for workers to participate in company management, among them being BLER. In Germany, 'codetermination' alludes to the original term 'Mitbestimmung' which, in fact, covers a much broader and complex system of worker representation in corporate decision-making, involving different levels and special works council rights.

The terms referring to worker representatives themselves also vary according to how legitimate mandates are considered and their role in the different national realities. While 'trade union participation' is the preferred term in Spain, for instance, leaving any role for employees largely aside, the Czech Republic recognises 'board-level employee representatives' as such, while Ireland refers to 'worker directors' as they are members of single-tier boards of directors.

The highest level of corporate government (or management) and administration can also be located at different levels and termed differently in the countries observed. Generally, the 'board' occupies a privileged place at the highest level of decision-making, but this is not always the case. The chapters often distinguish between monistic (or administrative) boards of directors and dualistic boards, the latter consisting of an executive (or management) body and a supervisory one on which worker representatives can gain a monitoring function over management, even if sometimes these bodies are only advisory. For instance, in the case of traditional Italian board structures, the supervisory body is referred to as a controlling body due to its mere audit functions. In other cases, that function might be more effective when implemented at the level of the executive leadership team, when it has a greater de facto power than the board itself, as is the case in Finland and seemingly in most countries where single-tier systems of corporate governance prevail.

Finally, concerning the scope of application of worker representation rights in corporate governance structures, the public sector stands out as key in all the chapters, but is not necessarily demarcated according to the same lines. 'State-owned companies' may refer to different legal, administrative or economic realities. In some countries, a highly complex public administration system implies that different layers (i.e. federal, regional, municipal or local) or types of 'public sector entities' may be concerned with worker participation, although no centralised registers are available. In others, state-owned companies are covered irrespective of their commercial aims or corporate form, because of the nature of their full, majority or partial public ownership. Elsewhere, they

are covered because of their specific corporate legal status, shared also by other private sector companies.

Still, the object of inquiry needed to be named, and a level of mutual understanding was required to reach the book's objectives. At appropriate times, explanatory footnotes provide explicit clarification of the use of these terms in their context, weaving a dialogue across the chapters and between the latter and the reader, while trying to avoid common misunderstandings. As an example, it is interesting to observe how the Portuguese chapter uses 'board-level employee representation' as a 'softer' right than 'codetermination', to emphasise the lack of workers' voting rights in the cases of worker representation on boards in Portugal, whereas some previous publications, with other national experiences in mind, had precisely equated 'board-level employee representation' to systems where workers had distinct voting rights on the board (Conchon 2015). Relying on labels is not always useful in comparative contexts as they usually do not refer to the same thing, so the chapters are explicit in their use of terminology.

To conclude, the approach invites an examination of the notion of worker representation in top corporate decision-making processes as embedded in its social path-dependent history. This means connecting it with the EU acquis and other satellite concepts of industrial relations such as trade unions, works councils, information and consultation rights, collective bargaining or participation in other areas of the economy. It also entails linking it with corporate governance structures such as (supervisory) boards, executive teams and different corporate forms.

6. Objectives and structure of the book

As discussed above, the primary aim of this book is to expand geographically our comparative knowledge of worker representation on boards, uncovering country realities that were less in the focus of previous research in the field of codetermination. Limited work has been done on actors' beliefs, attitudes and debates or the dynamics and practice of this institution in some of these underexplored countries. The book aims to build upon dispersed knowledge (see, among others, Galiana Moreno and García Romero 2003; Stoleroff 2016; Leonardi and Gottardi 2019; Zybała 2019; De Spiegelaere 2020; Harju et al. 2021; Lafuente Hernández 2018, 2021) and situate these realities in the European debate for a labour strategy aimed at strengthening worker participation in corporate governance.

The second aim of the book is to expand theoretical comparative knowledge on BLER by adopting a new perspective, interested in the practice, debates and social significance of BLER in its context, to understand how it emerges (or not) as a policy issue. This is done by using methodologies based on an inductive approach, interdisciplinarity and case study research designs to allow observation beyond the strict legal frameworks. In this way, the book intends not only to fill a gap in the field of comparative industrial relations and particularly codetermination studies, but also to serve practitioners from the labour movement and policymakers in their reflection and endeavours to

advance ambitious, coordinated and effective multi-level policies to enhance worker participation in corporate governance.

The book evolves around ten country chapters commissioned from recognised experts, academics and practising lawyers in the field of worker participation in their respective countries. They apply different methods to touch ground with their local realities and debates, and plough a path to collect relevant available local data. Some chapters are more policy oriented; others more legally so. Using the perspective and methods they considered most appropriate to explore their national realities, the country experts draw on previous studies and literature, as well as on data from original research conducted in their countries, to address the following aspects:

1. The historical context and how worker representation on top corporate governing bodies came to be discussed on the public agenda or in policy.
2. How the rights of worker representation in corporate governing bodies were underpinned by regulation, if any existed, and how they were articulated with other national institutions of industrial relations.
3. How these rights were used and implemented in practice. As far as possible, a mapping exercise of coverage was the aim, alongside a significant sector or company case study, to illustrate how the rights had been applied (or not) and how they were understood in practice.
4. The evolution and state of political and public debate, accounting for social partners' attitudes vis-à-vis workers' rights on company boards or governing bodies and, in particular, the position of trade unions, considering the situation of power relations.
5. A critical evaluation of the dynamics, social meaning and significance of this form of worker participation in the wider context of industrial relations, and its evolution from the functions expected originally to their currently observable impact.
6. A prospective evaluation exploring the opportunities and constraints for developing worker participation on corporate governing bodies as a social policy area and for expanding its enforcement where regulations already existed (e.g. via transfer from the public to the private sector, and the influence of the EU acquis or public investment in the context of post-Covid recovery plans).

The book is divided into four parts. This structure presents and organises the chapters according to a progressive reading sequence, without attempting to establish internally coherent theoretical country categories. Rather, country chapters have been brought closer together on grounds of particularly marked features in their narratives.

Part 1 assembles the cases of Belgium and Italy. These represent industrialised countries where hard law on BLER rights has never been adopted. Yet, the issue of worker participation on company boards has been historically discussed in these two countries. Actors with well-known and very strong opposing positions have sustained a debate on the issue, at least until recently, both at policy level and within trade unions themselves. Even so, certain experiments do exist on a case-by-case basis, based on company-level collective agreements or as the result of the transposition of EU corporate law regarding BLER rights in cross-border mergers or SEs.

Part 2 gathers Greece, Portugal and Spain as country cases where BLER has received a certain institutional recognition at one point in time, either in the law, in the constitution or in social pacts, but where it has either lacked legal specificity, had a marginal practical footprint or where the trade unions did not really support it strategically. The reasons are ideological, linked to isolated cases of malpractice, but mostly due to the macroeconomic context and power relations that forced other priorities on the table for trade unions. In Greece, the issue seems largely absent from the public and trade union agenda despite historical practice in some state-owned companies and sectors based on laws that have since been repealed. Conversely, in Portugal and particularly Spain certain actors show a renewed, slowly surfacing interest in the topic.

Part 3 presents the cases of the Czech Republic, Finland and Lithuania which were identified as those country cases where regulations on BLER have been recently adopted, even if in a limited manner or leading to flawed or fragile implementation.

Finally, Part 4 brings together the chapters on Ireland and Poland. As mentioned, their existing BLER experience, primarily rooted in the public sector but also in privatised companies (in Poland), has been thwarted by the (neo)liberal turn in the political economy and culture, and additionally by the implications of foreign capital investment, all of which have had a rather devastating impact, aggravated by privatisation processes in both countries.

The concluding chapter takes stock of the findings of the chapters from a transversal perspective, following the main aspects covered in each in response to the book's objectives. It points at some main similarities and differences in terms of dynamics and social significance, and highlights some explanatory factors and takeaways in terms of prospects for a worker participation agenda at EU and country level.

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Cite this chapter: Lafuente S. (2025) Introduction. The significance of worker representation on boards in Europe: ideas, debates and practices, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Abbreviations

BLER	Board-level employee representation
CBM	Cross-border merger
CCOO	Comisiones Obreras (Workers' Commissions)
CJEU	Court of Justice of the European Union
EEA	European Economic Area
EESC	European Economic and Social Committee
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EWC(s)	European Works Council(s)
EWPCC	European Worker Participation Competence Centre
TFEU	Treaty on the Functioning of the European Union
SCE	Societas Cooperativa Europaea (European Cooperative)
SE	Societas Europaea (European Company)
UK	United Kingdom

Part 1

Heated open debates and some experimentation

Chapter 1
Heavens no! Board-level employee representation in Belgium

Stan De Spiegelaere

'We work for the money
And they can figure it out
All that talk about the working youth
I'm sick of it
If something really needs to change
Well, that they should do themselves
As long as we get our coffee
In our break at half past ten.'

Excerpt from 'Lied van de werkende jeugd'
('Song of the Working Youth'), author's own translation from the original in Dutch.

1. Introduction

The lyrics from 'Lied van de werkende jeugd' ('Song of the Working Youth'), a 1998 song from the Dutch activist band Bots,[1] illustrate the lack of democracy at work and the resulting alienation of a life spent working in factories. If you do not like how work is organised, you can discuss it with your boss and nothing will change. The focus is the pay; and all the rest, well they can figure that out themselves.

In a slightly exaggerated fashion, one can see in the lyrics a reflection of the issue of board-level employee representation (BLER) in Belgium. The focus of trade unions at company level is information and consultation (you can discuss it with the boss, although nothing will change), not co-deciding work, organisational or strategic issues. The tactical attention of the unions goes (as it has always gone) to pay and working conditions set through negotiation taking place mostly at sector level. The Belgian solution entails economic codetermination through sectoral collective bargaining in exchange for management prerogative to prevail intact at company level: the rights and power of workers include information, consultation and the right to oppose and act as a constraint on management power, but not co-responsibility for company strategy through board-level representation.

In Europe, Belgium is in this sense a bit of an exception. In most neighbouring countries with similar industrial relations settings, there are forms of company level worker participation including board-level employee representation. In some countries, these systems are relatively well-developed while in others (see other chapters in this book) they are quite limited. Yet, in all those countries, employees, in some way or another and in some contexts, can co-decide company strategy. Not so in Belgium.

1. The most famous Bots song 'Zeven dagen lang' from 1976 is about drinking together, working together and fighting together. You may know it from the 1998 Scooter cover called 'How much is the fish' (which was, however, totally devoid of any reference to social struggle).

Apart from a very limited number of exceptional circumstances, as discussed later, there is no system through which employee representatives can be members of company boards.[2] The central question of this chapter is, consequently: why is there no such a system of codetermination in Belgium? And what prospects are there for its future introduction?

In searching for answers, Section 2 looks at the historic structure of Belgian industrial relations and the history of legislative initiatives around the topic. In Section 3, the position of the three main trade unions is discussed while Sections 4 and 5 discuss respectively the positions of employers and workers, and the main political parties. Section 6 reviews the currently existing practice with board-level employee representation and, finally, some prospects are discussed.

The main argument running through the chapter is that, while the lack of codetermination in Belgium may look an oddity in the European context, it makes a lot of sense from an internal perspective. The basic compromise between labour and capital is not geared towards company level worker participation as the three unions have never managed to agree on the issue and there is little to no political interest in it. As always, the future is uncertain but, because there are few voices openly advocating it, BLER remains a policy option in search of both a problem and a political window of opportunity.

2. Looking back

To appreciate in full the absence of BLER, a comprehension of the structure of Belgian industrial relations is essential and, for this, a look back into history is necessary. As the following paragraphs show, the Belgian structure of industrial relations might be an uneasy fit for BLER, while the history of legislative initiatives signals little political appetite or support for the concept.

2.1 Belgian industrial relations and BLER: an uneasy fit

The current shape of industrial relations in Belgium is largely influenced by inter-war experimentation and post-World War II (WWII) pacts and institutionalisation. Just as in many other countries of the European Union (EU), in the aftermath of WWII the Belgian social partners made several pacts and compromises that continue to shape industrial relations today. In the case of Belgium, these were the social pact of 1945 (although it remained a draft as it was never signed) and the productivity pact of 1956. The main components of the pacts are labelled the 'Belgian basic compromise' and refer to the following:

– On the employee side, the recognition of the authority of the employer and the promise to execute work duties conscientiously and to respect collective

2. The predominant structure of Belgian company boards is monistic, where the company is governed by a board of directors. In some cases, a dualist structure can also be installed.

agreements. Moreover, through the productivity pact, the employee side agreed to participate in productivity-increasing initiatives at company level.
– On the employer side, the recognition of trade unions and freedom of association and a promise to respect the dignity of employees and treat them fairly. Through the productivity pact, the employer side equally promised a just distribution of the profits stemming from productivity increases.

This basic compromise included an understanding regarding the structure and content of industrial relations. From the employer side it was agreed that working conditions, such as working time or wages, would be a matter for negotiation, mostly to be held at sector level. At the same time, company-level social dialogue on work organisation and company strategy would be restricted to information and consultation; management prerogative at this level was to remain intact.

In the post-war years, this compromise was translated into a series of laws and collective agreements installing social dialogue institutions at national, sectoral and company level. Without going into the details of these institutions, it is important to appreciate the following characteristics of Belgian industrial relations. First of all, most institutions are bipartite with a facilitating role played by government agencies. This is the case at national level (e.g. the National Labour Council) and at sector level (i.e. joint committees). Second, the sector level is (still) the most important for negotiation on wages and working conditions. As companies are obliged to be part of a certain sectoral joint committee, and sectoral agreements are, as a rule, made generally applicable, the power of the sector level is guaranteed. Third, while the spread of company social dialogue institutions is relatively broad thanks to all-encompassing workforce elections, the thresholds for their establishment are quite high (i.e. 50 employees to set up a health and safety committee and 100 for a works council) and their power is limited mostly to information and consultation. Fourth, there is an almost complete trade union monopoly over employee representation in the workplace. Only legally mandated 'representative' trade unions can submit candidate lists for workforce elections, meaning that employee representative mandates are reserved for union members only (with the exception of executive staff). Fifth, Belgian industrial relations are characterised by a high level of stability. The main architecture put out in the post-war era remains intact and has been modified only marginally.

It is clear from this description that BLER might be difficult to fit into the Belgian system of industrial relations: it would diverge from the idea of the sector as the main level of bargaining and also from the limited role of company-level institutions.

2.2 'I don't want to talk about it': legislative initiatives on BLER

The existence of this basic compromise did not mean there was (and is) no divergence in opinions and strategies regarding the form of industrial relations and democracy at work. Many consider that BLER did fit into the compromise. Illustratively, the initiators of the law of 20 September 1948 establishing works councils mentioned that 'workers have the undeniable right to take part – in general and in companies – not

only in the design of workforce regulations, but also the management of the economy' (Nationale Arbeidsraad 1984), hinting at works councils being only the first step in the democratisation of companies. However, these mentions were subsequently scrapped (Brouwers 1974).

On a number of occasions, initiatives were indeed taken to introduce a fully fledged Belgian type of BLER. The first post-war initiative came from the co-founder of Christelijke VolksPartij – Parti Social-Chrétien (CVP-PSC; Christian Democratic Party), August De Schryver. In his 1948 proposal, he envisaged company boards with employee representatives and independent members simply as a measure to improve information for employee representatives (Beke 2005: 242-244). The proposal was supported by the trade unions affiliated to Algemeen Christelijk Vakverbond – Confédération des Syndicats Chrétiens (ACV-CSC; Confederation of Christian Trade Unions), but was opposed by Catholic employer organisations which resulted in the proposal not even being discussed in parliament (Gerard and Mampuys 1986: 347-348).

In 1976, liberal members of parliament tabled a proposal to discuss codetermination in companies, envisaging a quasi-parity board with a decisive vote for management, representation rights for executive staff and the abolition of the trade union monopoly. Again, the proposal was not discussed as parliament dissolved in March 1977 (Chambre des Représentants 1977).

In 1981, the priority programme of the Martens V government envisaged an initiative to 'make large companies more democratic and transparent through the introduction of employee (manual, white collar and executive staff) participation in the management or supervisory boards of companies' (Nationale Arbeidsraad 1984). No such initiative was taken.

However, also in 1981, Charles Hanin (Parti Social-Chrétien; PSC) submitted a proposal to introduce a supervisory board in large enterprises (over 1,000 employees) including employee representatives (Laagland 2013). These representatives would be put forward by the trade unions or, under very strict conditions, directly by employees. Again, the proposal was not even discussed (Nationale Arbeidsraad 1984).

A year or so later, in 1982 and 1983, two further proposals were submitted by a group of Flemish and French-speaking liberal parliamentarians to reform social dialogue in large companies and introduce employee representation on the boards of large companies (Damseaux et al. 1983; Henrion et al. 1982), but these were both retracted without discussion or debate.

Since then and until the 21st century, very little or no legal initiatives have been taken on BLER in Belgium. In 2004 and 2008, this changed when the Belgian social partners were faced with the task of transposing different European directives that have an impact on social dialogue and BLER: Directive 2001/86/EC on employee involvement in the European Company (Societas Europaea; SE); and Directive 2005/56/EC on cross-border mergers. Both directives ensured in some way that existing worker participation structures, including BLER, were to be maintained when companies changed their

legal status into the SE form or engaged in cross-border mergers. Through the 'before-after' principle, Belgian companies or Belgian employee representatives in European companies can acquire the right to BLER.[3]

These directives were transposed through two collective agreements in the National Labour Council – Collective Labour Agreement No. 84 (6 October 2004) and Collective Labour Agreement No. 94 (29 April 2008) – and were made generally applicable by Royal Decree on 22 December 2004 and 12 June 2008.

Through those collective agreements, BLER was effectively imported into Belgium and defined (in Collective Labour Agreement No. 84) as follows:

> 'participation' means the influence of the body representative of the employees and/ or the employees' representatives in the affairs of a company by way of:
> – the right to elect or appoint some of the members of the company's supervisory or administrative body; or
> – the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative body (Article 3; para. 7.3).

The transposition of these two directives did not lead to any political debate around BLER in Belgium. The consensus was that the directives were to be transposed faithfully; that codetermination in other countries was not to be undermined in the Belgian legislation; and that, at the same time, European rules should not result in a widespread introduction of BLER in Belgium.

While on the legislative level the debate on board-level employee representation has largely disappeared, on the professional level recent initiatives for more discussion and debate have come from academia. On the French-speaking side, Professor Isabelle Ferreras (Université Catholique de Louvain) has animated the debate through a series of academic and non-academic publications developing a model for 'co-decided' companies. In essence, the Ferreras proposal aims to install a kind of bicameral system in companies in which representatives of workers ('labour-investors') and the employers ('capital-investors') would have equal decision-making power in companies (Ferreras 2017). This model has attracted ample attention from the Parti Socialiste (PS; Socialist Party) and has been discussed in most trade unions, as shown later.

On the Flemish-speaking side, less successful attempts have been made to foster debate on BLER by the author of this chapter. Under the umbrella of the think tank Minerva, proposals were made to open up a space for experiments in social dialogue, including the controlled and temporary introduction of systems of BLER (De Spiegelaere 2020a), yet these proposals have not led to significant public or policy debates.

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3. The 'before-after' principle ensures that, in cases of transformation into an SE or cross-border merger, rights to BLER are preserved if they were previously mandatory in some of the companies involved in the transaction. The composition of that board must then be 'Europeanised'; and this is how some Belgian employee representatives have found their way to the corporate board of some SEs or companies resulting from cross-border mergers.

This overview of the historic legislative initiatives and some of the more recent attempts to encourage debate indicates a large disinterest in the topic from a policymaking perspective. When proposals were tabled, they were never discussed; when context forced decisions to be taken, technical and pragmatic solutions were chosen and attempts to instigate a debate in society fell upon deaf ears.

3. Trade union positions

Having observed that the current structure of Belgian industrial relations might be a difficult fit with BLER, and that the public debate has been marked mostly by disinterest, this does not mean that there is no emotion in the debate regarding codetermination, or co-management.

Differences in opinion and emotion within the trade union movement have to be searched for, both between the different confederations and often also inside them. Obviously, these rather short overviews do not do justice to the often rich debates and nuances, which can be found in other publications (e.g. Gerard 1991; Brepoels 2015; De Spiegelaere 2020b and 2023).

As introduction, the Belgian trade union landscape is dominated by three large confederations: ACV-CSC, with Christian democratic roots; Algemeen Belgisch Vakverbond – Fédération Générale du Travail de Belgique (ABVV-FGTB; General Labour Federation of Belgium), with socialist roots; and Algemene Centrale der Liberale Vakbonden van België – Centrale Générale des Syndicats Libéraux de Belgique (ACLVB-CGSLB; General Confederation of Liberal Trade Unions of Belgium), with liberal roots. In terms of size, ACV-CSC is the largest, with roughly 1.6 million members, ABVV-FGTB second with 1.5 million members and ACLVB-CGSLB third with about 300,000 members.

3.1 ACV-CSC: shifting positions

The post-war evolution of the thoughts of ACV-CSC on codetermination and board-level employee representation can be split into four main periods (De Spiegelaere 2020b; Hancké and Wijgaerts 2015). In the first period between 1945 and roughly 1960, the union was clearly in favour of codetermination and participation in company management with full acceptance of co-responsibility. The established institutions such as works councils were seen as necessary intermediary steps towards employee involvement and eventually genuine codetermination.

In a second phase (starting roughly in the 1960s and running to the 1980s), the union's analysis of society and capitalism radicalised and the objective shifted from codetermination to self-management. Codetermination was henceforward seen as a necessary stepping stone towards full employee control over companies.

After this period of radicalisation came a long period of silence between the 80s and 2015. The topic of codetermination and employee participation disappeared into the background and was not explicitly discussed at union congresses.

This changed in 2015 when ACV-CSC tried to revamp its position. Through consecutive rounds of criticism, initial proposals similar to German-style codetermination (Mitbestimmung) were watered down into a proposal in which an employee representative would have observer status on company boards. This proposal was eventually scrapped and replaced by a clear position against board-level employee representation altogether. The fourth period in ACV-CSC is thus one of clear opposition to board-level codetermination.

From a distance, it thus might seem strange that Belgium has not developed a system of BLER given that the strongest trade union was, for a long time, an explicit supporter of such a system. Moreover, during these times, ACV-CSC had strong ties with the Christian democratic movement which dominated the Belgian political scene for decades. However, a closer look at the ACV-CSC debate in the post-war period has shown that the official position was never fully shared by members. In the union itself, it was always a tiny majority that was in favour of putting workers on boards. At every congress, the issue provoked much debate and it was therefore difficult to rally members behind a position that many did not believe in. Given the contentious nature of the position, the demand for codetermination never became a union priority.

Additionally, the moment in history where the proposal was most likely to pass was during the immediate post-WWII years. During this period, however, ACV-CSC was in a dire situation and in no position to push through political demands. That is also the moment when the demand for BLER was clearly defined. The union was ready to accept (step-by-step) the responsibility that came with codetermination. Still influenced by inter-war ideas of corporatism, ACV-CSC favoured institutions focused on cooperation between labour and management.

3.2 ABVV-FGTB: no co-responsibility without real influence

Contrary to the Christian democrat ACV-CSC, the Belgian socialist trade union ABVV-FGTB does not start from a concept of cooperation but from one of contestation and struggle. This translates into a double objective of creating institutions for employee opposition inside capitalist firms and also pushing for genuine self-managed organisations standing outside the capitalist logic. Codetermination, meaning the (limited) participation of employees in the management of capitalist organisations, was to be avoided.

In the post-war period, this meant that ABVV-FGTB was focused on institutions of contestation and struggle. Its aim was not to institutionalise labour-management cooperation but to establish a legal basis for trade union representatives which had the task of controlling and, if necessary, opposing management policies.

In the first post-war period (1945-1965), ABVV-FGTB favoured a strategy of pushing towards self-management through worker participation. This idea was heavily debated and amended in the period between 1957 and 1970. After observing the limitations of German codetermination, ABVV-FGTB feared that worker participation would lead to workers' integration in capitalist logics (Hancké and Wijgaerts 2015). Workers' control was put forward as an alternative instrument. In the words of André Renard: 'workers' control within the capitalist economy, workers' participation within the socialist economy' (Vandenbroucke 1981).

During the 1971 congress, the ABVV-FGTB position on workers' control was further clarified. Workers should have access to all information enabling them to act as a check on management while, at the same time, taking no responsibility. Workers should be able to contest management decisions and/or put forward alternatives, based on the right to information on company plans before final decisions are taken. According to the ABVV-FGTB in 1984, workers' control is clearly distinguishable from codetermination in that workers and unions have the continuing possibility to contest management decisions. Any full co-responsibility, in other words, is ruled out while the union is specific that, at times and under strict conditions, co-responsibility and codetermination remains possible (Nationale Arbeidsraad 1984).

Accordingly, ABVV-FGTB was against any codetermination in (that version of) European companies when their opinion was asked in 1976, given their 'concerns about the conservation of the full union autonomy of the employee representatives which cannot be limited to what the employer understands by "management"'.[4]

At the author's request for this research, ABVV-FGTB confirmed in 2022 that its position has not changed and is still in line with the 1971 congress: the management of the organisation is the full responsibility of the employer; codetermination would force workers to think in the logic and interests of the employer. Board-level codetermination should be avoided, except in certain publicly owned companies or in the context of companies adopting the European Company statute or cross-border mergers.

While the position of the union is relatively clear and consistent over time, that does not mean there are no voices in ABVV-FGTB that look on BLER more favourably. The metalworkers union ABVV-Metaal is involved in many German companies and can therefore assess the advantages and disadvantages of codetermination. In some cases, this has led to more or less explicit support for a type of board-level representation (Tormans 2012).

3.3 ACLVB-CGSLB: 'let's do it!'

The smaller liberal union ACLVB-CGSLB has consistently been in favour of codetermination, favouring its step-by-step introduction. In the post-war period, it

4. Author's own translation of the original text, which reads: 'de bezorgdheid om het behoud van de volledige vakbondsautonomie van de werknemersvertegenwoordigers die geenszins mag worden beperkt tot wat werkgevers onder beheer verstaan' (Damseaux et al. 1983: 32).

adopted a Social Charter including a recommendation for 'employee representatives in the management institutions of commercial companies' (Faniel and Vandaele 2011: 31-32). This position was repeated after the union distanced itself from the liberals in the political party in 1962. At its subsequent congress, it envisaged representation in the management institutions of companies with a right to co-decide (ACLVB 2008: 52).

In 1969, the union's congress was entitled 'codetermination and the participation by employees in profits', aiming to strengthen the position of representatives at company level so that they could have a real influence on company decisions. For this reason, the union proposed the establishment of a workers council that would delegate representatives to a works council in which employers and employees would collegially decide on strategic company issues (ACLVB 2008: 54-55). With this serious upgrade of the works council towards a parity strategic decision-making body, the union wanted to go beyond mere workers' control and take charge (and responsibility) of company management.

At subsequent congresses, the issue of codetermination, or board-level employee representation, has been less present as priority has been given to new challenges related to flexibility. Still, the union has, from time to time, floated the idea of codetermination, sometimes in combination with financial participation (Haaze 1995) or framed in a European context. As such, the 2008 congress envisaged 'the introduction of better conditions for European Works Councils and the promotion of codetermination of workers' (ACLVB 2008: 27). In 2012, the ACLVB-CGSLB was still making the news as it pleaded for Mitbestimmung-style board-level employee representation, including taking responsibility in company management.

Yet, in the more recent congress texts of 2015 and 2018, no reference to BLER are found, although there is still a strong focus on strengthening existing company-level social dialogue institutions (ACLVB 2018).

Throughout the history of ACLVB-CGSLB, the focus has been on cooperative relations with management where possible and therefore also the acceptance of co-responsibility. The proposal is mostly to install a 'typical' form of codetermination, with the exception of the more pronounced proposal made in the late 60s. In the latest decade, the issue of codetermination has received less attention, only being referred to in European contexts.

3.4 Summary

Whereas Section 2 concluded that there was largely disinterest in the issue of BLER from a policymaking perspective, this overview of trade union positions signals the opposite. The issue was, for a long time, one of the main distinguishing factors between the socialist union on the one hand and the liberal and Christian democrat unions on the other. The socialist union has consistently refused to take any kind of co-responsibility if it was not combined with real influence and control (essentially self-management); the liberal union has consistently favoured co-responsibility through BLER; while

the Christian union has shifted positions from embracing co-responsibility over self-management to opposing the idea.

In the ACV-CSC congress of 2015, the idea of BLER was shelved and so, given recent trade union silence on the issue, it can safely be argued that the current (yet unstable) consensus among Belgian trade unions is the following: no wish to introduce BLER except in SE structures where rights have to be maintained in order not to undermine foreign codetermination systems.

Just as the EU directives on cross-border mergers and employee involvement in SEs did not lead to radical legal changes regarding BLER, discussions in the European Trade Union Confederation (ETUC) on democracy at work and the defence of codetermination do not seem to have affected the position of the Belgian trade unions on the issue.

4. What do employers and workers think?

Contrary to some of the Belgian union federations, it is not easy to uncover the position of employers on BLER. Just as with the other actors, there is some divergence between in-principle positions and those adopted in respect of more specific dossiers.

As such, the president of the largest employer confederation, Verbond Belgische Ondernemingen – Fédération des entreprises de Belgique (VBO-FEB; Federation of Belgian Enterprises), declared in 1978 that 'there is no reason not to take into consideration the participation of employees in the statutory institutions of companies, taking into account their large contribution' (Nationale Arbeidsraad 1984). Yet, at that time, the same organisation was officially against BLER on the grounds that it would have undesirable effects on employers' freedom of decision (Sloover 1978: 29). And it was equally against the proposal to include BLER in European companies as proposed in 1976 (Nationale Arbeidsraad 1984).

Both the Flemish and French-speaking Unions of Christian Employers (Verbond van Katholieke Werkgevers and Association chrétienne des dirigeants et cadres) were, in 1977, more explicitly in favour of classic types of BLER through a presence of employee representatives on the supervisory boards of companies (Nationale Arbeidsraad 1984). Their motivation is grounded in a conception of the firm as embodying the need for cooperation to reach economic and social ends. To optimise these, effective collaboration is necessary and, therefore, codetermination (Sloover 1978: 46). And, similarly, individual industry leaders have often publicly voiced opinions in favour of German-style codetermination, yet with little consequence (e.g. Rabaey 2018).

Finding out what workers think about the issue is as challenging as it is for employers. Given the absence of a formal system of BLER and the sensitive character of the issue in the trade union world, few studies have been done into public or worker support for the issue.

Still, there are three studies which give some indication. On the one hand, a survey of union representatives from three ACV-CSC sectoral organisations interestingly showed that a large majority in all three (64-69%) agreed or completely agreed with the statement that 'employee representatives should have representation on the board of directors of a company' (De Spiegelaere and Van Gyes 2015). This is particularly interesting as the same union representatives several years later voted down a union position going in the same direction.

A second source comes from a (relatively old) survey of over 4,000 members of the liberal trade union ACLVB-CGSLB (Schamp 2012). In this survey, some statements were included regarding codetermination, such as 'workers should be represented on the management board of their companies'. A large majority of respondents agreed with this statement (61% agreed or totally agreed) with only 6% not agreeing. Similarly, the majority (60%) agreed with the statement 'workers should have their input to major decisions about their companies'.

The third source comes from a series of four-yearly studies by the agency work company Randstad into participation and representation in companies. Each asked employees to rank several types of participation in terms of their importance and also whether, in general, they were positive or negative towards different types of participation. The studies, of which the results are available for 2012, 2016 and 2020, consistently showed that, compared to all other types of participation (e.g. works councils, union representatives, personal meetings, teamwork), representation on the board of directors was seen as less important. At the same time, they also showed that a majority of employees in the private sector do value representation on the board. In 2016, this was 55% and, in 2020, even 70% said they agreed or completely agreed with this, with relatively more support from blue collar workers and less from executive staff (Randstad 2016, 2020).

These three surveys suggest that there is a divide between what workers think and the official trade union demand. While this can certainly be the case, two remarks must be taken into account. First of all, it is unclear whether the respondents to these surveys fully understood the meaning of the terminology used in the questions (codetermination and board of directors, among others). Second, surveys are completed by individuals with little discussion. During trade union congresses, context and discussion is likely to influence how workers, union members and union officials see issues and, consequently, how they vote on them.

5. What do the political parties think?

Having observed, based on a limited number of studies, that there is some kind of public support for the idea of the board-level representation of employees, the next question is whether this public preference is captured or represented at political level. For this section, desk research was done in combination with requests for updated positions put to the different political parties, as well as a number of personal discussions. As the topic is far from a political priority, most of the positions are indicative.

Given the federal and highly complex political party system in Belgium, the list of involved political parties is quite long. In short, three traditional parties dominated Belgian politics for a long time: socialist, Christian democrat and liberal. They all split in the 60s and 70s into French-speaking and Flemish-speaking wings. On the Flemish side, strong regionalist parties have also emerged, as have extreme right-wing parties. On the francophone side, the landscape seems more stable except for a recently growing radical left-wing party, the Parti du Travail de Belgique (PTB; Workers' Party of Belgium), and the recent electoral success of the liberal party Mouvement Réformateur (MR; Reformist Movement) in 2024 in Wallonia.

Without any doubt, the most active political party on the issue of BLER has been the Christian democratic parties, mostly during the era that they formed a single party (CVP-PSC) between 1945 and 1972. As discussed in Section 2, CVP-PSC submitted a legislative proposal in the immediate post-war period to introduce BLER, the main motivation being to 'correct' the place of labour in the capitalist economy but without questioning capitalism as a whole. It was perceived that capital and labour were both constituent parts of an enterprise, working toward the same goal, for which codetermination was necessary (Dambre 1985).

In 1976, just after the split with the French-speaking side, the Flemish-speaking Christian Democrat Party (CVP; later Christen-Democratisch en Vlaams, or CD&V) held a congress including a plan for a major reform of company structures. Mostly motivated by a wish to improve the social climate and communication, CVP proposed installing a German-like system with employee representatives on the supervisory boards which were to be established (Sloover 1978: 35-36). In 1981, another proposal was submitted by a member of the French-speaking PSC and it became part of the government programme of the Christian-liberal coalition. Yet, these initiatives were also shelved without much discussion. The issue has not received much attention since, even though the party has still expressed its (in-principle) support for BLER on various occasions, for example during the discussion in 2002 on an employee seat in the board of the national railway company.

PSC (later Centre Démocrate Humaniste, or CDH; and then Les Engagés) equally took a strong position in 1976 on employee participation in companies. Regarding BLER, it proposed two options: a parity composition of supervisory boards (to be established) in large companies; and employee observers on boards in combination with codetermination rights for works councils. In the meantime, voluntary experiments were to be promoted (Sloover 1978: 37-38). Currently, Les Engagés is in favour of a type of BLER in companies with more than 250 employees, combined with the financial participation of employees in the company, in order to create a sort of convergence of interests and views.

Moving to the socialist parties (initially named BSP-PSB, which split in 1978), they have largely followed the opposition of the socialist trade union ABVV-FGTB in warning against co-responsibility through BLER. According to the 1974 congress of the BSP-PSB, economic democracy was to be obtained through the socialisation of whole sectors. Inside companies, workers' control was to be a first step towards self-management,

a concept meaning that workers were to exert decision- making power (Nationale Arbeidsraad 1984).

After the split, the French-speaking PS confirmed its position in the 1982 congress: the goal is self-management which is to be preceded by workers' control and in no way by any form of codetermination. BLER (in its own words: 'pluralistic codetermination in company governance') is rejected as it would be a de facto recognition of the capitalist-shaped market economy (Nationale Arbeidsraad 1984: 40). In 2017, the PS surprised public opinion by tabling a proposal for a 'co-decided company' structure. The proposal projected a future in which all companies were democratically governed and the first step would be the establishment of a new company type in which shareholders and employees co-decided through a bicameral system of the type proposed by Ferreras (2017), mentioned earlier. Important decisions would have to be agreed upon by both employee and shareholder representatives. Financial support mechanisms would be necessary to incentivise companies to adopt this new democratic governance structure (Parti Socialiste 2017: 13-14).

The Flemish-speaking Socialist Party (Socialistische Partij (SP); then Socialistische Partij anders (SP.a); and now Vooruit) is less outspoken and clear. In recent history, there has been little to no discussion on the issue except for a congress resolution of 2013 which hinted at the positive effects of board-level codetermination. This was never taken over in a party programme, however. Regarding public companies, the 2019 programme does refer to the involvement of 'stakeholders' on boards, including representatives of employees (SP.a 2019: 143). Personal conversations with people in Vooruit show a relative openness to discussing the issue while, at the same time, signalling that it is a non-subject in current internal discussions. Most of the attention goes on the framework in which such a system would be introduced, like the role of the unions, the competences of the supervisory boards, the capacities of the representatives or the support made available to them.

The third large traditional political group in Belgium are the liberal parties (which split in 1972). Mouvement Réformateur (MR), the French-speaking liberal party,[5] drafted its position on BLER in 1975 through a pamphlet titled 'liberalism faced with participation in companies'. In essence, MR favours diverse and flexible forms of participation in which any type of codetermination should necessarily lead to co-responsibility. This was repeated in 1977, when it specifically proposed parity composition of a (transformed) board of directors with management having the decisive vote (Sloover 1978: 42). In 1976 and 1982, legislative proposals to that end were submitted (yet not discussed) in parliament (Nationale Arbeidsraad 1984: 39). Interestingly, the proposals also sought to abolish the trade union monopoly on representation.

5. The Liberal Party has often changed names and merged with other parties. Previous names included Parti de la Liberté et du Progrès en Wallonie (PLPW), Parti des Réformes et de la Liberté en Wallonie (PRLW) and Parti réformateur libéral (PRL). The current MR is the result of a merger between the PRL and three other parties in 2002.

Currently, MR has no explicit position on the issue of BLER. Two MR members of parliament (David Leisterh and Benoît Piedboeuf) put forward a proposal in 2021 to develop a system of employee financial participation. By providing shares to employees, MR wanted to go beyond a binary vision of the enterprise. Whether this financial participation could or should also lead to BLER was, however, not clear from the proposal. The members of parliament did clarify, in written exchange with the author, that, if the employer wishes, a seat on the board could be provided for employee representatives but that employers should not be obliged to do so.

On the Flemish-speaking side, Partij voor Vrijheid en Vooruitgang (PVV; Party for Freedom and Progress; then Vlaamse Liberalen en Democraten (VLD; Flemish Liberals and Democrats); and now Open-VLD) does not have a formal position on BLER.

The Flemish Green Party (first Anders Gaan Leven (Agalev), now Groen) is one of the only ones with an explicit position on the issue of BLER. The first mention of giving employee representatives a seat on company boards was made in the 2017 Schakelcongres. This would, in its view, support constructive cooperation between employer and employee representatives around strategic company decisions (Groen 2017). The same demand was put forward in its election programme, specifying that the employee representative should have the right to vote (Groen 2019). In a further communication, it has specified that 'at least one seat' should be reserved for an employee representative (Lafuente Hernández and De Spiegelaere 2018).

The French-speaking Green Party (Ecolo) does not have an explicit position specifically on BLER. However, on various occasions, it has taken positions in favour of more participative forms of company governance, including the promotion of cooperatives. In 2017, the 'Ecolab' exercise included proposals for participative company management, mostly focused on the promotion of the cooperative model. Similarly, in 2019, its political programme made reference to the 'horizontal government' of companies, 'employee participation' and 'democracy in companies'. It is interesting to note that most of these proposals refer to direct, rather than indirect, forms of participation. At the author's request, Ecolo confirmed it was in favour of more participation of employees, under the following conditions: (a) any reform needs to ensure that there is real employee influence on decision-making; (b) participation needs to be based on sound and extensive economic and financial information; and (c) any reform of company-level participation needs to be discussed in the institutions of social dialogue. BLER is, at the same time, not a priority. Preference is given to systems of real co-decision (e.g. the bicameral model proposed by Ferreras (2017)) or improvements in the current system of employee representation.

The Flemish right-wing regionalist party Nieuw-Vlaamse Alliantie (NVA; New Flemish Alliance) currently does not have a clearly defined position on the matter. Its predecessor, de Volksunie, expressed partial support for BLER on occasion in the 1970s (Sloover 1978: 48). More recently, some of its members (e.g. Zuhal Demir) have voiced support for a German kind of codetermination, but nothing of that matter has been discussed in congresses. In autumn 2021, the NVA was looking into the issue based on three motivations: (a) finding solutions for what it sees as the overly hostile relations

between unions and employers in Belgian companies; (b) increasing the involvement of employees in companies; and (c) putting more weight on the company level in terms of social dialogue.

Last but not least, the (unitary) left-wing Parti du Travail de Belgique – Partij van de Arbeid van België (PTB-PVDA; Workers' Party of Belgium) has seen its popularity surge in recent years and is particularly active in the socioeconomic debate. Regarding BLER, it is against forms of codetermination in private companies as it departs from the logic of building counter-power. In public sector companies – in its phrasing, entreprises démocratiques publiques (democratic public sector enterprises) – however, it is very much in favour of BLER. This new company form would have a board consisting of representatives of the (public) shareholders, consumers, workers and citizens (Robert and Mugemangango 2019).

Summarising, it is clear that BLER is not a priority for any of the Belgian political parties. Most of them do not even have clearly defined positions on the matter. Some possible explanations are that the Belgian system of social dialogue is highly defined by path dependency and so is the political imagination of social and political parties. Additionally, social dialogue and definitely company-level social dialogue are topics where it is difficult for politicians/parties to make a mark and obtain clear blue water.

6. Board-level employee representation in Belgium: existing, but limited practice

While there is officially no system of BLER in Belgium, due to a variety of reasons some companies do have structures integrating employee and union representatives on company boards or the administrative boards of institutions and organisations. In the following paragraphs, the best known cases of this are presented and discussed. Given the lack of official structures and difficulties of access, the exhaustivity of the following list cannot be guaranteed.

A first type of BLER is/was present in the context of some publicly owned companies, the prime example being the Belgian railway company, NMBS-SNCB. For a long time, two trade union organisations (ACOD-CGSP, the socialist public sector union; and ACV-CSC Transcom, the Christian democrat transport union) had assigned representatives on the company's board of directors. In the early 2000s, several legislative changes were passed effectively removing the union representatives and giving seats to representatives of more unions in a sort of 'strategic council'. Parliamentary documents reveal that the French-speaking socialists, the French and Flemish green parties and the Flemish Christian democrats 'regretted' the change but voted in favour of the compromise. The removal of the union representatives resulted in a number of strike actions, but to no avail (De Standaard 2001).

In a similar way, union representatives are also members of the Flemish bus transport public organisation De Lijn, in which representatives (previously from two and currently from three unions) can attend board meetings in an observer capacity (Vanacker 2020).

Representation is not undisputed as, in 2017, the Flemish government attempted to remove the union representatives (and the employer organisations) from the board. In the Walloon bus transport company TEC, a similar union (and employer) representation exists in a consultative role, just as in the Brussels version STIB-MIVB.

A second type of company with BLER concerns those that have set up voluntary systems. As such, the board of directors of Antwerp University reserves several mandates for employee representatives. Similarly, the management council has representatives from different sections of the staff. These are not union representatives and are not appointed through workforce elections; in some cases, they are not even union members. Interviewed in 2016, the Antwerp University representatives indicated that they were fully included in decision-making (D'Joos 2016).

Similarly, at HIVA – Research Institute for Work and Society, linked to KU Leuven, a voluntary system of codetermination has been established with an employee representative being a member of the management committee (yet not the board of directors). Just as in Antwerp University, the appointment does not happen through the trade unions although the employee representative is generally a union member. This voluntary codetermination system exists in parallel to legally mandated employee information and consultation bodies at university level. Apart from individual staff issues, the employee representative enjoys the same rights and duties as the other members of the management committee. The author was a member of this committee for a couple of years as employee representative. While involvement gives some co-decision power, being in a minority position entails little real power or influence and the lack of a training and support structure makes the position contentious.

A non-university example of pseudo codetermination comes from Arcelor Mittal. Before the merger, Arcelor had a single tier management structure which included employee representatives on a voluntary basis and which offered three such seats, taken by Spanish, French and Luxembourgish representatives. Given the number of employees in Belgium and Germany, it was decided to allow employee representatives from those countries to join, as observers, the preparatory meetings of the management committee which drew up the agenda. In the aftermath of the merger with Mittal, this system of codetermination was removed (D'Joos 2016).

A third type is made up of those that have BLER as a result of European legislation. One example comes from BASF (Badische Anilin- & Soda-Fabrik), a large multinational active in the chemical sector. It is headquartered in Germany and operates in more than 80 countries employing more than 100,000 employees worldwide. Being a large German company, BASF had a system of BLER. When the company changed its legal basis to that of an SE, negotiation on the system of employee representation resulted in a Europeanisation of board-level representation and the inclusion of a Belgian representative. The representative sits on a supervisory board which contains 12 members, half elected by the shareholders and half by the SE Works Council (BASF 2020). From several interviews, it appears that the BASF employee representative feels respected and appreciated on the supervisory board, while admitting to having little real influence on the decisions taken (D'Joos 2016; HBS 2008).

A second example comes from the company Euler Hermes, a multinational credit insurance company headquartered in France, belonging to the Germany-based Allianz SE. The company restructured its international structure between 2010 and 2012. Significant for this chapter was the Blue Europe project which brought together 12 legal entities under a single company called Euler Hermes Europe SE. The last part of that project was a merger of the German unit into the SE, headquartered in Belgium. Given the European cross-border merger regulation, the representation was Europeanised and a Belgian employee representative took a seat on the board of directors which has 12 members, four of whom are employee representatives coming from Italy, Germany, France and Belgium (Van Gyes and De Spiegelaere 2019). It is interesting to note that the Belgian representative is a member of the socialist trade union Bond van Bedienden, Technici en Kaderleden/Syndicat des Employés, Techniciens et Cadres (BBTK-SETCa; Association of Employees, Technicians and Managers), affiliated to ABVV-FGTB which, politically, has always opposed the introduction of a form of minority BLER.

On further interrogation of those unions which have mostly been confronted with BLER systems, it appears that there is a third example in Puilaetco-Dewaay, a private banking company working under the SE statute, although no information could be gathered on this case.

While this overview is likely to be non-exhaustive, some conclusions can still be drawn. First of all, it appears that board-level codetermination in Belgium is extremely limited in scope and appears to be decreasing. Second, while a couple of decades ago most board-level representatives were to be found in publicly owned companies, this has been largely undone through a series of reform operations. At the same time, private sector BLER has slowly developed as a result of European legislation. No real developments are observed regarding the voluntary take-up of employee representatives on company boards.

7. Conclusion and prospects

In a way, that there is no board-level codetermination in Belgium can be seen as an oddity for at least three reasons. First, in most neighbouring countries BLER has been established in different forms and in various periods. Second, the currently largest trade union in Belgium has been officially in favour of installing such a system; and, third, the long dominant Christian democratic political party has equally been in favour of BLER, even taking several legal initiatives over a period of time. In such a context, one could expect that BLER might have been implemented at some point.

At the same time, one can see the absence of board-level codetermination as being quite logical for several reasons. First of all, the absence of codetermination was part of the post-war social pact which provided ample rights to unions to economic codetermination at sector level in exchange for far-reaching management rights for employers at company level. Second, the Belgian social dialogue has been characterised by a strong degree of path dependency and incremental development. Any reform ideas or proposals have generally been met by a wave of criticism and suspicion. The

introduction of board- level codetermination would be an abnormally radical reform in the Belgian context. Third, the socialist union and party have been (and are still) fiercely against a system of codetermination (including BLER) and, in the post-war era, the socialist trade union was the most important union organisation. Fourth, while on paper the Christian democrat union and party have been in favour of codetermination, this position was always disputed internally and never made a party/union priority. All these observations remain valid with the only difference that the Christian democrat trade union ACV-CSC has been against BLER since its 2015 congress.

Although there was never a legal system, BLER has existed on an ad hoc basis for a long time. The same ad hoc approach was also adopted when Belgium had to make its system fit the European regulation on cross-border mergers and European companies. Given the reluctance to change the Belgian system, the social partners chose patchwork solutions with little debate.

One can therefore safely argue that the prospects of BLER being introduced in Belgium are quite slim and close to non-existent. While that would be the safest bet, surprises are not impossible. In advancing this case, we build on the insights of the 'garbage can' model of organisational choice as developed by Cohen et al. (1972). This model basically states that decisions in some organisations are the rather random result of a mix of problems, available solutions and decision-makers facing a 'choice opportunity'. While developed for an organisational context, the garbage can model is equally applicable to public policymaking (Kingdon 2010). Problems come and go with media attention, solutions float around and politicians search for opportunities to connect the dots.

From this perspective, it is not unthinkable that the lack of workers' influence and the antagonistic relations often identified as the existing problems of the Belgian system of social dialogue may one day be connected to board-level codetermination, as an existing solution, by politicians searching for opportunities to do something on the topic (namely, Flemish regionalists, the green parties or the socialist parties). Out of the garbage can of Belgian policymaking, BLER might someday catch flame, although this would most likely be a case of spontaneous combustion.

When Jean Sloover did similar research in 1978, he concluded that 'if the observer might, in the current circumstances, get the impression that the question [on board-level participation] is blocked, changes in the political conjuncture might lead to further episodes of a problem whose crucial stake cannot be underestimated'[6] (Sloover 1978: 54). Almost 50 years later, Sloover's conclusion remains valid and pertinent.

6. Author's own translation of the original text, which reads: 'Et si l'observateur ne peut se départir, dans les circonstances actuelles, de l'impression d'un blocage de la question, les changements de la conjoncture politique ne pourraient manquer d'écrire les épisodes ultérieurs d'un problème dont l'enjeu, fondamental, ne peut, en aucun cas, être sous-estimé.'

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Cite this chapter: De Spiegelaere S. (2025) Heavens no! Board-level employee representation in Belgium, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Abbreviations

ABVV-FGTB	Algemeen Belgisch Vakverbond – Fédération Générale du Travail de Belgique (General Labour Federation of Belgium)
ACLVB-CGSLB	Algemene Centrale der Liberale Vakbonden van België – Centrale Générale des Syndicats Libéraux de Belgique (General Confederation of Liberal Trade Unions of Belgium)
ACOD-CGSP	Algemene Centrale der Openbare Dienstenthe – Centrale Générale des Services Publics (General Union of Public Services)
ACV-CSC	Algemeen Christelijk Vakverbond – Confédération des Syndicats Chrétiens (Confederation of Christian Trade Unions)
ACV-CSC Transcom	ACV- CSC Confederation of Christian Trade Unions - Transport and communication
Agalev	Anders Gaan Leven (Towards Different Living; Flemish Green Party)
BASF	Badische Anilin- & Soda-Fabrik
BBTK-SETCa	Bond van Bedienden, Technicien Kaderleden – Syndicat des Employés, Techniciens et Cadres (Association of Employees, Technicians and Managers)
BLER	Board-level employee representation
BSP-PSB	Belgische Socialistische Partij – Parti socialiste belge (Belgian Socialist Party)
CDH	Centre Démocrate Humaniste (Party of the Humanist Democratic Centre)
CD&V	Christen-Democratisch en Vlaams (Christian-Democratic and Flemish Party)
CVP-PSC	Christelijke VolksPartij – Parti Social-Chrétien (Christian Democratic Party)
Ecolo	Écologistes Confédérés pour l'organisation de luttes originales (Confederated Ecologists for the Organisation of Original Struggles ; French-speaking Green Party)
ETUC	European Trade Union Confederation
EU	European Union
HIVA	Hoger Instituut voor de Arbeid (Higher Institute of Labour Studies, or Research Institute for Work and Society)
KU Leuven	Katholieke Universiteit Leuven (Catholic Univerisity of Leuven)
MR	Mouvement Réformateur (Reformist Movement Party)
NMBS-SNCB	Nationale Maatschappij der Belgische Spoorwegen – Société nationale des chemins de fer belges (National Railway Company of Belgium)
NVA	Nieuw-Vlaamse Alliantie (Party New Flemish Alliance)
PLPW	Parti de la Liberté et du Progrès en Wallonie (Party for Freedom and Progress in Wallonia)
PRL	Parti réformateur libéral (Liberal Reformist Party)
PRLW	Parti des Réformes et de la Liberté en Wallonie (Party for Reforms and Freedom in Wallonia)
PS	Parti Socialiste (French-speaking Socialist Party)
PSC	Parti Social-Chrétien (Christian Democratic Party)
PTB-PVDA	Parti du Travail de Belgique – Partij van de Arbeid van België (Workers' Party of Belgium)
PVV	Partij voor Vrijheid en Vooruitgang (Party for Freedom and Progress)

SE	Societas Europaea (European Company)
SP	Socialistische Partij (Flemish-speaking Socialist Party)
SP.a	Socialistische Partij anders (Socialist Party Differently)
STIB-MIVB	Société des Transports Intercommunaux de Bruxelles – Maatschappij voor het Intercommunaal Vervoer te Brussel (Brussels Intercommunal Transport Company)
TEC	Transport En Commun (Public Transport Company operating in Wallonia)
VBO-FEB	Verbond Belgische Ondernemingen – Fédération des entreprises de Belgique (Federation of Belgian Enterprises)
VLD	Vlaamse Liberalen en Democraten (Flemish Liberals and Democrats)
WWII	World War II

Chapter 2
The difficult standing of board-level employee representation in Italy

Volker Telljohann

1. Introduction

Although the Italian Constitution provides for worker participation in the management of companies, no laws have been passed to date that would guarantee board-level employee representation (BLER) rights. In the post-war period in general, Italian industrial relations has been characterised by a relative absence of experiences of workplace participation, whose modest diffusion lies in the tradition of an industrial relations system that, in the past, was typified by an elevated level of conflict and, as a consequence, by a particularly critical attitude towards the participation models practised in other countries. Trade unions as well as employers have always preferred to regulate industrial relations through collective bargaining (Leonardi and Gottardi 2019; Treu 2011).

Due to the voluntaristic tradition in Italian industrial relations and employers' and trade unions' critical stances towards participation, there has been almost no institutionalisation of participation rights. In 1993, the Protocol entitled Patto per la politica dei redditi e lo sviluppo (Pact for Income Policy and Development) represented an attempt to institutionalise industrial relations (Arrigo et al. 1994). That agreement, a fundamental document of Italian industrial relations, has contributed to the further development of participation in the workplace but has in no way addressed the issue of BLER.

It has been highlighted by scholars (Carrieri et al. 2015) that the most significant developments promoting the introduction of participation mechanisms were the company-level agreements signed by state holdings such as Istituto per la Ricostruzione Industriale (IRI; Institute for Industrial Reconstruction) and Ente Nazionale Idrocarburi (ENI; National Hydrocarbons Organisation) and, some years later, in the 1990s, by the household appliances producer Electrolux-Zanussi. In the latter case, forms of strategic participation were also introduced. Although these experiences have always been considered advanced cases to be taken as a model, they have substantially remained isolated cases. All in all, the approach of negotiated participation has produced disappointing results from a quantitative standpoint and ones which are barely stable from a qualitative point of view. So far, the most enduring achievement with regard to participation rights is represented by the transposition of European Union (EU) directives that have contributed to the establishment of a general framework for information and consultation of employees in the context of national industrial relations. The transposition into Italian law of the European Company (Societas Europaea, or SE) Directive theoretically also provides for the possibility of

BLER. However, these are theoretical rights that lack any material basis in practice, as there are still no participation-relevant SEs set up under Italian law (ETUI 2022). In the context of the financial and economic crisis the Italian government did make a timid attempt finally to introduce a first form of BLER. However, this failed.

This chapter draws on a literature review and an analysis of legislation and collective agreements as well as company and trade union documents. It is structured as follows. It first describes the (lacking) institutional design for BLER in the wider context of Italian industrial relations in sections 2 and 3. Section 4 critically examines some specific and, at times, failed company-level experiences of BLER. In this context, the focus is placed on the telling example of the cross-border merger between Fiat Chrysler Automobiles (FCA) and Peugeot S.A. (PSA) and its implications for BLER. Subsequently, the chapter outlines in Section 5 the state of political and public debate on BLER, also including a presentation of the positions of the social partners on this issue. Finally, the chapter evaluates the possibilities and obstacles for the normalisation of BLER.

2. Development of ideas and ideologies of worker participation

The history of industrial relations in Italy has been characterised by the delayed development of the process of industrialisation, accompanied by a strong dependence on the state economy. In the immediate post-World War II (WWII) period, the Italian monarchy was replaced by a democratic republic. During that period, however, the experience of the previous Fascist regime had an impact on the development of industrial relations. The adverse climate during the Fascist regime explains to a certain extent why trade union organisations, collective bargaining and worker representation remained rather weak up to the 1960s (Negrelli and Treu 1999).

Italian industrial relations is based on the principle of autonomy. The enacting of the Constitution in 1948 allowed the reinstatement of freedom of association, the affirmation of the right to strike and the return of collective bargaining into the legal sphere. According to Article 39 (1) of the Italian Constitution, trade unions have the freedom to organise themselves and their activity. Neither the state nor any private subject are allowed to infringe this right.

When drafting this chapter, there were no rights to BLER in Italy. The Italian Constitution would, in principle, allow for it as it provides that 'in order to achieve the economic and social enhancement of labour and in accordance with the requirements of production, the Republic grants workers the right to cooperate, within the forms and limits established by law, in the management of companies' (Article 46). But the Italian parliament had never voted on a law about BLER.[1] In the past this was also due to the reluctance of the social partners to establish reciprocal responsibilities by law:

1. However, on 14 May 2025, the Italian parliament approved a law on worker participation which had been promoted by Confederazione Italiana Sindacati Lavoratori (CISL; Italian Confederation of Trade Unions) – see Section 5.2. This law is meant to promote workers' representation on boards of directors or supervisory boards in order to contribute to corporate strategic decision-making. How (far) the social partners will implement this possibility through collective agreements remains to be seen.

employers feared that this would limit their property rights and prerogatives; unions, that it would restrict their own autonomy (Cattero 2010; Leonardi and Gottardi 2019; Tiraboschi 2015).

Therefore, trade unions as well as employers have always preferred to regulate industrial relations through collective bargaining. Trade unions have, traditionally, not been strongly in favour of the various forms of worker participation at plant as well as at board level as they feared that participation might imply the assignment of responsibilities and, as a consequence, a limitation of autonomy. It has also to be taken into consideration that the post-WWII period was marked by intense political and ideological conflict. Due to the strength of left-wing parties, there was a developed class consciousness within the Italian labour movement that represented an obstacle to more participatory developments (Treu 2011).

Because of the voluntaristic tradition the Italian system of industrial relations has always been symbolised by a low level of juridification. Except for the Statuto dei Lavoratori (Workers' Statute) enacted in 1970 and a legal code for strike action in essential public services, there is hardly any legal framework.

3. Board-level employee representation in the Italian institutional context

As has just been mentioned, the Italian legislative framework for worker participation is not strongly developed to date. In 2003, Legislative Decree 6/03 – Riforma organica della disciplina delle società di capitali e società cooperative (Company Law Reform Act) – introduced the possibility for Italian companies to choose a governance model from among three options: monistic (i.e. one-tiered board of directors); dualistic (i.e. a two-tiered model with a management board and a supervisory board); or the traditional Italian system under which the company's shareholders appoint both a board of directors and a controlling body, the latter being an audit committee rather than a supervisory body in the German sense. So far, the overwhelming majority of enterprises have adopted the traditional Italian model.

In this law, it is laid down that 'individuals with an employment relationship' are not eligible to be appointed as members of the controlling body as they are presumed to lack the essential requirements of independence. If at all, worker participation has to take place without employees. In theory, only union officers or so-called 'independent directors' appointed or elected by the workers are allowed to sit on the controlling body. Many company law experts consider this provision to lack conformity with EU laws (Guariello 2005). The employer side generally welcomed the reform, but trade unions considered it a missed opportunity to take a definitive step forward towards a system of participative industrial relations (Cattero 2010).

That there are still no starting points for BLER in national law has not been fundamentally changed by the implementation of European directives. The transposition into Italian law of the EU directives on SEs and on cross- border mergers could theoretically

lead to the introduction of BLER in originally Italian companies. However, so far, they have not had any effect with regard to participation experiences.

The possibility to establish an SE on the basis of the SE Regulation (2157/2001/EC) was accompanied by the SE Directive (2001/86/EC) that provides for obligatory negotiations on worker involvement in SEs which include the question of employee representation at board level. In Italy, the SE Directive was transposed by Decree Law 188/05.

For the unions it was an important achievement that employee representatives at board level would not be elected but appointed by the trade unions. According to the 2003 company law reform, employees not being eligible for administrative or supervisory boards implies, however, that only external representatives such as trade union officers would be eligible for board-level representation (Guariello 2005). Although trade union organisations have asked for national law to be brought in line with EU directives, this contradiction between national and European law has not yet been overcome (Leonardi 2025). But since no participation-relevant SE has been established under Italian law to date, this contradiction has not yet had any practical impact (Cattero 2010).

Directive 2005/56/EC on cross-border mergers also includes provisions for protecting existing employee rights to board-level representation. If one of the merging companies had BLER, employees can demand the same rights in the new company resulting from the merger. In Italy, this directive was transposed by Legislative Decree 108/08 (Telljohann 2020). As in the case of the SE Directive, there have not yet been any participation-related cases of cross-border mergers in which the Italian transposition of the Directive has been applied.

In 2012, the government led by Mario Monti introduced a labour market reform which included some voluntary provisions regarding employee involvement and participation. The corresponding Law 92/12 – the Monti-Fornero Reform – was thus mainly an initiative of the technocrats. In particular, Article 62(f) mandated the government to adopt a legislative decree that should introduce the possibility for joint stock companies and SEs established on Italian territory to have board-level employee representatives with the same voting rights as the other members.

The provision was limited, however, to companies with more than 300 employees and organised on the basis of a dualistic model including an executive board and a supervisory board. The law, a so-called enabling act, set a nine-month deadline for the adoption of a legislative decree; that is, by the end of the legislative period in April 2013. In light of the specific political situation in Italy, characterised by an emergency government of technocrats without a secure majority in parliament, it proved impossible to adopt a decree in time as the government fell in December 2012, before it could even have been prepared. Thus, the law did not have any impact (Telljohann 2019).

As has been shown above, neither national legislative initiatives nor the transposition of European directives have so far been able to make a perceptible contribution to the introduction of BLER in the context of Italian industrial relations.

So far, the only experiences of worker participation at corporate level have been the result of negotiation processes at enterprise level. Because collective bargaining has therefore proved to be the most appropriate instrument for introducing participation rights at corporate level, in 2016 trade unions and employers for the first time laid down rules in the national sectoral collective agreement for the metal industry in order to promote employee involvement in strategic company decisions (Leonardi and Gottardi 2019; Telljohann 2019). In particular, the national collective agreement signed on 26 November 2016 provides for the possibility of worker participation through so-called consultative participation committees. This right was confirmed in the following collective agreement signed on 5 February 2021 which stipulates that these committees can be established in enterprises with more than 1,000 employees and at least one site with more than 500 employees. Although this right has now existed since 2016, there is no evidence yet of companies in which it has been used. It therefore appears that the use of such participation rights does not represent a real priority on the part of worker representatives and trade unions.

4. Cases of board-level employee representation in the Italian context

4.1 Introduction of board-level employee representation through collective bargaining

In the absence of institutionalised participation rights, the few cases where the employee side has been involved in strategic company decisions have been the result of company- level agreements between trade unions and employers. Occasionally, such as in Alitalia (Italian Airlines) and Dalmine (steel sector company), board-level employee participation was linked to forms of financial participation through employee shareholding. In Alitalia, agreements in 1996 and 2002 provided for employee involvement with a view to contributing to the plan for corporate recovery. In general, however, the spread of such employee shareholding schemes is completely insignificant (Tiraboschi 2015).

In the 1980s, the approach of negotiated participation led to the conclusion of important agreements signed by state holdings such as IRI and ENI and this was added to by household appliances manufacturer Electrolux-Zanussi some years later. These agreements provided for the establishment of specific joint committees for the management of issues of common interest (Leonardi 2016; Telljohann 2007).

In 1984 the IRI Protocol was signed, setting up a system based on joint consultative committees. These committees, with equal numbers of management and trade union representatives, were established at various levels (i.e. group, sector, territorial, company). Due to these multifaceted rights, the Protocol was considered a distinct model of industrial relations, quite different from the model widely used in private industry. Moreover, state-owned companies in Italy have always had a pioneering role in the search for participative approaches in labour matters. Although the joint committees did not have the right to take binding decisions, they did prove themselves

capable of influencing management decisions (Tiraboschi 2015). The Protocol was thus an innovative experience that developed into a reference point for later participatory experiences as well.

In the 1990s, Electrolux-Zanussi was considered the most advanced experience. This agreement, the Testo Unico sul sistema di relazioni sindacali e di partecipazione (Single Text on the System of Industrial Relations and Participation) of 1997, represented a point of arrival on a pathway that had begun in the 1980s. It was the first agreement that put forward a comprehensive system of participation. For this reason, the Electrolux-Zanussi experience was subsequently regarded as a model in terms of participation and, for a long time, it fuelled a debate on its transferability into a broader context (Telljohann 2007). The model, dovetailing into the tradition of the IRI Protocol, was marked by a high level of codification of rules and procedures which provided for joint technical committees as well as for the introduction of a supervisory board composed of management and trade union representatives that met three times a year. Thus, participation came about, both at group level and at plant level, within the scope of joint bodies that were generally bilateral committees most of which were based on the principle of parity composition. Furthermore, the supervisory board, to which six union representatives belonged, had the task of discussing the group's results and examining in advance any industrial and organisational decisions under consideration (Telljohann 2007; Tiraboschi 2015).

However, at the beginning of the 2000s the model entered a profound crisis. Divergences in evaluation between management and the majority of the union movement about how it worked in practice increased to the point of compromising its functioning. Electrolux's shareholder value orientation and its application in the Italian context generated deep-seated conflicts that led to a loss of trust in the model on the part of employees and their representatives. Management's strategy to improve the group's competitiveness, above all through the reduction of labour costs by reducing staff levels and making employment relationships more flexible, increasingly often entered into conflict with workers' interests and, as a consequence, also undermined the efficacy of the model. Thus, management's changed strategy showed it to be no longer compatible with the participation model (Telljohann 2007).

4.2 Involvement in board-level employee representation through the SE Directive

The most fundamental innovation brought about by the SE legislation was the possibility of internationalising the composition of employee representation on company boards. In general, employee mandates on the board are allocated in proportion to the geographical distribution of the workforce across countries. In many cases, SEs have thus indeed led to an internationalisation of the boardroom. Experience with BLER has, in this way, been indirectly spread to countries in which such representation does not exist in the domestic corporate governance system (ETUI 2014). This also applies to Italy.

In a handful of cases, this has led to the participation of Italian employee representatives in the supervisory boards of SEs. This has so far been the case with Fresenius, Allianz and UBS, although this is a very limited number. In addition, the involvement of Italian employee representatives in BLER has also been time limited. Since employee seats on the supervisory board are allocated according to the number of employees in individual countries, there may be changes in the allocation of seats on the SE supervisory board as a result of different employment trends. This was the case in the past in Fresenius and Allianz (Telljohann 2011), where the Italian employee representatives lost their seats to employee representatives of other countries due to changes in the number of employees. According to the ETUI's cross-border company mobility database (ETUI 2022), in 2021 there was only one Italian employee representative, on the supervisory board of UBS.

In the few instances of the involvement of Italian worker representatives on SE supervisory boards, the experiences were seen as positive and helpful from the perspective of the individual representatives themselves. Participation at board level was considered an additional channel for interest representation and, at the same time, a new arena for international cooperation between worker representatives and trade unions across Europe (Tschirbs and Milert 2021). Despite everything, however, these cases have only contributed to a limited extent to a discussion on the possible role of BLER in Italian industrial relations. This is also due to the SE's binding corporate governance system being difficult to imagine in the Italian context.

4.3 The discussion on board-level employee representation in the context of the Fiat Chrysler Automobiles-Peugeot S.A. merger

The question of BLER rights arose again in the context of the cross-border merger between Fiat Chrysler Automobiles (FCA) and Peugeot S.A. (PSA). This case is of major importance as it exposed some particular challenges regarding the introduction of BLER in the Italian context.

On 17 December 2019, FCA and PSA entered into a combination agreement, which was subsequently amended on 14 September 2020, to effect a strategic combination of their businesses. This was to be achieved by means of a cross-border merger pursuant to the provisions of Directive 2017/1132/EU. Before the merger, FCA had its corporate seat in the Netherlands while PSA was headquartered in France. The combined group, named Stellantis, was also to have its place of effective management and tax residency in the Netherlands.

With regard to the merger, much emphasis was placed in the Italian media on the issue of the presence of two worker representatives on the board of directors of the new group, one for PSA and one for FCA. When the news broke in Italy in December 2019 that the combination agreement had been signed and that it provided for the presence of two employee representatives on the board, it became apparent that even interested observers were initially unable to classify the news. It came as a surprise as it seemed unlikely that Fiat, a group that had been repeatedly condemned in the past for anti-

union behaviour (ILO 2014), and therefore for the denial of trade union and workers' rights, had suddenly become the pioneer of codetermination in Italy. In the public discussion it became clear that no-one was aware that the future presence of worker representatives on the board was related to EU Directive 2017/1132/EU.

Being aware of the conflictual nature of industrial relations in the past, most observers considered BLER in the new company a previously unthinkable change in the Fiat and FCA culture, an event so unexpected that it was interpreted as heralding a new cultural identity. Observers were also surprised because it was not even among the declared, let alone claimed, objectives of the majority of Italian trade unions. As it seemed to be a change that took place without a need, the announced participatory model, which many observers compared with the German 'codetermination' model (Biondi 2019), was interpreted as a result of the group's far-sighted approach to industrial relations. Such a shift in industrial relations would indelibly mark the explicit recognition of strong common interests between capital and labour and the abandonment of an antagonistic culture (Griseri 2019).

However, the real reason for the eventual extension of board-level employee representation to the Italian part of the Stellantis Group was rather the necessary application of Directive 2017/1132/EU. Stellantis was the result of a cross-border merger of two companies with share capital, in which cases Directive 2017/1132/EU regulates the influence of employees in the activities of the new company through the right to elect or appoint a certain number of members of its supervisory or administrative body. In particular, the Directive provides that, if employees have participation rights in one of the merging companies and, if the national law of the Member State in which the company resulting from the cross-border merger has its registered office does not provide for the same level of participation as operated in the relevant merging companies, or does not provide for the same entitlement to exercise rights for employees of establishments resulting from the cross-border merger, the participation of employees in the resulting company, and their involvement in the definition of such rights, should be regulated.

The Directive therefore provides for a protection mechanism against the risk of the rules on participation in the company resulting from the cross-border merger being circumvented. In the example of this merger, employee participation had to be guaranteed as PSA was managed under an employee participation system. This 'before-after' principle (Verrecchia 2020), according to which BLER must be maintained if it previously existed in at least one of the participating companies, also implies that such forms of representation must now be opened up to the Europe-wide workforce of the new company resulting from the merger by allocating board seats according to the proportion of employees in the various Member States. In this particular instance, it would be necessary to open up BLER also to FCA where it had been hitherto unknown.

Prior to the merger, the governance model adopted by PSA had been characterised by a dual structure consisting of an executive board on the one hand and a supervisory board on the other. Two of the 12 supervisory board members were employee representatives of the PSA Group (Telljohann 2020). Due to Directive 2017/1132/EU requiring a level of employee participation at least identical to that implemented in the merging

companies, two employee representatives were foreseen on the board of directors[2] of the company resulting from the cross-border merger between FCA and PSA.

Directive 2001/86/EC, to which reference is made with regard to the principles and procedures for employee participation in companies resulting from cross-border mergers, provides, in Part 3 of its Annex on the standard rules for participation, that the allocation of seats on the administrative or supervisory organ between the members representing employees in the various Member States is to be decided on the basis of the proportion of the employees of the combined company employed in each Member State. Given that two groups were involved here and that the majority of their European employees were concentrated in France as regards PSA and in Italy as regards FCA, it was logical that one of the worker representatives should be elected or appointed in France and the other in Italy.

If, therefore, Italian observers express appreciation for the innovation concerning the representation of workers on the board, it has to be pointed out that this was due to European legislation which, in this case, guaranteed the maintenance of the pre-existing levels of participation in PSA and, therefore, it was not at all the voluntary choice of FCA. To acclaim FCA as an innovator of industrial relations in Italy is therefore completely out of place. If new possibilities for transnational participation and representation are opened up to former FCA workers and their representatives, this will be thanks to the more developed rights that PSA workers already enjoyed before the merger.

4.3.1 The combination agreement and the arrangements with regard to worker participation

The details of the merger are laid down in the 'Common draft terms of the cross-border merger between FCA and PSA' (FCA PSA 2020). In conformity with this document, the general meeting of FCA and the general meeting of PSA decided to use the possibility foreseen by Directive 2017/1132/EU of waiving the setting up of and negotiation with a Special Negotiating Body and, instead, being subject to the standard rules for employee participation as applied under Dutch law and as reflected in the final articles of association (FCA PSA 2020). This unilateral decision to apply the standard rules deprived employees of any say in their future representative structures.

However, the proposed articles of association of Stellantis envisaged that two non-executive directors should be appointed on the nomination of the Global Works Council for a term of four years. As the Stellantis Global Works Council had still to be constituted, in the transitional provisions regarding the composition of the board of directors it was laid down that two non-executive directors should be appointed on nomination through a process involving one or more bodies representing Stellantis employees.

According to the 'Common draft terms' document, prior to the execution of the merger proposal, the competent works councils and employee representative bodies within PSA

2. As the Directive does not oblige a particular governance structure, in this case the two employee representatives had to be included on the board of directors.

had been informed about and consulted with in respect of the merger. The final opinion required was obtained on 8 November 2019. This document, however, does not mention any information and consultation taking place within FCA. The reason for this is that the FCA European Works Council (EWC) was only informed after the document had been published. As mentioned in the 2020 Stellantis annual report, an extraordinary meeting was granted on 18 December 2020 in order to inform the employee side about the merger project (Stellantis 2021), meaning that this was held after the 'Common draft terms' document had already been published, on 27 October 2020, and after the information and consultation process on the French side had already been completed for over a year. Consequently, it could only serve to inform workers about decisions already taken.

However, on the part of the Italian trade unions, the reactions after the public announcement of the merger were basically positive. Indeed, all the comments focused on the news of the possible presence of worker representatives on the board. That Italian worker representatives, unlike French ones, had not been consulted in any way about the planned cross-border merger was not mentioned critically by any of the Italian unions.

Federazione Italiana Metalmeccanici (FIM-CISL; the Italian metalworking trade union affiliated to Confederazione Italiana Sindacati Lavoratori (CISL; Italian Confederation of Trade Unions), was particularly positive in its assessment of the cross-border merger (FIM-CISL 2019). With regard to BLER, the union considered the future presence of worker representatives on the board to be a real turning point in Italian industrial relations. FIM-CISL was convinced that, on the next board, there would be two employee representatives, one for PSA and one for FCA, so it considered FCA's supposed turnaround towards worker participation of great interest.

Unione Italiana Lavoratori Metalmeccanici (UILM-UIL), the Italian union of metalworkers affiliated to Unione Italiana del Lavoro (UIL; the Italian Labour Union) considered the expected presence of two worker representatives on the board to be positive and highlighted FCA as an innovative group in industrial relations (Liuzzi 2021).

In the view of Federazione Impiegati Operai Metallurgici (FIOM-CGIL), the biggest union in the metalworking industry affiliated to Confederazione Generale Italiana del Lavoro (CGIL; the Italian General Confederation of Labour), the participation of two employee representatives on the new board, one for PSA and one for FCA, would be an innovation. However, to make this innovation truly democratic, the union believed it necessary that workers elect their representatives (Franchi 2019). Thus, the union's assessment of possible future participation at board level was basically positive but, at the same time, it was insisting on democratic procedures. However, Fabio di Gioia, the FIOM-CGIL member of the FCA EWC, was much more sceptical from the very beginning when stating in his comments on the cross-border merger:

> If today we are discussing the fact that FCA is opening up to worker participation at a level never reached before, this is certainly not because of a revelation on the road

> to the participatory model, but because of the need to apply European legislation. (Di Gioia 2020)

This has proven to be a realistic assessment as, ultimately, only the employee representative bodies within PSA were involved in the nomination process. Formally, two members of the Stellantis board were appointed employee representatives with effect from 17 January 2021. Only the French representative has a trade union background. In contrast, the second employee representative, Ms Cicconi, is a well-known human resources manager (FCA PSA 2020) chosen by FCA management. As the Italian trade unions and employee representatives were not involved in the nomination process, this second representative cannot be considered a representative of FCA employees.

4.3.2 The announcement of the composition of the board: from historic breakthrough to lost opportunity

When FCA and PSA announced the composition of the board in September 2020, trade union assessments of the new governance model changed fundamentally. The trade unions also challenged the appointment of Ms Cicconi.

FIM-CISL expressed its dissatisfaction with the lack of trade union involvement in the appointment of the board representative of FCA employees. It considered it a mistake that FCA had decided to proceed independently in identifying someone that should, symmetrically to the person already appointed by PSA, represent the workers of FCA. UILM-UIL agreed, speaking of a 'lost opportunity'. According to the union, it was a choice made independently by the company and therefore not in any way an expression of the views of workers.

Thus, the announcement of the FCA-PSA merger in December 2019, with the supposed inclusion of two employee board-level representatives, initially raised great expectations which were later largely disappointed when the company announced who the members of the board would be. The failed entry of an Italian worker representative to the board turned out to be disillusioning for the Italian trade unions, especially for those who were convinced that this had represented a change in the company's industrial relations.

FCA had chosen unilaterally to appoint a manager who had no contact with workers and unions before the appointment. By contrast, on the French side, her counterpart was identified after extensive consultation procedures and the involvement of the employee side in the nomination process. These different approaches show that the quality of social dialogue depends significantly on existing structures and on the prevailing historically rooted culture. From this point of view, social dialogue has always been more developed in PSA than in FCA. In a public statement, referring to the traditional culture of industrial relations in FCA, Di Gioia (2020) sets out very clearly why, from the trade union point of view, no satisfactory solution had been reached on the issue of BLER:

> If we attribute a salvific power to the application of the participatory (or, if you prefer, co-managerial) model by contenting ourselves with the simple and formal 'entering

> the control room', we would be fools. In this sense, the experience of the European Works Council of the FCA group (...) should teach us a lot by showing us in practice that it is possible to comply with laws and regulations by creating the tools provided by law, but, at the same time, to work deliberately to undermine the tool itself.

Although the Italian trade unions expressed their displeasure at the lack of involvement in the nomination of the worker representative, they have refrained from putting too much emphasis on this issue as there are likely to be other issues such as job security, that require their full attention (De Palma 2021; FIM-CISL 2019).

In any case, as long as there is no second employee representative proposed by the employee side on the board, the entire European workforce of the former FCA remains excluded from information provided at board level. This puts former FCA workers at a structural disadvantage compared to former PSA workers.

Thus, it can be summarised that the application of the Directive on cross-border mergers in the case of PSA and FCA has not yet led to the involvement of the Italian employee side in board-level representation within Stellantis due to the unilateral approach of FCA management. Even if BLER should not enjoy absolute priority among the Italian trade unions, it can, however, be assumed that in the medium term they will put pressure on Stellantis management to overcome this structural disadvantage vis-à-vis the French employee side on the board.

4.3.3 A missed opportunity

The Stellantis case shows how important is the role of the Special Negotiating Body. In the absence of negotiations, only the French workers were informed and consulted within the framework of the cross-border merger project whereas Italian employees, among others, remained completely excluded from discussions on the future forms of information, consultation and participation in the Stellantis Group. With this low-road approach, FCA managed to undermine the legislator's intention to ensure the internationalisation of corporate boards also on the employee side and, thus, to prevent a new level of Europeanisation of industrial relations.

Furthermore, it must be noted that FCA has in no way become a pioneer of participatory industrial relations in Italy. This can of course be seen as a missed opportunity, but the question arises whether such expectations were not purely illusory from the very beginning.

The first illusion was that FCA management would have decided on its own initiative to introduce BLER in the context of the merger as a contribution to cultural change in its industrial relations. However, it quickly became apparent that the Directive on cross-border mergers had instead forced management to address the need to extend the BLER which had previously been practised at PSA.

The second illusion was that FCA management would now involve the Italian employee side in the nomination process. But, here again, it became clear that management

had no intention of deviating from its previous course of unilateral decision-making. With regard to the application of the Directive, FCA management took an approach that did not even comply with the minimum legal requirements: Italian employee representatives were neither informed of the merger in good time nor were they involved in the appointment of the board member concerned.

However, the issue of BLER does not seem to have been a top priority on the union side. While there has been sharp criticism of the approach of FCA management, there has not been a fundamental dispute about the involvement of the workers' side. This is certainly also related to the balance of power in FCA. Partially underutilised production capacities, the permanent use of social shock absorbers, a relatively low level of unionisation and a lack of unity between the trade unions present in FCA have resulted in trade unions having limited bargaining power with management. Against this background, the trade unions used their limited resources in the merger phase, which incidentally fell in the middle of the pandemic, primarily for the priority trade union policy goal of securing employment. To achieve this, the trade unions seem to have focused mainly on finding solutions through collective bargaining and pushing the government to intervene actively.

With regard to the discussion on BLER, the merger between PSA and FCA ultimately sparked only a brief debate at the moment when it became known that such employee representation would be introduced in the combined group and that it would, thus, also extend to the Italian part. However, the Stellantis case did not entail a substantial contribution to the discussion on the possible perspectives of BLER in Italy. And this may also be because it has reconfirmed the traditional obstacles that lie in the way. These include, in particular, the negative attitude of employers, the not always unanimous action on the part of trade unions and the passive attitude of governments towards BLER. The case has thus turned from the hoped-for lighthouse project, with a signalling effect on the rest of the Italian business world, into exactly the opposite: a confirmation of all the reservations about BLER in the Italian context. In this respect, Stellantis is symptomatic of the general Italian situation: there is no real convincing and coordinated commitment directed towards the introduction of BLER.

It remains to be seen whether the dominance of French representatives on the board can lead in the medium term to more dialogue-oriented industrial relations in the Italian part of the group as well.

4.4 Summary: limited experiences with board-level employee representation

As we have seen, there have been several cases in Italian companies involving forms of worker participation in strategic corporate decision-making. However, these experiences are limited to specific phases in the respective company-level industrial relations. As these experiences were not based on legal rights, they lacked continuity over time.

The Electrolux-Zanussi case has always been considered an advanced model but, ultimately, it never assumed a trend-setting role and has substantially remained an isolated case. We can thus sum up that the approach of negotiated participation has produced disappointing results from a quantitative standpoint alongside results that, from a qualitative one, have barely been stable.

In general, a distinction can be made between two basic paths to worker participation at corporate level. On the one hand, these participation experiences have developed endogenously from company-specific participation-oriented systems of industrial relations such as, for example, in the case of Electrolux-Zanussi. Other cases represent an exogenously induced involvement in BLER in foreign groups as a result of the application of provisions for participation in SEs.

In both cases, however, these experiences are rather uncertain. Since the examples of endogenous participation are based on collective agreement rules and therefore lack legal regulation, they can in principle be terminated at any time. Participation experiences here are usually informed either by longer or by shorter periods of time and are characterised by convergence with regard to the goals of the actors involved.

In addition, the involvement of Italian employee representatives on SE supervisory boards has, so far, not led to any significant discussions about a possible role for BLER within the Italian industrial relations system. This is partly because the number of cases is very small and partly because the experiences of worker representatives on such boards are rather personal and have only been spread to a limited extent in the respective trade union organisations. Although these experiences are assessed as quite positive in specific cases, at the same time it is pointed out that it would hardly be possible to introduce a similarly binding, legally anchored corporate governance system in the Italian context.

Ultimately, the cross-border merger between FCA and PSA does indeed represent a missed opportunity as FCA succeeded in keeping Italian employees excluded from BLER in the new company resulting from the merger.

5. The debate on board-level employee representation in Italy

5.1 The position of the social partners

The reasons that have triggered the modest diffusion of significant participation experiences are also to be sought in the tradition of an industrial relations system that, in the past, was shaped by an elevated level of conflict and, as a consequence, by a particularly critical attitude towards the board-level participation models practised in other countries.

Starting from the 1990s, employers and trade unions started to overcome the conflictual mindset in favour of a more cooperative strategy. Contemporaneously, the unions developed a new attitude towards participation: at the start of the 1990s the trade

union confederation CGIL launched its strategy of codetermination at plant level. CISL shared the desire for information and consultation practices without, however, wanting to achieve actual codetermination rights. Whereas CGIL was focused on industrial democracy, the strategic objective of the Christian-oriented CISL was, instead, the promotion of employee share ownership schemes (Cattero 2010; Telljohann 2007). Obviously, this divergence in union policy with regard to participation has always made it more difficult to extend certain positive experiences of participation at corporate level and achieve results that are also quantitatively significant.

Since the beginning of the 2000s, joint strategies in the field of worker participation have also been undermined by a more general crisis in terms of unity of action between CGIL, on the one hand, and the other two trade union confederations, CISL and UIL, on the other. As a consequence, there has been no significant advance in the field of participation at corporate level. In order to guarantee more effective trade union activity in board-level participation, it would be necessary for their strategies to be harmonised.

In the second half of the 2010s, which were marked by rapprochement between the trade union confederations, CGIL made a step forward in clarifying its own position on board- level participation, partially overcoming its reservations which, formerly, were linked to its decidedly class-oriented worldview. In 2016, the union proposed its Carta dei diritti del lavoro (CGIL 2016), a new charter of universal labour rights that addressed the changes taking place in the world of work through a strategy that affirmed fundamental rights and equality for all workers. In this context, it also proposed specific BLER rights in companies operating in sectors of strategic importance such as energy, water supply, banking and insurance, telecommunications, environment and transport. In these companies, CGIL is asking for two seats in the respective governance structures for experts designated by the trade unions. These experts should have the right to attend meetings of the controlling body with the right to speak and to record comments, opinions and statements in the minutes.

5.2 The need for stronger institutionalisation

In the past, the persisting different orientations of trade unions with regard to participation contributed to the fragility of the agreements reached in this field. Participation schemes that depended on voluntary acceptance by employers would need clear regulations that supported their efficacy. Thus, a stronger institutionalisation of the rules would be useful in order to support worker participation in practice.

In order to overcome this limitation, CGIL, CISL and UIL adopted on 14 January 2016 a joint statement (CIGL et al. 2016). This was also meant as a response to the economic and financial crisis and demanded, among other things, employee participation rights at various levels including company governance and organisational participation as well as economic and financial participation. This joint statement must be considered an important step forward in developing a joint position on participation between the three trade union confederations.

Additionally, on 28 February 2018, the employer association Confederazione generale dell'industria italiana (Confindustria; General Confederation of Italian Industry) signed a joint declaration with CGIL, CISL and UIL on the content and direction of industrial relations and collective bargaining that emphasised the importance of a more effective and participatory industrial relations system in order to achieve transformation and digitalisation processes (Confindustria et al 2018). The document also stipulated that the parties consider 'the enhancement of forms of participation in the processes of defining the strategic directions of the enterprise an opportunity' (Confindustria et al. 2018: 15). Although this must be considered a novelty in the face of digitalisation processes, which are destined to change the geography of production and work systems, there is no evidence so far that this document has led to the introduction of forms of board-level participation in any company.

While Confindustria and the trade unions were able to agree a common position on the issue of BLER in their statement, albeit in rather vague terms, the cross-border merger between FCA and PSA once again highlighted the potential for conflict associated with this issue in Italy. While there was some enthusiasm when the cross-border merger was announced, alongside speculation about a new phase regarding the issue of BLER and industrial relations in general, these hopes suffered a severe setback with the announcement of the members of the board of the new Stellantis Group. The disappointing results on the issue of participation from the Italian point of view certainly have a significance that goes beyond Stellantis since, throughout the post-WWII period, industrial relations at Fiat and subsequently at FCA had a paradigmatic character.

With regard to the processes of change in society, the Covid-19 crisis and the green and digital transitions in particular have also contributed to a discussion within the union movement about the need for a new level of worker participation regarding strategic company decisions. In this regard, the general secretary of CGIL, Maurizio Landini, has stated that transition requires deep reforms. In his view, the issue of 'what to produce, how to produce and for whom to produce' becomes decisive if we do not want the world of work to pay the bill for the crisis. Therefore, workers should be able to have their say on the nature of investment and on the direction of companies. This also means thinking about new forms of economic democracy and experimenting with new forms of codetermination in companies (Castellina 2021). So far, however, no concrete demands have been addressed in this regard, neither to the business side nor to the government.

On 23 December 2021, however, a Protocol was signed under which the government has ensured that the social partners will play an active and proactive role in the complex phase of implementing the projects, reforms and investments within the National Recovery and Resilience Plan (NRRP), not only at central level but also through the territorial roundtables that will allow for the governance of the NRRP to be as participatory and conductive as possible (Presidenza del Consiglio dei Ministri 2021). The Protocol, thus, enhances the participation of the social partners, paying particular attention to the economic, social and employment effects of the Plan. The signing of this document shows that, in this phase of fundamental change, involvement in tripartite action seems to be a clear priority for the trade unions as it is about control over the use of resources for investments linked to the creation of employment.

The idea of linking the allocation of resources for reconstruction to the introduction of participation rights at company level has, however, been more of an academic discussion. According to the economists Alessandro Arrighetti and Fabio Landini (2020), in a phase of radical change in the competitive environment it is necessary to think of ambitious measures that can bring about a profound change in the model of Italian capitalism. Therefore, they proposed using the resources allocated in response to the Covid-19 emergency for the creation of an investment and codetermination fund aimed at supporting companies that are willing to innovate their strategic and organisational model by focusing on codetermination. For this purpose, a two-tier corporate governance model, with the presence of employees on the supervisory board, should be adopted. This approach should help reorient companies towards a competitive strategy focused on high quality production, increasing the skills of the workforce and enhancing the innovation and efficiency of production processes.

Such proposals have not been taken up by the trade unions, the political parties or the government. At political level, the most recent initiative remains draft law 1051/15 on participation according to which forms of worker participation, including organisational participation, economic and financial participation as well as BLER, should be introduced on a voluntary basis in companies with at least 300 employees through company-level agreements (Leonardi 2016). However, the draft law, as others before, was never adopted.

In April 2023, CISL filed with the Court of Cassation a popular initiative-based legislative proposal entitled La Partecipazione al Lavoro (Participation at Work) (CISL 2023). The initiative, which was not supported by CGIL and UIL, was aimed at fully implementing Article 46 of the Italian Constitution which enshrines the right of workers to cooperate in the management of companies. The proposal included, among others, the introduction of forms of codetermination on supervisory boards and boards of directors, profit sharing and widespread share ownership through collective bargaining. The Italian parliament finally approved it on 14 May 2025, after it had been discussed in the Chamber of Deputies and the Senate.

On 10 June 2025, Law 76/2025 on workers' participation in corporate governance came into force. The law makes provision for workers' participation in the management, capital and profits of enterprises and introduces a structured framework for promoting various forms of employee involvement in corporate governance. However, the application of the legal provisions is voluntary; that is, the law does not impose mandatory obligations on employers, intending instead to facilitate the adoption of the principle. It recognises multiple forms of participation, allowing companies to tailor implementation to their governance model and business needs. In particular, the new legislation recognises four forms of worker participation; namely board-level, economic and financial, organisational and consultative participation.

With regard to BLER, the new rules provide for two options. The first concerns joint-stock companies or public limited companies organised on the lines of a dualistic model in which there is a management and a supervisory board. The company's articles of association may provide, where governed by collective agreements, for the participation

in the supervisory board of one or more workers' representatives, identified on the basis of the procedures set out in agreements, and who are in compliance with the requirements of the professionalism, good reputation and independence required of board members. The presence of at least one representative of the employees participating in financial participation plans may also be envisaged. The second option concerns those companies not organised according to a dualistic model. In this case, the articles of association may provide, where governed by collective agreements, for the presence on the board of directors and, where constituted, in the controlling body, of one or more members representing the interests of employees and identified by the employees themselves. In this case, too, the general requirements of independence, honourableness and professionalism apply.

The law guarantees the voluntary nature of BLER. The legislator has chosen not to impose a generalised obligation to implement participation at board level, but to leave it to individual companies to decide whether and how to adopt it, based on their organisational characteristics and the dynamics of industrial relations. There is no right to negotiate the introduction of BLER, the possibility to do so depending solely on the provisions of company articles of association (Alaimo 2025; Baratta 2025). Thus, the absence of such provisions can be considered equivalent to a choice not to adhere, without the need for a formal procedure or explicit declaration. This legal logic was demanded by Confindustria. In this regard, Confindustria's Vice-President for Labour and Industrial Relations, Maurizio Marchesini (Redazione ANSA 2025), states:

> We believe that the way forward is for collective agreements to regulate the terms and conditions for the possible participation of workers' representatives, following on from the company articles of association that provide for this possibility.

In companies where BLER is introduced, Law 76/2025 requires employees to attend specialised training sessions lasting no less than ten hours per year, enabling them to acquire the necessary knowledge to perform their functions professionally.

The law also establishes a permanent committee at Consiglio Nazionale dell'Economia e del Lavoro (National Council for Economics and Labour) to monitor implementation, issue guidance and promote best practice.

In summary, Law 76/2025 is aimed only at encouraging the voluntary introduction of participation and does not include any enforceable employee rights. Companies are under no obligation to establish BLER. Thus, the law does not represent any advance on the possibilities that already existed in the context of the Italian approach of negotiated participation (Leonardi 2025). As a result, neither does it represent any substantial progress towards the full implementation of Article 46 of the Italian Constitution. Essentially, the law codifies the status quo with regard to BLER, making it even more difficult for the time being to make progress towards more effective legislation. Looking at the European context, it must be noted that the Italian legislation cannot help in closing the gap with the experiences of BLER in other countries.

As shown by these legislative developments, the joint document of the three trade union confederations in 2016, the joint statement of the social partners in 2018 and the provisions of collective agreements in the metalworking industry in 2016 and 2021, the social and political debate over participation as an instrument of economic and industrial democracy has gained some momentum in recent years. However, it is striking that this discussion and the concrete provisions of the collective agreements have apparently not yet contributed to a spread of participation at corporate level in practice.

6. Conclusion: is there a future for board-level employee representation in Italy?

It can be concluded that, up until today in the Italian context, participatory experiences at corporate level have hardly been widespread. In investigating the causes of their insufficient coverage, it has to be highlighted that historically the characteristics of the Italian industrial relations system and the orientations of the actors determined a context that was little inclined to facilitate worker participation. Seeing that the negotiatory approach at plant level has not been able to produce satisfactory results with regard to BLER, it has become clear that there would be a need for a more incisive regulation in the form of legislation.

Even so, the rather unsatisfactory participatory experiences in terms of spread and continuity indicate that every attempt to institutionalise participation rights that has emerged within the national context so far has failed. The main reason for this is certainly the resistance of employers to any form of legally anchored codetermination rights at corporate level (Leonardi and Gottardi 2019). Governments would also have been too weak to be able to push through a corresponding legislative initiative against the wishes of Confindustria. Furthermore, in the current context it seems difficult to expand workers' rights through legislative initiatives as the political parties are becoming increasingly desensitised to trade union demands. In general, the current historical moment does not seem favourable to the introduction of legally binding forms of participation at corporate level (Leonardi 2016). Therefore, collective bargaining will remain the main instrument for the introduction of new experiences of worker participation. This will not change even after the introduction of Law 76/2025, which merely codifies the status quo and does not introduce any enforceable rights. Participation rights will continue to be regulated only within the framework of collective bargaining agreements.

Although CGIL and UIL are calling for legally binding participation rights, it is important to remember that such a demand is probably not at the top of their list of priorities. As shown in connection with the NRRP, both unions are primarily interested in getting involved in tripartite activities at national level. In this context, they are mostly concerned with issues relating to employment. It is significant that, in connection with the implementation of the NRRP, no specific proposals have been made by the unions for the introduction of BLER.

That the collective bargaining provisions for participation in corporate strategy issues introduced in the metalworking industry in 2016 have apparently not yet been applied in practice indicates that the issue of participation at corporate level does not seem to be of primary importance at company level either. The same applies to the 2018 joint declaration by the trade unions and Confindustria. These disappointing results confirm that trade unions are still giving priority to collective bargaining when it comes to influencing management decision-making. On the other hand, employers are keen to block as far as possible all initiatives promoting employee participation. During the discussions on Law 76/2025, Confindustria succeeded in ensuring no right to negotiate the introduction of BLER and that the possibility of introducing any participation rights at corporate level is dependent on the relevant company articles of association.

The Stellantis case also highlighted that the management of the Italian part of the company apparently did everything possible to prevent a representative of Italian employees being appointed to the Stellantis board of directors. This example also shows why a lack of mutual trust can make progress more difficult when it comes to corporate participation.

In respect of the spread of cases characterised by participation at corporate level, partially state-owned companies could play a pioneering role as they have always been important with regard to experimentation with participatory industrial relations practices. However, Tiraboschi (2015) points out that forward-looking experiences cannot simply be transferred to the private sector. In his view it is unlikely that such models of employee participation can be transferred to the private sector as 'private-sector management in Italy is still reluctant to accept the logic of fair collaboration with trade unions' (Tiraboschi 2015: 638). Apart from this, it should also be noted that Law 76/2025 was not used to introduce binding participation rights at corporate level, at least in companies with public participation.

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Cite this chapter: Telljohann V. (2025) The difficult standing of board-level employee representation in Italy, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Abbreviations

Alitalia	Società Aerea Italiana (Italian Airlines)
BLER	Board-level employee representation
CGIL	Confederazione Generale Italiana del Lavoro (Italian General Confederation of Labour)
CISL	Confederazione Italiana Sindacati Lavoratori (Italian Confederation of Trades Unions)
Confindustria	Confederazione generale dell'industria italiana (General Confederation of Italian Industry)
ENI	Ente Nazionale Idrocarburi (National Hydrocarbons Organisation)
ETUI	European Trade Union Institute
EU	European Union
EWC	European Works Council
FCA	Fiat Chrysler Automobiles
FIM-CISL	Federazione Italiana Metalmeccanici, CISL (Italian metalworking trade union, CISL)
FIOM-CGIL	Federazione Impiegati Operai Metallurgici, CGIL (Italian Federation of Metalworkers, CGIL)
IRI	Istituto per la Ricostruzione Industriale (Institute for Industrial Reconstruction)
NRRP	National Recovery and Resilience Plan
PSA	Peugeot S.A.
SE	Societas Europaea (European Company)
UIL	Unione Italiana del Lavoro (Italian Labour Union)
UILM-UIL	Unione Italiana Lavoratori Metalmeccanici, UIL (Italian union of metalworkers, UIL)
WWII	World War II

Part 2

Limited institutional recognition and practice

Chapter 3
Employee participation on the management bodies of companies in Greece

Ioannis D. Koukiadis and Ioannis V. Skandalis

1. Introduction

The subject of this chapter is one aspect of employee participation, namely board-level employee representation (BLER) rights in Greece. In a broader context, the term 'participation' refers to the right of employees to influence the decisions that affect them[1] and can be distinguished mainly in the following forms: (a) information of employees; (b) consultation, which allows employee representatives to express their opinions and make proposals without the need for agreement; (c) collective bargaining, which may lead to the conclusion of a collective agreement; and (d) joint decision-making, one part of which may be implemented through the representation of employees on the boards of companies (Spyropoulos 1998: 25-26). This last-named form of participation is quite exceptional in the context of Greek industrial relations and other forms of participation are much more common, as will be pointed out.

Greece is not distinguished by its particular performance on employee participation. Rather, it represents a classic example of the failure of this form of involvement. As Kravaritou-Manitaki has pointed out:

> The centralisation of structures, the partisanship of the trade union movement, the lack of a purely trade union tradition in the workplace, the peculiar nature of the Greek working class, as well as the negative attitude of employers, and the lack of course of a relevant social policy, are some of the reasons that will discourage and completely prevent the development or reappearance of participation in Greek enterprises. (Kravaritou-Manitaki 1986: 51-52)[2]

Even so, there was in Greece a relative amount of progress in employee participation in the management of enterprises after 1975. This was helped by the new constitution, the first after the fall of the dictatorship, which, although it may not have referred directly to participation, provided the legal basis for its promotion via certain provisions (Articles 23(1.2), 22(1.2), 2(1) and Article 5).

The structure of this chapter is as follows: after this introductory section (Section 1), a historical overview of the institution of employee participation in Greece follows in

1. It has also been argued that worker participation is considered to include the means available to workers to influence the formulation of economic, labour and social policy more generally (Koutroukis 1989: 11).
2. Authors' own translation. This applies to all the quotes excerpted from Greek original literature referred to in this chapter.

Section 2. Then, Section 3 analyses the current status of employee participation on company boards.[3] Next, the parameters to which the limited and fragmented board-level participation of employees in Greece might be attributed are analysed in Section 4. Section 5 presents the position of the social partners on this issue, as indicated through interviews with employee and employer representatives with experience of employee board-level participation. Section 6 approaches alternative mechanisms of employee participation in the context of Greek industrial relations. The final section summarises the conclusions.

2. Historical overview of the institution of employee participation in the management of enterprises

A historical overview in relation to the various stages of the evolution of employee participation in the management of enterprises is particularly useful because it reveals internal details and various negative reactions, even on the part of trade unions themselves.

Participation on the board of directors might be regarded as a form of employee participation in the shaping of working conditions. Despite the different missions and functions of the respective institutions for worker participation, one form cannot be dissociated from the other because they are not only interlinked but often contain elements of conflict. In Greece, as early as the founding congress of the General Confederation of Greek Workers (GSEE) in 1918 (Cordatos 1972: 303), a proposal was put forward for the participation of organised workers (i.e. by trade union organisations) on the boards of large enterprises (Kravaritou-Manitaki 1986: 41). Co-decision councils were indeed established, mainly in state-owned enterprises, the first example being the railway enterprise (Koutroukis 1989: 14-17). In this respect, the adoption of Law 3752/1929, which provided for the participation of workers in the process of the ratification of labour regulations, was particularly crucial. During the same period, employee participation was also established in the Piraeus Port Authority, the Bank of Greece and the National Bank of Greece. However, the absence of an institutional framework for these forms of participation led to their premature degeneration.

At the same time, there was a concerted move to set up de facto labour committees to supervise the implementation of working conditions (Kravaritou-Manitaki 1986: 49).[4] All these moves ended in failure, capped by the dictatorship of 1936; however, even before the dictatorship, there were no signs that these de facto labour committees would be successful.

A revival of the participation movement was manifested after World War II by trade unions in which a Marxist ideology prevailed. The 1946 GSEE congress called for the establishment of enterprise committees with a number of variations, with the main

3. In this chapter, 'board of directors' broadly refers to monistic boards, unless otherwise specified. References to supervisory boards will be made explicit in the relevant sections.

4. As Nikolaou-Smokoviti also observes in this respect, the first application of democratic relations took place in Greece with the 'factory councils' in the tobacco industry during 1928-1936 (Nikolaou-Smokoviti 1987: 181).

aim of gaining control of enterprises. This demand was picked up by the Communist Party of Greece. However, the failure of the left in the 1946-49 civil war, neutralised these moves. In the 1950s, the movement for the democratisation of enterprises was reactivated with a demand for participation in management bodies, while the demand for workers' councils was reiterated at the eleventh and twelfth congresses of the GSEE, during 1953 to 1955, again without success. It is noteworthy that GSEE referred to the international trends that had encouraged employee participation; however, this was not supported by Greek political parties or by the courts, which overturned any ad hoc employee committees that did not adopt the legal form of trade unions, stating that such committees had acted outside the existing framework.[5]

2.1 Public utilities and socialised companies

As regards specifically the participation of employees on the boards of undertakings, this form of participation, albeit in a limited form, was provided for in public utilities.[6] Initially, the participation of employees on the boards of public enterprises and public utilities (Demaina-Manika 1986: 825) was explicitly established by Law 1365/1983 for the purpose of strategy formulation, planning and control in order to strengthen social control over these enterprises (Nikolaou-Smokoviti 1987: 151-152).

The following distinction is crucial in this regard. According to Law 1365/1983, the 'socialisation of public enterprises or utilities, banks and insurance undertakings' means the participation, in the administration, in the formulation of strategy and in the planning and control of the above entities of representatives of the following groups: (a) the state; (b) local authorities; (c) employees in the undertaking or industry sector, region or the whole country; (d) the social bodies and organisations served or directly affected by these companies; (e) the legal or natural persons holding shares in the company. Thus, the participation of employees on the boards of directors of these companies was regarded as one parameter of 'socialisation' and not as an aim in itself.

With regard to the criterion according to which entities would be considered 'socialised', this was related to the participation of the state or public bodies in their share capital. Specifically, socialised enterprises, for the purposes of Law 1365/1983, are those enterprises whose share capital is wholly or by an absolute majority owned by the state; legal persons under public law; public benefit institutions or organisations of the state; or legal persons under private law supervised or subsidised by the state or by legal persons under public law. At the time of the adoption of Law 1365/1983, these were mainly hospitals or, otherwise, entities in water refining and distribution, electricity generation and distribution, the transport of persons and goods, telecommunications, postal services, and radio and television.[7]

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5. Case 4575/50 of the Labour Court of Athens, Employment Law Review 1951, p. 265ff.

6. As Koutroukis notes, worker participation was generally established at macroeconomic, national level on the advisory bodies of social and economic policy as well as in public enterprises of nationwide scope (Koutroukis 1989: 29).

7. This list of entities is provided by Article 19 para. 2 of Law 1264/1982, to which Law 1365/1983 directly refers.

Article 2 of Law 1365/1983 aims to: (a) serve the national interest and society as a whole; (b) actively involve employees in decisions; (c) harmonise the operation of the enterprise with national, regional and local economic and social development programmes, as well as with the natural, social and cultural environment; (d) conserve as many financial resources as possible; and (e) increase productivity and efficiency for the benefit of the employees of the enterprise. In the light of these objectives, it can be argued that the Greek legislator considered the participation of employees in the decision-making process of public utilities as an end in itself, to the extent that it enhanced their democratic functioning[8] and represented a factor in the increase of productivity and efficiency, benefiting both employees and wider society.[9]

However, the effective participation of employees in decision-making is not simply ensured by their numerical participation in various bodies; it is not just a question of numbers. Indeed, as Koukiadis observes in this regard, 'in many cases, the numerical abundance observed in participation events is inversely proportional to the contribution of participation to the democratisation of the decision-making mechanism' (Koukiadis 1981: 178).

Law 1365/83 failed in practice: it did not safeguard effective employee participation in 'socialised' entities.[10] This may be due to its failure to provide the means for the effective participation of employees or even some guiding principles, such as the equal participation of employees on boards or a right of veto on decisions directly affecting them (Kravaritou-Manitaki 1986: 119).[11] In the words of one employee representative, a member of the board of directors of Dimosia Epicheirisi Ilektrismou (DEI; the Public Power Company) during the years following the enactment of Law 1385/83 (see next section), the failure of employee participation on the boards of these entities might be attributed to the lack of appropriate information regarding employees' role on such bodies, as well as the absence of prior experience among other members of the board and by employees regarding employee participation (Nikolaou-Smokoviti 1987: 153-154).

2.2 Mining and quarrying sector

One sector in which there was employee participation through ad hoc legislation was mining and quarrying. In particular, Law 1385/83 provided for the participation of

8. So argues Nikolaou-Smokoviti, who notes that the institution of socialisation serves the interests of the people through the extension of the influence of workers in these enterprises (Nikolaou-Smokoviti 1987: 155).

9. Similarly, Spyropoulos points out that the participation of employees in the context of Law 1365/83 is, according to this law, the aim of socialisation but, at the same time, it is also considered as a means of its realisation (Spyropoulos 1998: 101). In the same spirit, Demaina-Manika points out that, in the context of Law 1365/83, representatives of employees and social bodies are collectively called upon to formulate and embody the concept of social interest which public enterprises serve (Demaina-Manika 1986: 825).

10. The failure of the law in practice was also due to the delay in the adoption of the presidential decrees required for its implementation which may have been due to controversies regarding the role of trade unions in socialised enterprises and their relations with the socialisation bodies (Spyropoulos 1998: 102). Similarly, Dimou notes that many of the 'to be socialised' enterprises included on the relevant list of Law 1365/83 were not socialised in the end because the necessary presidential decrees were not issued (Dimou 1993: 907).

11. On the possibilities of worker control of employer decision-making, see Travlos-Tzanetatos (1977: 98ff).

worker representatives in the control and management of mineral wealth and other natural resources through supervisory boards. These did not interfere in the day-to-day management of the company but exercised supervision over critical issues such as productivity, environmental protection, working conditions and technology. In particular, supervisory boards had the right to information and advisory powers and to exercise control (Nikolaou-Smokoviti 1987: 156-158).

It is also noteworthy that the managing boards of mining companies had to seek the permission of the supervisory board for decisions concerning the possible transfer of the company to another location and the substantial limitation or expansion of its activity, as well as the commencement or termination of cooperation with other companies. Therefore, it can be understood that the supervisory board's authorisation was required for all the critical decisions of mining companies and, indeed, the list of these issues was indicative as, under Law 1385/83, it was possible to extend it by other statutory provisions or by provisions in companies' articles of association.

It is evident that Law 1385/83 was also part of the framework of socialisation in the sector, in the sense of ensuring the participation of employees on supervisory boards, given that mines and mining exploit national property that is not renewable. The critical importance of the institution of supervisory boards here is also highlighted in that this sector of economic activity was the first to have adopted legislation on employee participation at the level of the supervision of the management of private sector companies (Nikolaou-Smokoviti 1987: 157). However, the participation system in these sectors has been abolished in practice.

2.3 Companies in financial difficulty

Another case of employee participation in the management of companies introduced by legislation is to be found in the case of companies in financial difficulty. More specifically, Law 1386/83 set up Organismos oikonomikis Anasygkrotiseos Epicheiriseon (OAE; Organisation for the Economic Reconstruction of Enterprises), operating under the legal form of a public limited company, for firms in difficulty which played an important role in the national economy either because of their objectives or because they employed a significant number of employees.[12] Through OAE, provision was made for the participation of employees in the management of private enterprises in financial difficulties with a view to their recovery.

In particular, OAE aimed at the economic rehabilitation of problematic enterprises which had strategic importance for the national economy, the introduction and application of new technology and the exploitation of enterprises under rehabilitation or which fell within the socialised mixed economy. In order to achieve these objectives, OAE could, in particular, take over the management and operation of firms under restructuring

12. However, the law did not provide an exact employee threshold.

and/or participate in the capital of the firms in question.[13] Employee participation was provided for in all the organs of OAE: in particular, one of the eight-member board of directors and one member of the five-member advisory committee[14] were appointed by GSEE. The participation of a worker representative was also provided for in cases where OAE took over the temporary management of firms in difficulty (Nikolaou-Smokoviti 1987: 160-161).

3. Current regime

3.1 Law 3429/2005

The tradition of employee participation, albeit at minority level, on the boards of directors of public entities continues today based on laws 3429/2005 and 4972/2022. The laws previously presented became obsolete. In particular, Law 3429/2005, which is one of the basic laws that is currently in force in this field, provides for such participation in public utility companies. The provision of public services to society as a whole is crucial so, in this sense, basic enterprises falling within the scope of this law are, to a great extent, no different to those to which Law 1365/83 applied, as mentioned in the previous section (e.g. undertakings providing health services, public utility companies, transport, energy and water companies).[15]

More specifically, in terms of the rationale for Law 3429/2005, it was thought important that the public should exercise influence on decision-making during the operation of such businesses. In particular, Article 1 para. 1, which defines the scope of Law 3429/2005, provides that:

> For the purposes of this law, 'public utility entity' means any company under the legal form of société anonyme in which the Greek government can exercise direct or indirect substantial influence, due to the participation of the state in its share capital or the financing of its participation or the rules governing it.[16]

The exercise of decisive influence, according to para. 2 of Article 1 of Law 3429/2005, is presumed when:

> (i) the Greek public or (ii) legal entities under public law or (iii) legal entities under private law financed by the Greek government or by legal entities under public law in excess of 50% or (iv) other public undertakings within the meaning thereof

13. It should be noted that the establishment of the OAE met with strong opposition from Greek employers (Nikolaou-Smokoviti 1987: 160, 163).

14. The advisory committee was the competent body to decide whether a company was eligible to be entered into the OAE; that is, whether there were financial difficulties to such an extent that justified admittance to the OAE.

15. See p. 3 of the report of the scientific service of the parliament on the Draft Law 'Public Enterprises and Organisations', available at https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/DEKO.pdf

16. Société anonyme (S.A.) is a form of company under Greek law which is limited by shares: the company's assets may be used to pay off its debts; while its shareholders are not personally liable and only put at risk the amount of their investment.

of this law: (a) are owners of shares representing the absolute majority of its paid-up share capital or (b) control the majority of the rights of voting members at its general assembly or (c) may appoint half plus one of the members of its board of directors or (d) finance the annual activity by over 50%.

It should be clarified that the use of the term 'presumed' within the legislation indicates that, even in the absence of these conditions, the general operation of a specific company might indicate the decisive participation of the public during its operation and therefore its inclusion within the scope of the law. On the other hand, 'presumed' also means that, even if the above conditions are met, it might not be possible to exclude, from the general operation of a specific business, that the public does not exercise a substantial influence on its operation and therefore that the said entity does not fall within the scope of this law. Of course, the second case will be rare in practice.

As regards the participation of employees in the management of public utility companies, Article 3 of Law 3429/2005, which refers to the composition of the boards of directors of these enterprises, provides for the participation of an employee representative provided that this is done in accordance with the provisions of their articles of association.[17] This means that the extent of participation and many related procedural issues are provided for within the articles of association of the public undertakings, which are drawn up by the undertaking itself without there being a specific framework in advance as to the responsibilities of employee representatives in management. In this sense, there is no guarantee of effective employee participation in the management of public undertakings.

The only provision in the legislation relates to the election of employee representatives whereby the election procedure is run by an election committee whose composition is determined by the most representative second-level trade union organisation (i.e. federation) in the undertaking; whilst, if no second-level trade union exists this may be done by the most representative primary-level trade union (i.e. the union which directly accepts individual members). In undertakings such as DEI, where there are several trade unions which are organised within a federation, the responsibility for organising the election procedure lies with the federation, while every employee in membership of the affiliated trade unions is able to participate in the election of the representatives.

The law also establishes an electoral system according to which the candidate obtaining an absolute majority of the total number of votes cast is elected. If no candidate obtains an absolute majority, a second round is held between the two obtaining the highest number of votes in the first round, with the one who obtains an absolute majority of the total number of votes in the second round being elected. In the event of a tie, the election committee draws lots (Article 3(2) of Law 3429/2005, as amended).

17. The relevant provision of Law 3429/2005 does not specify whether the designation of an employee representative in the management of public utilities is a maximum or minimum number of employee representatives. However, there are cases of public utilities (e.g. Eteria Ydrefsis ke Apohetefsis Protevusas; EYDAP – Athens Water Supply and Sewerage Company) whose board of directors includes two employees.

3.2 Employee participation on the boards of public entities under Law 4972/2022

Law 4972/2022[18] which refers, among other things, to the corporate governance of public utility companies also includes provisions concerning the participation of employee representatives on the boards of companies which fall under the scope of Chapter B (of Part A) of the law. In particular, its Article 3 of Chapter B applies to: 'any company under the legal form of société anonyme, whose share capital belongs directly and by an absolute majority to the Greek state, as well as their subsidiaries'.

The scope of application of Chapter B of Law 4972/2022 appears to be narrower than the corresponding scope of Law 3429/2005, as the exercise of decisive influence by the state (which has to exist in order for a company to be included in the scope of that law) is a broader concept compared to the condition of the share capital belonging directly and by an absolute majority to the Greek state (i.e. the one required for the inclusion of a company within the scope of Chapter B of Law 4972/2022). This is because the state might have decisive influence in the management of a specific company, regardless of shareholding composition, for example where it appoints a majority of the members of the board of directors even though it does not own the majority of the share capital. Of course, the most likely scenario is that most companies will fall under the scope of both laws at the same time, given that the possession of an absolute majority of the share capital by the Greek state will, in the vast majority of cases, simultaneously imply the exercise of substantial influence in its operation. However, Article 46 para. 2 of Law 4972/2022 excludes the possibility of overlap between the scopes of application of laws 3429/2005 and 4972/2022 for the same company by providing that: 'Chapter A of Law 3429/2005 does not apply to the companies of para. 1 and 3 of Article 3'. Thus, if a company fulfils the conditions for falling within the scope of both the above laws, then the provisions of Law 4972/2022 apply to the exclusion of the relevant provisions of Law 3429/2005.

Regarding the more specific issue of employee representation on those S.A. boards which fall under Chapter B (of Part A) of Law 4972/2022, it should be noted that the provisions of this law are similar to those of Law 3429/2005. In particular, it is provided that a representative of employees shall participate on the board of directors of an S.A., as long as this is provided for in the company's articles of association or in any other legal provision (Article 7 para. 1). Therefore, the participation of an employee representative on the boards of such companies again depends on the content of the articles of association of each one, as was the case also with Law 3429/2005.

Furthermore, Article 7 para. 4 of Law 4972/2022 provides for a similar procedure for the appointment of an employee representative on the board of directors as Article 3 para. 2 of Law 3429/2005 in that it stipulates that:

> The representative of employees is appointed after elections, in the presence of a judicial representative, in accordance with Article 11 of Law 1264/1982 (A 79). His term

18. Note that this is complementary to Law 3429/2005, not a replacement.

> of office is defined in the articles of association of the employee's trade union and may not exceed six (6) years. The board of directors may be formed and function lawfully before the procedure appointing the employee representative has been completed.

However, there is also a minor difference between the election procedure provided by Law 3429/2005 compared to that provided by Law 4972/2022 since the latter does not give priority to the electoral committee of the most representative second-level trade union for the organisation of the election, as was provided for in Article 3 para. 2 of Law 3429/2005. Thus, under Law 4972/2022 the process of conducting elections seems to be able to be organised by the most representative trade union at any level (e.g. primary), as long as a judicial representative is present. At the same time, six years is set as the maximum period for the term of office of the employee representative, which is not provided for in the context of Law 3429/2005.

In addition, Law 4972/2022 stipulates that the required qualifications to be a member of the board of directors, referred to in Article 8 para. 3, do not apply to the employee representative. The provision of para. 2 of Article 11 of Law 4972/2022 might be particularly crucial in terms of encouraging employees to participate on the board without them feeling the pressure of potential personal liability for damages that may arise from their role. In particular, the provision in question sets that:

> The articles of association of the company may provide for the coverage of an insurance policy for the members of the board of directors against third parties, which concerns the coverage of the legal expenses required in the context of court cases in which the board members have been personally involved due to their capacity. The coverage refers exclusively to activity in their capacity as members and as long as there is no malicious intention or gross negligence.

Although according to the explanatory memorandum of Article 7 of Law 4972/2022 its aim was to bring greater clarity regarding employee participation on boards, it appears that the only significant contribution has been the added clarity regarding its scope of application, i.e. that it applies to S.A. companies whose share capital belongs directly and by an absolute majority to the Greek state, as well as their subsidiaries. Apart from that, it only introduced minor amendments of a technical nature to BLER; that is, such changes which have been highlighted above. However, the essence of employee representation on the boards of public entities has not been changed and remains confined to minority participation. Apart from that, the co-existence of Laws 3429/2005 and 4972/2022 gives rise to interpretative issues and explains why the authors of this chapter consider that the BLER regime applying to public entities needs to be rationalised and clarified through the consolidation of all relevant provisions in a single statute.

Finally, it should be noted that the privatisation of several public utilities in recent years has limited the practical value of these provisions (Conchon 2011: 21, 49). A typical example is the case of the telecoms operator, Organismós Tilepikoinonión Elládos (OTE; Hellenic Telecommunications Organisation, now Cosmote), where the transfer of the majority of shares to private parties led to the disapplication of Law 3429/2005

because the company no longer fell under its scope. The company did not provide for the participation of employee representative on the board of directors after redrafting its articles of association, as was the case prior to privatisation.

4. Limited employee participation on the boards of private enterprises: lack of employer and employee interest

Although there is no database or official registry so as to be in a position to know the exact number of employees who are members of the boards of private entities, such participation in purely private enterprises in Greece is not, other than in a few exceptions, found historically; BLER occurs only in public enterprises and, even there, with the restrictions analysed in previous sections. Obviously, the lack of an institutional framework for employee participation in the management of private enterprises is the main reason for the absence of board-level employee representatives there. However, there are also other reasons why employee participation in the management bodies of private sector companies has not been encouraged.

First of all, participation in management implies, in many cases, personal individual liability which has become particularly stringent in recent years.[19] In this respect, if a company is in financial difficulties, an employee representative involved on the board of the company faces the same risk of being held liable as the other directors in the absence of any specific regulation regarding the representative. This is undoubtedly a disincentive to the participation of employee representatives in the management of a private company, even if the parties involved had been positive towards it. However, this is not an unresolvable issue since it has been addressed successfully in other legal systems. A potential way forward for Greek law might be offered by Article 11 of Law 4972/2022 which provides, as mentioned previously, for the possibility of insurance coverage for directors for any damage caused other than by malicious intention or gross negligence.

Furthermore, it might be inferred that the employee representative does, in many cases, operate under pressure. This is because the other directors often view him or her with suspicion that he or she is, in any case, pursuing the interests of employees without regard for the general course of the company; while, on the other hand, trade unions often feel that the employee representative may adopt positions on the management body which do not reflect their views. In this respect, trade unions frequently consider that the integration of worker representatives on the board leads to the loss of the class character of representation (Koutroukis 1989: 56). The cautiousness of trade union organisations towards BLER is manifested in the gradual and increasing abandonment

19. See, for example, Article 50 para. 1 of Law 4174/2013, currently in force, which provides that: 'Persons who are executive chairmen, directors, general managers, managers, managing directors, persons appointed to the administration and liquidators of legal persons and legal entities, as well as persons who exercise in substance the management or administration of a legal person or legal entity, shall be personally and jointly liable for the payment of income tax, any withholding tax, value added tax and the single property tax due by such legal persons and legal entities, irrespective of the time of their assessment, as well as for interest, fines, penalties, surcharges and any administrative pecuniary sanctions imposed on them, provided that the following conditions are met: (...)'.

of demands for participation in management, considering it a 'form of integration' of the working class in the capitalist system (Mitropoulos 1983: 181, 209).[20] This situation is further complicated by the employee representative being bound by a duty of confidentiality, like the other directors, which prevents him or her from sharing in detail with the trade union what is discussed at the management body.[21]

The Greek legislator, apparently recognising the pressure to which an employee representative would be subject by the potential dual status (i.e. as a member of the management of a public utility undertaking and a representative of a trade union organisation), provided in the context of Law 1365/83 for the disqualification from holding the office of trade union representative for those employees elected as members of the boards of socialised entities.[22] This was in order to separate the roles and responsibilities of the two different categories of bodies for the participation and representation of workers' interests (Kravaritou-Manitaki 1986: 138). However, a mandate of board-level employee representative is no longer incompatible, at least from a legal perspective, with a mandate as a trade union representative since Law 3429/2005 does not repeat the disqualification provision included in Law 1365/83. This highlights the problem of incompatibilities and the need to regulate by specific provision the potential conflict between the status of employee representative on a company's management body and any parallel status of trade union official (Demaina-Manika 1986: 820).

In a broader context, it has been argued that the catalytic factor that has prevented the effective participation of worker representatives on the boards of enterprises, even in the context of public enterprises, where a corresponding institutional framework exists, is linked to the culture of industrial relations in Greece.[23] In this sense, BLER will not be able to function satisfactorily unless the mistrust that has traditionally characterised collective labour relations in Greece is eliminated. This presupposes mutual acceptance by the social partners of the legitimacy of the interests of the other side, in the sense of accepting both the differences that divide them and the common interests that unite them which require cooperation in the addressing of common problems (Spyropoulos 1998: 357).

20. Similarly, Demaina-Manika points out that, sometimes, trade unions consider it useless and ineffective to be co-responsible with the employer in the management of the enterprise as this would call into question their competitive role in industrial conflict (Demaina-Manika 1986: 820).

21. The obligation of confidentiality regarding matters that come to the knowledge of a trade union during negotiations mainly covers any matter of particular importance to the company whose leakage would have damaging consequences for the company's competitiveness (Zerdelis 2020: 179).

22. This choice suggests that the Greek legislator preferred the creation of new institutions for worker participation in the management of public enterprises instead of entrusting this role to trade unions; see, in this respect, Koutroukis (1989: 56). A similar position regarding the way in which employee representatives in Greek public enterprises are selected is expressed in EurWORK (Schulten and Zagelmeyer 1998: 10).

23. According to one legal theory, the limited interest in employee representation in the management of enterprises in Greece is typically due to the strong association between this form of participation with its political element, the lack of relevant experience and culture in Greek society and the small and medium size of most enterprises (Nikolaou-Smokoviti 1987: 197-198).

In the next section, the position of employee representatives and employer associations on the issue of BLER is reflected through interviews with employer and employee representatives who have relevant experience of this issue.

5. The position of 'the players'

Employers' and employees' approaches to the issue of BLER is crucial for a complete view of the topic. In this regard, two interviews were carried out with employee representatives who have participated on the boards of their companies, as well as one interview with an employer representative. Due to Covid-19 restrictions, the interviews took place by video conference. Interview transcription material was confirmed with the interviewees to ensure that it reflected their views accurately. Obviously, on the basis of the limited number of interviews, the views expressed cannot be generalised; however, they do provide useful insights and some possible perspectives.

5.1 Employee representatives

The rationale driving the choice of employee representatives was company dynamics; we chose two leading companies in different industries (Hellenic General Insurance Company S.A, a leading company in the insurance sector; and Cosmote, the leading company in the telecommunications sector). The reason for this choice was to acquire insights on participation from companies facing major issues regarding their operation; for example, Cosmote has been privatised.

The employee representatives were questioned about the issues that have been highlighted as critical in the previous sections. In particular, the questions covered the following areas: (a) the relationship between the representatives and the trade unions; (b) the way that the representatives were treated by other directors; (c) the way that they dealt with the confidentiality characterising board decisions and their duty to inform employees; and (d) their impact on the adoption of crucial decisions by the board.

Our first interviewee was Mr Petsalakis, the president of the trade union of the Hellenic General Insurance Company S.A. Mr Petsalakis participated on the board of directors from 2006 to 2011 and from 2016 to 2021. The representation of employees on the board was provided initially through collective agreements but later it became customary. Such representation had a long tradition until finally abolished in 2021: in 1982, there were two employee representatives on the board; from 2011-2016 there was no representative; and between 2016 and 2021 there was one representative. Mr Petsalakis was elected to represent employees on the board through elections in which all employees of the Hellenic General Insurance Company S.A. participated.

Our second interview was with Mr Anestis and concerns one of the most fundamental enterprises in the Greek economy, the major telecommunications organisation now going under the trade name Cosmote. Mr Anestis is currently a member of the executive of the union of pensioner employees of Cosmote and was a member of the board in

Cosmote (as an employee representative) during the period from 2010 to 2013. Prior to his election to the Cosmote board, Mr Anestis had been elected as president of the employee federation of OTE.

Cosmote was a public entity for a number of years; thus, employee representation on its board of directors was founded initially under Law 1365/1985 and later on the basis of Law 3429/2005. According to Mr Anestis, the representation of employees on the board has not been linear since there were periods in which no official employee representative existed. In this regard, it should be remembered that, in line with Law 3429/2005, the participation of employees on the boards of public entities is determined by the articles of association of each company. In this context, there were periods in which the articles of OTE did not provide for employee representation on the board.

However, Mr Anestis commented that there was actually always at least one employee representative on the board given that, in periods where such participation was not provided for in the articles of association, the representative of the state was de facto determined by employees. There were also periods with two or even three employee representatives on the board; however, in recent years, employees had only one and today, following the almost total privatisation of Cosmote (currently the Greek state owns only 1.1% of the shares while e-EFKA, the Greek electronic national social security fund, owns 5.9%), there is no representative.

Regarding the means of appointment, that of Mr Anestis took place after an all- employee election. Although the formal irreconcilability of being an employee representative on the board and a trade union official (i.e. member of the executive of the trade union) was abolished after Law 1365/1983, the company continued to apply this on a de facto basis: an employee participating on the OTE board could not at the same time be a trade union representative in the company.

5.1.1 Relationship with other directors

The first issue discussed with the employee representatives concerned their relationship with the other directors. According to Mr Petsalakis, his initial experience was that the others did not take his participation very seriously, but this changed over time thanks to his own hard work and the devotion of significant time and effort in preparation for board meetings. Mr Petsalakis's seniority (i.e. 42 years of service) was probably an additional parameter that assisted the change of approach.

Mr Anestis thought that the other directors respected him, as had been the case with other employee representatives, since they recognised their leading technical expertise and experience. In particular, Mr Anestis regarded the relationship between the employee representative and the other board members as, in general, harmonic albeit with a few exceptions. One such was during the period 1997-98 when heated debates over the privatisation of OTE took place which led to the absence of any employee representative on the board during that period.

5.1.2 The issue of confidentiality

Mr Petsalakis thought this a crucial issue which, however, did not affect him during the exercise of his duties. In this regard, he signed a confidentiality agreement with the company that safeguarded his adherence to confidentiality in the eyes of the other directors. In his view, the trade union also respected that he was not able to reveal confidential information discussed at the board, which facilitated his situation.

Mr Anestis told us that confidentiality was a major issue in his participation on the OTE board, given that highly sensitive matters of technical, economic and strategic nature were discussed there. However, respect for such confidentiality was not a concern for him since, in his view, the members of the executive of the trade union had the maturity and the culture not to insist on the revelation of confidential information; it was enough for them to receive information of a generic character regarding the matters discussed at the OTE board that concerned employees. Thus, he was able to respect the confidential character of board discussions in full without this negatively affecting his relationship with the trade union.

5.1.3 The intervention of employee representatives in the adoption of critical board decisions

Here, Mr Petsalakis cited the case of employees providing services to the company through a temporary agency. His opinion was that, although the initial board proposal was negative toward the continuation of cooperation with such employees, his dynamic intervention, combined with a strike decision adopted by the trade union, resulted in the safeguarding of the rights of these employees.

According to Mr Anestis, an example of a very positive impact attributed to employee representation on the OTE board was over the organisation of the Olympic Games in Greece in 2004. The other directors were reluctant regarding whether OTE could exclusively provide telecommunications services in support of the Olympics with the majority view being that other actors should also participate. However, according to Mr Anestis, he managed to convince the rest that employees were willing to undertake the additional effort and had the required expertise to deliver this support without the need for others to get involved.

In a wider context, Mr Anestis thought that the other board members took into account the approach of the employee representative not only on employee-related matters but also on wider strategic decisions. Such a case was the issue of an important investment in relation to the EuroAsia Interconnector which was dividing the board as to whether OTE should participate. Mr Anestis reported that his intervention in the meeting was significant enough to convince the board to decide in favour of OTE participation, which turned out to be beneficial for the company.

5.1.4 The relationship between employee representatives on the board and trade unions

Mr Petsalakis said that his role as employee representative on the board was supported by the trade union. He was elected as a result of all-employee elections and his nomination was supported by the trade union; whilst, during his last term as a board member, he was also the president of the trade union. Trade union support for his election was crucial, especially during that held in 2016 when there was also a nominee, a former director, supported by the company; however, Mr Petsalakis managed to be elected with over 60% of the vote.

Mr Anestis's opinion regarding his relationship with the trade union while being on the OTE board was that this had been positive.

5.2 Employer view

In order to gain a perspective on the views of employers, an interview was held with Mr Ioannou, Director for Employment and Labour Market Affairs at SEV, the Hellenic Federation of Enterprises, who has extensive practical experience of this issue and who has also dealt with it on an academic basis.

Mr Ioannou's experience regarding employee representation on boards is negative. In his view, the few positive exceptions are lost within the general negative climate surrounding such representation. He also thinks that, in order for employers to be interested in having employee representatives on company boards, employees themselves should also be interested. However, according to Mr Ioannou, from 1970 onwards, trade unions have not been interested in such representation; consequently, there is no employee demand for representation in private undertakings with the only examples being in public undertakings and in bankrupt ones, such as the mines, where representation had been imposed by legislation.

With regard to his personal experience of employee representation on the boards of public entities, Mr Ioannou considered that employee representatives were not concerned about the financial data of the entity due to losses being part of the state budget. This was attributed, according to Mr Ioannou, to employees on boards always acting as members of the trade union and not as board members of the companies concerned; this had resulted in very negative financial results in many public entities.

Turning to the reasons why representation on the boards of public entities did not, in the majority of cases, continue after privatisation, Mr Ioannou considered that this was due to employee representatives being strongly opposed to privatisation. Thus, it was rational for private investors to discontinue such representation straight after the completion of the procedure.

Finally, with regard to whether there might be some positive prospects concerning BLER, Mr Ioannou thought this would require a totally different culture of representation which ought to be initiated by the trade unions and which had not existed so far. In

this regard, employee participation in the share capital of companies through share option plans, recently on the rise in some Greek companies, including start-ups, might encourage employee representation on the boards of such companies.

5.3 Assessment of interviews

The overall picture from the interviews with the two employee representatives could be considered positive from at least three perspectives. Firstly, both expressed that they had the support of the trade union during their election and term of office as a board member and, in their view, they retained very good lines of communication with the trade unions. Secondly, both interviewees felt that they were respected by the other directors. Thirdly, both interviewees stated that, in their view, board representation had resulted in a positive impact on some of the decisions adopted.

However, these positive elements do not change the overall picture of BLER which remains marginal, as also confirmed by these interviews. In particular, both indicated that employee representation had not always been in existence on their company's boards and that there were periods where no representation existed at all. Additionally, in both entities board-level participation by employees was a minority situation, meaning there was little prospect of influencing the adopted decisions. Finally, in the case of OTE, employee representation on the board, despite its long-lasting history, was abolished immediately following the completion of privatisation.

The interview with the employer representative is completely consistent with the marginal character of BLER within the Greek labour market. Consequently, on the basis of this interview, employers are not interested in such a level of participation because they consider that trade unions themselves do not wish to be represented on company boards.

On the positive side, the interviews indicate that there were examples of a positive employee experience of board-level representation which could be further explored should discussion on this issue reopen within Greek industrial relations. Additionally, the results of the interviews with employee representatives show that, despite the overall low rates of employee representation on boards, the relationship between such participation and trade unions was not always antagonistic or incompatible and that the two institutions (i.e. BLER and trade unions) might co-exist harmoniously. On a final note, the opinion of Mr Ioannou was that, despite the overall negative approach of employers towards BLER, start-ups – a growing part of the Greek market during recent years – might allow for some perspective on BLER.

The next section will refer to forms of employee participation that appear in collective labour relations in the private sector and analyse those that are closest to employee representation on the board.

6. Alternative forms of employee participation

After the 1950s, the movement for worker participation in the management of enterprises weakened and priority was given to demands for better working conditions in the highly confrontational climate that then prevailed.[24] In this context, the demand for the legal establishment of worker participation was abandoned and the gap left by the lack of participatory institutions was attempted to be filled by the establishment of the trade union movement (Kravaritou-Manitaki 1986: 63). This is because, as mentioned above, mistrust in Greece on the issue of participation was strong.

During this period, trade unions were established in all large companies, on the initiative of workers themselves, on an exclusive enterprise-only basis (Jacobs 2014). This weakened the role of the national sectoral or inter-occupational unions and, to a certain extent, dependence on them as they competed for affiliation. It is no coincidence that these company-established unions had little support from GSEE.

With the growth of this movement, interest in providing for separate institutions of participation diminished. The focus was on current and everyday labour problems internal to the enterprise in which the company-established trade unions played the main role. At the same time, in practice, they also appointed representatives who undertook dialogue with the management (Kravaritou-Manitaki 1986: 71), allowing them to achieve various lines of communication at that level. In particular, such representatives had a dual role: (a) they always represented all staff de facto, without any legislative provision, and thus acted as 'works councils' on issues of concern to staff while conducting collective bargaining at the enterprise level; (b) as purely trade union organisations, they also put forward demands through strike action. Their role was generally positive. As noted by Kravaritou-Manitaki:

> The initiatives of workers to know and control the functioning of their enterprise, to influence decisions, to link their movement to general issues and the direct democracy of an enterprise, without the guidance or control of sectoral unions and parties, is an unprecedented event in the history of industrial relations. (Kravaritou-Manitaki 1986: 77)

The role of these councils is akin to that of trade unions in Italy (consigli de fabrica). This might also be explained in that, although works councils exist in Greece in theory, employees do not in reality seek to establish them. Consequently, one could speak of a kind of unionisation of participation in the sense that the main role in participation matters is played by the company-established trade union and not by specially elected bodies.

Based on this development, the institutional evolution of participation issues can be understood in terms of two basic laws. The first is Law 1264/1982 which, in the context of ensuring the freedom of association of workers, provides for special provisions for democratisation in the workplace. It is the first piece of legislation that effectively

24. For the strong reservations of trade unions on the institution of participation, see Demaina-Manika (1986: 819ff).

recognises the role of trade unions within the company, granting a number of rights including the right to meet and be informed by the employer.[25] The second is Law 1767/1988, as amended by Law 2224/1990 (Dimou 1993: 901ff) on works councils, which also ratified the International Labour Organisation Workers' Representatives Convention 1971 (No. 135).

Based on this, the main forms of employee participation that occur in the private sector are based on information and consultation, and the forms of employee participation provided for in Law 1767/88. Particular mention should also be made to employee health and safety committees (EHSCs) which provide for the participation of employee representatives in their establishment.[26]

Employee participation is not unidirectional but occurs at different speeds and for different purposes. Thus, in the context of Greek industrial relations, other forms of employee participation developed alternatively to BLER, also constituting expressions of democracy at work. In particular, information and consultation before critical employer decisions are taken (e.g. in the case of collective redundancies and the transfer of undertakings) is based on the legislative initiatives of the European Union (EU).

Works councils are a major form of democracy in industrial relations. The basic competence of the councils is advisory and they are considered to be bodies of cooperation and not of dynamic confrontation for the improvement of working conditions in connection with the development of the enterprise (Leventis 2007: 616ff). Works councils are provided for by Law 1767/88[27] for companies with at least fifty employees and, where there is no trade union organisation, for companies with twenty or more employees. Their composition ranges from three to seven members depending on the size of the enterprise. The members of the council are elected by a general meeting of all employees every two years through secret ballot. They meet at the workplace. Joint meetings with the employer are provided for every other month.

Crucially, the law recognises the primacy of trade unions and that work regulations are primarily concluded with the trade union: only where the trade union is absent or inactive is the institution of the councils activated, according to Article 12 para. 4 of Law 1767/88.[28] This demonstrates the catalytic influence of the legacy of the trade union movement and also justifies the limited interest of the labour side in the institution of

25. For mechanisms aimed at facilitating the activity of trade union organisations provided for in Law 1264/1982, see in detail Zerdelis (2021: 98-103); Koukiadis (2021a: 328-342); and Papadimitriou (2022: 77-85).

26. Indeed, the first law on the establishment of health and safety committees (Law 1568/85) has been described as a 'milestone' in the process of securing the participation of employees in the broader framework of the management of public sector enterprises (Demaina-Manika 1986: 825).

27. This law has been described as a landmark piece of legislation in the history of Greek labour relations. This is because it was the first time that employee representation bodies were institutionalised at microeconomic level with the possibility of assisting in the decision-making of employers (Koutrouki 1989: 59).

28. The timeless dilemma regarding the relationship between trade unions and works councils is aptly captured by Travlos-Tzanetatos as follows: 'Are they organs (i.e. works councils) independent of the trade unions with the possibility of developing competitive i.e. disruptive action exposed to the risk of influence or appropriation by the employer or are they bodies representing the interests of the workers, integrated in the logic and dynamics of class struggle and thus of parallel, common, solidarity and coordinated action against the common social opponent?' (Travlos-Tzanetatos 1986: 236).

works councils, which has hardly been exploited in the context of collective industrial relations in Greece as Greek trade unions are, in general, cautious towards them (Travlos-Tzanetatos 2014: 578; Spyropoulos 1998: 105).

The powers of the councils range from information and consultation to co-decision rights, essentially depending on the particular issue on which a relevant decision of employees is to be taken. The co-decision rights pertain, among others, to the drawing up of the company's internal rules and health and safety regulations, the drafting of information programmes and a number of other matters relating to working conditions, for instance training.[29]

A further example of democracy in the workplace is the employee health and safety committee.[30] The establishment of an EHSC is regulated by Law 3850/2010. Concerning the scope of application, Article 2 para. 1 provides that its provisions apply, unless otherwise specified in individual parts of the law itself, to all enterprises, holdings and operations in the private and public sector.

In companies with more than 50 employees, where there is no works council, the members of the EHSC are elected at a general meeting of the employees of the company by direct and secret ballot (Leventis and Papadimitriou 2011: 796). This provision indicates the great importance which the legislator attaches to EHSCs, seeking to give them the broadest possible democratic legitimacy through the election of their members by all employees. As noted by Koukiadis:

> The introduction of the EHSC is a form of democratisation for companies based on the participation rights initiated through Law 1264/1982 and taking a more complete form through Law 1767/1988. In parallel, it constitutes a paradigm of a decrease in the dominant role of trade unions which traditionally have the monopoly of employee representation. The EHSC is a cooperation mechanism for employers and employees and, in this sense, the issue of health and safety becomes common for the two sides of the employment relationship. (Koukiadis 2021b: 658)

The role of the EHSCs is oriented towards the development of information, research and consultation mechanisms to ensure health and safety in the company. In this context, the EHSCs develop relations with employers, experts and the public authorities.[31]

29. More specifically, the issues covered by the co-decision procedure are provided by Article 12 para. 4 of Law 1767/88. According to Ladas, the works council's right of co-decision restricts employer prerogative since, without such a right, the employer would adopt the relevant decisions on its own initiative without employee participation (Ladas 2021: 146).

30. For the pivotal role played by the EU in the field of health and safety in Greek law and its decisive contribution to social welfare and the upgrading of the quality of employment, especially through the adoption of Council Directive 89/391/EEC of 12 June 1989 on the implementation of measures to encourage improvements in the safety and health of workers at work, see Koukiadis (2021b: 173).

31. See Koukiadis (2021b: 660).

7. Concluding remarks

This chapter indicates that the issue of employee participation on the boards of enterprises has never received much attention from employees' trade unions and employer associations or reached a prominent position within the agenda of the political parties in Greece. In fact, there are only instances of such participation on the boards of public undertakings, consisting of minority participation without a significant impact on actual decision-making. This participation was not voluntarily or freely chosen by the social partners but was imposed by relevant legislation, as our historical analysis indicates (Section 2).

The positive attitude and experience expressed by our employee representative interviewees regarding their participation on the boards of the Hellenic General Insurance Company S.A. and Cosmote does not alter this picture. In particular, such participation occupies a marginal position within Greek industrial relations, mainly with reference to the minority nature of employee representation as well as the general cautiousness of the social partners towards representation on company boards, as its abolition immediately following the privatisation of Cosmote indicates. However, this positive experience might give rise to a certain degree of optimism regarding at least the initiation of relevant discussions on this issue. Of course, we should also bear in mind the scepticism towards BLER expressed by the employer representative interviewed for this chapter who clearly identified that many factors would need to change (predominantly the approach of the trade unions) in order for this issue to be brought within the social dialogue with some prospects of a fruitful outcome.

In brief, the absence of active worker participation through employee representation on the boards of private sector enterprises might be attributed to the paternalist logic of the state and to the lack of interest by employers and employees' trade unions. Other observers have come to the same conclusion about the causes of the lack of effective participation:

> In Greece, there are reportedly signs that the Government has lost enthusiasm for public sector board participation, while trade unions, with some exceptions, do not appear to have particularly well thought-out positions on this and other participation issues, with many still preferring a more confrontational approach. Employers remain adamant in their opposition to representation of workers on company boards, because they believe that this threatens and weakens their management prerogatives (...) Other factors cited include Greece's lack of tradition in participation structures, failure to introduce them in harmony with pre-existing practices and customs, lack of a parallel modernization policy, and the coexistence of many participation bodies whose competencies conflict with those of management bodies. (Schulten and Zagelmeyer 1998: 14-16)

In the light of these observations, a radical change in the mindset of the social partners is required before BLER could be implemented within Greek enterprises. This essentially requires the development of mutual accountability, the encouragement of dialogue and cooperation, the recognition by employers of the interest of employees in having an

influence over business decisions that affect them (Koutroukis 1989: 30, 40-41) and, more generally, an alternative business planning environment.

Notwithstanding these considerations, the following parameters might set the whole issue of the role of participation on a new footing. On the one hand, the failure of socialism has led to a review of the old claims for workers to gain control of enterprises and for workers' self-management. On the other hand, the financial crisis has critically exposed the problems of neoliberalism and has opened a window of opportunity for a discussion of market despotism.[32] For the much-discussed issue of competitiveness, it is increasingly understood that it cannot thrive on the basis of purely economic data, without the qualitative elements which are basically a consideration of the coexistence of the interests of labour and capital facilitating the promotion of common objectives, this being the quintessence of participation.[33]

If we add to the above points the question of workplace productivity, as shaped by evolving technologies, it is easy to see that participation will be a basic tool for organising labour relations in the future, albeit with several new rules. This was also confirmed by our interview with the employer representative who referred to employee share option plans and start-ups as cases where employee participation might be further advanced.

Additionally, the following points which could create positive prospects for a reopening of the dialogue regarding employee representation on the boards of Greek companies should not be overlooked. A revival of interest in such representation could send a promising message. In particular, the weakening of class conflict with the new composition of the working class and the strengthening of employer powers via technological developments point the way for modern labour policies only being successful through the strengthening of the institutions of participation.[34] The policy on participation of the EU, whose interest has, so far, been confined to transnational companies or groups of companies, leaving the regulation of the institution of participation to the Member States, could also be directed along this path.[35]

In a wider context, employee representation on the boards of companies could be seen as a factor contributing to the shaping of a more democratic and fairer society, ensuring

32. For the thesis that policies dealing with economic crises have led to economically inefficient and socially destructive neoliberal choices, which threaten to overturn Europe's post-war labour and social model completely, see Travlos-Tzanetatos (2013: 363-364) and the references therein.

33. Similarly, Demaina-Manika points out that the participation of employees on the management bodies of a company not only allows the exchange of information and advice on every important event, economic and social, but also offers the possibility for employees to exercise in a continuous way a genuine influence on the decision-making process (Demaina-Manika 1986: 820).

34. A similar approach has been shared by Spyropoulos, according to whom 'the search for participatory processes and forms of social cooperation appears more and more clearly every day as the only possible way to recover the economy in a democratic society' (Spyropoulos 1998: 78). On the need to bring the debate on participation back to the forefront on the basis of the economic situation, see Conchon (2011: 7).

35. For the transposition of EU directives into Greek law, their implementation in practice, especially in various companies, see the conference of the Mediation and Arbitration Organisation (OMED) on 25 June 1998 on 'Establishment and operation of European Works Councils in Greece'. For an assessment of the provisions for participatory institutions under EU legislation, see EurWORK (Schulten and Zagelmeyer 1998: 31-48).

more humane production methods and greater social justice.[36] In this regard, it could be argued that democracy in society presupposes democracy in economic life which, in the field of labour relations, would be reflected in the substantial participation of employees in the decision-making of enterprises[37] that might be delivered by BLER (Pateman 1970: 66; Sweeney 2004; Hatcher 2007).

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36. In particular, it has been argued that the participation of employees in the management of enterprises contributes to the recognition of their individuality and the enhancement of their overall contribution to economic life, to the granting of rights to the employee and the creation of more opportunities for personal expression, to the suggestion of solutions to management, to the conduct of dialogue, to the assumption of responsibility and initiative by the employee, to the creation of a climate of mutual trust and cooperation and, more generally, to a better quality of life and public health (Nikolaou-Smokoviti 1987: 220, 221, 225 and 226).

37. However, see also Irma Rybnikova (2022) who, without questioning the relationship between democracy in the workplace and democracy in political life, takes the view that additional empirical evidence is required so as to prove the dynamic character of this relationship.

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Cite this chapter: Koukiadis I. and Skandalis I. (2025) Employee participation on the management bodies of companies in Greece, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Appendix
List of interviews

Identifier	Date	Name, role, organisation	Place or means
INT1	December 2021	Mr Petsalakis, former president of the trade union of the Hellenic General Insurance Company S.A.	videoconference
INT2	January 2022	Mr Anestis, former president of employee federation of OTE, union representative on Cosmote board	videoconference
INT3	March 2022	Mr Ioannou, Director for Employment and Labour Market Affairs, SEV	videoconference

Abbreviations

BLER Board-level employee representation
Cosmote see OTE
DEI Dimosia Epicheirisi Ilektrismou (the Public Power Company)
e-EFKA Greek Electronic National Social Security Fund
EHSC(s) employee health and safety committee(s)
EU European Union
Eurofound European Foundation for the Improvement of Living and Working Conditions
EurWORK European Observatory of Working Life of Eurofound
EYDAP Eteria Ydrefsis ke Apohetefsis Protevusas (Athens Water Supply and Sewerage Company)
GSEE General Confederation of Greek Workers
OAE Organismos oikonomikis Anasygkrotiseos Epicheiriseon (Organisation for the Economic Reconstruction of Enterprises)
OMED Mediation and Arbitration Organisation
OTE Organismós Tilepikoinonión Elládos (Hellenic Telecommunications Organisation, now Cosmote)
S.A Société anonyme (Greek company form for a company limited by shares)
SEV Hellenic Federation of Enterprises

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

* This study benefited from the support of the ETUI and the project 'Representativeness of Social Partners and the Impact of Economic Governance' (REP) ref. FCT PTDC/SOC-SOC/29207/2017. The authors are grateful to Cristina Nunes of the REP team for her collaboration in collecting materials for the preparation of the text.

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. 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. 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. 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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Cite this chapter: Costa H.A. and Rego R. (2025) Board-level employee representation in Portugal: a process (slow) in the making, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

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

Chapter 5
The fuse that has not lit: attempts at board-level worker representation in Spain

Sara Lafuente

1. Introduction

Based on currently repealed legislation for the governance of Cajas de Ahorros (savings banks) and an agreement to negotiate union participation on some state-owned company boards, Spain could, on the face of it, be considered one of those European countries where workers were entitled to representation and voting rights on corporate boards. But the picture looks quite different when analysing the issue in detail and in context: worker participation on boards barely survived the knock of the hostile economic and political landscape in Spain. It was hardly put into effect (Waddington and Conchon 2016) and had little impact on public debate and union agendas (Köhler 2019). Until very recently, worker participation in corporate governance remained a taboo covered by 'a dark and dense veil' (Arias 2019) despite existing regulation and practice.

How can these ambiguities be explained? How did different actors address and practise worker participation on boards so discretely up to the point where it nearly melted away? How is the topic being discussed today, and with what prospects for the future?

The truth is that little is known about worker representation on company boards in Spain. To understand the 'ghostly' presence of this issue,[1] this chapter goes beyond a mere account of the formal existing frameworks and investigates how worker representation on boards has evolved as a policy concept in a changing political and economic landscape. It takes stock of the applicable arrangements in Spain, examines their rise and fall, and identifies the factors that prevented, and may still prevent, codetermination (cogestión) from transcending the public debate and managerial culture. The study draws on an extensive literature review, analysis of laws and collective agreements, congress and other documents of the trade union confederations Comisiones Obreras (CCOO; Workers' Commissions) and Unión General de Trabajadores (UGT; General Union of Workers), press releases and 21 in-depth and semi-structured expert interviews with worker representatives, union officials and politicians conducted between 2016 and 2022.

After this introduction, Section 2 examines some historical precedents and the constitutional foundations for worker representation on boards in Spain. Sections 3 and 4 examine how the right was institutionally developed, both in the savings banks and in the public sector as a result of a national level social pact, albeit with limited

1. Grønbæk Pors et al. (2019) refer in this way to matters that have a major impact on the course of organisational processes or institutions, yet can only be apprehended beyond rational categorisations.

implementation, while Section 5 looks into the social debate on the issue, concentrating on the positions of the social partners and with a particular focus on trade unions. Finally, the chapter dissects how the debate has recently gained momentum, after a long period of silence, as well as its implications, which leads to a conclusion on the prospects for development.

2. Historical precedents and constitutional foundations

2.1 Before the 1978 Constitution

Spain was among the first countries to include worker participation at board-level in its constitution. The Republican Constitution of 1931 mandated the development of 'workers participation in the management and benefits of enterprises' (Article 46.2). A crucial 1931 legal project on workers' control (Proyecto de Ley de Intervención Obrera en la Gestión de las Industrias) proposed that workers have an advisory voice on corporate boards (Landa Zapirain 2017: 40; Pérez Rey 2016: 224-225). This was rejected outright by the conservative opposition, and even by parts of the governing socialist-republican coalition, based on arguments that are still familiar today: the project served the proletarian revolution, it breached freedom of enterprise, or would cause the ruin of industrial capitalists, and workers were anyway not prepared for it (Pérez Rey 2016: 224-225).

After this failed attempt, a worker participation system (of sorts) had to await Franco's 40-year dictatorship (1939-1978). The 1950s marked the end of autarchy and the beginning of a period of a certain openness, economic growth and prosperity, at least in comparison with the darkest times of Francoist repression. This period led to a change of strategy in the treatment of labour relations, introducing ideas from the human relations school, with its values of social harmony and cooperation, into the country. This new managerial paradigm resonated with some Social Catholic employers and theorists who assimilated, adapted and diffused it, more at an intellectual level than at a practical one, (Martínez Vara and Ramos Gorostiza 2018: 109-113). Yet, fundamental collective rights such as freedom of association,[2] collective bargaining or the right to strike remained not only prohibited but also heavily repressed during that period of Francoism.

This was the social and institutional context when Law 41/1962 of 21 July, developed by Decree 2241/1965 of 15 July, was adopted. This law set in place a mandatory employee pseudo-participation[3] in the management of limited liability companies and cooperatives with 500 employees or more, as well as in all state-owned enterprises

2. It should be recalled that the Spanish Union Organisation, known as Sindicato Vertical, was the sole union organisation allowed under Franco, and a core institution of its national-unionism and corporatist regime, and was only disbanded in 1977.

3. In Carole Pateman's terms, 'pseudo participation' refers to situations labelled as participation but which only cover 'techniques used to persuade employees to accept decisions that have *already* been made by the management' (...) where no participation in decision making in fact takes place' (Pateman 1970: 68).

without any threshold.[4] The aim was supposedly to bring social harmony and peace by integrating labour into capital and ensure its collaboration within the enterprise. The framework set a limited proportional employee representation of 1/6 on boards, where workers were nominated from and by the Jurado de empresa,[5] and had only information and advisory rights except in very few social matters. As the law's preamble cautiously emphasised, no effective codetermination was intended (Almansa Pastor 1965: 323).

All in all, the model had no practical relevance. It could only be considered as an instrument of Francoist institutions of worker pseudo-participation, monopolised by the Sindicato Vertical (Ojeda Avilés 1978). During la Transición (the post-Franco democratic transition), unions had no attachment to that experience and immediately looked to the 1976 German codetermination law as a much more promising reference, especially since UGT had formalised close collaboration with the Deutscher Gewerkschaftsbund (DGB; German Confederation of Trade Unions) while in exile (Sanz Díaz 2001: 323).

2.2 The 1978 Constitution model

Following these early experiences, the democratic Constitution of 1978 enabled union representation on company boards. Indeed, Article 129.2 mandates that public authorities 'effectively promote the diverse forms of participation in the company and promote, through adequate legislation, cooperatives, and (…) facilitate workers' access to the property of the means of production'. However, this constitutional mandate was merely programmatic; namely, it announced a political programme which had to be developed by law to establish effective rights. Also, it does not say who is entitled to participation or how this right should be articulated: board-level employee representation (BLER) remains one possible solution but it is not explicitly mentioned. It was only set by law for the savings banks, as discussed in Section 3.

Other than in the savings banks, this constitutional article was translated into laws for the social economy (cooperatives and a specific form called Sociedades Laborales[6]) and into workplace information and consultation rights in the private economy, especially on health and safety (Köhler 2019: 526). The 1980 Workers' Statute abolished Francoist pseudo-participation and established the right for workers to 'information, consultation and participation in the enterprise' (Article 4.1.g) 'through representative bodies' (Article 61), implying the right to collective, indirect union representation and to the election of works council representatives in connection with collective bargaining rights. Worker representation on boards is not mentioned.[7]

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4. Companies not covered could negotiate worker participation by agreement. The savings banks fell out of the scope of the law as they were neither public nor for-profit companies.

5. The Jurados de empresa had been the flagship Francoist institutions of worker representation in the workplace since the 1940s, with minimal functions and greatly controlled by the Francoist regime. They were abrogated in 1980 and replaced by works councils in the democratic period.

6. See Fajardo (2015) for a study on these forms.

7. The Workers' Statute remains the basic labour code in force as consolidated by Royal Decree 2/2015 of 23 October.

Thus, la Transición established a neo-corporatist industrial relations system characterised by a formally dual model of workplace participation (Nieto Rojas 2016) and by the recognition of a reduced number of organisations representing workers and employers' interests as social partners in bipartite and tripartite social dialogue, in which public authorities played a key role (Cruz Villalón 2006; Pérez Domínguez 1994). Union freedom and pluralism were recognised, but only those unions which had at least 10% of works council members elected nationally were granted the status of 'most representative union', giving access to social dialogue and other rights.[8]

CCOO and UGT benefit from that status, as do, additionally, the trade unions Confederación Intersindical Galega (CIG; Galician Inter-Union Confederation) and Euskal Langileen Alkartasuna – Sindicato Solidaridad de Trabajadoras y Trabajadores Vascos (ELA-STV; Basque Workers' Solidarity), in Galicia and the Basque Country regions respectively. For employers, Confederación Española de Organizaciones Empresariales (CEOE; Spanish Confederation of Business Organisations) and Confederación Española de la Pequeña y Mediana Empresa (CEPYME; Spanish Confederation of Small and Medium-Sized Enterprises) are considered, for now, the 'most representative' employer organisations.[9]

Despite significant breaks in this period of social concertation, as well as legal reforms and shifts towards the decentralisation of collective bargaining after the 2008 financial crisis, the institutional foundations of this model have remained broadly unchanged (González Begega and Luque Balbona 2014).

2.3 Institutional participation: a false friend

Worker participation on for-profit (private or public sector) company boards should not be confused with the institutional participation of unions in public administration bodies. Institutional participation was an important acquis of la Transición. It derived from the pluralist social and democratic state set by Article 129.1 of the 1978 Constitution,[10] in connection with Articles 1.1, 7 and 9.2 of the Constitution and Articles 6 and 7 of the Organic Law on Trade Union Freedom.

Institutional participation lacks a clear legal definition (Calvo Gallego 2009: 585). In Judgement 39/1986 of 31 March, the Tribunal Constitucional (Spanish Constitutional Court) restricted it to public administration bodies and the defence of general interests (Ysàs Molinero 2011; Mora Cabello de Alba 2003). Accordingly, both union

8. At regional level, this could be extended to unions either belonging to a most representative national confederation or otherwise having at least 15% of works council representatives in the region subject to a minimum of 1,500 delegates.

9. Determining the representativeness of employer organisations is a contentious issue due to the absence of clear rules to measure their affiliations as an objective criterion. Aside of some general rules in the Workers' Statute, their representativeness is assumed when they demonstrate a de facto capacity to act on behalf of employer interests (Cruz Villalón 2019; Pensabene 2019), but this tends to overlook diversity and over-unifies employer voice, disadvantaging smaller enterprises.

10. 'The law shall establish the forms of participation of interested parties in social security and in the activity of those public bodies whose function directly affects the quality of life or the general welfare'.

and employer organisations, as social partners representing the general interest, are entitled to participate in socioeconomic policymaking through institutional activity (García Piñeiro 2023: 158-159).

During the 1980s, institutional participation was enabled for the management entities in social security, health and employment (Royal Decree-Law 36/1978 of 16 November), two dozen state institutes (e.g. the Navy Social Institute) and university social councils[11] (Vega García 2011: 146-147). Later, it was also included as a collective right of public employees[12] and in the creation of specific public bodies by law.[13]

While other countries articulated worker participation on company boards as a form of worker interest representation, Spain embedded it in 'the logic of social concertation' (Cuevas López 1986: 1022). The concepts of institutional participation and worker participation appear closely connected and are easily confused as both are rooted in the Constitution and the social pacts of the 1980s referring to the public sector, and are essentially channelled by the unions. However, this chapter focuses on the latter kind, not on the institutional participation of unions as sociopolitical agents.

Spain is territorially organised as an autonomous state (Estado de las Autonomías) which functions as a quasi-federal state. Thus, Comunidades Autónomas (the regions) share significant administrative, political and socioeconomic powers with the state and can legislate on both institutional participation and worker participation in their own territories in accordance with the Constitution. Some regions have thus developed laws for the institutional participation of union and employer organisations in their regional administrations. Despite a general law still being missing for the General State Administration, and the lack of both means and coordination (Calvo Gallego 2009:580; Ysás Molinero 2011), institutional participation remains a relevant component of the Spanish neocorporatist model of industrial relations, especially for unions, as their joint claim for a law on institutional participation shows.

This chapter now turns in the next two sections to the main institutional underpinnings and experience of worker representation on boards in Spain, which is limited to savings banks and some public sector companies.

11. For example, see Article 14.3.b of Organic Law 11/1983 of 25 August of universities and their social councils.

12. 'The right to participate, through trade union organisations, in the control and monitoring bodies of the entities or bodies to be determined by law' (Article 31.4 of Basic Statute of the public employee, introduced in 2007 and now regulated by Royal Legislative Decree 5/2015 of 30 October, although it has still not been developed in law for the General State Administration.

13. For example, in the port authorities, employer and union organisations, among other groups, must appoint a number of board members (Article 30.2.e, Law of the ports of the state and merchant navy by Royal Decree Law 2/2011 of 5 September).

3. Savings banks: a failed experiment of worker representation on governing bodies

After la Transición, the savings banks (Cajas de Ahorros) were exceptional in having employee representation on boards regulated by law. Their social function had excluded them from previous arrangements as, historically, they had developed as non-profit entities within their territories. Originating as pawnshops, they usually reinvested savings in economic activity, welfare and charity work (Obra Social), providing financial support for local and regional development, with a significant impact especially in depressed areas (Ruesga 2012). Their first special legal framework[14] granted employees a right to elect four representatives to the board, two to a comisión de control (CC) – a form of supervisory or auditing commission under Spanish law- and two to a social action commission, which also meant representation in the savings banks general assembly (Pradas Montilla 1986: 16-18 and 29). The law established two years of seniority as an eligibility requirement and the same protections as for employee representatives under labour law.

Law 31/1985 of 2 August regulated the governing bodies of the savings banks, aiming to democratise them further by formally distributing power among four groups; namely, the elected representatives of employees (entitled to seats between 5% and 15% of each governing body, i.e. the general assembly, the board and the CC), along with three other representative groups of stakeholders (the local corporations, the depositors and the founding corporation). Employees could also access representation through the seats allocated to the local corporations and, although no institutional participation was foreseen for trade unions, they could have members elected to the seats reserved for depositors and employees. This became usual practice, given the dual channel of workplace representation in Spain and the strong unionisation of works councils in the sector.

However, Law 31/1985 only set a basic framework, with this being developed by regional law according to territorial competencies, so it was the regions that determined the specific procedures for election and appointment, and in very diverse ways. The governing bodies of the savings banks turned de facto into spaces of political distribution where board seats were increasingly allocated to public representatives of the regions, providing access to political forces and interest groups (e.g. see Casares Marcos 2005: 48-52), including employer associations and unions, as confirmed by several of the experts interviewed.

Often criticised for an unprofessional governance model and an ill-suited legal structure in view of their credit function (Zunzunegui 2005), the savings banks were gradually pushed to operate like private banks, i.e. by competitiveness and internationalisation, instead of standing by their local social functions. This 'regularisation' of the savings banks overpopulated the financial sector and made it increasingly vulnerable, especially with the property bubble at the end of the 1990s (Ruesga 2012).

14. Respectively in Decree 786/1975 of 3 April on trade union participation and the regime of board members and directors of savings banks; and Royal Decree 2290/1977 of 27 August on regulation of government bodies of savings banks.

When the bubble eventually burst in the 2008 financial crisis, this led to a restructuring of the entire banking sector. A new Law 26/2013 of 27 December on savings banks and banking foundations repealed the previous one, aiming at professionalising and de-politicising their governance. As good governance practice, it increased the number of so-called independent board members, unlinked to interest groups, and set incompatibilities and eligibility requirements (e.g. financial competences) (Funcas 2015: 15-16). Out of the 45 savings banks existing in 2010, just two survived (Caixa Pollença and Caixa Ontinyent): the rest disappeared, either transformed into foundations or absorbed by larger banks. Law 26/2013 still allowed staff representation of up to 20% in the general assembly according to each bank articles of association but it put an end to any employee (or union) representation on boards.

The 'black cards' scandal uncovered in late 2013 was the final straw. This involved economic malfeasance that led to dozens of prison sentences for board members of the Bankia savings bank, including politicians, public servants, employers and union representatives.[15] The scandal further discredited the financial sector, already held responsible for the austerity measures following the financial crisis. In that context of political disaffection and the loss of legitimacy of institutional politics and representative unions (Köhler and Calleja Jiménez 2018: 77), this high profile case only added to the negative reputation of savings bank governance and generated more outrage than sympathy for the concept of worker representation on boards.

In conclusion, the financial crisis, the unfortunate malfeasance episode and the change in political context buried quite an exceptional attempt, which included worker participation, to democratise the governance of the savings banks. The system was dismantled without a comprehensive assessment of the experience and without sparking any social mobilisation to save it.

4. Social pact for public sector enterprises

4.1 Institutional underpinnings

Board-level union representation was made possible in some public sector companies in the context of late 1980s social concertation. The tripartite Socioeconomic Pact for 1985-86 (Article 21.b)[16] underpinned an agreement on trade union participation in state-owned companies, which was signed on 16 January 1986. There, the Partido Socialista Obrero Español (PSOE; Spanish Socialist Workers' Party) government committed with UGT to negotiate, in state-owned companies of upwards of 1,000 employees, either minority union representation on boards, with the same rights and obligations as other board members; or, alternatively, union representation on parity committees for

15. The case uncovered how dozens of Bankia executives had been using official credit cards for personal luxury expenses for years before the 2012 bailout, misappropriating more than 15 million euros from small investors (Burgen 2014).

16. 'The Government, through the management of public sector enterprises, and UGT as the union signing this Agreement, will immediately start negotiations for the establishment of measures for trade union participation concerning an increase of trade union rights in public sector enterprises.'

information and supervision (comisiones de información y seguimiento), and which were in charge of studying industrial and economic plans and elaborating reports and proposals on work organisation.

In this way, UGT expected to increase the institutional role of unions and compensate for the losses in terms of wage constraint, labour flexibility and unemployment resulting from industrial restructuring (Valdés Dal-Ré 1993: 34). At best, a pioneering culture of participation would spillover from the public sector across the whole economy. When it became clear that the public sector had rather become the flagship of wage constraint, and that the government and employers had only agreed to negotiate union participation on public sector boards to smooth the reorganisation process (Vega García 2011: 191), social mobilisations followed especially in the metalworking sector, where privatisations were announced at the beginning of the 1990s. The period known as Pactismo (Pactism) was over.

The agreement left some trace, though. When minority board-level union representation was negotiated at company-level, only unions with 25% of works council members could appoint one representative each (an employee or not) which, in practice, secured board seats for CCOO and UGT. Appointment practices varied across unions, companies, regions and sectors, even within the same union. Sometimes the company's union committee had the greatest say (Sánchez de Miguel 1992: 88); in others, the sectoral branch proposed a candidate and the union confederation would simply ratify it. Also, mixed practice was reported regarding whether the board member should be an employee of the company or an external union officer. As for the parity committees for information and supervision, when established, all unions with more than 10% of works council members could take part. The agreement mandated the establishment of one such committee at group level – namely, one was established in each of the groups Instituto Nacional de Industria (INI; National Industry Institute), Instituto Nacional de Hidrocarburos (INH; National Hydrocarbons Institute) and Dirección General del Patrimonio de Estado (Directorate General of State Assets) – as well as in the other state-owned companies concerned.

On 22 June 1993, after a tough set of negotiations, INI-TENEO, one of the companies within the group,[17] signed a specific framework agreement with the sectoral union federations of UGT, CCOO and CIG covering their metalworking subsidiaries with 500 employees or more. This introduced not only the right to a board seat for each union organisation reaching 25% of works council members or staff delegates (or two, if only one union reached this threshold) but also, additionally, the right to representation on a parity committee for information and supervision in each of these subsidiaries (Article 10 of the agreement).

17. TENEO S.A. was established by INI in 1992 to receive INI's assets in for-profit state-owned enterprises. In 1996, TENEO was dissolved and its assets transferred to Sociedad Estatal de Participaciones Industriales (SEPI; State Industrial Holding Company), which currently manages the remaining for-profit state-owned enterprises which once belonged to INI and INH. In parallel, the Patrimonio group, controlled by Dirección General del Patrimonio del Estado, manages non-industrial state-owned companies. For details, see Table 1 at the end of Section 4 in this chapter.

Knowing the fate of social Pactism, it is safe to say that the system of board participation had intrinsic weaknesses from the start; namely, a volatile normative underpinning, limited coverage and limited rights.

First, the 1986 agreement was not a statutory collective agreement: it only set temporary obligations for the parties to negotiate collective agreements at company level. Consequently, it granted no erga omnes enforceable rights and gave leeway to decentralised systems. Conversely, the INI-TENEO agreement was a 'specialised framework collective agreement', which established a strong centralised and coordinated model for that specific group of companies. It included guidelines but also specific working conditions to be directly integrated by lower-level collective agreements (Valdés Dal-Ré 1993: 40-44). Even so, neither of these two different agreements is in force any longer or can be called upon. Most of the companies covered by the INI-TENEO agreement have disappeared, or been privatised or otherwise absorbed in the course of the 1990s. When company collective agreements expired in the context of a more hostile climate for unions, renegotiations usually led to losing board participation or this being traded off against other rights.

Second, the agreements only covered state-owned companies: the private sector and companies owned by the regions or the local authorities fell out of scope. In terms of coverage, this was a significant limitation, in view of Spain's quasi-federal state. Some regions and municipalities replicated similar social pacts for their own territories and public sector companies,[18] but that depended on whether PSOE governed the region or municipality at the time and on the social concertation dynamics that applied in each. Research for this chapter could only gather scattered information, and focus on the state level, as no centralised systematic official or union registry collects existing arrangements right across the different regions of Spain.

Finally, the 1986 agreement allowed for the negotiation of two very different alternative forms of participation in state-owned companies, union representation on the company board being only one of them. Thus, whether that option would be chosen depended on each company's power relations and social dialogue. Moreover, despite its symbolism, it implied a very minor participation, usually amounting to just two union seats on boards of circa 15 members.

4.2 Implementation and practice

It is difficult to ascertain how many and which companies did apply the agreement over time. The for-profit state public sector consists of various types of corporate forms and entities (Edo Hernández 1989). National accounts registered circa 400 in 2019,[19] but they cannot be filtered by employee numbers or traced back to 1986. At the start, unions

18. This is how some regional and municipal transport and water supply companies, like Ferrocarrils, Aïgues de Barcelona in Catalonia or Canal de Isabel II in Comunidad de Madrid came to have a couple of union board members (in the latter case, not anymore present).

19. See Inventory of public sector entities (Invente): https://www.pap.hacienda.gob.es/invente2/pagBuscadorEntes_SPI.aspx?Filtros=0

monitored where board-level union representation was being implemented, so as to appoint members, but they did not follow-up systematically[20] and no exhaustive list of companies covered can be found.

The 1986 agreement was quickly applied in some companies or groups, like INI,[21] but only scarcely received in others (García Murcia 1990: 256-257). As for the whole experience, company negotiations were extremely diverse. The main railway transport company Renfe included trade union representation on the board in addition to committees for information and supervision (Rivero Lamas 2006: 102). Organismo Administración Turística Española (the Spanish Tourism Administration Agency) implemented participation across all its governing bodies, while Fábrica Nacional de Moneda y Timbre – Real Casa de la Moneda (the National Mint) diluted participation rights into an observer seat for a works council representative in board meetings (García Blasco 2019: 292).

In some cases, like in Iberia or Radio Televisión Española (RTVE; Spanish Radio and Television Corporation),[22] board-level worker participation was eventually lost as a result of renegotiations, mergers or the reduction of board size. For INI-TENEO, the agreement was implemented in companies like Arcelor or Airbus, but the practice disappeared later. In Arcelor, three out of 12 board members were union representatives, but changes in ownership and control had a severe impact on the corporate governance model and the last union seat was not renewed in 2010 (La Nueva España 2017). In Airbus, unions kept two board seats even after privatisation but, in 2012, the company pressured unions to waive their right to board participation as a condition for signing a new collective agreement. Also, some companies probably chose to establish committees of information and supervision instead of board participation (e.g. Grupo Enagás – Empresa Nacional del Gas; the National Gas Company),[23] or simply disappeared (Galiana Moreno and García Romero 2003: 18).

The original agreements may no longer be in force, but their material content remains active in a few companies. According to an analysis of collective agreements in force in the companies remaining in the SEPI and Patrimonio groups (24 and 22 companies respectively), and in the articles of association of 13 state-owned entities,[24] only nine companies still have union representation on their boards. Four are from SEPI (Navantia, ENSA – Equipos Nucleares S.A. S.M.E. (Nuclear Equipments S.A.), Hunosa and Grupo Tragsa), where two union members remain on boards of ten to 15 members. Usually, one member is from UGT and the other from CCOO, except in Navantia where both members are currently from CCOO. These companies are active in the shipbuilding, nuclear engineering, energy and mining, and rural development sectors, respectively.

20. See the 1980s and early 1990s records in the UGT Archive Fundación Largo Caballero, Universidad de Alcalá.

21. An agreement on trade union participation was signed in the INI group as early as 20 June 1986.

22. In RTVE, two out of eight board members appointed by Congress had to be appointed by the most representative trade unions (Article 11.2 of Law 17/2006 of 5 June), but the right disappeared with Law 5/2017 of 19 September.

23. The 2020 collective agreement for Grupo Enagás (Article 8) refers to union participation through the parity supervisory committee, as well as in training and social affairs.

24. The findings were drawn from the Invente database, corporate governance information on the official corporate websites of the companies listed in Table 1, and expert interviews.

In the Patrimonio group, only Paradores keeps one UGT board member. Other than in ENSA,[25] collective agreements do not refer to a right of union participation on the board, which questions the continuity of an informal practice apparently dependent on management favour. Similarly, according to the respondents in the interviews conducted for this study, and to the corporate websites consulted (from all the companies listed in Table 1), two union representatives are also still active on the board of Administrador de Infraestructuras Ferroviarias (ADIF; Railway Infrastructure Administrator); and there are three in Renfe, from CCOO, UGT and Sindicato Español de Maquinistas y Ayudantes Ferroviarios (SEMAF; Spanish Union of Train Drivers and Assistants), a company union.

All in all, most of the arrangements based on the 1986 agreement for state-owned companies did not survive the hostile economic and political context that followed the era of social concertation which characterised the period of la Transición. Industrial restructuring and labour reforms unfolded within a neoliberal direction, imposing conditions in which it was too difficult to renegotiate such arrangements, while most company collective agreements simply decayed. Privatisations during the 1990s delivered a final coup de grâce to this attempt to put workers on the boards and the new public sector entities created after the period of validity of the 1986 agreement were no longer bound by its commitments. This may well explain the lack of studies and awareness about this experience in terms of its practical implementation, outcomes and inner workings.

25. ENSA's collective agreement acknowledges 'Trade union participation (…) through the incorporation of trade union representatives on the Board of Directors' (Article 77). As for Mercasa (Mercados Centrales de Abastecimiento S.A.; Central Supply Markets Company), its 2007 collective agreement refers to the working hours of 'employees making trips in their capacity as board members in companies in which Mercasa participates' (Article 19).

Table 1 **Remaining state-owned companies potentially covered by the 1986 and 1993 agreements**

	Industrial groups	Non-industrial groups	Other public sector companies
Companies	SEPI – integrated assets from INI, TENEO and INH, among other state-owned businesses	Patrimonio Group (from Dirección General del Patrimonio del Estado)	Entidades públicas empresariales (EPE; public business entities)
Direct control (50% or more)	**Grupo Navantia Grupo Tragsa** **Grupo ENSA** **Grupo Hunosa** Grupo Correos Grupo Mercasa (Mercados Centrales de Abastecimiento S.A.) Agencia EFE Mayasa (Minas de Almadén y Arrayanes SA) Cetarsa Compañía Española de Tabaco en Rama Saeca Grupo SEPIDES Cofivacasa Grupo Enusa Hipódromo de la Zarzuela	**Paradores de Turismo de España, S.M.E., S.A.** CESCE EXPASA Sociedad Estatal de Loterías y Apuestas del Estado, S.M.E., S.A. Aguas de las Cuencas Mediterráneas, S.M.E., S.A. SEITI (S.E. Infraestructuras del transporte terrestre, S.A., S.M.E) SEIASA (S.M.E. de Infraestructuras Agrarias S.A.) SIEPSE Sociedad Mercantil Estatal Aguas de las Cuencas de España S.A. Sociedad Mercantil Estatal Canal Navarra S.A. SEACSA (Sociedad Estatal de Acción Cultural S.A.) SEGIPSA, SEGITTUR SENASA CERSA (Cia Española de Reafianzamiento) ENISA (Empresa nacional de innovación) GRANTECAN SECEGSA	**ADIF-Alta Velocidad** **ADIF** **RENFE-Operadora E.P.E.** **ENAIRE E.P.E.** Centro para el Desarrollo Tecnológico y la Innovación E.P.E. Consorcio de Compensación de Seguros E.P.E. Instituto para la Diversificación y Ahorro de la Energía, M.P. E.P.E. Sociedad de Salvamento y Seguridad Marítima Entidad Pública Empresarial Red.es M.P. Fábrica Nacional de Moneda y Timbre – Real Casa de la Moneda, E.P.E., Medio Propio ICEX España Exportación e Inversiones, E.P.E. Instituto de Crédito Oficial SEPES E.P.E. de Suelo
Subtotal companies	**14**	**18**	**13**
Direct minority participation (under 50%)	Ebro Foods Enagas Hispasat Airbus Group NV Enresa IAG (International Airlines Group) Indra Redeia Telefónica Epicom	**TRAGSA** CELESA Club de Campo Villa de Madrid Estadio La Cartuja de Sevilla S.A.	-
Subtotal companies	**10**	**4**	**-**
Indirect participation	More than 100 companies	n.d.	-
Other companies	Corporación RTVE SEPI foundation F.S.P.	Cia Ferrocarriles de Madrid a Zaragoza y Alicante (MZA) (in liquidation) RUMASA (in liquidation)	-
Total companies	**24**	**22**	**13**

Notes: (i) both TENEO and SEPI had circa 80,000 employees. The 1993 INI-TENEO agreement covered the metal sector subsidiaries of INI and TENEO companies, plus Imenosa, Indra Sistemas, Encasur Uneleo, Hunosa, CSI (afterwards Arcelor), Astander and

Barreras. Some of them have been kept under SEPI; (ii) companies fully privatised between 1993 and 2024 are not recorded in this table, although some may have kept content inherited from the 1986 or 1993 agreements in their collective agreements (iii) union representation (rights and/or effective presence) is only confirmed on the boards of those companies written in bold.

Source: author's own elaboration, based on data from websites of SEPI and Dirección General del Patrimonio del Estado (January 2024), and Inventory of public sector entities (Invente) (2019).

5. The social debate: waves of silence and ambiguity

5.1 Academic debate

One could say the Spanish scholarly debate has only addressed the topic of board-level worker representation within short and uneven cycles of interest. For the most part, labour law scholars have edged around the topic, examining legal frameworks and using new regulations as milestones for commentary (Galiana Moreno and García Romero 2003; Rivero Lamas 2006). The 1986 and 1993 agreements (García Murcia 1990; Valdés Dal-Ré 1993) and the Spanish transposition of the Societas Europaea (SE; European Company) framework[26] (Gómez Gordillo 2007) have drawn special attention because of their novelty. However, the Spanish academic debate has neither discussed the theoretical concepts for developing innovative participation policies in depth, nor their actual social practice and enforcement.

When concerned with terms like 'industrial democracy', 'economic democracy', 'workers' control', 'worker participation', or 'codetermination', the academic debate has mostly focused on the so-called social economy, with legal forms such as worker cooperatives and employee-owned firms (Sociedades Laborales) and their practice (Morales 2003; Fajardo 2015). The existing legislation, developing Article 129.2 of the Constitution, has contributed to worker participation being cornered within these two corporate forms, discouraging its use and conceptual progress in the realm of the larger for-profit economic sector.

Scholars also anchored worker participation within the proliferating discussions around corporate social responsibility and financial participation in the 2000s (Nieto Rojas 2009). Studies in the sociology of work, industrial relations or business administration also looked into the mechanisms developed in the 1990s to involve workers in decisions and productive processes to maximise human capital, competitiveness and innovation (Castillo et al. 1991).

However, the evolution of the public debate and the political process, the inner workings and social practice of worker participation on boards have not been addressed in depth. At most, they have been given a passing treatment, remaining underexplored. This overlaps with a troubling lack of proposals in the public and trade union debate, only recently re-emerging mostly in the hands of civil society actors (and even more recently, the Ministry of Labour). The association Plataforma por la Democracia Económica (PxDE; Platform for Economic Democracy), created in 2018, gathering academics,

26. Law 19/2005 of 14 November, implicitly derogated by Royal Decree Law 1/2010 of 2 July approving the Law on capital companies.

unionists, activists and practitioners in the social economy, has contributed to debate the issue of economic democracy in publications and events, including workers' financial participation and participation on boards.

5.2 Social partners' positions

Spanish employers have consistently opposed worker participation (Landa Zapirain 2017; García Murcia 1990: 259). At best, in the last few decades, worker involvement has emerged in the human capital discourse as a managerial technique to pursue competitiveness, innovation and retain talent (CEOE Aragón 2024). Unlike their counterparts in France or the United Kingdom (UK) (Rehfeld 2019; Fulton 2019), Spanish employers have avoided reference to employee participation in debates on corporate law reform. Only a handful of employers promote corporate social responsibility and view firms as owing to the common good. They are linked to Christian values, like Acción Social Empresarial (ASE; Business Social Action), or socio-ecological values, like the Asociación de Empresas por el Triple Balance Sannas, but they lack institutional representation in the general landscape of social concertation.

The conclusions of the CEOE Summit 2020 on 'Spanish companies leading the future' illustrate this pact of silence within the dominant managerial class: participation is not mentioned once. The code of good governance of listed companies of the Comisión Nacional del Mercado de Valores (CNMV; Spanish National Securities Market Commission) is another example: its guidelines merely invite boards to 'try to conciliate the interest of the firm with (…) the legitimate interests of its employees, providers, clients and of any other interest group that may be affected' (CNMV 2015: 25). However, given the prevailing anti-participatory managerial culture, it is unlikely that Spanish employers will voluntarily relinquish power and promote participation (Landa Zapirain 2017: 33).

As for Spanish unions, focusing here on the two most representative national confederations, UGT and CCOO,[27] their positions are nuanced. While they support board-level participation in their congress documents and they hold seats on the boards of some public companies, they are not actively bringing this topic into public discussion or taking specific action in terms of mobilisation or negotiations with employers. Both confederations have conducted internal studies on codetermination (Otaegui 2013; UGT 2014) but these were focused on the state of play in Europe and tiptoed around the Spanish experience.

UGT has, however, consistently advocated the union's right to participate on company boards. This support can be traced back to congresses prior to the reestablishment of

27. As for other unions, ELA-STV's participatory approach has focused more on grassroots organising and industrial action than board participation. Anarcho-syndicalist trade unions, such as Confederación General del Trabajo (CGT; General Confederation of Labour), have openly rejected codetermination practices in their general criticism of the institutional power of, and the scandals among, the two most representative unions. As for Unión Sindical Obrera (USO; Workers' Union), Central Sindical Independiente y de Funcionarios (CISF; Civil Servants' and Independent Trade Union) and CIG, their official positions regarding worker representation on boards could not be confirmed.

democracy in 1978.[28] The action programme of UGT's 43rd Confederal Congress explicitly referred to worker participation and the intention to promote, through legislation, a model of 'corporate codetermination' or 'codecision' which encompasses 'the right to participate in corporate governing bodies' (UGT 2021: 31). While reinforcing single channel employee representation, this model would involve union participation and imply a shared responsibility in 'strategic development, planning, productive changes and corporate transformations', enhancing trade union control of and influence in decision-making processes.

As for CCOO, it initially criticised the restrictive system introduced in state-owned public enterprises but later contributed to its implementation (Sánchez de Miguel 1992: 88). The programmatic proposals of CCOO's 11th Confederal Congress in 2017 included the right to information, consultation and representation on company and supervisory boards, stressing the importance of union participation in the governing bodies of both public and private enterprises (CCOO 2017: 23). However, specific action at company level or in collective bargaining did not follow and these claims lost relevance at the following Congress in 2022 (CCOO 2022: 50), whose programme documents focused on delivering a law on institutional participation. At the time of the 'black cards scandal' in 2013, CCOO had initiated an internal debate with its federations to evaluate whether it was worth continuing to hold board seats as a general policy. The approaches and experiences were too diverse and especially concerned its federations of Industry and Services to Citizens, so this process resulted in CCOO retaining those board seats deemed useful and introducing portals of transparency and codes of conduct. This signalled a concern for accountability and increased control, but CCOO's position on board codetermination has continued to remain ambiguous.

In brief, union participation on corporate boards may have stabilised social relations in some companies, but unions have chosen to maintain the status quo rather than risk the potential negative consequences of opening Pandora's Box and exposing a sensitive issue in an unpredictable political context. Some have argued that Spanish unions ideologically prioritise union freedom and collective bargaining over other participation mechanisms (Landa Zapirain 2017). However, this has not prevented them from substantially engaging in works councils, leading the Spanish representation model to function similarly to a single channel model in practice, even if a dual channel model is formally in place (Ojeda Avilés 2005: 344; Nieto Rojas 2016 Landa Zapirain 2019). Rather, four reasons unrelated to ideology could explain why board representation is not a strategic priority for Spanish unions.

First, the results of works council elections are crucial because they determine the representativeness of unions and their position in tripartite social dialogue, collective bargaining and other institutions within the industrial relations system. Unlike board representation, works council elections have broader implications for unions beyond the company.

28. A textual analysis of UGT Congress resolutions between 1978 and 2021, hosted at the Archive Fundación Largo Caballero and consulted there in 2021, reveal the UGT's steady formal support for codetermination in terms of trade union participation on company boards.

Second, boards can provide more timely access to information than works councils in some cases, but their ability to place effective controls on management varies across European Union (EU) Member States (Davies et al. 2013: 6). In Spain, a single-tier board model applies. The general assembly of shareholders has formally the highest decision-making powers, so power has, in practice, become increasingly concentrated in the hands of board members with executive or specific delegated powers, to ensure efficiency, while other board members are left with purely advisory functions (Recalde Castells et al. 2013: 562-563). In this scenario, worker representatives may be better off if they participate in parity committees (comisiones paritarias) at company level, or on corporate bodies with actual decision-making power, such as the executive board (comité de dirección) or on nominations and remuneration committees, rather than on 'rubber stamp' boards (Landa Zapirain 2017: 37).

Third, Spain's economy remains peripheral in the EU, with Spanish company boards too often being those of a subsidiary implementing decisions from headquarters boards based in other countries. It is no wonder that the European Works Council (EWC) Directive raised expectations among Spanish representatives that they might strive for greater influence and more information by participating in the EWC at headquarters level rather than being represented on the board of a Spanish subsidiary. However, these expectations might have eventually been readjusted due to practice within EWCs being mixed (De Spiegelaere et al. 2022: 215).

Finally, the 'black cards' scandal did not help unions unite supporters behind board participation, either outside or inside their ranks. This isolated case of misconduct was publicly condemned by unions but, inevitably, it exposed flaws in their capacity to establish transparency, accountability and control over board seats and the potential risks associated with co-responsibility and worker incorporation in board activities. This further damaged the already tarnished image and reputation of the two largest unions during the period of the financial crisis in Spain (Köhler and Calleja Jiménez 2018). Though unions did not formally give up their claim for worker participation on company boards, they were unable to advocate its reinstatement after it was removed from the legislation and from certain companies.

In short, while trade unions are key actors in implementing worker representation on boards in Spain, they have been, for various reasons, reluctant to initiate public debate on the issue. This deviates from other countries, like Germany, Sweden and France, or even Italy or Belgium, where board participation has been a part of larger societal debates on economic democracy propelled by unions. In the case of Spain, the inaction of unions has opened up opportunities for other actors to take a leading role, as the next section explains.

6. Renewed opportunities?

6.1 The European 'back door'

Legislation from the EU and in some countries has offered an opportunity for Spanish worker representatives to sit on the boards of non-Spanish multinational companies. The Europeanisation of worker representation on boards has received less attention than EWCs or other participation rights (Castro Argüelles 2014: 327; Lafuente 2022a), but there are three EU directives that have established codetermination rules: SE Directive 2001/86/EC of 8 October; SCE Directive 2003/72/EC of 22 July; and the Cross-Border Mergers (CBM) Directive 2005/56/EC of 26 October, today extended also to cross-border conversions and divisions by EU Directive 2019/2121 of 27 November. Their aim was not to harmonise minimum standards across Europe, but rather to safeguard existing participation rights based on national laws, to protect them from erosion in a free movement EU (Lafuente Hernández 2019).

Their impact has been uneven and fragmented, to say the least. In Spain, the transposition of the SE and of the European Cooperative Society (SCE) directives triggered some scholarly debate, but the very few companies established in Spain according to these forms – none of them with worker involvement rights – reflects the lack of interest in these corporate forms (González Begega and Köhler 2012). In practice, Spanish worker representatives can only experience participation through 'their peripherical condition as employees of foreign subsidiaries' in SEs or SCEs registered abroad (González Begega and Köhler 2012: 10), as happens for instance in the German Fresenius SE. This can also apply to companies resulting from a cross-border merger, conversion or division involving at least one company from a country with codetermination rights: EU law has opened a door for worker representatives from foreign subsidiaries (e.g. Spanish ones) potentially to sit on the parent company board.

In addition to these EU rules, worker representatives from foreign subsidiaries can serve on the board of parent companies under the laws or practice of five countries: Sweden, Germany, France, Denmark and Norway (Lafuente 2023).

In Sweden and Germany, the participation system is designed so that it is up to unions to decide whether to hand over their reserved board seats to foreign trade union representatives. In this way, a UGT representative was appointed to fill one of the seats reserved for IG Metall (Industriegewerkschaft Metall; German Industrial Union of Metalworkers) on the supervisory board of Volkswagen AG. The debate on Europeanising supervisory board seats in multinational companies has been ongoing in Germany and has also garnered attention in Catalonia since the 2000s (Bassets 2006) as SEAT, the major Spanish Volkswagen subsidiary, is located there.

As for France, the experiment has also sparked interest among Spanish trade unions.[29] Since 2013, some large French companies must, by law, have one or two board members to represent employees. Where two members are to be appointed, the company can

29. No Spanish worker representatives are known to be active on Danish or Norwegian company boards.

designate that the EWC (if one exists) appoints the second member who, in such a case, can be employed by a non-French subsidiary of the group. In this way, at least four Spanish employee representatives became board members in French multinational groups; that is, in Alstom, Suez, Imerys and Pernod Ricard (Lafuente 2022b).

This European 'back door' to codetermination may gain even more relevance since the Court of Justice of the EU (CJEU) clarified in Case C-677/20 *IG Metall and ver.di vs SAP SE*[30] that all unions represented in an SE established by transformation are equally entitled to the supervisory board seats reserved to unions by the German transposition law (Lafuente et al. 2024). How to conduct such European appointments is, for now, left to ad hoc company negotiations and procedures. But the point is that non-German unions, including Spanish ones, will have to be involved in procedures to fill two or three union seats on the parity supervisory boards of German transformed SEs, which could potentially offer them a better route to more influence and information.

6.2 The legislative promise: chronicle of a foretold death?

The remaining question is whether participation rights in governing bodies will ever be realised in a law covering the whole economy. In 2002, the socialist party PSOE, at the time in opposition, proposed a bill including worker participation rights on company boards.[31] However, the proposal was stalled during that conservative legislature and, ironically, when PSOE entered government two years later, it never revived the proposal, letting it expire. It seems this was, ultimately, a rather solitary initiative of an individual deputy and his team, supported by UGT[32] but not by the PSOE majority.

Since this attempt, there have only been limited policy advances in Catalonia, the Basque Country and Navarra in addressing worker participation, aside from the transposition of the SE and SCE directives.

The 2006 Statute of Autonomy of Catalonia mandates public authorities to 'promote worker participation in their companies' (Article 45.3) and recognises the right of workers to information, consultation and participation (Article 25.4). On this basis, UGT advocated a law on codetermination in Catalonia inspired by the German model of codetermination on supervisory boards (Bermúdez Abreu and Prades Espot 2006: 304). This later triggered a debate in the Catalan parliament about introducing codetermination in the regional media sector (Lerín 2016). In the end, however, no such regional law was adopted and the concept was not even integrated in the Law on the Catalan Audiovisual Media Corporation (La Vanguardia 2019).

30. Judgement of the Court (Grand Chamber) of 18 October 2022 C-677/20 IG Metall and ver.di v SAP SE [2022] ECLI:EU:C:2022:800.

31. See Article 11 of Law Proposal on rights to information, consultation and participation of workers in enterprises, Official Gazette of Spanish Parliament, Spanish Congress, VII Legislature, Serie B. num. 236-1, 10 May 2002.

32. According to Rangil (2003:138), it was a draft law on worker participation proposed by UGT Catalunya in 1996 that inspired the PSOE proposal.

As for the Basque Country and Navarra, they have relatively strong union traditions and are pioneers in the cooperative movement and the social economy due to the strong historical imprint of Social Catholicism in part of the business community (Agirre et al. 2009). But progress has been, at most, symbolic. On 19 June 2018, the parliament of Navarra's Commission of Economic Development adopted a unanimous resolution urging the regional government to promote an inclusive-participatory enterprise model. On 27 September 2018, the Basque parliament approved by unanimity a non-legislative proposal[33] with the same goal. The proposal was influenced by the recommendations of the Catholic Mondragón Foundation, which advocates corporate social responsibility and a unitarist cooperative view of the enterprise. However, this soft attempt to pacify industrial relations in the Basque Country, which notably stands out for its strike activity (Las Heras and Rodríguez 2021), has not resulted in significant progress, except for some symbolic studies and regional subsidies to support enterprises with worker participation.

In May 2022, in the midst of this rather gloomy context, the Spanish Minister of Labour, Yolanda Díaz, expressed intentions to enact legislation on worker participation, including union representation on boards, following the German model of codetermination. This enthusiasm for democratising companies picked up pace during the 2023 Spanish presidency of the Council of the EU, where democracy at work was presented as a priority. While it did not spark a full-blown public debate, it definitely caught attention, triggered new research projects and received coverage in the media – including in the business press, which treated this as a 'pseudo-communist manoeuvre' that would jeopardise companies and bring 'war' to the boardroom (del Pozo 2024). This institutional announcement might have already inspired some concrete, though dispersed and voluntaristic, changes: the municipal company for waste collection of Alcorcón, ESMASA, recently modified its articles of association to integrate two worker representatives on its board at the initiative of the works council.

However, it was unclear what such a law would look like, which elements of the German model would be retained and how they would correspond to Spanish institutions and realities. In their 24 October 2023 agreement to renew the governmental coalition, the two progressive parties PSOE and Sumar vaguely committed to 'promote a more effective worker participation in companies (…) in line with Article 129 of the Constitution and within the framework of social dialogue' (PSOE and Sumar 2023: 12). This open formulation left a great deal of room for speculation: 'more effective worker participation' could mean a lot of things under Spanish law, beyond existing rights to information, consultation and negotiation through works councils, delegates and unions, with board participation being only one of the options (Cruz Villalón 2023).

The coalition agreement was more specific about the promotion of 'a law on institutional participation to regulate the presence of social partners in the diverse bodies of public administration' (PSOE and Sumar 2023: 13). But, as explained, institutional

33. Non-legislative proposal on the promotion of an inclusive-participatory model of enterprise [11/11/02/01/00400], 27 September 2018, see: https://www.irekia.euskadi.eus/amp/es/news/48528-pleno-ordinario-2018

participation is substantially different to worker participation on private company boards, and evidently more consensual: CCOO and UGT have been demanding a unified national law on institutional participation for a long time while their positions on board-level codetermination remain ambivalent.

Then, on 27 March 2024, Sumar brought a non-legislative proposal on democracy at work and worker participation rights as a first step in its plan to translate constitutional Article 129.2 into more democratic firms. The proposal urged the government to adopt legislation on trade union representation on company boards. Unsurprisingly, it was bluntly rejected, with votes against from all the conservative parties in Congress, including the nationalist parties Partido Nacionalista Vasco (PNV; Basque Nationalist Party) and Junts, which had supported the governmental coalition and were considered allies in different issues.

The possibility to democratise firms and share corporate power still greatly divides the right and the left in Spain, although the positions on the right-wing spectrum do vary. While Partido Popular (PP; the People's Party) and Vox bluntly rejected the initiative, arguing that it had not been discussed with employers, PNV sympathised with the idea of progressing democratic participation for workers, but required greater detail and emphasis on increased responsibility (Pascual Cortés 2024).

It seems the debate was too raw and the proposal too vague. The exposition of motives was purely technical, lacking political narrative, and the final point calling for 'a system allowing trade union participation on corporate boards' seemed to have sneaked in sheepishly.

Admittedly, non-legislative proposals only aim to trigger public deliberation and prepare future action on issues of sociopolitical significance. They allow parliamentary groups to take the political temperature, build arguments, contrast opinions and take sides on a topic (Greciet 2017). But this non-legislative proposal missed the opportunity to trigger a political discussion on the convenience, feasibility and conditions for a system of worker representation on boards in Spain.

However, its rejection should not be interpreted as a final defeat. It underscores the organised opposition to the topic, heralding that it will be crucial to conduct a thorough evaluation of past legal and negotiated experiences and to mobilise forces before any legislative proposal can be formulated and be expected to succeed. Preparing the field in this way would facilitate an informed public debate about how to make a good use of worker representation on boards, not least by mitigating its risks. In that spirit, the Ministry of Labour appointed an experts' committee on democracy at work, led by Professor Isabelle Ferreras, to draft a report by the end of 2025. The report is expected to include scientific arguments and a concrete legislative proposal to be discussed with social partners.

7. Conclusion

After a long and noticeable silence, worker representation on company boards has recently emerged on the Spanish political agenda, with the progressive Spanish government declaring the intent to develop a constitutional article on worker participation through legislation. However, this chapter identifies three key missing factors: an evaluation of pre-existing experiences; strong commitment from trade unions; and widespread public engagement. Without these elements, the formulation and implementation of effective policies to democratise corporate power in Spain seems unlikely, especially in view of past experiences of trade union participation on boards, failed attempts to legislate on the matter and the strong opposition from employers and right-wing parties.

The chapter has aimed to clarify why board-level worker representation has apparently had such little relevance to and effects on the Spanish industrial relations scene and public debate, despite the existence of experiences and arrangements on this level of representation.

First, it has provided an overview of the arrangements in the savings banks and in some public sector companies, examining the context in which they were adopted, their characteristics and their non-systematic and declining implementation. The first conclusion is that these frameworks for board representation were normatively too weak and volatile to light the fuse of a board-level employee representation model in Spain. Their coverage and rights were limited, at most setting minimal symbolic representation on large single-tier boards. Conversely to other countries, where worker representation on boards was an element of broader socioeconomic projects of industrial democracy supported by a union offensive, it saw the light in Spain as a defensive and partial solution amidst economic crisis and declining social concertation followed by the 1990s neoliberal turn. The experience was generally unstable, with difficulties for unions in terms of coordination, support and reputation, which explains also why board-level worker representation disappeared from savings banks and other companies without provoking mobilisations, in contrast with the outrage that was attracted to other attacks against collective labour rights in the aftermath of the 2008 crisis (Baylos 2013: 26-27). The chapter has identified the sources, company data and experts from which to conduct further research on past and present board- level representation experiences through in-depth company case studies, micro-analysis of regional or municipal public sector companies or a historical analysis of the savings banks experience.

A second conclusion is that the main unions have kept formal claims on the topic without opposing it, but have never prioritised or mobilised around it, showing a lack of active and sustained institutional support. According to the evidence analysed for this chapter, the fundamental reasons were not essentially ideological but rather strategic, due to a sociopolitical context in which unions have been oriented towards prioritising works council social elections and institutional participation. Thus, worker participation on boards has remained an 'orphan' idea until isolated social actors have brought it to the fore, starting with some individual Congress representatives from PSOE, civil associations and think tanks, and more recently, the Sumar party, which is involved in the left-wing government coalition since 2023 and which has adopted

worker participation on boards as part of a larger programme to democratise firms, although further details are still awaited.

Finally, the chapter has linked to the debate about worker participation in 'peripheral' economies in Europe. The novel experiences in European multinationals involving foreign trade unionists on boards, thanks to national law and practice or EU law developments, could indeed give new impetus to worker participation agendas in those countries. Particularly in Spain, it could rekindle the embers of an experience of board participation in public sector companies which, according to our analysis of interviews and union documents, the company-level representatives still generally value as positive and with potential despite the several current limitations reported. The chapter has also signalled that unions may need triggers and are not necessarily the primary advocates of a policy on employee representation on boards. Although they will be essential actors in implementing any legislation on the matter, the initiative is more likely to come from other actors or allies, especially at political level.

The Spanish debate about worker representation on boards may still be immature but, by realistically acknowledging it and critically examining the topic from different perspectives, worker participation can eventually move forward, removing Spain from its exceptionality on the European scene.

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Appendix
List of interviews

Identifier	Date	Name, role and/or organisation	Place or means
INT1	1st May 2016	Coordinator at Fundación 1º de Mayo, CCOO	Madrid
INT2	8 September 2016	Employee representative on the board of Suez, CCOO Catalonia	Brussels
INT3	29 November 2016	Union representative on the advisory board of Endesa Catalunya, CCOO Catalonia	Phone
INT4	5 September 2019	Former Head of Sectoral Strategies at CCOO Federación de Industria and director of IESEI	Phone
INT5	23 February 2021	Podemos Member of Parliament in Spanish Congress	Phone
INT6	19 March 2021	Former representative on the board of Caja de San Fernando, CCOO Federación Servicios	videoconference
INT7	2 July 2021	Research Manager, Eurofound	videoconference
INT8	8 July 2021	Head of Industrial Policy, CCOO Federación de Industria	videoconference
INT9	9 July 2021	Former employee representative on the board of La Caixa, CCOO	videoconference
INT10	12 July 2021	Former PSOE Member of Parliament in Spanish Congress and spokesperson of its Employment Committee, former General Secretary of UGT Basque Country	videoconference

INT11	13 July 2021	PSOE representative in the Spanish Senate and Executive Secretary of Employment and Labour Relations at CEF-PSOE, former officer at UGT	videoconference
INT12	13 July 2021	Union representative on the board of Puerto de Valencia, CCOO	videoconference
INT13	14 July 2021	Secretary of industrial policy in FICA-UGT and union representative on the board of Navantia, UGT	videoconference
INT14	14 July 2021	Union representative on the supervisory board of Volkswagen AG, UGT	videoconference
INT15	16 July 2021	Union representative on the board of Hunosa, SOMA-FITAG-UGT.	videoconference
INT16	19 July 2021	President of Plataforma por la Democracia Económica and former Managing Director of Agencia EFE (1989-1993)	videoconference
INT17	20 July 2021	Former economist in UGT, Employment General Secretary (2004- 06), Ministry of Labour and Immigration (2010-11) and Member of Parliament in Spanish Congress.	videoconference
INT18	22 July 2021	Union representative on the board of Alstom, CCOO	videoconference
INT19	22 July 2021	Officer at CCOO Federación de Industria and European Works Councils coordinator	videoconference
INT20	22 July 2021	Union representative on the boards of Renfe and Adif, CCOO.	videoconference
INT21	23 July 2021	Former union representative on the board of Canal de Isabel II, UGT.	videoconference

Abbreviations

ADIF Administrador de Infraestructuras Ferroviarias (Railway Infrastructure Administrator)
AG Aktiengesellschaft (German public limited company)
ASE Acción Social Empresarial (Business Social Action)
BLER board-level employee representation
CC Comisión de control (Supervisory or auditing commission)
CCOO Comisiones Obreras (Workers' Commissions)
CEOE Confederación Española de Organizaciones Empresariales (Spanish Confederation of Business Organisations)
CEPYME Confederación Española de la Pequeña y Mediana Empresa (Spanish Confederation of Small and Medium-Sized Enterprises)
CBM Cross-border mergers
CGT Confederación General del Trabajo (Spanish General Confederation of Labour)
CISF Central Sindical Independiente y de Funcionarios (Civil Servants' and Independent Trade Union)
CIG Confederación Intersindical Galega (Galician Inter-Union Confederation)
CJEU Court of Justice of the European Union
CNMV Comisión Nacional del Mercado de Valores / National Commission on Securities Markets
DGB Deutscher Gewerkschaftsbund (German Confederation of Trade Unions)

ELA-STV Euskal Langileen Alkartasuna – Sindicato Solidaridad de trabajadoras y trabajadores vascos (Basque Workers' Solidarity)
Enagás Empresa Nacional del Gas (National Gas Company)
ENSA Equipos Nucleares S.A., S.M.E. (Nuclear Equipment Company)
ESMASA Empresa de Servicios Municipales de Alcorcón, S.A.U. (municipal company for waste collection of Alcorcón)
EU European Union
EWC European Works Council
IG Metall Industriegewerkschaft Metall (German Industrial Union of Metalworkers)
INH Instituto Nacional de Hidrocarburos (National Hydrocarbons Institute)
INI Instituto Nacional de Industria (National Industry Institute)
Invente Inventory of public sector entities
Mercasa Mercados Centrales de Abastecimiento, S.A., S.M.E. (Central Supply Markets Company)
PNV Partido Nacionalista Vasco (Basque Nationalist Party)
PP Partido Popular (Popular Party)
PSOE Partido Socialista Obrero Español (Spanish Socialist Workers Party)
PxDE Plataforma por la Democracia Económica (Platform for Economic Democracy)
Renfe Red Nacional de los Ferrocarriles Españoles (National Network of Spanish Railways)
S.A Sociedad anónima (Spanish public limited company)
S.A.U Sociedad anónima unipersonal (Spanish single member limited company)
SCE Societas Cooperativa Europaea (European Cooperative Society)
SE Societas Europaea (European Company)
SEMAF Sindicato Español de Maquinistas Ferroviarios y Ayudantes Ferroviarios (Spanish Union of Train Drivers and Assistants).
SEPI Sociedad Estatal de Participaciones Industriales (State Industrial Holding Company)
S.M.E Sociedad Mercantil Estatal (Spanish State Company)
RTVE Radio Televisión Español (Spanish Radio and Television Corporation)
UGT Unión General de Trabajadores (Spanish General Union of Workers)
UK United Kingdom
USO Unión Sindical Obrera (Spanish Workers' Union)

Part 3

Laws under threat

Chapter 6
Board-level employee representation in the Czech Republic: back and forth

Jaroslav Stránský

1. Introduction: cancellation and reinstatement of board-level employee representation

In the Czech Republic, the rules on board-level employee representation (BLER) have undergone an interesting and complex evolution. The original, relatively generous regulation contained in the Commercial Code of 1991 applying to joint stock companies was abandoned in 2014 in connection with the recodification of the private law. Just three years later (in 2017), however, the obligation to fill some of the seats on the supervisory board with representatives elected by the company's employees was reinstated, although the threshold of the number of employees necessary to trigger mandatory representation was significantly increased compared to the previous regulation. Due to certain technical shortcomings of the newly adopted legislation, a further amendment was adopted in 2020.

These developments cannot be attributed to the results of a debate on the search for the most appropriate model for employee representation in companies. The changes that took place were rather the result of the political situation – the change in 2014 from a right-wing government to a coalition led by the left-wing ČSSD (Česká strana sociálně demokratická; Czech Social Democratic Party), which is generally more sensitive to workers' interests – and the lobbying activities of trade unions.

This chapter is divided into three main sections. Section 2 provides an overview of the recent legislative developments. Sections 3 and 4 provide an overview of the sociopolitical debate surrounding mandatory BLER. The substantial changes that the legislation has undergone is already suggestive of employee representation on corporate bodies being a controversial topic in the Czech Republic. It is not surprising that trade unions[1] and employers[2] hold different views, while these attitudes have long been mirrored by the

1. The largest trade union confederation is ČMKOS (Českomoravská konfederace odborových svazů; Czech-Moravian Confederation of Trade Unions), with circa 300,000 members in 2018. It succeeded the Czech and Slovak union confederation ČS KOS and is officially independent of any political party although it has been critical of the neoliberal policies of Czech right-wing governments (Fulton 2021) and there are historical and personal interconnections with ČSSD. The next largest confederation is ASO (Asociace samostatných odborů; Association of Independent Trade Unions) with circa 78,000 members.
2. There are several employer organisations operating at national level in the Czech Republic. SP ČR (Svaz průmyslu a dopravy České republiky; Confederation of Industry of the Czech Republic) acts as an umbrella for 32 associations of employers operating in industry, transport and other economic sectors. KZPS Czechia (Konfederace zaměstnavatelských a podnikatelských svazů; Confederation of Employers and Business Associations of the Czech Republic) is an organisation representing ten employer associations, bringing together the construction, textiles and agricultural industries. KZPS also represents associations of small and medium enterprises (SMEs).

positions of individual political parties, depending on whether they are left or right-wing. At present, the issue of mandatory employee representation on company boards seems to have somewhat disappeared from the public debate. In autumn 2021, elections to Poslanecká sněmovna Parlamentu České republiky (Chamber of Deputies of the Czech Parliament) were held and a government was formed in which right-wing parties predominated. It cannot be ruled out that a proposal to abolish mandatory employee representation will resurface during the new parliamentary term starting in October 2025. However, no such position was formulated by the government or the Ministry of Justice within its term of office 2021-2025.

Section 5 provides an overview of the current state of BLER in Czech companies. To this end, publicly available data on the number of companies and their division by legal form and number of employees was compiled. At the same time, a questionnaire survey was carried out on BLER in 30 Czech joint stock companies operating in the energy, manufacturing and financial services sectors. The questionnaire survey was designed to provide both basic data on the establishment and functioning of supervisory boards and an assessment of the performance of employee representatives on such boards and their value to employees. This section provides at least a partial mapping of how mandatory BLER works in practice and what results it brings. Section 6 concludes.

2. Historical and political background: building a market economy after 1989

After the collapse of the communist regime in autumn 1989, the process of political and economic transformation of the former Czechoslovakia began in 1990. The period up to 1989 was characterised by state management and central planning, and private ownership was virtually non-existent. Enterprises were referred to as socialist organisations and owned by the state. Therefore, a process had to be initiated transferring ownership to the private sphere.

A necessary condition for the creation of a market economy was a complete transformation of the legal order. Especially in the area of private law, it was not possible to build on the existing legal order; it was necessary to create new regulations in a very short period of time that would create a legislative bridge from a centrally planned economy to the environment of a functioning market economy (Rychetský 2019). Among the first laws that were adopted in 1990 was Act No. 104/1990 Coll., on joint stock companies, corresponding to the need for a legal framework in which business activities could be carried out and in which the regulation of BLER already appeared. This Act was repealed relatively soon after its adoption (on 1 January 1992) and replaced by the Commercial Code, adopted by Act No. 513/1991 Coll. However, the BLER regulation was retained.

The impossibility of building on the earlier legislation, together with the need quickly to adopt completely new laws to enable the market economy to function, were the causes of the legislation being heavily influenced by foreign models. This also applied to the new legislation in commercial law and corporate law, whose drafters acknowledged in

the explanatory memorandum that the legislation was based on traditional institutions of European commercial law and on international legislation in this area (Parliament of the Czech Republic 1990).

Due to geographical proximity and a certain historical affinity in terms of legal culture, German and Austrian legislation was often taken as a model by the legislators of the time. This is probably why BLER was adopted in the new regulations. The adoption of this legal institution obviously cannot be seen as a manifestation of an internally thought-out concept in the new legal order or a reflection of a specific 'Czech' form of capitalism. Rather, it was a consequence of the adoption of close and functional foreign models, occurring in the context of the demand for the rapid creation of new laws to enable the transition to a market economy.

The process of privatisation of state-owned enterprises during the 1990s had some particularly controversial consequences. However, privatisation is almost complete in terms of the number of previously existing socialist organisations; at present, only a few dozen state-owned enterprises exist in the entire Czech economy (see Section 5.1).

In the context of the industrial relations system, the key participants in social dialogue in the Czech Republic are trade unions, employers and their organisations/associations. Trade unions operate at company level and are further organised into sector-based federations which form confederations operating at national level. The largest confederation is ČMKOS, which was established as a separate entity from the Revoluční odborové hnutí (ROH; Revolutionary Trade Union Movement), known as the trade union before 1989 but which was an extension of the Communist Party and which did not act as a standard, independent and autonomous union. Employer organisations emerged in the 1990s, primarily based on the sectors in which privatised enterprises operated.

Social dialogue takes place at multiple levels. The focal point lies at company level where collective agreements are negotiated and established. While sectoral collective agreements also exist, company-level agreements hold greater significance in safeguarding employees' rights. At national level, social dialogue is mainly conducted by Tripartita (Council of Economic and Social Agreement). This advisory body to the government consists of representatives of national trade union confederations and employer organisations. Tripartita convenes regularly to discuss social and economic measures, but it does not have the authority to establish binding collective agreements. The outcomes of national-level social dialogue are more likely to hold political influence.

3. Legal regulation of BLER in the Czech Republic

The legislation on BLER has undergone a dynamic development in the Czech Republic which can be divided into three distinct phases.

In the initial phase, BLER was regulated under the above-mentioned Commercial Code and applied to joint stock companies with over 50 employees. However, with

the recodification of private law, the Commercial Code was replaced by a new act (No. 90/2012) on commercial corporations, leading to an exclusion of BLER in this second phase. In 2017, a significant amendment was introduced, marking the beginning of the third phase, wherein mandatory BLER was reinstated for joint stock companies employing over 500 employees. Subsequently, the law underwent further amendment in 2020. It is important to note that BLER in state-owned enterprises has been subject to a separate, consistent regulation throughout the entire period.

The following sections provide a more detailed description and explanation of each of these phases in the development of the BLER legislation.

3.1 The Commercial Code: 1992 to 2013

The Commercial Code (Act No. 513/1991 Coll.) regulated two types of limited companies ('capital companies' in Czech); namely, limited liability companies and joint stock companies, although only in the latter was there an obligation to appoint a supervisory board.[3] In the most common form of commercial company, the limited liability company, a supervisory board could be established on a voluntary basis but the Commercial Code did not envisage certain seats being elected by employees.

Section 200 of the Commercial Code prescribed that the supervisory board must have at least three members, two-thirds of whom were elected at the general meeting of shareholders and one-third by the company's employees if the company had more than 50 employees at the time of the election. The company's articles of association could determine that a higher number of supervisory board members could be elected by employees. However, this number could not be higher than the number of members elected by the general meeting of shareholders.

This regulation was refined by an amendment to the Commercial Code adopted in 2000. The basic parameters for the election of at least one-third of the members of the supervisory board by employees remained unchanged, but a more detailed regulation of the right to vote was added with the law specifying in greater detail who may elect employee representatives on the supervisory board and who may be elected. The right to vote was granted only to employees in an employment relationship[4] and only an employee of the company, an employee representative or a member of an organisation representing employees could be elected as an employee representative on the supervisory board. Voting had to be in secret and the election was valid only if at least half of the eligible voters participated.

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3. In the Czech corporate governance system, the supervisory board performs monitoring activities. It supervises the performance of the powers of the board of directors (executive board) and the activities of the corporation. The supervisory board is supposed to be independent and it is not an executive body. With a few exceptions, the legislation does not provide that a member of the supervisory board can legally act for the corporation.

4. Czech labour law regulates, in addition to employment relationships, basic labour law relationships in respect of work performed for an employer on a dependent basis but outside an employment relationship.

The board of directors, a trade union or a works council[5] active in the company, or at least 10% of employees acting in concert, had the right to submit a proposal for the election or removal of a member of the supervisory board. A member of the supervisory board elected by employees could also be removed by employees.

3.2 Recodification of private law: the Corporations Act: 2014 to 2016

On 1 January 2014, Czech private law was completely restructured. The main change was the replacement of the existing Civil Code (Act No. 40/1964 Coll.) with a completely new one (Act No. 89/2012 Coll.).

In the process, the entire private law was significantly transformed. The Commercial Code was abolished and commercial obligations were from then on directly regulated by the Civil Code. The legal regulation of commercial companies was concentrated in a new Act on Commercial Corporations (Act No. 90/2012 Coll.; hereinafter referred to as the Corporations Act).

Of the existing private law codes, only the Labour Code (Act No. 262/2006 Coll.) has been retained. Although the Civil Code classifies the employment relationship and other relationships involving the performance of dependent work for an employer as private law, it expresses in its Section 2401 that it leaves the regulation of these to the Labour Code. This provides in Section 4 that employment relations are governed by it but that, if it cannot resolve a particular legal issue, the Civil Code applies (principle of subsidiarity).

With the adoption of the Civil Code, voluntary will became the main principle of private law. Private law should not unduly interfere with legal relations between contracting parties; where possible, the will of those parties should take precedence and they themselves should be responsible for their content. The limits are only the legal provisions from which there can be no derogation relating to the preservation of public order, morality or the status of persons, including the right to protection of personality. These general principles also apply to the regulation of commercial corporations.

The Corporations Act carried over the two types of commercial companies from the cancelled Commercial Code: společnost s ručením omezeným (s.r.o; a limited liability company); and akciová společnost (a.s; a joint stock company).

In a limited liability company, a supervisory board may be established on a voluntary basis (as provided in its articles of association). Certain provisions of the Corporations Act apply to such a supervisory board but these do not, however, include Sections

5. Employees in the Czech Republic can be represented at company level both by trade unions and works councils, the latter being an employee representative body that can be established without necessarily any cooperation with a trade union as its members are elected by employees. Given the significantly lower level of empowerment of works councils, their actual influence and importance is low. Even if the rate of union density is currently 10- 15%, employee representation in the Czech Republic in practice can be linked only to the activities of trade unions. For more information about the Czech industrial relations system, see Fulton (2021).

488(2) and 488a which regulate supervisory board members elected by employees. Thus, even if a limited liability company does decide to appoint a supervisory board, it is not obliged to ensure that some of its members are elected by employees, even if it employs more than 500 people.

The regulation of the joint stock company has brought a significant change compared to the previous Commercial Code. It offers two possible systems of internal structure for joint stock companies: a monistic structure and a dualistic one. A joint stock company with a monistic structure has an administrative board of directors, the statutory body responsible for the business management and supervision of the company's activities and which therefore also performs the tasks of the supervisory board. A joint stock company with a dualistic structure establishes both a managing board[6] and a supervisory board.

In its original wording, the Corporations Act did not envisage that part of the members of the supervisory board would be elected by employees, implementing a policy intention to abandon the existing concept of mandatory BLER. According to the prevailing interpretation, however, it was possible for a joint stock company to regulate BLER in its articles of association (see further in Section 3.3). The supervisory board was to have three members, unless the articles of association provided otherwise, appointed and removed by the general meeting.

3.3 First Amendment to the Corporations Act: 2017

The return of mandatory BLER was made through an amendment to the Corporations Act by Act No. 458/2016 Coll., which entered into force on 14 January 2017.

The new BLER parameters differ significantly from the previous regulation, the main difference being that only joint stock companies with more than 500 employees are obliged to have elected employee representatives on the supervisory board. In this case, the total number of board members must be divisible by three, with two-thirds elected by the general meeting and one-third by employees. The company's articles of association may determine a higher number of employee-elected board members, but this number may not be larger than that elected at the general meeting. The law also explicitly states that the articles of association may provide for employees to elect part of the supervisory board even if the number of employees is lower than the threshold. Only employees employed by the company have the right to elect members of the supervisory board, while they may also remove an employee-elected member.

Compared to the regulation in force until 2014, the regulation adopted in 2016 was more concise and did not explicitly address some of the more important aspects of the BLER rules. For example, there was no provision for who had the right to nominate the candidates from whom the company's employees were to choose. Neither were the manner and process of the election regulated, nor the conditions for the election or

6. In a company with a dualistic system, the managing board is the statutory executive body in charge of the management of the company's business. It can also be referred to as an executive board.

removal of supervisory board members. All these aspects had to be addressed by the articles of association or another internal document of the company. The law did not explicitly state that a member of the supervisory board elected by employees must be an employee of the company and it was therefore possible that a person who had no direct links with the company concerned could be an employee-elected member.

These shortcomings of the legislation were a consequence of the draft not being submitted by the government and therefore not having been prepared by the relevant specialists in the Ministry of Justice; instead, it was drafted on the basis of a proposal drawn up by a group of members of parliament (MPs) (see Section 4.2).

Since Act No. 458/2016 Coll. was adopted after a period of approximately three years during which BLER was not mandatory, it explicitly regulated a procedure for companies which did not have employee-elected supervisory board members at the time the new legislation entered into force. According to a transitional provision, companies with more than 500 employees were obliged to bring their articles of association and the composition of the supervisory board into line with the new regulation within two years of the date of entry into force of the Act (i.e. by January 2019). It was assumed that this would be sufficient to allow at least one-third of the seats to be filled by employee-elected members in accordance with the requirements of the new legislation as the term of office of some of the existing board members expired.

The transitional provision provided for a quite strict sanction in case a company failed to comply. In such a case, the registration court should invite the company to do so and set an additional time limit to fulfil the obligation. In the event that the company failed to ensure the composition of the supervisory board complied with the requirements of the law, even within the additional period, the court had the power to dissolve the company. However, there are no known cases in which this happened; companies either maintained BLER in 2014 to 2016, even when it was not mandatory, or adapted to the new legislation.

After the amendment, BLER is mandatory only in joint stock companies with a dualistic internal structure; companies with a monistic structure are not obliged to fill certain board seats with employee-elected representatives.

3.4 Second Amendment to the Corporations Act: 2021

The Corporations Act was amended by Act No. 33/2020 Coll., which took effect from 1 January 2021, with a view to addressing the problematic provisions identified above, among others. The government's original draft bill proposed that, in joint stock companies with more than 500 employees, employees would elect not at least one-third, but only (at least) one member of the supervisory board, although this point was deleted by parliamentary amendment and the status quo was maintained. Other changes to the legislation were more technical in nature, aiming to clarify some controversial aspects and fill in missing points. The amendment added a rule according to which the criterion

of 500 employees is applied with reference to the first day of the financial year in which the supervisory board member is to be appointed.

Only employees employed by the company at the time are entitled to elect a member of the supervisory board or remove one originally elected by them. If the internal election rules so provide, members of the supervisory boards may be elected indirectly: employees elect a group of representatives who can then elect or recall a member of the supervisory board on their behalf. Only an employee of the company can be elected to this group. Furthermore, only an employee who is in an employment relationship with the company may be an employee-elected member of the supervisory board, although the articles of association may provide that such a member does not have to resign upon retirement from employment.

Following the amendment, the Corporations Act also regulates the nomination of candidates for the supervisory board to be elected by employees. A proposal for the election or removal of an employee-elected board member may be submitted by the managing board, trade union, works council or jointly by at least 10% of the employees employed by the company. The conditions for the validity of the election or removal of employee-elected members have also been amended. Voting must be by secret ballot and at least one-third of eligible voters or elected representatives must participate in the election. The candidate with the highest number of votes cast is elected although internal rules may provide for a higher test of employee support. An employee-elected board member shall be removed if at least half of the eligible voters or elected representatives vote in favour, unless the election rules provide for a different majority for removal.

The election and dismissal of employee-elected members is governed by rules that the managing board must adopt following consultation with the trade union and the works council, if it exists (the obligation to consult employee representatives prior to issuing the rules is based on the general information and consultation procedures contained in the Labour Code). The election or removal of employee-elected members is organised by the managing board, following consultation with the trade union and the works council, in such a way that the greatest possible number of voters may participate.

3.5 Supervisory boards in state-owned enterprises

In the context of the BLER legislation, the special regulation of state-owned enterprises deserves a brief mention. A state-owned enterprise is a special type of legal entity, regulated by Act No. 77/1997 Coll., in which the state exercises ownership rights. The enterprise carries out business activities on its own behalf and under its own responsibility in order to fulfil important strategic, economic, social, security or other interests.

According to the public register, there are currently 122 state-owned enterprises (SOEs) (see Section 5.1) although half this number are in the process of liquidation and many others do not carry out any economic activity. SOEs carry out specific public services.

These include, for example, Forests of the Czech Republic, the Czech Post Office and the management of the catchment areas of some large rivers. Probably the only state enterprise focused on purely commercial activities is Budweiser Budvar.

The bodies of a state-owned enterprise are the directors and the supervisory board. The latter must have at least three members and one-third of the seats must be filled by employee-elected representatives, with no threshold prescribed. Thus, all such enterprises in operation are required to have employee-elected members on their supervisory boards. The manner and conditions for the election and removal of employee representatives are laid down in election rules. Where a trade union is active, the election rules are issued with its consent and the election itself is carried out by the employer in cooperation with the trade union.

This is a long-standing and stable legal framework that has not been seriously amended in recent times. Employee participation on the supervisory boards of state-owned enterprises was maintained in 2014-16 when mandatory BLER was not applied in joint stock companies.

4. The evolution of the social and political debate related to BLER

The dynamic development of the legislation was accompanied by an intense professional, social and political debate involving representatives of political parties, experts and the social partners. This section provides a basic overview of the ideas that have emerged or which may emerge in the future in relation to BLER in the Czech Republic. With considerable effort, the mandatory election of part of the members of supervisory boards by employees has, so far, been maintained. However, it is necessary to prepare for the possibility that steps will again be taken to restrict or abolish BLER.

4.1 Abolition of mandatory BLER in connection with the recodification of private law

After a long period of time when the stable legal regulation of mandatory BLER was in force under the Commercial Code, a change occurred in connection with preparations for the recodification of private law.

The government's original proposal for a new Commercial Corporations Act envisaged the preservation of BLER in a form corresponding to the existing regulation. However, during the legislative process, the Legislative Council of the Government – an advisory body – demanded the abolition of mandatory BLER (Pospíšil 2014), which was complied with. The explanatory memorandum to the new regulation of commercial corporations stated the following:

> The possibility or obligation of employee representation on the supervisory board is deleted following the request of the Legislative Council of the Government. The Czech regulation is very strict and thus once again gives up the ambition of competitiveness.

> Moreover, employees, like other creditors, are protected by the rules of insolvency law, or even have an advantage. The accumulation of additional protection, albeit illusory, and undermined in recent years by possible corruption, seems inappropriate and burdensome in terms of transaction costs. Similarly, employee participation has been abolished by Poland, Hungary and Estonia, and has long been absent in the UK and countries affected by it (Parliament of the Czech Republic 2011: 242).

The legislator took the Anglo-American concept of the regulation of commercial companies as a model, which was explicitly acknowledged in the explanatory memorandum. However, the intervention in the originally prepared draft negatively affected the final quality of the legislation. This was particularly evident in the confusion that arose as to whether BLER was permissible under the rules in force since the beginning of 2014 if the company itself had regulated it internally.

There were several views according to which the law did not allow for the possibility of members of the supervisory board being elected by parties other than the general meeting; that the constitution of corporate bodies was a status issue (rules concerning the status of persons) and therefore did not allow for a regulation deviating from the law (Štenglová et al. 2013; Bělohlávek et al. 2013). Consequently, even a joint stock company itself could not decide by its own articles of association that part of the members of supervisory boards would be elected by employees.

In contrast, trade union representatives advocated that the new legislation did not exclude employee representation on supervisory boards (Horecký and Samek 2015). This view was also supported by the prevailing part of the professional community, which pointed out that an interpretation prohibiting the possibility of applying BLER would violate companies' autonomy of will and unreasonably limit the freedom of their internal organisation that the new legislation was intended to promote (Čech 2013; Pospíšil 2014).

The literature also contains the pragmatic observation that only a court of law could pronounce a binding conclusion on the inadmissibility of BLER, but that it was unlikely that anyone would petition a court to issue such a decision. If joint stock companies themselves had voluntarily decided they wanted to have representatives elected by employees on their supervisory boards, there was likely to be no-one who would challenge this decision in court (Pospíšil 2014). In any case, as confirmed by the results of the survey conducted for this chapter (Section 5), a number of joint stock companies retained employee representatives on their supervisory boards after 2014.

4.2 Renewal of mandatory BLER from 2017

In January 2014, a coalition government was formed in which ČSSD was the strongest party and Bohuslav Sobotka became prime minister. Due to its other coalition partners, this government could not be considered to be clearly left-wing, but it was much more accommodating to the interests of workers than the previous government, more right-

wing in orientation, that had prepared the recodification of private law which brought about the abolition of mandatory BLER.

It should be noted that it was a group of ČSSD MPs, rather than the government, which proposed a draft amendment to the Corporations Act aimed at restoring mandatory BLER. This group included Bohuslav Sobotka (in his role as MP) and Jaroslav Zavadil (at that time a ČSSD MP but also a former chair of ČMKOS). The proposal was submitted to the Chamber in 2015.

In the recitals to the proposal, it was stated that the 'representation of employees on the governing bodies of companies is an important European fundamental right'. The reintroduction of mandatory BLER was also justified on the grounds that the:

> … explanatory memorandum to the Corporations Act justified the abolition of mandatory employee representation on supervisory boards of companies as of 1 January 2014, in particular on the grounds that such participation leads to a deterioration in the competitiveness of Czech companies. This expedient argumentation was completely unsubstantiated, and no information, in particular analytical data, was provided to support this claim. On the contrary, in a number of large public limited companies, this representation of employees is proving successful, providing the opportunity to bring information on employees' views and needs to the management and supervisory bodies of joint stock companies and to participate in the monitoring of the management of public limited companies in order to protect employees' rights. As this legislation is contrary to the practice existing in the most advanced and economically strongest countries of the European Union and its basic legal principles, this proposal suggests a return to the previous legal situation in Czech legislation on this issue, i.e. to the legislation on the mandatory representation of employee representatives on the supervisory boards of joint stock companies. (Explanatory Report to the draft amendment to the Commercial Corporations Act, Parliamentary Document No. 592.)

During the legislative process, SP ČR, the largest employer organisation in the Czech Republic, expressed in a press release dated 13 April 2016 its opposition to the mandatory participation of employees on supervisory boards, also citing a survey conducted among its members. SP ČR justified its position by:

> The negative experience of company owners and their top management with the previous participation of employee representatives on supervisory boards and their passivity in decision-making on strategic issues. Employee representatives have often had a narrow view of the situation and the future of companies, rather substituting the activities of trade unions, as opposed to the need of company owners to have a control or conceptual body to assess the activities and actions of managers hired by the owner. (SP ČR 2016)

Discussion of the proposal to renew mandatory BLER did not provoke any response in the academic literature. The proposal was, of course, supported by ČMKOS and it is no secret that its actual drafting and presentation was the result of the latter's lobbying activities. ČMKOS was facing significant pressure primarily from influential union

federations active in industrial sectors, particularly in large companies where BLER had existed before its cancellation in 2014. These federations were interested in leveraging the favourable political climate to advocate the reinstatement of BLER. Consequently, ČMKOS took action and ultimately achieved success, albeit with the consequence that the final legislation required subsequent revision due to its technical shortcomings.

Several papers, however, commented subsequently on the renewal of mandatory BLER. They were quite critical of the technical drafting of the proposal and that the new regulation had not addressed some important aspects of BLER. Some authors commented that the justification in the draft law for the existence of mandatory BLER was not very convincing (Dědič and Šuk 2017). Nevertheless, expert commentators accepted the change as the result of a policy decision even while assessing the adopted legislation as rather poor in terms of its quality and raising many questions for debate. The ambiguity as to whether BLER only applies to a joint stock company with a dualistic governance structure, or whether it also applies to monistic companies, was the subject of sustained criticism (Florián and Parnaiová 2018). Some argued that mandatory employee representation should also apply to the board of directors of a joint stock company with a monistic structure (Tomášek 2017), but the majority of commentators rejected this (Dvořák 2017; Dědič and Šuk 2017). It was also pointed out that the legal regulation was deficient given the absence of rules for the nomination of candidates and for the election of a supervisory board member by employees (Dvořák 2017). This legal ambiguity can probably be attributed to the legislation being adopted as a result of the lobbying activities of a group of MPs.

4.3 Amendment of the law in 2021 and future outlook

The amendment to the Corporations Act adopted with effect from 1 January 2021 was generally well received by the legal community in terms of the elimination of some interpretative problems, in particular the confirmation that mandatory BLER applies only in companies with a dualistic management structure. The addition of rules for the nomination of candidates, the conduct of elections and the conditions for their validity was also viewed as correct (Dvořák 2020).

According to the available information, there is currently nothing in the literature, the broader social debate or at tripartite level that would suggest limiting or abolishing mandatory BLER in its current form. However, in December 2021, a government took office consisting of a coalition of more right-wing parties. In part, this is similar to the political configuration that adopted the recodification of private law ten years ago which resulted in the abolition of mandatory BLER, albeit only temporarily. Furthermore, a proposal had been made in the outgoing legislature to reduce the number of employee-elected supervisory board members from the current one-third to just one member. The combination of these factors meant there was a risk of a further attempt at least to limit mandatory BLER. However, the mentioned proposal did not make it into the following stages of the legislative procedure, and BLER was finally not limited during the government's term of office (2021-25).

On the other hand, the generally negative assessment of the frequent changes to the same issue could speak in favour of maintaining the legislation in its current form. The BLER rules have evolved rapidly over the last ten years. It is therefore to be hoped that legislators will not feel the need to make further changes in this area, especially in circumstances where the BLER regulations have been judged to be consolidated and functioning satisfactorily following the last amendment (Dvořák 2020).

The political landscape in the Czech Republic currently lacks a prominent left-wing party in the Chamber. In the 2021 parliamentary elections, ČSSD, which played a key role in the restoration of BLER in 2017, failed to secure representation. The governing coalition established in 2021 comprised five political parties identifying themselves as right-wing or centre-right. The leading party in the coalition was ODS (Občanská demokratická strana; the Civic Democratic Party) a long-standing conservative party. Other coalition members included TOP 09 (Tradice Odpovědnost Prosperita; Tradition Responsibility Prosperity), a conservative party with a pro-European stance; and KDU-ČSL (Křesťanská a demokratická unie – Československá strana lidová; Christian and Democratic Union – Czechoslovak People's Party), a traditional Christian democratic party that emphasises conservative values while also highlighting social issues. In the 2021 elections, these three parties ran in a coalition called Spolu (Together). The issue of BLER did not appear explicitly in Spolu's pre-election plans. The second part of the government entity consisted of a coalition between STAN (Starostové a nezávislí; Mayors and Independents) and Piráti (Pirate Party), which left the government in September 2024. These parties are generally considered to be positioned in the political centre and their stance on BLER is not definitively defined.

It could have been expected that, had an amendment to the Corporations Act been brought forward, the ruling parties would have been more inclined to abolish or significantly limit BLER. However, modifying BLER was never a legislative priority for that government, nor was there any noticeable lobbying activity from employer organisations geared towards abolishing or restricting BLER. This was probably a consequence of both employers and conservative government parties preferring the stability of the legislation, achieved after a significant amount of upheaval.

In the 2021-25 legislature, the primary opposition party in the Chamber of Deputies was the ANO (Yes) movement. It is challenging to classify ANO in terms of its political alignment as it tends to adopt a populist orientation. In the past, it had supported the renewal of BLER in agreement with ČSSD, indicating a lesser likelihood of endorsing any restrictions on BLER. Another opposition party was the radical right and nationalist SPD (Svoboda a přímá demokracie; Freedom and Direct Democracy), whose stance on BLER remained unclear.

5. Data on companies with employee representation and results of a survey of employee representatives on supervisory boards

This section discusses the results of an investigation aimed at establishing how many Czech joint stock companies have employees represented on their supervisory boards.

There is no public register in the Czech Republic of such companies with BLER. The findings help to obtain a better overall picture of the functionality of the legal regulation of employee representation on supervisory boards and of the actual impact of these rules on the reality of industrial relations. It also presents the results of a questionnaire survey conducted among several dozen employee representatives on supervisory boards. First of all, the method of collecting information and the focus of the questions contained in the questionnaire are described, followed by the results.

5.1 Joint stock companies in which BLER is to be established under the current legislation

Data from the Register of Economic Entities are publicly available on the website of ČSÚ (Český statistický úřad; Czech Statistical Office) and can be used to determine the number of joint stock companies whose supervisory boards are supposed to include employees according to the legislation.

First of all, an overview of the number of economic entities by legal form and identified activity was retrieved from this database (ČSÚ 2022a). Based on its figures, nearly half of all registered business entities do not engage in any identifiable business activity so are not considered relevant for our purposes as the obligation to establish BLER is associated with a certain number of employees. Second, data on the number of economic entities by number of employees were taken from ČSÚ's public database for 2022.

Table 1 **Businesses, by legal form and identified activity, situation in 2022**

Legal form	With an identified activity	Without an identified activity	Total registered
Joint stock companies	22 286	4 881	27 167
State-owned enterprises	68	43	111
Others	1 606 908	1 362 655	2 969 563
Total	1 629 262	1 367 579	2 996 841

Note: joint stock and state-owned companies were singled out from other businesses. The 'Others' category includes cooperatives, private entrepreneurs and all other legal forms included in the Registry of Economic Entities that were irrelevant for BLER analysis.
Source: ČSÚ 2022a (last checked 31 December 2022).

Table 1 shows the total number of joint stock companies and the number of active ones, but there is no link to the division of economic entities by number of employees. It is therefore impossible to find how many of the economic entities employing more than 500 employees (1,062 entities in total, according to Table 2) are joint stock companies.

Table 2 **Businesses, by employee numbers, situation in 2022**

Employee range	Number of businesses
Not specified	1 709 732
No employees	998 371
1-49	274 345
50-499	13 331
500 and more	1 062
Total	2 996 841

Source: ČSÚ 2022b (last checked 31 December 2022).

More detailed data can be obtained through the data in the section 'Register of Economic Entities – open data' (ČSÚ 2021). This dataset is continuously updated; the data here were obtained on 26 November 2021. This dataset contains basic data on all currently registered economic entities including name, identification number, registered office, legal form and categorisation by number of employees. It is not possible to analyse it using conventional software tools but, with the help of ČMKOS information and technology specialists, it was possible to extract data concerning joint stock companies using more advanced data processing methods and to narrow down the selection to those employing more than 500 employees.

According to these statistics, more than half the total of joint stock companies do not indicate the number of employees. Using the data contained in the data file of the Register of Economic Entities (ČSÚ 2021), there are 317 joint stock companies in the Czech Republic employing more than 500 employees and on whose supervisory boards, according to the current regulation, employees should be represented. The accuracy of this figure, however, may be distorted by two circumstances:

1. The high number of joint stock companies that do not report the number of employees.
2. The possibility of joint stock companies choosing a monistic structure where no supervisory board is formed, combined with the absence of an indication of whether the joint stock company has a dualistic or monistic structure.

With regard to point 1, it can be noted that most joint stock companies that do not indicate the number of employees are probably entities that either do not carry out any economic activity or which are rather small companies. Larger companies are usually more careful in complying with the obligations laid down by the law, including the rules on statistical reporting. Therefore, it can be assumed that, of the 18,760 companies that do not report the number of employees, only a few have more than 500 employees.

An assessment of the impact of point 2 is not entirely straightforward. The possibility of establishing a joint stock company with a monistic governance structure is relatively new in the Czech Republic (see Section 3.2). There are no indicators or data available to confirm that large joint stock companies established before 2014 have, to any great extent, changed their internal structure to a monistic one after the adoption of the Corporations Act. Indeed, a spot check of the structure of the identified joint

stock companies with 500 or more employees did not reveal any that had a monistic structure. Therefore it can be concluded that, in the Czech Republic, at least in the case of larger companies, a monistic governance structure is not used to a large extent. Based on this data, the conclusion that employees are represented on the supervisory board of approximately 320 joint stock companies in the Czech Republic holds.

Table 2 shows that, in 2022, there were 1,062 entities employing more than 500 employees in the Czech Republic. A significant number of these are public sector employers including state authorities, large municipalities or public universities, among others. In the private sector, many large employers also choose a legal form other than joint stock company. This is illustrated, for example, by the ranking according to revenues of the 100 largest Czech companies. From this, it can be deduced that only about half of the largest Czech companies have the form of a joint stock company (limited liability companies are much more significantly represented). The finding that about a third of the more than 1,000 enterprises employing more than 500 employees are joint stock companies therefore appears valid.

5.2 Results of a survey of employee representatives on supervisory boards of joint stock companies

In order to find out the results in practice and to evaluate the functioning of BLER in the Czech Republic, as well as the consequences of the changes that have been made (i.e. the cancellation and reinstatement of BLER), a questionnaire survey was conducted during October 2021 of representatives of employees serving as members of the supervisory boards of joint stock companies. The questionnaire survey was not addressed to employee representatives on the supervisory boards of state-owned enterprises.

Supervisory board members were directly approached through contacts made via selected trade unions affiliated to ČMKOS. Specifically, these were trade unions in the following areas:

- finance and insurance;
- energy and chemicals;
- engineering and metals.

Through leaders of the trade union federations, contacts were made with 42 representatives in a total of 30 joint stock companies to whom a short questionnaire[7] and a request for completion was distributed. The questionnaire was designed to be completely anonymous: the representatives did not give their names, nor did they indicate the companies in which they served as supervisory board members; they were asked only for the sector in which the undertaking operated, as shown in Table 3. A total of 28 respondents completed the questionnaire, i.e. 66.7% of all those approached.

7. The questionnaire can be found in the Appendix to this chapter.

Table 3 **Respondents' affiliation, by activity of their enterprise**

Sector	Total
Finance/insurance	9
Mechanical engineering/metals industry	8
Energy	6
Chemicals industry	4
Metallurgical production	1
Total	28

Source: author's own elaboration from 2021 survey results for question 1.

The fields of activities of the enterprises reflect which supervisory board representatives were contacted in the survey.

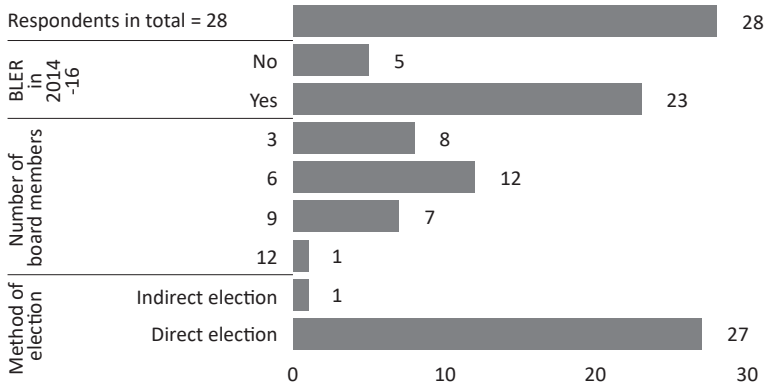
As Figure 1 shows, the direct election of supervisory board members through the voting of individual employees is significantly more prevalent. At only one employer are the members elected indirectly; that is, through a group of elected representatives.

The result of the answers to question 3 was clear: in all companies, one-third of the members of supervisory boards are elected by employees; in no company has the number of members been increased beyond the statutory threshold. Czech joint stock companies are apparently not willing to increase the number of employee-elected board members above the minimum. But responses to question 4 show that the total number of supervisory board members is quite variable. In the largest companies, supervisory boards consist of 12 members (of which there was one example in the survey); however, the most common are nine- member, six-member and three-member ones (see 'number of board members' in Figure 1).

The answer to question 5, which reports about the broader context of employee representation on supervisory boards in the Czech Republic, deserves attention. This question aimed to find out whether companies which had employee representatives as members of the supervisory board allowed BLER in 2014-16, when it was not mandatory under the wording of the Corporations Act but when it was permissible for joint stock companies to establish BLER in their articles of association (see Section 3.2).

As displayed in Figure 1 ('BLER in 2014-16'), the overwhelming majority of respondents indicated that BLER continued to be applied in their companies between 2014 and 2016. This result may have been partly influenced by the questionnaire survey addressing supervisory board members from companies where strong trade unions (organisations affiliated to trade union federations represented by ČMKOS) have been active for a long time and where social dialogue works well. However, it can be concluded that, in most large companies where BLER was in place before 2014, it was maintained afterwards. This can also be attributed to a certain inertia and to the desire to maintain social harmony. Simply put, if a joint stock company valued social peace, it was highly problematic de facto to expel employee representatives (typically linked in some personal way to a trade union) from supervisory boards.

Figure 1 **Continuity of BLER, board size and method of electing employee representatives**



Source: author's own elaboration from 2021 survey results for questions 2, 4 and 5.

At the same time, it can be stated that Czech companies do not seem to consider BLER as a phenomenon limiting their competitiveness. If the attitudes of enterprises towards it were significantly negative, it is very likely that a larger part of them would have blocked it when it was not mandatory. It is an open question how much the percentage of enterprises with BLER would have declined over time if the situation where BLER was only voluntary had been maintained for a longer period.

The answers to question 6 were quite clear. Given the method for identifying contacts with employee representatives on supervisory boards, it was not surprising that the vast majority were also members of trade unions. Only one of the employee-elected board members taking part in the survey was not a member of a trade union active in that company. In response to a follow-up question, he indicated that he was not connected to any trade union.

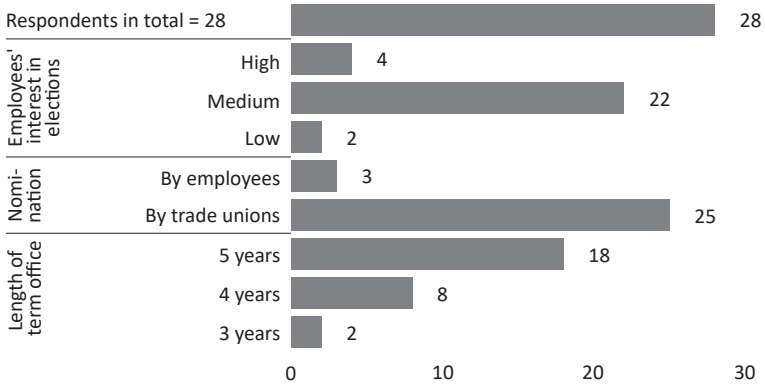
Figure 2 compiles the results regarding employees' interest in elections, nominations and length of BLER mandates. The most common term of office on the supervisory boards of Czech companies is four years; less often is it a five-year term and more rarely still three years.

Only following the 2021 amendment does the law contain an explicit regulation of the right to nominate candidates for employee-elected board members. Previously, this was governed by the articles of association of each company although, even at that time, most joint stock companies allowed candidates to be nominated by an employee representative (in the Czech context, in the vast majority of cases, trade unions) or by employees themselves.

Not only the results of the survey but also general experience with the functioning of BLER shows that the majority of employee representatives on supervisory boards are linked to trade unions and are therefore nominated by them.

As for the interest of employees in the election of their representatives to the supervisory board, the majority of respondents rated it as moderate. The current legislation insists on the participation of at least one-third of eligible voters as a condition for the election to be valid. The moderate level of interest and participation of employees in the elections is consistent with the observation that some companies have sought to provide special incentives for employees to participate in the election, for instance by placing voting stations at the entrance to the company or providing a token gift. However, available sources do not indicate any case where the election of employee representatives has been invalidated due to a lack of participation.

Figure 2 **Elections for board-level employee representatives, nominations and length of mandate**



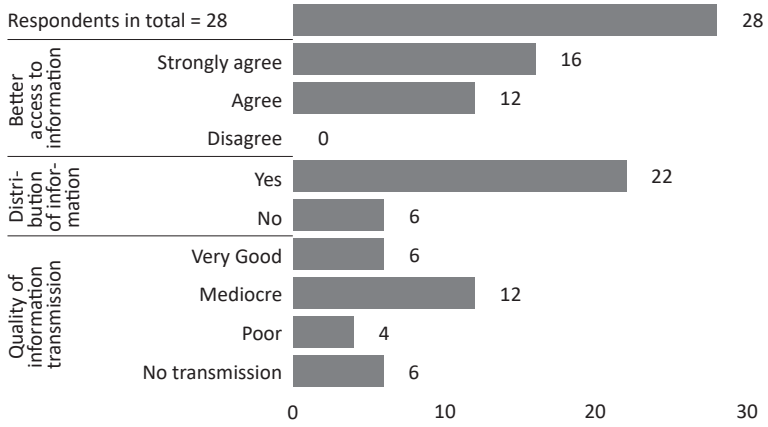
Source: author's own elaboration from 2021 survey results for questions 7, 8 and 9.

Concerning their experience with information processed in their board mandate role (see Figure 3 below), all respondents agreed with the statement that, thanks to their membership of the supervisory board, they had access to information which they would not otherwise have had, other than under the general provisions on the right of employee representatives to information and consultation under the Labour Code. Employee-elected supervisory board members therefore confirm that BLER contributes to a higher level of employee participation in companies. This question was followed up by others that focus on a key area of functioning of BLER; namely, the transmission of received information from employee-elected representatives to employees. It should also be noted that this question is linked to question 13 on the limits of employee involvement using BLER and to some of the answers to question 14 (see the Appendix to this chapter).

In the context of an anonymous questionnaire, a number of representatives admitted that there was no transfer to employees of the information obtained through their membership of the supervisory board. Although in most cases some information is transferred (at least, according to the statements of the employee representatives themselves), it should be noted that employee participation through supervisory boards does not work perfectly in the Czech Republic. Indeed, the transfer of information to

employees can be considered an important indicator of the real impact of BLER on employees and their working conditions.

Figure 3 **Experience of representatives with information in their board mandate role**



Source: author's own elaboration from 2021 survey results for questions 10, 11 and 12.

One of the reasons for this may be the absence of an explicit provision obliging employee-elected members to disseminate the results of their membership to employees. Another reason for this emerged from the answers to question 13, also answered by those respondents who stated that there was no transfer of information to employees, which sought to identify the barriers to achieving a higher level of information transfer (see Table 4).

Question 12 was answered only by those respondents who indicated in their answer to question 11 that there was a transfer of information to employees (where 22 responded 'yes'). Only six employee representatives on supervisory boards rated the level of transfer of knowledge and information to employees as very good. This finding also suggests that tools aimed at increasing the real impact of BLER on the day-to-day conduct of labour relations should be considered.

Table 4 **Reasons hindering a transfer of information to employees**

Obstacle reported	Total respondents
Confidentiality claimed by the company	16
Lack of relevant information	4
Employees' lack of interest	2

Source: author's own elaboration from 2021 survey results for question 13.

Question 13 aimed to identify the barriers for why the transfer of information to employees does not happen. Respondents who rated the level of transfer as very good were not asked this question.

Among the answers, the designation of information passed to members of the supervisory board as business confidential or as part of a trade secret clearly dominates. Furthermore, it is noteworthy that all respondents who admitted there was no distribution of information also identified the main barrier to be employers labelling information as confidential, thus preventing its distribution. This finding is not surprising as employee representatives in other European countries also face efforts to label information discussed at board level as confidential (Franca and Doherty 2020).

However it can be seen as an important suggestion for consideration in the possible further development of the BLER legislation. An explicit regulation of what information supervisory board members are entitled to, which was among the more frequent responses to question 14, would probably help to improve the importance and effectiveness of BLER. In connection with the activities of employee representatives, the possibility of using the rule contained in Article 276(3) of the Labour Code may be advanced; according to this, information confidentiality should not be extended to encompass information that the employer must provide, consult on or publicise pursuant to the Labour Code or some other statutory provision.

The final question (question 14) asked respondents to indicate any suggestions for changes or improvements to the BLER legislation. This was open-ended and answered by a relatively small proportion of respondents, some of whom indicated that they considered the current situation to be quite satisfactory or that they had no suggestions for improvement. However, several suggestions and evaluative attitudes related to BLER were made and revealed significant findings that deserve attention.

First, respondents recommended maintaining a minimum of one-third representation of employees on the supervisory board to enable their active participation in overseeing company management. This would ensure a balanced control mechanism. However, it was even recommended to increase the proportion of employee representation, with an ideal scenario of half the board members being appointed from among employees. This would foster a sense of shared decision-making and ensure a stronger voice for the workforce.

Another crucial aspect is the need for explicit regulations outlining the rights of supervisory board members regarding access to information, materials and responses: the basic scope of information provided to board members must be specified, not just left to them to make a request and then to hope that the outcome of the assessment of that request is positive. Currently, obtaining such information is challenging, particularly in cases where the owner holds the sole position in the general meeting and also serves as the chair of the board of directors.

To enhance the effectiveness of supervisory boards, it was suggested that greater emphasis be placed on the representation of employees rather than relying on representatives of political parties. By doing so, the board composition would better reflect the interests and perspectives of the workforce.

Transparency and information sharing are essential aspects to address. Members of the supervisory board should be encouraged to disseminate the insights gained through their board membership, thereby promoting increased transparency within the organisation.

It is worth noting that preserving the existing scope of representation and the associated legislation might prove to be challenging. Over the course of the past ten years there have been multiple attempts either to abolish or restrict employee rights, making it imperative to safeguard the current level of representation.

Overall, these findings underscore the importance of ensuring adequate employee representation on supervisory boards, clarifying their rights to information and promoting transparency within the decision-making process.

6. Conclusion

Several conclusions can be drawn from the findings of this chapter on BLER in the Czech Republic; that is, the participation of employee-elected representatives on the supervisory boards of joint stock companies employing at least 500 employees. In the past ten years, the legal framework of BLER has been subject to significant changes. In 2014, BLER was abolished as part of the 2012 recodification of private law. However, due to strong lobbying activities by Czech trade unions and favourable political circumstances, BLER was reintroduced into the legal regulation required by the Corporations Act. Nevertheless, this new legislation faced criticism for being imperfect and inadequately developed. Subsequent amendments have addressed these deficiencies.

The questionnaire survey, from which information regarding representatives on Czech supervisory boards was obtained, reveals intriguing findings. This was original research conducted by the author and involved gathering insights and data directly from representatives serving on the supervisory boards of Czech joint stock companies. It therefore provides valuable first-hand information drawn from the representatives themselves.

Despite the reserved attitudes of employer representatives and of a certain part of the professional and political spectrum, expressed around the time of the renewal of mandatory BLER in 2017, BLER works in the Czech Republic. It does not appear to be causing significant controversy and there are no known cases of companies not respecting the BLER regulation. Thanks to the feedback received from several employee-elected board members, it was found that most large companies maintained BLER even when they did not have to under the current legislation.

The real effects of BLER on working conditions and levels of employee participation in companies could be higher. In many cases, the transfer of information from employee-elected members back to employees does not work as it ought. Several reasons for this can be considered. First, certain information is deemed confidential by company management, limiting its dissemination. Additionally, there is insufficient clarity regarding the specific information rights granted to supervisory board members.

Furthermore, a certain challenge arises from a lack of interest among employees themselves in the information that should be conveyed by their elected representatives.

On the other hand, it should be noted that almost all employee-elected representatives on supervisory boards report that they have better access to information and thus a more effective tool for exercising control functions and other forms of employee participation. In many cases, employees themselves also gain real benefits from BLER through the distribution of the information obtained and through involvement in the company's monitoring processes.

Regarding the current position of the social partners on BLER, employee representatives, who are mainly unionised, and trade unions are understandably satisfied that mandatory BLER was reinstated in 2017. Given the rather right-wing orientation of the government established in 2021 – and since the government resulting from the October 2025 elections might be even more so – it is unlikely that trade unions will seek changes to improve this legislation in the near future. Employer representatives have, so far, taken a rather passive approach to the regulation of mandatory BLER, with no proposals to change or abolish it being expressed by employer representatives in the public or professional debate since 2017.

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- Act No. 89/2012 Coll., the Civil Code (in force)
- Act No. 90/2012 Coll., on Commercial Corporations
- Act No. 458/2016 Coll., amendment to the Act on Commercial Corporations
- Act No. 33/2020 Coll., amendment to the Act on Commercial Corporations

Cite this chapter: Stránský J. (2025) Board-level employee representation in the Czech Republic: back and forth, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Appendix

Questionnaire on the functioning of BLER, addressed to employee representatives in supervisory boards of joint stock companies in the Czech Republic (conducted in October 2021)[8]

1. In which field does the employer of which you are a member of the supervisory board carry out its main activity?
2. Which method of election to the supervisory board is applied:
   a. Direct election (supervisory board members are elected directly by employees)
   b. Indirect election (members of the supervisory board are elected by electors who were previously elected by employees)
3. How many members of the supervisory board of the employer you work for are elected by the employees?
   a. One third (the minimum set out in the Corporations Act)
   b. More than one third
4. How many members does the supervisory board of which you are a member have?
5. Were the members of the supervisory board of the employer where you serve on the supervisory board elected by employees even when employee representation on supervisory boards was not mandatory under the law (i.e. in 2014, 2015 and 2016)?
   a. Yes
   b. No
6. Are you a member of a trade union that is active at the employer where you serve on the supervisory board?
   a. Yes
   b. No (followed by a follow-up question on whether there is some connection to a trade union in this case)
7. What is the length of your term of office?
8. Who were you nominated to the supervisory board by?
9. How do you assess the interest of employees at the employer where you serve on the supervisory board in elections to that body?
   a. High interest and high participation in elections
   b. Moderate interest and moderate participation in elections
   c. Low interest and low participation in elections
10. Do you agree with the assertion that, as a result of your membership of the supervisory board, you have access to information which you would not otherwise have (applying only the general rules on the right of employee representatives to information and consultation under the Labour Code)?
    a. I strongly agree
    b. I tend to agree
    c. I tend to disagree
    d. I strongly disagree
    e. I'm not a member of a union or other employee representative, so I can't judge

8. Author's own translation from the original Czech.

11. Is there any form of transfer of the information obtained through your membership of the supervisory board to the employees of the employer where you serve?
    a. Yes
    b. No
12. If the answer to the previous question was 'Yes', how do you rate the level of information transfer to individual employees?
    a. Very good level; employees are sufficiently informed
    b. Moderate level; employees are informed of certain facts
    c. Low level; employees are hardly informed
13. What are the potential barriers to achieving a higher level of information transfer to individual employees?
    a. Employee disinterest in information
    b. Lack of relevant information from the employer
    c. Designation of information from the employer as confidential (trade secrets), i.e. preventing employee representatives on the supervisory board from passing on the information
    d. Other
14. Do you have any suggestions for changes to or improvements in the legal regulation of employee representation on supervisory boards?

Abbreviations

a.s	akciová společnost (joint stock company)
ASO	Asociace samostatných odborů (Association of Independent Trade Unions)
BLER	board-level employee representation
ČMKOS	Českomoravská konfederace odborových svazů (Czech-Moravian Confederation of Trade Unions)
ČS KOS	Czech and Slovak union confederation
ČSSD	Česká strana sociálně demokratická (Czech Social Democratic Party)
ČSÚ	Český statistický úřad (Czech Statistical Office)
KDU-ČSL	Křesťanská a demokratická unie – Československá strana lidová (Christian and Democratic Union – Czechoslovak People's Party)
KZPS Czechia	Confederation of Employers and Business Associations of the Czech Republic
MP(s)	member(s) of parliament
ODS	Občanská demokratická strana (the Civic Democratic Party)
ROH	Revoluční odborové hnutí (Revolutionary Trade Union Movement)
SME(s)	small and medium enterprise(s)
SOEs	state-owned enterprises
SP ČR	Svaz průmyslu a dopravy České republiky (Confederation of Industry of the Czech Republic)
SPD	Svoboda a přímá demokracie (Freedom and Direct Democracy Party)
s.r.o	společnost s ručením omezeným (Czech limited liability company)
STAN	Starostové a nezávislí (Mayors and Independents)
TOP 09	Tradice Odpovědnost Prosperita (Tradition Responsibility Prosperity Party)
UK	United Kingdom

Chapter 7
Employee representation on corporate governing and administrative bodies in Finland: a multitude of options serving one goal*

Maria Jauhiainen

1. Introduction

Employee rights have been at the core of policy-related decision-making in Finland since the 1940s. The main catalyst for this was the declaration issued by the Association of Finnish Industries on 23 January 1940 (tammikuun kihlaus/januariförlovningen; the 'January Betrothal'), in which trade unions and especially SAK-FFC (Suomen Ammattiliittojen Keskusjärjestö/Finlands Fackförbunds Centralorganisation; the Central Organisation of Finnish Trade Unions), namely the central organisation for blue collar employees, were recognised as negotiating partners in matters concerning the labour market. The parties agreed that, from then on, they would try to find common understanding through negotiation instead of striking or resorting to other forms of industrial action.

Despite Finland having a tradition of employee-management cooperation, it is quite notable that a law stipulating employee representation rights on corporate governing and administrative bodies, which we will here call 'board-level employee representation' (BLER),[1] was not passed as early as in other Nordic and European countries. The chapter addresses this puzzling observation, taking stock of the evolution of positions, regulatory systems and their practice, to explain how a law on this level of employee representation was finally passed and how an improved system was introduced in 2022. It suggests that high trade union density, wide national collective agreement coverage and the lengthy experience of negotiating to reach a common solution with employers and the employer associations could explain the delay in setting up a system for BLER in Finland, as these institutions were thought sufficient to cover the issues that representation would otherwise have addressed. The chapter shows how these positions and the regulatory environment changed such that BLER could gain greater potential as a channel for workers' influence, although this step could now be under threat as a result of recent government changes.

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1. The term BLER does not strictly cover all the possibilities contemplated by Finnish law regarding employee representation in corporate governance structures. For conciseness, this chapter will use interchangeably BLER and the broader term 'employee representation in corporate governing and administrative bodies', which covers the three main locations where employee representation can be established in the Finnish system: boards of directors; supervisory boards; and the top leadership team or body below board-level. The latter is part of the company's permanent structure and consists of upper-level executives that meet at least twice a month and prepare and justify decisions for the board of directors, considering business judgement and due diligence rules. Such executives include the chief executive officer (CEO), vice-president, chief financial officer (CFO), chief operating officer (COO), chief information officer (CIO) and chief technology officer (CTO).

It should be noted from the outset that the Finnish system consists of three specific groups of workers: blue collar; white collar; and senior salaried employees. The latter is the top group below the level of the company board and usually it has the power to represent the employer in collective negotiations, as well as to hire, dismiss and determine the salaries and merit pay rises of other employees.[2] Thus, from the 1940s, there have been three employee confederations in place: SAK-FFC for blue collar employees; STTK (Toimihenkilökeskusjärjestö; Finnish Confederation of Professionals) for white collar ones; and Akava (Korkeakoulutettujen työmarkkinakeskusjärjestö/ Centralorganisationen för högutbildade i Finland Akava; Confederation of Unions for Professional and Managerial Staff in Finland) for senior salaried employees. Even though trade union density has dropped gradually from its heyday, it still stood at 59.4% in 2021, reaching 72.8% in the public service sector and 71.8% in the industrial sector (Ahtiainen 2023). That same year, 89% of all employees were covered by collective agreements negotiated between Finnish trade unions and sector-specific employer associations. Most of these are signed on a binding industry-wide basis, meaning that they also cover employers (and their employees) that do not belong to these associations.

The strong tripartite political decision-making system established in 1940 by the 'January Betrothal' is still mostly in place. This means that, when something to do with the labour market is at stake, both the employer associations and employee confederations are heavily involved in the process alongside the government, the ministries and other state institutional policymakers. For many decades, pay rises were negotiated within this tripartite system with the end result being the tulopoliittinen kokonaisratkaisu/inkomstpolitiskt helhetsavtal (TUPO; the Comprehensive Incomes Policy Settlement). The last TUPO was reached in 2007 from which point the will of the employer side has been to move negotiations from the higher and more general level to lower ones and in particular to decentralise to local and company level. In this regard, they have succeeded. The general opinion on the employee side has been heavily against this trend, but it has – in one sense – also been a factor in the legal improvements to BLER that we saw take effect from 2022. For their part, employers have been convinced that efficient employee participation at a high enough level in the company will lead to better local negotiations mainly due to improvements in the levels of information that employees are able to receive through their board-level representatives.

Employee rights have prevailed at a relatively high level since 1940, their main emphases being employment security and the strong enforceability of employment contracts. Other rights, such as to information and consultation, let alone participation or representation, were slower to appear with the first Act on Co-operation (laki yhteistoiminnasta yrityksissä/lag om samarbete inom företag) 725/1978 coming into force only in 1978, covering companies with at least 30 employees, while the first law on employee participation did not come into force until 1990. Since then, these laws have developed, with the latest changes to the Act on Co-operation also covering employee representation in corporate governing or administrative bodies.

2. With such decisions about employee terms and conditions falling below executive level, this means that board-level employee representatives do not have responsibility in these areas.

The first Finnish act on employee representation and/or participation was not well known amongst employees who simply gave up on demands for representation if the company declined their request or – even worse – did nothing. The benefits of employee representation were not then widely known while some employees were fearful of the responsibilities stemming from this law, mainly to do with having to accept board responsibility, and so demands were conceded without any real opposition. It must also be said, however, that the enforceability of the first law was difficult and rather unclear, although this has now been improved. Overall, the significance of the Finnish system of employee representation in governing or administrative bodies was therefore somewhat slow to emerge among employees mainly due to a lack of knowledge of the law itself, of the rights and benefits stemming from it and of what kind of a role it can play in enforcing employee rights, especially when it comes to knowing what is really happening in the company and what its strategic orientation is.

The new (improved) law on this came into force on 1 January 2022 under a government led by SDP (Sosiaalidemokraatit/Socialdemokraterna; Social Democratic Party). But Finland had parliamentary elections in April 2023, whose outcome was a drastic swing to the right with PS (Perussuomalaiset/Sannfinländarna; True Finns) becoming the second most popular party behind KOK (Suomen Kokoomus/Samlingspartiet; National Coalition Party). The new, and very right-wing, government programme came out in late June 2023, with one of its stipulations aimed at already changing this law against workers' interests, even before the legal implementation period had been completed. These potential changes were not expected until 2025, and workers' hopes had earlier been pinned on the new government simply not having enough room in the schedule to start working on them early on, or being convinced by the trade unions that employers would also benefit from not changing the law.**

But, since the establishment of the new government, the trade unions needed to work fast and effectively to bring about as many new or improved BLER agreements as possible so as to retain company-specific positions intact: experience has shown that companies are not particularly willing to (re-)open agreements in which they have invested a lot of time and effort. Things do seem to be moving in the right direction, however, judging by the number of informed requests for assistance from trade unions and by the overall increased interest in the new legislation.

The chapter is structured as follows. After this introduction, Section 2 situates the emergence of BLER rights in Finland within the broader history and context of employee representation and cooperation rights. The first law on employee representation on corporate governing and administrative bodies came into force in 1990, but this fell somewhat into obscurity and malpractice over the next decades, as Section 3 assesses. Section 4 describes the efforts to establish a new law, reached in 2021 and which took effect in 2022, while this new system is described in Section 5. Finally, the chapter concludes by providing an evaluation of the new system and considers the prospects of the rights accorded by the legislation being worsened in the context of the recent government changes.

2. History of the Finnish employee representation system

The first provisions in Finnish law related to employee participation were contained in the Employment Contracts Act 1922 (141/22) in its articles on supervisors while corresponding provisions were continued in the 1970 Employment Contracts Act (320/70). There were also provisions on trade union shop stewards in laki yhteistoiminnasta yrityksissä/lag om samarbete inom företag (Act on Co-operation in Undertakings) (334/2007),[3] among others. This 2007 Act contributed right from the start to maintaining the importance of shop steward structures. The whole system and the order of its negotiations were – and are still – mainly based on wide-ranging shop steward structures geared towards collective agreements negotiated by trade unions, the strength of which remains a fundamental part of all employee involvement in companies in today's Finland. It should be noted here that, in Finland, there are no company-level works councils. These systems are replaced by local shop stewards forming looser or tighter collaboration bodies with other employee representatives, such as European Works Council representatives, employee representatives on boards or other administrative bodies, and/or health and safety representatives.

In addition to locally agreed shop steward structures, several other types of agreement at company level have been concluded on employee participation or representation regarding company decision-making procedures. These agreements relate mainly to cooperation, information being given to employees, other company activities, company development, the means of business rationalisations, health and safety at work and training.

Employee representation in company management was implemented quite early in some organisations, mainly in relation to social security. The relevant provisions were in the Pension Funds Act from 1971 (874/71) and the Mutual Funds Act from as early as 1941 (471/42). Also, in the Law on State-Owned Enterprises from 1987 (627/87), it was stated that at least one of the members of the boards of these enterprises had to be an employee representative.

Back in October 1983, the government had approved a decision in principle on employee representation in the operation of state-owned companies. Opportunities for employee participation in state-owned companies' governing and administrative bodies – mainly on supervisory boards – were therefore to be immediately developed via cooperation between management and employees with the aim of achieving uniform practice across all companies: the deadline for taking measures was spring 1984, with systems being in place as of the beginning of 1985. In most of these companies, employee representation was implemented either on the board of directors, the supervisory board or the executive leadership team leading day-to-day business operations in the different units. According to the decision in principle, the body concerned would have two or three employee representatives nominated to it by employee organisations, at least one of whom had to come from among white collar employees. If no agreement could be

3. The new law, the Act on Co-operation (1333/2021), came into force on 1 January 2022, encompassing the provisions for BLER in its Chapter 5.

reached on the nominations or proposals, elections were to be held with the employee organisations nominating the candidates.

Employee representatives had the right to attend and speak at meetings of the above-mentioned corporate bodies, except for matters relating to the selection and remuneration of senior management and for matters concerning collective agreements. Employee representatives were to be treated in the same way as the other members of the bodies as regards length of service, rights and duties, access to information, reimbursement of expenses, use of time and other matters. Acting as an employee representative was counted as normal work. Employee representatives were bound by a duty of confidentiality, which could also lead to criminal sanctions when, for instance, internal secrets were at stake.

In addition to state-owned companies, some privately owned companies also made a voluntary decision to give their employees the possibility of choosing representatives to the designated governing bodies of companies.[4] In most cases, rights were limited to attending and speaking at the meetings of these bodies, but not to vote. As noted, depending on the company, employee representation was carried out either on the board of directors, the supervisory board or the executive leadership team.

Employee representatives themselves, business executives and other board members in contact with the system expressed satisfaction with the experiment when later asked about it. Employers especially referred to benefits in terms of wider information and more in-depth talks with employees before making decisions.[5] This experience also led to more general changes in company culture and mindset that helped to pave the way for the Finnish legislation on employee representation.

As a result, laki henkilöstön edustuksesta yritysten hallinnossa/lag om personal representation i företagens förvaltning 725/1990 (Act on Employee Representation in the Administration of Undertakings) came into force in January 1990, taking full effect as of 1991. That Act was applied to all Finnish joint stock companies, cooperatives and other economic societies, insurance companies, commercial banks, cooperative banks and savings banks that had a regular staff of at least 150 people working in Finland, and no actual division into publicly or privately owned companies was made. Only general partnerships, limited partnerships and associations, and private entrepreneurs, like any form of self-employment, were excluded from the scope.

It also emphasised that employers and employees or their representatives had to agree locally on the form and where employee representation should be placed in the company, rather than setting this down in the law; a decision that may have later caused more harm than good for employees.

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4. Very few companies have a supervisory body in Finland. Usually, Finnish companies follow a monistic approach with a board of directors and one main executive team just below the chief executive or the head of the unit.

5. See reference to a follow-up study in the Finnish Government's proposal for an Act on Personnel Representation in the Administration of Undertakings (Government of Finland 1989).

In practice, the places where employee representation could be carried out varied between the supervisory board, the board of directors or the executive leadership team below the board. If no agreement were achieved on this, companies were able to determine the placement of representation in the company and the number of employees involved, which could range – according to the law – from one to four, the most common being one. Only on boards of directors were deputies allowed to attend meetings with a right to speak, although not to vote.

In other Nordic countries, the laws are stronger and better applied (Lekvall 2014),[6] especially the Swedish Act on BLER in privately owned companies,[7] dating originally from 1976 and applying to companies employing at least 25 employees where a collective agreement is in place. Under this law, employees are entitled to two places on the board of directors, retaining scope for deputies, and in companies with at least 1,000 employees, the number of posts rises to three. Again, deputies have the right not only to attend but to speak at meetings.

In the following decades, the Finnish employee representation system thus set out, which looked promising and had raised expectations, actually fell short of them, resulting in disappointments in the later stages of implementation and steps being taken to fortify the legislation. This work was started in 2015 by certain trade unions, led by IL (Insinööriliitto; the Union of Professional Engineers) and Teollisuuden palkansaajat TP (Industrial Employees TP),[8] as well as by Harri Hietala, the yhteistoiminta- asiamies/ Samarbetsombudsmannen (Cooperation Ombudsman) at the time,[9] which resulted in the improved legislation that came into force on 1 January 2022. This time, the new provisions, rather than being in a separate Act, were integrated into the much better-known yhteistoimintalaki/samarbetslage (Act on Co-operation) (1333/2021), significantly adding to visibility and awareness.

6. When referring to law-making in Finland in general, one highly important factor must be mentioned: Finland has, throughout its independence, been eager to follow or even copy the legislation of other Nordic countries, especially Sweden, to maintain a 'western' approach instead of having anything remotely 'eastern'. It has always been considered important to convey this message to the Soviet Union and later Russia, to show it where the country stands and also how the Finns see themselves.

7. Lag (1987:1245) om styrelserepresentation för de privatanställda, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-19871245-om-styrelserepresentation-for-de_sfs-1987-1245

8. Founded in 1993, Industrial Employees TP represents approximately 400,000 employees in industry, trade and related services and, when drafting this chapter, had 14 member unions from all three trade union confederations in Finland.

9. The Cooperation Ombudsman works in conjunction with the Ministry of Employment and Economy and is in charge of supervising compliance with the Act on Co-operation (1333/2021), the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007), the Act on Employee Involvement in European Companies and in European Cooperative Societies (758/2004) and the Act on Employee Funds (814/1989). It also gives advice on their implementation in companies and can levy penalties on a company not fulfilling its duties, according to the Laki yhteistoiminta-asiamiehestä/Lag om samarbetsombudsmannen (Act on Cooperation Ombudsman) (216/2010).

3. Implementation of and experience with BLER systems in Finland

According to official business statistics, 1,030 enterprises with at least 150 employees were registered in 2017 (Official Statistics Finland 2017). In principle, this amounts to the number of companies under an obligation to set up a system of employee representation as described. However, a series of recent studies evaluating the practical implementation of the Finnish system of employee representation concluded that the number is much lower. This helped pave the way for legal reform.

First, a pilot survey was conducted by Industrial Employees TP (2017) of 228 employee representatives from companies with 150 or more employees in Finland. The main results of this survey revealed that only 51% of respondents reported some sort of employee representation system being in place in their company. According to a significant part of the respondents (40%), the main reason for not having a system in place was that the employer did not want one despite its legal duty but, in some cases, respondents pointed to other reasons, including that they did not even know these legal obligations existed. Even among those respondents who said there was a BLER system in place, 35% were not able to say whether it operated according to the law or via an agreement, and an intriguing 23% reported that employee representation took place 'somewhere else' in the company, without further specification. This led to the assumption that it was organised somewhere other than the board of directors, the supervisory board or the executive leadership team, namely in a body situated at a lower level, often only set up for this purpose ('sham systems').

This survey triggered two further major studies, both also commissioned by Industrial Employees TP. The first was conducted in late 2018 and early 2019 before the spring parliamentary elections (Jauhiainen 2019). The second was conducted by Professor Jarkko Harju with the assistance of the author (Harju 2021). The results were also used in a larger international study published in 2021 (Harju et al. 2021). The next two sections present the empirical findings of both studies to evaluate the implementation of the Finnish system and its prospects.

3.1 The 2019 study: sham systems, lack of knowledge and non-application of the law

The 2019 study (Jauhiainen 2019) exposed two main problems with the implementation of the 1990 law and later led to the writing of the government programme of the SDP. The first and main point of action was the issue of employee representation systems that had been falsely formed to circumvent the legal obligations. In these cases, the option of forming a system in line with an agreement had been used to put together sham systems of employee representation outside the real organs of senior management in companies. The second problem brought to light was that the presence of a system could only be confirmed in half the companies surveyed, pointing at an apparently low rate of implementation or poor knowledge of the system by the actors involved.

The survey was conducted on a representative sample of mainly shop stewards and European Works Council (EWC) representatives[10] from all Finnish confederations, on the basis of a questionnaire with a similar, but wider, range of questions than the 2017 survey. This questionnaire was sent by Industrial Employees TP to more than 600 recipients on its mailing list in companies with at least 150 employees. The outcome of only one respondent per company was secured by asking for the name of the respondent's employer and, in the original covering letter, asking respondents to work together to secure only one set of responses per company. This was cross-checked so that each respondent represented one company; ultimately, there were 164 responses.

About half the respondents reported that there was no BLER system in place in the company in which they worked. The main reason they reported for this was that the employer had not wanted one, even though it was a legal duty, in the same vein as the result of the 2017 pilot study. Some respondents did not know the reason for a system not being in place, while others had not been aware of the requirements of the law to have been able to insist on its implementation in their company.

Among the respondents reporting that there was a system in place, three categories or groups arise. A first group concerned more than half the respondents: those that reported a BLER system present in their company, on the basis of an agreement between management and employee representatives with the support of trade unions. Such agreements normally included complementary measures to the legal minimum; for example, a joint agreement on two seats for employees on a company body.

A second group, consisting of a quarter of respondents, reported a BLER system being established according to the law, which meant that no BLER agreement was in place and that their companies followed the legal minimum; that is, only one seat on a company body selected by the employer.

Finally, a third group concerned those reporting 'other models'; namely, a BLER system that did not even fulfil the legal minimum. Even though the previous two options (agreement or the law) were the only ones available to fulfil the legal requirements, nearly one in every ten respondents answered that the system of employee representation had been formed in 'another way'. In their answers to open questions, respondents explained either that the systems established in this 'other way' consisted of structures outside the actual management bodies of the company, or that there was a system in place but it was only a 'shell', virtually without any meetings or other forms of activity. Mainly, this latter type consisted of annual meetings with the chief executive or other sham systems that were set up solely to give the impression of fulfilling the legal requirements, but which did not handle any of the topics required by the law or which simply reported to employees things that had already taken place.

In sum, this 'other models' category concerns systems of employee representation that are entirely bogus. Respondents highlighted that such arrangements were characterised by the rarity of the meetings, the counterpart being someone from Human Resources

10. Usually, all employee representatives cooperate closely together and the roles very often overlap.

(HR) (not the senior manager with decision-making powers over corporate strategy) and that the system was artificially constructed only for this purpose and that representation did not take place on a real decision-making, executive, supervisory or management body.

Looking now at the two first groups of respondents in more detail, there are a number of issues of interest that arise. Those from the first group (with an agreement in place) mostly reported that their agreement established that employee representation would be located within the management team, but with no precise information on the location of that team in the company or whether it covered all business units. About a quarter answered that the seats were on the board of directors while only two respondents had a seat on a supervisory board. It is noteworthy that nearly one-third of respondents in this first group still stated that the place of employee representation was 'somewhere else' other than in the management team, the board of directors or the supervisory board – a key finding in this study.

Quite tellingly, only half the respondents from companies with an employee representation agreement felt that employee representation had an influence on company decision-making or that they were heard on the relevant issues. Where employee representation was arranged by agreement but located 'somewhere else', employee representation was even less influential: only one in three answered they had any influence at all. This was considered the most dissatisfactory model of representation. When operating under an agreement, just over half the respondents said that this model worked well for them, but up to nearly one-third said that it did not.

As for the second group (the 'according to the law' respondents), most reported that the place of employee representation was organised in the company's management team. In nearly a third of responses, the position was on the board of directors of the company. When these respondents were asked about their influence in the company, more than half felt they did have influence although 36% felt they were not able to influence decisions.

When asked about the general functioning of the employee representation model, around two-thirds of this group said that it worked well with only around one-fifth saying that it did not.

In terms of reasons for the lack of influence on general company decision-making, respondents cited in their answers to an open question the lack of meetings or the lack of options for having any actual say in them, either because they were too formal, decisions had already been made elsewhere or, finally, because of mistrust and pre-judgmental negative attitudes from management vis-à-vis the role of worker voice. With regard to decisions being made elsewhere, the comments of respondents are illustrative:

> The meetings of the Steering Group to which the employee representative is invited are mainly presentations of matters that are very limited regarding our influence. Decision-making is completely theoretical, as long as it looks good on paper.

> Employee representatives do not have the opportunity to make any decisions or have any part in making them.
> Employee representation is structured in such a way that employee representatives are not actually making or discussing decisions, but those that have already been made in other forums. (Excerpts from questionnaires; author's own translation)

Concerning the negative attitudes of management, one representative highlighted that '(t)he employer seems to see employee involvement as a mandatory bad and as a general nuisance'.

These comments show – in particular – frustration with the lack of influence and that employee representation was being maintained only because the law required it. There was also a feeling that management saw it as a 'formality' and a 'disruption' to the company's operations. Frustrations also resulted from the failure to provide information and from decisions already having been made elsewhere than where employee representation had been organised. At the same time, replies also referred to other artificial arrangements which the law does not consider appropriate.

When asked what could, in their opinion, resolve this problem, most respondents – both those where local practice went by the law and where an actual agreement was in place – voiced that employee representation should only be organised in a real and actual top executive body of the company if it was to function correctly.

Slightly less than half of all respondents said that they did not have the same rights and obligations as other members of the management body, although this is of course the legal starting point. Furthermore, almost half (46%) of even those respondents where an agreement on employee representation was in place answered that they did not have the same rights and obligations as other board members,[11] which contributed to agreements also being used to reduce the equality of their status.

3.2 The 2021 study: confirmation of the results

Further research analysis was carried out in 2021 for Industrial Employees TP by Professor Jarkko Harju (2021), with the assistance of the author. The main finding here suggests that the law was being rather badly implemented at the workplace: at least one in three companies from which respondents came did not have a system of employee representation in place located in a governing or administrative body. The reasons for this are usually negative attitudes on the part of the employer and a lack of will to organise a system even though it is legally binding and not some sort of voluntary procedure or arrangement. Other reasons include a lack of information and an overall reluctance to promote employee participation in company decision-making processes.

11. In this case, 'obligation' can be understood as a positive thing, namely as equal status with other members of the corporate body.

Additionally, this study found that the previous law allowed for too large a range of implementation; for example, the establishment of institutions without real competence, or so-called 'coffee clubs' – morning coffees once or twice a year with the CEO – among others.

When looking at the main goals of employee representatives, the most important was to influence working conditions. Avoiding redundancies and layoffs were also seen as an important goal. One area where a strong emphasis would have been highly appreciated was in terms of influencing company investments and outsourcing arrangements. Unfortunately, however, this did not feature very high on the list of matters over which representatives had been able to have an effective influence. Respondents felt, overall, that they could make a difference, especially on general matters, and they usually felt they did have an influence on working conditions and wellbeing at work. On the other hand, respondents regarded that they had no real influence on the company's strategic decision-making; this was seen as a major setback with the current system although hope was expressed for improvements following the legal reform.

Among the other key findings were that companies were reluctant to involve employees in core decision-making in the company or in its preparation, which mainly happens within the executive leadership team. Furthermore, the differences in implementation methods between companies were large – in some cases, implementation worked really well but, in others, employee representation was perceived as unnecessary.

Nevertheless, where a well-organised system of employee representation was in place – meaning here one that fulfilled the formal and qualitative requirements of the law – it did improve the flow of information and trust in the workplace. This kind of well-organised system was also much appreciated by all the actors involved in it.

All of this resulted in convincing arguments that the drafters responsible for writing the government programme, and then also negotiating and agreeing it – a quite left-wing government – were quick to accept. Also, the lack of BLER systems that should have already been in place according to the existing law was deemed very worrying. This resulted in a consensus that something needed to be done about the visibility and the overall bindingness of the law and of the whole BLER system in Finland.***

4. Towards a new status quo: the legal reform process of 2019-2021

The prevailing law on employee representation dated from 1990 and received few amendments up to 2019. The Cooperation Ombudsman also tried to raise the matter[12] but, unfortunately, its statements did not really gain traction.

12. See an excerpt from Hietala's report (2015) that suggested the position of employees in company decision-making needed to be strengthened: 'An employee representative must be included on the supervisory board or the board of directors, or at executive leadership level, if the organisation employs at least one hundred (100) employees, and even though the legal threshold for the law's implementation would remain at 150 employees (…) In addition, an agreement on employee representation would be a condition for local agreements and negotiations whenever the employer has at least 30 employees' (Hietala 2015: 13; author's own translation).

The research analysis carried out by Industrial Employees TP did, however, catch the eye of former labour minister Mr Lauri Ihalainen, who wrote the SDP government programme in the spring and early summer of 2019. This significantly helped in the process, especially since the SDP won the parliamentary elections in the spring of 2019 and then formed a government.

Surprisingly, opposition throughout the law-making process from the other (mainly right-wing) parties was rather minimal. One factor contributing to this was that this reform was made as part of the much better-known Act on Co-operation, changes to which were both major and significant, especially on the employer side. This led the employer associations to focus more on the other proposed changes than on those on the employee representation system, the latter of which managed – fortuitously for the employee side – to 'slip through' without much opposition from other stakeholders.

All of this resulted in a strong entry for employee representation in the programme of the Rinne/Marin[13] government. Indeed, the programme announced the following:

> In order to strengthen trust in working life and cooperation between workplaces, the involvement and position of employees will be improved both in the cooperation procedure and in other company decision-making. (…)The provisions of the Act on Personnel Representation in the Administration of Undertakings will be transposed into the Act on Cooperation. (…)An assessment of the scope of the current Act on Personnel Representation, considering the specificities of small and medium-sized enterprises' (SMEs) activities, will be made. (Government of Finland 2019: 136; author's own translation)

After this, the item was swiftly placed in the hands of the legal reform group that was already in place for the Act on Co-operation. The legal reform process proceeded from autumn 2019 to the end of 2021, with the new law coming into force on 1 January 2022.

5. The new system and status of BLER in Finland

The purpose of the new Act 1333/2021 is, very much like its predecessor, to advance the functioning of the company, intensify cooperation between the company and its workers and increase the possibilities of workers exerting influence on the company. With this in mind, the law gives workers the right to participate in decision-making on the board of directors, supervisory boards or at executive leadership level of the company in terms of matters of importance to business operations, finances and the position of workers within the company. The new law was intended to rectify the situation explained above, at least to some extent, especially in demanding that the system of employee representation take place on the actual and real governing and administrative bodies of the company; it should no longer be possible to envisage any 'other place'.

13. Antti Rinne was Finnish Prime Minister from June until December 2019, while Sanna Marin held that position subsequently until June 2023; that is, until after the 2023 parliamentary elections.

The Act continues to concern Finnish joint stock companies, cooperatives and other economic societies, insurance companies, commercial banks, cooperative banks and savings banks that have a regular staff of at least 150 working in Finland. This means that it is mainly applied in private sector companies but also in state-owned companies that fulfil the above-mentioned requirements, as was already the case with the old 1990 law that applied to all company forms with only a few exceptions.

Employee representation on the governing and administrative bodies of a company can still be implemented either by agreement or by the fallback provisions of the law. Hence, it differs from other European countries with these kinds of system in place. The Finnish model was basically chosen to allow companies to decide on the models and practices best suited to them at the level of the most suitable corporate governance bodies.[14] An agreement negotiated locally by employer and employees or their representatives is thus intended to be the primary model for organising such a system and, if no agreement is reached, employee representation must, where workers themselves request it, be arranged in accordance with the secondary clauses of the law. On application, the Cooperation Ombudsman may grant permission to deviate from the method of implementing employee representation but employees then have the right to present the Office with a written statement giving their opinions. Also, employee representation can be set up on boards or within the executive leadership team instead of only at company level.

5.1 Employee representation by agreement

The provisions of what must be included in an agreement (Sections 32 to 40 of the new Act 1333/2021) are intentionally loose with the only things that cannot be deviated from being:

- qualifications: an employee representative must be a legally competent person, employed by the company and who is not bankrupt or under a ban on business operations (Section 32);
- the same rights and obligations: the employee representative is, subject to certain exceptions,[15] to have the same rights and obligations as members of the same body elected or appointed by the company. Such rights and obligations are thus determined by provisions applicable to the type of company in question and by any special rules applicable to the system of representation chosen (Section 34);
- protection against dismissal: the provisions of the Employment Contracts Act (55/2001) on the termination of a shop steward's or an elected representative's role, as well as of that of a member of a Special Negotiating Body, also apply to

14. At least, this was the original starting point, although the subsequent development of the model was less than favourable.

15. One exception is remuneration: employee representatives are entitled to a fee for the hours spent on this work outside their normal working hours, with travelling and accommodation costs being naturally covered (Section 35). However, they rarely receive specific remuneration for this work or the same amount as other board members, to prevent it from affecting their motivation to seek the role in the first place. They may keep any amount of money they receive: there is no voluntary commitment to use it 'for the greater good' as in Germany.

the termination of the employment contracts of employee representatives and their deputies (Section 37);
– confidentiality: confidential matters can be discussed with other employees and/or employee representatives who are affected by the said information, if this is necessary to perform the duty of employee representation (Section 40);
– statutory penalties: the punishment for violating this law is stipulated in the Criminal Code of Finland.[16]

5.2 Employee representation by the minimum requirements of the law

Where the minimum requirements of the law are being followed, the location of employee representation is at the discretion of the company, but it must be either the supervisory board, the board of directors or the executive leadership team that covers all the business units as well as all the employees working in them. This means that, if the company is divided in many business units, more than one employee representation place needs to be set up to cover all of the employees working in the different units. In principle, there neither is, nor has been in the past, any right to deviate from this even though companies have extensively used this freedom to avoid employee representation on bodies with decision-making power. This is one of several factors explaining the relative weakness of the BLER system in Finland in terms of its practical implementation, especially in the past.

There must be a minimum of one and a maximum of four seats (or one-quarter) for employees on the company's appropriate corporate body. Where only one employee representative is appointed to the governing or administrative body, a deputy is also entitled to attend and speak at meetings; this is in contrast to the position under an agreement in which the number of places is not limited but usually consists of just one while rights for a deputy would be unusual.

Employee representatives and the other members of the body have the same rights and obligations, unless otherwise stipulated, and, whenever applicable, the provisions set forth elsewhere for that particular governing or administrative body also apply to the employee representatives. Specifically, employee representatives and their deputies have the right to examine materials on any issue at hand to the same extent as the other members of the given body. They do not, however, have the right to participate in the handling of matters concerning the election, dismissal and contract terms of the company's executive members, employees' terms of employment or industrial action. The employee representative's voting rights may be restricted by agreement.

Employee representatives to governing or administrative bodies may either be agreed, elected or nominated. In the latter case, this occurs mainly in two different ways: via an agreement made among employee representatives (with no employer involvement or influence allowed) in the workplace; or in elections where all employees employed

16. Rikoslaki/strafflag (Criminal Code of Finland) (39/1889). See especially the parts to do with confidentiality: Chapter 38, and its Section 1 – Secrecy offence; and Section 2 – Secrecy violation.

by the company can stand for election and vote, following the procedure laid down for the election of a labour protection representative in the laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta / lag om tillsynen över arbetarskyddet och om arbetarskyddssamarbete på arbetsplatsen (Act on Occupational Safety and Health Enforcement and Co-operation on Occupational Safety and Health at Workplaces) (44/2006). Here, a selection committee is set up for this purpose, with the employee groups referred to in the Act on Co-operation entitled to nominate the candidates in such an election.

5.3 Assessment of the new law

All in all, the new Act 1333/2021 is very similar to the old one, with the important exception of limiting the company's right to decide freely on where the employee representation system should be located where no agreement is reached. Otherwise, the actual bulk of the new 2021 law has stayed quite unchanged, although a few very important amendments have been made to improve the previous version, especially from the employee representative's perspective.

First, the system must be located in a real and functional governing or administrative body in the company, whether organised under an agreement or set up according to the fallback clauses of the law.

Second, the number of employee representatives in such a body cannot exceed the number of management representatives, as was the case in the past when a management representative, for example, only visited a group consisting of employees a couple of times a year. This also refers to voting rights in the management body in question, which has greater bearing these days. Thus, it is noteworthy that, in the multitude of unlawful arrangements that were previously in place to fulfil the demands of the BLER law, no actual voting was ever conducted; they were merely bodies for giving employee representatives information on topics decided by management. This easily resulted in the ratio being mis-shaped with one chief executive or other high-level company representative meeting all the employee representatives in the company, which could number more than 20.

Third, a system that does not fulfil the criteria laid down will no longer fulfil the legal obligations and duties of the employer, whether this is done according to an agreement or set up according to the fallback clauses of the law.

Fourth, the Cooperation Ombudsman now has the duty and the right to see that agreements fulfil the legal obligations, which means that the system put in place must now meet the core standard: its location must be in a real corporate governance body, that also existed in the company prior to the setting up of the representation system; and that this body also handles matters of importance to business operations, finances and the position of workers in the company. If these requirements are not met, a penalty can be levied on the company if it does not correct the situation.

Fifth, there is also a retroactive aspect to this: all systems now in place must fulfil the legal requirements so that even old agreements can no longer get away with implementing an unlawful system.

Sixth, there is also a new section on a right to education and training, according to which employee representatives have the right to the necessary training according to what they objectively need to carry out their tasks.

Last but not least, this law has been moved into the very well-known Act on Co-Operation in which it now constitutes its own separate chapter. This aims to deal with the apparent lack of knowledge of it (Jauhiainen 2019) and also to make it more well-known among employers.

The highlight from a trade union perspective is that employee representation must now take place in a corporate governance body that actually addresses and determines important business, financial and staffing issues; and that such a body is either the company's decision-making board of directors, supervisory board or executive leadership team. Therefore, there are both qualitative and formal requirements for the corporate governance body where employee representation can now be formed – and located – in the company. These apply regardless of whether the employee representation system is organised according to an agreement or under the fallback provisions.

All in all, even if the new form of BLER in Finland is quite well designed institutionally, it does have its drawbacks, especially as it is not always seen as an integral part of employee rights that also benefit the company and, thus, it can still be ignored or belittled by senior management. Otherwise, the system has not – at least, not yet – played a major role in the larger picture of the Finnish industrial relations system, but there are some hopes, expressed mainly by the Finnish trade unions, that this could change in the future. The main wish is to have this system more prominent and influential in Finnish society and better acknowledged and respected by employers.[17] Furthermore, if Finnish companies do move away from sectoral collective agreements towards more sector-limited and local, company-level agreements, other forms of employee representation (different to the collective agreement-based system of shop stewards alone) may become more important on the company scene.

Developments here are ongoing and are being heavily pushed by the Finnish employer side, mainly by EK (Elinkeinoelämän keskusliitto/Finlands Näringsliv; the Confederation of Finnish Industries), and it is still unknown as to where it will lead the Finnish system and the roles played by trade unions.

17. For example, Akava (2022: 21) proposed goals for the programme of the next government, which included stipulations on lowering the BLER threshold.

6. Conclusion

Trade unions deemed a reform of the 1990 Finnish BLER system necessary, given the different shortcomings and problems with its implementation, and the resulting Act 1333/2021 can be seen as a clear victory for the employee side. After the legal reform and the work that is now being put into the renewal of outdated BLER agreements, negotiating new ones and setting up employee representation systems in companies where there were none, the levels of satisfaction with the legal reform and how it turned out are running high, especially among trade unions and employees. They see this as a change for better employee participation and cooperation and also as something new and flexible that they can bring to the negotiating table. Even so, we ought to remember that many negotiations on employee representation systems are ongoing, so it is a little early to provide a final assessment of how matters have progressed.

The main changes are the new and improved formal and qualitative requirements that now must be met, even where a BLER agreement is already in place. In the past, this was not possible and the Cooperation Ombudsman was not able to assert any influence on already signed agreements which only secured a sham system for employee representation in companies. In those cases, the agreement needed to be terminated and a new one negotiated with uncertain end results in a bid to try and bring about change. Now, however, the Cooperation Ombudsman can set up a penalty payment obligation to rectify sham systems drawn from agreements and also demand that new agreements fulfil the requirements. This represents a big step forward.

The retroactive aspect of obliging employers to change wrongly-made old agreements for new ones which do fulfil the requirements can be seen as a great improvement. This also encompasses the extensive right to training and the greater visibility and 'gravitas' for employee representation given its new setting in the context of such a widely known and acknowledged law as the Act on Co-operation.

But, when compared to other Nordic countries, the threshold for having these kinds of employee representation systems in place is still much higher: in Sweden it is only 25 employees, in Norway 30 and in Denmark 35, so Finland falls quite a long way short, with its threshold of 150.

In the wake of the Finnish parliamentary elections in spring 2023, the claim for lowering the threshold for mandatory BLER was raised again. This was on the agenda of the Finnish trade union confederations (Akava, in particular) with the aspiration that it would be taken up again by an incoming SDP government programme. Indeed, the Akava (2022: 21) paper stated as follows:

> In order to improve the flow of information and increase the opportunities for employee influence in companies, the limit on employee representation needs to be lowered. This will lead to improved opportunities for the employee representative to participate in the handling of questions and important matters about the company's business, finances and employees in the governing and administrative bodies in the company. Effective cooperation will also increase the chances of local agreements

being more successful. The requirement for the number of employed employees needs be reduced from the current 150 employees to 50 employees in the (up-coming) Act on Co-operation.

However, the government formed after the 2023 elections is strongly conservative and changed the expectations: a paragraph on evaluating, and thus possibly worsening, the legal achievements of the previous government was added to the government programme. It was non-specific (Government of Finland 2023: 63) in that it only mentioned that a possible change of the revised Act on Co-operation would be assessed in the mid-term meeting of the government, for example when it came to employee representation on boards or other executive leadership bodies. Any further improvements seem impossible in such a context and it is more likely that employees will end up on the defensive. Since so much was achieved during the term of the previous government, the general and well-accepted consensus is to limit new claims to weaken the current legislation.

In contrast to other countries and their systems presented in this volume, actual seats on the board of directors or supervisory boards for employee representatives is only one option for a company to fulfil its legal obligations in Finland. Thus, the system of employee participation may be seen by some as very decentralised and perhaps rather weak, but it still has its benefits which are nationally valued.

One of these is the possibility of being at the heart of decision-making preparations, for example at the executive leadership team, where the voice of employees can truly be heard and where it can also be valued by management. Furthermore, not being liable for decisions made in the board of directors, where one cannot have any real influence on the basis of one or two votes of the total, can be seen as a real benefit.

The Finnish system has its drawbacks and shortcomings. Yet, the process of first trying to reach an agreement on the employee representation system to be applied in a company's governing and administrative body is quite unique and can have real added value in terms of overall cooperation and greater benefits.

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- Act on Employee Representation in the Administration of Undertakings (laki henkilöstön edustuksesta yritysten hallinnossa/lag om personal representation i företagens förvaltning) (725/1990), no longer in force – replaced by new Act on Co-operation (1333/2021)
- Act on Co-operation in Undertakings (laki yhteistoiminnasta yrityksissä/lag om samarbete inom företag) (334/2007)
- Act on Co-operation (yhteistoimintalaki/samarbetslage) (1333/2021), in force.

- Act on Cooperation Ombudsman (laki yhteistoiminta-asiamiehestä/lag om samarbetsombudsmannen) (216/2010), in force.
- Criminal Code of Finland (rikoslaki/strafflag) (39/1889), amendments up to (766/2015) included, in force.

Cite this chapter: Jauhiainen M. (2025) Employee representation on corporate governing and administrative bodies in Finland: a multitude of options serving one goal, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Abbreviations

Akava	Korkeakoulutettujen työmarkkinakeskusjärjestö Akava/Centralorganisationen för högutbildade i Finland Akava (Confederation of Unions for Professional and Managerial Staff in Finland)
BLER	board-level employee representation
CEO	chief executive officer
CFO	chief financial officer
CIO	chief operating officer
COO	chief information officer
CTO	chief technology officer
EK	Elinkeinoelämän keskusliitto/Finlands Näringsliv (Confederation of Finnish Industries)
EWC	European Works Council
HR	Human Resources
IL	Insinööriliitto (the Union of Professional Engineers)
KOK	Suomen Kokoomus/Samlingspartiet (National Coalition Party)
PS	Perussuomalaiset/Sannfinländarna (True Finns)
SAK-FCC	Suomen Ammattiliittojen Keskusjärjestö/Finlands Fackförbunds Centralorganisation (the Central Organisation of Finnish Trade Unions)
SDP	Sosiaalidemokraatit/Socialdemokraterna; Social Democratic Party)
SME(s)	Small and medium-sized enterprise(s)
STTK	Toimihenkilökeskusjärjestö/Tjänstemannacentralorganisationen (Finnish Confederation of Professionals)
TUPO	tulopoliittinen kokonaisratkaisu/inkomstpolitiskt helhetsavtal (Comprehensive Incomes Policy Settlement)

Editor's notes

* The author revised this chapter in April 2024; the details are updated as of that date.

** Finally, the Finnish government has set up a working group to negotiate the details of the reform. Its plan includes lowering the employee threshold to be covered by BLER obligations from 150 to 100 and making the board or executive team the only acceptable locations for BLER. It remains to be seen what the governmental proposal will look like, now expected by spring 2026.

*** Other publications have followed the studies compiled in this section, updating and confirming their general assessment of the Finnish law and its implementation. See:

Ahtela J. (2025) Uinuva jättiläinen: Henkilöstön hallintoedustuksen kehittämisnäkymät ja yhteistoimintalain muutostarpeet [Sleeping giant: development prospects for personnel administrative representation and the need to amend the Act on Co-operation within Undertakings], Ministry of Economic Affairs and Employment.

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Chapter 8
Board-level employee representation in Lithuania: new regulation, limited implementation

Evelina Šilinytė

1. Introduction

Employee participation on company boards is a new and complex process in Lithuania. Following the restoration of Lithuania's independence in 1990, a negative perception of employee representation developed and social dialogue between employers and employee representatives stagnated for a long time. This led to a lack of significant change in this area over an extended period, but this has been changing more recently.

A new Labour Code, adopted by the Seimas (Parliament) of the Republic of Lithuania in 2016, introduced a new legal framework for the participation of employees in the governing bodies of an enterprise, which is the subject of this chapter's analysis. Driven by political parties, the new regulation means a new quality of social dialogue and that employee participation in the management of the company is beginning to develop in Lithuania. Employee participation is ensured only in state and municipal enterprises, according to the Labour Code; however, trade unions are seeking to expand this regulation beyond companies where the owner is the state or a municipality, although its implementation is facing political and practical obstacles.

The chapter is organised as follows. Section 2 explains the historical and industrial relations background, while Section 3 explores the governance structure of enterprises. The chapter continues with an overview of board-level employee representation (BLER) in state and municipal enterprises in Section 4 and an analysis of the eligibility requirements and rights and obligations of board-level representatives follows in Section 5. Section 6 identifies the limited implementation of BLER in practice, after which Section 7 discusses potential future changes to the legislation and Section 8, finally, concludes.

2. Historical and industrial relations background

Lithuania fell under Soviet occupation at the beginning of World War II and continued afterwards with Lithuania being incorporated into the Soviet Union until 1990. That means that an alien political and socioeconomic system was imposed on it since this system, controlled by the Communist Party, differed from its previous history. Independent trade union and employer activities ceased, with trade unions becoming a 'transmission belt' for centralised decision-making. The role of socialist management differed radically from that of employers in a market economy, while in a system

characterised by shortages of goods and products, material support arrangements and social security in general were essentially run by the trade unions.

After the collapse of the Soviet Union, Lithuania made remarkable progress in restructuring the economy, reorienting to new markets and relocating resources to new sectors. Nevertheless, the trade unions have often been seen as a legacy institution of the Soviet era, with the purpose of distributing goods and services among employees (NFS 2017). However, in recent years trade unions have become more active and representative, especially during negotiations on the new Labour Code.

These negotiations started in 2015 and the reform of Lithuania's labour law took place in 2016-17. This was a reform of the social model covering not only labour relations but also employment policy and the social insurance system. The new Labour Code, adopted on 14 September 2016, entered into force on 1 July 2017, replacing the old version which had been adopted in 2002.[1] The negotiation process gave trade unions a good start in increasing their popularity and representativeness. However, the model which is reflected in the Labour Code was constructed taking into account that trade unions in Lithuania represent only about 10% of the total workforce (Davulis 2017: 103-116). Accordingly, the Labour Code sought to give trade unions as few rights as possible on the grounds that they are not representative and do not represent all workers. Nevertheless, strengthening social dialogue is one of the key objectives of labour law reform.

Before the new Labour Code was adopted, employee representation in the management of an enterprise was regarded in the context of information and consultation procedures conducted with employee representatives – works councils, trade unions and sometimes even employees themselves (Davulis 2018). Essentially, this was constituted from the process by which employees, or their representatives, were first informed about issues that are fundamental to them, with consultation taking place thereafter (Kasiliauskas 2008). Subsequently, and despite being considered the most significant stage of employee involvement in the management of an organisation, the system did not comprehend involvement by employees in actual decision-making; that is, the process by which employees are involved in the work of organisations, becoming participants in the decision-making process.

To understand employee participation at board level, it is necessary first to explain the system of employee representation in Lithuania. The Labour Code provides for a three-tier representative model involving workplace representatives, works councils and trade unions: workplace representatives act in companies with fewer than 20 employees and have the right to information and consultation;[2] works councils must mandatorily be elected in enterprises employing more than 20 employees; and only where a trade union

1. Labour Code of Lithuanian Republic 2016-09-19, No. XII-2603 https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr [accessed 9 November 2021].

2. If the average number of employees is lower than 20, employees' rights of representation may be exercised by a representative, operating outside formal trade union structures, who is elected at a general meeting of employees for a term of three years. Unless otherwise provided, all the provisions of the Code and other laws and labour law provisions governing the rights, duties and guarantees of the works council and its members apply to workplace representatives.

acts at enterprise level and has a membership density of one-third does it replace the works council's functions regarding information and consultation.[3] Freely established trade unions, which have an exceptional right to collective bargaining, only gain the right to information and consultation where they reach this level of density. Indeed, under the Labour Code the rights of the formal representatives of employees are split in two: all information and consultation, and participation in the management of the enterprise, is granted to works councils while collective bargaining is the preserve of trade unions.[4] Accordingly, the right to appoint employee representatives to the board of an enterprise is also given to works councils: only in enterprises where trade unions are the sole form of representation does a member of a trade union have the right to become a board-level employee representative.

The right of employees to appoint representatives to the board of an enterprise is a novelty in labour relations in Lithuania and represents a completely new possibility for employees to be involved in management: that, in particular cases, employees would have the right to allocate a part of the members of the supervisory body in an enterprise, establishment or organisation. This change was proposed by a working group of high-ranking labour law academics led by Professor Tomas Davulis who drafted the Labour Code, in the context of a project initiated by the Ministry of Labour and Social Security and financed by the European Commission. This project sought to develop a new social model in Lithuania based on the principle of 'flexicurity' (Davulis 2017). Flexicurity is intended to strike the right balance between flexible job arrangements and secure transitions between jobs so that more and better jobs can be created.

The trade unions[5] insisted on opening negotiations on the new social model and the draft of the Labour Code, and negotiations did indeed get underway in LR Trišalė taryba (LRTT; the Tripartite Council of the Republic of Lithuania),[6] but they were under significant pressure from the government and the scholars who had sought to ensure that the drafts of the new social model, including the Labour Code, had been sufficiently well prepared that they did not need additional changes. Discussions at that point became focused primarily on the basic rights of employees and trade unions because, in the first draft of the Labour Code, those rights were reduced to the minimum enshrined in international and European Union (EU) standards. Consequently, the trade unions prioritised such basic rights as working time, working conditions, salaries and the rights of employee representatives, including on information and consultation. This, together

3. According to data provided by Valstybinė darbo inspekcija (VDI; the State Labour Inspectorate), works councils are elected in 51% of all functioning enterprises, trade unions are active in 11% and there are no employee representatives in 37%. https://www.vdi.lt/PdfUploads/Monitoringui_2022-05-30.pdf

4. With the exception of the public sector, where information and consultation rights are also the preserve of trade unions.

5. Trade union membership in Lithuania is distributed between two main confederations: LPSK (Lietuvos Profesinių Sąjungų Konfederacija; Lithuanian Trade Union Confederation); and Solidarumas (Lietuvos Profesinė Sąjunga 'Solidarumas'; 'Solidarity' Trade Union); see Fulton (2021).

6. LRTT is a body formed by agreement between the social partners and composed of an equal number of members of the trade union confederations, employer organisations and government representatives (seven each). By mutual agreement, the LRTT advises the Seimas and the government on social, economic and labour policy issues. Equality of membership is very important and, therefore, alternate members are provided for in each group. See https://socmin.lrv.lt/lt/administracine-informacija/lr-trisale-taryba?lang=lt#Kas%20yra%20tri%C5%A1al%C4%97

with a lack of available personnel during the process, was the reason why the specific provisions regarding BLER were not a focal point either there or in the discussions in the Seimas. Nevertheless, politicians who supported the trade union position regarding the provisions of the new Labour Code also supported the idea of employee participation on the board of directors during the discussions in the Seimas.

The initial version of BLER on which the negotiations took place was a little different from the final one: the right to appoint board-level representatives was given first to works councils but participation at board level was not limited only to state and municipal enterprises. Lithuanian trade unions supported the basic purpose behind this provision – of giving the right to employee representatives to participate in the management of the enterprise; however, they opposed this right being given only to works councils, operating at company level, and not to the trade unions which operate also at national, sector and regional level. During the negotiations, trade unions succeeded in arguing that all employee representatives – trade unions, works councils and workplace representatives – would have the right to appoint representatives at board level. In contrast, the representatives of employers – drawn from LPK (Lietuvos pramonininkų konfederacija; Lithuanian Confederation of Industrialists); AIF (Asociacija Investors' Forum; the Association Investors' Forum); LPPARA (Lietuvos prekybos, pramonės ir amatų rūmų asociacija; Association of Lithuanian Chambers of Commerce, Industry and Crafts); and LDK (Lietuvos darbdavių konfederacija; Lithuanian Employers Confederation) – opposed this development, claiming that employee representatives were not sufficiently qualified to work on a board of directors.

The provision currently in force regarding BLER is thus the result of compromise. Trade unions and employer representatives agreed to try this approach first in state and municipal enterprises and to return to the question later with a view to widening the scope of the provision allowing employee representatives to participate on the boards of directors of all types of enterprise. Trade unions understood that it is strategically important for employees to participate in the decision-making process at the highest level in the enterprise but, given employer opposition, the key to why this provision (with the negotiated changes) entered into force was support from the government which, at the time, featured an LSP (Lietuvos socialdemokratų partija ; Social Democratic Party of Lithuania) majority.

The major items to note regarding the compromise are that BLER exists only on the boards of state or municipal enterprises; and that either works councils or trade unions (where the trade union is established and has a density level reaching one-third of employees) may appoint representatives there.

3. Governance structure of enterprises

The changes introducing BLER contained in the 2016 Labour Code were accompanied by new legislation on state and municipal enterprises.[7]

A joint stock company is obliged to have a supervisory board or a board of directors. However, for a limited liability company, either one of these is optional: where a supervisory board has not been established, no other bodies have the right to implement its functions; where a board of directors has not been established, it is the head of the company who has the right to carry out its functions. Thus, both a supervisory board and a board of directors may be formed in joint stock or limited liability companies, including those owned by the state or municipality (according to the provisions of the Law on Joint Stock Companies).[8]

In contrast, the Law on State and Municipal Enterprises allows state and municipal enterprises only to have single-tier boards – that is, a board of directors. According to this Law, the functions and the competences of the board of directors are the following:

1. determining the structure of the enterprise;
2. providing the institution implementing the rights and obligations of the owner of the enterprise with conclusions regarding the draft strategy of the enterprise, projections of its distributable profit (or loss), estimates of its annual income and expenditure, plans for its annual acquisitions and borrowing, as well as various reports;
3. approving the rules of remuneration and promotion of the company's employees;
4. determining the performance indicators of the enterprise where the establishment of these is not assigned in the articles of association to the institution implementing the rights and obligations of the owner;
5. making decisions regarding the establishment of branches and representative offices of the enterprise and the termination of their activities;
6. performing other functions assigned to the competence of the board of directors by the laws and the articles of association.

Collegial bodies, namely boards of directors, must be formed in public interest enterprises (usually these are classified as large enterprises) and in enterprises that are important for national security in accordance with the Law on the Protection of Objects Important for Ensuring National Security of the Republic of Lithuania.[9] Both these categories of enterprise are state-owned companies. Other state or municipal enterprises may form collegial bodies on an optional basis.

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7. Lietuvos Respublikos valstybės ir savivaldybės įmonių įstatymas (Law on State and Municipal Enterprises) 1994 No. I-722. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.15154/asr [accessed 20 November 2021].

8. Lietuvos Respublikos akcinių bendrovių įstatymas (Law on Joint Stock Companies) 2001 No. VIII-1835. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080 [accessed 20 November 2021].

9. Lietuvos Respublikos nacionaliniam saugumui užtikrinti svarbių objektų apsaugos įstatymas (Law on the Protection of Objects Important for Ensuring National Security of the Republic of Lithuania) 2002 No. IX-1132. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.189498/asr [accessed 20 November 2021].

4. BLER in state and municipal enterprises

In the cases and procedures established by Article 210 of the Labour Code and the Law on State and Municipal Enterprises, employee representatives have the right to appoint a part of the members of the governing body of the state or municipal enterprise in accordance with the regulatory legislation or the articles of association of these enterprises.

The obligation to have BLER only exists in state and municipal enterprises where the sole or main shareholder is the state or municipality and whose legal status is specific; in the private sector or in regular joint stock or limited liability companies, even if owned by the state or municipality, BLER is optional and may only be established where provided for in the articles of association of the entity. Inevitably, these are very similar in style to state or municipal enterprises, despite their different legal status, so trade unions are trying to change the provisions of the Labour Code to ensure that BLER is also envisaged in joint stock and limited liability enterprises owned by the state or a municipality.

It is the articles of association of state and municipal enterprises that determine precisely how many board members and employee representatives there should be. However, the law states that a board of directors must have at least five board members while employee representatives must make up not less than one-fifth of the number; that is, no fewer than one. The Labour Code and the Law on State and Municipal Enterprises are both clear and quite prescriptive on this question: employee representatives must be appointed to the boards of these enterprises. Furthermore, the Law on State and Municipal Enterprises only allows single-tier boards to be established, so there is no place for manipulation or for decisions as to which board will be attended by employee representatives.

The management of an enterprise covered by the law on BLER or whose articles of association provide for the right of employee representatives to appoint members to the board or supervisory board must notify employee representatives of their right to appoint such members at least 20 working days prior to the date of the formation, or new term of office, of the board in question. If employee representatives fail to do so within this period, the head of the enterprise has the responsibility of notifying them of their right to do so and providing a further time limit of at least five working days. If representatives fail to appoint members within this further period, their places are filled according to the same procedure as for the other members of the board.

The deadlines for the appointment of board-level representatives are thus quite short. This could be understood as an interference in the right of trade unions to appoint them or, alternatively, as a highly formalistic procedure which should be read in the context of trade unions not having, in the views of employers, the capacity to represent employees.

According to paragraph 5 of Regulation 631-2015,[10] no set selection procedure applies as regards employee representatives, but such enterprises are obliged to ensure that the appointed representatives meet the legal general and specific requirements. A selection commission, created on an ad hoc basis and largely staffed by representatives of government ministries and departments, has the responsibility of checking that the person appointed meets the specific requirements prescribed by the law and that are explained in Section 5. Regulation 631-2015 also provides that the company has the right to check all the available information on the candidates retained by the selection commission (be they civil servants, employee representatives or others) before they are appointed to the board. According to the Labour Code, only employees of the same company can hold board-level positions. Consequently, the termination of an employment contract terminates the board-level position.

Finally, Article 211 of the Labour Code states that only employees with a representative function in the company can appoint members to the board or supervisory board of their enterprise on behalf of employees, where such a right applies. Article 163 of the Labour Code sets out that social partnership (social dialogue, information, consultation, collective bargaining) may take place at company level and, in line with Article 180, when employers with legal identity engage in social partnership, they must be represented by their board or by persons authorised thereby. According to the Labour Code, a board-level employee representative can only be placed on the board of an employer which is engaged in labour relations.

In this context of general and specific requirements for candidates and of a strict timeframe (25 days) for the selection of a suitable candidate, the right of employee representatives to appoint a board member looks like a work of fiction. Finally, such a candidate must be approved by the selection commission so it may also be said that employee representatives do not directly appoint a member of the board of directors: they can only propose a candidate who is then appointed, or not, by that commission.

5. Eligibility requirements and the rights and obligations of BLER representatives

As said, all appointments of board members – including, nowadays, board-level employee representatives – must comply with the general and specific requirements established in the Law on State and Municipal Enterprises. Until August 2021, Regulation 631-2015 included that the candidate had to meet the following general requirements to be a board member:

- have a university degree or equivalent;
- be unrelated to those whose performance of their duties as independent members of a board of directors would give rise to a conflict of interest;

10. This Regulation was adopted by the government and is legally binding. Dėl Kandidatų į valstybės ar savivaldybės įmonės, valstybės ar savivaldybės valdomos bendrovės ar jos dukterinės bendrovės kolegialų priežiūros ar valdymo organą atrankos aprašo patvirtinimo (Regulation of the Selection of Candidates for the Supervisory or Management Body of a State or Municipal Enterprise) 2015 No. 631. https://www.e-tar.lt/portal/lt/legalAct/obf2e080199b11e58569be21ff080a8c/asr [accessed 20 November 2021].

– the person must not have been withdrawn from a board within the last five years due to the improper performance of duties.

Moreover, the right to perform the duties of the post or associated functions must not be withdrawn or restricted.

Paragraph 10 of the Regulation further provided that the candidate had to meet the specific requirements established by the decision of the entity which had initiated the selection process as a means of attracting to the board those with the most appropriate competencies and who were best able to contribute to the achievement of the strategic objectives of the enterprise.

In August 2021, however, the Regulation was changed and paragraph 10 was repealed because it was in conflict with the Law on State and Municipal Enterprises. Since then, the requirements for candidates are as prescribed only in the Law on State and Municipal Enterprises, Article 10 of which provides that only a candidate meeting all the following general requirements can be a member of a board:

1. has a university degree or equivalent;
2. is of good reputation;
3. does not have connections with others that could give rise to a conflict of interest.

A candidate for membership of a board is not considered of good repute if, in accordance with the procedure established by the law, he/she has been convicted of a serious or very serious criminal offence; which is an offence relating to property, property rights and proprietary interests, the economy and the conduct of business, the financial system, public service and the public interest, the rule of law, public safety or the administration of government; or if he/she has a conviction that has not been expunged or revoked.

The law provides that specific requirements for board membership may be determined by the institution implementing the rights and obligations of the owner of the enterprise. In the case of state or municipal enterprises, the owner is the state or municipality acting through the competent authority, namely the relevant ministry or municipal council, which may lay down specific requirements for candidates not prescribed in the law or the articles of association and which have power only as a result of them being official decisions. This gives such authorities a wide discretion over who can be a candidate.

In practice, candidates are required to have competence in at least one of the following areas:

– finance (financial management, financial analysis or audit);
– the specific field of activity of the enterprise;
– strategic planning and management;
– management/corporate governance;
– English, French or German language skills;
– working effectively in a team;
– setting and persevering with ambitious operational objectives;
– possessing a high level of responsibility, analytical thinking and efficiency;

– managing large flows of information, systematising data, drawing conclusions and presenting them.

Board members appointed by employee representatives have the same rights and obligations as other members of the board of directors, as stated in Article 210 of the Labour Code. Members appointed by employee representatives keep their employment contracts and continue working in the company. These members do not have any additional or special protection, except for that accorded to trade union leaders as prescribed in Article 169 of the Labour Code: additional time-off for trade union matters; special time-off for training and education; and protection against dismissal.

According to the Law on State and Municipal Enterprises, the board may take decisions and a meeting shall be deemed quorate when more than half of its members are present. A member of the board of directors may vote in advance in writing, in accordance with the procedure laid down in the articles of the undertaking, in favour of or against a decision. Members of the board who have voted in writing in advance shall be deemed present at the meeting as regards those matters on which they have voted in this way. A decision of the board of directors may be adopted on the vote of at least two-thirds of those participating in the meeting.

6. Limited implementation of BLER in practice

Lithuanian state-owned enterprises can take one of three legal forms: 1) state enterprises (Valstybės įmonės – statutory state-owned enterprises), which have no shares and can only be owned by the state;[11] 2) private limited liability companies (uždarosios akcinės bendrovės) whose shares cannot be traded publicly, unless laws provide otherwise; 3) public limited liability companies (akcinės bendrovės – joint stock companies), whose shares can be sold and traded on a stock exchange.

This section focuses only on statutory state-owned enterprises: further work is needed on the other legal forms of state-owned enterprises and municipal entities[12] where there are several types of enterprise and where the rights and obligations depend on the precise legal status.

At the end of 2015, there were 128 directly state-owned enterprises in Lithuania but, following a number of restructurings, only 66 remained in February 2018 (OECD 2018: 55).

In 2018, the OECD (Organisation for Economic Cooperation and Development) issued recommendations to Lithuania on corporate governance, one of which was to move forward with plans to convert statutory state-owned enterprises engaged in economic activities into limited liability companies (OECD 2018: 11). Paragraph 139.1 of the Eighteenth Programme of the Government of the Republic of Lithuania, prepared in

11. At the end of 2015, there were 79 statutory state-owned enterprises in Lithuania.

12. There are 60 municipalities in Lithuania.

2020 in order to implement the OECD recommendations, provides for a review of the types of forms of legal entities in which the state operates and for the elimination of those forms that enable the state and municipalities to compete with the private sector in sectors of the economy that do not require state support.

The Lithuanian government subsequently developed a State Enterprise Reorganisation Plan in 2021 establishing clear plans and timelines streamlining the legal and corporate forms of statutory state-owned enterprises. This Plan was changed in 2023[13] extending the deadlines for the reorganisation, some of which were postponed until 2024. Oro Navigacija (Air Navigation Service Provider), Klaipėdos jūrų uostas (Port of Klaipėda) and Lietuvos automobilių kelių direkcija (Lithuanian Highways Directorate) were transformed into joint stock companies as a part of the restructuring process from January 2023. However, this process came to a halt in 2024. The new ruling majority since the October 2024 parliamentary elections – or at least one part of it – advocates the opposite approach, proposing to buy back energy company shares from private investors and restore them to state ownership, a stance that has introduced significant political and economic uncertainty.

According to data from August 2023,[14] eight statutory state-owned enterprises remain in Lithuania after state reorganisation – thus with the legal duty to include employee representation in the governing body – while one enterprise is currently in the process of liquidation. All have a board of directors according to their articles of association.

However, as a result of the state gradually moving towards the centralisation of enterprise management, it is transforming state-owned enterprises into other legal entities – joint stock companies and private limited liability companies. Because of the change in the legal status of statutory state-owned enterprises, and their transformation into joint stock companies or private limited liability companies, Article 210 of the Labour Code no longer applies and their governing bodies do not have the duty, according to the law, to include employee representatives. The Labour Code's provision on employee representation continues in place, but the number of companies to which it applies kept falling. Since 2024, there are only five statutory state-owned enterprises to which Article 210 of the Labour Code applies. After the legal status of the company has been changed, other rules and laws are applicable for this type of legal entity and, if it is no longer acting as a statutory state-owned enterprise, the requirement to have employee representatives in the board of directors is no longer relevant; an employee representative can be appointed to the board only according to a collective agreement. This could be one of the negotiation requirements for the national level collective agreement.

Looking at where employee representatives sit until now on governing bodies, there are five which have this in place in line with the law: Lietuvos oro uostai[15] (Lithuanian Airport

13. https://eimin.lrv.lt/uploads/eimin/documents/files/VV%C4%AE%20Pertvarkos%20planas_VPA20230731%2Bpriedas.pdf

14. https://governance.lt/apie-imones/atviri-duomenys/; https://governance.lt/apie-imones/vvi-sarasas/

15. https://www.ltou.lt/lt/apie-lietuvos-oro-uostus/valdymas-ir-struktura/valdybos-nariai

Authority); Registrų Centras[16] (State Registry Centre); Regitra,[17] a body registering vehicles and driving licences; Valstybinių miškų urėdija[18] (State Timber and Logging Company); and Turto bankas,[19] a centralised state property management company. The situation is different regarding the board of Ignalina, the nuclear plant: according to data officially available on the website,[20] there is an employee representative on the board although he is not a member of the trade union or the works council but a director of a private joint stock company.

According to information gathered by the LPSK, the poorest situation regarding employee representation at board level before the reorganisation was in the state transport sector where, in almost all companies,[21] there were provisions regarding employee representation on the board although none had actually been implemented.

The rules regarding employee representation on the board are the same for all state enterprises; however, the state has never been willing to implement the requirements it itself had created. Sometimes it happened that the directors of enterprises were also unwilling to see an employee on the board and, as a result, they created obstacles to appointing one. This kind of situation happened in Lietuvos oro uostai (LTOU; the Lithuanian Airport Authority), for instance, when the company started a public procedure to select the employee representative, posting an ad on websites regarding the general and specific requirements for this position. Owing to the intervention of LPSK, this process was interrupted.

There is one example of a private company collaborating with trade unions to establish an employee representative at supervisory board level: this is the case of Energijos Skirstymo Operatorius A.B. (ESO; Energy Distribution Operator), a private joint stock company, whose main activities are in electricity and natural gas distribution and supply assurance, and which has an employee representative on the supervisory board in line with its articles of association. This is not the rule but rather the exception in the Lithuanian private sector which, in this case, was possible most certainly as a result of the strong social dialogue and partnership existing in this particular private company.

7. Recent legislative changes

A draft amendment to the Labour Code regarding this new aspect of social partnership was registered in February 2018.[22] The draft occurred at the initiative of LPSK and was

16. https://www.registrucentras.lt/p/1024

17. https://www.regitra.lt/lt/imone/valdyba-ir-komitetai

18. https://vmu.lt/kontaktai/

19. https://turtas.lt/apie-mus/valdymas-ir-struktura/

20. https://www.iae.lt/struktura-ir-kontaktai/valdyba/29

21. There were six state-owned companies in the transport sector, namely: Kelių priežiūra (Road Maintenance Directorate), Vidaus vandenų kelių direkcija (Directorate of Inland Waterways), Klaipėdos valstybinio jūrų uosto direkcija (Directorate of Klaipėda Port Services), Lietuvos oro uostai (LTOU; Lithuanian Airport Authority), Oro navigacija and Lietuvos automobilių kelių direkcija.

22. Draft amendment to the Labour Code No. XIIIP-1723 https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/6abe5f901ac911e88a05839ea3846d8e [accessed 25 November 2021].

supported by individual members of parliament but was not picked up by a specific political party. It provided the possibility for trade unions and employers to act at parent company level where employees forming the trade unions are formally hired by different employers but which, nevertheless, fall within the governance of a single parent company. This amendment was discussed at the LRTT and all social partners agreed it was useful and meaningful. However, parliament halted the adoption procedure, awaiting a package of other amendments to the Labour Code being discussed by the social partners at the LRTT, and the draft remains pending.

In October 2020, elections to the Seimas resulted in a right-wing majority[23] and it then depended on the social partners if discussions on this amendment were to be picked up again at parliamentary level. There was an agreement between the trade unions and the employer organisations not to lobby the Seimas separately for amendments to the Labour Code. First of all, they negotiated amendments between them and only where all parties agreed, did they deliver the result of those negotiations to the LRTT and, later, to the Seimas. This practice of social dialogue has continued to this day.

Amendments to the Law on State and Municipal Enterprises were registered in 2019[24] by a few members of parliament from Lietuvos Laisvės Sąjunga (Liberalai) (Lithuanian Freedom Party (Liberals)). They proposed some limitations on the rights of board members appointed by employee representatives which would deprive them of the right to chair a board of directors and limit the number of employee representatives on the board to one person. However, this draft amendment was still pending and no procedures had been started regarding it at the Seimas when the changes made as a result of the reorganisation of statutory state-owned companies were adopted. The draft amendment was anyway unlikely to be adopted by the Seimas, but it has now definitely lost any kind of relevance.

A second set of amendments to the Law on State and Municipal Enterprises,[25] the Labour Code[26] and the Law on Joint Stock Companies[27] was also registered in 2019 at the initiative of the trade unions. The purpose of this was to ensure the participation of employee representatives on the boards of directors of joint stock companies and limited liability companies where the main owner was the state or a municipality. This differed from the regulation of the Labour Code, because it would have been applicable to companies where the owner was the state or a municipality. The LRTT started discussions regarding these amendments, but these remain pending.

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23. A coalition government was formed led by TS-LKD (Tėvynės sąjunga – Lietuvos krikščionys demokratai; Homeland Union – Lithuanian Christian Democrats), with LP (Laisvės partija; Freedom Party) and LS (Liberalų sąjūdis; Liberal Movement). See https://www.lrs.lt/sip/portal.show?p_r=35354&p_k=2

24. Draft amendments to the Law on State and Municipal Enterprises No. XIIIP-3691. https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/f84187c0a3d011e9aab6d8dd69c6da66 [accessed 25 November 2021].

25. Draft amendments to Law on State and Municipal Enterprises No. XIIIP-1775. https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/b5441a2025f311e88d2dc91c9285185a [accessed 25 November 2021].

26. Draft amendments to Labour Code No. XIIIP-1774. https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/3b61dcb025f311e88d2dc91c9285185a?jfwid=-n0odounmm [accessed 25 November 2021].

27. Draft amendments to Law on Joint Stock Companies No. XIIIP-1776. https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/3fd965a025f411e88d2dc91c9285185a [accessed 25 November 2021].

A draft amendment to Article 210 of the Labour Code was registered on 12 October 2023.[28] This provided a novelty in that Article 210 would apply to budgetary institutions and public bodies. The amendment came into force in January 2024, entitling employee representatives from these legal entities to appoint part of their collegial management or supervisory boards, but the implementation of this amendment has not been monitored to date.

However, there was a question regarding those state-owned enterprises that were limited liability or joint stock companies as regards whether Article 210 would apply to them. As mentioned above, there are only five statutory state-owned enterprises – the main target of Article 210 of the Labour Code – since 2024.

BLER has existed in the Lithuanian labour law system for less than ten years and it is important to mention that trade union members are not currently being trained to ensure their participation and representation at board level. Those trade union members who are representatives on the boards of enterprises communicate with others on a regular basis, particularly with the trade union committee, to form the positions they take on the board. However, there is no specific requirement regarding communication or decision-making established by trade unions and no set system is in place to favour the exchange of experience between board-level employee representatives. Low salaries, the Covid-19 pandemic and a lack of personnel are the reasons why trade unions have not been very active in promoting the BLER question recently. However, employee participation at board level is part of LPSK's long-term strategy adopted at its Congress on 6 May 2022 (LPSK 2022) and the question will, eventually, be on the table.

8. Conclusion

Employee participation on company boards is a new institution in Lithuania, introduced with the revised Labour Code. Employees are involved in corporate governing bodies almost exclusively in state and municipal enterprises. Lithuanian trade unions understand the meaning and benefits of employee participation at board level but, unfortunately, there are only limited examples of this right in the country and, up to now, employers' representatives have not been in favour of extending the principle to all companies.

Despite employee participation in the governance of state and municipal enterprises being mandatory, some do not have employee representatives on their boards. There is little evidence of employers and trade unions being particularly proactive in getting back to discussing this question. In the light of practice, it is possible to conclude that the previous government of Lithuania was unwilling to ensure the right of employee representatives to be appointed even to the boards of state enterprises. To avoid the duty to appoint board-level representatives, in line with the OECD recommendations,

28. Draft amendments to Labor Code No. XIVP-2853(2) https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/54842580690a11eea182def3ac5c11d6?positionInSearchResults=0&searchModelUUID=864fe884-4b9c-45ce-a201-e0804eea2a96

it initiated instead the restructuring of statutory state-owned enterprises. This plan aimed to reorganise them into other legal forms, thereby rendering inapplicable the requirement for BLER.

Since the 2024 elections, the new ruling majority, with a coalition government led by the social democrats, introduced some expectation of change and called a halt to the restructuring plan. Yet, the government's resignation and the collapse of its coalition have, for the time being, left the direction of politics uncertain on the issue of BLER.

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- Labour Code of Lithuanian Republic 2016-09-19, No. XII-2603.
- The Law on State and Municipal Enterprises 1994, No. I-722.
- The Law on Joint Stock Companies 2000, No. VII-1835.
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- Draft amendment of the Labour Code No. XIIIP-1723.
- Draft amendment to Law on State and Municipal Enterprises No. XIIIP-3691.
- Draft amendments to Law on State and Municipal Enterprises No. XIIIP-1775.
- Draft amendments to Labour Code No. XIIIP-1774.
- Draft amendments to Law on Joint Stock Companies No. XIIIP-1776.
- Draft amendments to Labor Code No. XIVP-2853(2) .

Cite this chapter: Šilinytė E. (2025) Board-level employee representation in Lithuania: new regulation, limited implementation, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Appendix
List of state companies covered by the law of State and Municipal Enterprises 1994, No. I-722*

- VĮ Ignalinos atominė elektrinė. https://www.iae.lt/struktura-ir-kontaktai/valdyba/29
- VĮ Valstybinės miškų urėdijos. https://www.vivmu.lt/lt/valdyba/
- VĮ Regitra. https://www.regitra.lt/lt/naujienos/patvirtinta-nauja-regitros-valdyba
- VĮ Registrų centras. https://www.registrucentras.lt/p/1024
- VĮ Lietuvos oro uostai. https://www.ltou.lt/lt/apie-lietuvos-oro-uostus/valdymas-ir-struktura/valdybos-nariai
- VĮ Indėlių ir investicijų draudimas. https://www.iidraudimas.lt/lt/administracine-informacija-0/apie-mus/
- VĮ Turto bankas. https://www.turtas.lt/lt/struktura-ir-kontaktai/kontaktai/
- VĮ Mūsų amatai. http://musuamatai.com/37-articles/290-valdyba

* See list of state-owned companies at: https://governance.lt/apie-imones/vvi-sarasas/

Abbreviations

A.B.	akcinė bendrovė (Lithuanian public limited liability company)
AIF	Asociacija Investors' Forum (the Association Investors' Forum)
BLER	board-level employee representation
ESO	Energijos Skirstymo Operatorius A.B. (Energy Distribution Operator)
EU	European Union
LDK	Lietuvos darbdavių konfederacija (Lithuanian Employers Confederation)
LP	Laisvės partija (Freedom Party)
LPK	Lietuvos pramonininkų konfederacija (Lithuanian Confederation of Industrialists)
LPPARA	Lietuvos prekybos, pramonės ir amatų rūmų asociacija (Association of Lithuanian Chambers of Commerce, Industry and Crafts)
LPSK	Lietuvos Profesinių Sąjungų Konfederacija (Lithuanian Trade Union Confederation)
LS	Liberalų sąjūdis (Liberal Movement)
LSP	Lietuvos socialdemokratų partija (Social Democratic Party of Lithuania)
LRTT	LR Trišalė taryba (the Tripartite Council of the Republic of Lithuania)
LTOU	Lietuvos oro uostai (the Lithuanian Airport Authority)
OECD	Organisation for Economic Cooperation and Development
TS-LKD	Tėvynės sąjunga – Lietuvos krikščionys demokratai (Homeland Union – Lithuanian Christian Democrats)

Part 4

The neoliberal imprint

Chapter 9
BLER in Ireland: a long climb from here to there!

Michael Doherty

1. Introduction

This chapter sets out to account for the very limited impact that board-level employee representation (BLER) mechanisms have had in the Irish context. Consequently, it takes a somewhat different approach to several others in this volume, whose goal is to present and discuss the diverse significance and practice of BLER in Europe. The aim is to contribute to the knowledge on BLER in Ireland from a quite particular perspective, which is not to explain in a technical and empirical fashion the (limited) functioning of BLER in Ireland but rather to focus on why BLER is seen as a rather irrelevant institution and to assess whether, and how, this state of affairs might be altered. Ireland represents an example of a liberal market economy (Hall and Soskice 2001), a model in which worker participation at board level is a somewhat alien concept.[1] As a result, the approach taken is to use Ireland as an example of an industrial relations (IR) model in which, historically and structurally, BLER has never taken root.

The chapter begins by outlining, in Section 2, the limited context in which BLER operates in Ireland, while Section 3 describes how worker participation is not seen as compatible with key institutional features of the Irish IR model. Section 4 then examines in detail the most significant component of the failure of worker participation mechanisms to become established in Ireland: the state's historical dependence on (and, arguably, obsession with) attracting foreign direct investment, especially from corporations based in the United States (US). Section 5 looks at the attitude of Irish employers and the trade union movement towards BLER. Section 6 examines whether there might be global and local factors at play that offer some hope for a brighter future for worker participation, and BLER, in Ireland notwithstanding recent global instability, driven, in this context, by a new, protectionist US administration. Finally, Section 7 concludes. The chapter mostly draws on academic and policy literature reviews but also conducts some legal analysis. This is supplemented with a small number of discussions[2] held with three respondents well-versed in the history of BLER in Ireland: a trade union representative; a representative of an employer consultancy organisation; and an academic expert.

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1. Indeed, the very use of the word 'participation' here (also used in the Irish BLER legislation) betrays a liberal market economy mindset; 'representation' in this world connotes practices or structures which act for workers in negotiations with (often conceived of as 'negotiations against') employers. The idea of workers being 'represented' in corporate management thus seems incongruous.
2. The term 'discussions' (rather than 'interviews') is used as these took place over many months in many different locations during 2021-2022 and were ongoing dialogues, not exclusively on the topic of BLER, rather than formal interviews. All three 'discussants' are experienced Irish IR observers/practitioners.

2. BLER in Ireland: a short story

The story of BLER in Ireland is a brief one. As O'Kelly (2017b) points out, the Irish Congress of Trade Unions (ICTU) called for a study into the introduction of industrial democracy at its Annual Delegate Conference in 1967 while the employer representative organisations – the Federated Union of Employers (FUE) and the Confederation of Irish Industry (CII) – produced a report on industrial democracy in 1970.[3] During the 1970s, before and after entry into the European Economic Community in 1973, there were debates in Ireland, and in the United Kingdom (UK), about introducing a system of worker participation at corporate level. An influential committee in the UK, the Bullock Committee, produced a report[4] which, while favouring the retention of the single-tier board structure, also supported the idea of worker directors on the boards of larger companies (Lewis and Clark 1977). The report was, unsurprisingly, controversial and never acted upon. The debate around it in the UK, however, featured many fundamental issues of industrial democracy (e.g. the single-tier versus two-tier board structure; the role of trade unions in nominating worker directors; and the question of whether worker directors would undermine the independence of collective bargaining) which were 'broadly representative of historical employer and labour standpoints regarding worker representation at board level in Ireland' (Wallace et al. 2020: 271).

Legislation on the issue was enacted in Ireland in 1977 in the form of the Worker Participation (State Enterprises) Act 1977. As the title of the Act suggests, BLER was limited to the public sector only; it remains the case today that there is no statutory requirement for BLER in the private sector in Ireland. The 1977 Act provided for worker directors on the unitary boards[5] of seven state-owned companies[6] and set out detailed procedures for their nomination and about the election process, giving the nomination rights to trade unions (Section 11) and setting the number of worker directors at a minimum of three and a maximum of one-third (Section 23).[7] The legislation was updated and amended by the Worker Participation (State Enterprises) Act 1988. O'Kelly (2017b) notes that, following the enactment of these two pieces of legislation, and resulting from the extension of the worker director concept to other state-owned enterprises and agencies, at one stage there were worker director members of over twenty boards.

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3. The ICTU is Ireland's only trade union confederation. The FUE and CII were the main employer representative bodies until they merged in 1993 to form the Irish Business and Employers Confederation (Ibec). The ICTU and Ibec are the peak social partner organisations in Ireland.

4. The Committee actually produced a majority report which supported retaining the single-tier structure and a minority report, produced by the employer representatives on the committee, which favoured a second-tier board in which workers could participate.

5. The unitary board is a key feature of the Irish corporate governance system (as it is in the US and UK). A unitary board is entrusted with the making of both corporate strategic decisions and the monitoring of corporate performance and activities of all kinds. By contrast, a two-tier board (characteristic for example of the German corporate governance system) separates out functions so that supervisory and management functions are dealt with at different levels and by separate groups of individuals (see Belcher 2003).

6. Bord na Mona (these days an energy company); Córas Iompair Éireann (CIE; a railways company); the Electricity Supply Board (ESB); Aer Lingus (airline); B&I Shipping Company; Comhlucht Siúicre Éireann (Irish sugar company); and Nitrigin Éireann (chemicals production).

7. The norm became four worker directors out of a board of 12 (which included the chief executive).

However, debates and policy action relating to BLER waned during the 1980s and 1990s. The idea of worker directors was never seriously entertained in relation to private sector organisations, as it simply did not feature in discourse in liberal market economies (especially given the influence of the policies of Reagan in the US and Thatcher in the UK, and the rise of a small, but influential, political party in Ireland, the Progressive Democrats, which espoused a neoliberal economic model and was in government for 15 of the 20 years between 1989 and 2009). Furthermore, BLER never even took root fully in relation to state-owned enterprises; as a Think-tank on Action for Social Change (TASC) report put it:

> It was originally hoped that the legislation would be extended beyond the small number of state-owned companies included in the Worker Participation Act. However, although a number of other companies and state agencies were brought under the legislation, the model did not extend across the public sector as intended. (TASC 2012: 34)

One major development which has had an impact on the extent of BLER in the Irish public sector has been the privatisation of previously state-owned companies. One of the clear examples here is Aer Lingus, the former state-owned airline, which began to be privatised in 2006 and is now part of the International Airlines Group (Fulton 2021). Currently, there are only twelve state enterprises in which boards feature worker directors, and new agencies established by the government in recent years (e.g. the Health Services Executive (HSE), which is the largest employer in Ireland with some 130,000 employees) do not have a legal requirement for BLER arrangements (O'Kelly 2017a).

BLER, then, does not loom large (indeed it barely casts a shadow) in the Irish industrial relations landscape. It does not feature to any appreciable extent in national policy debate and there is very limited research on BLER in Ireland.

O'Kelly (2017b) notes that the ICTU participated in a European Commission funded project in 2010 (the Informia Project) which investigated the nature and extent of employee involvement arrangements in four EU Member States, including Ireland. An ICTU survey for the project showed that IR or human resources strategies were generally not discussed in detail at board meetings at which worker directors participated and that worker directors perceived their influence on the outcome of discussions as relatively limited (O'Kelly 2017b).

The TASC study in 2012 examined the role and contribution of the worker director in six different companies and organisations (TASC 2012). The research concluded that the contribution of worker directors was positive, particularly in relation to the detailed operational knowledge brought, the importance of having a 'contrary voice' on the board and their role in acting as a two-way conduit for information in times of conflict. However, while the study recommended that the worker director model be extended further across the public sector, a majority of respondents felt that it would not be appropriate in the private sector. Although the study is of a very small scale, it is interesting that, even here in one of the very few areas of Irish IR where BLER exists, it was seen by a majority as a 'public sector' mechanism. This finding reinforces the

prevailing view (explored further below) that BLER is not easy to reconcile with the liberal market 'Anglo' IR model.

In the next section, we move to look at the Irish IR system more generally to locate BLER within the broader institutional framework; or, perhaps more accurately, to begin to explain its absence.

3. Worker participation and the Irish model

The Irish system of industrial relations, derived as it is from that of the UK, has traditionally been classified as 'voluntarist', meaning that there has been a preference for joint trade union and employer regulation of employment relations in which legal intervention is relatively absent. Voluntarism is premised on freedom of contract, what Kahn-Freund, in the employment context, referred to as that great 'indispensable figment of the legal mind' (Kahn-Freund 1977: 18), and on freedom of association whereby the employment relationship is essentially regulated by free collective bargaining between worker and employer representative groups. In such a model, there is no rejection of public intervention, or labour law, but the role of the state is limited primarily to providing a supportive framework for collective bargaining and the 'principal purpose of labour law is to regulate, support and restrain the power of management and organised labour' (Kahn-Freund 1977: 4). The characterisation of the Irish model as voluntarist has come under stress in recent years as the legislative regulation of working conditions has increased dramatically (due, among other things, to the legislative obligations of European Union (EU) membership).[8]

However, legislation generally provides for individual employment rights (minimum wages, working time) and the model remains that collective employment relations between worker and employer representatives is generally not subject to legislative intervention but left to the parties themselves. In terms of collective employment rights, Ireland provides notably weak legal protection for collective bargaining and for collective worker representation in general. The Irish Constitution, in Article 40.6.1, protects the right of freedom of association but trade unions in Ireland enjoy no rights to be recognised for bargaining purposes by an employer. Thus, while employees are free to join a trade union, they cannot insist that their employer negotiate with any union regarding their pay and conditions. Collective bargaining in Ireland, therefore, is seen as normative and collective agreements are usually not legally enforceable as they do not generally intend to create legal relations. The law does intervene in collective employment relations in some, limited, circumstances (relating to sectoral collective bargaining mechanisms; see Franca and Doherty 2020).

Worker representatives, then, as is typical in the ('single channel') Anglo model, must rely on IR 'muscle' (not any legal or state-mandated rights) to achieve their aims. In Ewing's (2005) terms, the Irish trade union movement leans heavily towards the

8. From 1990 to 2020, 43 major labour law acts were passed; a huge volume for an area of law unused to statutory regulation. Approximately half of these were required, or heavily influenced, by EU law.

'representational' function of trade unions, which sees collective bargaining as a private market activity conducted by unions, usually at the level of the enterprise, as agents of a tightly circumscribed bargaining unit. Trade unions rely, for power and influence, on membership and density levels (and on membership subscriptions). While this model may not be typical of many other models in Europe, where unions benefit from the erga omnes extension of collective agreements (which makes agreements binding on all workers and employers in a sector or industry), the trade union movement does retain significant political, social and economic influence. There has never been a Thatcherite attack on union rights, as in the UK, and, to date, there has never been a major anti-union public policy in Ireland. Neither has union legitimacy been challenged by any political party. However, in this model, declining trade union density (estimated currently at approximately 26%, down from a peak of more than 60% in 1980) represents a serious challenge to the influence of an autonomous union movement.

The voluntarist model, with its very weak legal protections for collective representation, unsurprisingly sees little place for legally mandating worker participation at all, let alone at corporate board level. In the Anglo world in which Irish IR sits, the emphasis of worker representation remains very much on the 'single channel of representation' in which trade unions, where they exist of course, continue to play the dominant role of representing worker interests (Hyman 1997).[9]

Trade unions might have a direct role in relation to BLER through negotiating collective agreements which guarantee board-level worker representation (Munkholm 2018). Such agreements, however, are virtually non-existent in Ireland. An interesting example was reported in 2004 when, following a dispute at Tara Mines, union members voted in favour of proposals on pay and conditions which included the election of a union shop steward to the Tara board of directors. At the time, the Swedish-based mining multinational, Boliden, had just taken over the mine and the deal was apparently part of an attempt 'to put in place more of a Swedish-style IR model, in the sense of moving towards a co-operative participative model, and away from adversarialism and conflict' (Dobbins 2004: 12).[10]

A significant focus of EU law measures on worker participation over the past 30 years or so has been on extending rights of information and consultation to workers. Domestically in Ireland, a focus for a considerable period in the 1990s and the first decade of the 21st century was on developing 'partnership structures' at the level of the workplace. By the time the financial, banking and social crisis struck in 2008, neither of these forms were seen as having much impact in terms of worker participation.

In terms of EU-driven measures, it is important to note that there is little tradition of legally grounded employee rights to information and consultation or to input into organisational decision-making in Ireland. Prior to 2006, the principal statutory

9. Single channel representation means that workers are represented solely by union or non-union representatives (or have no system of representation at all). Dual channel representation involves representation both through trade unions and other structures outside those of trade unions (for example works councils).

10. This seems to be a very isolated example, however; there is no information that could be found on how this proposal progressed and there is no worker director currently on the board at Tara Mines.

obligations to inform and consult with employees arose under EU-inspired legislation dealing with European Works Councils (EWCs) (of which more below), collective redundancies, health and safety, and the transfer of undertakings. This approach to informing and consulting employees represents what Gospel et al. (2003: 346) term an 'event driven disclosure model'. The features of such a model are that worker rights are triggered by a specific employer-initiated event (e.g. redundancy) and therefore information and consultation rights tend to be temporary and ad hoc. This model leans towards a focus on procedural justice in a specific context, is palliative rather than preventative and the rights granted under it have no continuous impact on the employment relationship. This contrasts with an 'agenda driven disclosure model' whereby the trigger lies within a bargaining/consultation agenda and where information and consultation rights cover a range of interlinked issues and involve an ongoing relationship between employers and employees.

The transposition of the 2002 Information and Consultation Directive (by means of the Employees (Provision of Information and Consultation) Act 2006) very much followed in the Irish minimalist tradition. Despite the existing lack of legal support for voice and involvement arrangements in Ireland, it came as little surprise to many that the Irish and UK governments initially opposed the Directive. Once it became clear its passage was inevitable, Ireland and the UK pushed for maximum 'flexibility' in terms of its requirements (Geary 2006). Therefore, wide scope was given to the social partners in each Member State to negotiate terms different to the 'standard rules' contained in the Directive, and sanctions for non-compliance that meant decisions in breach of the Directive would be suspended were omitted. The Act itself put no obligations on employers to begin negotiations regarding information and consultation procedures (requiring employees to trigger the provisions); did not allow any explicit role for external union officials or external expert assistance in negotiating the establishment of information and consultation arrangements; and, very contentiously, explicitly allowed for direct (i.e. non-collective) information and consultation arrangements (Doherty 2008). Unsurprisingly, Cullinane et al. (2017: 655) concluded:

> … even where valid opt-ins are secured and the legislative framework is self- consciously initiated by employees, the regulatory pathway is porous and non- union employers can elude its ambit. This imposes a considerable burden on the agency of non-union employees to ensure regulatory requirements are upheld. In the Irish context, such outcomes were attributable to the wider institutional context of pliable EU regulatory transposition.

In terms of domestic measures, the principles of workplace partnership, as framed in the tripartite national social partnership agreements between 1988 and 2010, seemed to be premised on the need for a move away from the event driven model of informing and consulting employees to a more agenda driven model, which sees employees as important stakeholders with rights and responsibilities in respect of the organisation's performance and operation. The national agreement 'Partnership 2000' defined workplace partnership and identified nine areas in which the concept would be particularly apposite (including opportunities for employees to contribute to meeting the challenge of global competition; cooperation with change, including new forms of

work organisation; representational arrangements (the role of the union and employee representatives and facilities for effective representation); and financial involvement). Workplace partnership was defined as:

> … an active relationship based on recognition of a common interest to secure the competitiveness, viability and prosperity of the enterprise. It involves a continuing commitment by employees to improvements in quality and efficiency; and the acceptance by employers of *employees as stakeholders* with rights and interests to be considered in the context of major decisions affecting their employment.
>
> Partnership involves common ownership of the resolution of challenges, involving the direct participation of employees/representatives and an investment in their training, development and working environment. (Paragraph 9.15 of 'Partnership 2000'; emphasis added)

The discourse of workplace partnership, therefore, was framed in terms of solidarity, inclusiveness, participation and workplace democracy. However, quite quickly, evidence emerged which suggested that the penetration and depth of workplace partnership in Ireland was relatively limited (O'Connell et al. 2004). Even in unionised workplaces (and in public services, where partnership arrangements were usually most prevalent), research indicated that unilateral management decision-making remained the most common approach to handling change (D'Art and Turner 2002). Importantly, even where positive workplace partnership experiences were reported (see Roche and Teague 2014), practices seemed to work best in the private sector when closely tied to 'operational issues' (e.g. health and safety) and in the public sector where separated out from 'core' issues (e.g. modernisation programmes).

A further issue of note here is the concept in Irish Law of 'excepted bodies'. These are defined in the Industrial Relations Acts 2001-2015 and are, essentially, internal (non-union) employee forums that can negotiate terms of employment with an employer. The existence of such bodies (in law) provides a framework for employers to set up worker participation mechanisms the terms of which are set almost entirely by the employers themselves. There are no available data on the prevalence of such bodies in Ireland (as their existence is an internal company matter) or how they operate, the scope of matters negotiated, what agreements if any are concluded, and so on. However, the existence of this legal mechanism may (in part) explain the paucity of any discernible employer interest in developing other, innovative structures offering deeper participation opportunities.

What these examples illustrate is that, given Ireland's IR traditions and institutional foundations, employee participation has been historically absent and attempts to implement practices of worker 'say' in strategic matters have been unsuccessful. In the next section, we will explore in more detail a specific issue that throws light on this: the dependence on foreign direct investment and the influence of (largely US-based) multinational employers.

4. Boston or Berlin?

The Irish model of industrial relations, voluntarist and traditionally adversarial in nature, is located, of course, in a common law legal system (derived from the UK) whose emphasis, as alluded to above, is on freedom of contract. It will not be a surprise to readers to state that worker and union movements in Anglo common law systems have a somewhat jaundiced view of the law, the courts and the judiciary. Indeed, it has been persuasively argued that the Irish judiciary, in a number of major areas of constitutional interpretation unrelated to labour relations, frequently tends to defer to individual values, particularly individual property rights (including the right to run a business), over those of the community or collective groups (Gwynn Morgan 2001). The strained relationship between collective labour rights and the common law courts was, in fact, discussed by the Irish Supreme Court itself in a recent decision (a 2021 challenge to the constitutionality of the Irish labour tribunal system; *Zalewski v WRC*). In that decision, Mr Justice O'Donnell referred to the historical desire in the field of industrial relations for a resolution of disputes by bodies other than courts 'which, particularly in the late 19th and early 20th centuries, were perceived as hostile to employees, trade unions, and collective action' (para 38). Mr Justice MacMenamin referred to the history of the interaction between the common law and the field of industrial relations as being 'particularly strained… The individual, contractual, focus of what was at one time called the Law of Master and Servant was not easily reconciled with the collectivist approach of the developing trade union movement' (para 40).

Importantly, in the context of BLER, it is also necessary to acknowledge the corporate law traditions of the Anglo common law system. The dominant view within corporate law theory in the common law world has been that of shareholder primacy. This is the view that companies, as separate legal entities run by their directors, must act primarily in the interests of shareholders, above the interests of other parties (including, of course, employees); moreover, this legal duty to shareholders has commonly been framed as one that prioritises shareholders' financial interests (McMahon and Richardson 2021). This can be contrasted with stakeholder theory, which suggests that companies should be run in a way that addresses the interests of a much wider range of stakeholders beyond just their shareholders (and their financial profits), including employees (McMahon and Richardson 2021). Of course, one way to ensure the interests of employees as stakeholders are taken into account is through a mechanism such as BLER. However, it is unquestionable that the shareholder primacy model (with its focus on share prices and the stock market) is the dominant approach in the Irish corporate law framework, with little emphasis placed on wider stakeholder interests. This is the dominant framework of many countries, including the US.

Ireland, therefore, in its labour law and corporate law traditions shares many institutional features with the US (as well as historical social and cultural links, given the large Irish-American population in the US). However, as an EU Member State, the Irish IR model is also strongly influenced by the European Social Model. In 2000, the Minister for Enterprise, Trade and Employment (and leader of the Progressive Democrats) gave an oft-quoted speech, including the following extract:

> Geographically we are closer to Berlin than Boston. Spiritually we are probably a lot closer to Boston than Berlin … What really makes Ireland attractive to corporate America is the kind of economy which we have created here. When Americans come here they find a country that believes in the incentive power of low taxation. They find a country that believes in economic liberalisation. They find a country that believes in essential regulation but not over-regulation. On looking further afield in Europe they find also that not every European country believes in these things … (quoted in Fischer 2014: 81)

A debate has long raged (in many areas of social, economic and cultural life) as to whether Ireland is, was, or will be 'closer to Boston than Berlin', but the argument here is that, in the context of BLER, 'Boston' has had a huge impact on the very 'un-Berlin' model of employee participation that exists. There are two aspects to this. One has already been discussed – in both Ireland and the US, the influences of the IR model and the legal system derived from the UK are clear: both are uncomprehending of, and hostile to, worker participation on corporate boards.

However, US multinational corporations have also had an overt influence on the development of the laws and practices of worker participation in the Irish context. Ireland is a small, open economy whose fortunes depend to a large degree on those of the international economy. Since protectionism was abandoned in the 1960s, the country has become increasingly dependent on attracting foreign direct investment (FDI). Different 'phases' of FDI have been identified (Kirby 2002) but, over the past 30 years or so, the main characteristic has been an influx of firms engaged in the production of 'sophisticated' products like software, electronics and engineering, and pharmaceuticals; the supply of internationally traded services, in particular financial services; and, in very recent years, 'big tech' – Google, Meta, Microsoft, Intel and Apple all have large-scale operations in Ireland (the European headquarters of both Google and Meta is located in Dublin). According to the Irish Central Statistics Office, inward investment into Ireland from the US stood at over 1 trillion euros in 2019; it is estimated that 20% of all private sector employment in Ireland is directly or indirectly attributable to FDI (IDA Ireland 2021).

There are many different reasons for the scale of US FDI in Ireland and various strategies have been pursued by the state (largely through its agency, the Industrial Development Authority Ireland) from the period of the 1960s to the present. Initially these focused on vigorous industrial incentive packages consisting, in particular, of a very low corporate tax regime and generous capital and training grants (Bradley 2000). In the late 1990s and early 2000s, governmental agencies shifted from attracting new greenfield start-ups towards the retention of existing multinational corporations (MNCs) (Collings et al. 2005).

However, in terms of IR, the drive to secure FDI in the face of competition from other states resulted in a profound, and deliberate, shift in policy by the Irish state. In the 1970s and early 1980s, state industrial development agencies actively encouraged incoming companies (as well as domestic, primarily manufacturing, companies) to conclude agreements with particular unions: 'preproduction agreements' or 'sweetheart deals'

as they came to be known. However, a change in policy occurred in the mid/late 1980s when state agencies began 'marketing' Ireland as a non-union environment (at least in part as a response to the refusal of US MNCs to recognise unions and their position that any statutory recognition measures would be unacceptable to them) (Lavelle et al. 2008). More latterly, the absence of worker participation mechanisms such as works councils have been part of the 'sell' in attracting FDI.

Research has also shown a clear link between the change in national industrial policy and a significant increase in 'double breasting' amongst US MNCs in Ireland. This refers to the practice whereby multi-establishment organisations simultaneously operate establishments on both a union and non-union basis (Gunnigle et al. 2009). A number of studies argue that managements, at both local and global level, have proactively initiated double breasting as a strategic ploy to increase management prerogative and better position subsidiary operations to attract new investment from corporate levels; in Ireland, Gunnigle et al. conclude that local management have taken advantage of:

> ... a permissive regulatory industrial relations environment to go 'union free' in new sites. Conveniently, this strategy dovetails with efforts to optimally position the Irish operations to attract new, higher order investments from corporate level (Gunnigle et al. 2009: 72).

The impact that US MNCs have on the wider IR system should not be understated. It is well known that US employers, in their behaviour towards unions, tend to be more aggressive and overtly hostile than employers in most other developed, western countries (Cullinane et al. 2017). However, a crucial feature to note here relates to the power of MNCs to influence public policy. Crouch (2011) has described what he refers to as the 'corporate takeover of the market'; the idea that neoliberalism (at least in Anglo-American capitalist societies) has resulted in the preferential treatment of large organisations (rather than the rigorous enforcement of competition laws) and the market dominance of global corporations (rather than small and medium-sized enterprises) which the modern state is too weak to regulate effectively.

The role of powerful non-state actors like the American Chamber of Commerce Ireland (the representative body for US companies based in Ireland at both government and industry level) has become ever more pronounced. This was demonstrated to staggering effect when the Irish government, prompted by the Chamber and large individual US MNCs, first opposed, and later succeeded in watering down, the Directive on information and consultation (I&C) rights (I&C Directive) (Doherty 2008). As noted above, one of the most contentious provisions of the transposing Irish legislation allows employers to comply with the law by ignoring or bypassing employee representative structures (union and non-union) and providing direct information and consultation arrangements; given the lobbying history, this has become known in Ireland as the 'Intel clause' (Doherty 2008).

The US MNC sector, of course, represents only a part of the Irish economy and employs only a fraction of the Irish workforce.[11] However, the argument here is that its impact on public policy when it comes to labour law and IR reform is huge; we have seen this directly in the case of the transposition of the I&C Directive (and there is also some evidence of a 'demonstration effect' in the number of indigenous or non-US based MNCs adopting strident non-union policies) (Gunnigle et al. 2002) but we can also see this in the absence of legal collective bargaining rights and any legal or institutional support for BLER. Legal intervention in Irish IR has largely been ruled out in recent years as potentially endangering inward investment. The next section looks at the implications of this for worker representatives.

5. Scaling Mount Everest

The Irish state has essentially favoured a rather permissive IR regime which seeks to minimise the legal obligations on employers to facilitate worker participation and which is located within a corporate legal system in which shareholder value is the dominant concern. At the same time, it maintained a national social partnership (corporatist) process for over 20 years, until 2010 (Doherty 2011), and continues to meet and consult regularly with the social partners on areas of shared concern affecting the economy, employment and the labour market through the Labour Employer Economic Forum (LEEF). Ibec participates in LEEF (as it did in the social partnership process) and sectoral employer groups have a strong role in social dialogue in certain areas (e.g. the Construction Industry Federation).

However, it seems that the social partners have become increasingly unable to discipline, in particular, recalcitrant employers. Writing almost two decades ago, Sheehan (2008: 106) commented that the notion in Irish IR of the 'good employer', which engaged in collective bargaining with trade unions, abided by procedural agreements and respected the state's dispute resolution agencies, had been fundamentally altered over the previous two decades. The question of powerful US MNCs is one aspect but, even by 2008, Sheehan noted an increasing tendency amongst powerful indigenous employers, which previously would have abided by the 'rules of the game', to refuse to engage with third-party dispute resolution bodies or to accept non-binding recommendations from the Labour Court. We have also seen in recent years numerous legal challenges to the state's long-established sectoral bargaining mechanism system in sectors such as construction, electrical contracting and catering (see Doherty 2012; 2013a; Eustace 2021), often taken by loose groupings of relatively small employers, and all of which demonstrate the increasing fragmentation of employer interests. As a result of a decision of the Irish Supreme Court in a case involving the powerful indigenous MNC Ryanair in 2007, many employers have established internal worker representation mechanisms

11. Note, however, the report in the Irish Times (1 June 2023) that just three firms accounted for a third of all Irish corporate tax receipts between 2017 and 2021; the report states that the three firms are likely to come from a shortlist that includes Apple, Google, Microsoft, Meta, Pfizer and Intel. Irish corporate tax receipts totalled 22 billion euros in 2022 (https://www.irishtimes.com/business/2023/06/01/just-three-firms-account-for- third-of-corporation-tax-receipts-report-finds/).

('excepted bodies'), explicitly excluding trade unions, the independence of some of which is a matter of some debate (Doherty 2013b).

All these issues, while seemingly only indirectly related to BLER, point to the single most important reason why this concept is not high on the agenda of the Irish trade union movement. Where BLER exists (Section 2), it is limited to certain state-owned enterprises and the current model (based on legislation from the 1970s and 1980s) has completely stagnated. This is partly due to the dwindling number of state enterprises covered (following privatisation and the failure to extend the model to any new state agencies) and partly to the model proving largely irrelevant from the labour perspective (see O'Kelly 2017b; TASC 2012). The union movement has not expended time or resources on regenerating it, preferring instead to focus on building density and bargaining power more generally. If we conceive of worker involvement in corporate decision-making at board level as being towards the apex of the industrial democracy mountain, Ireland is very much stuck at base camp. The Irish trade union movement is in a position where worker rights to information and consultation, let alone the right to be represented by a trade union in collective bargaining negotiations, are either extremely weak or non-existent. In such circumstances, it is little wonder that the focus is on beginning the climb rather than planting a flag at the peak.

As one experienced IR observer has put it (in conversation with the author), 'board-level participation is simply not in the DNA of the Irish model'.[12] Recent events have underlined this. A number of new state agencies have been set up without any BLER mechanisms (there is no legal requirement, of course, to have such mechanisms). Furthermore, a formal request to appoint worker directors to the boards of these agencies was met by a terse response from the government department responsible saying 'there simply was not enough time to do so'![13]

The Irish single channel model of representation, overwhelmingly via trade unions (notwithstanding the establishment by some employers of internal worker forums), has focused on the quantitative issues of pay and other core working conditions. There is little tradition amongst Irish worker representatives of being involved in strategic decision-making at enterprise level or sharing the responsibility for such decisions with other board members (Franca and Doherty 2020). If the key determinants of worker representatives' institutional power are state intervention and legal rules (Gumbrell-McCormick and Hyman 2013) then, as Jensen and Meckling (1979) have argued, it is unlikely that companies would introduce board-level worker representation without a legal obligation to do so. The legal and institutional context is vital in determining the model of worker participation that exists, but also has a significant role in influencing actors' responses; in a system where a strategic, board-level role for worker representatives is seen as unrealistic, it makes little sense for trade unions to invest in preparing members for such roles.

12. ECR1.
13. AE1.

6. The times they might be a-changin'?

The tale of BLER in Ireland, to this point, reads rather like a horror story. However, we need to consider some potential harbingers of change: there are important factors at play (globally and at EU and domestic level) that might point towards momentum for a renewed focus on worker participation in Ireland.

First, we have seen above that the legal and policy environment has not been hospitable to worker participation measures in recent years. In 2021, however, the government[14] established a High-Level Working Group (made up of senior representatives of the peak social partners, the ICTU and Ibec, as well as government nominees) to review collective bargaining and the IR landscape in Ireland. Although worker participation and BLER were not mentioned specifically in the terms of reference for the Working Group, its very establishment pointed to an awareness by the state of the need for labour relations policy to be modernised and, perhaps, to play a more central role in the policy mix. The Working Group published its report in October 2022.[15] For the union movement, this report – which focuses on ways to increase collective bargaining coverage – provides a pathway to scale at least the lower peaks of the industrial democracy mountain which might leave room for more strategic engagement with BLER in the future. The report has been emphasised by the trade unions in Ireland as an important aspect of the collective bargaining action plan the Irish government has pledged to produce by end-2025 (in line with obligations under Directive 2022/2041 on adequate minimum wages; see below).

Importantly, too, in 2021 the Irish Supreme Court upheld the constitutionality of a key erga omnes sectoral bargaining mechanism (Eustace 2021). What is noteworthy is the Supreme Court's discussion of the 'social market economy' principle introduced by the Treaty on the Functioning of the European Union (TFEU); while not extensive, this indicated a willingness to move away, in collective labour law cases, from the traditional common law focus on individual freedom of contract towards a greater recognition of the collective labour law principles inherent in the European Social Model. This willingness was confirmed by a decision of the Supreme Court in 2024 (*H.A. O'Neil Limited v. Unite the Union*). Here, the Supreme Court acknowledged that trade unions and their members may have traditionally adopted a view that the 'dice were loaded against them in the law courts' (per O'Donnell CJ, para 82). In this case, which focused on the rights of employers to seek injunctions restraining strike action, however, the Supreme Court came 'very close to an explicit recognition of a constitutional right to strike within the Article 40.6.1. protection of freedom of association' (Eustace 2025: 44). Significant attention must be paid, therefore, to the recent jurisprudence of the Supreme Court, which is seen as much more 'union friendly' (see IRN in 2024).

14. A coalition made up of the centre-right Fianna Fáil and Fine Gael (historically the largest political parties in Ireland) and the left-leaning Green Party.

15. https://enterprise.gov.ie/en/publications/publication-files/final-report-of-the-leef-high-level-working-group-on-collective-bargaining.pdf

Second, we must consider moves at EU level to reinforce (reinvigorate?) the European Social Model under the Juncker and Von der Leyen I European Commissions, as expressed in the European Pillar of Social Rights. Although the Pillar has been criticised (Lörcher and Schömann 2017), it must be acknowledged that measures adopted under, or alongside, it do seem to represent a general push towards more 'worker involvement' in setting terms and conditions of employment (e.g. Directive 2022/2041 on adequate minimum wages and the initiative to provide greater collective bargaining rights for some self-employed). In relation to the Directive, a noteworthy theme is the emphasis, particularly in Article 4, on the institutional role that collective bargaining plays in ensuring adequate minimum wage protection for workers. As Lübker and Schulten (2021: 16) point out, this represents a 'fundamental paradigm shift' in the European Commission's stance on employment regulation, hitherto based on the idea that collective bargaining systems operate as barriers to the operation of the free market; they highlight that this shift was driven partly by the political considerations of EU leaders as they sought to give effect to the concept of Social Europe. This aspect of the Directive was referenced widely in the Irish High-Level Working Group report. Importantly, given the focus on FDI in this chapter, any EU-level solution on bargaining rights could mitigate concerns regarding the impact that any local Irish legislative moves would have on foreign direct investment as the same rules will operate throughout the EU (Sheehan 2019). The same argument would apply, of course, to any similar developments in relation to worker participation.

A separate, but related, third development which could have an impact on Irish policy in this area is that of Brexit. The simple fact of the UK's withdrawal from the EU leaves Ireland as essentially the only Anglo common law Member State left in the Union (with the exception of (partially) Malta and Cyprus). Allies to form blocking coalitions to worker involvement legislation (see the story of the I&C Directive) will be harder to find in the future.

A very concrete impact of Brexit is being felt immediately in terms of worker participation as a large number of organisations that had based their European Works Councils in the UK switch their legal base to Ireland. The Irish legislation transposing the EWC Directive (the Transnational Information and Consultation of Employees Act 1996) has been the subject of an official complaint, by the trade union SIPTU (Services, Industrial, Professional and Technical Union), to the European Commission (Sheehan 2021a). The union argues that the Directive has been inadequately transposed, pointing among other things to the lack of any adequate penalties for companies in Ireland who disregard the legislation. The legislation had, prior to Brexit, never been tested in Ireland and, in what is now a familiar refrain, Sheehan (2021a: 10) notes that, when the Directive was transposed, 'a chief concern for the government of the day was that multinationals would not be discouraged by legislation that might even appear to be offering a "backdoor" to collective bargaining'. It seems inevitable, however, that the legislation will have to be amended and updated (the EWC Directive itself is due to be revised shortly, in any case).

The greater presence of EWCs in Ireland will also, potentially, open up a different role for trade union officials as 'external experts' to EWCs. This is a development that might

incentivise Irish unions to consider greater investment in producing officials who focus not only on the traditional quantitative issues of pay and other core working conditions but who also have a longer-term focus on high-level strategic corporate policy. Indeed, in early 2025 the ICTU established a European Office (and appointed a senior 'European Officer'); one of the key functions of the office will be to provide training programmes for EWCs, activists and staff on EU institutions, legal issues and financial matters. Note too the requirements in recent EU legislation for more multi-faceted roles for 'worker representatives'; for example, Directive 2023/1970 (pay transparency) gives worker representatives roles in relation to conducting joint pay assessments, and Directive 2024/2831 (platform work) mandates information and consultation with worker representatives in relation to the introduction and evaluation of automated monitoring systems/automated decision-making systems.

Fourth, given the focus in this chapter on the influence of US MNCs, it is worth noting, also, that the US government, along with 135 other countries (including, eventually and reluctantly, Ireland), supported the OECD-sponsored reform of the international tax system in late 2021, which ensures that MNCs will be subject to a minimum 15% tax rate from 2023 (Taylor and Marlowe 2021). Internationally, too, there is increased corporate focus on ESG (environmental, social, governance) goals. While the 'E' aspect has, understandably, attracted most attention, corporations, and crucially investors, are increasingly paying attention to social issues like labour practices and governance, including board diversity and executive pay (Castañón Moats and DeNicola 2021). It may be that the ideological distance between Boston and Berlin on some core issues is reducing.

Finally, the Covid-19 pandemic that dominated global thought from early 2020 must be taken into account here. It is at least arguable that there is a renewed political focus on labour market fairness and employee rights, which is exerting a discernible impact on the policy dialogue in Ireland (and elsewhere) concerning the nature and role of labour relations regimes. As governments everywhere have had to rethink the nature of what is 'essential work', increasingly employee voice and greater worker participation mechanisms are being identified as part of the approach to improving the terms and conditions of workers undertaking socially valuable labour.

However, we must be cautious about over-optimism. In particular, Irish and EU policymakers must now grapple with the challenges of a potential trade war with the newly-protectionist administration in the US which came to power in early 2025. In Ireland, the emphasis of the US administration on bringing US companies 'back home' is an existential threat which potentially undermines much of the country's economic model of the last six decades, and imperils FDI in Ireland, with knock-on implications for employment and economic growth. Boston, it seems, is starting to turn its back on Ireland; might this mean a greater emphasis on Berlin in the years to come?

7. Conclusion

BLER has played a limited and rather insignificant role in the story of Irish IR. This chapter has argued that this can be explained by a number of factors: the Anglo common law focus on individual contractual rights (at the expense of collective rights); the dominance of a shareholder (as opposed to stakeholder) model of corporate governance; and a lack of trade union support for a model that has traditionally not fitted within the single channel representation approach of the Irish union movement, with its focus on conventional collective bargaining. The primary concern for Irish unions has been addressing the weak institutional and legal support for collective bargaining mechanisms; in this context, BLER is seen as a very distant goal which might only ever be realised in the context of a more robust collective bargaining environment.

There are (tentative) signs, largely driven by external factors, that such an environment is now being contemplated, although optimism must be tempered somewhat by the uncertain outcomes that might derive from the protectionist agenda of the new US administration. Nonetheless, creating a more favourable institutional environment depends, to an extent, on the strategies pursued by the key actors in the system and, notably, the trade union movement. Following the pandemic and the uncertainty, yet time for reflection, to which its outbreak gave rise, there is arguably an opportunity for labour (from below or above) to seize the initiative in reframing a narrative based on participation ('we are all in this together' was one of the key Irish government messages during the periods of lockdown), both at work as well as in society more generally. A recent, 'pro union' turn by the Irish Supreme Court seems also to have opened (in the words of Hogan J in the *O'Neil v Unite* case) 'some-perhaps as yet undefined-zone of freedom' for unions to organise and campaign (para 7). A post-pandemic failure to protect the labour rights and dignity of workers is unlikely to contribute to social cohesion and popular support for national (or international) governing institutions in an era of huge global uncertainty.

This chapter has focused extensively on the weak public policy support for worker participation rights driven by a long-established state policy of promoting Ireland's permissive IR regime as a means of attracting, and retaining, FDI from US-based MNCs. The foundations of this policy are now being fundamentally questioned and re-assessed; providing challenges, but also opportunities. In the case of Ireland – a small, open and highly-globalised economy – developments at EU and global level over the coming years will be crucial in determining if progress up the rocky terrain of the industrial democracy mountain can be achieved.

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Cite this chapter: Doherty M. (2025) BLER in Ireland: a long climb from here to there!, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Appendix
List of discussions

Identifier	Date	Name, role and/or organisation	Place or means
ECR	December 2021/January 2022	Director of employer consultancy organisation	Online calls
AE1	March/May 2022	Academic IR researcher	Online calls
TUR1	February/April 2022	Irish trade union Official	Online calls

Abbreviations

BLER board-level employee representation
CIE Córas Iompair Éireann (Irish Transport System, railways company)
CII the Confederation of Irish Industry
ESB the Electricity Supply Board
ESG Environmental, social, governance
EU European Union
EWC(s) European Works Council(s)
FDI foreign direct investment
FUE the Federated Union of Employers
HSE Health Services Executive
Ibec the Irish Business and Employers Confederation
ICTU Irish Congress of Trade Unions
IR industrial relations
IRN Industrial Relations News
I&C information and consultation
LEEF Labour Employer Economic Forum
MNC(s) multinational corporation(s)
OECD Organisation for Economic Cooperation and Development
SIPTU Services, Industrial, Professional and Technical Union
TASC Think-tank on Action for Social Change
TFEU Treaty on the Functioning of the European Union
UK United Kingdom
US United States

Chapter 10
Board-level employee representation in Poland: trade union dilemmas about the deeper sense of employee participation

Andrzej Zybała

1. Introduction

This chapter offers a general picture of the phenomenon of board-level employee representation (BLER) in Poland, over a period of more than 30 years, as well as the scope, legal framework and changes thereto and the approach taken by trade unions.

Throughout the chapter, a significant focus is on trade union activity vis-à-vis BLER, as revealed in the course of interviews with union members describing how BLER has matched their priorities, how various barriers at company level have been faced and how managers have sought to impose constraints on the practice.[1]

The main thesis pursued here is that BLER must be seen as a far from deeply rooted component of Poland's national models of capitalism and labour relations. Indeed, Poland is the Visegrád country with the least-developed legal framework for the representation of employees at board level: while legal provisions regarding BLER were indeed introduced early, in 1990, a first immediate limitation was the scope of application in that it extended only to state-owned companies (Conchon 2015: 13). In international comparison, Poland forms part of a distinctive fifth cluster of countries with the most limited BLER legal framework (compared to Germany or France) and with less influence exerted on the decision-making process in companies (Waddington and Conchon 2016). In Waddington and Conchon's European survey of board-level employee representatives, Polish respondents reported a more limited involvement in final decision-making and influence on restructuring compared to the Germanic, Nordic or even French clusters, as well as greater dependence on employer resources amidst less provision of trade union support than respondents from other countries (Waddington and Conchon 2016).

This correlates with a rather low positioning for the matter of BLER on the agendas of Poland's economic reformers and of its social partners (i.e. both the trade unions and the employer organisations). The first evidence for this contention would seem to be BLER's absence from the intellectual framework underpinning the reform of

1. The author interviewed 15 people, including 13 from the two largest trade union confederations: OPZZ (Ogólnopolskie Porozumienie Związków Zawodowych; All-Poland Alliance of Trade Unions); and NSZZ Solidarność (Niezależny Samorządny Związek Zawodowy 'Solidarność'; Independent and Self-Governing Trade Union 'Solidarnosc'). In addition, one academic and one manager (who used to represent employees at board level) were also included. They were all selected as having a direct engagement with board-level participation, other than one interviewee, an employee of OPZZ with responsibility for participation issues. For further details about the interviews, see the Appendix to this chapter.

many Polish policies (including as regards the economy), or at least from the climate that is present as certain policy priorities are considered. Trade unions tend to accept the relevance of such employee representation, but rather in a rhetorical way as their practical agenda has remained focused on so-called 'existential' interests relating to job protection, pay rises and safety at work. Consideration must, however, be given to the profile of the economic reformers who represent the major political parties: the economic reforms they have pursued since the early 1990s have been based on the neoliberal model of a market economy.

I assume below that BLER is about democratising the way business organisations function (Wood 2010: 553) via a redistribution of power in the workplace and a desire to ensure board-level decision-making of improved quality (Waddington and Conchon 2016: 95). Some link a successful model for BLER to the 'European social model, a consensual model of [industrial relations] as well as at least some elements of a coordinated market economy model' (Waddington and Conchon 2016: xiv). Such a model also needs a broader framework of industrial democracy shaping the specific dynamics of interests and power between capital and labour.

In truth, BLER seems to be a very complex matter in every country, given the extension into multiple dimensions that may, for example, be cultural, policy-related, legal or political. This demands that BLER be analysed in a way that takes many and various frameworks into account. Nevertheless, the key one should be seen to involve industrial relations, with many links to other forms of employee representation and participation (Gold 2011: 41), as well as corporate governance (Waddington and Conchon 2016: 95).

After this introduction, Section 2 provides the Polish policy context, before Section 3 goes on to present the legal framework essential to BLER that was introduced at the beginning of the country's transformation from the model of the planned economy, characteristic of the communist era, towards a free-market economy model. Section 4 addresses implementation, including case studies that demonstrate that employee representation works independently of the legal framework and which covers the regularities and irregularities (in examples of companies manifesting various forms of BLER). Section 5 analyses more specifically the existing practice in state-owned companies, before Section 6 turns finally to the position of trade unions on BLER. The concluding section reflects how the socioeconomic determinants underpinning BLER strongly influence the understanding and perception of this phenomenon in Poland, and limit its practical dynamics and prospects.

2. The policy context

Poland resembles the other countries of the so-called Visegrád Group (which is to say Poland, Czech Republic, Slovakia and Hungary) in the degree of familiarity with the BLER concept. Before the centrally planned economy collapsed in 1990, workers had certain rights to participation in the decision-making process. In those days employees were granted a right to set up separate organisational bodies (rady robotnicze; works councils) alongside the board of directors. They represented a form of employee self-

management actually dating back to 1956, but only briefly in operation at that time, and not reconstituted until after 1981.[2] The works councils enjoyed entitlements beyond information and consultation in terms of co-decision in regard to business plans and the right to audit accounts and to appoint and remove top directors (Conchon 2011).

A great deal of autonomy in the management of enterprises was gained on the basis of the '3xS' principle (for the Polish words samodzielność, samofinansowanie and samorządność, loosely relating to independence, self-financing status and self-governance). As Kozarzewski wrote: 'it was considered that the role played by employees in the management of state enterprises allowed for some counteraction of the alienation of labour by way of a harmonising or reconciling of the interests of hired workers, enterprises and the national economy as a whole' (2007: 20).[3]

In the wake of its 1989 democratic breakthrough, Poland was quite quick to adopt a legal framework for BLER soon after 1990 – in the context of the country's overall socioeconomic transformation and as a part of generalised efforts to adjust to western-style socioeconomic models in areas like industrial relations, corporate governance and social dialogue.

The further development of BLER was relatively quickly constrained. This reflected a widespread perception of capitalism that was very traditional, given that it looked to a system dominated by (assigning unrestricted economic freedom to) private owners of capital, whose initiative and entrepreneurship were respected above all. This inevitably denoted a clear division between the roles of the private owner, on the one hand, and of the employee on the other.

From this point of view, employee participation appeared to be a constraint on economic freedom or, alternatively, was likely to be seen as trade union interference in companies' decision-making processes in a manner and to an extent 'incompatible with the idea of economic reform'. Politicians of almost all persuasions tended to recognise this as a manifestation of a 'third way', as far as they saw that, or as a threat to the mechanisms of 'the free market' (Bohle and Greskovitz 2012: 60).

The presence of such ideas and behaviours seem to justify a perception of BLER as a phenomenon which does not have deep roots within how national capitalism has been instituted in Poland.

An interesting matter arising at this point would be the generalised correlation between the socioeconomic model overall and the model where employee participation is concerned. In response it would seem reasonable to underline how Poland has shown a strong tendency to follow an 'Anglo-Saxon' path when putting the new rules of market economy policy in place. This cannot be seen to apply to either Hungary or the

2. The two Acts involved were Ustawa o przedsiębiorstwach państwowych (relating to state enterprises), as well as Ustawa o samorządzie załogi przedsiębiorstwa państwowego (relating to workforce self-government in such enterprises).

3. Author's own translation.

former Czechoslovakia which have tended to rely on elements of the German model of capitalism (Kluge and Stollt 2006: 60; Yeoh 2007).

It is in Poland in particular that it proves possible to discern many features of a specific market economy model emerging in central and eastern European countries defined by many scholars as a dependent market economy and as a hybrid model of capitalism. The main characteristics here include dependence on cheap labour and poor labour standards as preconditions to retain competitiveness and attract foreign capital. A consequence within industrial relations is a highly decentralised system of collective bargaining (Nölke and Vliegenthart 2009; Bohle and Greskovits 2006). Many academics go as far as to refer to an 'embedded neoliberal' model of capitalism that thus has little option but to generate neoliberal regimes where industrial relations are concerned (Glassner 2013: 163).

Despite the above reservations, the BLER system was instituted in 1990. It looked like a painful compromise from the perspective of the reformers (Gardawski 2020: 94) and, unsurprisingly therefore, there were subsequent attempts to remove its mere possibility.

Some commentators have claimed that the Act of 13 July 1990[4] on the privatisation of state-owned enterprises was a compromise with the trade unions. The regulations assumed their members would join company boards and it thus represented an incentive to extend their support for the idea of commercialisation and then privatisation (Kozarzewski 2007), one of the key concepts for reforming the state economy.

Trade unions had significant political influence at the time. They could make demands that were favourable to their members and various groups of employees, in some cases forcing governments to implement their most important demands. The main political parties had numerous trade union representations within their ranks, including at parliamentary level (which was the case up to around 2005). For example, trade unions strongly supported the 'employee share' (shares to employees) and buyouts into employee ownership (the transfer of enterprises to companies founded by employees), as well as social packages for those who worked for privatised companies (e.g. with job retention guarantees). Solutions of this type were included in the Pakt o przedsiębiorstwie państwowym w trakcie przekształcania (Pact on a state enterprise in the course of transformation) which the unions concluded with the government in 1993 (Frieske and Zakrzewska 2020: 6).

3. Legal aspects of BLER

After communism collapsed, the first BLER regulations covered state-owned enterprises (and were never extended to the private sector). They were adopted to initiate the process of commercialisation (as the first step to privatisation)[5] and occurred on the

4. Ustawa z dnia 13 lipca 1990 r. o prywatyzacji przedsiębiorstw państwowych.

5. The Act points out that the commercialisation process can actually be initiated at the joint request of an enterprise's managing director or chief executive officer (CEO) and its works council (rada pracownicza) once consultations have been held with both the workforce and the founding body.

basis of the Act of 13 July 1990. This denoted the transformation of former stated-owned enterprises into commercial state-owned companies (after which they were supposed to be governed by the provisions of the Commercial Code and no longer by administrative regulations/by-laws). These were named jedno-osobowe spółki skarbu państwa (sole shareholder state treasury companies since it was the Treasury which held all the shares).

Over time, a majority of state-owned enterprises became involved in the process which did offer a chance for BLER regulations to be embedded. Employees gained the right to elect a third of the members of the supervisory board (Pańków 2020: 3) in companies marketed as joint stock companies (which were obliged to adopt a two-tier system of corporate governance), while limited liability companies could do so on a voluntary basis (Kozarzewski 2007: 222). This right was guaranteed while the government maintained at least half of the shares unless the majority of employee board members agreed to dissolve it. The key role of the supervisory board was to monitor the executive board. Employee board members obtained legal protection against dismissal.

A further Act of 30 August 1996 on commercialisation and on certain rights of employees was introduced (with the relevant provisions in Article 11, para. 2), but the changes were not significant. Employees still hold the right to elect their representatives by secret ballot, of which there should be two out of the five members in respect of the first elected board, subsequent ones having a number of employee representatives as determined by the articles of association of the company. This number is based on the total number of board members (employee representatives should constitute about one-third of the board).

All board members are appointed and may be dismissed by a company's general meeting of shareholders; at the written request of at least 15% of employees, the dismissal of an employee representative on the board can be voted on. It is also on the basis of this Act that employees may elect – by secret ballot in general elections – one representative to the executive board of a commercialised company employing over 500 people.

Research has highlighted the importance of regulation in respect of both statutory bodies of a company: should employees fail to choose their representatives, the statutory bodies can still carry out their duties and the entire company is able to operate in a regular manner (Pańków 2020: 50).

The Polish regulations, when set against the background of other Visegrád countries, look bleak in terms of their scope, the proportions or numbers of worker representatives, the means of nominating candidates and the appointment mechanisms (see Conchon et al. 2016; Fulton 2021; and Stránský, this volume). It should be noted that the Polish legal regulations do not form part of company law (i.e. the Commercial Code), but rather relate to the regulation of the commercialisation and privatisation of state-owned enterprises.

Later (post-2000) developments point to a low intensity of activity. In 2010 the government launched an initiative to eliminate all regulations in this area 'to ensure a

level playing field with private-sector companies' (Waddington and Conchon 2016: 40). The regulation ultimately stayed in place, however. The point here is that the number of state-owned (but commercialised) companies has declined greatly in the course of the privatisation process. Only a small number remain in some, mainly strategic, sectors like energy and chemicals. In addition, there is a limited number of companies with partial state-owned stakes in which employees enjoy no legal entitlement to join boards.

Since 2016, the Prawo i Sprawiedliwość (PiS; Law and Justice Party) government has enjoyed the strong support of NSZZ Solidarność which, of course, features an important heritage. Even so, the government has failed to initiate any measures (including legal steps) in support of BLER and the truth is that this trade union has offered no policy initiative either.

Ministerstwo Aktywów Panstwowych (MAP; Poland's Ministry of State Assets), which has only been in existence since November 2019, mainly operates on the basis of the Act of 30 August 1996. Beyond that, the Ministry acknowledges that, in certain specific state-owned entities, employees have their representatives on the basis of separate regulations. This is the case in Poczta Polska (Polish Post Office) which is run by virtue of the Act of 5 September 2008 setting out its commercialisation. Article 10 of this Act details the number of board members, guaranteeing that employees may have two representatives on the board and that, furthermore, one of the employee representatives in question serves as deputy chair.[6]

Among very few other government initiatives, it is worth mentioning the establishment in 2016 of Rada do spraw spółek z udziałem Skarbu Państwa i państwowych osób prawnych (Council for state-owned companies and state entities).[7] As reported by Krzysztof Księżopolski, a member of the Council, the MAP has the duty to propose candidates, including those supported by employees. Usually, these candidates are accepted by the Council, but any suggestion that there is a logical recruitment system from within staff circles would be exaggerated. The establishment of the Council was supposed to ensure that candidates have appropriate professional skills and not merely political connections. There is a great deal of interest in state-owned companies in Poland, which also includes an interest in the composition of their supervisory boards, the general impression being that they are part of the sinecure system for all those linked to government circles and their political aides. One further important reservation needs to be expressed: the Council deals only with those candidates who are to be the board members of companies owned directly by MAP; its responsibilities do not extend to candidates for the supervisory boards of those companies which are owned by state-owned companies. In this case, it is the managers who ultimately decide on the inclusion of employee representatives.

6. According to the information on board seats available on the corporate website; see https://www.poczta-polska. pl/o-firmie/wladze-spolki/rada-nadzorcza/

7. See https://www.gov.pl/web/premier/rada-do-spraw-spolek-z-udzialem-skarbu-panstwa-i-panstwowych-osob-prawnych

4. The implementation of BLER

This section shows how BLER in Poland remains fragmented with various solutions being practised depending on diverse company legal forms. State-owned entities have an obligatory BLER system, while BLER could voluntarily be retained after commercialisation and privatisation although companies did not do so systematically. Companies which belong to state-owned enterprises sometimes practise BLER on a voluntary basis. Conversely, this is rarely the case in privatised state-owned companies, companies with partial state shares and fully privatised companies (all of which should have established BLER at the outset). Poczta Polska is a particular case as it operates on the basis of specific regulations.

So it can therefore be said that, in certain cases, BLER is also carried on outside the legal framework; that is, in companies which are not legally obliged to implement it. In particular, some new owners of former state-owned companies have decided to maintain the worker representation system in privatised companies. This sometimes takes place as a means of respecting earlier traditions formed over the years. However, this does not happen very often. The result is a patchwork of different structures and systems, and the scale of BLER across the whole economy is hard to assess.

4.1 Implementation in the public sector

According to research by Pańków (2020), the state-owned sector encompasses fewer than 200 commercialised companies entitled to have representatives on a board (many of these are large corporations in the energy sector).

The scale of BLER is also limited even within the state-owned sector as it is not legally required in companies belonging to state-owned companies. This was highlighted by an interesting legal precedent in the judicial system. The matter started when an employee-backed supervisory board member lost his post after the company had changed hands to another state-owned company which had no intention of maintaining BLER. The employee referred the case to the District Court, later the Appeal Court and finally the Supreme Court of the Republic of Poland. The latter issued its judgment in 2015, ratifying the position of the lower courts; namely that employees lose their right to elect representatives to company boards when the given company sells its shares to another, irrespective of whether or not the purchaser belongs to the state Treasury.[8]

4.2 Implementation in the private sector

As mentioned, BLER in the private sector is practised in a certain number of privatised companies. In general, in the aftermath of privatisation, it is typical for employee

8. Judgment of the Supreme Court of the Republic of Poland of 19 November 2015. V CSK 159/15; https://sip.lex. pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/v-csk-159-15-prawo-pracownikow-spolki-skarbu-panstwa- do-522062159

representatives to lose their board membership almost immediately. One interviewee, Stanisław Pałka, who (until May 2023) led a sector union, noted that a company for which he used to work and on whose board he sat had managers who did allow him to retain his status for one year following privatisation. 'It was a kind of gesture from their side that they were keeping me on the Board and that employees can have their representative.' Equally, he stressed that he was not aware of any company in Poland that had sustained BLER in the wake of privatisation (Zybała 2019).

The scale/scope of private sector BLER may be illustrated by the example of the food industry, where some small-scale trials have been carried out in unionised companies, as revealed by an inquiry conducted on the author's behalf in 2021 in about 150 companies organised by NSZZ Solidarność.[9] This indicated that employees have representatives at board level in just three privatised companies in the industry (KSC 'Polish Sugar' SA; Żywiec Group; and Herbapol Poznań).

A typical case is that of Żywiec Group,[10] a totally private company which emerged from a state-owned company (and is now part of Heineken). It has kept the BLER system because, as the privatisation process unfolded[11] and as the social package (mainly about job security) was being negotiated (back in 1998), unions were keen to underline its significance. Andrzej Biegun, Chair of NSZZ Solidarność at Żywiec Group, comments:

> We showed a great deal of determination while negotiating with the future investor to keep the company statute with the regulations about employee participation at board level. We obtained the investor's assurance in the social package that we would get a representative … We made the effort to keep this solution and maintain the staff's trust in representatives. We pay a lot of attention to the election of representatives – every three years – to make it fair and with a high turnout. It amounts to no less than 70% of those who are entitled to vote; sometimes even 90% participate. There are usually 2-3 candidates. (INT10)[12]

The BLER system also operates in the two leading companies belonging to Polpharma Group (pharmaceutical industry). These have arisen through the privatisation of formerly state-owned enterprises. Before the privatisation process, employees had representatives because they held a major package of shares. These were resold later but the new owner decided nevertheless to keep on with BLER. According to Leszek Świeczkowski, Chair of NSZZ Solidarność in this company, the owner was able to realise that the employee representation system works for all sides, including the company itself:

> It contributes to peaceful industrial relations, ensuring that information is properly flowing. All of us make efforts to keep professionals, as they can easily find employment elsewhere at the moment. One can see the practice of outbidding for the best specialists.

9. The inquiry (by questionnaire) was conducted on 22 September 2021 by Przemysław Pytel, an employee of the Food Industry Secretariat of NSZZ Solidarność.

10. Żywiec is a city in Poland as well as a brand of beer.

11. The company's name before privatisation was Zakłady Piwowarskie w Żywcu S.A.

12. All quotations are translations by the author from interviews conducted in Polish.

> The owner also understands very well the significance of the social package for the employees, including extra health insurance at private health centres. (INT6)

Świeczkowski adds that unions are quite strong in the company, with around 60% of employees being unionised (cf. unionisation rates across Poland which amount to about 12%).

BLER is also practised in a second company from this Group (Polfa Warsaw) where there are three employee representatives on the supervisory board and one on the executive board. In the past, it was a state-owned company, privatised in 2012. However, the new owner wanted to keep BLER. Mirosław Miara, Chair of NSZZ Solidarność, points out that this was not a result of union efforts; they had not come up with the idea. In his view, it was rather a case of the owner assuming beforehand that it wanted to have this system, although it could also have realised the union's strength with a unionisation rate amounting to about 60% and with restructuring in view and requiring cooperation with the employee side. After the privatisation was completed, some employees were relocated within the group. He clarifies:

> As an employee representative on the board, I deal with matters requiring intervention. However, I fix most staff matters as a union leader; for instance, major employment restructuring. In these circumstances, I negotiate the programme of voluntary redundancy. (INT16)

Some elements of BLER can be seen in other formerly state-owned companies where the new shareholders adopted specific policies including the concept of having union leaders on the supervisory boards of some subsidiaries (albeit without staff voting on this). This is the case for Orange Group (France Telecom), which bought a majority of shares in Telekomunikacja Polska. After that, although employees lost their right to vote a representative at board level, some union leaders have been included on some supervisory boards by the French owner (though again, without a vote by staff).[13]

5. BLER in companies under the control of state-owned corporations

A separate issue is BLER in companies that have remained under government control due to the retention of a certain number[14] of state-owned shares (i.e. in circumstances of partial privatisation – meaning that some shares are listed on stock exchanges). In these businesses, the situation varies significantly. Formally, enterprises do not have to keep BLER, given the lack of any legal obligation to do so. They follow various organisational cultures resulting from the commercialisation and privatisation process, with different levels of worker mobilisation and of trade union bargaining power. In some of the companies mentioned below, BLER is not practised at all, while in others it

13. In companies like Teltech, Exploris, Contact Center and TP Med.

14. No matter how many, as long as the government keeps a real control over the corporation. Sometimes the government owns less than 50% of the shares and yet it holds a real control over the corporation.

is practised extensively. There are also companies in which it is possible to find a kind of hybrid model (there being employee representatives on supervisory boards albeit through management nomination rather than staff choice).

5.1 A case in the chemical sector

An example of extensive BLER is Azoty Group[15] (stock traded) where employees can elect representatives to the supervisory and executive boards of companies within the group. Employees of the group as a whole (all companies together) elect two representatives to the supervisory board while employees at the three largest companies elect representatives to their respective executive boards as well.[16]

According to Agnieszka Kowalik, a member (since 2020) of the supervisory board[17] of the subsidiary Azoty PUŁAWY, BLER is regarded as standard practice among all employees and managers. The vast majority support it and the evidence is that more than 50% of employees participated in the election (including the employees of subsidiaries); within Azoty PUŁAWY itself, more than 60% of employees participated.

In this company, BLER has been practised since 1992. At that time, the commercialisation process was finished and the company had adopted the name 'Puławy' S.A. Nitrogen Plant.[18] The legal regulations on commercialisation made BLER possible at supervisory and executive board levels.[19] In 2013, Azoty Group took over; nonetheless, BLER stayed in place.

Kowalik underlined that employee representatives' activities on boards make it possible to extend effective support for employee interests across the group. This is enormously important, especially when subsidiaries face increasingly marked trends to have them made dependent on the holding company. However, things work very well when it comes to the economic development of the subsidiaries: employee representatives possess deep knowledge of operations within these companies, while some board members have never worked in them at all. Her experience suggests that the latter members do not always know all the intricacies and determinants important to the company's economic expansion.

Kowalik also asserted the importance of representatives' high levels of professional qualification and/or skill. Those who lack them – lacking proper competencies, knowledge of professional procedures or economic indicators – can fall prey to manipulation by those with higher levels of skill, leaving them in no position to make optimal decisions from the point of view of the company and its employees.

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15. The biggest chemical corporation in Poland set up in 2012 on the basis of a chain of state-owned companies, with more than 15,000 people employed.

16. Grupa Azoty PUŁAWY, Grupa Azoty POLICE and Grupa Azoty ZAK S.A.

17. She is, at the same time, the chair of the works council.

18. A similar process involving commercialisation and the ushering in of participation took place in the remaining Grupa Azoty companies.

19. Act of 30 August 1996.

In turn, Wojciech Kozak, a former (two-term) employee representative on the Azoty PUŁAWY executive board, pointed to the wide range of employee representatives' competencies and responsibilities. From his point of view, management by no means considers the role of board-level employee representative as purely 'decorative'.

The company's statutes provide, amongst other things, that employee representatives should have the same competencies and responsibilities as all other board members, but the regulations do not precisely prescribe the scope of responsibility. Within the company, it has become an entrenched tradition that employee representatives on the board take responsibility for the area of production (the factory floor), given that they mainly originate from this domain. Here, most employees are blue collar workers. Thus, as Kozak put it: 'I was responsible for all factory processes, for organisation, continuity of production and work safety, as well as for financing the production section' (INT12).

He adds that this was a major responsibility, as the executive board made business decisions on the basis of his calculations. He also points out that, as an employee board member, he felt the particular responsibility of expectation on the part of trade unions and staff alike, including those working as labourers on the factory floor. At the same time, he did not have anything to do with employment and pay issues. He was pleased with the general atmosphere conducive to being an employee representative. In rare cases, highly demanding expectations were formulated, usually from one of the five unions operating in the company, but these did not earn the support of employees.

5.2 A case in the mining sector

A further interesting case is Polskie Górnictwo Naftowe i Gazowe S.A. (PGNiG Group; Polish Oil Mining and Gas Extraction Group), one of the largest Polish companies employing some 25,000 people. There are no formal regulations making BLER obligatory: the Treasury holds 72% of the shares (some are listed on the Warsaw Stock Exchange; others are in the hands of employees thanks to privatisation processes). However, there are three employee representatives on the eight-member supervisory board, one of whom works as the secretary to the board.[20] In contrast, there are no employee representatives on the supervisory boards of any of the almost 40 subsidiary companies.

One employee representative interviewed for the research says that he covers particular staff matters, including guarantees for the group's collective agreements and various agreements with the executive board connected with employee interests. He also aims to set up a group-wide collective agreement to replace separate agreements on a subsidiary-by-subsidiary basis. This was an essential objective in light of the takeover, finalised on 2 November 2022, of PGNiG Group by Polski Koncern Naftowy Orlen S.A. (PKN Orlen; Polish Orlen Oil Corporation), another company under government control but which has no BLER system whatsoever.

20. https://pgnig.pl/lad-korporacyjny/rada-nadzorcza

Cooperation within the board is reported as very good, with all of his fellow members basically sympathetic to employee interests. There is also a very good relationship with the employer. The role of the board can, in general, be described as enormous since all the essential economic and social issues come before it. Employee-side board members are assigned specific staff-related matters to deal with, including individual ones relating to health conditions, for example.

5.3 BLER in the state-owned energy sector

There is significant scope for BLER in the energy sector (in both production and distribution). There are four leading energy groups in which the government holds a majority share, with tens of subsidiaries in place. However, each group works with a different BLER system. In some, employees elect representatives to the supervisory and executive boards in a classical manner; in others, trade unions delegate members/leaders to the boards. Finally, it is sometimes the case that employees elect their representatives to the board of the parent company while in others only the boards of the subsidiaries are involved.

A traditional BLER system can be seen in Grupa Kapitałowa Enea (Enea Group),[21] while Tauron Group has a hybrid model in place. In the latter, the trade unions brokered a deal regarding the participation model with the executive board at the time the group was set up. The main trade unions set up the Social Council[22] of Tauron, which puts up candidates for the boards of the subsidiaries (as there are no employee representatives on the supervisory board of the parent company). There is no election among employees, although there are agreed principles including one that holds that union board members cannot, at the same time, be employees of a specific subsidiary, only an employee of Tauron Group as such. Mirosław Brzuśnian, Chair of the Social Council of Tauron Group and one of the leaders of NSZZ Solidarność, comments thus: 'We are convinced that our BLER formula works well in practice, including the principle relating to the non-combining of the positions of board member and employee. We feel staff trust our board members' (INT6). He added that the group and the unions accepted that all union-side board members should transfer the income they earn from the board to the bank account of the Tauron Foundation which, among other things, provides a source of assistance to employees.

It needs to be noted that trade unions have had a traditionally strong position in this sector, where unionisation is at an above-average level by Polish standards. Furthermore, unions have organised numerous protest actions in defence of both the retention of employment and the level of pay.

21. See https://media.enea.pl/teczka-prasowa/14844/michal-dominik-jaciubek

22. A coordination body made up of the biggest trade unions at group level.

5.4 Non-standard forms of employee representation at board level

Below are four examples of the more unusual BLER systems. First, in Mahle Poland, there is no BLER system in the local company and no supervisory board at all (as the group adopted a legal form not requiring this), although there is a handful of employee representatives sitting on the supervisory board at the level of the parent company, one of them being Gerd Goretzky, who also chairs the European Works Council (EWC) of Germany's MAHLE Group.[23]

Maciej Ratajczak, a union leader in Mahle Poland, emphasises how vital this is for employees who are kept supplied with various kinds of information – including about the planned relocations of production sites or wage increases that have been given in various other companies across the group. 'It gives us a better starting point in negotiations with management… Gerd Goretzky minds our own business or arranges the affairs of ours. If necessary, we can act together.' Ratajczak says it would be good if there were to be an employee representative at local company level as well, but nobody at that level has ever entertained that idea. However, unions realise that the local company is being run directly from Stuttgart, its headquarters.

Second, there is MAN Bus (part of MAN Truck & Bus) operating in Starachowice and where the situation is similar. Union leaders cooperate with employees who are members of the supervisory board of the company as a whole. Jan Seweryn, NSZZ Solidarność leader, indicated that the employee members of the supervisory board do offer information. Once, they were asked to help block a decision about the merger of two factories, although this was an effort that, in the end, did not succeed.

Third, an interesting case is also provided by Herbapol Poznań S.A, which became an employee-owned company in 1994 due to the privatisation process.[24] BLER is the result of this. The company has a supervisory board with seven members, all of them company employees. These are selected by vote during the general meeting of shareholders. 80% of staff (350 employees) have shares in the company. There are four union members on the board, including three who work full-time for the union organisation. Recruitment to the board takes place with the participation of the trade unions (rather than employees) who put forward a candidate to be voted upon.

Finally, the food sector in Poland also features cooperatives which have supervisory boards that include employees voted on by other cooperative members as well as by eligible employees. In the case of ZZ Mlekpol, the works council submits a candidate for the board while in FAWOR S.P.C. (200 staff) most board members are employees.

23. See https://www.mahle.com/media/global/investor-relations/annual-reports/2019/mahle_ar2019_e.pdf

24. Employee-owned companies arose out of privatisation regulations from 1990 onwards. However, some lost their employee majority ownership as employees opted to sell their shares.

6. Trade unions and BLER

There were many discussions, especially at the beginning of the economic transformation in 1990, as to how labour might be included within a Polish market economy (or mode of economic governance). The neoliberal reformers sought ways to mitigate the overall power of the trade unions while creating for them a role that could be regarded as 'safe' from the perspective of a private sector which was perceived as the main economic driver. This was especially the case in that following decade when union bargaining power remained significant (and when unions continued to be included as a formal part of the ruling coalitions in power). However, the two subsequent decades have seen union priorities largely ignored.

It is specifically the case here that Poland's trade unions did not decide to promote BLER as a key systemic demand. As noted above, the trade unions enjoyed significant influence at the beginning of the transformation, thanks both to generalised sympathy and role recognition, a large membership base across the country and the political power they wielded. After all, it was in Poland that the world-renowned NSZZ Solidarność created the first non-communist government in the bloc. However, BLER was far from the top of that union's agenda even as each successive government initially had to rely on the participation of that part of MPs who originated more or less directly from the union. Zbigniew Sikorski, Chair of the Food Industry Secretariat of NSZZ Solidarność, acknowledged that BLER had never been an issue on which the union had focused. In his view, there were more important issues than that as a subject for social dialogue, such as pay rises or job security. Still, should it be possible to include employee representatives on boards, even at the initiative of the employer, then that would be valuable.

A consequence of this trade union ambivalence has been a steady lack of any all- encompassing union campaign to have the coverage of board-level employee representation extended – notwithstanding the frequent presence of the issue at rhetorical level. This needs explaining with reference to the specific approach taken to unions' public role and to the way in which interests are articulated. Włodzimierz Wesołowski concurred that unions, like any other interest group in Poland, have remained focused predominantly on existential interests (day-to-day issues such as ensuring that jobs are retained and wages rise) while overlooking transgressive interests (relating to future-oriented goals including upskilling and a competitive economic system). This, he deemed, reflected a limited 'ability to think in terms of future-oriented sequences' (Wesołowski 1994: 282).

Barbara Surdykowska, a legal adviser in NSZZ Solidarność, maintained that BLER had never encountered anything other than marked scepticism. The union had never formulated policy options to include employee representatives on supervisory or executive boards in companies, regardless of size. In this way, the union lost an opportunity to make policy in this area. For example, NSZZ Solidarność did not even have an up to date list of which of its members have been elected to boards. Rather, workplace unions in specific companies decided autonomously about their members' involvement in BLER.

Artur Kasprzykowski, from the Podbeskidzkie Regional Branch of NSZZ Solidarność, likewise underlined that the union was failing to monitor union membership in BLER systems. Indeed, as this author refers back to research carried out in 2018 in Poland and other central European countries, it is clear that unions have rarely assigned priority status to the issue (Zybała 2019). Indeed, some have opposed BLER on ideological grounds, perceiving it as crossing a line between capital and labour. According to a Polish interviewee,[25] unions were always well aware that what mattered to them was the strengthening of their membership base while involvement in BLER was regarded as something marginal. Trade unionists might join a board as employee representatives and become a source of information on the financial standing of a company, but their main task remained strengthening the union and safeguarding its future.

One Polish trade unionist acknowledged that debate had been lacking when it came to the degree to which BLER might represent a valuable solution for unions (or might, conversely, pose an actual threat, given the possibility for rivalry issues to arise). A second confirmed that, in Poland, unions had never really become involved in any strengthening of BLER and neither had they come up with any major policy approaches of relevance. At the beginning of the transition, unions rather emphasised employee ownership and the need to ensure that employees received their entitlements as the privatisation of state enterprises went ahead through management-employee buyouts, employee share distributions or 'voucher' privatisation. But employee ownership was never regarded as a matter of workplace democracy.

Furthermore, Polish trade unionists considered their power to make BLER a key priority to be insufficient given that this would have effectively required confrontation with both government and the overall mentality in society which viewed owners and managers as the ones having full rights to manage establishments. Likewise, from the early 1990s on, governments of whatever political complexion pursued policies within a neoliberal framework, thus taking for granted the notion that owners and managers in private companies should have a free hand in management:

> We didn't agree with this kind of approach, but we achieved nothing to change it. The thing is that in companies there is no participatory approach to management or co-decision rights at work. Co-decision rights would be regarded as an intrusion into the private and economic sphere. (Zybała 2019: 269)

Some claimed that unions see EWCs as a more important channel by which to achieve representation, offering greater opportunities for informational insights as to the financial standing of a company (Zybała 2019). There are cases in which members of EWCs know more about this subject than, for example, local managers. Stanisław Pałka (a former member of a supervisory board) underlined how, in Visegrád countries in general, the supervisory boards of companies forming parts of transnational corporations are indeed declining in significance and influence in any case. Members

25. The article being referred to here included the remarks from central European trade union leaders derived from seven interviews conducted in 2017 to illuminate their approaches to BLER (Zybała 2019).

meet only rarely, information being transmitted mainly electronically, while critical decisions are taken externally, at the level of the corporation.

Some interviewees pointed out that unions face fundamental obstacles as they attempt to improve workers' rights in regard to representation. These included constraints of a cultural nature or which are associated with the way socioeconomic matters are perceived, including as regards the very nature of employee participation. The talk is of constant struggle against managers' reluctance to cooperate with workers and of a force of habit that actions need to be taken unilaterally.

Among the three largest union confederations in Poland, only OPZZ has a (post-2010) strategic programme referring to BLER as an essential value and a critical element of the social market economy model. This union has this among its 21 biggest postulates, with the precise wording relating to 'more extensive worker participation in company management through a broadening of employee representatives' presence at board level' (OPZZ 2020: 33).

Norbert Kusiak, an OPZZ specialist, underlined during his interview that the union emphasised worker participation in company management in various types of enterprise. Consequently, its programme for 2018-2022 referred to BLER being extended to private companies, given that these are now dominant in the economy while state-owned enterprises have become a minority (OPZZ 2018: 7). OPZZ further pointed to workers' rights to elect and recall employee representatives in state-owned companies being infringed relatively often, a process in which the union has intervened on many occasions. According to Kusiak, state-owned companies should have served as a role model for employee participation in the private sector.

The union has tried to convince people that participation in company management exerted a positive impact on that company's long-term development, resulting in an improvement in working conditions, pay increases and a better balance between employer and employee. The latter gain access to information on the company's financial situation and its prospects, while also having the chance to engage in effective social dialogue. Kusiak admitted that the union does not monitor its members' activity at board level although it does stay in contact with them.

The union has been formulating a policy recommendation for government that demands new regulations regarding legal protection for employee-appointed board members. It claimed that only employees should have the right to recall their representatives (not the owner) as they appointed them by way of an election.

An example of this union's involvement in BLER was provided by the engagement of its specialists in an international research consortium aimed at analysing employee participation at board level in companies, including private ones (via an EU-backed project that ran between 2019 and 2020). The research team formulated various policy recommendations (Owczarek 2020).[26]

26. The project was named 'Employee participation in management'.

At the same time, some company union organisations have joined those at sector level in paying scant attention to BLER. For example, Zbigniew Pachacz, Chair of OPZZ in Orange Group (telecom sector), confessed that unions had failed to formulate positions when it came to employee participation at board level during meetings of the Orange Group Forum (the platform for dialogue between employer and employees within the group). The union did raise the issue during meetings of the France Telecom Worldwide Works Council but, in this situation, there was no conclusion which could be reached regarding BLER.

BLER has become more deeply rooted in some companies; that is, those in which union leaders have made something of an effort to retain it. According to interviewees, unions play a significant role in nominating candidates to become board members. Usually, candidates are independent but their chances of election remain limited as they lack organisational support. Another question concerns the power and capacity to protect worker interests. This is a complex matter and the results often depend on the set of circumstances which applies.

Mirosław Brzuśnian, Chair of NSZZ Solidarność in Tauron Group, said: 'We value this form of participation. It contributes to workers' knowledge about the situation the company is in and it ensures that the workers' perspective is included' (INT6). Wojciech Kozak, from Azoty PUŁAWY, admitted that his own impact on employment and pay issues remained quite limited; however, he did feel his presence on the board had resulted in securing a more pro-worker atmosphere.

Aleksandra Nowacka, Chair of OPZZ at Herbapol Poznań and an employee-nominated board member, indicated that union-supported board members were aware that the supervisory board is not a suitable forum at which employee issues can be dealt with. Nevertheless, they did try to support management decisions that are advantageous to employees. At the same time, she added that her company held to the idea of having a collective agreement – a very positive aspect from a worker perspective.

Andrzej Biegun, Chair of NSZZ Solidarność at Żywiec Group, declared that it was vital for the union to maintain employee representatives given the access to information that that ensures. 'Sometimes we impact on some decisions to be made or on changing some decisions made beforehand'.

7. Conclusion

As discussed above, the manner in which BLER is implemented remains fragmented and dependent on the diverse types of company form. BLER as defined in the legislation applies to companies still owned directly by the Treasury. In other types of company, there is a patchwork of different structures and solutions. Whether trade unions, especially in privatised enterprises, are determined to keep employee representation in place or whether new owners are prepared to respect earlier traditions formed over the years are also key variables. To discover all the solutions that have been implemented,

it is necessary to examine the complex reality of economic life; looking at the legal framework is not sufficient.

The evidence emerging from the analysis allows the conclusion that there are no signs of upcoming change in the situation as regards BLER in Poland. Neither the country's trade unionists nor its political class look willing to support this. The author's interviews suggest unions lack proper policy potential when it comes to the amendment of existing regulations as their priorities mainly revolve around issues of job security and pay. At the same time, much will depend on what certain scholars call revitalisation strategies on the part of trade unions, as well as on agenda developments and a willingness to accept BLER as a vital priority (Ibsen and Tapia 2017; Korkut et al. 2017; Mrozowicki et al. 2010). In the case of the OPZZ leadership, it is possible to note more significant interest in BLER. However, here too, much depends on developments in sectoral branches as well as at workplace level.

The long-term factors influencing managers' approaches to employee participation are of great significance. It is possible to mention here policy debates revolving around models of capitalism, the perception of business ownership and the role/place of employees' rights in decision-making processes. Equally, in the more recent circumstances of crisis surrounding the Covid-19 pandemic, it seems quite reasonable to anticipate a weakening of the neoliberal model of capitalism – with this having been seen as a symbol of the trend for the issue of employee representation to be sidelined on the economic agenda.

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Cite this chapter: Zybała A. (2025) Board-level employee representation in Poland: trade union dilemmas about the deeper sense of employee participation, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Appendix
List of interviews*

Identifier	Date	Name, role and/or organisation
INT1	4 September 2021	Zbigniew Sikorski, Chair of the Food Industry Secretariat of NSZZ Solidarność
INT2	7 September 2021	Barbara Surdykowska, legal adviser NSZZ Solidarność
INT3	10 September 2021	Zbigniew Pachacz, Chair of OPZZ in Orange Group (telecom sector)
INT4	13 September 2021	Maciej Ratajczak, Chair of OPZZ in Mahle Poland (car parts industry)
INT5	15 September 2021	Aleksandra Nowacka, Chair of OPZZ in HerbapolPoznań (food sector)
INT6	20 September 2021	Leszek Świeczkowski, Chair of NSZZ Solidarność in Polpharma Group (pharmaceutical industry)
INT7	20 September 2021	Norbert Kusiak, a specialist in OPZZ
INT8	20 September 2021	Artur Kasprzykowski, specialist in the Podbeskidzkie Regional Branch of NSZZ Solidarność
INT9	22 September 2021	Mirosław Brzuśnian, Chair of NSZZ Solidarność in Tauron Group (energy sector)
INT10	25 September 2021	Andrzej Biegun, Chair of NSZZ Solidarność in Żywiec Group, (beverage sector)
INT11	30 September 2021	Stanisław Pałka, Chair of OPZZ in the food industry sector
INT12	7 November 2021	Wojciech Kozak, a former (two-term) employee representative on the Azoty PUŁAWY executive board (chemical industry)
INT13	7 November 2021	Agnieszka Kowalik, member of the supervisory board of the subsidiary named Azoty PUŁAWY (chemical industry)
INT14	7 November 2021	Jan Seweryn, Leader of NSZZ Solidarność at MAN Bus, Starachowice (bus manufacturing sector)
INT15	10 November 2021	Krzysztof Księżopolski, PhD, Assistant Professor at Warsaw School of Economics
INT16	12 November 2021	Mirosław Miara, chair of NSZZ Solidarność in Polfa (Warsaw).

* INT1 was conducted by Artur Kasprzykowski ; the rest of interviews were conducted by the author.

Abbreviations

BLER	board-level employee representation
CEO	chief executive officer
EWC(s)	European Works Council(s)
MAP	Ministerstwo Aktywów Panstwowych (Poland's Ministry of State Assets)
NSZZ Solidarność	Niezależny Samorządny Związek Zawodowy 'Solidarność' (Independent and Self-Governing Trade Union 'Solidarnosc')
OPZZ	Ogólnopolskie Porozumienie Związków Zawodowych (All-Poland Alliance of Trade Unions)
PGNiG Group	Polskie Górnictwo Naftowe i Gazowe SA (Polish Oil Mining and Gas Extraction Group)
PiS	Prawo i Sprawiedliwość (Law and Justice Party)
PKN Orlen S.A	Polski Koncern Naftowy Orlen S.A. (Polish Orlen Oil Corporation)
S.A	spółka aukcyjna (Polish joint-stock company)

Concluding chapter
Can Sleeping Beauty be woken? Worker representation on boards amidst complex diversity

Sara Lafuente

1. Introduction: relic, transplant or aspiration?

A 'stagnated' aspiration, a 'Mount Everest' expedition or even 'a curse' – these are some of the metaphors used in the country chapters in this compendium to describe the efforts to establish worker representation on company boards in the countries under scrutiny, namely Belgium, Italy, Greece, Portugal, Spain, the Czech Republic, Finland, Lithuania, Ireland and Poland. Should this book thus be viewed as a tale of failed achievements? Jukka Ahtela appositely titled a recent report on board-level employee representation (BLER) in Finland by referring to it as a 'sleeping giant', highlighting the unrealised potential of a dormant institution that merits greater attention and development (Ahtela 2025). Ultimately, all these images indicate that worker representation on company boards remains a promising, living concept, yet one that is still waiting to be executed in effective policy.

References to 'codetermination' usually highlight models that have been considered successful, such as the German Mitbestimmung (Renaud 2007) or Swedish codetermination (Raynes 2022; Hedin 2015), while otherwise incorporating historic debates including the United Kingdom (UK)'s Bullock Committee inquiry on industrial democracy during the 1970s (Zahn 2022). This volume offers a fresh insight into worker representation on company boards by exploring European Union (EU) countries that are often overlooked in studies of codetermination, highlighting how they have received, practised and debated the concept differently, sometimes as a relic of the past, sometimes as a foreign transplant and sometimes as an aspiration for increased workers' control or collaborative industrial relations. Before the functioning and impact of the institution can be examined and valid international comparisons identified, understanding these diverse perspectives seems crucial for assessing the social significance of codetermination and the possible reasons for its lack of support. Particularly considering the 2024 EU elections and ongoing uncertainties about the future of EU social policy (Sabato et al. 2025), this analysis can usefully inform future political action in the area.

One significant takeaway from the chapters is national diversity in the discussion and perceptions of worker representation on company boards, shaped by historical, ideational and institutional factors, as well as the power relations and dynamics of countries' political economies. Reflecting this diversity, the chapters utilise an array of methods and empirical evidence to examine and understand the importance of worker representation on company boards in their specific contexts. As mentioned in the introduction, this diversity posed challenges during the editing process,

requiring compromises between respecting conceptual nuances across countries[1] and standardising the terminology for international readers and for comparative purposes. Thus, while this volume intentionally focuses on a limited number of countries, it enhances our understanding of worker representation on company boards as a sensitive political issue. Furthermore, it has practical implications too, pinpointing obstacles and opportunities across individual countries and Europe as a whole, and highlighting the questions that call for further research and engagement from social and political actors at various levels.

The book identifies similarities and differences in the emergence and discussion of worker representation on company boards as an idea and policy, suggesting path dependencies that are in constant evolution. This conclusion provides an overview of the main topics addressed in the chapters, emphasising both the unique and the common country characteristics regarding regulation, implementation and the scope of the practice of board-level worker representation, as well as the main positions of employers, trade unions and other actors, the state of the public debate and future prospects (see Table 1 at the end of Section 4, for a synthesis of the findings).

Section 1 discusses the role of regulation in supporting worker representation on corporate boards and corporate governance practices, while Section 2 addresses the issues of implementation and coverage. In turn, Section 3 presents the positions of socio-political actors, such as trade unions, and Section 4 focuses on public debates on worker representation on company boards. Finally, the chapter discusses the prospects for advancing worker representation on corporate boards in the public agendas of the different countries, as well as the implications for research, policy and unions.

2. Regulations: preferable but insufficient

The chapters identify national legislation and the normative sources that establish the rights for workers to be represented on corporate boards (see Annex at the end of the book for a detailed timeline in the wider European context). There is notable diversity in the regulatory frameworks across the countries examined, reflecting diverse cultural contexts and levels of industrial relations juridification. Some countries strongly support these rights in the hierarchy of norms (e.g. see the Italian, Portuguese and Spanish national constitutions) but lack general enforceable laws on the matter and have anchored worker participation in other ways. By contrast, countries such as the Czech Republic, Finland, Lithuania and Poland have enacted enforceable laws, although coverage varies, most applying mainly to public sector or privatised companies, setting in place systems that are highly decentralised and fragmented, as reflected in their implementation. In this volume, the Czech Republic and Finland are exceptional cases as their laws extend to both public and private sector companies.

1. The need for clarification of terms such as 'limited liability companies' or 'administrative boards' in corporate governance structures provides just one example.

Furthermore, existing national legislation can result in weak and unstable worker representation on company boards due to issues that concern the legal design, normative capacity or material content. The apparently rather technical details defining worker participation, such as the board committees where it may be deployed or the issues which are to be discussed, can also have a significant impact on workers' capacity to influence decisions (Harnay et al. 2024; Conchon 2015). Indeed, the protection afforded by law can vary depending on how specific key aspects are regulated. These include the thresholds and the ownership or corporate structures determining the scope of application of the rights, but also board powers and composition, degrees of participation, procedures for the appointment or withdrawal of worker representatives, and their specific rights on the board. If some of these elements remain minimalist, vague or reliant on company articles of association or managerial discretion,[2] the effectiveness of worker representation on company boards can be severely diminished.

These regulatory details should be considered in relation to existing labour laws and institutions, trade unions and collective bargaining rights and corporate law. The latter can indirectly create exemptions for certain company structures. For instance, Czech joint stock companies can now opt for monistic boards (i.e. boards organised in one unified corporate governance body which integrates both supervisory and executory functions), while worker representation remains only mandatory on supervisory boards; namely, they are present only when a dualistic board (i.e. two-tier corporate governance structure) exists in a company. In Ireland, worker participation has been oriented towards so-called 'excepted bodies' which largely operate under employers' rules, sometimes explicitly excluding trade unions (Doherty, this volume). Furthermore, the principle of board member independence, considered good practice in governance codes, can undermine worker participation as its detractors have used such a principle to limit or even prohibit such rights. This can be seen in the Czech debates surrounding the repeal of BLER obligations in the private sector (Stránský, this volume).

Additionally, legislation on worker representation on company boards should not be considered in isolation from governmental changes or broader economic plans. The evolution of worker representation rights has been neither linear nor necessarily incremental, and can face contradictory policies. The Lithuanian case illustrates how a piece of legislation, supposedly intended to involve workers on municipal company boards, was rendered effectively inoperative by deregulation and privatisation plans that were adopted almost in parallel (Šilinytė, this volume). Moreover, while privatisation and commercialisation processes have aggravated coverage problems in countries where worker representation on company boards had previously been confined to the public sector, the chapters point to problems that existed prior to privatisation, originating in the loopholes and limited coverage or normative capacity of the arrangements (see the chapters by Costa and Rego, Lafuente and Zybała, referred to Portugal, Spain and Poland respectively).

2. This is the case in Finland where the law provides some leeway for representation in non-executive functions or on advisory bodies, depending on the employer's choice. This substantially changes the purpose and the potential of workers to influence company policy.

Mandatory rules seem to be the most effective channel to incentivise worker rights on corporate governance bodies (Waddington and Conchon 2016), removing them from corporate competition. In the Czech Republic, companies have tended to abide by the new legislation, even retaining the practice in private sector companies when the obligation was repealed there. In Italy, EU mandatory rules have also enabled 'formal' worker representation in one Italian company (Fiat Chrysler Automobiles (FCA)) where BLER had never previously been introduced voluntarily.[3] Whether due to economic rational choice, as classical neoliberal theory argues (Jensen and Meckling 1976, 1979), or to a pervasive reluctance of the powerful to share control as a matter of ideology, as this volume's findings suggest,[4] it seems that worker representation on corporate boards is unlikely to thrive without the incentive of legally enforceable obligations. Clearly, an approach based exclusively on voluntarism or ad hoc company-level negotiations has not led to strong models of worker representation on corporate boards in Belgium, Italy or Spain. However, the lack of legislation in those countries has not prevented relevant debates on the matter,[5] as will be addressed later, and neither has it prevented the significant inspirational role that specific experiences of worker representation on company boards might have played in social imaginaries, even without being based on a law.[6]

In brief, legal regulations on worker representation on company boards are important, but focusing exclusively on their formal (or lack of) existence does not allow us to comprehend fully the role of past and present experiences of this institution, its potential and its social relevance in the countries examined here, where it is far from being naturally assumed. While being systematically exposed to attacks and attempts to abolish or restrict legislation, isolated experiments do trigger an interest and inspire policy debates in countries where the practice is scarce.

3. Implementation: limited, fragmented and weak

3.1 Quantitative dimension

The chapters in this volume delimit the effective application of worker representation on corporate boards, trying to identify and quantify the companies affected when regulations or some practices have existed. Official statistics and public or trade union

3. Admittedly, EU legislation on cross-border mergers did trigger discussions on BLER when the Italian company FCA and French company Peugeot S.A. (PSA) merged into Stellantis (Telljohann, this volume). However, this procedure occurred rather far from the public eye and the awareness of social actors, so it is probably not exemplary of how worker representation should be established as a democratic institution.

4. Detractors of mandatory worker representation on boards recurrently warn of the risks to investment, but data demonstrate that, once in place, BLER legislation entails no adverse effects on firm performance (Jäger et al. 2021; Harju et al. 2021), while its positive effects are valued, for instance in terms of long-term investment (Vitols and Scholz 2021).

5. The absence of legislation results precisely from such historical debates and compromise, as demonstrated by De Spiegelaere (this volume) with regard to the Belgian case.

6. For instance, a Spanish trade union representative was exceptionally granted one of the Volkswagen AG supervisory board seats, originally corresponding to the German trade union of metalworkers IG Metall (Industriegewerkschaft Metall), and this isolated case has gained great symbolic value in the Spanish national discourse about BLER (see Lafuente, Chapter 5 in this volume).

registers on these matters are overwhelmingly missing, making systematic monitoring or impact evaluation challenging, if not impossible, for unions, authorities and researchers. In response to this dilemma, authors have applied various strategies: for example, drawing on previous studies or their own involvement in policy processes, they have identified ways to access data (see e.g. Stránský) or signalled loopholes and concrete ways forward to complete future research (see both Šilinytė and Lafuente, with reference to Lithuania and Spain).

Regarding implementation in the countries under examination, worker representation on corporate boards is quite minuscule in terms of coverage both at macro and at micro level concerning the number or percentage of workers on the specific boards affected. It is primarily deployed in public sector companies at state, regional or municipal level, except in the Czech Republic and Finland, whose legislations extend obligations to private companies too. While in some contexts (e.g. Italy, Poland and Spain), worker participation was seen as having been pioneered by the public sector as a potential model for the wider economy, in other cases (e.g. Ireland), the dominant approach perceived it as limited to the public sector and thus deemed it 'unexportable' or inappropriate for private sector companies.

The practice of worker representation on corporate boards is often scattered and fragmented across companies, even in the public sector, as illustrated in Greece, Poland, Portugal and Spain, where privatised companies have (or had) different systems according to their specific company forms. Approaches to power are also not systematic across countries. Depending on their respective regulations and interpretation in practice, workers may be represented at group or individual subsidiary levels (e.g. as in Poland), on supervisory (e.g. as in the Czech Republic) or executive boards (e.g. Poland), boards of directors or managerial bodies below board level (e.g. Finland), each having legal and practical powers which vary from country to country.

On the other hand, despite the absence of enforceable laws in Belgium, Italy[7] and Spain, exceptional company-level experiences of worker representation on company boards either did exist or do still exist in those countries. These examples are based on path-dependent public sector company agreements resulting from a historical social pact, from ad hoc company agreements emanating from the application of EU legislation on cross-border mergers or European companies, or from the application of national codetermination systems that allow the incorporation of worker representatives from other countries on the seats of company boards.[8] However, the latter experiences can be time-constrained by changes to the allocation of seats per country, and have demonstrated both rather limited and highly discrete forms of implementation. On experiences which result from negotiations between trade unions and employers,

7. This concluding chapter was written before Law 76/2025 was adopted in Italy. Still, following Telljohann (this volume), the law did not introduce any mandatory BLER rights in Italy, as their implementation remains voluntary for employers.

8. See Lafuente (2023) for details on how some exceptional national codetermination systems – that is, in Denmark, France, Germany, Norway and Sweden – allow for worker representatives from foreign subsidiaries of the same corporate group to hold a mandate on the corporate boards of the parent company registered in the country concerned.

usually established in company-level collective agreements, managerial attitude has seemed essential for their introduction, implementation and survival over time.

However, 'one thing is the formal recognition of a right, a different thing is the real capacity to exert it' (Innerarity 2025: 4); existing regulations are not always implemented such that they achieve their full potential in practice. To illustrate, according to the constitutional mandate, 123 state-owned companies could be expected to have BLER in Portugal. Yet, regulations have not been adopted in the law to develop these rights in each of these state-owned companies, so a deficit in potential implementation has become apparent. In Finland, BLER is missing in many companies falling within the scope of the legal obligations, pointing to a lack of knowledge, enforcement capacity and/or interest at company level (see Jauhiainen, this volume).

Finally, implementation has not been static over time but has evolved. Most of the chapters here signal a decline in the practice of worker representation on company boards. For instance, Greece, Ireland and Spain counted more boards with worker representatives in the late 1980s – immediately after laws or social pacts were adopted – than today. In countries where board-level worker representation was only established in a shrinking public sector, privatisation, commercialisation, and resulting changes in public sector corporate forms have, as mentioned, been a death blow to effective practice: in many cases, board-level worker representation has simply been lost.

3.2 Qualitative implementation and dynamics

In addition, despite recent, underdeveloped or declining practices of worker representation on company boards, the chapters consider some of the qualitative dimensions of its implementation in terms of impact and inner dynamics. On the one hand, the practice reveals some benefits. By providing more timely access to quality strategic information, having worker representatives on company boards upgrades the exercise of (often fragile) information and consultation rights at company level. Such a representation can also work as an effective monitoring and control tool over company policy (see Stránský, this volume). Even when worker representatives are there only in an advisory capacity (Costa and Rego, this volume), their voices on the board can contribute to qualitative improvements in managerial decisions and in the defence of workers' long-term interests, the recording of divergent opinions when needed and the facilitation of direct contact with top management. The latter can improve social dialogue and bring increasingly remote and invisible centres of power closer to spaces where workers can intervene (Giraud et al. 2018: 182). However, authors' assessments of the impacts of board-level worker representation on working conditions is nuanced: while it is reported to be insufficient in the Czech Republic (Stránský), BLER seems to focus essentially on narrow human resources-related matters in Polish practice (Zybała), indirectly bringing positive effects on wages and equity.

Individual worker representatives sitting on boards echo these positive views, as reported in some chapters (see those by Costa and Rego, Jauhiainen, Koukiadis and Skandalis, Stránský and Zybała). Especially in multinational corporations, they frequently see this

level of participation as an opportunity to leverage their role vis-à-vis local management and to develop new arenas of international cooperation across borders, surpassing the role of Societas Europaea (SE) Works Councils or European Works Councils (EWCs). However, BLER may also add complexity to the already difficult coordination of cross-border worker representation and action, especially considering that employees or trade unionists are not always involved in corporate board roles and, when they are, they do not systematically act according to sectoral union policy. Furthermore, the attitude of management and overly restrictive confidentiality requirements may crucially limit the potential influence of the role, rendering accountability extremely difficult for worker representatives. This confirms previous work on the massive effects of confidentiality on how various forms of worker representation can effectively function (e.g. Parker 2024, among others).

Moreover, conflicting views are reported about the role of board-level worker representatives linked to eligibility, qualification requirements and appointment procedures. Even when representatives' influence is limited, their technical knowledge and skills (e.g. vigilance, diplomacy) are deemed relevant in dealing with other board members and making the best of their role. Procedures for nomination and appointment vary, sometimes providing for employee elections while, in other cases, leaving appointments to trade unions. Frequently, rules are simply not specific or centralised enough and, accordingly, the practice of board-level worker representation is further fragmented within a single country and/or sector. In turn, this reinforces the general lack of networks and strategic oversight of the role of worker representatives sitting on corporate boards, in addition to reinforcing the need for follow-up, instructional guidance or the taking of a sufficiently 'societal' view and coordination across companies (e.g. as in Poland, Portugal or Spain). There is also the issue of union distrust when procedures are not sufficiently transparent (see the TAP Air Portugal case, in Costa and Rego). The following section examines these aspects.

4. Positions of social actors: resolutely against versus ambiguously in favour

In the countries under analysis, employers seem to have consistently opposed such a level of worker representation, sticking to a dominant neoliberal theory of the firm and ownership to retain control. Few individual voices have deviated from this general – more or less vocal – pattern of hostility, although there are instances of a closer alignment with business sustainability values or with the Catholic Church's social teaching doctrine, showing concerns with human dignity, social justice and the common good in society, as referred to in some chapters (see for instance the country chapters by De Spiegelaere and Lafuente).

For their part, trade unions have retained more ambiguous and diverse attitudes, so their supportive positions have not been strong enough to shake the status quo. Generally, unions endorse the idea of labour representation on corporate boards rhetorically and on a case-by-case basis. In the context of declining union power, the decentralisation of collective bargaining and the increasing gap between the locus of centralised capital

decision-making and bargaining mechanisms, board representation may start to be seen from a trade union strategic perspective as a new means by which to get closer to the heart of corporate power and regain an influence. In any case, where unions hold board positions, they prefer to keep them, valuing them as a potential resource (see examples quoted by Koukiadis and Skandalis, Lafuente and Zybała). In addition, the Italian unions recently developed a joint position which explicitly demands worker participation. They also valued the introduction of board-level worker representatives as a positive innovation in the cross-border merger case involving FCA, while sharing criticism about the prevalent managerial approach to workers' involvement (see Telljohann). In Portugal, unions have agreed to introduce BLER in public entities by law and in company statutes (Costa and Rego).

However, unions have not prioritised worker representation on corporate boards in their agendas and objectives. This lack of a long-term strategic approach to this topic prevails in all of the countries under inquiry in this volume and might best be explained by the structural imbalances in power relations that disadvantage unions and determine how participation can be exercised in their concrete contexts, rather than simply by a lack of union interest. In this sense, the era of neoliberal, global and financial capitalism that began in the 1980s and shapes today's economy differs from the so-called 'industrial democracy decade' in the 1970s, when trade unions were at the peak of their social and institutional power and could promote advances in worker participation. Today, opportunistic union lobbying may occur in the context of specific legislative processes (e.g. as in Czech Republic, Finland and Lithuania), but the authors in this volume do not identify a single example of centralised union campaigning on this matter, mentioning only isolated company cases where unions have fought for worker representation on company boards (see the Polish Heineken subsidiary case in the chapter by Zybała). Admittedly, employees show only 'medium' interest in elections to choose representatives for supervisory boards, where BLER exists (e.g. as in the Czech Republic), thereby echoing the declining labour interest in board-level worker representation indicated by Nordic studies (see Lafuente 2023).

Also notable is that politicised trade unions in countries including Belgium, Italy and Portugal remain sceptical and reject board-level worker representation, especially in the private sector. The historical debate on workers' control running through the two major Belgian union confederations (De Spiegelaere, this volume) illustrates the ideological cleavages of this topic, as unsettling as it is for the labour movement, as well as the continuing evolution of their positions. While ACV-CSC (Algemeen Christelijk Vakverbond – Confédération des Syndicats Chrétiens; Confederation of Christian Trade Unions) has gone from officially supporting co-responsibility in corporate decision-making to explicitly rejecting it at more recent congresses, the socialist ABVV-FGTB (Algemeen Belgisch Vakverbond – Fédération Générale du Travail de Belgique; General Labour Federation of Belgium) has advanced from consistently rejecting it as a threat to union autonomy in contesting managerial rule to considering the practical potential of board-level worker representation in the public sector and in multinational companies. ABVV-FGTB even ended up lifting its sustained blockade against a European Trade Union Confederation (ETUC) claim for EU legislation that includes worker participation

on company boards, as the adoption of ETUC resolutions from 2016 and 2020 suggests (ETUC 2016, 2020).

Indeed, relations between board-level worker representatives and unions are far from straightforward. The official views of a trade union organisation are not always aligned with those of their board representatives, shop stewards or rank-and-file members, highlighting unions' internal diversity and the political sensitivity of the topic. While the independence of board-level worker representatives from their (or any) union may sometimes be considered a source of legitimacy for them among staff and other board members, it can expose them to isolation and manipulation by management (see Koukiadis and Skandalis, and Costa and Rego, this volume). When representatives are union officials who are external to the company, this may risk their disconnection from the company's workforce but, especially in unionised sectors (e.g. the energy sector in Poland), it may increase their capacity for strategic action (including strikes) and the adoption of solidaristic views proceeding beyond corporatism. However, unions do not always have the capacity and resources to adequately support board-level worker representatives in their role. This includes, for instance, coordinating and cultivating networks and spaces for exchange and providing training programmes or ad hoc expertise in preparing for board meetings and subsequent debriefings, in line with a long-term strategic view.

Image and reputational risks may also be considered in this context. Where a neoliberal mentality is dominant, which assigns exclusive control rights to capitalist owners, unions may fear that their credibility as 'serious' social partners will be damaged in the views of their members and the general public, should they openly advocate worker representation on company boards (see the chapters by Doherty and Zybała). The more urgent need is membership and recognition. On the other hand, the potential restrictions on independence and incorporation into capitalist or corporatist logic could lead to co-responsibility without sufficient capacity to influence. This could play against unions' solidaristic objectives across the economy while making their role purely 'decorative'. Moreover, it could discredit unions and divert their attention from more relevant issues for their represented constituencies (e.g. as in Portugal). In practice, board-level worker representation has also on occasion been exercised in concert with financial participation schemes and has sometimes suffered from malpractice,[9] reinforcing fears of reputational collateral damage.

Overall, in the countries examined here, unions prefer to concentrate their limited resources and power on what they deem to be more urgent and relevant matters, considering other channels as more effective for influencing management decision-making. Collective bargaining certainly stands out, but in peripheral economies like Ireland, Portugal, Spain or eastern European countries, EWCs within multinational groups might be considered a potentially more valuable source of information and influence for unions than board representation in subsidiaries with limited decision-

9. Some examples have appeared in Italy and Spain, under Alitalia's company agreement and the management's hijacking of democratic appointment procedures in the FCA-PSA cross-border merger case (see Telljohann, this volume), and the malfeasance case regarding Bankia board members (see Lafuente, this volume).

making powers (see Costa and Araújo (2008: 310) and Köhler 2019, among others). Even though the initially lofty expectations for EWCs might have waned (see De Spiegelaere et al. 2022), unions in these countries may still prefer to invest in and orient their officials towards EWCs where they are able to take a long-term strategic perspective.

Thus, in terms of the paramount issues facing social dialogue, worker representation on company boards is not generally perceived by unions as the cherry on the cake worth fighting for. It is unlikely that they trust its practical potential sufficiently to pursue it actively, particularly if certain pre-conditions are not met in the contexts within which they operate. These are, namely, stronger union recognition, membership and bargaining power; more effective information and consultation rights; improved job security and quality; health and safety protection; and other working conditions such as wages. All of these remain, in contrast, bread and butter issues considered to be more urgent and central to social dialogue in the countries under review.

5. Public debate: uneven waves

In order to understand the state and evolution of public debates about worker representation on company boards, the metaphor of moving and varying 'waves' (Ackers et al. 1992; Marchington et al. 1993) seems more encompassing for this set of countries than that of 'cycles' explained only by labour-capital power relations in the economy (Ramsay 1977). Today, nuanced public debate is often missing or weak on the issue. There is little to no political interest, arising from a lack of social support and practice as well as the silent or hesitant positions adopted in the public sphere by trade unions who may fear repercussions from bringing the issue to the attention of right-wing political forces and risking campaigns against already-acquired rights (see, for instance, De Spiegelaere, Doherty, Jauhiainen, Lafuente (Spain – at least until recently) and Stránský, this volume). Thus, advocating board-level worker representation appears to be a self-endangering rather than politically wise option, and is thus one which delays the time when this issue may reach the policy agendas of most countries.

Indeed, where public debate does exist, it is usually based on normative arguments rooted in preconceived positions on private ownership and labour-capital relations. In contrast, academic debate tends to focus on legal or technical issues[10] and economic studies, though the latter are, with some exceptions, frequently estranged from local realities.[11] However, scholarly reflection has generally been scarce, mostly triggered by specific European projects or EU law transpositions (the chapters by Costa and Rego, Doherty, Lafuente and Zybała offer some examples).

10. In Portugal, the scholarly legal academic debate has, for instance, focused on the issue of BLER's exclusion from voting rights (Costa and Rego, this volume). Conversely, in the Czech Republic, the debate between the neoliberal establishment, which is against BLER, and the advocates for its reinstalment has been marked by the use of normative versus more technical legal arguments, which do not speak to each other (Stránský, this volume).

11. Some research has been developed to quantify the number of companies with BLER and/or evaluate its impacts in Finland, Ireland and Portugal (respectively, Harju et al. 2021 and Jauhiainen 2025; TASC 2012; Costa and Rego 2023).

The scarcity of the debate and the differential treatment of worker representation on company boards in the countries studied here can be explained by path dependencies in their political economies, the diverse degrees of embeddedness of board-level codetermination in their systems of industrial relations and capitalism, and the orientations of the actors themselves, these being partly explained by the previous elements. The countries have followed very different paths to the market economy, with variations in their dominant corporate law traditions and understanding of company interests. Classical liberal theories of the firm and shareholder approaches to corporate governance have prevailed, in contrast to stakeholder approaches that are more present in coordinated market economies, such as that in Germany where the paradigmatic codetermination model has flourished. The policy debate around board-level worker representation is often situated within more general considerations, revolving around models of capitalism, business ownership, new forms of work organisation and the position of employee rights within that context, including information and consultation and, often, financial and direct participation. In other words, board-level worker representation has entered the public debates and agendas through different processes and frames, which may explain its association with certain policies, determining its advocates and detractors and limiting its penetration.

In Belgium and Italy, the foundational political compromises reached after World War II led to industrial relations models that were not inclined towards worker participation and codetermination, but rather built on the pillars of sectoral negotiation and collective bargaining, social partner autonomy and a corresponding acceptance of management's right to manage. In both cases, the lack of legislation results from conscious political choices (see Telljohann and De Spiegelaere, in this volume). This is marked in the case of Italy by intense ideological conflict, strong left-wing parties and class consciousness (Leonardi and Gottardi 2019); and, in Belgium, by the heated debates about workers' control and industrial democracy in the 1970s and several frustrated attempts to introduce some sort of 'codétermination à la belge' from different corners of the political spectrum. Since the 1980s, the public debate has been frozen in Belgium, even when EU rules on worker participation were being transposed into national law.

In Greece, Portugal and Spain, the experience of fascist dictatorship and democratic transitions and compromises in the 1970s-1980s still influence mainstream positions against, or hesitancy about, further developing internal participation mechanisms such as board-level worker representation, especially among unions and political parties. Capital and labour 'collaboration' in the economy may still be associated with one of the pillars of past dictatorial regimes in those countries. Furthermore, in the turn to democracy, independent trade unions were institutionally recognised as a symbol of political pluralism. Still, managerial authority was fully recognised too as a compromise, leading to adversarial dynamics of social dialogue.

In the Czech Republic, Lithuania and Poland, worker participation as an institution still resonates with some experiences of socialist planned economies, yet with very different frames of reference due to their varying transitions to market economies in the 1990s. In contrast to the Czech Republic, Poland pursued a neoliberal model based on unrestricted private economic freedoms and competitiveness and sought to attract

foreign capital by lowering labour standards. In the commercialisation and privatisation of state-owned companies, worker representation on company boards was kept as a compromise with unions' past institutional power, at a time when they were still strong, but this level of worker representation was excluded from general corporate policy (see Zybała). In Lithuania, BLER was legally introduced in municipal and state-owned companies, more as an institutional 'implant' under EU influence than as the result of a national debate or desire for continuity with the past (see Šilinytė).

In Ireland, the British debate on industrial democracy was followed closely, involving key issues such as corporate governance structures, the role of trade unions and the relationships between worker directors and collective bargaining. However, worker representation on company boards never took root, and the deliberate neoliberal policy turn in the 1980s-1990s to make Ireland competitive on the international scene represented a serious break in the debate on employee participation. The deregulationist market ideology of the United States (US) also left a serious imprint on the Irish industrial relations model and its notions of worker participation, the latter being closer to financial participation, reflecting Irish dependence on US investment (Doherty, this volume).

The issue has, however, recently gained traction in several countries. In Italy, the FCA and Peugeot S.A. merger highlighted challenges that led to discussions around board-level worker representation and its implementation in that national context (Telljohann, this volume). Also, CISL (Confederazione Italiana Sindacati Lavoratori; the Italian Confederation of Workers' Unions) promoted a citizens' initiative to legislate on this topic, including ownership participation and profit sharing.[12] In Spain, the labour minister announced plans to introduce legislation on workplace democracy including trade union participation on corporate boards, based on the coalition agreement between PSOE (Partido Socialista Obrero Español; Spanish Socialist Labour Party) and Sumar. Meanwhile, in Finland, the right-wing coalition in government since 2023 seems open to maintaining and potentially improving existing participation laws, despite its anti-labour policies. While concerns could be raised about BLER being instrumentalised by pro-business forces, the topic is gaining attention among unions and the public (see Ahtela 2025; Jauhiainen 2025). However, these open discussions on economic and industrial democracy have not yet yielded tangible results in terms of implementation.

12. The proposal was processed and finally approved as Law 76/2025 on workers' participation in corporate governance (Disposizioni per la partecipazione dei lavoratori alla gestione, al capitale e agli utili delle imprese) by the Italian Parliament on 14 May 2025. See https://www.gazzettaufficiale.it/atto/stampa/serie_generale/originario.

Table 1 **Overview of the state of worker representation on boards in the ten countries examined**

	Belgium	Italy	Greece	Portugal	Spain	Czech Republic	Finland	Lithuania	Ireland	Poland
Regulations	No law	Constitution, but no law*	Yes (some in public sector)	Constitution, but limited targeted laws	Constitution, but law no longer enforceable (neither social pact)	Yes	Yes	Yes	Yes	Yes
Implementation	n.a.	n.a.	Limited, fragmented, weak (via articles of association)	Limited, fragmented, weak (advisory rights)	Limited, fragmented, weak	Limited but improvable (companies enforcing)	Limited but improvable (companies enforcing and board location)	Limited but neutralised by privatisation plans	Limited and declining	Limited and fragmented
Scope of practice	Isolated examples (based on EU law or company agreement)	Isolated examples (based on EU law or agreement in some state-owned companies)	Public utility companies owned by the state (and historic practice in state-owned socialised companies, mining and quarrying sector and companies in financial difficulty)	Isolated examples in public sector	Limited state-owned companies	Public and private sector	Public and private sector	(Limited) state and municipal companies	Public sector	Privatised companies
Employers	Against BLER except a few voices	Against BLER	Lack of interest	Against BLER	Against BLER	Different views and practice	Different views and practice	Different views and practice	Against BLER	Against BLER
Main trade unions	Conflicting positions but evolving	Conflicting positions but evolving	Evolving positions towards diminished support	Not in favour / lack of support	In favour but not proactive	In favour	In favour	In favour	Conflicting positions	In favour but not proactive

	Belgium	Italy	Greece	Portugal	Spain	Czech Republic	Finland	Lithuania	Ireland	Poland
Other actors	Academia and think tanks in favour	2022 Meloni's right-wing government in favour	n.d.	n.d.	Business associations and 2023 Sánchez's left-wing government in favour	Fluctuating support with changing governments; 2021 Fiala's right-wing government neutral	2023 Orpo's right-wing government against	2020 Šimonytė's right-wing government against **	Influential US foreign capital against	n.d.
Public debate	Historic	Historic and emerging	Historic	No	Emerging	Active some years ago, then faded	Emerging	Recent	Historic	No
Prospects	Stable (none)	Mixed	Stable (none)	Stable (none)	Positive	Stable (none)	Positive	Negative	Negative	Stable (none)

Legend: n.d: no data available; n.a: not applicable

* Law 76/2025, adopted on 14 May 2025, does not impose any mandatory BLER obligations on employers; the application of the legal provisions remains voluntary (see Telljohann, this volume).

** A new coalition government has been in place since December 2024 in Lithuania, led by the LSP (Lietuvos socialdemokratų partija; Social Democratic Party) after the 2024 parliamentary elections, which could be better disposed to BLER (see Šilinytė, this volume).

Source: author's own elaboration, based on interpretation of findings from the country chapters compiled in this volume. See individual chapters for details.

6. Prospects and implications for research, policy and action

The prospects for industrial democracy appear to be less optimistic in 2025 than was the case in 2021 when this book project commenced. Many factors that initially inspired hope seem to have diminished in the current global and EU political landscape (Lafuente et al. 2025). President Biden's pro-union policies in the US augured well in terms of their positive impacts on US multinationals in Europe, especially in Ireland, but the subsequent right-wing US administration in place since the start of 2025 will certainly trump attempts to democratise corporations. In Europe, too, worker participation gained momentum under the 2019-2024 EU legislature, as EU institutions promoted democracy at work narratives and socially oriented legislation in response to the Covid-19 pandemic and the European Pillar of Social Rights (Lafuente et al. 2024). However, its current flagship policy, the Minimum Wage Directive, was at the time of writing under scrutiny by the Court of Justice of the European Union (CJEU) and risked being declared void despite the many critics of the Advocate's General assessment (Schulten and Müller 2025; Kilpatrick and Steiert 2025; Brameshuber 2025).[13] The political landscape is leaning toward right-wing conservatism, competitiveness, security and deregulation, relegating democratic workplace initiatives to a location somewhat against the tide.

This leads to a pressing question: is advocating worker representation on corporate boards worthwhile today? While there is no definitive or universal answer, as it depends on the specific context of power relations and agents' evaluation of their priorities, various options and courses of action are available and can emerge from actors driven by an 'optimism of the will' (Gramsci [1921] 1978: 19) even when they recognise the obstacles that are in the way. Introducing worker representation at the core of corporate decision-making promises to bend sacrosanct managerial and owners' authority to incorporate a certain level of democratic control. In this way, it fundamentally challenges hegemonic capitalist rule. The discursive and mobilising power of this idea should not be underestimated. The chapters in this book showcase efforts to enhance board-level worker representation in practice, policy and debates, identifying the factors that keep it a dormant policy option. This could help to evaluate actions, union strategies and political initiatives to promote effective and contextualised policies on democracy at work including the representation of workers on company boards. Some implications of the findings for research, policy and the social actors, especially unions, are discussed below.

6.1 Implications for research

Following the book's findings of differing country experiences, formal worker representation on company boards cannot be deemed a universally functional tool for workers' influence over company orientations and economic decisions. A 'one-

13. On 11 November 2025, the CJEU delivered its long-awaited verdict in Case C-19/23 [ECLI:EU:C:2025:865], finally validating the Directive — with the exception of a couple of provisions—, which has generally meant a relief for social Europe advocates.

model-fits-all' logic across countries and periods seems inaccurate and unhelpful when considering the diversity and changing nature of labour power resources, the evolving maturity of debates and the varying institutional landscapes. Adaptation to local realities and actors, and to their different speeds in terms of the development of debates, strategy of collective action and the changing world of work, seems key if the idea of worker representation on company boards is to materialise in social policy and practice, particularly in Europe where workplace democracy has been most discussed and established.

At the same time, the volume distances itself from theories of functional equivalence, which could legitimise immobilism rather than pursue increased and more effective workers' control (De Spiegelaere et al. 2019). It identifies how some path dependencies operate in the countries under scrutiny and how board-level worker representation has been discussed, applied and generally perceived as a 'foreign idea' with less relevance than collective bargaining, confronted as it is with several caveats and cultural and political resistance, not least on the side of unions. However, while worker participation may be articulated differently, it does not necessarily show equivalent results in terms of workers' influence in different settings.

Future research could develop the nuances between these two extremes. First, it might pay increasing attention to the articulation between the representation of workers on corporate boards, wider projects of democratisation and satellite representative roles in industrial relations. Interestingly, several chapters mention the existence of advisory roles for workers or unions in corporate governance structures, beyond voting rights on corporate boards. The practical implications of these should be further examined as they could have some effect on participation and social dialogue practice, potentially allowing some degree of influence over economic decisions in these countries.

Second, in striving for a public policy that is better informed about the realities, future research could deepen and update knowledge and technical expertise on the functioning of specific experiences of worker representation on company boards, their practice and the real obstacles representatives face. Confidentiality obligations, liability regimes regarding worker directors, the compatibility of mandates and their applicability and exemptions would merit further attention, for instance. Furthermore, comprehensive and in-depth company case studies could provide updated empirical evidence on the scattered procedures used, rates of implementation and measures of the impact and effectiveness of the cases under examination. Such a qualitative and in-depth company case study focus could clarify the conditions under which worker representation on company boards is more likely to become a valuable asset for workers and unions, also in comparison to other countries not examined in this book (e.g. France, Germany, Sweden). Particularly, management style and attitudes, forms of ownership and board composition may be relevant factors in determining board-level worker representation's inner workings and potential, so these could be promising research areas to explore in financial and corporate governance studies both in the countries under focus and from a comparative perspective.

Third, amid the uncertainties of the current global and European political economy, a historical perspective in research could shed light on how specific transformations, crisis moments or democratic transitions affected policy for worker representation on company boards and industrial democracy, including in prior contexts of rampant economic neoliberalism. This could encourage a better understanding and foresight in respect of labour power and the potential avenues for reproducing or keeping board-level participation.[14]

6.2 Implications for policy

This volume has identified the scope in which public policy and convincing narratives might develop in the countries under examination. Inserting worker participation in existing frameworks of social dialogue and connecting it with wider objectives in defence of democratic rights is one way. But the devil is in the detail, too, and policy can intervene to provide guarantees and resources so that board-level worker representation is exercised according to its democratic goals. Policies would benefit from adapting to the contextual idiosyncrasies at stake. Depending on the legal system and power relations at play, it may be politically sensible for some countries to introduce board-level worker representation rights gradually, starting with the public sector or specific corporate forms, while setting long-term objectives; in other countries, sectoral collective bargaining may initially be a more effective and realistic regulatory channel than binding legislation which introduces such rights.

It is contended here that board-level worker representation is not easily transplanted into (neo)liberal market economies and may require some degree of coordination in the political economy. This involves redefining the purpose of the firm, its interests and its social responsibilities beyond traditional ownership models. This would entail shifting the paradigm towards a model where workers' voice not only reacts or responds as a palliative remedy to employer actions, but is actively and preventively involved in agenda setting and planning. Such a shift would encourage continuous social dialogue and normalise cooperative relations between employer and employees, in contrast with the current sporadic involvement where employees deliver consent to corporate restructuring during crises like the Covid-19 pandemic and deindustralisation processes. Additionally, it is crucial to align political economy plans to ensure that other processes, such as privatisation, do not hinder the introduction of worker participation, as seen in the Czech Republic, Lithuania and Poland.

Policies on worker representation on corporate boards will need to intervene in labour law and industrial relations mechanisms as well as in other areas, especially corporate law, governance and related criminal law, to provide any necessary exemptions or specificities regarding worker representatives to secure their role. Through board

14. A recent labour history project coordinated by Philip Reick ('Democracy at work: Historical perspectives and future challenges for employee representation in Europe – DemWo') re-engages with historical industrial democracy debates and experiences to draw lessons for the present. Also, see previous comparative work in the Nordic countries from a contemporary historical perspective (Kärrylä 2021).

representation, workers gain a privileged position to monitor corporate policies. Similarly, their role could ensure internal oversight on corporate compliance with sustainability standards, taxation and public procurement policies. Specific investment funds could be addressed to incentivise companies to use codetermination in their organisational and strategic decision-making models in support of innovation, competitiveness and quality production.

Where national actors do not necessarily promote or support participation rights, it seems less likely that this dimension of participation will thrive without the explicit encouragement of EU policy. In many EU countries, the most enduring achievements in worker participation have been attained thanks to national transposition of EU directives.[15] Although the safeguarding potential of the SE Directive might have recently been put into question by the CJEU judgement of 16 May 2024 on the *Olympus* case C-706/22 (Langbein and Gieseke 2024), some of its provisions did blow oxygen into transnational board-level worker representation, inspiring principles of negotiation and the preservation of acquired participation rights in cross-border mergers, divisions and conversions. Their practice has triggered new debates and experiences, raising awareness among trade unions themselves about the potential of worker representation on corporate boards in countries where it has not yet flourished. Finally, additional opportunities to diversify the boardroom and feminise representation on the workers' side might arise where board-level worker representation is combined with the recent Directive (EU) 2022/2381 on Gender Balance on Corporate Boards. However, in the current context, it is uncertain whether EU legislation will remain oriented to the promotion of such rights within a logic of positive EU integration (Scharpf 1999); namely, of adopting common regulatory standards aiming at upward convergence on EU social policy.

6.3 Implications for unions and other actors

While a progressive orientation of governments and policies is relevant, evolution of the dominant managerial culture will be decisive if social change is to occur. But employers have consistently preferred to keep full control of managerial prerogative, unless sustained social mobilisation has propelled claims for participatory options and democratisation of the economy. This underlines the importance of agency, beyond regulation.

Unions appear to be central to ensuring that placing worker representatives on company boards will not be used as a substitute for other existing collective worker representation channels but, on the contrary, that it will operate as a resource to reinforce solidarity and articulation across the different levels, spaces and mechanisms of labour representation in the economy. Yet, to prevent corporatism or the risks of manipulation by management, it will not suffice just to have enforceable laws; unions will need to invest in these roles, perceiving them as an opportunity to deploy action regarding

15. Most significantly, Directive 2002/14/EC on a general framework for informing and consulting employees; Directive 2009/38/EC on EWCs (currently under revision); Directive 2001/86/CE supplementing the Statute for a European Company with regard to the involvement of employees (SE Directive).

company policies but also with regard to their more outward-facing strategies. This involves developing union policies and organising union training and support networks to empower worker representatives on the board vis-à-vis other board members. It also means formulating their function as far as the workforce is concerned and within the wider strategy of the union organisation.

At the same time, unions' claim for more democracy at work may bring revitalisation strategies and internal union democracy into focus. If efforts increase to make practical sense of worker representatives on company boards in general union policy and render them more sustainable, additional efforts may be advisable to prevent the risks of detachment between such roles and the workforce by establishing guarantees, control and accountability procedures, and promoting more participatory ways of taking action within union organisations. This could be an opportunity to refresh the so-called 'neglected view' of Sidney and Beatrice Webb's theoretical account on industrial democracy (1897) regarding unions' internal politics (Perusek 1993) and support trade unions' renewal initiatives, epitomised by the newly created ETUC Renewal Centre (ETUC 2024).

Ultimately, the capacity to create coalitions and alliances with other actors at multiple levels (e.g. workplace, sector) seems to be a key political strategy. Democratising work through worker representation has been a typical labour movement claim throughout history, but unions today are often tied by other urgent priorities and a lack of sufficient consensus to lead a political offensive for more workplace democracy. However, the latter issue has become a broader societal claim involving other stakeholders, as the chapters of this book attest. This may have an impact on the frames of reference within which worker representation on corporate boards is discussed and on the questions of how the social coalition advocating this level of representation can be broadened without diluting the claim's essential labourism.

One thing is certain: in contrast to the optimistic anticipation of a decline of the neoliberal model of capitalism following the global Covid-19 pandemic, recent developments have not only left democracy at the factory gates but have also brought capitalist logics into the traditional realm of democracy; that is, into the public sphere. Narratives able to 'capture the imagination' (De Spiegelaere 2023:22 and 26) and mobilise the many around what are the normative arguments of democracy will be decisive to progressive policies if they are to make workplace democracy an attractive idea again and to incorporate it meaningfully in their roadmaps.

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Cite this chapter: Lafuente S. (2025) Concluding chapter. Can Sleeping Beauty be woken? Worker representation on boards amidst complex diversity, in Lafuente S. (ed.) Revisiting worker representation on boards: the forgotten EU countries in codetermination studies, ETUI.

Abbreviations

ABVV-FGTB	Algemeen Belgisch Vakverbond – Fédération Générale du Travail de Belgique (General Labour Federation of Belgium)
ACV-CSC	Algemeen Christelijk Vakverbond – Confédération des Syndicats Chrétiens (Confederation of Christian Trade Unions)
AG	Aktiengesellschaft (German public limited company)
BLER	board-level employee representation
CISL	Confederazione Italiana Sindacati Lavoratori (the Italian Confederation of Workers' Unions)
CJEU	Court of Justice of the European Union
ETUC	European Trade Union Confederation
EU	European Union
EWC(s)	European Works Council(s)
FCA	Fiat Chrysler Automobiles
IG Metall	Industriegewerkschaft Metall (German Industrial Union of Metalworkers)
n.a	not applicable
n.d	no data available
PSA	Peugeot S.A.
PSOE	Partido Socialista Obrero Español (Spanish Socialist Labour Party)
S.A	société anonyme (French public limited company)
SE	Societas Europaea (European Company)
TAP	Transportes Aéreos Portugueses, originally; then, TAP Air Portugal
UK	United Kingdom
US	United States

Annex
Timeline of institutional arrangements introducing rights for worker representation on boards in the European Economic Area (EEA), by country

Country	1940-1969	1970-1979	1980-1999	2010-2024
Austria	1947: Works Council Act of 28 March (art. 14(2) 4)	1973: Labour Constitution Act of 14 December (art. 110)		
Croatia				2014: Labour Act of 15 July (art. 164)
Czech Republic			1990: Act nº111/1990 of 19 April on state enterprise 1991: Act nº 513/1991 Coll., Commercial Code (art. 200) 1997: Act nº 77/1997 Coll., on state enterprises (art. 13)	2012: Act on commercial corporations nº 90/2012 Coll. (Corporations Act) 2016: Act nº 458/2016 Coll. amending the Corporations Act 2020: Act nº 33/2020 Coll. amending the Corporations Act
Denmark		1973: Act nº 370 of 13 June on public limited companies (consolidated by Law nº 483 of 15 November 1985) 1973: Act nº 371 of 13 June on private limited companies	2009: Act nº 470 of 12 June on public and private limited companies (Companies Act)	2011: Act nº 322 of 11 April (arts. 140-143) (consolidating Act nº 470 of 12 June 2009) 2012: Edict nº344 of 30 March on employee representation in public and private limited companies
Finland			1987: Act 627/1987 on state enterprise (art.14) (repealed in 2002) 1990: Act 725/1990 on employee representation in the administration of undertakings	2010: Act 1062/2010 on state enterprise (art. 7-10) 2021: Act on Co-operation 1333/2021

Country	1940-1969	1970-1979	1980-1999	2010-2024
France			1983: Law 83-675 of 26 July 1983 on the democratisation of the public sector (art.5-28) 1986: Ordonnance 86-1135 of 21 October modifying Law 66-537 of 14 July on commercial companies, to offer public limited companies the possibility to introduce provisions in their statutes to foresee worker representation with deliberative voice on their boards of directors or supervisory boards 1993: Law 93-923 of 19 July on privatisation 1994: Law 94-640 of 25 July on the improvement of employee participation in the enterprise (creates article 8.-1 of Law 86-912 of 6 August, repealed in 2014) 2006: Law 2006-1770 of 31 December for the development of participation (art.33)	2013: Law 13-504 of 14 June on safeguarding employment (art.9) (modified by Law 2015-994 of 17 August on social dialogue and employment) 2014: Ordonnance 2014-948 of 20 August on governance and transactions affecting the capital of companies with state participation 2019: Law 2019-486 of 22 May on growth and transformation of firms (PACTE)
Germany	1951: Act on the participation of employees in the supervisory boards and boards of companies in the mining and iron and steel industry of 21st May. 1952: Works Constitution Act of 11st October (revised in 2004)	1976: Co-determination Act of 4 May	2004: One-third Participation Act of 18 May.	

Country	1940-1969	1970-1979	1980-1999	2010-2024
Greece			1983: Act 1365/1983 Socialisation of state-run undertakings and utilities 1986: Law 86-912 of 6 August on privatisation modalities 1996: Act 2414/1996 on the modernisation of public enterprises and organisations (art.6) (repealing 1983 Act) 2005: Act 3429/2005 of 27 December on public enterprises and organisations (art.3 para.2)	2022: Law 4972/2022 of 23 September, on the corporate governance of public limited companies and other matters
Hungary			1988: Act VI of 1988 on business associations (repealed in 2006) 2006: Act IV of 2006 on business associations (arts 38-39)	2013: Act V. of 2013 on the Civil Code (arts 3:124 to 3:126 and 3:288)
Ireland		1977: Worker Participation (State Enterprises) Act 6/1977	1988: Worker Participation (State Enterprises) Act 13/1988 (amending 1977 Act)	
Lithuania				2016: Labour Code of 19 September nº XII-2603 (art. 210) 2022: Law of state and municipal enterprises nº 102-2049 of 1994, consolidated version of 22 December 2022 (art.10)
Luxembourg		1974: Law of 6 May 1974, establishing joint committees in the private sector and organising the representation of employees in public limited companies (incorporated into Labour Code 2013 version as arts L426-1 to L426-11)		

Country	1940-1969	1970-1979	1980-1999	2010-2024
Norway		1972: Act on joint stock companies of 12 May	1985: Royal Decree nº 2096 of 13 December 1991: Act on state enterprises nº 71 of 30 August (art.20) 1997: Act on private limited companies nº44 of 13 June (arts 6-4, 6-5 and 6-35) 1997: Act on public limited companies nº45 of 13 June (arts 6-4, 6-5 and 6-37)	2014: Regulation nº 850 of 20 June implementing the legal provisions on the right for representatives in public limited liability companies and public limited liability companies and business associations 2017: Regulation nº 1277 of 24 August implementing the legal provisions on employees' right to representation in the board of directors and corporate assembly of limited liability companies and public limited companies (the Representation Regulations)
Poland			1981: Act of 25 September 1981, on state enterprises 1981: Act of 25 September 1981 on the self-government of the staff of a state-owned enterprise 1990: Act on privatisation of state enterprises of 13 July 1990 1996: Act of 30 August 1996 on the commercialisation and privatisation of state enterprises (art.11-16)	
Portugal		1976: Decree- Law 260/76 of 8 April on the general bases of public companies 1979: Law 46/79 of 12 September on works councils	2009: Law 7/2009 of 12 February of revision of the Labour Code (art. 428) 2009: Decree-Law 137/2009 of Comboios de Portugal (CP) 2009: Decree-Law 148/2009 of Metropolitano de Lisboa EPE	

Country	1940-1969	1970-1979	1980-1999	2010-2024
Slovakia			1990: Act nº 111/1990 of 19 April on state enterprise (art. 20) 1991: Act nº 513/1991 Coll., Commercial Code (art. 200)	
Slovenia			1993: Act on Worker Participation in Management – ZSDU (Official Gazette RS, nº 42/93 of 22 July), consolidated version ZSDU-UPB1 (arts 78-84a)	
Spain	1962: Law 41/1962 of 21 July, establishing the involvement of staff in the administration of firms that adopt the legal form of 'Sociedades' 1965: Decree 2241/1965 of 15 July, of development and application of Law 41/1962. (repealed by Act 8/1980 March 10)	1975: Decree 786/1975 of 3 April, on trade union participation and regime of board members and directors of savings banks 1977: Royal Decree 2290/1977 of 27 August on the regulation of governing bodies of savings banks	1985: Law 31/1985 of 2 August regulating the governing bodies of savings banks 1986: Agreement on trade union participation in state-owned companies, of 16 January 1993: Collective agreement for the companies in the metal sector of INI-TENEO Group, of 22 June (art.10)	
Sweden		1973) 1976: Law 1976:351 of 16 June, on employee representation on boards of companies and economic associations 1976: Law 1976:355 of 3 June on employee representation on boards of banks and insurance companies	1987: Act 1987:1245 of 17 December on board representation of private-sector employees	

Note: the table provides a non-exhaustive chronology of relevant legislative texts and institutional instruments (i.e. decrees, edits, social pacts) that underpinned rights for worker representation on corporate boards in EEA Member States. Some may not currently, or entirely, be in force. See individual chapters for details. Legal texts are regularly collected at the ETUI repository of legislation, see: https://www.worker-participation.eu/board-level-employee-representation-national-laws-and-other-instruments

EEA: European Economic Area

WPEurope network: Worker Participation in Europe network of the ETUI

Source: editor's own compilation as of September 2024, drawing on Waddington and Conchon (2016), Lafuente (2022), updates of the ETUI's Worker Participation in Europe network (WPEurope network) of experts, and the chapters of this book.

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Acknowledgements

This collective volume is the culmination of a long journey only made possible by the perseverance of many individuals. The editor is grateful for their support in bringing this book to fruition. First, she would like to express her deepest gratitude to the authors who have contributed their knowledge to this project. Since the first workshop during the Covid-19 pandemic, they have engaged with great curiosity and collegiality, and were ready to refine the chapters and patiently navigate the obstacles towards publication.

That this volume is able to see the light of day is owed also to the careful editing of Aline Hoffmann, Jane Parker, Mehtap Akgüç and Bart Vanhercke along the way. The editor would like to extend heartfelt thanks to two anonymous external reviewers and to Calvin Allen for his engagement in the conceptual discussions and invaluable support during the language editing process of the book, which brought clarity and coherence to the volume.

We thank Fabienne Depas for checking and harmonizing the references and the colleagues at the ETUI Communication and Publications Unit for formatting and ultimately producing, publishing, printing, promoting and disseminating the book.

A final word of gratitude goes to the respondents who kindly shared their knowledge with us in interviews and more informal discussions, as well as to the speakers and participants in the various events that ETUI has organised so far with local partners* to promote debate around the book's ideas and its country chapters. Their national updates, feedback and diverse viewpoints on worker representation on company boards have enhanced the depth and breadth of the analysis and enriched the impact of this work in ways that words cannot fully capture, opening avenues for future collaboration.

* ETUI panel at the Industrial Relations in Europe Conference (IREC) 2023, Durham (UK), 19 September 2023; ETUI and Institute of Public Affairs event 'Towards a policy agenda to democratise companies in Poland. Revisiting worker representation on boards', Warsaw (Poland), 22 October 2024; ETUI panel at the ADAPT Conference, Bergamo (Italy), 4-6 December 2024; ETUI, Plataforma por la Democracia Económica (PxDE; Spanish Platform for Economic Democracy) and CEHI – UB (Centre d'Estudis Històrics Internacionals – Universitat de Barcelona; Centre of International Historical Studies – University of Barcelona) event 'Towards a progressive agenda to democratise firms in Spain. Revisiting worker representation on company boards', Barcelona (Spain), 16 January 2025; ETUI and Teollisuuden palkansaajat TP (Industrial Employees TP) event 'Worker representation on boards in Finland and the Nordic countries. Challenges, prospects, transnationalisation', Helsinki (Finland), 12-13 February 2025.

Abbreviations

CEHI – UB	Centre d'Estudis Històrics Internacionals – Universitat de Barcelona (Centre of International Historical Studies – University of Barcelona)
IREC	Industrial Relations in Europe Conference
PxDE	Plataforma por la Democracia Económica (Spanish Platform for Economic Democracy)

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Revisiting worker representation on boards

The forgotten EU countries in codetermination studies

Edited by Sara Lafuente

During the 2008 financial crisis, board-level employee representation (BLER) was touted as an institution that could counter mismanagement with a stakeholder approach and thus improve the quality of corporate governance.

After the experience of the socioeconomic consequences of the Covid-19 global pandemic, today's growing concerns over the crisis in liberal and representative democracies have once again put worker participation and voice at the centre of interdisciplinary debates. Yet codetermination rights remain largely underdeveloped as a key dimension of EU industrial relations, with the issue of harmonisation moving on and off the EU agenda since the 1970s. How can this discrepancy be explained?

Revisiting worker representation on boards addresses this conundrum and advances comparative knowledge of BLER in Europe – which previous empirical research has demonstrated is not exclusively a German idiosyncrasy – by examining its sociopolitical significance as a concept and practice. It focuses on ten Member States which have often been underexplored in codetermination studies.

The aim of this volume is to provide a deeper understanding of current debates and practices around BLER and to assess the general prospects for development in this area of social policy at national and EU level. The book does not limit itself to acknowledging that the perceptions and practices of BLER remain largely anchored in national institutions, ideas and policy debates, but goes further to uncover parts of the underlying rationale behind this diverse and complex reality. The contributions draw on the EU acquis on worker participation and use different methodologies to quantify, map and evaluate the implementation, enactment and potential deployment of BLER.

For trade unionists, policymakers and researchers looking to orient themselves within the current debates and promote policies around worker representation on company boards, this book will certainly provide an invaluable compass.

D/2025/10.574/33
ISBN 978-2-87452-781-4