

Portugal

by Reinhard Naumann*

1. Legal aspects of the corporate governance system in Portugal

1.1 Legal types of company organisation (management)

Today, large companies in Portugal have generally, the legal form of an Anonymous Society (Sociedade Anónima / S. A.). The S. A., whose minimum capital is € 50.000, may go to the stock market (or not). During the nationalisations in 1975 the most important large firms were transformed into Public Enterprises (Empresa Pública / E.P.), but since 1989 almost all of these companies have been transformed into S. A. and their capital has been largely privatized.¹³

Normally a S. A. is governed by a board of directors (Conselho de Administração / CdA) whose members may be appointed in the company's founding contract or elected by the general assembly (of shareholders) and have plain powers to run the business. The CdA's members of large companies are generally divided into two sub-groups (executive and non-executive members). Executive members use to be professional top executives. The CdA is controlled by a Council of Auditors (Conselho Fiscal / CF). The Council of Auditors is elected by the general assembly (of shareholders).

Table 1.1.1		
S. A. Type "A" (Sociedade Anónima / Anonymous Society)		
Body	Mode of appointment	Legal attributions
board of directors (CdA)	Appointed in the company's founding contract or elected by general assembly	Manage the undertaking, decide on acquisition / sale of immobile goods, decide on opening or closing establishments etc.
Council of Auditors (CF)	Elected by the general assembly	Control board of directors, accomplishment of law and company's contract, control books etc.
General Assembly (Assembleia Geral / AG)	<u>Assembly of shareholders</u>	Elect and dismiss members of board of directors and Council of Auditors
Source: Code of Commercial Societies (Código das Sociedades Comerciais, DL 262/86)		

Companies that belong to this dominant type of Anonymous Societies (type "A") may create a particular body for the executive managers, thus creating a differentiated structure with a board of

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¹³ A third possible legal form of large firms may be the Limited Company (Sociedade Limitada / Lda.) with a minimum capital of € 5.000.

directors and its President defining the firm's overall strategy and responding, in the first place, to the shareholders' interests, and an Executive Committee headed by the CEO and depending on the board of directors. In any of these two cases, this type-“A” company must be considered a “single-tier” model of corporate governance.

Anonymous Societies may also take the legal opportunity to create another type of internal organisation with a third governing body called the General Council (Conselho Geral / CG). The CG is composed by share holders who are appointed in the founding contract or elected by the general (or constituting) assembly. In this case, the Management (Direcção) is appointed, supervised and controlled by the CG. The control of the accounts is carried out by an Official Auditor (Revisor Oficial de Contas / ROC)¹⁴. This might be considered a “double-tier” model.

Body	Mode of appointment	Legal attributions
Management (Direcção)	Appointed in the company's founding contract or elected by the General Council	Manage the undertaking, decide on acquisition / sale of immobile goods, decide on opening or closing establishments etc.
General Council (CG)	Appointed in the company's founding contract or elected by general assembly	Appoint / dismiss and supervise / control directors
Official Auditor (Revisor Oficial de Contas)	Appointed by general assembly	Control board of directors, accomplishment of law and company's contract, control books etc.
General Assembly (Assembleia Geral / AG)	<u>Assembly of shareholders</u>	Elect and dismiss members of Management and official auditor
Source: Code of Commercial Societies (Código das Sociedades Comerciais, DL 262/86)		

There are still a few large companies with the statute of a Public Enterprise (E. P.).¹⁵ According to the new legislation on the public sector (DL 558/99) the internal structure of E.P.s is regulated according to the legislation on Anonymous Societies. Thus the specific regulations for the internal

¹⁴ The auditor may be a single person or na agency of Official Auditors.

¹⁵ In 2001/2002 state owned companies with the status of Public Enterprise (Empresa Publica) were only to be found in the transport sector: The National Railway company “Caminhos de Ferros de Portugal E.P, the Lisbon Underground “Metropolitano de Lisboa E.P.”, the Air Navigation of Portugal (NAV E.P.) and the Railroad Network (REFER E.P.). Cp. Secretaria de Estado do Tesouro e das Finanças, March 2002

organisation of Public Enterprise under the previous legislation (Lei 260/76) , and in particular stipulations regarding workers' representation at governing bodies, have been abolished.¹⁶

According to experts, the overwhelming majority of companies opts for the type "A" model, that is the "single-tier" model of corporate governance.

1.2 Workers representation at governing bodies

According to the Constitution (1976) and specific legislation (1979, 1984) workers have the right to be represented at all governing bodies in companies that are completely owned (directly or indirectly) by public entities (state, regions, municipalities). This right is specified for the board of directors and the Council of Auditors (see below).

According to the Constitution, workers' representatives at public companies must be elected by the majority of workers of the respective company. Elections shall be regulated analogously to elections for Workers' Commissions. All workers of the company are allowed to vote. The candidates must be workers of the company. Candidates may be nominated by the Workers' Commission and/or by 10% of the company's workforce (or by 100 workers). The mandate of workers' representatives at governing bodies generally corresponds to the mandate of the Workers' Commission in the company (in most cases three years), not to the mandate of the company's governing body. There is no limit to re-election. A "Re-call" is possible if its demanded by the Workers' Commission and/or by 10% of the company's workforce (or by 100 workers). Workers Representatives' rights and duties are identical with those of the other members of the governing bodies.

The law explicitly allows social partners in non public companies to agree upon a workers' representation at the governing bodies that would be analogous to the model in public owned firms, but it seems that this possibility has never been used by any company. There was never specific regulation on group companies.

After the revolution in 1974 a vast program of nationalisations created a large universe of Public Companies (Empresas Públicas, E.P.), regulated by specific legislation (1976) that included stipulations regarding workers representation at governing bodies.

¹⁶ In the context of privatization and subsequent concentration of capital, legislation on alliances between companies has become increasingly important. The Code of Commercial Societies distinguishes 4 types of Allied Societies (Sociedades Coligadas), namely those linked by a) simple participation, b) reciprocal participation, c) a relation of domination or d) a group relation. There is specific legislation on Holdings (Sociedade de Gestão de Participações / SGPS). Experts alert that responsibilities of these alliances as a whole (or their dominating society) for acts or omissions of one of its parts are not sufficiently regulated, a situation that may prejudice workers and which might raise the question of European minimum standards regarding this problem.

Table 1.2			
Workers Representation at Governing Bodies in Portuguese Companies			
Level of organisation	S. A . Anonymous Society		E.P. Public Enterprise
	Private capital (in part or total)	100% public capital	100% public capital
Governing bodies in general (Executive, supervisory and controlling bodies)	No legal guarantee of right to workers' representation, but the law on Workers' Commissions (Law 46/79, Art.º 30º) establishes that social partners may agree upon a workers' representation at the governing bodies.	According to constitutional law (Art. 54º, CRP ver. 1997), Workers' Commissions have the right to "promote the election of workers' representatives at the governing bodies [órgãos sociais] of companies owned by the state or other public entities." Furthermore Art.º 90º establishes that "in the productive units of the public sector an effective participation of workers in the respective management is guaranteed." The law on Workers' Commissions (Law 46/79, Art.º 30º) establishes that Workers' Commissions in the public sector "promote, ..., the election of workers' representatives at the governing bodies [órgãos sociais] of the respective company". ¹⁷ The number of workers' representatives is defined in the company's statute. ¹⁸	
Executive body (board of directors, Management)	No legal guaranty of right to workers' representation.	The law on Workers' Commissions (Law 46/79, Art.º 31º) establishes that workers in the public sector have "the right to elect at the minimum one representative to the respective executive body." According to the "Law on Workers' participation in governing bodies of the public enterprise sector (Lei 29/84, Art.º 8º) "one of the members of the board of directors represents the company's workers and will be elected ... by the majority of the represented workers."	
Supervision (CG)		No specification of the right to workers' representation at this level.	
Control (Council of Auditors)		According to constitutional law (Art. 54º, CRP ver. 1997), Workers' Commissions have the right to "promote the election of workers' representatives at the governing bodies [órgãos sociais] of companies owned by the state or other public entities." This applies to the Council of Auditors, too. ¹⁹	
Sources: Constitution of the Portuguese Republic; Law on Workers' Commissions (Lei 46/79); Law on Workers' participation in governing bodies of the public enterprise sector (Lei 29/84)			

¹⁷ The law on Workers' Commissions also allows that workers' representatives at governing bodies may be appointed by the Workers' Commission, but the Constitution obliges to election of all representatives.

¹⁸ E.P.s statutes are defined by law decreed by government (Decreto-Lei).

¹⁹ According to the "Law on Workers' participation in governing bodies of the public enterprise sector (Lei 29/84, Art.º 10º) one of the members of the Council of Auditors [CF] "will be proposed by the workers' representative body ...", but the Constitution obliges to election of all representatives.

Since the beginning of privatisations in 1989, almost all Public Companies (E.P.) have been transformed into Anonymous Societies (S. A .) and most of them have been (partially or totally) privatised, even though there exist still a number of important companies with this status (a set of 100% publicly owned S.A . and some E.P.)²⁰. Thus, the universe where constitutional and other legal provisions for workers' representation at governing bodies would apply [in theory, not in practice!] has been drastically reduced (to less than 2% of the workforce in 2000).

In 1999 new legislation on the public sector (DL 558/99) abolished all previous stipulations regarding workers' representation at governing bodies²¹, eliminating with this move a central legal instrument for making workers' right of representation effective. This was a further step on the way to the complete erosion of a constitutional right that always had been obstructed by government (see below).²²

1.3 Workers' representative bodies inside companies

The most important entities representing workers at company level are

- The Workers' Commission (Comissão de Trabalhadores, CT) which is elected by all employees,
- The workplace union committee (Comissão Sindical / Intersindical, CS/CIS) which is elected by union members,
- The Workers Representatives for Health and Safety at the Workplace (Representantes HST) who are elected by the company's employees,
- The European Works Council (Conselho de Empresa Europeu / CEE) that is appointed by Workers' Commission and / or Trade Unions or elected by the company's employees.

The **Workers' Commission (CT)** has a set of information and consultation rights guaranteed by the Constitution (Article 54) and by specific legislation (Lei 46/79). According to the law on CT's, the CT has the right to be informed about the company's strategy and planning, the budget, the internal organisation, the organisation of production, personnel management etc. . The proceedings for getting information are legally defined. Management decisions on contracts for company recovery, dissolution or bankruptcy, closing of production sites, reduction of workforce etc. demand obligatorily CT's previous statement. In case of restructuring of the company, the CT has the right to be heard and give its statement on plans, to be informed on progress, to have access to the final restructuring plan, to talk to the responsible institutions and people inside the company and to criticize and make suggestions. Furthermore, the CT's have the right to

²⁰ The state still holds directly 100% of about 30 companies, some of them with considerable importance in branches like fishery, media, postal service, banks, major infrastructures and transports (rail, bus, underground and airlines).

²¹ In the context of privatization and subsequent concentration of capital, legislation on alliances between companies has become increasingly important. The Code of Commercial Societies distinguishes 4 types of Allied Societies (Sociedades Coligadas), namely those linked by a) simple participation, b) reciprocal participation, c) a relation of domination or d) a group relation. There is specific legislation on Holdings (Sociedade de Gestão de Participações / SGPS). Experts alert that responsibilities of these alliances as a whole (or their dominating society) for acts or omissions of one of its parts are not sufficiently regulated, a situation that may prejudice workers and which might raise the question of European minimum standards regarding this problem.

²² Cp. Footnote 8.

“scrutinize” management (controle de gestão) and to appoint (or to promote the election of) workers’ representatives at the companies’ governing bodies (see section 1.2 and section 2 on practice).

The Constitution guarantees the trade unions’ right to carry out their activities inside the companies (Article 55). The Trade Union Law (Lei 215-B/75) specifies that unions have the right to promote the election of workplace union representatives (delegados sindicais) on the shop floor and that union members in a company have the right to elect a **workplace union committee** consisting of workplace union representatives belonging to the respective trade union organisation(s). The Trade Union Commission may belong to a single union (workplace union committees: Comissão Sindical / CS) or to a group of unions who decided to create a common representative body (workplace multi-union committee: Comissão Inter-Sindical / CIS).

The Constitution guarantees information and consultation rights and legal protection to the trade union representatives (Article 55), guarantees to the unions (as well as to the CTs, see above) the right to participate in company restructuring (in particular with regard to VET and work conditions) and the capacity to collective bargaining (Article 56). According to legislation, unions have the exclusive right to sign legally binding collective agreements and to initiate a strike. Thus, legislation attributes to workplace union committees a major centrality in the industrial relations system at company level.

The law on **Health and Safety at the Workplace** (DL 441/91) guarantees a set of information rights for employees, establishes procedures for the election of **workers’ representatives** in this area and establishes their information and consultation rights.

It was only in 1999 that the Directive on European Works Councils (94/45/CE) was transposed to Portuguese Law (Lei 40/99), guarantying the respective consultation and information rights. In Portugal, representatives to EWC’s are appointed by

- a) agreement between Workers’ Commission and trade unions, or
- b) by agreement between Workers’ Commissions (if there are no trade unions), or
- c) by agreement between trade unions who represent together two thirds or more of the workforce, or
- d) by agreement between trade unions who represent each a minimum of 5% of the workforce.

If none of these options is valid, the representative is elected by the firms employees (according to the regulation of elections to the Worker’ Commissions, Law 46/79).

The members of workers commissions and union committees and EWCs and the workers representatives for health and safety have a legally guaranteed **time credit** for their activity and enjoy a **specific protection against discrimination**.

Table 1.3	
Workers’ Representative Bodies – Legal Attributions	
Workers’ representative body	Legal attributions at firm level
Workers’ Commission	According to constitutional law (Art. 54º, CRP ver. 1997): <input type="checkbox"/> Be informed,

<p>(Comissão de Trabalhadores, CT) Elected by employees</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Scrutinize management, <input type="checkbox"/> participate in company restructuring (in particular with regard to VET and work conditions), <input type="checkbox"/> manage or participate in management of company's social institutions, <input type="checkbox"/> promote election of workers' representative at governing bodies (applies exclusively to public sector) <p>According to Law 46/79 (1979):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Art.º 23º: Specification of information rights (company's planning, budget, internal reglementation, organisation of production, personnel management etc.) <input type="checkbox"/> Art.º 24º: Specification of management decisions that demand obligatorily CT's previous statement (contracts for company recovery, dissolution or bankruptcy, closing of production sites, reduction of workforce etc.) <input type="checkbox"/> Art.º 25º: Procedures of passing information <input type="checkbox"/> Art.º 29º: Definition of right to scrutinize management (controle de gestão) (apreciation of and statement on company's planning and budget; watch over proper use of resources, promote rationalisation of production and administration etc.) <input type="checkbox"/> Art.º 30º: Designation or Election (promoted by CTs) of workers' representatives to governing bodies in Public Enterprises. <input type="checkbox"/> Art.º 31º: Workers have the right to elect a representative for the board of directors of Public Enterprises. <input type="checkbox"/> Art.º 33º: Specification of CT's right to participate in restructuring (to be heard and give statement on plans, be informed on progress, to have access to final restructuring plan, talk to responsible organs and cadres, to criticize and make suggestions) <p>According to Law 29/84 (1984):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Art.º 8º: In public enterprises, one of the members of the board of directors represents the workers of the company and will be elected according to Art.º 31º of Law 46/79 ... by majority of the represented workers. <input type="checkbox"/> Art. 10º: In public enterprises, one of the members of the Council of Auditors will be proposed by the workers' representative body.
<p>Workplace (multi-) Union Committee (Comissão (Inter-)Sindical, CS/CIS) Elected by union members amongst workplace union representatives</p>	<p>According to constitutional law (Art. 55º and 56º, CRP ver. 1997):</p> <p>Trade unions have the right to carry out their activity in the company.</p> <p>Trade union members have the right to participate in companies' restructuring processes, in particular in the area of VET and change of work conditions.</p> <p>Trade unions have the legal capacity to exercise the right of collective bargaining.</p> <p>According to law 215-B/75:</p> <p>Art.º 25º: Guarantees Workers' and unions' right to carry out union activities inside companies (workplace union representatives, union and inter-union committees)</p> <p>Art.º 26º and 27º: Regulates union meetings (out of / during working hours)</p> <p>Art.º 29º: union members elect workplace union representatives, workplace union representatives may constitute committee</p> <p>Art.º 33º: Establishes number of workplace union representatives with working time "credit" according to number of employees</p>
<p>Workplace Representative for Health and Safety (Representante para Higiene e Segurança no Trabalho, RHST) Elected by employees</p>	<p>Information rights (Law 441/91)</p>

<p style="text-align: center;"><i>European Works Council</i></p> <p>(Conselho de Empresa Europeu, CEE)</p> <p>Appointed by workers' commissions and/or Union Committee or elected by employees</p>	<p>Information and consultation rights according to European Directive (94/45/CE) and Portuguese Law (Lei 40/99)</p>
<p>Constitution of the Portuguese Republic; Law on Workers' Commissions (Lei 46/79); Law on Trade Unions (Lei 215-B/75); Decree Law on Health and Safety at the Workplace (Decreto Lei 441/91); Law on European Works Councils (Lei 40/99)</p>	

1.4 Conclusions

The overwhelming majority of Portuguese large companies²³ opt for a legal form (Anonymous Societies type "A", see above) **that stipulates one executive body with comprehensive responsibilities in relation to share-holders and with regard to relations inside the company** (namely with the workforce). There are examples of "type A"-firms that created a differentiated structure of a board of directors primarily responding to shareholders and an Executive Committee for operative management tasks. In any of these two cases, the type-"A" company must be considered a **"single-tier" model of corporate governance**.

The second type of Anonymous Society (type "B", see above) which applies to a very small minority of large companies, creates two autonomous bodies, that is the General Council (responding to share-holders) and Management (responding to operative needs).

As workers' rights to be represented at governing bodies apply exclusively to companies with 100% public capital privatisation of the huge majority of public enterprises during the last 14 years has drastically reduced the **group of firms where this right of representation in theory might have some impact**. Furthermore, new legislation on Public Companies (1999) abandoned completely any reference to this constitutional right, thus opening the way to its practical abolition.

The legal possibility of social partners in private companies to agree upon workers' representation at governing bodies (created in 1979) had no practical consequences, and the legislator never took the necessary steps for an effective promotion of workers' representation at private capital's management.

The present revision of labour law (see below) does not imply any new regulation on workers' representation at governing bodies. Thus, we may consider that the **Portuguese legislator has been deliberately passive in relation to the absence and decline of workers' constitutional rights for representation at management in state owned companies**. The present situation of non-compliance may be seen as a violation of the constitution by omission.

The **absence of workers' representatives at executive bodies has hindered** the workers' representative bodies at company level in exercising their extensive information and consultation rights guaranteed by the Constitution and by specific legislation. This refers in particular to the **effectiveness of the workers' commissions' right to "scrutinize management"** (controle de gestão) that depends on the activity of workers' representatives at governing bodies, in particular at the board of directors.

²³ According to experts this applies to almost all large companies.

2. Practice (History)

2.1 Workers representation at governing bodies: the practice

During the 1980s, trade unions and workers' commissions made a major effort to implement a network of workers' representatives at governing bodies in the public sector. The most large companies were at that time still state owned. Unions and Workers' Commissions successfully promoted elections in almost all Public Enterprises (E.P.s), but a large part of elected workers' representatives were not allowed to enter into office. Representatives had obligatorily to be installed into office by the Ministry in charge for the respective branch. At executive level, it seems that since 1979 (when the law on Workers' commissions that stipulates workers' representation at governing bodies in the public sector came into force) there has only been one company where a workers' representative at the Board of Directors was installed by the responsible Ministry.²⁴ Despite of new legislation in 1984 that explicitly stipulated workers' right in public companies to be represented at Boards of Directors and Councils of Auditors, this situation did not change.

With the same method, government prohibited many elected representatives to Councils of Auditors to enter office, but obstruction was less extensive and a considerable part of the elected representatives to Councils of Auditors actually entered into office.²⁵

After a decade experiencing the impossibility to get the elected representatives into office, trade unions' and Workers' Commissions' mobilisation for their election lost momentum. By abolishing any reference to workers' representatives at management level, new legislation on public companies (1999) eliminated a central legal instrument for workers to elect representatives and thus opened the way to the complete practical abolition to this constitutional right.

2.2 Workers' representative bodies inside companies: existence

CGTP is the only trade union organisation that publishes statistical data on Workers' Commissions on a regular base. In the period 1996-1999, CGTP identified 314 elected Workers' Commissions whose members had been published in the Labour Ministry's official bulletin.²⁶ In 1999, there were 234,850 companies registered at the Labour Ministry. A small part of them (2,731) employed 100 and more people. Only 308 employed more than 500.²⁷ We may consider that Workers' Commissions actually tend to exist (almost) exclusively in larger companies with more than 100 employees.

²⁴ This was the public Airline in the Açores-Islands SATA where a workers' representative at the board of directors actually entered into office.

²⁵ It would require further comprehensive research to know the number of companies with a workers' representation at that level.

²⁶ See CGTP, Relatório de Actividades (1996/1999). According to a study at the Labour Ministry that applied more rigid criteria than CGTP's report (namely by excluding those commissions whose mandate had expired), in 1999 there were only 226 Workers' Commissions whose statutes were published in the Labour Ministry's official bulletin and whose mandate had not expired until that date. See Alberto Teixeira, *Comissões de Trabalhadores e Comissões Coordenadoras em exercício legal do mandato em 31 de dezembro de 1996 a 1999, por distrito de Portugal Continental*, 4 of April 2000.

²⁷ Cp. Ministério do Trabalho e da Solidariedade, *Quadros de Pessoal 1999*.

In a sample of 76 companies with about 82 thousand workers CGTP analysed elections to Workers' Commissions. According to CGTP's figures, 43% of workers participated in the elections. 68% voted in lists of candidates identified with CGTP. These figures cannot be cross-checked with other statistical data, but the dominant role of CGTP in the Workers' commissions has been observed in several case studies in large companies.

Institution	Total	100-500 employees	> 500 employees
Workers' commissions (Comissões de Trabalhadores)	15	11	40
Workplace union representatives (Delegados Sindicais)	39	34	72

Selected figures from a survey amongst Portuguese companies with 100 and more employees; for details see Alan Stoleroff, *Elementos do padrão emergente de relações industriais em Portugal*, in: *Organizações e Trabalho*, Number 13, pgs. 11-42, Lisbon April 1995

There is empirical evidence that trade union organisation is more widespread in Portuguese companies than the workers' commissions.²⁸ Furthermore, it may be stated that in the relation between Workers' Commissions and union organisation at company level, the latter is usually the dominating part. Workers' Commissions generally reflect the power relations between the competing unions inside the company and follow –with some exceptions- the orientations of the respective trade union.

2.3 Workers' representative bodies involvement in decision making

Comparative studies have shown that workplace participation in Portugal is very weak.²⁹ The percentage of companies with consultation or negotiation on wage and non-wage issues with workers' representatives is far below the percentage of firms with some kind of representative body. Management clearly privileges unilateral decisions and direct communication with employees (see tables 2.3.1, 2.3.2 and 2.3.3). These and other findings indicate that there is a considerable gap between the legal right of workers' representative bodies to be involved in decision making at company, on one hand, and management's practice on the other. As one author put it: "In Portugal, it is much more frequent than in other countries to modernise companies without involvement of people. ... there is not any involvement of affected [workers] at all in the planning period for the introduction of new technologies, only in the implementation phase there is some involvement in its less developed forms (information, consultation). ... The large majority of employers does not want to promote workers' involvement. Workers' representatives

²⁸ See Stoleroff (1995) and Kovács (1994).

²⁹ See FRÖHLICH, D., C. GILL and H. KRIEGER (1993), "Roads to Participation", *Workplace Involvement in Technological Innovation in the European Community*, and J. Wallace (1990), cited in Kovács (1994).

themselves have similar positions. These results are related to the reduced development of industrial relations in Portugal and subsequently with the lacking consciousness of benefits resulting from workers' involvement as they have been demonstrated in countries with more developed industrial relations, ...³⁰

Table 2.3.1		
Workers' and their representatives involvement in most recent act of fixing pay and working conditions (%)		
	Pay	Working Conditions
Direct application of collective agreement by unilateral management decision	55	46
Direct application of collective agreement by unilateral management decision, after consultation of workers' representatives	10	11
By negotiation (even informal) with workers' representatives	6	6
By flexible, individualized and decentralized method (by department, according to results)	27	33
Selected figures from a survey amongst Portuguese companies with 100 and more employees; see Alan Stoleroff, Elementos do padrão emergente de relações industriais em Portugal, in: Organizações e Trabalho, Number 13, pgs. 11-42, Lisbon April 1995		

Table 2.3.2			
Modes of passing Information to Workers and their Representatives (%)			
	Meetings with Workers	Meetings with representatives	Written Information handed to Workers
Regularly	30	19	26
Sporadically	46	20	34
Never	23	52	39
Selected figures from Stoleroff (1995)			

³⁰ Kováčz, p. 26

	Workers' commissions	Workplace union representatives	Affected employees
Change of Equipment	7	1	45
Restructuring of tasks / functions	18	6	38
Restructuring of careers	18	18	24
Selected figures from a survey amongst Portuguese companies; see Ilona Kováčz, A participação no contexto de competitividades, in: Organizações e Trabalho, Number 12, pgs. 11-29, Lisbon October 1994			

2.4 Conclusions

There is an enormous contrast between legislation on workers' participation rights and social reality in Portuguese companies. Despite of extensive legislation stipulating workers' representation at governing bodies in the public sector and forgoing rights of workers' representatives to "scrutinize" management, Portugal is one of the Western European countries with the lowest indicators in terms of de facto participation in decision making.

From the beginning, workers' constitutional right to elect representatives to governing bodies in state owned companies has been obstructed by government. Effective access to management was always denied and limited to the Councils of Auditors. But even this **restricted implementation** of the constitutional provisions for workers' representation **came to an end** when new legislation on public companies came into force (1999).

3. History, culture, politics and the near future

The governments' obstruction of workers' representation at governing boards in public enterprises resulted from a political decision in a particular historical context. In the 1980s, the dominant trade union confederation CGTP-Intersindical mobilised its considerable power resources (namely its numerous members and militants) in a fierce struggle against the creation of a liberal economy promoted by the major political forces (Socialists and liberal-conservative Popular Democrats). In this conflict, workers' representatives at governing bodies in the (still very large) public sector were expected to become an important factor in CGTP's strategy for a politically controlled economy.

20 years later, the conflict that provoked government's obstruction of workers' representation at governing bodies has disappeared and a completely new situation has emerged. But the project of an effective workers' participation and representation has been buried under the havoc of the earlier struggles and never re-emerged. The second trade union confederation, UGT (founded in 1979/80), made an effort to introduce a new pattern of collective work relations at company level,

but due to several factors (weak implementation of its organisation, opposition from competing unions and from employers) it did not succeed.

Nowadays, there is a tough and tense struggle of unions and workers' commissions to safeguard and exercise their legal information and consultation rights at company level.³¹ Some discussions on the question of participation take place at tri-partite concertation at macro level, but there is no real debate inside and between union and employers' organisations about this question. The recent change in government (a conservative coalition gained power in March/April 2002) threatens to shatter positive results regarding workers' participation that might have been produced by the macro-level agreements on employment and on health and safety signed by all social partners and the Socialist government in 2001.³²

Currently, the conservative government is promoting a profound review of labour legislation. The new labour code (Código de Trabalho) weakens the trade unions' position in relation to employers (in particular with regard to collective bargaining) and omits the question of workers' representation at governing bodies in companies.³³ Taking into account the "logic" of the new Portuguese government's strategy, future legislation on Workers' Commissions (predicted in the Labour Code) will probably not bring any impulse for more workers' participation at company level.

³¹ Strategy and method of this struggle by Workers' Commissions are outlined in Comissões Coordenadoras de CT's Regionais and Comissões Coordenadoras de CT's Sectoriais, Guia Prático das CTs para defender, afirmar e conquistar direitos, 2001

³² See "Acordo sobre política de emprego, mercado de trabalho, educação e formação" and "Acordo sobre condições de trabalho, higiene e segurança no trabalho e combate à sinistralidade", both signed on February 9th 2001 and published by the Portuguese Economic and Social Council (www.ces.pt).

³³ The Labour Code has already been approved by the majority in Parliament and its enactment is scheduled for November 1st 2003.

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