

# The Reform of Joint Regulation and Labour Market Policy during the Current Crisis: Portugal

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## National Report for Portugal

November 2014

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### Project

**Social dialogue during the economic crisis: The impact of industrial relations reforms on collective bargaining in the manufacturing sector (incorporating social dialogue in manufacturing during the sovereign debt crisis)**

*Employment, Social Affairs and Inclusion DG 'Industrial Relations and Social Dialogue'*

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## **List of abbreviations**

ACAP – Employers Association for repair manufacturing, repair and commerce  
AIMMAP – Employers Association for Metal Industries  
ANICP - Employers Association for Canned Fish Industries  
ANIL – Employers Association for Wool Industries  
ANIT-LAR – Employers Association for Home Textiles  
ANIVEC - Employers Association for Clothing Industries  
APICCAPS - Employers Association for Leather and Footwear Industries  
ATP – Employers Association for Textiles  
CAP – Employers confederation of farmers  
CCP – Employers Confederation for Services and Trade  
CDS-PP - Popular Party  
CIP – Employers Confederation in Manufacturing Industry and Services  
CTP – Employers Confederation in Tourism  
CES - Economic and Social Council  
CGTP- General Confederation of Portuguese Workers  
CITE - Commission for Equality at Work and in Employment  
CPCS - Standing Committee for Social Concertation  
FESAHT - Federation of Unions for Agriculture, Food, Drink and Hotel Industries  
FESETE – Federation of Unions for Textiles and Footwear Industries  
FIEQUIMETAL – Unions Federation for Metal, Electricity, Chemistry and Other Industries  
MoU - Memorandum of Understanding on Specific Economic Policy Conditionality  
PEC – Stability and Growth Pact  
PS - Socialist Party  
PSD - Social Democratic Party  
SIMA – Trade Union for Metal Industries  
SINDEL – National Trade Union for Manufacturing and Energy, affiliated to UGT  
SINTAB – Trade Union for Agriculture, Food and Drink Industries  
SITE Norte – Manufacturing union affiliated to FIEQUIMETAL and CGTP (Northern delegation)  
UGT – General Union of Workers

# **The Reform of Joint Regulation and Labour Market Policy during the Current Crisis: National Report for Portugal**

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The sovereign debt crisis has been a period of far-reaching labour market reform to an extent that had not been witnessed in Portugal since the democratic transition that started in 1974. Since 2009, a number of significant changes have been introduced to labour law and collective bargaining rules and, while a process of reform was already underway since the beginning of the decade, the pressures of the international and sovereign debt crisis clearly intensified this course, especially after the involvement of the troika in May 2011. Indeed, the financial assistance from the European Union organizations and the International Monetary Fund was conditional to the commitment of the Portuguese government to the implementation of a detailed plan of fiscal consolidation and structural reforms. This involved further amendments to labour law, employment policy and collective bargaining – most of which were implemented during the crisis. The objective of this report is to provide a comprehensive analysis of these reforms, their significance and implications. The report is organised in two parts. Part one focuses on the process and substance of the legal reforms whereas part two draws on case-based empirical research to assess their impact on collective bargaining in the manufacturing sector.

## **Part 1: The Process and substance of labour market reforms in the Portuguese context**

With the purpose of analysing the changes introduced during the crisis, the paper starts by setting the context of the reforms with an outline of the key features and recent trends in Portuguese industrial relations and employment regulation. This is followed by a discussion of how the crisis emerged and how it was represented. The report then focuses on the implementation of the reforms in section 2, which discusses the roles and reactions of the different national and international actors in this process. Section 3 discusses the main substantive reforms, focusing on three main areas: employment protection legislation, working time flexibility and collective bargaining. Part one concludes with a discussion of the significance of these changes.

### **1. The labour market context of the reforms**

#### *1.1 State of the art of labour market regulation before the crisis*

Independent trade unions and free collective bargaining only became part of the Portuguese industrial landscape after the end of the dictatorship in 1974. The current system of employment relations and regulation has been significantly marked by the legacy of both the authoritarian regime, the 1974 revolution and the political turbulence that characterized the democratic transition of the mid-1970s (Barreto and Naumann, 1998). The low trust and adversarial climate of industrial relations, the tradition of state intervention and a politicised labour movement are part of this heritage (Barreto and Naumann, 1998; Dornelas et al, 2006; Sousa, 2009; González and Figueiredo, 2014; Karamessini, 2008; Royo, 2006). Likewise, the relative protection of employment granted by the legislation in Portugal has its foundations on the comprehensive set of social and employment rights enshrined in the 1976 Constitution that was devised under post-revolution orientation towards the construction of socialist society<sup>1</sup> (Barreto and Naumann, 1998).

The Portuguese labour movement is organized into two main peak-level union confederations, CGTP-Intersindical with a class-oriented ideology, with origins in the authoritarian regime under clandestine form and with strong connections to the communist party; and UGT, a moderate concertation-oriented organization that emerged in 1978 with political links to both the central right PSD and central left party PS (Barreto and Naumann, 1998; Sousa, 2009, Dornelas *et al.*, 2006). The different background and ideology of the two confederations is reflected on their strategies and CGTP's confrontational approach contrasts with UGT's greater inclination to engage in dialogue and concertation (Campos Lima and Artiles, 2011; Sousa, 2009). CGTP is the largest union confederation but UGT drives significant political influence from its central position in macro-level concertation and its pro-agreement negotiating approach. UGT-affiliated unions organize a significant proportion of workers in public services, large companies of public utilities and in the banking sector. CGTP-affiliated unions are dominant in manufacturing. Despite having lost a considerable number of members in the

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<sup>1</sup> The 1976 Constitution had seven revisions between 1982 and 2005 adapting the initial text to the post-revolutionary period and to the European Union treaties.

private sector, CGTP is still very influential and has an important membership basis in manufacturing (Naumann, 2013; Sousa, 2009). Nevertheless, since the revolutionary momentum of the 1970s and early 1980s, trade unions have lost much of their membership. Union density has declined from an estimated density of 60.8% in 1978 to 19.3% in 2010 (Sousa, 2011:7). However, there is a lack of systematic and updated membership data due to the absence of official records, whereas data provided by the unions themselves has been perceived as lacking consistency and reliability (Sousa, 2011). This fact has recently generated regular debates on the representativeness of labour market organizations (e.g.see Sousa, 2011; Ramalho, 2013).

From the employers' side, there are four national-level confederations with a seat in the Standing Committee for Social Concertation (CPCS). The two largest and most influential are CIP (*Confederação Empresarial de Portugal*, encompassing firms in manufacturing industry and in services) and CCP (*Confederação do Comércio e Serviços de Portugal*, an association of firms in services and trade). CAP (*Confederação dos Agricultores de Portugal*, of farmers) and CTP (*Confederação do Turismo de Portugal*, an association of firms in Tourism) are the other two representatives of employers. CIP and CCP organize firms of different sizes but CIP's strategy is often represented as reflecting the interests of largest employers whereas CCP approach tends to reflect a SME-oriented position (Naumann, 2013).

The Portuguese firm structure is similar to that in EU in the sense that small and medium enterprises (SMEs) dominate (99.8% of total firms in the EU27<sup>2</sup> in 2012 that compares with 99.9% in Portugal<sup>3</sup> in that same year). Still, in Portugal, the distribution of firms is more biased towards micro firms (92.1% of total in the EU27 and 96% in Portugal). Moreover, employment in Portugal concentrates much more in SMEs than it does in the EU27 (76.9% and 66.5% respectively) and particularly in micro firms (44.3% of employees in Portugal and 33.5% in the EU27). Membership density of employers' organizations is also difficult to quantify but recent estimates place it at around 60% in 2008 (European Commission, 2013:25).

While industrial relations were initially very adversarial (particularly in the period immediately after the revolution), they became somewhat less so from the 1980s onwards. The emergence in 1978 of moderate UGT union confederation, with a concertation-oriented approach that contrasted to that of more radical CGTP-Intersindical (Barreto and Naumann, 1998), was followed by the development of social dialogue and concertation at the macro level. The creation by the government of the Standing Committee for Social Concertation<sup>4</sup> (CPCS), a committee composed by the two union confederations and four (initially three) employer associations for consultation between the government and the social partners, enabled social dialogue at the national level which led to the signing of a number of tripartite agreements. These agreements focused initially mainly on income policies and became the major influence on wage bargaining at sector and company level in the second half of the 1980s and beginning of the 1990s (Barreto and Naumann, 1998; Royo, 2002). Social dialogue and tripartite

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<sup>2</sup> Source: Gagliardi *et al.*, 2013: 10.

<sup>3</sup> INE, *Empresas em Portugal 2012*.

<sup>4</sup> Firstly created in 1984 without CGTP that refused to participate. CGTP joined Social Concertation in 1987.

Following the 1989 constitutional revision the existence of an independent Economic and Social Council (integrating and independent Standing Committee for Social Concertation) was inscribed in the Portuguese Constitution.

concertation<sup>5</sup> was consolidated in the 1990s and early 2000s and several tripartite agreements were signed as their content shifted from income policy to broader areas of employment, social security and collective bargaining. A dispute around the 2003 Labour Code that introduced new rules of collective bargaining led to an interruption on the signing of tripartite agreements in 2002/2003 but social concertation regained momentum in 2005 with the change of government to the Socialist Party. While social dialogue and tripartite agreements have enabled successive governments to gain public support for reforms to social and employment policy, CGTP – the larger of the two union confederations – despite actively engaging in social dialogue, has often failed to sign tripartite agreements. Yet in 2005 and 2006 CGTP along with UGT signed two bilateral agreements with the employer confederations - one on vocational training and another on collective bargaining - and a tripartite agreement to gradually increase the National Minimum Wage to 500€ by 2011 (Naumann, 2013)<sup>6</sup>. This agreement was however to be breached in the outbreak of the crisis and the National Minimum Wage was frozen at €485 in 2011 until 2014.

The last macro-level agreement on wage bargaining was signed in 1997 (Naumann, 2013) and collective bargaining in Portugal has taken place mostly at the sectoral level. Company agreements, although they had been a minority before the crisis, were also influential in setting more favourable conditions for the employees of a number of large companies (Dornelas *et al.*, 2006; Barreto and Naumann, 1998). Articulation between levels is legally possible since the 2003 Labour Code but it is rarely done (Dornelas, 2006; Ramalho 2013). Despite the current low union density, collective bargaining remained a key wage setting mechanism in Portugal until the present crisis and worker coverage remained very high until recently. Even though Naumann (2013) still estimates coverage at 92%, other sources indicate a significant decrease even before the crisis (UGT, 2014a; European Commission, 2013) to around 65% in the period 2007-2009 (European Commission, 2013). The high coverage had been enabled to a great extent by the practice of quasi-automatic extension of collective agreements to all workers and employers in the respective sector. Furthermore the longevity of collective agreements that remained valid until a new agreement was reached (Naumann, 2013; Ramalho, 2013) also contributed to high levels of coverage. These two features of collective bargaining – quasi-automatic extension and the legal arrangements that allowed agreements to remain valid after their term – have enabled Portuguese trade unions to remain influential in wage determination and in the regulation of employment, despite their low and decreasing membership rates. However, these rules started to be challenged in the context of a debate around the representativeness of the negotiating bodies both from the employer and the union side (Sousa, 2011; Comissão do Livro Branco para as Relações Laborais, 2007).

Other key debates and trends before the crisis included employers' demands for greater flexibility on dismissals and the reduction of the associated costs, greater working time flexibility and lower overtime pay. Despite some employers aspiring to having more discretion and flexibility at the company level in those matters, the social partners in both sides were

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<sup>5</sup> Social dialogue at this level regards three main issues: i) "*regular consultation between parties*", ii) "*social partners' active participation in the approval of new legislation on employment and industrial relations*" and iii) "*formulation of bipartite and tripartite agreements*" (Ramalho, 2013: 3).

<sup>6</sup> Information on bilateral and tripartite agreements, and the agreements themselves, are available on CES website: <http://www.ces.pt/11>

generally comfortable with sector-level bargaining, including the practice of extension of collective agreements (Dornelas et al., 2011). To a great extent the policy debate focused on *flexicurity* and a need to balance the protection of workers with the flexibility needs of firms. These concerns underpinned two major reports reviewing labour relations and labour market regulation that informed the negotiations of the social partners on the reform of labour market regulation prior to the crisis (Dornelas et al, 2006; Comissão do Livro Branco das Relações Laborais, 2007).

These debates also underpinned the process that led to the enactment of the Labour Code in 2003, which not only unified the different aspects of employment law into one single act but also introduced major changes to labour regulation and collective bargaining<sup>7</sup>. These changes partly responded to employers' key demands, including greater working time flexibility in the workplace, loosening of the rules for the use of fixed-term contracts and temporary work agencies and restrictions to collective bargaining, including the restriction of the 'after-effect' period of collective agreements and the elimination of the principle that collective agreements can only establish more favourable conditions than those set by the general law. These reforms induced a 'collective bargaining crisis' in 2004 (Campos Lima and Naumann, 2005; Campos Lima, 2008a). As the previous provisions had been that collective bargaining could only set more favourable conditions than the law and that each collective agreement should only be replaced by a more favourable one (Ramalho 2013), this presented the employers with an opportunity to let existing agreements expire and/or pressure the unions to negotiate more flexible conditions. As unions tried to protect the terms of conditions of the agreements, this led to a stalemate in bargaining. As a consequence, the number of collective agreements published in 2004 declined to less than half compared to the previous year and the number of workers covered declined to almost a third (Campos Lima and Naumann, 2005, Dornelas et al, 2006). Owing largely to this drastic fall in collective bargaining, subsequent changes of the labour code in 2006 and 2009<sup>8</sup> created new arbitration procedures and clarified rules and timeframes for the expiration of agreements<sup>9</sup>. As a result of these developments collective bargaining was resumed and the previous levels of coverage were partially restored (Ramalho, 2013; Dornelas, 2011) but started declining again after 2008 (see figure 3 in section 7.2). Despite the introduction of new arbitration procedures, these mechanisms have remained relatively ineffectual resources for resolving bargaining disputes (Ramalho, 2013).

With regard to employment protection legislation, despite attempts to facilitate dismissals, the opposition of both trade union confederations led the government to abandon these plans until the outbreak of the crisis (Campos Lima and Artiles, 2011).

## *1.2 "Representation" of the crisis and how it emerged*

Portugal, like Greece, was relatively spared from the international financial crisis in its initial stage but became one of the countries most affected by the sovereign debt crisis that followed

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<sup>7</sup> Law No 99/2003 of 27 August

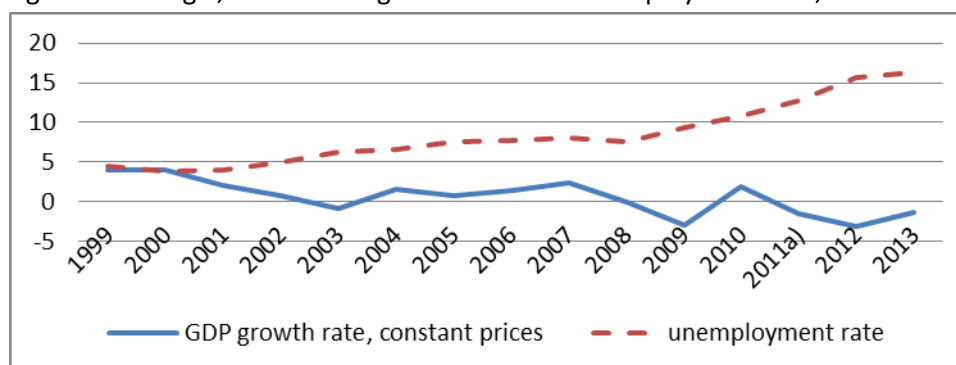
<sup>8</sup> Law no. 9/2006 and 7/2009

<sup>9</sup> Article 501 of Law 7/2009 of 12 February.



(Constâncio, 2013; Karamessini, 2013). The effects of the financial crisis were nevertheless felt in 2008, with a credit squeeze that exposed some vulnerabilities of financial institutions and led to the collapse of two banks, one of which was nationalized (Castro Caldas, 2013). Economic growth, rather low since the beginning of the decade, stagnated that year and, with the sole exception of 2010, declined afterwards.<sup>10</sup> Unemployment rate, on the increase since the early 2000s, grew sharply<sup>11</sup> throughout the years of the crisis (Figure 1).

Figure 1: Portugal, annual GDP growth rate and unemployment rate, 1983-2013.



Source: PORDATA ([www.pordata.pt](http://www.pordata.pt), accessed in 03.09.2014)

The dominant perception of the crisis in the country in early 2008 related mainly to the deep and generalized international crisis that started affecting the Portuguese economy mainly through the “decrease of foreign demand”, the “deterioration of financing conditions of both firms and families” and the “increase of risk aversion and uncertainty amongst the economic agents” (Banco de Portugal, 2008: 3). Still there was also a widespread perception that there were some structural weaknesses that constrained economic dynamism. Amongst those, the most consensual were the deficit of human capital amongst Portuguese labour force, the highly segmented labour market, the complexity and formality of justice procedures and the high dependence of energy (Banco de Portugal, 2010: 6).

The countercyclical measures implemented in 2009 (following European Union guidelines<sup>12</sup>) contributed to a higher than expected increase of the public deficit, feeding a second explanation on the causes of the crisis linking it to government inadequate policy of excessive spending and indebtedness. This second explanation has been at the centre of the political debate in the country since the beginning of austerity policies in 2010. This debate dominated the 2011 electoral campaign: while left wing parties and centre-left socialist party emphasised the effects of international financial crises, the centre right (Social-Democrat Party) and right (Popular Party) stressed the excessive public spending of the socialist government as the main cause of the crisis. The latter echoes the widespread view and the European Union’s version of

<sup>10</sup> The GDP growth rate in the period 2008 to 2013 was, respectively, 0.0%, -2.9%, 1.9%, -1.3%, -3.2% and -1.4% (Source: INE,

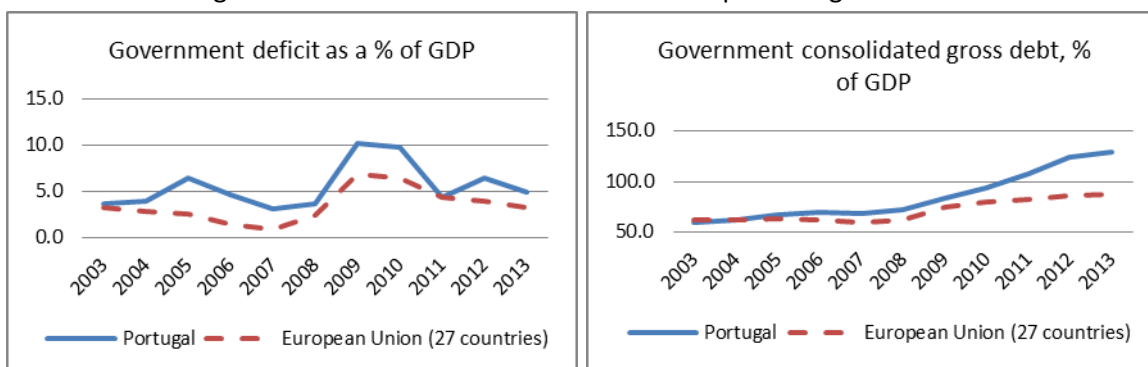
[http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_contas\\_nacionais&perfil=97154738&INST=116633478&contexto=am](http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_contas_nacionais&perfil=97154738&INST=116633478&contexto=am)

<sup>11</sup> Construction has been the sector with higher job losses.

<sup>12</sup> See Commission of the European Communities (2008).

the crisis according to which Southern European countries were the sole responsible for the problems facing their economies due to their financial irresponsibility and excessive borrowing.<sup>13</sup> While this vision was increasingly contested by economists who emphasized the role of the Euro and its rules in the emergence and diffusion of the crisis (see among others Stiglitz, 2013; Krugman, 2012; Constâncio, 2013), Portuguese analysts and policy makers continued to convey the idea that ‘we had been living beyond our means’ and that this is what led to debt and deficit growth<sup>14</sup>. Even though Portugal does not have a record of budget surplus<sup>15</sup> and despite the economic stagnation and growing unemployment even before the crisis, the public deficit had been tending to the EC-prescribed 3% and the public debt as a percent of GDP had stabilised in the years before the crisis (see Figure 2, below). In fact, the progress made to correct the deficit and the Portuguese government’s fiscal and labour market reforms undertaken in the 2000s had been praised by the international organizations that had recommended and monitored the implementation of these measures, the OECD, the IMF and the European Commission (González and Figueiredo, 2014). Nevertheless, when the economic situation worsened in Portugal this became more and more seen as relating both to internal factors (structural weaknesses, expansionary policies that increased expenditure) and external circumstances (relating to the deep worldwide crisis).

Figure 2 – Government deficit and debt as a percentage of GDP



Source: EUROSTAT [gov\_dd\_edpt1]

<sup>13</sup> See the various statements on Portugal issued by DG Economic and Financial Affairs along the Economic Adjustment Programme for Portugal at [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/portugal/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/portugal/index_en.htm); see also Armingeon and Baccaro (2012)

<sup>14</sup> António Borges (FMI) "Estamos de joelhos face ao BCE", DN, 28/10/2010; Cavaco Silva, "Não devemos continuar a viver acima das nossas possibilidades" JN, 06/05/2011

<sup>15</sup> Which is also the case in average EU27.

### *1.3 Overall responses to the crisis*

The responses to the crisis in Portugal were developed in successive phases consistent with the different stages of the international and domestic crisis but also with the European-level approaches on how to deal with it. The first set of 'anti-crisis' measures, enacted in 2008, were financial and aimed at securing the stability of the financial sector namely measures to ensure banks' financial soundness and the development of state guarantees (Castro Caldas, 2013). A second set of policies, explicitly aligned with the European Economic Recovery Plan (Commission of the European Communities, 2008), were of fiscal stimulus and were enacted in 2009 and beginning of 2010 as a response to growing unemployment and deteriorating economic conditions<sup>16</sup>. These consisted mainly of measures to protect jobs by providing fiscal and financial support to firms facing difficulties, extended unemployment protection and improved support for families with children<sup>17</sup>. However most of these measures were short-lived and were withdrawn before planned in May 2010 (Campos Lima, 2010a). Their withdrawal was part of the austerity programme that had been announced in March and April of the same year marking the beginning of the austerity era in Portugal.

This first set of austerity measures were part of a Programme for Stability and Growth (2010), which became known as PEC1<sup>18</sup>, issued in response to the growth of the government deficit to alarming levels, to the pressures of the international financial markets and to a change of approach of the European Commission (European Commission, 2010). This first austerity package was presented by the Socialist government in office as part of a strategy of fiscal consolidation to reduce the government deficit and control the public debt. Throughout 2010, as the economic outlook worsened and pressure from international markets intensified, the government presented successive programmes of escalating austerity. The measures included suspending planned public investments, cuts to pensions and to other social benefits, changes to the unemployment benefit and to the minimum income programme, income tax increases and successive increases to VAT up to 23% and wage cuts between 3.5 and 10% for public sector employees with monthly salaries above €1500 (Campos Lima, 2010a, 2010b, 2010c).

While the government initially consulted with the social partners in the Standing Committee for Social Concertation, no agreement was reached as the programme generated strong opposition from the two union confederations. Instead, the austerity measures generated waves of protests including a large demonstration on May Day, an even larger nationwide demonstration in 29<sup>th</sup> May of 2010 called by CGTP and a general strike in 24<sup>th</sup> November – the first that was jointly called by the two union confederations, UGT and CGTP in 22 years (Campos Lima, 2010b and 2010c).

Into 2011, as the economic crisis deepened, the government intensified efforts to avoid a bailout but as the impact of the cuts was increasingly felt, this escalated discontent that translated into a number of strikes in the public and private sector (Campos Lima and Artiles, 2011). Nevertheless, despite increasing discontent, the government reached a tripartite

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<sup>16</sup> Programa de Estabilidade e Crescimento 2008-2011 (Atualização de Janeiro de 2009)

<sup>17</sup> Initiative for investment and employment (Law 10/2009, 10 March) and Initiative for Employment (Resolução do Conselho de Ministros 5/2010)

<sup>18</sup> Programa de Estabilidade e Crescimento 2010-2013 (March 2010)

agreement with the employer confederations and UGT in March of 2011 (CES, 2011). This tripartite agreement covered a wide range of issues but had a strong focus on labour market reforms, including the reduction of compensation for dismissals (and the creation of an employer fund to finance these payments) and changes to collective bargaining rules and decentralization. However, March 2011 was a crucial month that witnessed the announcement of a new austerity package (so-called PEC4), two major demonstrations and the fall of the government. The first demonstration took place on 12 March and was organized spontaneously, through social media networks, initially by young people, in protest against unemployment, precariousness and low wages (Campos Lima and Artiles, 2011). The second one, on 19 March, was organized by CGTP to protest against new austerity measures. The new austerity package, that included further cuts and further fiscal measures, raised strong objections from all opposition parties as some measures, particularly further cuts to pensions and tax increases, were considered unacceptable. Despite having reached a tripartite agreement with the employers' confederations and UGT paving the way for significant labour market reforms, the government failed to secure sufficient political support for the austerity programme in parliament and this led to the resignation of the Prime Minister. In turn this political instability increased external mistrust leading to the escalation of interest rates on government bonds to unsustainable levels forcing, in April 7<sup>th</sup>, the request of financial assistance to the European Union organizations and the International Monetary Fund. Following Ireland and Greece, Portugal became the third country to request support under the terms of the European Financial Stabilisation Mechanism, which required the commitment to a new three year long austerity plan laid out in the memorandum of understanding (MoU) signed in May 17<sup>th</sup> in exchange of a loan of 78 billion euro. The MoU prescribed a set of detailed fiscal consolidation and structural measures, including labour market reforms to relax employment protection legislation, to make working time more flexible and to decentralize collective bargaining. The next section discusses the process of implementation of these reforms and the roles played by the different national and supranational actors whereas section 3 discusses the substance of these reforms.

## **2. The process of reforms: The role of supranational institutions, the state and the social partners**

This section focuses on the labour market reforms that took place during the economic crisis in Portugal under the adjustment programme agreed with the troika of international organizations. While most of the changes were specified in the MoU, it is important to take into consideration that, firstly, important reforms to labour law had been taking place since 2003 and, secondly, many of these labour market reforms had already been included in a tripartite agreement that preceded Portugal's request for assistance. Therefore, while it can be argued that this agreement was already signed under a background of strong pressure of international markets and European institutions, it is difficult to sustain that most of the labour market reforms that took place in this period were directly imposed by the troika, even if these measures were written in the MoU. In this section, we provide an account of the implementation of the labour reforms and the responses and roles played by the different institutional actors.

## *2.1 The Memorandum of Understanding (MoU) and its implementation*

The negotiations of the memorandum with the troika involved three political main parties – centre left PS, centre-right PSD, and right-wing CDS. Under the uncertain political circumstances, a support from a wide political basis was regarded by the troika as necessary to ensure the implementation of the MoU irrespective to which party would win the parliamentary elections scheduled for June 2011. This support was secured, even though left parties Bloco de Esquerda and Partido Comunista declined to engage in negotiations with the troika (Campos Lima, 2011b; Naumann et al, 2012). The social partners were also consulted in this process. UGT union confederation and CIP employer confederation both pushed for the integration of the measures negotiated in the tripartite agreement signed in March, with employers emphasising the need to reduce severance pay and the unions demanding the observation of the prohibition of dismissal without just cause. From the employers' side, CCP and CIP also emphasised the need for support in financing firms, with CCP specifically stating that this was more important than reducing wages or increasing taxes (Campos Lima, 2011b). CGTP proposed a postponement of the 3% deficit target but mainly used the opportunity to express its opposition to further austerity measures<sup>19</sup>.

The Portuguese MoU<sup>20</sup> is a detailed prescriptive document organised in seven sections, of which fiscal consolidation (section 1 'Fiscal Measures' and section 3 'Fiscal-structural measures), financial regulation supervision (section 2) and labour market reform (section 4) are the most comprehensive. It states that the conditions negotiated are to be strictly evaluated and implemented and, with regard to labour market reforms defines very precise measures and targets. These measures cover the unemployment benefit system, employment protection legislation, working time arrangements, wage setting and collective bargaining. 'Active labour market policies' are also included but these are defined in relatively vague terms compared to the former. Most of the reforms are justified with the argument of reducing "the risk of long-term unemployment and strengthening social safety nets", "tackling labour market segmentation, fostering job creation, and easing adjustment in the labour market", "to contain employment fluctuations over the cycle, better accommodate differences in work patterns across sectors and firms, and enhance firms' competitiveness"<sup>21</sup>. However there is no explicit reference to structural unemployment. So it gives scope to interpret the rationale of the measures as relying mainly to the supply side of the labour market, in other words aiming at reducing incentives to individuals to be unemployed (by means of the amount and duration of unemployment benefits). This is a very narrow representation of current unemployment in Portugal, where the unemployment rate has increased sharply (see Figure 1 above) and reached 16.3 % in 2013<sup>22</sup>. Unemployment rate was particularly high for youngsters (37.7% that same year) and increased sharply for the high educated – the unemployment rate for those

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<sup>19</sup> For a summary of the positions of the social partners see Campos Lima (2011b)

<sup>20</sup> Three documents and a letter of intent compose the Economic Adjustment Programme for Portugal. The documents are the following: i) Memorandum of Economic and Financial Policies (MFEP); ii) Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) and iii) Technical Memorandum of Understanding (TMU). All of them are included in European Commission (2011).

<sup>21</sup> European Commission (2011) p.52

<sup>22</sup> INE, Estatísticas do Emprego, 4<sup>th</sup> quarter 2013

with tertiary education doubled between 2009 and 2013, increasing from 6.4% to 12.9%. Long-term unemployment currently represents the highest share of the Portuguese unemployed (62.1% in 2013). These figures evidence the existence of massive structural unemployment and it is hard to argue for voluntary unemployment (even if existing) to be the main unemployment issue.

As to the need of reducing segmentation and promoting flexibility these had already been key issues under discussion in the Standing Committee for Social Concertation before the crisis, particularly in the period of introduction and revision of the Labour Code (2003 and 2009 respectively). In that period, this debate had been framed in terms of *flexicurity*. Given that labour law changes, by both right-wing (in the case of the 2003 Labour Code) and left wing governments (in the case of the 2009 revision of the Labour Code), had recently been introduced with the objective of achieving a better balance between security and flexibility, some of the new labour law dispositions included in the MoU were interpreted by many as an imposition of the troika. This interpretation results from the view that some of the MoU labour market policies favoured flexibility in detriment of security to an extent that had previously been considered unacceptable.

While the MoU includes many of the measures of the March tripartite agreement, it goes beyond them, particularly with regard to labour market measures and most notably the widening of the possible grounds for dismissals and restrictions to the extension of collective agreements, as discussed below, in section 3. Also significantly, the MoU acknowledges the importance of social dialogue requiring reforms to social security and labour market regulation to be implemented “*after consultation with social partners, taking into account possible constitutional implications, and in respect of EU Directives and Core Labour Standards*” (European Commission, 2011, p. 21). However, it specifies precisely the measures that are to be consulted with the social partners, leaving very little margin for real negotiation.

Soon after taking office, the new coalition government initiated a process of revision of the Labour Code. Almost a year after the signing of the MoU and despite several protests and a joint general strike, the social partners (the employers confederations, UGT but not CGTP) and the government signed a Tripartite Agreement ‘Compromise for Growth Competitiveness and Employment’ in January 2012. This agreement was important for the government to secure social support to labour market reforms as, according to the Minister of the Economy and Employment, it would “reinforce national competitiveness and pave the way to economic growth, while preserving social peace”.<sup>23</sup> Employers classified the agreement as “beneficial for the country and desirable under the country’s emergency situation”<sup>24</sup>, “positive for the economy, for unions and for the country showing the responsibility of social partners”<sup>25</sup> and considered that it gave positive international signs. The unions, as often, have been divided, with CGTP withdrawing from the negotiations, arguing that the topics under discussion represented a regression on workers’ rights and were against national interest. UGT, however, perceived the need to implement the MoU as unavoidable and, after a long process of difficult negotiations, signed the tripartite agreement despite considering that it “was not completely

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<sup>23</sup> PÚBLICO, 17/01/2012, *Governo e parceiros sociais assinam acordo tripartido*.

<sup>24</sup> Statement to the press of António Saraiva (CIP), Público/Lusa, 17/01/2012

<sup>25</sup> Statement to the press of João Vieira Lopes (CCP), Público/Lusa, 17/01/2012

satisfactory”<sup>26</sup>. It did so on the grounds that it included measures to promote employment and growth, improved upon some measures prescribed by the MoU (e.g. avoiding a ‘new reason’ for dismissal based on non-achievement of objectives unless these had been agreed with the worker), that it excluded further labour market measures not required by the MoU that had been proposed by the government (the extension by half an hour of daily working times) and included a clause where the government committed to only introduce further labour market reforms if these had been agreed with the social partners (UGT, 2012).

However, throughout 2012 and 2013 the social partners accused the government of progressively disregarding the commitments made in the tripartite agreements, namely, suspending the extension of collective agreements and subsequently introducing new rules without consulting with employers and union confederations and of prioritizing budget consolidation over measures to stimulate growth and to address unemployment<sup>27</sup>. In April 2012, UGT threatened to shred the tripartite agreement in protest<sup>28</sup>. The head of the Manufacturing and Construction Employers’ Confederation (CIP) also complained against the government not respecting commitments with social partners declaring that “social partners cannot be used to subscribe agreements and then not being heard when it comes to deciding.”<sup>29</sup>

Both employers’ and unions’ confederations have become increasingly critical of the policy design and implementation of the MoU measures. The employers’ criticism was expressed in a joint statement in 2013 made by the four employers’ confederation represented in social concertation<sup>30</sup>. They stressed “the urgent need that government adjusts its targets to the Portuguese reality” stating that “the austerity plan adopted in Portugal has been a short-term plan implemented as if it was the only possible. Still and given its results it would be irresponsible to insist and to deepen it”. They also state that the new policy “has to involve all the social actors and especially the social partners”.

The coalition government has been very compliant with the troika programme and engaged in dutiful and timely implementation of the reforms proposed. It regarded its dispositions mainly as technical problems to be solved by sophisticated technical means. While the relevance of technical expertise never came into question, the lack of sensitiveness of the policy makers to the social outcomes of austerity and their disregard for social dialogue has been the object of much criticism. The key areas of criticism were highlighted in a report from the Economic and Social Council (CES) pointing to “four main errors that restricted the content of the MoU and the resulting policies: i) an inadequate characterisation of the crisis underestimating its structural dimension [...] ii) an underestimation of the importance of internal demand and of the negative impact of its reduction [...] iii) an understanding of the “reform of the state” taken as mere expenditure cuts [...] and iv) a very short-sighted understanding of “structural

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<sup>26</sup> Statement to the press of João Proença (UGT), Público/Lusa, 17/01/2012.

<sup>27</sup> Patrões reforçam apelo a “novo rumo” para o país, Renascença, 24/06/2013; Jornal Publico ‘UGT Ameaça rasgar acordo de concertação’, 17/04/2012

<sup>28</sup> Jornal Publico ‘UGT Ameaça rasgar acordo de concertação’, 17/04/2012

<sup>29</sup> Declaration of António Saraiva to Rádio Renascença, 17 September 2012.

<sup>30</sup> CAP, CCP, CIP e CPT unidas por um compromisso para o crescimento económico em Portugal, Press Conference, June 24 2013.

reforms” considered as a mere succession of “competitive internal devaluations” (CES, 2013: 3-4).

The difficulties of the process of financial support appeared, in a first period, to be accepted by the Portuguese society and by the social partners (with the important exception of CGTP). The strictness of the implemented policies has been initially explained mostly by means of the country’s compromise with the troika and the importance of giving the right signs to external markets. Yet the government’s insistence on austerity measures, the lack of concrete sustainable improvements and the disregard of formal commitments made to the social partners led to increasing criticism and opposition. Moreover, the fact that the government proposed a number of measures that went beyond the MoU also contributed to these tensions. Indeed, the government proposed a number of labour market and fiscal reforms in addition or beyond the requirements of the MoU, some of which have been adopted (e.g. reduction of public holidays, elimination of absenteeism-related extra holiday entitlements, extra cuts to pensions and public sector wages). However, certain measures announced by the government had to be withdrawn due to opposition, namely from social partners (e.g. increase of daily working time by half an hour and changes to social security contributions of employers and employees). In addition, a significant number of the measures implemented were later reversed by the Constitutional Tribunal. This process is further discussed in the sections below.

## *2.2 Social, political and institutional processes*

Despite a number of political ‘crisis’, public protests, general strikes and demonstrations, Portugal has maintained an image of relative social stability in the sense that opposition to the austerity measures has been expressed peacefully and there have been no episodes of violence or any rise on extremist movements as observed in other countries during the crisis. Nevertheless, active opposition and protest has been expressed in a number of mass demonstrations since the beginning of austerity. Several general strikes took place of which three (November 2010, November 2011 and June 2013) were organized jointly by the two union confederations in an (almost) unprecedented display of unity of the Portuguese labour movement. Moreover, public statements of both the unions’ and the employers’ sides played an important protest role during the crisis in Portugal.

Political stability, which has also been considered as one favourable feature of the Portuguese context, has also been threatened several times. Two inter-related episodes illustrate the growing political and institutional tensions which have been emerging to a great extent in tandem with decisions of the Constitutional Court that reversed some of the governments’ austerity measures. The first episode refers to the government’s attempt to cut employers’ social security contribution (-5.75 pp) while increasing that of employees’ (7 pp). This measure was announced in September 2012 as a countermeasure of the budget effects of the decision of the constitutional court revoking the cuts to the 13<sup>th</sup> and 14<sup>th</sup> month pay to public employees and to pensioners. The Social Partners from both the employers’ and the workers’ side reacted with huge criticism to this direct redistribution of income from workers to employers, which was seen as greatly unfair. The head of the Manufacturing and Construction



Employers' Confederation (CIP) has been particularly harsh saying that "the pillar of social stability did suffer an attack."<sup>31</sup> The public criticism to this same proposal was also expressed in a large demonstration in the 15<sup>th</sup> September, a citizen's initiative called through social media networks. The widespread disapproval of the public opinion and the strong opposition by social partners in both sides led to the withdrawal of the measure. Yet the episode contributed to an increase in tensions and the erosion of trust between the social partners and the government and between the two political parties of the government coalition as well.

The second episode dates back to July 2013. It started with the resignation of the Minister of State and Finance (1<sup>st</sup> of July) followed by that of the Minister of State and Foreign Affairs who was and still is the leader of the smaller party in the coalition (2<sup>nd</sup> of July). Although the latter was ultimately persuaded to remain in the government with the upgraded position of deputy prime-minister, these resignations almost led to the fall of the government and signalled substantial tensions between the two parties of the coalition in office. The letter of resignation of the Minister of Finance, which has been made public, expressed significant criticism to the implementation of the assistance programme. The content of the letter evidenced not only the disharmony between the two parties of the coalition government but also the hostile stance of the government in relation to the Constitutional Court.

Considering these tensions that emerged in connection to the rulings of the Constitutional Court during the current crisis, it is worth briefly discussing the context of these decisions and the role that the Constitutional Court played in recent times in the process of labour market reform. This organ of sovereignty is independent from other state organs and its function is to ensure that the state's functions are performed according to the Portuguese Constitution and that the fundamental rights of citizens are observed. Within this role, a key task is to inspect the constitutionality of laws<sup>32</sup>. As such, the court is regularly called to define the boundaries between constitutional and unconstitutional dispositions of labour regulations, a process that has become more frequent since the implementation of the Labour Code in 2003, and even more so since the outbreak of the crisis.

Despite an existing consensus that the Court has played an important role in recent times in defining boundaries on labour market reforms, there is some controversy with regard to the Portuguese Constitution. Some argue that the Constitution needs to be revised and updated; others argue that it mainly defines general principles and that there is no urgent need for any revision. A debate took place in 2010 and 2011 (in response to European calls) on changing the Portuguese Constitution to include public deficit and debt targets but, despite the Prime Minister supporting this move, this was not taken forward partly due to arguments that these were not the fundamental matters that should guide economic and social policy.<sup>33</sup> Therefore, when called by the president and by members of parliament to inspect the constitutionality of a number of austerity policies and labour market reforms during the current financial crisis, the decisions of the Constitutional Court were not always aligned with the government's fiscal and financial priorities. For five times during the assistance programme the Court ruled against

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<sup>31</sup> Statement to the press of António Saraiva (CIP), TVI24, 13/09/2012.

<sup>32</sup> Tribunal Constitucional Portugal <http://www.tribunalconstitucional.pt/tc/en/home.html#>

<sup>33</sup> E.g. see *PSD e Bloco não querem limites de défice na Constituição*, TSF 17/05/2010; ; *PS obriga Passos a recuar no limite da dívida*, Económico 16/12/2011; *Regra de ouro vira prata*, Sol 24/11/2012

government measures that had been prescribed or that went beyond the MoU. These have mostly concerned labour law reforms and cuts to pensions and public sector wages. Under these circumstances, the Constitutional Court can be seen as an institution that sets boundaries between national sovereignty and external pressures, somewhat halting externally-determined measures that challenge what are considered fundamental rights of citizens.

Nevertheless, the decisions of the Constitutional Court against government policies and the reactions of the government have generated much controversy, particularly as these decisions have been represented by some as based on a literal interpretation of an ideological Constitution and a blockage to much needed reforms. It has been suggested that the Court has failed to make an impartial and context-integrated analysis of the constitutional dispositions. This has been mostly the position of the government and the coalition parties. The tensions increased as European authorities publicly expressed criticism towards decisions of the Portuguese Constitutional Court which has been considered, by many, as an unacceptable interference in Portuguese internal affairs<sup>34</sup>. The government has grown increasingly impatient with unfavourable decisions of the Constitutional Court to the point of the Prime Minister, after the most recent fail, has publicly questioned the legitimacy of the Court as a sovereign organ and the process of appointment of its judges<sup>35</sup>.

### 3. Substantive reforms

This section analyses the labour market reforms that were adopted during and as a response to the crisis, most of which were prescribed by the memorandum of understanding (MoU) although some started before the assistance programme and even prior to the crisis. In particular, the section focuses on the changes to labour law and collective bargaining rules that were designed to increase labour flexibility and management discretion in the workplace. These included changes to employment protection legislation, measures to increase working time flexibility and to reduce the compensation of overtime work as well as changes to the rules governing collective bargaining with the view of promoting 'organized decentralization' of decision-making and adjusting labour costs to firms' competitiveness. Most of these measures were implemented through a revision of the labour code in June 2012 and were subject, at least formally, to social dialogue with the social partners.

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<sup>34</sup> *FMI: Tribunal Constitucional é uma dificuldade em Portugal*, TVI24 10/10/2013; *BE critica "pressão vergonhosa" de Bruxelas sobre Tribunal Constitucional*, *Jornal de Negócios*, 18/10/2013; *Sindicato dos juizes critica pressão internacional sobre o Constitucional*, *Jornal de Notícias* 18/10/2013; *Relatório para Bruxelas vê juizes do Constitucional como força de bloqueio*, RTP Notícias 18/10/2013.

<sup>35</sup> *Passos Sobe a Parada na Guerra contra o Tribunal Constitucional*, *Jornal Publico*, 05/06/2014.

### *3.1 Employment protection legislation*

Relaxing employment protection legislation had long been a demand of Portuguese employers and there had been government attempts to ease and reduce the costs of dismissing permanent employees. However, trade union opposition backed by the constitutional right to employment security (art. 53) had previously prevented significant deregulation in this area. This changed with the crisis and with the involvement of the troika.

The revisions of the Labour Code in Law 53/2011, of 14<sup>th</sup> October 2011 and in law 23/2012 of 25<sup>th</sup> June 2012 reduced the compensation for employee dismissal from 30 to 20 days per year of tenure with a cap of 12 times the employee's monthly wage and revoked the previous minimum compensation of 3 months' pay.<sup>36</sup> The Labour Code revision in law 69/2013 of 30 August further reduced severance pay to 12 days per year of tenure in the case of collective dismissals (art. 366) and created a transitory regime for reducing the severance pay in the case of individual dismissals of employees in permanent and fixed-term and temporary contracts (art 5 and 6)<sup>37</sup>. These changes correspond to what had been prescribed by the MoU in May 2011 (section 4.4). However, the Tripartite Agreement between the government, the employers' confederations and UGT union confederation<sup>38</sup> reached in March of the same year had already paved the way for these reforms, in particular, the reductions in severance pay introduced by Law 53/2011 and 23/2012. Following the MoU and the March 2011 tripartite agreement, a new employer fund was created to partly guarantee the compensation of workers in case of insolvency or financial difficulties of the firm (Law 70/2013).

Another area of reform referred to the definition of dismissals, or the situations in which dismissals should be possible. This included changes to the notion of dismissal due to the worker's unsuitability or, in a more literal translation from Portuguese, 'failure to adapt'. In accordance with the MoU (section 4.5), Law 23/2012 determined that this type of dismissal should be possible even when this was not associated with the introduction of new technology or other changes in the workplace (art. 375). The worker not achieving previously agreed objectives was introduced as a new reason for dismissal on grounds of unsuitability (art. 5). Moreover, when job extinction affected a number of posts, there was no longer the requirement to observe the previous criteria of seniority and the new law established that it was up to the employer to set objective alternative criteria (Law 23/2012, art. 368, No.2). In both types of dismissals – job extinction and worker unsuitability, the employer would no longer be required to attempt to find an alternative suitable position within the firm<sup>39</sup>.

In contrast with what had been the case with the changes to severance pay, the tripartite agreement of March 2011 had not included any changes to the definition of dismissals. The situation changed after the entry of the troika. Considering the crisis circumstances and the commitments with the troika the social partners including UGT (but not CGTP, that more

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<sup>36</sup> Law 53/2011 of 14 October reduced severance pay for new hires (Article 366-A); Law 23/2012 extended the reduction to all employees (Article 366)

<sup>37</sup> The new regime includes transitory arrangements for reducing severance pay, which value depends on the type of contract, its length and when it started (Law 69/2013 of 30 August, articles 5 and 6).

<sup>38</sup> Acordo Tripartido para a Competitividade e Emprego (Tripartite Agreement for Competitiveness and Growth), 22 March 2011

<sup>39</sup> Law 23/2012 of 25 June

strongly opposed the changes) signed another tripartite agreement in January 2012 (Compromise on Growth, Competitiveness and Employment) (CES, 2012) that integrated most of the MoU requirements facilitating dismissals). Nevertheless, after one year of these reforms being in place, the Constitutional Court partly revoked the changes facilitating dismissals of workers on grounds of unsuitability and job extinction<sup>40</sup>. The Constitutional Court determined that exempting the employer from the obligation of attempting to find an alternative suitable position for workers in situations of job extinction and unsuitability violated the constitutional right to employment security. In addition, the court determined that allowing the definition of the criteria for selection of workers for dismissal (which was previously based on seniority) to be solely made by the employers' was one-sided and inappropriate. Following this decision of the Constitutional Court, the government proposed five new criteria to be observed in case of job extinction to replace the previous seniority-based ones: 1) worse performance appraisal, 2) lowest educational and professional qualifications, 3) highest cost of maintaining the employment contract, 4) seniority in the job and 5) seniority in the firm. These criteria were highly contested and negotiations with the social partners soon broke down. The two union confederations opposed the criteria and in the employer side CIP, the largest confederation, also failed to support the proposal<sup>41</sup>. Nevertheless, the government moved ahead and, having gained parliament approval, the new rules came into force in the beginning of June 2014 (Law 27/2014 of 8 May). However, the opposition parties, the unions and several analysts have observed that the criteria, especially performance appraisal, raise constitutional issues due to their subjectivity but also inadequacy considering that most Portuguese employers do not have formal performance appraisal systems in place<sup>42</sup>. Under these circumstances, there is a significant chance that the new criteria will ultimately be rejected by the Constitutional Court which may well, yet again, revoke these new legal rules.

The rules governing fixed-term contracts have also been object of transitory measures which allowed their exceptional renewal beyond their maximum legal duration. Law 3/2012 of 10 January allowed the extraordinary renewal of contracts reaching their maximum duration until the end of July 2013 whereas law 76/2013 allowed further renewals of contracts reaching their maximum duration until 7 November 2015.

Another area of change was the regime of reduction or suspension of work in situation of industrial crisis, often referred to as 'temporary lay off'. In accordance to the MoU and in line with what had been determined in the March 2011 tripartite agreement, the new labour code (Law 23/2012) introduced a number of changes to this regime. Articles 300 and 301 reduce the period of time necessary for the implementation of the temporary measures after an agreement or decision is reached and communicated to the workers affected. Moreover, the renewal of employment suspension or short-time working needs to be communicated to the workers' representative structures but does not require their agreement (article 301, No 3) as it did previously. However, on the positive side, the 2012 revision of labour code also includes positive measures that were not prescribed by the MoU. This includes measures that increase the employment protection of the workers affected, placing restrictions to their dismissal and

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<sup>40</sup> Acórdão do Tribunal Constitucional n.º 602/2013, 22/10/2013

<sup>41</sup> Governo aprova critérios para os despedimentos sem acordo da UGT e da CIP, Jornal Publico 06/02/2014

<sup>42</sup> CIP quer reabrir discussão sobre férias e trabalho extraordinário, Jornal Publico, 29/01/2014

under the new regime the employer is not allowed to dismiss workers during this period or up to 60 days afterwards (art 303, Law 23/2012).

### *3.2 Working time flexibility and overtime pay*

The revision of the labour code of Law 23/2012 introduced several changes to working time regimes and overtime pay aligned to what had been prescribed with the MoU. Some of these had long been demands from employers but had been contested by the unions. Trade unions opposed the changes because they had the potential to significantly reduce workers' total earnings but also because their formulation in the new law also challenged and reduced the scope for collective bargaining on these matters. Nevertheless, most of the changes to working time arrangements were included in the tripartite agreement 'Compromise for Growth, Competitiveness'2012.

The MoU required a review and an increase of the scope for existing working time flexibility arrangements to be negotiated at the workplace level between employers and employees and consistently, the 2012 revision of the Labour Code (Law No 23/2012) created the possibility of Individual and Group Time Banks (Law No 23./2012, article 208-A and 208-B). The 'Time Bank' regime already existed in the 2009 Labour Code (Law No 7/2009, revision of article 208) and allowed working schedules to vary throughout the year to cope with fluctuation in demand. The main innovation is that the 2009 labour code dispositions required time banks to be regulated by collective agreement whereas the new labour code creates the possibility of these regimes being negotiated at the firm level directly between the management and individual workers without the involvement of trade unions. Therefore, the new individual and group time bank regimes enable decentralizing matters of working time flexibility to the firm level and increases managerial prerogative on these issues.

Even though these new flexibility arrangements may reduce the need for overtime work and the opportunities for workers to top up wages with overtime pay, the same Labour Code revision halved the pay premium for overtime work (revision of article 268) and abolished the entitlement to compensatory rest (revision of art. 229). In addition, article 7 overruled dispositions in collective agreements setting compensatory rest periods for overtime work and suspended for two years collectively agreed rules setting more favourable conditions for overtime pay. Moreover it determined that after this two year period, the pay for overtime work established in previous collective agreements should be reduced by half. This was not a requirement of the MoU, which specifically indicated that these norms could be revised upwards or downward by collective agreements.

In addition to the measures required by the MoU, Law 23/2012 also eliminated four national public holidays (revision of art. 234) and the extra annual leave entitlements rewarding workers with low absenteeism (revision of art. 238). Article 7 also restricts dispositions in collective agreements regarding extra entitlements to annual leave.

However, the dispositions in article 7 of Law 23/2012 that restricted the scope for collective bargaining setting more favourable conditions on matters of working time and compensation of overtime pay were also partly overturned by the Constitutional Tribunal, which determined that this violated the constitutional principle of autonomy of collective bargaining. The ruling of the Constitutional Court revoked the suspension of more favourable collectively agreed rules for compensatory rest and for extra holiday entitlements but not those concerning overtime pay. This decision was justified by the temporary character of the measure (suspension for two years of dispositions in collective agreements setting higher pay rates than the labour code) on grounds that despite restricting the workers' rights to collective bargaining and to pay according to quantity, nature and quality, it was a temporary measure that safeguarded 'constitutionally relevant interests' of the current need to increase firms' competitiveness and productivity and to meet international commitments, in a reference to the MoU and the loan agreement. Consistently, it ruled against the restrictions to collectively agreed pay rates for overtime work after the duration of the two year temporary period, which was due to end in 31<sup>st</sup> July 2014. Responding to employers' calls, the government has recently approved in parliament a new law (48-A/2014) extending the suspension period till the end of that year. This was highly contested and opposed by the unions, with both confederations protesting that the proposal of law challenges the previous decision of the Constitutional Tribunal to allow the suspension only for the period of the crisis and the adjustment period and not beyond it (CGTP, 2014; UGT, 2014).

### *3.3 Wage setting and collective bargaining*

There have been very significant labour market reforms during the crisis. However, the reforms to the rules of collective bargaining started well before the crisis, with the 2003 Labour Code (law 99/2003) which created the possibility of expiration of collective agreements that had not been renegotiated<sup>43</sup>. These reforms have been strongly opposed by the unions, who protested that these severely damaged labour's position in collective bargaining, arguing that the possibility of expiration reduced employers' incentives to engage in meaningful negotiation and reach a new agreement (Quintas e Cristovam, 2002; CGTP, no date). The revision of the labour code of 2009 continued these reforms, clarifying the legal after-effect period during which collective agreements remain valid in different situations and enabling the expiration of agreements that contained clauses establishing that they would remain valid until their renewal. This period corresponds to the time while conciliation, mediation and arbitration is taking place or a minimum of 18 months after any of the parties required the cessation of the agreement for collective agreements that do not include an expiration clause. Collective agreements with an expiration clause can also expire but only after a five year period<sup>44</sup>. The 2009 revision of the Labour code also creates the possibility of 'necessary

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<sup>43</sup> Article 557, 558 and 559 of Law 99/2003 of 27 August and changes in Law 9/2006 (art. 557).

<sup>44</sup> Law 7/2009 of 12 February, article 501. For collective agreements that contain an expiration clause, this clause will expire after five years of one of three facts: 1) the last full publication of the agreement; 2) the request of one of the parties to end the contract; 3) a proposal of a new agreement containing a revision of this expiration clause. After this period, the expiration period for the collective agreement, the rule is the same as for contracts without this clause.

arbitration' (in addition to voluntary and compulsory arbitration), which can be requested by any of the parties when they fail to reach a new agreement 12 months after the expiration of the previous agreement.<sup>45</sup> Moreover 2009 Labour Code specified a number of areas that could not be object of less favourable dispositions in collective agreements<sup>46</sup>. In addition, the 2009 revision of the Labour Code grants collective bargaining powers to non-union representative structures of workers in companies with more than 500 workers, even though this role still requires trade union delegation<sup>47</sup>. Despite opposition from CGTP, the government and the other social partners signed a tripartite agreement that supported the reforms of the 2009 labour code.<sup>48</sup>

Subsequent changes to collective bargaining during the crisis were to a great extent a continuation of these reforms. The MoU envisaged the alignment of wage developments with productivity at the firm level through 'organized decentralization' of collective bargaining and, with that purpose, it required a number of measures, most of which were adopted through a revision of the labour code in 2012 (Law 23/2012 of 25 June). These included lowering of the company size threshold required for non-union bodies of workers' in the firm to be granted bargaining powers from 500 to 150 workers, even though they still need a mandate of the trade union (art 491) and encouraging the inclusion of articulation clauses between levels of bargaining, particularly on matters of functional and geographical mobility, the organization of working time and compensation (art. 482).

The real novelty introduced during the crisis was the definition of criteria for the extension of sectoral collective agreements to workers and firms not affiliated to the negotiating associations. This was a requirement of the MoU and was implemented through a Resolution of the Council of Ministers (90/2012) in October of 2012 which introduced new representativeness criteria that were not previously required. Under the new rules, a collective agreement can only be extended if the firms represented by the employers' association employ at least 50% of the workers in the industry, region and occupation to which the agreement applies. The process of enactment of the resolution defining these new rules marked a step away from social dialogue by the government. Despite the MoU specifically indicating that any changes to labour market or social security measures should be subject to consultation with the social partners, these criteria were defined unilaterally by the government (Campos Lima, 2013b). This also breached a government plea in the tripartite agreements of January 2012<sup>49</sup> not to introduce further changes to labour market regulation without the approval of the social partners. Both trade unions confederations and the four employer associations with a seat in the Standing Committee for Social Concertation opposed the resolution and considered that the changes undermined collective bargaining (Campos

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<sup>45</sup> Law 7/2009 of 12 February, articles 510 and 511.

<sup>46</sup> According to article 3 of Law 7/2009 of 12 February, collective agreements cannot set less favourable conditions with regard to: equality and non-discrimination; the protection of parenthood; minors' labour; workers with reduced working ability due to disability or chronic disease; workers who are students; duty of information of employers; limits to daily and weekly working times; minimum rest times and annual leave periods; maximum work duration of night workers; compensation guarantees; prevention of work accidents and work-related diseases; transfer of companies; worker elected representatives.

<sup>47</sup> Law 7/2009 of 12 February, article 491.

<sup>48</sup> Acordo Tripartido para um Novo Sistema de regulação das Relações Laborais, das Políticas de Emprego e da Protecção social em Portugal (CES, 2008).

<sup>49</sup> *Compromisso para o Crescimento, Competitividade e o Emprego* (CES, 2012)

Lima, 2013b). In a statement issued in November 2012 in its website, CIP (the largest employers' confederation) observes that the new resolution:

'undermines the possibility, in practice, of extending collective agreements and this in turn favours disloyal competition, desegregates employers and removes incentives for their affiliation, fosters informal economic activity and deadly hurts collective bargaining'<sup>50</sup>, which it regards as 'an expression of social dialogue at the sector level, that enables adjustments of the legal framework to the industry specific needs, that enables the improvement of working conditions and that is also an indispensable condition for social peace, crucial for the competitiveness and productivity of our firms'<sup>51</sup>

From the union side, CGTP – in a complaint to the *Provedor da Justica* (a Portuguese watchdog to which any citizen can complain to but which has relatively limited powers) makes similar remarks but highlights the wage inequalities that the non-extension of collective agreements will generate between workers covered and those who are not. The MoU justified the need for these criteria on the grounds that collective agreements negotiated by associations that do not represent the majority of the employers (to which these agreements apply to after the extension) might be against the economic interests of non-affiliated firms and damage their competitiveness. However, there is no consideration of its effects on fair competition, industrial conflict, employment conditions and labour market inequality. These reforms in labour law appear to be contributing to blockages in collective bargaining (discussed in Part 2) and are likely to lead to a worsening of the working conditions as fewer workers are covered by agreements that until recently could only set better wages and conditions than the legal minimum standards. However, these minimum standards have also been lowered - as in the case of overtime pay, as discussed above, or frozen - as in the case of the national minimum wage

The MoU required the freezing of the National Minimum Wage (NMW) "unless justified by economic and labour market developments and agreed by the programme of the framework review" (section 4.7). Accordingly, the NMW was frozen at 485€ in 2011, breaching a historical tripartite agreement with all the social partners (including CGTP, who rarely signs national tripartite agreements) to increase the NMW up to 500€ in 2011. The freezing of the minimum wage in a context of higher taxes, particularly VAT, is likely to have a strong negative effect on the workers affected. Moreover, this measure is not neutral because different groups of workers are likely to be differently affected. As women are twice as likely as men to receive the NMW, with 12.3% of working women (compared to 5.9% of men) earning the minimum wage (Dornelas et al, 2011), this measure is likely to have a disproportionately negative effect on women and contribute to increase gender inequalities in pay. The freeze of the NMW was only lifted in October 2014 - four and a half months after the end of the assistance programme its value was increased from 485€ to 505€.

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<sup>50</sup> GOVERNO INVIABILIZA CONTRATAÇÃO COLETIVA, 06/11/2012 available at [http://www.cip.org.pt/irj/servlet/prt/portal/prtroot/com.sap.km.cm.docs/cip/conteudos/areasestrategicas/assunt\\_ossociais/informacao/804d09ab-700a-3010-eca8-c971533a047a.xml](http://www.cip.org.pt/irj/servlet/prt/portal/prtroot/com.sap.km.cm.docs/cip/conteudos/areasestrategicas/assunt_ossociais/informacao/804d09ab-700a-3010-eca8-c971533a047a.xml); see also "Gregório da Rocha Novo afirma: Acórdão do Tribunal Constitucional pode dar machadada letal na contratação colectiva", *Vida Económica*,

17/01/2014

<sup>51</sup> Idem



Meanwhile, further changes to the rules of collective bargaining are under way. A new resolution of the council of ministers has been published changing the criteria for the extension of collective agreements. The new criteria is that a collective agreement can only be extended if either: 1) the firms represented by the employers association employ at least 50% of the workers in the industry, region and occupation to which the agreement applies; or 2) 30% of the affiliates of the employers' association signing the agreement are micro, small or medium enterprises<sup>52</sup>. Another legal change to collective bargaining was published in the end of August 2014 (Lei n.º 55/2014) further reducing all the periods for the expiration and 'after-effect' of collective agreements and creating the possibility of suspension of collective agreements in cases such as industrial crisis. This new proposal was subject to concertation with the social partners and, despite the opposition of CGTP, it was agreed with UGT and the employer associations.

### *3.4 Equality and non-discrimination*

The employment reforms discussed above were implemented without consideration of their impact for equality and work-life balance. As such – and as discussed in the previous section, some of those measures are likely to have a disproportional negative impact on certain social groups.

Yet, on the positive side, there were at least two legal reforms that are positive from an equality perspective. One relates to the changes in the 2009 labour code that specified the areas in which collective agreements could only set more favourable conditions than the law because many of these areas relate directly or indirectly to equality. Among the areas specified in article 3 of Law 7/2009 are equality and non-discrimination, the protection of parenthood, and the rights of workers with reduced working ability due to disability or chronic disease. Moreover, other areas that are ring-fenced that relate to work-life balance and, indirectly, to gender equality are limits to daily and weekly working times, minimum rest times and annual leave periods. All these dispositions were maintained in the 2012 labour code (Law 23/2012). However, the latter also includes a very significant substantive change of the legal rules governing collective bargaining concerning equality and non-discrimination. The 2012 revision of the labour code stipulates that within 30 days after their publication, the legality of the dispositions of collective agreements in matters of equality and non-discrimination is to be assessed by the competent service of the labour ministry (the Commission for Equality at Work and in Employment, CITE)<sup>53</sup>. If any illegal dispositions are detected, the parties are notified and required to change those dispositions within 60 days. If this is not done, the process is sent to an employment tribunal which will within 15 days pronounce the collective agreement void. The 2009 revision of the labour code had already initiated these reforms but did not include then the possibility and requirement of the celebrating parties changing the discriminatory elements of the collective agreements. The 2012 legal reforms granted the Commission (CITE)

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<sup>52</sup> Resolução do Conselho de Ministros n.º 43/2014 de 27 de Junho.

<sup>53</sup> Lei 23/2012, art. 479 and Decreto-Lei n.º 76/2012, art. 3

a greater role in promoting equality in collective bargaining and the opportunity to raise equality awareness amongst the social partners.

#### **4. Discussion**

The sovereign debt crisis in Portugal has been a period of intense labour market reform to degree that had not been witnessed since the 1974 revolution. These reforms were, to a great extent, induced by the pressures of the financial markets and the European policy of budget consolidation and internal devaluation but were consistent with the political ideology of the right-wing coalition in office. While many of the changes to labour law and collective bargaining had already been under way before the crisis, the worsening economic situation and the involvement of the troika facilitated reforms that had so far been successfully resisted by the unions or that had not even been on the agenda.

The substantive measures that were prescribed by the MoU and subsequently adopted by the Portuguese government were aimed at achieving fiscal consolidation and internal devaluation mostly through increasing labour market flexibility. While flexibility had been a central topic of social dialogue since the early 2000s, the focus on flexicurity was replaced, under the crisis, by a focus on reducing labour costs. Some labour market reforms, such as those facilitating and decreasing the cost of dismissals had been on the employers' and government agenda for some time but up to the crisis the trade unions had successfully resisted these changes. However, during the crisis, general strikes and demonstrations were no longer effective, particularly under the influence of international organizations that would hardly be affected by these actions (as also observed by Armingeon and Baccaro, 2012). Other changes, particularly those affecting the rules of collective bargaining, may represent a clearer break with what had been the previous path of reform and do not appear to respond to the demands of social partners on either side. This is particularly the case of the introduction of representativeness criteria for the extension of collective agreements. This reform is contributing to the collapse of sectoral bargaining, a central feature of Portuguese industrial relations with which all the parties appeared to be comfortable with. While this may appear at a first sight to represent a paradigmatic change that was induced by the crisis and externally imposed, it is important to take into consideration that significant changes to the rules of collective bargaining had already been taking place since 2003. These changes, particularly the possibility of caducity and expiration of collective agreements, may also have contributed to the blockages in bargaining and to the reduction in coverage observed during the crisis. Part 2 of this report, drawing mostly on interview data with the social partners and case study material, will enable shedding some more light on these issues.

The process of labour market reform also changed during the crisis. Up until then, the systematic effort to involve the social partners had led to the achievement of important consensus and had enabled the accumulation of an important capital of trust between the social partners and the government. During the crisis there was also an initial concern with involving the social partners and the achievement of two tripartite agreements that paved the way to the reforms. However, from then on, the government increasingly showed a disregard

for social dialogue by failing to honour some of the commitments made in those agreements and by taking unilateral decisions when consensus proved difficult and negotiations time-consuming. This, coupled with what was seen as an over-zealous implementation of the MoU also appears to have led to a change in the dynamic of relationships between labour market actors at the national level. The tradition of hostility between social partners inherited from the dictatorship and the revolutionary period seems to be partly giving way (at the national level) to distrust towards the government by the social partners on both sides. Both unions and employers seemed to share the view that exaggerated austerity and certain labour market policies could compromise social stability and industrial peace. Despite the fact that the two union confederations continue to have very different approaches when it comes to signing tripartite agreements, the government's stance has also brought together the labour movement in the opposition to the measures. In the recent history of four decades of democracy, only once did the two politically divided trade union confederations organize a joint general strike, and that was 22 years before the crisis.

Indeed, the government's dutiful implementation of far-reaching labour market reforms and austerity policies has been met with significant opposition and protest. A few of these measures have been successfully resisted by a variety of institutional and social actors, including trade union and employers organizations but also civil society who spontaneously organized into mass-demonstrations. Also notably, the Constitutional Court, called to assess the constitutionality of some of the measures, reversed a number of them. While trade unions fiercely protested and civil society revealed at times a surprising inclination to discerning mobilization against government austerity policy and troika intervention, it was the Constitutional Court that emerged as a crucial institution in safeguarding fundamental rights as defined in the Portuguese constitution and indirectly setting boundaries to external intervention on domestic matters. However, in fulfilling this role, the Constitutional Court has been subject to increasing pressure from the government backed by international organizations in a process of escalating tension between those two Portuguese sovereign organs.

## **Part 2 – The impact of the reforms to labour market policy and joint regulation**

Part 2 of this report examines the impact of the crisis and the associated labour market reforms on collective bargaining in manufacturing. Following Part 1's examination of the process and substance of the changes introduced in labour law during the crisis, in part 2 we consider their practical effects to the process, character, content and outcome of collective bargaining at the sector and firm level.

### **5. The research**

This part of the report is mostly based on primary research conducted between May and August of 2014 although this is complemented at times with secondary data from official sources. The empirical study draws on fifteen in-depth interviews both at the national and sectoral level with the key social partners from both the employer and union side and a three hour workshop with state officials, representatives from manufacturing trade unions and employer associations that involved a total of twenty participants. The interviews at the national level included those with direct responsibility for collective bargaining policy of their respective organizations (CGTP, UGT and CIP). At the sectoral level the research involved interviewees from employers' and union organisations that were in leadership roles and/or directly involved in collective bargaining processes. In addition, ten case studies of firms (see Table 1 below) were also conducted in three manufacturing sectors: 1) metal and automobile, 2) textiles, clothing and footwear and 3) food and drinks manufacturing. The number of interviews conducted at the national, sectoral and firm levels combined totalled thirty and these data was complemented with the sectoral and firm collective agreements in the cases where these existed and were made available.

We start by providing a brief overview of the manufacturing sector context in Portugal and of the specific industries studied. We then focus, in the following sections, on an analysis of the impact of the crisis and the labour market reforms on, firstly the process and character of collective bargaining and, secondly, on its outcome and content.

Table 1 – Case study firm profiles

Case studies	Employers association membership	Workforce size	Workers structure	Impact of the crisis	Company agreement	Interviewees
Large car manufacturer 1	ACAP (Car production, repair and trade)	4500	Trade union Workers committee	Significant	Yes	Management Trade unions Workers committee
Large car manufacturer 2	ACAP	810	Trade union Workers' committee	Significant	No	Management
Large car components manufacturer	AIMMAP (Metal)	350	No	Significant	No	Management
Medium car components Manufacturer	AIMMAP (Metal)	200	Non-union workers Committee	Significant	No	Management Workers committee
Large home textiles manufacturer	ATP	660	Trade union	Initially considerable	No	Management Trade union
Large Clothing manufacturer	ANIVEC	600	No	Minimal	No	Management Individual workers
Small Clothing manufacturer	ANIVEC	70	No	Minimal	No	Management Individual workers
Large shoe manufacturer	APICCAPS	1200	Trade union	Initially considerable	No	Management
Large food/drinks manufacturer	Not for bargaining purposes.	1000	Trade union Workers committee	Considerable	Yes	Management Trade union/ workers committee
Medium food/drinks Manufacturer	ANICP	180	No	Minimal	No	Management

## 6. The context of industrial relations in manufacturing

Manufacturing in Portugal is a relatively important economic sector when compared to other European countries, with a share in total employment of 16.7% compared to 15.6% share of that sector in the European Union employment (Eurostat, 2013). This share in Portugal declined during the crisis (from 18% in 2008 to 16.7% in 2013) and this decline was sharper in manufacturing than in total employment (19.1% compared to 13%, respectively). Textiles, clothing and leather industries when taken together are the largest sub-sector, with a 29% share of manufacturing employment, followed by food (14%), metal (12%) and automotive (8%)<sup>54</sup>.

When the crisis started, textiles, clothing and footwear industries had just been through a process of adjustment in response to the opening of European markets to international competition between mid-1990s and mid-2000s. As highlighted in the interviews, this involved the relocation of a number of MNCs and the reorganization and restructuring of the sector, in a process that involved significant job losses<sup>55</sup>. However, partly due also to strategic repositioning, these industries survived and after this process they were in a better position to face the challenges of the international crisis that started in 2008. While 2008 and 2009 were difficult years, since 2010 that there are signs of recovery and exports have been growing steadily since 2011<sup>56</sup>. While these industries are highly export-oriented, there is substantial variation in the share of exports in total sales according to the sub-sectors: 85% in clothing, 75.7% in leather and footwear, and 62.4% in textiles.

Metal and especially automotive industries have been more directly affected by the current international crisis. Some signs of recovery started to appear already in 2010 in the metal sector (see INE, 2013 and PORDATA) but only became evident in car production in 2014, with ACAP – the employer association for the car industry, reporting that production has increased 6.4% in July 2014<sup>57</sup>. The car industry is highly export-oriented with a share of exports in total sales of 82.9% in 2012 (INE, 2013).

Food and beverage is a very heterogeneous sector and overall much more oriented to the internal market, which had a share of 83.2% and 66,9% respectively on food and beverage manufacturing in 2012 (INE, 2013). Production on this sector slowed down after 2010 closely linked to the decline of available income and related drop in consumption.

Collective bargaining in manufacturing in Portugal are characterized by the dominance of industry-level bargaining but low levels of coordination and articulation (Dornelas, 2004; European Commission 2004). Despite most bargaining taking place at the sector level, collective bargaining in Portugal is not considered to have high levels of centralization (European Commission 2004) because of the fragmentation of both unions and employer associations, which results in the bargaining authority being distributed by multiple

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<sup>54</sup> All data in this paragraph is from Eurostat Online database [lfsa\_egan2] and was accessed between 15.09.14 and 10.10.14

<sup>55</sup> About a third of jobs were lost between 1995 and 2008, according to PORDATA

<sup>56</sup> INE (2013) Estatísticas da Produção Industrial - 2012

<sup>57</sup> <http://www.acap.pt/pt/pagina/36/estatisticas/>, accessed 10.10.2014.

organizations in each sector. Articulation between levels of bargaining has remained very low despite being legally possible since 2003 (Art. 536, Law 99/2003, see also Dornelas, 2006).

In metal and car industries there are three employer associations and three union organizations involved in industry level bargaining. From the union side the three main organizations are CGTP-affiliated FIEQUIMETAL, UGT-affiliated SINDEL and independent SIMA. However, due to blockages in bargaining and the expiration of the agreements with CGTP, the agreements concluded by UGT's SINDEL are now the main framework for these industries, even though CGTP has a stronger representativeness in manufacturing (Dornelas, 2006).

In textiles, clothing and leather industries, the main organization from the union side is CGTP-affiliated FESETE, who negotiates all the agreements with the five employer associations in the sector. UGT union organizations in these sectors generally subscribe to the industry agreements negotiated by FESETE.

In food and drinks manufacturing employer associations are organized in multiple industry branches and workers are mostly represented by CGTP's SINTAB, which also represents workers in agriculture. In turn, this union is affiliated to FESAHT, which is a federation of unions representing mainly workers in hospitality. One of the food-drinks subsectors studied is a particular case in Portugal because there is currently no industry agreement due to the industry being dominated by two large companies, each of which has their own agreement. As company bargaining is relatively rare in manufacturing in Portugal, Large Food-drinks Manufacturer was regarded as a particularly interesting case for this study as it could provide insights of responses to the crisis negotiated at the firm level

At the workplace level the main channels of employee representation are trade union delegates and committees and workers committees - a works council type of body. Both are democratically elected by the workers and are protected by the Constitution. The 2009 labour code introduced the possibility of workers committees signing company agreements but this requires a mandate from the trade union. Of the companies studied only two had company agreements, one of which, in car manufacturing, is celebrated with the workers committee and the other, in food-drinks manufacturing, is a regular formal agreement with the trade union (see box 1 below).

**Box 1 – Employee representation in the workplace in two company cases**

**Large Car Manufacturer 1** is considered the paradigmatic but atypical case of good industrial relations and firm-level bargaining in Portugal. The atypical character of industrial relations in the firm lies not only on their unusually collaborative nature but also on the fact that the negotiating party from the workers' side is the workers committee, who signs company agreements without the mandate of the sectoral union. For this reason, these agreements are not legally enforceable but they have effectively regulated the organization of work, and the terms and conditions of employment in the firm since 1994 while contributing to industrial peace. The character of the industrial relations in this company is however highly influenced by those of the German parent company. Under that influence, management is highly supportive of regular communication and transparent sharing of information that supports a culture of cooperation and trust. Despite the fact that the workers committee is the negotiating party, there is also union representation in the company with union delegates of CGTP, UGT and SIMA. The workers committee is also composed by union delegates from CGTP and the coordinator is a well-known member of CGTP but his negotiation-oriented approach contrasts with the generally confrontational approach of his union. Union density in the firm has been decreasing but elections for the workers committee are highly participated, involving 80 to 90% of the firm's employees. There has never been an internal strike in Large Car Manufacturer 1. This is due partly to a written agreement to follow specified procedures to solve disputes as soon as they arise, partly to a tacit understanding between management and workers. The lack of industrial action in the company is also due to the 'discipline' and influence of the European works council that rarely supports local internal strikes and helps resolving local disputes through the parent company. There are also written commitments from the company side to avoid job losses and instead engage with the workers committee in searching for alternative solutions whenever circumstances require. Therefore, Large Car Manufacturer 1 is also atypical in manufacturing in Portugal for the emphasis it gives to dialogue with workers as a main driver of efficiency.

In **Large Food/Drinks Manufacturer** there is a long tradition of union representation and company collective bargaining that results in regular formal company agreements. The union committee is traditionally strong, confrontational and its branch secretary reported in the interview that the level of unionization of production workers is around 90%. There is also a workers committee which is composed by 3 union delegates and four independent workers. The coordinator of both committees is the same person, the interviewee. In his view, both structures are important because the workers commission is seen as more neutrally (without the political connections) representing the views of firm's workers but as it does not have the same resources and therefore the same bargaining power, the union's commission is also necessary. From the HR manager perspective, the workers committee is the workers representation structure for day-to-day communication and that is closer to the workers without the political influences and connotations associated with the union, a view that was expressed in a number of interviews with managers of other firms.



## **7. The implications of the reforms on the *process* and *character* of collective bargaining**

The period of crisis in Portugal witnessed significant changes in the process and character of collective bargaining. However, these changes were to a great extent the result of reforms to the regulatory framework that were initiated before the crisis. The interviews with the social partners at the national and sectoral level revealed that it was mainly the introduction of the possibility of expiration of collective agreements in the Labour Code in 2003 that initiated the trends observed during the crisis. These led, even before the crisis, to increasing blockages to bargaining at the sectoral level, the weakening position of trade unions in collective bargaining and of workers in the employment relationship. The reforms were taken further during the economic crisis and the combined effect of both increased the pressures on the system. The underlying objectives of the changes had been, at least at the discourse level, to make collective bargaining more dynamic and to enable the organized decentralization of collective bargaining. The sections below examine the extent to which these objectives were achieved.

### ***7.1 The pressures of collective bargaining at the sector level***

The changes to the legal framework in 2003 introducing the possibility of expiration of collective agreements resulted from the widespread view, particularly amongst employers, that the collective agreements in place were not fit-for-purpose and that trade union intransigence was preventing the modernization of employment relations and of the organization of work. According to interviewees from both the employer and union side (mostly UGT), even though collective agreements were formally renewed and republished, the main changes introduced for a long time had been mostly wage updates and other matters of pecuniary nature. Most of the content remained the same, in many cases since the 1970s and 1980s. A number of interviewees from employer associations noted that the political instability and climate of the post-revolutionary period was highly favourable to labour and these circumstances enabled the introduction in sectoral collective agreements of a number of 'rights' that the trade unions have since then refused to forgo. Nevertheless, some areas became increasingly outdated, namely with regard to occupational categories, partly because many of these referred to jobs that no longer existed and partly because occupations were very narrowly defined therefore not providing any scope – in the employers' perspective – for functional flexibility. Moreover, some norms were outdated because they had been either surpassed by legislation or outdone by *de facto* workplace practice. Nevertheless, the most contentious issues were working time flexibility and the pay rates for overtime work. The latter had reached very high levels (in many cases of three times the rate for normal working hours) which the unions had been able to secure upon the understanding that overtime work should be discouraged so that it would only be used in very exceptional situations. The underlying reasoning was that worker's rest and leisure time should be protected. However, being one of

the relatively few flexibility strategies available to employers to adjust to demand fluctuations, in the context of very low manufacturing wages, overtime work in manufacturing had gradually become a widespread regular practice and overtime pay had become a very significant share of workers earnings. Therefore, lowering the rates for overtime or introducing working time flexibility that would reduce opportunities for overtime work would both lead to a cut to the earnings of the workers affected and this explains the union's resistance to agree to any changes unless, according to the UGT interviewee's perspective, these were compensated with wage increases.

The national-level interviewee from CGTP – who is responsible for the collective bargaining policy of this union confederation - challenges the view that the collective agreements remained unchanged and considers that there has always been a degree of flexibility both in sectoral agreements and in the workplace – namely with regard to working-time and functional flexibility. The sectoral agreement has never, according to this view, prevented local adjustments in the workplace that met the firm's specific needs, but this flexibility needed boundaries. In this perspective, employers' claims that there had been no change in collective agreements for decades and their demands for greater flexibility are fallacious and employers' real purpose has always been to reduce labour costs. From this point of view, the Portuguese production model of low added value that competes on basis of cost is not desirable and no longer sustainable considering the international competition of developing countries with much lower labour costs and standards. Instead, this union confederation aims to negotiate measures that enable the development of a production model based on added value, innovation and product diversification. In this perspective, union concessions on matters of overtime pay and flexibility as demanded by employers would only contribute to reinforce a model that is not in the national interest to maintain.

Consistently, the interviews with employer's associations provided no evidence that employers have ever seriously considered in these negotiations to provide wage increases or other pecuniary benefit that would compensate workers for the potential earnings loss that introducing working time flexibility would entail. Indeed, the legal reforms and then the crisis, enabled employers to negotiate flexibility into the collective agreement without having to offer much in return. The 2003 labour code and subsequent 2009 revision that created the possibility of expiration of existing agreements gave employer the upper hand in collective bargaining. The crisis that started in 2008 further contributed to weaken trade union's position. As the economic situation deteriorated, unions' concern with protecting workers' pay started to lose ground in relation to the need to secure the survival of businesses and protect jobs. The interviewee from CIP, the national confederation for manufacturing employers, explains that, after a long path of trying to introduce greater flexibility in sectoral agreements, firms met the crisis under increasing pressure to respond flexibly in order to avoid bankruptcies and job losses and did not have the means to offer unions any cash compensation for working time flexibility:

*When the crisis stroke, that was the time when we most needed these flexibility figures in order to avoid more firms closing down, more lay offs and more job losses...and we did not have the means to offer... If unions say "no deal" then I also cannot ...So you ask "What did we offer in return [for flexibility]?" . Employment did not drop further because in certain sectors –important*

*sectors – firms made good use of these alterations and new tools [...] It cannot be the two sides of the table “Do you want 50? I offer 8....” No, in collective bargaining we are talking of many people, in sectors that are fundamental to our economy where unemployment reached the levels it did. So this cannot be looked at in that direct and immediate exchange....*

Trade unions responses to the new reality varied. In metal-automobile industry, where there had been blockages in bargaining (and no updates to the wage tables) for a decade, industrial relations had become highly adversarial. The interviewees from employer associations attribute the responsibility for blockages in collective bargaining to the intransigence and lack of willingness to negotiate, particularly of CGTP-affiliated FIEQUIMETAL. However, as it was reported by the employer association for car manufacturing (and repair and trade), ACAP, the existing blockages involved not only the more radical CGTP-affiliated union but also the more moderate UGT union SINDEL and independent SIMA. The issues under dispute were mainly that employers wanted to introduce working time flexibility and lower overtime pay rates. These changes have always been considered unacceptable by CGTP negotiators from FIEQUIMETAL. While CGTP's FIEQUIMETAL had previously been the main bargaining partner due to its greater representativeness in manufacturing, employers started to envisage better prospects for negotiations with UGT's SINDEL. Eventually, an agreement was reached in 2010 with SINDEL that introduced time banks and lowered overtime rates. The economic circumstances were not favourable to the union side but SINDEL secured some concessions from employers regarding significant boundaries to time banks and time compensation for work done on weekends. The agreement also involved wage increases of around 10% but as this was designed to update wages that had not been increased since 2001 this increase cannot be regarded as a compensation for the introduction of working time flexibility (as noted by the ACAP interviewee). The new agreement also introduced significant changes to occupational categories. CGTP's union never agreed to any of ACAP's proposals and, after all the legal timelines and requirements including mediation and conciliation procedures, the process of negotiations failed and the agreement with CGTP's unions expired in 2009. SINDEL agreement was extended to the industry and is now the main framework for this subsector. A very similar process was described by another employer association for metal industries, AIMMAP, whose collective agreement with CGTP's unions has also expired and a new one was reached with UGT's SINDEL and is in place since 2010. CGTP union members can opt out from the SINDEL agreement, which could potentially create some difficulties in companies with a significant number of unionised members. In practice, based on information provided by employer associations and on the case studies, these problems rarely arise in the workplace and workers do not normally object to be covered by UGT agreements even if they are members of a CGTP Union. The situation of the metal sector seems to be representative of what is happening in many other manufacturing industries (though not in textiles), as reported by interviewees from unions affiliated to both UGT and CGTP and by the interviewee from CIP, the umbrella employer association for manufacturing. These revealed that the blockages in most manufacturing sub-sectors are long standing and based on similar grounds and where agreements have been reached these have been signed with UGT, from the union side.

CGTP unions in metal industry dispute that their collective agreements have expired and have submitted an appeal to the administrative court. While this process takes its course, in strict legal terms the CGTP collective agreements are not valid. Under these circumstances, the

union's strategy has been to persuade individual employers to comply with it and if some employers continue to do so with regard to some of its core rules (and CGTP unions in the North gave a number of examples of firms that do so) then, that has the potential to reinstate the validity of those agreements. This is however dismissed by the two employer associations interviewed who maintain that the only valid agreements in the sectors are those celebrated with UGT's SINDEL.

The situation in textile and footwear industries differs from what seems to be happening in most manufacturing industries where there are long standing bargaining blockages with CGTP unions. FESETE, which is also a CGTP-affiliated union federation, negotiates all the agreements with employer associations in the textiles, clothing and footwear industries. This union organisation has adopted an approach that is rather different from most CGTP unions. After a comparatively short-lived blockage in bargaining after the publication of the 2003 Labour Code, FESETE reached new collective agreements with the employers' associations in 2006. These agreements introduced working time adaptability and other forms of flexibility and avoided the expiration of agreements (although according to CIP's interviewee, this dispute was resolved due to the direct intervention of the Minister of Labour). Even though industrial relations have been relatively positive since then until the beginning of the crisis there have been no agreements and/or wage updates negotiated since 2010/11 (except for ANIT-LAR and ANIL that at the time of the interview were about to reach new agreements with FESETE). One of the six employer associations in these industries has recently requested the expiration of the existing agreement.

The blockages in collective bargaining observed during the crisis in textiles and footwear manufacturing appear to be at least partly caused by the suspension (in 2011) of extension of collective agreements and the subsequent introduction of representativeness rules in 2012. Employer associations claim that negotiating wage increases and favourable conditions for workers would result on firms that belong to the employer associations facing unfair competition from firms who are not members and would not be bound to practice the same wages and terms and conditions. Moreover, they claim that this may encourage the disaffiliation of current associates. This has been a key argument of employer associations in textiles and footwear for justifying their unwillingness to negotiate wage increases or negotiating very low wage increases. The representatives of various employer associations interviewed in textiles and footwear sectors consistently argued that the pay table only sets minimums and that their associates often pay more if they can and that many do so. However, local unions argue that larger employers who can afford to pay their employees higher wages often do so while still benefiting from the very low wages rates negotiated for the sector. This is because these industries, concentrated in the North region of Portugal, are organized in intricate subcontracting chains and networks. In many firms, the main flexibility strategy to deal with demand fluctuations is to subcontract large proportions of production to smaller firms, over which they tend to have a high degree of control and place very strong cost pressures. Thus these firms at the bottom end of the subcontracting chain have very small profit margins and little scope to offer higher wages and better conditions to their workers. Due to the nature of these inter-firm relations, local unions dispute the justification provided by employer associations based on potential unfair competition from non-affiliated firms because, as reported, small and large (or medium) firms do not compete with each other.

Instead, these are subcontracting relations and so the lower the wages practiced by the smaller firms, the greatest the benefit for the subcontracting firms. If this is the case, the non-extension of collective agreements would be irrelevant or if anything, larger firms who belong to the employer association might still feel obliged to encourage the firms they work with to pay the collectively agreed rates for the sector which in turn would also increase their charges. Therefore this, according to this perspective, would be the real reason for employer associations' refusal to negotiate pay increases since 2010/11. Somewhat contradicting that perspective, soon after the new change in the representativeness rule that made extensions viable, one of the employer associations in textiles concluded a new agreement with FESETE and updated wage tables. Even in this case, though, and similarly to what has been the rule in these sectors, wages in the main occupational categories are very low, very close to the national minimum wage. Nevertheless, it is clear that there are multiple realities within and between these sub-industries that add to the complexity of firm relations and interest representation at the sectoral level.

In metal industries, the changes to the extension rules appear to have had a lower impact and the main change affecting industrial relations has been the changes that enabled agreements to expire. The changes to extension rules have not prevented wage updates between AIMMAP and SINDEL in 2013. Even though ACAP has not negotiated a wage increase since 2012, this is justified on the basis of the economic situation of smaller repair and commercial firms who are also represented by this association. According to the interviewee from ACAP's representative, the changes to the extension rules did not affect this decision.

The views of social partners with regard to extensions were heterogeneous, mostly among employers but one CGTP union leader also argued that extensions may not be beneficial for unions because they do not encourage workers to unionize and only high levels of unionization enable a strong bargaining position. From the employers' side, all employer association interviewees reported being in favour of extensions as a basis for industry bargaining that propitiates fair competition but this view is not necessarily shared by all firms. The managers interviewed from Medium Car Component Manufacturer expressed the view that companies make their own internal management decisions and for that reason it would be better not to be bound by an industry agreement. The manager of Large Car Component Manufacturer and Large Shoe Manufacturer also expressed reservations.

## *7.2 Decentralization trends*

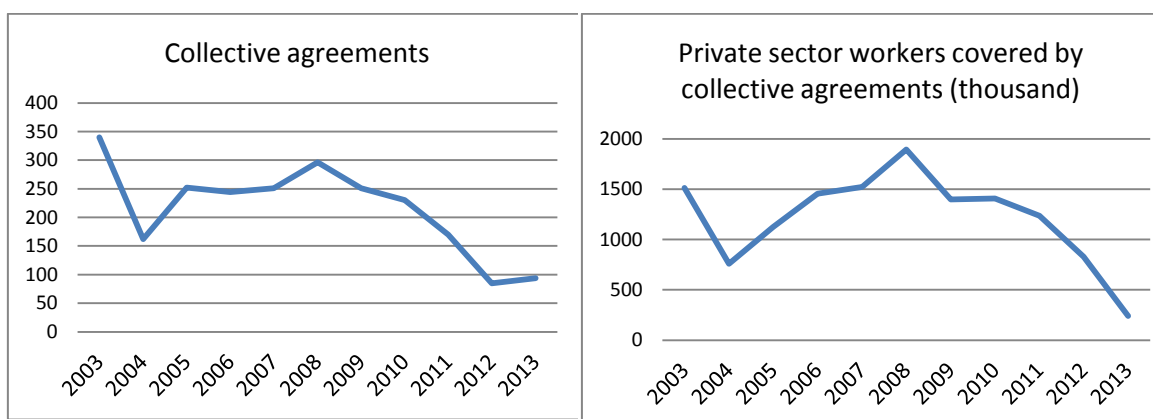
A number of changes in labour law were introduced with the explicit objective of promoting 'organized decentralization' that would facilitate flexibility and aligning wage developments with productivity at the firm level. Formal changes have been introduced in the law for this purpose, namely, encouraging the inclusion in sectoral agreements of articulation clauses between levels of bargaining and facilitating workers committees in firms to conclude company agreements – mostly by first introducing this possibility in 2009 in firms with at least 500 workers and then by reducing this threshold. The interviews with actors at different levels reveal that articulation clauses have hardly ever been used and that, as workers committees

still require a union mandate to be allowed to conclude agreements and as this is rarely granted, these changes have had little impact.

Although the introduction of the possibility of expiration of collective agreements from 2003 was introduced with the objective of making collective bargaining more dynamic, its initial effect was the opposite. Indeed, it appeared to have the effect, at least initially, of reducing collective bargaining activity although after a sharp decrease the levels of collective bargaining were partially resumed up to 2008 (see figure 3 below). However, the number of collective agreements and workers covered decreased again from 2009 until 2012. From 2012 the number of collective agreements has been growing but the number of workers covered has continued to decrease. This may be because as sectoral agreements were not extended they covered fewer workers but also because as the changes in extension rules led to blockages in sectoral bargaining, the relative proportion of firm agreements increased in 2012 and 2013. As the latter apply only to the firm's employees this trend also contributes to lower numbers of workers covered by collective bargaining.

The unions that contributed to this study generally expressed the consensual view that the changes introduced in 2003 and consolidated in the 2009 labour code revision enabling and facilitating the expiration of agreements, contributed greatly to the decline in collective bargaining activity observed during the crisis. The negative effect of the suspension and subsequent creation of representativeness rules for the extension of industry agreements is also consensual. This trend has continued throughout the crisis at least until 2013.

Figure 3 – Collective agreements concluded per year and workers covered in Portugal



Source: UGT (2014), *Relatório Anual da Negociação Coletiva - 2013*

Table 2 shows that the relative importance of company agreements has increased even though its total number has also decreased since 2008. However, it is also noticeable an inversion of the declining trend of industry agreements in 2014. Of the 41 agreements published already in 2014, almost half were published in July and August, following a regulation change<sup>58</sup> that added a new criterion for the extension of industry agreements based on 30% proportion of SMEs members of signatory employer associations. Several of the social partners interviewed

<sup>58</sup> Resolução do Conselho de Ministros n.º 43/2014, 27 June

expressed the view that the new rules are more appropriate because most employer associations have at least that proportion of members who are SMEs and therefore the agreements celebrated would meet the extension requirements. Thus, employer associations may be now more inclined to sign collective agreements and updating wage tables for the industry if they know that these will be extended to all firms. Therefore, while the increase of the relative proportion of company agreements in 2012 and 2013 could be interpreted as a trend towards decentralization, in absolute terms company agreements have also decreased until 2012 and are still at much lower levels than they were before the crisis. 2014 data and the most recent change to the extension rules suggest a degree of resilience of the industry-based system of bargaining.

Table 2 – Number of collective agreements\* and extensions in selected years

	2003	2008	2009	2010	2011	2012	2013	2014**
<b>Total Collective agreements</b>	343	295	251	230	170	85	94	115
<b>Company agreements (AE)</b>	81	95	87	64	55	39	48	57
<b>Multi-employer agreements (ACT)</b>	30	27	22	25	22	10	19	17
<b>Sectoral agreements (CCT)</b>	232	173	142	141	93	36	27	41
<b>Extensions (industry agreements)</b>	n.a.	134	n.a.	n.a.	n.a.	n.a.	9	n.a.

Source: UGT (2014), *Relatório Anual da Negociação Coletiva – 2013* and data provided by DGERT upon request (regarding extensions 2008 and 2013 and all data for 2014).

Notes: \* New agreements and revisions of existing agreements; n.a. – Not available; \*\* Jan-August

However, it is important to keep in mind that the data displayed in the figure and table above only refer to the workers covered by *new collective agreements*. This has important implications, the most important of which being that the total number of workers by new and existing valid agreements is unknown. The interviews with both sides, as well as documents provided in the process, indicate that in practice, the number of agreements that have in fact expired is not that significant. Since the publication of the 2003 Labour Code until the end of 2013 only a total of 34 collective agreements have expired and, some of these were parallel agreements that only differed in one of the signatory parties (e.g. the same employer association signing two agreements with the same text with different unions) so the number of *effectively different* agreements that actually expired is just 23, of which 18 sectoral and 5 company agreements (UGT 2013). There is no data available on how many workers are affected but, according to both sides, this is not a very significant number. Interviewees from unions and employers associations tend to agree that employers in most cases are not interested in letting agreements expire but use the new disposition to obtain concessions from unions in negotiations. Yet, the weakened union's position in the bargaining of new agreements and the low implementation levels of old agreements – imply that, even if formal coverage remains high, the relevance of the effects of sectoral bargaining may have decreased.

Sectoral agreements have traditionally determined better pay and conditions than those in the general law while at the same time allowing for sector-specific arrangements that would also

benefit employers and promote industrial peace. The interviews revealed that both unions and employer associations are supportive of industry bargaining. In the run up for the changes introduced in the 2003 Labour Code, it was the employers who maintained that the existing sectoral agreements were no longer serving their competitiveness and adaptability needs – in their view due to union intransigence. Yet the changes introduced from 2003 onwards clearly changed the balance of power in favour of employers and severely constrained trade union's bargaining position. Those unions who reached industry agreements have had to make relevant concessions. Unions fear that as the new expiration rules can be used by employers to pressure them to make concessions in every bargaining round, this will lead to the progressive deterioration of workers' terms and conditions. In this case, unions may lose an important part of their capacity to shape industry bargaining, which may become less relevant over time even if it remains formally the dominant level.

The situation may be different at the firm level in cases where unions are strong or where management is supportive of worker participation, both conditions that are relatively rare in manufacturing in Portugal. The two cases of firms with company agreements studied correspond to these situations and therefore are highly atypical. In these two cases, collective bargaining was based on strong representation of the company workers by the negotiating body and this allowed reaching agreements that were considered satisfactory by both parties. From the workers side, it protected their interests and avoided the deterioration of working conditions and pay, and from the company side it allowed achieving flexibility, a degree of wage restraint during the crisis and securing industrial peace. However, these cases are not typical and will be further discussed in the sections below.

CGTP unions' interviewees also reported a firm-level union strategy outside formal bargaining - '*caderno reivindicativo*'. This strategy appeared to have gained relevance during the crisis, in the context of bargaining blockages at the industry level. The *caderno reivindicativo* simply consists of local trade unions meeting with the workers of a firm and in their behalf approaching their employer without any formalities with the purpose of negotiating wage increases (and in some cases other terms of employment). Union interviewees from CGTP operating in metal and car industry in Porto region reported having been able to secure wage increases in this way in a number of companies. The national CGTP interviewee also reported the case of a car components' manufacturing cluster based on a region south of Lisbon around a large MNC company (Large Car Manufacturer 1). These firms were not able to provide yearly wage increases throughout the crisis as did Large Car Manufacturer 1 but trade unions have recently approached them individually with *caderno reivindicativo*. Having obtained positive results in one or two firms and as these results became known this facilitated negotiations in other firms, having a spill-over effect and similar wage increases were generalized to most firms in the cluster, according to the CGTP national interviewee.

Despite the recent success of these decentralized strategies in some firms in the metal industry, we found no evidence of formal decentralization in the three sectors studied. The employer associations and union interviewees reported no decentralization trends or any greater inclination of affiliated firms to conclude company agreements, which remain virtually non-existent in metal (with the notable exception of Large Car Manufacturer 1, even though this agreement with the workers committee – in the absence of a union mandate - is not



legally-binding) and textiles and leather industries. One employer association for clothing (ANIVEC) reported that while before the crisis there were a few large companies that had company agreements, these proved ineffective tools to manage labour in the context of dynamic industry bargaining that since 2005-6 provided flexibility tools that met firms needs. In food manufacturing, although company agreements are not prevalent, there are a small number of (formal) company agreements but there is no evidence that these have increased.

While national level figures indicate an initial increase of the proportion of company agreements in relation to sectoral agreements, recent figures show a degree of increase in bargaining activity at the industry level suggesting some resilience of the system. It is also clear that company agreements are not supplanting sectoral agreements. Nevertheless, the values in figure 3 and the interview data suggest a decrease of bargaining coverage during the crisis and a shift towards a greater individualization of the employment relationship indicating a trend towards disorganized – rather than organized – decentralization. The disorganized character of decentralization is also evidenced by the lack of vertical articulation, the informal bargaining strategies of local unions at the firm level and the reduced ability of sector-level union confederations to influence the wages and employment conditions of workers.

### *7.3 The impact of the crisis on the climate of employment relations*

The crisis and the changes in the legislation appear to have reinforced the existing character of industrial relations in each sector.

In metal and automobile industries, the climate of industrial relations were already very adversarial between employers CGTP unions and this was intensified during the crisis leading to the expiration of CGTP agreements in these industries. Relations between employers and UGT unions were less adversarial and, although partly due to the weakened position in the context of the crisis and the new legal framework, new agreements signed with UGT SINDEL led these to become the dominant framework for wages as well as employment terms and conditions in the sector. However, antagonism was not limited to employer-union relations. The interviews in these sectors also revealed the profound cleavages, competition and hostility between CGTP and UGT-affiliated unions.

In textiles, clothing and footwear after a period of blockages following the 2003 labour code, industrial relations became relatively collaborative, according to the interviewees. Despite the fact that there were no wage increases during the crisis, industrial relations continue to be described as relatively peaceful and collaborative by the actors although this may be at least partly due to the greater vulnerability of workers in the context of economic crisis, sector restructuring and growing unemployment. An employer association interviewee in clothing explains:

“Nowadays people understand, there is cooperation, even the trade unions have had a very constructive role [in collaborating with the employer’s association in helping to resolve internal conflicts in firms] – this did not used to be possible. And why is this? It’s the crisis. The

crisis makes people to become closer. I realize that when the crisis is over, there will be some demands...but at the moment people understand.”

Despite industrial relations in clothing and textiles appearing relatively peaceful during the crisis at the level of employer associations, the hostility of some employers towards unions was evident in a number of interviews, although it is unclear the extent to which this was aggravated during the crisis. While in textile and footwear this hostility was mostly expressed by individual employers, in metal industries employer negative attitudes towards unions was also noticeable in the interviews with employer associations. This hostility is often justified by what employers (both associations and individual employers) describe as a confrontational approach and lack of sensitivity of unions to the economic pressures faced by firms and is directed mostly towards CGTP unions. Employer associations in metal and car industries also argued that the action of CGTP-affiliated organizations tends to be oriented by ideological motives and political links to the communist party and that these do not always serve workers’ interests in practice and do not help resolving disputes. This alleged lack of pragmatism and low transparency of their motives is evidenced – according to ACAP interviewee – by the fact that FIEQUIMETAL failed to engage in voluntary arbitration that might have prevented the expiration of the collective agreement.

However, union politicisation may not be exclusive of CGTP unions, at least at the central levels. As noted by the CGTP interviewee, when the (right wing) coalition government showed receptivity to discuss an increase to the National Minimum Wage in April 2014 in the run up to the European elections, UGT refused to engage in concertation on grounds that it would not let the NMW be used as ‘electoral folklore’ in favour or against the government or any political parties<sup>59</sup>. Despite the secretary general justifying this position with the argument of political impartiality, an increase of the NMW earlier in the year – irrespective to whether or not it benefited the coalition parties in the elections, would surely have favoured low paid workers – particularly in manufacturing sectors such as textiles and footwear. Nevertheless, irrespective to the political motives and consequences of that particular decision of the secretary general, UGT interviewees argue that at local and sectoral level, UGT has a more independent and pragmatic approach to bargaining and to resolving disputes with employers through reaching compromises that protect workers interests.

In summary, during the crisis, industrial relations remained highly adversarial in metal manufacturing with, if anything, a reinforcement of antagonism between employers’ and CGTP unions and between the two union organizations, which remain politicized. An increase of conflict at the firm level is also linked to the changes to overtime pay rates, which will be further discussed in the next section.

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<sup>59</sup> SMN: UGT indisponível para «folclore eleitoral», CGTP recusa negociar como «moeda de troca», TSF, 09/04/2014. [http://www.tsf.pt/PaginalInicial/Economia/Interior.aspx?content\\_id=3803615](http://www.tsf.pt/PaginalInicial/Economia/Interior.aspx?content_id=3803615)

## **8. The implications of the reforms for the content and outcome of collective bargaining**

### *8.1 Shifting the boundaries between statutory and joint regulation*

There has been a very significant move from joint to statutory regulation in ways that clearly shifted the balance of power towards management thereby increasing managerial discretion in the workplace. This shift occurred firstly through creating the possibility of expiration of agreements and shortening their 'after-effect' duration and the introduction of representativeness rules for extensions, which potentially leave some workers uncovered by collective bargaining. However, there is not yet available data that allows knowing the extent to which this has happened.

This shift also took place in more direct ways. The government has regulated directly through legislation areas that were traditionally under the scope of collective bargaining, namely with regard to the organization of working time and overtime pay. As the Labour Code revision of 2012 allowed implementing individual time banks in firms, even if these are not regulated by sectoral collective agreements, the workers may still be required to work in that regime. Moreover, under the threat of expiration of agreements and the pressures of the economic crisis, many unions made concessions with regard to time banks and other forms of flexibility long demanded by employers. Time banks now exist in the three collective agreements regulating metal workers. Interestingly, individual employers and associations and also trade unions consistently mentioned that time banks have long been used by firms, upon informal agreements with workers or their representatives (see box 2 below). This was particularly the case of metal industries but the HR manager and union delegate of a textiles firm also reported time banks having been used in the firm. The interviewee from the automobile employer association explains:

*'At the time companies were only allowed to have a time bank if this was covered by the collective agreement. That is also why for us it was essential to have it in the sectoral agreement: because we knew that firms were already doing it, with the risk of having problems with the labour inspectorate'*

Indeed, in the four firms studied in metal industries, three of them had their own time bank regimes before these were covered by the sectoral collective agreement. In the fourth case, the company agreed a different working time regime with the workers in which in addition to the three shifts per day during the week, a weekend shift was created. According to the workers commission of Medium Car Component Manufacturer, this weekend shift consists of 24 hour carried out on the weekend and the workers involved receive the same pay as those working normal 40 hour shift work during the week. Time banks have not formally been introduced in textile and footwear industries agreements but they have already had since 2006 a system of working time adaptability. Moreover, the interviews in the three textile companies revealed that all three had either regular or occasional informal time banks. This was also the case of Medium Food/drinks Manufacturer.

### **Box 2 - Time banks in Portugal**

The case of Large Car Manufacturer 1 is often cited as the company that first started using time banks in Portugal. In this firm, the system was first introduced in 2003. Due to a fall in demand that year, the management and the workers commission negotiated a solution that would avoid job losses and consisted of exchanging wage increases for 12 'down days' that year and 10 further days in the following year. These 22 days became thus a permanent allowance that workers only work if needed and are entitled to be paid for those days if they reach a positive credit of 22 days in each period of 2 years. Weekend work is not included in the time bank. This solution was seen as a satisfactory solution for the situation faced by the company at the time both from the perspective of workers and management. It also served the company well in the early years of the current crisis. However, as the economic outlook improved, it became clear that the system was effective for responding to periods of low demand but less so for responding to periods of higher than usual demand. Under these circumstances, management has been keen to renegotiate working time flexibility to allow dealing with peaks in demand, namely by redesigning the time bank system to include work on Saturdays. However, the last attempt failed to secure the workers support.

Despite that drawback, the system is regarded as a successful case of negotiated working time flexibility and Large Car Manufacturer 1 set a template for time banks in the industry. The HR manager of Large Car Manufacturer 2 reported having visited 1 before proposing a time bank in the company and it was reported by the employer associations that after the example of 1, the concept and practice of time bank was widely spread in the industry and was subsequently included in the sectoral agreements. Arguably, it may have influenced its inclusion in the labour code in 2009 (if collectively agreed in a formal process) and in 2012 (individual and group time banks).

However, the time banks that were subsequently regulated by the industry agreements are not as favourable to workers as that implemented in 1. In most cases time banks are designed in a way that does not compensate workers for the flexibility while at the same time reducing opportunities for overtime pay.

With regard to overtime pay, which has been a source of long term conflict in industry bargaining in many manufacturing industries, notably metal, the government reduced by half the legal rates and introduced in the 2012 Labour Code dispositions suspending collective agreement clauses that set higher rates. These dispositions, which were meant to be temporary for a period of two years up to the end of July 2014, have in the meantime been extended till the end of the year in response to employers claims that they would not be able to pay the much higher collectively agreed rates.

In the cases where overtime work is used, firms have in most cases, seized the opportunity to lower overtime pay. The managers interviewed tend to argue that they have done so in order to comply with the law, conveying an interpretation of the legal disposition that failing to apply the new reduced rates would be an illegality. However, as some union interviewees observed,

the labour code only suspends collectively agreed pay rates and does not include any dispositions restricting individual employers' decisions to pay above the legal minimum.

Of all regulations introduced during the crisis, the suspension of collectively agreed extra pay rates has had the most negative impact on industrial relations and became a source of conflict in the workplace. This is because, firstly workers and unions regard the reduction of overtime as a breach of industry or company agreements and secondly because in some cases this reduction constituted an important component of workers' pay and so it corresponds to a very significant cut in total earnings. Trade unions have called strikes to overtime work with variable results. The call for strike also protects workers in cases in which they do not want to work overtime under rates that unions argue that do not compensate the implications for work-family reconciliation and reduced rest times. Both unions and a number of managers have also observed that the increased income taxes have also contributed to decrease the value of take-home pay of extra hours worked.

### **Box 3 - Overtime pay in three company case studies**

Even the best employers, such as **Large Car Manufacturer 1** reduced overtime pay rates, thereby breaching the company agreement which already set lower rates than those in the industry agreement. Despite workers discontent and disapproval of the move, due to a tacit understanding between management and the workers committee and between these and the European Workers' Council, this firm's workers do not strike. Therefore, the workers reluctantly collaborated in working overtime in two of five Saturdays planned. However, after these, the workers decided that it did not pay and the coordinator of the workers committee told management that workers were unwilling to keep working overtime and management made alternative arrangements (using a temporary work agency). The manager interviewed initially justified the move with the need to comply with the law. Confronted with the fact that the previous rates paid by the company for overtime work were also illegal because they breached the industry agreement, the manager added that the company needed to be internationally cost-competitive to win orders and investment from the parent company.

**Large Home Textile Manufacturer** is also considered a good employer. It follows the industry agreement and improves on some of the terms, namely, paying higher wages complemented with a system of bonus linked to attendance and productivity. Both sides consider that there are good industrial relations in the company, even during the crisis, except in what concerns the payment of overtime work. The application by management of the lower rate determined by the labour code constitutes, from the trade union perspective, a breach to the industry collective agreement that led to conflict and a call for strike to overtime work. Due to the strike, and because of the fact that after taxes the new rates do not pay for working weekends, a proportion of workers refuse to do so. This proportion is very high according to the union but relatively low according to management.

**Large food/drinks manufacturer** has a long tradition of firm level unionization and collective bargaining. The firm union is affiliated to CGTP and while being negotiation-oriented it is quite prepared to take a confrontational approach. It drives its strength from a very high level of membership among production workers, estimated at 90% by the branch secretary in the interview. The changes in the law associated with the crisis led to substantial tensions in

industrial relations, particularly when the firm decided to apply the new reduced rates for overtime pay – a decrease from 175% to 50% on weekends. For workers who regularly worked weekends and relied on regular overtime pay as a stable component of their earnings, this represented a substantial loss. Therefore, when the new rules were implemented, the workers and the union felt this breached the company agreement and initiated a strike to overtime pay that lasted five months. As the worker participation in the strike was 100% and the company relied significantly on overtime work, the management and the union reached a new agreement that compensated the extra effort associated with the overtime work. In practice, this ‘effort subsidy’ reinstated the previous rates but a new designation protected the company from the alleged risk of breaching the labour code rule. In exchange, the union agreed to a three year plan of relatively low wage increases (flat rate of 25, 20 and 15 euro) linked to overtime and productivity. Overtime work was also reorganized so that a greater proportion of workers were involved and so avoided excessive working hours for each worker. Both the union and management assess this solution as satisfactory. From the union side, this is a rare case in which a union was able to maintain collectively agreed rates for overtime work during the crisis. For management, despite that concession, the agreement achieved wage restraint and secured workers’ cooperation in overtime work and industrial peace in the following three years.

While in metal work the employers’ response appeared relatively uniform, in textiles the situation is somewhat more heterogeneous. While Large Home Textiles Manufacturer used to pay the rates set by the industry agreement and after the change, reduced the rates to those set by the 2012 Labour Code, Large Clothing Manufacturer paid overtime work as normal hours before and after the change in regulation in breach with both the collective agreement and the law. In turn, Small Clothing Manufacturer paid the collectively agreed rates before and after the change, but did not declare this payment with the justification that if overtime pay is taxed it does not compensate the workers’ effort. In fact, the interviews with the workers in this company suggest that the firm generally tends to make an informal use of working time flexibility regimes and overtime pay in the way that is favourable to workers. In this firm, time banks are used mostly for absences: workers who need to be off work are allowed to work extra in other times instead of losing pay whereas if it is management who requires overtime, workers are compensated with the collectively agreed rates.

These cases point to the high incidence of informal arrangements at the firm level, often in breach with the collective agreement and/or the legal standards. In metal and automobile industries, the interview evidence seems to suggest that the changes contributed to formalize arrangements that were already in place in the case of time banks although in the case of overtime pay the imposed rates contributed to increase tensions in the workplace. As reported, with or without industrial action, there is some evidence that a number of workers in these industries may be reluctant to work overtime at the new legal rates, which calls into question the effectiveness of the measure. The situation appears to be different in clothing and textile industries where the evidence suggests that management discretion in setting informal arrangements at the firm level may be more widespread and less affected by the regulatory changes. Nevertheless, the managers interviewed in both sectors made several

references to informal arrangements and understandings at the firm-level at the margin (and in some cases in breach) of the sectoral agreements.

## *8.2 Patterns of wage bargaining*

In addition to the changes to overtime pay rates, a combination of factors has affected pay developments in manufacturing, particularly in the industries studied. Statutory minimum standards play a major role in developments in earnings, particularly in low paid sectors and occupations. In sectors such as textiles and clothing and the subsector of Medium Food/Drinks Manufacturer, collectively agreed rates for the occupations of most workers tend to be set just a little above the national minimum wage (NMW). Therefore, when there are blockages in bargaining, these rates are regularly surpassed by the minimum wage, which becomes their actual wage (Tavora and Rubery 2013). Between 2011 and the summer of 2014, the NMW was frozen at 485 euro and bargaining was blocked in textiles, clothing and shoe manufacturing. Consequently the wages of most workers' in these industries were frozen at very low rates in the same period. In the two case study firms in clothing manufacturing, there had not been wage increases since 2011 and the monthly pay of most production workers varied between the NMW - 485€ and 505€/month. While the sector has been affected by the crisis, Large and Small Clothing Manufacturing were not severely affected and appear to be in good health in recent years, having required most workers to work overtime regularly in the last year and reporting good results despite some uncertainty. Interestingly, the workers in these two companies – who are not generally unionized, while aggrieved for not having wage increases, do not direct their grievances to their employer and instead tend to blame the government for not increasing the NMW. Despite not having increased wages, Small Clothing Company gave yearly bonuses during the crisis, which was already the tradition previously, but the total amount increased in recent years, according to the workers interviewed. Large Home Textiles Firm has given wage increases only to the lower grades throughout the crisis although this year as the economic and firm situation improves, the pay increase affected all grades. The lowest wage paid by the company, according to the HR manager, is 507.5€, therefore above the collectively agreed rate for the grade where most workers work in the industry (488€). Recent developments include the reaching of a new agreement between FESETE ANIT-LAR (the employer's association for home textiles) and ANIL (the employer association for Wools) in June 2014, which introduced a number of changes and updated the wage tables for these subsectors. Interestingly but not surprisingly, those wage tables became outdated four months after they were agreed as the value of the NMW was increased in October 2014 to 505 euro, surpassing the collectively agreed rates for the grades of most production workers<sup>60</sup>.

The reforms to collective bargaining affected the capacity of unions to negotiate wage increases at the sector level. In textiles and footwear sectors the threat of expiration of agreements have placed unions in a weaker bargaining position and the representativeness requirements for the extensions have, in the perspective of employer associations, prevented

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<sup>60</sup> The wage tables negotiated in this collective agreement can be found in FESETE website, available at <http://fesete.pt/portal/docs/pdf/acordotexteislar2014.pdf>

employers from increasing wages. In the car industry, while the economic situation was dramatic in the beginning of the crisis, conflictual industrial relations prior to the crisis were also crucial to explain blockages. As negotiations had been blocked, there had been no updates of sectoral wage tables since 2001. In the agreement negotiated in 2010 between SINDEL and ACAP enabled a significant update on wage rates for the sector but companies were not required to implement the new rates until 2012. There have been no wage updates in this agreement since then and the interviewee from the employer associations stated that the industry was not yet prepared to provide a further update. However, the AIMMAP (metal including car manufacturing) agreed revisions to the collective agreement with SINDEL and increased wages in 2013 and already in 2014 (2%). Nevertheless, union action at the company level through *Caderno Reivindicativo*, may also have contributed to wage increases in metal and car manufacturing.

Reforms to legislation in working time flexibility and overtime pay may have resulted in major losses for some workers. In the context of low manufacturing wages, well paid overtime work provided a chance for workers to top up their wages. In some sectors and firms overtime pay constituted an important component of total earnings of workers. The introduction of working time flexibility regimes, with increasing scope for this being unilaterally set by management at the firm level, may have replaced and decreased firms' need for overtime work, thereby reducing workers' opportunities for overtime pay. On the other hand, the imposition of a legal standard that prevails over collectively agreed rates, decreased very significantly the pay for overtime work (and therefore also the incentive for workers to do it). Moreover, the case of Large Food/Drinks Manufacturer also illustrates how in the rare cases where unions were able to keep the collectively agreed higher overtime pay rates they may have had to make concessions with regard to pay increases.

The cases of Large Car Manufacturer 1 and 2 suggest that the type of company also matters. Despite being strongly affected by the economic situation, these companies which are large European MNCs gave wage increases throughout the crisis. Despite the different character of industrial relations in the two firms – highly cooperative in 1 and adversarial in 2, the fact that the companies are unionized and have effective channels of worker representation may also have contributed for having had wage increases. However the importance of union representativeness is more evident in the case of Large Food/Drinks Manufacturer. In this company – also owned by a large MNC - the trade union, despite having had to agree to wage moderation to secure the agreed higher rates for overtime pay, was still able to secure yearly wage increases throughout the crisis. In 2012 the wage increase had been 3.5% and, according to the union, this was only achieved because of a threat of a strike. This case illustrates that high levels of worker membership, participation and support for the union can be a key factor influencing unions' ability to protect workers' interests and to secure wage increases.

While in Large Car Manufacturer 1 the workers committee benefitted from high levels of workers support, this structure seemed to drive its power resources to a great extent from management support for workers participation. The dimension of this MNC and the supportive approach of management meant that workers' did not need to struggle to obtain a wage increase and so the non-union status of the workers body (and associated lower legal resources, particularly the right to strike) did not affect the outcomes of bargaining as much as



it might have if management was less supportive and less inclined to provide good working conditions. Nevertheless, the adoption of the new reduced overtime pay rates in this firm shows that management retains discretion for deciding unilaterally when agreements prove difficult and suggests that the bargaining position of the workers committee may be more fragile than it appears.

In summary, wage developments were affected by multiple factors and, while it is evident that the economic crisis increased the cost pressure on firms, labour-intensive industries were more reluctant to increase wages even when the business prospects improved. The case of textiles and footwear manufacturing shows the importance of NMW for providing floors for wages – most workers' pay was frozen since 2011 and were only increased in October 2014 due to the increase of the NMW, which surpassed the rates of most workers in the old agreements and even those set in the collective agreement for home textiles and wools reached four months earlier. The changes in the rules of collective bargaining also contributed to the wage freeze in low pay sectors. Large MNC were naturally in a better position to increase wages, even during the worse years of the crisis, although employee voice and union presence in these companies may also have contributed to better outcomes for workers. The new systems of working time flexibility and lower overtime pay rates, as reported by unions, resulted in lower total earnings to a significant proportion of workers.

### *8.3 Firm-level responses to the crisis and the impact of labour market reforms*

To some extent, some of the reforms contributed to firms responding to the crisis by being able to reduce costs and to react flexibly to demand fluctuations, particularly in the case of the introduction of time banks and the reduction of overtime pay. However, as reported by the managers and employer associations interviewed, time banks – especially in metal industries - were already practiced before they were introduced in collective agreements and even before they were introduced in the legislation. In the textile sector, as highlighted above, two of the three companies visited continued paying the same overtime rates before and after the reforms – one below the collective agreement and the legal rate and the other continued to follow the collective agreement even though it was not legally required to do so.

None of the firms visited reported having made use of the new regulations facilitating individual dismissals, even though some may have benefited from lower costs with compensation for dismissals. Although a number of companies have made a number of workers redundant, they have mostly used the traditional path of voluntary redundancy and not renewing temporary contracts. Two companies made collective dismissals: Large Shoe Manufacturer dismissed 500 workers in 2009 and Large Car Component Manufacturer dismissed 100 workers in 2012. A number of companies mentioned that they have made use of the temporary dispositions for renewing fixed term contracts.

According to the interviews with employer associations and firms the responses to the crisis have varied from sector to sector. In clothing and shoe manufacturing, the key response has been mainly keeping costs low mostly by freezing wages, using working time flexibility,

overtime work and subcontracting to respond to variations in demand. The change to extension rules gave employer associations an opportunity to allocate to the government the responsibility for keeping wages low in the industry. The interviewee from APICCAPS, after discussing the problems of unfair competition between firms that the new rules raise, explains that the ability of the association to negotiate wage increases will depend on *'what the government and the partners in social concertation decide'* and that the industry trade union federation needs to understand that *'we need to wait that the government and the higher authorities change their vision of the problem'*.

In the home textile subsector, where firms are larger, according to the employer association there have been a number of important company restructuring that involved collective redundancies up to the beginning of the crisis. However, these processes appeared to be mostly the outcome of the opening of European markets to Asian countries rather than directly associated with the current crisis and ultimately led the firms that survived to become healthier and more competitive. In his perspective, the European crisis was actually positive to the industry because, with the reduction of consumption in Europe, the size of orders became smaller and therefore less attractive to Asian producers. In contrast, smaller orders had the appropriate size for Portuguese producers, who consolidated their position as a proximity industry with very short delivery times. Nevertheless, after a phase of restructuring, the industry kept wages low partly due to the uncertainty of the economic prospects, partly due to the extension rules. However, at the time of the interview the employer association was about to sign a collective agreement with FESETE but stated that this would only be published when the extension rules changed, which eventually happened in June 2014.

In automobile industries, which were sharply affected in the beginning of the crisis, the responses tended to involve more encompassing change and/or more creative solutions. The extent to which these changes were negotiated also varied. In all cases in this industry except Large Car Manufacturer 1, cost reduction was central in firms' responses. Box 4 summarizes their responses.

#### **Box 4 – Firms' responses to the crisis in car manufacturing**

When the effect of the international crisis started to be felt, the management of **Large Car Manufacturer 1** engaged with the workers committee in order to devise a response that would be effective and satisfactory to both sides and avoided job losses. The solution agreed involved three components: the use of the time bank 'down days', vocational training - 109 of workers were placed in vocational training programmes (though they have been, in the meantime, recalled because they were needed in production and will resume the programme in January 2015) and posting 207 workers to temporary assignments in the parent company in Germany. According to the workers commission, management was persuaded to adopt these solutions to avoid losing workers and skills that might be needed in the future and because, comparing that cost against that of training new workers, the difference would be minimal. Still, the good climate of industrial relations and the usually participative decision-making style of management did not prevent it from taking advantage of the new legislation to reduce overtime pay rates, breaching the existing company agreement.

**Large Car manufacturer 2** had operated until 2008 as a complement to another (larger) subsidiary in the

north of Spain. Until then, wherever there was variation in demand it was mostly the Spanish plant that adjusted. However, in 2008 the Portuguese subsidiary was allocated the responsibility for the full assembly of a car model independently of the Spanish factory. This required a rethinking of processes because until then the company was prepared to increase production through overtime but was not prepared to reduce production when demand decreased. That was when management decided to create a time bank that enabled reducing 20 days and increasing 10 days per year without varying pay. This was negotiated with the workers through the workers committee. However, immediately after the time bank was introduced in October 2008, there was an abrupt fall in demand and the 20 non-worked days were used in the remaining of that year, and the workers finished the year already with 20 negative days in the time bank. In February, 10 days of annual leave were used and after that, management decided to eliminate one of the three shifts. This was achieved by not renewing fixed-term contracts and stopping using temporary agency workers (affecting more than 300 workers) and reorganising permanent workers into two shifts. In May the company started a temporary lay off of 6 months involving 16 days suspension of production of which 5 were used to provide training to workers. This was done in close collaboration with government authorities for social security and employment but the company opted not to receive financial support from the government to the lay off – though this was available – because it required safeguards that the firm could not provide, namely that there would be no job losses during or after the lay off. Since then the company has used the third shift to respond to fluctuations of demand. The night shift was re-hired in 2010 for one and a half year and again in the beginning of 2013 until the Summer of 2014. Not surprisingly, industrial relations became adversarial in the beginning of the crisis. The firm has a workers committee that up to 2008 was not unionised. The time bank was negotiated and 86% of workers agreed. However, the new workers committee elected that year was 100% unionised. With the dismissals and lay offs relationships became extremely tense. Since then, according to management, industrial relations have improved and there is increasingly communication and collaborative relations between management and the workers committee and the unions (CGTP's SITE Norte and independent SIMA). In the HR manager perspective, improved relations were due to improved communication efforts and an increasing understanding from the workers and union side of the cost pressures facing the company in an extremely competitive market.

**Medium Car Component manufacturer** had between September and December 2008 a 50% reduction in orders. The main two responses were job cuts affecting 80 workers who were in temporary contracts and the use of the Lay Off - temporary suspension/reduction of production for a year. During that period the workers had a 20% reduction in wages and were offered vocational training partly supported by government funds. These strategies were at least discussed with the workers committee. There is no union presence in the company and the company has a non-union approach to participation which management justifies with what it sees as an inadequately confrontational approach of CGTP unions. The workers committee is collaborative, defines relationships with management as positive and collaborative based on trust that mostly emerges from the fact that management successfully led the company through the crisis, moving from near bankruptcy to the present healthy state. Local CGTP unions, however, have a more negative perspective of the company's labour practices and have attempted to persuade management to increase wages in 2014 through *caderno reivindicativo*, which in this case was unsuccessful.

These cases (Box 4) illustrate the pattern that was typical in metal and in the automotive segment of using working time flexibility to offset the initial impact of the recession. However, they are also illustrative of the fact that these adjustments – irrespective to the extent to which they were negotiated with the workers' representative structures, were not always sufficient to prevent job losses.

#### *8.4 The impact of the reforms on equality*

While many of the reforms were implemented without regard to their equality impact, there were also reforms that were positive from an equality and gender perspective.

On the negative side, the freezing of the minimum wage in a context of blockages in collective bargaining is likely to have a strong negative effect on the workers affected. This measure is not neutral because different groups of workers are likely to be differently affected. As women are twice as likely as men to receive the NMW, with 12.3% of working women (compared to 5.9% of men) earning the minimum wage (Dornelas et al, 2011), this measure will have had a disproportionately negative effect on women and may contribute to increase gender inequalities in pay. Indeed, Eurostat online data shows that the gender pay gap in Portugal has increased from 9.2% in 2009 to 15.7% in 2012.

On the positive side, the new disposition of the 2009 and 2012 labour codes attributing to CITE (Commission for Equality at Work and in Employment) the role of inspecting the conformity of collective agreements to equality legislation, appears to be leading to positive outcomes. Indeed, the new collective agreement in textiles between FESETE and ANIT-LAR extended to fathers childcare benefits that were previously only available to mothers. Additional evidence of the preliminary positive effects of this measure comes from a report recently published by CITE (Ferreira e Monteiro, 2013). It is reported that in 2012 this commission produced 15 recommendations relative to 45 clauses of collective agreements that were considered inadequate in relation to the equality and non-discrimination legal framework, and consequently all those clauses were declared invalid by the labour court. The same document also reports that, in the same year, CITE started sending to the bargaining parties 'prior appreciations' of collective agreements. The 12 amendments proposed by CITE on the basis that certain clauses were not consistent with equal opportunities law were mostly accepted by the social partners and the agreements were accordingly amended. The clauses in question included issues such as the use of non-inclusive language leading to certain rights being recognised solely to workers of one gender, the use of language that was not consistent with the new gender-neutral language of leaves for parents, dispositions that violated the legal dispositions of leaves for fathers, dispositions regarding the mode and duration of leaves for working mothers and fathers, the non-recognition of the right to working time reductions for breastfeeding (and bottle-feeding) for mothers and fathers (Ferreira e Monteiro, 2013). The document assesses favourably the preliminary work initiated in this domain. In addition, in our study the interviewee from UGT observed in the interview that equal opportunities legislation and policy is one area that has been safeguarded against the austerity and labour market reform agenda of the government during the crisis.

## **9. Conclusion: General trends and possible scenarios for industrial relations in Portugal**

While systemic changes to collective bargaining were already clearly under way in Portugal, the crisis had a revealing and accelerating effect in this process. In the face of cost-minimization employers' strategies and union resistance to negotiate flexibility systems that would further reduce worker's earnings, the government initiated in 2003 a process of regulatory change that favoured the employer side in collective bargaining. The economic crisis and the entry of the troika further contributed to weakening the bargaining position of unions and created opportunities to take these reforms further.

The objectives of those reforms had been to make collective bargaining more dynamic and to promote organised decentralisation. Yet to some extent the reforms contributed to create or intensify blockages in bargaining. In metal and car manufacturing these blockages were only (partly) overcome because the economic crisis and the fresh regulatory changes introduced during the crisis further weakened the workers' side and increased the risks of expiration of agreements. This led to a repositioning of bargaining actors in a process that favoured cooperative unions but that in some sectors led to the exclusion of the most representative union organisations. In textiles and footwear industries, the suspension of extensions and subsequent introduction of representativeness criteria actually contributed to create blockages in the sector despite the pre-existing cooperative relations between labour market actors. In both sectors, the changes led to the introduction of flexible arrangements that met longstanding demands of employers. The weakened position of unions meant that they were not able to negotiate conditions that would compensate the potential negative consequences of these arrangements for workers. In turn, the pressures of the crisis also constrained any commitments to employment security from the employer side, except in very atypical company cases.

The analysis of the bargaining structure and process during the crisis also indicates that any decentralization trends observed are of the disorganised rather than the organised kind. The industry level continues to be formally dominant despite bargaining blockages and recent data heralding a growth of sectoral bargaining activity, particularly after the most recent change to extension rules. While these developments point to the resilience of the system, the lower ability of sector-level unions to influence the wages and conditions of workers reduces the relevance of bargaining at this level. Moreover, reduced bargaining coverages and therefore a move towards individualization of the employment relationship, the lack of articulation between levels of bargaining and the informal firm-by-firm wage bargaining strategies reported by local unions are also signs of disorganised decentralization.

The character of bargaining remained adversarial in metal and automobile industries. If anything, the reforms contributed to increase conflict in the workplace, particularly the restrictions to collective bargaining on overtime pay. As employers took advantage of the new dispositions that lowered overtime pay and suspended jointly agreed rates, trade unions regarded this move as a breach of the collective agreements and responded with a call for a

strike to overtime pay. Even in companies with cooperative industrial relations, this reform created tensions that damaged the collaborative climate.

Working time flexibility and lower overtime pay rates had been long standing demands of employers but these had been successfully resisted by most unions until the crisis at the sectoral level. Under the new circumstances of less favourable collective bargaining rules and under the pressures of the economic crisis, some unions reached agreements to introduce these and other forms of flexibility and these agreements became the main frameworks for the respective sectors. However, a number of firms had already flexibility arrangements in place – particularly time banks, which had been implemented in the workplace upon informal workplace agreements or understandings (with worker representative structures or individual workers). Indeed, the research suggests that workplace informal ‘understandings’ were widely used by firms to respond to the crisis but it does not clearly indicate the extent to which these were negotiated or imposed by employers.

While the reforms had a mostly negative impact on workers - particularly in terms of wages and earnings, it is unclear the extent to which they contributed to increased adaptability and competitiveness of firms beyond lowering labour costs. Employers and managers reported that different forms of flexibility, including time banks, were implemented in firms before they were included in the collective agreement or in the legislation upon what was described as ‘an understanding’ with the workers by management and in some cases in breach of the sectoral agreement. In addition, none of the firms studied made use of the new dismissal rules despite benefiting from lower costs with severance pay.

While systemic change of collective bargaining is visible in the weakening of the union side and the disorganised centralisation trends, resilience of the system is evidenced by the persistent importance of the sectoral level of bargaining, at least in formal terms. However, there are also some key features of the system of collective bargaining that were maintained if not reinforced during the crisis. These were, however, mostly the weaknesses of the system, including the strong divisions and politicisation of the labour movement, the fragmentation of collective bargaining and low levels of coordination and vertical articulation. The government reinforced its intervention in collective bargaining by successively restricting the after-effect of collective agreements, by setting limits to bargaining outcomes and autonomy (namely with regard to the rates of overtime pay) and by (temporarily) withdrawing support for industry bargaining through the suspension and subsequent introduction of criteria for extensions that severely constrained bargaining at that level. While the new dispositions to promote equality in/through collective agreements are welcome, it is unfortunate that these come at a time when collective bargaining is being challenged in its role of regulating employment relations.

As the economic outlook slightly improved, some employer associations and individual firms appeared more willing to negotiate wage increases and conclude new collective agreements. However, on the government side, new legislation issued after the end of the adjustment programme further decreasing the after-effect periods of collective agreements, introducing the possibility of suspension of collective agreements in case of industrial crisis and further facilitating individual dismissals signals the persistence of a post-troika deregulatory path.

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