

DIADSE – DIALOGUE FOR ADVANCING SOCIAL EUROPE

Country report: Portugal (summary)

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Data and methods

The country report on Portugal has been based on research carried out between February and December 2015. In consonance with the objectives of the international project ‘DIADSE – Dialogue for Advancing Social Europe’, we describe developments in policy-making and social dialogue in the period of 2008-2015 drawing on literature, legislation, reports by national authorities or independent bodies, and the most reliable and up-to-date statistical data.

In addition, first-hand evidence has been collected through interviews with representatives from the workers’ and employers’ confederations with a seat at the national body for social dialogue. We conducted interviews with a total of eight high-level representatives from four of these organizations: the General Confederation of Portuguese Workers (CGTP-IN), the General Union of Workers (UGT), the Confederation of Portuguese Industry (CIP) and the Portuguese Confederation of Farmers (CAP); the two remaining organizations, the Portuguese Trade and Services Confederation (CCP) and the Portuguese Tourism Confederation (CTP), expressed their availability to answer our questionnaire only in writing. As far as the analysis of evidence is concerned, face-to-face and written answers have been taken as equivalent sources of information on the organization’s viewpoints and actions.

Domestic labour and social law reforms

Policies and orientations at the European level determined to a great extent the successive reform packages implemented in Portugal since 2008. In the last quarter of 2008, the Portuguese government adopted the Initiative to Strengthen Financial Stability (Iniciativa de Reforço da Estabilidade Financeira) with the aim of consolidating financial institutions. In January 2009, in line with the turn of the European response to the global crisis from a financial to an economic focus, the government launched the Initiative

for Investment and Employment (Iniciativa para o Investimento e o Emprego). The ‘economic stage’ of policy reform was replaced by the ‘fiscal stage’ in March 2010 with the Stability and Growth Programme (Programa de Estabilidade e Crescimento), the so-called PEC I, followed by three new versions, the last of which would be rejected by the national parliament on 23 March 2011 leading to the fall of the Socialist Party (PS) government.

A period of extreme international pressure ended up with the financial bailout under the terms of the [Memorandum of Understanding on Specific Economic Policy Conditionality](#) (MoU). The MoU was signed on 17 May 2011 by the Troika institutions – the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF) – and the interim government of the PS, with the agreement of the centre-right parties Social-Democratic Party (PSD) and Democratic and Social Centre (CDS). It was the government which resulted from the following legislative elections, the centre right coalition PSD-CDS (coming into office on 21 June 2011), that was to implement the policy requirements of the MoU. Therefore, the new cycle of austerity coincided with a new political cycle in the country.

It is important to bear in mind that a number of labour market reforms were underway as the global financial crisis broke in. The new Labour Code set by [Law 7/2009](#) was prepared on the basis of a tripartite agreement signed in July 2008 by all social partners with the exception of CGTP-IN, the most representative trade union confederation. It included major changes in labour legislation, such as those referring to relations between distinct sources of regulation (defining the areas in which collective agreements could not establish less favourable rules for the employees than those established by general law), vocational training, fixed-term contracts, working time adaptability and new working time arrangements, dismissal procedures, delegation on workers’ representative structures at the workplace, and the reduction of the period of validity and survival of collective agreements. This general reform was construed as the result of a compromise to promote negotiated forms of flexicurity with a clear preference for internal forms (Dornelas, 2011), changing the relative level of employment protection among the various labour market segments by slightly reducing protection against individual and collective dismissals and reinforcing the protection of temporary contracts (Pedroso, 2014). For the CGTP-IN, this trade off was not seen as a good deal considering that some of the positive measures were not enough to compensate for the increasing flexibility of dismissals and working time (Campos Lima and Naumann, 2011) and for the risks introduced with the new rules regarding collective bargaining, in particular those regarding the expire of collective agreements.

In 2009 and 2010, the government launched temporary measures to address raising unemployment and social crisis, among which amendments to the unemployment protection system reducing eligibility requirements and extending the period during which claimants were entitled to receive unemployment

benefits. However, with the austerity policy turn in March 2010, those exceptional measures were withdrawn. Measures implemented in 2011 included for the first time nominal cuts (between 3.5% and 10%) in public sector wages above 1500 Euros. The remaining labour market reforms to reduce severance pay and decentralize collective bargaining, which were part of the ‘Tripartite Agreement for Competitiveness and Employment’ signed on the eve of the government’s defeat, were suspended upon the resignation of the Prime Minister and the dissolution of the national parliament.

Labour market and social policies in Portugal changed very significantly in 2011. The requirements of the Economic Adjustment Programme and the agenda of the centre-right coalition in office from 2011 until 2015 were to a large extent aligned with one another, and the publicly disseminated scenario of emergency and imminent bankruptcy of the state provided favourable conditions for the government to impose a continuous reduction of labour costs both in the public and the private sectors. In other words, the new European interventionism (Callan et al., 2011; Schulten and Müller, 2013) and the ‘politics of exception’ (Clauwaert and Schömann, 2012) were welcomed and pushed further by the centre-right government in Portugal, as detailed below.

Position and role of social partners

Two important distinctions emerge from our analysis. First, the one between measures envisaged in the MoU and those in which the austerity agenda of the government has gone beyond the MoU guidelines. An overview of both types of measures is presented in the two tables at the end of this document. A second distinction should be made between measures supported by social dialogue and those adopted by unilateral governmental decision, as can be checked by consulting the column ‘Method of decision’ in the two tables.

The tables do not include the measures which, although adopted by the government – some of them with the legitimization of formal agreement in social concertation –, were overturned when the Constitutional Court deemed them unconstitutional. This was the case, among others, of extending the suspension of Christmas and holiday bonuses for the year 2013 ([Judgment 353/2012](#)) or extending cuts of wages to nominal wages above 675 Euros in the public sector in 2014 ([Judgment 413/2014](#)). A decision by the Constitutional Court in 2015 ([Judgment 494/2015](#)) also brought to a halt the blockade by the government of about 500 collective agreements in local administration establishing a weekly working time of 35 hours after the working time in the public sector had been increased to 40 hours.

Our interviews with representatives from the national social partners corroborate the significant change in the conditions for social dialogue. The trade union confederations describe the transition in 2011 as

representing a severe break with the efforts and advancements of social dialogue in the years before (UGT) and an intensification of the neoliberal offensive (both UGT and CGTP-IN). Employer confederations signal the same transition as the moment when it was finally possible to advance in an efficient manner with the necessary reforms, notwithstanding some difficulties or contradictions along the way.

The considerable mismatch between the viewpoints of union and employer confederations with regard to their involvement in designing the reforms reflects the different treatment given by the government to their claims. In the period of 2008-2015, and especially since 2011, employer confederations are inclined to conclude that their position and influence in decision-making has been preserved or even strengthened (except for some policy areas strictly predetermined in the MoU), while union confederations have seen their position and claims threatened and weakened. This is one of the key reasons to understand the action of the two trade union confederations, which retained their ideological and strategic differences while also joining for three general strikes – in a total of five general strikes in four years (2010-2013), as many as during the 35 years before (1974-2009).

Still, the employer confederations emphasise that many of their claims and proposals aiming at economic growth and job creation were discarded or forgotten by the other actors in social concertation. Like trade unions, they were not ascribed a key role by the Troika institutions or the national government when designing the official policy response to the economic crisis, even if their influence would clearly increase along the way.

The novel adverse circumstances in which social dialogue took place should not bring us to neglect the observation – made by interviewees of both workers' and employers' confederations – that the reforms adopted in the period of 2008-2014, although presented as a response to the crisis, have not been entirely conceived in this period. To a considerable extent, the measures then implemented were on the table, or at least on the employers' agenda, well before the first signs of economic recession appeared; economic recession was the source of pressure to introduce such reforms more than anything else. This certainly makes it less surprising that the same period in which social dialogue is described by trade union confederation interviewees as a 'farce' (CGTP-IN), a 'sham' or a 'mere ritual' (UGT), is described by their counterparts in the employers side as the period when much needed changes were finally undertaken (CIP, CAP, CCP).

The tripartite agreement in January 2012 can be seen as an example, and one of the most impressive heights, of this tumultuous process. What becomes clear, having in mind an objective assessment of the measures included in the tripartite agreement of 2012 and taking into consideration the social partners' views, is that the trade-off favoured undoubtedly the employers' and government's goals, or, to be more

precise, represented a zero-sum game penalising labour. Trade union confederation representatives signal that their influence in the tripartite agreement of 2012 was very limited (UGT) or inexistent (CGTP-IN), while employer confederation representatives express the opposite view. Moreover, the UGT respondents claim that they were able to exert some influence only in the sense of preventing even worse measures from being adopted, rather than including new positive measures. In this context, even the use of the expression ‘trade-off’ seems inappropriate.

The developments of social dialogue in Portugal examined in our study have challenged not only basic principles of equality between the negotiating parties, but also rules established in the national Constitution regarding the power balance between workers and employers.

Labour market effects of the reforms

Evaluating the labour market effects of the reforms is a complex exercise insofar as a wide range of measures was launched in the period of 2008-2015, in particular since 2011. These measures pertain not only to labour market and social policy, but also to macro-economic and fiscal policy, domains which affect the labour market situation and dynamics too.

Still, a careful analysis of quantitative data produced by official sources shows that none of the goals of the labour market reforms as set out in the MoU have been achieved. Labour market segmentation, which the facilitation of dismissals was supposed to tackle, remained extremely high. The reduction of the amount and duration of unemployment benefits did not translate into a reduction of long term unemployment, which instead reached unprecedented levels. The changes in the collective bargaining legal framework did not promote organized decentralization, but rather a dramatic erosion of sector bargaining and collective agreements coverage. These findings are in consonance with the conclusions of previous studies on recent developments in employment and working conditions in Portugal (Observatório sobre as Crises e as Alternativas, 2013; International Labour Organization, 2014).

In practice, the reforms favoured the institutional conditions for internal devaluation through wage depreciation and deregulation of social legislation (Degryse, 2012; Pochet and Degryse, 2013) while eroding the institutional foundations of inclusiveness in four ways: reducing employment protection by facilitating dismissals and temporary work; reducing unemployment benefits protection; undermining sector collective bargaining and collective agreements coverage; and limiting the effectiveness of minimum wage provisions. The changes in these four domains represented a reconfiguration of the Portuguese employment regime towards the liberal employment regime (Gallie, 2013; Campos Lima, 2015).

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Table 1. Measures envisaged in the MoU and method of decision

Policy area	Measure	Method of decision
<i>Wages</i>	Freezing the minimum wage (2012, 2013, 2014)	Government unilateral decision
	Freezing wages and career progression in the public sector	Government unilateral decision
<i>Working time</i>	Individual bank of hours to be negotiated between employee and employer	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
	Reduction of overtime payment	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
<i>Collective bargaining</i>	Derogation from higher level agreements, lowering of the firm size threshold above which it is possible to conclude firm-level agreements negotiated by non-union workers' representative structures	Tripartite Agreement March 2011 and Tripartite agreement January 2012 (both not signed by the CGTP-IN) – Labour Code (Law 23/2012)
	Introduction of stricter criteria for the extension of collective agreements:	
	2012 – Employer associations must represent 50% of employment in the sector.	Government Unilateral decision – Resolution 90/2012
	Amendment – Or in alternative employers' associations must include 30% of medium and small companies.	Tripartite consultation – Resolution 43/2014
	Shortening the survival of collective agreements that are expired but not renewed – reduced the period of caducity of collective agreements from 5 to 3 years, and their period of validity after expiring from 18 to 12 months.	Tripartite consultation – Labour Code (Law 55/2014)
<i>Protection in employment and unemployment</i>	Reducing severance pay	Tripartite agreement March 2011- Labour Code (Law 53/2011)
	Reducing substantially severance pay	Tripartite agreement January 2012 – Labour Code (Law 23/2012) Government unilateral decision – Labour Code (Law 69/2013)
	Extending the conditions for individual dismissals based on unsuitability and extinction of job positions	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
	Amendment on criteria for selection of workers in the case of extinction of job positions	Government unilateral decision – Labour Code (Law 27/2014)
	Unemployment benefit reform	Tripartite agreement January 2012 – Decree-Law 64/2012 and Decree-Law 65/2012.

Source: own elaboration, based on legislation and fieldwork.

Table 2. Measures beyond MoU and method of decision

Policy area	Measure	Method of decision
<i>Wages</i>	Wage nominal cuts in the public sector (2011-2015)	Government unilateral decision
	Suspension of holiday and Christmas bonus equivalent to two monthly wages in the public sector (2012)	Government unilateral decision
<i>Working time</i>	Increasing the weekly working time from 35 to 40 hours without compensation, in the public sector (2013, 2014, 2015)	Government unilateral decision (Law 68/2013 and Law 35/2014).
	Cut of vacancies by three days and cut of four public holidays, without compensation:	
	Private sector	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
	Public sector	Unilateral decision (Law 35/2014)
<i>Collective bargaining</i>	Limitation of collective bargaining autonomy in local administration	Unilateral decision (Law 35/2014)
	Measures imposing labour law over collective agreements and individual contracts, by stipulating the nullity, the reduction or suspension of the provisions of collective agreements and of labour contracts (severance pay, overtime payment; compensatory rest for overtime and increase of holiday days) – private sector	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
	Possibility of suspending collective agreements in force in companies in crisis	Tripartite consultation – Law 55/2014
<i>Protection in employment and unemployment</i>	Regime of dismissals in the public sector	Government Unilateral decision – Law 35/2014

Source: own elaboration, based on legislation and fieldwork.