

Chapter 5

The reform of joint regulation and labour market policy during the current crisis: national report on Portugal

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The sovereign debt crisis has been a period of far-reaching labour market reform to an extent not 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 under way from 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 EU institutions and the International Monetary Fund (IMF) was conditional on the Portuguese government's commitment to implementing 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 carried out during the crisis. The objective of this chapter is to provide a comprehensive analysis of these reforms, their significance and implications. The chapter is organised in two parts. Part 1 focuses on the process and substance of the legal reforms and Part 2 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 Portugal

With the purpose of analysing the changes introduced during the crisis, we start 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 (Section 1). We then focus 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 1 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 became part of the Portuguese industrial landscape only 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 characterised 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 in the comprehensive set of social and employment rights enshrined in the 1976 Constitution, which was devised under the post-revolution orientation towards constructing a socialist society¹ (Barreto and Naumann 1998).

The Portuguese labour movement is organised into two main peak-level union confederations: CGTP-Intersindical (*Confederação Geral dos Trabalhadores Portugueses-Intersindical Nacional*), which has a class-oriented ideology and origins in the authoritarian regime when it was forced to operate in a clandestine manner and with strong connections to the communist party; and UGT (*União Geral de Trabalhadores*), a moderate concertation-oriented organisation that emerged in 1978 with political links to both the centre-right PSD (*Partido Socialista*) and centre-left PS (*Partido Social Democrata*) (Barreto and Naumann 1998; Sousa 2009; Dornelas *et al.* 2006). The different backgrounds and ideologies of the two confederations are reflected in their strategies and CGTP's confrontational

1. The 1976 Constitution underwent seven revisions between 1982 and 2005, adapting the initial text to the post-revolutionary period and to the EU treaties.

approach contrasts with UGT's stronger inclination to engage in dialogue and concertation (Campos Lima and Artiles 2011; Sousa 2009). CGTP is the largest union confederation, but UGT derives significant political influence from its central position in macro-level concertation and its pro-agreement negotiating approach. UGT-affiliated unions organise a significant proportion of workers in public services, large public utilities companies and in the banking sector. CGTP-affiliated unions are dominant in manufacturing. Despite having lost a considerable number of members in the private sector, CGTP is still very influential and has a substantial membership basis in manufacturing (Naumann 2013; Sousa 2009). Nevertheless, since the waning of the revolutionary momentum of the 1970s and early 1980s, trade unions have lost much of their membership. Union density fell from an estimated density of 60.8 per cent in 1978 to 19.3 per cent 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 have been perceived as lacking consistency and reliability (Sousa 2011). This fact has recently generated regular debates on the representativeness of labour market organisations (for example, Carvalho de Sousa 2011; Palma Ramalho 2013).

On 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*, farmers) and CTP (*Confederação do Turismo de Portugal*, an association of firms in tourism) are the other two employers' representatives. CIP and CCP organise firms of different sizes but CIP's strategy is often represented as reflecting the interests of the largest employers, whereas CCP's approach tends to reflect an SME-oriented position (Naumann 2013).

The business structure in Portugal is similar to that in the EU as a whole, in the sense that small and medium-sized enterprises (SMEs) dominate. In 2012, SMEs accounted for 99.8 per cent of total firms in the EU27 (Gagliardi *et al.* 2013: 10); the proportion in Portugal was 99.9 per cent (INE 2012). In Portugal, however, the distribution of firms is more biased towards micro firms (92.1 per cent of the total in the EU27 and 96 per cent in Portugal) (INE 2012). Moreover, employment

in Portugal is concentrated much more in SMEs than it is in the EU27 (76.9 per cent and 66.5 per cent, respectively) and particularly in micro firms (44.3 per cent of employees in Portugal and 33.5 per cent in the EU27). Membership density of employers' organisations is also difficult to quantify, but recent estimates put it at around 60 per cent 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 the moderate UGT union confederation, with a concertation-oriented approach in contrast with 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 government's creation of the Standing Committee for Social Concertation (CPCS), a committee composed of the two union confederations and four (initially three) employers' 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 initially focused mainly on income policies and became the major influence on wage bargaining at sectoral 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 concertation were 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, which introduced new rules on collective bargaining, led to an interruption of 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. In 2005 and 2006, however, 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 euros by 2011 (Naumann 2013; CES 2006). This agreement was, however, to be breached in the outbreak of the crisis and the national minimum wage was frozen at 485 euros in 2011 until 2014.

The last macro-level agreement on wage bargaining was signed in 1997 (Naumann 2013) and collective bargaining in Portugal has since taken place mainly at the sectoral level. Company agreements, although in a minority before the crisis, have also been 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; Palma 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 per cent, other sources indicate a significant decrease even before the crisis (UGT 2014a; European Commission 2013) to around 65 per cent 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, which remained valid until a new agreement was reached (Naumann 2013; Palma 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 on the representativeness of the negotiating bodies on both 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. Although some employers aspired to obtain more discretion and flexibility at the company level in these matters, the social partners on both sides were generally comfortable with sectoral 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).

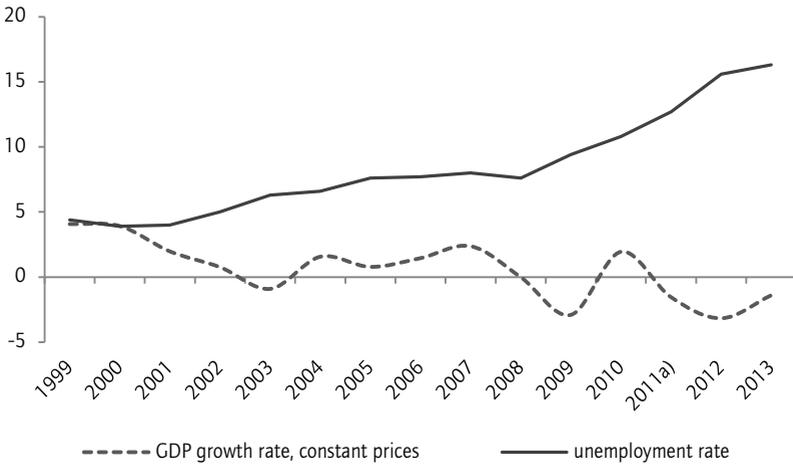
These debates also underpinned the process that led to the enactment of the Labour Code in 2003, which not only unified the different aspects of employment law into a single act but also introduced major changes to labour regulation and collective bargaining (Law No. 99/2003). These changes partly responded to employers' key demands, including greater working time flexibility in the workplace, loosening of the rules for the use of contracts and temporary work agencies and restrictions on 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 laid down by the law. These reforms induced a 'collective bargaining crisis' in 2004 (Campos Lima and Naumann 2005; Campos Lima 2008a). As the previous provisions had laid down 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 (Palma 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 and conditions of agreements, this led to a stalemate in bargaining. As a consequence, the number of collective agreements published in 2004 was less than half that of 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 in the Labour Code in 2006 and 2009 created new arbitration procedures and clarified rules and timeframes for the expiry of agreements (Laws 9/2006 and 7/2009). As a result of these developments, collective bargaining was resumed and the previous levels of coverage were partially restored (Palma Ramalho 2013; Dornelas 2011) but started to decline 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 (Palma 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 untouched by the international financial crisis in its initial stage, but became one of the countries most affected by the sovereign debt crisis that followed (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 nationalised (Castro Caldas 2013). Economic growth, fairly low since the beginning of the decade, stagnated that year and, with the sole exception of 2010, declined afterwards. The unemployment rate, on the increase since the early 2000s, grew sharply 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, accessed on 03.09.2014).

The dominant perception of the crisis in the country in early 2008 referred mostly to the deep and generalised international crisis that started to affect 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). However, there was also a widespread perception that there were some structural weaknesses that constrained economic dynamism. Among these, the most widely agreed were the deficit of human capital in the Portuguese labour force, the highly segmented labour market, the complexity and formality of legal procedures and the high energy dependence (Banco de Portugal 2010: 6).

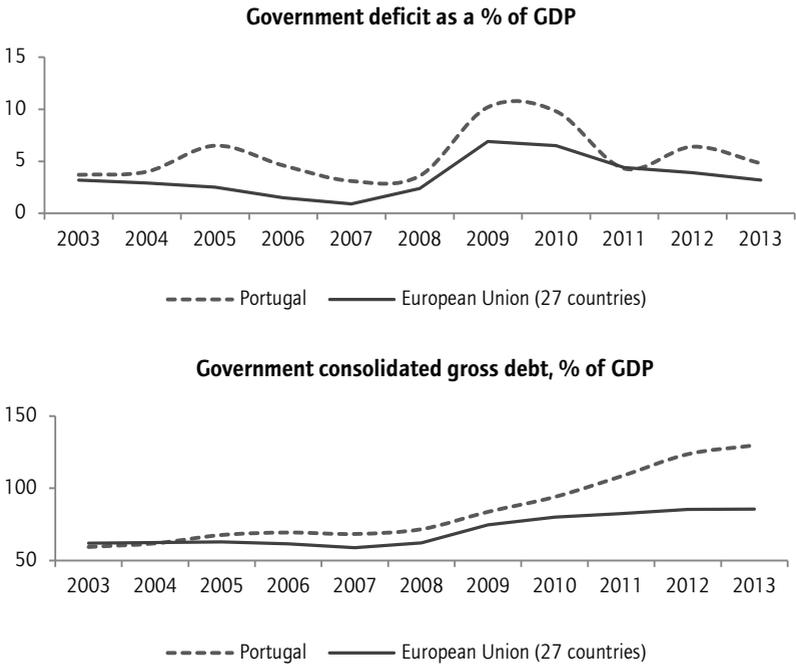
The countercyclical measures implemented in 2009 (following EU guidelines: see European Commission 2008) contributed to a higher than expected increase of the public deficit, feeding a second explanation of the causes of the crisis, linking it to the government's inadequate policy of excessive spending 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 the 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 a widely propagated view and also the European Union's professed version of the crisis, according to which southern European countries were solely responsible for the problems facing their economies due to their financial irresponsibility and excessive borrowing.² While this vision was increasingly contested by certain economists, who emphasised the role of the euro and its rules in the emergence and diffusion of the crisis (among others, Stiglitz 2013; Krugman 2012; Constâncio, 2013), Portuguese analysts and policy-makers continued the mantra 'we were living beyond our means' and that this is what led to debt and deficit growth.³ Even though Portugal does not have a record of budget surpluses and despite the economic stagnation and growing unemployment even before the crisis, the public deficit had been tending towards the European Commission-prescribed 3 per cent and the public debt as a percentage of GDP had stabilised in the years before the crisis (see Figure 2). 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

2. See the various statements on Portugal issued by DG Economic and Financial Affairs in connection with the Economic Adjustment Programme for Portugal, at http://ec.europa.eu/economy_finance/assistance_eu_ms/portugal/index_en.htm

3. 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.

international organisations that had recommended and monitored the implementation of these measures, namely the OECD, the IMF and the European Commission (González and Figueiredo 2014). Nevertheless, when the economic situation worsened in Portugal it was increasingly portrayed 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.

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 to dealing with it. The first set of ‘anti-crisis’ measures, enacted in 2008, were

financial and aimed at securing the stability of the financial sector; they included 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 (European Commission 2008), were for fiscal stimulus and were enacted in 2009 and beginning of 2010 in response to growing unemployment and deteriorating economic conditions.⁴ 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.⁵ However most of these measures were short-lived and were withdrawn before it had been planned to do so in May 2010 (Campos Lima 2010a). Their withdrawal was part of the austerity programme announced in March and April of the same year, which marked 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 PEC1,⁶ adopted 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 by the European Commission (European Commission 2010). This first austerity package was presented by the Socialist government 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 other social benefits, changes to unemployment benefit and the minimum income programme, income tax increases and successive increases in VAT to 23 per cent and wage cuts of between 3.5 and 10 per cent for public sector employees with monthly wages above 1,500 euros (Campos Lima 2010a, 2010b and 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 led to waves of protest,

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4. Programa de Estabilidade e Crescimento 2008–2011 (Atualização de Janeiro de 2009).
 5. Initiative for investment and employment (Law 10/2009, 10 March) and Initiative for Employment (Resolução do Conselho de Ministros 5/2010).
 6. Programa de Estabilidade e Crescimento 2010–2013 (March 2010).

including a large demonstration on May Day, an even larger nationwide demonstration in 29 May 2010 called by CGTP and a general strike on 24 November, the first to be called jointly 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, which translated into a number of strikes in the public and private sectors (Campos Lima and Artiles 2011). Nevertheless, despite increasing discontent, the government reached a tripartite agreement with the employer confederations and UGT in March 2011 (CES 2011). This tripartite agreement covered a wide range of issues, but focused strongly 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 decentralisation. 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 organised 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 organised 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 the government, on 7 April, to request financial assistance from the European Union organisations and the International Monetary Fund. Following Greece and Ireland, in April 2011 Portugal became the third European Union member state to request financial support and on 17 May was granted a 78 billion euro loan under the terms of the European Financial Stabilisation Mechanism. In exchange, this required a commitment to a three-year austerity plan, laid out in a Memorandum

of Understanding (MoU). The latter prescribed a set of detailed fiscal consolidation and structural measures, including labour market ‘reforms’ to weaken employment protection legislation, to make working time more flexible and to decentralise collective bargaining. In Section 2 we discuss the implementation of these reforms and the roles played by the different national and supranational actors (in Section 3 we discuss the substance of these reforms).

2. The process of reform: 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. While most of the changes were specified in the MoU, it is important to take into consideration that, first, important reforms to labour law had been taking place since 2003 and second, 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 from international markets and European institutions, it is difficult to sustain the argument that most of the labour market reforms that took place in this period were directly imposed by the Troika, even if these measures were included in the MoU. In this section, we provide an account of the implementation of the labour reforms and the responses and roles of 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: the centre-left PS, the centre-right PSD and the right-wing CDS. Under the uncertain political circumstances, the Troika regarded support from a wide political basis as necessary to ensure implementation of the MoU irrespective to which party won the parliamentary elections scheduled for June 2011. Such support was secured, even though left-wing parties Bloco de Esquerda and Partido Comunista declined to negotiate with the Troika (Campos Lima 2011b; Naumann *et al.* 2012). The social partners were also consulted in this

process. Union confederation UGT and employer confederation CIP both pushed for integration of the measures negotiated in the tripartite agreement signed in March, with the 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 per cent deficit target, but mainly used the opportunity to express its opposition to further austerity measures (for a summary of the positions of the social partners see Campos Lima 2011b).

The Portuguese MoU⁷ 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 with 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', as well as the need 'to contain employment fluctuations over the cycle, better accommodate differences in work patterns across sectors and firms, and enhance firms' competitiveness' (European Commission 2011: 52). However there is no explicit reference to structural unemployment. Thus it provides scope to interpret the rationale underlying the measures as mainly supply side-oriented, aimed at reducing alleged 'incentives' for individuals to remain unemployed (by reducing the amount and duration of unemployment benefit). This is an inadequate representation of current unemployment in Portugal, where the unemployment rate has increased sharply (see Figure 1), reaching

7. 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).

16.3 per cent in 2013 (INE 2013a). Unemployment rate was particularly high for youngsters (37.7 per cent that same year) and increased sharply for the highly educated; the unemployment rate for those with tertiary education doubled between 2009 and 2013, increasing from 6.4 per cent to 12.9 per cent. Long-term unemployment currently represents the highest share of the Portuguese unemployed (62.1 per cent in 2013). These figures indicate massive structural unemployment and it is hard to argue that voluntary unemployment is the main unemployment issue.

Concerning the need to reduce segmentation and promote 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 to the detriment of security to an extent previously 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 dismissal and restrictions on the extension of collective agreements, as discussed in Section 3 below. 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: 21). However, it specifies the measures that are to be consulted with the social partners, leaving very little margin for real negotiation.

Soon after taking office, the coalition government initiated a 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'.⁸ Employers called the agreement 'beneficial for the country and desirable under the country's emergency situation',⁹ 'positive for the economy, for unions and for the country showing the responsibility of social partners'¹⁰ and considered that it gave positive international signs. The unions, as so 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 satisfactory'.¹¹ It did so on the grounds that it included measures to promote employment and growth, improved upon some measures prescribed by the MoU (for example, avoiding a 'new reason' for dismissal based on failure to achieve 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 in which the government committed itself to introduce further labour market reforms only if they 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 prioritising budget consolidation over measures to stimulate growth and to address unemployment.¹² In April 2012, UGT threatened to shred the tripartite

8. PÚBLICO, 17/01/2012, Governo e parceiros sociais assinam acordo tripartido.

9. Statement to the press of António Saraiva (CIP), Público/Lusa, 17/01/2012.

10. Statement to the press of João Vieira Lopes (CCP), Público/Lusa, 17/01/2012.

11. Statement to the press of João Proença (UGT), Público/Lusa, 17/01/2012.

12. Patrões reforçam apelo a "novo rumo" para o país, Renascença, 24/06/2013; Jornal Público, 'UGT Ameaça rasgar acordo de concertação', 17/04/2012.

agreement in protest.¹³ The head of the Manufacturing and Construction Employers' Confederation (CIP) also complained that the government was not respecting commitments with social partners, declaring that 'social partners cannot be used to subscribe agreements and then not be heard when it comes to decision-making'.¹⁴

Both employers' and union 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' confederations represented in social concertation.¹⁵ They stressed 'the urgent need for the government to adjust its targets to Portuguese reality', stating that 'the austerity plan adopted in Portugal has been a short-term plan implemented as if it was the only one possible. Given its results, it would be irresponsible to insist on 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 has implemented the reforms in a dutiful and timely manner. 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 insensitivity of policy-makers to the social outcomes of austerity and their disregard for social dialogue have been the object of much criticism. The key areas of criticism were highlighted in a report by 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 domestic demand and of the negative impact of its reduction [...] (iii) an understanding of 'reform of the state' taken to involve merely expenditure cuts [...] and] (iv) a very short-sighted understanding of 'structural reforms' as a mere succession of 'competitive internal devaluations'. (CES 2013: 3–4)

13. Jornal Publico, 'UGT Ameaça rasgar acordo de concertação', 17/04/2012.

14. Declaration by António Saraiva to Rádio Renascença, 17 September 2012.

15. CAP, CCP, CIP e CPT unidas por um compromisso para o crescimento económico em Portugal, Press Conference, 24 June 2013.

The difficulties of the process of financial support appeared, at first, to be accepted by Portuguese society and by the social partners (with the important exception of CGTP). The strictness of the policies implemented was initially explained mainly in terms of the country's compromise with the Troika and the importance of giving the right signals to external markets. However, 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 to or beyond the requirements of the MoU, some of which have been adopted (for example, 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 the social partners (for example, 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 'crises', 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 in extremist movements of the kind observed in other countries during the crisis. Nevertheless, active opposition and protest have 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 organised jointly by the two union confederations in an (almost) unprecedented display of unity by the Portuguese labour movement. Moreover, public statements by both the unions' and the employers' sides have played an important protest role during the crisis in Portugal.

Political stability, which has also been considered a favourable feature of the Portuguese situation, has also been threatened several times. Two interrelated episodes illustrate the growing political and institutional tensions that 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 (by 5.75 percentage points), while increasing that of employees (7 percentage points). This measure was announced in September 2012 as a countermeasure to the budgetary effects of the decision of the constitutional court revoking the cuts in the thirteenth and fourteenth month pay of public employees and pensioners. The social partners from both the employers' and the workers' side reacted with strong criticism to this direct redistribution of income from workers to employers, which was seen as grossly unfair. The head of the Manufacturing and Construction Employers' Confederation (CIP) has been particularly harsh, saying that 'the pillar of social stability suffered an attack'.¹⁶ The public criticism of this proposal was also expressed in a large demonstration on 15 September, a citizen's initiative announced through social media. The widespread disapproval of public opinion and the strong opposition by social partners in both sides led to the withdrawal of the measure. However, the episode contributed to an increase in tensions and the erosion of trust between the social partners and the government, as well as between the two political parties in the government coalition.

The second episode dates back to July 2013. It started with the resignation of the Minister of State and Finance (1 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 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. The Minister of Finance's letter of resignation, which has been made public, expressed significant criticisms of the implementation of the assistance programme. The content of the letter indicated not only the disharmony between the two parties of the coalition government but also the government's hostile stance to the Constitutional Court.

16. Statement to the press by António Saraiva (CIP), TVI24, 13/09/2012.

Considering these tensions that emerged in connection with 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 has played in recent times in the process of labour market reform. This organ of sovereignty is independent of other state organs and its function is to ensure that the state's functions are performed according to the Portuguese Constitution and that citizens' fundamental rights are observed. Within this role, a key task is to inspect the constitutionality of laws. As such, the court is regularly called on 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 a consensus that the Court has played an important role in recent times in defining boundaries with regard to 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, although the Prime Minister supported this move, it was not taken forward, partly due to arguments that these were not the fundamental matters that should guide economic and social policy.¹⁷ Therefore, when called on by the President and by members of parliament to examine 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. Five times during the assistance programme the Court ruled against government measures that had been prescribed or that went beyond the MoU. These concerned mainly labour law reforms and cuts to pensions and public sector wages. In 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 to be citizens' fundamental rights.

17. For example, 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.

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 blocking 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 mostly been the position of the government and the coalition parties. The tensions increased as European authorities publicly expressed criticism of decisions made by the Portuguese Constitutional Court; many consider this to be an unacceptable interference in Portuguese internal affairs.¹⁸ The government has grown increasingly impatient with unfavourable decisions of the Constitutional Court to the point at which then Prime Minister Passos Coelho publicly questioned the legitimacy of the Court as a sovereign organ and the process of appointment of its judges.¹⁹

3. Substantive reforms

This section analyses the labour market reforms that were adopted during and in 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 a view to promoting ‘organised decentralisation’ 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.

18. 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.

19. Passos Sobe a Parada na Guerra contra o Tribunal Constitucional, *Jornal Publico*, 05/06/2014.

3.1 Employment protection legislation

Weakening employment protection legislation has long been a demand of Portuguese employers and there have 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 October 2011 and in Law 23/2012 of 25 June 2012 reduced 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 three months' pay.²⁰ 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 severance pay in the case of individual dismissals of employees on permanent and fixed-term and temporary contracts (Art. 5 and 6).²¹ 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 confederation²² 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 a firm faces insolvency or financial difficulties (Law 70/2013).

Another area of reform concerned the definition of dismissals, or the situations in which dismissals are 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

20. 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).

21. The new regime includes transitory arrangements for reducing severance pay, whose value depends on type of contract, length and when it started (Law 69/2013 of 30 August, Art. 5 and 6).

22. Acordo Tripartido para a Competitividade e Emprego (Tripartite Agreement for Competitiveness and Growth), 22 March 2011.

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 dismissal – job extinction and worker unsuitability – the employer would no longer be required to attempt to find an alternative suitable position within the firm (Law 23/2012 of 25 June). 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 dismissal. The situation changed after the entry of the Troika. Considering the crisis circumstances and the commitments made to the Troika the social partners – including UGT (but not CGTP, which opposed the changes more strongly) – signed another tripartite agreement in January 2012 (Compromise on Growth, Competitiveness and Employment) (CES 2012) that integrated most of the MoU requirements facilitating dismissals.

After one year of these reforms being in place, the Constitutional Court partly revoked the changes facilitating worker dismissal on grounds of unsuitability and job extinction.²³ The Constitutional Court determined that exempting the employer from the obligation of attempting to find an alternative suitable position of 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 made solely by the employer 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: (i) worse performance appraisal, (ii) lowest educational and professional qualifications, (iii) highest cost of maintaining the employment contract, (iv) seniority in the job and (v) 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 on the employer side CIP, the largest confederation, also failed to support

23. Acórdão do Tribunal Constitucional n.º 602/2013, 22/10/2013.

the proposal.²⁴ Nevertheless, the government moved ahead and, having gained parliamentary approval, the new rules came into force at 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.²⁵ 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 the object of transitory measures that 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 for reducing or suspending work in situations of industrial crisis, often referred to as ‘temporary lay-offs’. 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 implementing 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 (Art. 301, No. 3), as it did previously. However, on the positive side, the 2012 revision of the 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, imposing restrictions on their dismissal and 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).

24. Governo aprova critérios para os despedimentos sem acordo da UGT e da CIP, *Jornal Publico* 06/02/2014.

25. CIP quer reabrir discussão sobre férias e trabalho extraordinário, *Jornal Publico*, 29/01/2014.

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 by the MoU. Some of these had long been demanded by the 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 in 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, Art. 208-A and 208-B). The 'time bank' regime already existed in the 2009 Labour Code (Law No. 7/2009, revision of Art. 208) and allowed working schedules to vary throughout the year to cope with fluctuations 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 for these regimes to be 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 made it possible to decentralise matters of working time flexibility to the firm level and increase managerial prerogative on these issues.

Even though these new flexibility arrangements may reduce the need for overtime work and workers' opportunities to top up wages with overtime pay, the same Labour Code revision halved the pay premium for overtime work (revision of Art. 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 they violated the constitutional principle of free 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 laid down in the Labour Code) on the ground 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 on 31 July 2014. Responding to employers' calls, the government approved 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 programme 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 reform of the rules on 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.²⁶ These reforms have been strongly opposed by the unions, who have protested that they severely damage labour's position in collective bargaining, arguing that the possibility of expiration reduced employers' incentives to engage in meaningful negotiation and to reach a new agreement (Quintas e Cristovam 2002; CGTP no date). The Labour Code revision 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 during which conciliation, mediation and arbitration are taking place or a minimum of 18 months after any of the parties requested cessation 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.²⁷ The 2009 revision of the Labour Code also creates the possibility of 'necessary 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 (Law 7/2009 of 12 February, Art. 510 and 511). Moreover, the 2009 Labour Code specified a number of areas that could not be the object of less favourable dispositions in collective agreements.²⁸ In addition, the 2009 revision of the Labour Code grants collective bargaining powers to non-union representative structures of workers in companies with

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

27. Law 7/2009 of 12 February, Art. 501. For collective agreements that contain an expiration clause, this clause will expire five years after one of the following has taken place: (i) the last full publication of the agreement; (ii) a request by one of the parties to end the contract; (iii) 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.

28. According to Art. 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; labour by minors; workers with reduced working ability due to disability or chronic disease; workers who are students; employers' duty of information; limits on daily and weekly working time; minimum rest times and annual leave periods; night workers' maximum work duration; compensation guarantees; prevention of work accidents and work-related diseases; transfer of companies; worker elected representatives.

more than 500 workers, even though this role still requires trade union delegation (Law 7/2009 of 12 February, Art. 491). Despite opposition from CGTP, the government and the other social partners signed a tripartite agreement that supported the reforms of the 2009 Labour Code.²⁹

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 ‘organised decentralisation’ 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 a 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 from 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 organisation of working time and compensation (Art. 482).

The real novelty introduced during the crisis was the definition of criteria for extending sectoral collective agreements to workers and firms not affiliated to the negotiating associations. This was a requirement of the MoU and implemented through a Resolution of the Council of Ministers (90/2012) in October 2012, which introduced new representativeness criteria that were not previously required. Under the new rules, a collective agreement can be extended only if the firms represented by the employers’ association employ at least 50 per cent 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. Although the MoU specifically indicated 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 pledge in the tripartite agreements of January 2012 not to introduce further changes to labour market regulation without the approval of the social partners (see CES 2012). Both trade union confederations and the four

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

employers' associations with a seat on the Standing Committee for Social Concertation opposed the resolution and considered that the changes undermined collective bargaining (Campos Lima 2013b). In a statement issued in November 2012 on 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',³⁰ which it regards as 'an expression of social dialogue at the sectoral level, that enables adjustments of the legal framework to industry-specific needs, enables the improvement of working conditions and is also an indispensable condition for social peace, crucial for the competitiveness and productivity of our firms.'³¹

From the trade union side, CGTP – in a complaint to the *Provedor da Justiça* (a Portuguese watchdog to which any citizen can complain but which has relatively limited powers) – makes similar remarks but highlights the wage inequalities that the non-extension of collective agreements will generate between the workers who are 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 after 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 labour law reforms appear to be contributing to blockages in collective bargaining (discussed in Part 2) and are likely to lead to a worsening of working conditions as fewer workers are covered by agreements that until recently were permitted to set only 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

30. 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/assuntossociais/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.

31. *Idem*.

The MoU required the freezing of the national minimum wage ‘unless justified by economic and labour market developments and agreed by the programme of the framework review’ (Section 4.7). Accordingly, the national minimum wage was frozen at 485 euros in 2011, breaching a historical tripartite agreement with all the social partners (including CGTP, which rarely signs national tripartite agreements) to increase the national minimum wage to 500 euros 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 national minimum wage – 12.3 per cent of working women (compared with 5.9 per cent of men) earn the minimum wage (Dornelas *et al.* 2011) – this measure is likely to have a disproportionately negative effect on women and contribute to increase gender wage inequalities. The freezing of the national minimum wage was lifted only in October 2014; four and a half months after the end of the assistance programme its value was increased from 485 euros to 505 euros.

Meanwhile, further changes to the rules on collective bargaining are under way. A new resolution of the Council of Ministers has been published that changes the criteria for extending collective agreements. The new criteria are that a collective agreement can be extended only if either: (i) the firms represented by the employers’ association employ at least 50 per cent of the workers in the industry, region and occupation to which the agreement applies; or (ii) 30 per cent of the affiliates of the employers’ association signing the agreement are micro, small or medium enterprises (*Resolução do Conselho de Ministros n.º 43/2014 de 27 de Junho*). Another legal change to collective bargaining was published at the end of August 2014 (*Lei n.º 55/2014*), further reducing all periods with regard to the expiry and ‘after-effect’ of collective agreements and creating the possibility of suspending collective agreements in cases such as an industrial crisis. This new proposal was subject to concertation with the social partners and, despite the opposition of CGTP, was agreed with UGT and the employers’ associations.

3.4 Equality and non-discrimination

The employment reforms discussed above were implemented without considering their impact on equality and work/life balance. As a result – and as discussed in the previous section – some of those measures are likely to have a disproportionate negative impact on certain social groups.

On the positive side, there were at least two legal reforms that are positive from an equality perspective. One concerns the changes made to the 2009 Labour Code, which specify the areas in which collective agreements can set only more favourable conditions than the law because many of these areas are related directly or indirectly to equality. The areas specified in Article 3 of Law 7/2009 include 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 with regard to work/life balance and, indirectly, gender equality are limits on daily and weekly working time, 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 significant substantive change of the legal rules governing collective bargaining in relation to equality and non-discrimination. The 2012 revision of the Labour Code stipulates that, within 30 days of 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) (Law 23/2012, Art. 479 and *Decreto-Lei* No. 76/2012, Art. 3).

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 may pronounce the collective agreement void within 15 days. The 2009 revision of the Labour Code had already initiated these reforms but did not include the possibility or requirement that the parties change the discriminatory elements of collective agreements. The 2012 legal reforms granted the Commission (CITE) a greater role in promoting equality in collective bargaining and the opportunity to raise equality awareness among the social partners.

4. Discussion

The sovereign debt crisis in Portugal has been a period of intense labour market reform to a degree not witnessed since the 1974 Revolution. These reforms were, to a great extent, induced by the perceived pressure of the financial markets and the European policy of budget consolidation and internal devaluation, but they were also consistent with the political ideology of the right-wing government coalition. While many of the changes to labour law and collective bargaining were already 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 had not even been put on the agenda.

The substantive measures prescribed by the MoU and subsequently adopted by the Portuguese government were aimed at achieving fiscal consolidation and internal devaluation, mainly by 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 opposed these changes. However, during the crisis, general strikes and demonstrations were no longer effective, particularly under the influence of international organisations that were scarcely affected by such 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 the previous reform path and do not appear to respond to the demands of social partners on either side. This is particularly the case with the introduction of representativeness criteria for extending 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. While this may appear at a first sight to represent a paradigmatic change induced by the crisis and externally imposed, it is important to note that significant changes to the rules of collective bargaining had already been taking place since 2003. These changes, particularly with regard to the expiry 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 chapter, drawing mostly on interview data with the social partners and case study material, will enable us to shed more light on these issues.

The process of labour market reform also changed during the crisis. Until then, the systematic effort to involve the social partners had led to the achievement of important consensus and had enabled the accumulation of important trust capital between the social partners and the government. During the crisis there was also an initial effort to involve the social partners and two tripartite agreements were achieved that paved the way to reform. 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 appeared to lead 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 seemed to partly give way, throughout the crisis, (at the national level) to distrust of 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 continued to take very different approaches to signing tripartite agreements, the government's stance brought together the labour movement in the opposition to the measures. In the four decades of democracy, only once had the two politically divided trade union confederations organised a joint general strike, 22 years before the crisis.

Indeed, the government's dutiful implementation of far-reaching labour market reforms and austerity policies has met with significant opposition and protest. A few measures have been successfully resisted by a variety of institutional and social actors, including trade union and employers' organisations, but also civil society, which organised spontaneously to hold mass demonstration. Also notably, the Constitutional Court, called on to assess the constitutionality of some of the measures, reversed a number of them. While trade unions protested fiercely and civil society at times revealed a surprising inclination to mobilise against government austerity policy and Troika intervention, the Constitutional Court 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 organisations, and tension has escalated between these two Portuguese sovereign organs.

Part 2 The impact of the reforms of labour market policy and joint regulation

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

1. The research strategy

This part is based mainly on primary research conducted between May and August of 2014, complemented with secondary data from official sources. The empirical study draws on in-depth interviews at national and sectoral level with key social partners from both the employer and union side and a three-hour workshop with state officials and representatives of manufacturing trade unions and employers' associations that involved a total of 20 participants. The interviews at national level included persons with direct responsibility for the collective bargaining policy of their respective organisations (CGTP, UGT and CIP). At the sectoral level the research involved interviewees from employers' and union organisations in leadership roles and/or directly involved in collective bargaining. In addition, ten case studies of firms (see Table 1) were conducted in three manufacturing sectors: (i) metal and automobiles, (ii) textiles, clothing and footwear and (iii) food and drinks manufacturing. A total of 30 interviews were conducted at the national, sectoral and firm levels; the data were complemented by sectoral and firm collective agreements, where they existed and were made available.

We shall start with a brief overview of the manufacturing sector in Portugal and the industries studied. We focus in the following sections on analysing the impact of the crisis and the labour market reforms on, first, the process and character of collective bargaining and second, its outcome and content.

Table 1 Case study firms

| Case studies | Employers' association membership | Workforce size | Worker 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 |

2. The context of industrial relations in manufacturing

Manufacturing in Portugal is a relatively important economic sector compared with other European countries, with a share in total employment of 16.7 per cent compared with the 15.6 per cent average in the European Union in 2013 (Eurostat 2013). The figure in 2008 had been 18 per cent and the decline was sharper in manufacturing than in total employment (19.1 per cent compared with 13 per cent). Textiles, clothing and leather taken together are the largest sub-sector, with a 29 per cent share of manufacturing employment, followed by food (14 per cent), metal (12 per cent) and automotive (8 per cent).³²

When the crisis started, textiles, clothing and footwear had just been through a process of adjustment in response to the opening up of European markets to international competition between the mid-1990s and the mid-2000s. As highlighted in the interviews, this involved the relocation of a number of multinationals and the restructuring of the sector, in a process that involved significant job losses.³³ 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 there have been signs of recovery and exports have been growing steadily since 2011 (INE 2013b). While these industries are highly export-oriented, there is substantial variation in the share of exports in total sales by sub-sector: 85 per cent in clothing, 75.7 per cent in leather and footwear, and 62.4 per cent in textiles (INE 2013b).

The 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 2013a and PORDATA), but only became evident in car production in 2014, with ACAP, the employers' association for the car industry, reporting that production had increased by 6.4 per cent in July 2014.³⁴ The car industry is highly export-oriented with a share of exports in total sales of 82.9 per cent in 2012 (INE 2013b).

32. All data in this paragraph are from Eurostat's online database, accessed between 15 September 2014 and 10 October 2014.

33. About a third of jobs were lost between 1995 and 2008, according to PORDATA.

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

Food and beverages is a very heterogeneous sector and overall much more oriented to the domestic market, which had a share of 83.2 per cent and 66.9 per cent, respectively, in food and beverage manufacturing in 2012 (INE 2013b). Production in this sector slowed down after 2010 closely linked to the decline in household disposable income and consequent fall in consumption.

Collective bargaining in manufacturing in Portugal is characterised by the dominance of industry-level bargaining but low levels of coordination and articulation (Dornelas 2004; European Commission 2004). Although most bargaining takes place at the sectoral level, collective bargaining in Portugal is not considered to have a high level of centralisation (European Commission 2004) because of the fragmentation of unions and employers' associations, which results in bargaining authority being distributed among multiple organisations 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 the metal and car industries there are three employers' associations and three union organisations involved in industry-level bargaining. On the union side the three main organisations are CGTP-affiliated FIEQUIMETAL, UGT-affiliated SINDEL and independent SIMA. However, due to blockages in bargaining and the expiry of the agreements with CGTP, the agreements concluded by UGT's SINDEL are now the main framework for these industries, even though CGTP has stronger representativeness in manufacturing (Dornelas 2006).

In textiles, clothing and leather, the main organisation on the union side is CGTP-affiliated FESETE, which negotiates all the agreements with the five employers' associations in the sector. UGT union organisations in these sectors generally subscribe to the industry agreements negotiated by FESETE.

In food and drinks manufacturing the employers' associations are organised in multiple industry branches and workers are represented mainly 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.

Box 1 Employee representation in the workplace – two company case studies

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 in their unusually collaborative nature but also in the fact that the negotiating party on the workers' side is the workers' committee, which 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 organisation of work, and the terms and conditions of employment in the firm since 1994, while contributing to industrial peace. The character of industrial relations in this company is strongly influenced by the German parent company. Under that influence, management is highly supportive of the regular communication and transparent sharing of information that support a culture of cooperation and trust. Although the workers' committee is the negotiating party, there is also union representation in the company, with union delegates from CGTP, UGT and SIMA. The workers' committee is also composed of 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 involve 80 to 90 per cent of the 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, which rarely supports local internal strikes and helps to resolve local disputes through the parent company. There are also written commitments on the company side to avoid job losses and instead engage with the workers' committee in seeking alternative solutions whenever circumstances require. Therefore, Large car manufacturer 1 is also atypical in manufacturing in Portugal for the emphasis it puts on dialogue with workers as a main driver of efficiency.

At the **Large food and 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 and confrontational and its branch secretary reported in the interview that the level of unionisation of production workers is around 90 per cent. There is also a workers' committee composed of three 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' committee is seen as more neutral (without political connections), representing the views of the firm's workers, but as it does not have the same resources and therefore the same bargaining power, the union's committee is also necessary. From the HR manager's perspective, the workers' committee is the workers' representation structure for day-to-day communication; it 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.

One of the food and drink subsectors studied is a particular case in Portugal because there is currently no industry agreement. This is because the industry is dominated by two large companies, each of which has its own agreement. As company bargaining is relatively rare in manufacturing in Portugal, the large food and drinks manufacturer we studied was regarded as a particularly interesting case as it could provide insights into responses to the crisis negotiated at 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 body). Both are democratically elected by the workers and 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 and drinks manufacturing, is a regular formal agreement with the trade union (see Box 1).

3. The implications of reforms for 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 largely 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, as well as the weakening 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 were, at least at the level of discourse, to make collective bargaining more dynamic and to enable the organised decentralisation of collective bargaining. The sections below examine the extent to which these objectives were achieved.

3.1 The pressures of collective bargaining at the sectoral level

The changes made to the legal framework in 2003 introducing the possibility of expiration of collective agreements resulted from the widespread view, particularly among employers, that the collective agreements in place were not fit for purpose and that trade union intransigence was preventing the modernisation of employment relations and of the organisation of work. According to interviewees from both the employers' and the union side (mainly UGT), even though collective agreements were formally renewed and republished, the main changes introduced had long been mainly wage updates and other matters of a pecuniary nature. Most of the content remained the same, in many cases since the 1970s and 1980s. A number of interviewees from employers' 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 and thus provided no scope – in the employers' perspective – for functional flexibility. Moreover, some norms were outdated because they had been either surpassed by legislation or outstripped by 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, three times the rate for normal working hours), which the unions had been able to secure on the understanding that overtime should be discouraged and used only in very exceptional situations. The underlying reasoning was that workers' 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 come to be a 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 in the earnings of the workers affected and this explains the union's resistance to any changes unless, from 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 the 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 the 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 it is not in the national interest to maintain.

Consistently, the interviews with employers’ associations provided no evidence that employers have ever seriously considered, in negotiations, providing wage increases or other pecuniary benefits 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 employers the upper hand in collective bargaining. The crisis that started in 2008 further contributed to weaken the trade union position. As the economic situation deteriorated, the union 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 effort to try 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 hit, that was the time when we most needed these flexibility figures in order to avoid more firms closing down, more layoffs and more job losses ... and we did not have the means to offer ... If unions say 'no deal' then I also cannot [do more] ... 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 is not a matter of two sides across the table: 'Do you want 50? I offer 8....' No, in collective bargaining many people are involved, in sectors that are fundamental to our economy in which unemployment reached the levels it did. So this cannot be looked at in terms of direct and immediate exchange...

Trade union responses to the new reality varied. In the metal and automobile industry, where there had been blockages in bargaining (and no updates of wage tables) for a decade, industrial relations had become highly adversarial. The interviewees from employers' associations attribute the responsibility for the blockages in collective bargaining to the intransigence and lack of willingness to negotiate in particular of CGTP-affiliated FIEQUIMETAL. However, as reported by the employers' 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, which 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 per cent, but as this was designed to update wages that had not been increased since 2001 this increase cannot be regarded as compensation for the introduction of working time flexibility (as noted by the ACAP interviewee). The new agreement also introduced significant changes to occupational categories. The

CGTP unions never agreed to any of ACAP's proposals and, after all the legal timelines and requirements, including mediation and conciliation procedures, the negotiations failed and the agreement with the CGTP unions expired in 2009. SINDEL's agreement was extended to the industry and is now the main framework for this subsector. A very similar process was described by another employers' association for the metal industry, AIMMAP, whose collective agreement with the CGTP unions also expired and a new one was reached with UGT's SINDEL, which has been 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 employers' associations and on the case studies, these problems rarely arise in the workplace and workers do not normally object to being covered by UGT agreements, even if they are members of a CGTP union. The situation in 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 employers' 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, on the union side.

CGTP unions in the 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) this has the potential to restore the validity of those agreements. This is dismissed by the two employers' associations interviewed, however, who maintain that the only valid agreements in the sector are those signed with UGT's SINDEL.

The situation in textiles and footwear differs from what seems to be happening in most of manufacturing industry, where there are long-standing bargaining blockages with CGTP unions. FESETE, which is also a CGTP-affiliated union federation, negotiates all the agreements with employers' 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 were relatively positive from 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 employers' 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 the extension of collective agreements and the subsequent introduction of representativeness rules in 2012. Employers' associations claim that negotiating wage increases and favourable conditions for workers would result in firms that belong to the employers' associations facing unfair competition from non-member firms not bound to apply the same wages and terms and conditions. Moreover, they claim that this may encourage the disaffiliation of current members. This has been a key argument of employers' associations in textiles and footwear to justify their unwillingness to negotiate wage increases. The representatives of various employers' associations in textiles and footwear interviewed argued consistently that the pay table only sets minimums and that many of their members often pay more if they can. 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 wage rates negotiated for the sector. This is because these industries, concentrated in the north of Portugal, are organised in intricate subcontracting chains and networks. In many firms, the main flexibility strategy to deal with demand fluctuations is to subcontract a large proportion of production to smaller firms, over which they tend to have a high degree of control and impose 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 employers' 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 paid by the smaller firms, the greater 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 employers' 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 increase their charges. This, from this perspective, is the real reason why employers' associations have refused to negotiate pay increases since 2010/2011. Somewhat contradicting that perspective, soon after the new change in the representativeness rule that made extensions viable, one of the employers' associations in textiles concluded a new agreement with FESETE and updated wage tables. Even in this case, however, and similar to what has been the rule in these sectors, wages in the main occupational categories are very low, close to the national minimum wage. Nevertheless, it is clear that there are multiple circumstances within and between these sub-industries that add to the complexity of firm relations and interest representation at the sectoral level.

In the metal industry, 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 did not prevent 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, which 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, especially among employers, but one CGTP union leader also argued that extensions may not be beneficial for unions because they do not encourage workers to unionise and only high levels of unionisation enable a strong bargaining position. On the employers' side, all employers' 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 the 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 the large car component manufacturer and the large shoe manufacturer also expressed reservations.

3.2 Decentralisation trends

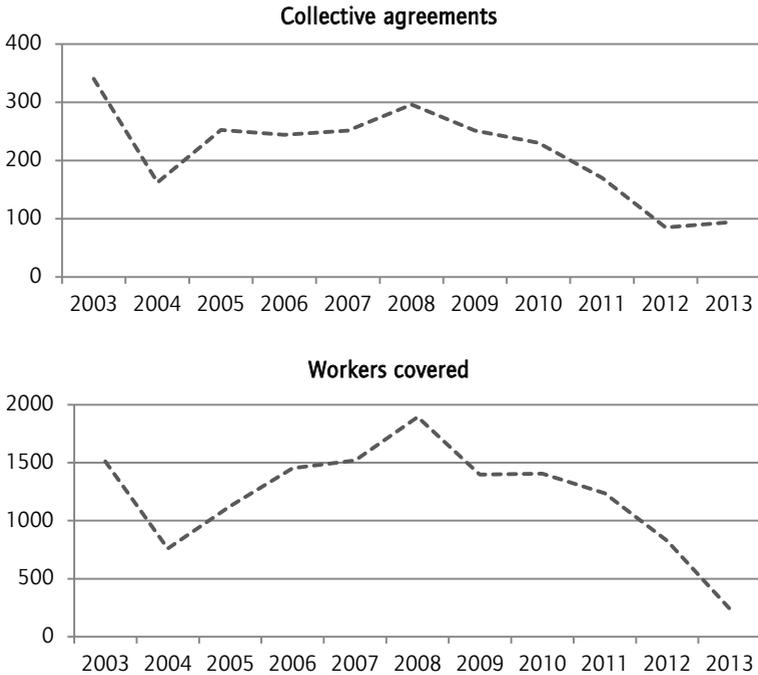
A number of changes in labour law were introduced with the explicit objective of promoting organised decentralisation that would facilitate flexibility and aligning wage developments with productivity at the firm level. Formal changes have been introduced in the law for this purpose, namely, encouraging the inclusion in sectoral agreements of articulation clauses between levels of bargaining and making it possible for workers' committees in firms to conclude company agreements, mainly 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). However, the number of collective agreements and workers covered decreased again from 2009 until 2012. Since 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 continued throughout the crisis, at least until 2013.

Figure 3 **Collective agreements concluded in Portugal, by year and workers covered**



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, an inversion of the declining trend of industry agreements was also noticeable in 2014. Of the 41 agreements published until August 2014 (by the time of writing), almost half were published in July and August,

following a regulation change³⁵ that added a new criterion for the extension of industry agreements, namely that 30 per cent of the members of signatory employers' associations should be SMEs. Several of the social partners interviewed expressed the view that the new rules are more appropriate because most employers' associations have at least that proportion of SME members and therefore the agreements signed would meet the extension requirements. Thus, employers' associations may now be more inclined to sign collective agreements and to update wage tables for the industry if they know that these will be extended to all firms. Therefore, while the increase in the relative proportion of company agreements in 2012 and 2013 could be interpreted as a trend towards decentralisation, in absolute terms company agreements have also decreased until 2012 and are still at much lower levels than they were before the crisis. Data for 2014 and the most recent change to the extension rules suggest a degree of resilience on the part 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** |
|---|------|------|------|------|------|------|------|--------|
| Total collective agreements | 343 | 295 | 251 | 230 | 170 | 85 | 94 | 115 |
| Company agreements (AE) | 81 | 95 | 87 | 64 | 55 | 39 | 48 | 57 |
| Multi-employer agreements (ACT) | 30 | 27 | 22 | 25 | 22 | 10 | 19 | 17 |
| Sectoral agreements (CCT) | 232 | 173 | 142 | 141 | 93 | 36 | 27 | 41 |
| Extensions (industry agreements) | n.a. | 134 | n.a. | n.a. | n.a. | n.a. | 9 | n.a. |

Notes: * New agreements and revisions of existing agreements; n.a. – not available;

** January–August.

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).

However, it is important to keep in mind that the data displayed in the figure and table only refer to the workers covered by *new collective agreements*. This has important implications, the most important of which is that the total number of workers covered by new and existing valid agreements is unknown. The interviews with both sides, as well

35. Resolução do Conselho de Ministros n.º 43/2014, 27 June.

as documents provided in the process, indicate that in practice, the number of agreements that have expired is not that significant. Between the publication of the 2003 Labour Code and the end of 2013 only 34 collective agreements expired and some of these were parallel agreements that differed only in one of the signatory parties – for example, the same employers' association signed two agreements with the same text with different unions – so the number of *effectively different* agreements that actually expired was just 23, of which 18 were sectoral and five were company agreements (UGT 2013). No data are available on how many workers are affected but, according to both sides, it is not a significant number. Interviewees from unions and employers' associations tended to agree that in most cases employers are not interested in letting agreements expire, but use the new provision to obtain concessions from unions in negotiations. However, the weakened trade union 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 employers' associations support industry bargaining. In the run up to 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. However, the changes introduced from 2003 onwards clearly changed the balance of power in favour of employers and severely constrained the trade unions' bargaining position. Those unions who have concluded 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 that we 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 made it possible to conclude 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's side it made it possible to achieve flexibility, a degree of wage restraint during the crisis and industrial peace. However, these cases are not typical and will be further discussed below.

CGTP union interviewees also reported a firm-level union strategy outside formal bargaining, so-called '*caderno reivindicativo*'. This strategy appeared to have gained in importance 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 on 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 the metal and car industries in the Porto region reported that they had 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 component manufacturing cluster based in a region south of Lisbon around a large multinational company (large car manufacturer 1). These firms were not able to provide annual wage increases in the early stages of the crisis, unlike 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 spillover effect, and similar wage increases were generalised to most firms in the cluster, according to the CGTP national interviewee.

Despite the recent success of these decentralised strategies in some firms in the metal industry, we found no evidence of formal decentralisation in the three sectors studied. The employers' associations and union interviewees reported no decentralisation trends or any stronger inclination on the part 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. One employers' association for clothing (ANIVÉC) reported that while before the crisis a few large companies had company agreements, these proved ineffective in managing labour in the context of dynamic industry bargaining that since 2005–2006 had provided flexibility tools that met firms' needs. In food manufacturing, 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 in 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 in 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 in bargaining coverage during the crisis and a shift towards greater individualisation of employment relations. This indicates a trend towards disorganised, rather than organised decentralisation. The disorganised character of decentralisation 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 sectoral union confederations to influence wages and employment conditions.

3.3 The impact of the crisis on the climate of employment relations

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

In the metal and automobile industries, the climate of industrial relations was already very adversarial between employers and the CGTP unions. This was intensified during the crisis, which led 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 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. Although 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, sectoral restructuring and growing unemployment. An employers' association interviewee in the clothing industry explains:

Nowadays people understand, there is cooperation, even the trade unions have played 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 become closer. I realise that when the crisis is over, there will be some demands ... but at the moment people understand.

Although the industrial relations situation in clothing and textiles appeared relatively peaceful during the crisis at the level of employers' associations, the hostility of some employers towards unions was evident in a number of interviews, although the extent to which this was aggravated during the crisis is unclear. While in textiles and footwear this hostility was expressed mainly by individual employers, in the metal industry employers' negative attitudes towards unions was also noticeable in the interviews with employers' associations. Employers – both associations and individuals – often seek to justify this hostility in terms of what they describe as trade unions' confrontational approach and lack of sensitivity to the economic pressures faced by firms. This is directed mainly towards CGTP unions. Employers' associations in the metal and car industries also argued that the action of CGTP-affiliated organisations tends to be guided by ideological motives and political links to the Communist Party and that these do not always serve workers' interests in practice or help to resolve disputes. This alleged lack of pragmatism and low transparency of their motives is evidenced – according to an 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 to CGTP unions, at least at the central level. As noted by the CGTP interviewee, when the (right-wing) coalition government showed a receptiveness to discussing an

increase in the national minimum wage in April 2014 in the run-up to the European elections, UGT refused to engage in concertation on the grounds that it refused to allow the national minimum wage be used as ‘electoral folklore’ in favour of or against the government or any political parties.³⁶ Although the secretary general justified this position on the grounds of political impartiality, an increase in the national minimum wage earlier in the year – irrespective of 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, regardless of 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 by 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 the employers and CGTP unions and between the two union organisations, which remain politicised. An increase in conflict at the firm level is also linked to changes to overtime pay rates, which will be further discussed in the next section.

4. The implications of the reforms for the content and outcome of collective bargaining

4.1 Shifting the boundaries between statutory and joint regulation

There has been a significant move from joint to statutory regulation in ways that have clearly shifted the balance of power towards management, thereby increasing managerial discretion in the workplace. This shift occurred first through creating the possibility of expiration of agreements and shortening the duration of their ‘after-effect’ and the introduction of representativeness rules for extensions, which potentially leaves some workers uncovered by collective bargaining. However, data are not yet available that would allow us to determine the extent to which this has happened.

36. SMN: UGT indisponível para ‘folclore eleitoral’, CGTP recusa negociar como ‘moeda de troca’, TSF, 09/04/2014. http://www.tsf.pt/PaginaInicial/Economia/Interior.aspx?content_id=3803615

This shift has also taken place in more direct ways. The government has regulated directly in areas of legislation that were traditionally under the scope of collective bargaining, namely the organisation of working time and overtime pay. As the Labour Code revision of 2012 made it possible to implement individual time banks in firms, even if these are not regulated by sectoral collective agreements, 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 employers' associations and also trade unions consistently mentioned that time banks have long been used by firms, based on informal agreements with workers or their representatives (see Box 2). This was particularly the case in the metal industry, but the HR manager and union delegate of a textiles firm also reported the use of time banks in the firm. The interviewee from the automobile employers' association explains:

At the time companies were allowed to have a time bank only 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 the metal industry, three 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' committee of the medium car component manufacturer, this weekend shift consists of 24 hours at the weekend and the workers involved receive the same pay as those working the normal 40-hour shift during the week. Time banks have not been formally introduced in textile and footwear agreements, but since 2006 there has been a system of working time adjustment. 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 the medium food and drinks manufacturer.

Box 2 Time banks in Portugal

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' committee 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 thus became a permanent allowance and 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 two-year period. 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 from the perspective of both 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 it to deal with peaks in demand, namely by redesigning the time bank system to include work on Saturdays. However, the last attempt failed to secure workers' support.

Despite that drawback, the system is regarded as a successful case of negotiated working time flexibility and large car manufacturer 1 established a template for time banks in the industry. The HR manager of large car manufacturer 2 reported that he had visited large car manufacturer 1 before proposing a time bank in his company and it was reported by the employers' associations that on the example of large car manufacturer 1, the concept and practice of time banks was widespread 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 large car manufacturer 1. In most cases, time banks are designed in a way that does not compensate workers for 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 branches, notably metal, the government reduced the legal rates by half and in the 2012 Labour Code introduced provisions that suspend collective agreement clauses that set higher rates. These provisions, 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 until 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 in which overtime work is used, firms have in most cases seized the opportunity to reduce overtime pay. The managers interviewed tend to argue that they did so in order to comply with the law, conveying an interpretation of the legal provision that failing to apply the new reduced rates would be illegal. However, as some union interviewees observed, the Labour Code only suspends collectively agreed pay rates and does not include any provisions restricting individual employers' decisions to pay above the legal minimum.

Of all the regulations introduced during the crisis, the suspension of collectively agreed extra pay rates has had the most negative impact on industrial relations and has become a source of conflict in the workplace. This is because, first, workers and unions regard the reduction of overtime as a breach of industry or company agreements and second, in some cases this reduction constituted a substantial component of workers' pay and so represents a significant cut in total earnings. Trade unions have called strikes on overtime, with variable results. Calls for strike action also protect workers in cases in which they do not want to work overtime under rates that, unions argue, do not compensate the ensuing problems for work/family reconciliation and reduced rest time. Both unions and a number of managers have also observed that increased income tax has also contributed to reducing the value of take-home pay accruing for the extra hours worked.

While in metal work the employers' response appeared relatively uniform, in textiles the situation is somewhat more heterogeneous. While the 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, the large clothing manufacturer paid overtime work as normal hours before and after the regulatory change, in breach of both the collective agreement and the law. In turn, the 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 informal use of working time flexibility regimes and overtime pay in a 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 hours at other times instead of losing pay, whereas if it is management who requires overtime, workers are compensated with the collectively agreed rates.

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 them and the European Workers' Council, this firm's workers do not strike. Therefore, the workers reluctantly collaborated by working overtime on two out of five Saturdays. However, after that, the workers decided that it did not pay and the coordinator of the workers' committee told management that workers were unwilling to continue 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.

The large home textile manufacturer is also considered a good employer. It follows the industry agreement and improves on some of the terms, paying higher wages complemented with a system of bonuses linked to attendance and productivity. Both sides consider that there are good industrial relations in the company, even during the crisis, except with regard to 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 of the industry collective agreement. This led to conflict and a call for workers to strike in protest. Due to the strike, and because, after taxes, it does not pay with the new rates to work weekends, a proportion of workers refuse to do so. This proportion is very high according to the union, but relatively low according to management.

The large food and drinks manufacturer has a long tradition of firm-level unionisation and collective bargaining. The firm union is affiliated to CGTP and although it is negotiation-oriented it is also quite prepared to take a confrontational approach. It derives its strength from its very high membership among production workers, estimated at 90 per cent 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, resulting in a decrease from 175 per cent to 50 per cent 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 on overtime pay that lasted five months. As worker participation in the strike was 100 per cent 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 supposed risk of breaching the Labour Code rule.

In exchange, the union agreed to a three-year programme of relatively low wage increases (flat rate of 25, 20 and 15 euros) linked to overtime and productivity. Overtime work was also reorganised so that a greater proportion of workers were involved and so avoided excessive working hours for individual workers. 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.

These cases point to the high incidence of informal arrangements at the firm level, often in breach of the collective agreement and/or legal provisions. In the metal and automobile industries, the interview evidence seems to suggest that the changes contributed to formalise 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 the clothing and textile industries, where the evidence suggests that management discretion in adopting 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.

4.2 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 the medium food and drinks manufacturer, collectively agreed rates for the occupations of most workers tend to be set just a little above the national minimum wage. Therefore, when there are blockages in bargaining, these rates are regularly surpassed by the minimum wage,

which becomes their actual wage (Távora and Rubery 2013). Between 2011 and the summer of 2014, the national minimum wage was frozen at 485 euros 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 national minimum wage or 485 euros and 505 euros a month. While the sector has been affected by the crisis, the large and the small clothing manufacturers were not severely affected and appear to have been in good health in recent years, having required most workers to work overtime regularly in the past year and reporting good results, despite some uncertainty. Interestingly, the workers in these two companies – who are not generally unionised – while aggrieved about not having received wage increases, do not direct their grievances towards their employer and instead tend to blame the government for not increasing the national minimum wage. Despite not having increased wages, the small clothing company gave annual bonuses during the crisis, which was the existing practice, but the total amount has increased in recent years, according to the workers interviewed. The large home textiles firm has awarded wage increases only to lower grades throughout the crisis, although this year as the economic and firm situation has improved, the pay increase has affected all grades. The lowest wage paid by the company, according to the HR manager, is 507.5 euros, therefore above the collectively agreed rate for the grade at which most workers work in the industry (488 euros). Recent developments include the conclusion of a new agreement between FESETE ANIT-LAR (the employers' association for home textiles) and ANIL (the employers' association for wool) 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 national minimum wage was increased in October 2014 to 505 euros, surpassing the collectively agreed rates for the grades of most production workers.³⁷

The reforms of collective bargaining affected the capacity of unions to negotiate wage increases at the sectoral level. In textiles and footwear the threat of expiration of agreements has put unions in a weaker bargaining

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

position and the representativeness requirements for extensions have, in the perspective of employers' associations, prevented employers from increasing wages. In the car industry, while the economic situation was dramatic at the beginning of the crisis, previously conflictual industrial relations were also crucial in explaining 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 of 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 employers' associations stated that the industry was not yet prepared to provide a further update. However, AIMMAP (metal including car manufacturing) agreed revisions to the collective agreement with SINDEL and increased wages in 2013 and 2014 (2 per cent). Nevertheless, union action at the company level by means of *caderno reivindicativo* (see above) may also have contributed to wage increases in metal and car manufacturing.

Reforms of legislation on 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 workers' total earnings. The introduction of working time flexibility regimes, with increasing scope for management to set it unilaterally 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 reduced pay for overtime work very significantly (and therefore also the incentive for workers to do it). Moreover, the case of the large food and drinks manufacturer also illustrates how in the rare cases in which unions were able to keep the collectively agreed higher overtime pay rates they often had to make concessions with regard to pay increases.

The cases of large car manufacturers 1 and 2 suggest that the type of company also matters. Although strongly affected by the economic situation, these companies – which are large European multinationals – awarded 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 unionised

and have effective channels of worker representation may also have contributed to the wage increases. However, the importance of union representativeness is more evident in the case of the large food and drinks manufacturer. In this company – also owned by a large multinational – 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 annual wage increases throughout the crisis. In 2012 the wage increase had been 3.5 per cent and, according to the union, this was achieved only with a strike threat. 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 worker support, this structure seemed to derive its power resources to a great extent from management support for worker participation. The size of this multinational and the supportive approach of its 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 the lack of legal options that go with that, particularly the right to strike) did not affect the outcomes of bargaining as much as it might have if management had been 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 the discretion to decide 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 cost pressures 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 the national minimum wage in providing floors for wages – most workers' pay was frozen from 2011 and only increased in October 2014 due to the increase of the national minimum wage, which surpassed the rates of most workers in the old agreements and even those set in the collective agreement for home textiles and wool reached four months earlier. The changes in the rules of collective bargaining also contributed to the wage freeze in low pay sectors. Large multinational companies 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.

4.3 Firm-level responses to the crisis and the impact of labour market reforms

To some extent, 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 employers' associations interviewed, time banks – especially in the metal industry – were already in use before they were inserted in collective agreements and even before they were introduced in 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, while the other continued to follow the collective agreement even though it was not legally required to do so.

None of the firms visited reported that they had made use of the new regulations facilitating individual dismissals, even though some may have benefited from the lower cost of compensation for dismissals. Although a number of companies have made workers redundant, they have usually used the traditional path of voluntary redundancy and not renewing temporary contracts. Two companies imposed collective dismissals: the large shoe manufacturer dismissed 500 workers in 2009 and the large car component manufacturer dismissed 100 workers in 2012. A number of companies mentioned that they had made use of the temporary provisions for renewing fixed-term contracts.

According to the interviews with employers' 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 to keep 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 employers' associations an opportunity to pass on 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 until the government and the higher authorities change their vision of the problem'.

In the home textile subsector, in which firms are larger, according to the employers' association there have been a number of important company restructuring measures that involved collective redundancies up to the beginning of the crisis. However, these processes appeared to be mainly the outcome of the opening up 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 were just the right 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 employers' association was about to sign a collective agreement with FESETE but stated that this would be published only when the extension rules changed, which eventually happened in June 2014.

In the automobile industry, which was sharply affected at 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 to firms' responses (summarised in Box 4).

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 of the extent to which they were negotiated with workers' representative structures – were not always sufficient to prevent job losses.

Box 4 Firms' responses to the crisis in car manufacturing

When the effects 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 thus avoided job losses. The solution agreed involved three components: the use of time bank 'down days', vocational training (109 workers were placed in vocational training programmes, although in the meantime they have been 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' committee, 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 usually the Spanish plant that adjusted. However, in 2008 the Portuguese subsidiary was allocated the responsibility for full assembly of a car model, independent of the Spanish factory. This required a rethinking of processes because until then the company had been prepared to increase production through overtime but not to reduce production when demand decreased. That was when management decided to create a time bank that made it possible to reduce working time by 20 days or increase it by 10 days per year without varying pay. This was negotiated with 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 remainder of that year; thus the workers finished the year with 20 negative days in the time bank. In February 2009, 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, halting the use of temporary agency workers (affecting more than 300 workers) and reorganising permanent workers into two shifts. In May the company started a temporary layoff of 6 months involving 16 days' suspension of production, of which five were used to provide training to workers. This was done in close collaboration with social security and employment authorities, but the company opted not to receive financial support from the government for the lay-offs – although 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 years and again at the beginning of 2013 until summer 2014. Not surprisingly, industrial relations became adversarial at 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 per cent of workers agreed. However, the new workers' committee elected that year was 100 per cent unionised.

With the dismissals and lay-offs relations became extremely tense. Since then, according to management, industrial relations have improved and relations between management and the workers' committee and the unions (CGTP's SITE Norte and independent SIMA) have been increasingly communicative and collaborative. From the HR manager's perspective, improved relations were due to improved communication efforts and an increasing understanding on the workers' and union side of the cost pressures facing the company in an extremely competitive market.

The medium car component manufacturer suffered a 50 per cent reduction in orders between September and December 2008. The main two responses were job cuts affecting 80 workers who were on temporary contracts and the use of lay-offs, temporary suspension/reduction of production for a year. During that period the workers experienced a 20 per cent 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 the confrontational approach of CGTP unions. The workers' committee is cooperative, 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 view of the company's labour practices and attempted to persuade management to increase wages in 2014 through *caderno reivindicativo*, which in this case was unsuccessful.

4.4 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 concerned. 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 national minimum wage – with 12.3 per cent of working women (compared with 5.9 per cent of men) earning the minimum wage (Dornelas *et al.* 2011) – this measure will have a disproportionately negative effect on women and may contribute to increase gender inequalities in pay. Indeed, Eurostat online data show that the gender pay gap in Portugal has increased, from 9.2 per cent in 2009 to 15.7 per cent in 2012.

On the positive side, the new provision of the 2009 and 2012 Labour Codes allocating to the Commission for Equality at Work and in Employment (CITE) the role of inspecting the compliance of collective agreements with 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 available only to mothers. Additional evidence of the preliminary positive effects of this measure comes from a report recently published by CITE (Ferreira and Monteiro 2013). It is reported that in 2012 this commission produced 15 recommendations concerning 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 amended accordingly. The clauses in question included issues such as the use of non-inclusive language leading to certain rights being recognised solely for workers of one gender; the use of language that was not consistent with the new gender-neutral language of leaves for parents; provisions that violated the law on paternity leave; provisions on the mode and duration of leave for working mothers and fathers; and non-recognition of the right to working time reductions for breastfeeding (and bottle-feeding) for mothers and fathers (Ferreira and Monteiro 2013). The document assesses favourably the preliminary work initiated in this domain. In addition, in our study the interviewee from UGT observed that equal opportunities legislation and policy is one area that has been safeguarded against the government’s austerity and labour market reform agenda during the crisis.

5. 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 has had a revealing and accelerating effect on this process. In the face of cost minimisation, employers’ strategies and union resistance to flexibility systems that would further reduce workers’ earnings, in 2003 the government initiated a process

of regulatory change that favoured the employers' 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. However, to some extent the reforms contributed to creating or intensifying 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, the suspension of extensions and subsequent introduction of representativeness criteria actually contributed to create blockages in the sector despite the previous cooperative relations between labour market actors. In both sectors, the changes led to the introduction of flexible arrangements that met employers' longstanding demands. The weakened position of the unions meant that they were not able to negotiate conditions that would compensate for 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 decentralisation 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 wages and conditions reduces the relevance of bargaining at this level. Moreover, reduced bargaining coverage and therefore a move towards individualisation 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 decentralisation.

The character of bargaining remained adversarial in the metal and automobile industries. If anything, the reforms contributed to increase conflict in the workplace, particularly the restrictions on collective bargaining on overtime pay. As employers took advantage of the new provisions 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 longstanding 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 the pressures of the economic crisis, some unions reached agreements to introduce these and other forms of flexibility, which became the main framework for the respective sectors. However, a number of firms already had flexibility arrangements in place – particularly time banks, which had been implemented in the workplace on informal workplace agreements or understandings (with worker representative structures or individual workers). Indeed, the research suggests that informal ‘understandings’ in the workplace were widely used by firms in response to the crisis but it does not clearly indicate the extent to which these were negotiated or imposed by employers.

While the reforms mostly had a negative impact on workers – particularly in terms of wages and earnings – the extent to which they contributed to firms’ increased adaptability and competitiveness beyond lowering labour costs is unclear. 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 legislation in 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 regard to severance pay.

While systemic change with regard to collective bargaining is visible in the weakening of the union side and the trend of disorganised centralisation, the system’s resilience 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 rates of overtime pay) and by (temporarily) withdrawing support for industry bargaining through the suspension and subsequent introduction of criteria for extension that severely constrained bargaining at that level. While the new provisions 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 improved slightly, some employers' associations and individual firms appeared more willing to negotiate wage increases and conclude new collective agreements. On the government side, however, 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 indicated a persistence of a post-Troika deregulation path. It is to be seen whether a change of government will bring about a change of path.

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