Portugal

Despite the strong insistence of the European Commission and the employers throughout 2010, the government refused to amend the Labour Code, in particular in the area of further flexibilising the regulations on **fixed-term work and dismissals**.

It was only at the end of 2010 that the government submitted a series of proposals to the social partners. The package contained a broad range of measures to promote growth and employment, along with active labour market policies and changes to labour law with regard to collective bargaining, (temporary) redundancy schemes (in terms of temporary reductions of working time or the suspension of an employment contract when indispensable to ensure the continuing existence of a given company) and severance payments. At that time, employees subject to collective redundancy or whose jobs were suppressed could claim one month's pay per year of service. The government proposed a reduction of the compensation to 20 days per year of service and the introduction of an overall limit to 12 months' pay (no such limit existed before). The then existing right to a minimum of three months' pay was to be removed. For fixed-term contracts hit by redundancy schemes, compensation would be reduced to 1.66 days per month of work, as opposed to 3 or 2 days (depending on whether the contract lasted longer than six months or not). The Minister of Labour also proposed the creation of a fund for dismissal compensation, exclusively company-funded, that would be responsible for paying 50% of such compensation, thereby upholding the guarantee that workers would quickly receive half of the amount instead of possibly having to wait several years for a court decision.

On 22 March 2011 a tripartite agreement was reached between all social partners, with the exception of the CGTP. As part of this agreement containing a wide range of measures targeting growth and employment, it was agreed that severance payments were to be reduced to 20 days per year of service. There was a 12-month limit to the benefits, with the maximum payment equivalent to 20 times the minimum wage. The measure was to be applied only to new labour contracts (after the agreement's measures had been adopted in law). The agreement also provided for the creation of a fund to finance the benefits, exclusively company-funded. The protection offered by the fund was enlarged to cover more cases than initially planned; in cases where a company goes bankrupt and closes or when a worker is dismissed, the fund would guarantee the immediate payment of 50% of the amount owed to the workers, thus underpinning the existing payment guarantee. However, in April 2011 the implementation of the agreement was suspended due to the fall of the government, after the proposed austerity plans were defeated in Parliament and the government handed in its resignation in March 2011. Only two weeks later the caretaker government announced that Portugal would be hosting a mission of the European Commission, ECB and IMF (the Troika).

In its Memorandum of Understanding (MoU) with the European Commission, ECB and IMF of 17 May 2011, the caretaker government, with the support of the two major oppositions parties, agreed to pursue a number of important labour market and labour law reforms, in particular relating to the systems of severance payments, rules governing **individual dismissals, working time arrangements and wage-setting, collective agreements between works councils and companies** (all in principle had to be concluded by the end of 2011) and further reforms to the collective bargaining system (by the second half of 2012).

> As for <u>dismissal compensation</u>, the government agreed to enforce the measures defined via social dialogue before the fall of the government and provide for their application as of 2012 to all existing labour contracts. The idea of the compensation fund also remained in the text.
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> As for <u>working time arrangements</u>, the MoU stipulated that the minimum <u>additional pay for overtime</u> established in the Labour Code was to be reduced to a maximum of 50% (at present employees are paid 50% extra for the first hour of overtime worked, 75% extra for additional hours, and 100% for overtime during holidays). It also foresaw that the end of the <u>compensatory rest period</u> equal to 25% of overtime hours worked would not be abolished. The MoU also foresaw major changes to the Portuguese <u>industrial relations system</u> and it was expected that draft legislation was to be submitted by the first quarter of 2012 on *inter alia*:
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> - The definition of criteria for the extension of collective agreements, including the representativeness of the negotiating organisations (to be assessed by 'both quantitative and qualitative' indicators) and how the extension will affect the competitive position of non-affiliated firms;
> - A further reduction of the length of continued application of collective agreements that have expired and not been renewed;
> - A further decentralisation of bargaining in favour of company-level bargaining;
> - Allowing works councils to negotiate functional and geographical mobility conditions and working-time arrangements;
> - Lowering the company size threshold, so that works councils can conclude agreements in companies with less than 250 employees;
> - The inclusion of conditions in sectoral collective agreements by which works councils would be able to conclude company-level agreements without the involvement of trade unions.

On 8 September 2011, the Parliament adopted a law on dismissals providing for compensation set at the 20 days per year of employment (instead of 30 days as mentioned before) and with benefits not allowed to exceed 12 times the reference base (20 days per year) and limited to 240 times the guaranteed minimum wage. The new rules apply to labour contracts concluded after 1 November 2011 in the cases of individual and collective redundancies (except unfair dismissals), temporary relocation, bankruptcy, restructuring, or even the death of the head of the company. The idea of a compensation fund remained valid but did not materialise due to resistance from both employers' and trade union organisations, albeit for different reasons.

Also in September 2011, the announced special tax on employees' Christmas bonuses came into force. The 50% tax will be applied to that part of the Christmas bonus exceeding the minimum wage (SMN). According to the implementing decree of 7 September, families may deduct 2.5% of the minimum wage per child, i.e. €12.12. The bonus could also be paid in a fragmented way. In October plans were announced to also apply this tax to civil servants.

On 7 December 2011, the Council of Ministers, without however consulting the social partners, adopted a draft bill increasing the working day by 30 minutes in the private sector, with no financial compensation (the so-called "half an hour law"). This measure was intended to be exceptional, for 2012 and 2013 only, and would bring daily working time up from 40 hours to 42.5 hours. A scheme was also included that allowed for the accumulation of the extra 30m minutes over a period of 4 weeks. Public businesses or businesses with a majority state holding would not be affected by the measures. The bill also included an 'anti-abuse' clause, which stated that a company could not make use of the extra time clause within 30 days of any job losses. Certain categories of workers (minors, pregnant women/young mothers, workers with reduced abilities or chronic disease) were excluded from this increase. For part-time work, the working time increase was to be proportional. The daily half hour can be accumulated over 4 weeks, with the employer then instituting an additional workday on a Saturday. However, this is only possible if workers agree. On 16 December 2011, draft bill No 36/XII was presented to Parliament. In the meantime, on 10 January 2012, Act 3/2012 came into force temporarily amending the maximum duration of fixed-term contracts. Fixed-term contracts can now be prolonged for up to 18 months. However, this exceptional extension cannot extend the contract beyond 31 December 2014. At the beginning of 2015 the rule of the Labour Code that provides that fixed-term contracts can last up to three years (since 2009, the maximum length has been six years) will be reintroduced.

Following fierce opposition against the working time proposals ("half an hour law") by both trade unions and the main opposition parties in Parliament and the signature of a tripartite agreement on 18 January 2012 ("Compromise for growth, competitiveness and employment"), the new draft law was withdrawn on 19 January. A tripartite agreement was reached by a national social dialogue body and contains a full set of measures on growth, employment and active labour market policies deemed as particularly relevant in the present context. The agreement also contains a series of measures concerning the revision of the labour code as foreseen in the MoU:

Time bank: the “bank of hours” system is extended. A company may now directly negotiate with the worker up to 150 hours a year, within the limit of 2 additional hours a day and 50 hours a week. Even so, the conditions established are more restrictive than those already existing in the labour code for the time bank via collective bargaining and no other forms of flexibilisation of working time were introduced, although the possibility was foreseen in the MoU.

Overtime pay: Overtime will be compensated 50% less, as established in the MoU. The first extra hour will be paid at a 25% overtime rate, with any following hours at 37.5%. Holiday and Sunday work will be paid at a 50% overtime rate (instead of currently 100%). After a period of 2 years the current values of collective agreements or labour contract will be applied, reduced by 50% and the collective bargaining process will be reopened. The regime of the absolute imperativeness applicable to current IRCTs and labour contracts was therefore rejected, although the MoU had foreseen such.

Annual leave, long weekends and holidays: The attendance bonus provided for in the Labour Code was removed. This provided for three additional vacation days, bringing annual leave up from 22 up to 25 days (except in cases already established in collective agreements prior to the introduction of that rule dating from 2003. This safeguard was not foreseen in the MoU). The agreement provides for the abolishment of 3 or4 national holidays (there was no agreement on the dates or the number of holidays). When the remaining holidays are on a Tuesday or a Thursday, thus giving the opportunity for a four-day weekend, the company can completely or partially close for the period (this possibility already existed for the period between 1 March and 31 October). However, the company will have to post a preliminary schedule (by 15 December of the previous year) to let employees plan their vacation. The Government accepted not to use the prerogative given by the Labour Code of moving any holidays to the following Monday, thus suppressing “four-day weekends”.

Dismissals: The rules concerning redundancies or dismissals on the grounds of inadequacy are changed to accommodate the Troika impositions:

- In the case of redundancies for business reasons, the employer now has the possibility to determine the criteria – although non-discriminatory – which can lead to redundancies. Consultation of the workers representatives is strengthened.
- In the case of inadequacy for the job, “a substantial change in the employee’s work leading to a decline in production, quality, or to repetitive failures or dangerous situation for the worker or third parties” even without any previous changes in the methods of production may lead to the dismissal. Training, a period of adaptation and proof of the change in the worker’s activity are nevertheless prerequisites for such dismissals, although the MoU did not foresee them. In both cases, the company is no longer required to offer another job.

- A new form of dismissal – based on failure to achieve predetermined targets – although foreseen in the MoU - was not accepted and will not come into force.

Severance payments: The agreement provides for three steps for the establishment of the procedure to cut redundancy benefits from 30 to 20 days per year spent in the company and the establishment of a maximum limit amounting to 12 months' pay. This measure comes into force in November 2012 and will affect all employment contracts. On that date the alignment of compensation amounts with the EU average must be concluded after discussion with the social partners. Nevertheless, contracts concluded prior to 1 November 2012 with compensation above the legal maximum will continue to receive compensation equal to what they were entitled to if they had been dismissed before the deadline. All other contracts will have compensation calculated based on the old rule (up to 1 November 2012) and by the new rule (from 1 November onwards). Acquired rights were therefore safeguarded. In the meantime, the government will also have to reach a consensus with the social partners about the draft bill creating an employer-funded compensation fund to partially subsidise severance compensation in the case of dismissal, bankruptcy or company closure (the coming into force of the fund will be simultaneous with the coming into force of the new compensation)

Collective bargaining: Works councils will be allowed to negotiate enterprise agreements in companies with more than 150 employees (the existing limit is 250 employees). It will be possible for collective agreements concluded at sectoral level to establish certain matters which may be negotiated at company level by trade unions or other workers' representative structures. A Labour Industrial Relations Centre, as provided for by the Tripartite Agreement of 22 March 2011, will be created in order to give new momentum to collective bargaining. The Government has also undertaken to do everything possible to improve the momentum of collective bargaining in the public and private sectors and to improve the effectiveness of the administrative services and mechanisms related to collective bargaining. Although foreseen in the MoU, the tripartite agreement contains no measures on the definition of standards for announcing the legal extension of collective bargaining, including the representatives of the parties or the reduction of the supervision and expiration periods of collective bargaining agreements.

In that same agreement, the government undertook not to introduce any additional or different provisions in labour law unless previously agreed with the Signatory Parties, thus preventing some of the harsher measures stated in the MoU being applied (namely the free collective bargaining by works councils workers committee. This was limited to cases where powers had been delegated by trade unions in companies with more than 150 workers and to the possibility of sectoral agreements allowing negotiation of certain issues). Shortly after this agreement was reached on 18 January 2012, the draft law that would have increased maximum weekly working time from 40 to 42.5 hours was withdrawn from parliament and the Council of Ministers of Portugal decided to cancel four holidays, namely "Corpus Christi"

(60 days after Easter Sunday), 15 August, 5 October and 1 December. After discussion with the Holy See the holiday of 15 August was replaced by 1 November.

The government also changed the rule concerning the closing of companies during long weekends – when public holidays are on a Tuesday or a Thursday. The final text of the new law was approved by parliament on 11 May 2012 and comes into force on 1 August 2012, amending the Labour Code.

Clearly, Law no. 46/XII intends to flexibilise labour legislation in line with the Explanatory Memorandum, with a focus on four different vectors, identified therein as fundamental: 1/ Organisation of working time; 2/ Inspection of working conditions and communications to the Authority for Working Conditions; 3/ Termination of employment framework; and 4/ Collective bargaining framework. Furthermore, the Portuguese government is hoping that the new Labour Code will help decrease unit labour costs, identified by the Central Bank of Portugal as still being 10% higher than the Eurozone average. In its report on labour costs for the first quarter of 2012 on pay cutting policies in countries like Portugal receiving international aid, the European Central Bank suggests that the impact on domestic consumption would have even worse negative effects

According to the Portuguese National Statistics Institute (INE), about 25% of the workforce works 41 hours a week, while the statutory working week is 40 hours. However, the drop in salaried work, beginning in 2008 with the economic crisis, started to get worse in early 2012, as the austerity measures imposed by the international "troika" came into force. Consequently, and in the context of a weakened economy, precariousness and drops in income increased: the number of workers earning less than €310/month increased by 5.4 % in the second quarter of 2012 (the statutory minimum wage is €485/month) and now accounts for 4.2 % of the total Portuguese workforce. Furthermore, the other austerity measures – higher taxes, the abolishment of certain benefits and decreased public spending – are putting a severe strain on family budgets. Turning the screw even tighter could lead to a breaking point, and Portuguese people's net earnings allegedly dropped by €60/month on average in the first half of 2012 (see survey by the "*Dinheiro Vivo*" agency from data provided by the Central Bank of Portugal).

On 1 January 2013, the Single Social Tax (TSU) was planned to be increased by 6 points for workers, bringing it up to 18%, and reduced by 5.75 points for employers, bringing it down to 18%, as part of the economic recovery programme specified by the IMF and European Union. As a consequence, private sector workers would have lost over one month's pay per year. Moreover, for the first time since its introduction, the minimum wage would go down. The government announced the creation of a "social credit" to compensate for the loss of earnings of the lowest paid, but no information has yet been released on this. Following large-scale mobilisation and a political crisis unleashed by this disputed proposition, the measure was withdrawn, with social dialogue being reopened on 24 September 2012 with a view to coming up with alternatives on in particular the handling of bonuses in the private sector. Negotiations led to a proposition being adopted by the Portuguese Parliament on amending the Labour Code, stipulating a system under which public and private sector workers will receive 12 months' salary per year and two annual bonuses, the Christmas bonus paid on 15 December and the other one usually in August. The new system is going to split 50% of the bonuses over the year. This should help minimize the impact of the high tax increase planned in the 2013 State Budget introduced as part of the plan to rescue the Portuguese economy. An amendment to the Labour Code was approved: workers will have 5 days to refuse the fractioned payment system after the law is published. The new Labour Code amendments entered into force in 2013 and first affect permanent contracts. As of 1 January 2013, public sector workers only have one bonus, thus implementing a decision of the Constitutional Court that rejected the cancellation of civil servants' bonuses based on anti-crisis measures on the grounds that it was discriminatory vis-à-vis other categories of employees.

As a result of the constant decline of Portuguese wages due to the crisis and the austerity measures designed to fight it, the social partners want to put negotiations on the national minimum wage on the agenda for 2013. However, the government is awaiting the outcome of the assessment of the adjustment programme set up by the Troika due in February 2013 before deciding on the agenda. The current statutory minimum wage is €485. Furthermore, the Portuguese government envisages further amendments to the new Labour Code, which came into force on 1 August 2012 and has already brought severance payments down from 30 to 20 days per year of service. The new amendments intend to further cut severance payments to 12 days per year worked, on the grounds that such a new reduction is in line with the Memorandum signed with the Troika.

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Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)
ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).
ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)