***Labour rights in the context of structural adjustment
and fiscal consolidation policies***

Country: Portugal

Time period: 2008-2015

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1 Structural reform program(s) and fiscal consolidation programs

1.1 Labor market reforms (flexibilisations);

* Working time adaptability and new working time arrangements – including individual and group adaptability; introducing the schemes of bank of hours and concentrated timetables (Law 7/2009);
* Facilitating individual dismissals linked to unsuitability of the worker and linked to the extinction of work positions (Law 23/2012, Law 27/2014). One year after the entry into force of Law 23/2012, the Constitutional Court (Judgment 602/2013) determined that some of the regulations were unconstitutional for breaking the principle of job security (article 53 of the Portuguese Constitution). Nevertheless, the Constitutional Court accepted that individual dismissals linked to unsuitability of the worker could be possible regardless of the introduction of new technologies or other changes to the workplace;
* Reduction of severance pay (Law 53/2011, Law 23/2012 and Law 69/2013);
* Special regime allowing fixed-term employment contracts to be subject to 2 additional renovations and an additional maximum duration of 18 months (Law 3/2012, Law 76/2013);

1.2 Changes to the national labour law;

A new Labour Code (LC) was set by Law 7/2009 introducing the following changes:

* Collective agreements may establish less favourable rules for the employees than those defined by law except in areas some areas;
* Vocational training – defining standardised rights to employees in permanent and fixed-term employment contracts, with the right to minimum of hours per year of certified training;
* Fixed-term contracts – limiting the grounds for fixed-term contracts and reducing their total duration from 6 to 3 years; and a maximum duration of 6 years for fixed-term contracts with an uncertain duration;
* Working time adaptability and new working time arrangements – including individual and group adaptability; introducing the schemes of bank of hours and concentrated timetables;
* Dismissal disciplinary procedures – making disciplinary procedures for dismissal faster.
* Principle of more favourable treatment – when the employment contract establishes more favourable conditions to the employee it prevails over provisions of collective agreements;
* Delegation on workers’ representative structures at the workplace – while previously only trade unions could negotiate company-level collective agreements;
* Validity and survival of collective agreements – creating a transitory specific regime for agreements with a survival clause that were negotiated prior to the introduction of LC; revising the general regime through a reduction of the survival period and the creation of a special regime for future cases of agreements with survival clause; and foreseeing compulsory arbitration proceedings related with lapsing of collective agreements.
* Law 23/2012 amending the LC 2009 introduced *de facto* unpaid working time through the reduction of the vacation period by three days and the cut of four public holidays (both without income compensation) and the reduction by half on overtime payments. These measures were included as well in the regulations regarding public sector employees (Law 35/2014).

1.3 Changes to the system of collective bargaining;

Law 7/2009:

* Delegation of collective bargaining on workers’ representative structures at the workplace
* Validity and survival of collective agreements

Law 59/2008:

* Introduced, for the first time in Portugal, the possibility of collective agreements in the public sector having the same standing as private sector agreements, although it limited the range of issues to be regulated by collective agreements.

Law 23/2012:

* introduced the possibility of sector collective agreements to define that regulations in domains such as functional and geographical mobility, working time and wages could be set up by collective agreements at another level, including company agreements (principle of open clause);
* reduced to 150 employees the threshold firm size above which workers’ representatives can conclude collective agreements

Resolution 90/2012:

* blocked extension ordinances and imposed the revision of regulations on the extension of collective agreements introducing stricter conditions whereby collective agreements could only be extended if the signatory employers’ organisations employ more than 50% of all employees in the industry concerned.

Law 23/2012, article 7, governing ‘relations between regulatory sources’ stipulated the nullity, the reduction or suspension of the provisions of collective agreements, as follows:

* Nullity of the provisions of collective agreements providing for amounts higher than those resulting from the Labour Code in relation to severance pay (Article 7, paragraph 1);
* Nullity of the provisions of collective agreements providing compensatory rest for overtime work (article 7, paragraph 2);
* The reduction in collective agreements provisions providing for increases in annual holidays, reducing them by an amount equivalent to three days (article 7, paragraph 3);
* The suspension for two years of the provisions of collective agreements providing for overtime payment increases higher than those established in the Labour Code (article 7, paragraph 4);
* The reduction by half of the amounts referred above of the provisions of collective agreements after the expiration of the period of tw years, provided they are not lower than those established by the LC (article 7, paragraph 5).

[One year after the entry into force of the Law 23/2012, on 20 September 2013, the Constitutional Court considered it unconstitutional on several issues (Judgment 602/2013) including paragraphs 2, 3 and 5 of article 7 on the grounds that they violated the right to collective bargaining (article 18, paragraph 2, and article 56, paragraph 3 and 4 of the Portuguese Constitution). However, limits to collective agreements in relation to severance pay and overtime payment were accepted by the Constitutional Court.]

* 1. Freezing of salary increases for public service workers and civil servants;
* Law 12-A/2008 established two types of employment relationship in the public sector – by appointment (limited to the core functions) and by employment contract;
* 2011 budget until 2016: Nominal cuts (between 3.5% and 10%) in public sector wages above 1500 Euros.
* 2012: Christmas bonuses were cut by 50%; and in 2012 Christmas and holiday bonuses (adding the equivalent of two months’ salary to the annual income of workers) were suspended, a measure of which implementation in 2013 was overturned by the Constitutional Court (Judgment 353/2012).
* In 2013, the government increased the weekly working hours for the public sector from 35 to 40 hours with no equivalent wage increase, therefore reducing in practice the sector hourly wage (Law 68/2013).
* In 2014, the government extended the nominal cuts %) in the public sector to wages above 675 Euros, a measure which the Constitutional Court overturned declaring it unconstitutional (Judgment 413/2014).
* Collective bargaining was paralysed. Wage freeze and wage nominal cuts were not negotiated. The government blocked, in 2014 and 2015, the collective agreements signed in local administration for the return of the weekly working time of 35 hours, following the entry in force of Law 68/2013 and Law 35/2014. Claiming the right to interfere on collective bargaining in local administration, the government blockaded around 500 collective local agreements in this period. Eventually, in October 2015, the Constitutional Court considered unconstitutional the government’s interference in collective bargaining in local administration (Judgment 494/2015).
* Law 35/2014 redefined employment relations in the public sector aligning them mostly with the changes to the LC of 2009 resulting from the Law 23/2012.
* Law 35/2014 introduced *de facto* unpaid working time through the reduction of the vacation period by three days and the cut of four public holidays (both without income compensation) and the reduction by half on overtime payments.
	1. Reduction of the number of people employed in the public service;
* Employment in the public service decreased under the MoU, from 727.173, in December 2011, to 655.914, in December 2014 (-10%). The present figure (June 2016) is 659.149. The largest reduction (-26.818) was in education. (Source: Boletim Estatístico do Emprego Público - BOEP n.º 14 (nova série), available at <http://www.dgaep.gov.pt/index.cfm?OBJID=F82200C9-44AE-446E-A9FB-70C117898028&ID=108>

1.6 Freezing or reduction of minimum wage;

* Under the MoU (2011-2014) the national minimum wage was frozen at EUR 485 per month. In 2015 it was raised to 505 euro, and in 2016 to 530 euro.

1.7 Privatization of state-owned or controlled businesses and services;

* 2011-2014 (as stipulated in the MoU): EGF (waste treatment), EDP (Electricity Production), REN (Electricity distribution), CTT (mail), Fidelidade (insurance), ANA (airports), CP Carga (railroad cargo), TAP (airline, partially reversed in 2016). The total proceeds amounted to 10 billion euro.

1.8 Reform of system of unemployment and/or social security benefits;

* In 2009, temporary measures to address raising unemployment extending the period during which claimants were entitled to receive unemployment insurance (UI) and unemployment assistance (UA) and increasing the coverage of UI by reducing the number of days a claimant must have worked to be eligible (withdrawn in March 2010.
* Decree-Law 72/2010 published in June 2010: changed the basis of calculation of UI, limiting it to no more than 75% of the net amount earned during the claimant’s previous job (instead of the previous maximum of 65% of gross earnings) and to no more than three times the value of the social support index (IAS), which in 2010 was set at €419.22 per month; and the obligation of beneficiaries to accept a job offer even if the wage was only 10% higher than their UI (when previously the wage had to be 25% higher).
* Law 64/2012 reduced unemployment protection – the amount of the unemployment benefit and the duration of the unemployment benefit – and reduced the necessary contributory period to access unemployment benefits from 450 days to 360 days.

2. **Pease explain if the above mentioned reforms were implemented at the Government’s own initiative, or if they were part of conditionalities for emergency lending or other financial assistance from an international financial institution (IMF, ESM etc.) or responded to other factors?**

Most reforms in this period were part of conditionalities of the MoU celebrated between Portugal and the troika institutions. For a detailed specification see Campos Lima, Maria and Manuel Abrantes (2016), “DIADSE – Dialogue for Advancing Social Europe: country report Portugal.

3. **What kind of mechanisms for consultation with government representatives and financial institutions were used during the design and implementation of the above reforms? Could you provide a brief overview of the consultative process that accompanied the reform process?**

Until May 2011 the programs (Stability and Growth Plans) were designed in consultation between the government and the EU institutions. The MoU was negotiated between the government and the troika institutions, subscribed by a caretaker government, and never formally adopted in the Parliament. Eleven reviews of the MoU took place between May 2011 and May 2014, involving consultations between the representatives of the institutions, the government and social partners. During the program the IMF established a permanent delegation in Lisbon.

4. **Has your organization or the Government in your country evaluated the programme’s impact on economic and social rights? What have been the results of your monitoring? Could you explain the methodologies used and share impact assessment or evaluation reports?**

The Observatory for Crises and Alternatives of CES, produced two reports, one in 2014 and the other in 2016, (available in Portuguese, see <http://www.almedina.net/catalog/product_info.php?products_id=30887> and <http://www.ces.uc.pt/cesalmedina/?id=10638>). Those report draw on statistical data, analysis of legislation and of reports produced by the troika institutions, to assess the social and economic impact of the MoU. Our basic findings are the following:

1. External indebtedness fueled by capital flows from surplus countries in the euro area channeled mostly to real estate and construction was the root cause of the Portuguese crisis;
2. The Portuguese bailout was triggered by a liquidity crisis affecting the highly indebted baking sector, not by a solvency crisis of the state;
3. Aiming at a “frontloaded” fiscal consolidation and internal devaluation, the bailout produced recession, unemployment and emigration at levels that far exceeded the troika forecasts;
4. Due mostly to the reduction of internal demand, the current account balance improved, but the debt (public and private) increased substantially, the situation of the baking sector further deteriorated due to non-performing loans;
5. Overall the stock of capital and the active population have shrunk substantially, undermining the prospects for recovery.

The government failed to produce any overall assessment of the MoU. The IMF has produced relevant assessments:

(<http://www.ieo-imf.org/ieo/pages/CompletedEvaluation267.aspx> and http://www.ieo-imf.org/ieo/files/completedevaluations/EAC\_\_BP\_16-02\_05\_The\_Portuguese\_Crisis\_and\_the\_IMF%20v2.PDF)

5. **To what extent did the reforms have a positive or negative impact on the following rights contained in international human rights treaties**:

(a) Freedom of association – workers have the right to form and join, without prior authorization, organizations of their own choosing for the defense of their occupational and industrial interests.[[1]](#footnote-1)

No direct impact. However, a decline of the engagement of workers in trade unions and other associations reflects a deterioration of the conditions for free exercise of rights within firms.

 (b) Right to collective bargaining[[2]](#footnote-2)

Negative impacts: on the coverage of labor relations by collective agreements, the transferring of collective bargaining to the level of the enterprise, the denial to enact of agreements of workers in municipal administration with the municipalities.

 (c) Right to strike in conformity with domestic laws[[3]](#footnote-3)

No direct impact

(d) Right to freedom of assembly

No direct impact

(e) Right to just and favourable conditions of work (fair and decent living wages for workers and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours; etc.)[[4]](#footnote-4)

Negative impacts: the freeze in the minimum wage 2011-2014, the extension of the working week in public administration from 35 to 40, the suppression of holidays, the reduction of remuneration of extra work time.

 (f) Right to social security, including social insurance[[5]](#footnote-5)

Negative impacts: Reduction in amount and duration of unemployment benefits; severe cuts in pensions

(g) Prohibition of all forms of forced labour[[6]](#footnote-6) and of harmful child labour[[7]](#footnote-7)

No direct impact. Most cases reported are related to exploitation abroad (included in EU countries) of Portuguese emigrant workers.

(h) Non-discrimination in employment (equal pay for equal work; equality of opportunity and treatment, etc.)[[8]](#footnote-8)

Negative impacts: high incidence of involuntary temporary employment, undeclared work, and “dependent” self-employment affecting in particular the youths.

6. **Please explain changes/impacts caused by the reforms in the following areas:**

1. levels of unemployment

Recession caused by “frontloaded” fiscal consolidation and internal devaluation had a huge impact on employment and unemployment

**Rate of unemployment (Source: Eurostat)**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| 8,8 | 10,7 | 12 | 12,9 | 15,8 | 16,4 | 14,1 | 12,6 |

1. poverty (including the number of people considered as working poor)

“Desigualdade Económica em Portugal”, a recently plublished report (available at <https://www.ffms.pt/publicacoes/detalhe/847/desigualdade-economica-em-portugal>) provides a detailed picture of the evolution of poverty and inequality in Portugal.

## Severe material deprivation rate (Source: Eurostat)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2008  | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  |
| 9.7  | 9.1  | 9.0  | 8.3  | 8.6  | 10.9  | 10.6  | 9.6  |

## In-work at-risk-of-poverty rate - EU-SILC survey (Source: Eurostat)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2008  | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  |
| 11.8  | 10.3  | 9.7  | 10.3  | 9.9  | 10.5  | 10.7  | 10.9  |

1. involuntary temporary employment (Source: Instituto Nacional de Estatística)

Involuntary temporary employment and other forms precarious employment increased substantialy.

**Temporary employment, n. of people (Source: Instituto Nacional de Estatística)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2011  | 2012  | 2013  | 2014  | 2015  |
| 230200 |  254500 | 259100  | 251700  | 243000  |

(d) **non-standard work contracts**,

Not available

(e) irregular and/or informal work arrangements or

(f) **the percentage of people contributing to or receiving benefits from unemployment social security or public health insurance?**

In spite of the absence of reliable data, informal work arrangements have probably increased during the MoU period.

**Percentage of people employed in the private sector (excluding public administration) contributing to social security (Source: Eurostat, author’s computations):**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2011  | 2012  | 2013  | 2014  | 2015  |
| 86,4% | 85,5% | 84,6% | 83,5% | 84,9% |

7. **How did the reforms affect the inclusion/exclusion of the following groups in the labour market: young persons, older persons, persons with disabilities, migrant workers, and members of ethnic/racial minorities?**

Young persons were particularly affected by unemployment (38% decrease in employment, against an overall decrease of 10%). Migrant workers, particularly in construction, were also disproportionally affected. Conversely, employment of older persons increased 6%. Data is not available for ethnic/racial minorities and persons with disabilities.

**Employment by sex, age, nationality (thousand people): Portugal 2008-2015 (Source: Eurostat)**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2008 | 2009 | 2010 | 2011 (a) | 2012 | 2013 | 2014 | 2015 |
| Employment (total) | 4786 | 4645 | 4577 | 4453 | 4256  | 4158 | 4254 | 4309 |
| Employment (15-24) | 408  | 363  | 323 | 305 | 260 | 241 | 247 | 251 |
| Employment(55-64) | 635  | 631 | 637  | 623 | 614  | 625  | 640 | 673 |
| Employment rate of non-EU nationals, age group 20-64 | 78.0  | 71.1 | 69.2  | 66.2 | 62.2  | 58.7  | 64.3  | 63.5 |

1. Break in time series

8. **How did the reforms affect the inclusion/exclusion of women in the labour market? Were there any impacts on the gender-related wage gap, and on the women’s right to enjoy the same rights in employment on an equal basis with men (for example, the right to maternity leave with pay or comparable social benefits; the right to protection from dismissal on the grounds of pregnancy, maternity leave or marital status, etc.)[[9]](#footnote-9)?**

In this period, female employment decreased 5.2% (against a total decrease of 10%). The gender pay gap increased 5.3 percent points. Formally the rights to maternity leave with pay or comparable social benefits, to protection from dismissal on the grounds of pregnancy, maternity leave or marital status were not threatened. However, informally, the pressures on women in the workplace increased. Reflecting lower levels of employment in the public administration were the pay gap is lower, and a weaker standing of women in the labor market in general, the gender gap increased substantially.

**Employment (Female): Portugal 2008-2015 (Source: Eurostat)**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2008 | 2009 | 2010 | 2011 (a) | 2012 | 2013 | 2014 | 2015 |
| 2,243 | 2,209 | 2,187 | 2,147 | 2,079 | 2,042 | 2,091 | 2,127 |

## Gender pay gap in unadjusted form (Source: Eurostat)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 2008  | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  |
| 9.2  | 10.0  | 12.8  | 12.8  | 14.8  | 13.0  | 14.5  |

9. **Could you provide information whether the reforms resulted in an increase in the activity of organized labour, including strikes and protests? Could you describe possible human rights concerns related to the treatment or safety of labour representatives, workers, or individuals who participated in trade union work, strikes or public demonstrations or were affected by them, that have been brought to your attention?**

In the four years (2010-2014) five general strikes took place (against a total of five in the preceding 35 years): November 24, 2010, November 24, 2011, March 22, 2012, November 14, 2012, June 27, 2013. A public sector strike took place on November 8, 2013. Huge demonstrations called informal groups of citizens took place in March 12, 2011 and September 15, 2012.

10. **Can you describe a particular successful measure or good practice that had a positive impact on the enjoyment of labour rights or other economic and social rights? If possible, please provide a reference or link to a report supporting your assessment.**

During this period measures with a positive impact on the enjoyment of labor rights or other economic and social rights were the rulings by the Constitutional Court above mentioned. (see https://www.ft.com/content/b5c9a802-f48d-11e3-a143-00144feabdc0)

1. See International Covenant on Civil and Political Rights (ICCPR), art. 22; International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 8; International Labour Organisation (ILO) Convention 87. [↑](#footnote-ref-1)
2. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-2)
3. See ICESCR, art. 8(d). [↑](#footnote-ref-3)
4. See ICESCR, art. 7. [↑](#footnote-ref-4)
5. See ICESCR, art. 9, and ILO Convention 102 and ILO Social protection Floor Recommendation, 2012 (No. 202). [↑](#footnote-ref-5)
6. See ICCPR, art. 8; ILO Conventions 29 and 105. [↑](#footnote-ref-6)
7. See Convention on the Rights of the Child, art. 32; ILO Conventions 138 and 182. [↑](#footnote-ref-7)
8. See ILO Conventions 100 and 111; Convention on the Elimination of All Forms of Discrimination against Women, art. 11; Committee on the Elimination of Discrimination against Women, General Recommendations Nos. 13 and 16; Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(i)-(ii); Convention on the Rights of Persons with Disabilities, art. 27; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 25, 26. [↑](#footnote-ref-8)
9. See Convention on the Elimination of All Forms of Discrimination against Women, art. 11. [↑](#footnote-ref-9)