



Managing restructuring in Portugal

Innovation and learning after the financial crisis

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Molire

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Preface

This report is one of 11 national reports in the MOLIÈRE project, (Monitoring Learning Innovation in European Restructuring), a project funded by the European Commission, DG Employment, Social affairs and Inclusion. The aim of the project is to analyse whether and how the practice of restructuring has changed in a selection of Member States, to assess the impact of the economic crisis on the national level and to monitor how the practice of restructuring changes in the longer term. Each national report assesses the impact of the economic crisis in 2008-2009 on the way restructuring is anticipated and managed. The results are summarised in a synthesis report including a comparison of the developments in Belgium, Bulgaria, Czech Republic, Germany, France, Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom. The aim is to provide updated and harmonized information for social partners and policy makers at national and European level to assist them in policy formation and the design of a European policy framework on anticipating and managing change and restructuring.

Section 1. Introduction

In this report, the concept of restructuring refers to the reorganizing of companies, in a broad sense; thus, including redundancies, wage reductions, reductions in working hours, etcetera. Therefore, restructuring may stem from anticipating or managing measures designed for change.

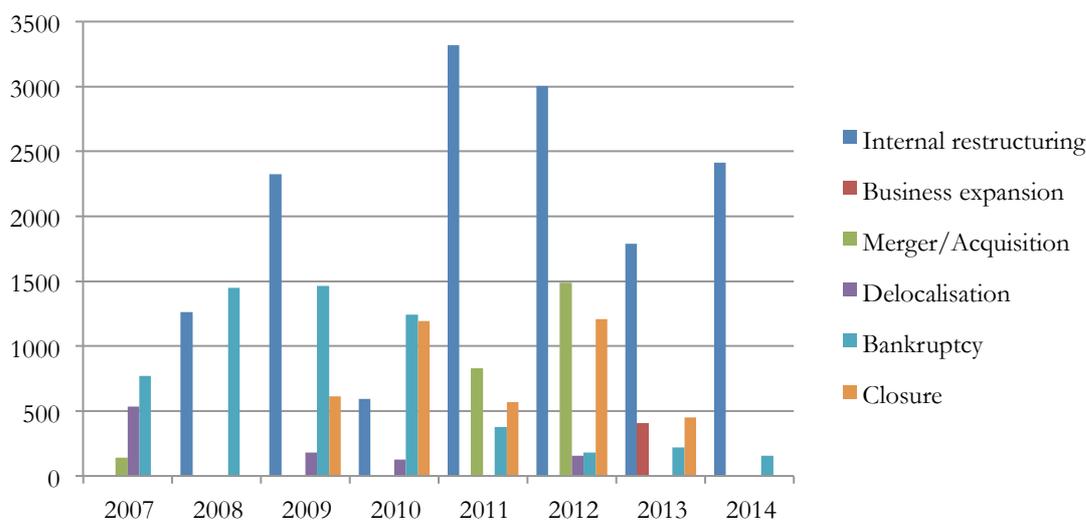
Nevertheless, we must also be aware that in Portugal the common perception of restructuring mostly involves a simple reduction in costs through job cuts with restructuring correspondingly associated to a sort of social stigma. In this sense, the potential effect of some measures undertaken within the scope of restructuring proves limited as, in practice, such restructured companies are already in very difficult situations by the time they seek help.

The main objective of this report is to provide an updated description and analysis of how the framework and the practices of restructuring are anticipated and managed in Portugal since the beginning of the crisis that still affects the country.

The following Figure expresses data available from the European Restructuring Monitor.¹ This means that the information contains important limitations as this database only includes the daily business press and online sources and instances involving the destruction of at least 100 jobs. In any case, this does provide an overview on restructuring in Portugal through different forms and for the period between January 2007 and December 2014. The data shows that 28,469 workers were at risk of losing their jobs in this period, mainly in the manufacturing sector, and that the number of workers facing the loss of their jobs increasing as the crisis and recession deepened with internal restructuring the most frequent form of restructuring.

¹ Internet: <http://www.eurofound.europa.eu/emcc/erm/index.htm>

Figure A - Restructuring in Portugal (2007-2014)



Source: ERM.

The overall period of observation is broader but there is a special focus on the 2011-2014 years. These years correspond to the troika's intervention in Portugal; hence the implementing the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU).

The MoU was signed on 17 May 2011 between a Portuguese Socialist Government and the troika, composed of the European Commission, the European Central Bank and the International Monetary Fund. The implementation of the MoU took place under a right wing coalition government and resulting in a deep impact on Portuguese society.

Finally, the report methodology applied two main techniques: on the one hand, desk research, specifically based on documental and website data and, on the other hand, exploratory interviews with representatives of public agencies and social partners. These interviews enabled the completion, clarification and checking of the data collected.

Section 2. Restructuring frameworks

The purpose of this section is to provide a general overview of the main restructuring related measures and changes in the Portuguese regulatory framework, at both the legal and the social dialogue levels. In fact, national legislation constitutes the main source of labour market regulation but there is also the sector level with employer and worker representatives agreements.

This divides into two sections: the first considers the legal framework around restructuring with the second focusing on regulation through collective agreements. The first section, the legal framework, also subdivides into two parts: on the one hand, measures addressed at companies and, on the other hand, measures addressed at workers². Considering the latter measures, one could also consider a division between passive and active measures.

² Note that the separation between measures addressed to employers and workers is often a pure analytical effort since in practice these measures overlap.

2.1. The legal restructuring framework

The Portuguese legal framework changed due to the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) directives. Most measures illustrate a clear orientation towards reducing labour costs.

2.1.1. Measures addressed to companies

In this section, we mention, on the one hand, the creation of institutional mechanisms and agencies to deal with restructuring in particular (public agencies, a specific fund, changes in the bankruptcy law); and, on the other hand, measures related with reducing costs, collective redundancies and more flexible usage of working time.

A late institutional awakening for companies in default

Although some authors sustain that the first attempt took place in the mid-1970s, there is no longer a clear memory tracing the foundation of the first public agency, under democracy, to help companies facing difficulties. Thereafter, in 1996, the Portuguese government, with the Socialist Party in power, for the first time advanced with a structure to help companies in difficult situations on worries over the increasing impact of bankruptcies and unemployment. In fact, about ten years after joining the European Economic Community, the Minister of Economy established the GACRE (a Support Office for the Coordination of Business Recovery)³ endowed with the mission of implementing the ‘Mateus Plan’, a set of measures that took the minister’s name. This plan intended to, on the one hand, waive debts to the social security and tax services, and, on the other hand, to issue state guarantees.

Some years later, in 1998, the same government set up the SIRME⁴ (Integrated System of Incentives for Business Modernization and Revitalisation). The SIRME was regulated to provide support to mergers and acquisitions involving firms facing financial difficulties. This support came as loans and guarantees.⁵ Furthermore, also in 1998, an extrajudicial conciliation procedure, the PEC⁶ (Extrajudicial Conciliation Procedure) was launched for the first time. The PEC was a restricted framework where creditors were called in order to find a solution together with the company. The PEC impact was not considered as important as expected despite representing an alternative solution to tribunals and courts in a country where the judicial system is considered slow.

In 2001, still under the auspices of the same government, a new Minister of Economy, set up a new structure, the AUDITRE (Audit Union for Business Restructuring)⁷, based on the same principles but with a larger budget. Later, this structure got abolished within the scope of reform intending to shrink state governance mechanisms.

In 2005,⁸ a new institutional mechanism was enacted by the Socialist Party Government, the AGIIRE (Integrated Intervention Office for Business Restructuring)⁹. The AGIIRE was designed to support companies and workers undergoing restructuring and follow up on those situations. The structure answered to the Ministry of Economy and in close articulation with other ministries. The assistance

³ Gabinete de Apoio para a Coordenação da Recuperação de Empresas.

⁴ Sistema de Incentivos à Revitalização e Modernização Empresarial - through the Despacho no. 8514/98, dated 21 May 1998.

⁵ We will not make reference here to the loans and funds created since that information seems too detailed and, at the same time, hard to retake. Nevertheless note that ‘Several credit lines for SMEs were created, although those were not specifically addressed to supporting SMEs or their employees in restructuring’ (Peirista and Carrilho, 2013).

⁶ Procedimento Extrajudicial de Conciliação.

⁷ Unidade de Auditoria para a Reestruturação Empresarial.

⁸ Decreto Regulamentar no. 5/2005, dated 12 July 2005.

⁹ Gabinete de Intervenção Integrada para a Reestruturação Empresarial.

provided was mainly in terms of public and private funding. Under the AGIIRE's activities, the NIRP (Rapid and Customized Intervention Cores)¹⁰ was designed to provide support to companies undertaking restructuring, insolvency or bankruptcy. These structures were run by officials from state entities such as the social security agency or the vocational training and employment institute. However, the NIRP never actually came into force. Several funds were also established in this period.

Later, in 2012, the current government, a right wing coalition operating under the directives of the MoU, launched REVITALIZAR.¹¹ This program intends to help companies in difficult situations, especially through the revision of legislation and already existing institutional mechanisms. Furthermore, for the first time, REVITALIZAR counted on European Union co-funding with the funds managed by private agencies.¹² REVITALIZAR deploys two main tools: the SIREVE (Corporate Recovery System by Via Extrajudicial) and the PER (Special Recovery Process).¹³

The SIREVE was founded to replace the PEC¹⁴ and relieve courts and improve the terms and conditions for the extrajudicial recovery of firms in difficulty, which circumstantially saw their economic structure and/ or financial potential deteriorating but still retaining potential viability. According to the SIREVE report of June 2014 (SIREVE, 2014), 406 companies applied for assistance since SIREVE began operations in September 2012, but only 79.6% of them were eligible under the SIREVE stipulations. Most companies are micro or small sized (84%), representing a total of 13,280 workers, mainly in manufacturing and services, and especially in North Portugal. SIREVE is only recent but its impact seems low level.

The PER is an alternative instrument to bankruptcy. This targets individuals or collective companies unable to pay their contributions and lacking the cash or credit necessary. With the PER, companies in difficulties see their productive capacity and jobs protected since credit collection gets suspended during the negotiation process, which opens up the scope for recovery. This tool came into effect in May 2012.¹⁵

Statistical data on PER actions in particular are not available but, according to the Ministry of Justice, bankruptcies continue to increase, especially since 2012, although pending cases seem to have decreased comparatively as we may see in the figure below.

¹⁰ Núcleos de Intervenção Rápida e Personalizada.

¹¹ Resolução do Conselho de Ministros no. 11/2012, dated 3 February 2012.

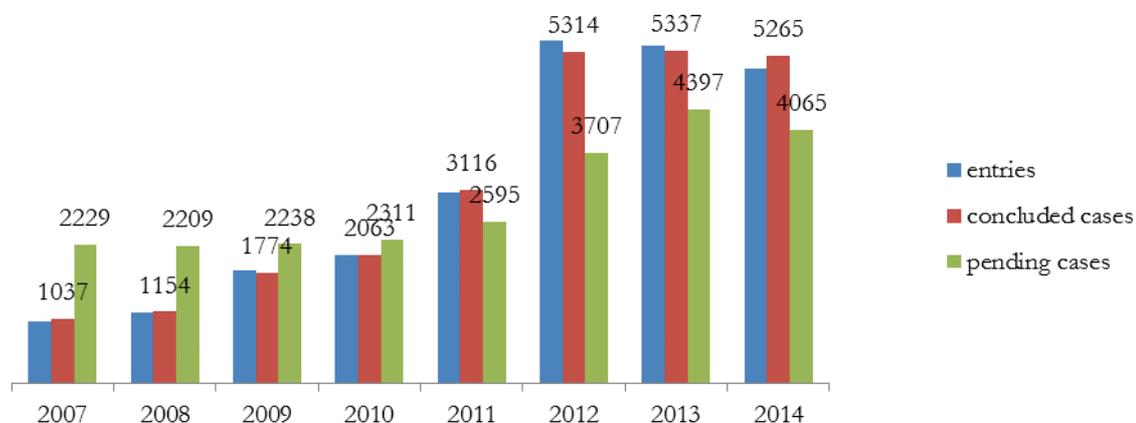
¹² On the Internet: <http://www.iapmei.pt/iapmei-mstplartigo-01.php?temaid=198&msid=18> (accessed on 8 September 2014)

¹³ Processo Especial de Revitalização. The REVITALIZAR also spans other initiatives, such as FINTRANS, a program for transferring companies but does not seem active.

¹⁴ Sistema de Recuperação de Empresas por Via Extrajudicial - through Decree Law no. 178/2012, dated 3 August 2012.

¹⁵ On the Internet: <http://www.iapmei.pt/iapmei-mstplartigo-01.php?temaid=196&subtemaid=100&msid=18> (accessed on 8 September 2014)

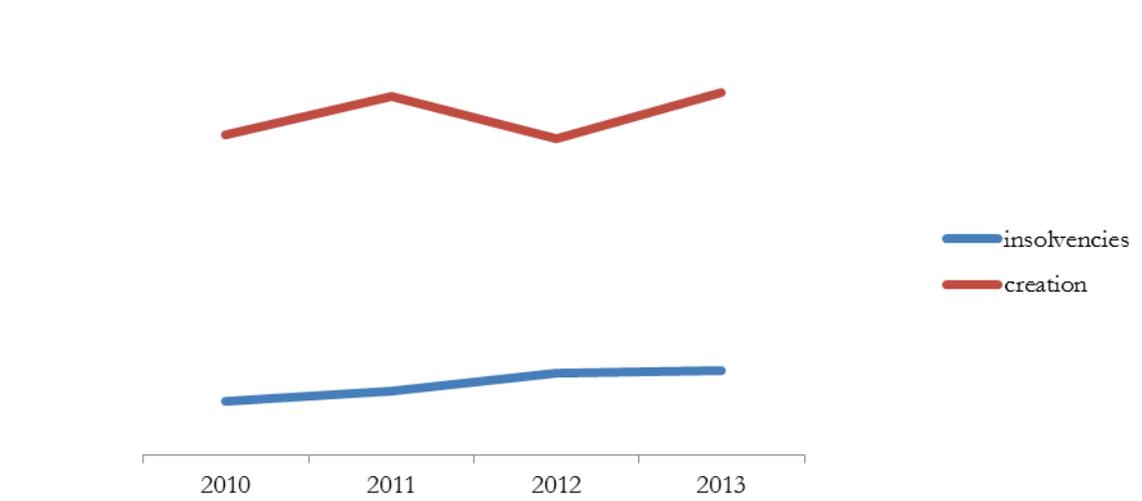
Figure B - Bankruptcy, insolvency and business recovery in courts (2007-2014)



Source: DGPJ, 2014.

Taking insolvency cases in particular, we find that they increased relentlessly during the recession, which may explain why political measures focused on these situations.

Figure C – Insolvencies and company created (2010-2013)



Source: IGNIOS, 2014.

The first employer financed compensation fund

In addition to refreshing the organic structures supporting companies undergoing restructuring, one institutional mechanism was set up for the first time to assist companies in difficulties. Also within the framework of the troika’s directives, two funds were created, the FCT (the Labour Compensation Fund)¹⁶ and the FGCT (Labour Compensation Guarantee Fund).¹⁷

¹⁶ Fundo de Compensação do Trabalho.

¹⁷ Fundo de Garantia de Compensação de Trabalho. Law no. 53/2011, dated 14 October 2011, mentions but does not establish a Compensation Fund. Parliament approved decree 172/XI, dated 29 July 2013 establishing the legal regime for these two funds that bear half of the costs of severance pay. The work compensation fund was regulated by Law no. 70/2013, dated 30 August 2013, on the Internet at:

These funds are financed by employers through monthly contributions. They are compulsory and applied to contracts beginning after October 2013. The FCT structure features individual capitalization in order to guarantee payment of up to half of the compensation payable on termination of employment. In turn, the FGCT displays a mutual structure, aiming at ensuring the amounts necessary to covering half the amount of compensation payable on contract termination minus the amount already paid out by the employer to the worker. These funds are managed by distinct agencies.

The recent nature of these funds and the fact that they concern only new contracts prevent any proper analysis of their impact. In any case, the data available show that the FCT had accumulated 6,596,179 Euros on 30 June 2014 and that there is an ongoing balance between contributions and withdrawals (FCT, 2014).

Shortening the bankruptcy process

The original MoU also included the revision of the bankruptcy law and the implementation of out of court mechanisms by September 2011. The aim was ‘*To better facilitate effective rescue of viable firms*’. Therefore, the government introduced fast track court approval procedures for restructuring plans. The focus was on simplifying bureaucratic procedures: «*The authorities will also take the necessary actions to authorise the tax and social security administrations to use a wider range of restructuring tools based on clearly defined criteria in cases where other creditors also agree to restructure their claims, and review the tax law with a view to removing impediments to voluntary debt restructuring.*» (MoU, 2011: 40). Awareness, monitoring and assessment were all also to be enhanced.

With about half a year of delay, in April 2012, the new bankruptcy law came out¹⁸ and, with an increased delay, in mid-2012,¹⁹ the Out of Court Recovery System for Companies (SIREVE) was enacted as mentioned earlier in this report. The main advantages of the new mechanism when compared with the previous, planned in 1998, include the reduction in the deadlines for completing the process, which went down from nine to four months. However, this also provided for the protection of the debtor and creditors during the negotiation process stage; the dematerialization of formalization and the negotiation process making recourse to a proprietary electronic platform; the scope for any creditor to the debtor making an unidentified request to participate in the negotiation process; getting plans/refunds for the main company creditors and on more favourable terms to the debtor, including their sustainability as regards the respective cash flows.²⁰

Changes in the labour law to reduce labour costs

With the 2009 revision of the Labour Code²¹, more flexible management became possible following the introduction of several reinforced measures that first began implementation in 2003 when labour legislation was compiled for the first time. However, again in 2012, already under the MoU directives, a new review of the Labour Code²² resulted in other measures, which may inclusively override the content of collective agreements.

Although there are several measures addressing the reduction in labour costs, such as the public sector recruitment freeze and the increase in working hours from 35 to 40 hours per week, we would highlight how four types of change in the legal framework effectively reduce labour costs: first, the statuto-

http://www.fundoscompensacao.pt/userfiles/file/Lci%20n_%C2%BA%20702013,%20de%2030%20de%20agosto.pdf (accessed on 22 October 2014).

¹⁸ Law no. 16/2012, dated 20 April 2012.

¹⁹ Decree Law no. 178/2012, dated 3 August 2012.

²⁰ On the Internet at: <http://www.iapmei.pt/iapmei-mstplartigo-01.php?temaid=184&msid=17> (accessed on 11 April 2014)

²¹ Law no. 7/2009, dated 12 February 2009, modifying the 2006 version.

²² Law no. 23/2012, dated 25 June 2012.

ry minimum wage freeze; second, the enlargement of eligible reasons for dismissing individual workers; third, the reduction of retirement related costs; and fourth, the reduction in overtime work payments.

Wage freeze

In addition to the public sector wage freeze since 2011, the statutory minimum wage has also been frozen since 2006. According to a 2006 social concertation agreement, the government should have increased the statutory minimum wage progressively from 385.90 Euros up to 500 Euros in 2011. However, it rose to 484 Euros in 2011 and, following the MoU directives, has since then been frozen, which inevitably led to wages stagnating more generally. Only very recently did the government decide to raise the statutory minimum wage, to 505 Euros, beginning in October 2014 and in effect until the end of 2015 (Albuquerque and Serra, 2014).

Dismissing individuals

Individual dismissal is now possible on the grounds of their inadaptability to the position and following the termination of their position of work. The MoU stipulations led to the introduction of worker inadaptability as a motivation for dismissal:

«Individual dismissals linked to unsuitability of the worker should become possible even without the introduction of new technologies or other changes to the workplace (...). Inter alia, a new reason can be added regarding situations where the worker has agreed with the employer specific delivery objectives and does not fulfill them, for reasons deriving exclusively from the workers' responsibility» (MoU, 2011: 53-54).

In fact, in 2012, the Labour Code introduced that possibility through articles 373-379.

Furthermore, the termination of job positions without any obligation to provide an alternative position was also incorporated into the MoU:

«Individual dismissals linked to the extinction of work positions should not necessarily follow a pre-defined seniority order if more than one worker is assigned to identical functions. The predefined seniority order is not necessary provided that the employer establishes a relevant and non-discriminatory alternative criteria (in line with what already happens in the case of collective dismissals); Individual dismissals for the above reasons should not be subject to the obligation to attempt a transfer for a possible suitable position» (MoU, 2011: 53-54).

This was enacted in 2012 through the articles 367-372 of the Labour Code.

With this enlarging of the scope for individual dismissal, dismissals are facilitated and thus providing an easy means of cutting wages and other labour costs.

Early retirement

Early retirement, according to the Portuguese Labour Code²³, takes place when the employer and the employee agree on the reduction or suspension of work of workers aged 55 or older with at least 30 years of social security contributions and the allocation of a monthly benefit payment. This early retirement ends on the legal age of retirement with either the end of the labour contract or the reintegration of the worker. The amount of this benefit can be neither more than the amount of the salary nor less than 25% of it.

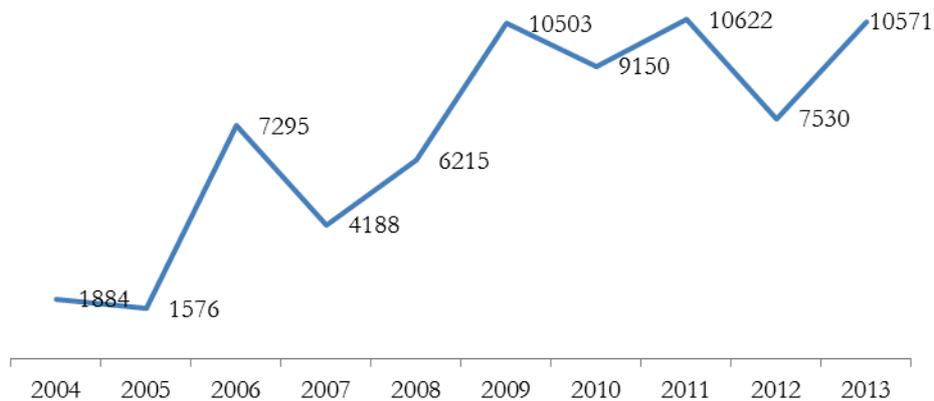
In more recent years, there were further changes in the early retirement procedures by the government in accordance with the MoU directives, freezing early retirements in the private sector until the end of 2015 to ensure the meeting of the lower deficit objective. A few exceptions were allowed for such as the long term (involuntary) unemployed or occupations with special conditions (miners, air traffic controllers, dancers, etcetera).

²³ Articles 318-322.

The MoU directives have also changed the legal age for retirement in Portugal. In 2012, the government announced the legal age for retirement in Portugal as 65 years of age for the private sector and 63.5 for the public sector. Furthermore, the legal age rises to 66 years in 2014 and 2015 for both sectors. People may retire at the age of 65 but are penalized in accordance with different combinations of values²⁴ in the private sector and 0.5% per anticipated month in the public sector.

In the last decade, legal measures were adopted to promote convergence between the public and private systems. We would note that early retirements in the public sector have increased over the last decade in Portugal. The next figure displays this trend.

Figure D: Public sector pensions due to early retirement (2004-2013)



Source: CGA, 2007, 2014.

The public sector used to be covered by a special pension system supervised by the Ministry of Finance whilst civil servants that began their contracts in 2006 or afterwards no longer gain access to this special pension system in reason of their contract type having changed to individual contracts (CGA, 2014).

Overtime work

Several clauses in the Labour Code related to overtime work were changed in 2012²⁵ in order to reduce costs. First, workers who work overtime on a business day, on a weekly rest day or holiday supplement ceased to be entitled to compensatory time off, corresponding to 25% of the hours of overtime work performed²⁶. Second, overtime work on a compensatory rest day that could be substituted by the provision of paid labour with an increase of no less than 100% became possible only to microenterprises or small businesses and on reasonable grounds in accordance with the organization of work²⁷. Finally, the most significant change, although temporary, covers overtime payments²⁸.

In 2012, legislation stipulated the suspension of overtime payments, inclusively those agreed by collective agreements not meeting the following values:

²⁴ The government has very recently announced the intention to temporarily allow for the retirement for workers with 40 years of labour contributions and aged 60 or older (Silva, 2014). However, no measures have yet been brought into law.

²⁵ Law no. 23/2012, dated 25 June 2012.

²⁶ Article 229.

²⁷ Article 230.

²⁸ Article 268.

- 25% for the first hour or fraction thereof instead of the previous 50%, and 37.5% per hour or subsequent fraction of the working day, instead of 75%;
- 50% for each hour or fraction thereof on the weekly rest day, mandatory or complementary, or holiday instead of the previous 100%.

This suspension was established until mid 2014 although new legislation extended it until the end of the year in July 2014²⁹. Meanwhile employer representatives are seeking a further extension (Martins and Revez, 2014).

Changes in the regulation of collective redundancies

The Portuguese Labour Code defines collective or mass redundancy as a redundancy implemented by an employer for one or more reasons that cannot be ascribed to the employee. Mass redundancies are processes in which over a period of 90 days: small firms make at least 2 workers redundant, and medium and large companies make at least 5 workers redundant (Simões and Naumann, 2010).

In mass redundancies, the employer must inform staff representatives in writing of the following information: the reasons for the planned redundancy; the firm's workforce; the proposed selection criteria; the number of redundancies and the occupations involved in the process; the redundancy timings; and the method determining the payment of workers affected by the process. The employer must also send a copy of this notification of collective redundancies to the service of the ministry responsible for labour. Five working days later, the employer must initiate negotiations with staff representatives in order to reach agreement on the size and effects of the measures for application and on strategies to decrease the proposed number of redundancies (early retirement; reduced working hours; temporary suspension of the labour contract; enrolment in retraining programs). Ministry of labour representatives participate in these negotiation processes ensuring respect for the legal framework and attempting to attain consensus.

Fifteen working days after the process beginning, the parties may or may not have reached an agreement. At this point, the employer must inform each worker affected by redundancy in writing of the cause, the date on which their contract ceases, the compensation eligibility of the worker and the form and timing of payment (Simões and Naumann, 2010). The announcement must be made with advance notification that ranges from 15 days for workers with less than one year of seniority and 75 days for workers with 10 years or more of seniority. Special conditions are foreseen for couples.

On being informed of the looming redundancy, the worker has the right to 2 days of work per week through to redundancy. These hours can be used freely by the worker, who is only required to inform the employer of his intention to use this time with at least three days notice. This time entitlement enables workers to seek new jobs.

Mass redundancy is deemed invalid when any of the procedures are not followed; and/or whenever based on political, ideological, ethnic or religious grounds. The worker is deemed to have accepted redundancy on receipt of compensation and vice-versa.

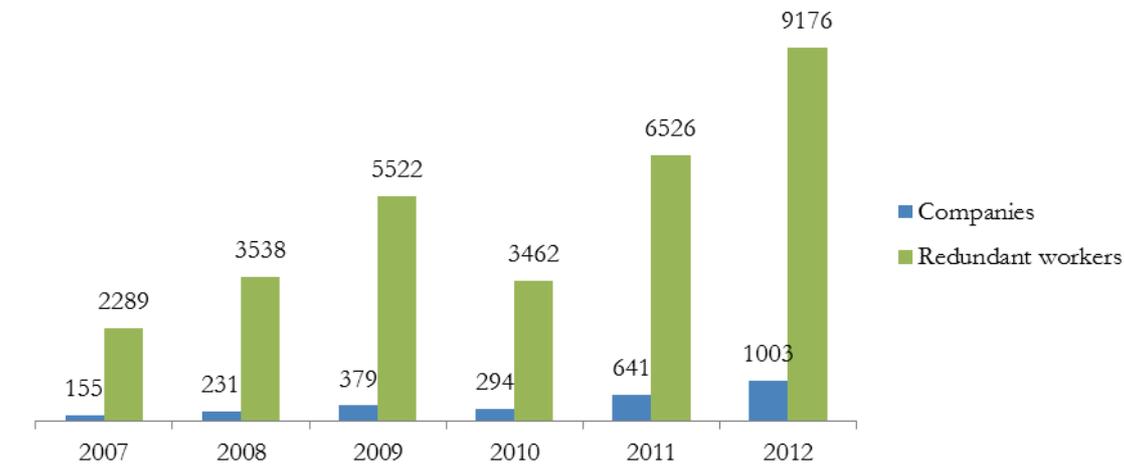
The regulation of collective redundancies in Portugal did not change significantly over the course of the crisis. Nevertheless, the notification period for collective redundancy processes was extended by one month in 2009³⁰.

²⁹ Law no. 48-A/2014, dated 31 July 2014.

³⁰ Law no. 7/2009, dated 12 February 2009.

Although there is no linear trend, collective redundancies have increased during the crisis, both in terms of the number of companies and in the workers correspondingly dismissed, as we may observe in the next figure.

Figure E – Collective redundancies (2007-2012)



Source: DGERT-MEE (Data of 2012 is not final).

According to the MoU, the government had to implement reform in severance payments for new hires in addition to aligning severance payments for open-ended contracts with that for fixed-term contracts. The MoU was very precise:

«...the total severance payments for new open-ended contracts will be reduced from 30 to 10 days per year of tenure (with 10 additional days to be paid by an employers' financed fund) with a cap of 12 months and elimination of the 3 months of pay irrespective of tenure; the total severance payments for fixed-term contracts will be reduced from 36 to 10 days per year of tenure for contracts shorter than 6 months and from 24 to 10 days for longer contracts (with 10 additional days to be paid by an employers' financed fund); the implementation of the fund agreed in the March Tripartite Agreement to partly finance the cost of dismissals for new hires» (MoU, 2011: 53-54).

The first reform of severance payment provisions took place in 2011 but was limited only to new hires. The new Portuguese legislation³¹ determines a payment of 20 days per year on new hires, which means a reduction by one third of the amount (with a cap of 20 times the national minimum wage or 12 monthly salaries). In a second stage, in July 2013, Parliament approved the reduction of severance payments to 12 days per year of service for all new open-ended employment contracts.

For already existing permanent contracts and all fixed-term contracts, severance payments were also reduced to 18 days per year of service for the first three years of the contract, and to 12 days per year of service for subsequent years. The law became effective on 1st October 2013.

Also in 2013,³² the severance payment of fixed-term contracts was stipulated according to the duration of the contract, reducing the values considered through a complex scheme. This scheme allows for differentiated payments according to different contract extensions but nevertheless resulting in a general cost reduction.

Again in 2013,³³ fixed-term contracts were now susceptible to extension (without becoming open-ended, permanent contracts). In fact, from November 2013 through to the end of 2016, these con-

³¹ Article 366A of Law no. 53/2011.

³² Law no. 69/2013, dated 30 August 2013.

³³ Law no. 76/2013, dated 7 November 2013.

tracts may be renewed twice when the limit attained is no longer than 12 months, with the respective severance payment.

Moreover, in the public sector, several programs³⁴ have promoted the voluntary termination of labour contracts and the respective severance pay since 2013. These programs addressed civil servants holding permanent contracts, within 5 years of retirement, aged below 60, in functions requiring the equivalent of high school education and belonging to professional careers including official assistant, teachers, senior technicians³⁵.

Changes in short time working

In 2009, new measures were introduced to the Labour Code to allow for more flexible management of working timetables. These measures are: intermittent work, the individual adaptability regime, bank or time accounts and the concentration measure.

First, intermittent work was introduced in 2009³⁶ as a new contractual type, although already possible in the performing arts sector. These contracts are now eligible whenever companies experience discontinuities or experience varying levels of production intensity. In these cases, parties may agree that the supply of labour is interspersed with one or more periods of inactivity. These contracts cannot be short term or temporary and must include reference to the total labour time per year, which cannot be less than six months. During the inactivity period, whenever there is no other agreed indication, the worker will receive at least 20% of the base salary paid by the employer and may take up another activity.

Second, the individual adaptability regime was also introduced in 2009³⁷ and means that the employer and the employee may, by agreement, define the normal working hours on average. This agreement may provide for an increase in the normal working day of up to two hours and the working week can reach 50 hours. Furthermore, group adaptability was also considered. In this sense, the collective labour regulation instrument instituting a regime of adaptability may provide for the employer applying the scheme to all workers in a team, section or economic unit when at least 60% of the workers in this structure are covered by it, through membership of trade unions signatories to the convention and when choosing this convention as applicable. Under the adaptability regime, the average working time is determined by reference to the period established in the collective bargaining agreement for work that does not exceed 12 months or, failing that, to 4 month periods. The reference period may be extended for 6 months when applying to: family worker's employer; workers who occupy administrative or management positions or that hold independent power of decision; accrued predictable activities, etcetera.

Third, the bank or time accounts (*banco de horas*) were also introduced in the 2009³⁸ revision of the Labour Code and possibly the measure with the greatest impact considering also their transposition to collective bargaining processes. The time accounts settle that, by collective agreement, four hours per day could be added to the normal labour time up to 60 hours per week and 200 per year. This year limit may differ still further to avoid redundancies. The added time could be compensated for through equivalent working time reductions, increases in vacations or wage payments. In 2012³⁹, the new revision allowed both individual and group accounts. This means that whenever the employer and employee agreed, the normal working time could be supplemented by 2 hours per day up to 50 hours per

³⁴ Programa de Rescisões por Mútuo Acordo.

³⁵ <http://www.dgaep.gov.pt/upload/pts/>

³⁶ Articles 157-160.

³⁷ Articles 204-207.

³⁸ Articles 208A-208B.

³⁹ Law no. 23/2012, dated 25 June 2012.

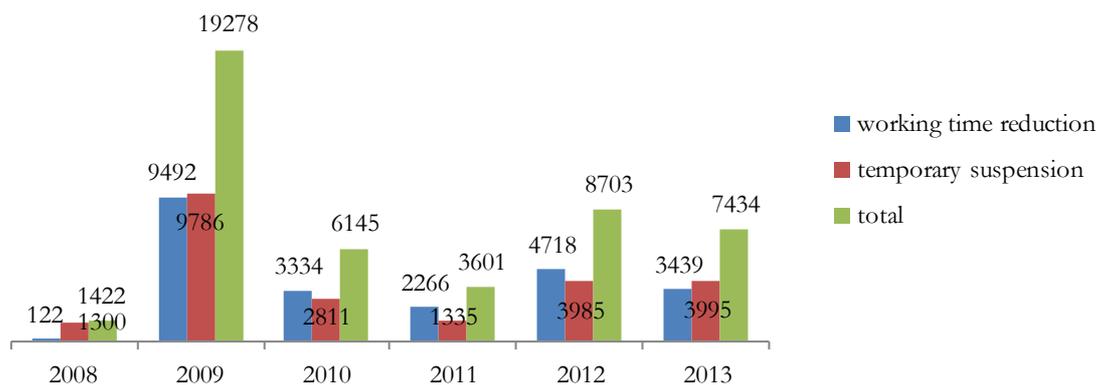
week and 150 hours per year. The legislation also simultaneously extended this scope to all workers in a team, section or economic unit when at least 75% of the workers of this structure consent to it and there is no indication by workers involved in a collective agreement of their rejecting it.

Finally, the concentration measure⁴⁰ allows both parties to agree to add 4 hours per day up to 4 days per week. Workers covered by the concentration regime cannot be covered by the adaptability regime. Payment and other concentration regime conditions must be regulated by collective agreement.

Temporary layoffs enlargement

Temporary layoffs involve temporarily reducing normal working hours or suspending employment contracts on the initiative of companies, for a certain period of time and caused by: market reasons (decrease in production due to a decline in demand); structural reasons (modifications to key firm products, etcetera); technological reasons (industrial automation, etcetera). Companies must be in a position to recover but, since 2012,⁴¹ temporary layoffs have broadened the spectrum of feasible applications. In fact, companies may also be considered as in difficult situations and in these cases their contributions to the social security system and the fiscal authorities may be failing.

Figure F – Number of workers in temporary layoffs per type of situation (2008-2013)



Source: *Segurança Social*, 2014.

Workers have the right to receive monthly retributive compensation, paid for by the employer (30%) and the Social Security System (70%), equal to two thirds of their gross regular salary, besides other benefits. They also have the right to take another job.

In 2012, other changes were also introduced to temporary layoffs. The normal working hours or suspension of employment contracts was reduced from 10 to 5 days from the date of written notice or immediately in situations where agreement has been reached with employees or employee representatives⁴². In addition, the temporary layoff process no longer considers the worker representative position with the employer having only to inform them⁴³. During this temporary layoff, as well as for 30 or 60 days following the implementation of measures, the employer takes on responsibility for not terminating the employment contracts of workers covered by the measures with few exceptions⁴⁴.

⁴⁰ Article 209.

⁴¹ Article 298 from Law no. 23/2012, dated 25 June 2012.

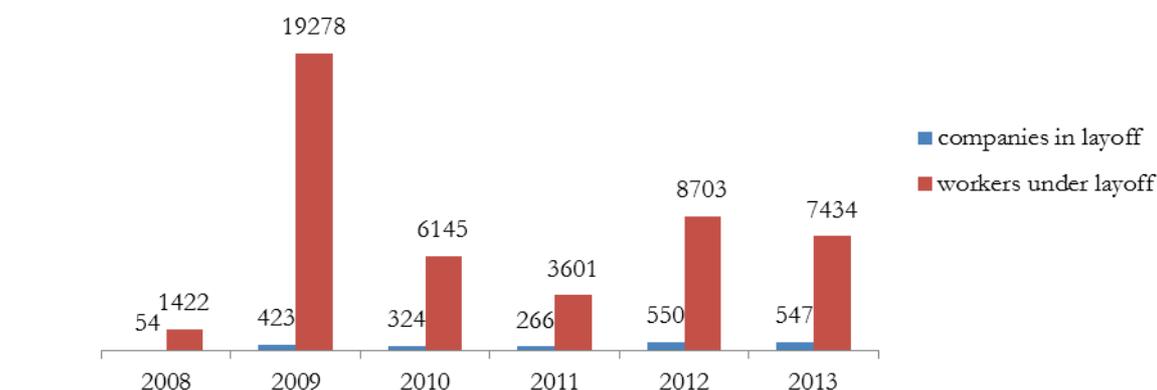
⁴² Article 301.

⁴³ Article 301.

⁴⁴ Article 303.

The available data on workers and companies experiencing temporary layoffs features in the next figure.

Figure G – Number of workers and companies in temporary layoffs (2008-2013)



Source: *Segurança Social*, 2014.

The available data seems to show that temporary layoffs increased in 2009 and then decreased until 2011 and have since risen and stabilised at higher levels. The legal changes, enabling more companies to apply this mechanism, therefore held a medium term impact.

2.1.2. Measures addressed to workers

This last part of the section focuses on measures involving workers, both active and passive. These measures are generic meaning there are no specific measures for workers under restructuring in Portugal except under applications to the European Globalization Adjustment Fund. Moreover, there are also measures penalizing workers worth noting.

Active measures

The EGF

The European Globalisation Adjustment Fund (EGF) was set up in 2006 to show solidarity with and provide support to workers being made redundant as a consequence of major structural changes in world trade patterns. The EGF underwent amendment in 2009, specifically the application threshold in terms of number of workers and increasing the co-financing rate. The EGF co-finances only active labour market measures aiming to help redundant workers back into employment.

In Portugal, there were 5 applications and 4,367 workers were targeted by these measures from 2007 up to 2014 in the following sectors: automotive (in 2007 and 2011), textiles (in 2009), electronic equipment (in 2009) and shoe manufacture (in 2010), both because of trade and the recession (EC, 2012; EC, 2014). Although there is a lack of data on their impact, considering the analysis of 2009 in particular, the results show that 19.5% of workers had again returned to work by the end of the implementation period, deemed a 'fairly low percentage' and explained by structural reasons (CE, 2010: 13).

Employability measures

Several public policies address workers with the aim of enabling their employability and correspondingly diminishing difficulties in integrating into the labour market or in transitioning to a new job. However, none of these policies are directly related to restructuring or collective redundancies. Moreover, these policies, known as active employment policies, existed long before the crisis and recession and date back at least to the first National Action Plan for Employment back in 1999.

During recent years and according to the MoU, the education and training field underwent significant change following the review of the strategy resulting in the construction of new plans and evaluations and in the search for new sources of funding (MoU, 2014). However, no structural changes were made in this period by the public employment service, the IEFP (Vocational Training and Employment Institute). Furthermore, possibly the most innovative service development was the online registration in December 2012 for unemployed persons without benefits.

The IEFP, operational since 1979, is the national agency responsible for structuring and evaluating programs as well as coordinating local employment agencies. Therefore, the IEFP implements measures related with:

- vocational orientation
- contracting support
- employment placement
- entrepreneurship and self-employment opportunities
- vocational training
- etcetera

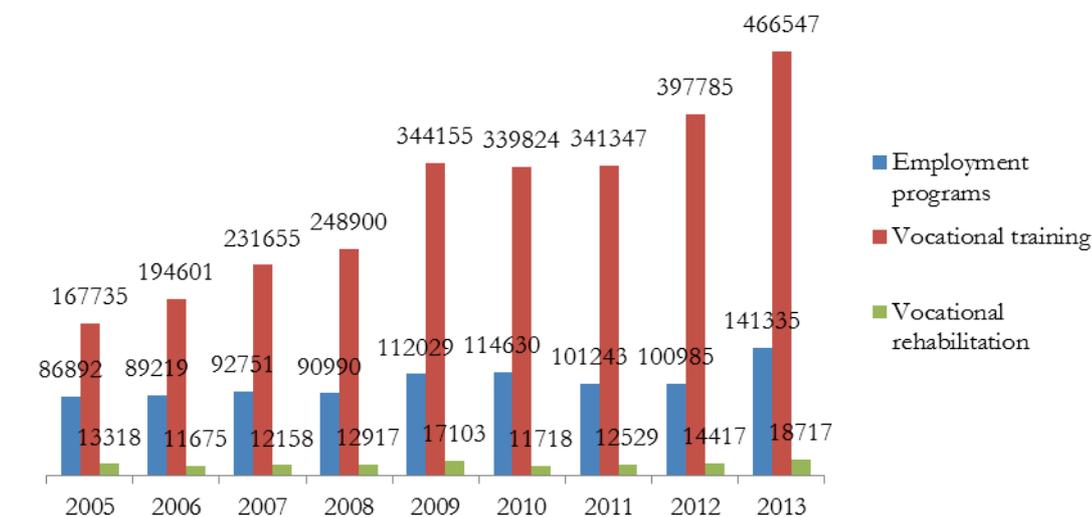
Some of the current measures are:

- a) employment-integration contracts (contratos emprego-inserção) – prioritising the long term unemployed but addressing all unemployed persons and seeking opportunities to get back into the labour market by spending one year working for NGOs or local government entities;
- b) support for the acceptance of job offers (incentivo à aceitação de ofertas) – addressed to persons unemployed for at least six months, this measure allows unemployed workers to take jobs where he/she will earn less than the unemployment benefit payment and correspondingly providing a complement;
- c) support for setting up companies (apoio à criação do próprio emprego) – providing the total amount of unemployment benefit in addition to also providing credit and also taking in unemployed persons not in receipt of unemployment benefit; we would note that in this latter case, there is a particular programme for young persons, the Investe Jovem, with special loan conditions;
- d) vocational rehabilitation (reabilitação profissional) - which includes several initiatives addressing the integration of handicapped people in particular;
- e) vocational training (formação profissional) for those less than 25 years old and aged over 18 – several initiatives in accordance with different qualifications; please note that some programs are tailored to meet the specific needs of individual companies since there is close interaction at the local level between employment agencies and the economic actors.

The next Figure depicts the evolution of these measures aggregated into three groups for the period just before the recession and then during the recession. The trend is clearly for an increase in vocation-

al training participation and a not so important change in the number of employment program participants.

Figure H: Participants in employability programs (2005-2013)



Source: IEFPe, 2014 and IEFPa, 2014 for 2013.

We would also note that the local employment agencies play a vocational counselling role and are responsible for drafting, in conjunction with the unemployed, Personal Employment Plans (Plano Pessoal de Emprego) for each registered person. This plan is designed to provide the most appropriate actions according to the 'physical abilities, qualifications, vocational training, skills and professional experiences'⁴⁵ of the individual. An internal classification of those unemployed at risk of becoming long term unemployed serves to orient local employment agencies in defining this plan.

The multitude of measures and programs, as well as their time lag, different names and specificities, provide a complex picture that makes any assessment of these active employment policies, the performance of services, etcetera, always difficult. The review of their organization is an already announced long term priority.

Passive measures

Unemployment benefits to managers and the decrease in general coverage

Individuals are eligible to receive unemployment benefits in case of involuntary unemployment. Being laid off or becoming unemployed by mutual consent when the firm is undergoing a restructuring process is considered involuntary unemployment. Changes were made to the unemployment benefits system in 2009 but the most important changes took place in 2012.

In March 2009, the government extended the duration of unemployment assistance.⁴⁶ Six additional months of unemployment assistance benefits were paid to those in receipt of unemployment assistance through to the end of 2010 (Simões and Naumann, 2010).

However, under the MoU directives, several measures have reduced public unemployment benefit expenditure even while there have been growing numbers of unemployed persons.

⁴⁵ In Declaração de Rectificação no. 23/2012, dated 11 May 2012, which updates the legislation on active job searching.

⁴⁶ Decree Law no. 68/2009, dated 20 March 2009

In fact, cutting the maximum duration of unemployment benefits to no more than 18 months was stipulated by the MoU⁴⁷ with only certain exceptions, such as the unemployed aged over 50 may receive 26 months. Furthermore, the cap on unemployment benefits to 2.5 times the social support index and the introduction of a declining profile of benefits for those unemployed longer than 6 months were also both established in 2012.⁴⁸

Possibly the most innovative and most favourable measure for workers was extending unemployment benefit for the first time to clearly-defined categories of self-employed workers providing their services to a single firm on a regular basis.⁴⁹ This measure intended to fight ‘fake green receipts’, people declared as independent workers when in practice working for one employer on a regular base.

Moreover, first launched in 1999 with later changes⁵⁰, there are today several types of partial unemployment benefits that may help workers to maintain their labour market presence and companies to reduce their labour costs:

- the partial unemployment subsidy (subsídio de desemprego parcial),
- the partial subsidy for activity ending (subsídio parcial por cessação de actividade),
- the partial subsidy for professional activity ending (subsídio parcial por cessação de actividade profissional).

The partial subsidies allow workers to keep working within certain limitations. These benefits are available to persons who have applied for or are beneficiaries of unemployment benefits and commence with part-time working contracts or self-employed workers once the wage or the income generated is lower than unemployment benefit. However, there is no available data on their coverage or take-up.

2.2 Regulation through collective agreements

Portugal is characterized by a pluralism of interest organizations and both in employer and employee representative associations. For example, there are 2 national trade union confederations and 5 national employer confederations⁵¹ alongside hundreds of trade unions and employer associations registered with the Ministry of Labour. Therefore, there are parallel collective bargaining agreements that creates difficulties for implementation; alongside national agreements of only limited efficiency since the most important trade union confederation, CGTP-IN, does not often sign them.

Indeed, labour regulation through social dialogue takes place across two main levels:

- a) collective bargaining, thus collective agreements at a branch or company level, celebrated bilaterally between employers and worker representatives (trade unions since works councils are rare and have limited powers), that set the rules for a sector or company; and
- b) social concertation through which social partners, representing both employers and workers, together with the government agree on national policies, with the latter being the main driving actor as this therefore fosters conditions for better implementation of the law.

Collective bargaining in Portugal is traditionally centralized and predominantly at the branch level, mostly based on updating wages and with a high level of collective bargaining coverage, largely through

⁴⁷ Decree Law no. 64/2012, Article 37.

⁴⁸ Article 29 and Article 28 of Decree Law no. 64/2012, dated 15 March 2012.

⁴⁹ Decree Law no. 65/2012, dated 15 March 2012.

⁵⁰ Created by Decree Law no. 119/99, dated 14 April 1999, the partial unemployment subsidy framework changed in 1999, 2000, 2003, and 2006.

⁵¹ On the trade union side: CGTP-IN and UGT; and on the employer side: CIP, CCP, CAP and CTP.

the extension of collective agreements requiring government intervention. However, one of the main features of the Portuguese industrial system status is the collective bargaining deadlock; thus the existence of old, original agreements and the impossibility of reviewing certain contents. This deadlock has been recognized over several years by both sides of the negotiating table and the government. This inclusively originated a national agreement, in 2005, to express the willingness to revitalize collective bargaining, signed by all social partners apart from the government in an unprecedented show of social concertation⁵².

In this sense, some important changes have been made to force the end of many collective agreements and to allow more flexible labour market regulation. The first initiative came with the 2003 Labour Code⁵³ but since then there have been several changes, especially in implementation of the MoU directives (Lima, 2013). The main later changes to the Portuguese industrial relations system were the following:

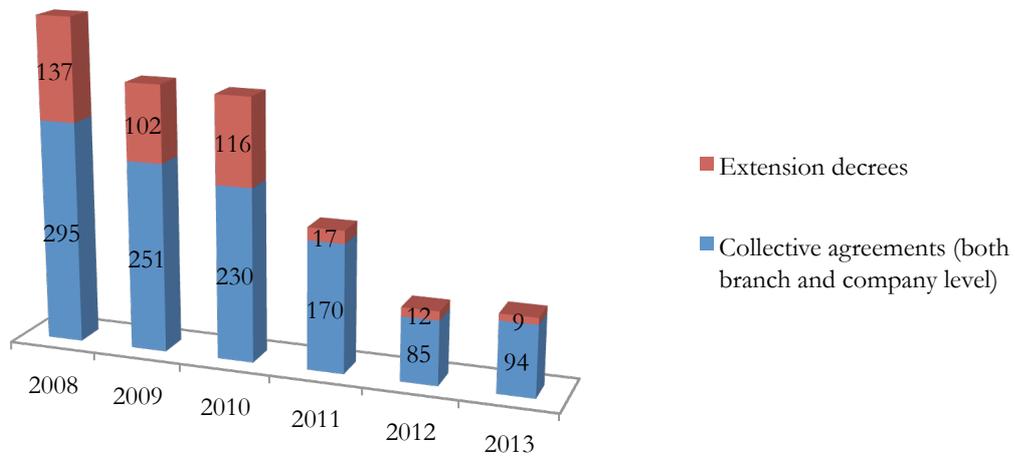
- the expiry procedure of collective agreements, created with the Labour Code in 2003, was enlarged with successive revisions, in particular in 2009, with the latest dating to 2014, when the expiry period was reduced from 5 to 3 years;
- in 2012, administrative extension decrees for collective agreements were limited to cases where the signing employer organisation represents at least 50% of the sector workforce; and, alternatively, since 2014, to cases where the signing employer organisation represents at least 30% of SMEs (although proof is not required);
- also in 2014, it became possible to temporarily suspend collective agreements in case of business crisis, market structural or technological disasters or other occurrences that have seriously affected normal company activities provided there is written agreement between both parties.

The impact of the deepening of the crisis in 2011 and the new regulation of extension decrees brought about the breakdown in collective bargaining. Today, collective labour regulation seems threatened and thus in particular jeopardising the power of trade unions. In fact, not only was the number of collective agreements reduced but also so were their coverage as seen in the next figure.

⁵² Acordo entre as Confederações com Assento na Comissão Permanente de Concertação Social Visando a Dinamização da Contratação Colectiva, Internet at: <http://www.ces.pt/download/200/DinamContratColec2005.pdf> (accessed on 22 October 2014).

⁵³ Law no. 99/2003, dated 27 August 2003.

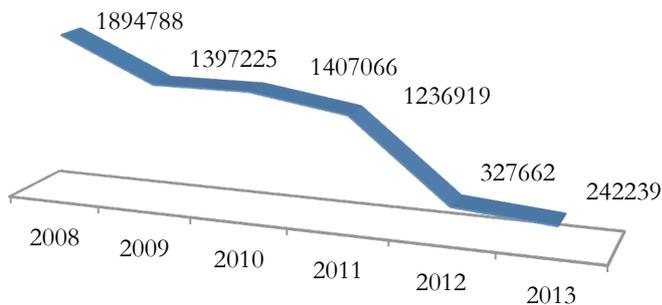
Figure I: Collective agreements and extension decrees (2008-2013)



Source: DGERT-MSESS

The decrease in the number of collective agreements and extension decrees led to an even more important decrease in the coverage of workers. Since wages were mostly regulated by collective agreements, this declining trend in collective agreements cannot be dissociated from decreasing wages.

Figure J: Workers with collective bargaining coverage (2008-2013)



Source: DGERT-MSESS

Since there is no systematic information available on the content of collective agreements, it is difficult to provide an accurate overview of the contents of collective agreements related to restructuring. However, collective agreements usually transpose some of the legal innovations dealing with restructuring, such as the time accounts or the cuts to overtime pay.

Section 3. Actors involved in restructuring

This section aims to provide an overview of the role of the different social actors involved in restructuring in Portugal. In this sense, we have divided this section into three parts: first, the public authorities, which include the different organizations at the level of the state and the local authorities; second,

the worker and employer representatives; third, the European and other actors, where we respectively include the troika and private sector companies.

The public authorities

The government

Under the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) directives, the Portuguese government has driven several changes in the legal framework impacting on the way companies deal with restructuring. With the establishing and the revisions of the Labour Code, the Portuguese government endowed companies with greater flexibility in managing their human resources, besides labour costs reduction. Simultaneously, the government has launched vocational training programs and suspended for more than one year a program aimed at certifying skills based on experience, the New Opportunities. The role of the state therefore remains central.

SIREVE

As mentioned in section 2, the Corporate Recovery System by Via Extrajudicial (SIREVE) is a service answering to the Economy Ministry and currently integrated into the Institute for SME Support and Innovation (IAPMEI) facilities. We would emphasise that the SIREVE mission does not only address SMEs but all companies needing help. The main aim of this system is recovering companies or at least providing a better way for dealing with creditors.

ACT and the labour inspectorate

The working conditions agency (*Autoridade para as Condições de Trabalho* - ACT), integrating the general labour inspectorate, also runs local service delegations. Its mission is to inform and enforce the Labour Code, besides controlling some exceptional situations, such as collective redundancies.

IEFP and the local employment agencies

The Vocational Training and Employment Institute (*Instituto do Emprego e Formação Profissional* - IEFP) is the public service endowed with responsibilities for designing, implementing and assessing active labour market policies. No discrimination of restructuring situations is made by these services. The IEFP, which also has local service delegations, *centros de emprego*, promotes training for young, the unemployed, as well as provides help in cases of self-employment, among other activities.

Worker and employer representatives

Worker representatives, first working councils and second trade unions, participate in the collective redundancy process. According to the Labour Code⁵⁴, the workers' committee or the coordinating committee has the right to participate in the company restructuring process and therefore is entitled to: information and consultation prior to the formulations of restructuring plans or projects; information on the final formulation of the restructuring instruments and the opportunity to comment before their approval; meetings with the bodies responsible for the restructuring preparatory work. However, no other concrete procedures are explicitly stipulated.

Temporary layoffs or collective redundancies are sometimes associated to a social plan (*Plano Social*), this is an agreement between both parties. However, despite the social plan concept still being reproduced through the Portuguese mass media, it holds no legal existence.

⁵⁴ Article 429.

Both worker and employer representatives are involved in social concertation and therefore engaged in policies impacting on the way we deal with restructuring. In this sense, in March 2011, a couple of months before signing the MoU, a tripartite agreement, the *Acordo Tripartido para a Competitividade e Emprego*, was signed by all social partners except the main workers confederation, the CGTP-IN. Among the measures established in this national agreement, we may stress some that became effective in the MoU period: the need for a fund to support companies, state reform, the reduction in redundancy compensation and the suspension of contracts during company crises.

A tripartite agreement was signed almost one year later, the *Compromisso para o Crescimento, Competitividade e Emprego*, again by all social partners but without the main worker confederation, the CGTP-IN. In this agreement, as from January 2012, with its contents closely following the MoU, the social partners held no effective influence since the MoU prevailed. The signing by social partners was intended to above all convey a sign of cooperation and the value placed on ‘social peace’.

European actors

The troika is composed of two European institutions (the European Commission and the European Central Bank) and an international one (the International Monetary Fund) and has settled an agreement with the Portuguese government in exchange for financial aid, the MoU. The troika was therefore the main actor in recent years, although through the government, affecting the way Portuguese companies and workers deal with restructuring.

Concerning restructuring, the MoU stipulated some initiatives in order to provide for an early intervention, a close follow up of the situation, as well as rescuing viable companies from the bank sector in particular. Since the crisis started with financial and bank problems, the MoU addressed special attention to this activity. In this sense, banks are obliged to provide early reporting and credit institutions with systemic risks have to prepare contingency plans. Moreover, the Portuguese central bank now holds the right to implement corrective measures. Quoting the MoU:

«The authorities will amend legislation concerning credit institutions (...) to, inter alia, impose early reporting obligations based on clear triggers and penalties. [The Portuguese central bank] will be authorised to take remedial measures to promote implementation of a recovery plan. Credit institutions with systemic risks will be required to prepare contingency resolution plans subject to regular review.» (MoU, 2011: 39)

Nevertheless, the implementation of these measures still remains ongoing, according to the last update of the MoU, which took place on 7 February 2014. Its ninth MoU update, for instance, stated that the follow-up of indebtedness requires undertaking:

«Continue to monitoring of the high indebtedness of corporate and household sectors through quarterly reports [ongoing]. Given the scale of the debt overhang, particularly in the corporate sector, monitor the implementation of the new framework to ensure that it is working as effectively as possible [ongoing].» (MoU, 2014: 7-8)

Moreover, the MoU launched the public sector restructuring/reform:

«Improve the efficiency of the public administration by eliminating redundancies, simplifying procedures and reorganising services; regulate the creation and functioning of all public entities including SOEs, PPPs, foundations, associations; re-focus their activities to core public policy objectives and enhance their cost efficiency and fiscal sustainability; streamline the budgetary process, including by adopting new financing laws at regional and local level; strengthen risk management, accountability, reporting and monitoring of all parts of the general government.» (MoU, 2014: 41)

Other actors

Private employment agencies

Playing a public role and providing a free service to workers, private employment agencies were legislated on in 2009 and recently regulated.⁵⁵ According to the national registration, there were only 6 agencies registered at the end of October 2014.⁵⁶ The new framework results from the ratification by the Portuguese Government of the ILO Convention no. 181 on private employment agencies. This is therefore an emerging industry that the government intends to regulate considering the vulnerable situation of unemployed persons, especially when the unemployment rate is high.

Temporary work agencies

Temporary work agencies have been organized into an association since 1989 but with a new approach since 2005 when renamed as the Portuguese association of private employment sector companies (Associação Portuguesa das Empresas do Sector Privado de Emprego –APESPE). The current 202 companies under a regular status registered with the Vocational Training and Employment Agency (IEFP) are regulated by legislation from 2009 and changed in 2014⁵⁷ to provide easier access to the activity. There is an important lack of data on the effective role of these companies although they are not new.

Law offices

Although no systematic data is available, there seems to be an increasing trend toward the specialization of law firms, which, together with accountants, provide important services to companies and acquire a central role in companies undergoing difficulties, in particular SMEs. These actors seem to assume a more important role as public services do not provide technical help nor even do they have early warning indicators which would allow for a proper intervention. We would note however that lawyers are not necessarily related only to financial reconstruction whenever a company enters bankruptcy but play a role in the everyday life of companies.

Section 4. Measures for anticipating change

In this section, the existing policies and measures running up to restructuring are described. These instruments include a set of measures to foster lifelong learning and to minimize the gap between demanded and offered skills. Recently, several of these measures were suspended or changed due to the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) directives, but no structural changes have been observed.

Fighting low qualifications

In the last decade, the Portuguese government launched an integrated set of reforms to increase the qualification level of the Portuguese population. A reform of secondary education was part of the new framework associated with the National Qualifications Framework from 2007. The measures introduced were: diversification in the supply of training; a program for the requalification of secondary

⁵⁵ Decree Law no. 260/2009, dated 25 September 2009, and Law no. 5/2014, dated 12 February 2014.

⁵⁶ On the Internet: <https://www.iefp.pt/agencias-privadas-colocacao> (accessed on 30 October 2014).

⁵⁷ Law no. 5/2014, dated 12 February 2014. Public database available on the Internet: <https://www.iefp.pt/empresas-trabalho-temporario> (accessed on 31 October 2014)

schools; a set of other measures ensuring the sustainability of the education and training system, such as the evaluation and autonomy of schools (Simões and Naumann, 2010).

Moreover, in 2005, the government decided to develop the New Opportunities Initiative (Iniciativa Novas Oportunidades). The main aim was to target non-formal and informal learning; thereby raising the employability levels in all stages of people's working lives. The focus is on combating non-achievement at school, dropping out of the school system and (re)qualifying the active adult population (Simões and Naumann, 2010).

The New Opportunities system, innovative when compared with the pedagogical models associated with formal education and training, was not always well understood and implemented. Some critics have questioned the value and the quality of learning consolidated in this way. A study published in 2012 (Lima, 2012), in particular, raised some debate nationally and has contributed to rethinking the initiative. The external evaluation commissioned by the National Agency for Qualification and Vocational Education⁵⁸ stressed a positive impact on professional certification, which is greater than the impact on education certification, however, wages have not improved for certified workers.

Whether due to the evaluation's findings or to the general orientation of expenditure cuts, in either case, from mid 2013 until mid 2014, the New Opportunities centres have been closed all over the country and in 2013 a new legal structure was created to replace that formerly in effect. The government established centers for training and qualification (Centros para a Qualificação e o Ensino Profissional - CQEP).⁵⁹ One year later, this initiative re-started but only partially and with contracts of 20h. Changes include transferring management to the local authorities/schools, the recruitment of psychologists as professionals (exclusion of experienced professionals), etcetera.

The interaction between demand and supply

In 2012, some institutional changes took place to enhance the efficiency of the interaction between the demand and supply of skills, generating some instability in services, as assumed by the annual ANQEP (National Agency for Qualification and Vocational Education) report. ANQEP was set up in 2012 but is in practice replacing the ANQ (National Agency for Qualifications). In fact, the ANQEP mission is:

«...to coordinate the implementation of policies on education and training for youth and adults and to ensure the development and management of the recognition, validation and certification of skills system, aiming thereby improving the quality and relevance of education and training and contribute to national competitiveness and increased employability» (ANQEP, 2013).

Some of the main departments of ANQEP are:

- the Qualification Systems Department of Integrated Management (Departamento de Gestão Integrada de Sistemas de Qualificação (DGISQ), responsible for promoting and regulating a diverse range of vocational education and dual certification training for youths and adults with the exception of artistic education;
- the Department of Qualification Standards (Departamento de Referências de Qualificação - DRQ), responsible for ensuring, in a logic of promoting and enhancing skills, ongoing and continuously updating the national catalogue of qualifications guiding the formation and recognition of the knowledge and skills acquired for the purpose of certification;

⁵⁸ Agência Nacional para a Qualificação e Educação Profissional - ANQEP

⁵⁹ [Portaria no. 135-A/2013, dated 28 March 2013.](#)

- the Network for New Opportunities Centres Coordination and Management Department (Departamento de Coordenação e Gestão da Rede de Centros Novas Oportunidades DCNO), responsible for promoting the development of the capacity and quality of responses of the national network of New Opportunities Centres.

The ANQEP is therefore the institution currently coordinating the Local Advisory Councils for Qualification, with the mission of permanently identifying the National Qualifications Catalogue, updating needs; and running the Information and Management System of Education and Training Provision, which is an instrument for managing and monitoring demand for skills, processes and results, fundamental for directing and guiding young people and adults to training provision that enables them to develop their certified skills, thus allowing for the decentralised management of the training provided; etcetera.

Another institution that allows for anticipating change has also changed recently. The Employment and Vocational Training Observatory (Observatório de Emprego e Formação Profissional - OEFP), created in 1993 and since integrated into the Labour Ministry, was abolished in 2012 and replaced by the Labour Relations Centres (Centros de Relações Laborais - CRL)⁶⁰, now integrated into the Economy Ministry.

While the OEFP constituted a space for joint analysis and proposing solutions for employment and vocational training related problems, the CRL mission is not only to monitor the evolution of employment and vocational training but also to support collective bargaining. Note that this structure was foreseen more than ten years ago in national agreements between the government and the social partners. As with the OEFP, the CRL displays a tripartite composition.

In Portugal, there were mainly design changes more than performative changes in the anticipative restructuring mechanisms.

Section 5. Measures for managing change

Measure	Comments
Wage and labour cost reduction	During the MoU directives, several measures were taken to reduce labour costs, namely wages and recruitment were frozen in the public sector, payment for supplementary work was reduced and individual dismissal procedures were facilitated.
Short time work	In 2009, four measures were introduced into the Labour Code to ensure more flexible management of working time: intermittent working contracts; the adaptability regime; time accounts; and time concentration.
Partial unemployment	Partial unemployment was set up a long time before the crisis. Companies may have workers partially receiving unemployment benefit allowing companies to reduce costs and avoid dismissals. In recent years, unemployment bene-

⁶⁰ Decree Law no. 189/2012, dated 22 August 2012.

	fit was extended to independent workers and managers and as also happened with partial unemployment benefit.
Temporary lay offs	Some changes were made during the MoU directives on temporary layoffs, such as the possibility of companies in default to apply and shortening the procedure.
Early retirement	During the MoU directives, the Portuguese government has suspended the right to early retirement in the private sector until 2015 and increased the legal retirement age up to 66 years in both the private and the public sectors.
Dismissal and severance pay	Severance payments were reduced in 2011. A compulsory Compensation Fund for Labour, supported by employers, came into force in 2013. In the public sector, several programs have promoted the voluntary termination of job contracts since 2013.
Dismissal and transition to new job	There are no known measures on dismissal and transition to new job addressing workers under restructuring. Some private employment agencies offer outplacement services, but they have just recently been regulated so there is a lack of data on their activities.
Training for transition and re-integration	The EGF seems to be the only specific measure on training for transition and re-integration. However, there are several measures related with vocational training addressing the unemployed and also a skills recognition programme addressing early school leavers and the recently refreshed New Opportunities.

Source: (several)

Wage and labour cost reductions

Although there are other measures, such as the abolition of four national holidays and the freeze on public sector wages, we highlight three measures interrelated with the wage and labour cost reduction: first, the statutory minimum wage freeze during the last 8 years (Lima and Naumann, 2014), second, the reduction of overtime work payments by about half in 2012 and third, the 2012 facilitation of individual dismissals on the grounds of both inadaptability to the function and the termination of the position without any obligation to find an alternative.

Short time work

According to the MoU, the Portuguese government had to present draft legislation on the : *«implementation of the commitments agreed in the March Tripartite Agreement regarding working time arrangements and short-time working schemes in cases of industrial crisis, by easing the requirements employers have to fulfill to introduce and renew these measures»* (MoU, 2011: 54). Nevertheless, most measures had already been introduced with the 2009 revision of the Labour Code.

In that year, four main measures were introduced to allow for the more flexible management of working time according to the company's own needs. These measures are: intermittent work contracts; adaptability regime – collective or individual; time accounts – collective or individual; time concentration.

The recentness of these measures together with the lack of data on the content of collective agreements prevention us from providing information on their impact.

Partial unemployment

Partial unemployment benefit (which has three types: partial unemployment subsidy, partial subsidy for the ending of activity, partial subsidy for the ending of professional activity), launched in 2006, allow workers to keep on working for a short time, and in certain cases allow independent workers and managers also to receive unemployment benefit. Therefore, this mechanism simultaneously allows workers to maintain their connection with the labour market and the companies to reduce their labour costs.

We would note that non permanent contracts are the most important motivation for unemployment (about 40%) and that dismissals are the second most important reason for unemployment (about 10-15%). The exception in recent years seems to be in 2011 when dismissals represented 25% of unemployed cases and non permanent contracts about 35% (IEFP, 2014).

Temporary lay offs

The temporary reduction in normal working hours and the suspension of employment contracts on the initiative of companies usually concerns companies positioned for recovery even while, since 2012, also eligible for companies in difficult situations, this meaning companies falling into arrears with their social security system and taxation payments. Moreover, since 2012, the period of written notice to workers was reduced from 10 to 5 days with temporary layoffs no longer considering the position of the workers' representatives (the employer only has to inform them), and the employer is prevented from terminating any work contractas.

Early retirement

During the MoU directives, the government has frozen early retirements in the private sector until the end of 2015 with only a few exceptions. The legal age for retirement has also changed in Portugal in this period. In 2014 and 2015, the legal age rises to 66 years of age for both the public and the private sectors and for at least 40 years of work/contributions. People may retire at the age of 65 but are subject to penalties.

Dismissal and severance pay

In recent years, severance payments were reduced and the regulation of severance payments for open-ended contracts approximated those of fixed-term contracts. The first reform of severance payment provisions took place in 2011 and limited to new hires only. In 2013, a second reform changed the calculation for the severance payments for all new open-ended employment contracts as well as reducing the severance payments for already existing permanent contracts and established fixed-term contract severance payments in accordance with the duration of the contract resulting in general cost reductions.

A second measure worthy of mention comes with the Labour Compensation Fund (FCT) that came into effect in 2013. The FCT is compulsory, financed by employers and applied to contracts beginning after October 2013. The FCT guarantees the payment of up to half the value of compensation payable on the termination of employment.

Finally, in the public sector, several programs⁶¹ have promoted the voluntary termination of job contracts and the respective severance payments since 2013. The program impacts seem low but there is not yet any assessment of their implementation.

Dismissal and transition to a new job

There are no measures providing support for the job transition of workers under restructuring in Portugal. Portuguese public employment services provide job counselling and other services but for the unemployed and not for workers threatened with unemployment. There is also an emerging outplacement service industry that provides such services but there is no available data on their activities.

Training for transition and re-integration

The European Globalisation Adjustment Fund (EGF), which co-finances active labour market measures, including vocational training aiming at helping redundant workers back into employment, seems the only measure focused on job transitions. More than 4,000 Portuguese workers were covered by five applications from 2007 to 2011 (with no applications from 2012 to 2014) with the assessment available showing only a low impact of the EGF measures.

In any case, there are several programs related with vocational training provided by the public employment service and addressing the unemployed and also an adult skills recognition program for people, whether employed or unemployed, wishing to have their experiences in educational or professional levels certified, the New Opportunities program. This programme was suspended for more than one year but returned to activity in mid-2014.

Section 6: Concluding remarks

In Portugal, the current legal restructuring framework is based on the Labour Code, launched by a right-wing government in 2003. The Labour Code has changed several times since its first version.⁶² The main legal changes related with restructuring were produced by the 2009 and especially 2012 revision. In fact, the main changes occurred during the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) implementation period following its signature by the troika and the government in 2011. Therefore, we may say that, in recent years, in Portugal, the main social actors involved in restructuring are the troika and the government.

From the employer perspective, evidence suggests that, besides the creation of two labour compensation funds, measures mainly address, on the one hand, introducing working time flexibility (enlarging temporary layoffs, creating time accounts, etcetera), and, on the other hand, reducing labour costs (freezing wages and early retirements, enlarging the scope for individual dismissal, reducing severance pay and overtime pay, etcetera). In this sense, in recent years, we have observed an increase in temporary layoffs, collective redundancies and workers being made redundant.

From the worker perspective, we would stress the enlargement of unemployment benefit to independent workers and managers as the most important measure in recent years and, while others exist, they are related neither with restructuring in particular nor with the period of the crisis. In fact, the public employment agency, for instance, provides an important offer of services to the unemployed and keeps on launching programs but the main change stems from form. In fact, vocational training proves the

⁶¹ *Programa de Rescisões por Mútuo Acordo.*

⁶² In 2004, 2006, 2009, 2012, 2013 and 2014.

measure bringing together the most participants and this trend has simply deepened in recent years with the recession driven rise in unemployment.

Simultaneously, we would also highlight that Portuguese workers are today less protected when unemployed, with fewer benefits as well as when in employment as collective bargaining coverage is decreasing. We would note that the Labour Code still establishes that worker committees or coordinating committees retain the right to participate in the restructuring process of the company, this role however is merely informative and consultative.

In Portugal, the dominant mechanism for dealing with restructuring is clearly the managing of change. Some economic sectors were targeted in particular, including the public sector, where wages and recruitment were frozen and, in the private sector, the bank sector received special financial support and manufacturing has certainly benefitted from the decrease in overtime payments.

Finally, we would like to stress that many of the measures resulting from the MoU indirectly relate to restructuring. Companies have been under increased institutional pressure such as that resulting in reduction of corporate tax deductions or the modification in property taxation. Nevertheless, companies have simultaneously been helped to overcome difficulties through: improvements to the functioning of the judicial system; the payment of state debts to companies; and freezing the statutory minimum wage.

Therefore, considering the Bernard Gazier (2008) proposal on restructuring and workforce adjustment regimes in which a two dimensional space combines 'the role of labour market policies' (limited or strong role of the state) and 'the main adjustment channels' (wage and labour costs, work and workers volume, or work and workers quality, thus, the skills levels) and, despite the author's own criticism of the proposal, we may see this model shows how the Portuguese situation has clearly changed over recent years. In fact, when aware of the role played by the social partners, in particular taking into account the regulatory role of collective wage bargaining, we realize that the Portuguese case has switched from a 'strong role' of labour market policies to an even stronger public control and hence to a more centralized regulation driven by the state. The state, or the government to be more precise, implemented several measures in accordance with the MoU directives in recent years, with some limiting the power and the influence of social partners.

On the other hand, analyzing the main adjustment channel, we would state that there is not only a 'work and workers volume' change, since the number of working hours per week has increased, time accounts created and other time flexible management schemes introduced, but there is still an important focus on 'wage and labour cost' interventions. In fact there is a wage freeze and reductions whether of severance payments, overtime pay or that in unemployment benefits. Therefore, in the axis of the adjustment channels, Portugal remains on the borderline between 'wage and labour costs' and 'work and workers volume'. Furthermore, and in any case, Portugal stays far from the 'work and workers quality' adjustment serving as the main channel and meaning that vocational training measures are far from dominant within this cultural context.

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