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**No dynamic collective bargaining without
active involvement of social partners**

**Peer Review 'Towards a more dynamic collective
bargaining'**

Portugal, 23-24 October 2017



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Table of contents

1	Summary	1
2	Background to collective bargaining in Portugal	2
3	Political interventions in collective bargaining, prior to the crisis and under the MoU	6
4	Results	8
5	Difficulties and constraints	10
6	Success factors and transferability	10
7	Conclusions	11
8	List of references	12
	Annex 1 Data tables.....	13

1 Summary

Collective bargaining is the strongest element of the Portuguese system of industrial relations. Within collective bargaining, the branch / sector level is by far the most important one. Tripartite concertation at macro level has played a major role in the industrial relations system as a whole and in relation collective bargaining in particular. The firm level is the weakest element in the industrial relations system.

The coverage of collective bargaining has traditionally been high, but its capacity to redistribute productivity gains is low and the statutory national minimum wage has assumed an increasingly important role in Portugal. Both employers' associations and trade unions see collective bargaining as an important element of regulation; the former in order to restrict unfair competition through social dumping and the latter as the core-business of their organisations.

The most important policy measure in relation to collective bargaining prior to the Memorandum of Understanding (MoU) was the introduction of the legal possibility to withdraw from an existing collective agreement (2003 and 2009). This measure was highly controversial because it resulted in a shift in power relations (in favour of the employers), but due to its redesign in a thoroughly prepared process of negotiated change (tripartite negotiations 2005-2008) the measure resulted in a broad process of renegotiation of most affected agreements.

The policy measures regarding collective bargaining stipulated in the MoU and fully implemented by the Portuguese government (e.g. freezing the minimum wage and restricting the extension of collective agreements) represented a complete reversal of the evolution of collective bargaining during the decades before. The implementation of these measure led to the stagnation of the minimum wage and the aggravation of the crisis in collective bargaining, in particular at the most important level of the system (branch and sector). Moreover, the MoU measures that aimed at the strengthening of the other levels of collective bargaining (e.g. decentralisation and revival of macro level wage agreements) had very little success. Notably, the MoU measures relating to the minimum wage and extension of agreements were revoked immediately after the end of the adjustment programme. An important reason for the failure of the reforms supported through the MoU was that the measures lacked any relation with the existing pattern of industrial relations and were in direct contrast to the strategies of Portuguese social partners.

The most important success factors for measures aiming at a more dynamic collective bargaining during the previous period of negotiated change (2005-2009) were that they met the perceived interest of the main actors (government and social partners) and that they built on existing structures in the industrial relations system.

Three conclusions are drawn from the analysis: firstly, the pre-crisis level of the coverage of collective bargaining must be recovered, and the unconditional extension of agreements is an important tool for this purpose (this assessment is contrary to the interpretation and recommendation formulated by the OECD); secondly, the introduction of opening-clauses (or other mechanisms) that would allow the adaptation of parts of the branch and sector agreements to the conditions at firm level could be a positive factor for a new dynamic in negotiations and thirdly, tripartite negotiations on the possibility of introducing new contents into collective bargaining might be a further way to create a new dynamic into collective bargaining.

2 Background to collective bargaining in Portugal

Collective bargaining is a way of self-regulation designed and implemented by the social partners within the framework of legislation. The central difference between collective bargaining and other forms of regulation of labour relations is that the collective interest organisations of workers and employers are the primary actors, not the government or other public bodies, and that the form of regulation is a contract, not a law or an administrative order. Due to this central characteristic, the success of collective bargaining as a regulator of labour relations depends on the strategies and structures of the social partners and on their specific ways of relating with each other (the pattern of industrial relations). Notwithstanding some progress in EU social dialogue, the predominant level for industrial relations is still the nation state, and the industrial relations pattern in each country determines to a large extent the characteristics of collective bargaining.

In countries with free collective bargaining any political measure aiming at re-regulating collective bargaining must take this primacy of social partners into consideration.

Table 1. Levels of the Portuguese industrial relations system

Labour	Type of relation	Capital
Trade union confederations	Tripartite concertation at macro level Standing Committee for Social Concertation	Employers' confederations
Trade unions and trade union federations	Collective bargaining at branch / sector level	Employers' associations and federations of employers' associations
Trade unions and trade union federations	Collective bargaining at company level	Companies
Trade union delegates and committees	Information and consultation	
Works councils and staff representatives for health and safety	Information and consultation	

Collective bargaining including wage bargaining is limited to the private sector (including state-owned companies falling under the jurisdiction of the legislation for private companies). Collective bargaining in public sector organisation does not include wage bargaining and is therefore not part of the following description and analysis.

Collective bargaining at **branch/ sector level** is the most comprehensive and continuous form of interaction between social partners. It can be considered the backbone of Portuguese industrial relations.

Tripartite negotiations at the **macro level** have, however, gained increasing importance during the six periods of its evolution:

1. Creation of the central body for concertation in 1984 (Standing Committee for Social Concertation / CPCS) and the signing of a series of agreements on wages and incomes during the following years, with the explicit objective of bringing inflation down.
2. A series of broad social pacts covering wages and income and several other areas (1990 and 1996).
3. A strategic shift to parallel negotiations of several thematic pacts in 2001 (vocational education and training (VET), health and safety, pensions).

4. A second round of thematic pacts on pensions (2006), the national minimum wage (2006), VET (2007) and on the revision of the Labour Code (2008).
5. Two "national emergency pacts" (2011 and 2012) with the primary aim to strengthen the national government vis-à-vis international institutions (namely the Troika) and to create a basis for negotiations with the government in an extremely adverse context.
6. A series of three agreements on the increases of the statutory minimum wage in 2014, 2016 and 2017.

The two first periods of social concertation were relevant for collective bargaining because they stipulated reference values for collectively agreed wage increases, with the explicit aim to reduce the extremely high inflation rate. Once this was accomplished, social concertation abandoned this line of action and focussed on other issues. The fourth period of concertation was of major relevance for collective bargaining because it included an agreement on the revision of the Labour Code which included a very important regulation regarding the cancellation of existing collective agreements.

Collective bargaining at the **company level** plays a secondary role in the Portuguese industrial relations system and information and consultation at company level are weak.¹ Trade union delegates (shop stewards) are the most common type of workers' representatives in companies, works councils and health and safety representatives are less frequently found.²

Table 2. Levels of the Portuguese collective bargaining system

Labour	Type of relation	Capital
Trade union confederations	No binding collective agreements between confederations	Employers' confederations
Trade unions and trade union federations	Collective bargaining at sector/ branch level	Employers' associations and federations of employers' associations
Trade unions and trade union federations	Collective bargaining at company level	Companies
Works councils ³	De facto agreements in a few number of cases (emblematic: Volkswagen)	

As noted above, the most important level of the Portuguese system of collective bargaining is the branch / sector level. Until 2010, branch and sector agreements represented approximately 60% of the total number of agreements (since 1999) and more than 90% of the number of workers covered by all types of agreements (since 2005). Even during the recent crisis in collective bargaining, the branch and sector agreements' share in the total coverage of workers never dropped below 80%. The

¹ "The analysis also showed that there were noticeable differences between countries. The Nordic countries (Denmark, Finland and Sweden) showed the highest levels of involvement, while the southern countries (Greece, Italy, Portugal and Spain) and the east-south countries (Bulgaria and Romania) had particularly low levels of involvement." See EUROFOUND's topical update on "Employee involvement and participation at work: Recent research and policy developments revisited" at <https://www.eurofound.europa.eu/observatories/eurwork/articles/working-conditions-industrial-relations/employee-involvement-and-participation-at-work-recent-research-and-policy-developments-revisited>

² The Report of Activities of the trade union confederation CGTP registered for the period 2012-2015 approximately 12,000 elected union delegates and 1,700 health and safety representatives (CGTP 2016: 52-54). The Green Paper on Labour Relations (Dray 2016: 302) registers only 195 works councils with a valid mandate.

³ New legal possibility of union mandate for collective bargaining by works councils (not used).

confederations negotiate and sign political bipartite and tripartite agreements (social pacts) that are not legally binding. Employers' and union confederations do not sign legally binding collective agreements with each other⁴. Company agreements represent only a small share of the total number of workers covered by collective bargaining. Any reform aiming at a more dynamic collective bargaining therefore has to take these structural characteristic into consideration.

From a legal standpoint, double affiliation (union and employers' association) is a condition for the application of collective agreements, but given that employers are interested in a uniform regulation of work relations at their companies there is a common practice of "voluntary internal extension", that is, the companies usually apply the agreement they fall under to all employees, regardless of their union affiliation. Thus, the only relevant criterion for estimating the direct coverage of a collective agreement, before administrative extension, is the affiliation with the signatory employers' association. In 2014, employers' associations organised 19% of all companies. These affiliated companies employed 39% of all workers.⁵ This density of 39% may be seen as the upper limit of the estimated direct coverage of all collective agreements (without administrative extensions) in relation to the total workforce in the private sector.

Until 2010 and after 2014, the Ministry of Labour used to extend any collective agreement by Ordinance (Portaria de Extensão) if the signatories requested it. These administrative extensions resulted / results in an increase of the coverage of agreements far beyond the density of employers' associations (as presented above). Until 2003, the "current coverage" of collective agreements (that is the coverage of all agreements published in one year) was close to 60% and stabilised after a drop in 2004/05 (down to around 50%). This means that during the years 2010 and 2011 the administrative extensions increased the coverage of agreements by approximately 10 percentage points (see Table 3 below). During the crisis (since 2012), the "current coverage" went down to a historic low of 8% (2013) (see Table 3 below).

Table 3. Collective bargaining - direct and total coverage

Year	2010	2011
Current total coverage including administrative extensions (in %)	52%	47%
Upper limit of direct coverage (= Employers' associations density in relation to the workforce) (in %)	40%	38%
Difference in percentage points (represents an estimate of the increase of coverage by administrative extension)	12pp	9pp

Sources: DGERT, *Instrumentos de regulamentação colectiva de trabalho publicados; Dray 2016, table 112*

Explanatory note: The difference between the current total coverage and the upper limit of direct coverage is an approximate value for the increase of the coverage of agreements by means of administrative extensions.

Since 2000, the average yearly increase of collectively agreed wages has, with very few exceptions, been closely aligned with the inflation rate. As such, the results of collective

⁴ There is only one confederation (Confederation of Portuguese Farmers (CAP)) who has signed collective agreements with one union and one union federation. CAP signed in 2007 two branch agreements with the union federation FESAHT/CGTP and with the single union SETAA/UGT. These agreements had a total potential coverage of approximately 32,000 companies and 82,000 workers.

⁵ See Dray 2016: 308

bargaining did not fulfil the trade unions' aim to raise agreed wages to a point that would capture a considerable part of the productivity gains (see Table 7 in the Annex).⁶

The wage setting system in Portugal produces significant inequality (see Farinha Rodrigues 2016) without being effectively rectified by collective bargaining. This in turn fosters in-work poverty. In such a situation, the statutory minimum wage (RMMG⁷) gains major importance. The national minimum wage is a political measure in the hands of the government, namely the Minister of Labour. Based on tripartite agreements, there have been two periods of sustained increases of the RMMG above the general evolution of collectively agreed wages (2007-2010 and since 2014).

Since 2005, the share of workers in the private sector covered by the RMMG has risen constantly from 4.5% (in 2005) to 12.9% in 2012, dropping in 2013 to 12.0% and then rising abruptly to 19.6% in 2014 and 21.1% in 2015. By January 2016 the share of workers covered by the RMMG had increased to 23.3%.

As noted above, the RMMG is a political instrument in the hands of the government, whilst collective bargaining largely depends on the trade unions' capacity to mobilise sufficient power resources in the direct negotiations with the employers to obtain wage increases. The reduced effectiveness of union mobilisation, together with the recent crisis of collective bargaining and the growing importance of the RMMG, indicate that the Portuguese unions' mobilisation capacity vis-à-vis the employers has decreased and that they are increasingly dependent on obtaining political support (from Parliament and/or government) in order to provide for a socially balanced regulation of work relations (see Table 8 in the Annex).

Summing up the description of the industrial relations system and the characteristics of collective bargaining:

- Collective bargaining is strongest element of the Portuguese industrial relations system because it is the most stable and comprehensive form of regulation of work relations (irrespective of its crisis since 2012).
- Within collective bargaining the branch / sector level is by far the most important one.
- Tripartite concertation was created in 1984 with explicit aim of bringing down inflation, an aim that was achieved in the late 1990s. Consequently, the setting of wage references at macro level was abandoned after 1997. In a new phase of social concertation important thematic agreements were signed in 2001 and 2006-2008.
- Company level is the weakest element in the industrial relations system and has limited potential for increase of its role because the structures are weak (low union density, small number of representatives).
- The capacity of collective wage bargaining to redistribute productivity gains is low and the national minimum wage has assumed an increasingly important role (including in terms of combatting in-work poverty).
- Both employers' associations and unions see collective bargaining as an important element of regulation, the former in order to restrict unfair competition by social dumping and the latter as the core-business of their organisations.⁸

⁶ 2009 was the only year with more positive results (from the unions' point of view), but this was caused by the drastic fall of inflation (from 2.6% to -0.8%) and not by an increase in nominal agreed wage increases.

⁷ Retribuição Mínima Mensal Garantida: Guaranteed Monthly Minimum Pay.

⁸ In 2005, all employers' and trade union confederations represented at the central body for tripartite negotiations signed a bipartite agreement for the revitalisation of collective bargaining.

3 Political interventions in collective bargaining, prior to the crisis and under the MoU

The creation of the democratic industrial relations system occurred in a context that was particularly favourable for trade unions and the regulatory framework (labour legislation and jurisdiction, collective agreements) that was shaped in the years of democratic transition (1974 and after) had a strong pro-labour bias. Since the 1980s, in the context of the liberalisation and opening of the national economy to European and global competition, employers exerted growing pressure on unions and governments to make changes in the regulation of work relations. Under the leadership of the manufacturers' confederation (CIP) employers obtained increasingly positive results. The approval of the Labour Code in 2003, promoted by the government under Prime Minister José Manuel Barroso (2002-2004), represented a major breakthrough from an employer's perspective. The Labour Code abolished the principle of "favor laboris"⁹ and the practical interminability of collective agreements (an agreement could not be cancelled without substituting it), both of strategic interest. Nonetheless, due to some loopholes in the legislation trade unions were able to block in most cases the withdrawal of employers from collective agreements.

In a new round of tripartite negotiations started in 2005 several thematic social pacts were signed, one of them on the revision of the Labour Code. The negotiations were based on a Green Paper (2006) and a White Paper (2007), both presented by the Ministry of Labour. In 2008, the social partners (with the exception of the union confederation CGTP) signed an extensive agreement on the reform of labour legislation. In 2009, the new Labour Code was approved by the Parliament. The employers' key demand of removing the obstacles for the cancellation of collective agreements was fulfilled, with the consequence that a set of branch agreements (mostly in manufacturing) which had been denounced by the respective employers' associations shortly after the approval of the original Labour Code in 2003 were effectively cancelled. On the other hand, the revised Code made the introduction of working time accounts depend on the indispensable condition of their regulation by a collective agreement. This was an important incentive for employers to renegotiate cancelled agreements rather than to abolish them completely.¹⁰

The introduction of the legal possibility to withdraw from an existing collective agreement (2003 and 2009) was probably the most important policy measure regarding collective bargaining since democratic transition¹¹. It resulted in a shift in power relations (in favour of the employers) and in a broad process of renegotiation of agreements on the basis of these new power relations.

Irrespective of the opposition of one of the trade union confederations and the shift in power relations, this important reform can be considered as a process of negotiated change that resulted in a comprehensive revision and preservation of the main body of the regulatory framework of collective agreements, carried out in autonomous negotiations between employers and trade unions.

The policy measures during the following years of crisis and adjustment had a completely different logic. The Memorandum of Understanding (MoU 2011) demanded the following changes in the regulation of collective bargaining (see sections 4.7 and 4.8):

⁹ The principle of "favor laboris" means that work contracts are not allowed to undercut legal standards. The abolition of this principle opened the way towards work contracts establishing rules below legal standards.

¹⁰ Regarding this process see ECE 2014 and Dray 2016: 375 et seqq.

¹¹ Democratic transition began with the fall of the dictatorship of the Estado Novo in 1974, followed by the construction of democratic institutions (democratic constitution, parliament and government), including democratic labour legislation, free union and employers' associations and autonomous collective bargaining.

- **Freeze the minimum wage.**¹²
- **Introduce restrictive regulation and handling of the extension** of collective agreements (representativeness of the negotiating organisations).
- **Reinvigorate tripartite concertation on wages.**
- **Shorten the survival** (sobrevigência) of contracts that are expired and not renewed.
- Implement measures concerning the "**organised decentralisation**".

These demands represented a complete reversal of the direction of the evolution of collective bargaining during the decades before: for example, based on a tripartite compromise minimum wage had gained a growing role in wage setting (with increase above the general trend); the unconditional extension had been a central tool to strengthen collective bargaining at branch/sector level; tripartite concertation on wages had been abandoned and social partners had autonomously maintained the branch and sector agreements as the central level of collective bargaining, without any significant attempts from any side to decentralise.

As such, the MoU represented a divergence from the pattern of Portuguese industrial relations and the process of negotiated change that had been the base of an important part of the reforms implemented since the 1990s.

Table 4. Aims and objectives of the MoU and national policies under the MoU

Existing industrial relations pattern before 2011	MoU 2011
Raise minimum wage above average	Freeze minimum wage
Combat against in-work poverty	Wage moderation
Unconditional extension	Restrictive regulation and handling of extension
Remove obstacles to collective bargaining at branch/sector level (social dumping) and guarantee high coverage of Collective bargaining	Limit extensions to sectors with high representativeness of SP
Tripartite concertation on wages had been abandoned	Reinvigorate tripartite concertation on wages Wage moderation
SP maintained branch and sector agreements as the central level of collective bargaining, without decentralisation	Demands measures for "organised decentralisation"

¹² Any increase ... will take place only if justified by economic and labour market developments and agreed in the framework of the programme review) Page 23

4 Results

The result of the changes in legislation on collective bargaining introduced in 2003 and 2009 (possibility to withdraw from existing agreements) was a comprehensive reform of collective bargaining. Fears of employers ending collective bargaining did not materialise and there was only a gradual decrease of collective bargaining coverage.

The existing industrial relations pattern with above-average increases in the minimum wage, unconditional extensions, abstention of tripartite negotiations from influencing collective wage negotiations and general support of a collective bargaining largely based on branch and sector agreements had some positive results, namely the reduction of in-work poverty, a considerable coverage of collective agreements, moderate collectively agreed wage increases (inflation plus small share of productivity gains), and an effective restriction of social dumping by branch agreements.

The result of the national government's attempt to implement the MoU's strategy for collective bargaining, on the other hand, was an increase in in-work poverty and income inequality (freeze of minimum wage) and a deepening of the breakdown of collective bargaining, in particular at branch and sector level (restrictions on extensions). The attempts to reinvigorate macro level tripartite agreements on wages and to decentralise collective bargaining did not succeed at all. Shortly after the official end of the adjustment programme under the MoU (summer 2014) the same national government who had implemented the adjustment programme signed a tripartite agreement on the increase of the minimum wage and withdraw the restrictions on extensions of collective agreements. Social partners did not show any interest in reintroducing wage negotiations at macro level concertation or in decentralising collective bargaining.¹³ The increases of the minimum wage in 2014/15, 2016 and 2017 (all based on tripartite agreements) were important measures against inequality and in-work poverty and the return to unconditional extensions was an important stimulus for the revitalisation of collective bargaining (in particular at branch/sector level).

Table 5. Aims & objectives and results of the MoU and national policies under the MoU

Existing industrial relations pattern before 2011	MoU 2011	National governments' policy under MoU (2011-2014)	Action of national actors after end of MoU (since summer 2014) ¹⁴
Raise minimum wage above average Combat against in-work poverty	Freeze minimum wage Wage moderation	Minimum wage frozen Growth of inequality and in-work poverty	Tripartite agreements on sustained increase of minimum wage in 2014-15, 2016 and 2017 Reduction of inequality and in-work poverty
Raise minimum wage above average Combat against in-work poverty	Freeze minimum wage Wage moderation	Minimum wage frozen Growth of inequality and in-work poverty	Tripartite agreements on sustained increase of minimum wage in 2014-15, 2016 and 2017

¹³ According to the Green Paper (Dray 2016: 380) until now no company agreement signed by a works council with a mandate from a trade union.

¹⁴ It would be important that Portuguese government officials inform the participants of the Peer Review about the issues dealt with in tripartite negotiations at macro level.

			Reduction of inequality and in-work poverty
Unconditional extension Remove obstacles to collective bargaining at branch/sector level (social dumping) and guarantee high coverage of Collective bargaining	Restrictive regulation and handling of extension Limit extensions to sectors with high representativeness of social partners	Restrictive regulation and handling of extension Weakens collective bargaining at sector/branch level	Withdrawal of restrictive regulation and return to unconditional extensions Stimulates collective bargaining at branch/sector level
Employers demand reduction of survival period of cancelled collective agreements	Reduce period of survival of cancelled collective agreements	Period of survival of cancelled collective agreements reduced Without any impact ¹⁵	Not an issue
Tripartite concertation on wages had been abandoned	Reinvigorate tripartite concertation on wages Wage moderation	Tripartite negotiations blocked, no reinvigoration	Tripartite agreements on minimum wage and negotiations on other issues, not on wages
SP maintained branch and sector agreements as the central level of collective bargaining, without decentralisation	Demands measures for "organised decentralisation"	Legislation facilitates decentralisation, without any practical consequences	Not an issue

In fact, immediately after the end of the restrictions on the sovereignty imposed by the MoU, the national actors (government and social partners) hurried to revoke all measures imposed by the MoU and to revitalise the process of negotiated change as it had existed before the crisis. The government is interested in this process because it is interested in creating social support for its policies. Trade unions are interested in recovering at least a small part of the power they lost during the MoU¹⁶ and are therefore strongly committed to tripartite negotiations and to the revitalisation of collective bargaining. The employers gained power during the implementation of the MoU and have an interest in a consolidation of their improved position on the basis of negotiated solutions that promote social peace and economic growth.

¹⁵ See Green Paper (Dray 2016: 372-3)

¹⁶ Under the MoU the Parliament passed legislation in order to make working time more flexible, reduced Employment Protection legislation (EPL) and reduced holidays. These and other measures imposed by the MoU (such as the reduction of unemployment benefits) changed individual and collective power relations in favour of the employers.

5 Difficulties and constraints

The major difficulties and constraints for the implementation of the measures stipulated in the MoU were rooted in their lack of any relation with the existing pattern of Portuguese industrial relations and their contrasting position vis-à-vis the strategies of Portuguese social partners.

Social partners had explicitly agreed on increases in the minimum wage above the general wage increases and were clearly in favour of unrestricted extensions of collective bargaining.

In view of the de facto moderation in collective wage bargaining they had no interest in putting wages on the agenda of tripartite concertation. Such a move would have introduced a possibly disruptive factor in the process of tripartite negotiations as a whole.

They had also no interest in decentralisation because:

- the employers consider the low-level regulation at branch and sector level as sufficient and companies prefer to keep the concession of higher standards (better wages and working conditions) in the domain of their unilateral decision; and
- the unions' priority was to revitalise collective bargaining at sector and branch level, that is at the level with the largest numbers of covered workers.

In this perspective, it was predictable that the MoU measures aiming at strengthening the macro and micro level (tripartite agreements and decentralisation) would fail and that the whole package of measures would confine itself to two effects: i) the freezing of the minimum wage; and 2) the aggravation of the crisis of collective bargaining at sector and branch level.

During the years before the crisis and the MoU, social partners had been actively involved in several periods of negotiated change (2001, 2005-2009), with benefits for all participants. This experience was a powerful factor for their resistance against the imposition of measures that contradicted their strategies and practice and for their commitment for a quick return to their established working methods immediately after the end of the MoU.

6 Success factors and transferability

The most important success factors for measures aiming at a more dynamic collective bargaining are that they:

- meet the perceived interest of the main actors (government and social partners); and
- can build on existing structures in the industrial relations system.

The introduction of the legal possibility to withdraw from collective agreements in 2003/2009 was a disruptive measure because it opened the way to the cancellation of a considerable number of important agreements, but it did not provoke a general crisis in collective bargaining. The final result was the renegotiation of most of the cancelled agreements, because it was in the employers' perceived self-interest to maintain collective agreements as a guarantee of certain minimum standards in work relations (and as a prerequisite for introducing working time accounts) and because the respective structures (namely the partners in the trade union camp) existed and were strongly interested in this renegotiation.

The MoU's aim to reinvigorate tripartite wage negotiations at macro level could count on the existence of an existing body for this purpose (the CPCS), but it was not in the

social partners' interest to respond positively to this proposal. Firstly, because due to government unilateralism tripartite negotiations had entered a deadlock in 2013/14 and social partners had an interest in demonstrating their disagreement with this state of affairs (and no interest in signing any agreement at all). Secondly, because social partners had other strong priorities for tripartite negotiations and were therefore not interested in introducing a possibly disruptive factor in the process.

7 Conclusions

Which are the most urgent challenges in relation to a more dynamic collective bargaining in Portugal?

First of all, the pre-crisis level of the coverage of collective bargaining must be recovered. The most important political measure for achieving this aim is the continuation of the practice of unconditional administrative extensions of collective agreements. This is a major factor in the employers' associations' decision about signing an agreement or not.

In its preliminary assessment of the "Labour Market Reforms in Portugal 2011-15" the OECD (2017) comes to the opposite conclusion, stating that "administrative extension of collective agreements continues to stifle competition - as dominant firms use it to avoid being undercut by new competitors - and is weighing on competitiveness" (OECD, 2017; p. 34) formulating as one out of four "Key OECD Recommendations" to "Further promote firm-level wage bargaining by abolishing administrative extension of collective agreements" (OECD, 2017; p. 38).

The very low wage levels stipulated in branch and sector agreements (far below the wages paid by larger companies) indicate that these agreements serve in fact to avoid unfair competition by social dumping and not to harm smaller competitors. Collectively agreed wage increases that capture only a very small share of productivity gains do not seem to be a heavy weight on competitiveness. The recommendation to "further promote firm-level wage bargaining" fails completely to respond to the realities of Portuguese industrial relations.

Administrative extensions do not stifle competition, they only help to establish minimum standards of decent work. Their abolition or restriction would, on the other hand, stifle the slow and difficult recovery of collective bargaining.

Secondly, the complete failure of decentralisation is not a reason for being pleased. On the contrary, the introduction of opening-clauses (or other mechanisms) that would allow the adaptation of parts of the branch and sector agreements to the conditions at firm level could be a positive factor for a new dynamic in negotiations. The challenge is to design this new mechanism in a way that it is not only a way for opting-out from certain parts of agreements but rather to negotiate certain aspects at firm level. A serious approach for decentralisation aiming at flexicurity (with flexibility and security) must open the way for trade unions to embrace such an endeavour as chance instead of seeing it as a mere threat.

Thirdly, tripartite negotiations on the possibility of extending the possibilities of introducing new contents into collective bargaining or bringing traditional issues that have been regulated by law (leaving less margin for their regulation by collective bargaining) back to the negotiation table might be a further way to create a new dynamic into collective bargaining.

It seems to be fundamental that all measures should be introduced by the proven methods of negotiated change (historical examples in 1999-2001 and 2005-2009) and make use of the comprehensive information and profound analysis of the Green Paper of Labour Relations (Dray 2016).

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Annex 1 Data tables

Table 6. Published collective agreements and extension ordinances, 1999-2016

Published per year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of all published collective agreements	388	371	361	338	342	162	254	245	252	296	252	230	170	85	94	152	138	146
Number of all covered employees ('000)	1,465	1,453	1,396	1,386	1,512	600	1,125	1,419	1,570	1,704	1,303	1,407	1,237	328	241	246	490	749
Current coverage	64%	61%	58%	56%	60%	23%	41%	51%	53%	56%	45%	52%	47%	13%	8%	10%	19%	29%
Number of Extension Ordinances (PEs)	183	144	185	147	152	4	56	137	74	131	101	116	17	12	9	13	36	35
Share of PEs in total number of published agreements	47%	39%	51%	43%	44%	2%	22%	56%	29%	44%	40%	50%	10%	14%	10%	9%	26%	24%

Sources: DGERT, *Variação média ponderada intertabelas (VMPI)* und DGERT, *Instrumentos de regulamentação colectiva de trabalho publicados*; GEE, *Boletim Estatístico*, January 2014 and January 2015

Note: Total number of employees 2001 and 2016 are estimates by the author.

Table 7. Collectively agreed wages compared with inflation and productivity, 2000-2013

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Apparent productivity (growth in %)	5.2	4.5	4.3	3.8	5.0	3.6	4.3	6.1	2.3	2.6	3	-0.1	0.9	4.2
Inflation (%)	2.9	4.4	3.6	3.2	2.4	2.3	3.1	2.5	2.6	0.8	1.4	3.7	2.8	0.3
50% of Productivity growth plus Inflation (%)	5.5	6.7	5.8	5.1	4.9	4.1	5.3	5.6	3.8	0.5	2.9	3.7	3.3	2.4
Nominal collectively agreed wage increases (CAWI)	3.4	4.0	3.8	2.9	2.9	2.7	2.7	2.9	3.1	2.9	2.4	1.5	1.4	1.0
Gap between sum CAWI and "50% of Productivity growth plus inflation"	-2.1	-2.7	-2.0	-2.2	-2.0	-1.4	-2.6	-2.7	-0.7	2.4	-0.5	-2.2	-1.9	-1.4
Gap between CAWI and inflation	0.5	-0.4	0.2	-0.3	0.5	0.4	-0.4	0.4	0.5	3.7	1.0	-2.2	-1.4	0.7

Sources on Productivity and inflation: PORDATA; Sources on CAWI: DGERT VMPI (average annualized nominal collectively agreed wage increase)

Note: Coverage of agreements since 2011 far below the level before. Therefore the comparison of data between the two periods (before and since 2011) must be done with reservations.

Table 8. Increases of minimum wage and collectively agreed wages, 2000-2017

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Minimum wage (€)	318	334	348	357	366	375	386	403	426	450	475	485	485	485	485	505	530	557
Increase of minimum wage (%)	4.1	5.0	4.1	2.5	2.5	2.5	3.0	4.4	5.7	5.6	5.6	2.1	0.0	0.0	0.0	4.1	5.0	5.1
Inflation (%)	2.9	4.4	3.6	3.2	2.4	2.3	3.1	2.5	2.6	-0.8	1.4	3.7	2.8	0.3	-0.3	0.5	0.8	1.4
Minimum wage at constant prices (Base: 2011)	1.2	0.6	0.5	-0.7	0.2	0.2	-0.1	1.9	3.0	6.5	4.1	-1.5	-2.7	-0.3	0.3	3.6	4.2	3.7
Collectively agreed wage increases (CAWI)	3.4	4.0	3.8	2.9	2.9	2.7	2.7	2.9	3.1	2.9	2.4	1.5	1.4	1.0	1.0	0.7	1.5	-
Gap between SMN increases and CAWI	0.7	1.0	0.3	-0.4	-0.4	-0.2	0.3	1.5	2.6	2.7	3.2	0.6	-1.4	-1.0	-1.0	3.4	3.5	-

Sources on minimum wages: PORDATA; Sources on CAWI: DGERT VMPI (average annualised nominal collectively agreed wage increase)

