



# Collective bargaining in Portugal: Study on the survival of contracts that are expired but not renewed (*sobrevigência*)

Final report

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A report submitted by ICF GHK  
in association with

Reinhard Naumann

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ICF GHK  
2nd Floor, Clerkenwell House  
67 Clerkenwell Road  
London  
EC1R 5BL  
T +44 (0)20 7611 1100  
F +44 (0)20 3368 6960  
[www.ghkint.com](http://www.ghkint.com)

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## 1 Introduction

This chapter analyses the evolution of the Portuguese system of collective bargaining and its outputs, focussing on the issues that gave rise to the existing expiry mechanism and the related *sobreavigência* periods (introduced in 2003 and revised in 2006 and 2009). Particular emphasis is placed on the most recent trends during the period of the crisis and the policy regime under the Memorandum of Understanding (MoU).

After the democratic revolution in 1974-75, the trade unions were able to negotiate a large number of collective agreements (mostly at branch level) that covered the majority of the private sector, as well as companies owned by public entities. These regulations exceeded in many regards those created in more advanced economies such as Germany. The liberalisation and opening of the Portuguese economy after the country's entry into the European Communities (1986) created growing competitive pressures on companies. Employers were increasingly dissatisfied with the regulatory framework (labour law and collective bargaining) and demanded a profound amendment of existing provisions. Although many employers sought to renegotiate collective agreements, most trade unions rejected substantial changes to their framework agreements. The legal rule of continuity protected their agreements. Continuity meant that an existing agreement could only be cancelled if all its signatory parties agreed or if it was replaced by an agreement between the same signatories.

In this situation, with employers demanding radical changes and trade unions insisting on keeping their agreements largely unaltered, collective bargaining as a process of permanent adaptation of terms and conditions of employment to economic realities largely came to a standstill.

The Labour Code adopted in 2003 sought to end this deadlock by allowing employers to withdraw unilaterally from existing agreements. The new law stipulated that after a period of unsuccessful negotiations any party was allowed to “denounce” the agreement, thus triggering a process that would end in its expiration (“*caducidade*”) if no understanding on a revised version of the agreement could be reached. Immediately after the new Labour Code coming into force, a number of important employers' associations “denounced” their agreements, but the Labour Code had left some loopholes that were successfully used by trade unions to avoid the expiry of many of their agreements. The most important problem was that agreements that stipulated that they could only expire if they were replaced by a new agreement signed by the same partners could not expire.

### Survival and expiry of collective agreements in Portugal

The concept of *sobreavigência* is related with the concept of *caducidade* (caducity or expiry) of collective agreements which was introduced by the new Labour Code in 2003. Before the Labour Code came into force, the Law on Instruments of Collective Regulation (1979) stipulated the “rule of continuity” of collective agreements. Continuity meant that an existing agreement could only be cancelled if all its signatory parties agreed or if it was replaced by an agreement between the same signatories.. The Labour Code (2003) ended this rule of continuity and introduced the caducity, namely the possibility that one of the parties could withdraw unilaterally from an agreement, thus triggering a process that might end in its expiry (caducity). The Labour Code established minimum periods for the procedures of this process (supposed to be used for renegotiation, mediation, conciliation, arbitration) until the Ministry of Labour would declare the cessation of the validity of an agreement. The sum of these minimum periods represents the total **period of *sobreavigência***, this is the period during which the agreement is still valid.

The expiry procedures start with the **Denunciation** of an agreement by one of the parties. The Denunciation marks the beginning of the first **survival-period (*sobreavigência*)**. After the end of **negotiations** on a revision of the agreement one of the parties notifies the others about the failure. A **notification** is also sent to the Ministry of Employment, with a **request** for the publication of the announcement of expiry. The last step of the procedure is the publication of the announcement of cessation of validity by the Ministry,

In 2006, a green paper on labour relations was published, followed by a white paper in 2007. In 2008, the government was able to negotiate a tripartite agreement on the reform of labour legislation, signed by all employers' confederations and by one of the two union centres (2008). This agreement opened the way for a revision of the Labour Code that made "caducidade" work in the case of agreements with a so-called "survival clause" (this will be explained further in chapter 3). It was the first time that a tripartite agreement in Portugal triggered important changes at the core of industrial relations. The revision of the Labour Code was passed by parliament in 2009.

As well as introducing changes that facilitated the expiry of collective agreements, the Labour Code 2009 (LC 2009) created incentives for the renegotiation of existing agreements (e.g. the possibility of extend the legal maximum of overtime hours per year by collective agreement or to introduce working time accounts by collective agreement), thus opening the way to a more dynamic system of collective bargaining. However, the crisis brought this process of negotiated change to an abrupt end.

In 2011, under the provisions of the MoU, the government ended the pervasive practice of extending collective agreements. The "Wage setting and competitiveness" section of the MoU stated a need to "define clear criteria to be followed for the extension of collective agreements and commit to them. The representativeness of the negotiating organisations and the implications of the extension for the competitive position of non-affiliated firms will have to be among these criteria."

In December 2012, the government introduced a 50% threshold for the representativeness of employers' associations as a prerequisite for the extension of collective agreements to the whole sector, including companies who were not members of the signing employers' association(s). Prior to this revision, the government only needed the request of the signatories to grant the extension of a collective agreement. The new rules meant that a reduced number of collective agreements now have the chance to be extended.<sup>1</sup>

The economic crisis was an important trigger for employers to be hesitant about the conclusion of renewed collective agreements. The non-extension of agreements represented a further disincentive for collective bargaining. The majority of employers' associations who considered signing new agreements could not count on their extension via governmental decree and had to face the risk of creating a comparative disadvantage for their affiliates in relation to their non-affiliated competitors.

The table below<sup>2</sup> demonstrates that the most evident drops in the number of collective agreements signed and of the number of workers covered by collective bargaining coincide with the years with fewer extension decrees, namely 2004 and 2011-2013. This significant coincidence suggests the conclusion that a drastic reduction of the number of extension decrees issued by the Ministry of Employment as it occurred in the periods referred to above constitutes a strong disincentive for the conclusion of collective agreements. In 2004, the period of non-issuing extension decrees was short and collective bargaining recovered rapidly. The more recent reduction of extension decrees is now (in 2014) entering its fourth year and can be seen as one of the causes of the profound and protracted crisis in collective bargaining.

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<sup>1</sup> All companies that are subject to the general labour legislation (Labour Code) are obliged to respond to an annual survey carried out by the Ministry of Employment, the so-called "relatório único" (single report). This is the only existing source with reliable data regarding the representativeness of employers' associations. Based on this source the Ministry establishes whether an employers' association reaches the 50% threshold or not, but this information is not published. Therefore it is not possible to estimate *ex ante* the proportion of collective agreements cannot be extended, but the enormous decrease of extension decrees issued under the new regulation (9 in 2013 *versus* an average of more than 100 per year in the period 2006-2010) demonstrates *ex post* that the share of those who qualify is small.

<sup>2</sup> The Ministry of Labour's mandatory survey amongst all Portuguese companies (Quadros de Pessoal) counted in 2012 612 agreements with valid wage tables. The table presents those agreements that were revised during the respective years.

**Table 1.1 Link between the number of extension degrees and the number of collective agreements signed and workers covered between 1999-2013**

Published per year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013*
Total number of agreements	388	371	361	338	342	162	254	245	252	296	252	230	170	85	95
Branch agreements	264	245	238	230	232	100	155	153	160	172	142	141	93	36	27
Groups of companies agreements	18	22	22	19	30	15	28	26	27	27	22	25	22	9	18
Single company agreements	105	103	100	88	80	46	73	65	64	97	87	64	55	40	49
Workers covered (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	187
Number of extension decrees	183	144	185	147	152	4	56	137	74	131	101	116	17	12	9

Source: DGERT, *Varição média ponderada intetabelas and DGERT, Instrumentos de regulamentação colectiva de trabalho publicados*, GEE, *Boletim Estatístico*, January 2014

Note: In July 2013, the DGERT (Directorate-General Employment and Labour Relations at the Ministry of Employment) stopped publishing its statistics on the evolution of collective bargaining. Therefore the figures for 2013 had to be completed by data published in the monthly Bulletin of Employment Statistics (BE January 2014). This is a curious situation because the data are produced at DGERT where they used to be published firsthand. Now that the entity who produces the data has stopped to publish them they can only be consulted at another body, the Office of Strategy and Studies at the Ministry of Economy. .

In the context of the present crisis in collective bargaining the *sobrevigência* mechanism is of major importance. The current regulation of *sobrevigência* gives employers the possibility to withdraw from agreements if they wish. This is important because it obliges trade unions to enter serious negotiations on the revision of existing agreements and to make substantial concessions in order to find a compromise. On the other hand the Labour Code 2009 established some procedures that delayed the expiry of agreements after their denunciation. This reduced the employers' impulse to withdraw from agreements and increased their motivation to negotiate a revised agreement rather than driving its expiry without a replacement.

In the present situation of economic uncertainty, a change in the legislation that regulates the expiry mechanism might function as a further disincentive for collective bargaining. Many negotiation processes are blocked and any steps which further facilitate the expiry of collective agreements might stimulate the employers' association involved to withdraw from collective bargaining altogether.

The tripartite agreement signed in January 2012 supported the implementation of the Memorandum of Understanding and contributed for the creation of a social consensus in this regard. It also committed all signatory parties to re-invigorate collective bargaining.

In this situation, and once the issue has been put on the agenda by the "Memorandum of Understanding on Specific Economic Conditionality" and remembered in its 7<sup>th</sup> review (June 2013), it is of high importance to have an informed debate about the question of changing the expiry mechanism of collective agreements.

This study comprises the research foreseen in the Memorandum with a broadened angle, looking at the evidence on the reality of the use of the expiry mechanism for collective agreements since the most recent key reform of Portuguese labour law on this aspect in

2009 and its effects in the national and international context. The focus of the study is on providing a clearer understanding and analysis of the process of survival and expiry of collective agreements in Portugal. It also offers comparisons with similar processes in other Member States. On the basis of this fact finding, it seeks to elaborate recommendations in the context of an understanding of what can and cannot be implemented (also on the basis of international experience) to reform the mechanisms for the survival of collective agreements.



## 2 Analytical approach and tools

In this chapter we present our analytical approach and the tools used in the completion of this study.

Following a kick-off meeting with the European Commission, during which the goals and available resources for the study were discussed in detail, an inception report was produced outlining the data collection tools and draft report structure.

The study phase involved a review of the literature, including existing studies in industrial relations and collective bargaining in Portugal, as for instance the Green Paper (2006), the White Book (2007) and the recent study for the CAWIE-project (Naumann 2012), as well as primary sources (namely laws, collective agreements, announcements and decrees issued by the Portuguese Ministry of Labour) and the use of the Ministry of Labour's database BTE online including its search engine ([http://bte.gep.msess.gov.pt/pesquisa\\_avancada.php](http://bte.gep.msess.gov.pt/pesquisa_avancada.php) ). This comprehensive database allows the search and download of collective agreements, announcements and decrees issued by the Portuguese Ministry of Labour since 1999.

The agreed survey questions were launched to industrial relations experts in the agreed study countries. Based on their information an overview table and national sections were prepared for this report which were cross-checked with national experts.

The central instrument used to identify expired collective agreements was the list of requests and announcements of cessation of validity provided by the Portuguese Ministry of Labour's<sup>3</sup> (DGERT, Directorate-General of Employment and Labour relations) database.

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<sup>3</sup> During the period covered by this study, the Portuguese Ministry of Labour changed several times its name and domain. At present its official designation is Ministry of Solidarity, Employment and Social Security. In our text we use the term Ministry of Labour in order to facilitate the reading of our report.

### 3 Expiry and *sobrevigência* (SV) in Law and in Practice

This chapter describes the SV-mechanism in practice (51 requests between 2005 and 2013, 34 of them approved). This description comprises the sectors where collective agreements have expired; the number of workers affected; the actors involved and the party triggering the expiry. It also examines the chronological order of the events that lead to expiry and the periods of *sobrevigência* as they were determined in practice by the Ministry of Employment under the different legal regimes (2003, 2006 and 2009). This is crucial to the understanding of the practical consequences of the stipulations regarding the expiry and the effective duration of SV-periods and thus particularly important for the discussion of possible options for reforms.

The chapter begins with an analysis of the legislation regarding the expiry and *sobrevigência* of collective agreements. It goes on to map the expiries under the aspects listed in the inception report<sup>4</sup>. The final section presents calculations regarding the time-spans between the most important “separators” of the different phases of the expiry process (e.g. “denúncia”: date of cancellation of the agreement by one of the parties, date of publication of last comprehensive revision of the agreement before cancellation, date of notification about failure of negotiations, date of cessation of validity, date of announcement of cessation).

#### 3.1 Expiry and SV in Law

In 2003, the Labour Code (LC 2003) came into force. This new legislation made major changes in several areas of labour law. One of these important changes was the introduction of the possibility to make collective agreements expire. Prior to this, an existing agreement could only be cancelled if all its signatory parties agree or if it was replaced by an agreement between the same signatories.

In 2006, in the course of the first revision of the Labour Code (LC 2006) some amendments were made in the regulation of the expiry mechanism.

The second revision of the Labour Code (LC 2009) brought some further and very important changes in the expiry mechanism.

**Table 3.1 Evolution of the Labour Code and survival and expiry mechanisms**

LC 2003 (Labour Code 2003) Law n.º 99/ 2003, 27 <sup>th</sup> August	LC 2006 (Labour Code 2006) Law n.º 9/2006, 20 <sup>th</sup> March	LC 2009 (Labour Code 2009) Law n.º7/2009, 12 <sup>th</sup> February	
Articles 13 and 556-558 Single regime (one regime for all types of situations)	Articles 551, 557, 559 Amended single regime	Article 10: Transitory regime for agreements with survival clause	Articles 500-502: General regime and specific regime for agreements with survival clause
Creates for the first time the possibility to make an agreement expire without replacing it by another one. Before, an existing agreement could only be cancelled if all its signatory parties agreed or if it was replaced by an agreement between the same signatories	Minor changes and new rule that employees covered by an expired agreement inherit a set of rights in their individual contracts of employment.	Creates a specific regime for agreements with a survival clause that were negotiated prior to the introduction of LC 2009	Revises the general regime, shortening the SV period. Creates a special regime for future cases of agreements with survival clause.

<sup>4</sup> Sector / company and number of workers covered; signatory parties; author and date of request for expiry; date of cancellation of the agreement by one of the parties; regime of SV that applies; date of publication of the most recent comprehensive revision of the agreement.

Sources: Laws 99/2003, 9/2006 and 7/2009

The LC 2003 stipulated that the process of expiry had to start with one of the signatories notifying the others of their intention to make the agreement expire (this could only be done at least 1 year after the last change and at least 3 months before end of its validity). This “*denúncia*” (denunciation) had to be accompanied by a proposal for renegotiating the agreement. With the “*denúncia*”, the validity of the denounced agreement was automatically extended by 1 year. If the negotiations were still ongoing after the first year of “*sobrevigência*”, the validity of the agreement was automatically extended by 1 further year. If at the end of the *sobrevigência* the agreement had entered procedures of mediation or conciliation, a further extension of the validity followed (6 months maximum). If arbitration had started during the period of conciliation or mediation, the agreement would stay valid until the verdict of the arbitration was announced.

Under the LC 2003 the minimum-period of *sobrevigência* of an agreement after its denunciation was 12 months. This period could be extended by up to 30 months or more (in case of arbitration; see table below).

**Table 3.2 Single regime for the expiry of collective agreements (LC 2003, Articles 13, 557 and 558)**

<i>Denúncia</i> at least 1 year since last change and at least 3 months before end of validity	SV 12 months	If after 12 months negotiations continue	SV further 12 months	If after 24 months conciliation or mediation	SV of 6 months (maximum)	If during period of conciliation or mediation arbitration is initiated	SV until decision of arbitral verdict
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SV: Between 12 months and 30 months or more  
(12+12+6+time until arbitral verdict)

#### Notes

*Denúncia*: One party notifies the others that it wishes to withdraw from the agreement, offering negotiations.

*Arbitration*: Labour Code 2003 does not define maximum period for arbitration.

The most important change introduced by the LC 2006 was the rule that if signatories did not define which rights of the expired agreement were transferred to the individual work contracts, three types of entitlements were automatically transferred to individuals: Payment, category and function, and the duration of working time.

The LC 2006 also introduced some changes in the regulation of the survival of collective agreements in the course of the expiry process. It was stipulated that one of the signatories had to notify the others and the responsible Ministry that the negotiations had failed. The cessation of the respective agreement would occur 60 days after this notification. This meant that in addition to the three sub-periods of *sobrevigência* (12+12+6 months) a further 2-month-extension of the validity of the agreement was added. On the other hand, the extension of validity in case of arbitration was integrated into the maximum-6-months-period for mediation and conciliation.

Under the LC 2006 the minimum-period of *sobrevigência* of an agreement after its denunciation was 14 months. This period could be extended up to 32 months (see table below).

**Table 3.3 Single regime for the expiry of collective agreements (LC 2006, Articles 13, 557 and 558)**

<i>Denúncia</i> at least 1 year since last change and at least 3 months before end of validity	SV 12 months	If after 12 months negotiations continue	SV further 12 months	If after 24 months conciliation or mediation or voluntary arbitration	SV of 6 months (maximum)	If conciliation and/or mediation and/or arbitration fail	SV further 60 days after notification of Ministry about failure
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<b>Denúncia at least 1 year since last change and at least 3 months before end of validity</b>	<b>SV 12 months</b>	<b>If after 12 months negotiations continue</b>	<b>SV further 12 months</b>	<b>If after 24 months conciliation or mediation or voluntary arbitration</b>	<b>SV of 6 months (maximum)</b>	<b>If conciliation and/or mediation and/or arbitration fail</b>	<b>SV further 60 days after notification of Ministry about failure</b>
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SV: Between 14 months and 32 months (between 12+2 and 12+12+6+2)

#### Notes

Employees who were covered by an expired agreement inherit its rights regarding pay, category and duration of working time in their individual work contracts.

The LC 2009 made several further important changes in the regulation of the expiry of collective agreements.

Firstly, it created the possibility for agreements with a “survival clause” (that stipulated that they would only expire if they were replaced by another agreement) to expire. Before, this had not been possible. For this purpose, the LC 2009 created a “transitory regime” for those cases with a “survival clause” that had been filed before the revised Labour Code came into force. It furthermore introduced a similar regulation for this type of cases in the general regime of the expiry mechanism.

The new general regime for the expiry of collective agreements without survival clause extended the first period of *sobrevigência* from 12 to 18 months and abolished the second 12-month-period of *sobrevigência*. This made the whole regulation simpler and clearer.

Under the LC 2009 the minimum-period of survival (*sobrevigência*) of an agreement (without survival clause) after its denunciation was 20 months. (See table below)

**Table 3.4 General regime for the expiry of collective agreements without survival clause (LC 2009, Articles 500-502)**

<b>Denúncia</b>	<b>SV 18 months</b>	<b>If after 18 months of negotiations and a other procedures (conciliation, mediation or voluntary arbitration) have failed</b>	<b>SV further 60 days after notification of Ministry about failure</b>
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SV: 20 months (18+2)

Notes: Employees who were covered by an expired agreement inherit its rights regarding pay, category and duration of working time in their individual work contracts.

The specific rules for the expiry of collective agreements with survival clause introduced the rule that this type of agreements could only expire 5 years after its most recent comprehensive revision<sup>5</sup> OR 5 years after its denunciation (*denúncia*) OR 5 years after the presentation of a proposal for the revision of the agreement that included the extinction of the survival clause. This 5-year-period of *sobrevigência* may appear long, but in the context of the Portuguese system of collective bargaining which is characterized by stagnation of many negotiation processes (see Chapter 1 and 6) numerous agreements had not been completely published for 5 or more years. This meant that the 5-year-period of *sobrevigência* would be in many cases irrelevant for the effective duration of the *sobrevigência* (see section 3.3 on time-spans below).

Under the LC 2009 the minimum period of *sobrevigência* of agreements with survival-clause varies between 0 months and 5 years, depending on the time-span between one of the 3

<sup>5</sup> The law says “last complete publication” (última publicação integral) in the Ministry’s official bulletin. The complete publication of an agreement results from the comprehensive revision of this agreement (not only the wage tables, but also a significant number of clauses of the framework agreement). The publication is irrelevant for the process of collective bargaining, the revision of the agreement (agreed upon by all signatories) is relevant. Therefore we use the expression “comprehensive revision”.

facts to be confirmed and the start of the expiry process. The most relevant of these facts is the most recent revision of the agreement. If this revision dates back 5 years or more, the 5-year-survival-period has no practical effect at all. In this case the normal survival-period of 18+2 months counting from the date of Denunciation applies. Until now, no case of this kind has occurred. Therefore, we cannot give a concrete example for illustration.

**Table 3.5 Specific rules for the expiry of collective agreements with survival clause (LC 2009, Articles 500-502)**

<b>One of these facts is confirmed:</b> <b>Last comprehensive revision of agreement</b> <b>Denúncia</b> <b>Presentation of a proposal for revision that includes the extinction of the survival clause</b>	<b>SV 5 years later</b>
SV: 0 months to 5 years (5 years – time span fact 1/2/3 until request)	

*Note: The time-span between any of the referred facts (1. 2. or 3.) and the request for the announcement of the expiry is subtracted from the 5-year-period.*

The transitory regime for the expiry of collective agreements with survival clause which started the decision process at the responsible Ministry before the LC 2009 coming into force stipulated the immediate expiry of all agreements that had been revised (comprehensive revision) at least 6.5 years ago and that had been denounced at least 18 months ago.

Theoretically a later denunciation could have delayed the cessation of validity by up to 18 months (in relation to the date of LC 2009 coming into force), but this did not apply to any of the existing 15 cases (see section 3.2 below).

**Table 3.6 Specific transitory regime for the expiry of collective agreements with survival clause which started the decision process at the responsible Ministry before LC 2009 coming into force (LC 2009, Article 10)**

<b>If</b> <b>The most recent comprehensive revision of the agreement came into force at least six and a half year ago</b> <b>And if</b> <b>18 months have passed since the denúncia.</b>	<b>Expiry on the date of the revised Labour Code coming into force (17 February 2009)</b>
<b>If</b> <b>The most recent comprehensive revision of the agreement came into force at least six and a half year ago</b> <b>And if</b> <b>18 months have NOT YET passed since the denúncia.</b>	<b>Expiry on the date of the revised Labour Code coming into force (17 February 2009) PLUS the period missing to complete 18 months since the denúncia</b>
17 February 2009 + between 0 and 18 months	

In considering the procedures for the expiry of a collective agreement, it is important to note that the “*denúncia*” is sent by the signatory who intends to make the agreement expire to the other party to the agreement. No third party is informed about this step. The Ministry is only informed at the end of the process, after the failure of negotiations. Therefore it is not possible to make a solid estimate of the number of executed “denunciations” of agreements in order to assess how many and which agreements are effectively on their way to expiration. Nonetheless, interviews with key persons at employers’ and trade union confederations indicate that at the present time the number of denunciations is close to zero.

### 3.2 SV in Practice

The process of expiry starts with the Denunciation of an agreement by at least one of the signatories. Half of the Denunciations occurred in 2004, since then their number decreased and since 2008 there was no Denunciation related to the 34 cases of expiry referred in this

study.<sup>6</sup> This information in relation to the approved requests for the publication of cessation of validity indicates that the interest of employers in making agreements expire has diminished after the first wave of Denunciations between 2003- and 2007.

**Table 3.1 Denunciations related to the agreements expired in the period (2005-2013)**

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of Denunciations	1	17	8	5	3	0	0	0	0	0	0

Source: Announcements of cessation of validity

The cessation of a collective agreement becomes legally valid if the respective announcement is published in the official Bulletin of the responsible Ministry (Boletim do Trabalho e Emprego, BTE). The decision about the publication of the announcement is taken by the head of the Directorate-General for Employment and Labour Relations (DGERT) at the Ministry.

**Table 3.2 Expiry announcements per year (2005-2013)**

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
Announcements per year	2	3	5	2	15	2	1	0	4
Rejections per year	2	4	7	6	2	1	3	2	1
Rejected requests that were later approved	1	2	3	3	0	0	0	0	0
Repetitions of rejected requests	0	0	0	0	1	0	0	1	0
Total number of decisions on requests per year	4	10	9	8	17	3	4	2	5
Announcements accumulated	2	5	10	12	27	29	30	30	34
Net Rejections accumulated (without rejected requests that were later approved and without repetitions)	1	3	7	10	11	12	15	16	17
Total number of requests accumulated (without rejected requests that were later approved and without repetitions)	3	8	17	22	38	41	45	46	51

Source: DGERT

Note: Announcements correspond to the number of approved requests. In 2006, for instance, the DGERT decided upon 7 requests, approved 3 of them publishing the respective announcements, and rejected 4.

Between 2005 and 2013, 34 of the 51 requests for the publication of the announcement of the cessation of validity of collective agreements were approved, 28 were rejected. 9 of the rejections referred to agreements whose expiry was later approved, and in 2 cases the employers' request for expiry was rejected twice. Therefore, the effective number of rejections was 17 (28 minus 9 later approvals minus 2 repeated rejections).

The Ministry of Labour's mandatory survey amongst all Portuguese companies (*Quadros de Pessoal*) counted in 2012 612 agreements with valid wage tables. The 52 requests for expiry represent about 8% of the total number of existing agreements, the 34 approved expiries about 6%.

During these years, 29 of the expired agreements were branch agreements signed by employers' associations, and 5 were company agreements.

<sup>6</sup> Since the introduction of the legal possibility to make an agreement expire until 31<sup>st</sup> December 2013 the Ministry of Employment published 34 announcements of expiry. All of these 34 cases are analysed in this study.

### 3.2.2 Mapping expiry and SV

#### 3.2.2.1 Sector / company

The evidence shows that 24 of the expired branch agreements are located in manufacturing, two in quarrying and processing of stones, two in commerce and distribution, and one in leisure industries. Four of the five company agreements belong to transport and communication; one is located in private health care.

#### 3.2.2.2 Number of workers covered

The 34 expired agreements are located in sectors that employ approximately 250,000 salaried workers, about 200,000 of them in manufacturing. The share of these sectors in the total number of salaried workers in the private sector is about 10% (QP 2012).<sup>7</sup> The sectors in manufacturing covered by the expired agreements represent approximately 40% of the salaried workforce in manufacturing.

These numbers do not mean that the expiries left 10% of the workforce in the private sector without collective agreement coverage. In several cases only a part of the existing agreements in a determined sector expired, while others signed by the same employers' association(s) and different unions stayed in place (see also Tables A.3.3 – A.3.5 in Annex).

The group of the largest expired agreements (sectors with more than 20,000 employees) is composed of 16 branch agreements signed by 7 employers' associations, all of them in manufacturing. These agreements are located in sectors with approximately 180,000 workers, corresponding to approximately 90% of the workforce in the manufacturing sectors with expired agreements.

Only two employers' associations in this group of large sectors forced the expiry of all their collective agreements.<sup>8</sup> AIMMAP (metal) cancelled its 5 agreements, and APICER (ceramics) cancelled its 5 agreements. We may add to this group APEQ (chemical industry) because this association cancelled the agreement signed with all large unions in the sector and kept only one agreement with two small unions representing very specific occupational groups.

In the metal sector the second employers' association (FENAME) cancelled two agreements, keeping six parallel agreements in place. This means that the expiry of AIMMAP's, APICER's and APEQ's agreements left a large part of the metal sector and almost the totality of ceramics and chemical industries without a collective agreement.<sup>9</sup>

In all other larger sectors with expired agreements parallel agreements remained valid. The effective coverage of these agreements varied according to the number of affiliates among the signatories and to the existence of extension decrees. It is not possible to make an estimate of the coverage of these agreements<sup>10</sup>, but we may assume that in most cases the expired agreements related to the largest trade unions in the respective sectors (see in detail next section).

<sup>7</sup> We exclude the public sector because collective bargaining in the strict sense of the word (namely collectively agreed wages) does not exist in public administration.

<sup>8</sup> The smaller Association of Crystal Glass Industries also made all its agreements (in this case 3) expire.

<sup>9</sup> The Association of the Industry in the Minho region (AIM) and the local ceramics union maintained always their agreement, but according to the agreement it covers only 450 employees.

<sup>10</sup> A collective agreement is binding for the members of the signing parties. The Ministry of Labour may issue a decree that extends the agreement to the total workforce in the respective sector if the signatories request it. Unions who did not sign the agreement may oppose the extension and the Ministry will exclude their members from the extension. This situation complicates the calculation of the effective coverage of collective agreements, a fundamental problem in industrial relations research in Portugal that cannot be solved in the course of this study.

### 3.2.2.3 Signatory parties (employers)

Some of the expired agreements had been signed by only one employers' association, others by groups of associations. In the case of the latter we take only those associations into consideration that are registered as first signatory of the respective agreement (BTE, official Bulletin of the Ministry of Labour). This was necessary for practical reasons (reducing the complexity of the description and analysis).

The 34 expired agreements were signed by 18 employers' associations and four single companies. 13 of the associations are located in manufacturing, one in services and manufacturing, two in quarrying, two in commerce and one in leisure industries. Three of the four companies are in the road transport sector and one in private health services. 17 of the 18 associations cover the national territory, one is local.

Some of the associations belong to the group of largest employers' organisations in the country, as for instance AIMMAP, ANIMEE, APIGRAF and APICER. These 4 large associations belong to the employers' confederation CIP.

The largest expired company agreement refers to the national postal service company CTT which is by far the largest employer amongst the 4 companies with expired agreements (between 6,500 and 10,000<sup>11</sup>). The other 3 companies employ between 121 (ISU) and 600/700 workers (Rodoviária Tejo and Rodoviária Lisbon).<sup>12</sup>

### 3.2.2.4 Signatory parties (unions)

Part of the expired agreements had been signed by only one trade union, others by groups of unions. In the case of the latter we take only those unions into consideration that are registered as first signatory of the respective agreement (BTE, official Bulletin of the Ministry of Labour). Due to extensive restructuring amongst some of the union organisations we aligned those individual unions that have participated in mergers in groups. This was necessary for practical reasons (reducing the complexity of the description and analysis).

17 trade union organisations lost one or more of their collective agreements due to expiry, seven of them were individual unions and six were federations. All union organisations involved cover the national territory.

FIEQUIMETAL is the federation that lost most agreements (6), followed by 3 other federations: FEVICOM (4), FETESE (4) and FETICEQ (3). FETESE signs collective agreements in almost all sectors of the economy. The expiry of four of its agreements is therefore of minor importance for this organisation. The domains of the other three federations are restricted to parts of the manufacturing sector. The expiry of their agreements in core areas of their domains is a serious issue for these organisations. This applies in particular to FIEQUIMETAL which says the expiry of its agreements with the five major employers' associations in its core sectors metal (AIMMAP and FENAME), automobile (ACAP), electrical equipment (ANIMEE) and chemical industries (APEQ). Until now, FIEQUIMETAL has not been able to re-establish collective bargaining in these sectors.

### 3.2.2.5 Author and date of request for expiry

All requests for the publication of the announcement of the expiry of collective agreements were made by the employers' respective associations.

The first three requests were filed in 2005. During the following years (until 2013) the number of requests oscillated between 0 and 3, except for the years with peaks of 7 and 14 per year (2007 and 2009, respectively).

These requests were submitted by the employers to the DGERT (Directorate-General Employment and Labour Relations at the Ministry of Employment) in order to conclude the processes of expiry initiated by the denunciation of the agreements. These denunciations

<sup>11</sup> The agreement signed after the expiry between CTT and SNTCT refers 6,500, the agreement signed with SINDETELCO refers 10,000.

<sup>12</sup> Sources: CCT ISU-STAS 2006, Quadros de Pessoal – Table Regulamentação Colectiva.



had taken place during the period 2003-2007. (see table 3.1 above and section 3.2.2.8 below)

### **3.2.2.6 Article invoked by Ministry for its decision on the request**

In 19 cases the Ministry invoked the general regime of expiry and *sobrevigência* valid at the moment of the receipt of the request. In the 15 cases that had been filed before the revision of the Labour Code in 2009 and not been decided when the new legislation came into force, the transitional regime for this type of situations was applied (LC 2009, Article 10).

### **3.2.2.7 Denúncia: Date of cancellation of the agreement by one of the parties**

All *denúncias* referring to the 34 registered expired agreements were submitted during the first 5 years after the first LC had come into force (2003-2007), 17 of them in 2004.

### **3.2.2.8 Regime of SV**

15 of the 34 expired collective agreements had a survival clause. These agreements could not expire before the transitory regime of the LC 2009 for this type of situation was created. These agreements expired when the LC 2009 came into force (17-2-2009).

There has been no case of expiry of agreements with a survival clause since the LC 2009 came into force. Therefore there is no evidence about the consequences of the 5-year-survival-period.

### **3.2.2.9 Date of publication of last comprehensive revision of the agreement before cancellation**

In several cases it was not possible to establish the date of the publication of the last comprehensive revision of the agreement before the *denúncia* because the online database of the Ministry of Labour (BTE online) does not allow the search of documents dated from before 1999. In these cases it was necessary to find alternative ways to get this information. The respective announcements of the cessation of validity published by the Ministry and the more recent versions of the respective agreements gave partial answers to this question. In some cases it was possible to identify the exact date of the last comprehensive revision of the agreement, in others it was only possible to say that the last revision occurred before a determined date.

Six out of 34 agreements had been published in 2000, 6 others between 2002 and 2006. The other 22 agreements had all been published before 2000, most of them before 1999 (20). Two comprehensive revisions of agreements date back to the 1980s (one to 1983 and one to 1988 or before).

### **3.2.2.10 Date of cessation of validity**

The majority of cessations of validity date back to the years 2005-2006 (six in each year) and 2009 (17). This can be explained by the fact that in 2005-2006 the minimum period of *sobrevigência* of the *denúncias* submitted in 2004 had already passed and by the fact that the new Labour Code that came into force in 2009 had allowed the immediate cessation of validity of all agreements with a survival clause.

### **3.2.2.11 Date of announcement of cessation**

The publication of the announcements began in 2005 and oscillated between 2 and 5 per year, with the exceptions of 2009 (15), 2011 (1)-and 2012 (zero).

## **3.2.3 Time-spans**

The average time-span between the denunciation (*denúncia*) and the cessation of the agreements, that is the total duration of the expiry process, was 34 months. The agreements without a survival clause took less time to expire (25 months), the agreements with a survival clause maintained their validity much longer prior to expiry (45 months).

During the period between the LC 2003 and its first revision regarding the expiry of collective agreement (LC 2006), three announcements of expiries were published. The process took an average time of 16 months (measured between *denúncia* and cessation of validity), close to the shortest possible period of *sobrevigência* stipulated in the law (12 months).

Nonetheless, the number of expired agreements was very low. (The translation of the announcement of the expiry of an agreement in these conditions (APICER-FEPCES) has been inserted as an annex to this study.)

During the following three years until the second revision of the legislation on the expiry (LC 2009), 11 agreements expired and the average duration of the expiry process increased considerably (23 months). This was close to the arithmetical mean between the shortest and the longest period of *sobrevigência* (14 months and 32 months, respectively).

The revision of the LC in 2009 made it possible to make agreements with a survival clause expire. The number of announcements in this period (until end of 2013) rose to 20, 15 of them referring to agreements that had had a survival clause. This explains in part the enormous increase of the average duration of the processes to 42 months. Another reason for the delays may have been the change in legislation which concerned several requests that had been made before the revision of the LC in 2009 and which had to be reconsidered under the new rules. (The translation of the announcement of the expiry of an agreement in these conditions (AIMMAP-SINDEL) has been inserted as an annex to this study.)

The average time-span between the most recent publication of the agreement and the *denúncia* is difficult to calculate. Our estimate is that it was 6 years, but it may be considerably longer. This figure is important for the assessment of the practical relevance of the relatively long *sobrevigência* periods for agreements with a survival clause (5 or 6.5 years). In the group of 15 expired agreements with survival clauses, the 6.5-years period of survival did not apply (not even in one case). All 15 agreements with survival-clause expired on the date of the new Labour Code coming into force (17 February 2009). This means that in all these cases the 6.5-years-survival-period had no practical consequences at all.

In the group of the 25 largest collective agreements, representing approximately half of all workers covered by collective agreements, only two have a so-called “survival clause”. In both cases the most recent comprehensive revision of the agreement dates back more than 15 years. This means that the 5-year-survival-period would not apply to any of the referred large agreements. This indicates that in the future the shortening of the 5-year-survival-period would have no practical consequences.

### Present regulation of the survival and expiry of collective agreements in Portugal (Labour Code 2009)

Since 2009, the ‘survival’ mechanism allows collective agreements which have unilaterally been cancelled (the so-called “*denúncia*”) to remain in place for the following period of negotiation (including conciliation, mediation and voluntary arbitration) for a minimum duration of 18 months (Labour Code, Article 501-3). The agreement remains in force during another period of 60 days after one of the involved parties has notified the Ministry that the negotiations have failed. It is then (after these 60 days) that an agreement effectively expires (Labour Code, Article 501-4).

A further period of survival is added if the agreement includes a clause that guarantees that the agreement can only be cancelled if the involved parties agree to substitute it by another one. This clause expires after a period of 5 years after one of the following facts:

- a) Last integral publication of the agreement in the Ministry’s Bulletin;
- b) Notification about the unilateral cancellation (“*denúncia*”) of the agreement;
- c) Presentation of a proposal for revision of the agreement that includes the referred clause.

(Labour Code, Article 501-1).

Conclusion: The general period of survival (“*sobrevigência*”) is 18+2+x months. The survival period is extended if the agreement includes a clause that determines that it can only expire if it is replaced by another one (the so-called “*cláusula de sobrevivência*”). Theoretically this may add up to more than 6.5 years (5 years + 18+2+x months), but in

most cases the starting point of the 5 years period will lie in the past. This will shorten the total period of *sobrevigência* (5 years – x months + 18+2+x months).

After the effective expiry of an agreement wages and other core terms and conditions such as category (function/occupation), working hours and specific social protection schemes remain in place in individual contracts of the workers who were covered by the agreement before its expiry.

## 4 The role of arbitration in the expiry mechanism

This chapter describes the regulation of arbitration in Portuguese labour law and analyses its role in collective bargaining. One case of successful arbitration related to a process of expiry will be of particular interest, including for the discussion of possible options for reforms.

The Labour Code (2009) establishes in its Article 2 three types of negotiated “instruments of collective work regulation”: collective agreements, the so-called “adherence agreements” (unions and employers who adopt existing agreements between other signatories) and voluntary arbitration. Since 2009, the Ministry of Labour has registered no (zero) cases of “voluntary arbitration”. The only case of successful voluntary arbitration dates back to 2005.

The Labour Code defines as non-negotiated “instruments of collective work regulation” two types of decrees issued by the Ministry of Labour (extension and regulation of work relations) and the decisions resulting from “mandatory arbitration” (arbitragem obrigatória) and “necessary arbitration” (arbitragem necessária). Mandatory arbitration can take place in relation to the negotiation of a collective agreement (Labour Code, Article 508), necessary arbitration may be initiated by the Ministry of Employment after the expiry of an agreement if no new agreement for the respective sector/company has been negotiated within 12 months and if no other collective agreement applies (Labour Code, Article 501).

Since 2009, the Ministry of Labour has registered two cases of mandatory arbitration, dating back to 2009 and 2011 and covering in total less than 28,000 workers (approx. 1.1% of employees in the private sector). One of these cases was related to the expiry of a collective agreement.

The Labour Code (2009) stipulates in its articles 510 and 511 that if a collective agreement expires and is not substituted by another agreement during the 12 months (covering at least 50% of the respective workforce) the Ministry of Labour may initiate the process of a “necessary arbitration” (which is regulated by a specific decree-law). This type of arbitration is designed to be triggered in the course of the expiry of a collective agreement. Since 2009, the Ministry of Labour has registered no cases of “necessary arbitration”.

The social partners and the Ministry have different reasons to abstain from making use of the tool of arbitration.

Efforts to transform arbitration into an effective instrument for the resolution of conflicts in collective work relations date back to the broad social pacts signed during the 1990s, namely the Economic and Social Agreement (AES) and the Agreement of Strategic Concertation (ACE) signed in 1996. These attempts to make arbitration work failed mainly because most unions and employers’ associations do not want to pass the final decision over changes of their collective agreements on to others. Trust relations in the triangle unions-employers-government are not strong enough to enable social partners to hand over the final say to a third party.

The Ministry’s abstention from the use of “necessary arbitration” until now may have its central reason in the type of expiry that has mostly occurred since 2009. In 15 of the 19 cases of expiry that occurred since 2009 employers had denounced the agreements between 3 and 5 years before and the only reason for the delay in the expiry was the existence of the so-called survival clause in the respective agreements. The employers who had waited several years for the unblocking of the expiry processes were manifestly determined to withdraw from their agreements. Three of the remaining agreements had not been revised for a decade or more and the only reason for the delay of the expiry of the fourth one was caused by the legal complexity of the case. In none of the 19 cases could the Ministry therefore count on the employers’ understanding or cooperation in a possible move to necessary arbitration.

The insignificant role of arbitration in the process of the expiry of collective agreements is not a Portuguese specificity. The survey amongst experts from several EU-countries revealed that arbitration does not play a role in any of these countries in the context of the expiry of collective agreements.

As a first conclusion we may say that until now arbitration has not played a relevant role in Portuguese collective bargaining and that the use of arbitration in relation to the expiry of collective agreements is not common, neither in Portugal nor in a set of other EU-countries like Germany, France, Italy, Spain, Greece and Denmark.

Nonetheless, there has been a positive experience in Portugal that may be of interest to this study. During the past 8 years the social partners and the government have established a largely successful system of arbitration on the minimum services to be provided in case of strikes under the umbrella of the Economic and Social Committee (CES). The experience started in 2006 with six arbitral verdicts and since 2007 the arbitration body has produced between 27 and 77 verdicts per year (annual average 2006-2013: 49).

<b>Arbitrational verdicts on minimum services during strikes</b>	
	2006: 6
	2007: 58
	2008: 51
	2009: 27
	2010: 77
	2011: 42
	2012: 71
	2013: 60

Source: Economic and Social Committee (SCES), <http://www.ces.pt/22>

The central reason for the success of arbitration in the case of minimum services during strikes is most probably the employers' and unions' common interest in creating legal certainty in relation to the minimum services stipulated in the strike law. Unions want to protect themselves against legal action based on the interpretation of the strike law by public authorities or by the employers, and the employers are not interested in creating further tensions during a strike resulting from conflicting interpretations of the strikers' obligations in terms of minimum services. Both employers and unions have an interest in externalising the decision on this subject, and if the unions do not agree with a verdict they still have the possibility to take the calculated risk of disobeying.

Arbitration in the context of the expiry of collective agreements cannot count on a convergence of employers' and trade unions' interest because one of the sides (normally the employer) is determined to withdraw from a collective agreement from the beginning. The arbitration would have the sole function to delay or even prevent the achievement of the goal of the party that wants to make the agreement expire. The Labour Code stipulates that it is the Ministry of Labour who decides whether the necessary arbitration takes place or not. A positive decision by the Ministry would go against the perceived interest of the signatory or signatories of the agreement in making it expire. Under normal circumstances the Ministry will not accept the political costs of taking sides in this kind of conflict. This will only happen in very specific situations.

The Portuguese Ministry did this in relation with the expiry of an agreement once.<sup>13</sup> In December 2008 the Ministry initiated mandatory arbitration on the conflict between the employers' association APIGRAF and the trade union STICPGI. This decision was taken 2 months before the LC 2009 came into force and therefore the instrument of "necessary arbitration" did not exist yet. The arbitration took 10 months and ended with a verdict that revoked the existing collective agreement and established a new regulation for the sector.

<sup>13</sup> See verdict published in BTE - Boletim do Trabalho e Emprego, n.o 40, 29/10/2009, pp. 4452-4480.

## 5 International comparison of survival and expiry mechanisms of collective agreements

### 5.1 Introduction

This chapter looks at mechanisms for the expiry of collective agreements in different EU Member States. It is essential for our understanding of the Portuguese expiry-mechanism and SV-regulation as it helps to examine to what extent the Portuguese regulation corresponds to common patterns in the EU (if they exist), or whether it contains more significant barriers and time-consuming processes for the expiry of collective agreements. This comparison is also an important source for the discussion of possible options for reforms of the Portuguese system, always bearing in mind that expiry mechanisms do not exist in isolation but are linked to wider processes and traditions of industrial relations at Member State level.

The information in the chapter was gathered through a review of the literature and a survey carried out in January-February 2014 amongst industrial relations specialists in several EU-countries. The results of this survey have been presented in a grid that assembles essential information about the *sobrevigência* and the mechanisms of the expiry of collective agreements across the agreed European countries. This chapter analyses the results of the survey which are summed up in the overview table below.

The countries selected for this comparison (Portugal, Spain, France, Italy, Greece, Germany and Denmark) feature very different systems of industrial relations, some of which deeply rooted in traditions of social partnership (Denmark and Germany) while others are characterized by more conflictive and politicised strategies and practices (Portugal, Italy, Spain and France). In some countries autonomous self-regulation through collective bargaining takes clear precedence over legislative intervention by the state (Italy, Denmark and Germany), in others the role of the law and public authorities is of major importance in the regulation of labour relations and collective bargaining (Portugal, Greece, France and to a lesser extent Spain). In our comparative analysis these different contexts have to be taken into account, because certain rules regarding expiry and *sobrevigência* may produce very different results in different national contexts.

Country <sup>14</sup>	Portugal	Spain	Greece	France	Germany	Italy	Denmark
Does an agreement automatically expire after period of validity?	No	No, only of this is stipulated in the agreements	Yes, if fixed-term (law establishes maximum validity of 3 years for all agreements)	No	Yes, if fixed-term. No, if open-ended.	Yes, usually the agreement contains a date of expiry.	No
If not: necessary process							
Must one party request expiry?	Yes	Yes	If expiry before end of validity Yes	Yes	If open-ended: Yes	No	Yes
Is a public authority actively involved?	Yes	Only as deposit for filing the denunciation	Only as deposit for filing the denunciation	Only as deposit for filing the denunciation	No	No	No
Specific procedures defined by law?	Yes	No, normally by the agreement	Yes	Yes	Yes	No	No
Must one party notify others of its intention to trigger the expiry of the agreement?	Yes	Yes	If expiry before end of validity: Yes	Yes	If open-ended, Yes	No	Yes
If yes: Does notification	No	No	No, but exceptions	No	No	Does not apply	No

<sup>14</sup> Expert responsible: Reinhard Naumann; information on Germany gathered with the assistance of Nadine Zeibig and Andreas Priebe (WSI) as well as Wolfgang Däubler; Spain with the assistance of Francisco Trillo Párraga, Universidad de Castilla-La Mancha - Derecho del trabajo y de la seguridad social and Ricardo Rodriguez, Senior Resercher at Labour Asociados; Greece with the support of Alikí Mouriki, Institute of Social Policy - National Centre for Social Research and Christos Ioannou, OMED- Organisation for Mediation and Arbitration; France with the help of Catherine Vincent, IRES - Institut de Recherches Economiques et Sociales; Italy with the assistance of Giorgio Verrecchia, Facoltà di Giurisprudenza. Università di Cassino and Denmark with the support of Christian Lyhne Ibsen, FAOS - Employment Relations Research Centre - Department of Sociology, University of Copenhagen

Country <sup>14</sup>	Portugal	Spain	Greece	France	Germany	Italy	Denmark
suspend/cancel agreement							
Is the party who wishes to trigger the expiry obliged to renegotiate the agreement?	Yes, but not obliged to reach agreement	Yes, but not obliged to reach agreement	Yes, but not obliged to reach agreement	No	No	No	Yes, if it does not take industrial action.
Legal minimum / maximum period for survival of agreement (with or without negotiations)?	Yes, <b>minimum</b> 18 months from denunciation	Yes, <b>maximum</b> 12 months from denunciation	No	12 months	No, but open-ended agreements establish usually a date in the future for a possible denunciation.	No (inter-confederal agreement establishes maximum 6 months before and 6 months after end of validity)	No
Do negotiations imply that agreement will survive during a determined period of time?	Yes, 18 months from denunciation	Yes, 12 months from denunciation	No, 3 months survival independent from negotiations	No, 12 months survival independent from negotiations	No	No	No
If negotiation fails: Agreement expires automatically and immediately?	No.	No	No	Does not apply (expiry independent from negotiations)	Yes, if fixed-term	Yes	No, not until the conflict is solved
Expires automatically after a given period of time?	Yes, 60 days after notice of failure.	Yes, 12 months from denunciation	Yes, 3 months after end of validity.	Expires automatically 3 months after filing of denunciation	Yes, if open-ended three months after notification	-	See above
Do unsuccessful negotiations inevitably lead to a							



Country <sup>14</sup>	Portugal	Spain	Greece	France	Germany	Italy	Denmark
period of arbitration? If yes: maximum period for arbitration?	No	No, only if signatories have agreed upon this or if the agreement does not regulate this; period only if defined by signatories	No		No	No	No
Is it possible to avoid the expiry of a collective agreement by arbitration?	Only if the Ministry of Labour initiates "necessary arbitration" and if this arbitration results in a verdict.	No	No	No	No	No	No
Who decides whether an agreement has expired? A public authority: A court of justice: Another body:	Yes No No	No No In case of conflict a referee appointed by the signatories	In the case of agreements in place without change for over 24 months on February 14, 2012, the legislator determined their expiry a year after. - The signatories themselves	. A court in case of dispute .	No. Yes No	- - -	Yes, if required
Does expiry depend on official announcement? If yes, what kind of publication?	Yes, official Bulletin of Ministry of Employment	No	Not directly, but the registration of expiry and its publication correspond to an official validation.	No	No	No	No

Country <sup>14</sup>	Portugal	Spain	Greece	France	Germany	Italy	Denmark
Do agreements exist that have a clause of survival? If yes, are they “eternal” or do they expire after a period?	Yes They expire 5 years after last revision or unilateral cancellation of agreement.	Yes, in relation to specific parts of agreements. No specific survival period stipulated.	No, and new law (2012) stipulates maximum validity of 3 years for all agreements	No	Could not be verified, but if they exist they expire five years after request of one signatory	Yes, some (like FIAT)	No
Possible to replace an agreement after its expiry by arbitration?	Yes, if one of the parties requests arbitration and if public authority approves.	No	Only if all signatories make arbitration possible.	No	No	No	No
After the expiry if parties do not sign a new agreement: General labour law applies?	Yes	Agreement of superior level applies. If this does not exist, situation not clear.	No	Yes	No, only if agreement stipulates that norms do not survive.	Yes, but labour legislation is rudimentary and there is also no statutory minimum wage. Some agreements stipulate survival (ultrattività).	No
Do workers previously covered by expired agreement keep some of the rights individually?	Yes, Wages, category/function, working time duration, social benefits	Conflicting academic opinions <sup>15</sup> : workers keep rights individually (e.g. because some key aspects should be incorporated through individual employment contract)	Yes, basic wages and some allowances	Yes, those rights regarding pay and working conditions that emanated from the binding agreement (not optional benefits conceded by the	Yes, “Nachwirkung” guarantees all rights.:	No	Yes, all of them

<sup>15</sup> The legislation is new and case law has not yet brought a definitive clarification. Therefore there is still a vivid debate amongst experts and decision makers about the correct interpretation of the new law.

Country <sup>14</sup>	Portugal	Spain	Greece	France	Germany	Italy	Denmark
		vs. new regulation needed (unilaterally imposed by the employer or by new agreement)		employer)			
Changes in legislation regarding expiry since 2000?	Yes, 2003, 2006, 2009 2003 created for the first time the possibility of expiry, 2009 eliminated important obstacles	Yes, in particular Law 3-2012, article 86 on "Vigencia" and "Disposición transitoria cuarta" Creates for the first time the possibility of expiry	Yes, the most important one in 2012. Creates for the first time the possibility of expiry and abolishes open-ended agreements.	No	No	Not in legislation, but in interconfederal agreement 2009. Not very relevant with regard to expiry.	No
Shortening of periods of procedures?	LC 2009 made expiry of agreements with survival clause possible, with long survival periods in relatio to their most recent comprehensive revision	Yes, by making expiry possible	Yes, by making expiry possible			No	Does not apply

## 5.2 SV and expiry mechanisms in Spain, France, Italy, Greece, Germany and Denmark

The Portuguese regulation regarding the survival and expiry of collective agreements is more complex than those in its comparators. Agreements with dated validity do not expire automatically after the end of their validity (like in Germany, Greece and Italy), Portugal is the only country where a public authority is actively involved in the expiry process, and Portugal is the only country where the law establishes a minimum period for negotiations (which is longer than the maximum periods stipulated by law in Spain, Italy and Greece). Despite of this, it seems that the Danish obligation to take industrial action in order to renounce an agreement is a much more powerful disincentive for taking this direction than the merely formal requirements for expiry in Portugal.

In Portugal, the period of survival of collective agreements after the process of expiry has been triggered (18 months plus 60 days) is much longer than in Spain and France (12 months from denunciation), Greece and Germany (3 months after end of validity) or Italy (immediately after end of validity).

The Portuguese regulation of agreements with a so-called “survival clause” which guarantees a continuation of this kind of agreement for 5 years after its most recent comprehensive revision or after its renunciation by one of the signatories, is unique in its design, but the 5-year-period has similarities with the respective regulation in Germany. According to the German labour law, survival clauses in collective agreements are not valid, but if they exist the respective agreements must be rescindable within a period of 5 years.

The Portuguese law creates the possibility to replace an agreement after its expiry by arbitration if one of the parties requests arbitration and if the responsible public authority approves it. The arbitrating body is composed by two arbiters appointed by the two sides and one arbiter-president appointed by the Economic and Social Committee. The arbitrating body is supposed to produce a binding verdict that substitutes the agreement under dispute. This possibility does not exist in the other countries referred in this section, except in Greece, but there arbitration must be requested by all signatories of the agreement.

As is the case in Portugal, regulations in the other countries referred in this section provide for the continuation of the norms of expired collective agreements. The Portuguese solution of guaranteeing that the employees previously covered by an expired agreement keep a set of the rights individually is similar to the solution in Greece (basic wages and some allowances)<sup>16</sup>. The situation in Spain, is still not clear because the legislation is new and case law has not yet brought the definitive interpretation of the new law. The Danish, German and French solution of guaranteeing all rights seems to be the most extensive one, while the Italian regulation seems to be much weaker than in all other countries. The German “*Nachwirkung*” guarantees that all norms of expired collective agreements continue valid, but they can be replaced by other arrangements such as individual work contracts, company agreements or collective multi-employer agreements.

As is the case in Portugal, there have been more recent changes in the Spanish and Greek labour law that abolish former rules that made the expiry of collective agreements very difficult or even impossible (particularly due to indefinite survival periods). An important difference is that in Spain and Greece these changes were implemented under the pressure

<sup>16</sup> Article 501-6 of the Portuguese Labour Code stipulates: “After the expiry and until another agreement or arbitral verdict comes into force, the effects agreed by the parties or, in their absence, those already produced by the collective agreement in relation to the remuneration of the worker, category and respective definition, duration of working time and social protection schemes whose benefits substitute those guaranteed by the general social security system or by a substitution protocol of the National HealthService stay valid.” [6 – Após a caducidade e até à entrada em vigor de outra convenção ou decisão arbitral, mantêm-se os efeitos acordados pelas partes ou, na sua falta, os já produzidos pela convenção nos contratos de trabalho no que respeita a retribuição do trabalhador, categoria e respectiva definição, duração do tempo de trabalho e regimes de protecção social cujos benefícios sejam substitutivos dos assegurados pelo regime geral de segurança social ou com protocolo de substituição do Serviço Nacional de Saúde.]

of the most recent crisis (2012), and thus much later than in Portugal where they occurred during the period 2003-2009.

There were no significant changes in the regulation of expiry and SV in the countries with a weaker state intervention in labour relations (Germany, Denmark and Italy). The legislation regarding expiry was not changed in Germany, France and Denmark, and the new inter-confederal agreement in Italy (2009) did not make important amendments in this area either.

The following brief sections about the regulation in each country provide the necessary information for a comparison of the Portuguese case with each of its comparators.

### 5.2.1 Spain

In Spain, legislation prior to 2012 stipulated that if negotiations on a collective agreement were unsuccessful, the so called 'normative clauses' on wages and working conditions would stay valid for years or even decades. This has radically changed with the new legislation (Law 3-2012) that creates the rule that a collective agreement expires 12 months after its "denúncia" by one of the signatories if negotiations are not successful. The new legislation has been harshly criticized by the trade union confederations CC.OO and UGT who signed in May 2013 a national agreement with the national employers' confederations that is supposed to attenuate the possible negative consequences of the new law for collective bargaining.

Nonetheless, the Spanish legislation still concedes a relevant role to self-regulation by collective agreement (inter-professional and lower levels):

- a) The collective agreement itself may determine longer periods of survival (in total or in parts) than the 12 months determined by law.
- b) There is case law that supports the interpretation that stipulations in collective agreements with regard to their survival (*ultractividad*) take priority over legislation (*Sala de lo Social de la Audiencia Nacional*, July 2013). UGT estimates that about 40% of collective agreements have such clauses, mostly referring only to parts of the agreements.
- c) If an agreement expires, it is replaced by the agreement at a superior level (if such an agreement exists).

Regardless of the uncertainty caused by the controversial debate about the interpretation of the new legislation and by diverse case law, it is clear that the Law 3 passed in 2012 makes it is much easier and faster for signatories to effectively withdraw from a collective agreement if they wish to do so.

#### 5.2.1.1 Comparison with Portugal

At first sight it may seem that the newly created possibility of a signatory to renounce a collective agreement by unilateral decision is simpler and faster than in Portugal, but the above mentioned aspects (a), b) and c)) may constitute loopholes in the new Spanish legislation (as there were in Portugal in 2003) that make it in practice much more difficult and time-consuming to achieve the effective expiry of a collective agreement than it is in Portugal. The fact that the new Spanish legislation is so recent hinders an evidence based assessment of its impact.

### 5.2.2 Greece

In Greece (as in Spain), a profound change in the legislation governing the survival and expiry of collective agreements took place in 2012. The new Law 4046/2012 makes it very easy for a signatory to withdraw from a collective agreement, and the period of survival of the agreement after expiry has been shortened from six to three months. Under the old legislation the duration of an agreement became open-ended if the two parties could not reach an agreement on its revision. Now all agreements have to determine a fixed-term (maximum 3 years). Furthermore, the law imposed the mandatory expiry of all those agreements by February 14, 2013 that were in force for 24 months or more and had a residual duration of one year.

#### 5.2.2.1 Comparison with Portugal

The new Greek legislation appears to set firmer parameters in legislation with less leeway granted for 'derogation' by collective agreement and thus providing clearer limitations

regarding the survival and expiry of collective agreements. However, this revision is also very recent and the practical outcomes will have to be assessed in a later stage. Nonetheless, it seems that under the new law it is easier and faster for signatory to make a collective agreement expire than it is in Portugal and in the case of failure of re-negotiations clearer limits are set on the survival of existing agreements.

### 5.2.3 France

In France the expiry of collective agreements is regulated by the Labour Code. The regulation of the expiry mechanism goes back to legislation passed in 1973 and 1982. A reform of this regulation is not on the agenda. The procedures are simple. One signatory notifies the others about his will to withdraw from the agreement and files the notification at the Ministry of Labour. Three months later the agreement expires. The law established a 12-month-survival-period for an expired agreement, negotiations are not mandatory. Employees inherit the mandatory rights contained in the expired agreement individually.

#### 5.2.3.1 Comparison with Portugal

The French regulation is in some points similar but simpler and the survival period is shorter. An important common trace is the transfer of the rights contained in the expired agreement to the individual work contracts.

### 5.2.4 Italy

In Italy, legal regulation of collective bargaining is based on the Constitution and on case law. There is no specific legislation regarding collective bargaining. The inter-confederal agreements between the peak-level social partner organisations play an important role in the regulation, but actors are allowed to opt out from these agreements (like FIAT has done). The law does not stipulate rules regarding the expiry of collective agreements (procedures, deadlines). Therefore it is very easy for a signatory to withdraw from an agreement. The minimum period of negotiation established by the inter-confederal agreement (6 months before expiry and 6 months after) does not imply that the agreement continues to be valid during the 6 months after the end of its validity.

Stipulations of a collective agreement only survive its expiry if this is determined in the agreement itself.

#### 5.2.4.1 Comparison with Portugal

In contrast to Portugal, the Italian law does not regulate the survival of collective agreements and their expiry. The fragmented regulation by the inter-confederal agreement 2009 and case law allows signatories to achieve the expiry of collective agreements with very few procedural obligations and in a shorter period than in Portugal.

### 5.2.5 Germany

In Germany, legislation and case law by the Federal Labour Court guarantee that any signatory can withdraw from a collective agreement within a reasonable period of time. Fixed term collective agreements (*befristet*) end automatically after the date of the end of their validity as it is determined in the agreement. Open-ended collective agreements (*unbefristet*) expire normally three months after they have been cancelled by one of the signatories. Even if the collective agreement contains stipulations that guarantee its indefinite continuation, each signatory must be able to withdraw from it. Even if the collective agreement contains stipulations that guarantee its indefinite continuation it must be allowed to each of the signatories to withdraw from it within "a reasonable period of time" (five years maximum) .

#### 5.2.5.1 Comparison with Portugal

Under the German regulation the expiry of collective agreements is much easier and faster than in Portugal. The survival period is considerably shorter, with the exception of collective agreements that stipulate their indefinite duration. (Meanwhile, this type of agreement does not seem to play any significant role in German collective bargaining. None of the national experts had knowledge of a concrete case and the issue was discussed as a hypothetical possibility.) Their survival of up to five years (defined by case law) corresponds to the

duration of the Portuguese *Sobrevigência* in similar cases (collective agreements with survival clause).

## **5.2.6 Denmark**

In Denmark, there are few legal requirements for the survival and expiry of collective agreements. This matter is largely regulated by the framework agreements between the peak level social partner organisations. Nonetheless, in practice it seems to be difficult for signatories to withdraw unilaterally from an agreement because they are obliged to legitimise this step by taking effective and comprehensive industrial action (strike or lockout or other forms of production stoppage). This obligation of taking industrial action is a substantial disincentive for a unilateral withdrawal from collective agreements.

### ***5.2.6.1 Comparison with Portugal***

Danish legislation and regulation by inter-professional agreements define much fewer requirements for the survival and expiry of collective agreements than the Portuguese legislation, which suggests that in Denmark it is much easier to end an agreement than in Portugal. But on the other hand it seems that the Danish obligation of taking industrial action to force the expiry is a much stronger disincentive for signatories to take this step than the merely bureaucratic obstacles and periods of survival stipulated by Portuguese law.

## 6 Economic implications of the current *sobrevigência* mechanism on wage dynamics and other significant direct and indirect effects

In this chapter we assess the impact of the expiry collective agreements in the respective sectors / companies with regard to

- the state of collective bargaining after expiry,
- the output of collective bargaining after expiry, and
- the change of the situation in the sector / company after the expiry.

This assessment provides an understanding of the extent to which the expiry-mechanism introduced in 2003 and revised in 2006 and 2009 has effectively contributed to the solution of the problems described in chapter 1 and impacts on the discussion of possible options for reforms.

The basic source of this chapter is mapping the impact of the expiring collective agreement.

### 6.1 Collective bargaining after expiry

In the total of the 34 expired collective agreements to date, 19 removed one or several trade unions from collective bargaining with the respective employers' organisation, while collective agreements with one or a number of other unions remained in place. This way of restructuring collective bargaining resulted in some cases in the reduction of the number of agreements and/or in the replacement of the old agreements by completely revised new versions. Two employers' associations achieved this type of restructuring in their collective bargaining, namely:

- AIMMAP/metal reducing the number of its agreements from five to two, and
- APICER/ceramics reducing from six to three.

Seven expired agreements resulted in the complete abolition of all collective agreements with the employers organisations and one company, namely with

- the local Association of Commerce, Industries and Services of Castelo Branco (one expired agreement),
- the Association of Crystal Glass Manufacturers (three expired agreements),
- the Portuguese Association of Companies Concessionaires of Gambling Areas (casinos, one agreement)
- the single company Rodoviária do Tejo (road and urban transport, two agreements).

There are a further six cases where, after the expiry, other agreements signed by the same employers' organisation remained in place, but these agreements had been unchanged since 2003 or before. Thus, these expiries did not result in the complete absence of formally valid collective agreements, but de facto they did end the process of collective bargaining and reduce the effective coverage of the still existing collective agreements to a very small segment of the workforce in the respective sectors.

Thus the result of these 13 expiries was apparently the complete cessation of collective bargaining in the domain of the respective employers' organisations / companies.

In nine cases the employers' organisations negotiated new collective agreements with those unions whose old agreements had expired. The result of these expiries was the comprehensive revision of the content of existing agreements.



**Table 6.1 Impact of expiries of collective agreements**

Immediate result of expiry / expiries	Number of cases	Impact on collective bargaining
Exclusion of one or some unions from collective bargaining	19 (-6)	Restructuring plus incentive for comprehensive revision of agreements
Expiry of all relevant agreements	7 (+6)	End of collective bargaining
Continuation of collective bargaining with the same partner(s)	9	Comprehensive revision of agreements

Sources: See Annex - Table A3.7 Collective bargaining after the expiry

Note: The case of APEQ is counted in two groups because in this case the expiry resulted in the exclusion of some unions from subsequent bargaining and the continuation of bargaining with some others.

## 6.2 Output of collective bargaining after expiry

In the course of this study it was not possible to compare in detail the changes in the regulations of a large number of collective agreements (wage tables and qualitative aspects like overtime pay and working time accounts). Therefore two cases were chosen that represent the two most common patterns of changes in collective bargaining, namely

- AIMMAP (metal manufacturing) who effected the expiry of all its five collective agreements, followed by a comprehensive re-negotiation with two unions / groups of unions (SINDEL and others and SIMA),
- AIC (crystal glass) who enforced the expiry of all its three agreements without negotiating a new one, thus effectively abolishing collective bargaining in its domain.

These two cases are analysed in detail as an illustration for the impact of expiry and *sobrevigência* on collective bargaining and on the economic situation in the respective sector (wage level, employment, number of companies).

### 6.2.1 AIMMAP case study

AIMMAP is by far the largest employers' association who made all of its collective agreements expire (50,000 employees covered). AIMMAP is also the major player amongst employers in metal industries, and metal is the largest sector with expired agreements. The cases of the other large associations in manufacturing who made their agreements expire (ACAP-Automobile, FENAME-Metal, APICER-Ceramics, ANIMEE-Electric and APEQ-Chemical) were similar to AIMMAP, and this association was one of those who took it furthest by making all of its agreements expire. These are the reasons why we consider AIMMAP the most representative case to be studied in detail.

#### Wages

According to the estimates given in AIMMAP's agreements, the sector covered by the agreements signed by AIMMAP (metal manufacturing) employs 50,000 workers. Thus, AIMMAP's agreements are - together with those signed by ACAP (motor vehicle manufacturing and repair) - the most significant amongst the 34 expired agreements in terms of the workforce covered.

In this section we analyse the possible impact of the expiry of the agreements signed by AIMMAP on the situation in the sector. The central criterion for this analysis is the comparison between the evolution of the collectively agreed wages in AIMMAP's agreements, the evolution of the national minimum wage and the effectively paid wages in the sector.

Due to the frequent long periods of deadlock in collective bargaining in many sectors of the Portuguese economy, collectively agreed wage increases occur in many cases in a very irregular manner. AIMMAP fits into this pattern. In this section the agreements signed by this

association with the union SIMA are analysed because the agreements with this union cover the entire period assessed in this study.

A first striking aspect in the comparison of agreed wages with other indicators is the evolution at the lower end of the wage table. Until 2009 the lowest 7 to 11 wage groups (out of 20) were situated below the national statutory minimum wage. In 2008, after 5 years without an increase of collectively agreed wages, the lowest wage group (level 20) represented only two thirds of the national minimum wage. This meant that according to the collective agreement the workers in the lowest wage group were entitled to earn €285.30 per month, but due to legislation on minimum wage they received €426.00.

After the expiry of the agreement in 2009 a new agreement was signed in 2010. The wage table was restructured (reduction of wage levels from 20 to 13) and wages were increased by 25% (in relation to the wage table in force since 2003). The lowest wage level was raised to the exact amount of the statutory minimum wage.

Taking into consideration that the most numerous groups of employees are situated in the lower half of the wage tables, we may suppose that the arithmetic mean between the highest and the lowest wage level represents the ceiling for the collectively agreed wages of the vast majority of workers covered by AIMMAP's agreement. This arithmetic mean represented between 67% and 81% of the average effectively paid basic rates in metal industries during the period 2007-2011.<sup>17</sup>

During the same period (2007-2011) the difference between the highest wage level of AIMMAP's agreement and the average effectively paid basic rates in metal industries ranged between 3 and 11 percentage points.

These numbers indicate that the collective agreements signed by AIMMAP do have a very limited or almost no influence on the effectively paid wages in the sector, particularly in the lowest wage groups. This situation worsened at the end of the long deadlock in collective bargaining (2003-2009) and improved considerably after the expiry of the old agreement and the negotiation of a new one. But even under the regulation of the new agreement (signed in 2010 and revised in 2013) the difference between the average effectively paid basic rates and the mean collectively agreed wages is still large.

We may conclude that before the expiries in 2009, AIMMAP's collective agreements did not exert any significant pressure for the increase of the level of the effectively paid wages in the sector. The updating of the wage tables in 2010 reduced the huge gap between collectively agreed and effectively paid wages, but the effective regulatory force of collective bargaining in terms of wage setting continued to be very limited (lowest wage group identical or below the statutory minimum wage, mean collectively agreed wage at 80% of average effectively paid wages).

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<sup>17</sup> The most adequate figure that should be used in this comparison is the average weighted collectively agreed wage, but it is not possible to obtain this type of data. Therefore we were forced to use the arithmetic mean as the only available solution.

**Table 6.2 AIMMAP - Evolution of collectively agreed wages before and after expiry (compared with evolution of collectively agreed wages in metal industries and with statutory minimum wage)**

	2000 (Apr)	2001	2002 (Feb)	2003 (Mar)	2004	2005	2006	2007	2008	2009	2010 (Jul)	2011	2012	2013 (May)
AIMMAP-SIMA: highest collectively agreed wage	818,53	818,53	887,3	913	913	913	913	913	913	913	1027,5	1027,5	1027,5	1050
AIMMAP.-SIMA:: mean agreed wage (arithmetic mean, not weighted)	527,98	527,98	582,95	599,15	599,15	599,15	599,15	599,15	599,15	599,15	751,25	751,25	751,25	775
AIMMAP –SIMA: lowest collectively agreed wage	237,43	237,43	278,6	285,3	285,3	285,3	285,3	285,3	285,3	285,3	475	475	475	500
AIMMAP-SIMA: wage groups below national minimum wage	14-20	14-20	14-20	14-20	14-20	14-20	14-20	12-20	12-20	10-20	None	12-13	12-13	None
Metal industries – effectively paid average basic rates (CAE 24,25,28)								824,37	854,93	883,43	908,68	925,13		
National minimum wage	318,23	334,19	348,01	356,6	365,6	374,7	385,9	403	426	450	475	485	485	485

Sources: Collective agreements AIMMAP-SIMA and Quadros de Pessoal Series 2007-2011

Notes:

**2009 = year of expiry of AIMMAP's five collective agreements**

Break in series of data for effectively paid wages published in "Quadros de Pessoal" between 2006 and 2007 (change of Portuguese Statistical Classification of Economic Activities from CAE 2.1 to CAE 3), data 2012 published at an aggregation level that does not allow comparison with earlier data, data 2013 not yet available.

Compared with the average increases of collectively agreed wages (CAWI) in the total economy, wage increases (in %) under the AIMMAP-SIMA agreement were above the national average during the period 2001-2002 and 2004-2010 and below in 2003 and 2011-2012. Taking into consideration that the CAWI before the new agreement signed in 2010 were very far below the effectively paid wages (and to a large part also below the statutory minimum wage) and that it was only in 2010 that the wage tables were at least partly updated, we may consider that a meaningful comparison of the general trend in CAWI with the agreement AIMMAP-SIMA is only possible for the period since the new agreement 2010. In fact, the CAWI AIMMAP-SIMA and in the general economy are comparable in this period.

The evolution of the effectively paid wages in metal industries was in line with the broader trends in manufacturing and the total economy.

### **Working time arrangements**

Internal flexibility is one of the central subjects of the political debate on labour legislation and collective bargaining in Portugal. Two aspects of this subject area will be discussed in relation to the changes in AIMMAP's agreements after the expiries in 2009: The changes in the regulation of overtime pay and in the offer of working time accounts. This involves a comparison of the agreements between AIMMAP and SINDEL (2002 and 2010) because these are the only ones whose complete texts are available in the online database of the Ministry of Employment (BTE online).<sup>18</sup>

The agreement negotiated between AIMMAP and SINDEL after the expiry of the previous agreement left the additional pay for the first and second hour of overtime unchanged, but reduced the pay supplements for any subsequent overtime hours on weekdays from 100% to 75%. Furthermore, the yearly maximum for overtime hours was increased from 120 to 200. The percentage of the compensating paid time off work was unaltered.

**Table 6.3 AIMMAP - Change of certain contents in collective agreements after expiry – Changes in regulation of overtime pay**

	<b>AIMMAP-SINDEL before expiry (CCT 2002 – Articles 43, 44 and 55)</b>	<b>AIMMAP-SINDEL after expiry (CCT 2010 – Articles 64 and 66)</b>
Additional pay 1st hour	+50%	+50%
Additional pay 2nd hour	+75%	+75%
Following hours	+100%	Weekday: +75% Day off / holiday: +100%
Overtime hours beyond the annual limit	Limit: 120h/year Additional pay 1 <sup>st</sup> hour: +75% Following hours: +100%	Limit: 200h/year (no specification)
Compensating paid off-time	25 % of worked overtime hours	25 % of worked overtime hours

Source: CCTs AIMMAP with SINDEL, BTE-MSESS.

The revision of the Labour Code 2009 (LC 2009, Article 208) introduced for the first time the regulation of working time accounts into Portuguese labour law. The introduction of working time accounts required their regulation in a collective agreement.<sup>19</sup>

<sup>18</sup> The database does not allow to consult the complete text of text SIMA's agreement before the expiry. Therefore we were forced to study the agreement between AIMMAP and SINDEL. This does not pose serious problems because the parallel agreements signed by one employers' association with several unions usually do not differ in their content.

<sup>19</sup> The legislation here considered is the LC 2009 which was valid at the moment of the expiries of the AIMMAP-agreements and of the AIC-agreements discussed below.

The limits on the extension of working time under the working time account established in the agreement AIMMAP-SINDEL are identical with those stipulated by the LC 2009. However, the extra-payment of hours worked on weekly days of rest and on bank holidays in the context of working time accounts was drastically reduced (from 200%/150% to 50%).

**Table 6.4 AIMMAP Introduction of working time accounts ('banco de horas') in 2010**

	CCT 2002	CCT 2010 – Article 53.º
Employer is allowed to create a working time account	No regulation	Stipulated
Extension of working hours without extra-pay, compensated by equivalent reduction of working hours on other days	--	Up to 4hours/ day 20hours/ week 200hours/ year
Extra-pay for work on weekly day off	200%	50%
Extra-pay for work on bank holiday	150%	50%

Source: CCTs AIMMAP with SINDEL, BTE-MSESS.

In conclusion we may state that the new agreement signed after the expiries of AIMMAP's previous agreements made substantial improvements in terms of internal flexibility.

#### **The Evolution of economic situation in metal manufacturing**

During the period 2007-2011 the number of companies in the metal sector decreased steadily, with a more accentuated loss of 11% in 2010. This evolution was in line with the broader trends in manufacturing and in the economy as a whole.

Employment in metal manufacturing stagnated in 2007-2008 and decreased afterwards, with a more accentuated drop in 2009. The year 2010 witnessed the most significant decline in the number of companies active in this sector. The evolution of this indicator was also largely in line with the broader trends in manufacturing and in the economy as a whole.

**Table 6.5 Companies and workers in the metalworking sector**

	2007	2008	2009	2010	2011
Companies metal	8.923	8.796	8.488	7.536	7.351
variation in %		-1	-4	-11	-2
Companies manufacturing	43.326	42.311	40.370	35.421	34.494
variation in %		-2	-5	-12	-3
Companies total economy	341.720	343.663	336.378	283.311	281.015
variation in %		+1	-2	-16	-1
Employees metal	107.219	107.221	99.175	95.928	92.255
variation in %		0	-8	-3	-4
Employees manufacturing	678.206	665.653	608.286	576.984	564.643
variation in %		-2	-9	-5	-2
Employees total economy	2.848.902	2.894.365	2.759.400	2.599.509	2.553.741

	2007	2008	2009	2010	2011
variation in %		+2	-5	-6	-2

Source: *Quadros de Pessoal, GEE-ME*

Note: 2009 = year of caducity

### **Conclusion regarding the expiry of the agreements signed by AIMMAP**

The evolution of the economic situation in metal industries was largely in line with the general trends in the context of the economic crisis after 2008. The evolution of collectively agreed wages and of effectively paid wages did not deviate significantly from the general trends, with the exception of the very low collectively agreed wage level in the agreement AIMMAP-SIMA before 2010.

Collective bargaining by AIMMAP did not exert a pressure for wage increases above the average in manufacturing or in the total economy. On the contrary, the influence of collective bargaining on wage setting in the sector seems to be limited.

The expiry of AIMMAP's five agreements in 2009 and the subsequent signing of two new agreements with SIMA and SINDEL did not reduce the wage level in the sector further. On the contrary, it resulted in a considerable increase of the level of collectively agreed wages, but still far below the level of effectively paid wages. Thus, collective bargaining continued to exert a limited influence on the level of wages actually paid in the sector.

The two new agreements signed by AIMMAP brought a considerable change in the regulation of working time, with a gradual but still considerable decrease of pay supplements for more than two hours of overtime per day and a substantial increase of the limit of overtime hours, and in particular with the newly introduced regulation of working time accounts.

It is not possible in the course of this study to establish a cause-and-effect-relationship between collective bargaining by AIMMAP and the evolution of the economic situation in the sector. We may conclude from the data that the expiry of AIMMAP's five agreements in 2009 and the subsequent signing of two new agreements with SIMA and SINDEL increased the regulatory force of collective bargaining in relation to wage setting (without exerting effective pressure for wage increases) and that the new regulations regarding working time expanded the legal possibilities for internal flexibility of the companies covered by the agreements.

### **6.2.2 AIC case study**

The association of crystal glass producers AIC is (in terms of employees involved) the most important example amongst employers' associations which effectively ended collective bargaining altogether. All other cases in the group of employers who abolished collective bargaining altogether refer to very small and specific geographic areas or occupational groups or single companies with less than 1,000 workers.<sup>20</sup> These are the reasons why we consider AICrystal the most representative case in this group to be studied in detail.

In 2009, the three collective agreements signed by AICrystal expired, at least 32 years after their last comprehensive revision (and 8 years after the most recent revision of pecuniary aspects). At the end of the very long period of stagnation in collective bargaining the wage tables were largely out-dated. The arithmetic mean of the collectively agreed wages as determined by the AIC-agreement in 2001 represented in the year of its expiry (2009) only 60% of the average effectively paid basic wage in "manufacturing of other non-metal mineral products" and the lowest level of the wage table represented only 59% of the statutory minimum wage. In 2009, 11 out of 31 wage levels were below the valid statutory minimum

<sup>20</sup> The Association of Commerce, Industries and Services of Castelo Branco (1 expired agreement) is a small local employers' association far from the densely populated coast, the agreement of the Portuguese Association of Companies Concessionaires of Gambling Areas (casinos, 1 agreement) did only refer to a small and specific group of employees (staff at gambling tables) and the single company Rodoviária do Tejo (road and urban transport, 2 agreements) employs less than 1,000 workers.

wage. Even in the year of the signing of the agreement (2001) the lowest wage level corresponded to only 79% of the minimum wage in effect at that time.

In terms of wage trends in the sector covered by the AIC-agreements and the influence of collective bargaining on wage setting the situation was similar to the case of AIMMAP, in particular during the long period of stagnation before 2009. The disappearance of the three AIC-agreements in 2009 had little to no impact on wage setting because the wage tables were contained therein were completely out-dated.

The non-existence of collective agreements in crystal glass production did not make a significant difference in relation to wage setting because employees kept their individual rights in terms of remuneration and thus any effect of the expiry on wage formation would only occur in the course of a major entry of new workers in the sector. Comparing the case of AIC with AIMMAP we see that AIMMAP's agreements after 2009 contained wage tables whose lower end was identical with the statutory minimum wage and whose mean level was still far below the effectively paid basic rates, suggesting that AIC's move towards the abolition of collective bargaining at all did not bring substantial advantages in relation to associations who continued bargaining after the expiry of their agreements.

<b>CAE 23 - Manufacturing of other non-metal mineral products</b>	<b>2001</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
AICrystal 2001: highest collectively agreed wage	1085,1 3	1085,1 3	1085,1 3			
AICrystal 2001: mean agreed wage (arithmetic mean, not weighted)	507,35	507,35	507,35			
AICrystal 2001: lowest collectively agreed wage	264,36					
Average effectively paid basic wage (in €)		791,9	823,9	847,4	855,8	873,0
variation in %			4,0	2,8	1,0	2,0
Number of companies		3.145	3.026	2.831	2.442	2.334
variation in %			-3,8	-6,4	-13,7	-4,4
Number of employees				42.24 3	40.57 7	37.95 6
variation in %				-4,7	-10,4	-3,9
National minimum wage	334,19	403	426	450	475	485

Sources: *Collective agreements AICrystal-FETICEQ and AICrystal-FEVICCOM, both for blue collar workers, and Quadros de Pessoal Series 2001-2011 (Agreement AICrystal-CESP covers only white collar workers)*

The most recent complete publication of the texts of the AIC-agreements in the Ministry's official bulletin occurred in 1977 and/or before. Therefore they are not available at the BTE-online database and it was not possible to analyse the regulations on overtime pay in these agreements. Nonetheless, it is possible to state that the expiry of all AIC-agreements without replacement had a consequence in this area.

As indicated above, the new AIMMAP-agreement with SINDEL settled the yearly maximum of overtime work at 200 hours. This limit lies 25 / 50 hours (according to the company size) above the level established by the Labour Code 2009 (LC 2009, valid at the moment of the expiry of AIC's and AIMMAP's agreements). AIMMAP made use of the possibility of extending this limit by collective agreement, as it was stipulated in the LC 2009 (see below).

The complete abortion of collective bargaining by AIC deprived this employers' association of the possibility to make use of the extension of the limit of yearly overtime and of regulating the introduction of working time accounts. Thus, AIC was not able to make use of two relevant instruments for internal flexibility offered by the LC 2009.

**Table 6.6 Change of certain contents in collective agreements after expiry – Changes in regulation of overtime pay**

<b>Labour Code 2009, Articles 228, 268</b>		
Additional pay 1st hour	+50%	
Additional pay 2nd hour	+75%	
Following hours	+75%	
Limit of hours per year	Micro or small company: 175 Medium or large company: 150	Can be extended by collective agreement up to 200

Source: *Labour Code 2009*

### **Conclusions**

There are no signs of a significant influence of AIC's collective bargaining on wage setting during the period 2000 until the expiry of its agreements. After expiry the companies in the sector continued to design their wage tables based on the statutory minimum wage. The extinction of the collective agreements with their wage tables dated 2001 did not have a relevant influence on wage setting in the sector.

In the course of this study it was not possible to analyse the further regulations in the AIC-agreements. Nonetheless, the analysis of the stipulations of the LC 2009 regarding the limits to overtime work and the introduction of working time accounts has shown that the extinction of collective agreements meant that certain instruments for internal flexibility could not be used by AIC.

### **Comparing the cases of AIMMAP and AIC with collective bargaining in general**

The first striking aspect of the two cases (AIMMAP and AIC) are the extremely long periods of non-negotiation that preceded the cessation of validity of the agreements (more than 5 years in both cases).

In fact, "old age" is a common phenomenon amongst Portuguese collective agreements. In its annual reports on collective bargaining the DGERT registered during the period 1995-2013 an average period of validity of wage tables of approximately 18 months, 6 months longer than the period usually stipulated in the agreements. Due to the present crisis in collective bargaining, the average validity of wage tables has increased to 32 months and will rise as long as the deadlock in a larger number of agreements continues (see table Average duration of collective agreements in annex).

A closer look at the first year of wage tables in manufacturing registered in the Quadros de Pessoal 2012 reveals that 69% of the valid agreements date back to 2010 or before, and 23% date back to 2000 or before.

The difference between collectively agreed wages and effectively paid wages (wage drift) results from the power relations in collective bargaining and is increased by delays in wage negotiations. In the Portuguese case these delays are in general considerable and in a relevant number of cases enormous.

The Green paper on Labour Relations published in 2006 presented figures that indicate a considerable wage drift for the period 1994-2003, with average basic rates representing approximately 130% of the average collectively agreed wages. In the case of AIMMAP discussed above, the relationship between the arithmetic mean of collectively agreed wage and the average effectively paid wage in the sector was similar.



**Table 6.7 Trends in average wage drift (1994-2003)**

	Nominal wages in €		
	1994	1998	2003
Average collectively agreed wages (CAWI)	372,28	451,19	550,52
Effectively paid average basic rates	487,70	568,53	728,83

Source: Dornelas (2006), p 152

It is therefore possible to conclude that the role of collective bargaining in wage formation in general in Portugal is limited.

In relation to the motives for the employers' associations to withdraw from their agreements we may conclude that the central reason was that they wanted to withdraw from the framework agreements with their very restrictive regulations of the labour process. As shown in chapter 3 and illustrated in this section, this aim was achieved by all large employers' associations in manufacturing.

On the ground of the available data it is not possible to establish which were the economic and social impacts of the expiry of the agreements, but we may suggest that there was a significant increase of internal flexibility in the respective sectors, with some relevant implications regarding working conditions (increased employers' discretion over workers' disposability and decreased workers' income for overtime).

## 7 Possible options for reforms

This chapter summarizes the findings of this study and tests possible options for reforms of the expiry mechanism in view of making collective bargaining more dynamic. It also assesses the options for modernizing the expiry mechanism as a response to the new demands of the labour market allowing for an increase in firms' competitiveness. This chapter will also cover an assessment of the potential impact, advantages and disadvantages of changing the periods of *sobrevigência*.

In the **Introduction** we explain how the collective bargaining system in Portugal that was created after the revolution in 1974 came to a standstill as a process of permanent adaptation of terms and conditions of employment to economic realities largely. The reason was that the trade unions were not willing to respond positively to the employers' demands for reregulation, and the underlying legal mechanism was the principle of continuity that meant that an existing agreement could only be cancelled if all its signatory parties agree or if it was replaced by an agreement between the same signatories.

The Labour Code 2003 abolished the principle of continuity, allowing signatories to withdraw unilaterally from existing agreements and regulating the expiry mechanism and the period of survival (*sobrevigência*) during the process. The law had left some loopholes, the most important of them was that agreements with a so-called "survival clause" stipulating that they could only expire if they were replaced by a new agreement signed by the same partners could not expire. This problem was eliminated six years later in the course of the revision of the Labour Code in 2009, and the 15 blocked expiry procedures of collective agreements with the so-called "survival clause" were immediately concluded.

As well as introducing changes that facilitated the expiry of collective agreements, the Labour Code 2009 (LC 2009) created incentives for the renegotiation of existing agreements, thus opening the way to a more dynamic system of collective bargaining. However, the crisis brought this process of negotiated change to an abrupt end.

The Memorandum of Understanding between the Troika and Portugal established an extensive list of measures in the area of labour relations. One of them was to prepare an independent review on the desirability of shortening the survival (*sobrevigência*) of contracts that are expired but not renewed.

In Chapter 3 on "**Expiry and *sobrevigência* (SV) in Law and in Practice**" we trace the changes in legislation on expiry and *sobrevigência* since 2003 and refer the present legal situation. Since 2009 there are two expiry regimes in place, a general regime with a minimum survival period of 20 months and a special regime for agreements with a so-called "survival clause" that stipulates a further survival period of 5 years. In our analysis we come to the conclusion that this 5-year-survival-period has little or no practical relevance because its starting point is the last comprehensive revision of the agreement. In the case of the 15 agreements with survival-clauses that expired in 2009, the 5-year-survival-period had no effect at all. Since then, there have been no further cases of expiry of agreements with survival-clauses, but if they would occur today or in the future, the 5-year-survival-period would also be of little (This aspect is further explored in the final section "Outlook" below.)

With regard to expiry and *sobrevigência* in practice we found out that all 34 successful processes of expiry that have occurred until now had been triggered by the employers during the period 2003-2007 and that 27 of them were concluded until 2009. 15 were resolved in 2009 when the revised Labour Code had come into force.

Most of the expired agreements are branch agreements in manufacturing, covering approximately 40% of the workforce in this sector. The study reveals that between 2003 and 2009 the largest employers' associations in manufacturing (in metal, automobile, electric equipment, ceramics, and chemical industries) withdraw from their agreements and made

them expire.<sup>21</sup> The primary reason was that they wanted to dispose of the extensive regulation of the production process in the framework agreements which they considered a serious obstacle to internal flexibility. All of the large employers' associations used the expiry to make a new start in collective bargaining, with comprehensively reviewed framework agreements.

The analysis of data regarding the possible **economic and social impacts** of the expiry of the agreements in Chapter 6 demonstrates that the regulatory force of collectively agreed wages in wage setting is very low and that the revised agreements negotiated after the expiry of the old ones did not reduce the collectively agreed wages. The analysed cases in combination with data on collective bargaining in general suggest that the expiry of the agreements resulted in a significant increase of internal flexibility in the respective sectors, with some relevant implications regarding working conditions (increased employers' discretion over workers' disposability and decreased workers' income for overtime).

Is the present Portuguese legislation on the expiry of collective agreements a "winning team"?

The analysis of the legislation regulating the expiry mechanism and the related survival periods revealed that the law in its present form performs its task. The legal requirements for the expiry of collective agreements are under several aspects more demanding and the minimum periods are longer than in other European countries, but it is possible for one of the signatory parties to effectively end an agreement if they wish to do so.<sup>22</sup>

All requests for expiry came from employers and employers' associations, most of them in manufacturing. Some of them relate to large sectors represented by important associations and trade unions. There was a first wave of requests for expiry in a number of medium and large sectors in manufacturing that was concluded with the cessation of validity of 15 agreements in 2009. Since then, the number of requests for expiry has dropped to very low levels and their origin has shifted from manufacturing to the service sector. It seems that during the period 2003-2009 the companies in the most exposed sectors have been able to resolve their problems with their collective agreements and that expiry and *sobrevigência* are no longer a current issue for them. The problems created by the old agreements and resolved by the expiry were mostly related to barriers to internal flexibility, wage setting was not the central problem.

Taking into consideration that the existing legislation performs its task regarding the expiry mechanism and the survival periods and that the employers' interest in making use of it has dropped to very low levels it seems that there is no major need for action in this area.

### **Comparison with other EU-countries**

The comparison with several other EU-countries (chapter 5) indicates that legal requirements for the expiry of collective agreements in Portugal are under several aspects more demanding and the minimum periods are longer than elsewhere in Europe. These differences are gradual, except for the Portuguese regulation of the survival period of agreements with a so-called "survival clause" (5 or 6.5 years after its most recent comprehensive revision). None of the other countries has a similar rule<sup>23</sup>. Nonetheless, the analysis of the Portuguese regulation demonstrated that the referred survival periods of 5 or

<sup>21</sup> The associations in textiles and clothing triggered the process of expiry but shortly before its conclusion they signed a comprehensively revised agreement with the unions. In this case, the expiry was clearly an instrument to oblige unions to make concessions in the negotiations.

<sup>22</sup> An analysis of the rejections of requests for expiry could have revealed possible problems in the expiry mechanism, but the respective notifications are not published and DGERT did not respond positively to the authors' request to provide the respective documentation.

<sup>23</sup> The German legislation and law case may suggest that there is some kind of similar rule, but this applies only to hypothetical cases that do not take place in real life.

6.5 years are in practice irrelevant<sup>24</sup>. In the group of the 25 largest collective agreements, representing approximately half of all workers covered by collective agreements, only two have a so-called “survival clause”. In both cases the most recent comprehensive revision of the agreement dates back more than 15 years. This means that the 5-year-survival-period would not apply to any of the referred large agreements. This indicates that the shortening of the 5-year-survival-period would have little or even no practical impact in the future.<sup>25</sup>

The existing legal minimum survival period for agreements without a survival clause (18 months plus 60 days) is longer than those in other EU-countries. Nonetheless, this does not seem to be a significant obstacle for achieving practical results. An employers’ association who perceives that it is in the interest of its members to make an agreement expire will not abandon this intent because the process takes some months longer. On the other hand, a longer survival period may increase the chances for a convergence of positions that allows the signatories to succeed in negotiations on a revision of the agreement<sup>26</sup>, and it corresponds to the longer duration of collective bargaining procedures in Portugal. As referred to in chapter 6, the average effective period of validity of wage tables is 18 months. This means that wage negotiations exceed the normal validity of wage tables (12 months) by 6 months. This is certainly different in countries like Germany or Denmark and must be taken into consideration in the comparison of data.

In chapter 6, the analysis of two case studies in the light of the general trends in collective bargaining in Portugal did not detect significant implications of the current *sobrevigência* mechanism in wage dynamics or in other economic indicators. The wage drift (difference between collectively agreed and effectively paid wages) reduces in general the relevance of collective bargaining for the wage formation in the economy, and in the case of agreements that are on the way to expiry (and that have not been revised for several years) wage tables tend to become completely irrelevant.

The changes in the regulation of working time that occurred in the context of the two cases of expiry indicate that the existing expiry mechanism allows employers to achieve different goals, according to their perceived interests. One employers’ association used the expiry mechanism to restructure bargaining in its domain. It negotiated comprehensively revised agreements with new working time regulations, with some important advantages (namely a broader working time flexibility than the general labour law). The other association opted for ending collective bargaining altogether.

### **Outlook**

Under the present regulation of the expiry and *sobrevigência* of collective agreements, signatories who wish to withdraw from agreements will continue to be able to achieve this aim. The formal prerequisites and the general survival period of the agreements (at least 20 months) will not constitute a serious obstacle for this. This applies to all existing agreements.

The 5-year-survival-period for agreements with a survival clause will not play a significant role in the future.

<sup>24</sup> Employers usually trigger the expiry mechanism after a period of stagnation in negotiations, and this implies that the last comprehensive revision dates back several years. In fact, all of the 15 agreements expired in 2009 without any delay related to the 6.5-years-of-survival-rule (see chapter 3).

<sup>25</sup> The Table “Large collective agreements with/without survival clause” presents data referring to the 25 largest branch and company agreements. It was not possible to obtain data on some very few large agreements because their last revision dates back 15 or more years, but the table is highly representative. It covers approximately 90% or more of the largest agreements and half of the total number of workers covered by collective agreements. (see table in the annex)

<sup>26</sup> In 2004-2005 in textiles and clothing industries (the largest Portuguese manufacturing sector in terms of employment) the employers triggered the expiry mechanism, but shortly before the publication of the announcement of the cessation of validity they withdraw their request and signed new revised agreements with the unions. This was clearly a case where the employers forced the unions to accept to make substantial concessions in order to save their agreement. From this angle a longer survival period can give unions the necessary time for coming to the decision of making concessions.

### ***Conclusion***

We may conclude that there is a need for making collective bargaining more dynamic, but it does not seem that a reform of the expiry mechanism would be a key-element for this purpose. The decline of the employers' interest in making collective agreements expire (in particular those active in the exposed sectors of the economy) underlines this assessment. A change of the expiry mechanism and a reduction of the survival periods would probably have no significant immediate impact in the economy or on the labour market, but as referred in the introduction such a change might function in the present situation of economic uncertainty as a further disincentive for collective bargaining (in addition to the economic uncertainty and the end of pervasive extensions of agreements).

In contrast to the expiry mechanism arbitration in the area of collective bargaining does not work at all. It seems that the need for action lies more in this area.

As referred in chapter 1, any activity in this area should take into account that social concertation has played a constructive role in the ongoing reform process and that it is therefore advisable to value the search of consensus with social partners.

# ANNEXES

## Annex 1 Acronyms of employers' and trade union organisations

### Employers' organisations

Acronym	Name	English translation
ACAP	Associação Automóvel de Portugal	Portuguese Automobile Association
(ACISCB)	Associação Comercial, Industrial e Serviços de Castelo Branco	Commercial, Industrial and Services Association of Castelo Branco
ADIPA	Associação dos Distribuidores de Produtos Alimentares	Association of Distributors of Food Products
AIC	Associação Industrial de Cristalaria	Industrial Association of Crystal Glass
AIMMAP	Associação dos Industriais Metalúrgicos, Metalomecânicos e Afins de Portugal	Association of Metal, Metalmechanic and related Manufacturers of Portugal
ANIL	Associação Nacional dos Industriais de Lanifícios	National Association of Wool Manufacturers
ANIMEE	Associação Portuguesa das Indústrias do Sector Eléctrico e Electrónico	Portuguese Association of the Electrical and Electronic Sector
ANIPC	Associação Nacional dos Industriais do Papel e Cartão	National Association of Paper and Cardboard Manufacturers
APEQ	Associação Portuguesa das Empresas Químicas	Portuguese Association of Chemical Companies
APEB	Associação Portuguesa das Empresas de Betão Pronto	Portuguese Association of Concrete Companies
(APECZJ)	Associação Portuguesa das Empresas Concessionárias das Zonas de Jogo	Portuguese Association of Concessionaires of Gambling Areas
APICER	Associação Portuguesa da Indústria de Cerâmica	Portuguese Association of Ceramic Industry
APIGRAF	Associação Portuguesa das Indústrias Gráficas, de Comunicação Visual e Transformadoras do Papel	Portuguese Printing, Visual Communication and Paper Manufacturing Industries Association
APIMINERAL	Associação Portuguesa da Indústria Mineral	Portuguese Association of the Mineral Industry
ASSIMAGRA	Associação Portuguesa dos Industriais de Mármore, Granitos e Ramos Afins	Portuguese Association of Manufacturers of Marbles, Granites and Related Branches
CTT	Correios de Portugal, S.A.	Portuguese Mail
FAPEL	Associação Portuguesa de Fabricantes de Papel e Cartão	Portuguese Association of Paper and Cardboard Manufacturers

FENAME	Federação Nacional do Metal	National Federation of Metal
ISU	Estabelecimentos de Saúde e Assistência, S.A.	Establishments of Health and Assistance
Rodoviária de Lisboa	Rodoviária de Lisboa, S.A.	Lisbon Bus
Rodoviário do Tejo	Rodoviária do Tejo, S.A.	Tejo Bus

### Trade union organisations

Acronym	Name	English translation
CESP	Sindicato dos Trabalhadores do Comércio, Escritório e Serviços de Portugal	Trade Union of Commerce, Office and Service Workers of Portugal
FEPCES	Federação Portuguesa dos Sindicatos do Comércio, Escritórios e Serviços	Portuguese Federation of Commerce, Office and Services Unions
FESTRU	Federação dos Sindicatos dos Transportes Rodoviários e Urbanos	Federation of Unions for Road and Urban Transport Workers
FETESE	Federação dos Sindicatos dos Trabalhadores de Serviços	Federation of Service Workers and Technicians
FETICEQ	Federação dos Trabalhadores das Indústrias Cerâmica, Vidreira, Extractiva, Energia e Química	Federation of Workers in the Ceramics, Glass, Extractive, Energy and Chemical Industries
FEVICOM	Federação Portuguesa dos Sindicatos da Construção, Cerâmica e Vidro	Portuguese Federation of Construction, Ceramics and Glass Trade Unions
FIEQUIMETAL	Federação Intersindical das Indústrias Metalúrgicas, Química, Farmacêutica, Eléctrica, Energia e Minas	The Inter-Union Federation of Metal, Chemical, Electrical, Pharmaceutical, Paper, Graphic and Printing Industries and Energy and Mining
FSTIEP	Federação dos Sindicatos dos Trabalhadores das Indústrias Eléctricas de Portugal	Federation of Electric Industries
SIMA	Sindicato das Indústrias Metalúrgicas e Afins	Union of Metal and Related Industries
SINDEL	Sindicato Nacional da Indústria e da Energia	National Union of Manufacturing and Energy
SINDETEX	Sindicato Democrático dos Têxteis	Democratic Textiles Union
SITESC	Sindicato dos Quadros, Técnicos Administrativos, Serviços e Novas Tecnologias	Union of Qualified Employees, Administrative Staff, Services and New Technologies
SITRA	Sindicato dos Trabalhadores dos Transportes	Transport Workers' Union
SNTCT	Sindicato Nacional dos Trabalhadores dos Correios e Telecomunicações	National Union of Post and Telecom Workers
SPBC	Sindicato dos Profissionais de Banca dos Casinos	Union of Professional Banking Casinos
STAS	Sindicato dos Trabalhadores da Actividade Seguradora	Union of Insurance Activity Workers
STICPGI	Sindicato dos Trabalhadores das Indústrias de Celulose, Papel, Gráfica e Imprensa	Workers Union of the Celulose Industries, Paper, Graphic and Printing

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## Annex 3 Data tables

**Table A3.1 Average duration of collective agreements (1995-2013)**

Total economy	
Year	Average duration of agreements (in months)
1995	16,7
1996	14,2
1997	13,1
1998	16,1
1999	13,8
2000	16,9
2001	16,5
2002	17,4
2003	14,1
2004	17,1
2005	20,4
2006	22,9
2007	16,6
2008	18,7
2009	13,7
2010	15,9
2011	15,9
2012	19,9
2013 (1 <sup>st</sup> half)	32,0

*Source: DGERT (2000-2010) Weighted average variation between wage tables*

**Table A3.2** Date of valid wage table in collective agreements in manufacturing

Valid since year in the period:	Number of agreements
1971-1980	4
1981-1990	17
1991-2000	44
2001-2010	126
2011	44
2012	42

Source: Quadros de Pessoal 2012 - Table 133

**Table A3.3** Number of expired agreements per trade union

Name of organisation	Number of expired agreements	Sectoral domain	Type of organisation	Geographic domain	Affiliation
CESP / FEPCES	4	Commerce and Services	Union / Federation of unions	National	CGTP
FIEQUIMETAL (FEQUIMETAL, FSTIEP, STICPGI)	6	Manufacturing (mining, metal, chemical, electric equipment, printing)	Federation	National	CGTP
FECTRANS (FESTRU, SNTCT)	2	Transports and communication	Federation	National	CGTP
FETESE	4	Commerce and services and others	Federation	National	UGT
FETICEQ	3	Manufacturing (Chemical and others)	Federation	National	UGT
FEVICCOM	4	Manufacturing and construction (quarrying, cement, ceramics, construction)	Federation	National	CGTP
SIMA	2	Manufacturing (metal and others)	Union	National	None
SINDEL	1	Manufacturing and Energy (metal, tobacco, electricity and others)	Union	National	UGT
SINDETEX Note: Integrated into SINDEQ, leading union of FETICEQ	2	Textiles	Union	National	UGT
SITESC	2	Commerce and services and others	Union	National	UGT
SITRA	2	Road and urban transport	Union	National	UGT
SPBC	1	Staff at gambling tables in casinos	Union	National	UGT
STAS	1	Insurance	Union	National	UGT

**Table A3.4** Table of expired agreements per employers' organisation

Name of organisation	Number of expired agreements	Sectoral	Type of organisation	Geographical domain
ACAP	1	Manufacturing and services	Association	National
ACISCB	1	Commerce,	Association	Local
ADIPA	1	Commerce and distribution	Association	National
AIC	3	Manufacturing	Association	National
AICR	1	Manufacturing	Association	National
AIMMAP	5	Manufacturing	Association	National
ANIL	1	Manufacturing	Association	National
ANIMEE	1	Manufacturing	Association	National
ANIPC	1	Manufacturing	Association	National
APEB	1	Manufacturing	Association	National
APECZJ	1	Leisure	Association	National
APEQ	1	Manufacturing	Association	National
APICER	5	Manufacturing	Association	National
APIGRAF	1	Manufacturing	Association	National
APIMINERAL	1	Quarrying	Association	National
ASSIMAGRA	1	Quarrying	Association	National
FAPEL	1	Manufacturing	Association	National
FENAME	2	Manufacturing	Association	National
CTT	1	Communication	Company	
ISU	1	Health	Company	
Rodoviária de Lisboa	1	Transport	Company	
Rodoviária do Tejo	2	Transport	Company	

Table A3.5 Large sectors with partial/total expiry of collective agreements

Ref. Nr.	Agreements listed according to date of cancellation by one of the signatories (denúncia)	a.1 Sector / company (CAE 2.1)	a.2 Number of workers covered	b1 Signatory parties (employers)	b2 Signatory parties (unions)	Existing parallel agreements with other unions that did not expire (First signing union referred)	Comment
	Source	Announcement and agreement	Agreement or Censos 2011	Announcement and agreement	Announcement and agreement	BTE Database	
3	<b>CCT Textiles</b>	Textiles	27300	ANIL, ANIT-LAR e ATP	SINDETEX, STV, SITEMAQ e SIFOMATE	FESETE	FESETE is probably by far the largest union in the sector
4	<b>CCT FENAME – FEQUIMETAL</b>	Metal manufacturing	33.657	FENAME	FEQUIMETAL	SQTD, FETESE, SITESC, FENSIQ, SINDEL, SERS	FEQUIMETAL is probably by far the largest union in the sector
6	<b>CCT APICER – FEPCES (administrative workers)</b>	Ceramics	26750	APICER	FEPCES	None	All agreements in the sector expired
7	<b>CCT APICER – FETICEQ (blue collar)</b>	Ceramics	26750	APICER	FETICEQ	None	
8	<b>CCT APICER – FEVICCOM (blue collar)</b>	Ceramics	26750	APICER	FEVICCOM	None	
9	<b>CCT APICER-SITESC (administrative workers)</b>	Ceramics	26750	APICER	SITESC	None	
10	<b>CCT APICER-FETESE (administrative workers)</b>	Ceramics	26750	APICER	FETESE	None	

Ref. Nr.	Agreements listed according to date of cancellation by one of the signatories (denúncia)	a.1 Sector / company (CAE 2.1)	a.2 Number of workers covered	b1 Signatory parties (employers)	b2 Signatory parties (unions)	Existing parallel agreements with other unions that did not expire (First signing union referred)	Comment
16	<b>CCT ANIMEE-FSTIEP</b>	Electric equipment	26000	ANIMEE	FSTIEP	FETESE, SIMA	FSTIEP is probably the largest union in the sector, but the group of unions signing with FETESE has probably a relevant share of unionized workers in the sector
17	<b>CCT APEQ</b>	Chemical industries (241, 242, 243, 245)	22500	APEQ et al.	FETESE	SITEMAQ (and SIFOMATE)	SITEMAQ and SIFOMATE are small unions representing a very specific occupational group (stokers).
18	<b>CCT FENAME-SIMA</b>	Metal manufacturing	33657	FENAME	SIMA	SQTD (1,798 workers), FETESE (33,657), SITESC, FENSIQ, SINDEL, SERS	SIMA has only a small share of unionized workers in the sector.
19	<b>CCT AIMMAP-FEQUIMETAL</b>	Metal manufacturing	50000	AIMMAP	FEQUIMETAL		All agreements with AIMM AP expired, but most of FENAME's agreements did not.
20	<b>CCT AIMMAP-SINDEL</b>	Metal manufacturing	50000	AIMMAP	SINDEL		
21	<b>CCT AIMMAP-SIMA</b>	Metal manufacturing	50000	AIMMAP	SIMA		
26	<b>CCT AIMMAP-SITESC</b>	Metal manufacturing	50000	AIMMAP	SITESC		

Ref. Nr.	Agreements listed according to date of cancellation by one of the signatories (denúncia)	a.1 Sector / company (CAE 2.1)	a.2 Number of workers covered	b1 Signatory parties (employers)	b2 Signatory parties (unions)	Existing parallel agreements with other unions that did not expire (First signing union referred)	Comment
27	<b>CCT AIMMAP-FETESE</b>	Metal manufacturing	50000	AIMMAP	FETESE		
29	<b>CCT ACAP-FIEQUIMETAL</b>	Motor vehicles production and services	50000	ACAP	FIEQUIMETAL	FEPGES, SITESC, FETESE	FIEQUIMETAL is probably the largest union in the sector



Table A3.6 "Large collective agreements with/without survival clause"

Type of agreement	Sector	Signatories	Number of companies covered according to agreement	Number of workers covered according to the agreement	Survival clause	Most recent comprehensive revision
CCT	Textiles and clothing	ATP - FESETE	730	95 000	No	
CCT	Clothing	ANIVEC-APIV - FESETE	6 000,00	100 000,00	No	
CCT	Shoe and leather	APICCAPS - FESETE	600	17 000	No	
CCT	Wood	AIMMP and others - FSTIEP and others	5 000	55 000	No	
CCT	Chemical	APEQ and others - FETESE and others	600	22 500	No	
CCT	Metal	FENAME - FETESE	947	33 657	No	
CCT	Metal	AIMMAP - SINDEL and others	1 000	50 000	No	
CCT	Electric material	AINIMEE - FETESE and others	208	28 000	No	
CCT	Construction	AECOPS and others - FEVICOM and others	18 517	300 000	No	
CCT	Construction	AECOPS and others - SETACOOOP and others	18 517	300 000	No	
CCT	Automobile manufacturing, sales and repairs	ACAP and others - SINDEL and others	8 000	50 000	No	
CCT	Retail trade including some services Northern and Central PT	ACPorto and others - CESP	13 500	37 000	No	
CCT	Retail trade >200m2	APED_FEPCES	96	75 000	No	
CCT	Road transport goods	ANTRAM_FESTRU			Yes	1982 or before
CCT	Restaurants	AHRESP - FETESE	24 578	45 582	No	
CCT	Restaurants	AHRESP - FESAHT	24 578	45 582	No	
ACT	Credit institutes	Group of Banks - FEBASE	28	54 360	Yes	before 1999
CCT	Cleaning	ASSOC.EMP.PREST.SERV.LIMPEZA ACTIV.SIMILARES - STAD and others	70	27 000	No	
CCT	Cleaning	ASSOC.PORT.FACILITY SERVICES - FETESE and others	70	35 000	No	
CCT	Private schools	AEEP - FENPROF and others	553	35 224	No	
CCT	Private social services	CNIS - FNE and others	4 000	70 000	No	
AE	Post services	CTT		9 711	No	
AE	Telecommunications	PT COMUNICAÇÕES and others - SINDELCO and others		10 435	No	
AE	Banking	CAIXA GERAL DE DEPÓSITOS - STEC and other		11 060	No	
ACT	Banking	BANCO COMERCIAL PORTUGUÊS and others - FEBASE		8 977	No	
			<b>127 592</b>	<b>1 516 088</b>		

	without multiple counting	<b>83 480</b>	<b>1 061 666</b>	
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Source: Quadros de Pessoal 2012 and collective agreements at BTE online

Note 2: CCT = sector agreement; ACT = agreement signed by a group of companies; AE = single company agreement

Note 1: The total number of covered by collective agreements was in 2012 2,1 million, the number of workers covered in the table above is approximately 1,06 million.

**Table A3.7 Table Collective bargaining after the expiry**

Agreements listed according to date of cancellation by one of the signatories (denúncia)	a.1 Sector / company	b1 Signatory parties (employers)	b2 Signatory parties (unions)	g. Date of cessation of validity	New agreement with the first same signatories	Other unions with agreements valid after the expiry of the agreement of signatories referred in the announcement of cessation	Notes	Groups "1: Exclusion of one/some unions"; "2: Expiry of all agreements"; "3: Comprehensive revision"
Source	Announcement and agreement	Announcement and agreement	Announcement and agreement	Announcements		BTE Database (search back to 1999)		
CCT FAPEL	Paper	FAPEL	STICPGI	03-12-2005	No	FETESE: 2007, 2008		1
CCT AICR SINDETEX	Rope manufacturing	AICR	SINDETEX	24-03-2005	No	SINDEQ: 2006; FESETE: 2007, 2008, 2011		1
CCT ANIL-SINDETEX	Textiles	ANIL	SINDETEX	17-11-2005	No	SINDEQ: 2006-7-8-9-10-11; FESETE: 2006-7-8-9-10-11		1
CCT FENAME – FEQUIMETAL	Metal manufacturing	FENAME	FEQUIMETAL	31-03-2006	No	SQTD, FETESE, SIMA, SERS		1
CCT COMMERCE CBR-CESP	Commerce (Cast. Branco)	ACISCB	CESP	01-01-2006	No	None		2
CCT APICER – FEPCES (administrative workers)	Ceramics	APICER	FEPCES	20-02-2006	No	FETESE, FETICEQ, Sindicato Nacional dos Trabalhadores das Indústrias de Cerâmica, Cimentos, Construção		1

CCT APICER – FETICEQ (blue collar)	Ceramics	APICER	FETICEQ	14-07-2006	Yes	FETESE, Sindicato Nacional dos Trabalhadores das Indústrias de Cerâmica, Cimentos, Construção		3
CCT APICER – FEVICCOM (blue collar)	Ceramics	APICER	FEVICCOM	20-08-2006	No	FETESE, FETICEQ, Sindicato Nacional dos Trabalhadores das Indústrias de Cerâmica, Cimentos, Construção		1
CCT APICER-SITESC (administrative workers)	Ceramics	APICER	SITESC	20-02-2005	No	FETESE, FETICEQ, Sindicato Nacional dos Trabalhadores das Indústrias de Cerâmica, Cimentos, Construção		1
CCT APICER-FETESE (administrative workers)	Ceramics	APICER	FETESE	20-02-2006	Yes	FETICEQ, Sindicato Nacional dos Trabalhadores das Indústrias de Cerâmica, Cimentos, Construção		3
CCT ASSIMAGRA-FEVICCOM	1411, 1412, 1413, 267	ASSIMAGRA	FEVICCOM	01-08-2007	Yes	None	ASSIMAGRA changed name to ANIET	3
CCT APIMINERAL-FEQUIMETAL		APIMINERAL	FEQUIMETAL	15-11-2005	No	FETICEQ (see comment)	FETICEQ: still valid but not changed since	formally 1, de facto 2

							2003	
<b>CCT CEMENT-FETESE</b>	Cement	ANIPC	FETESE	01-08-2007	No	FEVICCOM (see comment)	FEVICCOM: still valid but not changed since 2003	formally 1, de facto 2
<b>CCT Graphics-FETICEQ</b>	Graphics	APIGRAF	FETICEQ	16-12-2008	No	STICPGI (FIEQUIMETAL) and SINDELCO (see note)	Agreements changed in 2009 by compulsory arbitration	3
<b>AE CTT-SNTCT</b>	Postal services	CTT	SNTCT	07-11-2008	Yes	SINDELCO		3
<b>CCT ANIMEE-FSTIEP</b>	Electric equipment	ANIMEE	FSTIEP	17-02-2009	No	FETESE, SIMA	SIMA's agreement not changed since 2003	formally 1, de facto 2
<b>CCT APEQ</b>	Chemical industries	APEQ et al.	FETESE	17-02-2009	Yes	None (see note)	During the process of expiry FETESE negotiated a new agreement, while other unions (namely FIEQUIMETAL) who had been co-signatories of the old FETESE-agreement saw their agreement expire.	1 and 3
<b>CCT FENAME-SIMA</b>	Metal manufacturing	FENAME	SIMA	17-02-2009	Yes	SQTD, FETESE, SERS		3
<b>CCT AIMMAP-FEQUIMETAL</b>	Metal manufacturing	AIMMAP	FEQUIMETAL	17-02-2009	No	SINDEL (with FETESE), SIMA		1
<b>CCT AIMMAP-SINDEL</b>	Metal manufacturing	AIMMAP	SINDEL	17-02-2009	Yes	SIMA		3
<b>CCT AIMMAP-SIMA</b>	Metal manufacturing	AIMMAP	SIMA	17-02-2009	Yes	SINDEL		3
<b>CCT CRYSTAL-Fed. Ceramic Workers</b>	Crystal glass	AICR	FEVICCOM	17-02-2009	No	None		2

CCT CRYSTAL-FETICEQ	Crystal glass	AICR	FETICEQ	17-02-2009	No	None		2
CCT CRYSTAL-CESP	Crystal glass	AICR	CESP	17-02-2009	No	None		2
CCT ADIPA-FEPCES	Food distribution 512, 513	ADIPA	FEPCES	17-02-2009	No	FETESE		1
CCT AIMMAP-SITESC	Metal manufacturing	AIMMAP	SITESC	17-02-2009	No	SINDEL (with FETESE), SIMA		1
CCT AIMMAP-FETESE	Metal manufacturing	AIMMAP	FETESE	17-02-2009	Yes (with SINDEL)	SINDEL, SIMA		3
CCT CASINOS	Leasure	APECZJ	SPBC	13-11-2009	No	None		2
CCT ACAP-FIEQUIMETAL	Motor vehicles production and services	ACAP	FIEQUIMETAL	22-12-2009	No	SINDEL (with FETESE), SITESC, FEPCES	SITESC not changed since 2003, FEPCES not changed since 2000	formally 1, de facto 2
CCT APEB	Production of concrete	APEB	FEVICCOM	17-02-2009	No	FETESE	FETESE unchanged since 2009	1
AE Rodoviária de Lisboa-SITRA	Urban transport	Rodoviária de Lisboa	SITRA	06-05-2005	No	SIQTER, FETESE (see note)	SIQTER and FETESE unchanged since 1999	formally 1, de facto 2
AE ISU	Healthcare	ISU	STAS	11-02-2013	No	FESAHT (see note)	FESAHT unchanged since 2002	formally 1, de facto 2
AE Rodoviária do Tejo-FESTRU	Urban transport	Rodoviária do Tejo	FESTRU	17-02-2009	No	None		2
AE Rodoviária do Tejo-SITRA	Urban transport	Rodoviária do Tejo	SITRA	17-02-2009	No	None		2

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