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Collective bargaining in Portugal in the aftermath of the crisis: trends and prospects

Isabel Távora¹

Abstract

This article examines the decline of collective bargaining in Portugal during the recent economic crisis and why, following significant improvements in the economic and political contexts, the number of collective agreements published each year remains lower than before. Drawing on theoretical work on institutional change by Streeck and Thelen (2005) and Baccaro and Howell (2017), it argues that industrial relations institutions in Portugal have been subject to an incremental but transformative process of liberalisation. The analysis of national data and in-depth interviews with key informants reveals that serial legal amendments since the 1990s weakened unions, converted bargaining into a mechanism to introduce flexibility and wage austerity and reduced incentives for the parties to conclude agreements. While these changes were gradual, their consequences became clear during the crisis. By improving understanding of recent developments in Portuguese collective bargaining, the article enriches knowledge of processes of liberalisation of industrial relations in Europe.

Keywords: Collective bargaining, Portugal, southern Europe, liberalisation, austerity

Introduction

The sovereign debt crisis was a period of intense labour market reform in Portugal, especially after the involvement of the troika in 2011. The amendments to labour law in this period were associated with a significant disruption of collective bargaining and a concurrent decline in the coverage of published agreements (Rocha and Stoleroff, 2014; Cruces et al, 2016; Campos Lima, 2013; Távora and González, 2016; Visser, 2016; Currie and Teague, 2017). With the end of the adjustment programme, an improvement of the economic outlook, the emergence of a political climate more supportive of bargaining and the reversal of some of the most disruptive measures, there was an expectation that collective bargaining would resume its normal operation. However, while a recovery is taking place, the pace has been slow and the levels of coverage of new agreements are still far from pre-crisis levels. This article takes a closer inspection of the circumstances that led to the decline of collective bargaining in order to provide an understanding of why bargaining figures remain relatively low.

To that end, the article relies on two main sources of data. The first one consists of Portuguese national sources of collective bargaining indicators. Data on Portuguese collective bargaining has improved considerably since the crisis, particularly with the creation of the *Centro de Relações Laborais*². The reports published by this tripartite body, by the Ministry of Labour's DGERT³ and by UGT⁴ configure a valuable and detailed source of data on Portuguese collective bargaining. This is examined alongside studies covering the case of Portugal in international and cross-national research. The second source of data consists of twelve in-depth interviews conducted in May and June 2018 with key informants

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² The *Centro de Relações Laborais*, created in 2012, provides data on and to support collective bargaining (Decreto-Lei 189/2012). It has produced regular reports since 2015.

³ *Direção-Geral do Emprego e das Relações de Trabalho*

⁴ *União Geral de Trabalhadores*, one of the two national union confederations.

from Ministry of Labour's DGERT (two), trade union organisations (six) and employer associations (four). The interviews were conducted by the author, in person, except for three telephone interviews. The interviews with union organisations comprised the two national union confederations (UGT and CGTP), four sectoral union federations (two UGT and two CGTP-affiliated, two in services and two in manufacturing). The employer associations covered both manufacturing and services and comprised one of the five national employer associations and three sector-level organisations. The interviews with union and employer organisations involved key informants that were or (in one case) had been in leadership positions and directly involved in sectoral bargaining or national social dialogue. The interviewees from DGERT were two employees who were involved in mediation and conciliation processes. Further details of the interviewees are withheld to protect their anonymity.

The analysis draws on theoretical work on institutional change by Thelen (2003) and Streeck and Thelen (2005) as well as on Baccaro and Howell's (2017) thesis of neoliberal⁵ convergence to argue that, along with other political economies of Western Europe, industrial relations institutions in Portugal have been subject to a transformative liberalisation process, the latter conceptualised as an expansion of employer discretion in wage setting, hiring and firing and work organisation. Baccaro and Howell (2017) argue that since the 1970s, employer discretion has expanded, and the balance of class power has shifted against labour everywhere in Europe. Intensified competition, market liberalism and a reinvigorated project of European integration that has institutionalised a deflationary and deregulatory logic created a labour-unfriendly environment and put real pressure on industrial relations institutions (Baccaro and Howell, 2017; Streeck and Thelen, 2005). The full implications of this path of European integration became clear during the economic crisis and have been particularly noticeable in the labour market reform carried out in southern European countries (Baccaro and Howell, 2017; Marginson, 2014). However, as this paper will show, the transformation of Portuguese collective bargaining was not an abrupt process, nor did it take place merely as a response to the pressures of the crisis. As Streeck and Thelen (2005) have taught us, institutional change towards liberalisation most often proceeds slowly and tends to take place through gradual incremental changes, which, over a period of time, can lead to major institutional transformation. This may not be recognizable in the structure of institutions because the stability in institutional form can hide significant change in their uses, functions and consequences. Baccaro and Howell (2017) see liberalisation happening mainly through two different institutional processes. A first and most obvious of these processes is deregulation, which includes dismantling or weakening the institutions that support multi-employer collective bargaining, but also mechanisms that allow actors to ignore or derogate from institutional rules. A second institutional process occurs when institutions remain apparently the same but are given a different use or take a different role that produces different outcomes. This is what Thelen (2003) had conceptualised as institutional conversion, which enables a functional change so that institutions that were once discretion-limiting can become discretion-enhancing.

As the data below will show, both these processes can be identified in the case of Portugal. Incremental processes of deregulation and, mainly, institutional conversion help understanding why collective bargaining institutions and procedures appeared more resilient than expected to the deregulatory pressures of the economic crisis but also how the stability in the structure of bargaining

⁵ In this perspective, neoliberalism is understood as the use of state power to create a market order in society, in which individuals coordinate their interactions through the principles of competition and the associated price system; it is linked to a strategy of economic reform involving trade and financial liberalisation, fiscal discipline and disinflation and, in the sphere of employment relations, labour market reform that expands employer discretion (Baccaro and Howell, 2017).

conceals considerable transformation in the function and outcome of sectoral bargaining. In this respect, the lower quantity and, as we shall see below, quality of new collective agreements reflect a transformational change that resulted from the cumulative effect of legal reforms over a period that started well before the crisis.

To contextualise the study, the next two sections discuss firstly the background features and key challenges facing collective bargaining in Portugal in the last decades and, secondly, the key recent reforms to its legal framework. This is followed by a section that, drawing on the data and analytical framework outlined above, examines why the number and coverage of new agreements has declined, why these figures remain lower than before and why they are likely to remain so. The closing section contextualises continuity and change in Portuguese collective bargaining within wider trends towards liberalisation and fragmentation of industrial relations in western Europe and reflects on the prospects of Portuguese collective bargaining.

1. Collective bargaining in Portugal: Challenges and pressures for change

The structure of collective bargaining in Portugal is characterised by the dominance of the sector level, with firm-level agreements having some, albeit limited, expression (Visser, 2016; Naumann, 2013). At the national level, social dialogue has facilitated change in employment and social policy, but tripartite agreements reached at this level 'have functioned primarily as a means of gaining political acceptance for the overall process of liberalization and restructuring' (Barreto and Naumann, 1998: 396). This helps understanding why the largest of the two national union confederations, CGTP, has often failed to sign tripartite agreements (Campos Lima and Artiles, 2011). The two national union confederations, UGT and CGTP⁶, have competing union structures within sectors, where the structure of employer representation also tends to be fragmented (Campos Lima and Artiles, 2011). This results in parallel agreements and a highly fragmented bargaining structure. The divisions of the labour movement, the politicisation of industrial relations and the antagonism between social partners is a legacy of both the country's authoritarian past and the turbulent political transition following the 1974 revolution (Stoleroff, 2000; Karamessini, 2008). Despite the decline of overt industrial conflict during the 1990s, this heritage has continued to limit the development of the trust required for the class compromises and social exchange that characterize more mature collective bargaining systems that are typical in Northern Europe (Barreto and Naumann, 1998).

While trade unions enjoyed significant power and high membership levels in the post-revolutionary period, they have been weakened by declining membership, which now stands at 20% (OECD 2017). However, high bargaining coverage has been enabled by two main factors. The first one was the practice of administrative extension of sectoral agreements, which allowed increasing their scope beyond the affiliates of the contracting organisations and to cover all the workers and firms in the respective sector; the second factor was a legal 'continuity rule', which determined that collective agreements would remain valid until they were replaced by a new one (Palma Ramalho, 2013). However, the latter was increasingly seen as blocking the modernisation of the content of collective agreements. Under growing economic pressures of globalization, European integration and heightened competition, employers wanted to introduce internal flexibility and adjust occupational categories, but many unions saw these changes as excessively unfavourable to workers and as trespassing 'acquired rights' and so consistently blocked them. This led to a standstill and to a situation

⁶ *Confederação Geral de Trabalhadores Portugueses – Intersindical Nacional*

in which although agreements were formally renewed and republished annually, in most cases the changes referred solely to routine yearly wage increases (Naumann, 2014).

It was in this context that, responding to the pressure from employers and despite fierce union opposition, that the expiry (or termination) of agreements by request from one of the parties was introduced in 2003 Labour Code (Law 99/2003), along with other legal changes, including measures to increase working time flexibility. The latter came in the continuity of a series of legal amendments that had started in the 1990s to introduce both internal and external flexibility in employment but the changes to collective bargaining rules were an innovation (Palma Ramalho, 2013).

2. The labour market reforms affecting collective bargaining

The crisis was a period of intense labour reform, which was exacerbated with the involvement of the 'troika' of the European Commission, the European Central Bank and the International Monetary Fund from May 2011. Similar to the case of other European Union (EU) member states facing similar financial pressures (e.g. see Koukiadaki and Kokkinou, 2016 for Greece and Trif, 2016, for Romania), the much-needed financial assistance was conditional to the commitment of Portugal to a three-year programme of fiscal consolidation and structural reforms. The goal was to achieve 'internal devaluation' which was presented as the only way to restore national competitiveness in troubled eurozone countries (Myant et al, 2016). The prescribed reforms were laid out in a Memorandum of Understanding (MoU) and included amendments to labour law to reduce employment protection, to make working time more flexible and to decentralise collective bargaining (Távora and González, 2016).

This section reviews the key changes affecting collective bargaining. These can be included in the two broad types identified by Marginson (2014) as part of what he described as a frontal attack to multi-employer bargaining in southern Europe during the crisis: 1) measures to reduce the reach of collective bargaining, namely restricting extension mechanisms, expiry rules and validity periods; and 2) measures to decentralise collective bargaining, namely, facilitating the articulation between levels and company-level agreements by non-union bodies. However, the process of change in Portugal differs from that in Spain, Romania and Greece. First, while in the other national cases the reforms were mostly implemented unilaterally by governments under international pressure (Koukiadaki and Kokkinou, 2016; Fernández Rodríguez et al, 2016; Trif, 2016), in Portugal the two main revisions to the labour code, in 2009 and 2012, were preceded by a tripartite agreement (without CGTP) that paved the way to the reforms and even the MoU involved consultation with all the social partners (Campos Lima 2011). While it can be argued that social dialogue was used mainly to legitimise austerity and deregulation, it was still a more participated process compared to the other southern European countries. Secondly, even if the economic pressures of the crisis and 'international commitments' were used to justify and push through measures that were more radical than would have been possible in normal circumstances, there was a greater continuity in the Portuguese reform trajectory (Távora and González, 2016) than what appears to have been the case in parallel cases. A process of reform to Portuguese industrial relations was already under course since the 1990s, which aimed to respond to long-standing internal pressures and address well-acknowledged challenges. A partial break with this continuity was the introduction of representativeness criteria for the extension of sectoral agreements. Despite previous debates around representativeness in relation to collective

bargaining, including in the 2008 tripartite agreement⁷, the social partners on both sides of the industry were comfortable with sectoral level bargaining and existing extension practices (Dornelas et al, 2011).

The introduction in October 2011 of representativeness criteria for administrative extension, following a five months period of suspension of extensions, was the most controversial and unilateral change to collective bargaining during the crisis. *Resolução do Conselho de Ministros 90/2012* established that extensions should only take place if the firms represented by the signatory employers' association employed at least 50% of the workers of the industry branch to which the collective agreement applied. However, the relative low organisation density of Portuguese employers made these criteria impossible to meet and these rules were eased in 2014 with the addition of the alternative criteria that at least 30% of the affiliates of the signatory employers' association be SMEs (*Resolução do Conselho de Ministros 43/2014*). In 2017, extension rules changed again. Rather than prescribing conditional criteria, the new rules establish that administrative extensions of collective agreements should be based on the analysis of its potential socio-economic and equality impact (*Resolução do Conselho de Ministros, 82/2017*).

Another key reform affecting the reach of collective bargaining concerned the expiry of collective agreements. While the possibility of expiry (or termination) of agreements by request of one of the parties had been introduced in 2003 (Law 99/2003), the 2009 revision of the Labour Code (Law 7/2009) clarified and reduced the period of validity of collective agreements to eighteen months following an expiration request. This law also addressed a loophole in the first formulation of expiry rules: many collective agreements contained renewal clauses that reproduced the previous legal norm stipulating that they remained valid until replaced by a new one and this constituted a barrier to their expiry. Law 7/2009 established that agreements with such clauses could also expire after five years of their first publication or expiry request. In addition, Law 7/2009 created a new form of arbitration, 'necessary arbitration', to be used by request of one of the parties to assist in cases of expiry of a collective agreement. Law 55/2014 reduced further the periods for the expiration and 'after-effect' of collective agreements with and without renewal clauses - from 18 to 12 months and from 5 to 3 years, respectively. This law also created the possibility of employers suspending collective agreements in cases of industrial crisis.

The reforms aimed at decentralising collective bargaining involved the introduction in 2009 of the possibility of non-union structures of worker representation signing collective agreements in companies with at least 500 workers (Law 7/2009) and, in 2012, a reduction of this threshold to 150 (Law 23/2012). However, the bargaining competence of these structures is still dependent of union authorisation. Thus, there is no record of published agreements signed by non-union structures (Dray, 2017). Another reform aimed at decentralising bargaining concerned the articulation between levels of bargaining and had a comparable low impact. While articulation between bargaining levels was already legally possible, law 23/2012 specified that sectoral agreements could contain clauses enabling such matters as functional and geographical mobility, working time and compensation to be regulated by agreements of lower level. Analyses of collective bargaining conducted by the *Centro de Relações Laborais* indicate that these clauses have been rare (Nunes de Carvalho and Agapito, 2018; Furtado Martins and Agapito 2017, 2016).

⁷ *Acordo Tripartido para um Novo Sistema de Regulação das Relações Laborais, das Políticas de Emprego e da Proteção Social em Portugal*, <http://www.ces.pt/storage/app/uploads/public/58b/f17/f79/58bf17f79da4e681625862.pdf>, accessed 21/11/2018

Other areas that were subject to reform that, while not directly targeting the rules of collective bargaining, targeted its content and affected its autonomy, were overtime pay and working time flexibility. With regard to working time flexibility, the 2012 Labour Code (Law 23/2012) continued reforms initiated in 2003 and 2009 and introduced individual and group working time accounts that could be, for the first time, negotiated directly between individual workers and managers in the workplace unless they were regulated by a collective agreement. The same Labour Code reduced by half overtime pay rates and suspended for two years the validity of collective agreement provisions providing higher rates. It also determined that after this two-year period, the pay for overtime work established in existing valid collective agreements should be reduced by half but this rule was revoked by the Constitutional Court. While the two-year suspension of collectively agreed rates was accepted by the Constitutional Court due to its temporary character in the face of the dire economic circumstances and the need to meet 'international commitments', the restrictions beyond the MoU period were considered an unjustified breach of the constitutional principle of autonomy of collective bargaining. As the sections below will show, these changes, affecting matters that had been longstanding sources of industrial conflict and increasing the discretion of individual employers, play an important role in explaining the decline of collective bargaining.

3. Understanding the lower levels of collective bargaining in Portugal

Most analyses of collective bargaining in Portugal during the crisis have focused on the decline in the number and coverage of the agreements published each year (Rocha and Stoleroff, 2014; Cruces et al, 2016; Campos Lima, 2013) but have not examined the impact of this decline on the overall coverage of bargaining (for an exception see Addison et al, 2017). However, the distinction between agreements published each year and existing valid agreements and understanding how the decline of the former affected the latter is important for recognizing continuity and change in Portuguese collective bargaining

Published agreements consist of those agreements that are reached for the first time or renegotiated each year, with the latter being the vast majority. These (re)published agreements are the formal product of any agreed changes to the content of existing agreements, including wage increases. Therefore, the decline in the coverage of these agreements indicates a decline of the number of workers covered by wage increases or other changes to their contractual terms. In turn, existing agreements refer to all agreements that remain valid irrespective to whether they have been subject to any changes that year. Consistently, Figure 1 shows that, while the coverage of published agreements declined from its highest value in the last 11 years of 65.5% in 2008 to 10.1% at its lowest point in 2013, the coverage of existing valid agreements declined steadily but only slightly from its highest value in 2010 of 85.4% to 79.2% in 2016. Therefore, despite the sharp decline in collective agreements published during the crisis, especially between 2011 and 2012, for the vast majority of workers, their collective agreements remained unchanged, but valid. Since expiry became possible in 2003, only 44 collective agreements have expired and, while the number of workers affected is unknown, this is a relatively small number in the total universe of valid agreements, which in 2015 were 690 (Furtado Martins and Agapito, 2017). Therefore, the proportion of agreements that expired is just around 6% of the total. Moreover, of the 44 agreements that expired, 21 were subsequently replaced by a new agreement renegotiated by the parties (Nunes de Carvalho and Agapito, 2018).

Table 1 shows that the decline in published agreements was mostly due to the decline in sectoral agreements published each year. Company agreements declined less and recovered more quickly than the number of sectoral agreements, but the number of workers covered by the different types of

agreements indicate that sectoral agreements remain dominant. The sharp fall of published agreements during the crisis enabled decentralised firm discretion on pay increases but the continuing coverage of existing agreements and of the dominance of the sector level suggests a significant stability of the formal structure of collective bargaining.

Figure 1 – Proportion of employees covered by existing and published agreements (%)

Source: DGERT data in Nunes de Carvalho and Agapito (2018)⁸

Figure 2 – Number of employees covered by existing and published agreements

Source: Source: DGERT data in Furtado Martins and Agapito (2017), Nunes de Carvalho and Agapito (2018) and UGT (2018)

⁸ Adapted from graph 8, p.47.

Table 1 – Number of agreements published each year by type and number of workers covered and extensions 2005-2017

Type/year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Sector	151	153	160	172	142	141	93	36	27	49	65	69	91
Workers covered (Thousands)	1,015	1,343	1,430	1,778	1,299	1,309	1,160	291	197	214	446	648	n.a.
Groups of firms	28	26	27	27	22	25	22	9	18	23	20	19	21
Workers covered (Thousands)	68	73	58	47	59	64	52	26	27	19	21	65	n.a.
Company	73	65	64	97	87	64	55	40	49	80	53	58	96
Workers covered (Thousands)	36	37	32	69	37	33	24	9	17	12	22	34	n.a.
Total	252	244	251	296	251	230	170	85	94	152	138	146	208
Workers covered (Thousands)	1,121	1,454	1,521	1,894	1,397	1,407	1,236	327	241	246	490	749	821
Extensions of sector agreements	56	137	74	137	101	116	17	12	9	13	36	35	84

Source: Furtado Martins and Agapito (2017), Nunes de Carvalho e Agapito (2018) and UGT (2018)

What explains the decline in the number of collective agreements published each year?

Some of the factors explaining the decline in the number of collective agreements were crisis-specific but this was also the outcome of a longer-term process of gradual institutional change. To some extent, the decline in the number of collective agreements published in the crisis years reflects the reluctance to increase wages of employers faced with the economic pressures of the downturn (Addison et al, 2017). In the case of sector-level agreements, this reluctance was exacerbated in 2011/12 by the suspension and then introduction of representative criteria for the extension of sectoral agreements (ILO, 2018). Those rules meant that, in most cases, sectoral agreements would not be extended beyond the firms affiliated to the contracting employer association. Therefore, negotiating wage increases in those circumstances would mean exposing members to the competition from non-affiliated firms not bound by bargaining standards and so with much lower labour costs (Távora and González, 2018). This helps understanding the sharp decline in the agreements published in 2012, but it is only part of the story.

While the gradual reinstatement of extension procedures during the crisis was not accompanied by a concurrent retake of sectoral agreements, the pattern of decline is consistent with the cumulative effect of gradual changes leading to a major transformation in the institutional framework governing collective bargaining. This process started before the crisis. As shown in figure 2, there was a sharp decline in newly published collective agreements in 2004, following the introduction of expiry rules by the 2003 Labour Code. Interviews with union and employer organisations revealed that this was a reaction of the parties to a significant change to the rules governing collective bargaining. However, as it transpired that most agreements contained continuity clauses that prevented them from expiring, collective bargaining activity gradually resumed, and the number of published agreements and their coverage increased again gradually until 2008. However, the 2009 Labour Code introduced dispositions for the expiry of collective agreements with renewal clauses. As a result, 15 of the 44 collective agreements that expired between 2003 and 2017 did so in 2009 (Furtado Martins and Agapito, 2017).

Expiration rules gave a lever to employers as, if unions failed to agree to more flexible terms, they now faced the real prospect of finding themselves without an agreement. The 2012 Labour Code complicated matters and weakened unions further. Two key elements had a particularly negative impact. One was the cuts to overtime pay rates and the restrictions to higher rates in collective agreements and the other was the creation of individual and group working time accounts. The rules on working time accounts weakened unions because if they failed to negotiate working time flexibility into collective agreements, working time accounts could now be directly negotiated in the workplace with individual or groups of workers. Moreover, reduced legal rates for overtime pay and the new working time flexibility regimes meant that dispositions in existing collective agreements had become significantly more costly and less flexible for employers than the law. As a consequence, employers increased the pressure on unions to agree to terms that would close this gap. Expiration requests (or their threat) by employers created a dilemma for unions: whether to make concessions that would lead to poorer terms and material losses for workers or to continue resisting to do so and risk agreements expiring.

Trade unions varied in their responses to the changed circumstances. UGT-affiliated unions tended to pragmatically engage in the renegotiation of collective agreements and try to achieve terms that would be at least slightly better than the general law. Several of the sectoral agreements negotiated by UGT unions introduced working time accounts or other forms of working time flexibility and reduced overtime pay rates to values closer to the reduced legal rate – namely, in metal manufacturing and a wholesale retail branch, as reported in the interviews. With the notable

exception of textiles where both UGT and CGTP unions renegotiated agreements with working time flexibility even before the crisis, these regimes have been mostly negotiated by UGT-affiliated unions. Several CGTP-affiliated unions have continued to resist compromising on these matters. As a result, CGTP agreements in key sectors such as chemicals and metal manufacturing have expired and have so far not been renegotiated; this space has been, to a great extent, occupied by UGT (see also Naumann, 2014). Yet in some sectors, particularly labour-intensive industries with long operating hours that make these issues particularly contentious, such as hospitality and retail, UGT unions have also found extremely difficult to reach compromises. One interviewee from a UGT union organisation representing workers in large retail explained:

“Employers want to reduce wage complements associated with overtime pay, introduce working time flexibility arrangements and expand the working day to avoid paying night shift rates. This has many implications for workers’ family and personal life; it involves constant alterations in working periods which creates an instability that is very disruptive. On the other hand, overtime work is the only complement to the miserable wages paid in the sector. Employers want to reduce complements without increasing the basic salary. It is a very serious problem.”

In sum, the number of published agreements fell, partly, because of employers’ reluctance to increase wages during the crisis, which was exacerbated in 2011 by the restrictions to extensions. However, this decline was also a manifestation of the cumulative effect of gradual changes to labour market regulations. These ultimately resulted in an institutional framework that put unions in the difficult position of having to agree flexible arrangements that they considered excessively unfavourable to workers. Even when this was the only way to avoid expiry, many failed to do so. Moreover, the new legal framework reduced incentives for employers to reach compromises on matters of working time flexibility or overtime pay: should negotiations fail and the existing agreement expire, employers would be free to negotiate working time accounts directly with workers in the workplace and revert to the lower legal overtime pay rates.

Why do figures of collective agreements published each year remain lower than before?

Despite the resilience of the formal structure of bargaining, the combined and cumulative effect of gradual changes to its legal framework led to a process of transformation of the function and outcomes of sectoral bargaining, associated with a gradual shift in the balance of power between employers and unions. This was patent in the interviews in that the former were generally quite pleased with the reconfigured legal framework whereas the latter were highly unhappy about it. A recurrent theme that emerged in the interviews with employers was that collective bargaining should be judged not just by numbers but mainly in terms its capacity to adapt and provide solutions to the specific problems of the industry as well as how it served the interests of workers and firms. In this perspective, the view of employers and government officials was generally that the possibility of expiration had created the conditions for the renewal of the content of agreements and industry-specific responses. Employers also argued that the low number of collective agreements that have expired since the possibility was first introduced shows that the expiry rules have not had a negative effect on bargaining. However, interviewees on the union side offered a different perspective. In their experience, while the impact of current expiry rules is not visible in expiry figures, this impact is manifest on the outcomes of collective bargaining in terms of both the quantity and the quality of the agreements reached.

In the case of CGTP organisations, this impact is mostly reflected in the quantity of agreements: as discussed above, CGTP negotiators have often found it impossible to reach agreements with employers proposing lower terms, even under the threat of expiration of previous agreements. In the

case of UGT-affiliated unions, this impact is mostly reflected on the quality of agreements: interviewees pointed out that in many cases an expiry request does not lead to expiry but leads instead to a new but undesirable collective agreement. In the context of the crisis and the wider reforms to labour law, the expiry rules excessively weakened the bargaining position of trade unions, pressuring them to agree to flexible working arrangements that result in worse working conditions and material losses for workers. Moreover, there was a perception across union interviewees, DGERT officials and even conveyed by one of the employer associations that, in their current formulation, expiry rules lent themselves to abuse by employers, who can make agreements expire without having to justify it or demonstrate any effort to reach a new agreement. There were accounts of cases in hospitality, food processing and one textile branch, where negotiations had stalled and where employers failed to make meaningful attempts to respond to the issues raised by their union counterpart and were reportedly just waiting for the agreement to expire. Nevertheless, even where employers cooperate and unions have accepted the need to renegotiate the content of agreements, the process of renegotiating agreements that have remained unchanged for several years and in some cases decades, is complex and resource-intensive and so takes much longer. Moreover, once the process of renegotiating the content of agreements for the first time has been completed, each bargaining round thereafter requires new changes. Previously, yearly bargaining rounds tended to consist of routine negotiations to agree the wage increase for that year, a task that was typically simplified by following the rate set for the public sector. Under the current legal framework, there are often other matters on the bargaining table. In addition to flexibility regimes, overtime pay and redefining job categories, recent changes have covered the introduction of performance appraisal systems (metal), changes to working times (wholesale retail, textiles) and an alternative annual leave system (textiles). On one hand this means that as the process takes longer and as issues are often contentious, the parties may not reach an agreement every year; on the other hand, even when agreements are reached, they tend to be of a lower quality, involving a downgrading of workers' terms. Previously a mechanism that protected workers against unilateral changes to their employment conditions, collective bargaining was converted into a mechanism used by employers to gain unions acquiescence to wage austerity and highly flexible working time arrangements. While this transformation was incremental, it became obvious during the economic crisis and was not inverted in its aftermath, which helps understanding why bargaining blockages persist, particularly at the sector level.

Moreover, employers' continuing demands for working time flexibility while remaining reluctant to respond to unions' calls for sizeable wage increases was a source of increasing resentment from trade unions and contributes to the current blockages. During the crisis, working time flexibility at lower costs was presented as necessary to keep companies afloat and protect jobs and, under those circumstances, some unions conceded on these matters. However, at a time when the economy has returned to growth, employers' intransigent demands for 'low cost flexibility', as described by union participants, is increasingly seen as unacceptable. These strategies were justified by employers by concerns over economic uncertainty but seen by union interviewees as reflecting their excessive focus on cost-based competition. However, this also need to be understood under the background of the wider political and economic context. As stressed by unions, a decade of government austerity, especially wage restraint in the public sector, had legitimised and reinforced those strategies. Despite the recent unfreezing of career progression in some government departments, there have been no wage increases across the board in the public sector since 2009. The rate of wage increases in the public sector has traditionally provided a benchmark for the private sector, and so their absence has had a negative impact on collectively agreed wages. One UGT respondent summarises this effect in this way: "The state as employer is not providing a good example for collective bargaining and the

private sector has a tendency to follow bad examples". Indeed, while austerity and deregulation have been presented as emergency responses to the crisis, they may have become more permanent features of social and labour market policy. In the current globalised, highly competitive and volatile business environment and under European-enforced fiscal and market discipline that restrict the tools available to national governments to tighten labour markets and support workers (Streeck and Thelen, 2005; Baccaro and Howell, 2017), the pressures on Portuguese trade unions and collective bargaining are likely to continue.

4. Discussion: what prospects for Portuguese collective bargaining?

The analysis in this paper improves understanding of change and continuity in Portuguese collective bargaining institutions, particularly in the face of the 'frontal attack' inflicted during the recent economic crisis. That collective bargaining in Portugal displayed greater resilience than expected and compared with Eurozone countries in similar positions (such as Greece) was evidenced by the temporary character and reversal of some of the most disruptive measures and by the stability of the formal structure of collective bargaining, characterised by the dominance of the sector level. However, in line with Streeck and Thelen's (2005) theorizing of how institutions change, this analysis also reveals a gradual but transformational change taking place beneath the surface of stability in institutional form and procedures. Incremental changes to the legal framework led to a gradual power shift from trade unions to employers. Drawing on Thelen's (2002) concept of institutional conversion, the study shows how sectoral collective bargaining, once a mechanism for protecting and achieving gains for workers, was transformed into one that enabled employer discretion to introduce flexibility and wage austerity. This change in function and in the outcomes became particularly visible since the economic crisis but did not result solely from the changes introduced in this period. Rather, this was the result of the cumulative effect of incremental changes introduced in labour law in the last three decades. This process intensified in the 2000s and was taken even further under the economic pressures of the crisis, legitimised by the 'international commitments' associated with the financial assistance programme.

Recognising that collective bargaining was converted into a mechanism to introduce wage austerity and working time flexibility helps understanding why the number of agreements reached each year declined and remains lower than before, particularly at the sectoral level. The reason for this is not only that comprehensive changes in content take longer to negotiate than routine wage increases but is also, and mainly, that both employers and unions have now less incentives to conclude collective agreements. The incentives for employers are reduced because, under the new legal framework, they can introduce flexible terms at a lower cost than before even if these terms are not regulated by a collective agreement; trade unions, in turn, in order to close agreements, need to accept lower terms and flexibility regimes that lead to material losses for workers. As the analysis above revealed, many Portuguese unions find this excessively unpalatable and are choosing instead not to conclude such agreements, even if that leads to the expiry of existing ones. The outcome, whether or not trade unions engage with bargaining, is increased employer discretion in the workplace. In this sense, the Portuguese experience is consistent with Baccaro's and Howell's (2017) thesis that common liberalising tendencies in contemporary capitalist political economies are shaping a transformation of industrial relations institutions. However, while Portugal is moving in the same direction as its western European counterparts, the Portuguese neoliberal trajectory has specific features, which add to existing knowledge of processes of liberalisation and fragmentation of collective bargaining in Europe. The most distinctive trait of the Portuguese case is that it was sectoral bargaining that was subject to institutional change, not as a direct result of deregulation, or in a radical abrupt manner in response

to the crisis (as seems to have been the case of Greece) but through a gradual process of conversion. Sector-level bargaining has also been eroded in countries such as Germany and France in the last decades but in these cases the changes involved decentralisation through increased opportunities for company-level derogation⁹, which have not been the main processes used in Portugal. While national-level collective bargaining and social dialogue have, since the 1980s, been widely used by governments in western Europe (e.g. for France and Italy, see Baccaro and Howell, 2017), for gaining union acquiescence for deregulation and wage restraint, the conversion of sectoral bargaining to serve a similar purpose is more of a novelty. Whether or not this development in Portuguese industrial relations heralds the start of a trend in Europe is yet to be seen but it certainly provides an indication to those studying other national cases of where processes of liberalisation of industrial relations institutions could be found.

In a comparative analysis of recent developments in collective bargaining, Visser (2016) concluded for Portugal that as fewer agreements were being published and most workers were covered by older outdated agreements, the overall collective bargaining coverage would ‘almost certainly fall sharply in years to come, unless there is a sharp uptake in bargaining’ (p. 9). However, this may have been an over- pessimistic interpretation of the Portuguese case, at least at the formal level. As shown above, the fall in yearly published agreements has had a relatively low impact on the overall coverage of valid existing agreements and, even if outdated, they continue to offer some protection against unilateral employer changes to workers’ employment terms and work organisation. Moreover, the number of agreements that have expired is relatively low and expiry requests have decreased since 2009; therefore, the gradual increase in new agreements observed since 2014 may be enough to sustain the current levels of coverage of overall valid agreements. However, given the processes of conversion that are taking place beneath the surface of stability of the formal bargaining structure, the question of whether the overall coverage will decline further is less relevant than whether collective bargaining will retain any capacity to protect workers’ rights, working conditions and pay.

The introduction of expiry rules has triggered a process of renegotiation of agreements that is slowly leading to a renewal and an updating of content. Yet, the combined effect of that and other legal amendments have excessively weakened labour and, consequently, the changed terms in new agreements tend to be excessively unfavourable to workers. A growing recognition that the recent developments in the legal framework have excessively weakened the bargaining position of unions, has led to calls and proposals for new amendments. By the end of June 2018, the social partners (except CGTP) and the government signed a tripartite agreement aimed at amending the labour code to help reducing precarious work and to galvanise collective bargaining¹⁰. This has paved the way to a revision of the labour code published in September 2019 (Law 93/2019). Key changes to the rules governing collective bargaining include the need to justify expiry requests and new opportunities for arbitration before the agreement expires. Individual working time accounts will no longer be possible but working time accounts for groups of workers can still be implemented in the workplace, now subject to approval of the affected workers in a workplace referendum.

Despite questions remaining as to whether these changes go far enough (for a detailed discussion see Campos Lima, 2019), they may contribute to rebalance the bargaining position of the parties and constitute a first credible attempt in southern Europe to contain the liberalisation of industrial relations. Yet, the long-term prospects of Portuguese collective bargaining remain uncertain. Thelen’s

⁹ In the case of Germany the erosion of sectoral bargaining also involved reduced coverage, especially in services, and dualism (Thelen, 2014)

¹⁰ Tripartite agreement “*Combater a precariedade e reduzir a segmentação laboral e promover um maior dinamismo da negociação coletiva*”. Accessed at <http://www.ces.pt/concertacao-social/acordos> (18/12/2018).

(2014) theoretical and empirical work shows that liberalization can be compatible with relatively egalitarian and inclusive labour markets through the reconfiguration of industrial relations institutions to enable balanced forms of flexibility. However, her case studies indicate that this is dependent on active state support and, above all, on the presence of a united and well organised labour movement that can counterbalance employers' power. With a deeply divided labour movement, Portuguese industrial relations fail to meet the latter condition. With regard to the former, recent history suggests that state support for collective bargaining is sensitive to the economic cycle and to the political leanings of the government in office. Moreover, under current Eurozone rules, even labour-friendly governments are restricted in the use of traditional policy tools to protect workers and to support collective bargaining institutions (Baccaro and Howell, 2017). Under these circumstances, while the most recent amendments to the labour code have decelerated the Portuguese neoliberal path towards increased employer discretion and decreased capacity of collective bargaining to protect workers, this trajectory is unlikely to change course in the long run.

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