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# DECENT WORK **IN** **PORTUGAL** 2008-18

From crisis to recovery

# Decent work in Portugal 2008–18

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# Preface

In 2013 and 2014, the ILO published a number of studies analysing the challenges faced by those countries in Europe most severely affected by the international financial and economic crisis that began in 2007 and the subsequent Eurozone crisis that started in 2009. At the time, there was widespread concern with dramatic downturns in the number and quality of jobs, and the ILO vigorously argued for the importance of broad economic policy targets aimed at promoting a productive recovery centred on investment, employment and social protection – in combination with supportive macroeconomic policy – to generate job-rich and equitable growth.

It is with these previous findings in mind that we now return – five years later – to look at the evidence of what has and has not worked in response to the crisis in Portugal. While other crisis-affected countries have barely been able to benefit from the uptick in economic growth in Europe in recent years, Portugal stands as a solid example of successful and swift economic and labour market recovery, without compromising on workers' rights. The evidence highlighted in this report is notable in its own regard, with nearly half a million new jobs created since the beginning of the recovery and average economic growth of over two per cent and rising in the past three years.

But it is how these results were achieved that makes the story of Portugal stand out and may serve as an insight for how to better respond to future economic crises in other countries. Factual evidence from other national experiences shows that fiscal consolidation alone cannot rescue a declining economy. Instead, as the example of Portugal shows, it is when countries go beyond a restrictive application of fiscal consolidation policies that vibrant and inclusive growth based on the universal principles of decent work can take place.

Portugal's recovery is built on solid export performance, based on business reforms and structural changes that took place over the past two decades, but also on increased domestic demand that was aided by support to incomes and increases in minimum wages in recent years. Putting money into workers' pockets is not just good for these workers by decreasing their risk of living in poverty, but it has a cumulative positive effect for the economy as a whole.

In addition, the analysis of this report suggests that striving for labour market flexibility by means of weakening collective bargaining and reducing employment protection legislations – which was a condition of the financial assistance programme – did little to contribute to the recovery of the Portuguese economy. In fact, the report identifies positive effects of a return of collective bargaining and a stronger focus on the creation of permanent and well-protected employment in the country since 2015. Portugal has demonstrated that taking steps to foster employment-oriented policies and safeguard social cohesion helped to speed up its recovery.

This is not to say that Portugal should rest on its laurels. There are still a significantly higher number of precarious workers than prior to the crisis, and the young and the long-term unemployed continue to face particular challenges in their integration into the labour market. The country's external debt remains high. Yet, this report shows that it is possible to maintain responsible, but active fiscal policy and move toward a gradual reduction of debt, while improving labour market performance with targeted spending and ensuring adequate employment and income protection.

As the ILO approaches its centenary in 2019, it is an opportune time to reflect on the lessons learnt from the most severe economic crisis of our generation and take the positive messages of Portugal as an example that decent work and economic benefit go hand in hand, and that one cannot exist without the other in the long run. This example can and should serve as a reminder that there is always a way out of crisis, but only if people are put first. It is in this spirit that we trust this report will serve as the basis for reflection for policy-makers in other countries and will continue the debate within relevant institutions in the multilateral system.



Guy Ryder, ILO Director-General

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# List of abbreviations

<b>ACT</b>	Authority for Working Conditions
<b>AICEP</b>	Portuguese Foreign Trade Chamber ( <i>Agência para o Investimento e Comércio Externo de Portugal</i> )
<b>ALMP</b>	Active labour market policies
<b>BoP</b>	Bank of Portugal
<b>BSSF</b>	Bank Solvency Support Facility
<b>CAP</b>	Employers' Confederation – Confederation of Portuguese Farmers
<b>CCP</b>	Employers' Confederation – Portuguese Commerce and Services Confederation
<b>CEACR</b>	ILO Committee of Experts on the Application of Conventions and Recommendations
<b>CEEP</b>	European Centre of Enterprises with Public Participation
<b>CES</b>	Economic and Social Council
<b>CGTP</b>	Confederation of Portuguese Workers
<b>CIP</b>	Employers' Confederation – Confederation of Portuguese Business
<b>CITE</b>	Commission for Equality at Work and in Employment
<b>CPCS</b>	Permanent Committee for Social Dialogue
<b>CPI</b>	Consumer price index
<b>CRL</b>	Centre of Labour Relations ( <i>Centro de Relações Laborais</i> )
<b>CTP</b>	Employers' Confederation – Portuguese Tourism Confederation
<b>DGERT</b>	Directorate-General for Employment and Labour Relation (MTSSS)
<b>EC</b>	European Commission
<b>ECB</b>	European Central Bank
<b>ECOFIN</b>	Economic and Financial Affairs Council
<b>EFF</b>	Extended Fund Facility
<b>EFSM</b>	European Financial Stabilisation Mechanism
<b>EMU</b>	Economic and Monetary Union
<b>EPL</b>	Employment protection legislation
<b>ETUC</b>	European Trade Union Confederation
<b>ETUI</b>	European Trade Union Institute
<b>EU</b>	European Union
<b>EWCS</b>	Eurofound European Working Conditions Survey
<b>FCT</b>	Work Compensation Fund
<b>FDI</b>	Foreign direct investment
<b>FGCT</b>	Guarantee Fund of the Work Compensation
<b>FMC</b>	Formações Modulares Certificadas ( <i>Certified Modular Training Courses</i> )
<b>FTC</b>	Fixed-term contract
<b>GDP</b>	Gross domestic product
<b>GEP</b>	Office of Strategy and Planning in the Ministry of Labour, Solidarity and Social Security (GEP/MTSSS)

<b>GFCF</b>	Gross fixed capital formation
<b>GVA</b>	Gross value added
<b>ICLS</b>	International Conference of Labour Statisticians
<b>IEFP</b>	Institute of Employment and Vocational Training (IEFP/MTSSS)
<b>IGCP</b>	Portuguese Treasury and Debt Management Agency
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>INE</b>	Statistics Portugal
<b>IRENA</b>	International Renewable Energy Agency
<b>ISCED</b>	International Standard Classification of Education
<b>LFS</b>	Labour Force Survey
<b>LTU</b>	Long-term unemployed
<b>MoU</b>	Memorandum of Understanding
<b>MTSSS</b>	Ministry of Labour, Solidarity and Social Security
<b>NACE</b>	<i>Nomenclature statistique des activités économiques</i> (Statistical Classification of Economic Activities)
<b>NEET</b>	Not in education, employment or training
<b>NFC</b>	Non-financial corporations
<b>NOP</b>	New Opportunities Programme
<b>NPL</b>	Non-performing loans
<b>NRP</b>	National Reform Programme
<b>OECD</b>	Organization for Economic Development and Cooperation
<b>OMT</b>	Outright Monetary Transactions
<b>PES</b>	public employment services
<b>PREVPAP</b>	Extraordinary Settlement of Precarious Bonds in the Public Administration Programme
<b>REATIVAR</b>	Programme for Reintegration of the Long-term Unemployed
<b>RVCC</b>	<i>Reconhecimento, Validação e Certificação de Competências</i> (Recognition, Validation and Certification of Competencies)
<b>SDR</b>	Special Drawing Rights
<b>SES</b>	Structure of Earnings Survey of the EU
<b>SME</b>	Small and medium-sized enterprises
<b>SWT</b>	School-to-work Transition
<b>TSU</b>	Single Social Tax ( <i>Taxa Social Única</i> )
<b>UGT</b>	General Union of Workers
<b>UEAPME</b>	European Association of Craft, Small and Medium-Sized Enterprises
<b>UNICE</b>	Union of Industrial and Employers' Confederations of Europe

# Executive summary

This report has been prepared following consultations with the Ministry of Labour, Solidarity and Social Security (MTSSS) of Portugal with the objective of reviewing the country's economic and labour market situation since 2008 and examining future prospects. It follows a previous ILO report, *Tackling the Jobs Crisis in Portugal*, prepared in 2013, and updates its findings and recommendations in view of the recent developments in Portugal and the European Union until the end of 2017.

## The report highlights three distinctive features that helped Portugal through a tough adjustment process, and towards swift economic and labour market recovery

Following the financial and sovereign debt crises, Portugal went through a difficult process of adjustment and recovery common to other economies in the Eurozone. The implications for the labour market were severe. It took almost ten years to restore a consistent period of economic growth and reach employment levels approaching those prevailing before the global financial crisis.

**First, the country was already on its own adjustment path before the crisis.** A series of policies had gradually been implemented that helped fostering business restructuring towards the tradable sectors, including measures to reform the public sector, enhance the quality of infrastructure, support integration in global production chains, rapidly increase the education attainment of citizens and reform the training system. As external economic and financial conditions improved, the economy was ready to restart.

**Second, the Portuguese experience does not support the conventional notion that adjustment can be accelerated and international competitiveness rapidly regained simply by means of reducing labour costs and making the labour market more flexible.** More effective in the case of Portugal appear to have been broader measures to improve the business environment, ensure access to credit, improve the capability of the public administration, fine-tune tax and fiscal incentives, actively and wisely manage the public budget, and the preservation of the level of minimum wages, thus avoiding a sudden drop in domestic demand.

**Third, while the scope of reforms and the fiscal targets of the financial assistance programme in 2011–14 were determined externally, the successive policy packages were discussed and adopted at national level, with the engagement of the social partners.** This was a factor behind success in the most recent years. For one, it contributed to addressing the attention to the social costs of fiscal consolidation and the importance of supporting incomes and wages to boost economic growth. It is the view of this report that social dialogue – though not always resulting in unanimous consensus – was a primary vehicle to tailor policy changes to the needs and circumstances of the country and ensure buy-in.

The effective application of relevant International Labour Standards has also contributed to the achievement of the primary objective of the various policy initiatives reviewed by this report, which were aimed at combining the pursuit of sound macroeconomic goals and fiscal consolidation with the creation and protection of decent jobs, while addressing the needs of the most vulnerable.

Portugal has progressively regained financial and fiscal stability. But in spite of economic and employment recovery, there remain concerns about the quality of jobs generated and the need to further strengthen the production base to enhance external resilience. The two objectives are not incompatible. As suggested in the ILO report on Portugal presented in 2013, a coherent policy mix that focuses on decent work can help unlock a virtuous circle of improved social cohesion, productive upgrading and the generation of decent jobs.

## Key findings and policy considerations

### **A solid economic recovery is underpinned by thriving exports, shrinking debt and improved access to finance**

Ten years since the burst of the global financial crisis, the country's economic recovery is on solid ground, as reflected by sound GDP growth and a return of employment to pre-crisis levels. A consistent pattern of economic growth has been restored; exports are thriving and the country has regained access to the international financial market; external debt is gradually being reduced; private sector investments are gradually picking up; and some fiscal space is opening up that could be used parsimoniously to address bottlenecks to economic growth and to sustain social cohesion.

Overall, the rebound of the economy has benefitted from the relative diversification of exports that have been a main driver for the recent growth, as well as gains in the efficiency of public expenditure and changes in business regulations.

### **Income support and other demand-driving measures can fuel more GDP growth**

There has also been a policy shift to a more accommodative fiscal stance, in the effort to maintain a balance between, on the one hand, a credible commitment to fiscal consolidation and gradual public debt reduction and, on the other hand, the need to support incomes, domestic demand, job-rich recovery and investment. Significant growth in 2016–18 is benefitting from some pick-up in domestic demand and especially investment – a welcome development that would fuel further increases in GDP.

External and domestic developments have contributed to boosting labour demand. Labour supply has been in a good position to capitalize on the new employment opportunities. Educational attainment of the Portuguese has increased significantly over the course of the last decade, and there are almost as many women as men in the labour force. The result has been a significant increase in employment that has recovered lost ground reaching 4.8 million by end-2017, while the number of unemployed has declined to levels last seen in 2003.

### **Despite rising employment, job quality and wages remain low**

There remain however concerns with the quality of jobs. Labour market segmentation is widespread, with large numbers of temporary jobs. Stable and secure jobs are especially rationed for the younger cohorts, in spite of their growing educational attainments. Wages have remained nearly stagnant in real terms and are low relative to EU averages, although consistent increases in the minimum wage have contributed to a slight decline in inequality.

Areas that would require attention in the future include the level of gross fixed capital formation. The availability of credit has started increasing and the cost of credit has been decreasing as interest rates for non-financial firms have been reduced. Business credit in 2017 grew for the first time since 2011, but most firms still appear hesitant to borrow for investment purposes.

## **Future efforts should amplify Portugal's competitive edge and explore space for fiscal expansion**

Some need for fiscal prudence remains, to ensure that public debt follows a downward trend over the medium and long run. Over-reacting financial markets might lead to higher yields on Portuguese debt, should conditions for a turbulent re-pricing of risk in the Eurozone arise again.

The road ahead rests on strengthening the country's competitive position, while ensuring opportunities for secure and well-remunerated jobs for all, backed by adequate social protection measures. In the short run, any space for fiscal expansion should be explored. Attempts to reduce the external debt should not compromise public investment, whose rate was 1.8 per cent of GDP in 2017 – a low level by historical standards. Public spending for investment could help crowd in private productive investment.

## **Aligning wages to productivity gains could broaden the recovery, but investments and diversification are also key**

In addition, the conditions for collective bargaining should be fully restored in order to adjust wages after years of stagnation and align them to long-term growth in productivity. This might stimulate domestic demand and broaden the recovery. It might have an impact on price competitiveness of Portuguese exports, if productivity gains are ignored, but its effects could be absorbed as shown by the experience of the past decade. Portugal should not lock itself into price competition with new EU entrants and Asia. Wage pressures might indeed provide an incentive for firms to invest in technical progress and innovation. This is particularly relevant for Portugal, which suffers from a low level of capital per worker compared to other European economies.

As suggested in the ILO report in 2013, investment promotion, reforms in the business environment and financial support measures should be couched in a focused growth strategy aiming at diversifying, innovating and getting closer to the technological frontier in medium-high tech goods and services in higher value-added markets, such as ICT, upgraded tourism, agricultural niches and greener industries. Public and private efforts should continue to be combined to improve financial support to enterprises, as well skills development, business support services, promotion of clusters and value chain upgrading.

## **The case of Portugal suggests that EU macroeconomic policy should move beyond a one-size-fits-all approach**

Developments in the Eurozone significantly affect trends in the country. The adjustment experience of Portugal offers ground to reflect on ways the European Union could in the future better shelter its members from financial and economic storms, e.g. by calibrating EU monetary policy to the needs of all countries, by broadening the scope of financial stabilization instruments, and by revising the conditionality attached to those instruments, especially as it concerns changes in labour market regulations.

## **MoU-induced employment protection reforms were unnecessary in a labour market with sufficient flexibility and already-high rates of temporary contract work**

Portugal adopted several employment protection legislation (EPL) reforms in line with the Memorandum of Understanding (MoU) signed in 2011 between the Portuguese Government and its international partners.<sup>1</sup> These reforms were also reiterated in a tripartite agreement in January 2012.<sup>2</sup> An explicit goal of the reforms was “to tackle labour market segmentation, foster job creation, and ease the transition of workers across occupations, firms, and sectors”.

The list of the reforms prescribed by the MoU concerned the alignment of severance payments of open-ended contracts with those of fixed-term contracts; general reduction of severance payments; and altering valid grounds for dismissals. In addition, several other measures were undertaken,

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1. The European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF).

2. Not all trade unions signed the agreement.

including transitory additional renewals of temporary contracts, a decrease of the end-of-contract indemnity, and extension of the total duration of very short-term contracts.

Contractual labour market segmentation has been a long-standing feature of the Portuguese labour market. Temporary contracts disproportionately affect younger workers (15–24) and their use has risen from less than 40 per cent in 2000 to more than 60 per cent by the early 2010s for this age group, where the figure has remained since. This has in part contributed to the near-5 per cent increase in the share of temporary contracts in total wage employment in the last 20 years. In most cases – and in contrast with other countries – temporary contracts are largely involuntary.

At the onset of the latest global economic recession, the legal framework favoured the use of temporary contracts, a situation that was reinforced by the reforms introduced between 2011 and 2013. Further ease of the use of temporary contracts was accompanied by a decrease of employment protection for permanent workers without leading to a change in the share of temporary workers among employees. Thus, adjustment reforms reduced protections without benefit to employment or the labour market.

Segmentation continues to raise both equity and efficiency concerns. The equity concerns stem from the fact that workers in different contracts face different working conditions, including penalties in terms of earnings, skill development, and prospects for temporary workers. Efficiency is also compromised, because temporary workers receive lower on-the-job training, and their high turnover does not favour skill and in-house knowledge accumulation, thus reducing overall productivity.

### **Future policies should include incentives to convert temporary contracts to permanent ones and ensure equality of treatment across contracts**

While recognizing the validity of recent efforts, further policy measures to deal with labour market segmentation should aim at addressing its three key features: the high share of (involuntary) temporary employment; low transitions to permanent contracts; and unequal working conditions across contracts. Such measures can include placing stricter limits on the use of temporary contracts and ensuring compliance with such regulations. The tripartite agreement for the labour law amendments reached at the time of writing this report, and approved by the Parliament, takes steps in this direction. Enterprises can be encouraged to convert temporary contracts into permanent ones through various incentives, including in the area of training to be provided to temporary workers. Measures should also ensure equality of treatment and working conditions, eliminate incentives to use temporary contracts with the single aim of saving on labour costs, provide enough tools to enterprises to ensure internal rather than external flexibility, and stimulate responses through social dialogue that include temporary workers.

### **After deregulatory amendments, working hours – already high by EU standards – increased without improving employment opportunities**

The regulation of working hours, working time arrangements, rest periods and holidays has been a central issue in the legal amendments that have taken place since 2008. This includes the reforms introduced during the adjustment period, whose aim was to increase working hour flexibility to improve employment opportunities and the economy overall. The experience of Portugal, however, provides little evidence that this deregulation worked. This may be in part due to the fact that the country's Labour Code already provided employers and workers with working time flexibility.

The amendments introduced under the MoU covered the expansion of flexible working time arrangements – including time banking, the reduction of overtime pay by 50 per cent and the elimination of compensatory rest periods for overtime hours. They were accompanied by a tripartite social dialogue agreement in 2012 that included the elimination of four national holidays and the elimination of extra annual holiday time (“bridge days”). Subsequently, some amendments were challenged in the Constitutional Court, which emphasized they could not be imposed on collective agreements in force without breaching the fundamental right to collective bargaining, therefore leaving some more favourable clauses from collective agreements in force.



### **With lower overtime pay and stagnant wages, these longer hours often mean more work for less money**

Average numbers of usual weekly working hours increased on average by one hour – between 2009 and 2016 – and more so for women – even though Portugal already stood in the top quarter within the EU. The share of workers working overtime also increased and continues to rise. After a sharp increase, time-related under-employment started to decline as from 2015, with a declining share of part-timers who would prefer to work full time. This would suggest that there has been some improvement in options for employees working part-time hours. However, the increase in hours and the stagnation of monthly wages effectively reduced the hourly pay of workers.

### **Regulating working time in concert with wages and other aspects of employment may help workers and employers achieve optimal flexibility**

The decision of the courts on the interplay between reforms and collective agreements implies that the best way forward is to articulate policies through social dialogue. While some of the reforms are still in force, others have recently been changed or reverted back to their pre-crisis formulation (e.g. the reintroduction of four public holidays, and discussions for time banking to be again subject to collective bargaining). More generally, working time should be seen as one of the elements of employment and should be regulated in conjunction with other aspects of employment, including wages, which in their totality can contribute the necessary flexibility desired by both workers and employers. Enforcement of any regulatory measures will be crucial to both workers and employers, while collective bargaining can also play a central role.

These considerations are particularly important in view of unfolding policy debates around the future of work and the impact of technology on workers and employers. The recent regulatory initiative in telework places Portugal at the vanguard of countries recognizing the need to balance the positive and negative impacts that technology can have on workers and employers. The recent resolution by the Portuguese Parliament on “on-call” work, with implications for the “right to disconnect”, could be an important measure to help facilitate work-life balance for workers.

### **Labour inspections fell as adjustment reforms reduced resources while making labour laws more complex**

Labour law enforcement in Portugal falls under the mandate of a single institution, the Authority for Working Conditions (ACT), under the Ministry of Labour, Solidarity and Security. The Labour Code of 2009 and its successive amendments that introduced flexibility related to contractual forms, organization of work and enlarged liability schemes also increased the legal complexity for enforcement mechanisms. Many of the new legal institutes required stronger efforts to build legal cases, thereby slowing the enforcement capacity of ACT.

The reforms under the adjustment programme further increased the complexity of labour law, while decreasing inspection resources (e.g. pay cuts, a freeze on career progression and a reduced number of inspectors). The result – lower staff motivation and a reduced capacity of ACT to effectively play its role of regulator, as ACT is forced to focus increasingly on individual requests with a limited effect on the regulated environment.

From 2011 to 2014 the number of inspections dropped significantly, as did the rate of proactive inspections and the number of legal and technical advice given by ACT. Part of this drop is explained by a change in the methodology used to register inspections, but it is also the result of the tough fiscal consolidation choices the Government chose to make. The efficiency was further hindered by the incompatibility of the internal electronic system with data sources of other State regulatory agencies, e.g. to produce automated reports or management scoreboards. Application of the recent law (42/2016) that authorized the inter-connection of data between the State Tax Authority, Social Security and ACT is a step in the right direction in this regard, and could be the foundation for more analytical components of an integrated IT system.

## **Traditional enforcement can be enhanced by strategic compliance planning and new legal tools, and some steps have recently been taken in the right direction**

Consequently, all issues discussed in this report call for more effective law enforcement. An important step would be to implement strategic compliance planning rather than the single use of the traditional enforcement, educational and communication approaches. Improvements in this regard are expected, as ACT has been slowly increasing its human resource capacity since 2015, even if staff numbers still remain below what would be desirable. New legal tools may also have an impact on compliance, such as the recent competence for direct action in the recognition of employment relationships, established by Law No. 63/2013. Moreover, it is important to continue recruiting qualified staff and sustain staff motivation through additional training and capacity development investments, as well as transparent career progression incentives. Lastly, even if data does not reveal immediate outcomes, concerns have been raised on the capacity of labour courts to receive new cases referred by inspectors – an issue that would have to be addressed to increase efficiency and effectiveness of the overall enforcement mechanism of the Labour Code.

## **Active labour market policies – from job creation to training and public employment services – are a crucial factor behind Portugal's labour market recovery since 2013**

In line with the policy recommendations advanced by the ILO in its 2013 study, renewed emphasis on active labour market policies (ALMPs) has substantially contributed to the labour market recovery observed in Portugal since 2013. In particular, direct and indirect support to job creation has strengthened employment growth, while reforms aimed to improve the delivery of public employment services have contributed to activating (and profiling) unemployed individuals more effectively, and training measures (especially those provided for a longer duration) have increased participants' employment probabilities.

However, large numbers of the newly created jobs were of a temporary nature, and only modestly benefitted young NEETs and long-term unemployed. This was due to the relatively loose targeting of ALMPs on the most vulnerable labour market segments, as well as to the design of employment incentive schemes, which aimed at supporting job creation regardless of its quality. Recent efforts to improve targeting of ALMPs and their impact on permanent hiring should continue.

## **Future ALMPs should enhance effectiveness and target more disadvantaged workers, including young people and the long-term unemployed**

Latest policy efforts have significantly contributed to addressing some of the limitation in the design of previous ALMPs, while enhancing their inclusiveness. For instance, the current employment incentive schemes (*Contrato Emprego*), introduced in 2017, promotes the creation of permanent employment by restricting the use of temporary contracts only to particular categories of disadvantaged workers, such as long-term unemployed. Further, the 2017 training initiative (*Qualifica*) more closely targets low-skilled individuals, while strengthening work-related training components. In addition, the 2016 reform of the Public Employment Service (PES), has improved the quality of the services offered by providing a more personalized support to the unemployed.

While recent policy initiatives introduced in the country in the area of ALMPs go in the right direction of improving the targeting, delivery and inclusiveness of ALMPs, there is still room for improvement. First, it would be important to strengthen the institutional capacity of the Public Employment Service (PES) by reducing caseload per career manager, and improve its ability to monitor long-term sustainability of the placements done via the different ALMPs. Second, with around one third of young NEET not registered with the PES, it is key to introduce stronger outreach services (e.g. job fairs, social media campaigns, direct engagement with communities, etc.) to enhance youth engagement with PES. Finally, as economic conditions improve, it is important to take this opportunity to rebalance the existing ALMP policy framework, by reallocating part of the expenditure in employment incentives to finance other, more adapted ALMPs, such as stronger start-up incentives schemes for the unemployed. Important steps in this direction have been taken through the introduction of a new integrated strategy to entrepreneurship support (*Startup Portugal*) in 2016.

## **The minimum wage, a key labour market intervention in Portugal, has helped reduce income inequality**

While wages picked up before the crisis, they sharply fell during 2010–13 and levelled off just slightly above pre-crisis levels. Real average wages were about 3 per cent higher in 2016 than in 2007. Portugal had a similar labour share to other European countries until 2009, but saw a steep decline between 2009 and 2015 when labour productivity increased more rapidly than wages. Although the decline in the labour share bottomed out in 2015, it remains well below its level of the early 2000s, and also below the level of various other European countries, suggesting some possible scope for sustainable and carefully considered wage increases in the future. Meanwhile, average wages remain low in comparison to the EU (approx. €900, compared to €2,000 in the EU as a whole), explaining at least in part why so many of its young people have sought work in other countries. While inequality in Portugal is comparatively high, both wage and income inequality have declined in recent years. The decline in wage inequality can be explained by two simultaneous factors: the drop in the wages of the top 10 per cent during the last few years, as well as the increase in the wages of low-paid workers helped by Portugal's minimum wage policy.

The minimum wage is an important labour market intervention in Portugal, which has contributed to increasing the wages of low-paid workers and reducing wage inequality. Setting an adequate level of minimum wage has implications both for inequality and poverty. In Portugal, almost one-fifth of all wage earners earn about the minimum; another fifth of wage earners earn no more than 25 per cent more than the minimum. This demonstrates the important role of the minimum wage, which not only benefits young workers but also more experienced and older workers, as well as many women – who make up about 61 per cent of minimum wage earners. While the minimum wage is low in absolute terms compared to other European countries, it is relatively high compared to the median wage in Portugal, but relatively similar compared to the average wage, which is partially a reflection of relatively high, albeit declining income inequality. Considering these complexities, it would be important to regularly and rigorously monitor the effects of the minimum wage on employment, and particularly on youth employment.

## **Future policies should focus on closing the gender gap and boosting wages through education and skills enhancement**

Statistics of the gender pay gap show that it has slightly decreased in the past decade, but remains high, with men earning approximately 19 per cent more than women. This gender pay gap has been attributed to a mix of factors, including the fact that women workers tend to work in firms and jobs that pay less, and to lack of equal access to top jobs – the so-called glass ceiling. Further measures could thus be taken to reduce the gender pay gap. Overcoming unequal pay across groups requires sustained effort at various levels and through a wide range of policy approaches, including combatting gender-based stereotypes about women's roles and aspirations, strengthening policies on maternity and paternity as well as parental leave, and advocacy for better sharing of family responsibilities. Equal pay at the enterprise level also requires job evaluation methods free from gender bias.

Sustained attention to access to education, and policies to increase the skills of the labour force – particularly those at the bottom of the distribution – would also contribute to higher wages. An important source of income inequality is the high incidence of unemployment of vulnerable populations and the resulting downward pressure on wages for low-skilled workers.

## **Social dialogue has been key to Portugal's successful recovery but the culture of collective bargaining must be revitalized to ensure inclusive growth**

Commendably, social dialogue was heavily relied upon prior, during, and after the crisis period. While full consensus often proved elusive, social partners were consulted on most decisions. Where decisions were made unilaterally, or against interests of unions and/or employers, conflict and push-back resulted. The freezing of collective bargaining at sectoral level during the MoU period, however, ensured that this policy instrument could not be used by workers and employers to respond to the crisis.

Collective agreements generally continue to provide terms and conditions that are equal to or only slightly higher than legal minima, in particular with regard to wages. The content of most collective agreements, with some important recent exceptions, appears largely unchanged when comparing the pre- to post-crisis periods. This points to a need to revitalize the culture of bargaining, and to make agreements more dynamic and reflective of current labour market challenges, including subject areas beyond wages and working hours. The June 2018 tripartite agreement could mark an important milestone in rebuilding a stronger culture of collective bargaining.

The goal of the MoU and subsequent legislation to decentralize collective bargaining from the sectorial level to the enterprise level was not achieved. The predominance of sectorial level bargaining coupled with the use of extension mechanism results in high collective bargaining coverage (over 85 per cent in 2016), an outcome largely supported by unions and employers' organizations. However, relatively low union membership figures (less than 9 per cent in the private sector) may raise issues of representativeness and "free rider" problems (i.e. workers benefit from agreements without joining a union or paying union dues).

Changes in criteria for extensions of collective agreements since 2014 have had a positive effect on the number of agreements and number of workers covered, though neither has yet reached 2008 levels. The total number of new agreements dropped from 296 in 2008 to 94 in 2013, and has recovered to 208 in 2017, while total collective bargaining coverage by new agreements has swung from nearly 1.9 million workers to 241,000 workers, before increasing to 821,000. It is clear that the changes in legislation and extension criteria had a direct impact on the number of agreements and workers covered, even though the gap between pre- and post-crisis coverage remains large.

The extension of collective agreements is a key policy tool to promote collective bargaining and enhances its role in reducing inequality and fostering inclusiveness. Therefore, it would be desirable to maintain a system of extensions, while monitoring the impacts of the criteria adopted in June 2017.

Lastly, minimum wages have become an increasingly important influence on average levels of wages across the economy. Therefore, it should be explored how collective bargaining at different levels can be better used to link wages with productivity growth at both the sectoral and enterprise level. This can help to avoid a low wage trap, and instead lead to a virtuous cycle of increased productivity growth, leading to increased wage growth and domestic consumption, which, when combined with higher levels of skills and capital investment, leads in turn to higher productivity growth.

## About this report

The report is organized as follows. Chapter 1 focuses on economic trends and demand patterns. Chapter 2 examines developments in the labour market from the last decade till end 2017. Chapter 3 reviews legal and regulatory changes that were implemented as part of the 2011 adjustment programme agreed with the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF) – or in response to it – in the areas of employment protection and regulation of contracts, hours of work, and labour inspection. Chapter 4 provides an overview of recent reforms in the area of active labour market policies (ALMPs), discusses their effectiveness in improving labour market and social conditions, and proposes a number of policy options going forward. Chapter 5 examines trends in wages and looks at issues of inequality, poverty and the gender gap. Chapter 6 focuses on legal and policy changes in collective bargaining. Each chapter includes empirical and analytical findings and concludes by highlighting key challenges and policy considerations.

# Overview of economic performance and demand patterns (2008–18)



## KEY FINDINGS

Portugal went through many economic difficulties during the past decade, but it is now bouncing back with surprising vigour.

A main driver of recovery is the strong growth of exports, firmly grounded in a range of structural changes and reforms, some of which predate the crisis, including firm restructuring and a shift to the tradable sectors; growing integration in global value chains; growing attainments in education and skills; investments in infrastructure; public sector reforms; and changes in business and labour market regulations.

Another main driver is the shift to a more accommodative fiscal policy stance in recent years, in the effort to maintain a balance between, on the one hand, a credible commitment to gradual public debt reduction and, on the other hand, the need to support incomes, domestic demand and employment.

Recent increases in wages and in private investments – especially in tradables – are sustaining domestic demand and the restored profitability of the domestic banking system is helping boost business confidence among domestic and foreign investors.

Looking ahead, any space for fiscal expansion to support aggregate demand should be explored, compatible with EU commitments.

Attempts to reduce the external debt over the long-run should not drag on growth and should not compromise public and private investment. Investment promotion, financial support and skills development should target medium-high tech goods and services with high value-added content.

The adjustment experience of Portugal should be used to review and improve the instruments the European Union can use to assist and shelter its members from financial and economic shocks. ■

Portugal went through many economic difficulties during the past decade, but it is now bouncing back with surprising vigour. The country, which was already experiencing modest growth in the early 2000s, was doubly hit by the global financial crisis and the Eurozone debt crisis. The impact on employment and incomes was dramatic. More than 600,000 jobs – about 12.5 per cent of total employment in the country – were lost in the period from the start of the financial crisis in 2008 to the first signs of recovery in the second quarter of 2013, and nearly 500,000 people emigrated between 2011 and 2014, searching for opportunities abroad. Since then, growth has regained momentum, unemployment has declined, and living standards in 2017 were back to the level they were in 2008 (see table 1.1). Exports are thriving and the country has regained access to the international financial market.

There remain gaps in the labour market and concern for the quality of the new jobs, especially for youth, as will be discussed in the chapters that follow. Moreover, the country's high external debt might still pose a risk in the case of a new burst of international financial and economic instability. But, by and large, the process of adjustment and recovery is on a firm ground thanks to a combination of factors and policies that go beyond the conventional recipe of fiscal consolidation and hyper-deregulation. Lessons from the Portuguese case can be of great value for countries experiencing a severe economic downturn as well as for the design of measures to improve and strengthen the monetary, fiscal and financial architecture of the European Union.

The aim of this chapter is to briefly review the country's macroeconomic performance over the past decade and the prospects for the near term, and then highlight key challenges and policy issues. Detailed trends in employment and unemployment and policy issues concerning employment protection legislation, the scope of active labour market policies, wages and collective bargaining are not part of this chapter but are addressed in separate chapters of the report.

**1.1 Key economic and social trends in Portugal (2008–18)**

TABLE	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018*
GDP growth rate	0.2	-3.0	1.9	-1.8	-4.0	-1.1	0.9	1.8	1.6	2.7	2.4
Real per capita income (2000=100)	100	97	99	97	93	93	94	96	98	101	n/a
Investment as percentage of GDP	22.8	21.1	20.5	18.4	15.8	14.8	15.0	15.3	14.9	16.2	17.0
of which public investments as per cent of GDP	3.7	4.1	5.3	3.5	2.5	2.2	2.0	2.3	1.5	1.8	2.1
Government debt as percentage of GDP	71.7	83.6	96.2	111.4	126.2	129.0	130.6	128.8	130.1	125.7	121.7
Fiscal deficit as percentage of GDP	-3.8	-9.8	-11.2	-7.4	-5.7	-4.8	-7.2	-4.4	-2.0	-3.0**	-1.1
Current account as percentage of GDP	-12.1	-10.4	-10.1	-6.0	-1.8	1.6	0.1	0.1	0.7	0.4	0.2
Export growth (%)	-0.3	-10.7	9.5	7.0	3.4	7.0	4.3	6.1	4.1	7.0	6.6
Unemployment rate (%)	7.6	9.4	10.8	12.7	15.6	16.2	13.9	12.4	11.1	9.0	7.8

\* IMF Forecasts. \*\* Of which -2.1% was for the recapitalization of Caixa Geral de Depositos (CGD)

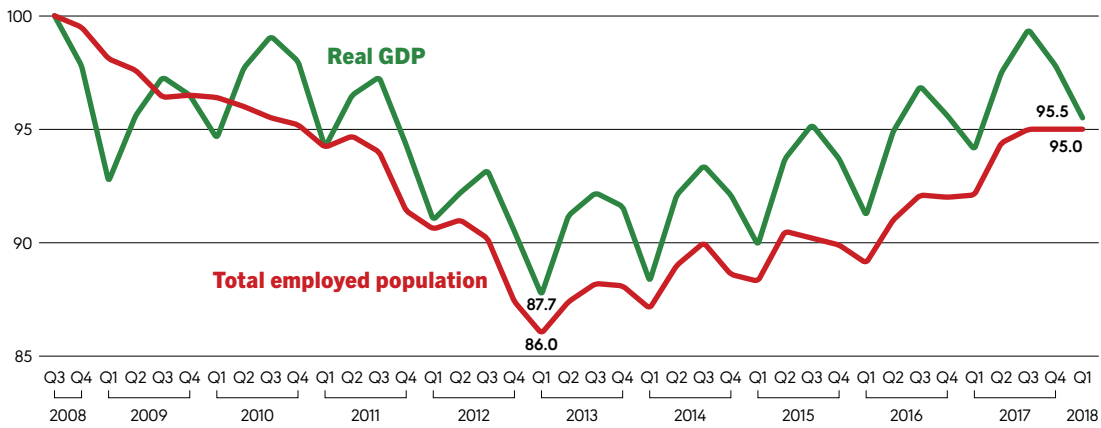
Source: Banco de Portugal, except export growth (Eurostat) and 2018 forecasts (IMF).

# Portugal's recovery is on a firm ground

## A brisk economic recovery ...

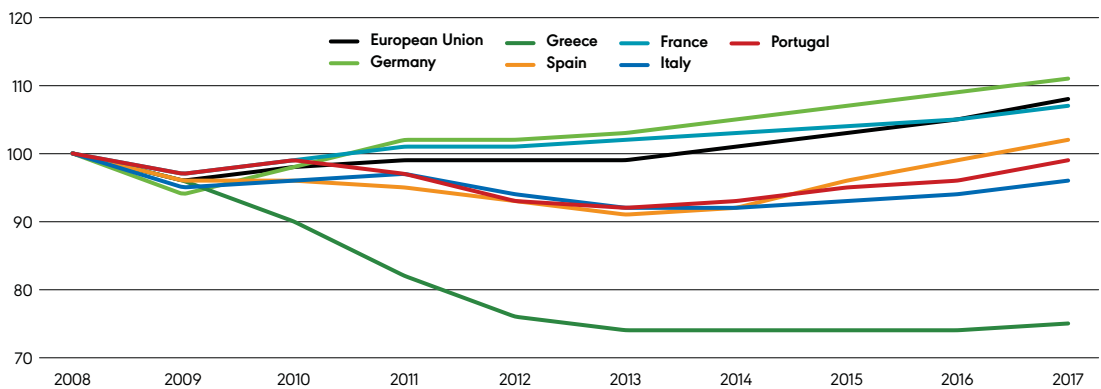
After the dramatic downturns of 2008–09 and 2011–13, when the GDP declined abruptly and unemployment reached unprecedented levels, the country is experiencing a brisk recovery. The growth rate in Portugal turned positive in 2014 (figure 1.1). As for the other highly indebted countries in the Eurozone, it was prompted by the shift in the monetary policy by the European Central Bank (ECB), which moved from a hike in interest rates in 2011 to massive monetary easing and, through its Outright Monetary Transactions (OMT) programme in September 2012, committed to buying government-issued bonds on the secondary market to support the value of the Euro at any cost. This halted the sharp re-pricing of risks between government bonds in the Eurozone and re-established ordered conditions on the European financial markets (Coeuré, 2013). Recovery in Portugal then gained momentum and started accelerating from 2016. In 2017, the country's economic growth was superior to the Euro area for the first time since 2009.

**FIGURE 1.1** GDP and employment trends (Q3 2008=100)



Source: Eurostat.

**FIGURE 1.2** Real GDP per capita growth rate in selected European countries, 2008–17 (2008=100)



Source: Eurostat.



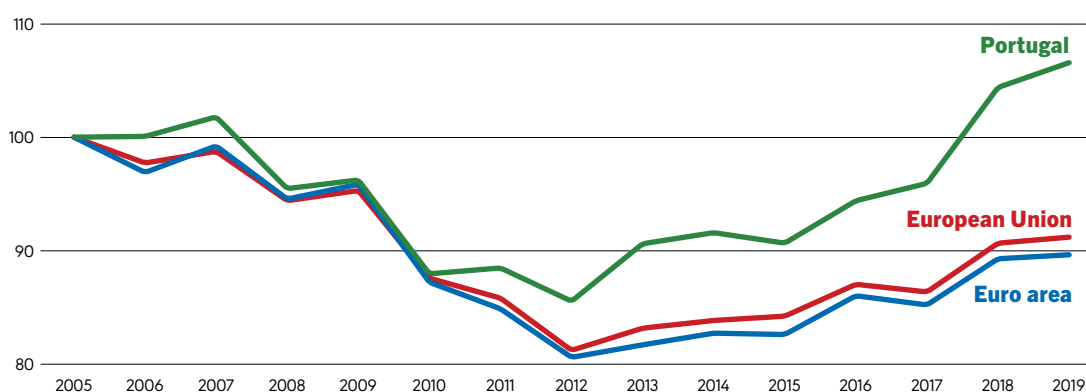
Projections for the near term point to a similar positive trend, although there are different views on the strength of the future economic growth. IMF baseline scenario projections of 2.4 per cent real GDP growth rate in 2018 and 1.8 per cent in 2019 are considered to be conservative by the Government (IMF, 2014). Whatever the projected figures might be, the country's growth trend is slightly ahead of the broad cyclical recovery underway throughout most of Europe. If Greece and partly Italy are still struggling with the consequences of the Eurozone recession, Portugal, together with Spain and Ireland, seems to be on its way out of the tunnel (figure 1.2).

## ...supported by the return to a more favourable situation abroad

Those recent positive developments have been aided by external factors, mainly the sustained growth in the country's main trading partners in the Euro area (Spain, Germany and France alone account for about 50 per cent of total exports) and in key markets outside the EU, such as Angola, Brazil and China. Portugal's external accounts have consistently improved thanks to strong export growth, relative import compression due to subdued domestic demand and sustained capital inflows.

Export buoyancy started before the crisis. It has been strong in manufacturing and especially in service exports such as tourism. Tourism almost doubled in value since 2010, leading to a positive external balance since 2013. This was partly due to geopolitical developments and partly to investments in the quantity and quality of tourist services that have increased the attractiveness of Portugal relative to competing destinations. Overall, Portuguese exports have been increasing at an annual rate of 5 per cent and are expected to continue to grow in the near future in line with Eurozone sustained trend growth. What is remarkable is how the country has been able to achieve significant gains in its export market share since 2005 (figure 1.3).

**FIGURE 1.3** Export shares of Portugal and the EU (2005=100)



Source: AMECO/EU.

Portugal is a very open small economy, whose economic fortunes are not surprisingly linked to those of its trading partners. Its degree of economic openness, measured by the share of exports plus imports to GDP, stood at 85 per cent in 2017 – closer to the share of Germany and significantly higher than that of Greece, Italy and Spain, which stayed in the range between 60 and 67 per cent.<sup>1</sup> The structure of exports is also well diversified. Portugal exports 398 products with revealed comparative advantage (meaning that its share of global exports is larger than what would be expected from the size of its export economy and from the size of a product's global market), closer to Italy (522) and Spain (498) than Greece (268).<sup>2</sup>

1. World Bank at <https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS>

2. Observatory of Economic Complexity (OEC), at [https://atlas.media.mit.edu/en/profile/country/prt/#Product\\_Space](https://atlas.media.mit.edu/en/profile/country/prt/#Product_Space)

The way firms in the country have been able to skilfully take advantage of the opportunities offered by the export market was a main driver of the country's path out of the crisis. As it will be discussed later, this was due to a series of non-price determinants which mainly predated the burst of the crisis, including firm restructuring and integration in global value chains, investment in education and infrastructure, public administration reforms and changes in the business environment.

## Domestic policy factors also played a role

At the start of the crisis in 2008, the Portuguese Government, like most other European countries, reacted with a series of fiscal measures to mitigate the impact on the domestic economy. The decline in growth was less severe than in most European counterparts, but in 2010, a series of unsuccessful austerity programmes in Greece made it clear that Greece was unlikely to be able to repay its external debt. The Eurozone double-dipped and a private sector global financial crisis became a European sovereign debt crisis. With fears of a Euro area break-up growing, the spread on Portuguese (and Italian and Spanish) bonds increased to an extent that could not be explained by macroeconomic and fiscal changes, confidence in the solvency of the domestic banking system declined, the level of the external debt escalated, and the country had no choice but to apply for international financial assistance.

In May 2011, a three-year Economic Adjustment Programme was signed with the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF). As a condition for financial assistance, the programme included a package of reforms of the labour market, the judicial system, network industries and housing and services sectors. Additional measures were taken in 2013 to cut public spending. They were accompanied by the freezing of wages and collective bargaining and active labour market policies to support employment (see Chapter 4). As noted in the 2013 ILO report, the introduction of the adjustment programme coincided with the steepest declines in output and jobs ever registered in the history of the country. Employment losses were particularly strong in the non-tradable sectors (Gouveia and Coelho, 2018), as tightened credit supply and contractionary fiscal policy combined to depress domestic demand. Recovery only started in 2014 and since then it has become progressively stronger.

It is only in the most recent years that policy shifted to a more moderate fiscal stance, in the effort to maintain a balance between a credible commitment to gradual public debt reduction and the need to support incomes, domestic demand, investment and job creation. In a more favourable economic context, this shift helped broaden and accelerate the recovery by means of supporting domestic demand. Increases in minimum wage are one example, as discussed in Chapter 5.

The composition of public spending also shifted. At the height of the crisis, Portugal had reduced spending on economic affairs, education and healthcare by about 7 per cent of its GDP, a decline second only to Greece. More recently, as less was due for interest repayments on the debt, more was spent on social items, including pensions, recovering the ground lost in the crisis years. In 2017, the level of expenditure increased in nominal terms thanks to higher than expected tax revenues (figure 1.4). In percentage of GDP, however, and excluding the extraordinary expenditure for the recapitalization of the Caixa Geral de Depósitos (CGD), the fiscal deficit in 2017 was -0.9 per cent, the lowest ever since the start of democracy in Portugal. A similar level of deficit is projected for 2018, overall, quite a conservative fiscal policy stance.

The result of the recent policy shift has been some improvement in the level of poverty. The fast return of poverty to pre-crisis levels after the significant increase at the peak of the austerity programme is indeed a distinctive feature of the adjustment process in Portugal vis-à-vis countries such as Greece, Italy and Spain (see Chapter 5).

## 1.1 Structural reforms and crisis adjustment in Portugal

### BOX

As noted by a former chief economist at the IMF, “Structural reforms are no miracle cure – the effects are very often uncertain”. Yet, structural reforms, usually in the form of rapid and extensive deregulation of product and labour markets, are a core component of the adjustment packages available to countries affected by an economic shock, in Europe and elsewhere. Such reforms often appear to be a necessary “political” price to pay in exchange for financial and monetary assistance, but their effects in accelerating adjustment and raising long-term economic growth are highly disputed.

There are different views about the impact of the adjustment package of structural reforms in Portugal. Regarding product market regulation, reforms have yielded some fruit in easing the cost of doing business and enhancing competition in given sectors, e.g. housing and energy, with downstream benefits. It is estimated that those reform efforts contributed to some increase in employment in downstream activities that depended on inputs from the reformed sectors. However, the effects on productivity are mixed. (Correia and Gouveia, 2017).

More controversial is the discussion on the effects of labour market reforms, especially changes in employment protection legislation. Some observe that multiple changes in employment legislation have taken place in Portugal throughout the past 15 years and that even before the crisis the flexibility of the labour market was already at the standard of advanced industrial economies, as measured by indicators of wage flexibility and flows of workers in and out of jobs (Centeno and Coelho, 2018). So, the induced reforms of the adjustment package were by and large redundant. Others observe that implementation was partial and further deregulation is vital in order to make the Portuguese labour market flexible enough to sustain growth and support productive transformation (OECD, 2017c). In this view, the reforms were incomplete and could not fully deliver on their promises.

Given the complexity of the matter, attempts at a quantitative assessment can be quite arbitrary. Estimates based on sectoral data suggest that decreasing the costs associated with hirings and dismissals fostered employment in some industries more sensitive to changes in labour market regulations, but the impact on productivity was negative, suggesting those jobs were likely to be low-quality and precarious. (Correia and Gouveia, 2017). Another study found that labour market reforms in Portugal had a negative effect on productivity in the long-run for all but the least productive firms (Gouveia, Santos and Gonçalves, 2017). What these preliminary findings suggest is that if there is an effect in fostering employment, it varies across industries, and it is more visible in those industries that are less relevant to enhancing productivity and sustaining growth and employment over the long-run. The jobs created are also likely to be less productive and of poor quality.

The Portuguese experience should be looked at in the context of the broader debate on structural reforms. First, while there are claims that deregulated markets do automatically lead to higher levels of investment, growth

and employment, there is growing recognition that, as a response to a shock, structural reforms of both product and labour markets have immediate and significant short-term adjustment costs. Those reforms should be accompanied by accommodative macroeconomic policies in order to avoid making adjustment even more difficult (IMF, 2016b). This was not the case in Portugal.

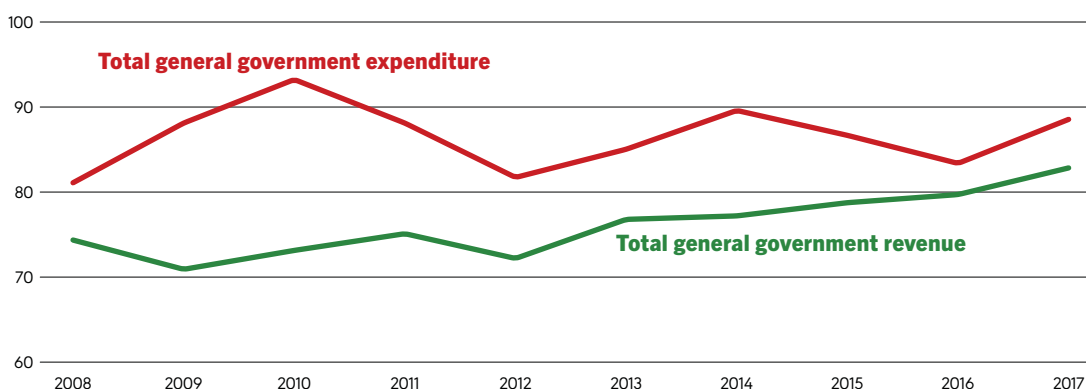
Second, the long-term impact on employment and growth is also put under question by a growing body of empirical research. Research carried out by the IMF in 2015, for instance, showed that changes in labour market regulation have no impact in enhancing productivity across most industries in the short term and over a longer time run (IMF, 2015). A large body of evidence support similar conclusions, see Storm and Capaldo (2018). A full evaluation for Portugal will need to be based on the future evolution of the economy.

Third, the scope of reforms is being reconsidered, with more attention being paid to improvements in the public administration and the business environment, as opposed to a sole focus on product and labour markets (Draghi, 2018). Those institutional reforms entail fewer short-term costs and bring economic benefits over the short, medium and long-term. Indeed, Portugal has been a very active reformer in those areas before and during the crisis, as outlined in this chapter.

Finally, the distributional effects of reforms are also receiving new attention. This is prompted by the widespread concern that the kind of reforms promoted so far have been associated with less inclusive economic and social outcomes. As noted by a major proponent of those reforms: “We need to show that reforms can contribute to both efficiency and equity” (Draghi, 2017). This implies accompanying measures to address inequalities, fight tax avoidance and tax evasion and support those who are vulnerable and most at risk of losses. Active labour market policies have been introduced in several European countries, including Portugal, to alleviate the burden of more flexible labour markets for workers. However, improving employability may not be sufficient to grant better chances to access gainful employment in a depressed economy. Balancing flexibility with security requires a firm commitment to fully use macroeconomic policy to achieve full employment, not just to pursue narrow fiscal and monetary nominal targets.

The design of an effective reform package that balances efficiency and equity cannot be reduced to a technocratic exercise. In the ILO view, social dialogue and collective bargaining between independent and representative organizations of employers and workers is a tested vehicle to agree on measures that reconcile equity and efficiency in line with national preferences and circumstances. In the view of many practitioners and observers, the detailed changes in labour legislation enforced by the adjustment package – and the introduction of unfamiliar models of bargaining – neither respected nor took advantage of the current practices of collective bargaining and social dialogue in Portugal. Rather, they exacerbated divisions and reduced trust among the social partners.

**FIGURE 1.4** Total general government revenues and expenditures in current value (billions of euros)



Source: Eurostat.

## Other domestic structural factors that predate the crisis had a strong hand

A number of factors that predate the financial and debt crises helped the country vigorously regain and maintain its international competitiveness in the midst of austerity and recession in Europe. They include a domestic supply-side boost that resulted from market reforms and changes in business and tax regulations that took place over the past 20 years; a wave of reforms that improved the effectiveness of public administration; and the cumulated results of past investments that had enhanced the country's stock of modern infrastructure and its human capital. All those factors contributed to the dynamism of the exporting sector.

The road ahead for the economy of the country rests on building on those long-term determinants of growth and deepening them further to build a competitive position in medium-high tech goods and services in high value-added markets.

## Non-price-led export growth

One sign of the underlying productive transformation that predated the crisis relates to the dynamics of export growth. But well before the crisis, Portuguese enterprises had started to reorganize, innovate and differentiate products in order to face price competition from new EU entrants and Asian exporters and move towards higher value-adding activities even in traditional sectors such as agriculture.

An analysis of average unit values of exports suggests a limited relevance of cost competitiveness factors in the robust growth of exports over the 2003–14 period (Banco de Portugal, 2016).<sup>3</sup> Indeed, the recovery of export from the slump of 2009 was sudden and sustained because structural preconditions were in place, not for the effect of cost reduction via squeezed wages and decline in relative prices. The export recovery initiated before the squeeze in average nominal wages that coincided with the introduction of the austerity programme in 2011–12, and it progressed steadily even when wages started to pick up as from 2015 to a greater extent than most European competitors (see Chapter 5).

3. For an in-depth analysis of the non-cost factors behind export performance, see also Gouveia and Coelho (2018) and Centeno and Coelho (2018).

This delinking of exports and wage costs is a distinctive feature of the adjustment and recovery process of Portugal, which goes against a key tenet of the conventional conditional reform package promoted by the EC, IMF and ECB. This tenet is the “internal devaluation” mechanism by which monetary union countries can adjust to a crisis simply by means of declining wages and flexible labour markets in order to regain international cost competitiveness. Lower wages, and thereby lower prices of exports, were not in fact the key drivers of export growth and economic recovery in Portugal.

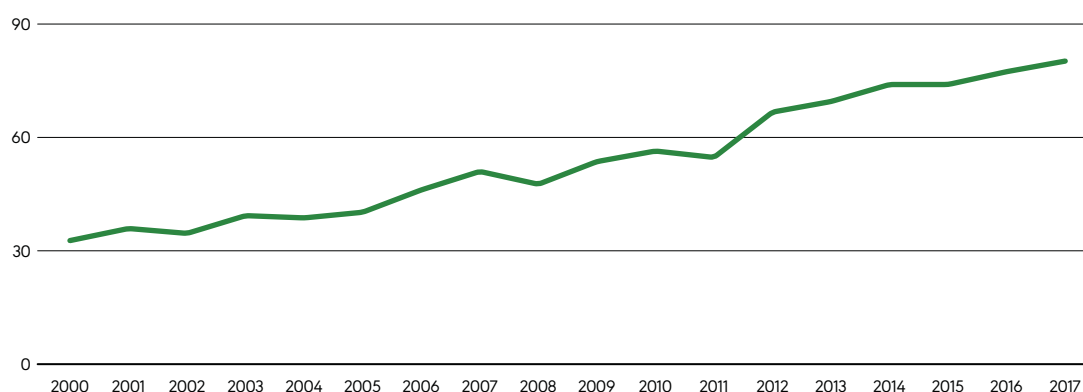
## An improved environment for business

A favourable business environment is a critical precondition for recovery and growth. With regard to business regulations, Portugal has significantly increased its ease of doing business in recent years, achieving some notable firsts. The country is now 29th out of 190 countries for which the *Doing Business* assessment has been carried out (World Bank, 2018). This places Portugal practically on par with France, the Netherlands, Spain, Switzerland and Japan, way ahead of Italy (46th) and Greece (67th).

Portugal is ranked even higher in terms of enforcing of contracts and dealing with insolvency, and ranks the highest for the number of procedural steps needed to register property (jointly with Norway, Sweden, Georgia and New Zealand). It gets a top score for trading across borders and is also at top in terms both of border compliance/cost of export (along with France and the Netherlands) and the time required to comply with corporate income tax audit (jointly with Lithuania). As a result of the reduced time and cost needed for company formalization in Portugal, the number of business start-ups increased by some 17 per cent (Branstetter et al., 2014). This has been estimated to increase employment by fewer than 10,000 new jobs per year, although most of the new firms were typically small and operating in traditional sectors (agriculture, construction and retail trade).

Foreign direct investment (FDI) has also been consistently accruing to Portugal, with an acceleration in 2012 (figure 1.5). Since the early 2000s, moreover, the country has also seen an increase in its participation in global value chains and its position is currently in line with that of other major European countries (Gouveia and Coelho, 2018). Traditionally, although Portugal is the production base of a few major multinationals in cars, part suppliers and textiles, it is construction and real estate that have been the main recipients of FDI in the past (Felke and Eide, 2014). But recently the country has been able to attract foreign investors and supplier chains thanks to appealing locational non-price features including quality of life and education, geographical position, institutional framework and political stability. Notable recent examples include the Autoeuropa investment by Volkswagen, as well as investments in financial and insurance activities, scientific and technical activities. Indeed, FDI yearly inflows jumped from 8.6 per cent in 2014 of gross fixed capital formation to 20 per cent in 2017.

**FIGURE 1.5** Foreign direct investment stock (percentage of GDP)



Note: Liabilities is understood as stock of FDI in the country.

Source: Eurostat.

## Good infrastructure

Sustained public investment in infrastructure had been one of the drivers of growth throughout the 1990s and the early 2000s. It left the country with a good level of infrastructure assets at the start of the crisis, including municipal roads, highways, electricity, water and gas infrastructures, railroads, ports and airports, but also health and education infrastructure. All are likely to have helped get exported goods out of the country and facilitate large-scale tourism arrivals. The country is currently well-ranked on indicators such as time to export or access to electricity, and both the European Commission and the World Economic Forum have recognized the good quality of airports, ports and railway infrastructure.<sup>4</sup>

## Public sector reforms

The quality of public administration is another important long-term determinant of economic growth. In its “Readiness for the Future of Production Assessment 2018”, the World Economic Forum ranks Portugal in the group of countries with high potential, with the quality of the institutional frameworks ranking the highest among the key domestic drivers.<sup>5</sup>

Portugal’s effort to rationalize the public sector and improve its quality started since the mid-1980s. At that time the focus was on improving the efficiency of the public sector with measures such as mobility and retraining and selective recruitment while making an effort at making public administration more transparent, less bureaucratic and closer to the citizens. In the 2000s, efforts focused mainly on making it more efficient, accountable and of higher quality (though some observers noted that to translate principles of private management to the public administration has had mixed results (Madureira, 2015). The introduction of the excessive deficit procedure in 2005 and the stability programme in 2010 accentuated the speed of rationalizing public sector employment. The austerity measures have taken quite a toll on the resources accruing to the public administration.

Currently, administrative simplification and modernization have received renewed attention under the National Reform Programme of 2016, with the re-start of the SIMPLEX programme, which combines several measures aimed at promoting better and smart regulation for citizens and enterprises, as well as the introduction of new technologies to reduce administrative burdens and make the relationship with public administration easier and more effective. SIMPLEX, the Government’s flagship programme to cut red tape, was introduced in 2006 and ended in 2011. After its reintroduction, a recent impact assessment commissioned by the Portuguese Government has estimated that a sample of the 255 measures implemented in 2016 has saved business an estimated €568 million.<sup>6</sup>

## Human capital as a competitive asset

Finally, the education profile of the population in Portugal has been historically low by EU standards. But large investment in education in the past decades started bearing its fruits and are contributing to make the labour market more dynamic and the economy more competitive in the international markets. Education attainment level for youth (15–29) are now comparable to EU average in terms of stocks, with catching up and significant flows into higher level education and increasing scoring in international tests such as PISA with above OECD average results in science, reading and mathematics (Centeno and Coelho, 2018).

It will be important to ensure that human capital does not become a depreciated asset. An excruciating effect of the crisis has been the large outmigration of highly educated young people. This outflow is now less intense, and young people move abroad for many reasons including the desire to broaden their skill sets and experience. But a large wage differential vis-à-vis other European countries may still work as a significant push factor and make it more difficult to translate brain drain into brain circulation.

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4. EC–EU Transport Scorecard performance [https://ec.europa.eu/transport/facts-fundings/scoreboard\\_en](https://ec.europa.eu/transport/facts-fundings/scoreboard_en) and Global Competitiveness Report 2017–18 <https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>.

5. Portugal scored 6.9 out of 10, higher than Spain, Italy and Greece. See <http://reports.weforum.org/country-readiness-for-future-of-production/economies/#economy=PRT>

6. *Resultados do estudo de impacto económico Simplex*, República Portuguesa, Gabinete da Secretária de Estado adjunta da Modernização Administrativa, 10 November 2017.



## Challenges and headwinds

### Labour market challenges

The recent strong rebounding of the labour market has been a distinctive feature of the recovery, as it will be documented in the next chapter. The increase in unemployment following the austerity was abrupt and it was accompanied by an even sharper increase in the number of discouraged workers and by massive outmigration. Since then, the unemployment level has been declining significantly (facilitated by the effects of wage subsidies and other active labour market policies, as discussed in Chapter 4). It is now approaching the levels prevailing in the pre-crisis period as well as the EU average. The reduction in the numbers of the discouraged workers and the involuntary underemployed as well as the reversal of migration flows are further signs that the labour market is approaching a situation close to the full utilization of the country's human resources. Although there are signs of unfulfilled vacancies for specific types of high-skill jobs, jobs in construction and low-paid jobs in agriculture, the rate of labour underutilisation remains overall high (20 per cent) compared to the EU average (15 per cent), and especially so for youth (41 per cent in Portugal, as opposed to the EU average of 31 per cent in 2017) (see figure 1.6).

There are also concerns with the quality of jobs. Labour market segmentation is widespread, with large numbers of temporary jobs (Chapter 3). Stable and secure jobs are especially rationed for the younger cohorts, in spite of their growing educational attainments. Remuneration has remained stagnant and low relative to EU averages (see Chapter 5).

#### 1.2 Labour underutilization in Portugal and Europe

##### BOX

The unemployment rate is the primary indicator used to assess labour market recovery and consider whether a change in the macroeconomic regime is desirable. But relying on it exclusively can be insufficient to guide policy. In most countries, adjustment to the great recession occurred through changes in a variety of labour market aggregates other than the number of the unemployed. A broader range of indicators should be taken into account to fully capture the degree of the labour market slack, i.e. the shortfall between the volume of work desired by workers and the actual volume of work available. This shortfall is a critical driver of wage dynamics and an indicator of how close an economy is to the situation of full employment.

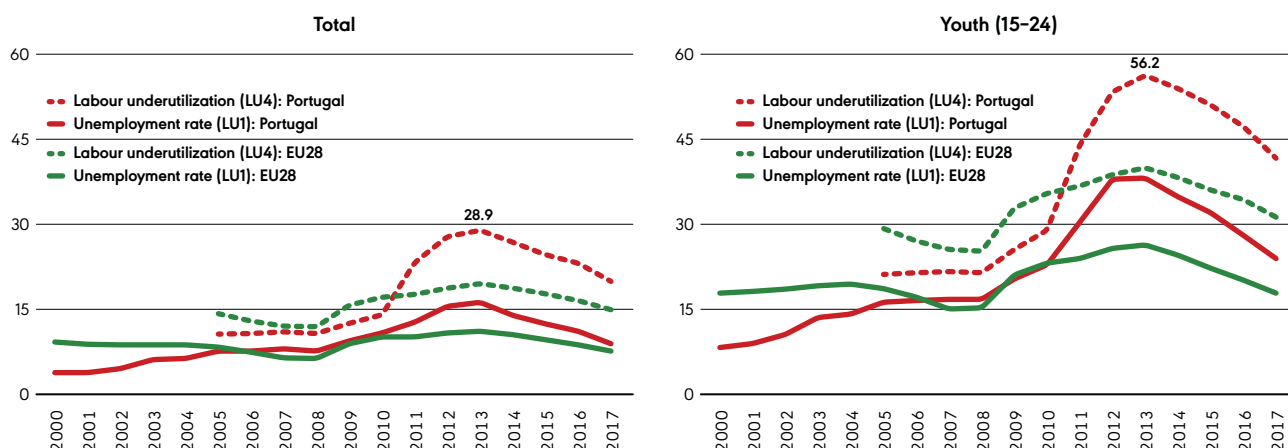
Countries are starting to adjust their labour market statistics to be able to measure a labour underutilization rate in line with the recommendations of the Resolution concerning statistics of work, employment and labour underutilization adopted by the 19th International Conference of Labour Statisticians in 2013 (ILO, 2008). The new rate (LU4) complements the unemployment rate with two additional measures. First is time-related underemployment, i.e. all persons who are employed part-time but would be available to work additional hours if given an opportunity. Second is the potential labour force, i.e. all persons of working age who either lack employment and searched for jobs but were not currently available to start working, or who wanted to work but had not actively searched for employment in a recent period.

In traditional labour market statistics, both groups within the potential labour force are classified as inactive, i.e. out of the labour force. But de facto they maintain important ties to the labour market. Research covering the US labour market over the past 25 years shows that the probabilities of those in the potential labour force to transit to employment were similar to those who were in long-term unemployment. Changes in the size of the potential labour force and in involuntary underemployment are linked to the business cycle and can react more promptly than the traditional unemployment rate, as people go in and out of inactivity according to the conditions of labour demand.

In Portugal, the labour underutilization rate increased more rapidly than the unemployment rate in 2010–13, more significantly than the European average, and it remained higher, although it started declining considerably in 2017 (Eurofound, 2017). Its levels in 2017 were still higher than those prevailing before the crisis for both total and youth (15–24) employment (see figure 1.6). The most recent figures from INE suggest that the decline is accelerating, with the underutilization rate reaching 13.3 per cent against an unemployment rate of 6.7 per cent in the second quarter of 2018 (INE Labour Force Survey tab.17).



**FIGURE 1.6** Labour underutilization (LU4) and unemployment rates: Portugal vs EU28, 2000–17 (percentage)



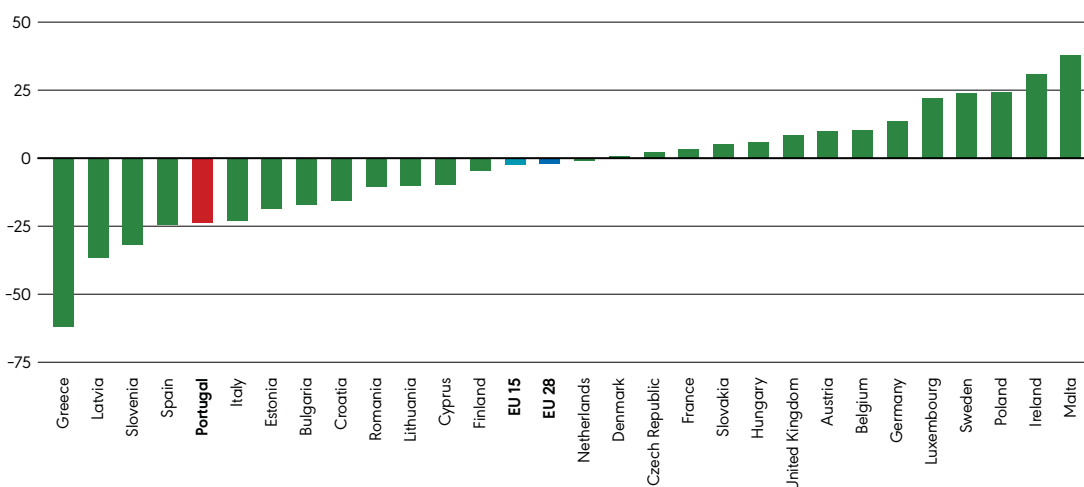
Source: ILOSTAT.

## Private investment is only slowly gaining momentum

A slight increase in investment was another sign of recovery, from a low of 14.8 per cent of GDP in 2013 to 16.2 per cent in 2016 (see table 1.1). Overall, however, gross fixed capital formation (GFCF) remains subdued. It fell in absolute and relative to GDP terms over the period 2008–13 and, in spite of the recent mild recovery, it remains below the EU28 average. This situation is common to the group of highly indebted countries in the Eurozone (see figure 1.7) where a vicious circle of gaps in demand, frozen credit and lower public spending in investment, education and infrastructure (as spending on the latter items was crowded out by the burden of public interest repayments and banks' bail outs).

In addition, the composition of private investment in Portugal has been traditionally skewed towards non-tradable sectors and, in particular, real estate. The share of investment in the latter over total GFCF, however, declined from 30 per cent in 2000 to 20 per cent in 2015. Since the crisis, real estate investment has mainly been confined to tourism-related construction or renovation of rental properties to meet tourist demand. A disaggregate analysis of private sector investment patterns over the past two decades shows that investment in tradable sectors increased steadily and declined less than

**FIGURE 1.7** Gross fixed capital formation, 2007–17 (percentage change, 2010 prices)



Source: ETUI, *Benchmarking Working Europe 2018*, p. 13.

investment in non-tradables during the crisis. Correspondingly, credit allocation to exporting firms and firms with better risk profiles was also less affected by credit shortages (Gouveia and Coelho, 2018). As a result, the allocation of private investment between tradables and non-tradables in Portugal in 2016 has become closer to that of major European economies, i.e. there is no longer a bias toward investment in “unproductive” and sheltered activities in real estate, construction, commerce, education and health care. Sectors that have recently seen some increase in their share of GFCF include accommodation and food services, agriculture, health services, transport equipment, education, textiles and apparel.<sup>7</sup>

Overall, given both historical factors and the legacy of the crisis, Portugal still suffers from a low level of capital per worker compared to other European economies. Capital deepening is therefore a critical challenge. Effective recapitalization policy measures taken by the Government since 2016 are helping to release the main post-crisis financial constraints on private investment, but their effects need some time.

The high level of indebtedness of firms and individuals is one such constraint, although deleveraging has accelerated most recently. Private non-financial sector debt stood at 209 per cent of GDP in 2017, a strong reduction vis-à-vis 2012 level (over 260 per cent) and a level approaching the Euro area average of about 200 per cent (IGCP, 2018). Another major constraint is subdued supply and demand for business credit from resident banks. Post-crisis investment activities have been financed primarily through retained earnings and, more recently, from non-resident financial institutions, as total credit granted by resident financial institutions to the private sector kept declining, particularly for corporate credit.

Confidence in the crisis-hit domestic banking sector is now increasing after recent reassessments of asset values and capital augmentations following public recapitalizations, sale of banks, decline in loan-to-deposit ratios and take overs. The falling yet still-high stock of non-performing loans (NPLs) – 13.3 per cent at end 2017 – makes banks still vulnerable to downside risks and may limit their ability to finance productive investment and contribute to future growth more aggressively. But Portuguese banks have finally returned to profitability in 2017, thereby enhancing their room for financing enterprises.

As the availability of credit is starting to improve, the cost of credit has been decreasing significantly, which could encourage a stronger boost in private sector productive investment as we look forward. Interest rates for non-financial firms were down to almost 2 per cent in August 2017, not far from the equivalent levels in Germany, compared with crisis peak levels of around 7 per cent (figure 1.8). This is especially important for SMEs, whose source of credit are mainly domestic.

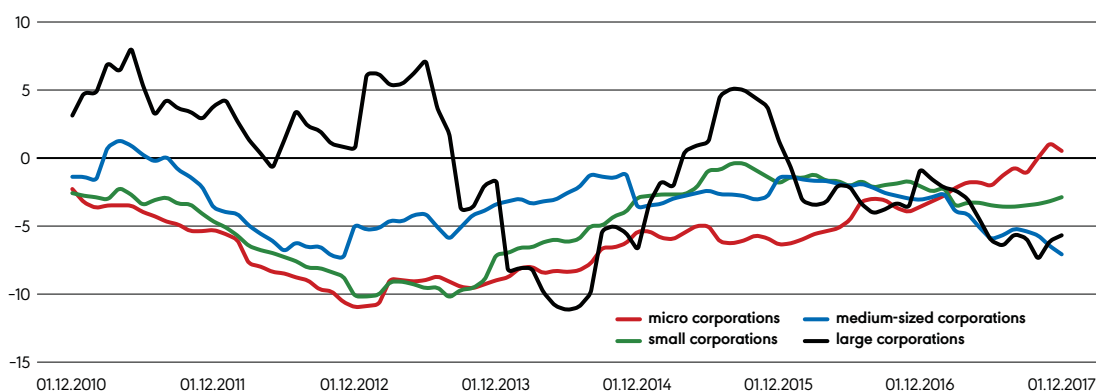
**FIGURE 1.8** Interest rates on new loans for non-financial firms, 2000–18 (percentage)



Source: ECB.

7. INE National Accounts, tables C.3.1 and C.3.2.

**FIGURE 1.9** Total loans to non-financial corporations by firm size, 2000–17  
(percentage change in value of loans from previous year)



Source: Banco de Portugal.

In sum, there are incipient signs of a greater role of the domestic financial sector in supporting investment. For example, the share of SMEs that identify access to finance as their most important problem decreased from 22 per cent in 2012 to 7 per cent in March 2018, bringing this indicator closer to the Euro area average.<sup>8</sup> The stock of credit to export-oriented firms has also been increasing. But the pick-up in credit has been so far limited to the smallest enterprises, with the share of loans to non-financial medium and large corporations experiencing a decline in 2016 and 2017 (figure 1.9).

## External debt is declining but remains high

The level of the country's external debt has recently been stabilized and it is expected to drop to 121 per cent of GDP in 2018 and 110 per cent in 2021, having hovered around 130 per cent during the 2010s, registering its largest annual decline in the last 20 years (see table 1.1). In 2017, Portugal exited the European Commission's excessive deficit procedure, following 15 quarters of consecutive growth.

The relative buoyancy of public finances has enabled the Portuguese Government to make debt repayments earlier than prescribed. This is estimated to result in cumulative savings of nearly \$1 billion during the next three years (IMF, 2017a). Reliance on ECB financing through the Asset Purchase Programme has also declined and the country has been able to re-access the international financial market at relatively favourable conditions, with an upgrade in its credit ratings by international rating agencies.

Public borrowing costs remain manageable as the economy keeps growing and sovereign bond rates remain at the current record low levels. Still, the Portuguese external debt is the third largest in the Euro area. Reducing it will involve a long and gradual process during which the country's financial situation will remain vulnerable to turns in the sentiment of volatile international financial markets.

The monetary accommodation provided by the ECB and its commitment to sustain the Euro by means of buying sovereign bonds will be a critical element to ensure stability. In the IMF assessment, Portugal's financial risks are mainly external and moderate in the medium-term. A gradual increase in the level of interest rates can be expected, as economic growth will gain momentum throughout the whole of Europe. Yet a radical shift in the ECB policy stance to a less accommodative approach (e.g. rapidly raising interest rates to prevent future inflationary pressures in the richest EU economies) might generate turmoil, particularly if markets find reasons to doubt the ECB commitment to support all members of the monetary union whatever it takes.

8. See the ECB survey on access to finances of enterprises (SAFE).

Portugal will not be the first target of a wave of speculative attacks but, as it happened in 2011, it might not be able to remain immune to contagion effects. As described in a recent recount of the past crisis, once the Greek crisis in 2010 undermined the conviction that public debt was risk-free, re-pricing of risk occurred for all countries in Europe that were perceived as somehow vulnerable by financial markets, affecting “most of all those with high public debt levels, a lack of fiscal space, fragile market access and, especially, low growth” (Draghi, 2014). To mitigate future risks, a good economic growth record and a proven national capacity to manage the public budget in a responsible counter-cyclical manner is likely to provide a better safeguard than another rush to hard austerity, which would have unclear effects on the level of the debt but a definite deflationary impact on the economy.

## ■ Policy considerations

### Strengthening job recovery and decent work

All in all, the economic outlook has improved considerably recently as structural changes in the economy, increased business confidence and an improving financing situation have allowed Portugal to take advantage of the recent favourable cyclical conditions both domestically and abroad. And the Portuguese Government is committed to promoting competitiveness, economic growth and social cohesion, together with sound and sustainable public finances (IMF, 2017a).

How could progress be sustained and the benefits shared fairly? At the height of the economic slump, an ILO report called for a series of measures to tackle the jobs crisis: boosting job quality; helping jobseekers and vulnerable groups; and promoting job creation and productive investment by means of managing aggregate demand and channelling resources to the creation and expansion of enterprises (ILO, 2014). Now the economic recovery is fully on its way, but the gist of those recommendations remain valid and can be adjusted to the task of reaching a full recovery in the quality as well as in the numbers of jobs. A few steps ahead have already been made and are underway, that may just need to be strengthened. A number of suggestions relating to job creation are introduced below, while others relating to the functioning of the labour markets and the issue of job quality are contained in the following chapters.

### Supporting aggregate demand and wage adjustment to get closer to full employment

The recent improvements in the economy are bound to result in more credit, investment and employment. This would result in “extensive” growth that can be accelerated by fiscal support and a drive to higher wage levels and domestic incomes.

There is still a need for some degree of fiscal prudence to ensure that public debt consistently follows a downward trend over the medium and long run. Over-reacting financial markets might lead to higher yields on Portuguese debt. But in the short run, any space for expansion should be explored.

The scope for using the fiscal leverage more aggressively is hotly debated. The economic argument for an expansion, in the case of interest rates at the current low levels, has been authoritatively made in Blanchard and Portugal (2017). The mathematics of debt reduction shows that high growth is the most effective route. Other IMF analysis of the labour market slack in the Eurozone suggest the need to boost aggregate demand in Portugal, Italy and Spain (Hong et al., 2018). Fiscal consolidation might help counter international investors’ nervousness about debt sustainability, but it has a clear negative impact on growth in exchange for a small decrease in the debt to GDP ratio, more so now that the benefit of a reduction in the spread and therefore in the spending for interest repayment is becoming negligible.

In Portugal, there could be room to improve investments in infrastructure, education, social protection and employment creation without affecting the perception about the sustainability of the deficit, while contributing to debt reduction by means of higher economic growth.

Public investment spending, for instance, has fallen to historically low level, despite a very recent effort to reverse the decline. Though not unexpected for current expenditures to crowd out public investment during periods of fiscal consolidation, a minimum level of public investment is required to maintain the quality of public infrastructure and human capital.

Spending in infrastructure and welfare has been a primary casualty of austerity. A targeted approach to raising infrastructure investment should be promoted. For instance, investments in telecommunications, railroads, education and health infrastructures have historically had high output multipliers and some returns in the form of future tax revenues, and possibly positive effects on the public budget (Pereira and Pereira, 2017). Support to skills development and employability is another priority as it will be discussed later.

Supporting aggregate demand could also accompany the efforts to strengthen the balance sheets of the banking sector and address non-performing loans, mitigating their adverse effects. Addressing non-performing loans and the so-called Zombie enterprises is typically accompanied by bankruptcies among firms, job destruction and property loss among households, working or not.

In addition to the fiscal leverage, another way to stimulate domestic demand could be by means of recreating the conditions via collective bargaining to adjust wages after years of stagnation and align them to long-term growth in productivity. The possible impact on the cost competitiveness of Portuguese exports might be absorbed given the drive to improve the quality of the goods and services exported in the recent years. Portugal should not lock itself into price competition with new EU entrants and Asia. Wage pressures might indeed provide an incentive to firms to invest in technical progress and innovation.

## A focused growth strategy to boost productive investment and medium-term supply

“Intensive” growth, i.e. deepening structural transformation via a shift to a more modern and technologically sophisticated industrial and services activities, especially in the tradable sector, is critical to improve the foundations for sustained economic prosperity and the generation of quality jobs. A diversified and competitive production structure is also essential to strengthen economic resilience and minimize the risks of exposure to volatile international product and financial markets.

This calls for a revival of private sector investment that, as mentioned earlier, remains at low levels. Higher public spending for investment in ICT, telecommunications, infrastructure, R&D can help crowd in private productive investment, thereby boosting higher medium-term supply and potential output.

Improving the financial situations of Portuguese enterprises and releasing constraints in accessing financial resources is another major avenue. Several measures have been taken since the start of the crisis to ensure credit channels for enterprises, especially SMEs. “*Capitalizar*”, a programme launched in 2016, aims to promote balanced financial structures, reducing the liabilities of economically viable companies and improving the conditions of access to financing for micro, small and medium-sized enterprises. Still, SMEs’ use of credit for their operations and investment remains limited.

Measures to strengthen the banking system remain of special importance. Now that the banking sector is regaining its profitability, it can be expected to be less reluctant to extend lending to entrepreneurial activities. The recapitalization and restructuring of the Caixa Geral de Depósitos, the state-owned bank, and the largest Portuguese bank, might represent a breakthrough for restoring solid credit conditions and stronger financing of investments.

There is also scope for further improvement in the business environment. Though there has been a positive trend in addressing insolvency, this is compromised by delays in resolving such cases and low pay-outs to creditors. This dilutes both enforcement and the effectiveness of liquidation processes.

Investment promotion and financial support measures should be part of a focused growth strategy that explicitly aims at diversifying, innovating and getting closer to the technological frontier in medium-high tech goods and high value-added services such as ICT, upgraded tourism, agricultural niches and greener industries. Public and private efforts should continue to combine financial support with skills development, business support services, promotion of clusters and value-chain upgrading.

## A coherent “decent work” policy mix

Neither extensive nor intensive growth will produce inclusive growth unless they are accompanied by decent employment creation. While it is important to sustain the growth momentum, the benefits of growth should be distributed in a way that maximizes social welfare. Labour market policies and institutions should be seen as an important complement to economic and sectoral policies to achieve that goal.

A coherent “decent work” policy mix is necessary in order to strengthen job recovery, ensure equity conditions, and enhance economic resilience. Education and skills are a main example. There is potential for labour market policies to play a useful role especially when cast within the broader economic context. Indeed, Portugal has adopted such an approach. For example, the National Reform Programme (NRP) is promising in its long-term emphasis on improving education, lifelong learning and information technology skills as well as encouraging R&D, innovation and entrepreneurship (NRP 2018). And the higher skill levels of new entrants to the labour force, together with the modernization of the private sector and the resulting increase in the demand for more qualified workers, can provide the basis for a sustained increase in productivity growth.

Other complementary policies will be discussed in the remaining chapters, including well-designed EPL to reconcile workers’ security and mobility, ALMPs to address vulnerabilities and enhance employability, wage policies and collective bargaining.

## Lessons for Europe?

Ten years after the great financial crisis, Portugal and other countries that belong to the European Monetary Union – but not all – are seeing the damages created by years of recession finally reversed by a consistent pattern of economic growth. The harsh experience of the past decade is prompting a reflection on the resilience of the Union and its capacity to foster economic and social convergence across its member countries and protect them from future financial storms. The perception of fragilities in the existing structure is fuelling political pitfalls and may undermine support to the European project. More in-depth country comparative research on the process of adjusting to the crisis within the Eurozone is needed, but the Portuguese experience provides several insights that could be used to identify areas for strengthening the current fiscal and financial architecture.

A first item concerns the importance of calibrating monetary policy to the needs of all countries. The accommodative stance taken by the ECB in 2012 and its clear commitment to restore confidence in the European sovereign bond markets helped countries from a further downward spiral and start repairing damage to their financial systems. As the Eurozone grows, a reversal in the ECB policy stance should take into account the situation of all countries, especially more heavily indebted economies, to avoid possible over-reactions in financial markets and a new systemic crisis.

Second, it would be important to broaden the scope of financial stabilisation instruments such as the European Financial Stabilisation Mechanism (EFSM), which supported Portugal, in order to more promptly shelter countries from financial and economic volatility. A number of measures and initiative for better risk-sharing are indeed under discussion, and some relevant provisions for the future EU budgets have already been submitted (Draghi, 2018). The question should not be the need for such instruments but the financial amounts that are needed to make them effective.

Finally, it will be important to deepen the understanding of how sustained and inclusive economic growth can actually be restored through so-called structural reforms, and review the conditionality that has been conventionally attached to financial assistance programmes or other forms of support. For instance, the request to countries to carry out reforms in exchange for funds could include guarantees to maintain levels of public investment or poverty alleviation measures for social cohesion purposes. In the conventional adjustment package put forth by the EC, IMF and ECB, deregulation, wage restraint and reforms to make labour markets more flexible are presented as indispensable key components in order to promote internal devaluation, accelerate adjustment and boost productivity and future growth. Depressing wages and imposing hyper-flexible labour markets, however, did not work for Portugal, nor would it probably work for other Eurozone countries. It might actually lock countries into price competition and lead to deeper dualization within and across countries. Better evidence and analysis on the impact and modalities of those reforms is very much needed.

# Overview of labour market developments and challenges



## KEY FINDINGS

Between 2011 and 2013 there was substantial dislocation in the labour market. The situation started to stabilize in 2014 with a substantial reduction in unemployment. Employment creation particularly picked up in 2017 and the first half of 2018.

The trend of this revival can be in some significant part attributed to previous efforts to align conditions of employment, including in the public sector, with emerging economic realities arising from slow economic growth and the effects of the global financial crisis in 2008.

This suggests the labour market was already sufficiently flexible by 2011, raising the question whether some of the labour conditionalities and reforms introduced during adjustment were really justified, especially given their severe adverse impact on employment and the associated social costs, including those from emigration.

Labour force participation recovered most of its lost ground after reaching its lowest rate in 2013, with female employment nearly on par with male. Wage employment has increased at the expense of self-employment (own-account workers and employers) as well as family work.

Unemployment is now more equally shared among all age groups, and long-term unemployment has been declining. This is a positive development that shows adequate labour market response and absorption capacity. However, many jobs are of low quality and the youth unemployment rate is still high.

Today the labour market seems to be in a good position to further its gains and take advantage of future opportunities if the macro and private sector environment continues to improve and is complemented by labour and social policies that promote inclusive economic growth through constructive social dialogue. ■



This chapter analyses the development of the Portuguese labour market in the aftermath of the adjustment programme implemented under the Memorandum of Understanding. As such, it lays the foundation for the analysis of various aspects of the labour market in the chapters that follow. It looks at demographic developments, the evolution of employment and unemployment, differences in labour market outcomes for women and men, and the overall development of productivity, and recommends future policy directions.

## Demographics trends and labour force participation

Portugal has followed a similar trend of demographic ageing as most European countries, although the transition started only during the 1970s, later than in many other countries. The rising share of the older population and the drop in the share of young people have accelerated since 2010. This extensive secular change has resulted in delays in family formation and an accelerated decline in fertility from nearly three children in 1970 to 1.3 children by 2013, one of the lowest in OECD countries. Moreover, between 2010 and 2014, there has been a decline in the population by 200,000 as the number of deaths has exceeded births.

Immigration stalled as economic opportunities declined and, for the same reason, emigration especially among young people in search of jobs abroad rose to levels unseen since the 1970s. These changes put substantial pressure on the sustainability of social protection systems and may have negative impact on productivity as well.

The high level of emigration is especially seen as a challenge, because most emigrants are young and educated – which are typically proxies for future productivity increases. These demographic changes are also reflected in the economic activity rate, which declined from 67.5 per cent in 2008 to 65.4 per cent in 2013 before it partially recovered half of the loss to 66.4 per cent by 2017 (see figure 2.1).

Unemployment peaked at 927,700 in 2013 having risen from 455,200 in 2008. It has since fallen below its 2008 level and is in fact at its lowest since the early 2000s. The employment structure has also changed with the share of employees increasing at the expense of self-employment. Within employees, the share of temporary contracts has gained ground over those who have permanent contracts.

These broad trends mask significant variations within the labour market with respect to gender, age and education groups. The complex and swift changes in the demographic characteristics and labour market outcomes can be observed in table 2.1.

The overall population shrank by 201,000 between 2012 and 2016, due to demographic effects. While the stock of inactive individuals above retirement age increased substantially (by nearly 200,000), inactivity among the working age population declined significantly. The number of inactive women was reduced by 35,000 and that for men by 63,000. This is an even more important observation, considering the context that these numbers exclude the rising numbers of those in education. This suggests that attachment to the labour force has increased by 2016, a welcome development.

Just over half of the total resident population is part of the labour force (employed or unemployed) though with a declining tendency from 51.2 per cent in 2012 to 50.2 per cent in 2016 (table 2.2), mostly due to the demographic changes mentioned above.

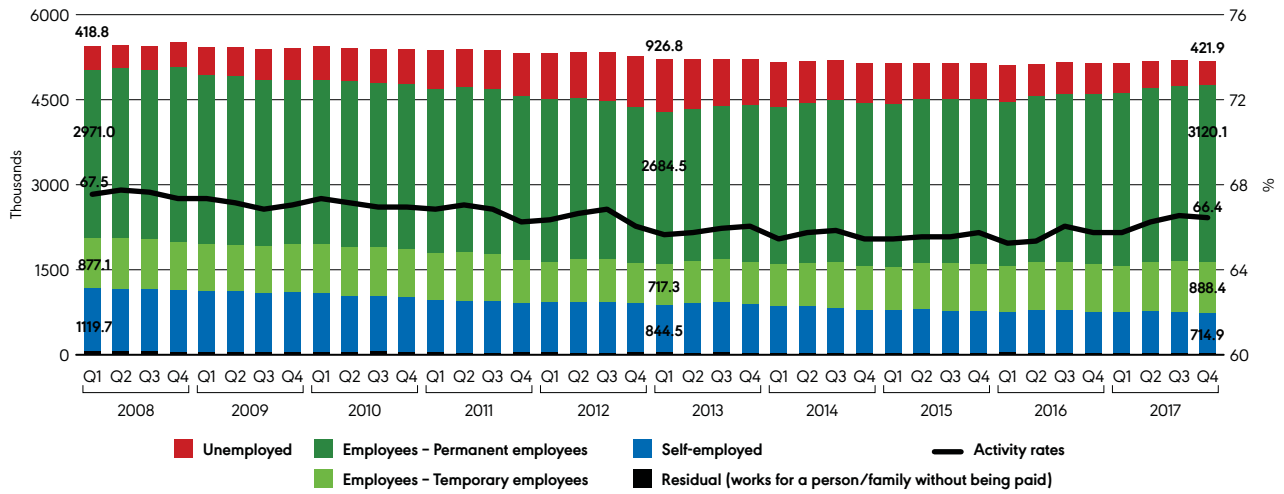
A more appropriate way to measure the activity rate is by taking into account changes in the population structure and education enrolments. Focusing on the working-age population (15–64) the negative trend moves into slightly positive territory, bringing the rate to nearly 75 per cent, which is slightly above the EU average. And if one excludes those in education, the activity rate rose by nearly 1 per cent to just over 83 per cent, a rather significant increase in a time span of only four years, mirroring the overall recovery of the labour market.

Overall, the activity rate in Portugal is very high. Concentrating on the 25–54 age group, to reduce the biases arising from education enrolments and aging population, the rate is 90 per cent in Portugal – one of the leading rates in the EU, just behind Sweden (91 per cent) and Slovenia (92 per cent).<sup>1</sup>

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1. <https://data.oecd.org/emp/labour-force-participation-rate.htm#indicator-chart>

**FIGURE 2.1** Key labour market characteristics, 2008Q1 to 2017Q4



**2.1 Population and labour market composition and their changes, 2012–16**

TABLE		2012	2016	Change		% contribution to total change	Share in 2016
				thousands	%		
	Population 0–14	1573	1461	-112	-7%	-56%	14.2%
	Males 15+ in education or training	349	356	8	2%	4%	3.4%
	Females 15+ in education or training	354	361	7	2%	4%	3.5%
	Employed males 15-24	142	142	0	0%	0%	1.4%
	Employed female 15-24	118	120	2	2%	1%	1.2%
	Unemployed males 15-24	83	53	-29	-35%	-15%	0.5%
	Unemployed females 15-24	76	49	-28	-36%	-14%	0.5%
	Employed males 24+	2215	2219	4	0%	2%	21.5%
	Employed females 24+	2071	2124	52	3%	26%	20.6%
	Unemployed males 24+	352	238	-114	-32%	-57%	2.3%
	Unemployed females 24+	325	234	-92	-28%	-46%	2.3%
	Inactive males 15-64 (excl. in education and training)	418	383	-35	-8%	-17%	3.7%
	Inactive females 15-64 (excl. in education and training)	722	659	-63	-9%	-31%	6.4%
	Inactive males 65+	652	746	94	14%	47%	7.2%
	Inactive females 65+	1070	1174	105	10%	52%	11.4%
	Sum	10521	10320	-201	-2%	100%	100%

Source: LFS, 2012 and 2016.

**2.2 Labour force participation as a rate of different population groups, 2012–16**

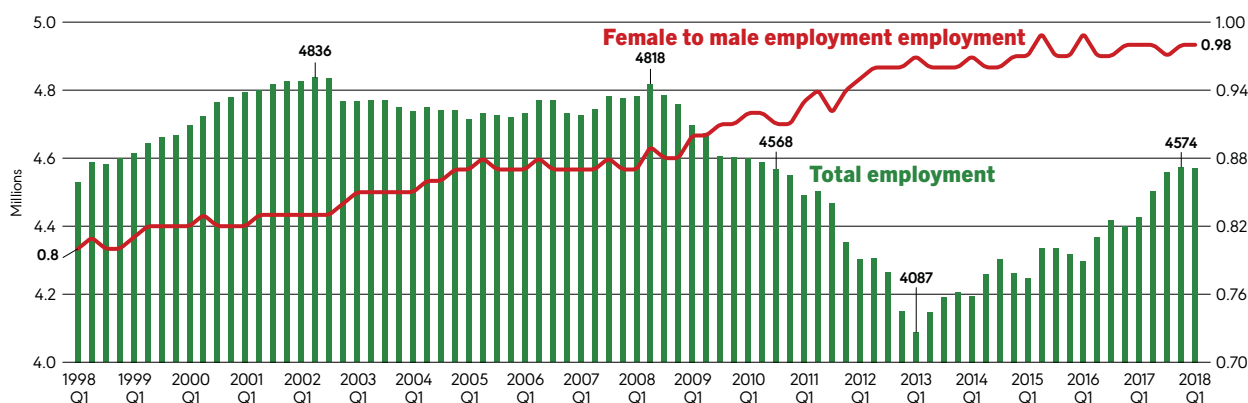
TABLE	Labour force rate of:	2012	2016	% change
		Total population (all ages)	51.2%	50.2%
Excluding 15	60.2%	58.5%	-2.8%	
Excl. <15 and 65+	74.5%	74.6%	0.2%	
Excl. <15, 65+ and students	82.5%	83.3%	0.9%	

Source: Table 2.1.

## Employment

Employment hovered at a plateau of over 4.8 million until 2008 but declined to just under 4.6 million at the time the adjustment policies were introduced in 2011. It declined further to just under 4.1 million by 2013, though it has since fully recovered to its pre-adjustment level (figure 2.2).<sup>2</sup>

**FIGURE 2.2** Female and male employment, 1998–2017



Source: Eurostat.

The employment rate has increased faster than the activity rate, partly due to declining unemployment. In relation to the total population, it has increased by 3.3 per cent annually since 2012, 3.8 per cent if the young and elderly are excluded and an impressive 6.2 per cent if students are excluded (table 2.3). Again, concentrating on the 25–54 age group, by end-2017 the employment rate in Portugal stood at 84 per cent, substantially above the average rates for the EU28 rate (80 per cent), the EU19 and the OECD (each at 78 per cent).<sup>3</sup>

Most of the increase in the employment rate has come from women. The employment gains since 2012 have been negligible for working-age males and practically zero for male youth. Though the employment increase for female youth has also been small, the increase in the employment of working-age women has been responsible for 90 per cent of the total increase in employment during the period between 2012 and 2016.<sup>4</sup> This has practically closed the gender gap in employment, although not in wages, as will be shown in Chapter 5 below.

Just as changes in the overall activity rate masked significant variations within the labour market, these aggregate employment changes mask significant changes in employment status and sectors, contractual arrangements and unemployment against the significant increase in education and narrowing gender differences that are discussed below.

### 2.3 Employment as a rate of different population groups, 2012–16 (percentage)

TABLE	Employment rate to	2012	2016	% change
	Total population (all ages)	43.2	44.6	3.3
	Excluding 15	50.8	52.0	2.3
	Excl. < 15 and 65+	57.7	59.9	3.8
	Excl. < 15, 65+ and students	69.7	74.0	6.2

Source: LFS 2012 and 2016.

2. A break in the LFS survey series in 2011 might affect the precision of comparisons. The underlying trends are nonetheless not much affected.

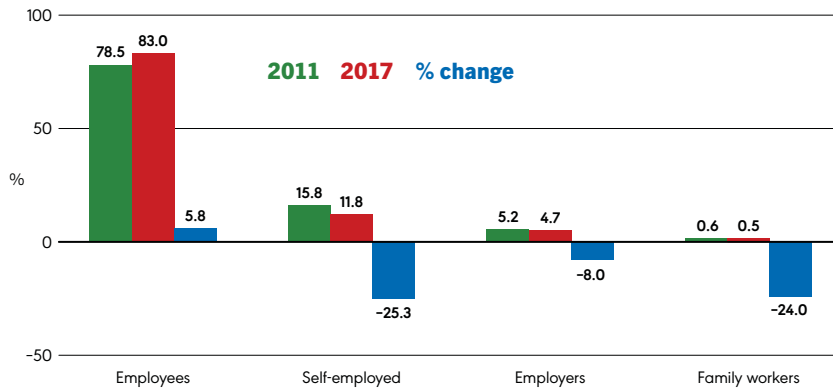
3. <https://data.oecd.org/emp/employment-rate-by-age-group.htm#indicator-chart>

4. For detailed flows, see table 2.1 in this chapter.

## Employment status

Self-employment has registered a steady decline over time, from 1.1 million in 2008 to 715,000 in 2017 (figure 2.3). Most of the decline had already taken place by 2013 by which time it had lost 261,000 jobs. This trend continued since but at a slower rate. In terms of shares, it accounted for nearly 17 per cent in 2011 but only for 12.5 per cent in 2017.

**FIGURE 2.3** Employment shares by status and their change, 2011–17



Source: LFS 2011 and 2017.

A large part of the decline in self-employment has come from agriculture in what can be labeled as a secular shift to the service industry. Construction is the other sector where self-employment declined significantly recently but this can be considered more cyclical in nature and likely to be reversed. The steps taken by the Portuguese authorities to effectively detect disguised self-employment have also played a role.

Among the self-employed, the decrease came primarily from reductions in own-account workers whose share declined by 25 per cent. The share of employers also declined but only by half percentage point equivalent to a decline of 8 per cent. Family workers account for a very small share in employment, less than 1 per cent, and the big relative decline in the share (25 per cent) did not affect the overall employment distribution much.

These changes indicate that the majority of employment created during the recovery has been in wage employment. This is suggestive that the labour market is sufficiently flexible, as it is wage employment that can be particularly constrained by unduly employment protection laws – as the underlying rationale of some of the adjustment policies implied. That this logic was in fact flawed will be further shown in Chapter 3A.

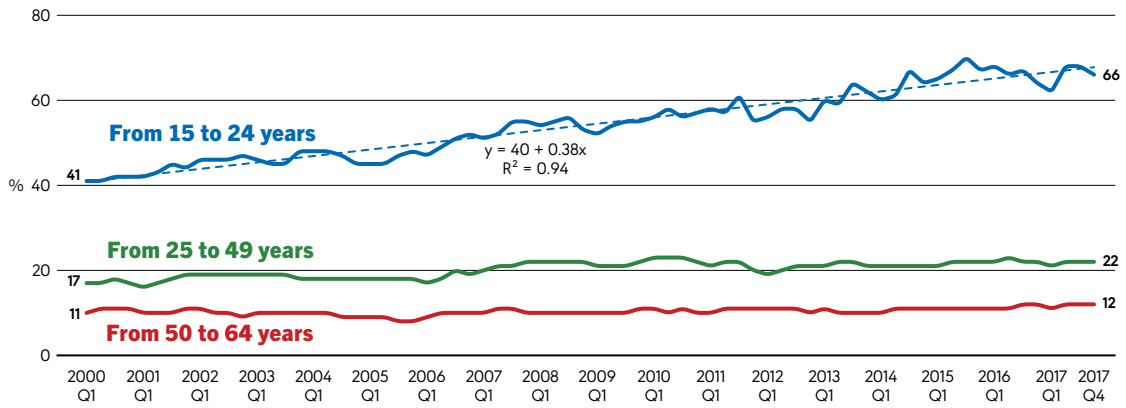
## Type of employee contract

The incidence of temporary contracts affects primarily young workers below the age of 25. It has kept increasing practically linearly in the last two decades. It was 37 per cent in 2000 and peaked at 66 per cent in 2015 before retracting to 63 per cent in 2017 (figure 2.4). Older workers have been less affected, although the number of temporary contracts among this cohort has also increased by about 50 per cent during the same period.

Overall, the number of temporary workers today is almost equal to that ten years ago despite a more substantial dip in temporary employment compared to permanent employment during the adjustment period. Since then, temporary jobs increased much more rapidly in relative terms, but overall still more permanent jobs were created with 336,000 compared to 119,000 for temporary contracts between 2013 and 2017.<sup>5</sup>

5. Author's calculations, based on LFS 2011, 2013 and 2017.

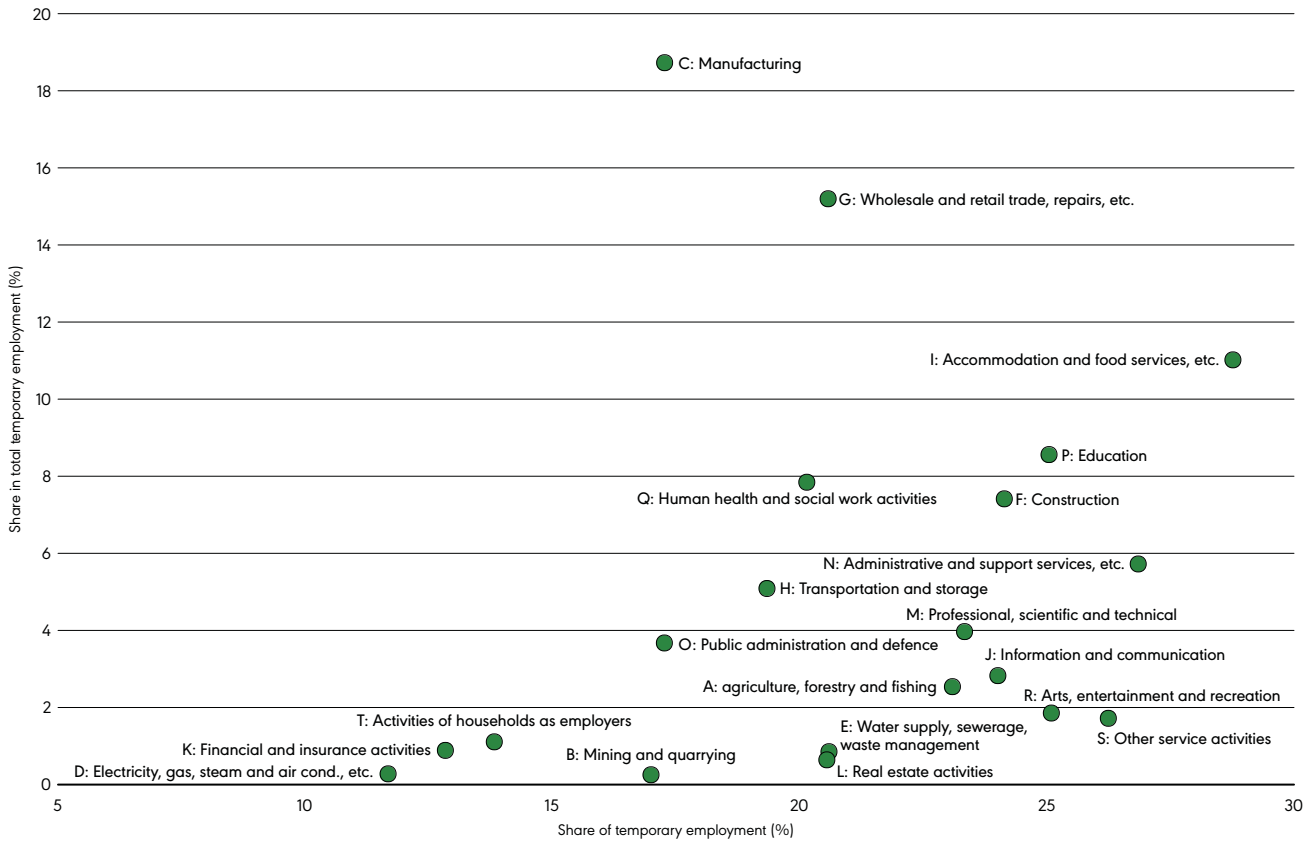
**FIGURE 2.4** Incidence of temporary employment by age group, 2000–17



Source: Eurostat.

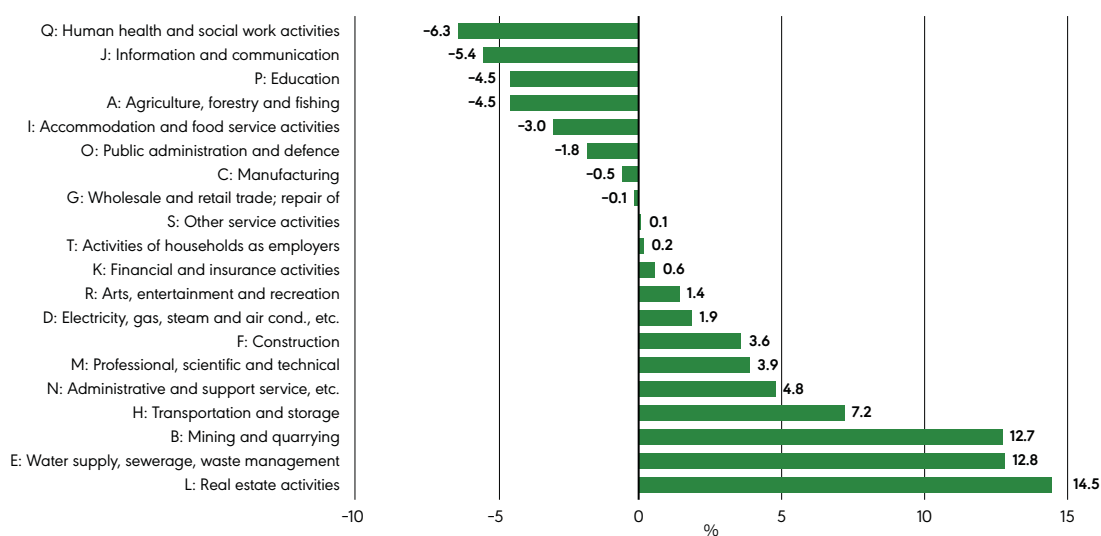
The share of temporary employment varies significantly across sectors, as can be seen in figure 2.5. Many service sectors, as well as seasonal industries (e.g. tourism, agriculture and construction) have shares that range between 20 and 30 per cent. Meanwhile, while the share of temporary employment in manufacturing is comparatively low, it accounts for nearly one-fifth of total temporary employment, due to the large size of the sector.

**FIGURE 2.5** Share of temporary employment by sector and sector contribution to total temporary employment, 2017



Source: LFS 2017.

**FIGURE 2.6** Changes in shares of temporary employment by sector, 2013–17



Source: LFS 2013 and 2017.

Despite the relatively small changes in the overall share of temporary contracts in total employment, there have been significant changes within sectors (figure 2.6). Some sectors saw the share increasing by more than 10 per cent, while in some sizeable sectors the share declined by 3 per cent or more (e.g. health care, social work and education, each accounting for 10 per cent of total wage employment).

## Employment by sector

All major economic sectors experienced a significant decline in employment between 2011 and 2013. Of the 21 (NACE) sectors only eight sectors saw an increase in employment.<sup>6</sup> These sectors accounted for 21 per cent of total employment but their combined increase was only 41,000 jobs. This compares to 310,000 jobs lost during these two years.

The situation was reversed between 2013 and 2017 when all but three sectors saw an increase in employment. This resulted in an economy-wide increase of 327,000 despite the continuing losses in agriculture during this period, which reached 150,000, further magnifying the shift away from primary production, mainly to the service sector. The most major gains in the latter took place in health and social work (a sizeable sector) and in the information and communication industry (table 2.4).

6. These sectors were transportation and storage; accommodation and food service activities; information and communication; real estate activities; health and social work activities; other service activities; and activities of extraterritorial organizations.

## 2.4 Sectoral employment distribution (per cent) and sector ranking, 2017

TABLE	Sector	Sectoral share in 2017 (%)	Rank in 2017	Change in rank since 2011
	C: Manufacturing	16.9	1	0
	G: Wholesale and retail trade; repairs etc	14.8	2	0
	Q: Human health and social work activities	9.3	3	3
	P: Education	8.2	4	1
	I: Accommodation and food service activities	6.8	5	3
	F: Construction	6.5	6	-2
	A: Agriculture, forestry and fishing	6.4	7	-4
	O: Public administration and defence	6.2	8	-1
	H: Transportation and storage	4.3	9	1
	M: Professional, scientific and technical	4.2	10	-1
	N: Administrative and support services, etc.	3.4	11	0
	J: Information and communication	2.4	12	3
	S: Other service activities	2.3	13	1
	T: Activities of households as employers	2.3	14	-2
	K: Financial and insurance activities	2.3	15	-2
	R: Arts, entertainment and recreation	1.3	16	0
	L: Real estate activities	0.9	17	1
	E: Water supply, sewerage, waste management	0.8	18	-1
	D: Electricity, gas, steam and air conditioning	0.4	19	0
	B: Mining and quarrying	0.3	20	0
	U: Activities of extraterritorial organizations	0.1	21	0

Source: LFS 2011 and 2017.

## Unemployment

Unemployment has declined by nearly 400,000 from its peak in 2013, and that at a rate that was largely uniform across population groups (table 2.5).

### 2.5 Unemployment as a rate of different population groups, 2012–16

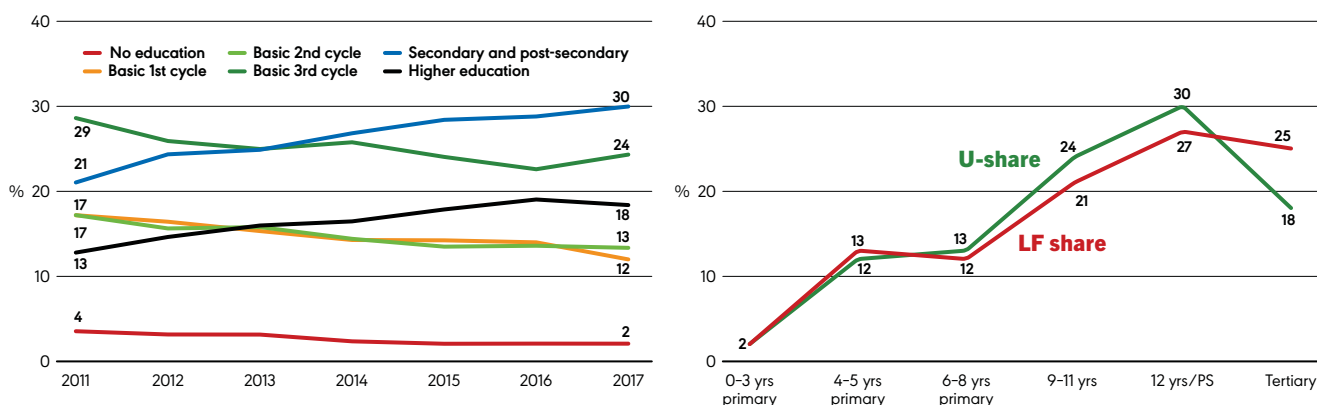
TABLE	Unemployment as a rate of	2012 (%)	2016 (%)	% change
	Total population (all ages)	7.9	5.6	-30.0
	Excluding 15	9.3	6.5	-30.6
	Excl. <15 and 65+	11.6	8.3	-28.5
	Excl. <15, 65+ and students	12.8	9.2	-28.0
	Total labour force	15.5	11.1	-28.6
	Youth labour force	37.9	28.0	-26.2
	Prime age labour force	13.6	9.8	-28.1

Source: Table 2.1.

There have also been significant changes in the unemployment rates by education that have resulted in corresponding changes in the shares of workers with different education levels in the unemployment pool. Most importantly, the share of those with secondary education in total unemployment has increased by nearly half. By 2017 it accounted for more than 30 per cent compared to 21 per cent in 2011 (figure 2.7, left panel).



**FIGURE 2.7** Unemployment and labour force shares by education, 2011–17 (LFS)



Source: See table 2.1.

The shares of those with higher education have also increased but this is more driven by the very fast rise in their numbers due to substantial educational advancements in Portugal. All in all, the increase in the share of those with secondary education has been steady, while that of less-educated groups has dropped, indicating that the latter have benefitted more from the economic recovery.

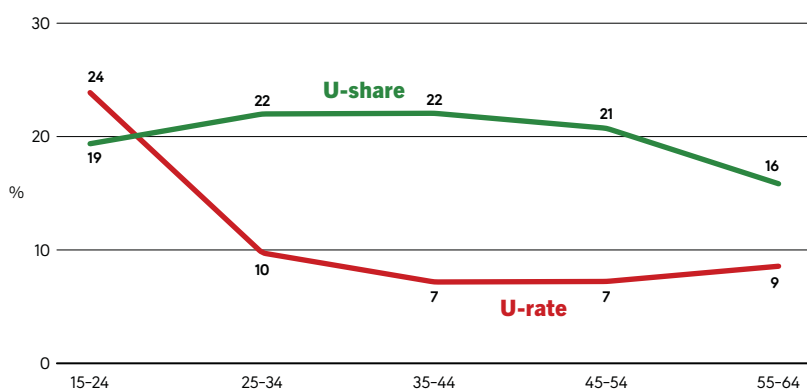
More generally, those with mid-level education are over-represented in the unemployment pool in terms of their share in the labour force (figure 2.7, right panel). The shares of those with less than six years of education or higher education are lower than their respective shares in the labour force. This implies that the dramatic shift in educational attainment has not been fully absorbed by the labour market, with the biggest mismatch showing in too few mid-skill jobs having been created.

Figure 2.8 shows the unemployment rates and shares in total unemployment by age group in 2017. Two things are immediately obvious. First, the unemployment rate of the very young (<25) is more than double those for other age groups. For older age groups, the unemployment rate is rather uniform, though slightly higher for the younger (25-34) and the older (55-64).

Second, and more importantly, each of the five decennial age groups account for around one-fifth of total unemployment. In other words, while the unemployment rates for the youth are high, the bulk of unemployment is located in older age groups. So, unemployment is not just an issue specific to young jobseekers or school-to-work transition but affects the whole labour force.

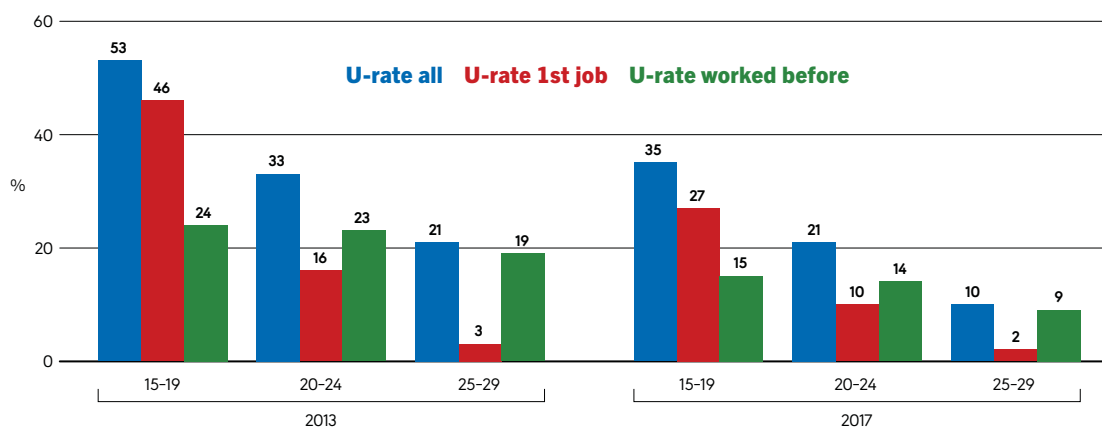
Regarding youth, their unemployment rates declined in line with the general trends in unemployment. The youth unemployment rates have declined in a similar fashion for the three subgroups shown in

**FIGURE 2.8** Unemployment rates and shares in total unemployment by age group, 2017



Source: LFS 2017.

**FIGURE 2.9** Youth unemployment rates, 2013 and 2017



Source: LFS 2013 and 2017.

figure 2.9. The unemployment rates of the older youth group (25–29) are relatively low among those who have previously worked. Even among those who are first time job seekers in the latter age group, the unemployment rate is practically on par with the total unemployment rate.

The composition of unemployment by duration has changed since the depth of the recession. The share of short-term unemployment (less than one month and from one to six months) is increasing, while the share of those who have been unemployed between six months and one year has remained the same. The shares of the longer term unemployed (more than one year or two years) is declining. This suggests that the causes of unemployment are becoming less structural in nature compared to search and cyclical unemployment – a positive development that shows adequate labour market flexibility and absorption capacity.

Despite the overall positive picture from the official data examined in this section, an alternative look at unemployment more broadly defined reveals some remaining challenges. The numbers used in estimating the official unemployment figures do not consider either discouraged workers who are no longer registered as unemployed, or the underemployed who want to work more hours but can only find part-time employment. It also excludes those that do not have formal contracts such as those with employment-insertion contracts or internships promoted by the Institute of Employment and Vocational Training (IEFP) (CES, 2015).<sup>7</sup> Using INE/Eurostat data that include these categories, the combined rate of unemployment and underemployment is about double the official unemployment rate in the mid-2010s (GEP/MTSSS, 2018).

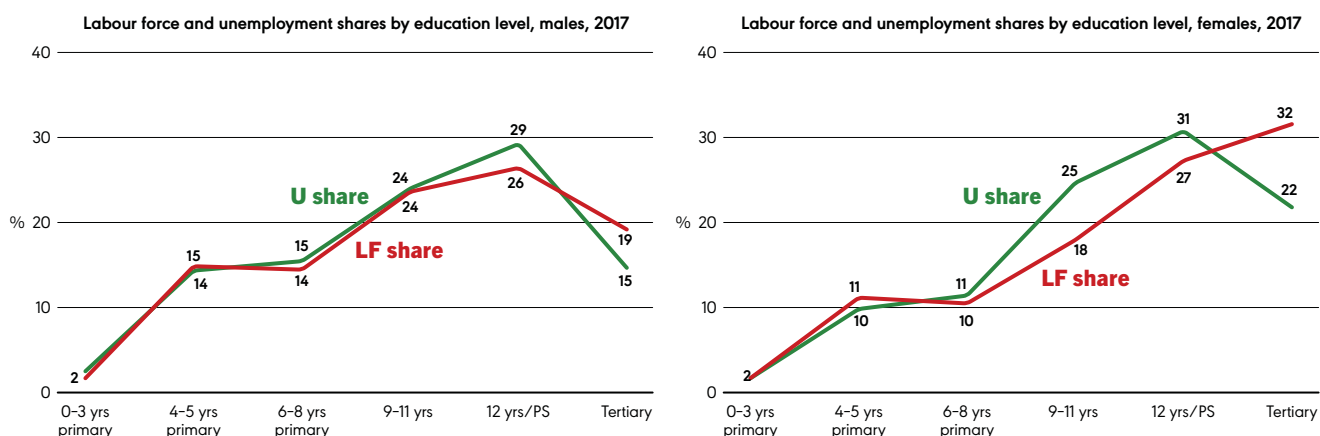
## Gender differences

As shown earlier, the employment gains of women have recently been greater than those of men. Women have practically closed the relatively small employment gap that they had compared to men only ten years ago. Today, the ratio of female-to-male employment is near parity, placing Portugal third among EU countries. The narrowing of the gender employment gap has been associated with changes in gender differences in education, unemployment and status of employment.

Both highly educated males and highly educated females have lower shares in unemployment than in the labour force. However, males who have attended mid-level education (secondary and short two-year post-secondary education) are overrepresented in the unemployment pool (figure 2.10, left panel). Females are also overrepresented at that level, but the greatest difference is found at the level

7. For a working definition of an internship, please see p. 3 in O'Higgins, N. and Pinedo, L. 2018, "Interns and outcomes: Just how effective are internships as a bridge to stable employment?", *EMPLOYMENT Working Paper No. 241*, ILO.

**FIGURE 2.10** Gender differences unemployment and labour force shares by education



Note: The data follows the structure of the International Standard Classification of Education (ISCED).

Source: LFS 2017.

immediately below, among those who have completed the third cycle (9–11 years of education)<sup>8</sup> and to a lesser extent among those with secondary and short post-secondary education. At the lower end, least educated females are underrepresented, while this is not the case among males.

The reduction in female unemployment over time has been more prominent, as seen in a significant narrowing in the female-to-male unemployment rate differential, which reached near parity in 2016.<sup>9</sup> By 2017, there were 224,000 unemployed males compared to 238,000 unemployed females, a difference of only 14,000. However, this masks variations in different age groups, with the number of female unemployed exceeding males in the 25–34 and 35–44 age groups (by 8,000 and 16,000 respectively). This difference arises mainly because of the relatively high unemployment among females with higher education. On the other hand, male unemployment is higher in the 15–24 age group, and especially in the 55-plus age group (a difference against males of more than 10,000).

In addition to changes in the education composition of employment and unemployment, there have been significant changes in employment status with respect to age, education and hours worked. Female workers are predominantly employees, and they have increased their share over time more than men. Their share as employees now stands at 87 per cent compared to 79 per cent for males, a difference that corresponds to nearly 80,000 more female employees.

Women have also improved their share as employers compared to men. On the other hand, their shares have relatively decreased among the self-employed and unpaid family workers (figure 2.11, top left panel) – an especially encouraging sign for the inclusion of often most vulnerable women in the labour market. Part of the decline can be attributed to the significant fall of female employment in agricultural employment. The ratio of female-to-male employment in agriculture was close to parity in 2008, but by now it has dropped by half.

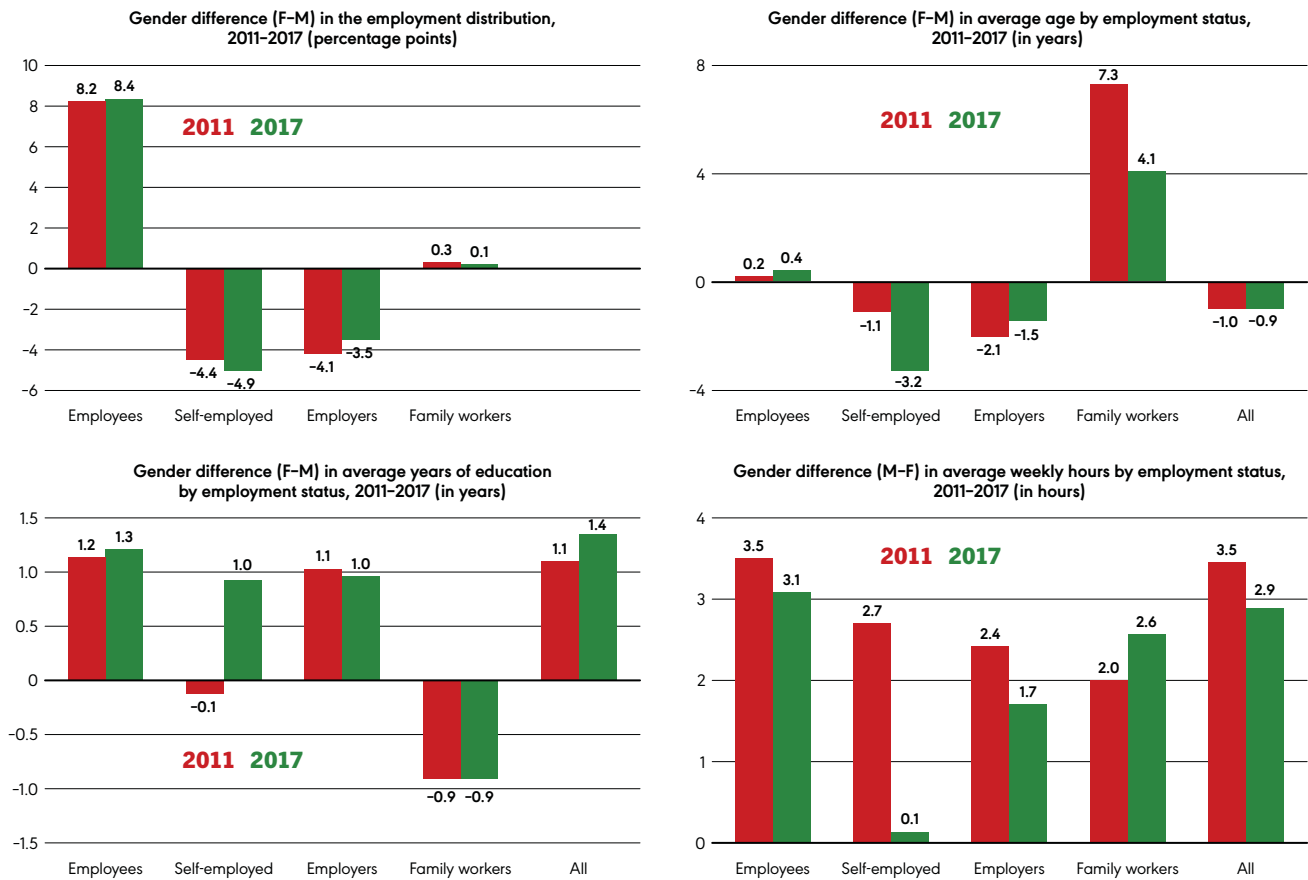
The gender age gap has remained around one year since 2011 (figure 2.11, top right panel). Yet, the gap has narrowed among employees and more so among employers by a whole year in the time span of only the last six years. The gap has also narrowed among family workers, albeit their numbers are small. It only increased in the case of own account workers. This suggests a greater attachment of women to the labour force, with resulting effects on productivity and gender equality.

The gender education gap has continued to increase in favour of female employees, own-account workers and unpaid family workers (figure 2.11, lower left panel). It slightly decreased among employers though overall women increased their education advantage by 0.3 years since 2011.

8. The data follows the structure of the International Standard Classification of Education (ISCED).

9. In fact, the unemployment rate for women was 0.2 percentage points higher than that of men, compared to a gap of 2.9 percentage points in 2007 (OECD).

**FIGURE 2.11** Gender differences (F–M) by employment status, age, education and hours of work, 2017



Source: LFS.

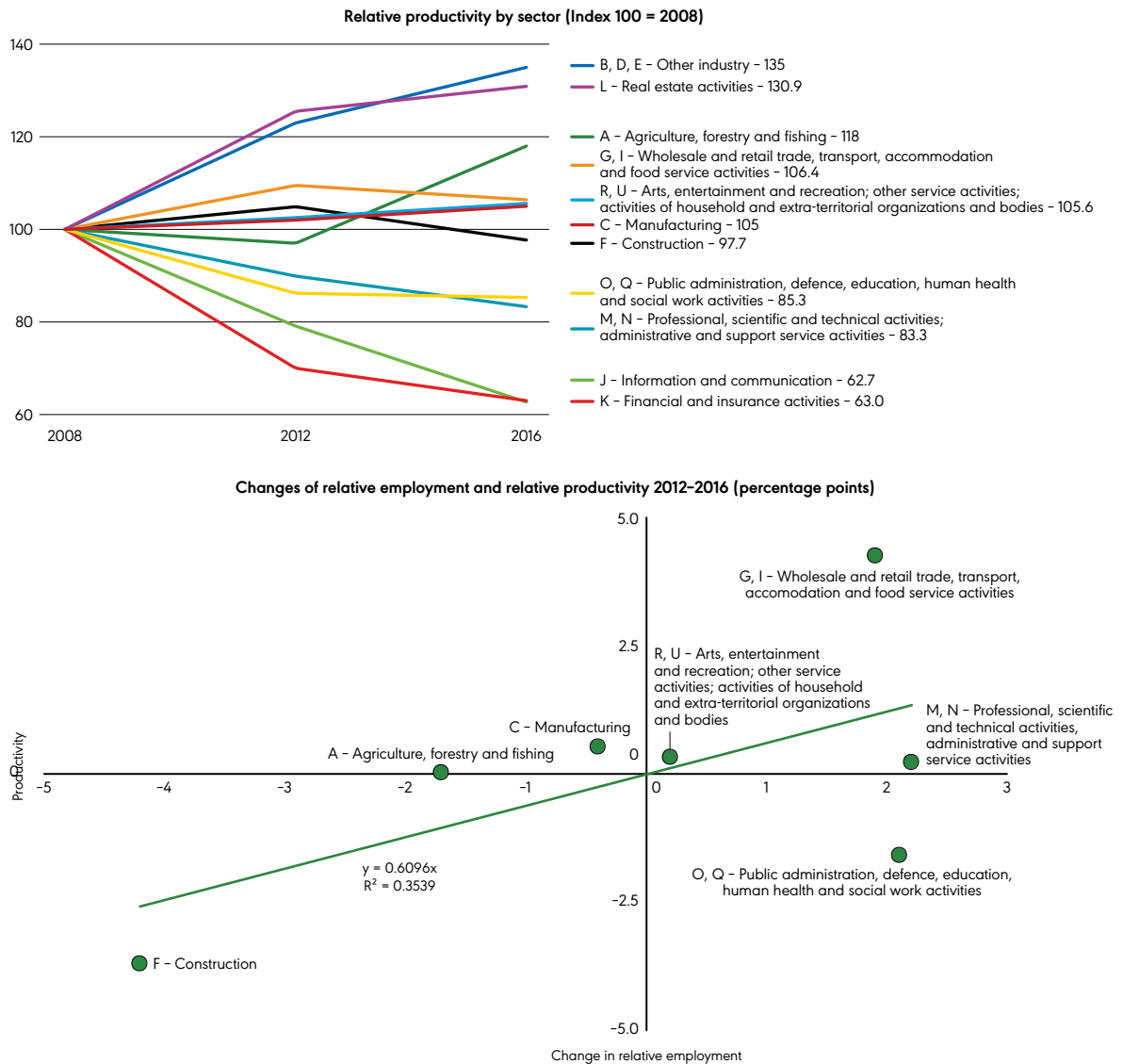
Finally, women have narrowed the difference in working hours (figure 2.11, lower right panel). Overall, they now work 2.9 fewer hours than men compared to 3.5 hours six years ago. Looking at changes within different groups by employment status, the gender gap among the self-employed has practically vanished while it increased among family workers. It was reduced among employees by 0.4 hours and more so among employers (by 0.7 hours).

## ■ Employment and productivity

The discussion below focuses on employment changes and relative productivity by sector. (Their effect on wages is examined in Chapter 5.) Relative productivity across sectors is an important statistic as it proxies productivity gains that are known to arise primarily from sectoral reallocations rather than productivity improvements within sectors.

Relative productivity is measured by the ratio of shares of sectoral production (gross value added) to GDP to the shares of employment by sector to total employment. For example, in 2008, 11.2 per cent of workers were engaged in activities in the primary sector (agriculture, fishing, forestry) but contributed only 2.2 per cent to the value of production. In the same year, the figures in the finance and insurance sector were respectively 1.8 per cent of employment and 8.1 per cent of GDP. The relative productivity in agriculture was therefore 0.19. By comparison the relative productivity in the finance and insurance sector was 4.5, that is, more than 20 times that in agriculture.

**FIGURE 2.12** Relative productivity by sector, 2008–16



Source: Eurostat.

By default, relative productivity increases in some sectors at the expense of others. This is shown in figure 2.12, top panel. The sectors that experienced a decline in relative productivity have mostly been in services, while productivity in all other sectors increased.

The bottom panel in figure 2.12 shows the relationship between changes in relative employment and changes in relative productivity since the adjustment policies were introduced. There is a positive relationship between the two, though in an accounting sense, the relationship might have been negative. This is so because, as employment increased over time, it is also possible for productivity to decline due to the increase of labour as an input (compared to other inputs to production).

It therefore seems that the recent adjustment policies have resulted in sectoral reallocations and productivity gains in line with previous, and more gradual, reforms that had been adopted since the 2000s. These observations are followed up in Chapter 5 (on wages) and Chapter 6 (on collective bargaining) that show that productivity has been increasing while unit labour costs have been declining.

## Summary of labour market developments

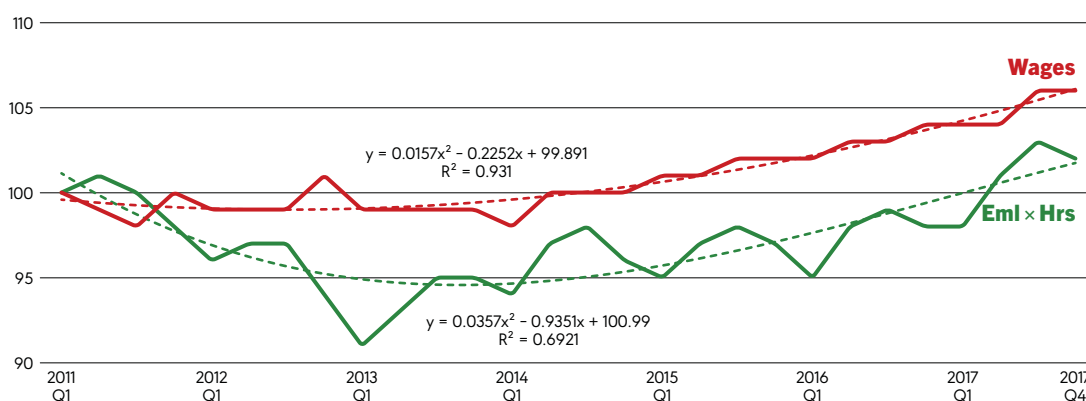
Portugal seems to have avoided many of the problems commonly found elsewhere during sharp-shock adjustment policies like the ones introduced in 2011. The strength of the economic recovery and the substantial job creation that has accompanied it may be traced, at least in part, to the proactive national policies that had been adopted before the adjustment program, something that had already started aligning the labour market with the changing conditions in production and international competition.

For example, it is not immediately obvious that changes in the regulatory framework for temporary contracts during adjustment played a critical role for employment creation. The labour market had been under stress well before the crisis and the use of temporary contracts has not changed much over time (see discussion above).

Type of contract aside, the workers who are generally affected most by labour regulations are the employees. Yet the share of employees has continued to increase reaching 83 per cent in 2017. The share of own account workers lost 4 percentage points during the same period. The losses have been smaller among employers and unpaid family workers who nevertheless account barely for 5 per cent of total employment. These changes suggest that the main constraints have been largely outside of the labour market.

The way the adjustment program was implemented – part of its objective being to contribute to internal devaluation through a reduction of labour costs – resulted in little change to nominal wages, though there was a significant initial reduction in employment before it recovered after 2014 (figure 2.13). However, the smooth evolution of employment masks the considerable dislocation that the labour market went through between 2011 and 2013 (figure 2.14). Employment has since followed a rather consistent upward trend with the expected seasonal pattern for an economy in which tourism is a significant sector: The lowest employment rates are observed in the last quarter of each year.

**FIGURE 2.13** Nominal wages and employment×hours, 2011Q1 to 2017Q4  
Actual and fitted data (index 2011Q1 = 100)

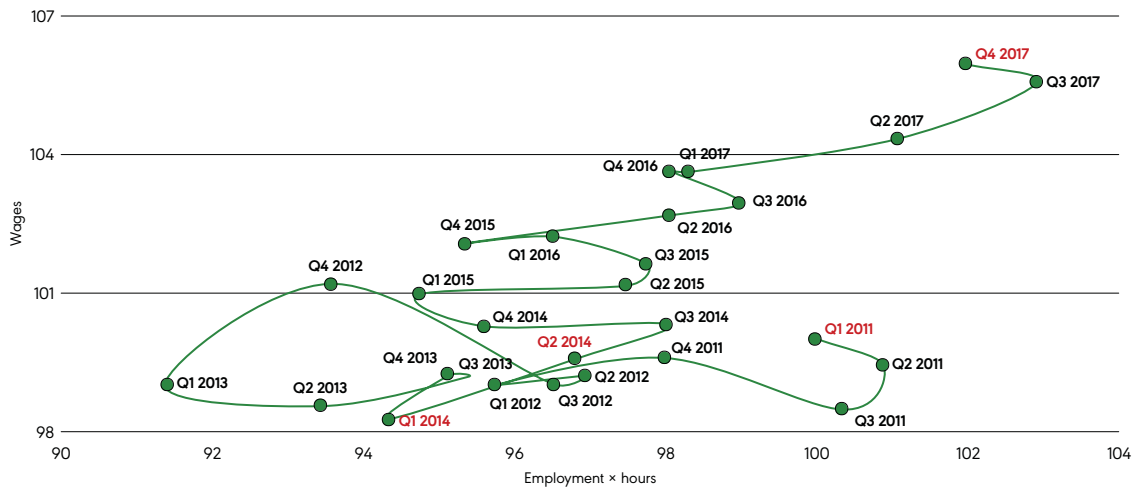


Source: LFS 2011–17.

Moreover, there have been considerable changes within the labour market in terms of composition both of employment and unemployment by age, education and gender. Some of these changes have been in line, at least in part, with changes in the demographic structure of the population and with the natural trend of sectoral transformation, with workers moving from primary production especially towards the service sector.

More specifically, the participation rate has been decreasing for some time following a secular trend that is common in many other countries – that is, specifically a decline in participation of lower-educated cohorts, as the economy is gradually shifting towards higher-skilled professions. Its decline during the first half of 2010s has been accelerated by the adjustment policies that are typically expected to lead to a loss in employment and discouragement among workers to search for jobs, due to a lower number of available vacancies. However, the rate recovered half of its lost ground by 2017,

**FIGURE 2.14** Quarterly changes in nominal wages and employment × hours, 2011Q1 to 2017Q4  
Index 2011Q = 100



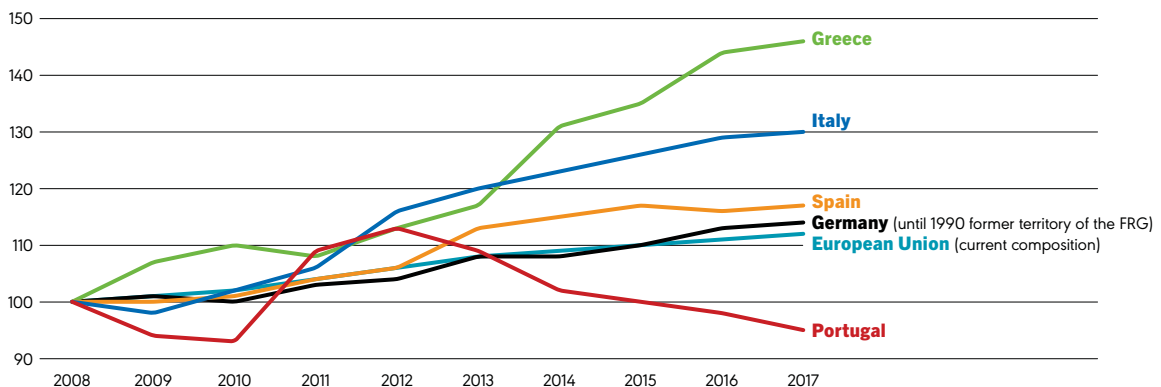
Source: LFS 2011–17.

which is a sign of the positive trend in growth of GDP and employment, making it more attractive to rejoin the labour market. Moreover, this has been helped by additional females joining the labour market, thus countering the negative effect of increasing enrolments in education, which tend to delay the entry of working age people into the labour market.

The recent increase in the labour force participation rate has not been associated with higher unemployment. To the contrary, unemployment has been reduced to its pre-crisis levels given the recent robust employment creation that followed. Moreover, labour utilization increased in terms of hours partly because of the significant reduction in the incidence of part-time employment by 100,000, mostly since 2013. In fact, Portugal seems to defy the rather universal trend of increasing part-time employment (figure 2.15), despite the increase in female employment.

The ratio of unemployed or inactive youth to the total youth population has declined significantly. In addition, the educational attainment of youth has been increasing swiftly. For example, while ten years ago the share of Portuguese youth with primary education was 20 percentage points greater than the EU average, the difference is now only 10 points. And at the higher education level, the difference has practically disappeared. This might have been an indirect effect of the economic downturn as remaining in the education system became less costly due to fewer employment opportunities and lower real wages. On the negative side, there has been an increase in emigration (see box 2.1).

**FIGURE 2.15** Part-time employment, 2008–10 (number of workers, index 2008 = 100)



Source: Eurostat.



## 2.1 Emigration rates accelerated since the crisis

### BOX

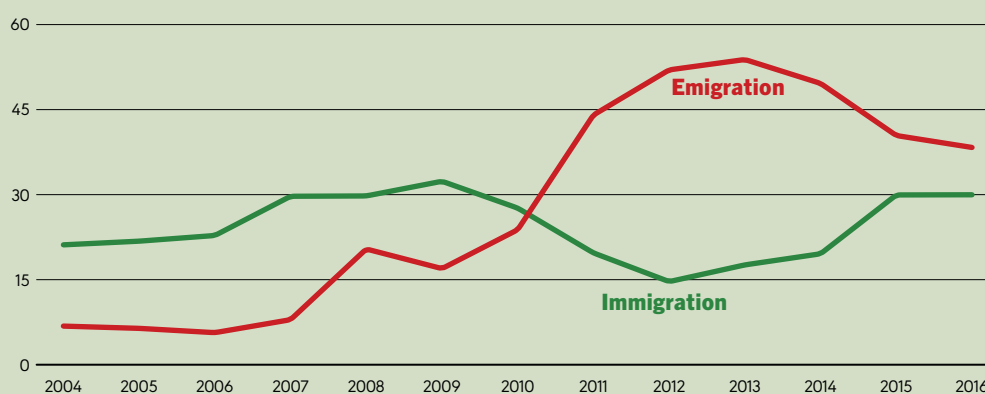
Nearly half a million people are estimated to have left Portugal between 2011 and 2014. The annual emigration rate of 2.5 per cent of the active population is the highest or second highest rate in Europe (after Malta), depending on the year (Observatório da Emigração, 2015). This is significant, given stagnant population growth. Portugal has one of the lowest crude fertility rate in the world, well below replacement. The number of nationals abroad in 2017 – 2.3 million – corresponds to more than 20 per cent the population or nearly half of domestic employment in 2014. Recent emigration has also shifted from overseas (such as the United States) to predominantly European destinations especially (in descending order) the United Kingdom, France, Switzerland and Germany (Observatório da Emigração, 2017). There has also been a shift in the gender composition of emigration, with women accounting for 52 per cent among those who emigrated in 2011.

Previously, those who emigrated had relatively low skills, but a rising proportion of recent emigrants have higher qualifications. This is due to the increasing education attainments and a hiring freeze by the public sector, a traditional employer of university graduates, rather than a higher incidence of emigration from skilled sectors. This gives rise to concerns about “brain drain”. But there is also another, more hidden dimension, which is lower investment in skills under financial and labour market pressures.

In the first ten months of 2015, the Institute of Employment and Vocational Training (IEFP) recorded 22,000 withdrawals because of emigration. At the higher end, only one in five researchers had at least one employment contract with access to full social protection and labour rights while 40 per cent were willing to emigrate and another 40 per cent were undecided. Even among those employed, 30 per cent were willing to emigrate and another 30 per cent had not yet decided what they will do (Carrilho and Perista, 2016).

Little can be done to reduce emigration by those seeking a better future in private labour markets abroad. The case may be different when emigration from one country leads to employment in the public sector in another country, such as the case of young Portuguese nurses who emigrate to work in national health services elsewhere in Europe. There is rarely justification for limiting freely contracted transactions between individuals and private employers, but it is different when a country benefits from the publicly funded education output of another country, especially one that has lower incomes. Policies should aim to reduce unemployment and job insecurity and increase wages, employment opportunities and prospects for career advancement while improving working conditions and social protection.

Annual migration flows, 2004–16 (thousands)



Source: Eurostat.

Despite the robust response of the economy and the labour market after 2013, there are remaining challenges. First, as mentioned in chapter 1, the labour underutilization rate is higher than official figures of the unemployment rate suggest. And though the share of part-time employment is small, a much higher share of part-time workers in Portugal would have liked to work more compared to those in other EU countries (see Chapter 3A). To this one can add the increasing number of employees on temporary contracts. In addition to having fewer labour rights, workers with in non-permanent work receive wages that are lower by 30 per cent than the wages of workers with permanent contracts (GEP, 2016).

Second, the gains in higher education and training are naturally expected to have a high pay-off for the economy in the future. However, like in many other economies in an era of globalization, there has been a job polarization in Portugal associated with a “missing middle”, as suggested not only by the overrepresentation of secondary school graduates in the unemployment pool compared to their labour market share (see figure 2.9), but also by the pattern of employment creation in the last decade.

More specifically, as proxied by the level of education, the demand for more qualified workers, which has increased by 46 per cent since 2008, is almost sufficient to absorb the increase in the labour supply of those who have pursued post-secondary education (62 per cent – figure 2.16). The demand for the least educated workers declined by 15 per cent since 2008 but the decrease in the labour supply of workers qualified at that low level has been even greater. Where employment creation seems to have been massively deficient is with respect to jobs in the middle of the education ladder. Jobs requiring neither low nor high qualifications have decreased by 22 per cent, while the forthcoming labour supply has increased by more than double that figure (47 per cent).

## 2.2 Portugal's green energy revolution

### BOX

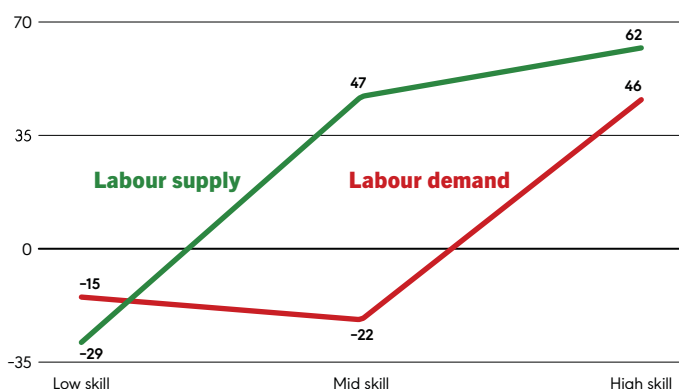
While job recovery across Portugal has been significant post-adjustment, the country has also made substantial leaps in greening its economy. Renewable energy supply is burgeoning, making Portugal one of the leaders in the world in clean energy supply. March 2018 marked the first time in Portuguese history when more renewable energy was produced than the country consumes (Reuters, 2018). In 2016, the share of renewables in overall energy consumption stood at 30.5 per cent – almost triple the average of Europe and North America – up from 20.5 per cent in 2008 (SDG Indicators Global Database). This share is even higher in electricity production, where renewables accounted in 2017 for 51 per cent of electricity production. This places Portugal third in the EU, below Austria (67.1 per cent) and Sweden (61.3 per cent). Between 2005 and 2016, Portugal was the EU member-state with the third greatest increase in the share of renewables in electricity production. It is expected that this number has further increased since. Moreover, the energy and carbon intensity of the Portuguese economy has been decreasing, ameliorated by the shift towards service sector jobs. It is now lower than the European average.

The majority of direct and indirect employment impact of renewable energy comes from wind and hydro energy, where the biggest growth is expected, though solar energy is increasingly playing a bigger role. Direct employment in the sector has grown from some 1,500 workers in 2005 to 3,483 in 2015, and is projected at nearly 5,550 workers by the year 2030. Though direct employment does not play a major role in total employment, there are substantial effects on indirect employment through adjacent supply chains (e.g. manufacturers of components, construction, external maintenance providers, etc.). In 2005, indirect employment amounted to approximately 26,000 workers but rose to 44,500 by 2015 and is expected to rise to more than 60,000 by 2030.\*

In 2015, environmental goods and services (such as management of energy resources, waste and water) accounted for 2.3 per cent of employment, 2.8 per cent of the gross value added (GVA) and 3.3 per cent of exports. More impressively, their growth was 5.5 per cent of GVA (compared to the general increase of 3.6 per cent) and 13.1 per cent of exports (compared to 4.7 for all exports). In 2014, the relative weight of the environmental goods and services sector in total GVA was 2.7 per cent – higher than the EU28 average of 2.3 per cent (EurObserv'ER, 2017).

\* Figures for 2005 and projections for 2030 are from APREN (*Associação de Energias Renováveis*) and Deloitte, *Estudo do Impacto Macroeconómico do Sector das Energias Renováveis em Portugal*, 2009. Figures for 2015 were provided in private communication by IRENA – International Renewable Energy Agency.

**FIGURE 2.16** Changes in labour demand and labour supply, 2008–16 (percentage)



Source: Eurostat.

Third, and related to education, much of the future course of employment, unemployment and effective labour utilization will depend on the strength of growth of new sectors and forms of employment in line with the growth of technology (see box 2.2).

## Policy considerations

The robust response of the economy and the labour market after 2013 should not lead to complacency. Much of remaining unemployment is not concentrated among the youth and is not simply a school-to-work transition issue. The bulk of the unemployed (80 per cent) are above the age of 25 years. To reduce unemployment further would require enhancing the macroeconomic performance of the economy, and not just opening new markets, but creating competitive markets that, through social dialogue, can serve the interests of both workers and employers.

### Striking a balance between attracting investors and ensuring social cohesion

At the macro level, attention should be given to how fiscal targets are pursued domestically in relation to broader economic and social objectives and external developments, for example, in the EU. Increasing public, private and foreign investment along with continuing improvements in the business environment and, more broadly, private sector development, would improve the prospects for decent employment creation (see Chapter 1).

Though not addressed in this report, the operations and development of micro, small and medium-size enterprises (SMEs) would need to be examined to the extent that the recent reduction in the share of the self-employed – as employers or own-own account workers – is the result of constraints to entrepreneurship from lack of access to finance or incentives.

## Quality of work

With regard to the labour market, assuming near-full employment conditions would prevail, there can be more emphasis to quality of work.<sup>10</sup> Later chapters will outline suggestions to tackle labour market segmentation, improve conditions for part-time and temporary workers, and improve enforcement mechanisms through labour inspection.

## Adapting social protection policies to demographic change

Considering the pressures exercised on the social insurance system by an ageing society, social insurance would need to be aligned with the ongoing demographic transition. The transition has implications not only for the labour market but also for economic growth and old age security. Under current conditions, the National Statistics Institute (INE) projects the population to drop by 2 to 4 million by 2060. The worst-case scenario may bring the ratio of people over-65 to those under-15 (the ageing index) from 131 to 464, the highest in Europe.<sup>11</sup> Eurostat similarly projects that Portugal will end up with the lowest proportion of children by 2050 when the percentage of under-15s may fall to 11.5 per cent from 14.6 per cent in 2014. Thus, social security contributions need to be re-examined in a way that will not increase the so-called tax wedge while balancing them in a fair way between workers and employers.<sup>12</sup>

## Special attention for youth and the long-term unemployed

Though the population shares of NEET youth and the long-term unemployed have been declining, both groups deserve special attention. Youth can benefit from school-to-work transition programmes. The long-term unemployed could re-enter the labour market through lifelong education and especially retraining. Both groups would benefit from redesigned and updated ALMPs. Bearing in mind that unemployment is expected to drop below 7 per cent in 2019, further reductions might be more difficult with labour policies alone or with programmes similar to those pursued in the past (see Chapter 4).

## Expanding education and training

The ongoing expansion and modernization of the education and training systems (not covered in this report) would need to be intensified and deepened, taking into account that the service sector generates most employment. With this in mind, more emphasis should be given, first, to the involvement of employers in the design, financing and implementation of training and, second, the relative high absorption of the output from higher education by the public sector.

## Narrowing the gender gap

Finally, the gains of women workers in the labour market and the narrowing of the gender gap need to be preserved and expanded. Part-time work is generally undertaken more by women than men, although the share of part-time workers in Portugal in general is small. Even if not so, but also in line with the discussion in Chapter 3, policies that improve work-life balance can attract more women into the labour market with resultant benefits for productivity and the overall economy as well as for them and their families, especially given the fact that children are more at risk of poverty than are prime-age people and the elderly.

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10. Additional labour market policy considerations are mentioned in Chapter 3 (on employment protection and regulation of contracts, hours of work and labour inspection), Chapter 5 (wages and inequality) and Chapter 6 (on collective bargaining).

11. The ageing index is calculated as the ratio of the number of inactive elderly persons (aged 65 and over) to the number of young persons (below 15 years). A value of 100 implies the number of elderly persons is equal to that of the young.

12. The tax wedge is the difference between before-tax and after-tax wages. It measures how much the Government receives as a result of taxing employment – something that can discourage the decision to work and increase labour costs to employers.

# Employment protection legislation, regulation of working time and rest periods and labour administration



This chapter reviews several aspects of labour market reforms introduced since 2011. Though reforms had been gradually introduced before the current decade, they were accelerated and intensified between 2011 and 2014 to fulfil the obligations under the MoU between the Portuguese Government and the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF).

Section 3A, on employment protection legislation, focuses on segmentation between workers with permanent and temporary contracts and attempts to assess to what extent reforms have been effective in combating labour market segmentation.

Section 3B examines legal provisions for working time, working time arrangements and rest periods. It considers how these legal provisions have developed since the turn of the century. It then analyses working hour trends since 2008 to determine the implications these legislative changes had in practice in the Portuguese context.

Section 3C focuses on labour inspection. All three sections conclude with some policy observations for future consideration.

# 3a Employment protection legislation: Regulating external flexibility

## KEY FINDINGS

Contractual labour market segmentation, a long-standing feature of the Portuguese labour market, continues to raise equity concerns. It expresses itself in the form of: a high share of temporary employment, low transition rates from temporary to permanent contracts, and differences in working conditions under different contract forms.

Contractual labour market segmentation also compromises labour efficiency and productivity, because temporary workers receive lower on-the-job training. Moreover, their high rotation does not favour the accumulation of skills and in-house knowledge, thus reducing overall productivity.

Root causes of labour market segmentation in Portugal include regulation of temporary contracts and open-ended contracts; inertia in the use of temporary contracts; macroeconomic instability and uncertainty; low use of internal flexibility measures by enterprises; and declining collective bargaining coverage by renewed and new agreements.

Reforms in temporary contract regulation since 2011 have been accompanied by a decrease of employment protection for permanent workers, including the alignment of severance payments of open-ended contracts with those of fixed-term contracts; general reduction of severance payments; and altering valid grounds for dismissals.

However, these reforms have not led to changing the share of temporary workers among employees, and therefore failed to “tackle labour market segmentation, foster job creation, and ease the transition of workers across occupations, firms, and sectors”, as envisioned in the May 2011 MoU with the EC, ECB and IMF.

Consequently, policies should address the high share of temporary employment, low transitions to permanent contracts, and unequal working conditions across contracts by placing stricter limits on the use of temporary contracts and ensuring better compliance with such regulations. The tripartite agreement for the labour law amendments reached at the time of writing this report, and approved by the Parliament, takes steps in this direction.

Other measures should concern ensuring equality of treatment and of working conditions, eliminating incentives to use temporary contracts with the single aim of saving on labour costs, providing enough tools to the enterprises to ensure internal rather than external flexibility, and stimulating responses through social dialogue that are inclusive of temporary workers. ■

Employment protection legislation (EPL) is a key labour market institution. It contains rules governing termination of employment at the initiative of the employer, whether individual or collective, as well as the regulations governing the use of temporary contracts. EPL is also one of the most debated labour market institutions. Its aim is to protect workers against arbitrary dismissals and income loss associated with the loss of job, thus also restoring the asymmetry in the bargaining power between workers and employers. EPL is also essential for ensuring labour market stability and enhancing productivity growth. However, many commentators are concerned that if protection levels are set too high they may deter employment creation and harm the workers that they are meant to protect.

Over the 2011–14 period, Portugal adopted several EPL reforms, to fulfil the conditions set out by the Memorandum of Understanding (MoU) signed in May 2011 between the Portuguese Government and the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF). An explicit goal of the prescribed EPL reforms was “to tackle labour market segmentation, foster job creation, and ease the transition of workers across occupations, firms, and sectors” (p. 22 of the MoU).

The list of the reforms prescribed by the MoU was very specific. It concerned the alignment of severance payments of open-ended contracts with those of fixed-term contracts; the general reduction of severance payments; and altering valid grounds for dismissals. The weakening of the level of EPL became a main goal of the structural reforms in the MoU, and was also reiterated by the tripartite agreement of January 2012. By 2014, the Portuguese Government implemented all the prescribed reforms. In addition, a series of reforms concerning the use of temporary contracts was implemented.

## Labour market segmentation: main features

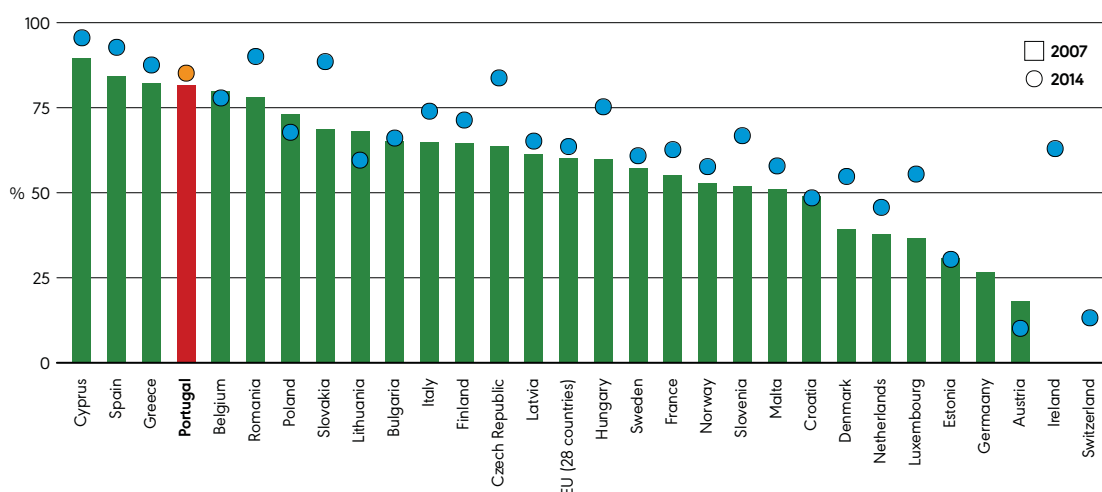
Labour market segmentation has been a long-standing feature of the Portuguese labour market. The segmentation is predominantly contractual,<sup>1</sup> and is linked to a co-existence of several types of contracts, notably standard contracts (open-ended) and temporary contracts (fixed-term, project-based, and casual).

Contractual segmentation manifests itself in three key features. First, the presence of temporary work is relatively high, well rooted, spread across most sectors of activity, and it equally concerns male and female workers. While temporary work is over-represented among young workers (59 per cent of youth were on temporary contracts in 2017), it is also relatively widely spread across the prime-age population (16 per cent of workers aged 25–55 are on temporary contracts in 2017).<sup>2</sup>

Importantly, temporary employment has a strong involuntary aspect: in 2014, 84 per cent of all temporary workers stated that they were in temporary employment because they could not find a permanent job (figure 3.1). This proportion increased by over 2 percentage points since 2007, and returned to its 2007 level by 2017. The proportion of involuntary temporary employment also stands in sharp contrast with countries such as Switzerland or Austria, where it was around 11 per cent in 2014.

The second important aspect of labour market segmentation is that transitions between contractual statuses are low. In other words, not only is the share of temporary contracts high, but workers are “locked” in the temporary status. It is estimated that the yearly probability of transiting from a temporary to a permanent job was only 12 per cent in Portugal in 2004. This stood in sharp contrast with 47 per cent in the United Kingdom, Ireland and Austria (Boeri, 2011).

**FIGURE 3.1** Trends in involuntary temporary employment, as a percentage of temporary employment, 2007 and 2014



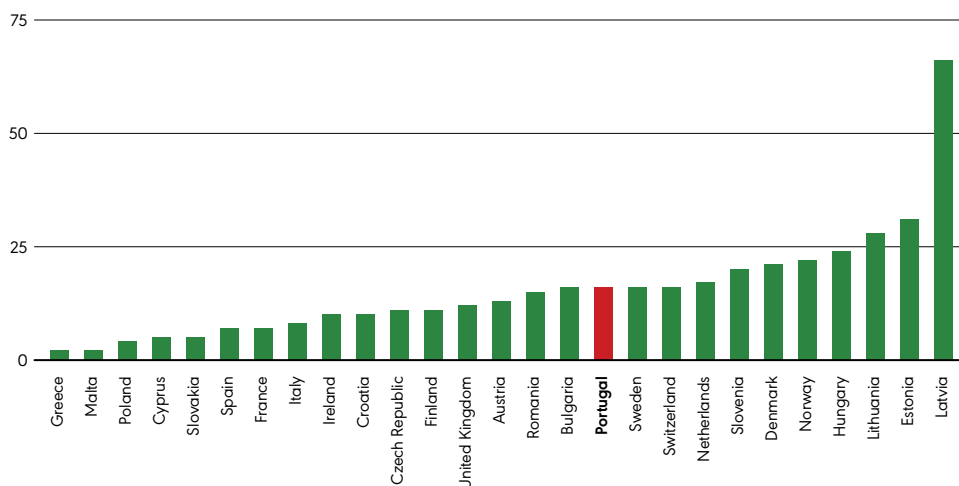
Note: Answers to the Labour Force Survey question: “Main reason for the temporary employment: could not find a permanent job”.

Source: ELFS; calculations by Schmid and Wagner, 2016; adapted for the ILO (2016) report.

1. Other types of segmentation include segmentation across informal / formal divides, for example.
2. Author's computations based on the Portuguese LFS.



**FIGURE 3.2** Transition from fixed-term contracts to permanent contracts, annual averages of quarterly transitions, estimated probabilities



Source: Eurostat.

The situation got only slightly better by 2016, when yearly transitions reached 16 per cent in Portugal (albeit according to a different methodology and concerning only the 25–39 age group) (figure 3.2). In such a situation, temporary workers face disproportionate risks of labour market adjustments, alternating temporary contracts with unemployment, rather than with stable employment. According to some estimates, in Portugal, worker turnover in excess of job turnover is five times higher for temporary contracts than for permanent contracts (Carneiro et al., 2014).

Third, the segmentation manifests itself in different quality of working conditions, with temporary workers often facing employment conditions of poorer quality. This difference often arises from the employers' choices and strategies with respect to using different contractual arrangements. Permanent workers are often assigned to “primary” or “core” functions of the enterprise, consisting of jobs that are well-paid, stable and with advancement opportunities. In contrast, “secondary”, or “periphery”, jobs, which are lower-paid, have fewer opportunities for training and advancement, and for which the adjustment costs are substantially lower, are reserved for temporary work.<sup>3</sup>

Overall, such contractually imposed divisions of labour pose equity and equality concerns, especially when core and periphery tasks are, in fact, very similar. Moreover, the co-determination of contractual status and working conditions, regardless of the tasks performed, is usually stronger if temporary employment is an involuntary choice, or when workers have little bargaining power to request better working conditions regardless of their contractual status (Aleksynska, 2018).

The Eurofound European Working Conditions Survey (EWCS) shows that temporary jobs in Portugal fare worse than regular jobs along the whole range of working conditions, including earnings, social environment, physical environment, working time quality, work intensity, skills and discretion, and prospects (figure 3.3). The greatest difference is in earnings, with workers on regular contracts earning on average 37 per cent more than workers on temporary contracts.<sup>4</sup>

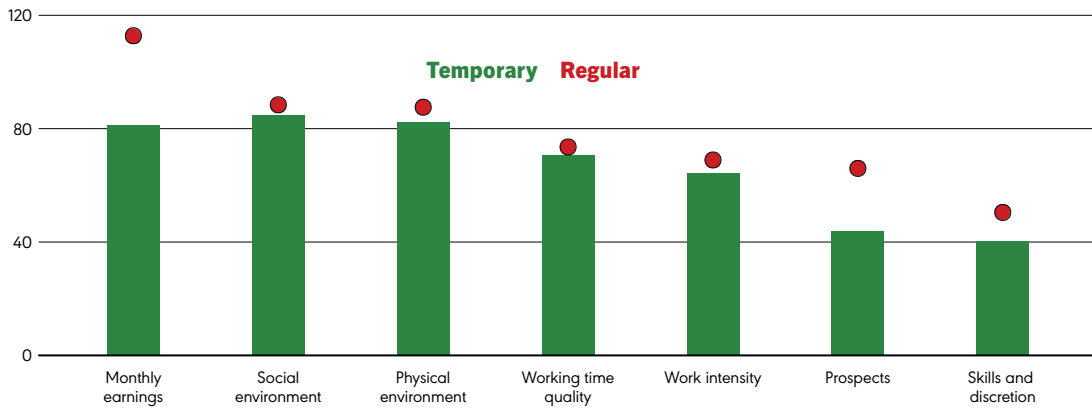
The second greatest difference is in perceived prospects, which include both prospects for career advancement and the probability of losing a job. Importantly, relatively large differences are also observed in such component of working conditions as skills and discretion. These include not only autonomy at work and performing complex tasks, but also the training opportunities provided by the employer. As the share of temporary employment remains sizeable, poor skill outcomes for temporary workers risk translating into poorer competitiveness and productivity, affecting the overall country's productivity – an effect that has been recorded in other similar settings.<sup>5</sup>

3. For an exhaustive overview of the very rich literature on this topic, see ILO, 2016.

4. This is a rough difference; econometric results accounting for individual and sector-specific characteristics usually find a lower wage gap.

5. See, for instance, Dolado et al., 2002; Dolado et al., 2012; Kleinknecht, 2015; Lucidi and Kleinknecht, 2010.

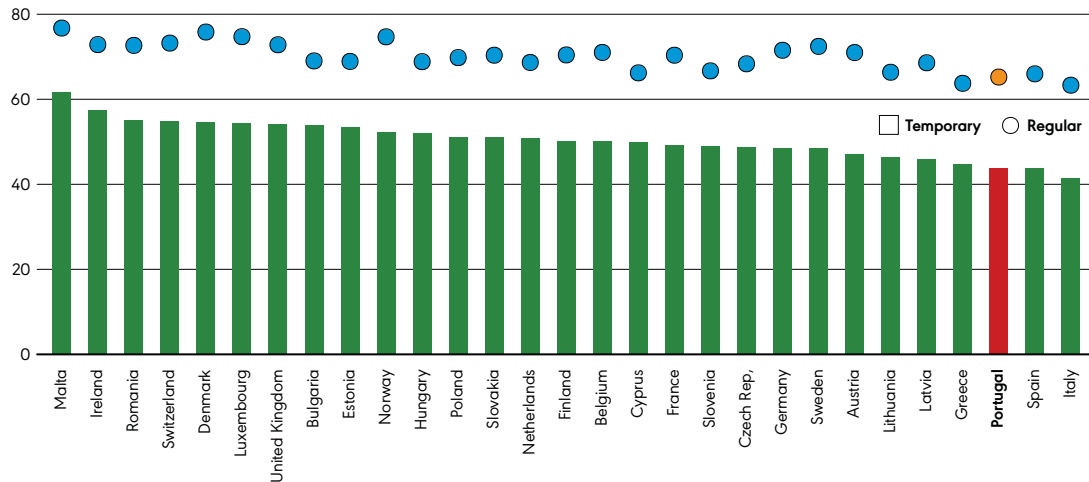
**FIGURE 3.3** Work quality across temporary and regular contracts



Notes: Each index is measured on 0–100 scale with the exception of earnings that are measured in euros. The *physical environment* index measures physical risks that people encounter in their workplace, and is constructed from 13 indicators related to specific physical hazards, including ambient, biological, chemical, and ergonomic ones. The *Work intensity* index monitors the level of work strain in the job and is built on questions measuring quantitative, pace and emotional demands. The *Working time quality* index concerns work duration, atypical working schedules, and flexibility of working time arrangements. The *Social environment* index addresses management quality, adverse social behaviour, and social support in the workplace. The *Skills and discretion* index reflects skill content of the job, decision latitude and autonomy at the workplace, worker participation in the organization, and training opportunities provided by the employer. And the *Prospects* index reflects the continuity of employment and career advancement through the questions on career prospects and the likelihood of losing a job.

Source: author's computations based on the EWCS 2015 data.

**FIGURE 3.4** Prospects for career advancement and jobs stability in selected European countries



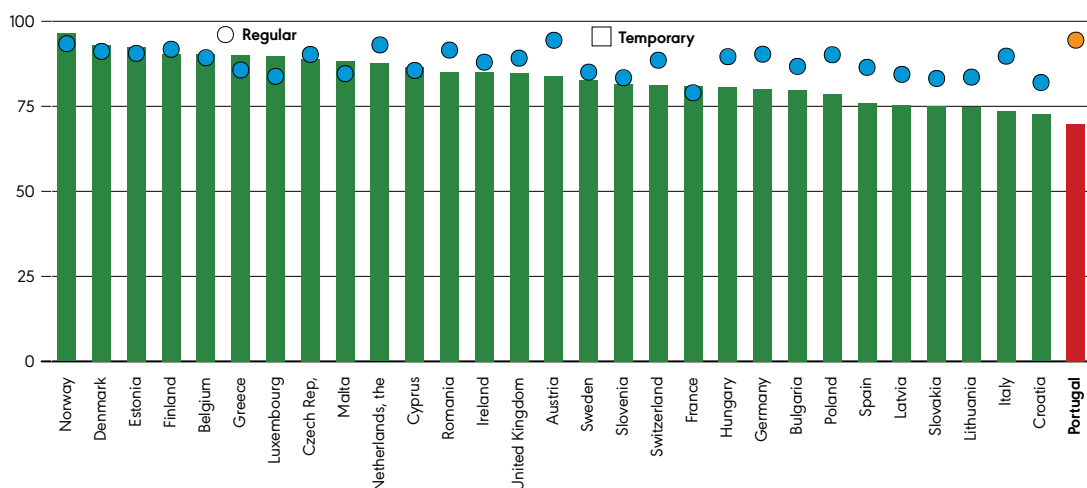
Note: tabulations are based on the Prospects index, computed according to the Eurofound (2016) methodology.

Source: author's computations based on the EWCS 2015 data.

The prospects of Portuguese temporary workers are not only bleak as compared to permanent workers. They are also one of the lowest as compared to temporary workers in other European countries, and are highly similar to those of workers in Spain and Greece, other countries with highly segmented markets (figure 3.4).

It is thus hardly surprising that the overall satisfaction of Portuguese temporary workers with their working conditions is also among the lowest in Europe (figure 3.5). Interestingly, satisfaction of Portuguese regular workers with their working conditions is, in contrast, one of the highest in Europe, possibly also reflecting workers' awareness of the substantial gap in working conditions between different contracts.

**FIGURE 3.5** Satisfaction of workers with their working conditions in selected European countries



Note: tabulations are based on the question “On the whole, how satisfied are you with working conditions in your main paid job?” Reported are the shares of workers who stated that there are either “Very satisfied” or “Satisfied” with their working conditions. Source: Author’s computations based on the EWCS 2015 data.

Considering the factors described above, Portuguese contractual labour market segmentation could be described as “bad contracts along with bad jobs”, given the vast majority of temporary workers face this situation involuntarily and the large majority of temporary workers are locked in this situation. As a result, segmentation raises concerns of the equality of working conditions, equality of treatment and of chances, as well as general equity issues.

Given this, policy measures to deal with labour market segmentation should address its three features: they should aim to reduce the sheer size of temporary arrangements by dealing with the root causes of segmentation, improve transitions to permanent contracts, and alleviate negative consequences of segmentation on working conditions.

## Possible causes of labour market segmentation: regulations of temporary contracts

The current labour market segmentation observed in Portugal has several root causes. A key one is the regulation of temporary contracts, and the incentives that they set for the use of temporary, rather than permanent, contracts.

Portugal ratified the ILO Termination of Employment Convention, 1982 (No. 158), which, together with the accompanying Termination of Employment Recommendation, 1982 (No. 166), is the main ILO standard whose provisions provide regulatory guidance on employment protection in case of dismissals at the initiative of the employer, and on temporary contracts (see box 3.1 for details).

Portugal also transposes into its laws the European Union Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-Term Work concluded by the social partners (ETUC, UNICE and CEEP). These instruments set the minimum provisions, allowing national regulations to reach them by using the tools that are most adapted to the national context.

The labour codes in most of the countries in the world, and Europe specifically, reflect the provisions outlined in the ILO standards on employment termination. These include the adoption of different approaches to prevent abusive recourse to temporary employment. Aleksynska and Muller (2015) describe three major safeguards observed throughout the world: the prohibition against using temporary contracts for permanent tasks, limitation of the number of successive temporary contracts, and limitation of the cumulative duration of temporary contracts.

### 3.1 International and regional sources of regulation of temporary employment

#### BOX

Strictly speaking, temporary employment, including fixed-term contracts (FTCs), is not directly regulated by international labour standards. Nonetheless, the Termination of Employment Convention, 1982 (No. 158), and its accompanying Termination of Employment Recommendation, 1982 (No. 166) require that adequate safeguards be provided against using temporary contracts solely with the purpose of avoiding the protections mandated by the Convention (Art. 2(3)).

In respect to Convention No. 158 (Art. 2(2)), countries may exclude the following categories of employed persons from all or some of the provisions concerning termination of employment at the initiative of the employer: (a) workers engaged under a contract of employment for a specified period of time or a specified task; or (b) workers engaged on a casual basis for a short period.

Recommendation No. 166 (Article 3(2)) details examples of legal rules to prevent any abusive recourse to FTCs. It may be done by:

- (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;
- (b) deeming contracts for a specified period of time to be contracts of employment of indeterminate duration;
- (c) deeming contracts for a specified period of time, when renewed on one or more occasions, to be contracts of employment of indeterminate duration.

At the regional level, the most detailed instrument regulating fixed-term work is the European Union Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-Term Work concluded by the social partners, including ETUC, UNICE and CEEP. It is recognized in this Directive that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers, but that fixed-term employment contracts can respond, in certain circumstances, to the needs of both employers and workers. The Directive defines the term “fixed-term worker” as “a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event”.

Source: Aleksynska and Muller (2015); ILO (2016).

The first reference to temporary contracts appears in the Portuguese legislation in 1969,<sup>6</sup> when only seasonal and casual contracts were allowed, and only in activities established by the National Institute of Labour and Insurance. The subsequent half a century is a story of “reforms at the margin”, whereby the use of temporary contracts was gradually liberalized. Meanwhile, the protection of regular contracts remained relatively unchanged.

The liberalization started with the law of 1976,<sup>7</sup> establishing fixed-term contracts (FTCs). It provided that the work to be done under temporary contracts of six months had to be temporary in nature. However, no such requirement was provided for temporary contracts of longer duration. The only limits that were placed concerned the total duration of such contracts, limiting them to a maximum of three years.

The liberalization continued with the reforms of 1989 and 2003. More recently, the 2009 reform introduced an authorization to extend FTCs up to three times as a general rule, up from two times. However, it also imposed stricter limits on maximum duration: while it remained at three years, the rule was extended also to temporary agency work contracts and service contracts concluded for the same purpose with the same person within the same company or group of companies. An authorization to hire temporary workers when a new activity starts of uncertain duration, in businesses or workplaces, was limited to businesses with fewer than 750 workers. These measures were seen as

6. Legislative Decree No. 49408 Contracts of Employment. Analysis by Aleksynska and Schmidt, 2014.

7. Legislative Decree No. 781/76 to regulate contracts of employment of limited duration. Analysis by Aleksynska and Schmidt, 2014.

an attempt to harness the rise of temporary employment, or at least to counter balance the increase in the authorized number of FTC renewals, even though the latter restriction was quite nominal and concerned only very few businesses and employees.<sup>8</sup>

Also, in 2009, very short-term, fixed-term contracts for casual work (*muito curta duração*) were introduced in seasonal agriculture and tourism for work of a maximum duration of one week. These contracts were introduced with the aim of increasing formalization of casual work and ensuring greater social protection of these workers. They do not require to be established in writing, though they do require electronic registration with social security administration. These contracts feature lower total social security contributions (the employer must contribute at a 26.1 per cent rate, whereas the worker does not have to contribute), as compared to all other contracts (where the employer must contribute at a 23.75 per cent rate and the worker at an 11 per cent rate).<sup>9</sup>

In pre-crisis Portugal, temporary employment was quite diverse. Three main forms of temporary employment allowed by law included fixed-term contracts, project-based contracts, and very short casual contracts.<sup>10</sup> The regulation of fixed-term contracts (FTCs) specifically features several aspects.<sup>11</sup>

First, as a general principle established since 1989, and provided by the Labour Code of 2009, with amendments, (art. 140(1)), FTCs were only allowed to satisfy temporary needs of the undertaking and for the period strictly necessary to satisfy such needs. In other words, they generally could not be used for permanent tasks. Art. 140(2) provides a non-exhaustive list of examples of temporary needs of the undertaking. However, this general principle also featured exceptions. In some cases, the Labour Code allowed the conclusion of FTCs when no temporary needs were involved. These cases are the launching of a new activity of uncertain duration or starting-up an undertaking or branch of enterprise of fewer than 750 employees; and hiring workers seeking their first job or long-term unemployed worker or worker in another situation foreseen in specific legislation of employment policy (art. 140(4) LC).

Second, the law placed limits on the number of successive fixed-term contracts. FTCs with a specified date of expiry (certain term) could be renewed three times (art. 148(1) LC). There was no such limitation for temporary contracts with an uncertain term, such as project-based work (in fact, Portuguese Labour Code does not regulate their renewal), but the law limited their duration up to a maximum of six years. According to the criterion of the maximum authorized number of renewals, Portugal was in the group of European countries that had the greatest number of authorized renewals (table 3.1).

Third, the law also placed limits on the maximum cumulative duration of successive FTCs. The maximum cumulative duration of successive FTCs (and for a single FTC) varied according to the type of contracts and the reasons for which they were concluded. FTCs with a specified date of expiry (certain term) were not supposed to last more than three years as a general rule. Shorter periods were foreseen for contracts concluded with long-term unemployed workers or for launching a new activity or starting up a new company provided the total number of workers does not exceed 750, and for contracts concluded with workers seeking their first job (art. 148(1) LC). FTCs with an uncertain term could last for the maximum of six years (art. 148(4) LC). According to the criterion of maximum authorized cumulative duration of successive temporary contracts, Portugal was in the mid-range group of European countries (table 3.2).

Taken together, according to the three criteria listed above, Portuguese laws could be considered as already offering quite favourable conditions for the recourse to temporary contracts and setting good incentives for their use rather than non-use.

Legal changes of 2012 and 2013 changed little to these aspects of regulations of fixed-term contracts. Quite the contrary, they allowed for two exceptional and transitional further extensions of temporary

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8. Indeed, in Portugal in 2015, 78 per cent of all employees worked in enterprises with fewer than 250 workers (OECD, 2017). This means that even a greater share of workers worked in enterprises that were allowed to use FTCs for a new activity of uncertain duration. Also, enterprises with fewer than 250 of workers represented 99 per cent of all enterprises (ibid.), meaning that virtually all enterprises in the country had the right to hire temporary workers for a new activity of uncertain duration.

9. Portuguese Code of Social Security Contributions (Código dos Regimes Contributivos do Sistema Previdencial de Segurança Social: Taxas Contributivas), p. 1. Available at: [http://www.seg-social.pt/documents/10152/13311/Guia\\_taxas+Contributivas\\_set2015.pdf/d96972fb-a15b-4f57-80f8-d06a65b1535f](http://www.seg-social.pt/documents/10152/13311/Guia_taxas+Contributivas_set2015.pdf/d96972fb-a15b-4f57-80f8-d06a65b1535f) (in Portuguese)

10. There is also temporary agency work, which can be temporary or open-ended.

11. The legal information and its interpretation presented here draws on ILO EPLex (2018).

### 3.1 Examples of regulations of the maximum number of successive FTCs authorized by law, European countries

TABLE	Maximum number of successive FTCs authorized by law	Countries
	1	Bulgaria
	2	Estonia, France, Spain
	3	Greece, Luxembourg, the Netherlands, Romania
	4	Belgium, Germany, Portugal (FTC with certain term), Slovakia
	No regulation	Portugal (FTCs with uncertain term)

Note: some European countries regulate fixed-term contracts mainly through collective agreements, and do not have legislatively set limits.

Source: Elaboration based on ILO EPLex, latest available data.

### 3.2 Examples of regulations of the maximum cumulative duration of successive FTCs, European countries

TABLE	Maximum cumulative duration of successive FTCs (years)	Countries
	2	Germany, Greece, Luxembourg, the Netherlands, France, Spain, the Czech Republic, Slovenia, Sweden
	3	Belgium, Bulgaria, Italy, Norway, Romania, Portugal (FTCs with certain term), Slovakia
	5	Hungary
	6	Portugal (FTCs with uncertain term)
	10	Estonia

Note: some European countries regulate fixed-term contracts mainly through collective agreements.

Source: Elaboration based on ILO EPLex, latest available data.

contracts.<sup>12</sup> Such additional extensions, even if transitory, made Portugal a European champion<sup>13</sup> of authorized extensions of temporary contracts, further eliminating the incentives to convert temporary contracts into permanent ones. Moreover, the 2012 reform<sup>14</sup> increased the authorized length of very short, casual, contracts (*muito curta duração*), in a non-transitory manner. Their duration was extended from a maximum of one week to 15 days, and the total limit was raised from 60 to 70 days over a period of 12 months.

Finally, the reforms decreased the indemnities paid to workers at the end of their fixed-term contract, aligning them with severance pay received by permanent employees in case of dismissal at the initiative of the employer.<sup>15</sup> Before 2011, temporary workers whose contracts of a fixed duration were not renewed or converted to permanent ones were entitled to a contract termination indemnity, which equalled three days of base pay plus tenure-based increments for each month of service for contracts of six months or less; and two days of base pay plus tenure-based increments for each

12. Law 3/2012 of 10 January 2012: two extraordinary renewals are allowed for FTCs that achieve their maximum duration (pursuant to art 148 LC) until 30 June 2013. The total duration of such renewals cannot exceed 18 months and each of the extraordinary renewals cannot be shorter than one-sixth of the lower between (i) the maximum duration of the FTC; (ii) its actual duration. In any case, the limit of the FTCs subject to this regime of extraordinary renewals to be in force is 31 December 2014. Law 76/2013, of 7 November 2013: two extraordinary renewals are allowed for FTCs that achieve their maximum duration (pursuant to art 148 LC or Law 3/2012) within two years of the entry into force of the Law. The total duration of such renewals cannot exceed 12 months and each of the extraordinary renewals cannot be shorter than one-sixth of the lower between (i) the maximum duration of the FTC; (ii) its actual duration. In any case, the limit of the FTCs subject to this regime of extraordinary renewals to be in force is December 31, 2016.

13. And also a world champion; see Aleksynska and Muller (2015) for a global overview of these regulations.

14. Law 23/2012 of 25 June.

15. Note some possible variation in terminology. The ILO habitually refers to “severance pay” as a payment to the worker in case of termination of a regular contract at the initiative of the employer, and to “indemnity” as a payment to the worker at the end of a fixed-term contract, as a compensation for the non-renewal of the contract. In Portugal, and sometimes in other contexts, “severance pay” may be used to refer to both types of payments.

month of service for contracts of over six months. Law 53/2011 of 14 October reduced this indemnity to 20 days for each year of service, with fractions of a year counted proportionally and upper limits applying. Initially applying to new contracts only, these rules were extended to all contracts from 31 October 2012 onwards (though rights accrued to that date were preserved). Law 69/2013, from 1 October 2013, further reduced this indemnity. For FTCs with a definite duration (and with the maximum cumulative duration of three years), a contract termination indemnity of 18 days of basic pay and tenure-based increments per year worked was established. For FTC of undetermined term (and because their maximum duration is six years), the contract termination indemnity is the sum of the following: (a) 18 days of base pay and tenure-based increments per year completely worked, for the first three years of the contract; and (b) 12 days of base pay and tenure-based increments per year completely worked, after the third year. This reduction of the FTC indemnity could hardly decrease the attractiveness of fixed-term contracts.

It comes as no surprise that, given these changes, temporary employment remained virtually unchanged over the 2009–13 period. Interestingly, in several countries with strong segmentation (e.g. Spain), temporary employment dropped sharply during similar macroeconomic shocks and more than permanent employment, because they served as the main margin of adjustment. This has not happened in Portugal: the level of temporary employment remained remarkably stable, with only a two percentage points dip between 2008 and 2012; while the adjustment happened primarily at the expense of permanent employment. By 2012, the share of fixed-term contracts among new hires reached over 75 per cent (OECD, 2014). Thus, it may be argued that the reforms that further liberalized the use of temporary contracts not only failed to improve the existing segmentation problem, they helped maintain the level of temporary employment in a situation where it could have decreased naturally.

Moreover, following the reforms, the composition of temporary employment was modified. The growth of very short-term contracts was immediate. On the one hand, this effect was natural, because the introduction of these contracts was made in order to reduce the use of informal arrangements, and new short-term contracts naturally substituted many of the previous informal arrangements. On the other hand, this growth was amplified also by the general macroeconomic slack and uncertainty, as it concerned not only casual contracts in agriculture and tourism, but also other more common FTCs, for which short-term transitory extensions were allowed. But once these transitory measures reached their end date, the share of very short-term contracts remained sizeable (figure 3.6). Between 2008 and 2017, the share of contracts of less than three months increased from 8 per cent to 14.7 per cent.

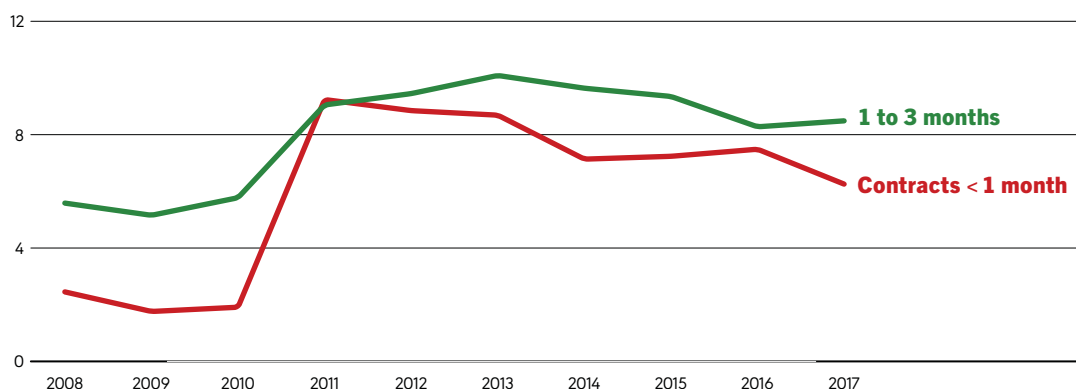
Summing up, the past decades of reforms created an environment in which it is very easy to use temporary contracts, and legislative changes adopted from 2001 to 2013 only exacerbated this situation. In addition to being quite widely authorized, some of temporary contracts, such as those with very short duration in agriculture and tourism, feature lower non-wage costs (such as lower total social security contributions and lower administrative burden when no written contract is to be provided).

Thus, one of the first policy avenues to harness the spread of temporary employment is to place stronger limits on the use of temporary contracts and make sure that they are enforced, but also review the exceptions in which temporary contracts are authorized for permanent tasks, and create stronger incentives for the conversion of temporary contracts into the permanent ones at their expiry.

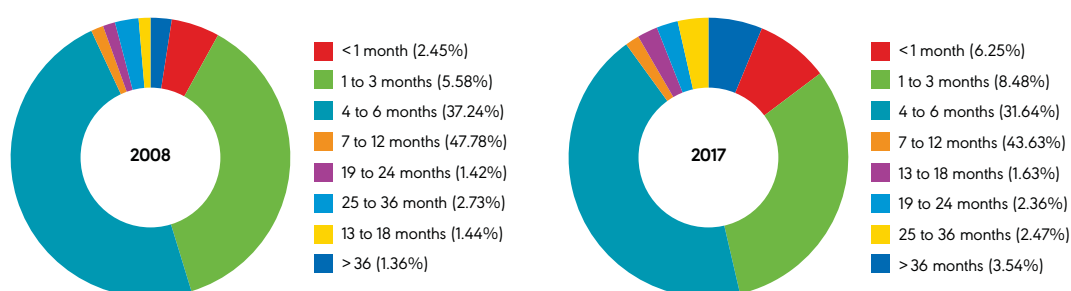
Important steps towards this policy course were made at the time of writing this report. The Government of Portugal has submitted a second proposal to social partners aiming at fighting precariousness and reducing labour market segmentation on 24 May 2018. Following that proposal, the Government and the main social partners have reached a tripartite agreement on the underlying amendments to the labour law in June 2018; the agreement was approved in the National Parliament on the 6 July 2018.



**FIGURE 3.6** Evolution of the share of temporary contracts, by contract duration



Temporary contracts structure, by duration



Source: author's elaboration based on the Portuguese LFS.

Among others, the tripartite agreement included the following measures:

- Reducing the maximum accumulated duration of fixed-term contracts from three to two years, including renewals, and establish that the maximum accumulated duration of renewals cannot exceed the initial contract period;
- Reducing the maximum duration of indefinite duration contracts from six to four years;
- Revoking the norm that allows hiring first-time jobseekers and long-term unemployed on fixed-term contracts for permanent jobs, admitting it exclusively for the very long-term unemployed;
- Limiting the possibility of hiring on fixed-term contracts in the event of starting a new activity of uncertain duration or opening new facilities to companies with less than 250 workers and establishing that the maximum duration of such fixed-term contracts is limited to a two-year period from the start of the new activity or opening of the new facility.

## Possible causes of labour market segmentation: regulations of open-ended contracts

Numerous commentators in academic and policy debate<sup>16</sup> suggested that the problem may not be the regulation of temporary contracts per se. Rather, it is how these regulations articulate with employment termination of regular contracts at the initiative of the employer. The argument advances that temporary employment may be particularly attractive if the wedge between the costs of terminating a temporary versus a regular worker is large. On one hand, temporary contracts are not very costly to terminate at their expiry date: if the employer does not wish to continue the employment relationship, no reason has to be provided to the worker beyond the fact that the contractual obligations are over. In Portugal, only a limited compensation is to be paid to the worker in case of contract non-renewal.

However, terminating a regular contract at the initiative of the employer may be seen as costly by employers, as it necessitates providing a valid reason for dismissals, requires following a specific notification procedure, involves paying severance or redundancy payments. What's more, in case of the contestation by the worker, it can lead to litigation and present a possibility of worker reinstatement in the previous post, if found unjustified. Reducing this wedge, it is argued, may eliminate the incentives to resort to temporary employment.

The proponents of this idea, often referred to as the “single contract” idea, believe that the reduction in this wedge can be achieved by decreasing the “cost” of terminating regular contracts. It is in this spirit that the MoU prescribed that “severance payments of open-ended contracts will be aligned with those of fixed-term contracts”, reducing their amount, as well as requested changes to some other EPL aspects, including definition of dismissals.

Looking back at 2009–10, indeed, the Portuguese level of protection offered to the workers in case of termination of individual regular employment contracts at the initiative of the employer, or the costs of termination for the employer,<sup>17</sup> was one of the highest in Europe. According to the ILO EPLex (2015), comparable levels of indicators of employment protection were observed only in Slovakia and the Czech Republic (box 3.2).<sup>18</sup>

Importantly, however, the level of protection was lower for workers in small companies as compared to large companies, as different EPL rules apply depending on the enterprise size in what concerns unlawful dismissals (figure 3.7).

This high level of protection could be indeed largely attributed to one of the EPL aspects: the level of severance pay. Severance payments, due in the event of dismissal for unsuitability, elimination of the position, and collective dismissal, amounted to one-month basic salary for each full year of seniority, with a minimum three-month payment (art. 366, 372, 379 of Labour Code of 2009). These provisions meant that workers with relatively short tenure were especially well protected, as compared to workers with similar tenure in other countries.

From 2011–14, a series of EPL reforms were undertaken to fulfil the MoU conditions. Two EPL aspects were principally affected: severance pay, and valid grounds and procedures for dismissals due to redundancy or unsuitability.

Regarding severance pay, in 2011, the Law 53/2011, with the effect from November 1, reduced severance payments on all new open-ended contracts to 20 days of basic salary per each full year of seniority and eliminated the minimum three-month payment. There were also limits introduced to the maximum amount of severance pay, linked to the minimum wage (the base wage for calculating the full amount of severance pay could not exceed 20 times the national monthly minimum wage; and the total amount of severance pay could not exceed 12 times the worker's base wage).<sup>19</sup>

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16. See, for instance, Boeri et al. (2013); Casale and Perulli (2014); Lepage-Saucier et al. (2013) for an overview of the academic debate, as well as OECD (2017) for an example of policy proposals reflecting the debate.

17. Note, however, that while both are provided by EPL rules, the protections to workers and costs to employers are not always symmetric. Thus, it is possible, that some changes improve worker protection without necessarily introducing additional costs to the employers.

18. Interestingly, in these countries, the level of temporary employment is relatively low.

19. The Law 23/2012 of 25 June also extended some of these provisions, in a transitory manner, to contracts signed earlier.

### 3.2 Measuring the level of protection afforded by the rules governing termination of individual regular employment contracts at the initiative of the employer

#### BOX

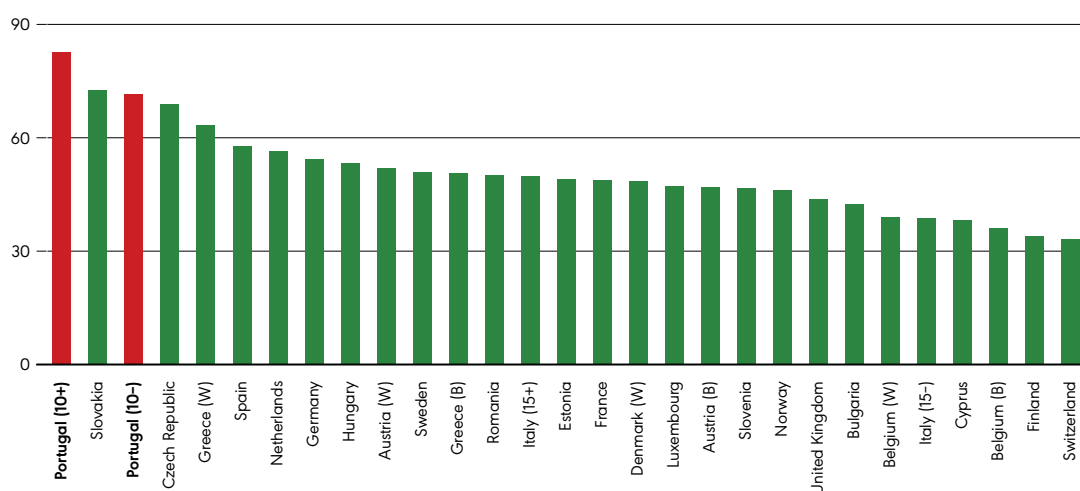
In most countries of the world, regulations governing the termination of individual regular employment contracts at the initiative of the employer are based on several pillars. They include:

- substantive requirements for dismissals, such as the need to have a valid reason for dismissal and the set of counterbalancing provisions determining what constitutes prohibited grounds for dismissals;
- regulations of probationary periods, during which other EPL provisions may not fully apply;
- procedural requirements for dismissals, which include notification procedures and notice periods that may vary depending on workers' tenure;
- a set of compensatory payments, such as severance and redundancy pay; and
- avenues for redress, which include the set of rules and procedures in case a worker wishes to contest the employers' decision, as well as the set of remedies in case the dismissal is deemed to be unfair. In addition, in case of collective redundancies, different procedural requirements may apply.

In 2015, the International Labour Office elaborated a set of EPLex indicators which aim to describe the level of protection that is offered to the workers in case of termination of individual regular employment contracts at the initiative of the employer. These indicators reflect national laws according to the pillars outlined above, and are measured on a 0–1 scale, with higher values measuring higher levels of protection afforded to workers. The indicators are created with reference to the international labour standards governing EPL.

Source: ILO (2015).

**FIGURE 3.7** Level of protection provided by national EPL to workers in case of individual regular contract termination at the initiative of the employer, 2010



Note: Numbers next to country names signify enterprise size (for example, 10+ means in enterprises with over 10 employees). Letters next to country names signify: W for white-collar workers, B for blue-collar workers.

Source: Elaboration based on ILO, 2015, ILO EPLex indicators.

In 2013, with the Law 69/2013 of 30 August, severance payments were further reduced to the current 12 days of basic salary for each full year of seniority.<sup>20</sup> Importantly, more favourable regimes that had been provided by collective agreements or employment contracts, where they existed, were deemed null and void. The latter provision, however, was considered as unconstitutional by the Constitutional Court of Portugal (Decision 602/2013), and was subsequently aborted.

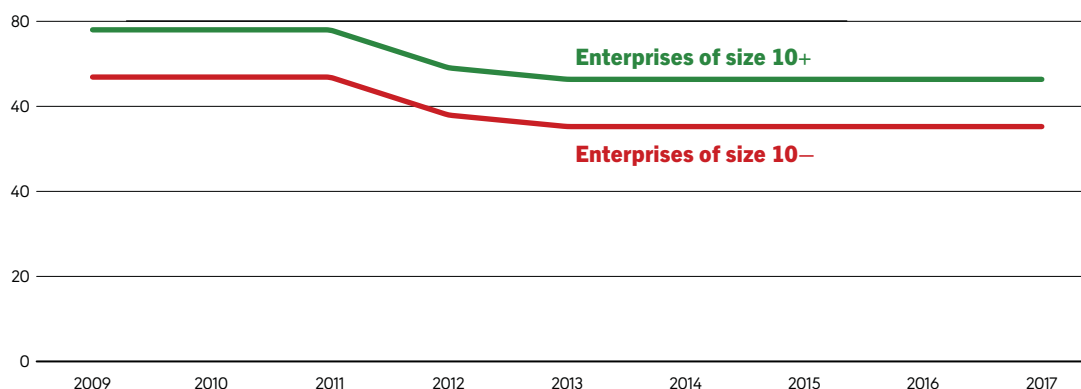
20. With transitory measures applying to contracts for which the duration on 1 October 2013 was inferior to three years.

In October 2013, two dismissal funds (FCT and FGCT) were also set up. Compulsory monthly contributions are paid for each worker, in the amount of 0.925 per cent of the worker's wage for the FCT and 0.075 per cent in for the FGCT. Payments to FCT essentially represent deterred severance payments; they are intended to help employers reduce the up-front cost of severance payments. FGCT provides insurance to workers that they will receive at least 50 per cent of the severance pay that they are entitled to.

Another EPL aspect that was affected was the valid grounds for dismissals in case of unsuitability and economic redundancy. Some requirements in order for the dismissal on unsuitability to take place were eliminated, and selection criteria based on seniority in case of redundancy were altered (see box 3.3 for details). These reforms, however, were also ruled as unconstitutional by the Constitutional Court of Portugal (Decision 602/2013), and subsequently reversed.

The reforms of severance pay have considerably reduced the level of employment protection of workers (and the costs for employers to terminate workers), as reflected in EPLex indicators (figure 3.8). The reforms of valid grounds, though short-lived, also aimed at facilitating dismissals; their effect, however, is not captured by the indicators. Taken together, the reforms brought the EPL level in Portuguese small enterprises to the levels comparable to Germany (whether in 2010 or in 2017). For large enterprises, the EPL level decreased to that available to Greek white-collar workers in 2010.

**FIGURE 3.8** Level of protection provided by Portuguese EPL to workers in case of individual regular contract termination at the initiative of the employer, 2009–17



Source: Computations based on the ILO (2015) methodology and the ILO EPLex data.

Despite this considerable reduction in the level of employment protection, the reforms do not seem to have reached their explicit objective of reducing labour market segmentation. The relative level of temporary employment has not been affected. Quite the contrary, the 2017 level of temporary employment was exactly the same as in 2008. The level of involuntary temporary employment also remained stable. It is possible that the true effect of these reforms on the recourse to temporary employment may manifest itself in several years. In the meanwhile, it is instructive to examine why the effect of the reforms on temporary employment was not immediate, and why it may remain quite limited in the future.

First, the reduction of the level of protection for open-ended contracts was undertaken in parallel with further liberalization of the use of temporary contracts. Some of this liberalization has been only transitory, and allowed for exceptional additional contract renewals. Some of it was permanent, such as authorizing a wider use of very short contracts. Thus, the incentives set up by easier dismissals rules for regular contracts were not strong enough to counter-balance the incentives set up by easier hiring rules on temporary contracts, as the protection of workers in all contracts was lowered.

Second, the synchronization of severance pay for open-ended contracts with the indemnities to workers whose temporary contracts are not converted into permanent ones (both are now at 12 days) concern only a very small fraction of contracts. From figure 3.6, it is apparent that workers whose temporary contracts cannot be extended further because, for example, they have reached the legal three-year limit with the same employer, constitute less than 3 per cent of all temporary workers.

### 3.3 Summary of the reforms affecting valid grounds for dismissals

#### BOX

In Portugal, it is possible to dismiss an employee on the ground of unsuitability for the position. Unsuitability occurs in the following situations: continued reduction in the employee's productivity or quality of work; repeated damages to the equipment allocated to the job; risks for the employee's own health and safety or to that of third parties.

In addition, prior to 2012, the following requirements had to be fulfilled:

- a) the dismissal for unsuitability in the above-mentioned situation can only take place provided that there has been changes in the worker's position resulting from the introduction of new technologies or equipment in the six months preceding the beginning of the dismissal procedure;
- b) the worker must have been given adequate training to adjust to the changes introduced;
- c) the worker must have been given an adaptation period of at least 30 days whenever the position involves health and safety risks;
- (d) there is no other position available in the enterprise compatible with the worker's qualification; and
- (e) ultimately the situation of unsuitability is not caused by the lack of safety and health conditions at work attributable to the employer (art. 374(1) and 375(1) LC 2009).

*Under the Law 23/2012, the requirements under letters (d) and (e) were eliminated. However, the judgment of the Constitutional Court No. 602/13 of 23 September 2013, declared elimination of the requirement under letter (d) unconstitutional. As a consequence, Law 27/2014 of 8 May 2014 reintroduced the requirement under letter (d) (amended).*

In addition, in the context of complex, technical or managerial positions, unsuitability occurs when the employee fails to reach the objectives previously agreed and it is practically impossible for the employment relationship to continue. In such case, changes to workers' positions resulting from the introduction of new technologies or equipment or modifications in the manufacturing or marketing process are also required. It is also compulsory that the situation of unsuitability is not caused by the lack of safety and health conditions at work attributable to the employer (art. 374(2) and 375(1) LC).

The Labour Code also allows dismissals for economic reasons. Depending on the number of employees concerned, a distinction is made between collective dismissals and dismissals based on the elimination of the position. Both types of dismissal are allowed on the grounds of the closure of one or more departments, or the need to reduce the workforce for structural, technological or economic reasons (art. 359(1) LC).

Under the original version of the LC 2009, art 368 (2) provided for a list of criteria to be followed to select the employee to be made redundant when more employees with the same post were present in the section; these were: (1) shorter length of service in the same post; (2) shorter length of service in the occupational category; (3) lower rank class of the occupational category, (4) shorter length of service in the enterprise.

*Law 23/2012 eliminated this list so that criteria could be set out by the employer provided that they were relevant and non-discriminatory. The judgement of the Constitutional Court No. 602/13 of 23 September 2013, declared elimination of list unconstitutional. As a consequence, Law 27/2014 of 8 May 2014 introduced an amended list of criteria: 1) lower level of performance, pursuant to criteria pre-disclosed to the employee; 2) lower academic and professional qualifications; 3) higher cost of keeping the employment relationship in place; lower work experience in the post; lower length of service. These new provisions remain highly contested (Tavora and Gonzalez, 2014; 2016).*

Source: ILO EPLex.

For many other temporary workers, though subject to limitations on the total number of renewals, temporary contracts may be further extended, rather than converted into permanent ones, without any cost for the employers. Thus, incentives set up by the synchronization of severance pay concern only a very small number of workers whose contracts cannot be renewed any more.

Third, severance pay is only one aspect of EPL. There are also other aspects that make worker protection and, conversely, costs to the employer (whether de jure, or de facto) particularly high. One such aspect is embedded in the probation period pillar of EPL: the longer the probation, the weaker

the level of protection afforded by EPL. This is because during the probation period workers are excluded from the scope of the relevant provisions concerning termination of employment. Moreover, experience of many countries shows that usually probation is the area that can articulate particularly well with the regulation of temporary contracts and present a certain trade-off: in countries with longer probation, a shorter total duration of FTCs is usually authorised, and vice versa (ILO, 2016a).

As of 2018, and as a general rule, the probationary period in Portugal equalled 90 days (Article 112 of the Labour Code). This can be seen as a relatively short period (ILO, 2015), and hence a factor contributing to a “higher” level of protection. At the time of writing this report, the tripartite agreement on the amendments to the labour law reached in June 2018, proposed to establish that the applicable probation period for open-ended contracts with first-time jobseekers and long-term unemployed is 180 days. It also proposed to stipulate that professional traineeships prior to open-ended contract count for purposes of probation periods. These measures can be seen as steps towards increasing the probation period while simultaneously reducing the duration of FTCs, and hence as an incentive to hire on open-ended contracts in those cases where hiring on FTCs would have been done with a genuine aim of probation.

Another EPL aspect that renders the level of protection “high” is embedded in the redress area, whereby workers contest their dismissal in the labour courts. The court procedures and the costs associated with them are not captured by any of the existing indicators of employment protection. And yet, it is the de facto length of the procedure and especially the uncertainty associated with it that is often considered as one of the most “costly” aspects of employment protection, going considerably beyond the amount of severance pay. Ensuring that court procedures are more predictable, faster, and efficient, could be an important avenue to reducing the de facto EPL costs for the employers, without necessarily reducing worker protection. In other words, rather than the reforms of de jure EPL, further reforms may concern the de facto functioning of the labour judicial system, as well as ensuring that labour courts have enough resources – financial and personnel – to deal with cases in a timely manner. Re-examining and promoting non-state procedures that can facilitate settlement of individual labour disputes early and informally, thus limiting the need for recourse to formal mechanisms, and the associated costs, both private and public, can also be one of the avenues to pursue (Ebisui et al., 2016).

Other areas of EPL that ensure worker protection concern cornerstone principles of having to have a valid reason for dismissal and prohibiting dismissals on discriminative grounds. Further reducing the level of protection at the expense of these measures may be problematic. This is because this may infringe on fundamental principles and rights at work, such as discrimination; on the provisions of Convention 158; and on civil and constitutional rights more generally. As such, dismantling these principles may precipitate the race to the bottom in worker protection much more than it would reduce the costs of employment termination for employers. And yet, this will never allow to reach a “zero cost of dismissal” of regular contracts; while any non-zero cost will always provide incentives to use temporary contracts as long as those are widely authorized. Consequently, dismantling such measures may have adverse consequences for social justice more generally, without effectively solving the segmentation problem.

## Policy considerations<sup>21</sup>

Labour markets dysfunction cannot be explained by the EPL gap between permanent and temporary contracts alone. The actual situation seems to be rather a result of the combination of the “gap” and of other problems. For example, the flexible legislation authorizing the use of temporary contracts created certain inertia in the use of such contracts. This inertia is due to the fact that, over the years, enterprises adapted their production technologies and human resources strategies to the possibility of a wide recourse to temporary contracts. Thereby, they grew reliant on the recourse to temporary employment and integrated their use into their daily practices.

Thus, even a hypothetical total closing of the “firing costs gap” would not create enough incentives to undo the existing well-rooted practices and hence the labour market segmentation. Moreover, at the times of frequent macroeconomic fluctuations, temporary employment is also affected by employment

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21. Unless stated differently, this section is based on the discussions of a workshop on Labour Market Segmentation, held at the ILO in Geneva in April 2013; as well as ILO (2016).

opportunities in general, rather than by specific legal changes. As the economy recovers, the recourse to temporary employment may also grow, rather than decline, if some uncertainty over the stability of such recovery remains.

Given this, additional measures are necessary to decrease the segmentation and also to alleviate its negative consequences. These measures should be undertaken with the view of addressing the three aspects of segmentation: high share of temporary contracts including involuntary ones, low transitions between contracts, and poorer work quality outcomes of temporary workers. Such initiatives should be considered together with the macroeconomic policies stimulating overall job creation.

## Decreasing recourse to temporary contracts

### Limit scope for using temporary contracts

As outlined above, Portuguese laws can be considered as having quite favourable conditions for the recourse to temporary contracts. Thus, the most straightforward proposal is to review existing regulations with the aim to limit the scope for the use of temporary contracts; the maximum number of their renewals; and or the maximum authorized duration of their use. This could contribute to genuinely reaching the objective of the international standards of providing “adequate safeguards [...] against recourse to contracts of employment for a specified period of time whose aim is to avoid the protection resulting from the Convention” (Art. 2(3), C158).

The tripartite agreement for the labour law amendments reached at the time of writing this report and approved by the Parliament, takes steps in this direction. In light of the currently considered legal changes, it is important to ensure indeed that the use of temporary contracts be only authorised to replace temporarily absent permanent employees or for work that is temporary in nature or is genuinely for a specified task, as suggested by the ILO CEACR (1995). In other words, permanent work should be reserved for open-ended contracts. Such safeguard should also concern as many employees as possible. Currently proposed modification to one of the existing exceptions to this rule, i.e. limiting hiring temporary workers for a new activity of uncertain duration to businesses with fewer than 250 workers (down from 750) means that, still, the vast majority of businesses will maintain this right.

### Ensure compliance

It is also very important to ensure compliance with these regulations and enforce them, ensuring that temporary contracts are genuinely used only for temporary tasks. Having modern adequate system of monitoring the abuse of FTCs and training labour inspectors to discern such genuine use is key in this regard. It may also be envisaged to create mechanisms for labour inspectors to judge the legitimacy of FTCs and grant them powers to immediately convert abusive FTCs into open-ended contracts. Another possible measure is to improve communication between labour inspectorate, tax authorities and social security (unemployment insurance) with the aim to verify whether FTCs are lawfully applied to those workers who identify themselves as long-term unemployed. For this, it is important that those entities have all the means and resources needed to effectuate such actions. The Government’s initiatives in increasing staffing and resources at the Labour Conditions Authority (ACT) and application of the recent law (42/2016) authorizing the inter-connection of data between the State Tax Authority, Social Security and ACT are welcome steps towards ensuring compliance of employment protection legislation.

### Update regularly

Regarding very short-term casual contracts, a good practice could be to re-examine them on a regular basis to verify whether their use, and the exemptions from certain protections that they embed, are still justified. This is the approach mandated by the EU Directive on part-time work, which provides that exclusion of casual workers “should be reviewed periodically to establish if the objective reasons for making them remain valid”.<sup>22</sup>

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22. Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, Annex: Framework agreement on part-time work; Clause 2(2).



## Encouraging transitions between contracts

### Tax (dis-)incentives

Enterprises may be encouraged to convert temporary contracts into permanent ones, or discouraged from the use of temporary contracts, through various tax (dis-)incentives. Such incentives and disincentives may take form of higher social security contributions paid on temporary contracts as compared to open-ended ones, reduced social security contributions in case of contracts conversion, payments to specialized unemployment benefits or educational funds in case of contract non-conversion, to name a few. Some European countries experimented with such measures in the recent past, with somewhat opposing patterns. The 2012 reforms in Spain and Italy offered financial incentives to firms to convert apprenticeship (Italy), training, release or replacement contracts into open-ended contracts by offering employers reductions of social security contributions. In France, a bill transposing the outcomes of a national inter-occupational agreement (2013) into the Labour Code in 2013, opened the possibility for social partners to agree on both financial disincentives to offer short-lasting fixed-term contracts and financial incentives to offer open-ended contracts. Care has to be exercised, however, when adopting tax incentives for employment on permanent contracts, as there is a risk that the workers benefitting from receiving permanent contracts under such incentives are the ones who would have obtained permanent contracts in any case, leaving most vulnerable workers unaffected. At the same time, a potential risk of the tax disincentives to use very short-term contracts is that the duration of fixed-term contracts will be increased only marginally, but their effective conversion into the open-ended contracts may not necessarily be affected.

### Invest in skills of temporary workers and lifelong education

To ensure competitiveness and employability in the times of rapid scientific and technological innovation, more effort should be dedicated to provide continuing education, on-the-job training, and integrate education with workplace learning. Incentives should be set to stimulate investments by employers into job-specific and sector-specific most up-to-date technologically advanced skills regardless of contractual status, and of temporary workers specifically. This would motivate employers to retain temporary workers who received training, in order to strengthen firms' competitive edge.

### Encourage genuine collective responses

Legislative changes can address shortfalls or gaps in existing laws, but another important and complementary, regulatory tool is collective agreements. One of the explicit priorities for unions can be negotiation of the regularization of employment, or agreeing on a time limit after which workers are no longer considered as temporary and become regular employees. Such negotiations can be done on a case-by-case basis, but also on the sectoral level. Looking at practices of other countries, demands for regularization and continuity of employment have been particularly successful when there is sufficient evidence to suggest that temporary workers are indeed performing the core activities of the enterprise, that they have been working sufficiently long for the same employer, that they work under the supervision and direct control of the principal employer and perform work of a permanent nature, or that they should have had a permanent contract in the first place.

### Rethink employment protection by enhancing portability of social benefits and rights accumulated during working life

Proposals to achieve this include creating an Austria-type model, in which severance payments are replaced by individual severance accounts, to which both employers and employees contribute on a monthly basis. Implementation of such proposals would entail an across-the-board reform of severance payment and unemployment benefits legislation, and a creation of a pillar-based system instead. A step towards this direction has been already taken with the creation of two dismissal funds in October 2013,<sup>23</sup> but can be further advanced, to ensure that worker contributions genuinely represent

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23. For a discussion, see ILO, 2014.



deterred payments that belong to workers; can be claimed in case of unemployment or in the absence of thereof, for example upon retirement; and are portable across employers. Such reforms, however, are not void of certain risks. Creation of individual severance accounts may increase labour costs and require re-arranging of all employers' contributions, an exercise that is especially difficult during macroeconomic recessions. In addition, at a time of a recession, the existence of individual severance accounts may provide strong incentives for collective dismissals and may even have inflationary side-effects. Thus, a careful anti-recession design would be needed, and would probably have to allow for the existence of a traditional, albeit relatively small, severance pay component.

## Alleviating the negative consequences of labour market segmentation

### Ensure equal working conditions through laws concerning working conditions and legal practice

As has been shown, workers in temporary employment often face worse working conditions as compared to permanent workers. It is thus important to extend to workers in temporary jobs protections that are enjoyed by regular workers. Following the EU Directive 1999/70/EC on fixed-term work, which sets out a general principle of non-discrimination for fixed-term workers, Portugal guarantees workers in temporary contracts the same treatment as workers in permanent contracts (Article 146(1) of the Labour Code). However, greater efforts are needed to ensure enforcement of existing regulations, through better labour inspection, but also through effective enforcement of this principle by courts and adjudicating bodies. Attention needs to be paid not only to equal remuneration for the work of equal value, but also to the equal provision of training, including on occupational safety and health, as well as general physical working conditions. Given the over-representation of young people among temporary workers, such measures are particularly important for combating discrimination at the workplace and in general, as well as providing equal chances to workers, enhancing competitiveness and productivity. In addition, they can prevent abuses in these arrangements by mitigating incentives for their inappropriate use as simply a cheaper alternative to standard employment, as well as ensuring a level playing field, based on fair and sound competition between enterprises.

### Address overall labour costs gaps

When making hiring decisions, employers take into account many costs, not just employment termination costs. For example, the popularity of very short temporary employment is further driven by lower social security contributions and lower administrative costs associated with it. Also, it is easier to avoid issues of maternity and sick leave in case of short temporary contracts as compared to permanent contracts. Care should be exercised to ensure that temporary contracts are not used exclusively with the objective to circumvent workers' rights concerning these social protections.

### Strengthen social protection of temporary workers

In Portugal, in order to be able to claim maternity benefits, the employee must: (1) have paid social security contributions for a minimum period of six calendar months, whether consecutive or aggregate, by the date when they are unable to work, and (2) have paid social security contributions for the quarter immediately preceding the month in which they cease work due to the birth of a child.<sup>24</sup> Regarding sickness benefits, employees must be gainfully employed (shown through registered earnings) for a total of six calendar months, whether consecutive or aggregate, prior to the date that the sickness started; the month in which the sickness occurred may be counted for this purpose, provided that earnings were registered. Furthermore, employees must have registered earnings for at least twelve days of work in the four months immediately before the month preceding the onset

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24. Portuguese Social Security website, on maternity benefits. Available at: <http://www.seg-social.pt/subsidio-parental> (in Portuguese). Accessed: April 2018.

of incapacity (Institute of Social Security, 2018).<sup>25</sup> Although in order to access maternity and sickness benefits, the same requisites apply for permanent and temporary employees, the six-month employment requirement might be more difficult to be fulfilled by temporary employees – making it more difficult for them to access the benefits in practice. In this regard, lowering contribution thresholds, allowing more flexibility with regard to the contributions required to qualify for benefits and interruptions in contribution periods, and enhancing portability of entitlements between different social security schemes and employment statuses may be avenues to explore.

## Indirect measures

### Greater role to collective bargaining

Temporary workers are usually less unionized than regular workers, either because they change work too often, or because they are afraid their contracts will not be renewed if they join unions. Conversely, unions also often face difficulty in organizing and representing temporary workers. In this regard, it is important that the general collective bargaining coverage remains sufficiently high. In Portugal, during the economic crisis of 2008–13, collective bargaining coverage by renewed and new agreements fell, because in that period, the revision of collective agreements dropped and the number of workers encompassed by those agreements decreased. Maintaining and improving the general coverage, and at the same time building the capacity of unions to organize temporary workers and ensure their effective representation in collective bargaining should be seriously examined as a tool to protect temporary workers. Equally important is the level at which bargaining takes place – whether at the enterprise, sector or national level – as it is directly related to the coverage of collective bargaining agreements. In contrast to enterprise-negotiated agreements, collective agreements reached through multi-employer bargaining are usually more easily extended to all employers (and workers), including temporary workers who are not members of the organization that negotiated the agreement. More inclusive bargaining systems, as well as administrative extensions of collective agreements reached through multi-employer bargaining, have positive implications for wage equalization, the compression of wage structures, and reduction of the gender pay gap, and can lead to an overall reduction of wage inequality between countries. All of these outcomes are of direct relevance to temporary workers (Blau and Kahn, 2003; Visser, Hayter and Gammarano, 2015). The inclusion of temporary workers into collective agreements can also be an explicit policy goal in itself, with greater consideration given to the proportion of temporary workers when assessing how representative the parties were. It may also be worthwhile examining to what extent existing collective agreements in some sectors can be extended to other sectors with particularly large shares temporary workers.

### Enhance internal, rather than external flexibility

Enterprises should be offered a wider menu of adjustment variables, concerning the possibilities of not only external, but also internal adjustment, so that the high volatility in employment and wages (one of the most negative side results of the segmentation) is mitigated. Adjustments in working hours is one such area that is examined in the second part of this chapter.

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25. Sickness benefits – a practical guide (Guia prático, subsidio de doença, Instituto da Segurança Social), pp. 6-7. Available at: [http://www.seg-social.pt/documents/10152/24095/5001\\_subsidio\\_doenca/7eefa38c-22f9-4552-b291-f97b99d39c0c](http://www.seg-social.pt/documents/10152/24095/5001_subsidio_doenca/7eefa38c-22f9-4552-b291-f97b99d39c0c) (in Portuguese). See also: Portuguese Social Security website, on sickness benefits. Available at: <http://www.seg-social.pt/subsidio-de-doenca> (in Portuguese). Accessed: April 2018.

# 3b Working time and rest periods in Portugal

## KEY FINDINGS

Regulatory changes on working hours, rest days, and public holidays can have a profound impact on the working and employment conditions of workers.

Available data indicate that Portugal was already among EU countries with the longest working hours. After amendments to the Labour Code allowed for greater flexibility on working hours and limited leave days and public holidays, Portugal's working hours became even longer.

Fewer leave days, public holidays, and the lowering of overtime premium pay rates mean that workers may be working longer for less money.

Recent changes to return some of these days will limit this impact. However, future consideration of the rate of the overtime premium wage should be done in tandem with wage-setting measures as it can affect overall worker remuneration.

Moreover, concerns exist about the application of time banking systems in the workplace.

Addressing working time and rest periods will be important in any future regulatory evaluations and such measures should take into account worker well-being as well as the impact on workers' family and community life. ■

Portuguese labour law has developed on several different levels and over the course of many years. The regulation of the labour market is based on constitutional protections, a codification of labour rights in the Labour Code, and collective bargaining as well as enterprise-level regulation. Since the turn of the century, and in particular after the economic crisis of 2008, there was pressure to amend labour legislation mainly to loosen labour regulations on a number of key issues affecting workers, employers and industrial relations in Portugal.

One notable area of debate in this process involved the regulation of working hours, working time arrangements, and rest periods. The central feature of this type of regulation is the amount of flexibility such provisions will allow. The stringency of the provisions can determine how they are applied, but on some levels the interpretation of such provisions are often based on how workers and employers view "flexibility". This has been at the core of the debate on these issues internationally and notable in the legal amendments that took place since 2008 in Portugal.

### 3.4 Principles to consider when addressing working time and rest in law and policy

BOX

The design of working hours and rest period laws and policies are not new. For example, the first ILO international labour standard was on working hours and was set in 1919. It was based on national discussions regarding limitations to working hours within countries [(Hours of Work (Industry) Convention, 1919 (No. 1)]. Since then, working hours and rest periods have been a key tool for national policy-makers and social actors around the world in the development of regulation and policies to address working conditions in labour markets.

In 2011, the ILO Meeting of Experts identified a number of important principles when considering laws and policies regarding working hours and rest. They include: (i) the need for daily, weekly and maybe annual limits on normal working hours; (ii) maintaining the exceptional nature of overtime, the limitation of the number of additional hours and the adoption of compensatory measures; (iii) the principle of a regular and uninterrupted weekly rest that allows workers to participate fully in family and social life; (iv) the right to paid annual leave, ensuring workers and their families a sufficient rest period, if possible uninterrupted, taken at the desired time and which workers cannot renounce in exchange for financial compensation; (v) the recognition of the atypical nature of night work and its potentially adverse impact on workers' health, warranting special protection; (vi) the promotion of productive and freely chosen part-time work, with conditions equivalent to those of full-time employment, including maternity protection, thus ensuring equality of opportunity and treatment for the workers concerned; (vii) taking into account the needs of enterprises, especially as regards the introduction of more flexible forms of working-time arrangements; (viii) the recognition of the importance of collective bargaining and of the need for full and genuine consultations with the representative organizations of employers and workers on working-time regulation; and (ix) the need for an effective inspection system or other enforcement measures to prevent and punish any abusive practices (ILO, 2011).

Source: ILO, 2011

## Legal provisions on working time and rest period in recent decades

The regulation of labour markets is important to ensure the benefits of production are shared by all in society as well as to ensure the health and well-being of the workforce. Regulatory measures can include national laws, policies and institutional measures such as collective bargaining. Generally speaking, most national policy-makers seek to develop laws and policies that achieve balance between worker and employer needs.

However, recently national policy-makers in different parts of the world have been under significant domestic and international pressure to substantially deregulate their labour market to spur business investment. The problem with this is that it can lead to a “race to the bottom” between countries as they compete for investment by pursuing policies and deregulatory measures that can lead to poor working and employment conditions (Stone, 1995; Hepple, 2005; Deakin, 2006). Regulatory measures at local, national, and international levels are needed to limit the impact of these pressures.

Consideration should also be extended to the regulation of working time arrangements (e.g. flexitime, compressed work weeks, hours averaging, work sharing, etc.) in order to ensure they effectively meet the needs of both workers and employers.

Labour rights are regulated on a number of different levels in Portugal. Thus policy-makers' attempts to amend labour legislation must actively take into account the implications at different levels of regulation as well as the needs of workers and employers. Each legal level has played an important role in this process, especially after the global economic crisis in 2008 and the resulting legal conditions established by the 2011 MoU. Policy-makers will need to continue to address each level in the coming years.

### 3.5 Types of regulation of working hours and rest periods

#### BOX

The regulation of labour markets can be addressed at a variety of levels. At the national level, legal obligations may exist through international commitments. These may derive from international labour standards (i.e. ILO conventions, recommendations, or protocols) or participation in regional agreements including such obligations (e.g. the European Union and EU laws, such as regulations, directives and recommendations).

Then there is national level regulation in the form of national constitutional protections and national legislation (e.g. constitutional provisions, national labour law, and judicial rulings may also apply). Below this level, state, provincial or national regional legislation can also regulate labour markets.

Collective bargaining agreements (CBA) can be a form of regulation operating on different levels depending on the level the agreement at which it was negotiated. CBAs can be negotiated at national level, by sector, or at enterprise level or some combination of these. Finally, regulation can be done at enterprise level, where legislation created at national, provincial, or sectoral level, as well as plant-level collective agreements, are implemented.

Labour regulation on working hours and rest should address basic issues including: normal daily and weekly working hours; overtime working hours (in order to establish an upper limit on overtime hours); daily rest breaks in the workplace (e.g. meal breaks, etc.); daily rest (period between two working days); weekly rest (e.g. weekends); and annual leave days.

At the top level of the Portuguese labour law system is the Portuguese Constitution.<sup>26</sup> While national constitutions in many countries have rights that can be applied to labour law, the Portuguese Constitution includes specific provisions on a number of key worker rights. This broad catalogue of worker rights has contributed to what has been suggested as protective labour law in Portugal (Palma Ramalho, 2013). With regard to rest periods, Article 59 of the Portuguese Constitution stipulates that “Regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions, every worker has the right...To rest and leisure time, a maximum limit on the working day, a weekly rest period and periodic paid holidays...”<sup>27</sup> Article 59 of the Portuguese Constitution also addresses working hours by specifically requiring the “state to ensure the working, remuneratory and rest-related conditions to which workers are entitled, particularly... setting national limits on working hours.”<sup>28</sup>

As labour rights are established in the Portuguese Constitution, court cases have been filed in the Constitutional Court of Portugal to address changes to labour legislation in the past. In this context, the Court has received challenges to amendments to the Portuguese Labour Code, including those proposed by EC, ECB and IMF in the MoU of 2011 regarding overtime and “bridge days” (Monteiro Fernandes, 2014).<sup>29</sup>

Below the constitutional level is the Labour Code of Portugal, which codifies all of the labour legislation of the country. Prior to the codification of the labour laws in the early 2000s, worker rights were ensured by a number of Acts in law (Palma Ramalho, 2013). Codification of the first labour code took place in 2003.<sup>30</sup> However, the legislative work continued with discussions with the social actors who agreed that certain types of working time flexibility could be incorporated into Portuguese labour legislation. The 2003 Code was amended to address these and other legislative issues by the Labour Code of 2009.<sup>31</sup>

26. The Constitution of the Portuguese Republic was established in 1976 and amended in 2005 (7th Revision).

27. TITLE III (Economic, social and cultural rights and duties) CHAPTER I (Economic rights and duties) Article 59(1)(d) (Workers' Rights) of the Portuguese Constitution, amended 2005.

28. TITLE III (Economic, social and cultural rights and duties) CHAPTER I (Economic rights and duties) Article 59(2)(b) (Workers' Rights) of the Portuguese Constitution, amended 2005.

29. Also see Chapter 4 (entitled Labour Market and Education) of the Memorandum of Understanding on Specific Economic Policy Conditionality (17 May 2011), which detailed the legislative programme intended to fundamentally amend Portuguese Labour Law placed upon the Portuguese Government by the EC, ECB, and IMF.

30. Labour Code of 2003, approved by Law No. 99/2003 of 27 August 2003.

31. Labour Code of 2009, approved by Law No. 7/2009 of 12 February 2009.

### 3.6 Getting to the Labour Code of 2009

#### BOX

The Labour Code of 2009\* incorporated a number of rights regarding working hours and rest periods, but amended some provisions from the 2003 Labour Code. Some of these key issues addressed in the 2009 Labour Code concerning the duration and organization of working time include:

- The rules regarding the definition of working time, interruptions and intervals considered as working time and rest period; the limits of normal daily and weekly work periods are maintained (from 2003 LC to 2009 LC); the adaptability of working time is maintained, either by stipulation in the individual contract or by collective regulation of working time (from 2003 LC to 2009 LC).
- Collective agreements can establish normal working hours that must be accepted by at least 75 per cent of the employees in the team, section or economic unit. This type of agreement is not applicable to a worker if that worker is covered by a collective agreement that addresses this in a different manner.
- Collective agreements include an hours-banking system in which working hours can be increased up to 4 hours per day and reach 60 hours per week, with a limit of 200 hours per year. Compensation for this work can be made by reducing working time, payment in cash, or both. Time-banking arrangements could already be applied at plant level, but only through collective bargaining (including through a collective agreement at plant level, i.e. agreement between one union and one employer for a company or plant).
- The possibility of a compressed work week where the normal daily working day can be increased up to 12 hours, concentrated in three or four separate consecutive days and the duration of the normal working hours are to be respected on average for a period of up to 45 days.
- Rules on exemption of working hours, limits on maximum working hours for night workers; ceilings for additional work; and minimum duration of daily, weekly, and annual rest periods were maintained from 2003 LC to 2009 LC.

See Proposta de Lei N.º 216/X.

\* SECTION II (Duration and organization of working time) SUBSECTION I (General concepts and principles on the duration and organization of working time) of Labour Code of 2009, approved by Law No. 7/2009 of 12 February 2009; as amended by Laws No. 105/2009, of 14 September, 53/2011, of 14 October, 23/2012, of 25 June, 47/2012, 29 August, 69/2013, 30 August, and 27/2014, of 8 May is the full title of the current code.

Collective bargaining agreements also play a role in the regulation of working and employment conditions in Portugal. This is based in part on protections of industrial relations and collective bargaining included in the Portuguese Constitution as well those addressed in the Labour Code of 2009.<sup>32</sup> Portugal also has a long tradition of sectoral and professional-level collective bargaining and collective bargaining agreements. In practice, these agreements go beyond the “affiliation principle”, meaning that law allows the application of these agreements to be extended to workers and employers not affiliated with the trade unions or employer associations that negotiated the agreement (Palma Ramalho, 2013). Many of these agreements normally include sections on working hours, working time arrangements, rest periods and holidays which address specificities of particular sectors of the economy and groups of workers employed in firms in those sectors. The agreements can also influence the development and implementation of enterprise regulations on these issues and how they are applied in practice within the workplace.

International labour law also plays a role in the formulation of labour law and legal interpretation in Portugal. The first source is based on ratifications of international labour standards (ILO Conventions).

32. TITLE III (Economic, social and cultural rights and duties), CHAPTER I (Economic rights and duties) of the Constitution of the Portuguese Republic of 2005; SUBTITLE II (Instruments of collective labour regulation), CHAPTER I (General principles relating to collective labour regulation instruments) of Labour Code of 2009, approved by Law No. 7/2009 of 12 February 2009.

At the time of writing, Portugal has ratified 84 conventions and one protocol, including several on working hours and rest.<sup>33</sup>

The second source is based on obligations to implement European Union law. EU law is based on regulations, directives and recommendations that create a variety of legal obligations on member states to implement agreed measures. These include directives on working hours that have played an important role in the recent development of Portuguese labour law.<sup>34</sup> For example, the EU Working Time Directive contains a number of key working hour and rest principles that member states must implement in national legislation including: a limit to weekly working hours, which must not exceed 48 hours on average, including any overtime; a minimum daily rest period of 11 consecutive hours in every 24; a rest break during working hours if the worker is on duty for longer than six hours; a minimum weekly rest period of 24 uninterrupted hours for each seven-day period in addition to the 11 hours of daily rest; and paid annual leave of at least four weeks per year.<sup>35</sup> These international standards can also play a role as to how national courts might interpret changes to labour legislation in Portugal.<sup>36</sup>

## ■ Amending Portuguese labour law post-crisis

Modifications to the Portuguese Labour Code in 2011 and 2012 were linked most conclusively with two agreements (Monteiro Fernandes, 2014). The first was Memorandum of Understanding on Specific Economic Policy Conditionality (2011 MoU). The second was the Commitment to Growth, Competitiveness, and Employment, a social dialogue agreement between the Government, employer confederations, and the UGT trade union<sup>37</sup> (2012 Agreement). These provisions amended various portions of the Labour Code, including specific legal provisions on working time and rest.

The 2011 MoU detailed the policy changes and amendments to Portuguese labour law put forth by the signatory institutions and agreed by the Portuguese Government. The aim was to: "...carry out reforms in working time arrangements with a view to contain employment fluctuations over the cycle, better accommodate differences in work patterns across sectors and firms, and enhance firms' competitiveness."<sup>38</sup> Specific provisions targeted included: the expansion of flexible working time arrangements by extending the use of (working) time banking to individual agreements between a worker and employer or applied by the employer to a team, section or unit if 75 per cent of the workers of such team, section or unit had accepted it;<sup>39</sup> the reduction of overtime pay by 50 per cent; and elimination of compensatory rest periods for overtime hours.<sup>40</sup>

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33. The ratifications on working hours and rest include: ILO Hours of Work (Industry) Convention, 1919 (No. 1); ILO Weekly Rest (Industry) Convention, 1921 (No. 14); ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); ILO Night Work Convention, 1990 (No. 171); and Part-Time Work Convention, 1994 (No. 175). Other standards ratified by Portugal include wages, freedom of association, and collective bargaining, which are addressed in other parts of this report.

34. These include directives on working time [Working Time Directive (2003/88/EC)] and part-time work [Directive 97/81/EC concerning the Framework Agreement on Part-Time work concluded by UNICE, CEEP and the ETUC].

35. Working Time Directive (2003/88/EC).

36. They can also influence how international bodies view implementation of international legal obligations at national level, such as the ILO Committee of Experts on the Application of International Labour Standards, and how the European Court of Justice might interpret implementation of EU labour regulations in Portugal if presented with cases.

37. It should be noted that the UGT signed this agreement in difficult economic circumstances and did so to avoid more significant losses for workers. The UGT viewed this agreement as a bi-tripartite commitment to the effective resumption of collective bargaining, essential to ensuring the reconciliation of work life with family life and to help find negotiated solutions for demands for future labour market flexibility. It also sought to strengthen the political and social dialogue that contributed to effective mobilization for the exit of the crisis with economic and social cohesion. For further information see [https://www.ugt.pt/UGT\\_18\\_01\\_2012.pdf](https://www.ugt.pt/UGT_18_01_2012.pdf)

38. Chapter 4, Section 4.6 of the Memorandum of Understanding on Specific Economic Policy Conditionality (17 May 2011), p. 23.

39. Article 208 of Labour Code of 2009, introduced through Law No. 23/2012 of 25 June 2012. As noted above, time-banking arrangements were introduced by the 2009 Labour Code and could already be applied at plant level, but only through collective bargaining (See art. 208 read with art. 2, para. 3 c) of Law 7/2009). In 2012, articles 208-A and 208-B were introduced to allow for time-banking schemes to be agreed individually (employer and worker) or applied by the employer to a team, section or unit if 75 per cent of the workers of such team, section or unit had accepted it.

40. Articles 229, 230, 268, and 269 of the Labour Code of 2009, introduced through Law No. 23/2012 of 25 June 2012.



### 3.7 What is working “time banking” and its application in Portugal?

BOX

Time-saving account arrangements (time banking) permit workers to build up “credits” or to accumulate “debits” in hours worked, up to a maximum amount; the periods over which the credits or debits are calculated are much longer than with flexi-time, ranging from several months to a year or even longer. The rules of the specific time-saving-account arrangement determine how and when the “banked” hours accumulated in the account can be spent. In general, in the case of shorter term working-time accounts, hours worked which are above contractually agreed hours can be taken as paid time off.

In Portugal time banking existed as part of collective bargaining, but Law 23/2012 of 25 June 2012 extended this so that “time banking” agreements could be negotiated between an individual worker and employer. The extension to individual agreements between workers and employers was contentious and consideration has been extended to limit its application to use in collective agreements.

See *Working time in the twenty-first century*, Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements on the definition of time banking. Also see the Labour Code of Portugal for national legislation on this topic.

As mentioned above, the second agreement, the Commitment to Growth, Competitiveness, and Employment, was negotiated by social partners in Portugal in 2012. The aim of this agreement, like the 2011 MoU, was to introduce greater flexibility to labour regulation. The agreement reinforced some of the amendments made in the Labour Code of 2009 (including those on working time and rest periods) based on the 2011 MoU, but proposed additional changes. These included the elimination of four national holidays<sup>41</sup> and the elimination of extra annual holiday time (referred to as “bridge days”).<sup>42</sup>

As discussed elsewhere, the overall aim of these legal amendments, particularly those set forth by the MoU, was to increase flexibility in the labour market in Portugal.<sup>43</sup> They included amendments to working time and rest provisions in the Labour Code and an amendment extending time banking to individual agreements. As it had previously only been available in the labour market through collective bargaining agreements, some perceived this as undermining organized labour (Monteiro Fernandes, 2014). Another working-time amendment reduced the rates of overtime premium pay (from 50 per cent per overtime hour to 25 per cent in the first hour to 37.5 per cent for every additional hour during a business day; and 50 per cent on weekly rest day or if it prevented enjoyment of the weekly rest day).

Changes to rest period provisions in the Labour Code included the right to compensatory rest, which left it to the employer’s discretion as to whether to provide overtime pay or compensatory rest for overtime hours. In addition, “bridge days” were removed from the Labour Code, which meant that if the employer chose to close on what used to be a “bridge day”, the leave day could be deducted from a worker’s annual leave. Furthermore, four mandatory public holidays were eliminated from the annual calendar. Researchers have suggested that some of these legal changes amounted to an increase working time, resulting in more work for the same money (Monteiro Fernandes, 2014; Palma Ramalho, 2013).<sup>44</sup>

The proposed amendments introduced in Law No. 23/2012 (i.e. those based on the aforementioned agreements) were challenged in the Constitutional Court.<sup>45</sup> The Court determined that though some

41. Revision of Article 234, No. 1 of the Labour Code; introduced through Law No. 23/2012 of 25 June 2012.

42. Revision of Article 238, No. 1 of the Labour Code; introduced through Law No. 23/2012 of 25 June 2012. “Bridge days” are defined as a normal business day between two holidays, or between a holiday and the weekend. Traditionally the “bridges” were offered by companies to employees as free time, with or without compensation (Monteiro Fernandes, 2014).

43. Flexibility regarding working hours and rest are generally interpreted differently by workers and employers in many countries. For employers, flexibility is about workers being available when an employer needs them to work. For workers, flexibility is the ability to have an input in determining their working hours and rest periods. While these are often at odds, particularly in the regulatory context, negotiations on working hours and rest can lead to conclusions that are beneficial to both parties.

44. See Chapter 5 for further discussion of wage setting and wage levels during this period.

45. Judgement of the Constitutional Court No. 602/2013 of 20 September 2013. Further details on the implications for future agreements will be addressed in the collective bargaining chapter of this study.

of the proposed legislative amendments found in Law No. 23/2012 were in conformity with the Constitution, some needed to be reconsidered. The Court found that the changes introduced on compensatory time off for overtime work and the elimination of “bridge days” were, per se, in compliance with the Constitution.<sup>46</sup> However, the Court emphasized that these amendments could not be imposed on collective agreements in force without breaching the fundamental right to collective bargaining and therefore those clauses that were more favourable than the amended Labour Code could not be declared void and remained in force.<sup>47</sup>

It is also notable that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recently commented on the application of international labour standards on working time and rest in Portugal. This may have influenced government and judicial decisions on the amendments made to the Labour Code during this period. For example, in 2013 the CEACR indicated that with regard to the application of ILO Convention No. 132 in Portugal, unused leave can only be replaced by cash compensation in the case of termination of employment.<sup>48</sup> Furthermore, in 2015 the CEACR expressed its concerns regarding changes to the Portuguese legal provisions on hours averaging, including compressed workweeks and hours averaging schemes. The CEACR stated in that case that according to ILO Convention No. 1 (ratified by Portugal), hours of work were only to be averaged in exceptional cases where the eight-hour day and 48-hour week could not be applied, and only by collective agreement given the force of regulations (CEACR, 2015).<sup>49</sup> Also in 2015, the CEACR requested that the Portuguese Government, as part of its obligations relating to ILO Convention No. 106, ensure that compensatory rest is compulsorily granted in all cases of exemptions, whether permanent or temporary, from the normal weekly rest scheme of 24 consecutive hours (CEACR, 2015).<sup>50</sup>

Some of these legal provisions have recently been changed or reverted back to their pre-crisis formulation. For example, the four public holidays that had been abolished in 2012 have been reintroduced back into the law in 2016.<sup>51</sup> Most recently, the Portuguese Government has proposed reverting back to the original application of time banking, allowing it as part of collective bargaining rather than individual agreements between workers and employers (Government of Portugal, 2018). Thus, the current status of the provisions on working hours and rest in the Labour Code can be summed up as follows: some of the recommended provisions have remained, some have been challenged in the Constitutional Court with mixed results, and others have reverted by to their pre-crisis status.

## Working hours in practice and perceptions

Working time and rest periods are recurrent topics of policy and legal debate because the nature of work, its content, the conditions under which it is performed, and continuous changes in the labour markets (Eurofound, 2017c). Any changes can have significant impacts on the duration of working hours and the manner in which working hours are arranged. They can also impact on when rest periods are available to workers.

Changes in national laws and policies can have a profound impact the depth and breadth of how working hours and rest periods are organized in practice. However, the impacts may not be immediately visible, and it may require some time to determine the extent to which such changes have impacted workers and employers in practice. It is therefore important to consider the quantitative and qualitative impact of these legal changes.

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46. Judgement of the Constitutional Court No. 602/2013 of 20 September 2013. It should be noted that the Court did not view the changes to working hours and rest as unconstitutional in this context, but did challenge them in the context of collective bargaining agreements (collective bargaining enjoying constitutional protections). For further information on collective bargaining in this period, see the chapter on collective bargaining and industrial relations in this report.

47. Judgement of the Constitutional Court No. 602/2013 of 20 September 2013.

48. Holidays with Pay Convention (Revised), 1970 (No. 132) ([http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3146430:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3146430:NO))

49. Hours of Work (Industry) Convention, 1919 (No. 1) ([http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3179739:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3179739:NO))

50. Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) ([http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3158771:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3158771:NO))

51. Law No. 8/2016 of 1 April 2016.

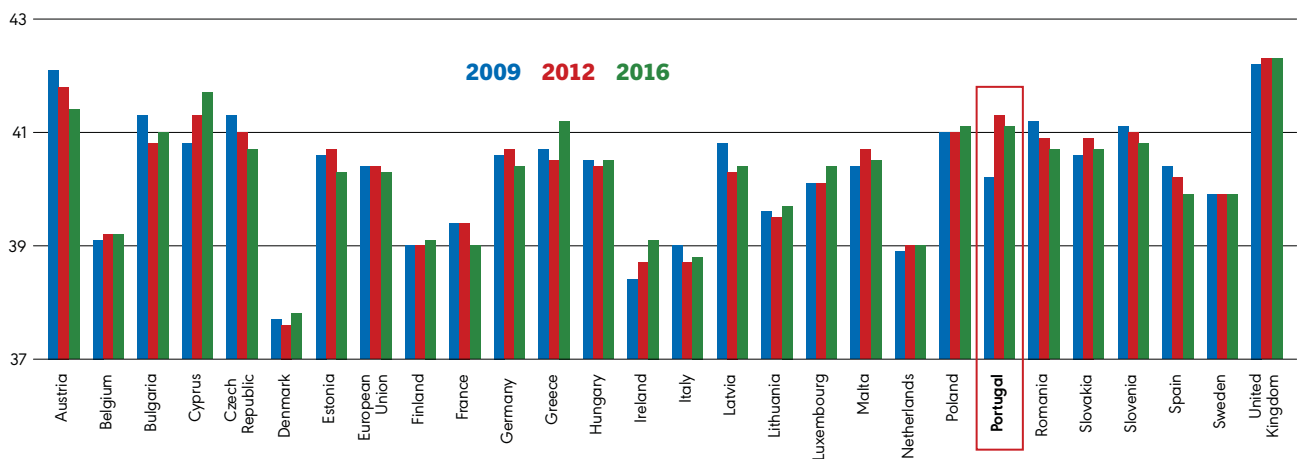
## Average number of working hours per week

In this context it is important to consider developments in actual working hours per week over the last decade. In many industrialized countries, it has varied, as can be observed in average working hours for workers in the member states of the European Union in 2009, 2012 and 2016 (see figure 3.9).

While a worker in the EU worked 40.3 hours per week on average during a normal working week in this period, the average weekly working hours in Portugal rose from 40 hours per week in 2009 to 41 hours per week in 2016. Eurostat data also indicates that Portugal is in the quarter of member states with the highest average number of weekly working hours in this period.<sup>52</sup> It also suggests that from 2009 to 2016, Portugal had one of the largest increases in average weekly working hours of any EU member state. It is notable that the rise in working hours appears to change within the same time period legal amendments that were introduced in Portugal from 2011.

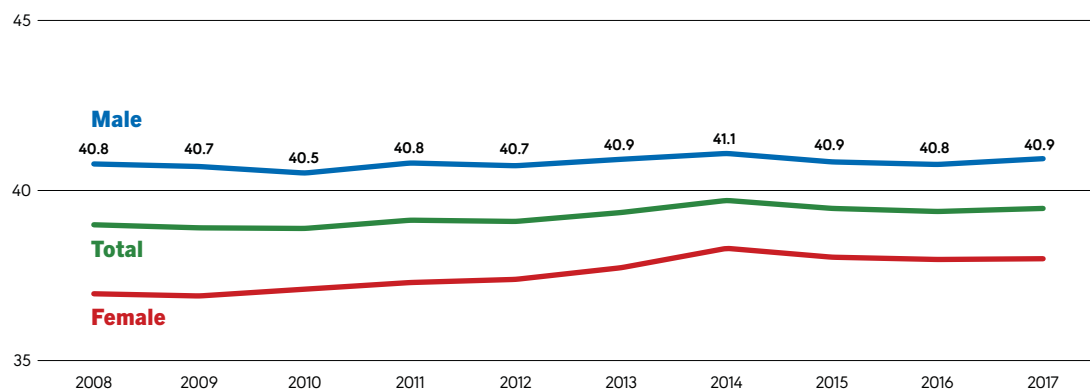
Portuguese data indicates that the average number of usual weekly hours appear to be going up overall, with the most pronounced increase in 2014. While the hours for men are higher than for women, the hours rise for both men and women at approximately the same time and have remained higher than in 2009 (figure 3.10). A difference in working hours between men and women remains, but the two rose in unison.

**FIGURE 3.9** Average number of weekly hours in main job in the EU, 2009, 2012, and 2016



Source: Eurostat, 2017.

**FIGURE 3.10** Average number of usual weekly working hours in Portugal, 2008–17



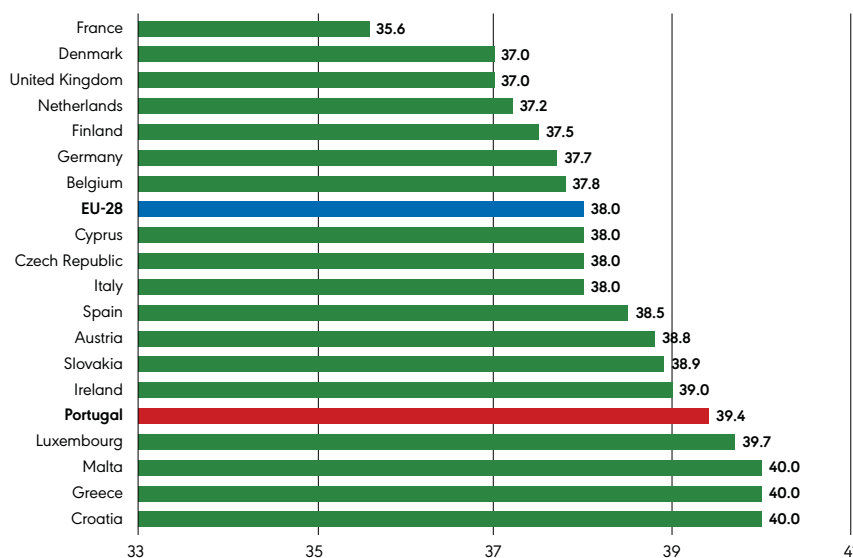
Source: LFS 2017.

52. It should be noted that three of the six countries with the highest number of average weekly working hours are southern member states of the EU (Greece, Cyprus, and Portugal) in this period.

## Collectively bargained working hours

Collective bargaining plays an important role in determining working hour duration and working time arrangements in many countries. This is particularly the case in EU member states, notably in Western and Northern Europe. Collective bargaining also plays a role in determining working hours for many workers in Portugal. Recent research indicates that on average collectively bargained normal weekly working hours in Portugal are 39.4 hours per week (Eurofound, 2017b; see below). This average, based on averaging of all available sector agreements in each EU member state, is on the higher side when compared with other EU member states (figure 3.11). Average collectively agreed normal working hours in the chemical, metalworking, and retail sectors in Portugal are approximately 40 hours per week, which would appear to contribute to the higher end of the calculation and are part of a group with the highest collectively agreed working hours in the respective sectors among EU member countries (Eurofound, 2017b). The lower end of collectively bargained normal working hours in Portugal are in the banking and public administration sectors (both reporting 35 hours per week; Eurofound, 2017b).<sup>53</sup>

**FIGURE 3.11** Average collectively agreed normal working hours, 2015–16



Source: Eurofound, *Developments in Working Time 2015–16* (2017b), p. 12.

## Overtime working hours in Portugal

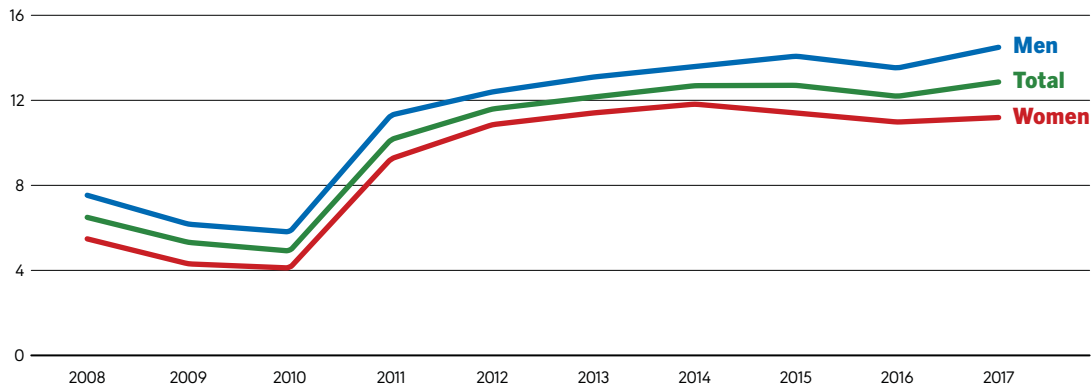
Overtime, defined as all hours worked in excess of the normal working hours,<sup>54</sup> should generally be viewed by policy-makers as a temporary exception to normal working hours to help enterprises cope with exceptional workloads (ILO, 2011). In commercial establishments overtime can commonly be authorized in order to prevent the loss of perishable goods, avoid endangering the technical results of their work or allow for special work such as stocktaking. Often overtime is compensated with premium payments, time off in lieu for overtime hours worked, or some mix of both and may be based upon national legislation, collective bargaining agreements or sector/enterprise practices.<sup>55</sup>

53. In 2013, normal working hours were increased from 35 to 40 hours per week in the public sector as part of measures to cut costs (Eurofound, 2017b). However, in 2016, the 35-hour week was reinstated in Portugal.

54. For example, the European Working Time Directive limits normal full-time working hours to eight hours per day and 48 hours per week, but does allow exceptions for overtime hours by day or week or as part of some permitted hours-averaging schemes.

55. Issues of overtime compensation are addressed in Chapter 5 of this report.

**FIGURE 3.12** Proportion of workers working overtime in Portugal



Note: Includes paid and unpaid overtime.

Source: LFS.

Overtime working hours can have mixed implications for employers and workers. For employers, it can mean that enterprises can produce more during a period of time to meet a contract or customer need. For workers, overtime compensation can be an incentive to work longer hours, which can lead to excessive working hours and fatigue,<sup>56</sup> increased risks of accidents at work, health issues for workers,<sup>57</sup> and imbalances between work and personal life (ILO, 2011). In this context, research suggests that the use of overtime hours can actually lower average productivity of a worker (Golden, 2012).<sup>58</sup> These issues with overtime may be negatively compounded for workers in the event that overtime working hours are unpredictable or involuntary.<sup>59</sup>

The proportion of workers who work overtime hours has been rising in Portugal in recent years (figure 3.12). In the period 2008–17 this proportion almost doubled for all workers (from 6.5 per cent in 2008 to 12.8 per cent in 2017), as well as for both men and women (from 7.5 per cent to 12.8 per cent for men and from 5.5 per cent to 11.2 per cent for women during the same period). It is worth noting when the rise in these proportions took place. From 2008 to 2010, there was a downward trend overall and for both men and women (overall from 5.3 per cent in 2008 to 4.9 per cent in 2010). However, since 2010, these proportions have steadily risen (overall from 4.9 per cent to 10.2 per cent in 2011, and upwards since).

The upward trend coincides with the legislative amendments made due to the 2011 MoU, which also reduced the cost of overtime premium pay. Second, it would appear to indicate that organizations sought to increase the use of overtime working hours rather than hire more workers from 2010.<sup>60</sup> Third, in spite of improving economic conditions in Portugal, the proportion of workers working overtime continues to rise. Finally, it should be noted that based on lower premium pay for overtime hours from 2011, these hours have been worked at lower overtime premium pay rates than prior to the change. This means that wage-related income may have dropped as well, especially if workers relied on overtime wages.<sup>61</sup>

56. Fatigue can be defined as the biological drive for recuperative rest, which might or might not involve a period of sleeping (Williamson et al., 2011). Fatigue may take several forms, for example sleepiness or mental, physical or muscular fatigue. If no safe recovery is possible, the result of fatigue is a decrease in performance ability, which might also lead to an adverse safety outcome (Tucker and Folkard, 2011).

57. The body of literature on the negative implications of long working hours has been growing recently. See Kivimäki et al., 2015. The association between long working hours and health is discussed by Bannai, 2014 and Berniell and Bietenbeck, 2017, among others.

58. Measured as output per worker hour.

59. Predictable overtime working hours mean workers are provided advance notice that overtime will be available to work (optimally notice of overtime working hours are provided as far in advance as possible). Voluntary overtime means that a worker can choose to work overtime hours or not without penalty or sanction (e.g. being made fired or redundant).

60. See Chapter 2 for the employment and unemployment analysis.

61. See Chapter 5 for more details.

### 3.8 Working hours and productivity: a consideration

#### BOX

Working time can be considered on a number of different dimensions. One dimension is in terms of the length of working hours (either by day or week). Another is to consider how working hours are arranged over a period of time (e.g. day, week, month and year). In addition to these dimensions, productivity and work intensity may also be considerations. In this context it would be important to take into account the optimal level of working hours beyond which an individual worker's productivity may fall due to fatigue.

While research on the link between variations in working hours and productivity is limited, developing research suggests that shorter working weeks are linked with productivity gains (White and Ghobadian, 1984). Further research suggests that working more hours may be counter-productive. One study estimated the optimal length of the working day to be around eight hours, but finds that this optimal level is dependent on the exact nature of the work, and thus varies across occupations (Dolton, P., C. Howorth, and M. Abouaziza, 2016). Other research indicates that while output rises with working hours in a linear way, once a threshold is reached output increases at a decreasing rate, and may even become negative at a certain point (Pencavel, 2015).

This raises some important points in the policy debates about extension of working hours and overtime working hours in particular. Limiting long hours or overtime hours, the payment of overtime premiums, days off in lieu of overtime hours, or a combination of these, are in place to ensure that the cost of extending working hours is not borne solely by the worker, but is considered more broadly in terms of the health, well-being, and the work-life needs of workers and managers. Some policy-makers believe that extending working hours may increase productivity, but this presents an incomplete picture. While there are gains from longer hours, they may not be consistent and can diminish over a period of time to the point of not being beneficial to the worker or the employer.

For more on this discussion, see Dolton (2017).

### Short and very short hours

An additional concern in many labour markets are workers who are working fewer hours than they would prefer. When examined in conjunction with long hours, a bifurcation of working hours between short and long hours becomes visible. Short hours are more likely to be the result of time-related underemployment, typically meaning workers who are working part time would prefer to work full time.<sup>62</sup> Research has suggested bifurcation between long and short hours may also be viewed as a distinction between income poverty and time poverty (Lee et. al., 2007). Short hours and very short hours are likely also linked to precarious contracts (e.g. fixed term, etc.) that were used in Portugal in growing numbers before 2009, and especially since the global economic crisis.<sup>63</sup>

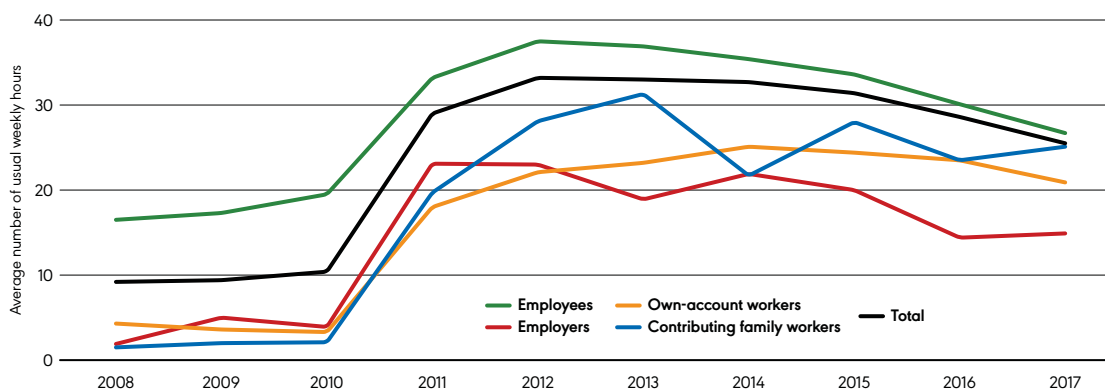
Determining the extent of the problem can be challenging due to data availability, but time-related underemployment has been captured to some extent by the Portuguese LFS. A previous period of growth in time-related underemployment began to drop in 2013, from 29 per cent to 25 per cent in 2017 (figure 3.13). However, it should be noted that while the trend can be viewed as positive (less underemployment), the overall proportion still accounts for about one-quarter of those reporting. As these hours tend to coincide with the use of many non-standard contracts (including part-time and some fixed term contracts), this may help explain why concerns remain about the use of these contracts in the Portuguese labour market.

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62. According to the 1998 resolution of the ICLS, time-related underemployment can be defined as a situation in which "the hours of work of an employed person are insufficient in relation to an alternative employment situation in which the person is willing and available to engage". Time-related underemployment can be measured directly, but this requires data not only on the number of hours worked with appropriate hour bands to identify short (or part-time) hours, but also information from workers regarding whether or not they are working such short hours voluntarily or involuntarily (ILO, 2011).

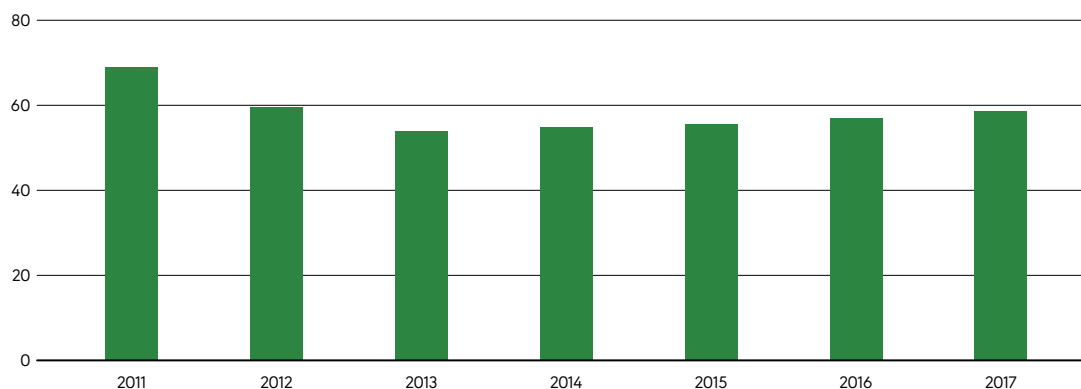
63. Non-standard employment contracts and their use in the Portuguese labour market are examined in more detail in Chapter 3A.

**FIGURE 3.13** Time-related underemployment: proportion of those working less than 35 hours per week and available to work more hours (percentage)



Source: LFS 2017.

**FIGURE 3.14** Workers in Portugal who express a willingness to find another job or change jobs (employees working part-time/looking for full-time job)



Source: LFS 2017.

According to the Portuguese Labour Force Survey, a very large percentage of part-time employees would prefer to work full time (see figure 3.14). In 2011, 68.9 per cent of employees who expressed a willingness to find or change to another job wanted to go from part-time to full-time work; by 2017, this dropped to 58.8 per cent. This would suggest that there is some improvement in options for employees working part-time hours. However, in absolute terms, almost two-thirds of employees in this category would still prefer full-time working hours.



## Technology, working time and the right to disconnect

Technology has rapidly changed how, when, and where work is now done. New information and communication technologies (e.g. mobile phones and laptops) have changed the way many workers engage with their colleagues, employers, and work. Properly implemented, these technologies can help workers maintain a work-life balance (Eurofound and ILO, 2017). However, if not managed properly, these technologies can become invasive for workers and blur the distinction between working hours and personal time. Two of the most common ways technology has affected working hours are in the form of telework and how working hours are determined for workers who are on “on call”, notably those in the “gig economy”.<sup>64</sup>

Telework can be defined as the use of internet communication technologies (ICT) for the purposes of work outside of the employer’s premises (Eurofound and ILO, 2017). This can be done through negotiated arrangements between employers and workers, either temporarily (e.g. for a day or a few days) or can be a long-term, home-based or remote form of work away from the employer’s location. However, the most common form of telework can take place at the end of the work day when a worker is away from the workplace, but still receiving and answering communications (e.g. phone calls, emails and text messages) from work. This can completely distort the boundary between workers’ working hours and rest hours, which in the long term can have negative consequences for their health and well-being.

Similar issues can affect the work-life balance of workers on non-standard contracts in the gig economy. While these contracts offer workers flexibility with regard to working hours, these hours may not always be guaranteed by the employer. These workers often must wait to be notified by their employer to find out if, when, and how long they may be working. As they may be on call and have insecure working hours, this may have negative consequences on the periods when they are not working. It means that they may experience stress in terms of when they will work and for how many hours, which can negatively affect their rest periods as they lack the discretion to determine when these periods will take place (Ghosheh, 2016).

With the rapid development of these technologies in recent years, social actors in many parts of the world have been forced to play catch up. An early example of policy action on telework was the EU Telework Agreement (see box 3.9). It was of particular importance not only for the content of the agreement, but because it was one of the first agreements put in place by the social partners themselves. However, action at national level has been limited. Portugal recently implemented legislation on telework that is based on some of the principles outlined in the EU Framework Telework Agreement. The Labour Code of Portugal now includes a specific section on addressing telework based on legal amendments that took place in 2012.<sup>65</sup> This law defines telework, who can telework, who is responsible for telework technologies, treatment of teleworkers, privacy of telecommuting workers, and participation and collective representation of telecommuting workers.<sup>66</sup>

Policy debates and legal debates on the negative impact of technology on a worker’s ability to not remain electronically connected to work have also gained some momentum in recent years. Concerns over the “right to disconnect” have begun to take place in some countries. This refers to the ability of workers to disconnect from work by not being required to engage in work-related electronic communications such as e-mails or messages during non-work hours. Research has recently commenced on these issues within the EU and elsewhere around the world. In the meantime, some EU member states have begun to take action. The French Government has sought to address this issue through legislation, while social actors in Germany have addressed this through a joint declaration on mental health (Eurofound and ILO, 2017). In Portugal, the Parliament adopted a resolution in 2017 recommending that the Government, among other issues, guarantee that rest periods are effectively enforced in situations where workers are meant to be reachable or “on call” in order to help them reconcile their work-life balance.<sup>67</sup>

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64. The “gig economy” involves companies that use software applications to create platforms that allow customers to request workers perform a task or service. Commonly known companies include Uber and Amazon Turk. Temporary workers and agency workers may also workers who are “on call”, relying on mobile phone calls or text messages to be summoned to work.

65. Law No. 23/2012 of 25 June 2012.

66. Labour Code of Portugal, Section IX, Subsection V, Articles 165-171.

67. “Diário da República” web page: <https://dre.pt/application/file/a/114290194>

### 3.9 Framework for telework

#### BOX

In 2002, a framework agreement on telework was signed by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe/the European Association of Craft, Small and Medium-Sized Enterprises (UNICE/UEAPME) and the Centre of Enterprises with Public Participation (ECPE). The agreement aimed to ensure greater security for teleworkers employed in the EU. It established a general framework at European level concerning employment conditions of teleworkers and to reconcile the need for flexibility and security shared by employers and workers.

The agreement addresses a number of fundamental issues. It grants teleworkers the same overall level of protection as workers who carry out their activities at the employer's premises. It defines telework as a form of organizing or performing work using information technology where work normally performed at the employer's premises is carried out away from those premises on a regular basis. The agreement focused on several key areas in which the specific nature of telework must be taken into account, including: the voluntary nature of teleworking, employment conditions, data protection, privacy, who is responsible for technological equipment, health and safety, organization of work, the training of teleworkers, and the collective rights of teleworkers.

From a working-time perspective, the key area addressed by the agreement is on work organization. The agreement provides that within the framework of applicable legislation, collective agreements and company rules, the teleworker manages the organization of his/her working time. The workload and performance standards of the teleworker are equivalent to those of comparable workers at the employer's premises.

With regard to the legal and policy measures identified above, they may be of limited application to workers who are on non-standard contracts in the gig economy. This is an area of growing debate and concern for policy-makers, but at present the efforts to develop laws and policies for this group revolves mainly around contractual status. While research in this area is in its early stages, the working hour and rest issues will need to be key considerations as policy-makers and social actors determine how to effectively improve the quality of these jobs in the future (De Stefano, 2016). This will need to be an area of attention for many policy-makers around the world, including those in Portugal.

## Policy considerations

Economic events over the last decade have put policy-makers in many countries under pressure, with proposals to deregulate markets, particularly labour markets, recommended and applied in many parts of the world. However, this method is based on a "one size fits all" approach that often does not consider or address national circumstances.

Working time is among the many labour issues where deregulatory pressures have been exerted. Increasing working hour flexibility (i.e. limiting regulation of working hours) is often proposed as a way to improve the economy overall and create employment opportunities for workers. The evidence is not overwhelming on these points.

Portugal's experience in deregulating many parts of its labour market, including those relating working time and rest periods, yields important considerations.

### Increases in working hours should be treated with caution

First, data indicates that Portugal has some of the longest working hours in the EU. Part of this may be attributable to the recent amendments to some provisions on working hours, overtime hours, and rest periods in the Portuguese Labour Code. They may continue to face upward pressure due to external factors or international demands. However, the available and growing body of research suggests that longer working hours may not result in better outcomes for workers or employers.

In fact, Portugal's Labour Code already provides for a number of different working time arrangements that can contribute the necessary flexibility desired by workers and employers. Collective bargaining can also play an important role in this process. Thus, recommendations to amend Portuguese law and policies in ways that result in increased working hours and the loss of rest periods should be considered with suitable caution in order to avoid a "race to the regulatory bottom."

## A holistic analysis of policy options

Labour policy and regulatory issues, such as working hours, cannot be determined in isolation. Policy or legal changes on working hours, for example, can have an impact on issues such as wages and compensation. The same may be true in reverse. For example, cutting the overtime premium wage can have a significant impact on workers' incomes, especially in jobs or industries where this income plays an important role in take-home compensation.

In addition, cutting annual leave days and eliminating "bridge days" results in increases in working hours. If no corresponding increases in wages takes place, it amounts to workers working more hours for less pay. Similarly, increases in monthly minimum wages may be justified when amendments to working hours, rest periods, and overtime premium pay result in extended working hours. It is therefore critical to address issues such as working hours, rest periods and wages/compensation as part of a holistic analysis rather than simply changing component parts that can have unintended, and even negative, consequences for workers and employers.

## Different working time arrangements may benefit both enterprises and workers

Portugal is showing signs of some bifurcation of working hours (e.g. very long working hours for full time workers and very short hours for underemployed workers). Those in full-time employment have seen some increase in working hours, mainly due to overtime. At the same time, many short-hour workers would like to work longer hours, but still have difficulties finding jobs with longer hours or full-time work. Greater emphasis might be given as to how enterprises might better implement different working time arrangements in a way that benefits workers and employers. These issues can be addressed as part of a broader policy narrative involving wages, overtime pay and compensation, and industrial relations (including collective bargaining) that improve working conditions and job quality for all workers in the labour market.

Another issue to bear in mind is the impact of technology on workers and employers in the Portuguese labour market. The recent regulatory initiative in telework places Portugal at the vanguard of countries recognizing the need to balance the positive and negative impacts that this form of technology can have on workers and employers. In addition, the recent resolution by the Portuguese Parliament on "on call", with implications for the "right to disconnect", could be an important measure to help facilitate work-life balance for workers.

## Strengthening enforcement

Finally, enforcement of these regulatory measures will be crucial to both workers and employers. Changes in working hours, rest periods, and public holidays can have destabilizing impacts in some workplaces. It is important that workers have their rights protected and employers understand their obligations in this context. This is especially the case with regard to the implementation of new technologies and the regulations implemented to enforce them. Institutional actors such as labour inspectorates and the judicial system will need to be aware of the impacts and will need sufficient resources to enforce these regulations. Further training on how to enforce measures on telework and the "right to disconnect" for labour inspectors and the judicial system may be required to adequately balance worker and employer needs in this rapidly evolving area in the world of work.

# 3c Labour inspection

## KEY FINDINGS

Substantive law was considerably transformed when the 2009 Labour Code and its successive amendments entered into force.

During the financial crisis, time-consuming investigations typical of economic downturns, such as lay-offs and collective dismissals, limited the capacity of the Authority for Working Conditions (ACT), Portugal's labour law enforcement institution, to assume a bigger role in labour market regulation.

This was compounded by the complexity of labour law, reduced resources and low staff motivation, all of which led to a serious decrease in the capacity of ACT. It was forced to react to pressing individual requests at the expense of playing a proactive regulatory role.

This has begun to change, as recent initiatives are repositioning ACT as an effective player in regulating the labour market. ACT started hiring in 2015, which should allow it to proactively act and enforce the law.

New legal tools may also have an impact on compliance, such as the recent competence for direct action in the recognition of employment relationships.

With regard to labour courts, concerns have been raised on their capacity to receive new cases referred by inspectors. ■

Labour law enforcement in Portugal falls under the mandate of a single institution, the Authority for Working Conditions (ACT), under the Ministry of Labour, Solidarity and Social Security. ACT covers all national territory with exception of the archipelagos of Madeira and Azores (autonomous regions). All labour law provisions and all sectors are under its scope, including enforcement of occupational safety and health legislation. ACT fulfils equally the role of national institute for occupational safety and health. ACT is headed by an Inspector General, assisted by two Deputies. There are 32 local offices covering the regions. The Authority has financial autonomy, with receipts mainly from the State budget, the social security taxes and a percentage of collected fines.

## The sanctioning process

Sanctioning procedures can have an administrative or criminal nature. Most commonly a sanctioning process is initiated with a notice of infringement in which a labour inspector is personally aware, by direct verification of the facts or indirectly, through an analysis of documents or other registries. For offences that labour inspectors cannot confirm personally through direct investigation, a report of infringement is drawn up on basis of available evidence, with identification of at least two witnesses and reported superiorly. Whereas administrative offences run in administration and are only referred to the judiciary (labour courts) in case of appeal by the offender, penal offences are reported to public prosecutors in criminal courts.

Labour administrative offences are constituted by any typical, unlawful and culpable act involving the breach of a provision conferring rights or imposing obligations on any party in the context of labour relations, punishable by a fine or, in some cases, by a fine and an ancillary sanction. General principles of criminal law apply to administrative offences, mainly concerning guarantees to offenders, including the contradictory (the right of the offender to provide evidence in his/her favour). The first

### 3.3 Amounts of fines for labour law infringements (in euros)

TABLE	Seriousness	Degree of guilt	Companies' turnover in €	UCs	Amount in €
	Minor	Neglect	Less than 10000000	2-5	204 to 510
10000000 or more			6-9	612 to 918	
Minor	Malice	< 10000000	6-9	612-918	
		10000000 or more	10-15	1020-1530	
Serious	Neglect	Less than 500000	6-12	612-1224	
		500000-2499999	7-14	714-1428	
		2500000-4 999 999	10-20	1020-2040	
		5000000-9 999 999	12-25	1224-2550	
		10000000 or more	15-40	1530-4080	
Serious	Malice	Less than 500000	13-26	1326-2652	
		500000-2499999	15-40	1530-4080	
		2500000-4999999	21-45	2142-4590	
		5000000-9999999	26-50	2652-5100	
		10000000 or more	55-95	5610-9690	
Very serious	Neglect	Less than 500000	20-40	2040-4080	
		500000-2499999	32-80	3264-8160	
		2500000-4999999	42-120	4284-12240	
		5000000-9999999	55-140	5610-14280	
		10000000 or more	90-300	9180-30600	
Very serious	Malice	Less than 500000	45-95	4590-9690	
		500000-2499999	85-190	8670-19380	
		2500000-4999999	120-280	12240-28560	
		5000000-9999999	145-400	14790-40800	
		10000000 or more	300-600	30600-61200	

assessment, on the nature of the offence, is done by the inspector. For each investigated fact, inspectors must conclude if there is a breach of the law and whether it is of criminal or administrative nature. For an administrative offence, the law sets the degree of seriousness (minor, serious and very serious) and the applicable fine or ancillary sanction (suspension of activity, prohibition to apply to public tenders and publication of the name of the offender on ACT's website). For legal persons, fines are fixed according with turnovers and the degree of blame (neglect or intent). Negligence involving the infringement of labour law is always punishable.

In order to assure that fines are dissuasive, the law created a fictional unit of measure in which the value of the fine is expressed, the procedural unit of account (UC), which set at one-fourth of the Social Support Index, fixed every year by the Government.<sup>68</sup> The actual value of one UC is €102. Fines are increased in case of repetition. When the offender has no employees or is a natural person with employees but no profitable aim, the amounts of fines are smaller (as fixed by the law). The maximum figure for fines applicable to very serious offences is doubled when there is a breach of norms relating to child labour, occupational safety and health, or freedom of association. Values for UCs corresponding to minor, serious and very serious offences are shown in table 3.3.<sup>69</sup>

When several administrative offences are committed together, the amounts of fines are added, but the maximum limit, in this case, cannot exceed the double of the maximum threshold for the specific fines in cause. When the violation affects a plurality of workers individually considered, the number of infringements is equal to the number of affected workers. To determine the amount of the fine within

68. Article 22 of the Act 34/2008, of 26 February, modified by the Act 181/2008, of 28 August and the Law 64-A/2008, of 31 December.

69. These values are applicable only to companies.

the minimum and maximum thresholds due consideration is taken of non-compliance with written recommendations duly informed by labour inspectors, coercion, fabrication, simulation or other fraudulent means used by the offender, his financial situation and the benefit he gained from the infringement. Whenever the offender is a corporate body or equivalent, the administration, managers and directors are jointly liable for the payment of the fine. The same happens to shareholdings for sanctions related with false independent work. Contractors are jointly liable with subcontractors that perform all or part of the contract in their premises or under their responsibility, for all very serious offences committed by the subcontractor as well as by the user of interim workers from temporary agencies.

Notices of infringement can refer to several offenders in case of concurrent offences. Concurrent offenders answer with sole responsibility even if the illicit depends on some qualities or special relations of the committer and these only exist in relation to one of the offenders. Each offender is punished according to his own guilt. Accomplices may be sanctioned with a special attenuated fine. If the infringement refers to wages arrears, labour inspectors summon the employer to calculate and pay the due amounts. In case this is not complied with, the inspector calculates and documents a record of indebt that is attached to the notice of infringement and is enforced with the fine. Failure to comply with social security contributions has a similar approach. For cases of undeclared work or false independent work, inspectors are compelled to make a calculation and draw up an indebt record (in other cases, they refer the facts to the social security institute). All sanctioning proceedings have to be initiated before a period of five years after the offence was committed.

Offenders are summoned by ACT to pay the fine or to put forward their defense within 15 days upon being notified of the notice of infringement. The accused must be informed of all the necessary elements de jure and de facto that are relevant to put forward a defense. Failure to notify the offender or insufficient notification results in nullity of all subsequent acts in the proceeding. Defenses may be presented in writing or verbally. The accused is considered notified when the registered letter is signed personally or, when signed by a third party, such as any worker even if he/she does not have representation powers, on the third day after signature. In the case the accused is assisted by a lawyer, all notifications are addressed to both. Individuals with joint liability for the payment of the fine are also notified, in order to habilitate them to pay the fine or to contradict the facts. Voluntary payment is admitted for minor and serious offences. Very serious offences can only be paid before final administrative decision if committed with negligence.

The complexity of sanctioning proceedings and the fact that the whole process is run by ACT leads to the need for all labour inspectors to have a solid legal background. As admission is open to all master graduates, all inspectors receive extensive legal training during their first year of probation. A significant part of the training is dedicated to collection of evidence and drafting of notices. Administrative procedures are usually effective with a very low rate of appeals to court, thus evidencing that legal proceedings in ACT are usually well instructed and based on solid notices drafted by inspectors.

## ■ Capacity challenges

Substantive law was considerably transformed when the 2009 Labour Code and its successive amendments entered into force. While introducing flexibility instruments – mostly related to contractual forms, organization of work and enlarged liability schemes – the Code increased the legal complexity for enforcement mechanisms particularly for ACT. Many of the new legal provisions required stronger efforts to build legal cases (for example, very short duration contracts, contracts with a plurality of employers, intermittent work, banks of hours or the presumption of employment relationships).

The significant changes in labour legislation that entered into force before and during the financial crisis and the period of fiscal consolidation limited the capacity of ACT to effectively play its role as regulator. Rather, it was forced to act reactively to individual requests that had a limited effect on the regulated environment. The causes of ACT's decreased capacity included the increased complexity of labour law, reduced resources and low staff motivation. A moratorium on new hires, pay cuts, a freeze on career progression (with performance appraisals being perceived of little relevance by staff), retirement of officials, and staff turnover to other State authorities with better pay or with a lesser workload led to a substantial reduction of resources. Throughout the crisis, there was a

### 3.4 Evolution in the number of labour inspectors and working population

TABLE	Year	2010	2011	2012	2013	2014	2015	2016	2017
	No. Inspectors	384	371	359	343	308	307	314	306
	Active population	5.58 million	5.54 million	5.49 million	5.38 million	5.22 million	5.19 million	5.18 million	5.21 million

Source: Authority for Working Conditions, Annual report 2014.

constant decrease in the number of labour inspectors, falling 20 per cent in four years (from 384 in 2010 to 308 in 2014) (table 3.4).<sup>70</sup>

Recovery started in 2015 with an internal competition for 42 inspectors<sup>71</sup> and an external competition for 80 in 2016.<sup>72</sup> The high number of candidates (that can reach thousands), long selection procedures, and the initial training period (one year) mean, however, that the actual capacities of ACT will not improve immediately. The small number of legal officers and other professional staff (214 in 2014) also affects the operations of ACT. This is of particular relevance as all sanctioning procedures are processed internally, along with sanctions on violations of working time in road transport reported by local police. Labour inspectors often cover the needs for legal staff, acting as instructors of sanctioning proceedings.

As mentioned above, the crisis affected the capacity of ACT to be proactive, and thus more strategic. For example, in 2014 only 34.6 per cent of inspection visits were planned even if requests for intervention in general did not change in pattern or size from 2011 to 2014 (see table 3.5). Fewer staff, a complex and extensive legal framework under ACT's mandate, together with a growth of time-consuming cases typical of economic downturns, such as lay-offs and collective dismissals, may have impacted the capacity of ACT to assume a bigger role on labour market regulation. Activity indicators also reveal a decrease in the number of legal and technical information provided to employers and workers upon request (table 3.6).

### 3.5 Intervention requests from 2011 to 2014

TABLE	Year	2011	2012	2013	2014	2015	2016
	Total number	25 555	21 845	28 001	25 166	19 644	8 592
	Requests from workers	60.5%	60.5%	62.8%	57.7%	55.35%	51.6%
	Requests from unions	11.2%	10.2%	9.7%	12.4%	10.7%	12.2%

Source: Authority for Working Conditions.

### 3.6 Technical and legal information provided by ACT upon request

TABLE	2011	2012	2013	2014	2015	2016	2017
	83 195	55 158	34 405	54 982	20 755	27 567	23 697

Source: Authority for Working Conditions.

The new employment protection tools introduced in recent years have thus far had a limited impact. These include Law No. 63/2013, of 27 August, which aimed to reinforce safeguards for workers trapped in false occupational status, later extended to cover contractual forms such as internships by Law No. 55/2017. The law gave a mandate to labour inspectors to directly notify employers regarding the recognition of employment relationships within ten days of notification, provided the criteria established by Article 12 of the Labour Code<sup>73</sup> were met. According to the law, if the employer does

70. Representing 38 per cent of ACT's staff.

71. Notice No. 5347-A/2015.

72. Notice No. 15320-A/2016.

73. A labour contract exists whenever someone obliges oneself to provide his or her activity to another within the latter's organization and authority. According to the law for the presumption to operate, some (not quantified) of the following criteria must be met: that the beneficiary of the work performed determines or controls the place where tasks are conducted; that the equipment and tools use are the beneficiary's property; that the beneficiary determines the starting and end of work periods; that a fixed amount is paid periodically as counterpart to the work performed; if the tasks performed are of managerial nature.



### 3.7 Cases of false occupational status identified by ACT, contracts converted, and referrals to public prosecution

TABLE	Year	Inspection visits	Identified workers	Cases converted after ACT's intervention	Sanctions applied	Admonitions	Referrals to the public prosecutor
	2010	(1)	436	(3)	(1)	(1)	(2)
	2011	552	1,144	(3)	77	2	(2)
	2012	505	396	(3)	69	2	(2)
	2013	1 529	500	(3)	54	10	13
	2014	1 364	1,510	507	420	34	425
	2015	1 124	478	291	66	29	64
	2016	903	559	84	94	30	37
	2017	587	592	288	384	53	317

(1) Data not identified in ACT's activity reports.

(2) Data started to be collected after entry into force of Law No. 63/2013.

(3) Data started to be collected in 2014.

not convert the civil contract into a labour contract, ACT refers the case to the Labour Prosecutor's Office together with all collected evidence. This allows for a judicial proceeding for recognition of the employment contract to be initiated in court within 20 days.

According to the data collected and ACT staff interviewed, some bottlenecks prevent the law from being more effective. It was reported that it is unclear how the judiciary is following up on referred cases. Courts allegedly lack the capacity for this increased workload. Moreover, procedures tend to be lengthy and burdensome for ACT, as labour inspectors end up having to investigate and collect all the evidence on the indicators required by law to build a strong case and must go through the judicial proceedings as any other witness. This, and the fact that outcomes of cases referred to courts are mostly unknown, may explain the low number of referrals to the judiciary, according to information provided by ACT (table 3.7).

Technology plays an important role on ACT's effectiveness as in any other enforcement agency. Although the Authority has an internal electronic system with the historic of infractions of all enterprises, data on inspection procedures and socio-demographic information, limitations do not allow to compare data with that of other State regulatory agencies, to produce automated reports or management scoreboards that would be useful for risk mapping, a more accurate selection of targets and early identification of inefficiencies. Law No. 42/2016, of 28 December authorized the inter-connection of data between the State Tax Authority, Social Security and ACT, but this is not possible in practice as the IT architecture used by the different agencies are not compatible. ACT has in the meantime launched the procedures for the upgrading of the system so as to allow interconnection, as well as other improvements.

## ■ Policy considerations

### Harness technology

ACT's IT system should be upgraded to allow effective implementation of Law No. 42/2016, including the introduction of automated mapping and more intelligent management features. The system should integrate all of the ILO's harmonized statistical indicators for labour inspectorates, as these were developed based on best practice. Exchange of data on the labour market and workforce with other ministerial sources should also be explored to better establish priorities and predict work.

### Better compliance through strategic planning and a more effective judicial process

Strategic compliance planning should be strengthened by increasing the number of proactive interventions based on accurate evidence analysis and compliance risks, and lessons learned from past experiences. The ACT should continue to explore all possible interventions to address diverse compliance problems, through the use of political and systemic strategies rather than the single use of traditional enforcement and information approaches. Strategies should continue to strengthen interaction with other relevant stakeholders, such as social partners, social security and the tax inspectorate.

In order to address the bottlenecks concerning judicial action on such matters as the recognition of employment relationships, new legal tools should be assessed, and remedial action undertaken so that the law can reach its full impact potential.

### Investing in staff

ACT legal capacities should be strengthened by recruiting qualified staff as legal officers to ensure a more efficient treatment of legal cases related to sanctions imposed by labour inspectors, releasing them to carry out the core functions of labour inspection as per ILO Convention 1947 (No. 81).

Human, financial and material resources should be reinforced to provide ACT with the means to fully accomplish its demanding and expanding mandate.

# Active labour market policies: From crisis interventions to structural measures

## KEY FINDINGS

Renewed emphasis on active labour market policies (ALMPs) has substantially contributed to the labour market recovery observed in Portugal since 2013. In particular, direct and indirect support to job creation has strengthened employment growth, while reforms to improve the delivery of labour market services have contributed to activating unemployed individuals more effectively due to more personalized support.

Moreover, training measures in Portugal have increased participants' employment probabilities in the short-run and, although little is known regarding their longer term impact, these positive effects are expected to persist thanks to human capital accumulation and the acquisition of job-related skills.

Given the substantial improvements in the state of the economy in the most recent years and the need to improve inclusiveness in the provision of ALMPs, Portugal has taken important steps towards gradually adapting its ALMP framework to the needs of today's labour market. Recent policy initiatives introduced in Portugal have improved the targeting and delivery of ALMPs, to address some of the limitations in the design of previous activation programmes and enhance their inclusiveness.

For instance, the current scheme of employment incentives (*Contrato Emprego*) promotes the creation of permanent employment; the 2017 training initiative (*Qualifica*) has improved its targeting to focus more closely on low-skilled individuals, while strengthening work-related training components; and the 2016 reform of the Public Employment Service (PES), has improved the quality of the services offered by providing a more personalized support to the unemployed, all while bringing about a sizeable reduction in case-manager work-loads (although it remains one of the highest in the EU).

Meanwhile, in 2016, the Portuguese Government launched an integrated strategy to entrepreneurship support (*Startup Portugal*), aimed at promoting start-up creation by combining financial support with counselling and entrepreneurship training.

While recent efforts to reform the system of ALMPs go in the right direction, a number of areas could still be improved going forward:

- First, it would be important to make additional efforts to strengthen the institutional capacity of the PES by reducing caseload per career manager and continuing to emphasize more personalized service provision.
- Second, with around one-third of young NEET not registered with the PES, it is key to introduce stronger outreach services to enhance youth engagement with the PES, thereby opening the possibility of them participating in other ALMPs. Other important measures would be to strengthen links between upper-secondary schools and the apprenticeship system, while expanding the offer of "second-chance" education curricula.
- Third, as economic conditions improve, there is the opportunity to rebalance the existing ALMPs policy framework by reallocating part of the expenditure in employment incentives to finance other ALMPs that are more adapted to the current economic and labour market circumstances. One suggestion is to further strengthen start-up incentives schemes with views to activating jobseekers through an integrated approach to entrepreneurship. ■

One of the main policy considerations put forward in the 2013 ILO report *Tackling the Jobs Crisis in Portugal* was to scale up investments in the national active labour market policies (ALMPs) framework as a way to promote a swifter transition from unemployment and inactivity to employment and foster skills development, especially among the most vulnerable societal groups. That recommendation was made at a time when the unemployment rate had just started to decline from its record high of 2013 and a number of reforms to existent active labour market programmes were under consideration. Since then, labour market conditions in Portugal have improved considerably (see Chapter 2), partly as a result of the continued efforts to scale up spending in ALMPs and make them more inclusive.

The overall picture that emerges is that ALMPs have substantially contributed to the labour market recovery observed in Portugal from 2013 onward. In particular, direct and indirect support to job creation has strengthened employment growth while reforms of the public employment centres have contributed to activating unemployed individuals more effectively. At the same time, renewed apprenticeship schemes have raised participants' employment prospects in the short run – and potentially contributed to their human capital accumulation over the longer term. Looking forward, as the labour market tightens, the focus of ALMPs needs to be re-oriented to address some of the long-standing challenges of the Portuguese labour market, such as high incidence of long-term unemployment, low levels of job-related training provision, and high inactivity rates among youth.

Policy initiatives recently introduced in Portugal are already going in this direction, improving the targeting, delivery and inclusiveness of ALMPs. However, as outlined in this chapter, a number of challenges remain. First, it would be important to strengthen the institutional capacity of the Public Employment Service (PES)<sup>1</sup> and improving its ability to monitor long-term sustainability of the placements done via the different ALMPs. At the same time, with around one third of young NEET not registered with the PES, it is key to introduce stronger outreach services to enhance youth engagement with PES. Finally, as economic conditions improve, there is the opportunity to rebalance the existing ALMPs policy framework, by reallocating part of the expenditure in employment incentives to finance other more adapted ALMPs such as stronger start-up incentives schemes for the unemployed.

With this in mind, this chapter provides an overview of recent reforms in the area of ALMPs in Portugal, discusses their effectiveness in improving labour market and social conditions, and proposes a number of policy options going forward. ALMPs are an important tool, but not the only one governments have to address labour market challenges. As such, this chapter complements other chapters in this report, which provide evidence on labour market reforms in the areas of labour market regulation (Chapter 3), minimum wages (Chapter 5) and collective bargaining (Chapter 6).

The chapter is organized as follows. The first section introduces the concept of ALMPs and reviews the empirical literature that has examined their effectiveness. The second then presents main trends in spending and participation in ALMPs in Portugal and summarizes the latest reforms undertaken since 2012. The third section combines qualitative and quantitative evidence from multiple sources (e.g. existing impact evaluations, administrative data) to shed light on the effectiveness of these newly implemented or reformed ALMPs. The chapter concludes with a number of policy considerations on how to strengthen the delivery and design of ALMPs.

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1. In Portugal, this is the *Instituto do Emprego e Formação Profissional* (IEFP).

## A primer on active labour market policies

### Definition and scope of active labour market policies

Labour market policies have been traditionally divided into active and passive interventions (ILO, 2016a). While the latter have generally been intended to provide income support to unemployed individuals during periods of joblessness, ALMPs are usually aimed at improving labour market performances by combining a set of different activities: (i) matching vacancies with job-seekers through the provision of job-search assistance; (ii) updating and improving skills through different types of training (e.g. classroom or on-the-job); (iii) providing incentives to either firms or workers to take-up (or create) specific jobs; and (iv) creating jobs directly in the public sector or indirectly in the private sector.

Based on these functions, ALMPs in advanced economies have been generally categorized into: (i) labour market services; (ii) training; (iii) employment incentives; (iv) supported employment and rehabilitation; (v) direct job creation; and (vi) start-up incentives.<sup>2</sup> In this sense, ALMPs are not only targeted towards unemployed individuals – but they can also attract employed, underemployed, and individuals that are outside of the labour force.

Over time, the distinction between active and passive labour market policies has become more nuanced in the policy arena (see box 4.1). In particular, the receipt of unemployment benefits is becoming increasingly linked to the participation in active interventions. Moreover, in an effort to increase participants' take-up rates, several countries are combining the provision of ALMPs with some form of income support, particularly for individuals who are not eligible to receive unemployment benefits. This policy shift is based on the recognition that employment policies are part of a wider social protection strategy aimed at supporting individuals in the labour market along a number of dimensions (e.g. poverty reduction, employability and social inclusion). In this sense, ALMPs are not simply aimed at reducing unemployment levels; they can also be used as effective policy tools to improve labour market and social inclusion on a broader set of dimensions. This implies that ALMPs are no longer seen as mere emergency interventions (e.g. to reduce job losses in times of crisis); but they are rather used to address structural challenges (e.g. lack of skills).

#### 4.1 The debate over active and passive labour market policies

##### BOX

The debate on the effectiveness of active and passive labour market policies has substantially evolved in developed economies during the recent decades – partially following the emergence of new evidence on the effectiveness of these interventions.

Many advanced economies introduced and/or scaled up ALMPs during the 1990s to respond to the sustained increase in unemployment levels. In particular, concerns emerged over the possible structural nature of unemployment rates – especially for certain categories of workers such as youth and long-term unemployed.

In this context, ALMPs were prioritized in order to address different challenges such as skills mismatch, labour market detachment and asymmetries of information. At the same time, the coverage and generosity of unemployment benefits system was often reduced – under the understanding that overly generous income support might generate disincentive effects for jobseekers.

During the most recent years, however, a new policy trend emerged based on the recognition that active and passive labour market policies can complement each other. In particular, income support is essential to sustain living standards (and aggregate demand), provide workers with income stability (both when employed and unemployed) and ensure that they have the financial means to accept a good quality job (rather than just the first one that becomes available). At the same time, ALMPs provide the necessary support to increase jobseekers' incentives and capacity to look for a job. This is even more important in the current economic scenario, where the changing nature of jobs will require workers to constantly update and adapt their skills.

Source: ILO, 2016a.

2. This list follows the traditional advanced-country classification as adopted by the OECD and Eurostat. For emerging and developing economies, a different categorization applies that takes into account differences in the content of the policies and in the functioning of the labour markets (ILO, 2016).

In particular, ALMPs have been assigned the following four objectives – which apply to both developed and developing economies (ILO, 2016a).

- *Creating employment*: The primary role of ALMPs is to increase employment levels by reducing labour market imbalances and correcting rigidities. Although, in a perfectly competitive labour market workers and employers have perfect information and also incentives to act efficiently (e.g. acquire an adequate level of skills, move from declining to expanding sectors, etc.), in reality, there are many obstacles hindering this process. This makes ALMPs an interesting policy strategy for providing incentives to overcome these labour market failures (e.g. through the provision of a training programme, employment subsidies).
- *Improving equity*: The second objective of ALMPs concerns their ability to improve equity in the labour market. This is achieved by targeting (formally or in practice) interventions to those groups that face the greatest obstacles in terms of labour market reinsertion (e.g. low-educated, youth).
- *Enhancing employment mobility and job quality*: The third objective of ALMPs is associated with their potential to enhance employment mobility and increase job quality. In particular, technological progress and international trade have increased the pace at which skills requirements change and jobs are destroyed and/or relocated. In this context, ALMPs can have the dual objective of favouring transitions within the labour market (which often need to be supported by the provision of income support) and improving the quality of new employment opportunities. This can be done by adjusting workers' qualifications to match the structure of demand and by providing unemployed or inactive individuals with the incentives to search for jobs in emerging sectors.
- *Reducing poverty*: The fourth and final objective of ALMPs is related to poverty reduction. In particular, ALMPs can contribute to increasing living standard of employed individuals by directly raising their income (e.g. employment incentives) or by enhancing their human capital and productivity (e.g. training). At the same time, some types of ALMPs are conceived as a policy instrument aimed to provide a source of income of last resort (e.g. public works schemes).

## International evidence on active labour market policies

A large body of literature has examined the effectiveness of ALMPs from both a theoretical and an empirical perspective. A number of lessons that emerge from the literature are particularly relevant to the case of Portugal. For example, public works schemes are relatively less effective than other interventions (such as employment subsidies) in raising individuals' probability of finding an unsubsidized job after completion of the programme (Kluve, 2010). However, more recent evidence finds that: (i) the effect of public works schemes programmes gradually turn positive in the long term (Vooren et al., 2008); (ii) employment subsidies are found to be effective in rising beneficiaries' probability of employment, especially in the short to medium term (Card et al. 2017; Vooren et al., 2018); (iii) the effect of training programmes on beneficiaries' probability of finding employment is found to be rather small in the short term, but becomes larger over the medium and longer term (i.e. or six to 36 months after participation according to Vooren et al., 2008) as the benefits from human capital accumulation materialize (Card et al., 2017); (iv) training interventions that combine a class component and an on-the-job component are more effective than interventions with just one of these components (ibid.); (v) the length of an intervention is positively associated with its effectiveness (Escudero et al., 2017); (vi) labour market services tend to show a positive short-term effect (i.e. the facilitated labour market matching results into a higher employment probability) that decreases with time – since the productivity of the individual is generally not affected by these interventions;<sup>3</sup> and (vii) start-up incentives are one of the most effective type of ALMPs, particularly for more vulnerable groups, such as lower-educated individuals (Escudero, 2018).

Regardless of the type of ALMP that is implemented, evidence suggests that an effective targeting of beneficiaries remains key in ensuring their success. Studies show that ALMPs are generally more effective among female participants and for individuals that are long-term unemployed (Card et al., 2017). By contrast, evidence from developed economies suggests that youth benefit relatively less

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3. Labour market services include the provision of labour market information, job search assistance, placement services, and counselling. They are typically administered and provided by the national Public Employment Service (PES) institution, which may be also responsible for managing other active labour market policies, such as training activities, and, in some countries, for administering unemployment benefits. For additional details on the distinction between the PES as an institution and labour market services as a category of ALMPs, please refer to box 2.2 of ILO (2016).

than prime-age workers from participation in these types of interventions.<sup>4</sup> This result could be associated with the composition of youth participating in ALMPs in advanced economies, often low-skilled individuals that have not completed their educational degree (Card et al., 2017).

In addition, available evidence suggests that ALMPs do not have to be designed as stand-alone measures to increase effectiveness, but rather that they can be connected to other interventions in the labour market. In particular, a growing number of studies suggest that ALMPs are more effective when designed as part of a wider social protection strategy aimed at providing individuals with a comprehensive package of support that combines income protection with employment promotion (ILO, 2016a). For instance, Bassanini and Duval (2006; 2009) find that the adverse impact of the generosity of unemployment benefits (i.e. discouraging individuals to look for a job) is lower in countries with higher spending in ALMPs. Similarly, Boone and Van Ours (2004) find that spending in training is more effective for countries with a more generous unemployment benefits' system. More generally, Pignatti and Van Belle (2018) confirm the presence of complementarities between active and passive policies for a large set of developed and emerging economies, suggesting that the more governments spend on one of these sets of interventions, the more effective the other intervention becomes.

Finally, the literature also suggests that the implementation of ALMPs needs to be closely associated with macroeconomic developments in the country. For instance, evidence suggests that ALMPs in advanced economies are more likely to show positive results when implemented during periods of crises (Card et al., 2017). This may be due to the lower opportunity costs faced by individuals entering a programme during a downturn (i.e. job opportunities are limited). However, it is also found that these conclusions depend strongly on the type of ALMP analysed. For instance, public work schemes are relatively more effective during recessions (e.g. as participants would otherwise remain unemployed), while the effectiveness of training programmes is not associated with the state of the labour market. Linked to the above, continuity in the implementation of ALMPs has been found to be a key driver of the success of these policies (Escudero, 2018). This reinforces the need to invest in ALMPs not only during booms when resources are available but also during crises when the unemployed need that support the most.

## Recent developments in the ALMP framework in Portugal

The content and pace of implementation of ALMPs in Portugal has substantially evolved over time – following evolutions in the state of the labour market, as well as macroeconomic conditions and the state of public finances. Expenditure on ALMPs raised considerably in the immediate aftermath of the 2007–08 financial crisis, increasing from 0.39 per cent of GDP in 2008 to 0.61 per cent of GDP in 2009. Notable development given the limited fiscal space available by the Government, it was a meaningful effort that helped cushion the initial effects of the crisis on the labour market. At the same time, the Government launched a reform to the PES in 2009 as part of the “Initiative Employment 2009”, which sought to create better structures to support the unemployed. In 2010, additional efforts were put forth to step up support to the unemployed facing particular barriers to re-integration into the labour market. As a result of this increased investment, the system of ALMPs in Portugal was able, at least initially, to keep pace with the increased demand of services that followed the eruption of the 2008 economic and financial crisis.

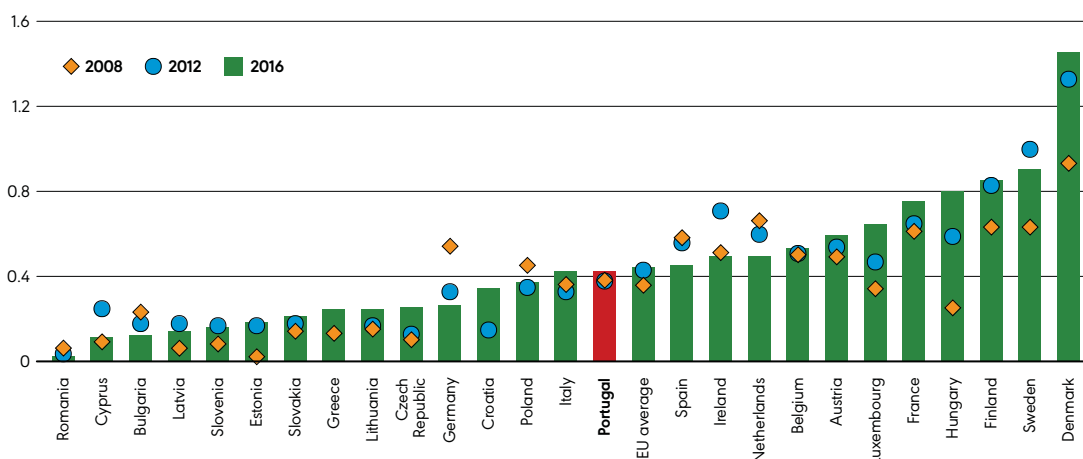
However, as economic conditions remained difficult and fiscal space further constrained, spending in ALMPs began a downward spiral in 2010, which continued until 2012, when spending in ALMPs bottomed out at 0.36 per cent of GDP. Since then, a large number of new ALMPs have been introduced and existing ones revised, with a view of improving labour market performance over a wider set of outcomes (e.g. competitiveness, inclusiveness, skill upgrade) in the medium- to long-runs (see below for a detailed review of interventions by type of ALMP). As a result, spending in ALMPs in Portugal has slightly increased after 2012 to reach 0.42 per cent of GDP in 2016 – a value close to the average expenditure across other EU member states (figure 4.1). Still, while this represents an important improvement, spending in ALMPs per person wanting to work remains almost half of the average spending across other EU member states, suggesting that further targeted investments to these types of policies would be a welcome strategy (see Policy considerations in this chapter).

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4. However, evidence from Latin America shows the opposite result (Escudero et al., 2017).



**FIGURE 4.1** Spending in ALMPs as a share of GDP in Europe in 2008, 2012 and 2016 (percentage)



Note: EU average refers to the simple average of spending in ALMPs across the 26 EU countries with data available in each of the three reference years. Note that in the case of Portugal, 2008 and 2012 shares overlap.

Source: Eurostat.

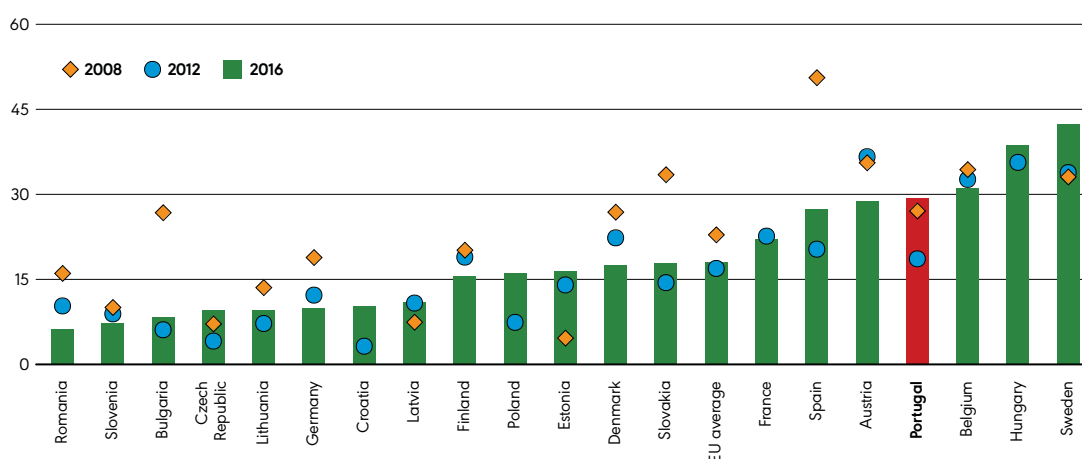
#### 4.2 Indirect (negative) potential effects of active labour market policies (ALMPs)

##### BOX

When ALMPs are not tightly targeted and properly designed, they can give rise to a series of unintended negative effects which may partly (or fully) offset the benefits that these policies bring about to the labour market. These indirect negative effects can be classified as follows:

- **Deadweight loss:** The resources invested in the policy benefit individuals who would likely have benefited also in its absence. For example, an employment subsidy targeting young graduates benefit youth who would have been hired as well without the training. As a result, employment outcomes are not different from what they would have been in the absence of the program.
- **Displacement effects:** The increase in employment generated by the intervention might displace the employment of non-participants. For example, firms hire subsidized workers instead of unsubsidized ones, so that there is no net job creation.
- **Substitution effect:** It occurs when a programme provides incentives to employers to substitute one type of workers for another. For example, subsidies for young workers may create an incentive for firms to substitute prime-age adult workers with younger ones.
- **Lock-in effects:** During participation, individuals lower their job-search efforts and therefore have a lower probability of finding a job compared to unemployed who are not participating in ALMPs. For example a young unemployed person participating in a training programme does not search as actively for a job compared to someone who is not attending a job programme. Locking-in effects are thought to be important, especially for longer duration training programmes.
- **Creaming:** Only unemployed with higher employment probabilities (better education, motivation, etc.) are selected to participate in the programme. Creaming is especially significant if case-workers need to deliver good re-employment rates.
- **Stigmatization:** If the measure is too tightly targeted at very disadvantaged unemployed, they may be stigmatized. The stigmatizing effect signals low productivity to employers and prevents them from hiring workers participating in the programme.

**FIGURE 4.2** Coverage rate of registered unemployed in ALMPs, 2008, 2012 and 2016 (percentage)



Note: The rate is obtained as: (number of participants in ALMPs) / (number of registered unemployed), thus irrespective of the employment status of participants in ALMPs. The EU average refers to the simple average of spending in ALMPs across the 26 EU countries with data available in each of the three reference years.

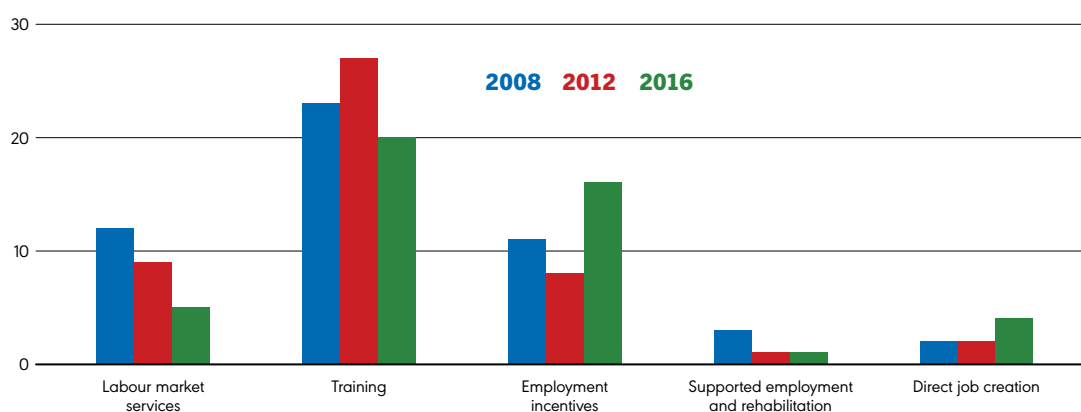
Source: Eurostat.

The take-up rate of ALMPs has also increased considerably in the aftermath of the crisis, and especially in the years after 2013. The number of participants in ALMPs rose by almost 60 per cent between 2012 and 2015 – although it declined again in 2016, largely as a result of the lower demand for participation due to falling unemployment. This resulted in an increase of the coverage rate – the number of participants in ALMPs per 100 registered unemployed people grew from 19.1 per cent in 2012 to 29.4 per cent in 2016, a value broadly in line with the EU average (figure 4.2). However, at 24.3 per cent in 2016, the ALMPs coverage rate is lower among long-term unemployed, in spite of an important jump from 14.9 per cent in 2012. It is, however, important to note that the number of registered unemployed is a subgroup of the total number of jobseekers registered with the PES, which may also include workers on reduced working time or employed workers looking for another job.

Moreover, it is important to keep in mind that not all unemployed people are registered with IEFP, the national PES, and as such, they are not eligible to benefit from participation into ALMPs. In the case of Portugal, some 83 per cent of the unemployed in 2016 were registered with the PES, a value that is in line with the EU average. However, Portugal has a relatively high share of people who are officially registered as inactive, but they are, in fact, available to work but not seeking employment, or seeking work but not immediately available to work. These groups that have expressed interest in gaining employment but are considered as inactive – the so-called potential labour force – accounted for 10 per cent of the total inactive population in Portugal (compared to 8 per cent at the EU level). This suggests that, looking forward, efforts are needed to promote higher registration rates with the PES among those individuals marginally attached to the labour market.

It is also key to understand how and to what extent spending on different types of ALMPs evolved over time. As reviewed above, different types of ALMPs are generally used at different points of the business cycle – and their effectiveness is also expected to vary according to the state of the economy. In the case of Portugal, the largest shares of expenditure in ALMPs is devoted to training programmes and employment incentives, which account for 43 per cent and 35 per cent of total spending in ALMPs, respectively, in 2016. While spending on employment incentives is today higher than its level in both 2008 and 2012, expenditure in training increased in the immediate aftermath of the crisis, but has been gradually decreasing in the years after 2012, as labour market conditions started to improve (figure 4.3). This spending pattern is in line with the intuition and empirical evidence suggesting that training measures should be scaled up during crises (due to the reduced opportunity cost of participation, as jobs opportunities are anyway limited), and combined with measures that create jobs when labour demand is weak. Training and employment incentives are much less prominent across other EU countries, accounting on average for 26 per cent and 21 per cent of total spending in ALMPs, respectively.

**FIGURE 4.3** Spending in ALMPs as a share of GDP in Portugal by type of intervention (percentage)



Source: Eurostat.

Greater reliance on training programmes and employment incentives has partly come at the expenses of other ALMPs, notably labour market services for which public spending more than halved since 2012, and it is now at a lower level than in 2008. The share of spending in labour market services is also low when compared to other EU countries, accounting for less than 11 per cent of total spending in ALMPs in 2016, against an average of 21 per cent in the EU. At the same time, the spending necessary to promote direct job creation – which typically benefits more the most vulnerable jobseekers – remains rather negligible, despite the fact that it has increased since 2012. In 2016, spending in direct job creation in Portugal accounted for 9 per cent of total ALMPs expenditure, against an average of 15 per cent across EU countries. Likewise, spending in start-up incentives remains extremely low, and well below the average level across other EU countries. This likely represents an untapped potential, as evidence shows that start-up incentives are one of the most effective types of ALMPs particularly for vulnerable jobseekers (Escudero, 2018), potentially due to the “double dividend” when subsidized firms create additional jobs (Caliendo and Künn, 2014).

In order to better understand the extent to which the evolution of spending in the various types of ALMPs mirrors changes to the labour market policy stance, the rest of this section discusses major reforms in labour market services, training programmes, and employment subsidies separately, with particular attention to reforms introduced since 2016.

## Labour market services

Reforms in the area of labour market services have focused on strengthening the link between this form of support and the provision of unemployment benefits. This is in line with empirical evidence that shows that job-search monitoring and benefit sanctions can reduce the duration of unemployment (McVicar, 2014). However, the type of support received is also key to ensure the quality of the new job found (e.g. salary, tenure). In this area, Portugal adopted relatively strict eligibility requirements. In particular, a major reform in 2012 established that jobseekers receiving unemployment benefits who were: i) aged 45 years and over (independently from their unemployment spell), as well as (ii) jobless for more than six months (independently from their age) would be summoned for mandatory interviews every two weeks (if during the period there is no other contact) with the PES. The PES would then refer them to the appropriate ALMP, if necessary, or directly to job interviews if vacancies were available. These requirements – such as the obligation for jobseekers receiving unemployment benefits (in place between 2006 and 2016) to confirm their availability for work each fortnight to the public employment centres (a criteria that only Australia and the United Kingdom require (OECD, 2017a) often resulted in heavy administrative reporting duties with limited trickle-down effects for beneficiaries in terms of the quality of job-search assistance.

At the same time, reform efforts were concentrated on making the PES a more modern and efficient institution. This was particularly important as the centres through which the PES operates are the

entities in charge of coordinating labour market interventions. In 2012, a programme to re-launch the PES was thus put into action. This programme was based on eight axes: (i) increase the employability of the unemployed; (ii) foster the uptake of job offers by the job centres; (iii) co-operate with partners for placement of the unemployed; (iv) upgrade information systems; (v) change the system of ALMPs; (vi) coordinate active and passive policies; (vii) establish mechanisms for ongoing evaluations; and (viii) re-structure the network of job centres and vocational centres. One key objective of this programme was to ensure that the activation of the unemployed started within three months of their enrolment at the public employment centres. This is an important effort as it is well documented that prolonged unemployment spells weaken the effectiveness of activation measures (Escudero and López Mourelo, 2017).

In 2016, this system was partially reformed with a view of updating the functioning of the PES in accordance to the new state of the economy.<sup>5</sup> In particular, the legal obligation to report to employment centres every two weeks was replaced with a more personalized support which involves face-to-face interviews and other job support actions occurring every six months of unemployment. During this period the jobseeker will have to undertake five actions, each belonging to the following types: (i) preparation or update of a personal employment plan; (ii) group sessions with general information; (iii) group sessions with information on job and training opportunities; (iv) actions aimed at skills development; and (v) job-search guided sessions.

Additionally, projects are currently being undertaken to improve the accessibility of the services provided by public employment centres. In particular, the *Projeto Balcão Único do Emprego* (Single Employment Counter Project) introduced in 2018 aims at: (i) improving the online interface of the labour market services provided by the PES; (ii) promoting a more personalized service to both job-seekers and employers; and (iii) improving the collaboration and interconnection of data with other public administration bodies (namely, the system of social security services).

## Training

As previously mentioned, training initiatives account for the bulk of spending in ALMPs in Portugal. This was motivated by concerns over the overall low level of skills in the labour market as well as the understanding that enrolment in these types of activities is less expensive in terms of the opportunity cost of keeping participants attached to the labour market during periods of high unemployment when job opportunities are limited. Interestingly, while in other countries these training measures often target a relatively young cohort, this is not the case in Portugal, where often there is no age limit determining participation in these programmes.

One of the main training programmes was the New Opportunities Programme (NOP) that was launched in 2005 and was in place until 2010. The aim of this programme was to give low-qualified workers the possibility to build on their professional experience and skills through the completion of an upper secondary diploma. To achieve this, a system of formal and non-formal skill recognition, accreditation and certification (*Reconhecimento, Validação e Certificação de Competências*, RVCC) was introduced, which was complemented with formal learning. Almost half a million adults obtained a certification by 2010 thanks to this programme, with positive effects on income and employment, but only when certification was combined with vocational training courses.

In light of this evidence, *Qualifica*, a new major training initiative, was launched in 2016. As in the case of the NOP, the main feature of *Qualifica* is the provision of an RVCC. However, with respect to the former initiative, *Qualifica* aims at strengthening work-related training components of the RVCC system, while increasing adult participation in life-long learning activities and re-training activities. At the same time, the new programme expects to reach a larger number of beneficiaries than the NOP, aiming at qualifying half of the active population with upper secondary education, and achieving a 15 per cent participation rate in lifelong learning activities among adults. Within this context, the challenge is to maintain high quality of the training opportunities on offer and ensure continuity, as both the depth and length of training are key to their effectiveness (Escudero et al., 2017). Meanwhile, it would be key to reach the lowest skilled and the youngest which were largely excluded by training opportunities under the NOP.

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5. Additionally, a major concern was the sustainability of the system in terms of number of workers that each case-worker managed.

A number of other training initiatives have been put in place in recent years, especially since 2013. These include: (i) the apprenticeship programme (*aprendizagem*) for young people, which attracted some 33,000 young participants in 2015; (ii) the Certified Modular Training Courses (*Formações Modulares Certificadas*, FMC), which are mainly directed to employed adults who are more interested in targeted training activities than taking a full qualification programme; (iii) the *Cheque Formação*, introduced in 2015, which is a training subsidy directed to both employees and employers wishing to undertake training activities; (iv) the *Formação Transversal*, a short-time training programme aimed at strengthening soft skills and job-search capabilities; and (v) *Vida Ativa*, another short-time training course aimed at validating participants' skills and providing them with short-term training activities. The latter two training activities were introduced in 2013 on a temporary basis, which partly explains why the number of individuals enrolled in training programmes increased substantially after that year. In 2017, a new variant to *Vida Ativa* was introduced, called *Qualifica+*, directed specifically to adults with very low qualifications. It includes two major groups: unemployed adults who finalized fourth year of schooling but did not complete sixth year; and unemployed adults who already completed sixth year but did not finish ninth year of schooling.

## Employment incentives

Another area of intense policy action in recent years in Portugal has involved employment subsidies. This type of intervention can be particularly effective in times of crisis to sustain employment levels for specific groups of workers. However, employment subsidies are also known for prompting deadweight losses and for creating displacement and substitution effects (see box 4.2), and therefore their implementation should be narrowly targeted and temporary. A first set of subsidies were introduced as part of the initiatives “Employment 2009” and “Employment 2010”. The provision of employment subsidies was reinforced with the introduction of *Estímulo 2012* and *Apoio à Contratação via Reembolso da TSU*, which were eventually merged into *Estímulo Emprego* (Employment Stimulus) in 2014. Under this programme, employers were provided with financial support when hiring registered unemployed people on permanent or fixed-term contracts with a minimum duration of six months. The subsidies were relatively generous, covering on average 50 to 60 per cent of the salary for a maximum period of 12 months (OECD, 2017a). At the same time, incentives were built in a way to promote more stable forms of employment (either directly or as a transition after the first job). For instance, the generosity of the *Estímulo Emprego* was highest for employers that hired directly on a permanent basis, followed by cases in which employers transformed a temporary contract into a permanent one. Over 58,000 people participated in the programme in 2015, up from 28,000 in 2013. However, the programme was discontinued in June 2016, partly because of concerns on its effect on labour market duality between permanent and fixed-term contracts (see the following section).

In January 2017, a new employment subsidy, *Contrato-Emprego*, was introduced with the aim of addressing some of the critical issues of *Estímulo Emprego*.<sup>6</sup> With respect to the *Estímulo Emprego*, *Contrato-Emprego* (Employment-Contract) aims to strengthen the creation of permanent employment contracts, while fixed-term contracts are allowed only for particular categories of disadvantaged workers, such as long-term unemployed, and for a minimum duration of 12 months (compared to 6 months in *Estímulo Emprego*). Furthermore, in the case of fixed-term contracts, a bonus is awarded to employers for the conversion to permanent contracts, which creates even greater incentives to promote stable job creation at the end of the employment subsidy. At the same time, *Contrato-Emprego* has enhanced the inclusiveness of employment incentives to disadvantaged workers. To be eligible, the unemployed person must have been enrolled in the national PES (IEFP) for six consecutive months, or (regardless of the registration time) be part of any of the following categories: (i) receiving unemployment benefit; (ii) receiving the Social Integration Income; (iii) having a disability or incapacity; (iv) being a single parent; (v) having a spouse or partner who is also unemployed and enrolled in the PES; and (vi) having completed an internship financed by the PES in the previous 12 months. People aged 29 or under, or aged 45 or over, can also benefit from the employment incentive provided that they have been registered with the PES for at least two months.

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6. Ordinance 34/2017, January 18.

### 4.3 The Youth Guarantee in Portugal: Remaining challenges and the way ahead

#### BOX

Following the recommendation of the European Council, Portugal introduced its version of the Youth Guarantee (*Garantia Jovem*) in December 2013, as a way to reduce the high and growing numbers of NEET youth (i.e. not in employment, education or training). *Garantia Jovem* is composed by a set of ALMPs, aimed at providing all young people under the age of 30, with a work opportunity, training, or continued education within four months of leaving education or becoming unemployed. This programme is based on four pillars: (i) internships (*Estágios Emprego*); (ii) hiring incentives (*Apoios à Contratação*); (iii) vocational training (*Formação Profissional*); and (iv) entrepreneurship support (*Empreendedorismo*).

A total of 211,778 NEETs participated in the programmes provided by *Garantia Jovem*. Internships were the measure that contributed the most to youth integration into the labour market, covering 22 per cent of all young NEETs integrated into active employment and training programmes in 2016 (data from IEFP).

Results from impact evaluations show that almost half of young NEETs (aged 15–24) in Portugal were reached by *Garantia Jovem* in 2015, up from 41 per cent in 2014. Among them, over 43 per cent of participants took up an offer within four months of registration into the programme. Moreover, over 45 per cent of participants were in employment, education or training after six months of exiting the programme (EC, 2017a). Overall, *Garantia Jovem* appears to have contributed to reducing the national NEET rate for youth aged 15–29, which decreased from 15.9 per cent in 2013 to 12.3 per cent in 2016 (ibid.). However, looking forward a number of challenges remain. In particular, more efforts are needed to: expand the outreach of *Garantia Jovem* to non-registered young NEETs, strengthen the labour market relevance of vocational training, and improve the monitoring and follow-up of participants through improved data collection and reporting systems.

The Portuguese Government has already taken important steps in this direction by introducing the “National Outreach Strategy for non-registered young unemployed and inactive young people in Portugal”, designed in collaboration with the ILO. This four-year strategy is composed of two phases; one (2017–18) aimed to assess how effective have been the efforts to strengthen the geographical balance of the *Garantia Jovem* network and service provision, and, the other (2019–20), aimed to scale up the actions and projects that, based on the evaluation made in the first phase, can amplify the results. Within this context, Portugal has already put in place the project, “Make the Future...Today!” (2017–18), which intends to better inform young people and the various stakeholders about the activities provided by the Youth Guarantee, with a view of increasing the involvement of inactive young people into the programme.

At the same time, a number of employment incentives specifically targeted to youth, long-term unemployed, and other vulnerable categories of workers have been introduced in recent years. The employment internship programme *Estágios Emprego*, one of the four pillars of the Youth Guarantee (*Garantia Jovem*) introduced at the end of 2013 (box 4.3), targeted youth aged 18–30 years, as well as older individuals being unemployed for one year or longer. The long-term unemployed were also specifically targeted by *REATIVAR*, a measure introduced in 2015 that provides six-month traineeship opportunities.

However, in April 2017, both *Estágios Emprego* and *REATIVAR* programmes have been replaced by the new measure, Professional Traineeships.<sup>7</sup> This new scheme differs from the previous ones on a number of important aspects: (i) it provides a “bonus” (*Prémio-Emprego*, Employment-Award) for companies that integrate trainees in open-ended contracts after the end of the internship; (ii) applications to participate in the programme must be made on specific periods; (iii) it introduces a maximum number of trainees per entity and per each calendar year; (iv) it narrows down the qualification levels of targeted interns by excluding young people holding the level-two qualification of the National Framework of Qualifications (NFQ), unless interns are older than 30 years; and (v) it adds a differentiation of the granted allowance according to the interns’ level of education, where the allowance increases with the interns’ level of education.

7. Ordinance 131/2017, April 7.



Finally, a recent tripartite agreement, “Combatting precariousness, reducing labour market segmentation and promoting collective bargaining”, approved by the Portuguese Parliament in July 2018, is expected to bring important changes to the use and design of employment incentives.<sup>8</sup> Among other objectives, this agreement aims at reducing the excessive use of temporary contracts and to promote their conversion into permanent employment. In particular, the agreement focuses on: (i) strengthening incentives for the conversion of fixed-term contracts into open-ended ones; (ii) expanding the probation period for open-ended contracts with first-time jobseekers and long-term unemployed to 180 days; and (iii) including professional traineeships prior to open-ended contract within the probation period.

## **An assessment of recent interventions**

The next issue to be addressed is whether ALMPs have been effective in improving participants’ labour market outcomes in Portugal, particularly following the financial and economic crisis. To assess this, this section presents evidence from existing impact evaluations conducted in Portugal along with more descriptive evidence arising from administrative data. The analysis focuses on the three main groups of ALMPs that have been at the centre of policy changes in the most recent years: labour market services, training programmes and employment incentives. Overall, the picture that emerges is that ALMPs have proved useful in cushioning the impact of the crisis on the Portuguese labour market. However, adapting the design and implementation of these interventions as labour market conditions change is key in order to ensure their future success. In this sense, ALMPs need to be adapted to the current state of the economy and the new challenges that might lie ahead.

### **Labour market services**

The bulk of the efforts to improve the provision and efficiency of labour market services have been directed towards modernizing the system of service provision and enhancing the personalization of services with views to increasing jobseekers’ attachment to the labour market. The first important change in this regard, as discussed above, was the introduction in 2012 of an obligation for unemployed individuals who were receiving unemployment benefits for more than six months to meet caseworkers every two weeks, and the possibility to be redirected to relevant ALMPs. An evaluation of this intervention was carried out in 2014 (see box 4.4 for details), comparing the chances of exiting unemployment between individuals who were affected by the reform as they were unemployed for more than six months and individuals who were not affected by the reform because they had been in unemployment for less than six months (Martins and Pessoa e Costa, 2014). The results reveal that individuals subject to the new policy regime were twice more likely to exit unemployment than people not subject to the policy change. Additionally, the findings suggest that the increase in employment probabilities did not come at the expense of reduced employment opportunities for the rest of the labour force (i.e. no substitution effects). This last result is important in demonstrating that in certain cases the provision of labour market services during periods of economic downturn, when the number of jobs is constrained, has indeed overall positive effects in terms of employment.<sup>9</sup> More generally, it is important to highlight the positive effects of keeping individuals attached to the labour market even when labour demand is constraint, as labour market attachment increases individuals’ willingness to look for and accept jobs, improves their motivation and limits human capital erosion.

As mentioned above, the obligation of complying with fortnightly meetings was substituted in 2016 by the introduction of a personalized support that envisages less frequent meetings aimed at providing more substantive support. This policy reform seems particularly beneficial since it places the quality of the job found (along with the speed at which the job match takes place) at the heart of the effort. Additionally, this approach reduces drastically the previous excessive focus on the sanctioning function of labour market services, focusing instead on addressing the wider range of challenges that jobseekers

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8. Source: Cabinet of the State Secretary of Employment.

9. Similar research in France had instead found that more intense counselling for certain groups of jobseekers increases their probability of finding a job, but reduces the employment prospects of comparable individuals outside the programme (Crepon et al., 2013).



#### 4.4 An evaluation of the 2012 reform to labour market services

##### BOX

Martins and Pessoa e Costa (2014) provide one of the few impact evaluations of ALMPs in Portugal during the crisis. Their contribution is important – beyond the case of Portugal – to understand whether labour market services can be effective during crises (when vacancies are limited). The identification strategy exploits the change in the eligibility criteria that the 2012 reform imposed, which required certain categories of jobseekers to meet with caseworkers every two weeks. In particular, the obligation applied to both (i) jobseekers above the age of 45 (independently from unemployment spell); and (ii) jobseekers that were unemployed for more than six months (independently from their age). The study uses this second eligibility criteria and compares employment outcomes of jobseekers (below the age of 45) who were just above or below the six-month unemployment threshold for participation. The main identification assumption is that these two groups of jobseekers are identical (with respect to their employment prospects) in the absence of the policy intervention. The main result of the paper is that the obligation to meet caseworkers every two weeks (and eventually be directed to other ALMPs or job interviews) doubles the probability of exiting unemployment status the following month. Additionally, the paper does not find any evidence that the improved employment probabilities of participants come at the expense of other categories of jobseekers not participating in the intervention (i.e. displacement effects). Jointly, these findings point to the important role that can be played by labour market services in improving employment outcomes relatively quickly (and with limited financial costs) even during crises. However, the analysis does not provide an assessment of the quality of the job found (e.g. presence of an employment contract) as well as its sustainability (i.e. duration) – two outcomes that are crucial to effectively measure the overall impact of the reform.

face in obtaining a decent job, such as lack of information on available vacancies, and difficulties in filling high-quality job applications. Although no evaluations of this later reform exist to date, preliminary evidence of descriptive nature seems to suggest that this recent reform achieved the desired outcomes.

First, the new personalized support seems to have increased jobseekers' attachment to the labour market. In particular, since the implementation of the new reform in 2016 the share of unemployment benefit recipients involved in ALMPs increased from 14.2 to 17.5 per cent at the end of 2017 and during the same time the average duration of registration in the public employment centres decreased from 15.2 to 12.7 months.<sup>10</sup> This trend – together with the reduction in unemployment levels – has brought about a reduction in the number of jobseekers assigned to each caseworker (from 550 to 350 persons between December 2014 and October 2017), while the number of technicians involved in career and job offers management remained stable at around 1,000 (OECD, 2017a). This development had positive trickle-down effects on the efficiency of caseworkers' operations. In particular, the number of monthly calls made by caseworkers increased since the introduction of the reform in 2016 (from 11 to 16 per cent of the unemployed) and the attendance rates of beneficiaries following those calls also increased (from 88 to 90 per cent of the issued calls). At the same time, the number of cancelled registrations (i.e. due to non-attendance upon call) remained stable at 0.3 per thousand employment individuals per month (data from the Ministry of Labour).

## Training

Training measures are generally regarded as one of the most effective types of ALMPs, even though the positive effects on participants might take time to materialise (Card et al. 2017). Importantly, training measures can lead to larger societal benefits (i.e. beyond the labour market) due to improvements in skills' levels.<sup>11</sup> Given the relatively lower opportunity costs for beneficiaries of enrolling into training initiatives during economic downturns (i.e. individuals cannot easily find employment, at least not on a full-time basis, when labour demand is weak), training initiatives are generally scaled up during periods of recession. This was also observed in the policy interventions introduced in Portugal in recent years.

10. However, this latter finding could be also motivated by improvements in the state of the labour market.

11. This is particularly relevant in the case of Portugal, where a large part of the labour force still has a relatively low level of skills compared to other EU countries.

Available data shows that beneficiaries of the apprenticeships programme (*aprendizagem*) had in 2014 a 45 per cent probability of being employed (either within the same organization where they did the apprenticeship or elsewhere) 12 months after the end of the apprenticeship (up from 35 per cent in 2013). Moreover, the rate of re-employment for these apprenticeships is higher than the one registered for shorter training interventions such as *Vida Ativa* (30.5 per cent of probability of being in a job 12 months after the completion of the programme in 2014), which is in line with empirical evidence suggesting that measures of a longer duration might be more effective in raising participants' employment prospects (Escudero et al., 2017).

This descriptive evidence is in line with the results of econometric analyses, which show that participating in an apprenticeship increases the probability of getting employment after the programme; while the effects of participating in the programme *Vida Ativa* are found to be of limited magnitude and non-significant (OECD, 2017b). At the same time, both types of interventions appear to channel individuals mostly towards temporary employment contracts. In particular, of those that are successfully employed 12 months after participating in an apprenticeship, only 19.7 per cent have a permanent employment contract (80.3 per cent have other forms of employment, mostly temporary contracts). In this respect, the programme *Vida Ativa* performs slightly better (22.9 per cent of those employed have a permanent contract after participation). More generally, considering that the positive effects of training programmes on participants' employability tend to be more significant in the medium- to long-terms (Card et al., 2016), it would be important to re-assess the impact of the aforementioned training activities over the next few years. This could be useful to guide potential corrections to the design of existing training programmes, such as *Qualifica*, for which robust evidence from impact evaluations is not yet available.

## Employment incentives

Finally, it is important to analyse the effectiveness of reforms implemented in Portugal in the area of employment incentives. Indeed, these interventions have been significantly scaled up during the recession and they are also particularly expensive for the public finances. The main employment incentive programme *Estímulo Emprego*, in place until the end of 2016, has proven to be relatively well targeted. It reached mainly individuals with basic education (up to the third cycle of primary education), who represented over 40 per cent of beneficiaries in 2015, as well as the younger cohort of prime-age workers (25–34 years' old), who accounted for over one third of total participants in the programme the same year. The parallel smaller scale employment incentive initiative *REATIVAR*, targeting long-term unemployed, has instead been less successful in targeting people with lower levels of education.

Overall, available estimates on the status of employment of beneficiaries from existing employment incentives schemes in Portugal show these participants had higher employment rates after participation. In particular, 64.1 per cent of individuals who benefitted from an employment incentive were still employed 12 months after the termination of the support in 2014 (data from the Ministry of Labour). Importantly, 45.8 per cent of them were employed within the same firm, suggesting that the initial support led to continued unsubsidized employment (although no causal interpretation can be ascribed to this relation). Accordingly, preliminary econometric evidence suggests that hiring subsidies have been effective in the country during the recession – participants in employment subsidies report a 40 per cent higher probability of being in a job even 24 months after the end of the intervention (OECD, 2017c).

Employment incentives appear to have also been beneficial in terms of fostering the use of permanent employment contracts (again based on available estimates rather than causal analyses), as 29 per cent of beneficiaries that were employed 12 months after participation had a permanent employment contract. This could be related to the type of contracts that are subsidized with the employment incentive – 53 per cent of subsidized employment relations in 2014 were of permanent nature.<sup>12</sup> Given differences in the amount of the wage subsidy provided to temporary and permanent contracts, this translated into differences in employment probabilities after participation in favour of individuals that were hired under the employment incentives with a permanent employment contract. In particular,

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12. Of the remaining 47 per cent, the large majority (35 per cent) were for contracts of less than 12 months and the remaining 12 per cent concerned temporary contracts that lasted more than 12 months.

78 per cent of the public expenditure in 2014 in employment incentives was directed towards subsidizing permanent employment contracts.

Employment incentives primarily designed to target youth have also shown positive outcomes. Descriptive evidence shows that more than half of participants in *Estágios Emprego* were employed one month after termination of the programme, a share that increases to 68 per cent after nine months (Government of Portugal, 2014). This is in line with an impact evaluation analyses suggesting that employment outcomes of participants in subsidized internships under any of the three main schemes (i.e. *Passaportes Emprego*, *Estágios Profissionais*, *Estágios Emprego*) improved significantly faster than those of non-participants six months after participation (OECD, 2017c). However, the probability of being employed in the same firms where the internship was carried out (without having benefitted of other type of support, e.g. subsidy) fell to 15.2 per cent six months after the completion of the internship – a percentage which rises to 16.1 per cent after 12 months. Even taking into account firms other than the ones where the internship was carried out, the actual employability rate did not exceed 38.3 per cent one year after the completion of the internship in 2014.

Looking forward, with the state of the labour market continuing to improve, the risk of deadweight losses and displacement effects from broadly targeted employment incentives schemes is likely to increase, as firms benefitting from the subsidy are likely to create jobs also in its absence, and/or hire subsidized workers instead of unsubsidized ones, which may result in negligible net job creation. Such unintended negative consequences can be minimized by targeting subsidies more narrowly to those groups of individuals that face significant and structural barriers to labour market insertion, such as youth, low educated individuals and women. However, even for these groups, economic incentives should be accompanied with more structural measures aimed at increasing their productivity (e.g. training), which could also allow for a reduction in the amount of the incentive. At the same time, it is important that employment incentives do not exacerbate the already high labour market duality between workers with permanent and temporary contracts.

With this in mind, the new employment incentive scheme, *Contrato-Emprego*, takes a number of steps in the right direction. This programme is expected to create about 15,000 jobs in 2017, with an overall budget of €57 million (OECD, 2017a). The first four tenders of *Contrato-Emprego* have supported 16,700 jobs (87 per cent on permanent contracts), with 60 per cent of incentives directed to youth and the long-term unemployed.<sup>13</sup> At the same time, in line with the policy objectives of the Government, the new employment incentive appears to be more effective in reaching individuals with basic or lower education, which account for almost 48 per cent of beneficiaries, according to preliminary data at the end of 2017. However, the largest majority (84 per cent) of those who have so far benefitted from the new employment incentive have past employment experience (data from IEFPP), which calls for a greater focus on the targeting of employment incentives for youth seeking a first job. In this regard, according to Government figures, the Professional Traineeships programme have also had promising results, with 82 per cent of the 25,500 trainees supported through this programme being young and 14 per cent long-term unemployed. Overall, more than 3,000 traineeships have been converted to permanent contracts as a result of the Employment-Award.<sup>14</sup>

Finally, it is important to note that simple descriptive statistics do not provide for a rigorous evaluation of the measures or the reforms carried out – and these types of evaluations should be conducted on a regular basis to assess the causal effects of ALMPs. In particular, a central concern with employment incentives is that the hiring of (certain) individuals would have taken place even without the subsidy. In this sense, enterprises would simply obtain a discount on hires that would have conducted anyway (i.e. deadweight loss). In fact, in a survey carried out on employers that benefitted from *Estimulo 2012*, 60 per cent of enterprises report that they would have created the jobs even in the absence of the subsidy (OECD, 2017b). Avoiding deadweight losses in the case of employment subsidies is difficult, as it would require perfect targeting on a case-by-case basis, which would require information that is not readily available to policy makers while they undergo extremely high implementation costs. However, in relative terms, the Portuguese system of employment incentives seems to have performed relatively well as estimates of deadweight losses from other countries are often close to 90 per cent of the jobs subsidized (ibid.).

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13. Figures provided by the Cabinet of the Prime Minister of the country.

14. Ibid.

## Policy considerations

This chapter has presented an overview of recent reforms in the area of ALMPs in Portugal and a preliminary assessment of their effectiveness. Results suggest that ALMPs have proved beneficial in sustaining the gradual but steady, labour market recovery observed since 2013. In particular, employment incentives have strengthened labour demand, allowing for a swifter-than-expected decline of the unemployment rate – even if they have probably financed some hires that would have taken place anyway. They have, however, mostly promoted the creation of fixed-term employment contracts, with modest conversion rates into more stable jobs. At the same time, training measures (especially those provided for a longer duration) have increased participants' employment probabilities in the short-run and enhanced (at least partly) their job-related skills. Finally, the initial reform of the system of labour market services appears to have increased labour market re-insertion, while the most recent changes introduced in 2016 seem to have raised the quality and effectiveness of the services provided.

Given the substantial improvements in the state of the economy in the most recent years, Portugal is now trying to readapt its framework of ALMPs to the different needs of the labour market, and adjust it according to lessons learned from the past wave of reforms (2012–16). In particular, the 2017 reform of employment incentives has increased the focus on these schemes on the most vulnerable societal groups, while trying to promote hiring on permanent contracts to avoid creating further disparities with respect to workers on fixed-term work arrangements. Similarly, the 2017 reform of the Professional Internship programme aims at promoting the conversion of internships into permanent work contracts by offering a bonus upon conversion. Meanwhile, it also limits the cases of abuse by establishing a maximum number of interns that each company may hire in a given year. At the same time, the 2017 *Qualifica* training initiative targets more closely low-skilled individuals, while strengthening work-related training components. Finally, the project of reform of the PES, developed under the *SIMPLEX+* programme, is another welcome initiative, aiming at modernizing the provision of labour market services, improving the quality of the services provided (through a more personalized support) and increasing their accessibility.

Nevertheless, spending per participant in ALMPs remains rather low in Portugal by international standards, often limiting the capability of the national ALMP framework to reach the most disadvantaged societal groups. Moreover, in spite of improvements, ALMPs remain largely concentrated in employment subsidies at the expense of other types of ALMPs that could be more supportive of vulnerable jobseekers, and more effective during times of economic growth (e.g. start-up incentives). In light of these considerations, it appears that there is room to introduce a number of measures to improve the quality, delivery and outreach of ALMPs and balance their policy mix.

### Strengthening the PES institutional capacity

Despite the latest positive reforms, expenditure in labour market services remains relatively low. This is reflected in the high client-to-staff ratio, which at over 350 jobseekers per career manager is around three times higher than the EU average. For instance, this ratio is well below 200 in France and Germany, and even lower in particularly virtuous countries such as Sweden, Denmark and the United Kingdom (EC, 2016). This limits the PES capability to provide job-search assistance tailored to the jobseeker, more granular profiling of the unemployed, and ultimately more effective placement.

Halving the caseload per career manager in Portugal could prove a cost-effective measure to improve employment transition rates, as well as the quality of the placement by providing more personalised services and targeted career counselling. In particular, part of the additional career managers could specialise on providing dedicated services only to those facing particularly high barriers to employment, such as young NEET and the long-term unemployed. For instance, the introduction of specialised PES staff working only for the most disadvantaged societal groups in countries such as Belgium, France, and Denmark have proven important in improving job placement rates for these vulnerable groups (EC, 2015).

Moreover, it is crucial that the effectiveness of the services provided by the PES is measured, not only by rates of placement, but more importantly in terms of long-term sustainability of the placements.

This could also help to understand where to place the additional resources directed towards the PES. Looking at longer-term outcomes of PES beneficiaries requires greater monitoring of clients over time and an assessment of their subsequent experiences. With this in mind, additional resources might be devoted to develop a more systematic data collection on PES beneficiaries' labour market outcomes. This should allow for a more effective targeting of PES and ensure a better value for money.

Finally, while the 2018 PES reform strategy, aiming at improving digitalization of basic services and their accessibility, can arguably improve basic profiling and registration rates with the PES, it is crucial that strong face-to-face services remain in place by lowering the caseload of career managers. This is particularly important for the most vulnerable who may not have the confidence or skills to use e-Services. This is key not only when providing services to jobseekers, but also when servicing employers. For example, when notifying a vacancy, some employers will prefer e-Services, while others may prefer to contact the PES by phone or other means. In other words, in order to make the PES one of the preferred channels for posting and looking for a vacancy, it is necessary to provide a high quality and comprehensive set of services, ranging from human resources advice for SMEs to tailored career advice for jobseekers (EC, 2015).

## Increase registration rates with PES among low-educated youth and NEET

Although the share of jobseekers participating in ALMPs is in line with international standards (see second section above), the PES is not able to reach a large number of people who do not receive unemployment or social assistance, and, as such, have no incentive to register with the PES. This is particularly the case for youth, who are left without employment support and are at risk of becoming NEET. Indeed, around half of young, low-skilled, long-term unemployed in Portugal contacted the PES to find work during the last month of 2015, while another 30 per cent of young jobseekers are not registered at all (OECD, 2017a).

In light of these figures, it would be important to implement ad-hoc strategies to reach vulnerable youth, keeping in mind that strategies for engaging young people, and especially the most disadvantaged ones, may be quite different from those used to reach other clients. For instance, experiences from other EU countries, such as Germany, Greece and Hungary, show that the introduction of outreach services, such as job fairs organized in youth centres, or at the premises of training centres, can be successful in enhancing youth engagement with the PES (EC, 2015). Similarly, campaigns using social media and other new technology used by young people can also be effective in reaching people that would not normally register with the PES (EC, 2015; OECD 2017a).

At the same time, strengthening training programmes tailored at youth can also prove important in increasing their registration rates with the PES. In particular, given that Portugal has one of the highest drop-out rates from formal education, higher activation rates could be obtained by strengthening the linkages between upper-secondary schools and the apprenticeship system, while expanding the offer of "second-chance" education curricula (OECD, 2017a). To this end, greater coordination between the PES, the education system and local authorities – such as that organized within the context of the Portuguese Youth Guarantee programme – could help gather information about "at-risk" youth before they leave school in the attempt to reach them before they become NEET (EC, 2015)..

## Activating jobseekers through an integrated approach to entrepreneurship

Spending in start-up incentives in Portugal remains one of the lowest across European countries. However, as economic and labour market conditions in Portugal continue to improve there is room to increase spending in start-up incentives for the unemployed. This may also stem from a budget-neutral rebalancing of the composition of spending in ALMPs, based on redirecting resources from employment incentives in favour of higher spending in start-up incentives. Indeed, in periods of economic expansion, any potential displacement effect – i.e. incentives that take away employment and business opportunities from existing companies – driven by start-up incentives is likely to be

smaller than that caused by other labour demand-oriented labour market policy measures, such as employment subsidies (EC, 2017b). Importantly, as outlined by the existing empirical evidence, start-up incentives are often more effective than other types of ALMPs for disadvantaged jobseekers, particularly for the low educated, who face limited options in the labour market (Escudero, 2018; Caliendo and Künn, 2011; Rodriguez-Planas, 2010).

Beyond the increased financial support to this type of ALMPs, Portugal system of start-up incentives needs to move further away from the one-shot provision of financial support towards a more integrated approach which combines financial aid, business counselling, and entrepreneurship training. Since 2016, Portugal has taken important steps in this direction by launching an integrated strategy for entrepreneurship (*Startup Portugal*). In particular, the Portuguese Government introduced three voucher-style programmes aimed at promoting the creation of start-ups. These programmes combined financial support with counselling and entrepreneurship training (see Appendix 4 for details). This is a positive development as countries that have put in place similar integrated frameworks for business support and enterprise development in their national context have, on average, witnessed positive labour market returns on their investments in start-up incentives. For instance, evaluations show that in most of the countries analysed, more than half of the start-ups created through the provision of incentives were still active after a period of five years or longer – with start-ups created by women having even higher survival rates (Caliendo et al. 2016). Moreover, it appears that even when start-up incentives do not lead to the creation of viable enterprises in the long-term, beneficiaries of such schemes are more likely to obtain regular, non-subsidized jobs, while being less likely to return to the PES as unemployed. This is mostly the result of the skills that beneficiaries develop during the training part of the start-up incentives process. Moreover, while start-up incentives have direct positive employment effects, they can also support indirect job creation as subsidized firms start hiring employees (Caliendo and Künn, 2014). Evidence from a number of European countries show that, on average, around 20 per cent of subsidized start-ups hire one employee or more (EEPO, 2014). In light of this evidence, existing start-up development schemes in Portugal could be further scaled-up with the objective of reaching a larger pool of potential entrepreneurs, and providing them with more sustainable counselling and greater financial support.

However, developing an appropriate mix of measures to support start-ups (e.g. combining subsidies with training, counselling, and financial support) requires specialized trainers and advisers that provide high-quality managerial and entrepreneurial counselling. The 2016 Portuguese strategy for entrepreneurship is already seeking greater synergies with key actors of the business-development arena, such as business incubators and venture capitalists, which can provide valuable counselling and training to participants in start-up incentive schemes. In an effort to increase the resources devoted to the PES, Portugal might also need to increase the spending devoted to gathering the necessary expertise within the PES staff. It is indeed crucial that the PES is adequately staffed to efficiently manage the assignment of unemployed individuals across the various start-up incentives schemes, and to monitor the long-term performance of participants.



# Wages and inequality

# 5

## KEY FINDINGS

Wages in Portugal represent about 70 per cent of total household income. Wage increases therefore play a key role in raising the standard of living of workers and their families.

In recent years, Portugal, like many countries, has seen a “decoupling” of wages and productivity, meaning that the growth of average wages has lagged behind the growth of labour productivity. Wage policies – including minimum wages, equal pay policies, and collective bargaining – can close this gap, reducing wage and income inequality.

Despite wage fluctuations during the crisis, real wages in 2016 were about 3 per cent higher than in 2007. While the labour share of the economy declined substantially until 2015, it has recently rebounded. Moreover, wage and income inequality have largely declined in Portugal in the past decade, albeit from high starting levels. While the gender pay gap has also declined, it remains at about 19 per cent.

Nevertheless, with rising concerns about levels of inequality, the minimum wage has become a prominent policy tool. It sets an important standard in Portugal where some 40 per cent of wage earners are paid no more than 25 per cent above the minimum wage.

Evidence shows that increasing the minimum wage did not have negative employment effects and can thus be a very useful tool for supporting the wages of low-paid workers, many of whom tend to be women.

However, other income sources, particularly unemployment benefits and other social transfers, will remain important for low-income individuals who are unemployed.

There may be room for additional, carefully considered wage growth, which would contribute to domestic demand and decrease incentives for emigration. To better predict effects of wage increases, the monitoring system for minimum wage effects on employment should be strengthened. ■



When ILO member States adopted the 2008 Declaration on Social Justice for a Fair Globalization, they called for wage policies “designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection”.<sup>1</sup> This highlighted the importance of wage policies in achieving the objectives of decent work and social justice for all men and women. In line with these objectives, the UN 2030 sustainable development agenda calls for the adoption of “fiscal, wage and social protection policies” to progressively achieve greater equality.<sup>2</sup>

Wages in Portugal represent about 70 per cent of total household income.<sup>3</sup> Wage increases thus play a key role in raising the standard of living of workers and their families. While wage increases in the long run are only possible when the economy is expanding and when labour productivity is growing, in recent years many countries have seen a “decoupling” of wages and productivity, meaning that the growth of average wages has lagged behind the growth of labour productivity. This “decoupling” has led to a decline in the share of GDP going into labour compensation (“the labour share”), and an increasing share of GDP flowing into profits and dividends (“the profit share”).<sup>4</sup> Although a growing profit share could in principle lead to more investment and hence future job creation and wage growth, in practice, this has often not been the case. Instead, low-wage growth and declining labour shares have weakened the ability of workers and their families to buy goods and services produced in the local economy, thereby holding down private consumption and aggregate demand (ILO, 2012). Indeed, there appears to be growing recognition that sustainable wage increases are not only good for social cohesion, but also a crucial determinants of growing household incomes and hence of aggregate demand and inclusive growth (ILO, 2012; EC, 2018).

Wage policies – including minimum wages, equal pay policies, and collective bargaining (discussed in the next chapter) – are not only important to link economic growth and average wages. They are also a key mechanisms to reduce wage and income inequality. Increasing levels of inequality have recently become a major source of concern in Europe and the world of at large. While recent trends have been mixed across Europe (Dauderstädt and Keltek, 2017), a longer term perspective reveals that income inequality has increased in a majority of advanced economies since the 1980s and that unequal wage distributions have been a major factor behind the increase in income inequality. In the face of such growing inequality, many countries have introduced or strengthened minimum wages.

A majority of the available evidence shows that minimum wages did not recently have negative employment effects. Although the range of estimates varies widely across the literature, a large proportion of recent studies and meta-studies (quantitative studies of studies) find employment effects that are too small to be observable in aggregate employment or unemployment statistics, except where the minimum wage is set at very high levels (ILO, 2016c).<sup>5</sup> If carefully operated, minimum wages can thus be a very useful tool to support the wages of low-paid workers, many of whom tend to be women. This being said, although minimum wages can have a large impact on the wage distribution, they merely set a floor. Many countries in the world, therefore, rely on collective bargaining systems to determine workers’ wages above an existing statutory floor and have a more comprehensive impact on the distribution of wages.

This chapter has five sections. The first section traces the changes in average wages and the labour share in Portugal, while the second section documents overall trends in income and wage inequality, and the third section provides an overview of the gender pay gap. The fourth section highlights the important role of the minimum wage, as nearly half of wage earners are paid no more than 125 per cent of the minimum wage. The final section shows that many low-income individuals are unemployed rather than wage employees, pointing to the importance of other income sources for this group, particularly unemployment benefits and other social transfers.

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1. [http://www.ilo.org/global/meetings-and-events/campaigns/voices-on-social-justice/WCMS\\_099766/lang--en/index.htm](http://www.ilo.org/global/meetings-and-events/campaigns/voices-on-social-justice/WCMS_099766/lang--en/index.htm)

2. See SDG Goal 10.4. <http://sdg.org.ua/en/about-sdgs/reduced-inequalities>

3. See Global Wage Report 2014/15. <http://www.ilo.org/global/research/global-reports/global-wage-report/2014/lang--en/index.htm>

4. On the global decline of the labour share see Karabarounis and Neiman, *The Quarterly Journal of Economics* (2014), 61–103.

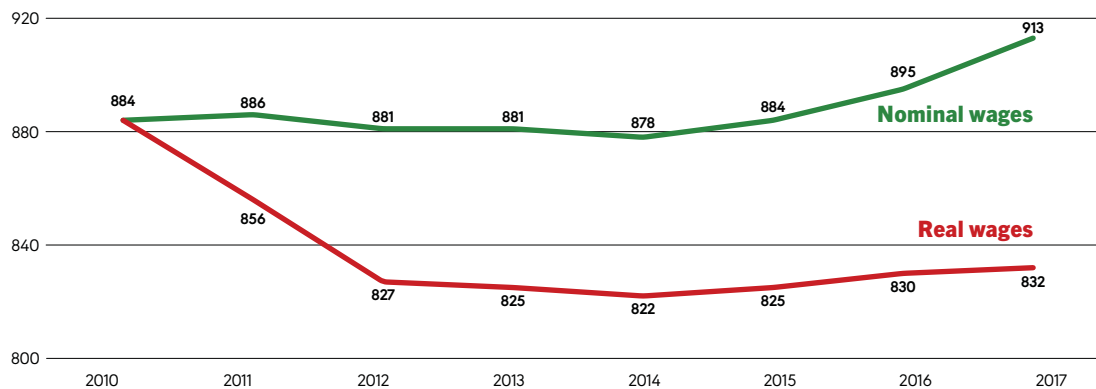
5. For more detailed summary of the literature see the ILO minimum wage policy guide, available at: [https://www.ilo.org/global/topics/wages/minimum-wages/WCMS\\_458660/lang--en/index.htm](https://www.ilo.org/global/topics/wages/minimum-wages/WCMS_458660/lang--en/index.htm)

## Average wages and the share of labour compensation in GDP

Using administrative data from the Social Security Remuneration Declarations, figure 5.1 shows the evolution of nominal and real monthly earnings in Portugal between 2010 and 2017. We observe that nominal wages declined somewhat between 2011 and 2014, from €886 per month to €878 per month, and progressively increased thereafter up to €913 per month in 2017. Deflating nominal wages by the consumer price index (CPI), however, we observe that real average wages declined quite sharply between 2010 and 2012, and recovered moderately since 2015. By 2017, real average wages remained about 6 per cent below their level of 2010.

Figure 5.2 provides a longer perspective on the evolution of average wages using a different data source, the GEP's *Quadros de Pessoal*, as well as information on the respective role of nominal wages and the CPI in helping to understand the evolution of real wages. We see that real average wages had in fact increased by 12 per cent between 2002 and 2010, before sliding back as Portugal entered into economic turbulence – only beginning to recover in 2015. Note that the sharp increase in 2009 was to a large extent due to falling consumer prices, rather than to higher nominal wage increases. Overall, with this longer term perspective, the real average wage in Portugal in 2016 remained 7 per cent below their level of 2010.

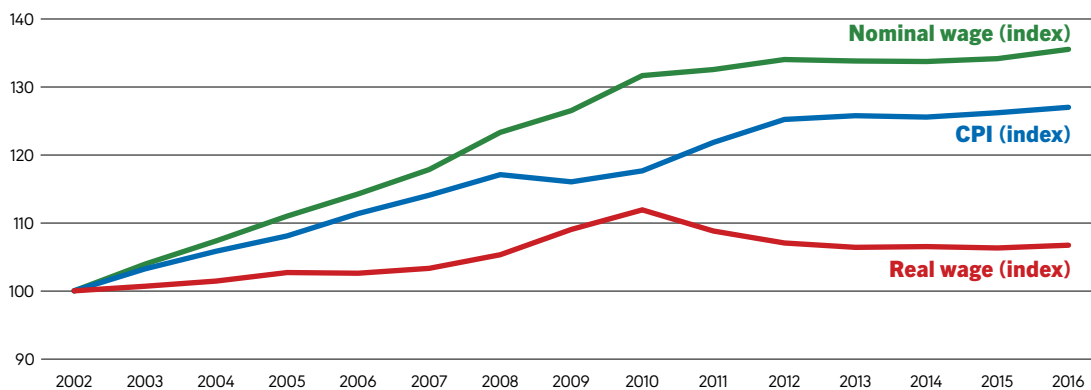
**FIGURE 5.1** Evolution of average monthly wages, 2010–17 (euros)



Note: Real wages are nominal wages deflated by the consumer price index (2010=100).

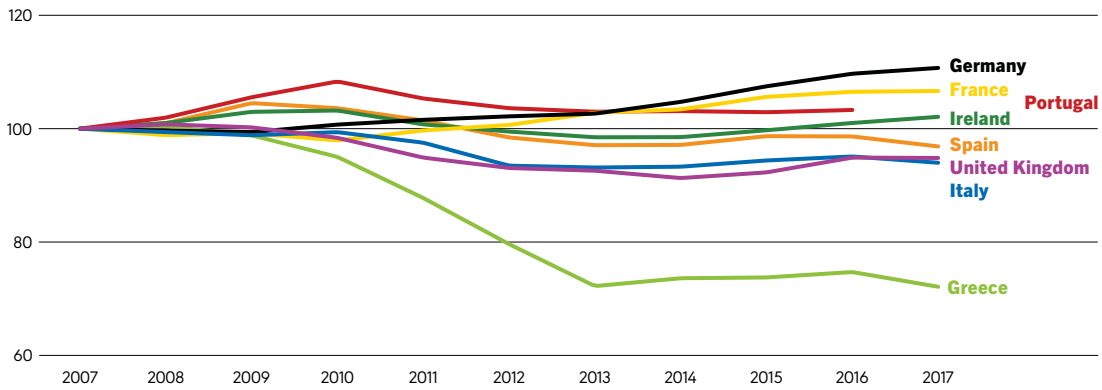
Source: ILO calculations based on Declarações de Remuneração à Segurança Social, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

**FIGURE 5.2** Average wages and CPI, 2002–16



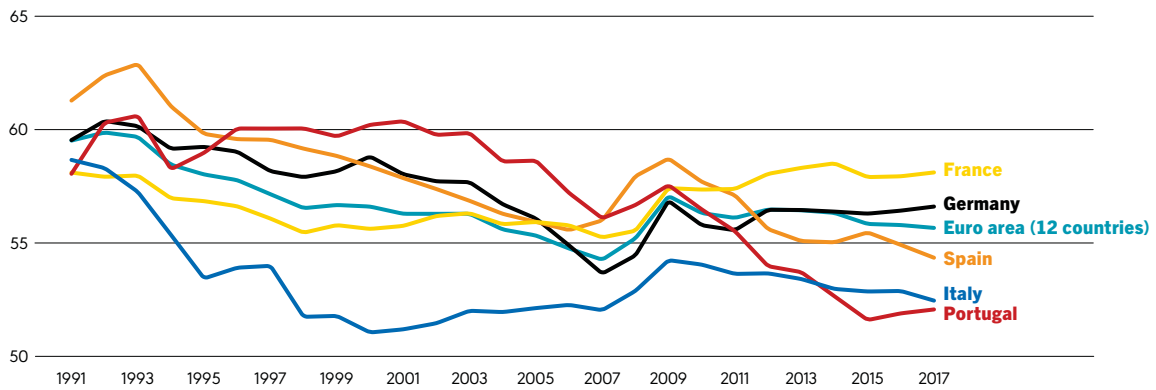
Source: ILO calculations based on Quadros de Pessoal, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

**FIGURE 5.3** Index of real average wages in selected countries, 2007–2016/17 (2007 = 100)



Source: ILO *Global Wage Report* based on official national sources; for Portugal, ILO calculations are based on Quadros de Pessoal, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

**FIGURE 5.4** Adjusted labour income share in Portugal and other selected countries



Source: AMECO/EU. Adjusted wage share: total economy: as percentage of GDP at current prices (compensation per employee as percentage of GDP at market prices per person employed) (ALCDO).

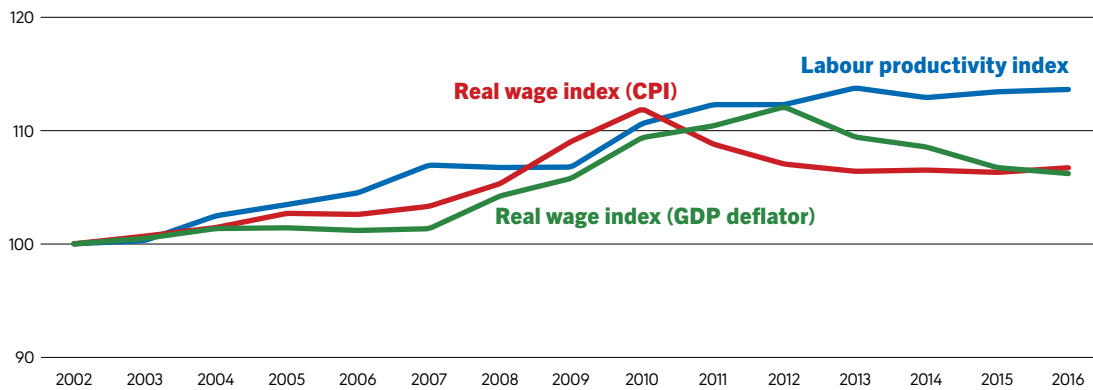
higher than in 2002, and 3 per cent higher than in 2007. As can be seen in figure 5.3, this trend compares relatively well to other countries, particularly countries such as Spain, Italy, the United Kingdom or Greece, where real wages have fallen since 2007.

Have recent trends towards higher wages in Portugal been unsustainable? This is quite unlikely in light of the evolution of the labour share of GDP shown in figure 5.4. The labour share remained relatively stable at about 60 per cent of GDP during the 1990s, before starting its decline in the early 2000's to less than 52 per cent in 2015.<sup>6</sup> The labour share's decline was briefly halted during 2008/09, as profits were hit harder than labour during the early phases of the global economic crisis – pointing to the counter-cyclical behaviour of labour shares also observed in other countries. Perhaps more surprising is the continuous decline in the labour share in subsequent years until 2015, when its decline was halted.

These trends in the labour share suggests that wage moderation took place in a context of more rapidly increasing labour productivity since the end of the 1990s. Figure 5.5 shows indeed that between 2002 and 2016, labour productivity (measured here as GDP per worker) increased more rapidly than real wages – mostly as a result of “decoupling” after 2010. A similar decoupling was observed over

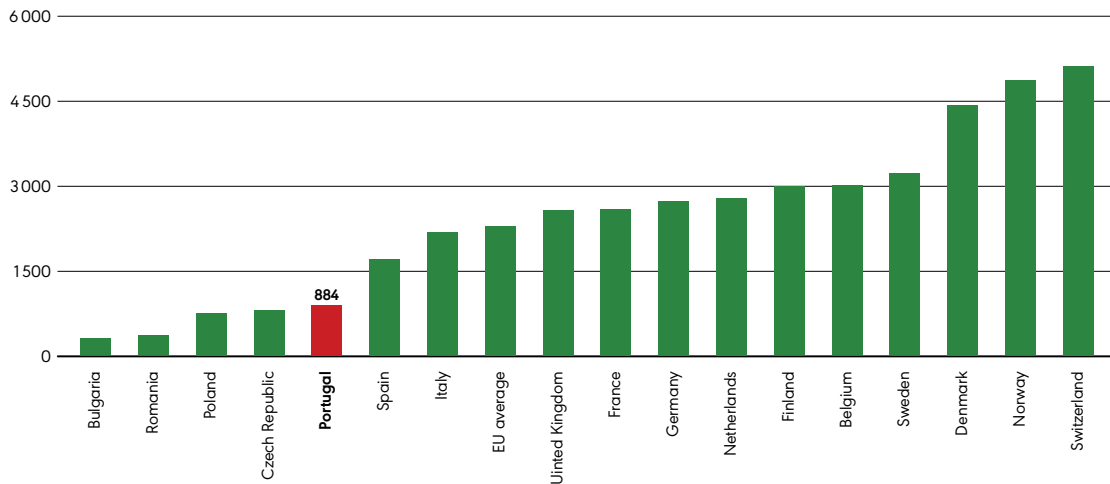
6. The labour share in GDP is defined as the total compensation of employees given as a per cent of gross domestic product (a measure of total output), both provided in nominal terms. Total compensation refers to the total remuneration, in cash or in kind, payable by an enterprise to an employee in return for work done by the latter during the accounting period.

**FIGURE 5.5** Trends in growth in average real wages and labour productivity in Portugal, 2002–16



Source: ILO Global Wage Database; ILO *Global Employment Trends*. For Portugal, ILO calculations are based on Quadros de Pessoal, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

**FIGURE 5.6** Monthly wages in Europe (full-time equivalent, euros)



Source: ILO based on Eurostat median hourly earnings, all employees (excluding apprentices).

a longer period in a recent study by the European Commission on wage dynamics in the Economic and Monetary Union (EMU), which observed that Portugal and Ireland were the two countries with the largest gaps between wage growth and productivity growth between 2000 and 2016 (EC, 2018). This declining labour share, combined with the relatively stronger economic growth and declining unemployment rate in 2017, suggests that there might be some scope for sustainable and carefully considered wage increases in the future.<sup>7</sup>

In addition to seeing its labour share decline over the last two decades, and seeing wage growth lagging behind productivity growth, it is worth remembering that Portugal remains a low-wage country by European standards – notwithstanding a rise in the real mean wage of more than 50 per cent between 1988 and 2013 (Portugal, Raposo and Reis, 2018). Converting Eurostat estimates of gross hourly wages into full-time equivalent figure (assuming 40 hours of work per week), Portugal's monthly median wage in enterprises with ten employees or more stands at less than €900 per month, compared to more than €2,000 for the EU as a whole (figure 5.6).

7. See also Onaran and Obst, 2016, who found that in Portugal, like in ten other EU15 countries, a decrease in the share of wages in national income leads to lower growth, and hence a higher wage share would lead to more rapid growth.

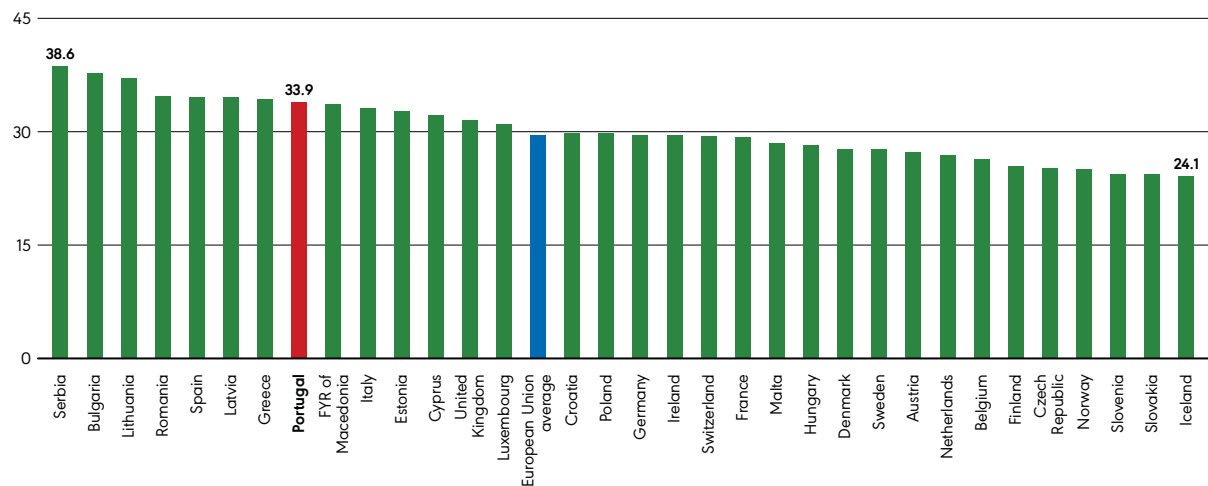
With regard to the public sector, Portugal implemented a reduction in the public sector wage bill during 2010–14, as part of a strong fiscal consolidation effort. The education and health sectors contributed most to the reduction in the wage bill, which was achieved through a combination of reduced government employment – achieved mainly through attrition and a cut in the number of workers with temporary contracts – as well as temporary wage cuts, with higher cuts for higher-paid employees. According to the IMF, this included wage cuts between 3.5 and 10 per cent in 2011 for wages above €1,500, the suspension of the 13th and 14th monthly salaries in 2012, and additional 2.5 per cent to 12 per cent cuts for wages exceeding €600 in 2014 (IMF, 2017b). Additionally career progression was frozen as a means of containing the public sector wage bill. These cuts have since been fully rolled back and career progression has been unfrozen. Any possible future wage increase in the public sector should of course take into consideration the effects on the total public sector wage bill and on the fiscal situation of the country.

## Income inequality, poverty and the distribution of wages

Portugal has relatively high-income inequality and poverty. Three relevant indicators are shown in figure 5.7. Looking first at the Gini index, we observe that its value for Portugal stands at about 0.34, which is higher than many other European countries, though lower than Spain and Greece. Using a different indicator – the share of the population at risk of poverty (that is with incomes below 60 per cent of the median) – Portugal is again in the upper half of the distribution, with a rate of 19 per cent of people at risk in 2016.

The high-income inequality in Portugal has been observed by others before, who had also observed that Portugal achieved significant results in reducing economic inequality and poverty before the outbreak of the economic crisis – but that this progress was halted by the crisis.<sup>8</sup> Figure 5.7c shows that Portugal has also relatively high wage inequality by international standards.

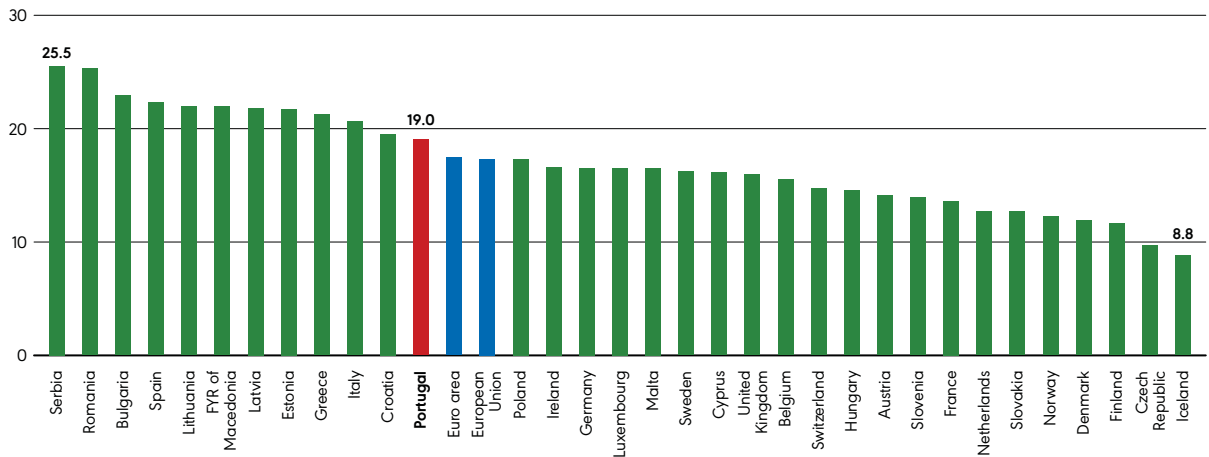
**FIGURE 5.7a** The Gini coefficient of household income inequality, 2016



Source: EU Survey for Income and Living Conditions (EU-SILC).

8. See Rodrigues, Figueiras, and Junqueira, 2016 or Arnold and Rodrigues, 2015.

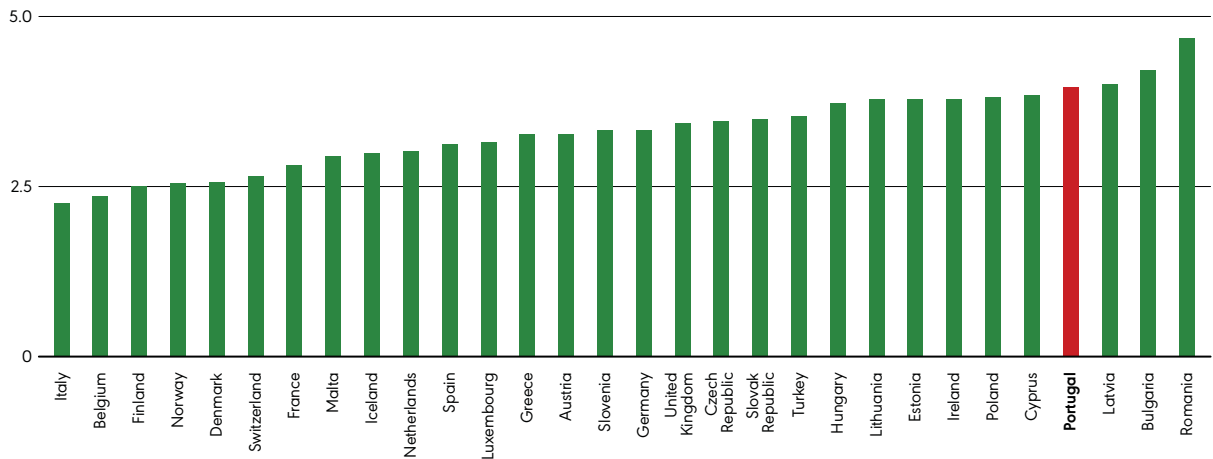
**FIGURE 5.7b** Percentage of population at risk of poverty, 2016



Note: The at-risk-of-poverty rate is the share of people with an equivalized disposable income (after social transfer) below the at-risk-of-poverty threshold, which is set at 60 per cent of the national median equivalized disposable income after social transfers.

Source: Eurostat.

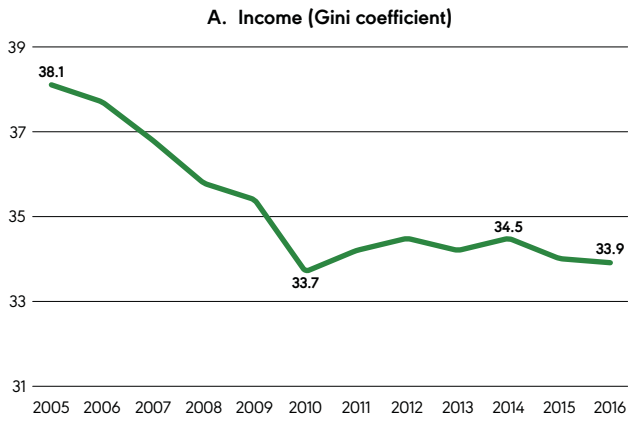
**FIGURE 5.7c** Earning inequality in Europe



Source: OECD decile ratios of gross earning (2014–16).

Figure 5.8 (left panel) shows how income inequality – measured by the Gini coefficient – declined in Portugal between 2005 and 2010, and how the crisis has halted this gradual decline. The other panels in the figure show the evolution of different measures of the distribution of wages between 2006 and 2016. Panel (b) shows that the ratio of wages of the best paid 10 per cent to the lowest paid 10 per cent declined from 7 in 2006 to 6 in 2016. Panel (c) shows how the proportion of low-paid workers (with wages below two-thirds of the median) also declined both before the crisis and again since 2014; and panel (d) shows that the pay gap between managers and skilled professionals, as well as between skilled professionals and unskilled professionals also declined.

**FIGURE 5.8** Measures of income and wage inequality

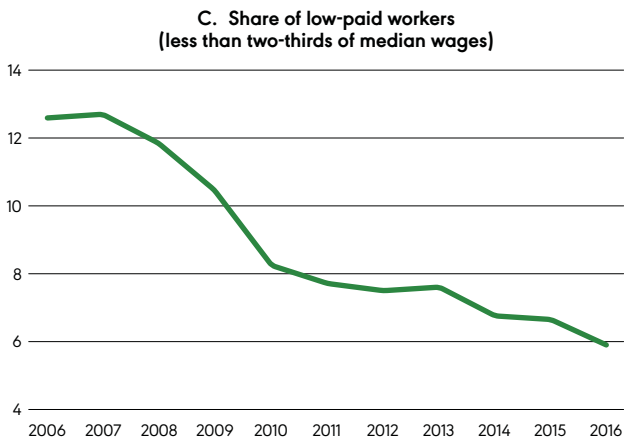


Source: EU-SILC (Eurostat, 2018).

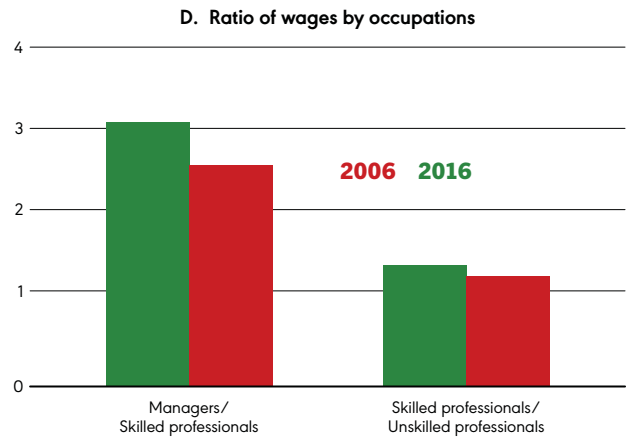


Note: D10 to D1 is the ratio of mean wages of the top decile to the bottom deciles of the wage distribution.

Source: Quadros de Pessal.



Source: Quadros de Pessal/GEP-MTSSS.

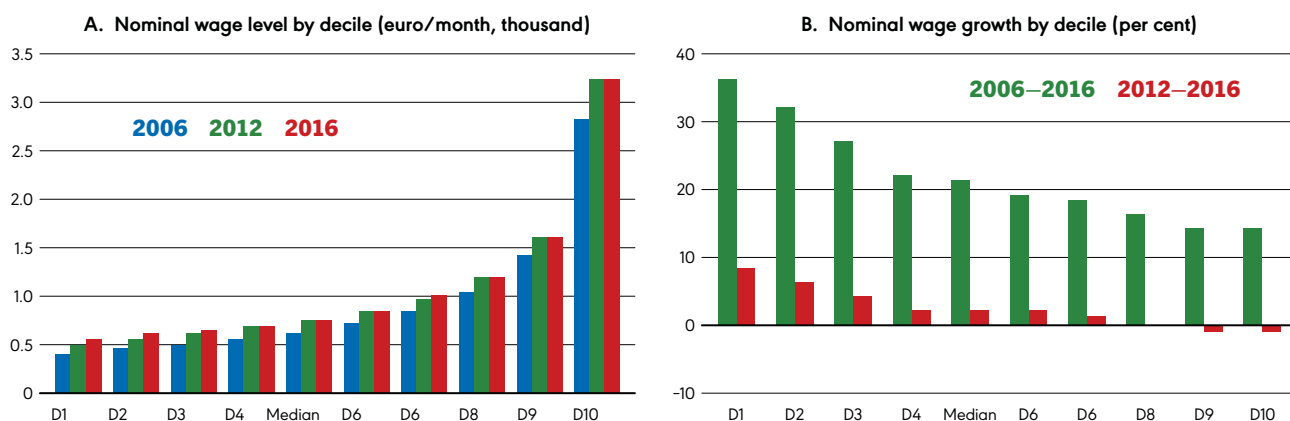


Source: Quadros de Pessal/GEP-MTSSS.

To better understand why wage inequality declined, figure 5.9 illustrates how the average wages of different deciles evolved during the period 2006–16. The left-hand panel shows that between 2006 and 2012, wages of all groups increased, whereas between 2012 and 2016, only wages of low-paid workers increased. The total growth rate in nominal wages for workers in different deciles is illustrated on the right-hand side, showing that over the whole period 2006–16, wages of top deciles increased by less – and even declined during 2012–16 – compared to the wages of bottom deciles, which increased by more than 30 per cent.



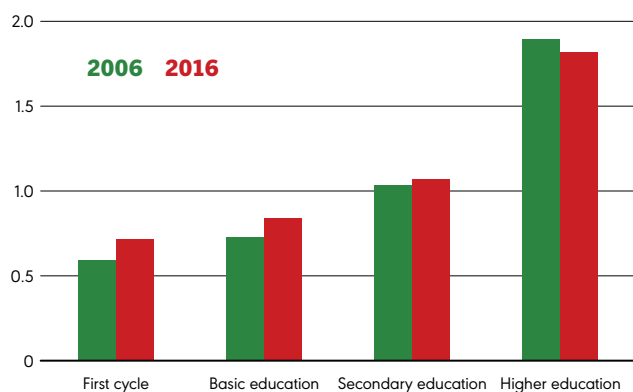
**FIGURE 5.9** Wages distribution by decile (average wage of each decile)



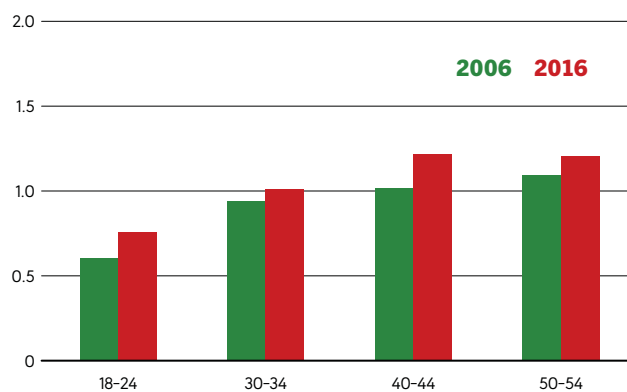
Source: GEP/MTSSS.

Looking at the distribution of wages in more detail, figure 5.10 shows average monthly wages for different workers by level of education and figure 5.11 shows wages by age. Unsurprisingly, average wages increase with education and age (up to a certain point). Looking at changes over time, we can observe that wages of workers with higher education declined, while the average wages of less educated workers increased. From figure 5.12, average wages by region, and figure 5.13, average wages by industry, we see that average wages are highest in the Lisbon area and in the electricity and gas sector, followed by the financial and real estate sector. Wages are lowest in agro-fisheries, and hotels and restaurants (note that private services, such as domestic work, are excluded from the data set).

**FIGURE 5.10** Monthly wage of employees by education (euros, thousand)

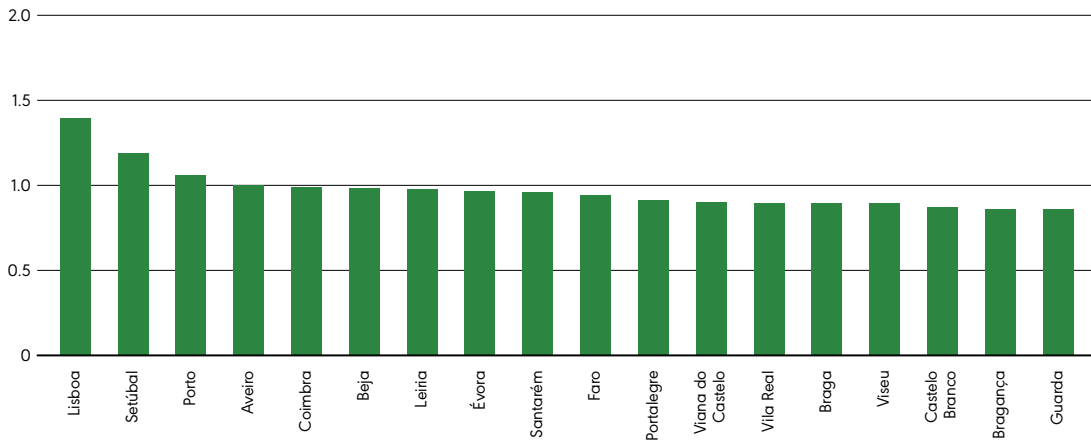


**FIGURE 5.11** Monthly wages of employees by age (euros, thousand)



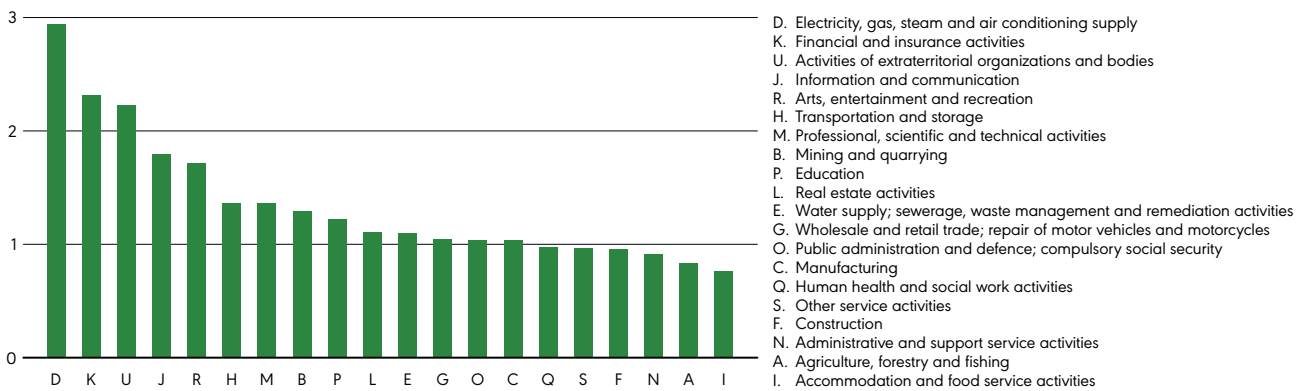
Source: Quadros de Pessoal, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

**FIGURE 5.12** Monthly wages of employees by region (euros, thousand)



Source: Quadros de Pessoal, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

**FIGURE 5.13** Monthly wages of employees by industry (euros, thousand)



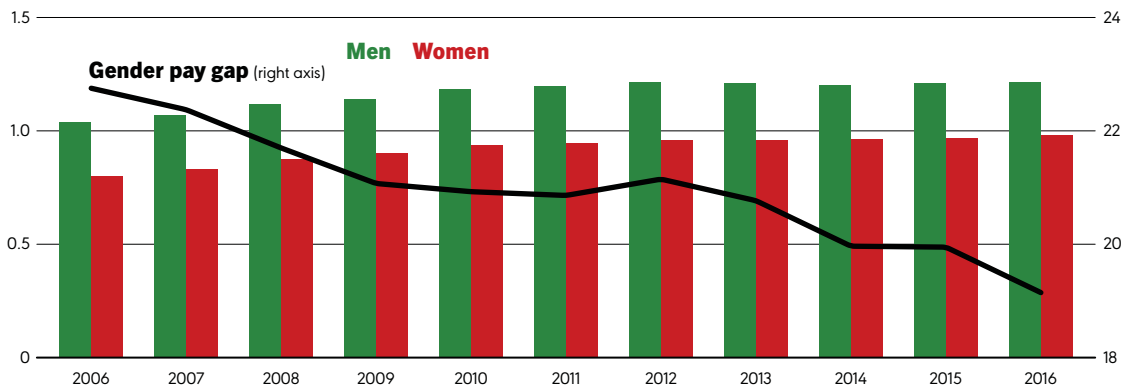
Source: Quadros de Pessoal, Gabinete de Estratégia e Planeamento (GEP) do Ministério do Trabalho, Solidariedade e Segurança Social.

## The evolution of the gender pay gap

Another important aspect of the distribution of wages is the pay gap between men and women. Gender equality and women’s empowerment is one of the 17 Sustainable Development Goals (SDGs) set by the 2030 Agenda for Sustainable Development. Achieving equal pay for work of equal value by 2030 is the target of SDG 8 on sustainable and inclusive growth and decent work. The gender pay gap provides some information on the extent of gender equality in the labour market. However, as emphasized by the ILO and others,<sup>9</sup> the factors that lie behind the “raw” gender pay gap (the difference in average wages between men and women) need to be well analysed and understood in order to inform national policy interventions to eliminate the gender pay gap.

9. See ILO Global Wage Report 2016/17 <http://www.ilo.org/global/research/global-reports/global-wage-report/2016/lang--en/index.htm> as well as the forthcoming ILO Global Wage Report which will be dedicated to this issue.

**FIGURE 5.14** Monthly wages of employees by sex, 2006–16 (euros, thousand)

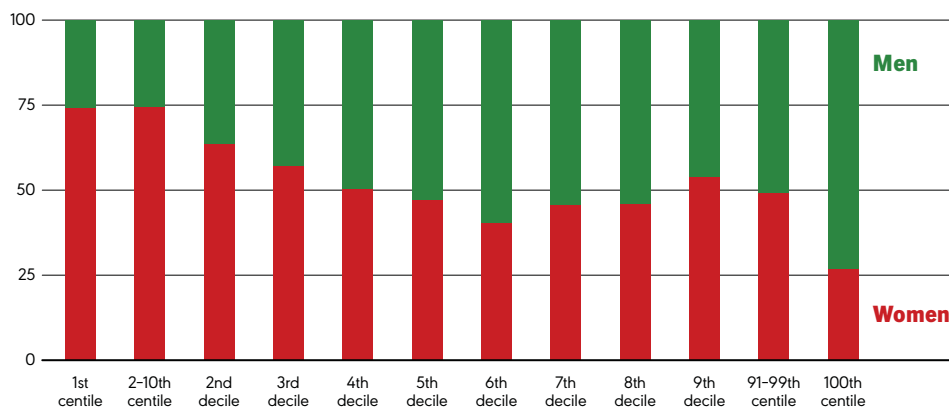


Source: GEP.

Since the early 1990s, women dominated inflows into the labour market in Portugal, and as women became increasingly skilled, this change was accompanied by a decrease in the gender pay gap (Cardoso, Guimarães, Portugal and Raposo, 2016). Looking at more recent years, figure 5.14 shows that average wages of women increased somewhat more rapidly than men. The period 2006–16 thus reveals a further decline in the monthly gender pay gap, from about 23 per cent to 19 per cent.

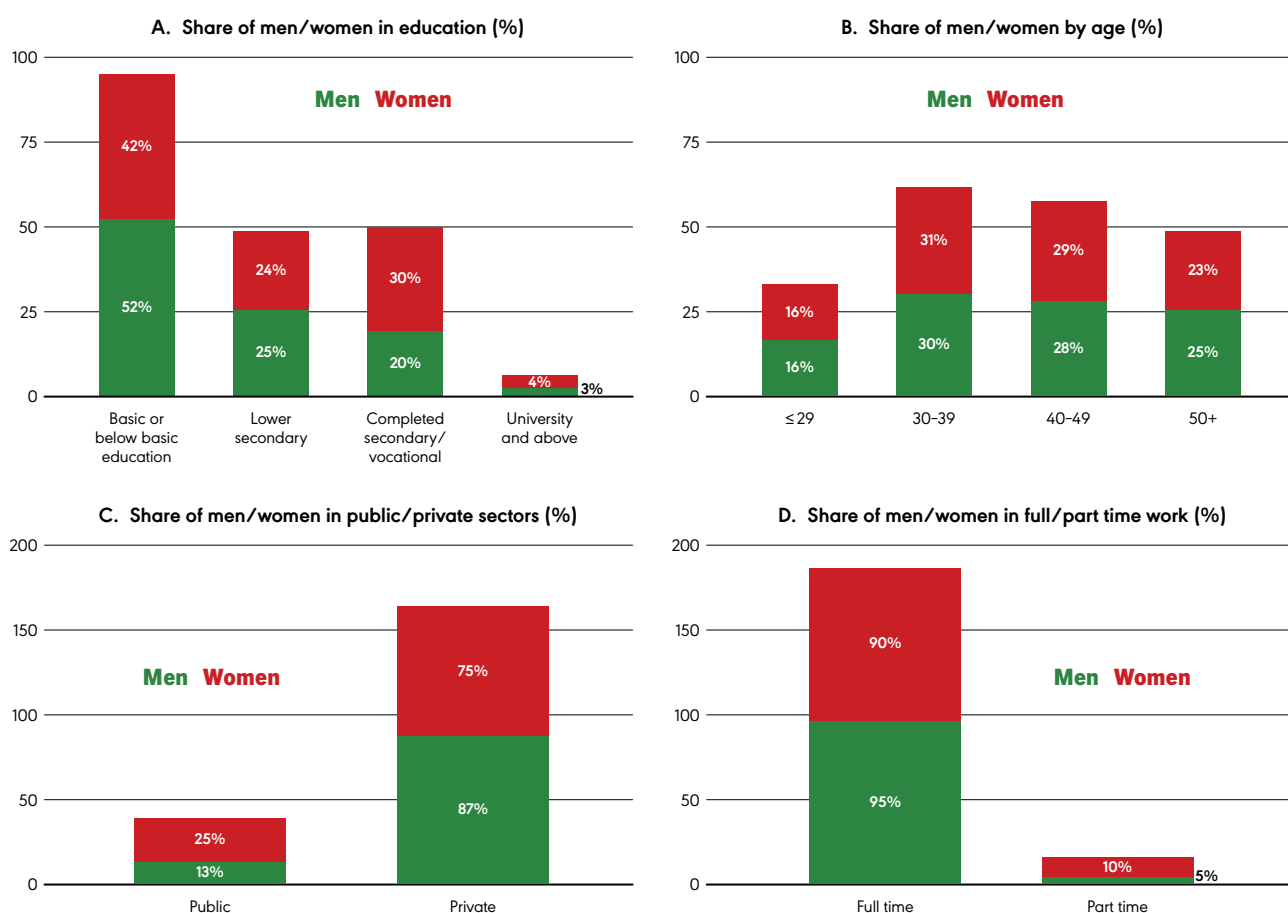
Another way of seeing the gender pay gap is shown in figure 5.15, which plots the proportion of men and women in different parts of the wage distribution, starting with the lowest decile up to the highest decile (plus the top and bottom centile at the two extreme ends of the distribution). In spite of their better education, women are over-represented at the lower end of the wage distribution. We see that women make up more than 70 per cent of workers in the bottom decile and centile, whereas they are less than 30 per cent in the top centile, a phenomenon reflecting the “glass ceiling” that prevents women from equal access to top jobs.

**FIGURE 5.15** Share of men and women across the wage distribution (per cent)



Note: ILO estimates for Portugal based on European Union Structure of Earnings Survey (SES) dataset, 2014. The dataset covers workers in enterprises with 10 employees or more.

**FIGURE 5.16** Characteristics of men and women



Note: ILO estimates for Portugal based on European Union Structure of Earnings Survey (SES) dataset, 2014. The dataset covers workers in enterprises with 10 employees or more.

The data in panel A follows the structure of the International Standard Classification of Education (ISCED).

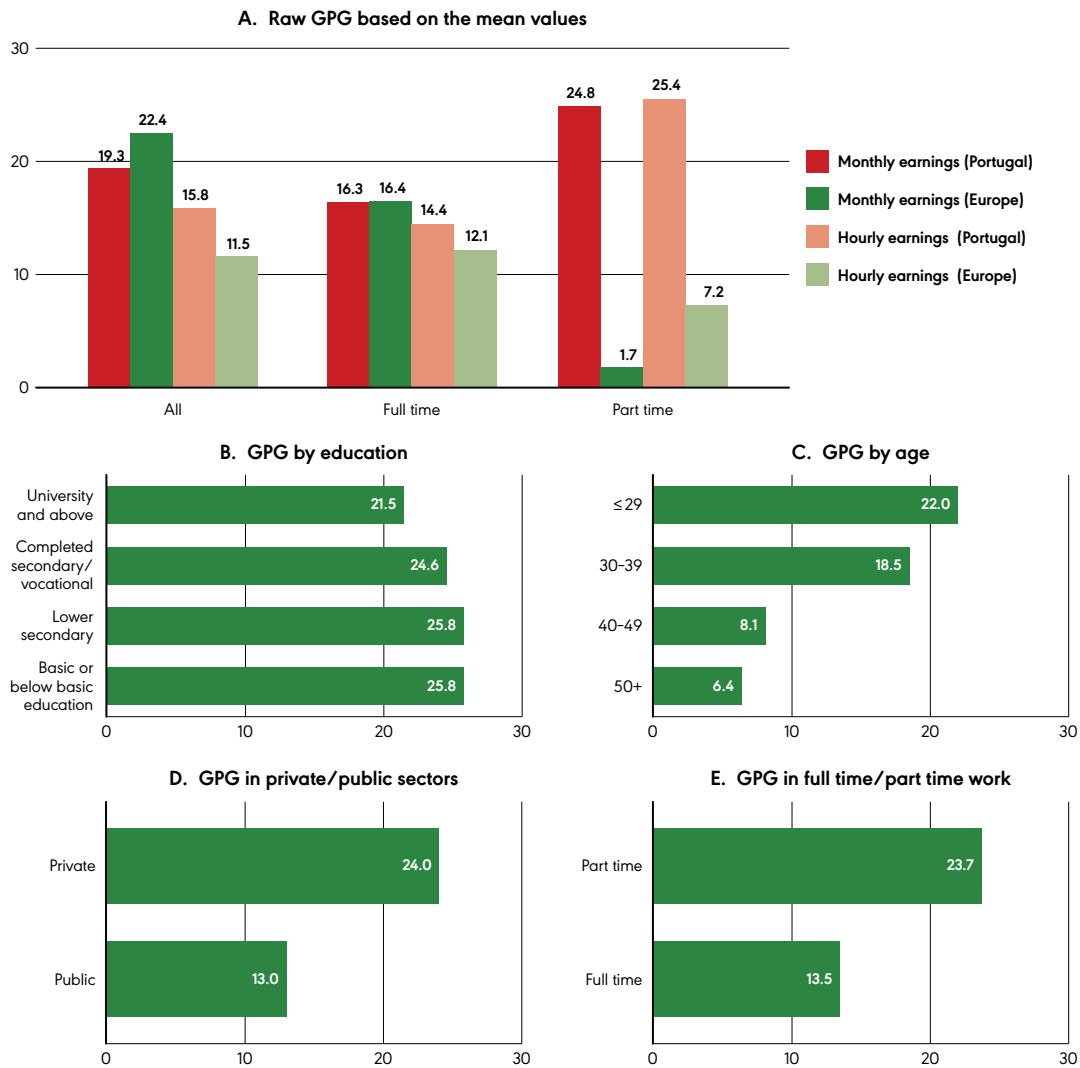
PT: part-time workers are described as those who declare to work usually less than 35 hours; FT: full-time workers are workers described as those who declare to usually work 35 hours or more.

In Portugal, women earn lower wages than men in spite of the fact that women are more educated than men. As figure 5.16 (top left panel) shows, women surpass men in terms of university education (4 per cent compared to 3 per cent for a total population) and dominate in terms of secondary education and vocational training completion (30 per cent compared to 20 per cent). Similarly, significantly more men have basic or below basic education levels (52 per cent for males compared to 42 per cent for females) while the two genders are quasi-equal in the lower secondary education category (25 per cent for males and 24 per cent for females).

The top right panel of figure 5.16 shows that the age profile of men and women in the labour market are very similar. What differs between men and women is the fact that a larger share of women work in the public sector, and more women also work part-time. The bottom left panel shows that men dominate the private sector as they represent 87 per cent of all employed men compared to the women's share of 75 per cent of all employed women. By contrast, more women are found in the public sector with a 25 per cent share compared to a 13 per cent for their male counterparts. The bottom right panel shows that 10 per cent of women work part-time, double that of men, at 5 per cent.

The fact that more women than men work part-time can explain a certain proportion of the monthly gender pay gap. Figure 5.17 shows that when the gender pay gap is estimated on an hourly basis (using the Eurostat Structure of Earnings Survey dataset) it declines from 19 per cent to about 16 per cent, which is higher than the European average of 11.5 per cent, using the same data and

**FIGURE 5.17** The hourly gender pay gap (GPG)



Note: ILO estimates for Portugal based on European Union Structure of Earnings Survey (SES) dataset, 2014.

PT: part-time workers are described as those who declare to work usually less than 35 hours; FT: full-time workers are workers described as those who declare to usually work 35 hours or more.

methodology. Other panels in figure 5.17 show that the gender pay gap is higher in the private than in the public sector; is higher for older than for younger workers; is higher for low-educated than high-educated women; and is also higher in part-time than in full-time work. However, when looking at occupational categories, the reverse is true – the gender pay gap is actually higher among senior officials, declining down the hierarchy to unskilled workers.<sup>10</sup> The discrepancy is most likely due to the rapid changes in educational attainment.

Although much progress has been made in recent decades to increase the labour force participation of women – to increase their levels of skills and to reduce the gender pay gap – women continue to be paid only about four-fifths of men’s wages. This gender pay gap has been attributed to a mix of factors, including the fact that women workers tend to work in firms and jobs that pay less and to lack equal access to top jobs – the so-called glass ceiling (Cardoso et al., 2016). Further efforts should be devoted to better understanding the forces behind the gender pay gap with a view to developing adequate policies to ensure equality for men and women in the world of work.

10. Source: Quadros de Pessôal

## The minimum wage

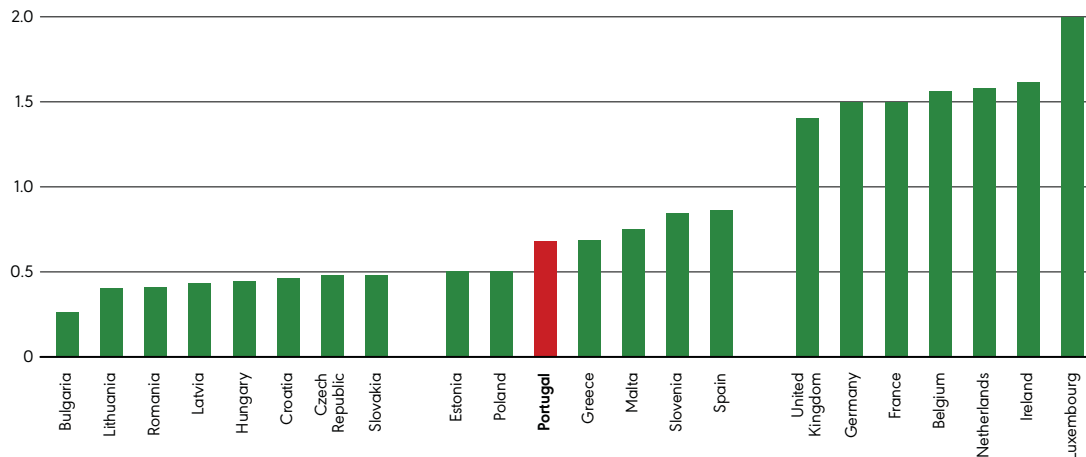
The national monthly minimum wage is set by the Government and applies to all employees irrespective of their sector, occupation or company in which they are employed or their age or location of employment. The monthly minimum is paid for the standard hours of work an employee is expected to work. For workers who work less than full-time, the minimum wage is paid pro-rata to the hours worked. For example, a part-time worker employed for half the typical hours is paid half the national minimum. The evolution of the minimum wage since 2011 is shown in table 5.1. The minimum wage level was frozen between 2011 and September 2014 and was raised in October 2014 and again regularly thereafter. It is expected to be possibly further increased to €600 in 2019. In absolute terms, as shown in figure 5.18, this remains relatively modest by European standards. In relative terms, however, when compared to the average wage, as shown in figure 5.19, the minimum wage in Portugal is relatively high.

5.1 National minimum wage, 2011–18 (monthly in euros)

TABLE	2011	2012	2013	2014	2015	2016	2017	2018	2017
	485	485	485	490	505	530	557	580	23697

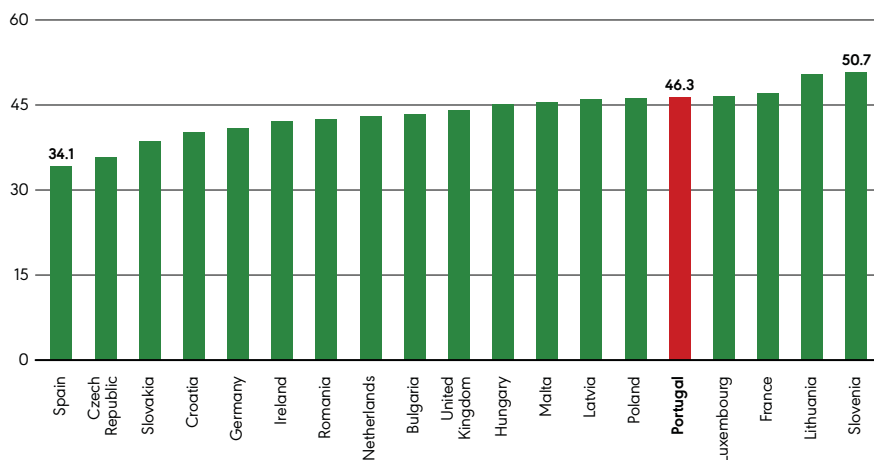
Source: MTSSS.

FIGURE 5.18 Minimum wages per month (euros, thousand)



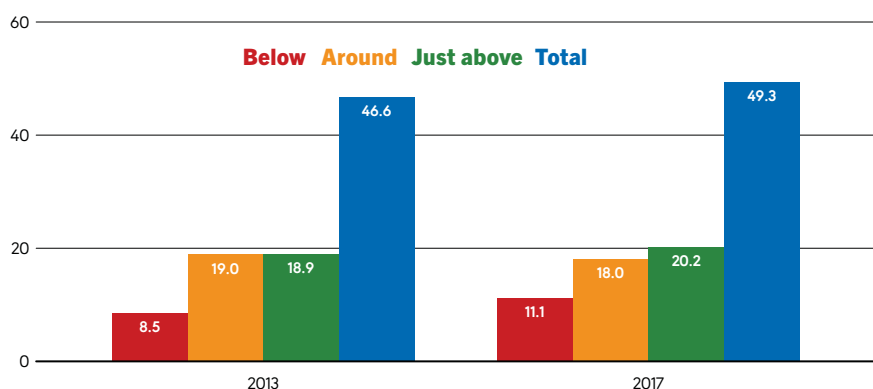
Source: Eurostat.

FIGURE 5.19 Minimum wages as a percentage of average earnings



Source: Eurostat.

**FIGURE 5.20** Percentage of workers paid below, around and just above, minimum wage, 2013 and 2017



Note: “Below” refers to workers earning less than 95 per cent of the minimum wage; “Around” refers to workers earning between 95 per cent and 105 per cent of the minimum wage; “Just above” refers to workers earning between 105 per cent and 125 per cent of the minimum wage; “Total” refers to the sum of the three previous groups.

Source: ILO estimate based on Labour Force Survey (2017) from National Statistical Office of Portugal (INE).

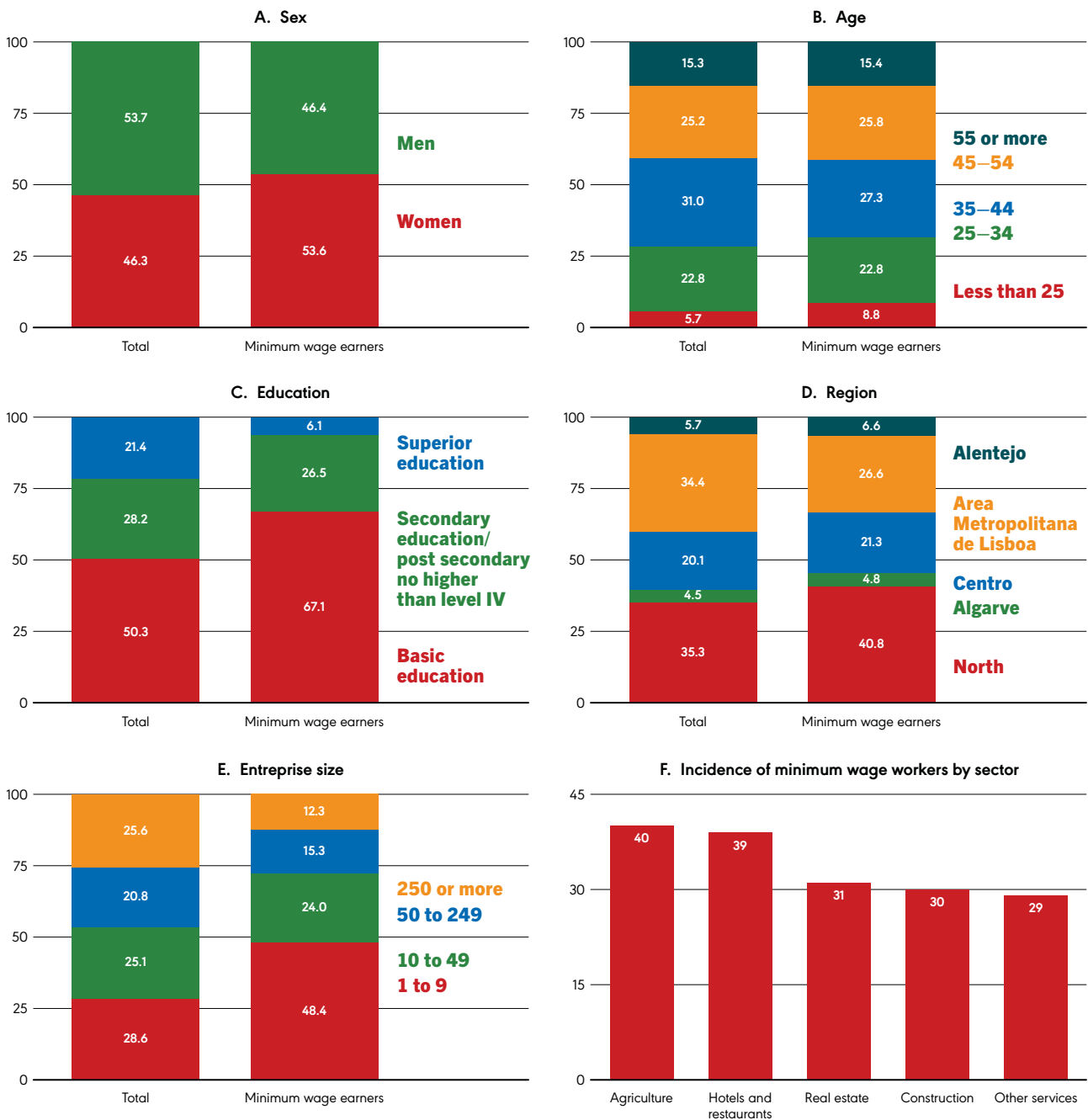
The fact that the minimum wage is an important policy intervention in Portugal is confirmed by further analysis showing that a relatively large proportion of workers are paid at the minimum wage. Using the micro-data from the Labour Force Survey, figure 5.20 estimates that in 2017, there were about 18 per cent of workers earning between 95 per cent and 105 per cent of the minimum wage, and another 20 per cent of workers were earning no more than 25 per cent more than the minimum wage. This figure is also important in understanding the effects of minimum wages, as an increase in the rate does not only affect workers exactly at the minimum but typically also leads to some wage increases for workers earning slightly more (the so-called spillover effects). These estimates are relatively similar to those of the annual minimum wage report of the Government, which indicates that in January 2017, with the increase in the value of the minimum rate from €530 to €557, the proportion of workers at the minimum wage increased to 22.8 per cent, later declining to 21.6 per cent in September 2017 (GEP/MTSSS, 2017). In 2018 this compression effect did not take place, with the proportion of workers earning the minimum wage remaining constant in March 2018 at 22.9 per cent, the same proportion as March 2017 (MTSSS, 2018).

Who are the minimum wage earners in Portugal? Figure 5.21 looks at the characteristics of minimum wage earners in April 2017. We see that the difference in age profile between minimum wage workers and the overall population of employees is quite small. Strikingly in 2017, more than two-thirds of minimum wage earners were 35 years old or above. Clearly, the effect of the minimum wage is not limited to young workers or labour market entrants but also provides protection against unduly low pay for many experienced adult workers. Women are over-represented, as they represent 53.6 per cent of all minimum wage earners, compared to 46.3 per cent of the overall population of employees. As expected, low educated workers are over-represented at the bottom – although close to a third of minimum wage earners have secondary education or more – and so are workers in micro-enterprises of less than 10 employees (though here too, more than a quarter of minimum wage workers are employed in large or very large enterprises of 50 or more workers). Looking at the incidence of minimum wage workers by industry, we observe a particularly large share of minimum wage workers in agriculture, hotels and restaurants, real estate, construction and other services.

Figure 5.22 shows that low-paid workers overwhelmingly live in relatively low-income households. Indeed, according to this estimate, about 70 per cent of workers with low pay are to be found among the poorest 30 per cent of households. This shows that minimum wages, even if they are not perfectly targeted at the poorest, mainly benefit and improve the lives of low-income workers and their families. But as is also clear from the figure, many of the low-income individuals are unemployed rather than wage employees, pointing to the importance of other income sources for this group, particularly unemployment benefits and other social transfers.



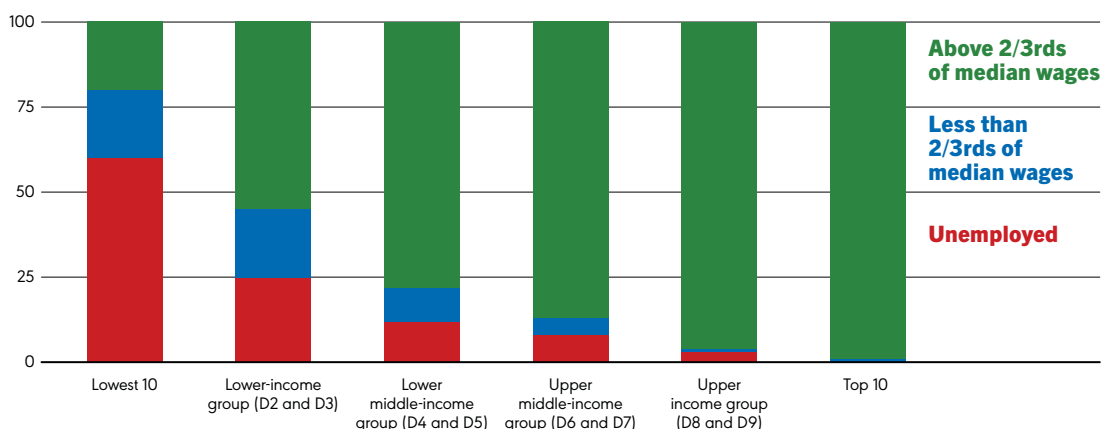
**FIGURE 5.21** Characteristics of minimum wage workers, 2017



Source: GEP/MTSSS, December 2017.

At the same time, because the minimum wage – relative to the average or the median wage – is relatively high in Portugal, it would be important to strengthen the existing system for a tripartite monitoring of the effects of the minimum wage on employment, and particularly on youth employment, using more robust evaluation methodologies. This would be important to ensure that further minimum wage increases do not have any substantial adverse effects on employment.

**FIGURE 5.22** Labour market status and wages by level of per capita household income (per cent)



Source: ILO Global Wage Report based on EU-SILC, 2014.

### 5.1 The ILO policy guide on minimum wages

**BOX**

The ILO policy guide on minimum wages ([www.ilo.org/minimumwage](http://www.ilo.org/minimumwage)) is based on existing ILO standards and a diversity of international practice. It provides information on key questions of good practice and highlights different choices that can be made depending on national preferences and country circumstances. Some principles, however, are of general relevance to countries that have a minimum wage system.

The ILO Minimum Wage Fixing Convention, 1970 (No. 131), calls for minimum wages that provide a broad scope of application and that are designed and operated in full consultation with social partners and foresees, where appropriate, their direct participation, on an equal footing. In addition, the Convention calls for the participation of “persons having recognised competence for representing the general interests of the country” and appointed after consultation with social partners. In many countries, tripartite consultation takes place within national social dialogue institutions such as tripartite wage commissions, wage boards, or other tripartite bodies with general competence for economic and social affairs.

The Convention considers that the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment. It is understood that these criteria are not exhaustive but seek to balance economic and social factors. To keep their relevance, minimum wages should also be adjusted from time to time. The minimum wage should also be reviewed from time to time, preferably on a regular basis, with a view to adjusting the rate to reflect changes in the cost of living and economic circumstances.

The Minimum Wage Fixing Convention also calls for “appropriate measures, such as adequate inspection reinforced by other necessary measures” to ensure the effective application of all provisions relating to minimum wages. High rates of non-compliance have negative consequences not only for workers and their families, whose rights are violated, but also for compliant employers, as it gives non-compliant enterprises an illegitimate cost advantage. The rate of compliance is affected by a range of factors including the level at which minimum wages are set, as well as by institutional factors. The policy guide provides some examples of how compliance can be increased through information and awareness-raising campaigns, as well as a host of other measures.

Source: ILO, 2016c ([www.ilo.org/minimumwage](http://www.ilo.org/minimumwage)).

## ■ Policy considerations

### Sustainable wage growth

The pickup in economic growth, the declining unemployment rate, and past decoupling of wages and productivity as well as the declining labour share suggests that there might be some scope for sustainable and carefully considered wage increases in the future. But any possible future wage increase in the public sector should take into consideration the effects on the total public sector wage bill and on the fiscal situation of the country. Sustainable wage growth would be all the more important given the fact that the average wage in Portugal remains low by European standards and also helps to explain why so many of its young people have sought work in other countries.

### Closing the gender pay gap

Further efforts should be devoted to better understanding the forces behind the gender pay gap, with a view to developing adequate policies to further reduce it and thus ensure equality for men and women in the world of work. Overcoming unequal pay across groups requires sustained effort at various levels and through a wide range of policy approaches, including combatting gender-based stereotypes about women's roles and aspirations, strengthening policies on maternity and paternity as well as parental leave, and advocacy for better sharing of family responsibilities. Equal pay at the enterprise level also requires job evaluation methods free from gender bias.

### Monitoring the effect of the minimum wage on employment, especially youth

The minimum wage is an important labour market intervention in Portugal, which has contributed to increasing the wages of low-paid workers and reducing wage inequality. While the minimum wage is low in absolute terms compared to other European countries, it is relatively high compared to the median wage, but relatively similar compared to the average wage, which is partially a reflection of relatively high, albeit declining income inequality in Portugal. For this reason, it would be very important to strengthen the system for rigorously monitoring the effects of the minimum wage on employment, and particularly on youth employment through state-of-the-art monitoring and evaluation methodologies.

### Investing in the education and skills of low-wage workers

Finally, as wage inequality remains relatively high in spite of past progress, sustained attention to equal access to education, policies to increase the skills of the labour force, particularly those at the bottom of the distribution, would also contribute to higher wages and less wage inequality. An important source of income inequality is the high incidence of unemployment and the resulting downward pressure on wages for most categories of workers. Collective bargaining (discussed in the next chapter) can also contribute to determine workers' wages above the statutory minimum and contribute to reducing wage inequality.

# Collective bargaining and the impact of legal and policy changes since 2009

## KEY FINDINGS

Commendably, social dialogue in Portugal was heavily relied upon prior, during and after the crisis. Although full consensus often proved elusive, social partners were consulted on most decisions.

However, the changes to collective bargaining imposed as a result of the MoU – especially the freeze on collective bargaining at the sectoral level – had a negative impact on the level of trust between and among the tripartite parties, heightened tensions and created obstacles to re-creating a tradition of bargaining.

The goal of the MoU and subsequent legislation to decentralize collective bargaining from the sectoral level, and to strengthen enterprise-level bargaining, was not achieved. The changes in legislation and extension criteria had a direct impact on the number of agreements and workers covered. Indeed, the gap between pre- and post-crisis coverage remains large, although it has recovered substantially.

Collective agreements generally continue to provide terms and conditions that are equal to or only slightly higher than legal minima, in particular with regard to wages. The content of most collective agreements, with some important recent exceptions, appears largely unchanged when comparing the pre- to post-crisis periods. This points to a need to revitalize the culture of bargaining, and to make agreements more dynamic and reflective of current labour market challenges.

The 30 May 2018 tripartite agreement could mark an important milestone in rebuilding a stronger culture of collective bargaining. It seeks to address key concerns of the parties with regard to two of the most contentious issues under the MoU, hours banking and overtime compensation. It provides new rules with regard to the expiry and renewal of collective agreements, which is hoped will promote a more dynamic outcome to bargaining and strengthen the principle of most favourable treatment. ■

## Legal and institutional reforms of collective bargaining

Since 2009, significant amendments have been introduced to labour law and collective bargaining in Portugal. While the sovereign debt crisis was a period of intense labour market reform, especially after the adjustment programme went into effect in 2011, a process of change had already been under way since the introduction of the Labour Code in 2003. The 2003 Act unified the various Portuguese labour laws into a single legal document and also introduced some innovations, including in the rules governing collective bargaining.

The most important measures introduced during the 2009-2014 period directly affecting collective bargaining can be characterized by the two broad types identified by Marginson (2014). First are those concerning the decentralization of collective bargaining, including procedures of articulation between levels of bargaining. Second are those affecting the reach of collective bargaining, namely time-limiting their duration after expiry and restricting the extension of sectoral agreements beyond affiliated members of the contracting parties.

As was the case of other European member states in similar circumstances, these measures were included in a Memorandum of Understanding (MoU) in which Portugal committed to a three-year programme of fiscal consolidation and structural reforms signed in 2011 (EC, 2011). They were presented as a necessary response to the crisis based on the assumption that “internal devaluation” was necessary to restore national competitiveness (Deakin and Koukiadaki, 2013; Cruces et al., 2015). In the Portuguese MoU, this was articulated in terms of a need to “promote wage developments consistent with the objectives of fostering job creation and improving firms’ competitiveness with a view to correct macroeconomic imbalances” and to “promote wage adjustments in line with productivity at the firm level” (pp. 23–24).<sup>1</sup>

However, in contrast with other member states that undertook comparable reforms under similar pressures such as Greece (Koukiadaki and Kokkinou, 2016) and Spain (Fernández Rodríguez et al., 2016; Cruces et al., 2015), the changes to collective bargaining Portugal did not represent a total break with the previous path of reform and even the most controversial reforms were under previous debate at the national level. Two major reports published in 2005 and 2006 provided a detailed analyses of employment relations in Portugal and contained a number of recommendations for amendments to the labour code<sup>2</sup>. Several of these, namely in relation to the decentralization of bargaining and limits to the after-effect period of agreements, were integrated in a 2008 tripartite agreement that paved the way to the first wave of changes to labour law during the crisis.

With regard to the first type of measures, regarding decentralization, Law 7/2009 introduced the possibility of non-union structures of representation of workers negotiating collective agreements in companies with at least 500 workers (article 491), a threshold that was later reduced to 150 by Law 23/2012 (article 491). However, the bargaining competence of these structures was still dependent of trade union authorization. While the possibility of collective agreements containing clauses of articulation between levels had already been legally possible, Law 23/2012 specified that sectoral agreements could contain clauses enabling such matters as functional and geographical mobility, the organization of working time and compensation to be regulated by agreements at lower level.

The second type of measures, those affecting the scope of collective bargaining, had, as shown in section three, the most important impact because they affected the institutional foundations of the system. Despite relatively low levels of trade union membership and also of employer affiliation,<sup>3</sup> high

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1. [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2011-05-18-mou-portugal\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf)

2. These were the *Livro Branco sobre as Relações Laborais* (CLBRL, 2007) and the *Livro Verde sobre as Relações Laborais* (Dornelas et al., 2006).

3. According to data from *Relatório Único* and *Quadros de Pessoal*, the proportion of companies affiliated to employers’ associations was 19 per cent in 2014, having increased slightly from 18.4 per cent in 2010. The same data source places the proportion of private sector workers who are members of trade unions at 9.2 per cent, having decreased slightly from 10.6 per cent in 2010 (GEP/MTSSS, 2016). However, the data on trade union membership are likely to be an underestimation because they rely on reporting by employers, who may not have a full knowledge about the trade union membership of their employees. Other sources placed trade union density in Portugal at 20 per cent in 2012 (OECD, 2017).

coverage of collective bargaining in Portugal had been enabled by three key elements: the dominance of the sector level of bargaining, frequent use of administrative extension of collective agreements to cover all the workers and companies in the respective sector, and the after-effect validity of agreements, i.e. legal provisions that enabled agreements to remain valid beyond their contracted duration until replaced by a new one except if both parties mutually agreed to terminate it.

The impossibility of employers to withdraw from agreements and trade unions' defensive approach with respect to those acquired rights meant that even if agreements were renewed, the changes tended to focus mainly on wage revisions and much of the content remained the same, in some matters becoming outdated vis-à-vis the law (Dornelas et al., 2006).<sup>4</sup> The possibility of expiration 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 internal flexibility, especially with regard to working time. However, while the objective of these changes had been to revitalise collective bargaining and make it more dynamic (GEP/MTSSS, 2016), the result was instead a sharp fall in new collective agreements in the years that followed. This led to subsequent changes in 2006 that mitigated this effect (Palma Ramalho, 2013).

The 2009 revision of the Labour Code (Law 7/2009) continued these changes and addressed a loophole in the previous law: many collective agreements still could not expire because they contained a clause that reproduced the previous legal norm stipulating that they remained valid until replaced by a new one. Law 7/2009 established that these clauses would expire after five years of the publication of the respective collective agreement and created a transitional regime that allowed collective agreements that were 6.5 years old at the time of the publication of that law to expire if one of the parties had requested it. Law 7/2009 also clarified and reduced the period of validity of collective agreements to eighteen months following an expiration request and while the parties negotiated a new agreement. In addition, it created a new form of arbitration, "necessary arbitration",<sup>5</sup> to be used by request of one of the parties to assist in cases of expiry of a collective agreement.

Law 55/2014 reduced the periods for the expiration and "after-effect" of collective agreements and successive renewal clauses and created the possibility of suspension of collective agreements in cases of industrial crisis (Law 55/2014). The latter, however, requires agreement with the trade union or works council duly authorized by the trade union.

The freezing of administrative extensions of collective agreements in May 2011, and the subsequent introduction in October 2012 of representativeness criteria as a requirement of administrative extension, was the most controversial change introduced to collective bargaining and the one that had the most visible and immediate impact on the system (see the third section of this chapter on the impact of the reforms).<sup>6</sup> It was introduced unilaterally by the Government in alignment with the MoU's prescription and was opposed by all the social partners.

The question of representativeness had been debated in relation to extensions in the 2008 tripartite agreement even though a shared vision on the particular course of action to take in this respect was yet to develop. Given the relatively low level of trade union and employer organization membership, one area of debate was around the desirability of extending collective agreements that were negotiated by associations that might not be representing the interests of the majority of firms and workers in the sector (OECD, 2017c). While extensions create a level playing field by preventing unfair competition of non-affiliated firms that could otherwise obtain cost advantages by practicing sub-standard work conditions and wages, some see extensions as potentially harming the competitiveness of non-affiliated employers, especially smaller and new firms (Martins, 2014; OECD, 2017c). In this perspective,

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4. For example, maximum normal weekly working times above the 40 hours legal limit.

5. Necessary arbitration is a particular case of compulsory arbitration linked to the expiry of collective agreements. It can take place following the cessation of a collective agreement if: (i) a new agreement is not reached within 12 months; (ii) there is not another collective agreement applicable to at least 50 per cent of the workers within the scope of the expired agreement; and (iii) one of the parties request it (GEP/MTSSS, 2016).

6. ILO standards do not prescribe a strict set of rules of the extension of collective agreements. The ILO supervisory bodies have stated that determinations with regard to extension of collective agreements "are clearly a matter for public policy determination, where appropriate and suited to the conditions of each country". Public policy-based extension implies that a competent public authority may determine whether or not a certain collective agreement already covers a sufficiently representative number of workers and employers concerned, prior to deciding to extend such an agreement.

the benefits of extensions for workers in terms of wage increases needs to be weighed against the employment effects due to potential company closures, dismissals and reduced hires resulting from loss of competitiveness of non-affiliated firms (ibid.).

Collective bargaining in Portugal has been found to have a limited ability to influence actual pay practices of employers and that actual pay rates tend to be on average significantly higher than those set by collective agreements (Dornelas et al., 2006; see also case studies in Naumann, 2014). In effect they set minimum terms and conditions of employment for the respective sectors. Nevertheless, arguments around competitiveness underpinned the suspension of administrative extensions in May 2011 and the introduction in October 2012 of representativeness requirements. According to these, a collective agreement should only be extended if the firms represented by the signatory employers' association employed at least 50 per cent of the workers of the domain to which the agreement applied (normally an industry branch or sector) (*Resolução do Conselho de Ministros 90/2012*).

It soon became clear that the organizational density of Portuguese employers made these criteria impossible to meet and, in the face of fierce protests from social partners, these rules were eased in 2014 with the addition of the alternative criteria that at least 30 per cent of the affiliates of the signatory employers' association being SMEs (*Resolução do Conselho de Ministros 43/2014*).

In 2017, rather than imposing conditional criteria, new legal rules determined that decisions on extensions should consider the social and economic circumstances that may justify them. In particular, the legal act (*Resolução do Conselho de Ministros, 82/17*) explicitly states that the analysis of the benefits of an extension should consider its potential to improve social cohesion and social equity, namely from a gender equality perspective and considering the principle of equal pay for equal work. Accordingly, the decision should be based on the analysis of the following indicators: (a) The economic impact of the overall increase of the wage bill with respect to the workers covered and to be covered; (b) the wage increase of the workers to be covered; (c) the impact on the wage distribution and scope for reducing inequalities within the sector or domain affected by the collective agreement to extend; (d) The percentage of workers to be covered (general and broken down by gender); and (e) The proportion of women to be covered. The same act commits the government to reduce the time period between requests and issuing of extensions. This last point had been part of the debate around the first changes to extensions and its potential negative effects for smaller firms: as extension orders often took place many months after the conclusion of the respective collective agreement and had retroactive effects, including on wages, this was argued to exacerbate the economic difficulties faced by some of these firms following extension orders.

Less controversial changes during the crisis include the creation of a Centre for Labour Relations to provide data and technical support for the parties to collective bargaining (*Decreto-lei 189/2012*) and the introduction of rules to ensure gender equality and prevent discriminatory provisions in the content of collective agreements. These rules started to be introduced by the 2009 Labour Code and were further developed in the 2012 revisions (*Lei 23/2012*, art. 479 and *Decreto-Lei n.º 76/2012*, art. 3). They mainly consist on the requirement of all collective agreements to be checked by the Commission for Equality at Work and in Employment (CITE) upon its publications and to be changed in case any dispositions are found to be against equality law. Failure of the signatory parties to comply would ultimately lead to the agreement becoming void.

There is evidence that these 2012 measures are producing effects. An analysis by Ferreira and Monteiro (2013) reports that in that year, 45 clauses in collective were found to be inconsistent with Portuguese equality law and therefore declared void by the labour court. In addition, "prior appreciations" of collective agreements by CITE in the same year led to 12 amendments of clauses in collective agreements. The same study identifies some of the issues subject to change: the use of non-inclusive language that led to certain rights being recognized for workers of one gender, the use of language that was inconsistent with the new gender neutral parental leave terms, dispositions that violated legal leave entitlements for fathers or mothers, the lack of recognition of legal rights to working time reduction for breastfeeding (and bottle-feeding) for mothers and fathers. These rules also encourage the parties to further consider gender equality and to change dispositions that might be considered inadequate from an equality perspective: that led the signatory parties of a collective agreement in textiles to agree to extend to men an entitlement to a child-care benefit that was previously only available to women (Távora and González, 2016b).



Finally, it is worth mentioning changes in other areas of labour law that had an impact on collective bargaining because they affected the autonomy of bargaining or regulated matters that had until then been on the realm of collective agreements. In some cases they opened the possibility of these being negotiated directly in the workplace between individual workers and management, in particular working-time arrangements. The same Labour Code (Law 23/2012) reduced by half overtime pay rates and suspended for two years the validity of collective agreement provisions providing higher rates. In addition, it eliminated the right to compensatory rest following overtime work.

## ■ Implementation of the reforms

Tripartite agreements paved the way for implementation of the labour market reforms that took place, particularly the two major amendments to the Labour Code in 2009 and 2012. However, those conducted in 2012 were undertaken under strong pressure of the EC, ECB and IMF, and were informed by the prescriptions contained in the MoU. The social partners were involved in the consultations with the three institutions in the preparation of the MoU in 2011 and had had the opportunity to voice their positions and push for the observation of the measures that had been agreed in previous tripartite agreements.

However, one of the two central union confederations, while continuously engaging in dialogue on these matters, did not sign any of the tripartite agreements and opposed the MoU. The other confederation accepted the need to implement the MoU and signed in January 2012, the Tripartite Agreement “Compromise for Growth Competitiveness and Employment” that paved the way to the 2012 revision of the labour code (Law 23/2012).

The signing of the tripartite agreement was further justified by the fact that it included measures to promote economic and employment growth and commitments from the Government not to introduce further labour market reforms except if agreed with the social partners (UGT, 2012).

Employer confederations supported the labour market reforms on the basis that such measures were needed to respond to the crisis. However some of these corresponded to their longstanding demands, particularly with regard to facilitating dismissals, working time flexibility and opportunities to cancel collective agreements (Távora and González, 2016b).

The coalition Government in office at the time actively sought the support of social partners through social dialogue and succeeded in reaching an agreement with the four employer confederations and UGT. However, it also took a number of unilateral decisions that disregarded formal commitments with the social partners. This included the freezing of the national minimum wage at €485 per month in 2011, thereby breaching the 2006 tripartite agreement where it had committed to gradually increase the minimum wage up to €500 in 2011. Second, despite the pledge not to introduce changes to collective bargaining without the agreement of social partners, the government unilaterally introduced representativeness criteria for the administrative extension of agreements against their opposition. This generated substantial resentment and led to a decrease of trust between the social partners and the government. Employers protested against government’s excessive focus on fiscal consolidation and the postponement of measures to promote growth and reduce unemployment (*ibid.*).

At the national level, the labour market reforms and on the part of the government generated a wave of general strikes and social protest during the crisis (Rocha and Stoleroff, 2014). There had only been five general strikes in 45 years of democracy (since the 1974 revolution), until 2010–13, when another five took place (*ibid.*; Dias and Fernandes, 2016). CGTP led the labour protest but, despite the longstanding differences between the two union confederations, most of the general strikes that took between 2010 and 2013 were called jointly by the UGT and CGTP. In addition, 12 large demonstrations took place in the same period organized by both CGTP and new social movements.

At the industry and company levels, industrial conflict also increased. Table 6.1 shows prior notices of strike<sup>7</sup> and strike activity escalated in 2012 and 2013, following the MoU, the labour reforms and

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7. Portuguese law does not contain a definition of strike but this is usually understood as a collective and coordinated suspension of the provision of work with the view of achieving a specific and common objective (GEP/MTSSS, 2016).

## 6.1 Prior notice of strikes, 2008–17

TABLE	Year	Number of prior notices of strike	Number of strikes
	2008	703	n.d.
	2009	376	n.d.
	2010	978	123
	2011	928	88
	2012	978	127
	2013	1 534	119
	2014	619	90
	2015	812	75
	2016	488	76
	2017	613	n.d.

Source: CLR (2017); DGERT (2018).

new fiscal consolidation measures.<sup>8</sup> While the number of strikes that actually took place is much lower than the number of prior notices, they provide an indication of the increase in the level of conflict, and of industrial action in relation to previous periods.

Much of the increase of industrial conflict was caused, or at least intensified, by certain elements of the 2012 Labour Code (Law 23/2012) particularly those concerning working time and cuts to overtime pay that overrode collective agreements. These measures, which were introduced with the dual goal of cutting labour costs during the crisis and forcing a resolution of existing deadlocks in bargaining, served to exacerbate industrial conflict. This was particularly the case of the reduction by half of overtime pay and the norm determining that clauses in collective agreement providing higher rates would be void for the duration of the MoU. This was interpreted as a breach of the collective agreement and was strongly resented by unions and workers leading to widespread prior notices of strikes on overtime work.

Finally, the role of the Constitutional Court in the process of labour market reforms and their implementation should be noted. It found several of the legal changes to be unconstitutional, leading to their reversal. These included cuts to pensions and public sector wages and labour law reforms, including measures that facilitated individual dismissals and that interfered with the autonomy of collective bargaining. In relation to the latter, the main example concerns the issue of the compensation of overtime pay. The original Law 23/2012 not only included provisions suspending for two years collective bargaining clauses on overtime pay and compensatory rest more favourable than those determined by that act, but included norms restricting those clauses beyond that period. While the restrictions during the two-year period were accepted by the Constitutional Court due to the exceptionally unfavourable economic circumstances and the need to meet “international commitments”, the restrictions beyond that period were overruled on grounds that they configured an undue violation of the constitutional principle of the autonomy of collective bargaining.<sup>9</sup>

The Constitutional Court played a part in preventing certain reforms even before these were attempted as in the case of the decentralization of bargaining through providing bargaining rights to works councils without the need of a trade union delegation, which had been prescribed by the MoU. Collective bargaining is constitutionally defined as an exclusive competence of trade unions and as such, the Government was warned by the Constitutional Court against removing the requirement of a union mandate (Visser, 2016).

8. Portuguese law requires unions that decide to resort to strike to provide a prior notice of five days to the affected employing organisation or employer association and to the labour authorities. In the case of essential social services, the prior notice should be of ten days.

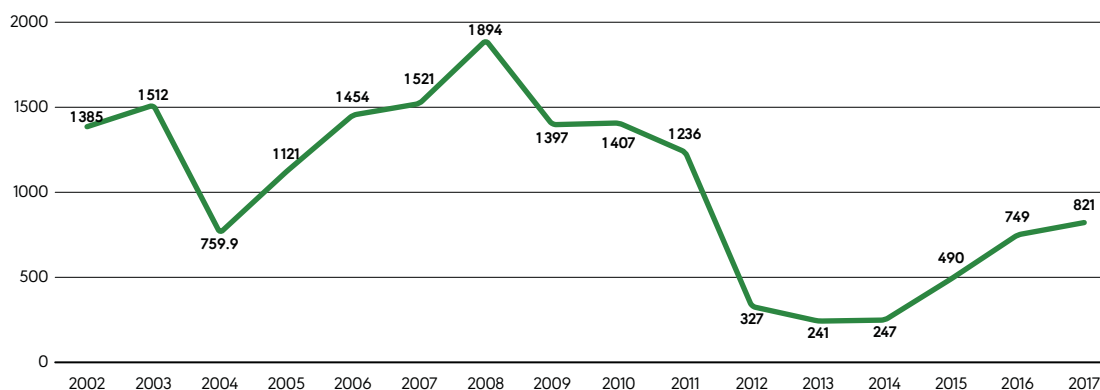
9. *Acórdão do Tribunal Constitucional n.º 602/2013*.

## Impact of the reforms

### The impact of the reforms on the structure of bargaining

Figure 6.1 shows the coverage of collective agreements published in the last 15 years. It shows a dip in 2004 following the publication of 2003 Labour Code, then a gradual increase until 2008, after which it starts to decline again. The largest plunge, however, takes place between 2011 and 2012, coinciding with the MoU, the suspension and introduction of new rules for extensions and the 2012 revision of the Labour Code, Law 23/3012. From 2014, when the criteria for extensions were relaxed, a gradual recovery becomes visible. As the ILO noted, these important changes resulted in an unprecedented decline in the number and coverage of collective agreements. While nearly 300 collective agreements were registered in 2008, there were a mere 85 in 2012. Similarly, in 2012, around 300,000 private sector workers were covered by a collective agreement compared with 1.2 million the year before. The main factor behind this trend is that while the measures had the intended effect of reducing the role of sectoral or multi-employer agreements, they failed to boost enterprise-based agreements (ILO, 2014). Table 6.2 shows the very substantial decline in percentage of employees covered by collective agreements during this period, and the gradual recovery since 2015, though numbers still remain well below pre-2012 levels.

**FIGURE 6.1** Number of employees covered by collective agreements published 2002–17 (in thousands)



Source: DGERT (2018).

**6.2 Number of employees potentially covered by collective agreements 2008–17**

TABLE	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Workers potentially covered by CBA (thousands)	1894	1397	1407	1236	327	241	247	490	749	821
Total number of employees (thousands)	3872	3775	3766	3719	3543	3458	3611	3711	3787	3949
Percentage of workers potentially covered	48.9	37.0	37.4	33.3	9.2	7.0	6.8	13.2	19.8	20.8

Source: DGERT (2018); Eurostat.

While there was a contraction of all types of agreements (sector, groups of companies and company agreements) this decline was mainly caused by the decline in sectoral agreements (table 6.3). The number of extension requests approved was just 17 in 2011, 12 in 2012, reaching its minimum in 2013 when only nine were published; in 2014 they remained low (14), increased to 36 and 35 in 2015 and 2016 respectively (table 6.4). In 2017, there was a very substantial increase to 84 (UGT, 2018), suggesting that the most recent changes in the rules governing extensions have enabled a return to the practice of extending most sectoral agreements.

The decline in the number of new and renewed agreements published each year did not negatively affect the overall number of existing valid collective agreement. Data in table 6.5 shows that the

### 6.3 Number of new and renewed agreements published each year by type and number of workers covered, 2005–17

TABLE	Type/year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
	<b>Number of agreements published</b>													
	Sector	151	153	160	172	142	141	93	36	27	49	65	69	91
	Groups of firms	28	26	27	27	22	25	22	9	18	23	20	19	21
	Company	73	65	64	97	87	64	55	40	49	80	53	58	96
	<b>Total</b>	<b>252</b>	<b>244</b>	<b>251</b>	<b>296</b>	<b>251</b>	<b>230</b>	<b>170</b>	<b>85</b>	<b>94</b>	<b>152</b>	<b>138</b>	<b>146</b>	<b>208</b>
<b>Workers covered (thousands)</b>														
	Sector	1015	1343	1430	1778	1299	1309	1160	291	197	214	446	648	n.a.
	Groups of firms	68	73	58	47	59	64	52	26	27	19	21	65	n.a.
	Company	36	37	32	69	37	33	24	9	17	12	22	34	n.a.
	<b>Total</b>	<b>1 121</b>	<b>1454</b>	<b>1521</b>	<b>1 894</b>	<b>1 397</b>	<b>1 407</b>	<b>1 236</b>	<b>327</b>	<b>241</b>	<b>246</b>	<b>490</b>	<b>749</b>	<b>821</b>

Source: DGERT (2018).

### 6.4 Extension requests and approved, 2005–16

TABLE		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
		Extension requests	139	150	151	162	133	122	82	30	16	31	55	60
	Extensions approved	56	137	74	137	101	116	17	12	9	13	36	35	84

Source: DGERT (2018).

### 6.5 Number of existing valid collective agreements and private sector employees covered as reported by employers, 2005–15

TABLE	Type/year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
	<b>Number of collective agreements</b>											
	Sector	255	257	323	320	318	259	247	377	418	411	429
	Groups of firms	46	46	64	56	55	53	45	48	56	51	54
	Company	149	148	183	185	189	146	155	173	197	206	207
	<b>Total</b>	<b>450</b>	<b>451</b>	<b>570</b>	<b>561</b>	<b>562</b>	<b>458</b>	<b>447</b>	<b>598</b>	<b>671</b>	<b>668</b>	<b>690</b>
<b>Number of employees covered (thousands)</b>												
	Sector	2 144	2 138	2 212	2 245	2 122	2 035	1 979	1 775	1 752	1 802	1 855
	Groups of firms	84	85	87	87	86	92	92	97	97	97	99
	Company	92	86	89	91	93	92	89	82	80	80	78
	<b>Total</b>	<b>2 321</b>	<b>2 310</b>	<b>2 389</b>	<b>2 423</b>	<b>2 303</b>	<b>2 220</b>	<b>2 161</b>	<b>1 955</b>	<b>1 930</b>	<b>1 979</b>	<b>2 032</b>

Note: The data in this table refers to both newly published collective agreements and old or pre-existing agreements that remain valid whereas the data in table 6.3 refers to newly published agreements only.

Source: DGERT (2017). Note: This data is based on information provided in Relatório Único, a GEP/MTSS report that all private sector employers submit every year to the Ministry responsible for employment relations.

number of existing valid agreements has actually increased significantly between 2005 and 2015. This is explained by the fact that, despite its decline during the crisis years, the number of collective agreements concluded in this period is still much higher than those that ceased their validity. Despite the recent changes discussed in the first section of this chapter, legal rules still allow agreements to remain valid except if the parties agree to its cessation or one of the parties request its expiration. Even in this case, the law still contains a number of safeguards to prevent or delay the expiration of agreements.

Table 6.6 shows that a significant proportion of expiry requests made by employers between 2003 and 2009 were denied, mostly because the collective agreements in question contained clauses that reproduced the previous legal norm ruling that they would remain valid until replaced by a new one.

## 6.6 Requests of expiry of collective agreements

TABLE	Year	Approved	Denied	Year	Approved	Denied
	2005	2	3	2012	0	2
2006	3	4	2013	4	1	
2007	5	7	2014	0	1	
2008	2	3	2015	7	2	
2009	15	5	2016	3	1	
2010	2	1	2017	3	n.a	
2011	1	3	<b>Total</b>	<b>47</b>	<b>33</b>	

Source: DGERT (2018).

When the law provided for the expiry of these clauses in 2009, a number of agreements that met the requirements (set by law 7/2009) ceased their validity that year (GEP/MTSSS, 2016; Naumann, 2014). Overall in the 2005–17 period, only 47 collective agreements actually expired. Another reason for this relatively low rate of expiration is that employers use the possibility of expiration as a way of pressuring unions to renegotiate the content of agreements, but are in most cases reluctant to go through with it due to the risk of breakup of the bargaining relationship and an escalation of industrial conflict (Távora and González, 2016a). Arbitration still appears to play a very minor role in solving collective bargaining disputes. Since 2003, there were only three arbitration awards (one resulting from voluntary and two from compulsory arbitration<sup>10</sup>) and no awards resulting from the new form of arbitration, necessary arbitration, created in 2009 to assist in cases of cessation of agreements (GEP/MTSSS, 2016).

Even though the decline in newly published collective agreements was not associated with a decline in the overall number of valid agreements (which actually increased), their coverage has declined slightly. Data from the Centre of Labour Relations shows that the overall coverage of collective bargaining has declined from 85.4 per cent in 2005 to 80.1 per cent in 2015 (CRL, 2017). In absolute numbers, table 6.5 shows that the number of employees covered has declined from 2.3 to 2.0 million and it is clear that this decline is mostly associated with the decline on the workers covered by sector agreements. In parallel with what happened to the other types of agreements, sectoral agreements increased in number over the whole 2005–15 period. Therefore, the decrease in coverage despite the increase of numbers of valid agreements may be explained, at least partly, by the reduction of administrative extensions from 2011.

While other European Union member states such as Greece and Romania have experienced, as a result of comparable labour market reforms during the crisis, a significant decentralization of their collective bargaining systems, the data in table 6.3 and table 6.5 shows that this has not been the trend in Portugal. Table 6.3 shows that during the crisis years, especially from 2011, the proportion of company agreement concluded increased in relation to sector agreements, being higher in number in some years, including 2017. Nevertheless, the number of workers covered by each type of agreement indicates that the sector level continued to be dominant. Sector agreements declined more than lower level agreements partly because the changes in the rules of extensions created disincentives for employers to conclude such agreement, as discussed below.

Despite the sharper decline in the number of new agreements and slower recovery at the sector level, there is not a trend towards decentralization in Portugal. The continuing dominance of sector agreements is more obvious when examining existing valid agreements and their coverage in table 6.4. Despite legal changes since 2009 to enable collective agreements to be concluded by non-union representative structures of workers in companies, no such agreements have been registered (GEP, 2016), likely due to the reluctance of unions to authorize this. In addition, this is also explained by the fact that both union and non-union forms of worker representation in companies is quite low in

10. It is mainly compulsory arbitration that would apply in assisting the resolution of difficulties in the negotiation of a collective agreement. Necessary arbitration is a particular case of compulsory arbitration and applies when agreements cease their validity. Voluntary arbitration is to be used to solve conflicts resulting from the interpretation of collective agreement dispositions.

Portugal (Visser, 2016), especially in smaller firms. A recent OECD analysis of European Company Survey data indicates that among firms with 10–249 employees, the incidence of any type of employee representation in Portugal is just 8 per cent compared to 40 per cent average of the other European countries covered by the study.<sup>11</sup>

A detailed 2016 study by the Ministry of Labour, Solidarity and Social Security, the Green Book on Labour Relations (*Livro Verde das Relações Laborais*), indicates that the total number of works councils with a valid mandate was just 191 in 2015 (GEP/MTSSS, 2016). The low level of workplace representation also contributes to the explanation of why articulation between agreements of different levels is weak and why the legal changes in this respect did not have much impact. According to available information, there are no articulation clauses between agreements at different levels. A national study of employment relations in 2006 described vertical articulation in Portuguese bargaining as extremely rare (Dornelas et al., 2006) and the lack of data or discussion of the issue in subsequent studies suggests that it continues to be so.

## Why has bargaining declined?

There are multiple reasons for the decline of collective bargaining during the crisis. The changes to extensions played an important role in this decline both because they affected the coverage of bargaining directly but also because, as discussed above, they affected the willingness of employer associations to conclude sectoral agreements. The low inclination of employers to conclude agreements at different levels was also due in some cases to their unwillingness to increase wages in the context of the crisis (Addison, Portugal and Vilares, 2017). Yet it is fair to assume, and there is evidence to suggest, that this reluctance would have been even greater in the case of sectoral agreements that would not be extended to non-affiliated enterprises.

Moreover, some of the reforms or the strategies may have contributed to the increased adversarialism that was observed during the crisis. Increased hostility, in turn, may have made it more difficult to reach agreements between union organizations and employers at different levels.

These difficulties have been particularly severe in relation to issues of working time, different types of flexibility and the compensation of overtime time work as reported by employer and trade union interviewees (Távora and González 2016a). These were precisely the issues that were subject to legal changes since 2003, along with the possibility of the expiry of agreements. The immediate reaction after the introduction of the new rules was, in relation to the changes introduced in 2003 and during the recent crisis, an immediate blockage in the conclusion of agreements. Regarding the first ones (in 2003), the level of bargaining returned to previous levels after a few years. This suggests that after the initial shock effect, the changes did not prevent the continuing willingness and ability to conclude agreements. The changes during the crisis went further in that they affected extensions and reduced the compensation of overtime work with a temporary over-riding of collective agreements.

However, both issues have now (at least partially) been reversed: the rules of extensions appear to better enable their widespread practice whereas, while legal overtime pay remains at the levels determined by the 2012 labour code revision (Law 23/2012), the restrictions to its regulation by collective bargaining no longer apply. While this may enable collective bargaining to gradually recover its previous levels, it is not obvious that the legal changes have made it possible to resolve the pre-existing differences between unions and employers with regard to the compensation of overtime work and working time flexibility, which may remain contentious issues.

The question then becomes how to enable a bargaining system that enables mutual exchange and produce agreements that are actually capable of regulating employment and wages that support firms' competitiveness and productivity growth and provide workers with a fair share of these gains. This question may be addressed at least in part through the implementation of a tripartite agreement on combatting precariousness, reducing labour market segmentation and promoting collective bargaining reached in June 2018 (discussed in more detail below).

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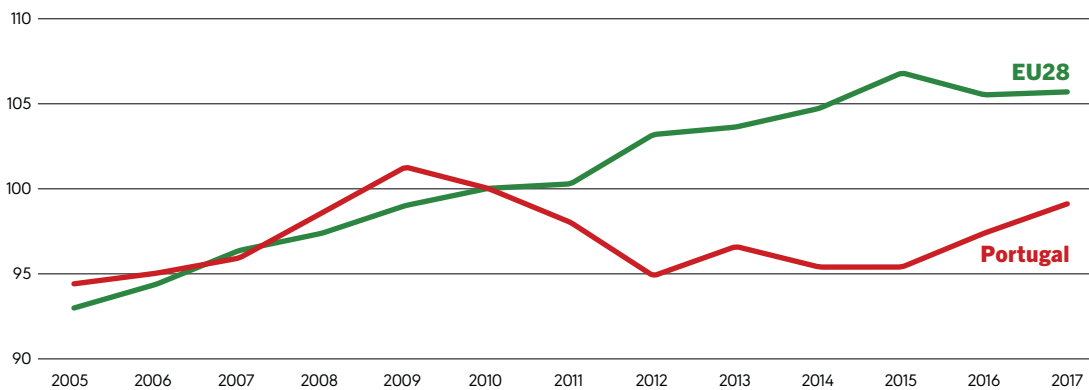
11. Available at: <http://www.oecd.org/eco/surveys/economic-survey-european-union-and-euro-area.htm>

## The socio-economic impact of the collective bargaining changes

An analysis of developments in labour costs and compensation of employees in Portugal before and after the economic crisis clearly show that the goal of “internal devaluation” was indeed achieved. Figure 6.2 below shows that unit labour costs in Portugal decreased markedly between 2009 and 2012 and remained stagnant until 2015, while in the EU as whole they continued to grow steadily, if modestly. Lower unit labour costs in Portugal were achieved through a decrease of labour compensation rather than an increase in productivity.

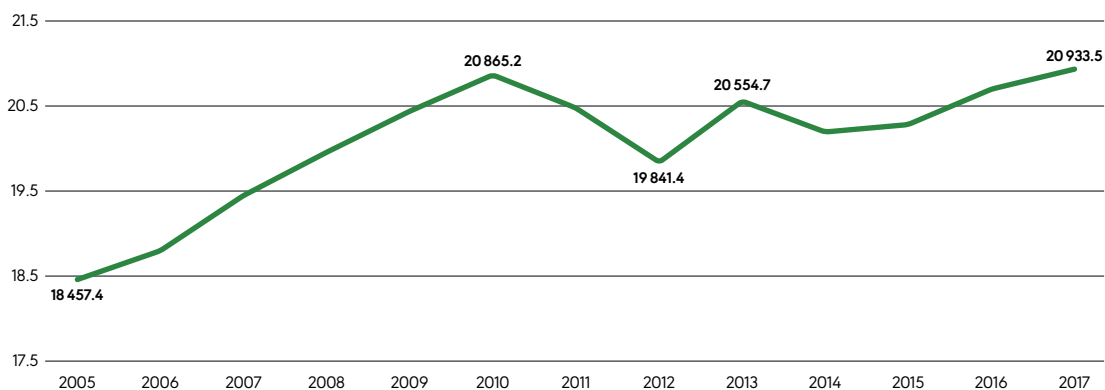
Figure 6.3 shows that employee compensation decreased between 2010 and 2012 and again between 2013 and 2014.<sup>12</sup> In turn, figure 6.4 shows while productivity per person had grown between 2005 and 2007, since then only in 2010 and 2013 did Portugal achieved positive growth; productivity per hour continued to grow after 2007 but at slower pace than before and it stagnated in 2013.

**FIGURE 6.2** Unit labour costs (Index 2010= 100)



Source: Eurostat online database, National Accounts (Eurostat, 2018).

**FIGURE 6.3** Compensation per employee (euros, thousand)\*



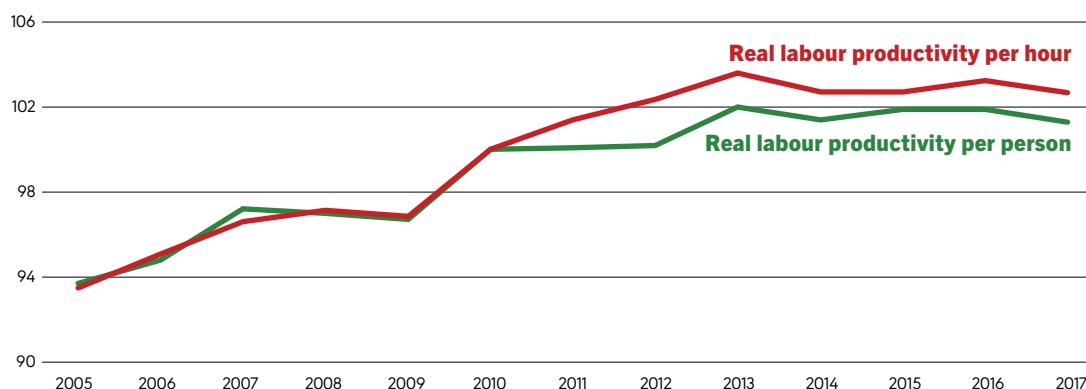
\* Compensation of employees is defined as the total remuneration, in cash or in kind, payable by an employer to an employee in return for work done by the latter and it includes social contributions paid by the employer (Eurostat 2018).

Source: Eurostat online database: National Accounts (Eurostat, 2018).

12. This is also consistent with Eurostat Structure of Earnings Survey data showing a decline in average earnings from €18,500 in 2010 to €17,500 in 2014.



**FIGURE 6.4** Labour productivity (index 2010=100)



Source: Eurostat online database, National Accounts (Eurostat, 2018).

The 2011 and 2012 labour market changes – including changes to collective bargaining, freezes to the national minimum wage, reductions to overtime pay and the introduction of new and more individualized forms of working-time flexibility – go a long way in explaining the decreases in workers' hourly earnings. It is also worth noting that freezes and cuts to public sector wages (e.g. see Campos Lima and Artiles, 2011) also contributed the downward pressures on wages although a detailed analysis of these is beyond the scope of this chapter.

Despite the overall coverage of existing collective agreements having decreased only slightly, a key outcome of the sharp fall of new agreements was that workers who were not covered did not benefit from contractual wage increases. In the absence of increases of collectively agreed wages and national minimum wages, wage increases of the lowest-paid workers was in this period solely dependent on management prerogative. Qualitative evidence from interviews conducted in sectors such as clothing and textiles suggests that wages of many workers in low wage sectors, particularly those where women are over-represented, remained frozen at national minimum wage levels in 2011–14 (Távora and Rodríguez-Modroño, 2018).

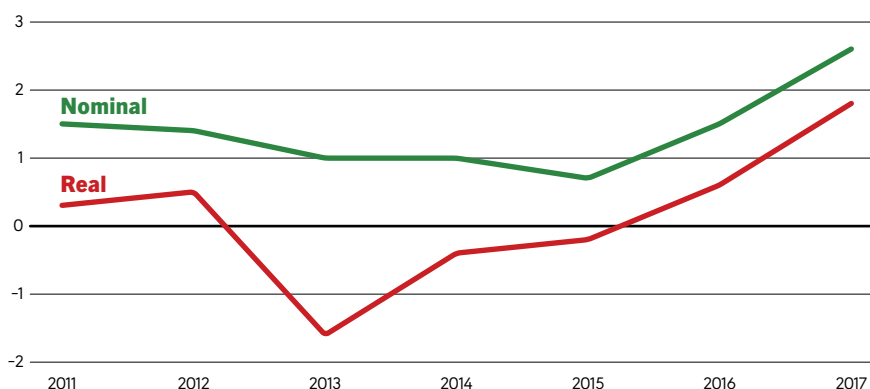
During the crisis, collective bargaining weakened its capacity to protect workers from excessive low pay as evidenced by the increase in proportion of workers receiving the national minimum wage. Data from the Portuguese statistics office shows a sharp increase in this proportion from 10.5 per cent in October 2010 to 23.3 per cent in October 2016 with a similar percentage increase in the case of women, from 14.4 to 28.9 per cent in the same period.<sup>13</sup>

However, the reduced role of collective bargaining in the regulation of low pay is not just because of the lower number of workers covered by new agreements. An analysis of the wage tables of the most representative collective agreements published in 2017 finds that the lowest pay rates set by the vast majority of them are the same as that of the national minimum wage (DGERT, 2018). This also means that the lowest rates negotiated in many sectors are likely to be surpassed by the next increase of the national minimum wage. Collective bargaining cannot set less favourable conditions than the law on matters such as pay, so in such cases the workers on lower wage rates automatically have their wages increased to the new national minimum wage level – and the collective agreement becomes outdated.

The reduced capacity of collective bargaining to provide effective wage floors in Portugal is a long-standing issue documented in a number of analyses (Távora and Rubery, 2013; Naumann, 2014; Dornelas et al, 2006). Yet the sharp increase in the proportion of workers receiving the minimum wage suggests an exacerbation of this problem. A key element contributing to it was a reduction of 0.75 per cent in employers' social contributions on minimum wage workers. This was a temporary measure, since discontinued, to offset the cost for employers of minimum wage increases when these were

13. If we consider a longer period of reference the increase of workers covered by the national minimum wage is even more dramatic: the proportion of workers covered between 2000 and 2002 was 4 per cent (Dornelas et al., 2006).

**FIGURE 6.5** Collectively agreed wages: Variation 2011–17 (percentage)



Source DGERT (2018).

resumed in 2014 (OECD, 2017). However, this measure had the perverse effect of creating incentives for employers to hire and keep workers on minimum wages – and resulting in equivalent values for minimum pay rates in collective agreements. This may have further contributed to the blockages of collective bargaining.

Where agreements were reached during and in the aftermath of the crisis, overall wage increases have been minimal. Figure 6.5 shows that in real terms, these have been negative in the 2013–15 period and only in 2017 is there a sizeable, albeit still modest, real wage increase.

In addition to the blockages in bargaining and freezes in national minimum wages, the reduction of overtime pay that temporarily superseded collectively agreed rates also contributed to the overall decreases in earnings and labour costs (OECD, 2017c). The introduction of individual and group time banks also provided employers with opportunities to adjust employees' working times thereby reducing the need for overtime work at premium pay. In the Portuguese context, these two changes had a significant impact. Overtime work was the main flexibility strategy available to employers to respond to demand fluctuations; for workers it provided opportunities for topping up relatively low basic wages. For many workers, particularly in manufacturing, it had become an important component of the overall pay package. So both the reduced overtime pay rates and lower overtime opportunities due to new forms of working time flexibility have resulted in lower overall earnings (Távora and González, 2016).

Despite being highly contentious issues, there is evidence that lower rates of overtime pay and new forms of working time flexibility are gradually being integrated in collective agreements. A study by the Centre of Labour Relations showed that a growing proportion of collective agreements published since 2012 introduced overtime pay rates more aligned with the new legal values (CLR, 2015). With regard to working time flexibility regimes, the *Livro Verde* and its 2018 update show that these have become important and are to a great extent regulated by collective agreements. This is particularly the case of adaptability regimes regulated by collective agreement, that covered 56.5 per cent of employees in 2010, although this proportion decreased slightly to 53.6 per cent in 2016 (GEP/MTSSS, 2016; MTSSS, 2018). Working-time accounts still appear unimportant, but the employees covered have increased slightly from 0.5 per cent in 2010 to 1.4 per cent in 2016. At the same time, individual forms of flexibility have increased, with proportions of workers with individual adaptability growing from 9.5 per cent in 2010 to 13.1 per cent in 2016, and the proportion of those with individual working-time accounts growing from 0.5 per cent in 2012 (when it became legally possible) to 0.9 per cent in 2016.

## Policy considerations

The June 2018 tripartite agreement appears to mark an important milestone in rebuilding a stronger culture of collective bargaining. Among many other topics, it seeks to address key concerns of the parties with regard to two of the most contentious issues under the MoU, hours banking and overtime compensation. It provides new rules with regard to expiry and renewal of collective agreements, which is hoped will promote a more dynamic outcome to bargaining, and strengthens the principle of most favourable treatment. At the time of writing, this tripartite agreement is being debated in Parliament as a number of provisions will require legislative amendments. The following considerations are partly covered by this agreement, but it remains to be seen to what extent they will find their way into legal application.

### Maintaining extensions in collective bargaining agreements, while promoting representativeness

The extension of collective agreements is a key policy tool to promote collective bargaining and enhance its role in reducing inequality and fostering inclusiveness. In this regard, it would be desirable to maintain a system of extensions, while monitoring the impacts of the newly adopted criteria. The predominance of sectoral level bargaining coupled with use of extension mechanism results in high collective bargaining coverage (over 85 per cent in 2016), an outcome largely supported by unions and employers' organizations. However, relatively low union membership figures (less than 9 per cent in the private sector) may raise issues of representativeness and "free rider" problem (e.g. workers benefit from agreements without joining a union or paying an equivalent fee). Some new agreements introduce a requirement to pay an agency fee for non-unionized workers who wish to be covered by that agreement.

### Including new areas of common interest in discussions

Continuous engagement with workers and employers to examine ways can make the content of collective agreements more dynamic. Workers' and employers' organizations are encouraged to consider including in collective bargaining subjects such as skills and training, productivity and competitiveness, working time and rest time, part-time and temporary employment, gender equality and other matters of common interest.

### Improving articulation and coordination of agreements

As noted in the ILO report in 2013, the Government and social partners may wish to consider better articulation and coordination of agreements. While the law clearly provides for this, there is little evidence of it in practice. Increased worker representation at the enterprise level may help contribute to this articulation. This is particularly important in light of the dominance of small firms in the economy.

### Linking wages and productivity growth to avoid the low wage trap

Minimum wages have become an increasingly important mechanism for fixing wages generally across the economy, as shown by the growing percentage of employees paid at or around the minimum. Consideration should be given to exploring how collective bargaining at different levels can better link wages with productivity growth at both sectoral and enterprise level. This can help to avoid a low wage trap, and instead create a virtuous cycle of increased productivity growth leading to increased wage growth and domestic consumption, which, when combined with higher levels of skills and capital investment, can lead to higher productivity growth.

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# Appendices

## Appendix 1. Excerpts from the Adjustment Programme and key legal and regulatory changes in the labour market since 2009

2009

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<b>September</b>	Law 105/2009 makes a slight amendment to the labour code on “Special cases of very short-term employment contracts”.
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2011

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<b>January</b>	Minimum wage increases from €475 to €485.
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<b>April</b>	Portugal makes a request for the activation of an international aid mechanism.
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<b>5 May</b>	Financial Assistance Programme: Portugal and the European Union (EU), the European Central Bank (ECB) and the International Monetary Fund (IMF) agree on an economic and financial adjustment programme of €78 billion (the EU/ECB/IMF Financial Assistance Programme translated into a set of measures and legislative initiatives, including of a structural nature, related to public finances, financial stability and competitiveness, to be introduced during a three-year period).
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<b>17 May</b>	A Memorandum of Understanding on Specific Economic Policy Conditionality is signed with the European Commission (EC) on Portugal’s request for aid. A Memorandum of Economic and Financial Policies (MEFP) is signed with the IMF.
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<b>August</b>	Staff teams from the EC, the ECB and the IMF conclude their first regular quarterly review of the Portuguese Government’s economic programme, whose objectives are “to restore competitiveness and to put Portugal’s economy on a path of sustainable growth, sound public finances and job creation” (ECB).
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<b>September</b>	The first regular quarterly review leads to the first regular update of the Financial and Economic Assistance Programme in September 2011.
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<b>October</b>	Law 53/2011 was passed, decreasing severance payments (from 30 to 20 days per year of tenure). The law comes into force on 1 November 2011.
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<b>November</b>	Staff teams from the EC, ECB, and IMF visit Lisbon for the second quarterly review of Portugal’s economic programme: “The mission has reached staff-level agreement on economic and financial policies to meet the programme’s objectives. Strict implementation of these policies will be needed to restore external competitiveness, bolster confidence in the sustainability of public finances, and maintain financial stability while ensuring adequate credit in support of sustainable growth” (ECB).
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**December** The second review leads to the second regular update of the Programme in December 2011. In line with the commitments of the Memorandum of Understanding, the target was to reduce at least 15 per cent of management positions and administrative units in the central administration by the end of December 2011. At the end of December 2011, the number of civil servants totals 611,801, of which 458,353 are in central administration, representing an approximate reduction by 6 per cent (or 36,511 persons) in the total number of civil servants and a reduction of about 11 per cent (or 54,071 persons) in civil servants in central administration compared to December 2010.

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## 2012

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**January** Law 3/2012 was adopted, introducing a possibility to extend fixed-term contracts beyond ordinary limits (applying to contracts expiring by the end of June 2013).

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**February** Staff teams from the EC, the ECB and the IMF visit Lisbon for the third quarterly review of Portugal's economic programme: "The mission concludes that policies are generally being implemented as planned and economic adjustment is under way but challenges remain. A determined implementation of reforms remains essential to ensure economic recovery and fiscal sustainability" (ECB).

Launch of *Estímulo* 2012 hiring subsidy – Ministerial Ordinance No. 45/2012.

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**March** The third review leads to the third update of the programme in March 2012. Decree-Law 64/2012 is approved, introducing various changes into the unemployment benefit regime, which came into effect on 1 April.

Launch of the Modernisation of the Public Employment Service – Cabinet Resolution No. 20/2012.

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**June** Staff teams from the EC, the ECB and the IMF visit Lisbon for the fourth quarterly review of Portugal's economic programme: "We conclude that the programme remains on track amidst continued challenges. While the authorities are implementing reform policies as planned and external adjustment proceeding faster than expected, rising unemployment is becoming a pressing concern. The need to combine fiscal consolidation with deleveraging private balance sheets while restoring external cost competitiveness remains a difficult balancing act" (ECB).

The fourth review leads to the fourth update of the programme in June 2012. Minister of State and Finance announces the recapitalization of the banking system. A governmental injection of more than €6.6 billion in three Portuguese banks, including approximately €5 billion from the Bank Solvency Support Facility (BSSF) within the financial assistance programme to Portugal, is carried out.

Law 23/2012 introducing the third modification of the Labour Code is adopted, changing 64 articles of the Labour Code, with emphasis on the ones related to the hour bank system, overtime and public holidays pay, compensatory rest periods, mandatory holidays, mass redundancy compensation, dismissal due to abolition of post of employment and unsuitability as well as the declaration of nullity of the Collective Agreements Standards that establish higher amounts than the Labour Code for the compensation for mass redundancy, the abolition of post of employment or unsuitability.

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**July** IMF completes fourth review under the Extended Fund Facility (EFF) arrangement with Portugal and approves a €1.48 billion disbursement after a request for a waiver of applicability of end-June performance criteria.

Decree-Law 207/2012 establishes that recipients of unemployment benefit can continue benefit receipts partially if they accept a low-paid job.

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<b>August</b>	<p>Extension of duration of contracts of very short duration. Procedures for implementing short-time working arrangements are accelerated.</p> <p>Launch of <i>Apoio à Contratação via Reembolso da TSU</i> subsidy – Ministerial Ordinance 229/2012. The Ordinance established contracting support measures, including total or partial reimbursement – depending on without-term or fixed-term contracts – of mandatory contributions to social security from the employer.</p>
<b>September</b>	<p>Staff teams from the EC, ECB and IMF visit Lisbon for the fifth quarterly review of Portugal's economic programme: "In 2012, despite headwinds from abroad, real GDP growth remains in line with projections, exports are performing better than expected, and the fast reduction in the external deficit is contributing to alleviating the external financing constraint. Nevertheless, higher unemployment, lower disposable incomes, and a shift in tax bases away from more highly-taxed activities are weighing on revenue collection. Against this backdrop, policy choices need to strike a balance between advancing the required fiscal adjustment and avoiding undue strains on the economy. Swift progress on structural reforms remains key to put the economy on a sustainable growth path. Maintaining broad political and social support for the revised adjustment programme will also be important" (ECB).</p>
<b>October</b>	<p>IMF completes fifth review under the EFF arrangement with Portugal and approves a €1.5 billion disbursement.</p> <p>The fifth review leads to the fifth update of the programme in October 2012.</p> <p>Resolution No. 90/2012 is adopted by the Council of Ministers, introducing new criteria for the administrative extension of collective agreements.</p>
<b>November</b>	<p>Staff teams from the EC, ECB and IMF visit Lisbon for the sixth quarterly review of Portugal's economic programme: "The programme is broadly on track, despite stronger headwinds. With much already accomplished, strong commitment and perseverance need to be maintained as the programme enters its second half. External and fiscal adjustment continues to advance, adequate capital and liquidity buffers have reduced financial stability risks, and structural reforms are proceeding apace. At the same time, rising unemployment, lower incomes, and uncertainty are weighing on confidence, while the recession in the euro area is beginning to bear on export dynamics. Given financing constraints and high debts, the programme adequately balances the need to adjust, against the unavoidable costs of adjustment for economic activity and jobs" (ECB).</p>
<b>December</b>	<p>The sixth review leads to the sixth update of the programme in December 2012. By end of December 2012, the number of civil servants has been reduced to 584,228 with 436,103 persons working in central administration. This represents a reduction of about 4.5 per cent (27,573 persons) overall, about 4.9 per cent (22,250 persons) in central administration and 3.5 per cent (5,323 persons) in regional and local administration. The reduction targets in the Memorandum of Understanding are 1 per cent yearly cuts in central administration and 2 per cent yearly cuts in regional and local administration. The reduction target is raised to 2 per cent for central administration in the December 2012 update of the Memorandum (to be achieved by limiting staff admissions 2012–2014).</p>
<b>2013</b>	
<b>January</b>	<p>IMF completes sixth review under the EFF arrangement with Portugal and approves a €838.8 million disbursement. Portugal makes its comeback on the financial market for the first time since the Financial Assistance Programme was entered into in May 2011.</p>
<b>February</b>	<p>Revision of <i>Apoio à Contratação via Reembolso da TSU</i> – Ministerial Ordinance 65-A/2013.</p> <p>Launch of <i>Apoio à contratação de desempregados com idade igual ou superior a 45 anos via reembolso da TSU</i> – Ministerial Ordinance 3-A/2013.</p>

<b>March</b>	<p>Staff teams from the EC, the ECB and the IMF visit Lisbon for the seventh quarterly review of Portugal's economic adjustment programme: "Programme implementation remains broadly on track, against the background of difficult economic conditions. The end-2012 fiscal deficit target was met, financial sector stability has been safeguarded, and a wide range of structural reforms is progressing. External adjustment continued to exceed expectations. And the government has resumed issuance in the bond market, while domestic financing conditions have eased somewhat. At the same time, weakening export demand, particularly from the euro area, low confidence, and the private sector debt overhang are providing stronger-than-expected headwinds to economic activity. As during previous reviews, policy choices and implementation of the programme were re-evaluated in light of the new circumstances" (ECB).</p> <p>Introduction of <i>Estímulo</i> 2013 – Law 106/2013.</p>
<b>5 April</b>	<p>The Constitutional Court rejects some of the fiscal consolidation measures in the 2013 Annual Budget considered essential by the Government to meet the mandatory deficit targets (four measures ruled unconstitutional, including cuts in public sector and state pensions, estimated at about €1.3 billion in expected revenue and savings, more than 20 per cent of the total planned from fiscal consolidation measures).</p>
<b>7 April</b>	<p>The Prime Minister, in an address to the nation, calls for severe cuts in public spending to keep the country's financial assistance programme on track. He said there would be no new tax hikes in 2013 but that measures would be taken to "contain public spending in the areas of social security, health and education".</p>
<b>11 April</b>	<p>The Prime Minister sends a letter to the IMF, EC and ECB indicating changes underway on wages, labour legislation and pensions (levelling wages in public and private sectors). He also announces that the Government has a plan to cut €4 billion and, if necessary, to substitute the measures rejected by the Constitutional Court by others of equivalent value.</p>
<b>15/16 April</b>	<p>The IMF, EC and ECB visit Lisbon to discuss the alternative compensatory measures proposed as well as the State reform.</p>
<b>3 May</b>	<p>The Prime Minister, in an address to the nation, announces, among other measures, a €4.8 billion cut in public spending over the next three years, including an increase in the legal retirement age from 65 to 66, a reduction of 30,000 civil servants, an increase of the weekly working hours in the public sector from 35 to 40, a reduction of the annual leave from 25 to 22 days in public administration and the creation of a new permanent tax on pensions.</p>
<b>7 May</b>	<p>Portugal issues its first new government bonds since the start of the Financial Assistance Programme (May 2011), in a heavily oversubscribed offer of ten-year debt that raised €3 billion, at a 5.69 per cent rate (6.72 per cent in January 2011).</p>
<b>12 June</b>	<p>The Government of Portugal sends a letter of intent to the IMF describing the policies that Portugal intends to implement in the context of its request for financial support from the IMF. On the basis of the policies defined in the letter, and in light of the country's performance under the programme, the Government requests the completion of the seventh review under the Extended Arrangement and the eighth purchase under the arrangement in the amount of SDR574 million.</p> <p>The Executive Board of the International Monetary Fund (IMF) completes the seventh review of Portugal's performance. The completion of the review enables the immediate disbursement of an amount equivalent to SDR574 million (about €657.47 million), bringing total disbursements under the EFF arrangement to SDR19.700 billion (about €22.56 billion).</p> <p>The IMF's seventh review under the Extended Arrangement and request for modification of end-June performance criteria, following discussions with the officials of Portugal on economic developments and policies that ended in May 2013, is undertaken.</p> <p>Seventh regular update of the programme is undertaken.</p>



<b>20/21 June</b>	A decision on maturities extension is taken by the Economic and Financial Affairs Council (Ecofin) (seven years).
<b>31 June</b>	By the end of June, the number of civil servants has been reduced to 574,946 overall, of which 428,187 are in central administration. Overall, this represents a reduction of about 2 per cent compared to December 2012.
<b>22 August</b>	Workers' councils in firms with at least 150 employees can negotiate plant-level agreements – Decree-Law 189/2012.
<b>29 August</b>	The Constitutional Court examines the compatibility of new fiscal consolidation measures with the Constitution, finding one of them unconstitutional.
<b>September</b>	Law 63/2013 enters into force, introducing a procedure concerning the enforcement of the Labour Code's (2009) stipulations about "presumed employment contract" in the case of misuse of service provider contracts in an employment relationship.
<b>1 October</b>	Law 69/2013 (adopted in August 2013) adjusted the value of the compensation due in case of termination of the employment contract.  Law 70/2013 (adopted in August 2013) sets forth the legal system of the Work Compensation Fund (FCT) and the Guarantee Fund of the Work Compensation (FGCT).  <i>Incentivo Empleo</i> – Ordinance n° 286-A/2013 (adopted in September 2013) enters into force.
<b>18 October</b>	Parliament approves the law proposal on convergence of pension systems in the public and private sectors, entailing cuts in public sector pensions.
<b>November</b>	The IMF completes the eighth and ninth reviews under an EFF arrangement with Portugal, and approves an immediate €1.91 billion disbursement (SDR1.679 billion), bringing total disbursements under the EFF arrangement to SDR21.379 billion (about €24.34 billion).  Second exceptional extension of temporary contracts is approved – Law 76/2013.

## 2014

<b>February</b>	Relaxation of rules to set up private employment and temporary work agencies – Law 5/2014.  The IMF completes the tenth and eleventh reviews under an EFF arrangement with Portugal, recommending further labour market flexibilization.
<b>June</b>	Law 27/2014 (adopted in May 2014) – Criteria for selecting worker to be dismissed in case of extinction of a work post are revised again, and the requirement to find another suitable job for a worker before being dismissed is re-introduced.  Resolution of the Council of Ministers 43/2014 – Criteria for the extension of collective bargaining agreements are revised.
<b>July</b>	Ministerial Ordinance 204-A/2013 – <i>Medida Estímulo Empleo</i> and Ministerial Ordinance 149-A/2014 come into force.  Law 48-A/2014 extended the deadline for the suspension of the provisions of the collective labour regulatory instruments and of the employment contracts clauses.
<b>September</b>	Law 55/2014 (adopted in August 2014) – The validity period of cessation clauses in collective bargaining agreements is reduced, and the possibility to temporarily suspend collective agreements in times of crisis is introduced.
<b>October</b>	Increase in the minimum wage from €485 to €505  Temporary decrease of 0.75 percentage points in employer social security contributions on minimum-wage workers who were hired no later than May 2014.

## 2015

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<b>January</b>	The IMF concludes its First Post-Program review. It concluded “that the recent minimum wage increase in an environment of very low inflation appears premature and could impede a normalization of labour markets, particularly for low-skilled workers and youth. [...] the new option of extending [collective] agreements to the whole sector even if only 30 per cent of micro and SMEs are represented undermines the progress towards a more dynamic and inclusive system of collective bargaining.”
<b>March</b>	Decree 84/2015 – Introduction of a financial incentive for the “Promotion of Gender Equality in the Labour Market”.  Decree 85/2015 – Introduction of financial support to promote geographical mobility.  Decree 86/2015 – Introduction of <i>REATIVAR</i> (aims to promote reintegration of long-term unemployed, over 30 years of age through work placements lasting 6 months).
<b>May</b>	The IMF’s Article IV consultations concludes that “a significant effort has already been made to use active labor market policies to improve skills and labor market attachment of workers. But the productivity of workers, especially of the low skilled, also depends critically on the skills of managers, where Portugal ranks relatively low in cross-country comparisons. [...] Keeping workers without jobs attached to the labor market will require a more inclusive unemployment support system, for example by reducing the minimum contribution period for eligibility and reducing inactivity traps, especially for older workers. With an increasing share of workers paid at the minimum wage, further premature increases would lower the chances of lower-skilled workers to make the transition from inactive or unemployed status to jobs.”
<b>April</b>	Law 28/2015 establishes gender identity in the scope of the right to freedom in the access to work and employment.
<b>August</b>	The IMF concludes the Second Post-Program Review, stating that “rebalancing the economy will require continued structural reforms. [...] The impact of past labor market reforms needs to be assessed, while fresh reform initiatives regarding employment protection rules and collective bargaining are needed.”
<b>September</b>	Law 120/2015 enhances the rights of maternity and paternity; increases from 10 to 15 working days the mandatory parental leave for the father, consecutive or un-sequential, in the 30 days after the 30 days following the birth of the child, five out of which must be consecutively immediately after it.
<b>October</b>	Decree-Law 210/2015 (adopted in September 2015) – Revision of dismissal funds (limit contributions to 50 per cent of SP).

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## 2016

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<b>January</b>	Minimum wage is increased from €505 to €530.
<b>April</b>	The IMF concludes the Third Post-Program Discussion, advising Portugal against reversals of structural labour market measures introduced during the Fund-supported program, cautioning that “a weakening of reforms that have improved labor market flexibility could diminish medium-term prospects for growth, employment, and income.”
<b>June</b>	The IMF concluded the Fourth Post-Program Monitoring, expressing overall positive developments, but also expressing regret that the full rollback of public sector wage cuts has not been accompanied by a more fundamental reform of the public sector. [Moreover, the IMF assessed that] any unwinding of past policies that have succeeded in making hiring and collective bargaining more flexible would have adverse consequences for the competitiveness of Portuguese firms.”

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<b>August</b>	<p>Law 28/2016 changes liabilities for compensation and social security costs to the enterprise in cases of modern forms of bonded labour.</p> <p>Law 34/2016 abolished bi-weekly presentation requirement of the unemployed.</p> <p>Ordinance 232/2016 regulates the creation and the regime of setting up and functioning of the <i>Centros Qualifica</i>, namely, the guidance to employment offers of education and vocational training and the development of procedures of recognition, validation and certification of skills.</p>
<b>September</b>	<p>The IMF concludes its Article IV consultations, and “called for a comprehensive spending review, aiming particularly at better means-testing of social benefits and controlling pensions and public sector wages. [...] Directors emphasized that pushing ahead with structural reforms remains critical to enhancing competitiveness and promoting growth, [...] and] encouraged the authorities to engage all stakeholders by means of an inclusive social dialogue.”</p>
<b>October</b>	<p>Ordinance 282/2016 regulates the model of individual coaching for employment (MAP-Employment), replacing the bi-weekly presentation model of the unemployed. MAP-Employment refocuses the intervention of the Public Employment Service on the capacitation of the unemployed, with a focus on individual case plans.</p>
<b>2017</b>	
<b>January</b>	<p>Minimum wage is increased from €530 to €557.</p> <p>Ordinance 34/2017 establishes the Employment-Contract measure (replacing the Employment Stimulus measure), which consists in granting to the employer a financial support to the conclusion of employment contracts with unemployed registered in the Institute of Employment and Vocational Training (IEFP). The focus is on those hardest to employ and most support is limited to hiring on permanent contracts.</p> <p>Decree-Law 14/2017 changes the legal system of the National Qualifications System and outlines the structures that will ensure its functioning.</p>
<b>February</b>	<p>IMF concludes Fifth Post-Program Monitoring Discussions, and “encouraged the authorities to proceed with reforms in labor and product markets, with a particular focus on tackling labor market segmentation, improving education and skills, and enhancing public sector efficiency. [The IMF] noted that it would be important to ensure that increases in the minimum wage do not impair labor competitiveness and undermine prospects for new entrants to the labor force.”</p>
<b>March</b>	<p>Resolution of the Council of Ministers 32/2017 – Decides to start an Extraordinary Settlement of Precarious Employment in the Public Administration Programme (PREVPAP).</p>
<b>April</b>	<p>Ordinance 131/2017 creates the measure of Professional Internships, including support to the transition from internship contract to permanent contract.</p>
<b>June</b>	<p>Decree-Law 72/2017 enshrines the incentives for hiring young people seeking for first employment, long-term unemployed and very long-term unemployed, through a partial waiver or total exemption of the payment of employer’s contributions to the general scheme of social security.</p> <p>Resolution of the Council of Ministers 82/2017 defines the criteria, procedures and indicators to be observed for the emission of extension ordinances of collective conventions, and enters into force on 10 June.</p> <p>Portugal exits the European Commission’s excessive deficit procedure, which it entered in late 2009.</p>
<b>July</b>	<p>Law 55/2017 strengthens the regime introduced by Law 63/2013, to more effectively fight the situations of hiding subordinated working relations and broadens the scope of application of the Law to other forms of non-declared and undeclared work.</p>

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**September** The IMF concludes its Article IV consultation with Portugal in an overall positive light, yet “emphasized that raising Portugal’s productivity and growth potential remains central to reducing the vulnerabilities that weigh on the medium term outlook. Addressing impediments to higher investment is key in this regard. [The IMF] highlighted the need to focus on issues that affect investors’ perceptions of the business environment, including reducing rigidities in the labor market [...]”

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## 2018

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**January** Minimum wage is increased from €557 to €580.

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**February** In its Sixth Post-Program Monitoring Discussions, the IMF states: “The Portuguese economy has strengthened. Supported by a benign external environment, job-rich growth has gathered momentum since late 2016. [However,] Raising the economy’s growth potential and resilience to shocks will also require further structural reforms and higher investment and productivity. For the economy to absorb negative shocks and adapt to new opportunities, a flexible labor market is key. Flexibility needs to be preserved even as an environment with more stable jobs is sought.”

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**June** A tripartite agreement on the fight against precariousness and labour market segmentation was reached between the government and most social partners (except CGTP).

The proposed changes to the labour law framework aim to limit use and duration of fixed-term contracts under exceptional and restricted circumstances, increase protections for employees on fixed-term contracts, extend the duration of very short-term contracts in exceptional and restricted circumstances, discourage recourse to undeclared work, foster the hiring of young people and the long-term unemployed, and counteract the individualization of labour relations (including on individual time-banking accounts).

Moreover, amendments to the social security contributory regime should include measures to penalize enterprises’ overuse of fixed-term contracts through additional social security levies.

The agreement also includes supplementary measures concerning the unemployment protection regime, active labour market policies that promote permanent contracts, and the reinforcement of resources allocated to the Authority for Working Conditions (ACT).

At the time of the writing of this report, the detailed implementation of these legal provisions has yet to be elaborated and passed by Parliament.

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## ■ Appendix 2. Summary of main changes in ALMPS, 2017

### Employment contract (Hiring Support scheme – Decree 34/2017)

#### What has changed in the hiring supports?

With the Employment contract measure, in force since last January:

- Improved targeting to the open-ended contracts: support to fixed-term contracts is reserved to specific situations such as the long-term unemployed (LTU);
- Creation of the “Employment-Prize” (last payment of the support is done 24 months after the beginning of the contract; support for converting fixed-term contracts into an open-ended contracts);
- Closed application periods throughout the year and with budget allocations;
- Introduction of limits to the accumulation of supports;
- Positive differentiation of the segments furthest from the labour market (e.g. youth, LTU, older persons).

### Professional internships (Decree 131/2017)

#### What has changed in professional internships?

With the regulation in force since April, there is:

- Improved targeting for strategic results (creation of an “Employment Prize” for the conversion of internship contracts into open-ended contracts);
- Promotion of the effectiveness of the support-granted criteria for the application analysis, including employability of the previous supports granted to the company;
- Valuation of skills, including differentiation of the amounts of scholarships for interns with master’s degrees and doctorates;
- Strengthening mechanisms of monitoring, including direct communication channels between interns and the vocational training institute (IEFP);
- Reinforcement of the protection instruments (possibility of the intern being compensated in case of infringement by the company).

### Generation-contract (Measure under development, to be implemented in 2018)

#### What is the Generation contract?

- It has the double mission of improving the situation of two groups especially affected by unemployment – youth and long and very long-term unemployed (LTU) – and of fostering a better balance between generations in the labour market and in companies;
- Its two fronts are support for the simultaneous hiring of young people and LTU and partial reforms and support for hiring youth;
- The first front, support for hiring of young people and LTU, will be operational in 2018 and will consist of partial or full exemption of the payment of social security contributions for the employer for each eligible signed labour contract.

Who will benefit from the support?

- Young people up to 30 years old looking for first employment;
- Long-term unemployed who are 45 years and older.

### ■ Appendix 3. Government support for entrepreneurship

In 2016, the Portuguese Government launched Startup Portugal, an integrated entrepreneurship strategy. The three aspects of the strategy consist of voucher-style financial supports integrated with counselling and entrepreneurship training:

- *Startup Voucher* is the biggest of the three, with €3.7 million invested in 245 start-ups supported for one year on a monthly €691,70 stipend. It involves selection by the National Network of Start-up Incubators and mentoring by IAPMEI, Portugal's SME support and training institute, which has experience in running SME academies across the country. The voucher involves more than €10 million invested in start-ups over its various editions. The implementation of the idea as a business is rewarded with a prize.
- *Vale Incubação* (incubation voucher), with 93 start-ups already supported, aims to support 2,000 start-ups with a €5000 voucher for purchasing incubation services (including training and counselling) at accredited incubators. An additional 90 start-ups are being assessed in the second edition of this voucher program.
- *Momentum*, a programme aimed at supporting finalists who are recent graduates in developing their start-up idea with a monthly €691,70 stipend, free accommodation and free incubation by the National Network of Start-up Incubators. This programme is supported by mentoring from ANJE, the national young businessperson's association. (Five projects have been supported so far.)

In addition, the annual Web Summit is a key moment in Portugal's start-up ecosystem. The Government went from supporting 67 start-ups to attend in 2016 to 150 in 2017 and 200 in 2018. Support consisted of a discounted ticket (100 per cent in 2016, 50 per cent in 2017 and 2018) and a business training bootcamp (for one person in 2016 and two people in 2017 and 2018). This bootcamp is offered as part of a national roadshow to guarantee that it is accessible to start-ups from all regions.

Moreover, the programme leveraged co-investments of €98 million from venture capitalists and €26 million from business angels. Their financial support was part of an integrated strategy to upgrade the quality of the various players in the ecosystem.