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**JOINT STUDY OF THE EUROPEAN SOCIAL PARTNERS
“THE IMPLEMENTATION OF FLEXICURITY AND THE ROLE OF THE
SOCIAL PARTNERS”**

NATIONAL FICHE:

Portugal

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Preface

This national fiche is part of the EU Social Partners’ Study “The implementation of flexicurity and the role of social partners” carried out in the context of the EU Social Dialogue Work Programme 2009-2011, which includes “*Jointly monitoring the implementation of the common principles of Flexicurity, notably in order to evaluate the role and involvement of the social partners in the process and to draw joint lessons*”.

To implement this task in the best possible way and to involve national member organisations actively in the gathering of data and information, the study applies a methodology that consists of multiple levels of analysis using a variety of instruments to be implemented with the help of a team of experts:¹

- The expert team, with the advice of European Social Partners, agreed on a *set of selected statistical indicators* in the field of employment and economic and social development with labour market relevance.
- National social partners were asked to participate in a *questionnaire-based survey* focussing on the relevance of the flexicurity concept within national labour markets, the role of the social partners in policy implementation and their views of the flexicurity concept. To complement the research, the expert team visited a number of countries and carried out interviews with national social partners.²
- Based on the two sources above and a review of available written materials and information, the expert team prepared *29 national “fiches”* on the implementation of the flexicurity principles and the role of social partners in the respective national contexts.
- Results of the questionnaire survey and main findings of the national analyses were discussed at four “*country cluster seminars*” that were organised by the European Social Partners with the help of national sections in Warsaw (November 2010), Lisbon (December 2010), Paris (31st January-1st February 2011) and The Hague (8th February 2011).
- In the light of the overall study results and the comments received by national social partners in the contexts mentioned above, the expert team has prepared a *comparative synthesis report* on “Social Partners and Flexicurity in Contemporary Labour Markets” that was presented and discussed at a *EU-level synthesis seminar* on 31st March and 1st April 2011 in Brussels.

This national fiche aims to present a broad overview on the economic and social context and the state of play with regard to flexibility and security in the labour market and current social security arrangements (sections one and two). Secondly, the report describes the role of the social partners and social dialogue in the implementation of policies and practices that can be considered under the broad umbrella of “flexicurity” (section three), also summarising inputs provided by national social partners to the questionnaire, from interviews carried out and other contributions made in the context of the study. Section three also presents brief descriptions of cases of good practice as has been indicated by the national social partners.

The text was originally prepared as draft report in the autumn of 2010 in order to facilitate the discussion at the cluster seminar in Lisbon on 11 and 12 December 2010. The original dossier has been reviewed and revised to take into account the comments and discussions that took place during the seminar or received afterwards.

However, it should be stressed that this report is presented as an “independent expert report”. It represents the views of the individuals involved in its preparation and does not purport to represent the views, either individually or collectively, of the social partners’ representatives that contributed to it, or those of the European level social partner organisations that were responsible for its commissioning.

¹ Expert team: Eckhard Voss (coordinator), Alan Wild, Anna Kwiatkiewicz and Antonio Dornelas.

² The following countries were visited in the context of the project between May and July 2010: Denmark, France, Ireland, Italy, Czech Republic, Poland, Germany, Portugal and the Netherlands.

1 The economic and social context

Economic crisis and recovery

The economic and financial situation of Portugal has dramatically worsened between autumn 2010 and May 2011: While in its autumn 2010 economic forecast, the EU Commission still made a gentle optimistic assessment that the Portuguese economy signaled signs of recovery following the severe crisis during the 2008 economic and financial crisis,³ the situation six months later has deteriorated rapidly. On 7th April 2011, Portugal had to request international assistance from the European Union and the IMF that is accompanied by an agreement on an Economic Adjustment Programme for 2011-2014 being worth 78 billion Euros and the commitment by the Portuguese government to fiscal consolidation aiming at reducing the gross public-debt-to-GDP ratio in the medium term (i.e. reducing the deficit to 3% of GDP by 2013), to carry out significant structural reforms in the labour market and efforts to stabilize the financial sector.⁴

Prior to the need to ask for financial assistance, a rapid deterioration in public finances had led to a diminishing financial confidence and rising pressures in sovereign bond markets. As a consequence, the Portuguese banking sector became increasingly cut off from market funding and resorted extensively to funding from the Eurosystem. In this context, the Portuguese government failed to achieve parliamentary approval to the Stability Programme and resigned on 24 March. In the wake of several downgrades of Portuguese sovereign bonds, interest rates reached levels that were no longer compatible with fiscal sustainability.

The deep current crisis is hitting a country that has joined the European Community in 1986, has experienced a period of economic growth above the EU average for much of the 1990s, but fell back already at the end of the decade. Commenting on Portugal’s experience of “boom and bust”, the EU Commission in 2006 commented that,

„The Portuguese economy has shown a rather striking evolution in the last ten years. In the run-up to EMU in the second half of the 1990s, Portugal posted impressive results in both the real, budgetary and monetary areas. Its GDP per capita grew faster than the EU average and met the Maastricht criteria for EMU in good times. However, from 1999 the economy started to slow down and in early 2002 entered recession. Economic activity shifted from the tradable to the non-tradable sector with a corresponding loss of competitiveness, while public finances deteriorated: since 2001/2 Portugal has mostly been in excessive deficit. Inflation has remained above the EU average, unemployment was rising until recently, and households' indebtedness increased significantly in the first few years of the century. The strong demand stemming from the sharp fall in interest rates was fuelled further by budgetary policy in the nineties and early this decade. Demand was not followed by a parallel increase in potential supply, mainly due to insufficient reforms preventing productivity growth from supporting catching-up dynamics. Imports rose substantially, leading to high external deficits and debt. Over time higher external indebtedness led to lower domestically available income.“⁵

After having experience stagnation in 2008 and a GDP decline of -2.6% in 2009, Portugal’s GDP grew by 1.3% in 2010. This growth however was, according to the assessment of the EU Commission (Spring 2011 Economic Forecast), due to rather unexceptional factors (e.g. VAT increase in July 2010 and January 2011, increase in exports). In fact, economic indicators also in 2010 have been still getting worse: the country lost shares in export markets, price and cost developments indicate that competitiveness is surely not increasing and unemployment has been steadily increasing since 2008. This all and the refinancing problems have resulted in large government deficits, which exceeded 10% of

³ See: EU Commission 2010: Portugal - Fiscal consolidation and private sector deleveraging, Economic Forecast Autumn 2010, http://ec.europa.eu/economy_finance/eu/forecasts/2010_autumn/pt_en.pdf.

⁴ See: EU Commission 2011: Portugal – Times for adjusting and rebalancing, Economic Forecast Spring 2011, http://ec.europa.eu/economy_finance/eu/forecasts/2011_spring/pt_en.pdf

⁵ EU Commission 2006: Portugal's boom and bust: lessons for euro newcomers, ECFIN COUNTRY FOCUS, Volume 3, Issue 16 22.12.2006.

GDP in 2009 and 9% in 2010 up from 3.5% in 2008. Based on the rigid measures foreseen in the Economic Adjustment Programme, the EU Commission is expecting the deficit to decrease to 5.9% in 2011 and 4.5% in 2012. However, at the same time and due to the high interest rates Portugal has to pay general governments gross debt is exploding: Starting from 71.6% as a percentage of GDP in 2008 it increased to 93% in 2011 and is expected to further increase to up to more than 107% in 2012.

Against this, the EU Commission states, that:

“The rising debt levels should lead to a rapid increase in interest payments, which is expected to be the fastest-growing spending item over these years and a major force hampering a faster pace of deficit reduction.” (EU Commission, Spring 2011 Economic Forecast, p.149).

Against this, the future perspectives of the Portuguese economy are very uncertain and the overall challenge or key question certainly will be whether it will be possible to combine the current austerity programmes and priority of fiscal consolidation with a modernisation programme that also addresses key structural weaknesses of the country’s economy. Here, in particular the improving of productivity levels and at the same time shifting the nature of the economy higher up the value chain, have been identified as key tasks. In this respect much will depend on Portugal’s economy to improve the quality of its human capital through investment in education of younger citizens and lifelong learning for those already in employment.

PORTUGAL - MAIN ECONOMIC INDICATORS AND OUTLOOK

| | 2007 | 2008 | 2009 | 2010 | 2011 |
|--------------------------------------|--------|--------|---------|--------|---------|
| GDP | 2.4 | 0.0 | -2.5 | 1.3 | -1.0 |
| – annual percentage change | | | | | (-2.2) |
| Employment | 0.0 | 0.5 | -2.5 | -0.9 | -0.7 |
| -annual percentage change | | | | (-1.5) | (-0.9) |
| Unemployment rate | 8.1 | 7.7 | 9.6 | 10.5 | 11.1 |
| (Eurostat definition) | | | | (11.9) | (12.3) |
| General government balance | -2.8 | -2.9 | -9.3 | -7.3 | -4.9 |
| (as percentage of GDP) | (-3.1) | (-3.5) | (-10.1) | (-9.1) | (-5.9) |
| General government gross debt | 62.7 | 65.3 | 76.1 | 82.6 | 88.8 |
| (as percentage of GDP) | (68.3) | (71.6) | (83.0) | (93.0) | (101.7) |

Source: European Commission: Autumn 2010 and Spring 2011 Economic Forecast. (2011 figures in brackets)

Labour market indicators and trends

It has to be stressed that the following data and figures illustrate the situation of Portugal mainly before the 2008 crisis and in particular the recent worsening of the labour market situation.

Based on figures for 2009, the Portuguese labour market is described in the summary tables below. Comparing Portugal with the EU average, the country differs significantly in a number of ways:

- The economy has a service sector substantially smaller than the EU average and very high levels of employment in a low productivity agricultural sector. Employment in industry is a little higher than the EU average;
- Unemployment is high, much of it long term in nature with two thirds of those unemployed having been out of work for more than six months and almost a half for a year or more
- One out of five young people in Portugal in 2009 were unemployed; this is a share very similar to the EU average.

PORTUGAL - MAIN LABOUR MARKET INDICATORS 2009 IN COMPARISON TO EU27

| | Portugal | EU27 |
|--|----------|------|
| Employment rate – % population aged 15 – 64 | 66.3 | 64.6 |
| Employment rate older people – % population aged 55-64 | 49.7 | 46.0 |
| Self employed - % total population | 13.2 | 15.5 |
| Employment in services - % total employment | 62.2 | 70.4 |
| Employment in industry - % total employment | 26.9 | 24.1 |
| Employment in agriculture - % total employment | 10.9 | 5.6 |
| Unemployment rate - % labour force 15+ | 9.6 | 8.9 |
| Youth unemployment rate - % labour force 15-24 | 20.0 | 19.6 |
| Long term unemployment rate - % labour force | 4.3 | 3.0 |
| Inequalities of income distribution (2008) | 6.1 | 5.0 |

Source: Eurostat, *Employment in Europe Report 2010*.

The comparative illustration below shows Portugal to be at the high end of Europe’s general unemployment league and similar positioned with respect to the incidence of long term unemployment. The country has proved to be chronically incapable of creating new jobs in recent years and employment levels have stagnated.

INCIDENCE OF LONG-TERM UNEMPLOYMENT AND THE UNEMPLOYMENT RATE 2007



Source: *Employment in Europe Report*, p. 73, based on OECD figures.

Comparing Portugal’s position with the EU average in regard to indicators that illustrate the state of flexibility and security in the labour market, the following aspects are quite striking:

Indicators on education, qualification and lifelong learning activities illustrate the weak position of Portugal as compared to the EU average: only around 30% of the total population had completed at least an upper secondary education, compared to a EU27 average of 72%. It should also be recalled that the European Union today in the context of the Europe 2020 strategy is heading for a share of 80%.

Also lifelong learning participation in Portugal is low in European average terms and substantially lower than the EU average. Investment by companies in adult learning is also well below Europe’s average;

Relatively few Portuguese workers are employed on a part-time basis – 11.6% compared to nearly 19% at the EU27 average. A comparative weak role of flexible working time arrangements is also illustrated by the indicator on access to flexitime where Portugal ranks around ten percentage points below the EU average.

In contrast to flexible working time, more than one out of five workers is employed on the basis of a fixed-term contract; this share is significantly above the EU average

The high share of people on fixed-term contracts may reflect the substantial difference in employment protection between those on regular and on fixed term contracts according to the OECD EPL indicator. Here, in particular the strictness of employment of regular employment in 2008 was clearly higher than the EU27 average. It has to be mentioned here however, that since then a number of measures have been taken that have brought a significant liberalisation of the labour market.

While slightly more persons in Portugal in 2009 were in risk of poverty after social transfers than at the EU average, the country displays rather similar figures on public expenditure on labour market policies (both passive and active) as the EU27 average. And also the job satisfaction of Portuguese workers according to the European Working Conditions survey in 2010 was similar to the European mean figure.

PORTUGAL - FLEXICURITY INDICATORS IN COMPARISON

| | Portugal | EU27 |
|--|----------|-------|
| Total population having completed at least upper secondary education (population aged 25-64, %), 2009 | 29.9 | 72.0 |
| Part-time employment - % total employment, 2009 | 11.6 | 18.8 |
| Fixed-term contracts - % total employees, 2009 | 22.0 | 13.5 |
| Access to flexitime, % total employees aged 15-64, 2004 | 19.9 | 31.3 |
| Percentage of employees (all enterprises) participating in CVT courses , 2005 | 28.0 | 33 |
| Lifelong learning participation – percentage of the population aged 25-64 participating in education and training over the four weeks prior to the survey, 2009 | 6.5 | 9.3 |
| Job satisfaction – percentage of workers that are either very satisfied or satisfied with working conditions in their main paid job (EWCS 2010) | 84.8 | 84.3 |
| Strictness of employment protection – regular employment, 2008 | 4.17 | 2.11* |
| Strictness of employment protection – temporary employment, 2008 | 2.54 | 2.08* |
| Strictness of employment protection – collective dismissals, 2008 | 1.88 | 2.96* |
| Public expenditure on <i>passive</i> labour market policies (categories 8-9) - % of GDP, 2008 | 0.99 | 0.96 |
| Public expenditure on <i>active</i> labour market policies (categories 2-7) - % of GDP, 2008 | 0.41 | 0.46 |
| Persons at-risk-of-poverty after social transfers - % of total population, %, 2009 | 17.9 | 16.3 |

Source: Eurostat; *Employment in Europe Report 2010*; Eurofound (*European Working Conditions Survey 2010*); OECD. *OECD average

Conclusions

As already mentioned below, the implications of the ongoing economic and financial crisis situation in Portugal on the economic prospects and the labour market will of paramount importance for the future. And here, the anti-crisis measures implemented already as well as the measures foreseen under the umbrella of the Economic Adjustment Programme for 2011 – 2014 will have significant effects on the economic as well as labour market and social policy frameworks of the country.

2 Flexibility and security in recent labour market and social policy reforms

Introduction and overview

The issue of flexicurity was not on the agenda of the Portuguese government until 2006 when a shift towards flexicurity was outlined in the Green Paper on Labour Relations. More recently, flexicurity type measures have been introduced under the broad heading of “adaptability” and it is possible to identify a mix of labour market and social policies which reflect the prevailing European flexicurity approach and debate.

Reluctance to use the term flexicurity stems in part from a tension between employers and trade unions on measures designed to improve flexibility and those designed to assure employment security, with the outcomes based on “power balance” rather than “consensual policy making”. This is particularly the case at the sectoral collective bargaining level and in tripartite policy concertation with the government. At the single employer collective bargaining level adaptability and security have proved easier to address in some companies.

In recent years, the role of the state in the employment policy debate has been central, with the socialist government launching and proposing a variety of new policies where flexibility and security issues are at stake including on contractual arrangements, lifelong learning, active labour market policies, and unemployment social protection.

It was suggested in the interviews contributing to this fiche that a fundamental issue for the country is that employers today are reluctant to “pay” for increased flexibility at the sectoral level and people generally are unwilling to pay for the social measures needed to increase security. Whilst there is a recognition that the “country” needs to change, there is not the same recognition amongst individuals that “they themselves” need to change.

Lifelong learning and the mobility of workers

In recent years, a number of approaches and initiatives have been carried out by the Portuguese government and the social partners to improve the situation of lifelong learning in Portugal:

In 2005 the Portuguese government launched the “New Opportunities Initiative” to respond to the qualification challenge of the country more effectively through an integrated set of strategic measures on education, training and certification, which aimed to generalise the secondary level as a reference goal for the qualification of youths and adults. In Portugal today the majority of 45 to 59 year olds in the workforce have less than ten years of formal education. The strategy focused in particular on two objectives;⁶

- Improvement of the *basic training of youth* by the diversification of education and training supply through the strengthening of vocational courses to reduce non-achievement and early drop-out rates in the educational and training system;
- Improvement of the *base training of the adult population*, recognising, validating and certifying the skills already acquired by means of education, training, professional experience to build qualification paths that match the individual workers’ circumstances and focus ongoing personal development towards the needs of the labour market.

⁶ Lisbon Strategy. National Plan of Reforms (PNR) – Portugal”: Report on the implementation of the PNACE 2005 - 2008, Lisbon, October 2008, p. 8.

The social partners influence in this area has been substantial and has taken place through several channels, including where they are represented in advisory tripartite bodies.

In 2006, within the Standing Committee for Social Dialogue, the employers’ organisations and trade unions signed a bilateral agreement on vocational training, in which they define more than thirty commitments to contribute to the improvement of the population’s qualification level, *“either through the ways directly reachable in the dialogue with their associates, or through common positions on training policies.”* (Acordo visando a Formação Profissional, AFP 2006). Based on this and following an agreement achieved in March 2007 between the government and the social partners (“Agreement on the Reform of Vocational Training”) a number of measures have been taken to improve the lifelong learning culture in the country.

Sectoral agreements and partnerships have also been reached in industries such as tourism, agriculture and trade, involving employers’ and trade union confederations, as well as public organisations. In these agreements, sectoral plans provide an *“adequate training offer in order to respond to the real needs of both the enterprises and workers involved”* have been devised.⁷

The revision of the Labour Code in 2009, that followed the 2008 “Tripartite Agreement for a new System of Labour Relations Regulation, and Policies of Employment and Social Protection in Portugal” also introduced changes and provisions regarding VET, in particular with regard to the workplace related training and the possibility to set standards and frameworks by of collective agreements. The revision of the labour code also introduced some changes and clarifications to the already existing right of individual workers to have 35 hours of certified training per year.

External/internal flexicurity and flexible contractual arrangements

With the above mentioned revision of the Labour Code in 2009, also new forms of more flexible contractual arrangements were introduced as the Confederation of Portuguese Industry CIP stated in the reply to the questionnaire survey, mentioning in particular:

“(...) contracts of very short duration (lasting not longer than one week) for agricultural seasonal work or in tourism; intermittent contracts for discontinuity activities or with variable intensity in which parties may agree that the provision of work is interrupted with one or more periods of inactivity.”

The PSD/DCS-PP coalition government of 2002 – 2005 adopted a new labour code in 2003 that aimed to increase the flexibility in the Portuguese labour market by, for example extending the maximum duration of fixed-term contracts. The Labour Code also introduced a significant change in collective agreements that led to a reduction in the number of workers covered by collective agreements by changing the law that mandated the continuation of “old” agreements where “new” ones had not been agreed. This resulted in the reduction in the number of agreements in force as well an acceleration of the process of expiring of collective agreements.

In reaction to the strong opposition of Portuguese trade unions to these changes, the subsequent socialist government signed a tripartite agreement for a new system of regulation of industrial relations, employment policy and social protection in June 2008. However, the trade union federation CGTP-IN didn’t sign this agreement since in its view it was still imbalanced.

The 2008 tripartite agreement on the new system of labour regulations underlying the new labour code identified a number of major problems in the Portuguese labour relations system which needed to be addressed by the new labour code reform:

⁷ Ministry of Labour and Social Solidarity: National Action Plan for Employment 2005 – 2008. Follow-up Report 2006, p. 97/98.

- A reduced adaptability of companies and workers to structural change;
- A weak system of collective bargaining;
- Formal rigidities in the legal framework;
- Low effectiveness of law and collective bargaining regulations; and
- High levels of precarious employment with substantial labour market segmentation.

The revised Labour Code of 2009 contained:

- Measures to increase company adaptability through improved internal flexicurity, e.g. by working time flexibility such as time banks, group specific working time models;
- Improvements in the regulatory capacities of collective agreements through enlarging the space for negotiated solutions;
- Changes in the law on dismissals to make dismissals through disciplinary procedures faster, reduce the cases of mandatory reinstatement and introduce maximum compensation for dismissals in the courts;
- Strengthened labour law effectiveness through stricter regulation and the introduction of heavier penalties for breaching the law;
- A reduction in precarious employment through a set of measures with complementary effects. These include the reduction of maximum duration of fixed-term contracts (3 years) and limits to the possibility to renew them (only twice); a more efficient definition of employment relationships that allow the labour inspectorate to fight fraudulent use of self-employment; a reduction in the contributions for social security applicable to open-ended contracts and an increase in them for fixed-term contracts and self-employment; and a reduction of labour market segmentation through improving social protection and the re-design of employment policies relating to the self-employed.

The reception of the new labour code by outside institutions was generally positive as the following statement by the European Commission on the progress made by the Portuguese Government in the context of the implementation of the Lisbon Strategy illustrates:

“It [the Labour Code] contains specific measures to counter labour segmentation and fight the precariousness of some jobs. Whilst this is undoubtedly a fundamental step, the focus should now turn to its full and swift implementation. It is also important to insert a review clause in the Code. The full implementation of both recommendations issued to Portugal is essential in the context of the current crisis. By overcoming the qualifications deficit and reducing labour segmentation, Portugal will be better equipped to face the rapid and changing needs of its economic situation.”

Active labour market policy

Historically the Portuguese approach to active labour market policies has been comparatively weak and this has also been recognised by the EU Commission in the report evaluating the implementation of the Lisbon agenda in Portugal where emphasis is placed in particular on:

- Facilitating the transition between unemployment and employment, particularly in the context of preventing and reducing long term unemployment;
- Supporting (re)entry into the workforce of active citizens over 55 years of age;
- Supporting the entry into the labour market of disadvantaged groups.

Against this, the Portuguese government in recent years has developed a number of initiatives in order to develop the toolbox of ALMP. In particular in the context of the 2008 tripartite agreement several measures have been taken in the field of active labour market policies. The Portuguese employer federation CIP in its response to the questionnaire survey highlighted in particular those measures that promote the participation of unemployed older persons in the labour market or those coming from disadvantaged groups. Depending on the specific case, there is the possibility of a reduction/exemption of social security contributions paid by the employer for a certain period of time.

The trade union federation UGT-P in their response to the survey highlighted in particular the measure taken in the aftermath of the 2008 crisis, i.e. temporary measures agreed in December 2008:

- creation of more than 12.000 professional traineeships for youngsters, namely for those with higher education in low employability areas;
- payment of 2.000 Euro plus two years of financial relief for social security purposes for employers hiring youngsters or long term unemployed;
- companies making fixed term contracts with unemployed people over 55 years old have a 50% reduction of their contribution for social security purposes;
- creation of a new qualification-employment programme directed to enterprises with financial difficulties in sectors especially affected by the crisis. The programme supports companies which provide training to some of their workers during their working time by paying 90% of their salaries;
- creation of the support-insertion contract which intends to insert 30.000 unemployed people in non-profit organisations;
- creation of a special 100 million Euro credit line aiming at supporting the creation of 1,600 new enterprises by unemployed people.

These and other measures to improve the situation of unemployed persons (improved access to unemployment benefits, support for families and children as well as support for small and micro companies and the promotion of vocational training were included in the “Investment and Employment Initiative” 2009 and the Employment Initiative 2010.⁸

Faced with the worsening of public finances, the Portuguese government in April 2010 had to announce a number of austerity measures that also included the reduction of the new unemployment and social security provisions. After consultations with the social partners failed, the government decided to take unilateral action and by the Decree law in June 2010 most of the temporary anti-crisis measures were withdrawn against the strong opposition of the Portuguese trade unions..

Supportive social security systems

As the Portuguese General Union of Workers UGT-P comments in the reply to the questionnaire survey on flexicurity,

“The Portuguese social security system is public and universal and aims at guaranteeing the right to certain incomes to the respective beneficiaries. The system is structured based on the development of the solidarity principle: At national level through the transference of resources amongst citizens, as a way to guarantee effective equal opportunities for all and the minimum social incomes for the most disadvantaged ones. At labour level, through redistributive mechanisms regarding labour protection. At intergeneration level, through the combination of financing methods under the distribution and capitalization regimes.”

⁸ Iniciativa Investimento e Emprego 2009 and Iniciativa para o Emprego 2010, for more details see Eurofound/EIRO article of 3.9.2010, <http://www.eurofound.europa.eu/eiro/2010/05/articles/pt1005029i.htm>.

In recent years, in particular the regulation of unemployment benefits has been addressed by a number of legal reforms:

The Portuguese law on “*Rendimento Social de Inserção*” (RSI) requires all RSI recipients to be registered in employment centres and extends the range of people entitled to RSI. At the same time the concept of the ‘household’ to test means was enlarged. According to the Decree law No. 220/2006 on social protection for unemployed people the entitlement to unemployment benefits is conditioned on specific obligations, such as accepting either

- a ‘convenient job’ (*emprego conveniente*);
- socially necessary work;
- a vocational training course;
- a personal plan for employment;
- or any other type of active measure.

Attendance at job centres is required every two weeks, and evidence of active job search is required with the penalty being the loss of unemployment benefit.

In the early phase of the financial and economic crisis, the Portuguese government adopted a number of exceptional anti-crisis measures in 2009 that aimed at cushioning the social effects of the crisis:

- Reduced vesting period for unemployment benefits;
- Extended periods of benefit;
- Reduced employers’ social contributions by 3%;
- Job creation initiatives for disadvantaged and older workers;
- Support for transfers from temporary to regular employment contracts but this may not be financially sustainable into the longer term.

However, as the trade union federation CGTP-IN stated in a written comment to this country paper, the recent measures taken by the Portuguese government on fiscal consolidation also had a significant impact on the law on unemployment benefits:

“For example, the anti-crisis measures concerning unemployment (in order to enlarge the coverage of the unemployment benefits) were abolished; the law on unemployment benefit was changed in mid-2010; conditions of access were tightened.” (CGTP-IN)

High quality and productive workplaces

Until recently, the challenge to create not only more but also better jobs was one of the targets of labour market policy reforms in Portugal. A revised regulation on contributions to social security that has been suspended in the light of the current crisis situation intended to support more permanent contractual arrangements by either reductions (1% in the case of permanent contracts) or increases (3% on short term contracts) in social security contributions made by employers.

However, the economic and financial crisis has shifted priorities and maintaining and/or the creation of jobs is the top priority in the current situation as the trade union federation UGT-P stated in its response to the questionnaire survey:

“Before the crisis our trade union confederation was more concerned with the creation of more and better jobs, but presently with the worsening of the working conditions we are fighting for the increase or employment with decent working conditions.” (UGT-P)

Gender equality

According to various studies the gender pay gap in the private sector in Portugal is approximately 75% and that there has been only very slow improvements over the last two decades. The gender pay gap is much higher amongst older workers, while younger women are catching up with their male colleagues, due to their higher education and qualifications. The government has introduced measures against discrimination, and the trade unions have taken some action (particularly in collective bargaining) in order to reduce the gender pay gap. A recent overview states:

“The gender pay gap has never reached the top of the policy agenda, and the current crisis seems to accentuate this situation.”⁹

In their reply to the questionnaire survey on flexicurity both the employer federation CIP and the trade union federation UGT-P highlighted recent changes in the field of parental leave: In 2009, the legal framework of maternity/paternity was changed with the aim to promote amongst other aspects a stronger shared responsibility between the parents by the possibility of taking shared parental leave by mother and father up to 6 months.

Financial sustainability

As the Portuguese social partners highlighted in their responses to the questionnaire survey, the financial sustainability of the labour market and social security system is based on the principle of solidarity, i.e. it is financed by social security contributions made by workers and employers. Stability is also assured by public financial resources. In order to improve the medium and long-term sustainability, the social partners in 2006 reached two agreements with the government – the “Agreement on Strategic Guidelines of the Social Security Reform” and the “Agreement on the Reform of Social Security”. However, the trade union confederation, the General Confederation of Portuguese Workers, CGTP, did not sign the agreement, arguing that it will contribute to devaluing pensions.

The agreements included a number of measures to improve the long-term sustainability of financing social security, including the introduction a sustainability adjustment factor in the calculation of future pensions in relation to life expectancy, the transition to the new pension formula, new provisions on early retirement and introducing a new index reference for adjusting and calculating social benefits, including the national minimum wage. Based on these agreements the Decree Law No. 187/2007 came into force in May 2007.

Conclusions

As the overview of developments and reform process in the different policy fields in this chapter illustrated, Portugal went through very turbulent times in recent years that are characterised by a number of “U-turns” resulting from political changes as well as the rapidly worsening of the economic and fiscal conditions during the last two years. From the perspective of flexibility and security in Portuguese labour relations and the labour market, there have been remarkable changes of reforms aiming at liberalizing labour relations and fostering external flexibility and reform projects that tried to improve the social security, in particular for those in flexible forms of work and the unemployed.

However, since the deterioration of the Portuguese economic and financial crisis situation in 2010, these changes are overshadowed very much by the huge challenge to cope with the financial crisis of the country.

⁹ See: Eurofound/EIRO: Addressing the gender pay gap: Government and social partner actions – Portugal, 27 April 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0912018s/pt0912019q.htm>

3 The role of social partners

General remarks on the role of social partners

Portugal has a sophisticated system of industrial relations that is characterised by strong social partner organisations, a strong role and coverage of national collective bargaining as well as institutionalised structures of social dialogue within the “Standing Committee for Social Concertation” (*Comissão Permanente de Concertação Social, CPCS*).

The two major trade union federations and only members of the CPCS are the “General Portuguese Workers’ Confederation (*Confederação Geral dos Trabalhadores Portugueses, CGTP*) and the “General Workers’ Union” (*União Geral de Trabalhadores, UGT*).

Business interests are organised by the “Confederation of Portuguese Industry” (*Confederação da Indústria Portuguesa, CIP*) and the “Confederation of Trade and Services of Portugal” (*Confederação do Comércio e Serviços de Portugal, CCP*) which are the most influential employer confederations. They cover the largest part of the economy, with CIP representing industry and services and CCP focusing on services. Apart from CIP and CCP, there are two further employer organisations represented in the CPCS: the Confederation of Farmers of Portugal, CAP and the Confederation of Portuguese Tourism, CTP.

PORTUGAL - MAIN SOCIAL DIALOGUE INDICATORS

| | Portugal | EU27 |
|--------------------------------------|----------|------|
| Collective bargaining coverage, 2006 | 70% | 63% |
| Trade union density, 2008 | 20% | 23% |
| Employer organization density, 2006 | 58% | n.a. |

Sources: Eurofound EIRO Country profiles, EU Industrial Relations Report 2008.

Main instruments and levels of influence

Negotiations at industry level, between employers associations and the unions, are the most important element in Portugal’s collective bargaining arrangements. Company level agreements cover many fewer employers. Portugal has traditionally had a high level of collective bargaining coverage – partially through the extension of agreements by the government. However, this high level is under threat as legal changes now make it easier for agreements to lapse.

Changes in the Labour Code in 2009, which introduced new rules when collective agreements come to an end, have provoked concern that the extent of collective bargaining coverage could fall over time, as they allow agreements to expire, even when the agreements themselves state that they continue in effect until a new agreement has been signed. Although the changes are not as dramatic as those introduced by the new Labour Code in 2003, which did not become operational following a change of government, the new arrangements provide for collective agreements to expire if they are not renewed.

Over the years, the social partners and social dialogue have made an important contribution to vocational training. The first specific agreement regarding vocational training was a tripartite agreement signed in 1991. The results of the agreement proved to be rather limited and ten years later, in February 2001, a second, more specific and ambitious, tripartite agreement was concluded. An important part of the measures that were part of the 2001 agreement was later included in the controversial Labour Code of 2003. The bipartite agreement of 2006 and the subsequent 2009 Labour Code reflects a continuation of the tripartite peak-level concertation on vocational training that started in 1990.

Likewise, the framework agreement regarding the duration and adaptability of working time was addressed by social concertation first in 1990, with the Economic and Social Agreement (*Acordo Económico e Social*, AES), and later in 1996 with the Short-term Agreement (*Acordo Concertação Social de Curto Prazo*, ACSCP), which addressed functional flexibility, as well. However, the General Portuguese Workers' Confederation (Confederação Geral dos Trabalhadores Portugueses, CGTP) did not sign those agreements.

The rules on social protection for unemployed people were the result of a long period of negotiations with the social partners and the concept of 'convenient job' was one of the issues important to the trade unions although the final formulation set up by the Decree Law No. 220/2006 took into account only partially of trade union demands.

The current crisis situation and the austerity measures adopted by the government in 2010 and 2011 have resulted in a deep crisis of social concertation and social dialogue in Portugal: This is illustrated for example by the recent failure of the “Pact for employment” that was introduced by the government in November 2009 in order to promote the preservation and creation of employment. In the light of the deep division between trade unions and the government on the austerity measures in autumn 2010, also the General Workers Union UGT withdraw from the pact in October 2010, after the CGTP and also the employers organisation CCP had expressed their opposition already earlier.¹⁰

Recent changes and challenges

In Portugal, trade unions are generally sceptical about the concept of flexicurity. They are particularly keen to combat precarious work and see a focus on flexicurity as an approach which responds primarily to employers' needs. In particular, trade unions consider that contractual flexibility is already significant in the country and could be reduced, not least through a more effective implementation of existing rules. They believe that more attention should be devoted to lifelong learning and social security with the proviso that activation measures should not negatively impact on employee rights and protections.

In contrast to this, employer organisations tend to be much more in favour of flexicurity and view it in two dimensions. First in increasing internal and external flexibility of employment in terms of hiring and firing, working time, work organisation, functional flexibility and geographical mobility. Second they emphasise employment security rather than job security.

On the employers' side, the Confederation of Portuguese Industry, CIP considers the concept with interest along the twin lines of internal and external flexibility and employment rather than job protection. They generally believe that the policies implemented in Portugal to date have been insufficient to implement effectively the components of flexicurity. This is also expressed in a reply to the questionnaire survey carried out in the context of this project:

With the referred revision of the Portuguese Labour Code in 2009 some changes were introduced regarding the legal framework on dismissals: i) faster dismissals through disciplinary procedures; ii) limitation of mandatory reinstatement only in situations of violation of some formal irregularities; and iii) introduction of maximum compensations for dismissals in the courts. In CIP perspective, in the field of the external flexibility (e.g. dismissals) much more should have been done. (CIP reply to the questionnaire)

In contrast to this, the trade union organisations are concerned about recent developments and a deterioration of working conditions and social security. With regard to the need of further reforms fostering flexibility in the labour market, the trade union federation UGT stated in the response to the questionnaire survey:

¹⁰ See: Eurofound/EIRO: „Employment pact fails as UGT leaves negotiations“, 20.1.2011, www.eurofound.europa.eu/eiro/2010/10/articles/pt10100391.htm

We agree with internal flexicurity as regards working time adaptability through collective bargaining. We disagree of a partial or total implementation of the external flexicurity principles, since the regulation of our legislation is more than enough. (UGT reply to the questionnaire survey).

However, despite what appear to be major differences of view between the social partner organisations it is possible to identify areas where progress has been made in implementing measures that improve the situation with regard to several aspects of flexibility and security in the Portuguese labour market. Progress has however been through a conscious process of trade-offs between the social partners rather than win/win solutions;

- Trade unions as well as employer associations are heavily involved in providing vocational training services;
- Vocational training, working time duration and internal adaptability are also main issues that have been addressed multi-employer and, in particular, in single employer collective bargaining;
- Protection regarding disabled workers, migrant workers, women and workers with children and/or with family specific problems have also been addressed in collective bargaining and reflected in collective agreements, again at company level;
- Supplementary social security provisions are also included in collective agreements, again at company level. However some multi-employer collective agreements are also relevant on these issues, notably in the banking sector (ACTs bank sector), electricity (ACTs EDP), and roads constructing, repairing and maintenance (ACT BRISA).

Conclusions

These initiatives and the examples of good practice suggested by the Portuguese social partners illustrate the key role of social dialogue and social partners in implementing flexicurity and/or measures that aim at better balancing flexibility and security in Portugal. This key role has also been stressed by the employer federation CIP in its reply to the questionnaire survey:

Regardless of the above mentioned national context, the participation of social partners in the design and implementation of Flexicurity policies is fundamental. In fact, the social partners having a thorough knowledge of the reality are the ones that are best placed to develop and implement the Flexicurity policies. Such participation can occur within bilateral or tripartite social dialogue at national level or, namely, within the collective bargaining. In CIP perspective the best way to promote and implement the Flexicurity policies are through collective bargaining processes. The participation of the social partners in the Flexicurity policies doesn't jeopardize naturally the overall competence and responsibilities of the governments. (CIP reply to the questionnaire survey)

Cases of good practice in the field of labour market flexibility and security

The following case study information was provided by the Portuguese social partner organisation UGT:

CASES OF GOOD PRACTICE IN THE FIELD OF “FLEXICURITY” AS SUGGESTED BY THE SOCIAL PARTNERS IN PORTUGAL

| Good Practice | Social Partner | Flexicurity principle addressed |
|--|----------------|---|
| <p><i>Collective Agreement between the Association of Construction and Public Works Companies and SETACCOP (UGT-affiliated union)</i></p> <p>This agreement introduced a few clauses regarding “working time adaptability”, namely the “phased working time”, which allows for the establishment, by department or group of workers, of varying clock-in and clock-out hours, while keeping the working time period unchanged. This particular agreement determines the creation of two weekly fixed periods, leaving the remainder of the working time period open for changes, allowing both employer and employee to negotiate it. Another important clause is the one regarding the so called “time bank”, which allows for the extension of the working time period up to a certain limit (180 hours per year, in this case), when needed and by mutual agreement.</p> | UGT | Internal flexibility |
| <p><i>Public Employer Collective Agreement between the Social Security Institute and SINTAP (UGT-affiliated union)</i></p> <p>Concerning the public sector, this agreement also establishes a number of clauses on working time adaptability. It identifies a total of 5 different working time modes that the Institute may choose to apply (plus a sixth option, entitled “specific working time”):</p> <ol style="list-style-type: none"> 1. Strict working time (the normal working time with fixed clock in and clock out hours as well as a fixed number of hours during the morning and afternoon, with a one-hour lunch break); 2. Flexible working time (determines a daily period of hours during which the employees must be present at work, allowing them to freely manage their clock-in and clock-out hours); 3. Continuous working time (consists of uninterrupted working time, with less an hour of work than in the strict working time and with a single 30-minute break); 4. Phased working time (keeping the normal working time period unchanged, it allows for either services or groups of workers to fix different clock-in and clock-out hours); 5. Shift work. <p>An additional clause regarding working time adaptability determines that the working time period can be fixed in average terms, with the employee’s consent. This working time, however, cannot exceed 9 hours per day or 45 hours per week (provided that this weekly limit cannot last longer than 2 months).</p> | UGT | Internal flexibility |
| <p><i>“Tripartite Agreement for a New System of Labour Relations Regulation, and Policies of Employment and Social Protection in Portugal”, 2008</i></p> <p>The agreement reached between social partners, with the exception of one of the trade unions, and the government can be seen has a good practice. According to CIP, “the employers’ adopted a very proactive and strong position defending not only the interests of companies but also the need to ensure a strong and sustainable economic and social development for the country. Regarding the content of the agreement it is true that not all of the solutions established can be positively evaluated in terms of Flexicurity but there were some positive steps namely regarding the internal dimension of the concept (e.g. organization of working time).”</p> | CIP | National pathway Combining flexibility and security in the labour market |

Sources: Questionnaire replies

4 Key issues arising

From the point of view of the author of this report the following key points/questions are arising in regard to flexicurity in Portugal, also in reflection of the cluster seminar discussions:

- *How do the distinct differences in views on flexicurity within and between the social partner organisations in Portugal affect the employment policy agenda;*
- *What can the social partners do better to improve the problem of inadequate education and lifelong learning which the economy desperately needs to solve? To what extent do prevailing arguments between the social partners on external flexibility and activation get in the way of action in this area?*
- *How does the depth of the current crisis affect the ability of the social partners to agree on labour market solutions and their implementation?*

Sources and references

Replies to the questionnaire survey, interviews and other contributions

There were three replies from the Portuguese social partner organisations: two from trade unions (UGT and UGTP-IN and one from CIP).

The author of the first draft of this report, Alan Wild, visited Portugal in Summer 2010 and carried out interviews with the social partners on flexicurity in Lisbon.

After the flexicurity cluster seminar in Lisbon in December 2010 further comments were received by the Portuguese social partners on the draft national report.

Further resources

Flexicurity and Industrial Relations EIRO 30.9.2008

http://www.eurofound.europa.eu/eiro/studies/tn0803038s/tn0803038s_4.htm

Flexicurity and Industrial relations EIRO 5.9.2009

<http://www.eurofound.europa.eu/eiro/studies/tn0803038s/uk0803039q.htm>

Industrial relations profile – Portugal – EIRO

EU Commission 2006: Portugal's boom and bust: lessons for euro newcomers, ECFIN COUNTRY FOCUS, Volume 3, Issue 16 22.12.2006

Lisbon strategy National Plan of reforms (PNR) Portugal October 2008

European Commission: “Implementation of the Lisbon Strategy Structural Reforms in the context of the European Economic Recovery Plan: Annual country assessments, Brussels 2009

Lisbon Strategy. National Plan of Reforms (PNR) – Portugal: Report on the implementation of the PNACE 2005 - 2008, Lisbon, October 2008