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EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF PORTUGAL

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29)

for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 15 May 2014

CYCLE 2014

REVISED EUROPEAN SOCIAL CHARTER

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for the period from 1 January 2009 to 31 December 2012

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submitted by the **Government of Portugal**

for the time period from 1 January 2009 until 31 December 2012 (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29)

in accordance with the provisions of Article C of the revised European Social Charter and the Article 21 of the European Social Charter, which the instrument of ratification was deposited on 30 May 2002.

In accordance with Article C of the revised European Social Charter and Article 23 of the European Social Charter copies of this report have been sent to

the General Confederation of Portuguese Workers
(Confederação Geral dos Trabalhadores Portugueses)

the General Union Confederation of the Workers
(União Geral de Trabalhadores)
and
the Confederation of the Portuguese Industry
(Confederação da Indústria Portuguesa)

Preliminary remarks

Portugal hereby submits its ninth Report that has been prepared in accordance with the reporting system adopted by the Committee of Ministers on 26 March 2008 for the presentation of the national reports concerning their national implementation of the revised European Social Charter.

The Report deals with group 3 (area of right of the work) concerning Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29, and the period under review is from 1 January 2009 to 31 December 2012.

The ninth Report is a follow-up to earlier reports submitted by Portugal on the national implementation of the obligations laid down in the revised European Social Charter. It does not refer to the individual provisions of the Charter unless either the remarks of the European Committee for Social Rights of the European Social Charter (by way of simplification hereinafter referred to as "Committee"), in particular in the conclusions, give reason for this, or if relevant amendments in the material and legal situation have occurred.

TABLE OF CONTENTS

TABLES

ARTICLE 2
THE RIGHT TO JUST CONDITIONS OF WORK

Introduction to and framework for the 2009 and 2011/2012 labour reforms

During the reference period (1 January 2009 - 31 December 2012), of particular significance in terms of an update to the information provided in the 5th National Report was the revision of the Labour Code (CT) by Law no. 7/2009 of 12 February 2009, as subsequently amended by Laws nos. 105/2009 of 14 September 2009, 53/2011 of 14 October 2011, 23/2012 of 25 June 2012, and 47/2012 of 29 August 2012.

This revision followed the Tripartite Agreement for a New System for Regulating Labour Relations, Employment Policies and Social Protection in Portugal, dated 25 June 2008, in which the Social Partners and the Government together took the view that the main labour-market problems required a reform of the Labour Code approved by Law no. 99/2003 of 27 August 2003, and that this should be structured along five fundamental axes:

1. Increase adaptability in enterprises.
2. Promote regulation by collective bargaining.
3. Rationalise and increase the security of the parties in dismissal proceedings.
4. Strengthen the effective nature of labour legislation.
5. Fight precarity and segmentation, and promote job quality.

"*The Social Partners and the Government took the view (...) that the reform of the normative framework governing labour relations and the appropriate recalibration of the active employment and social protection policies enhance one another and are instruments that are indispensable to a new virtuous articulation between economic growth, the improvement of business competitiveness, the increase in productivity, the improvement of employability, the development of the quality of employment, the reduction of unequal opportunities, the improvement of labour relations, and the more equitable sharing of the results of economic progress.*

A more effective normative framework requires that the legislative acquis *comprising the Labour Code and its Regulations be integrated and reformed in such a way as to stabilise a new articulation between a law that is simpler, more accessible to its users, reduces uncertainty and promotes trust between social interlocutors at every level, and a development of the negotiated regulation of the change in labour relations.*"

The post-2009 amendments to the Labour Code followed the Tripartite Agreement for Competitiveness and Employment dated 22 March 2011, and the Commitment to Growth, Competitiveness and Employment dated 18 January 2012.

This labour-legislation reform took place within the framework of the budgetary consolidation process implemented in the wake of the commitments derived from the May 2011 Memorandum of Understanding between the Portuguese authorities and the European Commission, the International Monetary Fund and the European Central Bank, which also provided for a "package of measures" designed to strengthen the potential for economic growth and job creation. These measures addressed important aspects of the country's labour legislation, particularly the organisation of working time, dismissals, and collective bargaining.

§ 1) Length of the working day/week

1.1 Regime regulated by the Labour Code

The changes brought in by the latest reform did not entail increasing the normal working day or week, but rather sought to ensure that enterprises can manage working time more flexibly, using the adaptability, hour bank, and concentrated working hours regimes.

Article 203(1) of the revised Labour Code (CT rev.) says that the "normal" (standard) working period – i.e. the time a worker undertakes to work, measured in the number of hours per day and per week (Article 198, CT rev.) – cannot exceed eight hours a day and forty hours a week.

These maximum limits can be reduced by collective labour regulation instruments (IRCTs), but this cannot lead to a reduction in workers' pay (Article 203[4], CT rev.).

Without prejudice to cases in which an IRCT provides otherwise, the normal working period can be increased by up to four hours a day for workers who work solely on days when most of the enterprise or establishment's staff are taking their weekly rest (Article 203[2], CT rev.).

There are, however, exceptions to the maximum limits on normal working periods (see Article 210[1], CT rev.) in situations in which this is expressly permitted by the Labour Code, or when an IRCT allows it. In these cases the work must be markedly intermittent or involve simple presence; or it must be effectively impossible to subject the normal working period to those limits – a possibility that only applies to employers that are not-for-profit or are closely linked to the public interest. In any case, if the employer engages in industrial activities, the normal weekly period cannot exceed an average of forty hours calculated for the reference period as a whole.

Although the revised Labour Code is systematised in a new way, these provisions correspond to those that already existed in the previous Labour Code approved by Law no. 99/2003 of 27 August 2003.

The situations expressly provided for in the Code, as referred to above, concern the adaptability, hour bank, and concentrated working hours regimes. These are currently configured as follows:

1. Adaptability through collective regulation

IRCTs can define the normal working period in average terms. In this case the daily limit imposed by Article 203(1) can be increased by four hours and the working week can rise to up to sixty hours, albeit it cannot exceed an average of fifty hours over a two-month period (Article 204[1] and [2], CT rev.).

2. Individual adaptability

An employer and an individual worker can also agree that the normal period should be defined in average terms. They can increase the normal working day by up to two hours, and the working week to a maximum of fifty hours (see Article 205[1] and [2], CT rev.).

3. Group adaptability

Article 206(1) of the revised labour Code says that when a collective labour regulation instrument institutes the adaptability regime provided for in Article 204, it can also allow the employer to apply that regime to all the workers in a given team, section or economic unit, if at least 60% of the staff therein are covered by the IRCT in question.

The IRCT can also say that the regime will continue to be applicable for as long as the workers covered by it in the team, section or economic unit number 60% or more of the total.

Under Article 206(2), if an employer's proposal[1] is accepted by at least 75% of the workers in a given team, section or economic unit, the employer can apply the regime to all the staff in that organisational structure.

- Reference period / adaptability –

Under an adaptability regime, the average length of time to be worked is determined with reference to the period agreed in the applicable IRCT, which cannot exceed 12 months. If the IRCT does not stipulate it, the period is 4 months (Article 207[1], CT rev.).

However, this can be increased to 6 months in the case of:

a) Workers who are members of the employer's family.
b) Workers who occupy a board director's or senior management post, or who have the power to take autonomous decisions.
c) Activities characterised by long distances between the place of work and the worker's place of residence, or between different places of work.

[1] See Article 205(4), CT.

d) Activities involving the permanent security and surveillance of persons or goods – i.e. work as a guard or caretaker, or for a security or surveillance enterprise.
e) Activities characterised by the need to ensure continuous service or production – i.e.:

i) The provision of reception, treatment or care services by a hospital or similar establishment, including the work of trainee doctors, or by a residential institution or prison.
ii) Ports and airports.
iii) The press, radio, television, cinema production, the post office, telecommunications, ambulance services, fire brigades, or civil protection services.
iv) The production, transport or distribution of gas, water or electricity, refuse collection, or incineration facilities.
v) Industries whose working process cannot be interrupted, on technical grounds.
vi) Research and development.
vii) Agriculture.
viii) Passenger transport by a regular urban transport service.

f) A foreseeable surge in activity, particularly in agriculture, tourism, and postal services.
g) Rail transport staff who work intermittently aboard trains, or whose task is to ensure the continuity and regularity of rail traffic.
h) Chance, or *force majeure*.
i) Accidents, or an imminent risk thereof.

4. Hour bank through collective regulation

IRCTs can institute an hour bank regime, under which the normal working period can be increased by up to four hours a day and to a maximum of sixty hours a week, with the increases limited to two hundred hours a year (see Article 208[1][2], CT rev.).

IRCTs can waive this annual limit if the hour bank regime is used to avoid reductions in the number of workers, but for no more than 12 months (see Article 208[3], CT rev.).

IRCTs that introduce an hour bank must regulate:

a) The compensation for the additional work, which must take at least one of the following forms:

i) An equivalent reduction in working hours at another time.
ii) An increase in the length of annual holidays.
iii) Payment in cash.

[2] Article 208 was amended by Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.

b) The amount of advance notice the employer must give the worker when he/she needs to work.

c) The period within which any compensatory reduction in working hours must be given – the choice within this period is made by the worker, or if he/she doesn't choose, by the employer – and the advance notice of the use thereof that one party must give to the other.

5. Individual hour bank

The hour bank regime can also be instituted by agreement between an employer and an individual worker, when the normal working period can be increased by up to 2 hours a day, to a maximum of 50 hours a week, with the total limited to at most 150 hours a year (see Article 208A[3], CT rev.).

The agreement must regulate:

a) The compensation for additional work, which must take at least one of the following forms:

    i) An equivalent reduction in working hours at another time.
    ii) An increase in the length of annual holidays.
    iii) Payment in cash.

b) The amount of advance notice the employer must give the worker when he/she needs to work;

c) The period within which any compensatory reduction in working hours must be given – the choice within this period is made by the worker, or if he/she doesn't choose, by the employer – and the advance notice of the use thereof that one party must give to the other.

6. Group hour bank

Article 208-B(1)[4] of the revised Labour Code says that when an IRCT institutes the hour bank regime provided for in Article 208, it can also allow the employer to apply that regime to all the workers in a given team, section or economic unit, if at least 60% of the staff therein are covered by the IRCT in question. The IRCT can also say that the regime will continue to be applicable for as long as the workers covered by it in the team, section or economic unit number at least the percentage of the total stipulated by the IRCT itself.

Under Article 208(2) of the revised Labour Code, if an employer's proposal[5] is accepted by at least 75% of the workers in a given team, section or economic unit, the employer can apply the same hour bank regime to all the staff in that organisational structure.

[3] Text added by Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.
[4] Text added by Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.
[5] See Article 205(4) of the Labour Code.

- Concentrated working hours regime -

Article 209(1) of the revised Labour Code says that the normal daily working period can be increased by up to four hours:

> a) By agreement between an employer and an individual worker, or by IRCT, in such a way as to concentrate the normal weekly working period into at most four working days.
>
> b) By IRCT, in order to create a work schedule that contains at most three consecutive days of work followed by at least two days of rest, while respecting the normal weekly working period on an average basis within each 45-day reference period.

Workers who are subject to a concentrated work schedule cannot be covered by the adaptability regime at the same time (see Article 209[2]).

Analysis of a sample composed of 95 collective labour agreements showed that 33 of them established normal working periods below the standard ones provided for by law, with a range of between 20[6] and 39 hours a week, while the normal working day varied between 6 and 7.5 hours.

1.2 Public sector employment regime

The regulations governing the working times of public-sector staff with appointments on the one hand and labour contracts on the other have different normative sources (Executive Law no. 259/98 of 18 August 1998 for staff with appointments; the Regime governing Labour Contracts for Public Functions (RCTFP) for workers with contracts), but there are no significant differences between them.

The normal working period cannot exceed 7 per day or 35 hours per week (Article 126, RCTFP; Articles 7 and 8 of Executive Law no. 259/98). The working day must be interrupted by a rest period of between 1 (minimum) and 2 (maximum) hours; and no more than 5 hours can be worked consecutively[7] (Articles 136 and 137, RCTFP; Article 13, Executive Law no. 259/98).

§ 2) Paid public holidays

2.1 Regime regulated by the Labour Code

The revised Labour Code provides for 9 mandatory (Article 234[1][8]) and 2 optional (Article 235[1]) public holidays[9].

[6] Plus an additional 4 hours a month.
[7] These limits can be altered by IRCTs in the case of workers recruited under labour contracts.
[8] The text of paragraph (1) resulted from Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.
[9] The amendment to Article 234(1) resulted in the abolition of four public holidays – Corpus Christi, 5 October, 1 November, and 1 December – with effect from 1 January 2013.

Under Article 236(1) of the revised Labour Code, all activities that are not permitted on Sundays must also be closed or suspended on mandatory public holidays. When staff do work, they are entitled to be paid at the rate applicable to public holidays, and the employer cannot compensate for it with overtime (see Article 269[1] CT rev.).

Staff who do normal work on public holidays at enterprises that are not required to close or suspend operations on those days are entitled to compensatory rest equal to half the hours so worked, or to a 50% pay increase for those hours, with the choice between the two formats pertaining to the employer (Article 269[2][10]).

Analysis of a sample composed of 95 collective labour agreements revealed that 25 of them stipulated a pay increase for working on public holidays greater (between 125% and 300%) than that laid down in the version of the Labour Code that preceded Law no. 23/2012 of 25 June 2012.

It should be noted that, of the collective labour agreements published after the entry into force of Law no. 23/2012 of 25 June 2012, only one provides for an increase in pay for work done on mandatory public holidays greater (100%) than the 50% established by the new Law.

2.2 Public sector employment regime

Law no. 66/2012 of 31 December subjected all (both appointed and contracted) workers who exercise functions in the public sector to the public holiday regime provided for in the Labour Code.

Articles 234 and 235 of the Labour Code say that there are mandatory public holidays, and optional ones.

The mandatory ones are set out in Article 234, as amended by Law no. 23/2012 of 25 June 2012: 1 January, Easter Friday, Easter Sunday, 25 April, 1 May, 10 June, 15 August, 8 December, and 25 December.

Article 235 says that collective labour regulation instruments (applicable only to workers recruited under labour contracts) and Council of Ministers Resolutions (a CMR would theoretically apply to all workers) can stipulate that Mardi Gras and each municipality's specific local holiday can be public holidays.

The following public holidays were abolished in 2012: Corpus Christi, 5 October, 1 November, and 1 December. In addition, since the same year, no optional public holidays have actually been observed.

Workers continue to enjoy the right to be paid on public holidays on which they do not work.

[10] The text of paragraph (2) resulted from Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.

§ 3) Annual holidays with pay

3.1 Regime regulated by the Labour Code

The minimum annual holiday period remains 22 working days (Article 238[1], CT rev.).

Workers are paid during their annual holidays. Each worker is also entitled to additional holiday pay equal to his/her basic pay, plus other remuneratory benefits that represent compensation for the specific way in which he/she performs his/her work, for the length of time equal to the minimum duration of his/her holidays (Article 264[2],[11] CT rev.).

Employers must pay the additional holiday month before the worker's actual holidays begin, with proportional payments if the holidays are split up into smaller periods, unless the parties agree otherwise in writing (Article 264[3]).

Unlike the earlier version of the Labour Code (the one approved by Law no. 99/2003 of 27 August 2003), the revised Code currently makes no provision for mechanisms that would increase the length of a worker's annual holidays – e.g. on the basis of the his/her age, lack of absences, and so on.

Analysis of a sample composed of 95 collective labour agreements showed that 27 stipulate a minimum length of holidays above that provided for by law, with totals varying between 23 and 30 days.

These increased holiday periods are subject to certain conditions, such as a worker's attendance record, age, number of years with the enterprise, if he/she takes the majority of his/her holidays outside the most commonly requested time of year, shift working, and performance evaluations, as well as a combination of the above.

3.2 Public sector employment regime

Since the entry into force of Law no. 66/2012 of 31 December, there has been a single annual holiday regime for both Public Administration staff with labour contracts and those with appointments (it used to be set out in the RCTFP for workers recruited under labour contracts, and in Executive Law no. 100/99 of 31 March 1999 for appointed staff). There is only one exception – appointed staff can take an extra 5 working days of holiday if they take all of their allowance for a given year between 1 January and 30 April or between 1 November and 31 December.

Apart from this exception, staff are entitled to between 25 and 31 working days of paid annual holidays – newly recruited workers begin with 25, and this

[11] The text of paragraph (2) resulted from Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.

increases for each 10-year "module" of the person's age and length of public service.

§ 4) Hazardous or unhealthy occupations

4.1 Regime regulated by the Labour Code

Where doing away with risks in hazardous or unhealthy activities is concerned, we would note that the health and safety issues that used to be covered by the Labour Code approved by Law no. 99/2003 of 27 August and by the respective regulations (Law no. 35/2004 of 29 July 2004) are now addressed in the Labour Code approved by Law no. 7/2009 of 12 February 2009 (as amended by Laws nos. 105/2009 of 14 September 2009, 53/2011 of 14 October 2011, 23/2012 of 25 June 2012, and 47/2012 of 29 August 2012), and in Law no. 102/2009 of 10 September 2009. The latter regulated the legal regime governing the promotion of health and safety at work and the prevention of work-related accidents and illnesses, as provided for in Article 284 of the Labour Code, and was itself subsequently amended with regard to prevention by Law no. 42/2012 of 28 August 2012.

As such:

Article 15 of Law no. 102/2009 of 10 September (all references from here until the end of section 4.1are to this Law) lists employers' general obligations, as follows:

- Employers must ensure that workers enjoy healthy and safe conditions in every aspect of their work (paragraph [1]).

- Employers must continuously and permanently make every effort to conduct their activities under conditions that are healthy and safe for workers, in the light of the following general principles as regards prevention (paragraph [2]):

    - Identify the foreseeable risks in all the enterprise, establishment, department or service's activities, in the design or construction of work facilities, places and processes, and in the choice of equipment, substances and products, all with a view to eliminating those risks, or when this is not viable, reducing their effects (subparagraph [a]).
    - Integrate the assessment of risks to workers' health and safety into all of the enterprise, establishment, department or service's activities, with the duty to take the appropriate protection measures (subparagraph [b]).
    - Fight the risks at source, in such a way as to eliminate or reduce exposure and increase levels of protection (subparagraph [c]).
    - Ensure in workplaces that exposures to chemical, physical and biological agents and psychosocial risk factors do not constitute risks to workers' health and safety (subparagraph [d]).

- Adapt the work to the man/woman, especially with regard to the design of work stations, the choice of work equipment, and working and production methods, particularly with a view to attenuating monotonous and repetitive work and reducing psychosocial risks (subparagraph [e]).
- Adapt to the state of the art in technical terms, and to new work organisation formats (subparagraph [f]).
- Replace that which is dangerous with that which poses no danger or is less dangerous (subparagraph [g]).
- Prioritise collective protection measures over individual ones (subparagraph [h]).
- Draw up and disseminate instructions that are understandable and appropriate to workers' activities (subparagraph [i]).

- Without prejudice to the rest of an employer's obligations, the preventative measures it implements must be preceded by, and reflect the results of, the risk assessments associated with the various phases of the production process, including preparatory, maintenance and repair activities, in such a way as to result in effective levels of protection of workers' health and safety (paragraph [3]).
- Whenever tasks are entrusted to a worker, his/her knowledge, skills and aptitudes in the health and safety field must be taken into consideration, and the employer is responsible for providing the information and training needed to undertake the activity under safe and healthy conditions (paragraph [4]).
- Whenever it is necessary to access high-risk areas, the employer must only allow workers with the appropriate skills and aptitudes and training to do so, and then only for the minimum amount of time necessary (paragraph [5]).
- Employers must take measures and give instructions that enable workers to stop working or immediately move away from their workplace in cases of serious and imminent danger that cannot be avoided by technical means, without the possibility of restarting work for as long as the danger continues to exist, except in exceptional cases and with the appropriate protection (paragraph [6]).
- When they organise means of prevention, employers must not only take workers into account, but also third parties who are capable of being affected by the risks entailed in the work, both inside and outside the facilities (paragraph [7]).
- Employers must ensure that workers' health is monitored in the light of the risks to which they are potentially exposed in the workplace (paragraph [8]).
- With regard to first aid, fire-fighting and evacuation, employers must establish the measures that are to be taken and identify the workers who are responsible for implementing them. They must also ensure the necessary contacts with the outside entities with the competence to undertake both those operations and emergency medical operations (paragraph [9]).
- When implementing preventative measures, employers must organise appropriate services either in-house or outside the enterprise,

establishment, department or service, mobilising the necessary resources, particularly in the technical prevention, training and information fields, together with the protection equipment whose use may become necessary (paragraph [10]).

- The health and safety at work rules which the law or collective agreements impose at an enterprise, establishment, department or service must also be complied with by the employer it/him/herself (paragraph [11]).
- Employers must pay for the costs of organising and operating the health and safety at work service and of other preventative measures, including examinations, exposure assessments, tests and other occupational risk and health monitoring actions, without imposing any financial charges on workers (paragraph [12]).
- For the purposes of Article 15, independent workers are considered equivalent to employers, *mutatis mutandis* (paragraph [13]).

Under Article 15(14), breach of the provisions of paragraphs (1) to (12) of the same Article constitutes a very serious administrative offence.

In addition to the provisions of Article 15(14), employers whose conduct helps give rise to a dangerous situation may also be civilly liable (Article 15[15]).

It should also be noted that employers must write to their workers' health and safety representatives at least twice a year in advance or in a timely manner, asking them for a formal opinion on certain matters, such as the assessment of risks to health and safety at work, including those regarding workers who are subject to special risks. If there are no such representatives, the employer must write to workers themselves (introduction to Article 18[1]).

On the question of the scope of and requirement for an in-house health and safety at work service, employers must create such a service or department dedicated solely to the workers for whose health and safety they are responsible in the following cases (Article 78(1) and [3]):

- Establishments with at least 400 workers (subparagraph [a]).
- Sets of establishments within 50 km of the one with the largest number of workers, when the set including the largest one has at least 400 workers (subparagraph [b]).
- Establishments or sets of establishments that engage in activities which Article 79 defines as high-risk and to which at least 30 workers are exposed (subparagraph [c]).

Article 79 says that the following are deemed high-risk for the purposes of the same Law:

- Construction, excavation, earth-moving works or works involving tunnels, with risks of falling or burial, demolitions, and interventions on railways or roads when traffic is not halted (subparagraph [a]).
- Activities of extractive industries (subparagraph [b]).
- Hyperbaric work (subparagraph [c]).

- Activities involving the use or storage of dangerous chemical products that are capable of causing serious accidents (subparagraph [d]).
- The manufacture, transport or use of explosives and pyrotechnics (subparagraph [e]).
- Activities of the iron and shipbuilding industries (subparagraph [f]).
- Activities involving contact with medium and high voltage electrical currents (subparagraph [g]).
- The production and transport of compressed, liquefied or dissolved gases, or significant use thereof (subparagraph [h]).
- Activities that imply exposure to ionising radiations (subparagraph [i]).
- Activities that imply exposure to agents that are carcinogenic, mutagenic, or toxic for reproduction (subparagraph [j]).
- Activities that imply exposure to group 3 or 4 biological agents (subparagraph [l]).
- Work that involves exposure to silica (subparagraph [m]).

Employers must also arrange for health examinations that are suited to demonstrating and assessing each worker's physical and psychological aptitude for his/her work, as well as the repercussions which both that work and the conditions under which it is done have for his/her health (Article 108[1]). Health check-ups must performed by a doctor who fulfils the requisites set out in Article 103 (Article 108[2]).

In addition, and without prejudice to the provisions of special legislation, the following health examinations must be performed (Article 108[3]):

- Admission examinations, before the worker begins work, or in the next 15 days if the urgency of the admission justifies it (subparagraph [a]).
- Periodical examinations, which must be annual for minors and workers over the age of 50, and every two years for other staff (subparagraph [b]).
- Occasional examinations, whenever there are substantial changes in the material elements of the work that may have damaging repercussions for the worker's health, and in cases in which a worker returns to work after an absence of more than 30 days caused by an illness or accident (subparagraph [c]).

In the light of the state of the worker's health and the results of the efforts to prevent occupational risks in the enterprise, the occupational health doctor can increase or reduce the time between exams provided for in Article 108(3); he/she must also take account of the result of any examinations which the worker has undergone and are still current, and must cooperate with the worker's GP as necessary (both Article 108[4]).

Article 108(6) makes it a serious administrative offence to breach the provisions of Article 108(1) or (3), or to use the services of a doctor who is not qualified in accordance with Article 103, when it is the employer that is responsible for that use.

The working hours and protection of night workers are addressed in Paragraph 7.

Lastly, we would note that in addition to the general legislation on the prevention of work-related accidents and illnesses, there is also some specific legislation on the matter.

4.2 Public sector employment regime

Workers (under both labour contracts and appointments) who engage in dangerous or unhealthy activities are not entitled to extra annual holidays or shorter working hours.

However, we can point to a number of norms in the Regime governing Labour Contracts for Public Functions e Regime (RCTFP) that possess a programmatic nature or impose certain requirements on employers:

- Under Article 118(e), breaks and interruptions for health and safety at work reasons are deemed working time.
- Article 124 requires employers to organise work at a pace that both bears health and safety requirements in mind and attenuates health and safety needs.
- Article 134 requires public-sector employers to attach priority to the requirements of workers' health and safety when they design work schedules.
- Article 151 requires that shift workers receive a level of health and safety protection that is appropriate to the nature of the work they do.
- Article 155 precludes night workers whose activities imply special risks or significant physical or mental strain from working more than 7 out of any 24 hours.
- Article 156 says that night workers must be given periodic medical examinations that are both free and confidential.

§ 5) Mandatory weekly rest

5.1 Regime regulated by the Labour Code

Article 232 of the revised Labour Code says that workers are entitled to a mandatory rest day each week, which as a rule is a Sunday.

This is only not the case when staff work:

a) In enterprises or sectors thereof that are dispensed from closing or suspending operations on one complete day each week, or are required to do so on a day other than Sundays.
b) In enterprises or sectors thereof whose operations cannot be interrupted.
c) In activities that have to take place on other workers' rest days.
d) In security or cleaning activities.

e) At expositions or fairs.

We would note that collective labour regulation instruments (IRCTs) and labour contracts can provide for a complementary weekly rest period, which can be continuous or not, every week of the year.

Analysis of a sample composed of 95 collective labour agreements shows that 47 allow the mandatory rest period to be taken other than on Sundays.

5.2 Public sector employment regime

Weekly rest is addressed in Articles 166 and 167 of the RCTFP (for staff with labour contracts) and in Article 9 of Executive Law no. 259/98 of 18 August 1998 (for staff with appointments), albeit in both cases as a rule the working week is 5 days and workers are entitled to one weekly rest day and one complementary rest day, which must be Sunday and Saturday respectively.

The regimes are not exactly the same when it comes to the list of exceptions, with regard to which the RCTFP is peremptory, whereas Executive Law no. 259/98 adopts a typically open solution. Besides this, under the contractual regime (but not the appointment one) it is possible for the complementary rest day not to fall immediately before or after the mandatory one, in which case the latter is extended by 11 hours, which is the length of the daily rest period.

§ 6) Information on important aspects of the labour contract and work in general

6.1 Regime regulated by the Labour Code

Article 106 of the revised Labour Code requires employers to give workers information about important aspects of the labour contract and about their work in general.

Under Article 106(3)[12], this information must at least include the following:

a) The employer's identity; in the case of a company, the existence of any coalition of companies, cross-shareholdings or dominant or group relationships; and the employer's registered office or domicile.
b) The place of work, or if there is no fixed or predominant place, the mention that work will be done in various locations.
c) The worker's professional category, or a summary description of his/her functions.
d) The date on which the contract is entered into, and that on which the worker starts work.
e) In the case of a term contract, its expected term or duration.

[12] The text of Article 106(3)(m) resulted from Law no. 23/2012 of 25 June 2012, with entry into force on 1 August 2012.

f) The length of the worker's annual holidays, or the criteria used to determine it.
g) The prior notification times the employer must give the worker when terminating the contract, or the criteria for determining them.
h) The amount of remuneration and the intervals at which it is paid.
i) The normal daily and weekly working periods, specifying cases in which they are defined as averages.
j) The number of the insurance policy for work-related accidents, and details of the insurer.
l) The applicable collective labour regulation instrument, if there is one.
m) Details of the labour compensation fund or equivalent mechanism, as and when required by specific legislation.

The information on the items referred to in subparagraphs (f) to (i) can be replaced by referencing the pertinent legal provisions, clauses in the applicable IRCT, or rules in the enterprise's in-house regulations.

This body of information must be given in writing in one or more documents signed by the employer. In cases in which there is more than one document, one of them must contain the items referred to in subparagraphs (a) to (d), (h) and (i) (see Article 107[1] and [2], CT rev.).

The employer is considered to have fulfilled this duty when the information is contained in the written labour contract or promissory labour contract itself.

The relevant documents must be given to the worker within 60 days of the beginning of the contract, or by its end if it is terminated before that.

6.2 Public sector employment regime

There is no legal obligation to tell appointed staff the essential content of their labour relationship (it is publicly available in the relevant legislation).

In the case of workers with labour contracts, the right to information about the terms and conditions governing the contract is set out in Articles 67 *et seq*. of the RCTFP, and this information must be provided within at most 60 days.

The information that must be made available is essentially as follows:

a) Elements identifying the contract.
b) The place of work, and the public-sector employer's registered office or location.
c) The worker's professional category and a summary characterisation of its contents.
d) The date on which the contract is entered into, and that on which the worker starts work.
e) In the case of an event-limited term contract, its expected term or duration.
f) The length of the worker's annual holidays, or if it is not possible to know this, the criteria used to calculate it.

g) The prior notification times the public-sector employer must give the worker when terminating the contract, or if it is not possible to know them, the criteria for determining them.
h)The amount of the remuneration.
i) The normal daily and weekly working periods, specifying cases in which they are defined as averages.
j) The applicable collective labour regulation instrument, if there is one.

§ 7) Protection of night workers

7.1 Regime regulated by the Labour Code

Article 225 of the revised Labour Code says that employer must arrange for night workers to be given free, confidential examinations designed to assess their state of health before they are assigned to night work, and at regular intervals of at most one year thereafter.

Employers must also evaluate the risks inherent in night workers' activities. In doing so they must take account of a number of factors, including the worker's physical and psychological state. This evaluation must be conducted before the worker starts work and every six months thereafter.

The Law expressly says that the health and safety protection applicable to shift workers also applies to all night workers (see Article 222 *ex vi* Article 225[4], both CT rev.). This means that employers must organise health and safety at work activities in such a way that night workers receive a level of protection which is appropriate to the work they do; and that they must also ensure that the protection and prevention resources dedicated to the health and safety of night workers are both equivalent to those applicable to other workers, and available at all times.

Whenever possible, employers must also ensure that workers who suffer from health problems linked to doing night work are reassigned to daytime work (see Article 225[5]).

It should also be pointed out that Article 224(4) of the revised Labour Code says that night workers must not work for more than 8 hours in a 24-hour period in which they do night work entailing the following activities, which imply special risks or significant physical or mental strain:

a) Activities that are monotonous, repetitive, undertaken at a predetermined work-rate, or isolated.
b) Construction, demolition, excavation or earth-moving works, or interventions in/on tunnels, railways or roads when traffic is not halted, or with a risk of falling from a height or being buried.
c) Extractive industrial activities.
d) The manufacture, transport or use of explosives and pyrotechnics.
e) Activities involving contact with medium and high voltage electrical currents.

f) The production or transport of compressed, liquefied or dissolved gases, or significant use thereof.
g) Activities whose risk assessment shows them to be particularly wearing, dangerous, unhealthy, or toxic.

This provision is not applicable when overtime work is needed for reasons of *force majeure*, or to repair or remedy a situation that is due to an accident or the risk of an imminent accident and is seriously damaging to the enterprise or its viability; nor does it apply when the activity is characterised by the need to ensure that production or a department or service operates continuously, on condition that a collective labour agreement entitles the worker involved to an equivalent period of compensatory rest.

Article 223(1) of the revised Labour Code defines night work as that done during a period which can last for a minimum of 7 and a maximum of 11 hours, and which must include the interval between midnight and five a.m.

We should note that the exact period classified as night-time can be defined by an IRCT, but that otherwise it runs from ten p.m. on one day to seven a.m. the next (see Article 223[2]).

Night workers are all those who do at least three hours of normal night work each day, or who work three hours a night calculated on an annual basis. IRCTs can also change this definition (see Article 224[1]).

7.2 Public sector employment regime

Although the regime governing night work has different normative sources for workers with labour contracts and those with appointments, the rules are actually the same with regard to both what is classified as night-time, and night workers' pay.

Night work is that done between ten p.m. on one day to seven a.m. the next. We should point out that in the case of appointed staff, this definition results from an amendment made by Law no. 66/2012 (the period previously went from eight p.m. to seven a.m.). All workers receive a 25% pay bonus for doing night work.

Quantitative data

The following table gives a breakdown of the number of labour inspectors who were available to control the legal provisions regarding the right to appropriate working conditions in the workplace, during the reference period.

Table 1

Variation in the no. of serving labour inspectors, 2009/2012

Year		2009	2010	2011	2012*
No. of serving labour inspectors	**Men**	103	121	130	126
	Women	150	263	274	265
	Total	253	384	404	391

Source: ACT
***** Data collected in accordance with new parameters, including with regard to information and consultation processes.

The next table shows the extent of these inspectors' work, in terms of: the number of establishments that were subject to at least one inspection of one or more aspects of the labour law; the total number of visits for this purpose; and the number of workers employed at the inspected establishments.

Table 2

Establishments visited, inspection visits, and workers covered, 2009/2012

Year	2009	2010	2011	2012**
Establishments visited *	81,213	84,546	80,159	37,398
Inspection visits	81,213	84,546	90,758	54,922
Workers covered	654,985	705,936	609,343	499,200

Source: ACT
* All economic activities.
** Data collected in accordance with new parameters, including with regard to information and consultation processes.

Duration of work, paid public holidays, weekly rest

During the reference period and in these fields, the results of the labour inspectors' interventions in workplaces are given in Table 3. The Table shows

infractions that led to proceedings which in turn resulted in pecuniary sanctions for employers under the Labour Code.

Table 3

Infractions linked to the organisation of working times that were the object of sanctions, 2009/2012

Subject/Year	2009	2010	2011	2012**
Duration and organisation of working time	**1,389**	**2,326**	**2,143**	**1,659**
Accessible record of working times	*	1,938	1,794	1,330
Content of record of working times	*	224	192	171
Record of workers who work outside the enterprise	*	*	7	2
Maximum normal working hours limits	*	65	75	55
Other	-	99	75	101
Work schedule	**1,530**	**2,110**	**1,643**	**1,084**
Rest break	*	46	48	46
Daily rest	*	77	54	40
Mandatory items on written work schedule	*	872	672	467
Worker identification	*	30	45	28
Display of written work schedule	*	820	603	440
Submission of copy of work schedule to ACT	*	178	141	-
Other	-	87	80	63
Part-time work	*****	*****	**1**	**1**
Shift work	*****	**72**	**77**	**75**
Intermittent work	*****	*****	**0**	**0**
Night work	*****	*****	**0**	**0**
Overtime work	*****	**446**	**393**	**246**
Overtime limits	*	71	79	43
Overtime records	251	258	231	155
Express mention of grounds for overtime	*	64	60	39
Other	-	53	23	9
Weekly rest	*****	**35**	**44**	**28**
Telework	*****	*****	**1**	**0**
Control of working and rest conditions in the road transport sector	**1,062**	**1,032**	**721**	**421**

Source: ACT

* Information not available separately.

** Data collected in accordance with new parameters, including with regard to information and consultation processes.

Annual holiday period

The minimum period of 22 working days of annual holidays must be scheduled by April each year and be displayed in the form of a chart in workplaces. The following table shows the number of notified infractions with regard to this obligation. When holidays are not taken, or are taken but not paid, labour inspectors calculate the amounts in question and require employers to pay them.

Table 4

Infractions linked to breaches of the right to annual holidays with pay that were the object of sanctions, 2009/2012

Year	2009	2010	2011	2012***
Annual holidays	190*	175	183	225
Extra holiday month of pay	**	55	87	118

Source: ACT
*Overall data for all holiday-related issues. Information not available separately.
** Information not available separately.
*** Data collected in accordance with new parameters, including with regard to information and consultation processes.

The following table sets out the amount of pay involved in cases of breaches of the right to paid holidays.

Table 5

Overdue pay due to breaches of the right to annual holidays with pay, 2009/2012

Year	2009	2010	2011	2012*
Holiday pay	€94,670	€203,111	€363,980	€129,657.59
Extra holiday month	€685,674	€1,572,668	€1,708,826	€2,207,383.16

Source: ACT
* Data collected in accordance with new parameters, including with regard to information and consultation processes.

Eliminating risks linked to dangerous or unhealthy occupations

As a result and/or development of the transposition of Directive no. 89/391/EEC into Portuguese law, the Labour Code imposes a range of obligations linked to the management of health and safety at work. They involve the latter's planning, the organisation of preventative activities, and the collection, treatment and dissemination of data resulting from those activities. The first line of the next table shows the number of infractions in this field that were the object of official notifications.

Some special sectors of activity are particularly dangerous, and specific legislation has therefore been developed for them. This is the case of construction and public works (Executive Law no. 273/2003 of 29 October 2003), the extractive industry (Executive Law no. 324/95 of 29 November 1995), and fisheries (Executive Law no. 116/97 of 12 May 1997). The number of infractions in this field that were the object of official notifications is given in the second line of the table; the majority of these involved construction.

The prevention of chemical risks (including those posed by carcinogenic agents and asbestos), physical risks (particularly with regard to the safety of workplaces, work equipment, exposure to noise and vibrations, the manual movement of loads...), and risks caused by biological agents is addressed in Portuguese legislation with European Union origins. The infractions that led to notifications in this field are shown in line three of the table.

Table 6

Notified infractions regarding health and safety at work (HSW), 2009/2012

Year	2009	2010	2011	2012*
HSW organisation and management	2,209	2,254	1,924	1,451
Special Directives	2,381	2,372	1,673	888
Chemical, physical and biological risks	11	51	69	25
Total	4,601	4,677	3,666	2,364

Source: ACT

* Data collected in accordance with new parameters, including with regard to information and consultation processes.

The Labour Inspectorate's annual activity plans for interventions during the reference period prioritised undertaking campaigns that included communicating with and disseminating information among the various social actors. These four years saw seven such campaigns: the prevention of exposure to silica (2009); safe repair and maintenance work (2010-2011); the assessment of risks posed by the use of dangerous substances in workplaces (2011); the assessment of psychosocial risks (2012); the promotion of appropriate working conditions in the agricultural and forestry sector (2012); the assessment of risks

posed by the use of dangerous substances in workplaces in the cleaning sector (2012); and the promotion of appropriate conditions in confined spaces(2012).

Informing workers about essential aspects of their labour contracts

The Labour Code requires employers to provide their workers with written information about the important aspects of their labour contracts. Table 7 shows how many notifications were issued for infractions in this respect.

Table 7

Notified infractions regarding the duty to inform workers

Year	2009	2010	2011	2012*
No. of infractions notified	83	59	44	18

Source: ACT
* Data collected in accordance with new parameters, including with regard to information and consultation processes.

Answers to queries from the European Committee of Social Rights

Paragraph 2 - Public holidays with pay

1. Under Article 258 of the Labour Code, work carried out on a public holiday is regarded as overtime and employee's wages are doubled. Under Article 259 of the Labour Code, work carried out on a public holiday may also be regarded as ordinary work by companies which are not obliged to suspend activities on such days. According to the report there are also 126 collective employment agreements which provide for increased wages for work carried out on a public holiday varying between 120 and 300% of the standard wage. The Committee asks what areas these collective agreements cover and what proportion of workers are concerned by the pay rates of 200 to 300%.

Out of the universe of 126 collective labour agreements, a sample of 91 included the following sectors:

- Electrical material
- Land transport
- Cellulose/paper industry
- Insurance
- Agriculture
- Construction materials
- Confectionery and similar
- Waterborne transport
- Associations
- Chemical products
- Optical industry
- Beverage industry / retail trade
- Cement industry
- Textiles
- Dairy products
- Animal slaughter
- Forwarding agents
- Media
- Glass industry
- Financial intermediation
- Education
- Milling of cereals
- Retail trade
- Pharmacies
- Restaurant and hotel trade
- Air transport
- Construction
- Metallurgy
- Tanning
- Post and telecommunications
- Tobacco industry

We can only estimate the percentage of workers covered by a 200% to 300% increase, because this is all the law requires in terms of information (Article 492[1][g], CT).

We thus estimate that 340,455 workers are encompassed by collective agreements that provide for a 200-300% rise in pay. They work in the following areas: cellulose/paper industry, agriculture, construction materials, confectionery and similar, waterborne transport, associations, chemical products, optical industry, dairy products, media, glass industry, financial intermediation, education, milling of cereals, restaurant and hotel trade, cement industry, and construction.

On this subject we would also note that Article 268(1)(b) of the Labour Code (as amended by Law no. 23/2012 of 25 June 2012) says that overtime worked on mandatory or complementary weekly rest days or public holidays is paid at the normal hourly rate plus 50% for each hour or fraction thereof.

In addition, Article 7(4) of Law no. 23/2012 of 25 June 2012 suspended provisions of collective labour regulation instruments (IRCTs), and clauses in labour contracts, for two years from the date on which the Law entered into force, in the following cases: (a) when they increase overtime pay by more than the rate stipulated in the amended Labour Code; and (b) when they make any provision regarding pay for normal work done on public holidays, or compensatory rest attributed as a result of such work, at enterprises that are not required to suspend operations on such days. Moreover, at the end of the two-year period, if the parties have not amended those provisions or clauses in the meantime, the amounts they stipulate will automatically be halved, albeit this reduction cannot bring them to below the figures established in the Labour Code (Article 7[5], Law no. 23/2012 of 25 June 2012).

2. The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the base salary is maintained, in addition to the increased pay rate.

Under Article 269(1) of the Labour Code, in such cases workers are entitled to the rate of pay applicable to public holidays, and the employer cannot compensate for it with overtime.

Paragraph 3 - Right to just conditions of work

The Committee asks whether employees who fall ill during periods of annual leave may take their leave at a later date.

Article 244(1) of the Labour Code says that annual holidays do not begin when, at that moment, the worker is temporarily unable to work due to illness or another fact for which he/she is not responsible, nor do these reasons cause the holiday to be suspended when it has already begun. In both cases the employer must be notified of the situation for this to be applicable.

In such situations, the scheduled holiday continues once the illness or other condition ends. The days that were not effectively taken must then be rescheduled by agreement, or if agreement is not reached, unilaterally by the employer, when Article 241(3) of the Labour Code (restriction on the employer's right to impose dates) does not apply (Article 244[2], CT).

Paragraph 4 – Elimination of risks in dangerous or unhealthy occupations

In its previous conclusion (Conclusions XVI-2), the Committee asked for the second successive time for a list of sectors regarded as dangerous or unhealthy and a list of all the relevant collective agreements, including the details of what they stipulated in terms of reduced working hours and/or additional paid leave. It also asked what proportion of employees were covered by such measures. In the absence of this information, the Committee concludes that the situation is not in conformity on this point.

The 2nd Report on the Revised Social Charter mentioned that there is no indicative list of work-related situations that are considered dangerous or unhealthy. However, the Report did say which activities were seen as high risk.

The present reference period saw the passage of Law no. 102/2009 of 10 September 2009, which regulated the legal regime governing the promotion of health and safety at work and the prevention of work-related accidents and illnesses, as provided for in Article 284 of the Labour Code (with regard to the prevention part), as described before. Article 79 of Law 102/2009 gives a list of high-risk activities and work.

As for a list of collective labour agreements in sectors linked to dangerous or unhealthy activities, we would recall that the 2nd Report said that: *"we are not, however, aware of any rules in collective agreements that reduce working hours or award additional holidays to groups of workers who work in these sectors."*

Even so, in a sample group of selected collective labour agreements (13) from these sectors, 7[13] agreements stipulate normal working periods that are shorter,

[13] Company agreement between CAIMA - Indústria de Celulose, SA (an industrial cellulose company) and FETESE - Federação dos Sindicatos da Indústria e Serviços (Federation of Trade Unions in Industry and Services), published in Boletim de Trabalho e Emprego no. 22/2013.

and annual holiday periods that are longer, than those established in the Law, for all the professional categories covered by the respective agreement.

We can only estimate the percentage of workers covered by collective labour agreements in sectors linked to dangerous or unhealthy activities that provide for a reduction in working time and/or additional holidays, because this is all the law requires in terms of information (Article 492[1][g], CT). As such, we estimate that 4,355 workers are covered by agreements that make such provisions.

On this question we would note the following:

The Revised European Social Charter reads as follows: "*The Parties undertake ... to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations*".

Law no. 102/2009 of 10 September 2009 regulated the legal regime governing the promotion of health and safety at work and the prevention of work-related accidents and illnesses, as provided for in Article 284 of the Labour Code (with regard to the prevention part).

The prevention consists of a range of public policies and programmes, along with provisions or measures with regard to licencing and in every phase of an enterprise, establishment, department or service's activities. The purpose is to eliminate or reduce the occupational risks to which workers are potentially exposed (Article 4[i], Law no. 102/2009).

Employers must ensure that workers enjoy safe and healthy conditions in every aspect of their work (Article 15[1], Law no. 102/2009), and must continuously and permanently make every effort to conduct their activities under conditions that are healthy and safe for workers, in the light of the general principles regarding prevention (Article 15[2], Law no. 102/2009).

Company agreement between CAIMA - Indústria de Celulose, SA and FIEQUIMETAL - Federação Intersindical das Indústrias Metalúrgica, Química, Elétricas, Farmacêutica, Celulose, Papel, Gráfica, Imprensa, Energia e Minas e outros (Inter-Trade-Union Federation for the Metallurgical, Chemical, Electrical, Pharmaceutical, Cellulose, Paper, Printing and Graphics, Press, Energy and Mining Industries) and others, published in Boletim de Trabalho e Emprego no. 18/2013.
Collective labour agreement between Portucel Tejo / CELTEJO - Empresa de Celulose do Tejo, SA and another (cellulose companies) and FETESE - Federação dos Sindicatos dos Trabalhadores de Serviços and others, published in Boletim do Trabalho e Emprego no. 20/2005, then amended and republished in Boletim de Trabalho e Emprego no. 22/2006.
Collective labour agreement between BP Portugal - Comércio de Combustíveis e Lubrificantes, SA and other oil companies and FETESE - Federação dos Sindicatos da Indústria e Serviços, published in Boletim de Trabalho e Emprego no. 47/2010, then amended several times and republished in Boletins de Trabalho e Emprego n.os 25/2011, 25/2012 and 28/2013.
Collective labour agreement between BP Portugal - Comércio de Combustíveis e Lubrificantes, SA and other oil companies and FIEQUIMETAL - Federação Intersindical das Indústrias Metalúrgica, Química, Elétrica, Farmacêutica, Celulose, Papel, Gráfica, Imprensa, Energia e Minas, published in Boletim de Trabalho e Emprego no. 2/2009, then amended and republished in Boletim de Trabalho e Emprego no. 27/2010.
Company agreement between PORTUCEL - Empresa Produtora de Pasta e Papel, S. A. (a pulp and paper company) and FETESE - Federação dos Sindicatos dos trabalhadores de Serviços and others – Overall revision, published in Boletim de Trabalho e Emprego no. 41/2010, then amended and republished in Boletim de Trabalho e Emprego no. 20/2011 (PORTUCEL – Empresa Produtora de Pasta e Papel, S. A. and SINDETELCO - Sindicato Democrático dos Trabalhadores das Comunicações e dos Media (Democratic Trade Union of Communication and Media Workers).
Company agreement between PORTUCEL - Empresa Produtora de Pasta e Papel, S. A. and FIEQUIMETAL - Federação Intersindical das Indústrias Metalúrgica, Química, Farmacêutica, Elétrica, Energia e Minas and others – Overall revision, published in Boletim de Trabalho e Emprego no. 29/2010.

The employer's obligation to ensure that workers enjoy safe and healthy conditions in every aspect of their work: *"(...) thus presupposes undertaking a risk assessment activity, seen as a dynamic process that must cover all the enterprise's activities, involve every sector and every area of productive activity, and monitor their key moments."*[14]

Among the general principles that employers must bear in mind with regard to prevention, the following are especially significant (all references to Law no. 102/2009 of 10 September 2009):

- Identify the foreseeable risks in all the enterprise, establishment, department or service's activities, in the design or construction of work facilities, places and processes, and in the choice of equipment, substances and products, all with a view to eliminating those risks, or when this is not viable, reducing their effects (Article 15[2][a]).
- Integrate the assessment of risks to workers' health and safety into all of the enterprise, establishment, department or service's activities, with the duty to take the appropriate protection measures (Article 15[2][b]).
- Fight risks at source, in such a way as to eliminate or reduce exposure and increase levels of protection (Article 15[2][c]).
- Ensure in workplaces that exposures to chemical, physical and biological agents and psychosocial risk factors do not constitute risks to workers' health and safety (Article 15[2][d]).
- Adapt the work to the man/woman, especially with regard to the design of work stations, the choice of work equipment, and working and production methods, particularly with a view to attenuating monotonous and repetitive work and reducing psychosocial risks (Article 15[2][e]).
- Adapt to the state of the art in technical terms, and to new work organisation formats (Article 15[2][f]).
- Replace that which is dangerous with that which poses no danger or is less dangerous (Article 15[2][g]).
- Prioritise collective protection measures over individual ones (Article 15[2][h]).
- Draw up and disseminate instructions that are understandable and appropriate to workers' activities (Article 15[2][i]).

Breach of any of the provisions of paragraphs (1) to (12) of Article 15 of Law no. 102/2009 of 10 September 2009 constitutes a very serious administrative offence (Article 15[14], Law no. 102/2009).

What is more, the maximum amounts of the fines for very serious administrative offences, as provided for in Article 554(4) of the Labour Code, are doubled in situations involving breaches of norms governing work by minors, health and safety at work, the rights pertaining to organisational structures that represent workers, and the right to strike (Article 556[1], CT).

[14] Roxo, Manuel M., *Segurança e Saúde do Trabalho: Avaliação e Controlo de riscos*, 2nd Edição, Coimbra, Almedina, 2006, p.109.

Paragraph 6 – Information on the employment contract

The Committee asks for confirmation that all aspects of the employment contract or relationship are covered by the contract or another written document. The Committee asks whether, where employees do not have a written contract, there are other written sources containing information on the essential aspects of the employment relationship.

Employers are always under a duty to give workers information, as provided for in Articles 106 and 107 of the revised Labour Code, whatever form the labour contract may take. The only option an employer has is to include the required information in the labour contract itself, and then on condition that the contract is a written one (Article 107[3]).

If the labour contract is a "consensual" – i.e. unwritten – one, the employer must give each worker the required information in the shape of one or more separate and obligatorily written documents. Failure to do so constitutes a serious administrative offence of a labour-related nature (Article 107[5]).

Paragraph 7 – Night work

The Committee asks whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

Employers must consult workers' health and safety representatives, or in their absence, the worker him/herself, with regard to assignment to night work, how to organise that work in the way that best suits the worker, and the health and safety measures that should be taken (see Article 225[6], CT rev.).

ARTICLE 4
THE RIGHT TO A FAIR REMUNERATION

The reference period (1January 2009 – 31 December 2012) saw the publication of Law no. 7/2009 of 12 February 2009, which approved the revision of the then current Labour Code and consequently revoked both Law no. 99/2003 of 27 August 2003, which had approved that previous version of the Code, and Law no. 35/2004 of 29 July 2004, which had regulated it.

It should also be noted that during the reference period the revised Labour Code was then itself the object of significant amendments linked to Article 4(2) of the Revised European Social Charter[15].

§1) Sufficient remuneration

1.1 Regime regulated by the Labour Code

Article 59(2)(a) of the Constitution of the Portuguese Republic (CRP) requires the state to establish and update "*a national minimum wage which, among other factors, shall have regard to workers' needs, increases in the cost of living, the level of development of the forces of production, the demands of economic and financial stability, and the accumulation of capital for development purposes*".

Article 273(1) of the Labour Code, which currently regulates this matter and reproduces the essence of the regime described in the 2nd National Report on the implementation of the European Social Charter, guarantees workers a minimum monthly remuneration (RMMG), whatever actual format is used. The amount is set each year by specific legislation, and the legislator must consult the Permanent Social Concertation Commission (CPCS) before making the decision.

Among other factors, this decision is taken in the light of workers' needs, the increase in the cost of living and the variation in productivity, all with a view to ensuring that it is appropriate to the criteria included in the policy on incomes and prices (Article 273[2], CT).

Breach of the provisions of Article 273(1) of the Labour Code constitutes a very serious administrative offence (Article 273[3], CT).

The amount of the RMMG was the object of the following legislative acts during the reference period[16]:

- Executive Law no. 5/2010 of 15 January 2010 set the RMMG at €475 for 2010.

[15] The Labour Code approved by Law no. 7/2009 of 12 February 2009 has since been amended by Law no. 105/2009 of 14 September 2009 (1st amendment), Law no. 53/2011 of 14 October 2011 (2nd amendment), Law no. 23/2012 of 25 June 2012 (3rd amendment) and Law no. 47/2012 of 29 August 2012 (4th amendment). All these legislative acts have been published in the *Diário da República* and can be consulted in this (now exclusively electronic) official journal at http://www.dre.pt/.

[16] All these legislative acts have been published in the *Diário da República* and can be consulted at http://www.dre.pt/.

- Executive Law no. 143 /2010 of 31 December 2011 set the RMMG at €485 for 2011.

However, in 2012 the RMMG was frozen in the wake of the Financial Assistance Programme agreed by the Portuguese State and the European Commission, the European Central Bank and the International Monetary Fund.

The 'Wage setting and competitiveness' section of the 'Labour market and education' chapter of the Memorandum of Understanding on Specific Economic Policy Conditionality signed by the Portuguese authorities on 3 May 2011 established the following:

"i. commit that, over the programme period, any increase in minimum wage will take place only if justified by economic and labour market developments and agreed in the framework of the programme review."

The 'Survey of Earnings and Working Hours' conducted by the then Ministry of Solidarity and Social Security's Office for Strategy and Planning (GEP/MTSS) revealed that the proportion of full-time employees who received the RMMG during the reference period was as follows:

Table 8

Full-time workers covered by the RMMG, by area of economic activity (%)

	2007	2008	2009	2010	2011
Total	**6.0**	**7.4**	**8.7**	**10.5**	**11.3**
Extractive industries	1.8	3.2	3.1	4.7	7.7
Manufacturing industries	6.8	8.6	10.8	13.2	14.2
Prod/distr. electricity, gas and water	0.1	0.1	0.0	0.1	0.1
Construction	4.9	5.7	6.4	7.9	9.7
Wholesale and retail trades	6.6	8.6	8.9	12.0	11.6
Accommodation and restaurants	13.9	14.8	15.8	16.4	17.5
Transport, storage, communications	1.1	1.1	1.8	1.7	3.8
Financial activities	0.1	0.2	0.1	0.8	1.1
Real estate and corporate services	4.7	5.1	7.1	15.5	17.2
Education	1.6	1.7	5.4	7.4	4.8
Health and social action	5.3	6.9	8.5	10.8	11.9
Other collective social/personal services	6.3	10.9	18.7	20.5	21.2

Source: GEP/MSSS, *Inquérito aos Ganhos* (Earnings Survey) October 2011 *(in Portuguese*).

The following table contains information on the updating of minimum wage tables set by collective labour regulation instruments (IRCTs) published in 2009-2011.

Table 9

Minimum wage tables, updates made by IRCTs published during the reference period, all economic activities

Portugal

Year	No. of IRCTs	No. of workers covered	Average duration (months)	Nominal annual variation (%)
2007	252	1569 601	16.6	2.9
2008(1)	296	1704 107	18.7	3.1
2009	255	1303 457	13.7	2.9
2010	231	1294 570	15.9	2.4
2011	192	1202 908	15.9	1.5

Source:MSSS-GEP/DGERT, Series of Reports and Analyses: "*Regulamentação Coletiva de Trabalho-aumento médio ponderado intertabelas*".

Note: (1) CAE (NACE) Rev.3 from 2008 onwards.

1.2 Public sector employment regime

On the subject of how workers' remuneration is structured it is important to recall that Article 62 of Law no. 12-A/2008 of 27 February 2008 says that remuneration can comprise: i) basic pay; ii) supplements; and iii) performance bonuses.

However, since 2010the payment of performance bonuses to public servants has been prohibited. There are still supplements, but they are very varied, the subjective scope for their award differs greatly (in both sectorial and quantitative terms), and the way in which they are calculated and awarded is quite opaque.

This is why we will only look at basic remuneration here, while nonetheless acknowledging that some supplements, such as expense allowances and overtime pay, were directly or indirectly the object of reductions and other measures whose effects were more significant than the cuts in basic pay in the strict sense of the term:

- There were two increases in Value Added tax (IVA), first from 19% to 21%, and then to 23%; on top of which, many items that had been subject to the reduced rate were moved to the maximum rate.
- The State Budget for 2013 redrew the Personal Income Tax (IRS) bands, compacting them and redefining the boundaries between them, with the immediate, generalised effect of reducing disposable income.
- Executive Law no. 137/2010 of 20 December 2010 required public sector workers to contribute 1% of their pay to Caixa Geral de Aposentações (the public sector retirement fund).

§2) Rate of additional remuneration for overtime work

2.1 Regime regulated by the Labour Code

With regard to the conditions applicable to overtime work and how long it can last, the legal regime provided for in the revised Labour Code (CT) approved by Law no. 7/2009 of 12 February 2009 maintained the essential elements of the overtime regime established in the previous legislation (Articles 227 and 228, CT).

The 2009 version of the Code said that workers doing overtime work were entitled to paid compensatory rest and additional pay, as follows (Articles 229, 230 and 268, CT):

- Paid compensatory rest equal to 25% of the overtime hours worked, for overtime on normal working days, complementary weekly rest days or public holidays (Article 229[1], CT).

- Paid compensatory rest equal to the number of hours of rest that were not taken, to be taken on one of the next three working days, for overtime that makes it impossible to take daily rest (Article 229[3], CT).

- One day of paid compensatory rest, to be taken on one of the next three working days, for overtime worked on mandatory weekly rest days (Article 229[4], CT).

- Paid compensatory rest equal to the number of hours of rest that were not taken, for up to two hours of overtime worked on a mandatory weekly rest day because of the unforeseen absence of a worker who ought to occupy the workstation on the next shift (Article 230[1], CT).

- Subject to agreement between the employer and the worker, the possibility that the compensatory rest for overtime done on a working day or public holiday can be replaced by work paid at a rate that is increased by at least 100% (Article 230[2], CT).

- In the case of micro or small enterprises and for reasons which are linked to the way in which work is organised and which the law says must be accepted, the possibility that the compensatory rest for overtime on a working day, a complementary weekly rest day or a public holiday can be replaced by work paid at a rate that is increased by at least 100% (Article 230[3], CT).

- Payment for overtime at the normal hourly rate plus 50% for the first hour or fraction thereof and 75% thereafter on normal working days, and plus 100% for each hour or fraction thereof on mandatory or complementary weekly rest days or public holidays (Article 268, CT).

Although the normal work done on public holidays at enterprises that are not required to suspend operations on such days is not deemed overtime, it did

give workers the right to either the same amount of compensatory rest, or a 100% increase in the applicable pay, with the choice between the two being made by the employer (Article 269, CT).

The new legislation made it possible for the rules on paid compensatory rest for overtime done on normal working days, complementary rest days or public holidays and on payment for overtime to be waived by IRCTs under which overtime could be compensated for by an equivalent reduction in working time, payment in cash, or both (Articles 229[6] and 268[3], CT).

However, the directives which were provided for in the Government Programme and were required for there to be sustained job creation and an effective upturn in economic growth, with a view to concomitantly ensuring the conditions needed to quickly overcome the crisis situation and make it possible for the nation's public debt to be sustainable, led to the implementation of another range of measures. These were targeted at people's well-being and the competitiveness of enterprises and the Portuguese economy in general, and included the modernisation of the labour market and labour relations.

To this end the Government made every effort to achieve a wide-reaching social agreement with the Social Partners, with a view to the implementation of a set of policies targeted at Growth, Competitiveness and Employment, and also designed to fulfil the undertakings Portugal made in the May 2011 Memorandum of Understanding on Specific Economic Policy Conditionality.

The labour reform thus formed part of the framework of an important social concertation process, which saw the definition of the respective general lines of action and culminated in the signature on 18 January 2012 of the Commitment to Growth, Competitiveness and Employment by the Government and most of the Social Partners with seats on the Permanent Social Concertation Commission.

It was in fulfilment of this Commitment to Growth, Competitiveness and Employment that the Labour Code was again revised, this time by Law no. 23/2012 of 25 June 2012.

Among the amendments with regard to the payment of overtime work made by this Law, it is especially worth noting the following:

- Compensatory rest for overtime was eliminated in all cases, without prejudice to the fact that (Article 229[3]and [4], CT):
  - Workers who do overtime that prevents them from taking their daily rest are entitled to paid compensatory rest equal to the number of missing rest hours. This entitlement must be given in the next three working days.
  - Workers who work on mandatory weekly rest days are entitled to a paid day of compensatory rest. This must also be taken in the next three working days.

- The increase in pay for overtime work was halved. Overtime is thus now paid at the following rates (Article 268[1], CT):
  - On normal working days: +25% for the first hour or fraction thereof, and +37.5% thereafter.
  - On mandatory or complementary weekly rest days or public holidays: +50% per hour or fraction thereof.

In harmony with these changes, the increase in pay for normal work done on public holidays at enterprises that are not required to suspend operations on such days was also halved (Article 269, CT).

At the same time, the Law annulled the provisions of IRCTs and the clauses of labour contract clauses that predated its own entry into force and addressed the question of compensatory rest for overtime done on normal working days, complementary weekly rest days or public holidays (Article 7[2], Law no. 23/2012).

Article 7(4) of the same Law also imposed a two-year suspension, counting from its own entry into force, of the provisions of IRCTs and the clauses of labour contract clauses on:

- Overtime bonuses greater than those laid down in the Labour Code.
- Pay or compensatory rest for normal work normal done on public holidays at companies that are not required to suspend operations on such days.

Moreover, at the end of the two-year period, if these provisions or clauses have not been altered, the amounts they stipulate will automatically be halved, although this cannot reduce them to less than the amounts established in the Labour Code (Article 7[5], Law no. 23/2012).

Turning to the legal framework, we would particularly note the Tripartite Agreement for Competitiveness and Employment, which was signed in March 2011 by the Government and several leading Social Partners (CCP – Confederação do Comércio e Serviços de Portugal; CIP – Confederação Empresarial de Portugal; CTP – Confederação do Turismo Português; and UGT – União Geral de Trabalhadores). In addition to a number of commitments for the future, this Agreement encompassed three main groups of the measures contained in Council of Ministers Resolution no. 101-B/2010 of 27 December 2010: promoting competitiveness; reorganising and improving the active employment policies; and one-off changes in the overall framework that regulates labour relations.

We would also point to the Commitment for Growth, Competitiveness and Employment, which the Government and the majority of the Social Partners with seats on the Permanent Social Concertation Commission signed in January 2012. This Commitment was made with a view to both implementing measures designed to re-launch economic growth in a way that would increase employment levels and improve living and working conditions, and taking measures that could reduce the social impact of the crisis and help bring about

a greater balance in society.

As part of this Commitment for Growth, Competitiveness and Employment, and in the light of both the March 2011 Tripartite Agreement and the May 2011 Memorandum of Understanding between the Portuguese State and the European Commission, the European Central Bank and the International Monetary Fund, the Government and the Social Partners agreed reforms in the labour field, which included the overtime changes described above. These were subsequently embodied in Law no. 23/2012 of 25 June 2012, and sought to bring overtime rates closer to those in competing countries, while simultaneously ensuring that workers are adequately compensated for the additional effort inherent in this type of work.

The methods used to calculate overtime bonuses are still the same as those described in the 2nd National Report on the implementation of the Revised European Social Charter. They currently form the object of Articles 268 and 271 of the Labour Code (CT), which make the following provisions:

- Overtime is paid at an hourly rate (Article 268[1], CT).
- The amount of the hourly rate is calculated using the following formula: (Rm x 12): (52 x n), where Rm is the pay for the normal working week calculated with reference to the rate of monthly pay, defined in average terms in cases covered by adaptability regimes (Article 271, CT).

Where the impact of flexible working hours on overtime pay is concerned, we would note that the following situations are not deemed overtime and therefore do not give rise to overtime pay: work done under adaptability regimes (Articles 204 to 207, CT), or hour bank regimes (Article 208, CT); work done by persons who are exempt from fixed work schedules (see infra *Article 4§2, answers to the Committee's 2010 Conclusions*].

On the subject of special situations regarding exceptions to the rules governing overtime pay, we would mention the following:

- Article 226(1) of the Labour Code defines the notion of overtime: "*Overtime work is deemed that done outside normal working hours*".
- Article 226(3) of the revised Code reduced the number of exceptional situations, by saying that work done in some circumstances that had previously been considered overtime are no longer classified as such.

This means that whenever a worker's activities do not match this notion of overtime working, he/she is not entitled to an increase in pay. The exception is normal work done on public holidays at companies that are not required to suspend operations on such days, when the worker has the right to either compensatory rest equal to half the number of hours worked, or a 50% increase in pay for the hours in question, with the choice between the two made by the employer; even so, this work is not considered overtime (Article 269[2], CT).

2.2 Public sector employment regime

The law says that hours of overtime work are paid at a higher rate than normal hours.

Firstly, although overtime was always defined as work done outside normal working hours for both appointed staff (Executive Law no. 259/98) and staff with labour contracts (Regime governing Labour Contracts for Public Functions – RCTFP), the increase in pay was not the same for these two categories of worker, albeit the difference between them was small.

Since 2012, the compensation for overtime work has been the same for both groups, with the percentage of the increase (or "overtime bonus") dependent on the number of hours worked, as follows:

Table 10

Overtime pay

	Bonus rate 2009(1)	**Bonus rate 2012 DL 66/2012 (2)**	**Bonus rate 2012 DL 66-B/2012 (3)**
First hour on normal working days	50%	25%	12.5%
Subsequent hours on normal working days	75%	37.5%	18.75%
Hours on rest days or public holidays	100%	50%	25%

§ 3) The right of men and women to equal pay

3.1 Regime regulated by the Labour Code

The 2nd and 7th National Reports on the implementation of the Revised European Social Charter already provided information about equal pay for men and women. With reference to Article 20, the 7th Report noted the following:

Article 13 of the Constitution of the Portuguese Republic enshrines the principle of equality in general, while Article 59(1)(a) establishes the principle of "equal pay for equal work".

This constitutional principle of equal remuneration for all, regardless of age, gender, race, citizenship, territory of origin, religion and political or ideological beliefs, means that every worker is entitled:

- "*To the remuneration of his/her work in accordance with its volume, nature and quality, with respect for the principle of equal pay for equal work and in such a way as to guarantee a proper living*".

Article 270 of the Labour Code says that when the amount of remuneration is determined, one must take account of the volume, nature and quality of the work, with respect for the principle of equal pay for equal work.

The Code also stipulates that workers have a right to equal working conditions, particular with regard to pay, and that the elements which determine the latter cannot entail any gender-based discrimination (Article 31[1], CT).

This in turn means that in the case of work that is equal or of equal value (Article 31[2], CT):

- Any form of variable remuneration – namely task or output-based pay – must be established on the basis of the same unit of measurement.
- Remuneration calculated on the basis of working time must be the same.

Having said this, differences in pay are not considered discriminatory when based on objective criteria that are the same for women and men – namely those involving merit, productivity, lack of absences, or length of service (Article 31[3], CT).

Without prejudice to the above, nor can leave, absences or dispensation from work for reasons linked to the protection of parenthood serve as grounds for differences in workers' remuneration (Article 31[4], CT).

Breach of the right to equal pay for men and women constitutes a very serious administrative offence (Article 31[6], CT).

We would also note that the legal norms that regulate labour contracts can only be waived by IRCTs which do not contradict those norms and whose provisions, namely with regard to equality, non-discrimination and pay-related guarantees, are more favourable to workers (Article 3[3][a] and [j], CT].

The provisions of IRCTs or in-house company regulations regarding working conditions – particularly remuneration – that apply solely to one of the sexes and to professional categories that entail work which is equal or of equal value are deemed automatically replaced by the most favourable provisions applicable to workers of both sexes (Article 26[2], CT).

Lastly, we would mention that within 30 days of the publication of a negotiated IRCT or the decision in mandatory or necessary arbitration proceedings, and after first consulting the interested parties, the competent department or service of the ministry with responsibility for the labour area must issue a duly justified evaluation of the respective provisions regarding equality and non-discrimination (Article 479, CT).

In the salary discrimination field, the Commission for Equality at Work and in Employment (CITE) plays an important role as the national mechanism for equality. Its competences include pursuing equality and non-discrimination between women and men at work, in employment and in vocational training,

and in this respect it receives and analyses complaints linked to breaches of labour and employment legislation and issues formal opinions on the subject.

During the reference period for the present Report (1 January 2009 – 31 December 2012), CITE received 3 complaints regarding remuneration and remuneratory supplements and issued the respective opinions.

Such opinions are non-binding administrative decisions, but failure to comply with them is considered unlawful unless a court decides otherwise.

Full operationalisation of the principle of equality also entails the existence of other national instruments, some of which are cross-cutting in nature, such as the 2007-2010 and 2011-2013 National Plans for Equality (PNIs)[17], while some are specific to other areas, but incorporate this dimension.

PNI III (2007-2010) matched a phase in which the country was consolidating the national policy in the gender equality field, in fulfilment of commitments at both the national (particularly the Programme of the 17th Constitutional Government, and the Major Options of the Plan for 2005-2009) and international (especially the European Commission's Roadmap for Equality between Women and Men 2006-2010) levels. Its Strategic Intervention Area no. 2 – Gender Perspective in Priority Policy Domains (no. 2.2 – Economic Independence [Objective: Promote equal treatment and opportunities for men and women in the labour market]) included measures designed to raise awareness of, and reinforce the fight against, salary differences between women and men. Of particular note were measures:

> N) Promote the carrying out or updating of studies on salary differences between men and women.
> P) Promote the strengthening of the Working Conditions Authority's mechanisms for inspecting and identifying both cases of gender-based discrimination, particularly in collective labour negotiations and agreements, and forms of precarious and parallel work.

PNI IV (2010-2013) sought to affirm equality as a factor for competitiveness and development, and took a triple approach: strengthen the cross-cutting scope of the gender dimension; conjugate this strategy with specific actions, including positive ones; and bring the gender perspective into area in which there is discrimination. Its Strategic Intervention Area no. 2 – Economic Independence, Labour Market and Organisation of Professional, Family and Personal Life, included measures intended to promote reductions in salary differences. These particularly included measures numbers:

> 20) *Promote the implementation of equality plans in enterprises within the scope of Council of Ministers Resolutions nos. 49/2007 of 28 March 2007, and 70/2008 of 22 April 2008*.
>
> 26) *Promote good gender equality practices, namely those that promote the reduction of asymmetries in salaries in enterprises in the*

[17] Respectively approved by Council of Ministers Resolutions nos. 82/2007 of 22 June 2007 and 5/2011 of 18 January 2011.

public and private sectors and in organisations in general, through the use of the existing referentials, awards – particularly the "Equality and Quality" Prize – and awareness-raising campaigns.

Portuguese law says that women have the right to the same salary as men for work that is equal or of equal value. However, there is still a difference between the sexes in terms of both salaries and earnings.

The data for full-time third-party employees in Portugal show that in 2011[18], women were paid around 82% of the average monthly basic remuneration of men; or 79.1% if we look at average monthly earnings (which also includes other pay-related elements, such as overtime pay, bonuses and other benefits, which are generally of a discretionary nature). In other words, women's average monthly basic pay was 18% less than that received by men, with an even greater differential – 20.9% – if we talk about earnings.

Since 2006, we have seen a slight reduction in the differences between male and female pay, inasmuch as the differentials between both the average monthly basic pay and the earnings of women and men have fallen.

Table 11

Monthly salary differential in basic pay and earnings, Female/Male (%), 2009-2010

	2009		2010		2011	
	Basic	Earnings	Basic	Earnings	Basic	Earnings
	FP/MP*	FE/ME**	FP/MP	FE/ME	FP/MP	FE/ME
Salary differential	82.2	78.9	82.0	79.1	82.0	79.1

* Female Pay / Male Pay
** Female Earnings / Male Earnings
Source: MEE/GEE, *Quadros de Pessoal* (Personnel Tables, *in Portuguese*)

We can see that the salary difference between women and men is directly proportional to levels of qualification – i.e. the higher the level, the greater the differential. There is a particularly large difference at the senior management level, with a female/male ratio of 0.72:1 for basic average pay, and 0.712:1 for average earnings, in 2011.

At the other end of the scale, the gender pay gap is smaller in categories with lower levels of qualification. Examples include unskilled workers and apprentices (women received 95% of the average basic pay and 91.7% of the earnings of their male counterparts), and unqualified professionals (89% average basic pay, 84.6% earnings).

[18] This analysis is based on GEP's 'Personnel Tables' and on the ratio of the average basic remuneration and earnings for women to that for men. 2011 is the most recent year for which data are available.

Table 12

Average monthly remuneration, by basic pay and earnings and by level of professional qualification, Female/Male (%), 2009-2011

Qualification level	2009		2010		2011	
	Basic	Earnings	Basic	Earnings	Basic	Earnings
	FP/MP*	FE/ME**	FP/MP	FE/ME	FP/MP	FE/ME
Total	**82.2**	**78.9**	**82.0**	**79.1**	**82.0**	**79.1**
Senior managers	71.7	70.7	71.8	71.1	72.2	71.2
Mid-level managers	84.5	80.3	85.7	83.0	84.0	81.2
Foremen, master craftsmen, team leaders	86.8	84.7	93.2	90.2	92.8	90.4
Highly qualified professionals	88.1	85.0	85.2	82.3	83.5	80.4
Semi-qualified professionals	89.8	85.7	91.3	86.7	90.5	86.4
Qualified professionals	88.0	82.3	88.1	83.4	88.1	83.4
Unqualified professionals	88.5	84.2	89.1	84.6	89.0	84.6
Unskilled workers and apprentices	94.2	92.3	94.5	91.2	95.0	91.7
Unknown	86.0	81.6	-	-	-	-

* Female Pay / Male Pay
** Female Earnings / Male Earnings
Source: MEE/GEE, *Quadros de Pessoal* (Personnel Tables, *in Portuguese*)

The same situation exists with regard to salary inequalities at different levels of academic qualifications. The differential rises as the level of schooling increases, going from workers with less than the first basic education cycle (87.3% average basic pay, 82.3% earnings), to those who have completed the third basic education cycle (80.3% average basic pay, 76.4 % earnings), and finally reaching its greatest extent among staff with higher education (licentiate or Bologna bachelor's degree: 69.8 % average basic pay, 69.2 % earnings).

Table 13

Average monthly remuneration, by basic pay and earnings and by level of academic qualifications, Female/Male (%), 2009-2011

Qualification level	2009		2010		2011	
	Basic	Earnings	Basic	Earnings	Basic	Earnings
	FP/MP*	FE/ME**	FP/MP	FE/ME	FP/MP	FE/ME
Total	**82.2**	**78.9**	**82.0**	**79.1**	**82.0**	**79.1**
< 1st Basic Education Cycle	87.5	82.0	88.0	82.3	87.3	82.3
1st Basic Education Cycle	78.3	73.5	78.7	73.8	79.0	74.4
2nd Basic Education Cycle	78.4	73.7	78.6	74.0	78.9	74.4

3rd Basic Education Cycle	79.6	75.6	79.8	76.0	80.3	76.4
Secondary	75.0	72.0	74.6	72.2	74.8	72.1
Initial Higher Edu. Degree (*Bacharelato*)	68.4	67.7	68.0	67.8	68.5	68.0
Licentiate or Bologna Bach. Degree	68.8	68.0	69.4	68.8	69.8	69.2
Unknown	85.9	82.2	85.3	82.1	72.8	72.4

* Female Pay / Male Pay

** Female Earnings / Male Earnings

Source: MEE/GEE, *Quadros de Pessoal* (Personnel Tables, *in Portuguese*)

If we analyse pay differences between the sexes by type of economic activity, we find a clear mismatch in those in which female participation is greater.

In 2011, women earned less than men in activities such as: *Manufacturing industry* (73.4% basic pay, 70.4% earnings); *Human health and social support activities* (71.6% basic pay, 68.4% earnings); and *Artistic, performance, sporting and recreational activities* (42.9% basic pay, 45.9% earnings).

The sector of activity in which men and women's earnings are closest is *Electricity, gas, steam, hot and cold water, and air conditioning* (94.9% basic pay, 91.0% earnings); this is followed by *Administrative and support service activities* (basic pay 89.7%, earnings 87.2%).

The sectors in which women earn more than men are: *Activities of international organisations and extraterritorial institutions* (118.2% basic pay, 114.9% earnings); *Water catchment, treatment and distribution, and sanitation* (116.5% basic pay, 108.0% earnings); and Construction (113.6% basic pay, 109.3% earnings).

Table 14

Average monthly remuneration, by basic pay and earnings and by economic activity, Female/Male (%), 2009-2011

CAE (NACE) - rev. 3	2009		2010		2011	
	Basic	Earnings	Basic	Earnings	Basic	Earnings
	FP/MP* (%)	FE/ME**	FP/MP	FE/ME	FP/MP	FE/ME
Total	**82.2**	**78.9**	**82.0**	**79.1**	**82.0**	**79.1**
Agriculture, animal husbandry, hunting, forestry, and fisheries	81.2	81.2	81.3	82.2	78.4	79.4
Extractive industry	110.2	101.2	109.2	100.2	112.3	103.8
Manufacturing industry	71.8	69.3	73.1	70.2	73.4	70.4
Electricity, gas, steam, hot and cold water, and air conditioning	100.8	91.3	96.8	89.3	94.9	91.0

Water catchment, treatment and distribution, and sanitation	116.0	107.0	115.8	106.4	116.5	108.0
Construction	113.3	108.1	113.1	108.5	113.6	109.3
Wholesale and retail trades, repair of motor vehicles	81.7	82.2	82.2	83.0	82.7	83.9
Transport and storage	119.3	109.3	120.6	111.2	94.2	111.1
Accommodation, restaurants and similar	80.5	79.4	81.2	80.1	81.7	80.8
Information and communication activities	82.6	82.3	84.4	84.4	84.3	84.3
Financial and insurance activities	77.4	74.8	78.3	75.3	78.3	75.4
Real estate activities	72.7	73.2	71.5	72.6	74.2	75.8
Consultancy, scientific, technical and similar activities	73.0	73.5	73.4	73.6	73.4	73.7
Administrative and support service activities	88.8	85.4	88.8	85.5	89.7	87.2
Public Administration, defence and compulsory social security	86.6	81.5	107.2	105.7	106.7	105.2
Education	81.2	78.9	81.7	79.5	82.3	80.6
Human health and social support activities	71.5	70.6	71.3	68.7	71.6	68.4
Artistic, performance, sporting and recreational activities	54.0	56.9	46.5	49.7	42.9	45.9
Other service activities	72.3	71.3	71.7	70.6	72.6	71.3
Activities of international organisations and extraterritorial institutions	84.3	82.4	82.8	83.6	118.2	114.9

* Female Pay / Male Pay
** Female Earnings / Male Earnings
Source: MEE/GEE, *Quadros de Pessoal* (Personnel Tables, *in Portuguese*)

3.2 Public sector employment regime

There is no gender-based remuneratory differentiation between public servants.

§ 4) Reasonable period of notice for termination of employment

4.1 Regime regulated by the Labour Code

With regard to this paragraph we would note that the regime described in the 5th National Report on the implementation of the Revised European Social Charter and in the *answers to the 2010 Conclusions of the European Committee of Social Rights*[19] has not changed in this respect.

With a view to implementation of the alterations set out in the 2008 Tripartite Agreement, as described in the 5th Report, the Labour Code currently makes the following provisions:

In cases of collective redundancy, individual redundancy due to abolition of the worker's job, or dismissal on the grounds of unsuitability, the employer must communicate the decision to each worker in writing at least 15, 30, 60 or 75 days before termination, depending on his/her length of service (Articles 363[1], 371[3], and 378[2], CT).

We would note that if a collective redundancy covers both spouses, or both members of a cohabiting couple, the length of notice is increased to the period immediately above that which would apply if only one of them were being dismissed (Article 363[2], CT).

We would also emphasise that during their prior notice period, workers are entitled to a time credit (i.e. time off work) equal to two days per week, with no loss of pay (Article 364[1], CT).

Dismissal in breach of the required notice period constitutes a serious administrative offence (Article 363[6], CT).

It is worth noting that these notice periods can be regulated by IRCTs, which can increase the length laid down in the Labour Code (Article 339[2], CT).

On the other hand, we would also mention that in the absence of a written agreement to the contrary, during trial periods either party can terminate the contract without prior notice, the need to allege just cause, or any right to compensation (Article 114[1], CT).

However, if a trial period has already lasted more than 60 days, employers must give 7 days' notice of termination; and if it has lasted more than 120 days, 15 days' notice (Article 114[2] and [3], CT).

These prior notice periods for trial periods apply to every category of worker covered by the labour contract regime.

[19] On the "right to a reasonable period of notice for termination of employment" in the case of collective dismissals, see: File 8.29.42.20.2011.4. (Information report no. 32/11-DSCT).

Failure to give the appropriate prior notice means that the employer must pay the worker for time equal to the length of the prior notice it failed to give (Article 114[4], CT).

4.2 Public sector employment regime

As has already been mentioned on a number of occasions, Public Administration workers can be subject to one of two regimes governing the formation of the legal public employment bond – appointment, and the labour contract. The differences between them also have implications for the conditions under which that relationship ends.

In the case of appointed staff, we must also distinguish between definitive and transitional appointments.

Article 32 of Law no. 12-A/2008 of 27 February 2008 says that definitive appointments can end in the following cases:

a) Unsuccessful conclusion of the trial period.
b) Resignation by the worker.
c) Mutual agreement between the public sector employer and the worker.
d) Imposition of the disciplinary penalty of compulsory dismissal.
e) The worker's death.
f) The worker's retirement.

As we can see, these types of cause for termination are not compatible with prior notice periods.

The same Law (Article 13) treats transitional appointments in the same way as it does workers with fixed-term labour contracts, *mutatis mutandis*.

It is thus important to look at those causes for termination by the employer of a labour contract for the exercise of public functions that may be relevant to the question of worker protection (thus naturally excluding termination by mutual agreement).

In the case of indefinite contracts, we must consider three termination formats: dismissal on the grounds of unsuitability; collective redundancy; and individual redundancy due to abolition of the worker's job. Although the three are substantively different and subject to specific preconditions, they all require the public sector employer to inform each worker of the reasons for the dismissal at least 60 days in advance.

Fixed-term contracts can be divided into date-limited and event-limited situations.

Date-limited fixed-term contracts (Article 252, RCTFP) end when they reach their term, unless the employer gives the worker at least 30 days' written notice

that it would like to renew the contract; in the case of event-limited fixed-term contracts, the public sector employer must give at least 7, 30 or 60 days' prior notice, depending whether the contract has lasted up to 6 months, more than 6 months and up to 2 years, or more than that respectively.

§ 5) Non-authorisation of deductions from wages

5.1 Regime regulated by the Labour Code

Article 279 of the current Labour Code has maintained the regime described in the 2nd National Report on the implementation of the European Social Charter:

The employer in a relationship based on a labour contract cannot offset remuneration it owes against a credit it holds on the worker, nor can it make any deductions from that remuneration, except in the following cases (Article 279[1] and [2]):

> a) Deductions in favour of the state, the social security service, or any other entity when required by law, a judicial decision that has transited *in rem judicatam* or the official record of the outcome of conciliation proceedings, when the employer has been notified thereof.
> b) Indemnities or compensation which the worker owes the employer and whose payment has been ordered under a judicial decision that has transited *in rem judicatam* or in the record of conciliation proceedings.
> c) Pecuniary sanctions imposed on the worker in disciplinary proceedings.
> d) Repayments of capital or payments of interest on a loan granted to the worker by the employer.
> e) The price of meals taken in the workplace, the use of telephones, the provision of supplies, fuel or materials when requested by the worker, or other expenses incurred by the employer on the worker's behalf and with his/her agreement.
> f) Loans or advances against pay.

Except for that mentioned in subparagraph (a), the total amount of such deductions cannot exceed one sixth of the worker's remuneration (Article 279[3], CT).

Lastly, we would note that trade union dues can be deducted from workers' pay and paid to the union in question by employers, but only when this is both provided for in the applicable IRCT and the worker authorises it, or when an individual worker asks for it to be done (Article 458[1] and [3], CT).

5.2 Public sector employment regime

Deductions from workers' pay can be made when the law requires it, the worker asks for it to be so (e.g. union dues), or judicial authorities so decide (e.g. attachment of salaries).

As can be seen from Article 219 of the RCTFP, no other monthly deductions are made from the pay of public servants under either the appointment regime or a labour contract.

Failure to pay remuneration, or payment of less than the amount stipulated in the annual law that sets the national minimum wage (SMN) or in an IRCT, whether or not established in the form of a collective labour agreement, is one of the things that can lead to intervention by the Labour Inspectorate. In such cases the inspectors calculate any amount that is missing and require the employer to pay it. The following table shows the amounts that were calculated in this way during the reference period.

Table 15

Unpaid remuneration calculated by labour inspectors (€), 2009/2012

Year	2009	2010	2011	2012(*)
Basic pay	9,694,453	14,798,039	11,411,311	11,987,684
Extra Christmas month	796,197	6,837,082	2,120,957	2,648,711
Other remuneration	4,116,201	5,001,685	3,570,655	5,018,974
Total	14,606,851	26,636,806	17,102,923	19,655,369

Source: DGAEP
(*)Data collected in accordance with new parameters, including with regard to information and consultation processes.

Answers to queries from the European Committee of Social Rights

1. The Committee requests information on whether the statutory provisions on compensation for overtime apply to all categories of workers. The next report should indicate if there are any exceptions, namely as regards senior state officials or senior managers.

We would note the following with regard to workers who occupy a board director's or senior management post or who have the power to take autonomous decisions, and are not subject to a fixed work schedule [Article 218[1][a], CT][20]:

In these cases, the parties can agree one of the following formats under which the member of staff does not have fixed working hours (Article 219[1], CT):

- The maximum limits on the normal working period do not apply.
- The normal working period can be increased by a given daily or weekly amount.
- The parties agree a given normal working period.

In all these formats under which a worker can be exempt from a fixed work schedule, none of the work he/she does on normal working days is considered overtime [Article 226[3][a], CT].

In cases in which the agreement that includes the exemption also limits the amount of work to be done to a given daily or weekly period, anything exceeding that limit is considered overtime and must be paid as such (Article 226[2], CT).

Workers who are exempt from any work schedule are entitled to a specific additional remuneration determined by IRCT. If there is no applicable IRCT, then this remuneration cannot be less than (Article 265[1], CT):

a) One hour of overtime per day.
b) Two hours of overtime per week, when the exemption regime nonetheless includes complying with the normal working period.

Having said this, board directors and senior managers can agree to waive this specific remuneration (Article 265[2], CT).

2. The report indicates that a Tripartite Agreement for a new system of regulation of industrial relations, employment policy and social protection was signed on 25 June 2008 by Government and virtually all of the social partners, which includes a proposal to allow collective agreements to regulate the manner in which overtime is compensated. The Committee asks whether

[20] The exemption from a fixed work schedule also applies to workers in the following situations: those doing preparatory or complementary work whose nature means it can only be done outside the normal limits on working hours; teleworkers and other cases in which the person regularly works outside the establishment and without immediate control by a hierarchical superior (Article 218[1], CT).

following this Tripartite Agreement it will be possible for collective agreements to include pay rates/or time off in lieu below what is foreseen in the Labour Code.

As we have previously noted, the amendments to the Labour Code made by Law no. 23/2012 mean that collective labour agreements are currently precluded from regulating compensatory rest (Article 229, CT)[21].

Moreover, as we have also already said, any IRCT provisions and labour contract clauses which were made before Law no. 23/2012 came into force and which addressed compensatory rest for overtime done on normal working days, complementary weekly rest days or public holidays are now considered null and void (Article 7[2], Law no. 23/2012).

In addition, the entry into force of the same Law coincided with a 2-year suspension of IRCT provisions and labour contract clauses which said that overtime bonuses should be greater than those established in the Labour Code; and that if such provisions are not amended by the end of this 2-year period, the amounts in question will automatically be halved (albeit they cannot be reduced to below the Labour Code amounts) (Article 7[4] and [5], Law no. 23/2012).

With regard to collective labour agreements entered into after Law no. 23/2012 came into effect, Article 268(1) of the current Labour Code says the following:

"Overtime work shall be paid at the standard hourly rate plus the following additions:
a) On normal working days: +25% for the first hour or fraction thereof, and +37.5% thereafter.
b) On mandatory or complementary weekly rest days or public holidays: +50% per hour or fraction thereof".

Paragraph (3) goes on to say that the above can be waived by IRCTs.

3. On paragraph (4) "Right to a reasonable period of notice for termination of employment in cases of collective redundancy", the information we provided on previous occasions is still valid.

In this respect the Committee concluded that 15 days' prior notice is not reasonable for someone who has been working for more than 6 months.

It is true that under the revised Labour Code (CT) approved by Law no. 7/2009 of 12 February 2009, employers who want to terminate a labour contract as part of a collective redundancy need only give workers who have been employed for less than a year of the dismissal decision 15 days of prior notice (Article 363[1][a], CT).

[21] See above: point (1) of the form on the application of the Revised European Social Charter, with regard to this Article 4§2.

However, collective redundancies are subject to a specific procedure, which includes: (1) a notification phase; (2) an information and negotiation phase; and (3) a decision-making phase (Articles 360, 361 and 363, CT).

In phase 1 the employer notifies: the workers' committee; or if there is none, either the inter-trade-union committee or the trade unions that represent the workers who are to be made redundant; or if there are none of the above, each of the workers themselves (Article 360[1] and [3], CT). In the latter case, the workers then have 5 working days to appoint a committee to represent them, which can have up to 3 members if up to 5 workers are being dismissed, or up to 5 members if more than 5 workers are being made redundant (Article 360[3], CT).

In the 5 days after these notifications, the employer must promote phase 2 – information and negotiation with whatever group represents the workers. The purpose is to reach an agreement on the extent and effects of the measures that are to be taken, along with any others designed to reduce the number of redundancies (Article 361[1], CT). The competent department or service of the ministry with responsibility for the labour area takes part in the negotiations, in which its role is to ensure that both the substantive and the procedural content of the process are in order, and to attempt to reconcile the parties' interests (Article 362[1], CT).

When agreement is reached, or otherwise 15 days after the notification, the employer must give at least 15 days' written notification to each redundant worker who has worked for it for less than a year (Article 363[1][a], CT).

During this notification period, workers are entitled to a time credit of two days per week with no loss of pay (Article 364[1], CT).

We would point out that the prior notification periods laid down in the Labour Code can be regulated by IRCTs, which can establish longer periods (Article 339[2], CT).

In this context we consider that the Portuguese legislation is in conformity with the provisions of Article 4(4) of the revised ESC, which establishes "*the right of all workers to a reasonable period of notice for termination of employment*".

The Committee also asked some other questions with regard to this paragraph:

a) *The Committee asks whether the prior notice periods for trial periods lasting more than 60 days apply to every category of worker.*

The prior notice periods for trial periods apply to all categories of worker covered by the labour contract regime (Articles 111[1] and Article 112, taken in articulation with Article 114, all CT). These periods are as follows:

- 7 days when the trial period has lasted for more than 60 days (Article 114[2], CT).

- 15 days when the trial period has lasted for more than 120 days (Article 114[3], CT).

b) *The Committee asks whether the 15-day prior notice for collective redundancies referred to in paragraph 2 also applies to workers in a trial period, and what the average length of trial periods is.*

The 15-day prior notice period for collective redundancies does not apply to workers in trial periods. During such periods either party can terminate the contract as described above (0, 7 or 15 days' notice).

Article 112 of the Labour Code says the following about the actual length of trial periods:

In the case of indefinite labour contracts:
- 90 days for workers in general.
- 180 days for workers whose post is technically complex, entails a high level of responsibility or presupposes a special qualification, and for those whose functions involve a special degree of trust.
- 240 days for non-board directors and other senior managers.

In the case of fixed-term contracts:
- 30 days when the contract lasts 6 months or more.
- 15 days for contracts with a fixed term of less than 6 months, and for event-limited fixed-term contracts that are not expected to last for more than 6 months.

Service commission contracts can have trial periods, but this must be stipulated in the contract and cannot be for more than 180 days (Article 112[3], CT).

The length of trial periods can be reduced by IRCTs or by written agreement between the parties (Article 112[5], CT).

ARTICLE 5
THE RIGHT TO ORGANISE

1. Regime regulated by the Labour Code

It should be noted that the reference period included the publication of Law no. 7/2009 of 12 February 2009, which approved the revision of the then current Labour Code. The new Law consequently revoked both Law no. 99/2003 of 27 August 2003, which had approved the earlier version of the Code, and Law no. 35/2004 of 29 July 2004, which regulated it[21].

The same year saw the entry into force of Law no. 102/2009 of 10 September 2009, which regulated the legal regime governing the promotion of health and safety at work and the prevention of work-related accidents and illnesses, as provided for in Article 284 of the Labour Code, and revoked (among other things) Executive Law no. 441/91 of 14 November 1991.

On the subject of trade unions and employers' associations, Articles 440 and 443 to 446 of the Labour Code (CT) maintained (albeit with some formal changes) the regime described in the 5th National Report on the Implementation of the Revised European Social Charter. In this respect we would limit ourselves to pointing out that *trade unions and employers' associations are currently regulated together, with both subject to the same norms when the applicable regimes are the same, while maintaining the appropriate specificities – in the case of trade unions, for example, the right to political views, the charging of trade union dues, and the right to engage in union activities within one's company.*

With regard to the formation and registration of both trade unions and employers' associations, their acquisition of legal personality, the content of their articles of association, and the principles governing their organisation and democratic management, the applicable legal regime is now set out in Articles 447 to 451 and 456 (disbandment) of the Labour Code.

The freedom of police personnel to form, belong to and operate trade unions continues to be covered by Law no. 14/2002 of 19 February 2002, which regulated trade union activities by police personnel in the Public Security Police (PSP) force. Law no. 299/2009 of 14 October 2009, which approved the Statute governing the Police Personnel in the Public Security Police, came into force during the reference period.

Turning to the freedom of association enjoyed by members of the armed forces, the reference period also saw the entry into force of Organic Law no. 1-B/2009 of 7 July 2009, which approved the National Defence Law. This says that serving military personnel have the right to form or belong to associations of a

[21] The Labour Code approved by Law no. 7/2009 of 12 February 2009 has since been amended by Law no. 105/2009 of 14 September 2009 (1st amendment), Law no. 53/2011 of 14 October 2011 (2nd amendment), Law no. 23/2012 of 25 June 2012 (3rd amendment) and Law no. 47/2012 of 29 August 2012 (4th amendment). All these legislative acts have been published in the *Diário da República* and can be consulted in this (now exclusively electronic) official journal at http://www.dre.pt/.

non-political, non-party and non-trade-union nature – namely professional associations (Article 31).

At the same time, the same legislative act maintained the restrictions on the rights of members of the armed forces to expression, demonstration, association and collective petition and their legal capacity to stand for election – restrictions that are permitted by the Constitution itself [22] – and the prohibition on engaging in trade union activities (Article 25[2] and [3] and Article 26).

The following police officers' trade unions were formed during the reference period:

Table 16

Nr. of police trade unions registered (2010 – 2012)

Trade union	Year formed
Federação Nacional dos Sindicatos de Polícia (FNSP – National Federation of Police Trade Unions)	2010
Associação Sindical Autónoma de Polícias (ASAP – Autonomous Trade Union of Police Officers)	2012
Sindicato de Agentes da Polícia de Segurança Pública (SPSP – Public Security Police Officers' Trade Union)	2012
Total	3

Source: DGERT

The number of trade unions formed in all sectors of activity was as follows:

Table 17

Nr. of trade unions formed (2009 – 2012)

Year	Number of trade unions formed
2009	6
2010	27
2011	1
2012	5
Total	39

Source: DGERT

The number of employers' associations formed in all sectors of activity was as follows:

[22] See Article 270 of the Constitution of the Portuguese Republic.

Table 18

Nr. of employers' associations formed (2009 – 2012)

Year	Number of employers' associations formed
2009	2
2010	2
2011	2
2012	0
Total	6

Source: DGERT

2. Public sector employment regime

The Constitution of the Portuguese Republic (CRP) grants workers: "*the freedom to form, belong to and operate trade unions as a condition and guarantee of the building of their unity in defence of their rights and interests"* (Article 55[1]).

The content of this freedom is elaborated on:

a) In Articles 55 *et seq*., CRP;
b) In the Labour Code (with regard to the private sector);
c) In the Regime governing Labour Contracts for Public Functions – RCTFP[23] (especially devoted to the public sector).

As developed in the RCTFP, enjoyment of this freedom presupposes both the freedom to form trade unions and the so-called freedom of membership.

In order to collectively defend and pursue their interests, Public Administration staff can form:

a) Workers' committees and subcommittees; and
b) Trade unions (see Article 289, RCTFP).

As is also the case with companies, the legislator has thus created a *"dual channel"* to ensure the representation of public sector workers.

In addition, the RCTFP also safeguards the freedom of membership in a dual-facetted manner:

1. Negatively, by allowing people not to belong to (or remain in) any trade union – Article 312, RCTFP.

[23] Annexe I to Law no. 59/2008 of 11 September 2008.
Note: Law no. 59/2008 of 11 September 2008 has since been amended by Law no. 3-B/2010 of 28 April 2010, Executive Law no. 124/2010 of 17 November 2010, Law no. 64-B/2011 of 30 December 2011, and Law no. 66/2012 of 31 December 2012.

The RCTFP strengthens this so-called negative right by expressly prohibiting discriminatory acts:

"All agreements or acts that seek the following shall be deemed null and void:

a) To subject the worker's employment to the condition that he/she joins, or does not join, a trade union or resigns from the one he/she belongs to;

b) *To dismiss a worker, change his/her place of work or in any way prejudice him/her due to the exercise of the rights regarding participation in organisational structures intended for collective representation purposes or to his/her membership or non-membership of a trade union"* (Article 291, RCTFP).

2. Positively, in the event the worker wants to belong to a trade union, by ensuring respect for the right to choose between the possible alternatives (see Article 312[1], RCTFP).

The RCTFP also guarantees the following collective projections of the freedom to organise:

a) The freedom to decide the organisation and internal regulations of trade unions. This freedom applies to drawing up unions' articles of association – which are not subject to administrative approval – and also to the issuing of their internal regulations and the independence of their management from any outside oversight (see Articles 313 *et seq*., RCTFP).

b) The right of workers to engage in trade union activities at their public-sector employer. Both staff and trade unions have the right to engage in such activities within their organ, department or service, namely via union delegates and committees and inter-union committees (Article 330[1], RCTFP).

c) Collective autonomy and self-oversight
Trade unions also have the right to engage in *"collective bargaining"* – i.e. to negotiate and enter into collective labour agreements [see Article 310[1][a], RCTFP].

There are two essential aspects to this right:

- The freedom to take the initiative of conducting collective bargaining, which means the right to decide what claims or expectations it is opportune or necessary to pursue in contractual terms (Article 351, RCTFP).

- The so-called "freedom of stipulation" – i.e. the ability to contractually concede rights and accept duties (Article 351, RCTFP).

The right to organise – Restrictions

Article 27[1] of the Portuguese Constitution says that everyone has the right to freedom and security, while Article 46 enshrines the freedom of association.

As such, the Chapter of the Constitution on workers' rights, freedoms and guarantees (Chap. III) includes: Article 55 on freedoms concerning trade unions, paragraph (1) of which says: "*Workers are accorded the freedom to form, belong to and operate trade unions as a condition and guarantee of the building of their unity in defence of their rights and interests (...)*"; Article 56 on trade union rights and collective agreements ; and Article 57 on the right to strike and the prohibition of lock-outs.

Article 18(1) of the CRP says that fundamental rights and freedoms like these are unalienable and directly applicable. However, paragraphs (2) and (3) of the same Article do allow the legislator to impose some restrictions on them when there are good reasons for doing so, namely in the cases in which the Constitution itself provides for this and in accordance with the principles of necessity and proportionality.

Article 270 of the CRP follows on from this by saying that: "*Strictly to the extent required by the specific demands of the respective functions, the law may establish restrictions on the exercise of the rights of expression, meeting, demonstration, association and collective petition by full-time military personnel and militarised agents on active service and agents of the security services and forces, and on their legal capacity to stand for election. In the case of the security forces, even when their right to form trade unions is recognised, the law may preclude the right to strike*".

The details of this subject, the framework for which is provided by a number of special legislative acts, were covered in the 5th National Report.

In the case of the Republican National Guard (GNR), it is important to note that Law no. 39/2004 of 18 August 2004 addresses the principles and general bases governing the exercise by GNR personnel of the right to form, belong to and operate professional associations.

However, Law 39/2004 does not provide for any exercise of the right to form, belong to and operate trade unions, because the members of the GNR are military personnel – soldiers – and as such do not possess this right. The legal basis for this preclusion can be found in the following legislative acts:

1. The Law governing the General Bases of the Statute applicable to Military Personnel (Law no. 11/89 of 1 June 1989) imposes military status and its particularities on GNR personnel (Article 16). This in turn means that the latter are required to comply with the National Defence Law (Article 7);

2. Article 27(3) of the Law governing National Defence and the Armed Forces (Organic Law no. 1-B/2009 of 7 July 2009) says that: "*The constitutional norms regarding workers' rights shall not be applicable to serving military personnel when the exercise of those rights presupposes enjoyment of the fundamental rights referred to in the following Articles, to the extent that they are restricted by them, namely the freedom to form, belong to and operate trade unions, the right to create and belong to workers' committees, and the right to strike*".

Having said this, the GNR is also subject to the legal framework provided for in Law no. 39/2004 of 18 August 2004 itself, which, as we have already mentioned, lays down the principles and general bases governing the exercise by GNR personnel of the right to form, belong to and operate professional associations. This Law specifies the restrictions that are imposed in accordance with the Constitution, and is in turn regulated by Executive Law no. 233/2008 of 2 December 2008, which also develops those restrictions in more detail.

One of the main limitations is that professional associations of GNR personnel cannot possess a political, party political or trade union nature (Articles 1[2] and 6[d], Law no. 39/2004). At the present time there are four professional associations of Republican National Guard personnel.

In the case of the Public Security Police (PSP) the framework for the question of the right to organise is addressed not only by the CRP, but also in Law 6/90 of 20 February 1990 (the Law governing Membership of Associations in the PSP, the general bases for which are regulated by Executive Law no. 161/90 of 22 May 1990), and Law no. 14/2002 of 19 February 2002, which regulates the exercise of the freedom to form, belong to and operate trade unions and the rights of collective bargaining and participation (in the definition of the rules that apply to them) by PSP personnel who actually engage in policing functions.

PSP personnel have the right to form professional associations, which are in turn entitled to represent their members in the defence of their statutory, social and deontological interests, and to take part in the definition of the statute governing the profession and of the conditions applicable to police activities, for example (Law 6/90).

PSP personnel also enjoy the freedom to form, belong to and operate trade unions, as provided for in the CRP and the regime laid down in Law no. 14/2002 of 19 February 2002, as rectified by Declaration of Rectification no. 15/2002 of 26 March 2002. All of which means that these rights are duly safeguarded in Portuguese law in general and specifically in that applicable to the organisation and *modus operandi* of the Public Security Police (PSP).

The PSP Social Balance Sheet, which is available at the official PSP website www.psp.pt, provides data on questions linked to pay and other aspects of the rights in question.

We would particularly note the following:

- Both the exercise of the freedom to form, belong to and operate trade unions, and the rights of collective bargaining and participation, by PSP personnel who engage in policing functions are regulated by Law no. 14/2002 of 19 February 2002, as rectified by Declaration of Rectification no. 15/2002 of 26 March 2002.

- In terms of normative principles, this legislation is designed to ensure that PSP personnel who actually do policing work enjoy the rights of collective bargaining and participation, while simultaneously imposing measures that are more restrictive of the exercise of the freedoms linked to trade unions than those applicable to other Public Administration staff – restrictions that are justified by the specific nature of the police's mission and the demands inherent therein. Of particular importance in this respect is the prohibition on striking.

Twelve (12) trade union organisations and one (1) National Federation of Police Trade Unions (FNSP) are linked to the PSP.

The Staff of the Borders and Immigration Service (SEF) are subject to the Regime governing Labour Contracts for Public Functions (RCTFP – Law no. 59/2008 of 11 September 2008). The only limitation on their exercise of these rights is that they are required to provide a minimum level of service during strikes.

The other bodies that belong to the Ministry of the Interior (MAI) are either also subject to the RCTFP, or are governed by the Labour Code (approved by Law no. 7/2009 of 12 February 2009). As with SEF, their rights in this field are not subject to any limitation other than the need to provide a minimum level of service during strikes in certain cases.

Answers to queries from the European Committee on Social Rights

1) The Committee has found that where discrimination on grounds of union membership occurs domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victims (Conclusions 2004, Bulgaria). Owing to the lack of information on that aspect in the report the Committee reiterates the request made in its previous conclusion as to penalties imposed on employers who breach the prohibition of discrimination.

First of all, in this regard we would point out that employers are not allowed to engage in any form of discrimination, be it directly or indirectly – in this case, based on trade union membership – and that doing so is classified as a very serious administrative offence (Article 25, CT).

A discriminatory act against a worker or job seeker because of any factor – again, in this case, on the grounds of trade union membership – gives that person the right to compensation for both material and non-material damages, under the general terms of the law (Article 28, CT).

As we said elsewhere, both any act designed to subject a worker's employment to the condition that he/she join, leave or not join a trade union, and his her dismissal, transfer or any other negative consequence due to his/her trade union membership, are not only prohibited, but also null and void. Breach of this prohibition is also classified as a very serious administrative offence (Article 406, CT).

Besides this, employers cannot either individually or via their associations promote the formation, maintain, or in any way finance the operation of organisational structures designed to collectively represent workers, nor can they take any part in their organisation or management or prevent them from exercising their rights, or make it difficult for them to do so (Article 405, CT).

What is more, the violation of trade union autonomy or independence and the undertaking of a discriminatory act are both crimes that are punishable by a fine of up to 120 daily units (Article 407, CT).

Any board director, director, manager or worker in a position of authority who is responsible for any of the above acts is subject to imprisonment for up to a year (Article 407, CT).

2. The Committee previously found the situation in conformity with Article 5 as the exercise of trade union prerogatives did not appear to be dependent on the fulfillment of any criteria of representativeness in domestic law. It notes however from an individual observation of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2009 that the CEACR had previously asked the Government to determine and establish objective, precise and predetermined criteria to evaluate the representativeness and independence of employers' organizations and trade

unions. In this respect the CEACR also reiterated its request that Act No. 108/91 of the Economic and Social Council (CES) concerning the Permanent Commission for Social Partnership (CPCS) be amended so that it does not refer by name to trade unions which are to be members of the CES and CPCS. In the light of the information available in the CEACR's individual observation, the Committee asks that the next report clarify the situation in order to show whether criteria of representativeness or other criteria are used to create a distinction between trade unions.

The information provided in response to "Observation, 2008" made by the Committee of Experts in the ILO Report submitted in 2010 by the Government with regard to the Convention (no. 98) concerning application of the principle of the right to organise (1949), is still valid.

On the subject of the representativeness of the relevant organisations, in this report the Portuguese Government said: "*The Committee of Experts maintained the observation that the legislation on the make-up of the Economic and Social Council (CES) and of the Permanent Social Concertation Commission (CPCS, which forms part of the Council, where it is the organ with the competence to promote dialogue and concertation between the social partners, contribute to the definition of the income, price, employment and vocational training policies) should be modified in such a way as not to mention the name of workers' organisations that belong to both bodies, and to establish objective, precise and predetermined criteria with which to assess the representativeness and independence of employers' and workers' associations.*

The Committee took note of the information in the 2008 report that, in April 2008 and within the context of the negotiations on the principle of the revision of the existing labour legislation, the Government had proposed to the trade union and employers' confederations represented on the CPCS that there be an agreement on general, abstract and permanent criteria for trade union and employer representativeness. However, to date this has not happened. Finally, the Committee said that it hoped the CPCS would look at these questions with a view to future legislative reforms, and asked the Government for information on the matter.

Neither the de facto *situation nor the legislation have changed since the 2008 report was submitted. The Government is aware that the President of the Economic and Social Council took the initiative of promoting general reflection on the Council's composition and that the Council's members have cooperated with him in this. The Government is monitoring this initiative with interest, although it is unable to foresee either its results, or any proposals or recommendations that the Council or its President may make*."

ARTICLE 6
THE RIGHT TO BARGAIN COLLECTIVELY

§ 1) Joint consultation between workers and employers

1.1 Regime regulated by the Labour Code

Albeit with some formal changes, the current Labour Code (CT) maintains the legal regime contained in earlier legislation, which was described in the 1st and 5th Reports.

At the risk of repeating the information given in those Reports, we would recall that joint consultation is conducted under the aegis of the Economic and Social Council (CES), with a particularly important role played by one of its bodies – the Permanent Social Concertation Commission (CPCS).

At the corporate level, the legal regime governing workers' committees is now regulated by Articles 415 to 439 of the Labour Code, while the regime on the creation of a European works council or the procedure for informing and consulting workers of Community-scale enterprises or groups of enterprises is now set out in a specific Law (Article 404[d], CT)[24].

At the same time, during the collective bargaining process both trade union and employers' representatives must consult the workers/employers in question, as necessary and in a timely manner (Article 489[2], CT).

In the health and safety at work field there must be cooperation both between the state and the organisations that represent workers and employers, and, at the level of each enterprise, establishment, department or service, between the employer and the workers and their representatives. The regime governing the promotion of health and safety at work is currently regulated by Law no. 102/2009 of 10 September 2009 (see the latter's Article 6[4]).

Article 8(1) of the same Law says that as part of the promotion and assessment at national level of policy measures in the health and safety at work field, there must be consultation of and participation by the most representative employers and workers' organisations. Paragraph (2) goes on to require that the employers and workers' organisations with seats on the CPCS include:

> a) The National Council for Hygiene and Safety at Work (CNHST).
> b) The Working Conditions Authority's (ACT) Consultative Council for the Promotion of Health and Safety at Work (CCPSST).

[24] Law no. 96/2009 of 3 September 2009, which transposed Directive no. 2009/38/EC of the European Parliament and the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (EUR-Lex).

1.2 Public sector employment regime

Where the Public Administration is concerned, the question of parity between, or joint consultation of, workers and employers does not pose itself in the same ways as it does in the private sector approach.

We have therefore chosen to summarise the various channels for the consultation (and participation) of workers (and the bodies that represent them).

Law no. 23/98 of 26 May 1998 established the regime governing collective bargaining and participation by Public Administration staff, which currently rests on the following pillars:

a) The object of the rights of collective bargaining and participation is the creation and amendment of the Statute governing Public Administration Workers and the monitoring of its implementation (Article 1[2]).
b) Public Administration workers are guaranteed the right to bargain collectively with regard to their Statute (Article 151]). The Law lists both the subjects that must be the object of collective bargaining, and the negotiation procedure (Articles 6 and 7).
c) Law no. 23/98 created a conflict solving mechanism – 'supplementary negotiation' (Article 9).
d) The Law also identifies the areas and subjects in which there is a right of participation (Article 10).
e) The only trade unions that can exercise these rights are those whose articles of association identify them as representing the interests of Public Administration workers , and they must be duly registered(Article 2).
f) The Administration and trade unions must consider, discuss and resolve the questions between them from a common overall perspective that takes account of both all the different departments, services and bodies and all the public servants concerned, with respect for the principle of the pursuit of the public interest and with a view to dignifying the Public Administration and improving the socioeconomic conditions of its staff (Article 4).

Portuguese law also establishes other mechanisms for worker (and trade union) consultation and participation.

We will look at this in more detail under Article 22 of the Revised European Social Charter. For now, we will simply note that participatory channels are in place for:

a) Workers' committees (see Article 232 *et seq.* of the Regulations[25]).
b) Trade union delegates (see Article 337[2], RCTFP).
c) Workers' health and safety representatives (see Article 224[3], RCTFP).

[25] Annexe II to Law no. 59/2008 of 11 September 2008.

§ 2) Voluntary negotiation processes

2.1 Regime regulated by the Labour Code

The right to enter into collective labour agreements is enshrined in the Constitution of the Portuguese Republic (Article 56, CRP).

The current Labour Code (CT) has maintained the essence of the previous legal regime on collective bargaining, which is now set out in Articles 404, and 405 *et seq*. (subjects), 476 to 484 (collective labour regulation instruments – IRCTs), and 485 *et seq*. (collective bargaining). The following aspects are especially noteworthy:

- Workers' collective representation bodies must be independent of the state, political parties, religious institutions, and associations of any other nature, none of which may interfere in their organisation and management. Nor may any of the above fund one another (Article 405, CT).

- The state must promote collective labour agreements, in such a way that they apply to the largest possible number of workers and employers (Article 485, CT).

- The negotiation process begins with one party making a proposal to enter into or revise a collective agreement. The other party must then respond in writing, setting out its own arguments, within a time limit stipulated by law (Articles 486[1] and 487[1], CT).

- Whenever possible, the parties must prioritise both the negotiations about pay and the organisation of working time (including with a view to agreeing the overall resulting increase in costs), and those about health and safety at work (Article 488[1], CT).

- IRCT provisions on the following matters cannot be less favourable than the equivalent legal provisions: a) the rights to/of personality, equality and non-discrimination; b) the protection of parenthood; c) work by minors; d) workers with reduced working capacity, disability or chronic illness; e) student workers; f) the employer's duty to inform; g) the limits on the length of normal daily and weekly working periods; h) the minimum length of rest periods, including annual holidays; i) the maximum duration of night work; j) the way in which workers are paid and the respective guarantees; l) the chapter on the prevention and remedying of accidents at work and occupational illnesses, and the legislation that regulates it; m) the transmission of companies and establishments; and n) the rights of workers' elected representatives (Article 3[3], CT). The most favourable treatment principle applies to all of these more important matters, which are key elements of the labour relationship.

- During the collective bargaining process the parties must respect the principle of good faith, namely by responding to proposals and counter-

proposals as quickly as possible, complying with the negotiation protocol if there is one, and having representatives take part in meetings and other contacts intended to prevent or settle conflicts (Article 489[1], CT).

- Each party must provide the other with the items or information the latter requests, to the extent that this does not prejudice the defence of its own interests (Article 489[3], CT).

- Trade unions may: give the body that represents workers in an enterprise with a certain number of staff powers to enter into contracts that bind the union's members there, and allow workers' committees to negotiate and sign collective labour agreements for and on behalf of the unions in question. Having said this, to date there is no record of a collective agreement signed with recourse to this prerogative (Article 491[3], CT).

- Either party can unilaterally repudiate a collective agreement by notifying the other party of its intention in writing, on condition that this is accompanied by a proposal for the overall revision of the agreement. However, the mere act of making a revision proposal does not constitute repudiation (Article 500, CT).

- Lastly, Executive Law no. 126-C/2011 of 29 December 2011 created the Labour Relations Centre (CRL) – a tripartite collegial body whose mission is to support collective bargaining (Article 37[1]). The CRL's composition, competences and *modus operandi* are set out in Executive Law no. 189/2012 of 22 August 2012, which approved its organisational structure.

Particularly significant among the measures adopted with a view to the implementation of the legal framework are the Tripartite Agreement for Competitiveness and Growth, which was signed on 22 March 2011 by the Government, Confederação do Comércio e Serviços de Portugal (Portuguese Retail and Services Confederation – CCP), Confederação Empresarial de Portugal (Confederation of Portuguese Industry – CIP), Confederação do Turismo Português (Confederation of Portuguese Tourism – CTP), and União Geral de Trabalhadores (General Union of Workers – UGT). The Agreement contains a range of objectives and commitments, including that of making collective bargaining more dynamic. The following stand out:

- The goal of reconciling the predominance of sectoral collective bargaining with decentralisation, both in its direct form and in a number of specified domains at the sectoral level, so that they can develop in a decentralised way.

- The Government and the Social Partners undertook to make collective bargaining in the private sector more dynamic, with incentives for the revision of existing collective agreements under the terms and within the time limits they themselves provide for.

- The Government undertook to take every step in its power to support the development of collective bargaining and promote the effective implementation of the existing rules.

- The Government agreed to create the above mentioned Labour Relations Centre, which is a tripartite body whose mission is to support the socioeconomic, negotiator training and negotiation-content analysis aspects of social dialogue.

- The Government also said that it would optimise the resources in the mediation and conciliation field, so as to ensure compliance with legal time limits, improve quality of service, and seek a greater degree of devolution of the applicable actions.

- Another important outcome was the Commitment to Growth, Competitiveness and Employment, which the Government and the majority of the Social Partners made on 18 January 2012. Among other undertakings, it included the agreement to stimulate collective bargaining, in its role as a fundamental instrument for regulating labour relations.

In pursuit of all this the parties to the Agreement committed themselves to the following measures:

- To allow collective labour contracts to say that certain matters, such as geographic and functional mobility, the organisation of working time, and pay, can be regulated by the bodies that represent workers within a given enterprise, including workers' committees and trade union committees. Such contracts can define the terms and conditions under which this can occur.

- To require that agreements resulting from such negotiations must obligatorily be deposited, and be published in the *Boletim do Trabalho e Emprego.*

- To allow trade unions to delegate the powers needed to enter into collective agreements to the bodies that represent workers within enterprises, on condition that the latter employ at least 150 staff.

- To make collective bargaining more dynamic. In this respect:
    - The Government undertook to make the conciliation and mediation services more operable, and to use the administrative mechanisms it has available.
    - The Social Partners agreed to seek to enter into bilateral agreements in which they take on responsibilities for the promotion of collective bargaining.

At the same time we should emphasise that the Labour Code allows collective agreements to be extended by ministerial order, to employers and workers in the same sector of activity and professional field, when justified by appropriate

social and economic circumstances – i.e. when, in the light of the scope of the instrument in question, their situation is the same or similar (Article 514).

As such, and given that when it comes to promoting collective bargaining, ministerial extension orders are particularly important to the harmonisation of the terms and conditions applicable to both parties in labour agreements, we would note Council of Ministers Resolution no. 90/2012, which was published in Series I of *Diário da República* (the Official Journal) no. 211 of 31 October 2012. This defines the cumulative required minimum criteria for the issue of ministerial orders extending collective labour agreements, along the lines of the commitment the Government made in the Memorandum of Understanding on Specific Economic Policy Conditionality.

As required by the Memorandum, the Government undertook to define clear criteria for the extension of collective agreements.

The Memorandum specifically says that the employers' associations which have entered into collective agreements must represent at least 50 % of the workers in the sector for an extension to be operable, albeit the decision to extend must also take account of its implications for the competitiveness of the enterprises in that sector.

The following data refer solely to the private sector. The reference period saw the signature of the following IRCTs:

Table 19

Nr. of collective labour regulation instruments entered into (2009 to 2012)

IRCT	2009	2010	2011	2012
Collective labour contracts	139	140	86	36
Collective labour agreements	21	23	24	15
Company agreements	89	64	48	35
Voluntary arbitration decisions	1	-	1	1
TOTAL	250	227	159	87

Source: DGERT

Geographically, it is worth noting that the following number of collective labour agreements possessed a national scope:

- In 2009 - 154
- In 2010 - 164
- In 2011 - 99
- In 2012 - 60

2.2 Public sector employment regime

Law no. 12-A/2008 of 27 February 2008 (the LVCR) expressly says that three different formats of public legal employment relationship can exist (or coexist): appointment (Articles 9 to 19); the labour contract for public functions (Articles 9 and 20 to 22); and the service commission (Articles 9, 23 and 24).

Within this new framework the contract is now the standard legal bond for the vast majority of workers with a public legal employment relationship; appointments and service commissions may only be made in cases in which the law expressly provides for them (see Articles 9[4] and 10).

Article 81 of the LVCR lists all the normative sources of the labour contract for public functions, and it expressly states that they are a: *"normative source in the matters which the law allows collective labour agreements to regulate"* (Article 81[2]). In this regard the RCTFP is more rigorous in its reference to IRCTs: *"The labour contract for public functions, hereinafter referred to as the 'contract', is especially subject to collective labour regulation instruments, under the terms of Article 81(2) of Law no. 12-A/2008 of 27 February 2008"* (Article 1).

As Article 2(1) of the RCTFP highlights, collective labour regulation instruments (IRCTs) can be negotiated or non-negotiated.

The following are negotiated IRCTs:

- Collective labour agreements (the most important form of IRCT). These are subdivided into:

    a) Collective career agreements – applicable to a career or set of careers, regardless of the organs, departments or services in which the staff in that/those career(s) serve.

    b) Collective agreements for a public employer (ACEEP) – applicable to a public sector employer, whether or not it possesses legal personality (Article 2[3], RCTFP).

- Adherence agreements. Article 370(1) of the RCTFP says that trade unions, and in the case of collective agreements for a public employer, the applicable public employers can: *"adhere to current collective labour agreements or arbitration decisions"*.

- Voluntary arbitration decisions. At any time the parties can also agree to submit labour-related issues, in particular those arising out of questions linked to the interpretation, completion, entry into or revision of a collective labour agreement, to arbitration (Article 371, RCTFP).

The non-negotiated types of IRCT are:

- Extension regulations – The scope of the application of collective labour agreements and arbitration decisions can be extended after their entry into force by 'extension regulations' (Article 378, RCTFP).

- Required ('necessary') arbitration decisions – Required arbitration occurs when either party in negotiations on a collective labour agreement notifies both the other party and the Directorate-General of the Administration and Public Sector Employment (DGAEP) that it is invoking this mechanism (Article 374[1], RCTFP).

The labour agreement negotiation process begins when one party sends the other a proposal for a new agreement or the revision of an existing one. Such proposals must be made in writing and be accompanied by sufficient reasoning (Article 351[2], RCTFP).

The recipient must respond, also in writing and setting out its own arguments, within 30 days of receipt (unless some other time limit has already been agreed, or is suggested by the author of the proposal). The response must express: *"a position with regard to all the clauses in the proposal, which it must accept or refuse or else make a counter-proposal"* (Article 352[1] and [2], RCTFP).

After a preliminary discussion phase in which the bases for conversation and the goalposts within which it will take place are debated, there begin the actual negotiations – i.e. the phase in which the parties' representatives interact in order to bring their initial positions closer together.

If the negotiations lead to agreement about all the matters under discussion, the text is signed and deposited with the DGAEP (Article 356[1], RCTFP). If not, there begins a phase that can lead to recourse to the peaceful conflict-settlement processes provided for by law (Articles 383 *et seq*., RCTFP).

The following IRCTs were entered into or approved during the reference period):

Table 20

Nr. of collective labour regulation instruments entered into (2009 – 2012)

IRCT	2009	2010	2011	2012	TOTAL
Collective career agreements	2	1	1	1	5
ACEEPs	0	12	10	4	26
Adherence agreements	0	0	0	0	0
Voluntary arbitration decisions	0	0	0	0	0
Extension regulations	0	3	1	0	4
Required arbitration decisions	0	0	0	0	0
TOTAL	2	16	12	5	35

Source: DGAEP

§ 3) Conciliation and voluntary arbitration

3.1 Regime regulated by the Labour Code

The private-sector conciliation and arbitration procedures were described in the answers to the European Committee of Social Rights' 2010 Conclusions[26].

Having said this, it is important to note that the present reference period saw the approval of Executive Law no. 259/2009 of 25 September 2009, which regulated the legal regime governing both compulsory and required arbitration, and also arbitration with regard to minimum services during strikes and the means needed to ensure them. Among others, this Executive Law contains the rules on the composition and selection of lists of arbitrators, and the formation and *modus operandi* of compulsory and required arbitration tribunals.

The following decisions were given by arbitration tribunals during the reference period:

- Compulsory arbitration decision no. 1/2008-CCT, re Associação Portuguesa das Indústrias Gráficas, de Comunicação Visual e Transformadoras do Papel (Portuguese Association of Graphics, Visual Communication and Paper Transforming Industries – APIGRAF) and Sindicato dos Trabalhadores das Indústrias de Celulose, Papel, Gráfica e Imprensa (Cellulose, Paper, Graphics and Press Industry Workers' Trade Union – STICPGI), published in *Boletim do Trabalho e Emprego* no. 40 of 29/10/2009.

- Compulsory arbitration decision no. 1/2010 – AO, on the difference that arose in the revision of the collective labour contract between Associação Portuguesa de Hospitalização Privada (Portuguese Private Hospitalisation Association – APHP) and Federação dos Sindicatos dos Trabalhadores de Serviços (Federation of Service Workers' Trade Unions – FETESE), published in *Boletim do Trabalho e Emprego* no. 15 of 22/4/2011.

- In this respect we would also note the Ruling which the Lisbon Court of Appeal handed down on 06/07/2011 (available at www.dgsi.pt), in which the Court found some of the clauses in the above-mentioned arbitration decision no. 1/2010 – AO null and void because they were in breach of imperative legal norms. The Court partially revoked the decision and sent the case to the Economic and Social Council under the terms and for the purposes of Article 22(3) of Executive Law no. 259/2009 of 25 September 2009.

3.2 Public sector employment regime

A collective labour conflict is said to exist whenever an organised category of workers and an organised category of employers say (or just one of them says)

[26] File 8.29.42.20.2011.4. (Information report no. 32/11-DSCT).

that they want different things with regard to existing (or future) collective regulations on labour relations.

A distinction is commonly made between two types of collective conflict:

a) Legal conflicts, which are linked to the interpretation and implementation of existing legal norms.
b) Conflicts of interest, which concern changes to existing norms or the creation of new precepts.

Legal conflicts of this kind that arise within the framework of the RCTFP can be settled by:

a) A joint committee created by the collective agreement itself.
b) Conciliation.
c) Mediation.
d) Voluntary arbitration (see Articles 349, 371, 384, and 388, RCTFP).

The parties are responsible for choosing the mechanism that offers the best response to the conflict in the circumstances.

Conflicts of interest within the ambit of the RCTFP can be resolved by:

a) Conciliation.
b) Mediation.
c) Voluntary arbitration (agreed by the parties).
d) Required arbitration (initiated when one party so notifies the opposing party or parties and the DGAEP).

As we said, within the framework of the RCTFP the parties can resort to conciliation in order to solve both legal conflicts and conflicts of interest. This can occur when the parties so agree, or when just one asks for it (Article 385[1], do RCTFP).

When the parties agree on conciliation, they can regulate the process; if they do not do so, then the procedure is that set out in Articles 385 and 386 of the RCTFP (see Article 384[2], RCTFP). When only one party asks for conciliation, the procedure is automatically that laid down in Articles 385 and 386.

When conciliation is requested by one party, there is an important distinction (with different procedures) between cases in which a proposal to enter into or revise a collective agreement has gone unanswered on the one hand, and any other situation on the other.

The recipient of a proposal must respond in writing and setting out its own arguments within 30 days, unless some other time limit has already been agreed, or is suggested by the author of the proposal (Article 352[1], RCTFP). Failure to respond or to make a counter-proposal within this time limit (and as laid down in Article 352[2] of the RCTFP) entitles the proposing party to ask for

conciliation without any further conditions [see Articles 352[3] and 385[1][b], RCTFP].

Whenever a conciliation request is based on any other reason, the procedure begins with the sending of 8 days' prior notification in writing to the other party [see Article 385[1][b], RCTFP]. Once the 8 days have passed, the interested party can then contact the DGAEP, which will appoint an arbitrator by lot.

The parties to collective conflicts (both legal conflicts and conflicts of interest) can submit them to mediation at any time; to this end they can opt between public mediation services and other labour mediation formats (see Article 388[1] and [2], RCTFP).

If there is no agreement, a month after conciliation begins any party can ask any person on the official list of presiding arbitrators to act as mediator (see Article 388[3], RCTFP). In this case the party must immediately specify the object of the desired mediation (Article 388[4], RCTFP).

Unless the parties agree otherwise, the mediation process then proceeds in accordance with Articles 389 and 390 of the RCTFP.

The parties can at any time also agree to submit *"labour-related questions that result in particular from the interpretation, completion, entry into or revision of a collective labour agreement"* to (voluntary) arbitration (Article 371, do RCTFP).

Voluntary arbitration is governed by agreement between the parties, or otherwise by Article 372 of the RCTFP (see Article 371, RCTFP). Either way there must be an arbitration agreement or 'convention' that immediately determines the object of the dispute and subjects its resolution to an arbitration decision.

Required or 'necessary' arbitration is designed to lead to entry into a (new) collective labour agreement, and begins when one party so notifies the other(s) and the DGAEP (see Article 374[1], RCTFP).

The DGAEP monitors the process from beginning to end, but the process starts without any need for a prior decision (by the DGAEP or any other entity). Article 374(1) of the RCTFP expressly states that required arbitration is initiated when one party sends the duly reasoned notifications to that end.

However, the DGAEP can be called on to intervene early in the process, with regard to the formation of the arbitration tribunal, when it must concretely verify the legal preconditions for carrying out the appointment by lot (general requisites regarding arbitration; and specific requisites regarding the lottery itself).

The general requisites for there to be a required arbitration are:

- Procedural requisites: The communication referred to in Article 374(1) of the RCTFP must have been sent to the other party(ies) and the DGAEP, and must set out the grounds for the sending party's position.

- Substantial requisites:
  a) A collective labour agreement must have ended over a year ago and no new one must have been entered into (Article 364[5], RCTFP).
  b) There must be a proposal for a new agreement, and there must have been: *"prolonged and unfruitful negotiations"* (expression based on ILO guidelines).

The following collective conflict resolution mechanisms were initiated during the reference period:

Table 21

Nr. of collective conflict resolution (RCC) mechanisms initiated (2009 – 2012)

RCC MECHANISMS	2009	2010	2011	2012	TOTAL
Conciliation	2	15	25	21	63
Mediation	0	1	0	1	2
Voluntary arbitration	0	0	0	0	0
Required arbitration	0	0	0	0	0
TOTAL	2	16	25	22	65

Source: DGAEP

§ 4) Collective action

4.1 Regime regulated by the Labour Code

The general legal framework for the regime governing strikes was described in the 1st Report, while the 5th Report set out the reforms provided for in the Tripartite Agreement for a New System for Regulating Labour Relations, the Employment Policies and Social Protection, which was signed in June 2008.

The regime governing strikes and the prohibition on lock-outs is now laid down in Articles 530 to 545 of the Labour Code (CT).

On the prior notification of strikes, we would note that Article 534(4) of the CT says that if the services mentioned in Article 534(3)[27] are defined in an IRCT, the latter can dispense the prior notice from including a proposal with regard to those services (the notice must specifically refer to the IRCT in question).

We would note that strike committees are included in the case referred to in Article 531(2) on the entities that are invited to take part in the negotiation on the provision of the minimum services that are indispensable to the fulfilment of essential social needs (Article 537[1], CT) and the provision of the services needed to ensure the safety and maintenance of equipment and facilities (Article 537[3], CT).

[27] The prior notice must contain a proposal defining the services needed to maintain equipment and facilities. If the strike involves an enterprise or establishment designed to satisfy indispensable social needs, there must also be a proposal with regard to minimum services.

We would also particularly point to the following changes in the process of defining the services that must be ensured during strikes:

- Article 538(2) of the CT now says that whenever necessary, the competent department or service of the ministry with responsibility for the labour area should be assisted by its counterpart at the ministry with responsibility for the sector of activity in question, in the negotiations to reach an agreement on minimum services and the means needed to ensure them.

- Article 538(3) of the CT says that when a strike is substantially the same as at least two previous strikes in which arbitration defined the same minimum services, the department or service referred to in Article 538(2) should propose during the negotiations that the parties accept the same definition (any refusal to accept this must be noted in the minutes recording the negotiations).

- Article 538(4)(b) of the CT (with the text given to it by Law no. 105/2009 of 14 September 2009) now says that in the case referred to in Article 538(1) to (3), if agreement is not reached in the three days following the prior notice of a strike and the situation concerns a company in the state-owned business sector, the minimum services and necessary resources must be defined by an arbitration tribunal formed in accordance with a specific law governing compulsory arbitration (Executive Law no. 259/2009 of 25 September 2009, which regulated both compulsory and required arbitration, and also arbitration with regard to minimum services during strikes and the means needed to ensure them).

4.2 Public sector employment regime

Portuguese law has taken a clear position in relation to the most characteristic forms of joint action ('coaction'). The Constitution enshrines the right to strike (Article 57, CRP), and summarily prohibits lock-outs (Article 57[4]).

The ordinary law regulates the exercise of this right (Articles 530 *et seq*., CT; Articles 392 *et seq*., RCTFP). Both the Labour Code (see Article 544) and the RCTFP (see Article 406) repeat the prohibition on lock-outs.

The right to strike means that any worker can stop fulfilling his/her contractual obligations under certain conditions. In this regard Article 398(1) of the RCTFP says:

"With regard to the workers who join it, a strike suspends the relations arising out of the (labour) *contract – particularly the right to remuneration – and consequently releases them from the duties of subordination and regular attendance at work"*.

A strike thus places workers *"outside their contract"* (in terms of the effects that characterise the latter), although the following continue to exist:

a) The legal employment bond, and the worker's length of service (Article 398[3], RCTFP).
b) Rights, duties and guarantees that do not presuppose actually working (Article 398[2], RCTFP).
c) The rights provided for in legislation on social protection and the benefits due as a result of work-related accidents and occupational illnesses (Article 398[2], RCTFP).

Striking does, however, have other types of effect (economic, social, etc.): effects in the employer's sphere (public employers); effects in the sphere of citizens/users; and multiplicative effects on society in general. Indeed, it is commonly said that when a strike affects essential services, the conflict involves a *"triangular relationship"* between workers (and trade unions), employers and users.

It is precisely the impact that strikes have in the spheres of both public sector employers and citizens/users that led the legislator to subject strikers to certain duties or obligations, which can even go as far as requiring them to work normally.

Both the Labour Code and the RCTFP expressly refer to two obligations to work during strikes:

a) To provide the services needed to ensure the safety and maintenance of equipment and facilities.
b) To provide the minimum services that are indispensable to the fulfilment of essential social needs (see Article 57[3], CRP; and Articles 537 CT, and 399, RCTFP).

As a rule, strikes are decided by trade unions (see Article 393[1], RCTFP).

However, within the framework of the RCTFP, workers' assemblies can also decide to resort to striking, on condition that:

a) The majority of the workers in the organ, department or service in question are not represented by trade unions; and
b) The assembly was expressly convened for that purpose by 20% of the workforce or 200 workers (see Article 393[2], RCTFP).

The following data are for the strikes of which the DGAEP was notified during the reference period. "General strikes" are those which are referred to as such in the prior notices issued by trade unions. All the strikes that lasted 26 days or more were overtime stoppages.

Table 22

Nr. of strikes by duration, 2009

2009			
Duration of Strike	**No. of Strikes**		**Total**
	General Strikes	**Sectoral Strikes**	
1 day		13	**13**
2 to 5 days		7	**7**
6 to 10 days		5	**5**
11 to 15 days			**0**
16 to 25 days			**0**
26 to 50 days		1	**1**
More than 50 days			**0**
Source: DGAEP			**26**

Table 23

Nr. of strikes by duration, 2010

2010			
Duration of Strike	**No. of Strikes**		**Total**
	General Strikes	**Sectoral Strikes**	
1 day	5	24	**29**
2 to 5 days		21	**21**
6 to 10 days		1	**1**
11 to 15 days		2	**2**
16 to 25 days		2	**2**
26 to 50 days		1	**1**
More than 50 days			**0**
Source: DGAEP			**56**

Table 24

Nr. of strikes by duration, 2011

2011			
Duration of Strike	**No. of Strikes**		**Total**
	General Strikes	**Sectoral Strikes**	
1 day	5	25	30
2 to 5 days		13	13
6 to 10 days		8	8
11 to 15 days			0
16 to 25 days		1	1
26 to 50 days		4	4
More than 50 days		1	1
Source: DGAEP			57

Table 25

Nr. of strikes by duration, 2012

2012			
Duration of Strike	**No. of Strikes**		**Total**
	General Strikes	**Sectoral Strikes**	
1 day	1	23	24
2 to 5 days		10	10
6 to 10 days		3	3
11 to 15 days			0
16 to 25 days			0
26 to 50 days		15	15
More than 50 days			0
Source: DGAEP			52

Answers to queries from the European Committee of Social Rights

1. The Committee also notes from a source other than the report[3], that on 7 November 2008 the Parliament passed the revision of the new Labour Code which had entered into force in 2004. The Committee asks to be informed on any modifications introduced by the said revision as regards joint consultation between employees and employers or their respective representative organizations in this respect.

See the information given earlier with regard to Article 6§1.

2. It requests that the next report contain an up-dated description of all modifications introduced by the revision of the Labour Code which affect the machinery for voluntary negotiations between employers' and workers' organizations. It also reiterates its request whether the rules governing collective bargaining in the public sector, which it has previously held to be in conformity with Article 6§2, have been amended.

The following changes that resulted from the Labour Code approved by Law no. 7/2009 of 12 February 2009 and subsequently amended by Law no. 23/2012 of 25 June 2012 are particularly worthy of note in this respect:

- Within 30 days of the publication of a negotiated IRCT or a compulsory or required arbitration decision, and after first consulting the interested parties, the competent department or service of the ministry with responsibility for the labour area must issue a reasoned assessment of the IRCT or decision's provisions on equality and non-discrimination (Article 479, CT).

- A number of organised decentralisation measures have been implemented in relation to IRCTs. On the one hand, collective labour contracts can now leave the regulation of certain matters, such as geographic and functional mobility, the organisation of working time, and pay, to another collective agreement. This move is designed to improve articulation between IRCTs, and to promote collective bargaining in general (Article 482[5], CT).

- On the other hand, trade unions are now allowed to give another collective worker-representation body powers to enter into a contract with an enterprise, on condition that the latter has at least 150 workers (Article 491[3], CT).

- Collective agreements must regulate their own effects on the workers they cover when they lapse and until a new IRCT enters into force (Article 492[2][h], CT).

- Workers who do not belong to a trade union can choose to be subject to any collective agreement or arbitration decision that applies to their enterprise. They can also end this arrangement if they subsequently join a trade union that is party to an agreement which covers the same

enterprise (Article 497, CT).

- A number of changes were made to the rules on the lapse of collective agreements and their ongoing effects. We describe this legal regime in more detail below.

3. The report informs that during the reference period the social partners concluded 1,045 collective agreements. Of these, 314 were overall revisions or initial agreements, and 58 were partial amendments. The Committee notes from the same source referred to above 15 that in 2008 approximately 1.9 million workers were covered by renegotiated or new collective agreements (about 300 thousand more than in 2007).

The Committee reiterates that it requests details on whether the agreements were concluded in the private or in the public sector and it needs information on the number of employers and employees covered by these agreements. It thus asks the next report to contain updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements.

We would recall what was said on this subject in the 5th Report – that GEP's competences only allow it to supply data with regard to the private sector.

On the number of collective labour agreements reached in the private sector, we would refer you to the information given on Article 6§2 in section (3) of the form on the application of the Revised European Social Charter.

We do not have data for the number of employers covered by collective agreements entered into during the reference period; however, it is estimated that the number of workers involved was 7,331,328[28].

4. According to information from other sources, 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. The Committee requests that the next report provide clarification in this regard.

The Labour Code (CT) says that collective agreements can determine their own duration, failing which they last for a year; similarly, an agreement can set the terms for its own renewal, but otherwise agreements are successively extended for a year at a time (Article 499, CT).

Either party can unilaterally repudiate a collective agreement by notifying the other party of its intention in writing, on condition that this is accompanied by a proposal for the overall revision of the agreement. However, the mere act of making a revision proposal does not constitute repudiation (Article 500, CT).

[28] This total was calculated from data in the '*Quadros de Pessoal/Relatório Único*' (Personnel Tables / Sole Report, *in Portuguese*) for 2009, 2010 and 2011, which encompass all IRCTs, regardless of the year in which they were published.

Law no. 7/2009 of 12 February 2009, which approved the revision of the Labour Code, instituted a transitional regime applicable to earlier collective agreements containing clauses saying that the agreement could only end when it was replaced by another instrument. Under this regime, if such agreements had not already lapsed by then, they ceased to have effect on the date on which the new Law entered into force [Article 10], subject to the following conditions:

a) The last published full version of the agreement, including the clause in question, must have entered into effect at least six and a half years ago.
b) A party must have validly repudiated the agreement during the period when the Labour Code was in effect.
c) This unilateral repudiation must have taken place at least 18 months ago.
d) The agreement could not have been revised since the unilateral repudiation.

Subject to all the necessary conditions, such agreements lapsed 18 months after their repudiation.

This is followed by Article 501, which says:

"1 — The clause in a collective agreement that subjects the latter's termination to its replacement by another collective labour regulation instrument shall lapse five years after any one of the following facts occurs:

a) The last publication of the full text of the collective agreement.
b) Unilateral repudiation of the collective agreement.
c) Submission of a proposal for revision of the collective agreement, including revision of the aforesaid clause.

2 — After the clause referred to in the previous paragraph has lapsed, or in the case of a collective agreement that does not regulate its own renewal, the provisions of the following paragraphs shall apply.

3 — In the event of a unilateral repudiation, the collective agreement shall be maintained under a regime whereby it continues to have effect during the period in which negotiations, including conciliation, mediation or voluntary arbitration, take place, or for at least eighteen months.

4 — Once the period referred to in the previous paragraph has ended, the collective agreement shall remain in force for sixty days, following which either party may notify the ministry with responsibility for the labour area and the other party that the negotiation process has ended without agreement, after which the collective agreement shall lapse.

5 — In the absence of prior agreement on the effects derived from the collective agreement in cases in which the latter lapses, the minister with responsibility for the labour area shall, within the time limit referred to in the previous paragraph, notify the parties of that they should agree those effects

within a time limit of fifteen days, should they wish to do so.

6 — Following the lapse, and until another collective agreement or arbitration decision enters into force, the effects agreed by the parties, or in their absence, those which the collective agreement has already had in labour contracts, with regard to the worker's pay, category and its definition, working time duration, and social protection regimes whose benefits replace those provided by the general social security regime or are subject to a National Health Service substitution protocol, shall be maintained.

7 — In addition to the effects referred to in the previous paragraph, the worker shall benefit from the other rights and guarantees derived from labour legislation.

8 — During the period in which a collective agreement continues to have effect following repudiation, the parties may agree to prolong the collective agreement's force for a given period, which agreement shall be subject to deposit and publication.

9 — Agreements on the effects derived from collective agreements in cases in which the latter lapse shall be subject to deposit and publication."

It is a fundamental aspect of the new regime on collective labour agreements which contain a successive renewal clause that neither the period following repudiation in which the agreement continues to have effects, nor the lapse of the collective agreement can occur until after the conditional clause referred to in paragraph (1) has itself lapsed (Article 501[2], CT).

In articulation with its provisions on the lapse of collective agreements, the Labour Code also provides for required (´necessary´) arbitration, which can occur in cases in which the lapse of one or more collective agreements applicable to an enterprise, group of enterprises or sector of activity is not followed within 12 months by entry into a new collective agreement, nor is there another agreement applicable to at least 50% of the workers in the same enterprise, group or sector. Any party can apply for required arbitration in the 12 months after the end of the 12-month time limit following the lapse of a collective agreement (Article 510, CT).

During the reference period, out of a total of 723 collective labour agreements, 60 recorded requests were made for the publication of notifications regarding the date on which collective agreements reached their term; of these requests, 28 were denied, while 32 led to the publication of the respective notifications, with 5 new collective agreements entered into in this respect.

5. The Committee previously deferred its conclusion pending receipt of further information; it asked the next report to describe the conciliation and mediation procedures under the new Labour Code in further detail and wished in particular to know whether the authorities responsible for conciliation and mediation initiated by only one of the parties may take decisions which are binding for both parties without their joint consent. In addition the Committee

asked for information on the circumstances in which is recourse to compulsory arbitration is possible. The report fails to provide any information on these points. Therefore the Committee is obliged to conclude that it has not been established that mediation is voluntary and recourse to compulsory arbitration is only permitted within the limits of Article G of the Revised Charter.

In this regard we would repeat the information provided in the answers to the 2010 Conclusions of the European Committee of Social Rights:

"(…) the revised Labour Code (CT) makes provision for the following collective conflict resolution processes: arbitration, conciliation, and mediation (Articles 505 to 513, and 523 to 528).

Under the Labour Code, both the recourse to voluntary arbitration and to conciliation or mediation are subject to the will of the parties (Articles 506, 507, 523, and 526, CT). It is up to the parties to choose the process they want to apply to the case in question from among the possible ones.

As such, the parties can agree to submit the labour-related questions that result in particular from the interpretation, completion, entry into or revision of collective agreements, to arbitration (Article 506, CT).

Voluntary arbitration is governed by agreement between the parties, and is conducted by three arbitrators, with one appointed by each of the parties and the third chosen by the first two (Article 507[1] and [2], CT).

As to the circumstances in which it is possible to resort to compulsory arbitration, we would note that in conflicts that result from entry into a first collective agreement, and on condition that there have been long, unfruitful negotiations or unsuccessful attempts at conciliation or mediation and it has not been possible to settle the conflict by voluntary arbitration, required arbitration may be ordered at the request of either party and following consultation of the Permanent Social Concertation Commission (CPCS) (Article 508[1][a], CT).

The Labour Code also permits compulsory arbitration in two other situations: if the CPCS approves a recommendation in favour of arbitration with a vote that includes a majority of the representatives of both workers and employers; and when essential services designed to protect people's life, health and safety are at stake (Article 508[1][b] and [c], CT).

We would also emphasise that the Tripartite Agreement for a New System for Regulating Labour Relations, the Employment Policies and Social Protection, which was signed in June 2008 by the Government and the majority of the Social Partners with seats on the CPCS and took concrete form in the revised Labour Code, decided to maintain the rules governing the admissibility and implementation of compulsory arbitration.

However, the revised Labour Code envisages another situation in which compulsory arbitration (known as required or 'necessary' arbitration) is permitted: when 12 months pass after a collective agreement lapses and the

parties have not entered into a new one, nor is there another collective agreement that applies to at least half the workers covered by the one that has lapsed (Article 510, CT).

Conciliation and mediation can take place either by agreement between the parties, or at the request of one of them if certain requisites are fulfilled (Articles 523[3][a] and [b] and 526[3][a] and [b], CT).

As we said above, conciliation can be initiated: by agreement between the parties; or at the request of one of them in cases in which there is no response to a proposal to enter into or revise a collective agreement; or if one party simply gives the other 8 days' notice (Article 523[3][a] and [b], CT).
If the parties or party that request(s) the conciliation so wish, it can be conducted by a specialised public service (no. 1 do Article 524, CT).

If the conciliation is initiated at the request of one of the parties, the request must set out the grounds for it and attach proof that the prior notice has been sent (Article 524[2], CT).

The competent department or service will then summon the parties to begin the conciliation. In cases involving the revision of a collective agreement, it will also invite any trade unions and employers' associations that are taking part in the negotiation process, but are not involved in the request (Article 524[3], CT).

The parties that are summoned must attend the conciliation meeting, which will begin by defining the matters it is to address (Article 524[5] and [6], CT).

If the parties so agree, mediation can be arranged at any time – particularly during the conciliation process; then, one month after conciliation has begun, either party can request mediation (Article 526[3][a] and [b], CT).

If the party or parties that ask for mediation so wish, the process can be conducted by a mediator from a specialised public service (Article 527[1] and [3], CT). When the mediation is requested by one party, the mediator will ask the other for its position on the object of the mediation; if the parties differ, the mediator will then decide the object of the process, taking the viability of the mediation into account in his/her decision (Article 527[4], CT).

The mediator has 30 days in which to make a proposal to the parties, which can accept or reject it (Article 527[7], [8] and [9], CT).

All this means that under these conciliation and mediation regimes, the competent public departments and services cannot take decisions against the will of the parties, which are free to reconcile with one another or not, and to accept or reject the proposed solution.

In the light of the above we consider that Portuguese legislation is in conformity with Article 6§3, inasmuch as recourse to voluntary arbitration, be it conciliation or mediation, depends on the will of the parties (Articles 506, 507, 523, and 526,

CT) and is only possible in the situations and with the restrictions described above (Article 508, CT)."

6. The Committee previously found the situation not to be in conformity with Article 6§4 on the grounds that right to call a strike is primarily reserved to trade unions, and the establishment of a trade union is subject to an excessive timeframe.

We have nothing new to say about the right to call a strike, so we will reiterate the information given in the past:

"On the one hand, all the workers encompassed by a strike, whether or not they are represented by the trade union that called it, and even if they are members of another union, can join the strike. Although the legislation does not say so expressly, this is the general understanding adopted by legal theorists (namely: Romano Martinez, Direito do Trabalho*, Almedina, 2002, p. 1063; Bernardo Xavier,* Direito da Greve*, Editorial Verbo, 1984, p. 166; Monteiro Fernandes,* Direito do Trabalho*, Almedina, 1999, p. 890-891).*

On the other hand, we are talking about a regime that allows any trade union to call a strike, but only allows the workers themselves to do so in certain restricted situations.

The Charter states that the Parties recognise the right to strike: "With a view to ensuring the effective exercise of the right to bargain collectively" (introductory part of Article 6). The Charter does not say who can call a strike. However, inasmuch as the right to collective bargaining is exercised by trade unions on behalf of workers, who cannot do so personally, it is coherent for strikes to be called by trade unions. Within the context of Article 6 of the Charter, it is not coherent for workers to also have the right to call strikes, because the Article does not make provision for them to personally exercise the right to bargain collectively, and the goal of a strike is to ensure the effective exercise of that right.

When the Charter links the right to strike with collective bargaining, the competence for which pertains solely to trade unions acting on workers' behalf, it is in harmony with the dominant concept adopted by the International Labour Organisation's control bodies.

The fact is that paragraphs 146 and 149 of the 1994 survey "Freedom of Association and Collective Bargaining" by the Committee of Experts on the Application of Conventions and Recommendations read as follows:

> *The Committee on Freedom of Association affirmed the principle of the right to strike, stating that it is an "essential (element) of trade union rights" and stressing shortly afterwards that "in most countries strikes are recognized as a legitimate weapon of trade unions in furtherance of their members' interests".*

> *Under Article 3(1) of Convention No. 87, the right to organize activities and to formulate programmes is recognized for workers' and employers' organizations. In the view of the Committee, strike action is part of these activities under the provisions of Article 3; it is a collective right exercised, in the case of workers, by a group of persons who decide not to work in order to have their demands met. The right to strike is therefore considered as an activity of workers' organizations within the meaning of Article 3.*

When they seek to provide grounds for the right to strike, which is not generically recognised in any convention, both the ILO Board of Directors' Committee on Freedom of Association and the Committee of Experts link it to the conventions on the freedom of association – particularly the definition of the "action programmes" which trade unions are entitled to adopt. The strike is a form of implementation of the action to which trade unions can resort; and this establishes the connection between the exercise of the right to strike and the competences that pertain to trade unions".

Where the time needed to form a trade union is concerned, Article 447(1) of the Labour Code says that the decision to form a new union and approve its articles of association is taken by a constituent assembly, which can be an assembly of members' representatives; and the union acquires legal personality when those articles are registered by the competent department or service of the ministry with responsibility for the labour area. After registering them and within 30 days of receiving them, this department/service must then have them published in the Boletim do Trabalho e Emprego *(Article 447[4][a], CT). The trade union can begin work once this publication has occurred, or 30 days after registration (Article 447[7], CT). We thus conclude that the 30-day time limit for a trade union to commence its activities is a maximum that may not be attained".*

7. The Committee wished to know whether the determination of minimum services is subject to administrative or judicial review.

Here again we reiterate an earlier answer – in this case, to the ECSR's conclusions with regard to the information provided in the 5th Report on the Revised European Social Charter (1 January 2005 to 31 December 2008)[29].

The *"(...) general principle is that minimum services are defined by agreement (...).*[30]

In this respect, minimum services are subsidiarily defined in one of the following ways (Article 538[1], CT):

- *By an IRCT.*

[29] Information report no. 31/11-DSCT – File no. 8.29.42.21.2011.5.
[30] Martinez, Romano, *Direito do Trabalho*, 5th edition, Almedina, Coimbra, 2010, p. 1328.

- *If this does not occur, they must be defined by agreement between the worker's representatives and the employers encompassed by the prior notification, or the respective employers' association.*

If minimum services are not defined under either of these formats, then:

- *The ministry with responsibility for the labour area, assisted whenever necessary by the competent department or service of the ministry with responsibility for the sector of activity in question, summons the workers and employers' representatives to negotiate an agreement on minimum services and the means needed to ensure them (Article 538[2], CT).*

- *When minimum services are negotiated for a strike that is substantially the same as at least two previous strikes in which arbitration defined minimum services with the same content, the ministry with responsibility for the labour area will propose that the parties accept the same definition (any refusal must be noted in the minutes recording the negotiations) (Article 538[3], CT).*

- *If agreement is not reached in the three days following the prior notice of a strike, the minimum services and the means needed to ensure them must be defined by joint duly substantiated order of the ministers with responsibility for the labour area and for the sector of activity concerned, and in the case of a company in the state-owned business sector, by an arbitration tribunal formed in accordance with a specific law governing compulsory arbitration (Article 538[4], CT).*

We would note that *both the arbitration decision and the joint order can be appealed against. In the case on an arbitration decision, this appeal is lodged before the law courts – more precisely the Court of Appeal (Article 27[5] with referral to Article 22[1], both of Executive Law no. 259/2009 of 25 September 2009); in that of a joint order, before the Administrative Courts under the terms of the Code of Procedure in the Administrative Courts – CPTA).*

ARTICLE 21
THE RIGHT TO INFORMATION AND CONSULTATION

1. Regime regulated by the Labour Code

The right of workers to be informed and consulted in enterprises and establishments is exercised through workers' committees and subcommittees, trade union delegates, European works councils, workers' councils, and workers' health and safety representatives.

We will now update the information on this subject:

1. The right of workers' committees and subcommittees to be consulted and the content of the right to information are now governed by Articles 423 and 424 of the Labour Code (CT) respectively.

The obligation to consult workers' committees is now set out in Article 425. However, we would also note the consultation with regard to the treatment of biometric data (Article 18[4], CT), the use of means of remote surveillance (Article 21[4], CT), and closure for annual holidays (Article 242[1][b] of the CT), which were already present in the earlier Law.

The exercise of the right to be informed and consulted and the general rules for the election of workers' committees and subcommittees are now the object of Articles 427 and 433 of the CT.

Article 427(7) has extended an existing provision on the right of trade union delegates to be informed and consulted to also apply to workers' committees and subcommittees. Under this provision, when the matter at hand involves a decision by the employer in the exercise of powers to direct and organise derived from a labour contract, both parties must conduct the information and consultation procedure in such a way as to achieve consensus whenever possible.

2. Regarding trade union delegates, matters concerning their election or removal or the termination of their duties and the formation of trade union and inter-trade-union committees are now covered by Article 462 of the CT. Of particular note is the provision that the term of office of trade union delegates cannot exceed four years (Article 462[2], CT).

The rules on informing and consulting trade union delegates are now contained in Article 466 of the CT, which made the following amendments to the previous legislation:

- The legislator opted to subject the exercise by delegates of the right to be informed and consulted to the same rules as those applicable to workers' committees and subcommittees (Article 466[2] with referral to Article 427[1], [2], [4], [5], [6] and [7], both CT).

- An exception with regard to establishments with less than 20 workers was abolished in order to bring the regime on delegates into line with Directive no. 2002/14/EC of the European Parliament and of the Council of 11 March 2002 (intention deduced from the exposé of reasons set out in Government Bill no. 216/X). However, Article 466(3) of the CT continues to say that the provisions of Article 466(1) and (2) are not applicable to micro or small enterprises.

The regime governing European works councils is now set out in Law no. 96/2009 of 3 September 2009. The rules on the councils' composition, information and consultation, the annual directors' report, meetings with the board of directors, and the appointment or election of members of special negotiating groups and the councils themselves are now respectively laid down in Articles 13, 15, 16, 17 and 26 of Law no. 96/2009.

In this regard we would particularly note the following norms:

- Article 13(1) says that the provisions of Article 6(1) apply to the composition of European works councils. Article 6(1) says that during the negotiations referred to in Article 5, the workers of Community-scale enterprises or groups of enterprises must be represented by a special negotiating group whose members correspond to the workers employed in each Member State, with each state having one seat for each 10% or fraction thereof of the workers employed in all the Member States, who are employed in that state.

- Article 15(1) gives European works councils the right to be informed and consulted about transnational questions within a reasonable period by the board of directors or another appropriate level of representation. This particularly applies to the situation and probable evolution with regard to employment, investments, fundamental organisational changes, the introduction of new working methods and production processes, transfers of production, mergers, reductions in the size or the closure of enterprises, establishments or major parts of the latter, and collective redundancies.

- Article 15(2) also entitles European works councils to be informed in particular about the structure, the economic/financial situation, the probable future evolution of activities, the production, and the sales of Community-scale enterprises or groups of enterprises.

- Article 15(3) says that European works councils also have the right to be informed and consulted by the board of directors about any measures that have a considerable effect on workers' interests – particularly changes of premises or facilities that imply the transfer of workplaces, closure of enterprises or establishments, or collective redundancies.

- Under Article 26(1), within two months after the board of directors takes the initiative, or of the request to begin the negotiations referred to in Article 5(1), or of the fact that is provided for in Article 12 and causes the obligatory formation of a European works council, the representatives of the workers at establishments or enterprises located in Portuguese territory must be

appointed in one of the following ways, which are listed in order of preference:

a) By agreement between the workers' committee and the trade unions, or between the workers' committees at the enterprises in the group and the trade unions.
b) If there are no trade unions, by the workers' committee or by agreement between the workers' committees at the various group enterprises.
c) If there is no workers' committee, by agreement between the trade unions that together represent more than half the workers of the establishments or enterprises who belong to any trade union.

4. The information and consultation of workers and their health and safety representatives are now covered in Articles 19 and 18 of Law no. 102/2009 of 10 September 2009, which made the following amendments to the previous legislation:

- A new paragraph requires employers to inform both the health and safety at work department or service mentioned in Article 19(4), and the workers with specific functions in the health and safety at work field, of the admission of workers with fixed-term contracts, under service commissions or on occasional assignment (Article 19[6]). It also makes the breach of the new paragraph a minor administrative offence (Article 19[9]).

- The severity of the administrative offence for breach of the provisions of Article 18(4) was changed (Article 18[8][31]).

5. Also on the right of workers' representatives to be informed and consulted, we should mention that the Labour Code says that consultation must be included: when an enterprise's internal regulations are drawn up (Article 99[2]), when the work schedule is created (Article 212[3]) or changed (Article 217[2] and [3]), on matters regarding the record of overtime work (Article 231[7]), when annual holidays are scheduled (Article 241[2] and [3]), and as part of the procedure for temporary closures due to facts for which the employer is responsible (Article 311[3] and [4]).

The following changes are especially worthy of note in this respect:

- When an enterprise's internal regulations are drawn up, the workers' committee (or if there is none, the applicable inter-trade-union committees, trade union committees or union delegates) must be consulted (Article 99[2], CT);
- The worker's committee has 10 days in which to issue a formal opinion on temporary closures (Article 311[4], CT).

Where redundancies and dismissals are concerned, we should also note that the rules on communications sent in cases of collective redundancy (Article 360[1] and [3], CT), the information and negotiations in the same situation (Article 361[1], CT), the communications in cases of dismissal due to elimination

[31] Breaches of the provisions of paragraphs (2), (4) and (6) now constitute minor administrative offences.

of a worker's job (Article 369[1], CT) and the consultations in the same circumstances (Article 370[1], CT), have been changed:

- Article 361(1) of the CT now says that within the five days following the act provided for in Article 360(1) or (4), the employer must promote a phase in which it informs and negotiates with the body that represents workers, with a view to reaching agreement on both the extent and effects of the forthcoming measures, and other measures that will lead to a reduction in the number of workers who will lose their jobs – i.e. measures that entail:

    a) Suspending labour contracts.
    b) Reducing normal working periods.
    c) Occupational reconversions or reclassifications.
    d) Early or pre-retirements.

- Article 369(1) of the CT (with the text given to it by Law no. 23/2012 of 25 June 2012) says that when a worker is to be dismissed because his/her job is going to be abolished, the employer must write to the workers' committee (or the inter-trade-union or trade union committee if there is none), the worker involved, and also the trade union concerned if he/she is a union representative, telling them:
-
    a) Why it is necessary to eliminate the job, and indicating the section or unit concerned.
    b) That it is necessary to dismiss the worker occupying that job, and indicating his/her occupational category.
    c) What criteria were used to select that particular worker.

The rules on the lawfulness or otherwise of collective redundancies, and of dismissals due to elimination of workers' jobs, and on the effects of any unlawfulness are now set out in Articles 383(a), 384(c), and 389(1) of the CT.

6. Finally, we would note that the legal norms governing confidential information and the justification and judicial control of that confidentiality are now contained in Articles 412 and 413 of the CT.

We would also mention that Executive Law no. 295/2009 of 13 October 2009, which amended the Code of Labour-related Procedure (CPT) approved by Executive Law no. 480/99 of 9 November 1999, created another three forms of special, urgent proceedings. These are again designed to add operational feasibility to the innovations in the substantive regime, and include the ability to challenge the confidentiality of information or the refusal to provide it or engage in consultation, which was created in order to ensure that both the duty of members of workers' representative bodies to protect the privacy and confidentiality of information given to them by an employer, and the employer's ability to refuse to provide information, function as intended (Articles 186-A *et seq*.).

Analysis of a sample (95) of collective agreements published between 2009 and 2012 revealed that two of them are more favourable than the law,

inasmuch as in the case of two small enterprises, some matters which are excluded under Article 466(2) of the CT are instead made subject to information and consultation.

What is more, one of these two agreements stipulates that during consultations, the bodies representing workers must pronounce themselves – i.e. give an opinion – within six working days.

2. Public sector employment regime

The first aspect that we should look at here concerns the meaning and scope of Law no. 23/98 of 26 May 1998, on the rights of collective bargaining and participation. It is important to point out that the scope of the rights to negotiate and participate that are granted to workers' representatives is so extensive that, broadly speaking, all the matters that are really of interest to workers and in terms of their working and employment conditions are the object of participation and negotiation under the specific terms of this Law.

Having said this, Article 12 does make one important exception: the Public Administration's structure, responsibilities and competences cannot be the object of participation and negotiation.

Among other things, this rule means that workers' representatives do not take part in or negotiate decisions on the structure, functions, organisation and scope of the Public Administration (to put it another way, on the core of the Public Administration policy). There is thus all the more reason for them not to enjoy the right to information (by this we naturally mean advance information) on these matters.

On the other hand, Article 337 of the Regime governing the Labour Contract for Public Functions (RCTFP) goes in the other direction when it gives workers' committees the right to information about a range of subjects. We will highlight those that seem to directly impact the scope of the Article that concerns us here – i.e. subparagraphs (b) and (c), which establish a right to:

b) Information and consultation on the situation, structure and probable future evolution of employment in the organ, department or service, and on any expected anticipatory measures, particularly when jobs are threatened.
c) Information and consultation with regard to decisions that are capable of leading to substantial changes at the level of the way work is organised, or in terms of labour contracts.

At least in abstract terms, the above appears to mean that in 2009, one Law gave workers' committees a right to information that an earlier Law (1998) had not conceded to trade unions representing workers.

The way in which the content and importance of the right to information has evolved over the last twenty years seems to more than adequately explain the difference that now results from these two texts.

The second point worth mentioning on this subject concerns the fact that in practice there have been virtually no workers' committees in the Public Administration – a sector in which there is no tradition like the one that does exist in the private sector.

The truth is that in a universe of several thousand public institutions, there are just 20 workers' committees registered with the Directorate-General of the Administration and Public Sector Employment (DGAEP).

Answers to queries from the European Committee of Social Rights

1) The right of workers to be informed and consulted is implemented through collective agreements. The exercise of this right is entrusted to the trade unions represented within undertakings or to other representative bodies, such as works councils. The Committee asks for details in the next report on the precise legal basis for this right and any recent amendments to it.

The labour legislation provides for the right of workers to be informed and consulted. We would highlight the fact that the CT allows IRCTs to waive legal norms that regulate labour contracts, except when the norm actually says otherwise (Article 3[1]), and only if the IRCT provisions are more favourable to workers with respect to certain matters, including the rights of workers' elected representatives (Article 3[3][n]).

We would also note that the changes to the legal regime governing the right of workers to be informed and consulted were listed in the answer to the form, so here we will describe the regime itself:

1. In European Companies or SEs (Executive Law no. 215/2005 of 13 December 2005) and European Cooperative Societies or SCEs (Law no. 8/2008 of 18 February 2008) the workers' council is entitled to be informed and consulted by the managing body (board of directors...) about the evolution of and prospects for the business of the enterprise as a whole and of those of its subsidiaries and establishments described in Article 24(1) of both Executive Law no. 215/2005 and Law no. 8/2008 (Article 24[2] of both Laws).

The SE/SCE's managing body must inform the workers' council of the agenda for its meetings and provide it with copies of the documents that are submitted to its general assembly of shareholders (Article 24[3] of both Laws).

It must also give the workers' council a detailed and documented annual report on the evolution and prospects of the SE/SCE itself and those of its subsidiaries and establishments identified in the two Article 24(1)s (Article 25[1] of both Laws). The report must in particular contain information on the economic/financial situation, the probable future evolution of the business, production and sales, the employment situation and its probable future evolution, investments, the most important changes in the company's organisation, working methods and production processes, transfers of production, mergers, and collective redundancies (Article 25[2] of both Laws). After the report has been submitted to it, the workers' council is entitled to meet the managing body for information and consultation purposes (Article 26[1] of both Laws). This meeting must take place one month after submission of the report, unless the management body accepts a shorter time period (Article 26[2] of both Laws). The SE/SCE management body must tell the managements of the company's subsidiaries and establishments about the information given to and the consultation with workers' council (Article 26[3] of both Laws).

The workers' council has the right to be informed about any issues that have a considerable effect on workers' interests – particularly a change of premises or

facilities that implies transfers of workplaces, the closure of any of the SE/SCE's companies, establishments or subsidiaries, and collective redundancies (Article 27[1] of both Laws).

The workers' council (or if it so decides, particularly for reasons of urgency, a smaller 'restricted' version of itself) is entitled to ask for and obtain a meeting with the management body (or other more appropriate managerial entity with the power to take decisions), in order to be informed and consulted about matters that have a considerable effect on workers' interests (Article 27[2] of both Laws). In the event the meeting is with the restricted council, the members of the full council who represent the workers at the establishments or companies that are directly affected by the measures in question are specifically entitled to attend (Article 27[4] of both Laws). If the SE/SCE's management body is probably going to take a decision contrary to the formal opinion of the workers' council, the latter is entitled to a new meeting with the management body, the purpose of which is to seek an agreement (Article 27[5] of both Laws).

Article 47 of Executive Law no. 215/2005 makes breaches of the latter's Articles 24, 25, 26(2) or (3), and 27(1) or (2) very serious administrative offences, and breaches of Article 27(3) to (5) serious ones.

Under Article 50 of Law no. 8/2008, breaches of its Articles 24, 25, 26(1) or (2), and 27(1) or (2) constitute very serious administrative offences, and breaches of Article 27(3) to (5) serious ones.

2. With regard to workers' committees and subcommittees, we would especially point to the following:

Article 423(1) of the CT particularly gives workers' committees the right to receive the information they need in order: to fulfil their functions (subparagraph [a]); to control the enterprise's management (subparagraph [b]); to participate, among other things, in corporate restructuring processes, drawing up vocational training plans and reports, and procedures concerning changes in working conditions (subparagraph [c]); to take part in the drawing up of labour legislation, either directly or via their coordinating committees (subparagraph [d]); to manage or take part in the management of the enterprise's social projects (subparagraph [e]); in the case of enterprises in the state-owned business sector, to arrange and promote the election of the workers' representatives on the management bodies (subparagraph [f]); and to meet the enterprise's management at least once a month in order to consider subjects linked to the exercise of their rights (subparagraph [g]).

Article 423(2) of the CT says that workers' subcommittees, acting under general guidelines set by the full committee, should:

- Exercise the rights provided for in Article 423(1)(a), (b), (c) and (e), under the authority delegated to them by the full committee (subparagraph [a]).

- Inform the worker's committee about matters that are of interest to its work (subparagraph [b]).
- Serve as the link between the workers in the subcommittee's establishment and the full committee (subparagraph [c]).
- Meet the establishment's managing body, in accordance with Article 423(1)(g) of the CT (subparagraph [d]).

Article 423(3) of the CT requires the enterprise or establishment's management body (as appropriate) to draw up the minutes of meetings held under Article 423(1)(g) and (2)(d), which must then be signed by all the participants.

Article 423(4) of the CT makes breaches of the provisions of Article 423(1)(e) or (g), (2)(d), and (3) serious administrative offences.

On the content of the right to information, Article 424(1) of the CT gives workers' committees the right to information about:

- General activity plans and budgets (subparagraph [a]).
- The organisation of production and its implications for the degree to which workers and equipment are used (subparagraph [b]).
- The procurement situation (subparagraph [c]).
- Sales forecasts, turnover and sales administration (subparagraph [d]).
- Personnel management and the setting of the basic criteria governing it, the volume of salaries and its breakdown by professional group, benefits, productivity, and absenteeism (subparagraph [e]).
- The accounting situation, to comprise the balance sheet, profit and loss statement, and trial balances
- Forms of financing (subparagraph [g]).
- Fiscal and para-fiscal costs (subparagraph [h]).
- Draft changes to the corporate object or the share capital, and any planned reconversion of the enterprise (subparagraph [i]).

Under Article 424(2) of the CT, breaches of the provisions of this paragraph (1) constitute serious administrative offences.

Article 425 of the CT requires employers to ask the workers' committee for its opinion before undertaking at least the following acts (other legislation may add to the list):

- Changes in the criteria governing occupational classifications and worker promotions (subparagraph [a]).
- Changes in the location of the enterprise or establishment's activities (subparagraph [b]).
- Any measure that results, or might result, in a substantial reduction in the number of workers, a worsening in working conditions, or changes in the way in which work is organised (subparagraph [c]).
- The winding up of the enterprise or a request to enter bankruptcy (subparagraph [d]).

The Labour Code also says that workers' committees must be consulted about other matters, such as biometric data, the use of remote surveillance resources, and closures for annual holidays:

- Notifications sent to the National Data Protection Commission (CNPD) must be accompanied by a formal opinion issued by the workers' committee, or if such an opinion is not made available within 10 days of consultation, proof that one has been requested (Article 18[4], CT).
- Requests for authorisation by the CNPD must be accompanied by a formal opinion issued by the workers' committee, or if such an opinion is not made available within 10 days of consultation, proof that one has been requested (Article 21[4], CT).
- Whenever compatible with the nature of their activities, employers may wholly or partially close enterprises or establishments for annual staff holidays for more than 15 days at a time outside the period between 1 May and 31 October (Article 242[1][a], CT), when so determined in an IRCT or if the workers' committee issues a favourable opinion [Article 242[1][b], CT].

On the exercise of the right to information and consultation, Article 427 of the CT says that:

- Workers' committees or subcommittees should ask the managing body of the enterprise or establishment, respectively, for information on the matters covered by the right to information (paragraph [1]).
- This information must be given in writing within 8 days, or 15 days if this is justified by its complexity (paragraph [2]).
- The provisions of Article 427(1) and (2) of the CT do not prejudice workers' committees/subcommittees' right to be given information at the meetings referred to in Article 423(1)(g) and (2)(d) of the CT (paragraph [3]).
- In the case of consultations, employers must ask workers' committees for formal opinions, which must be issued within 10 days of receiving the request, unless more time is given due to the extent or complexity of the matter in question (paragraph [4]).
- If a workers committee asks for information that is pertinent to the matter about which it is being consulted, the time limit set in paragraph (4) runs from moment at which that information is provided in writing or at a meeting (paragraph [5]).
- If no opinion has been issued by the end of the time limit, the obligation to consult is deemed fulfilled (paragraph [6]).
- When what is at stake is a decision taken by an employer in the exercise of the powers to direct and organise given to it by a labour contract, both parties must conduct the information and consultation procedure in such a way as to achieve consensus whenever possible (paragraph [7]).
- Breaches of the provisions of paragraph (2) or the first part of paragraph (4) of Article 427 constitute serious administrative offences (paragraph [8]).

3. Article 466(1) of the CT gives trade union delegates the right to be informed and consulted about the following matters (other legislation and collective agreements can add to this list):

- The recent, and probable future, evolution of the enterprise or establishment's business and economic situation (subparagraph [a]).
- The situation, structure and probable future evolution of employment at the enterprise or establishment, and any preventative measures, particularly when it is foreseen that worker numbers will be cut (subparagraph [b]).
- Any decision capable of initiating substantial change in the way in which work is organised or in labour contracts (subparagraph [c]).

It should be noted that Article 466(2) of the CT subjects the information and consultation of trade union delegates to the provisions of Article 427(1), (2) and (4) to (7); while Article 466(3) says that micro and small enterprises are not subject to Article 466(1) and (2).

4. The subject of European works councils is addressed in Law no. 96/2009 of 3 September 2009. We would especially highlight paragraphs (1) to (3) of the latter's Article 15, which respectively give such councils the right:

- To be informed and consulted about transnational questions within a reasonable period by the board of directors or another appropriate level of representation. This particularly applies to the situation and probable evolution with regard to employment, investments, fundamental organisational changes, the introduction of new working methods and production processes, transfers of production, mergers, reductions in the size or the closure of enterprises, establishments or major parts of the latter, and collective redundancies.
- To be informed in particular about the structure, the economic/financial situation, the probable future evolution of activities, the production, and the sales of Community-scale enterprises or groups of enterprises.
- To be informed and consulted by the board of directors about any measures that have a considerable effect on workers' interests, particularly changes of premises or facilities that imply the transfer of workplaces, closure of enterprises or establishments, or collective redundancies.

In the case referred to in Article 15(3) of Law no. 96/2009 and without prejudice to the latter's Article 17, European works councils have the right to ask for and obtain a meeting with the board of directors or another level of representation with the competence to take decisions, whichever is most appropriate, and to be informed and consulted about the measures in question at the meeting (Article 15[4], Law no. 96/2009).

Before the meeting, the board of directors must give the European works council a detailed, documented report on the planned measures (Article 15[5], Law no. 96/2009).

This meeting must take place as soon as possible, and if it was requested by a restricted council, the members of the full council who represent the workers at the establishments or companies that are directly affected by the measures in question are entitled to attend (Article 15[6], Law no. 96/2009).

We would also point out that both full and restricted European works councils can issue opinions on the measures referred to in Article 15(2) of Law no. 96/2009, either at the meeting or in the next 15 days (or more, if the parties so agree) (Article 15[7], Law no. 96/2009).

Article 15(8) of Law no. 96/2009 makes breaches of any of the provisions of paragraphs 1) to (5) of the same Article very serious administrative offences, and breaches of paragraph (6) serious ones.

Article 16(1) of Law no. 96/2009 requires boards of directors to give European works councils a detailed and documented annual report on the evolution of the enterprise or group of enterprises, and to tell the managements of group enterprises or establishments about it.

This report must contain information on the enterprise or group's structure, the economic/financial situation, the probable future evolution of the business, particularly its production and sales, the employment situation and its probable future evolution, investments, the most important changes in the company's organisation, working methods and production processes, transfers of production, mergers, and reductions in the size or closure of enterprises or establishments or major parts thereof, and collective redundancies (Article 16[2], Law no. 96/2009).

Paragraph (3) makes breaches of the provisions of Article 16 of Law no. 96/2009 very serious administrative offences.

At least once a year and after receiving the annual report, the European works council is entitled to meet the board of directors for information and consultation purposes (Article 17[1], Law no. 96/2009). This meeting must take place within a month of receipt of the report, unless the council agrees to a shorter time limit (Article 17[2], Law no. 96/2009).

The board of directors must inform the managements of the enterprise's establishments or of the group's enterprises that the meeting has been held (Article 17[3], Law no. 96/2009).

The board of directors and the European works council must together regulate the procedures regarding meetings by protocol (Article 17[4], Law no. 96/2009).

Under Article 17(5) of Law no. 96/2009, breaches of the provisions of paragraphs (1) and (2) of the same Article constitute very serious administrative offences.

5. With regard to the subject of workers' health and safety representatives, which is addressed by Law no. 102/2009 of 10 September 2009, we would note

that the latter's Article 18(1) says that employers must consult those representatives (or if there are none, the workers themselves) in writing at least twice a year and in advance or in good time, with a view to obtaining formal opinions about the following matters:

- The assessment of risks to health and safety at work, including those that affect groups of workers who are subject to special risks (subparagraph [a]).
- Health and safety measures before they are implemented, or as soon as possible if they need to be put into practice urgently (subparagraph [b]).
- Measures whose impact on technologies and functions mean that they have repercussions for health and safety at work (subparagraph [c]).
- The programme for and organisation of training in the health and safety at work field (subparagraph [d]).
- The appointment of the employer's representative who will monitor the work of whichever type of health and safety department or service is adopted (subparagraph [e]).
- The appointment and removal of workers who perform specific functions in the health and safety field in the workplace (subparagraph [f]).
- The appointment of the workers with responsibility for implementing the measures provided for in Article 15(9) (subparagraph [g]).
- The format of the health and safety department or service, and any recourse to outside services or qualified technical specialists in order to carry out all or part of the activities linked to health and safety at work (subparagraph [h]).
- The protection equipment that needs to be used (subparagraph [i]).
- Risks to health and safety, and prevention and protection measures and the way they are implemented, both with regard to the activity in question and in relation to the enterprise, establishment, department or service (subparagraph [j]).
- The annual list of fatal work-related accidents and of those that lead to an incapacity for work lasting more than three working days, which must be drawn up by the end of March in the following year (subparagraph [l]).
- The reports on those accidents (subparagraph [m]).

For the purposes of Article 18(1), access must be given to all the technical information on record, non-individualised collective medical data, and technical information from inspection services and other bodies with competences in the health and safety at work field (Article 18[2], Law no. 102/2009).

The formal opinion provided for in Article 18(1) of Law no. 102/2009 must be issued within 15 days of the request for consultation, albeit the employer can set a longer time limit if the complexity of the subject(s) warrants it (Article 18[3]). The grounds for any refusal to accept an opinion on the matters referred to in Article 18(1)(e), (f), (g) or h) must be given in writing (Article 18[4]). If an opinion has not been delivered to the employer by the end of the time limit set in Article 18(3), the obligation to consult is deemed fulfilled (Article 18[5]).

The requests for consultation, answers thereto, and proposals provided for in Article 18(1) and (4) must be recorded in a specific book organised by the enterprise (Article 18[6], Law no. 102/2009).

It should also be noted that, over and above the provisions of Article 18(1) to (6), workers and their health and safety representatives can also make proposals designed to minimise any occupational risk at any time (Article 18[7], Law no. 102/2009).

Under Article 18(8) and (9), breaches of the provisions of Article 18(1) constitute very serious administrative offences, while breaches of the provisions of Article 18(2), (4) and (6) are minor administrative offences.

Article 19(1) of Law no. 102/2009 says that workers and their health and safety representatives in the enterprise, establishment, department or service must dispose of up-to-date information on the following:

- The matters referred to Article 18(1)(j) (subparagraph [a]).
- The measures to be taken and the instructions to be followed in cases of serious and imminent danger (subparagraph [b]).
- First aid, fire-fighting and worker evacuation measures in the event of an incident; and the workers or departments/services charged with implementing those measures (subparagraph [c]).

In addition to the appropriate training, this information must always be made available to workers in the following cases (Article 19[2], Law no. 102/2009):

- On admission to the enterprise (subparagraph [a]).
- On changing job or functions within the enterprise (subparagraph [b]).
- When new work equipment is introduced or existing equipment is changed (subparagraph [c]).
- When a new technology is adopted (subparagraph [d]).
- Activities that involve workers from various different enterprises (subparagraph [e]).

Employers must give workers with specific functions in the health and safety at work field information about the matters referred to in Article 18(1)(a), (b), (i) and (l) and (2) of Law no. 102/2009 (Article 19[3]). They must also inform the services and qualified technical specialists from outside the enterprise that undertake health and safety at work-related activities about any factors which presumably, or are known to, affect workers' health and safety, as well as about the matters referred to in Article 18(1)(a) and (g) (Article 19[4]). Enterprises at whose facilities a service is provided must inform the respective employers and workers about the matters listed in Article 19(4) (Article 19[5]).

Employers must also notify both the health and safety at work department or service mentioned in Article 19(4) of Law no. 102/2009, and workers with specific functions in the health and safety field, of the admission of workers under fixed-term contracts or service commissions or on occasional assignment (Article 19[6]).

Article 19(7) and (8) of Law no. 102/2009 make it a very serious administrative offence to breach the provisions of Article 19(1) or (2), and a minor administrative offence to breach the provisions of Article 19(3) to (6).

6. The Labour Code also says the following about the right of workers' representatives to be informed and consulted (all references to the CT):

- When an enterprise's internal regulations are drawn up, the workers' committee (or if there is none, inter-trade-union committees, trade union committees or trade union delegates) must be consulted (Article 99[2]).
- The workers' committee (or if there is none, inter-trade-union or trade union committees or trade union delegates) must be consulted in advance about the definition and organisation of work schedules (Article 212[3]).
- Changes in work schedules must be preceded by consultation of both the workers involved and the workers' committee (or if there is none, inter-trade-union or trade union committees or trade union delegates). Even if the adaptability regime is in place there, such changes must also be displayed at the enterprise at least seven days before they take effect (three days in the case of a microenterprise). Changes that do not last for more than a week can be implemented on condition that they are both recorded in a book of their own, with the notation that the body that collectively represents the workers has been consulted, and the employer does not resort to this system more than three times a year (Article 217[2] and [3]).
- Under the terms to be laid down in a Ministerial Order issued by the minister with responsibility for the labour area, employers must send that ministry's inspection department or service a list of the workers who did overtime during the previous calendar year, to include a breakdown of the number of hours worked under Article 227(1) or (2) of the CT. The list must be countersigned by the workers' committee, or if there is none and the worker in question belongs to a trade union, by that union (Article 231[7]).
- If annual holiday dates are not agreed by employer and worker, it is the employer that schedules them, after first consulting the workers' committee (or if there is none, the inter-trade-union or trade union committee that represents the worker in question). A worker's holidays cannot begin on one of his/her weekly rest days. Employers that are small, medium-sized or large enterprises can only schedule holidays for between 1 May and 31 October, unless an IRCT or an opinion issued by the workers' representatives allows otherwise (Article 241[2] and [3]).
- When an employer wants to temporarily close an enterprise or establishment, it must inform the workers and the workers' committee (or if there is none, the inter-trade-union or trade union committees at the company) of the grounds for, and expected length and consequences of, the closure at least 15 days in advance, or as soon as possible if this is not feasible. The workers' committee then has 10 days in which to issue an opinion (Article 311[3] and [4]).

- Employers that want to undertake a collective redundancy must inform the workers' committee (or if there is none, the inter-trade-union or trade union committees at the company that represent the workers in question) of this intention (Article 360[1]).
- Within the 5 days following the act provided for in Article 360(1) or (4) of the CT, the employer must promote a phase in which it informs and negotiates with the body that represents workers, with a view to reaching agreement on both the extent and effects of the forthcoming measures, and on other measures that will lead to a reduction in the number of workers who will lose their jobs. The latter measures can particularly include: suspending labour contracts; reducing normal working periods; occupational reconversions or reclassifications; and early or pre-retirements (Article 361[1]).
- In cases involving dismissal because one or more jobs are being eliminated, the employer must notify the workers' committee (or if there is none, the inter-trade-union or trade union committee), the worker(s) concerned, and the worker's trade union if he/she is a trade union representative, of the following (Article 369[1]):

  a) The need to abolish the position, giving the reasons for doing so and identifying the section or equivalent unit in question.
  b) The need to dismiss the worker occupying that job, and indicating his/her occupational category;
  c) What criteria were used to select the worker.

- The workers' representative body, the worker(s) in question, and in the case of trade union representatives, the respective trade union(s), then have 10 days in which to give the employer their duly substantiated opinions, in particular on the reasons invoked by the employer, the requisites provided for in Article 368(1) of the CT or the criteria referred to in paragraph (2) of the same Article, and any alternatives that would make it possible to attenuate the effects of the dismissal (Article 370[1]).

With regard to the regime governing sanctions in relation to the above Articles, we would note that:

- When committed without malice aforethought, breaches of the provisions of Article 311(3) of the CT constitute very serious administrative offences (Article 311[5]).
- Breaches of the provisions of Articles 99(2), 212(2) or (3), 217, 231(1),(2), (4) or (7), or 241(2), (3) or (4) of the CT constitute serious administrative offences (Article 99[5], Article 212[4], Article 217[6], Article 231[9], and Article 241[10]).
- Dismissals in breach of the provisions of Articles 360(1) to (4), Article 361(1) or (3), or Article 369(1) of the CT constitute serious administrative offences (Article 360[6], Article 361[6], and Article 369[2]).

Lastly, we would emphasise that collective redundancies are unlawful unless the employer has sent the communication provided for in Article 360(1) or (4) of the CT, or has promoted the negotiations provided for in Article 361(1) (Article

383[a]); and dismissals on the grounds that the worker's job is being eliminated are also deemed unlawful unless the employer has sent the communications provided for in Article 369 (Article 384[c]).

Under Article 389(1) of the CT, if a redundancy or dismissal is declared unlawful, the court will order the employer:

- To compensate the worker for all material and non-material damages incurred (subparagraph [a]).
- To reinstate the worker at the same establishment or enterprise with no loss of category or length of service, except in the cases provided for in Articles 391 and 392 (subparagraph [b]).

7. Finally, we would point out that members of bodies that collectively represent workers are not allowed to tell workers or third parties about information which they have received within the scope of the right to information and consultation and which they were expressly informed was confidential (Article 412[1], CT). This duty of confidentiality continues to exist after such persons end their term of office as members of the representative body (Article 412[2]).

Article 412(3) of the CT says that employers are not required to provide information or engage in consultations whose nature is capable of seriously prejudicing or affecting the enterprise or establishment's operations.

We would also note that the grounds for classifying information as confidential, not providing information, or not consulting must be given in writing, based on objective criteria that are themselves founded on management needs (Article 413[1], CT).

In addition, Article 413(3) goes on to say that the body which collectively represents the workers concerned can challenge the above classification or refusal under the terms of the Code of Labour-related Procedure (CPT) (Articles 186-A *et seq*., Executive Law no. 295/2009 of 13 October 2009, which amended the CPT approved by Executive Law no. 480/99 of 9 November 1999).

2) The Committee asks whether this is the scope of Portugal's legislation, particularly as regards the calculation of these minimum thresholds.

In this respect we would highlight the fact that Article 503(6) of the CT (right of trade union delegates to be informed and consulted) approved by Law no. 99/2003 of 27 August 2003 reads as follows: "*The provisions of the present Article are not applicable to microenterprises, small enterprises, and establishments where less than 20 staff work*".

The amendment of the Labour Code approved by Law no. 7/2009 of 12 February 2009 eliminated the exception with regard to establishments with less than 20 workers, when they belong to medium-sized or large enterprises. The exposé of reasons for Government Bill no. 216/X indicates that this was done in order to adapt the regime to the provisions of Directive no. 2002/14/EC of the European Parliament and of the Council of 11 March 2002. Article 466(3) of the

CT thus now says that the provisions of Article 466(1) and (2) no longer apply to micro or small enterprises.

We would also note that Article 100(1) of the CT classifies enterprises as follows:

- Microenterprises: employ less than 10 workers.
- Small enterprises: employ between 10 and 49 workers.
- Medium-sized enterprises: employ between 50 and 250 workers.
- Large enterprises: employ over 250 workers.

For the purposes of Article 100(1), the above numbers are the average for the previous calendar year, while in the first year of an enterprise's existence the figure that counts is the number of workers on the day on which the enterprise is legally formed (Article 100[3], CT).

3) According to the report, the rules on subjects about which workers must be informed and consulted and the procedures for exercising this right within undertakings are mostly contained in collective agreements. The Committee asks for further details about the subjects concerned. It also asks what proportion of employees are covered by these collective agreements.

As we have already mentioned, the right of workers to be informed and consulted is provided for in the labour legislation. In particular, the Labour Code says that the legal norms which regulate labour contracts can be waived by collective labour regulation instruments (IRCTs), unless the specific norm in question says that it cannot be set aside (Article 3[1]); and moreover that where a variety of matters are concerned – particularly the rights of workers' elected representatives – this can only happen when the IRCT provision is more favourable to workers than the corresponding legal norm (Article 3[3][n]).

As we also say earlier, analysis of a sample of collective agreements published between 2009 and 2012 reveals that only two (company agreements) contain clauses that are more favourable than the law with regard to the right to information and consultation. (It should be noted that this analysis only looked at clauses whose provisions differ from the law.)

We would recall that the 5th Report mentioned that: "*analysis of collective agreements published between 2005 and 2008 showed that 101 of them contain clauses on matters which are the object of information and consultation, as well as on the regulation of the exercise of this right by bodies that collectively represent workers, either in the shape of a simple referral to the law, or by means of the latter's transcription. Of these 101 collective agreements, it was found that only one had actually been invoked. That one says that the bodies which represent workers must obligatorily be consulted about increases in the contribution workers must pay towards the cost of meals to amounts that are significantly higher than those already set.*" All of which means that most of the collective agreement clauses on information and consultation either simply refer to, or directly transcribe, the law.

On the proportion of workers covered, collective agreements are themselves required to estimate the number of employers and staff they encompass

(Article 492[1][g], CT). The estimate for the number of workers covered by the two company agreements referred to above is 30 to 40.

4) The Committee asks whether specific rules are laid down in collective agreements as to how regular information and consultation should be and how it is ensured in practice that employers fulfill their obligations to inform and consult their employees.

As mentioned previously, analysis of the content of collective agreements identified clauses on rights linked to information and consultation at small enterprises. One of these cases includes a time limit for responses to consultation requests.

The fact is that the law specifies the procedures for informing and consulting, and how often this should occur. This is described in the answer to the first question posed by the Committee of Experts.

5) The Committee asks therefore whether employees' representatives are empowered to appeal to the relevant courts in respect of alleged breaches of the rights covered by Article 21 of the revised Charter.

Of particular importance here is Article 413 of the CT, which says that:

- The grounds for classifying information as confidential, not providing information, or not consulting must be given in writing, based on objective criteria that are themselves founded on management needs (paragraph [1]).
- The body which collectively represents the workers concerned can challenge the above classification or refusal under the terms of the Code of Labour-related Procedure (CPT) – i.e. before the courts (paragraph [2]).

In this respect Articles 186-A *et seq*. of the CPT provide for special, urgent proceedings in the form of a court action challenging the confidential nature of information or a refusal to provide information or engage in consultation. This procedure was created in order to guarantee that both the duty of members of workers' representative bodies to protect the privacy and confidentiality of information given to them by an employer, and the employer's ability to refuse to provide information, function normally.

6) The Committee points out that there must be sanctions for employers who fail to fulfill their obligations under this article (Conclusions 2005, Lithuania). It asks what body is responsible for ensuring that the right of workers to be informed and consulted is respected. It also asks what penalties may be imposed on employers in the event of infringements and whether the employees concerned may claim damages.

Article 15(2)(a) of Executive Law no. 126-C/2011 of 29 December 2011[32], which approved the Organic Law governing the Ministry of the Economy and

[32] Legislative act subsequently amended by Executive Law no. 266/2012 of 28 December 2012.

Employment, and Article 2 of Regulatory Decree no. 47/2012 of 31 July 2012, which approved the Organisational Structure of the Working Conditions Authority (ACT), together entrust the monitoring and inspection of compliance with provisions of laws, regulations and collective agreements on working relations and conditions to the ACT.

The relevant administrative offences are described in the answer to the 1st question posed by the European Committee of Social Rights.

However, where administrative offences are concerned, we would also note here that the maximum fines for very serious administrative offences provided for in Article 554(4) of the CT are themselves doubled in situations involving breaches of norms governing work by minors, health and safety at work, rights of bodies that collectively represent workers, and the right to strike (Article 556[1], CT).

ARTICLE 22
THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

1. Regime regulated by the Labour Code

Without prejudice to the information given in previous Reports, we would recall that the rights set out in Article 22 are exercised within enterprises either directly by the workers themselves, or else and above all by the bodies that collectively represent those workers and are formed precisely to collectively defend and pursue their rights and interests.

The right of workers to take part in the determination and improvement of working conditions and the working environment via elected representatives is guaranteed in Articles 54 (Workers' committees) and 56 (Trade union rights and collective agreements) of the Constitution of the Portuguese Republic (CRP), as well as in various Labour Code (CT) precepts (Articles 415 *et seq*.).

Article 54(1) of the Constitution enshrines the workers' right to create committees in order to defend their interests and democratically intervene in the life of their enterprise. Workers elect the members of such committees by direct secret ballot (Article 54[3], CRP).

The same precept regulates the process of forming workers' committees, the election of their members, and their rights (Article 54[2], [4] and [5], CRP). Provision is also made for the creation of coordinating committees: "*with a view to improving intervention in economic restructuring and in such a way as to guarantee workers' interests*" (Article 54[3], CRP).

Article 55(1) of the Constitution enshrines the principle of the: "*freedom to form, belong to and operate trade unions as a condition and guarantee of the building of their unity in defence of their rights and interests*". Article 56(1) goes on to say that: "*Trade unions have the competence to defend and promote the defence of the rights and interests of the workers they represent*".

Trade unions have a range of rights in the area covered by Article 22. Of particular importance here are the rights to: "*take part in drawing up labour legislation*"; "*take part in corporate restructuring processes, especially with regard to training actions or when working conditions are altered*"; and "*exercise the right to enter into collective agreements, which right shall be guaranteed as laid down by law*" (Article 56[2] and [3], CRP).

The Labour Code approved by Law no. 7/2009 of 12 February 2009 puts these CRP provisions into practice by establishing the right of the workers in each enterprise to create a workers' committee in order to defend their interests and exercise the rights provided for in the Constitution and the ordinary law (Article 415, CT).

In addition, workers' subcommittees can be created in an enterprise's establishments when the latter are geographically scattered (Article 415[2], CT); and coordinating committees can be formed in order to improve interventions in economic restructuring processes, so as to articulate the activities of the worker's committees in the different enterprises linked by a dominant or group relationship (Article 415[4], CT).

Workers' committees are particularly entitled to: receive the information they need to perform their functions; perform a control function in relation to the enterprise's management; participate, among other things, in corporate restructuring processes; participate in procedures concerning changes in working conditions; take part in the drawing up of labour legislation, either directly or via their coordinating committees; manage or take part in the management of the enterprise's social projects; in the case of enterprises in the state-owned business sector, arrange and promote the election of the workers' representatives on the governing bodies; and meet the enterprise's managing body at least once a month (Article 423[1], CT).

The Labour Code says that trade unions have the right to enter into collective labour agreements; take part in drawing up labour legislation; and participate in corporate restructuring processes, especially with regard to training actions, or when working conditions change (Article 443[1] and [2], CT).

Trade union activity in an enterprise is undertaken by trade union delegates, trade union committees, and inter-trade-union committees (Article 460, CT).

Trade union delegates are entitled to be informed and consulted, particularly about: the evolution of the enterprise or establishment's business and economic situation; the enterprise's employment situation and any preventative measures related to, especially when reductions in worker numbers are expected; and decisions that could lead to substantial changes in the way in which work is organised or in labour contracts (Article 466, CT).

Worker participation in Community-scale enterprises or groups of enterprises takes place through European works councils, the legal regime governing which is currently regulated in a specific Law (Law no. 96/2009 of 3 September 2009).

Worker participation in the health and safety field within enterprises is undertaken either by the workers' HSW (health and safety at work) representatives or, when there are none, by the workers themselves. We will give more details of this legal regime in the answers to the queries which the European Committee of Social Rights posed in 2010 in relation to the subject of "*Protection of health and safety*".

On the question of the organisation of social and sociocultural facilities and services within enterprises, the Labour Code prohibits employers from operating canteens, refectories, "cut-price" supplies or other establishments directly linked to work in order to supply goods or provide services to their staff for profit. It also says that the workers' committee has the right to manage or take part in the

management of the enterprise's social projects (Articles 129[1][i] and 423[1][e], CT).

Finally, turning to how compliance with the regulations regarding this precept is controlled, we would especially note that both workers and their representatives can ask the ministry with responsibility for the labour area's inspection body – the Working Conditions Authority (ACT) – to intervene in such matters. The ACT's mission includes promoting improvements in working conditions by monitoring and inspecting compliance with labour-related rules and standards, controlling fulfilment of the legislation on health and safety at work, and imposing the sanctions for failure to respect them (Article 2, Regulatory Decree no. 47/2012 of 31 July 2012, and Article 14, Law no. 102/2009 of 10 September 2009)[32].

Workers' representatives can also ask the ACT to intervene whenever they consider that the means adopted and the resources provided by employers are insufficient to ensure health and safety at work (Article 14[5], Law no. 102/2009).

Portuguese legislation does not provide for any exceptions with regard to the implementation of Article 22, either for workers, or for enterprises.

2. Public sector employment regime

The legislator has established various mechanisms or routes via which workers (and their representatives) can take part in the determination and improvement of working conditions and the working environment.

In this respect there are four main mechanisms:

a) The right of participation pertaining to trade unions (see Article 10, Law no. 23/98 of 26 May 1998).
b) The right of participation pertaining to workers' committees (see Articles 232 *et seq*. of the Regulations).
c) The right of participation pertaining to trade union delegates (see Article 337[2], Regime governing Labour Contracts for Public Functions – RCTFP).
d) The right of participation pertaining to workers' HSW representatives (see Article 224[3], RCTFP).

Law no. 23/98 of 26 May 1998 established the regime governing collective bargaining and participation by Public Administration staff. Its Article 10 guarantees such workers the right to participate via their trade unions, particularly in:

a) The monitoring, inspection and implementation of measures regarding health and safety at work.

[32] These legislative acts were published in the *Diário da República* and can be consulted in this (now exclusively electronic) official journal at http://www.dre.pt/.

b) The management of public servants' social security institutions and other organisations designed to fulfil workers' interests, particularly social work and services, ADSE (public sector workers' social protection service), and Caixa Geral de Aposentações (public sector retirement fund).
c) Management audits of public departments and services.
d) The drawing up of internal regulations on the specific working conditions in each department or service.

Workers with a public sector labour bond are entitled to form workers' committees in order to collectively defend and pursue their rights and interests (see Article 289, RCTFP).

Article 235(1) of the Regulations requires that the following acts undertaken by public sector employers must obligatorily be subjected to a formal opinion from workers' committees:

a) The regulation of the use of technological equipment for remote surveillance in the workplace (subparagraph [a]).
b) The treatment of biometric data (subparagraph [b]).
c) The drawing up of the organ, department or service's internal regulations (subparagraph [c]).
d) The definition and organisation of the work schedules applicable to all or part of the organ, department or service's staff (subparagraph [d]).
e) The drawing up of the holiday schedule for the organ, department or service's staff (subparagraph [e]).
f) Any measures that lead to a substantial reduction in the number of the organ, department or service's staff or a substantial worsening of their working conditions, and any decisions capable of leading to substantial changes at the level of the way work is organised or in labour contracts (subparagraph [f]).

The RCTFP also guarantees both workers and trade unions the right to engage in union activities within their organ, department or service, particularly via trade union delegates and trade union or inter-trade-union committees (Article 330[1], RCTFP).

Trade union delegates enjoy the: *"right to information and consultation with regard to the matters that form part of their responsibilities"* (Article 337[1], RCTFP). This right particularly encompasses:

a) Information on the recent, and probable future, evolution of the activities of an organ, department or service, peripheral establishment or devolved organisational unit, and its financial situation.
b) Information and consultation on the situation, structure and probable future evolution of employment in the organ, department or service, and on any expected anticipatory measures, particularly when jobs are threatened.
c) Information and consultation with regard to decisions that are capable of leading to substantial changes at the level of the way work is organised, or with regard to labour contracts (Article 337[2], RCTFP).

Workers with a public sector employment bond are also entitled to work under safe and healthy conditions (Article 221[1], RCTFP).

Article 221 of the RCTFP lays down the principles that public sector employers are required to abide by with regard to health and safety activities. In this respect they must:

a) Plan and organise the prevention of occupational risks.
b) Eliminate factors that contribute to risks and accidents.
c) Assess and control occupational risks.
d) Inform, train, consult with and promote the participation of workers and their representatives.
e) Promote and monitor workers' health (see Article 221[2] and [3], RCTFP).

Article 224 of the RCTFP regulates the consultation and participation procedures concerning workers (and their representatives).

Article 224(3) says that public sector employers must particularly consult workers' representatives (or if there are none, the workers themselves) in writing at least twice a year and in advance or in good time, about the following:

a) The assessment of risks to health and safety at work, including those that affect groups of workers who are subject to special risks.
b) Health, hygiene and safety measures before they are implemented, or as soon as possible if they need to be put into practice urgently.
c) Measures whose impact on technologies and functions mean that they have repercussions for health, hygiene and safety at work.
d) The programme for and organisation of training in the health, hygiene and safety at work field.
e) The appointment and removal of workers who perform specific functions with regard to health, hygiene and safety in the workplace.
f) The appointment of the workers with responsibility for implementing first aid, fire-fighting and staff evacuation measures, their training, and the equipment and materials available to them.
g) Any recourse to outside services or qualified technical specialists in order to carry out all or part of the activities linked to health, hygiene and safety at work.
h) The protection equipment and materials that need to be used.
i) The annual list of fatal work-related accidents and of those that lead to an incapacity for work lasting more than three working days, which must be drawn up by the end of March the following year.
j) The reports on work-related accidents.

The following table shows the infractions that were detected as part of the inspection work linked to the control of the rules and standards which are designed to protect workers' health and safety and which guarantee that workers are informed, trained and consulted with regard to, and participate in, the activities undertaken in the HSW field.

Table 26

Coercive procedures in the health and safety at work (HSW) field, 2009-2012

Year Subject / Reported Infractions	2009	2010	2011	2012 (**)
General Prevention Principles	**107**	**70**	**49**	**51**
Worker Participation	*****	**44**	**29**	**14**
Information	14	14	4	7
Consultation	*	29	21	1
Workers' HSW Representatives – Electoral process	*	0	0	0
Workers' HSW Representatives – Protection	*	*	0	0
Workers' HSW Representatives – Conditions needed to perform functions	*	*	0	0
Other	*	1	4	6
Training	**80**	**180**	**144**	**86**
Lack of adequate HSW training	*	148	119	83
Training (appointed workers / persons responsible for implementing emergency measures / workers' representatives)	*	7	*	2
Other	*	25	21	1
Obligations of worker with leadership or coordination functions	*	*	*	**2**
HSW Activities	**1,130**	**2,254**	**1,924**	**1,451**
Planning and programming	*	30	7	17
Risk assessment	*	111	110	115
Assessment of risks capable of having prejudicial effect on genetic heritage	*	*	*	1
Internal safety inspections	*	5	4	3
Accident analysis	*	13	12	12
Incident statistics	*	0	1	0
Health monitoring	*	2,057	1,779	1,298
Emergency activities – Situations entailing grave and imminent danger	*	*	0	0
Emergency activities – Fire, first aid and staff evacuation	13	38	11	5
Coordination of external activities	**13**	**3**	**4**	**3**
Monitoring of outside HSW services	*	*	0	0
Simultaneous or successive activities at the same workplace	*	*	4	7
Health and Safety at Work Services	**49**	**242**	*	**324**

Vulnerable groups	*	**8**	**7**	**0**
Pregnant women	*	2	0	0
Minors	*	6	7	0
Work-related Accidents and Occupational Illnesses	*	**783**	**1,491**	**1,473**
First aid	*	0	0	1
Year **Subject / Reported Infractions**	**2009**	**2010**	**2011**	**2012 (**)**
Work-related accident insurance (lack of)	941	782	1,188	1,079
Work-related accident insurance (lack of or insufficient declarations)	*	*	257	219
Work-related accident insurance (failure to identify insurer on pay slip)	*	*	25	26
Work-related accident insurance – independent worker (lack of)	*	*	*	147
Reporting of occupational illnesses	*	0	0	0
Occupational rehabilitation and reintegration obligations	*	1	1	0
Report of work-related accident to insurer (lack of)	*	*	*	6
Display at the enterprise of rights and obligations of victims and persons responsible	*	*	*	0
Employer without transferred responsibility – written notification sent to court	*	*	*	3
Mandatory documents	**120**	**153**	**121**	**100**
Communication of work-related accidents to ACT and missing documents	76	77	100	87
HSW activities	20	4	3	4
HSW service formats	24	38	18	9
Annual Activity Report	**55**	**34**	*	
Essential requirements regarding safety of machinery[33]	1	*	*	**6**
Special Community HSW Directives[34]	**2,381**	**2,372**	**1,673**	**888**
Miscellaneous	**344**	**-**	**423**	**35**
TOTAL	**5,234**	**6,143**	**5,865**	**4,433**

Source: ACT

(*) The data are not broken down.

(**)Data collected in accordance with new parameters, including with regard to information and consultation processes.

[33] Executive Law no. 103/2008 of 24 June 2008.

[34] The data regarding special Community Directives are broken down in Table 51.

Answers to queries from the European Committee of Social Rights

1) *The Committee underlines that workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in Article 22 of the Revised Charter (see below). The workers' right to take part in the determination and improvement in these areas implies that workers may contribute, to a certain extent, to the employer's decision making process (Conclusions 2007, Armenia). The Committee asks for the next report to provide the relevant information in this regard.*

The Labour Code lays down the following with regard to the right of workers to take part in the determination and improvement of working conditions in ways that contribute to employers' decision-taking processes:

Workers' committees are entitled to meet their enterprise's management body at least once a month in order to consider matters linked to the exercise of their rights (Article 423[1][g], CT).

Employers must ask workers' committees for a formal opinion before undertaking the following acts: changes in the criteria governing occupational classifications and worker promotions; changes in the location of the enterprise or establishment's activities; measures that will or might result in a substantial reduction in the number of workers, a worsening in working conditions, or changes in the way in which work is organised; and the winding up of the enterprise or a request to enter insolvency (Article 425, CT).

As part of the exercise of the right to control an enterprise's management, which is designed to promote responsible commitment by workers to the enterprise's activities, the workers' committee can: assess and issue an opinion on the enterprise's budget and any amendments thereto, and can monitor their execution; promote the appropriate use of technical, human and financial resources; acting in relation to both management bodies and staff, promote measures that help improve the enterprise's activities, particularly in the equipment and administrative simplification fields; and make suggestions, recommendations or criticisms to the enterprise that tend to promote workers' initial qualification and continuous training and improve working conditions, particularly with regard to health and safety at work (Article 426[1] and [2], CT).

As part of its participation in corporate restructurings, the workers' or coordinating committee especially has the right to be informed and consulted in advance about the process of formulating restructuring plans, and to make suggestions, claims or criticisms to the competent bodies at the enterprise (Article 429, CT). More details of this legal regime are given below.

Where matters concerning the protection of health and safety at an enterprise are concerned, workers' HSW (health and safety at work) representatives can issue opinions and submit proposals, particularly with regard to the assessment

of risks to health and safety at work and protection and prevention measures (Article 18, Law no. 102/2009).

In addition to this, workers' representatives have the right to meet the enterprise's management body at least once a month in order to discuss and analyse matters linked to health and safety at work (Article 25, Law no. 102/2009).

2) The Committee emphasizes that Article 22 applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions 2005, Estonia). It has considered as in conformity with this provision a situation where, in undertakings employing less than 10 people, employees were in direct contact with the employer. Rules relating to the determination and improvement of working conditions must cover the great majority of employees concerned (Conclusions 2007, Norway). The Committee asks that the next report provide information on these issues.

The information given with regard to this paragraph in the 2nd Report on the Revised European Social Charter remains valid. We would reiterate the fact that Portuguese legislation does not exclude any enterprise from the scope of the implementation of these provisions on the basis of the number of workers it employs.

3) The Committee asks for further information on workers' committee and their role, as well as the impact of the modifications made by the Labour Code on the right of workers to take part in the determination and improvement of their working conditions and working environment.

As far as workers' committees and their role in this respect are concerned, it is important to underline the following:

As we mentioned earlier and was described in the 2nd Report on the Revised European Social Charter, each enterprise's workers can create a workers' committee whose purpose is to defend their interests and exercise the rights provided for in the Constitution and the ordinary law (Article 54[1], CRP, and Article 415[1], CT). Any worker at an enterprise, regardless of his/her age or function, is entitled to take part in the formation of this collective worker representation body and the approval of its articles of association; all workers are also entitled to stand for election to this body (Article 415[3], CT).

It is the workers who decide to create the workers' committee, approve its articles of association, and directly elect its members by secret ballot (Article 54[2], CRP, and Articles 430 and 433, CT).

A workers' committee acquires legal personality when its articles of association are approved. It also possesses a legal capacity that encompasses all the rights

and obligations that are necessary or useful to the pursuit of its goals (Article 416, CT).

The number of members of a workers' committee varies depending on the size of the enterprise (in terms of staff numbers): less than 50 workers – up to two members; 50 to 199 workers – up to three members; 201 to 500 workers – between three and five members; 501 to 1,000 workers – between five and seven members; more than 1,000 workers – between seven and eleven members (no. 1 do Article 417, CT).

The term of office of members of a workers' committee cannot exceed four years, but successive terms of office are permitted (Article 418, CT).

In pursuit of their responsibilities, workers' committees have the right to (all references to the Labour Code):

- Call general workers' meetings, to be held in the workplace (Article 419[1]).
- Receive the information needed to perform their functions, particularly with regard to: general activity plans and budgets; the organisation of production and its implications for the degree to which workers and equipment are used; personnel management; and draft changes to the corporate object or the share capital, and any planned reconversion of the enterprise's activities (Articles 423[1][a] and 424).
- Exercise the function of controlling the enterprise's management (Articles 423[1][b] and 426).
- Participate among other things in corporate restricting processes, drawing up vocational training plans and reports, and procedures regarding changes in working conditions (Articles 423[1][c] and 429).
- Take part in drawing up labour legislation, either directly or via their coordinating committees (Articles 423[1][d], 470, 474 and 475).
- Manage or take part in the management of the enterprise's social projects (Article 423[1][e]).
- Intervene in cases involving: individual dismissals (Articles 353 and 356); collective redundancies (Articles 360, 361, 363); dismissals due to the elimination of the worker's job (Articles 369 to 371); dismissals on the grounds of unsuitability (Articles 376 and 377); reductions in or suspensions of activities in a business crisis situation (Articles 299 to 301, and 307); transfers of workers who belong to collective worker representation bodies (Article 411).
- Subject to fulfilment of certain requisites, sign collective labour agreements (Article 491[3]).

Workers' committees also have the right to issue an opinion before an employer undertakes the following acts:

- Treatment of a worker's biometric data (the National Data Protection Commission – CNPD – must be notified before the data is treated) (Article 18).

- Regulation of the use of remote surveillance equipment in the workplace (Articles 20 and 21).
- Changes in the criteria governing occupational classifications and worker promotions (Article 425[a]).
- Changes in the location of the enterprise or establishment's activities (Article 425[b]).
- Any measure that will or might result in a substantial reduction in the number of workers, a worsening in working conditions, or changes in the way in which work is organised (Article 425[c]).
- The winding up of the enterprise or a request to enter insolvency (Article 425[d]).

Workers' committees also have the following rights, which are intended to enable them to better fulfil their responsibilities:

- To hold workers' meetings in the workplace, and display all documents regarding the workers' interests in a place that is appropriate to that end and is made available by the employer (Articles 419 and 420, CT).
- To appropriate facilities within the enterprise, and to the material and technical resources needed to perform their functions (Article 421, CT).
- To promote and arrange the election of the workers' representatives on the governing bodies of state-owned business entities [Articles 423[f] and 428, CT).
- To meet the enterprise's management body at least once a month in order to consider subjects linked to the exercise of their rights (Article 423[1][g], CT).

The individual members of workers' committees have the following rights, which are designed to enable them to perform their functions:

- To adequate legal protection against any form of conditioning of, or constraint or limitation on, the legitimate exercise of their functions (Article 406, CT).
- A time credit, giving them time in which to carry out their responsibilities (Articles 408 and 422, CT).
- Protection in cases involving disciplinary or dismissal proceedings and in the event of transfers (Articles 410 and 411, CT).

Contrary to what the Committee has said about the exercise of the right to participate in corporate restructurings, Portuguese legislation fully guarantees this right, which is enshrined in both the Constitution [Article 54[4][c], CRP) and the Labour Code. The latter's Article 429(1) implements the constitutional guarantee by expressly stating that: "*The right to take part in corporate restructuring processes shall be exercised by the workers' committee, or by the coordinating committee in cases involving the restructuring of the majority of the enterprises whose committees it coordinates*."

As such, where participation in corporate restructuring processes is concerned, workers' or coordinating committees have the right to:

- Be informed and consulted in advance with regard to restructuring plans or projects.
- Be informed about the final formulation of restructuring instruments, and to pronounce themselves thereon before they are approved.
- Meet the bodies with responsibility for the preparatory work for the restructuring.
- Submit suggestions, claims, or criticisms to the competent bodies of the enterprise in question.

What is more, if the employer prevents a committee from exercising the rights listed above, it commits a serious administrative offence (Article 429[3], CT).

4) The Committee asks that the next report provide the minimum number of employees, under national legislation, beyond which such representatives must be elected or appointed. It also asks for information on their responsibilities.

The election of workers' HSW representatives was described in the 2nd Report on the Revised European Social Charter, and more recently and in more detail in the 8th Report on the Implementation of the Charter, under Article 3 (Right to safety, hygiene and health at work).

We would note that Portuguese law does not require a minimum number of workers' representatives for their election to be valid.

Law no. 102/2009 says that the number of workers' representatives can vary between one and seven, depending on the size of the enterprise (Article 21[4]). Under the same Law, unless an IRCT provides otherwise, the maximum number of representatives is as follows:

- Enterprises with less than 61 workers — one representative.
- Enterprises with 61 to 150 workers — two representatives.
- Enterprises with 151 to 300 workers — three representatives.
- Enterprises with 301 to 500 workers — four representatives.
- Enterprises with 501 to 1,000 workers — five representatives.
- Enterprises with 1001 to 1,500 workers — six representatives.
- Enterprises with more than 1,500 workers — seven representatives.

As part of the overall worker consultation process, workers' HSW representatives are responsible for issuing opinions and making proposals, in particular with regard to (Article 18, Law no. 102/2009):

- The assessment of risks to health and safety at work, including those that affect groups of workers who are subject to special risks.
- Health and safety measures, and the programme for and organisation of related training.
- Health and safety risks, and protection and prevention measures and the way in which they are implemented with regard to both activities and the enterprise, establishment, department or service itself.

- Without prejudice to the above, workers and their HSW representatives can at any time make proposals designed to minimise any occupational risk (Article 18[7], Law no. 102/2009).

Within this context workers' representatives must have available to them up-to-date information about: health and safety risks, protection and prevention measures, and the way in which they are implemented; the measures to be taken and the instructions to be followed in cases of serious and imminent danger; measures regarding first aid, fire-fighting, and both worker evacuation in the event of an incident and the staff, departments and/or services with the responsibility for putting those measures into practice (Article 19[1], Law no. 102/2009).

Workers' HSW representatives must be given ongoing training designed to enable them to perform their functions (Article 22[1], Law no. 102/2009).

Enterprises' management bodies must make appropriate facilities available to workers' HSW representatives, along with the material and technical resources they need in order to perform their functions (Article 24[1], Law no. 102/2009).

Workers' HSW representatives are entitled to meet the enterprise's management body at least once a month in order to discuss and analyse matters linked to health and safety at work (Article 25, Law no. 102/2009).

5) The Committee asks if national collective agreements refer to the organization and management of social and socio-cultural services, and if so whether these collective agreements provide for the participation of workers in the organization of such services.

Analysis of a sample (95) of collective agreements showed that 20 contain clauses on this matter.

Where the content of agreements that is relevant to this subject is concerned, we would especially note the following:

Some of the above collective agreements provide for the existence of social facilities within the enterprise, such as refectories, canteens and crèches[35]:

- The collective agreements between APCOR and FEVICCOM, and ANCAVE and Sindicato dos Trabalhadores da Indústria e Comércio de Carnes do Sul (Trade Union of Workers in the Southern Meat Industry and Trade – STICCS), say that enterprises must make places in which staff can heat up and eat their meals available to them.
- The collective agreement between APIAM and Sindicato Nacional dos Trabalhadores da Indústria e Comércio da Alimentação, Bebidas e Afins (National Trade Union of Workers in the Food, Beverage and Similar Industry and Trade – SNTICABA) requires all enterprises to provide workers

(35) Collective labour agreements are published in the *Boletim do Trabalho e Emprego,* which is available at http://bte.gee.min-economia.pt/.

with a suitably equipped place in which to heat up and eat their meals, or else a meal allowance for as long as the enterprise does not have such a place. It also provides for the existence of a crèche at enterprises whose workers have 20 or more children under the age of three.

- On the subject of the workers' right to social facilities, the company agreement between CIMPOR and FETESE says that all the company's premises or facilities which have at least 50 staff must have a refectory.
- There are also collective agreements with clauses that provide for: mortgage credit; complementary pension plans; medical/social services; legal aid; the creation of physical spaces in which to engage in recreational and sports activities; the creation of an incentive plan for workers to engage in sports; and the existence of cooperation protocols with public and private entities that seek to secure advantageous terms for workers.

Some of the collective agreements we analysed contain clauses that provide for worker participation in the organisation of social and sociocultural services, facilities and equipment, particularly via either a committee which workers are entitled to form for this purpose and which has the right to participate in the management of the social services intended for the enterprise's staff, or via trade union delegates who are tasked with monitoring all the social services that exist within the enterprise, particularly crèches, refectories, and hygiene and safety services.

One example in this respect is the collective agreement between APCOR and FEVICCOM, which says that the workers must manage the enterprises' social projects, by means of a committee appointed for that purpose.

Another is the agreement between APIAM and SNTICABA, which says that trade union delegates are responsible for monitoring the operation of all the social services at the company – again, especially crèches, refectories, and health, hygiene and safety services.

6) The Committee stresses that workers must have legal remedies when their right to take part in the determination and improvement of their working conditions and environment is not respected (Conclusions 2003, Bulgaria). There must also be sanctions for employers who fail to fulfill their obligations under this Article (Conclusions 2003, Slovenia). The Committee asks that the next report provide relevant information on both issues.

The Constitution enshrines the right of access to the law and effective jurisdictional protection. Everyone, including workers, is guaranteed access to the law and the courts in order to defend those of their rights and interests that are protected by law (Article 20[1], CRP).

As a rule, disputes that arise out of labour relations are heard by specific courts – the labour courts – which the Constitution classifies as courts with a specialised

competence (Article 211[2], CRP, Article 78[b], Law no. 3/99, and Articles 118, 119 and 175, Law no. 52/2008[36]).

The labour courts are in particular competent to hear and judge cases involving transgressions against legal and collective-agreement norms that regulate labour relations, and transgressions against legal or regulatory norms regarding health, hygiene and safety at work (Article 86, Law no. 3/99, and Article 118, Law no. 52/2008). They also have the competence to take decisions regarding the imposition of fines for such transgressions.

The labour courts also hear appeals against decisions taken by administrative authorities in proceedings regarding administrative offences in the labour and social security fields (Article 87, Law no. 3/99, and Article 119, Law no. 52/2008).

Jurisdiction in labour-related matters is specifically regulated by the Code of Labour-Related Procedure (CPT) approved by Executive Law no. 480/99 of 9 November 1999 and amended and republished by Executive Law no. 295/2009 of 13 October 2009[37].

In order to better ensure that workers can exercise their rights within the ambit of the subject that is of interest to us here, Article 7 of the CPT says that without prejudice to the legal aid regime itself, the Public Prosecutors' Office will act in court on behalf of workers and their families when the law so requires or the parties request it.

Bodies that collectively represent workers – especially trade unions – have the legitimacy to bring court actions regarding rights linked to the collective interests they represent, and to be party to suits in which workers' interests are at stake (Article 5[1], Executive Law no. 295/2009).

Trade unions can also exercise a right to act on behalf and in the place of workers who so authorise in certain circumstances – namely lawsuits concerning measures that an employer has taken against members of the union who are elected workers' representatives, and in cases of breaches of individual rights of the same nature pertaining to workers who are members of the same union (Article 5[2], Executive Law no. 295/2009).

In addition, Bodies that collectively represent workers can legitimately bring court actions regarding whether information should be classified as confidential, and in cases in which an employer refuses to provide information or engage in consultation (Article 5[6], Executive Law no. 295/2009).

[36] The way in which the judicial system is divided up is regulated by Law no. 3/99 of 13 January 1999, which approved the Law governing the Organisation and *Modus Operandi* of the Judicial Courts, otherwise known as LOTJ (Law no. 3/99 itself amended Law no. 38/87 of 23 December 1987), and by Law no. 52/2008 of 28 August 2008, which approved a new version of the LOTJ, all of which have been amended on a number of occasions. These legislative acts were published in the *Diário da República* and can be consulted in this (now exclusively electronic) official journal at http://www.dre.pt/.

[37] These legislative acts were published in the *Diário da República* and can be consulted in this (now exclusively electronic) official journal at http://www.dre.pt/.

As to whether there are sanctions for employers who are in breach of the obligations covered by Article 22, as we explained in the 2nd Report on the Revised European Social Charter, Portuguese law makes employer infractions against the rules governing this matter subject to the regime governing liability for labour-related administrative offences.

Labour-related administrative offences are regulated by: the provisions of the Labour Code, which typifies and classifies them in terms of the degree of seriousness, which depends on the precept to which they refer (Articles 548 to 566); and subsidiarily by the General Regime governing Administrative Offences set out in Executive Law no. 433/82 of 27 October 1982 (as subsequently amended on various occasions), and by Law no. 107/2009 of 14 September 2009 for the legal regime governing the procedure applicable to labour and social-security-related administrative offences [Article 549, CT, and Article 1, Law no. 107/2009].

ARTICLE 26
THE RIGHT TO DIGNITY AT WORK

The period between 1 January 2009 and 31 December 2012, included a number of changes to the existing legislation as a result of the revision of the Labour Code (CT) approved by Law no. 7/2009 of 12 February 2009.

Harassment of a worker or job seeker is defined as: *"...undesirable behaviour, namely that based on one or more discriminatory factors and undertaken during access to or as part of employment, at work or during vocational training, with the objective or effect of disturbing or constraining the person, affecting his/her dignity or creating an intimidating, hostile, degrading, humiliating or destabilising environment. Such harassment constitutes discrimination*" (Article 29[1], CT).

Any undesired behaviour of a sexual nature, be it verbal, non-verbal or physical, whose objective or effects are those referred to above is considered sexual harassment (Article 29[2], CT).

Breach of the provisions of Article 29 of the Labour Code constitutes a very serious administrative offence, conviction for which may be publicised (Article 562[1], CT).

Under the terms of the Labour Code with the 2009 amendment, harassment at work is no longer always treated as a form of discrimination, as it had previously been.

The current text of Article 29 does not require harassment to be based on a discriminatory factor. Discrimination is just one of the possible harassment formats, and other types of behaviour are capable of constituting harassment.

It is thus possible to talk about a discriminatory harassment, in which the undesired behaviour with hostile effects is based on any discriminatory factor – sex being one; and a non-discriminatory sexual or moral harassment, when this is not the case, but the constant and insidious nature of the behaviour in question has the same hostile effects, which at the end of the day are designed to drive the worker out of the company (also known as 'mobbing').

Harassment at work is not deemed a crime, but as a very serious administrative offence (Article 29[4], CT). It can give rise to compensation if considered discriminatory (Article 28, CT: Compensation for discriminatory acts: *Undertaking a discriminatory act that injures the worker or job seeker shall give him/her the right to compensation of material and non-material damages under the general terms of the law*).

If the harassment situation is classified as sexual coercion, however, it may be deemed a crime, as provided for in Article 163 of the Penal Code:

1 – Whosoever by means of violence, serious threat, or whosoever to that end and after rendering another person unconscious or unable to resist, constrains that person to undergo or engage in a significant sexual act with the perpetrator or a third party, shall be punished by a term of imprisonment of between one and eight years.

2 – Whosoever, by means not included in the previous paragraph and by abusing authority resulting from a family, guardian or ward-based relationship or a relationship involving hierarchical, economic or work-related dependency, or by taking advantage of fear he/she has caused, constrains another person to undergo or engage in a significant sexual act with the perpetrator or a third party, shall be punished by a term of imprisonment of up to two years.

The Regime governing Labour Contracts for Public Functions (RCTFP, Law no. 59/2008, as passed on 4 September 2008) remains in force, and in this regard there have been no noteworthy changes in relation to the information provided in the previous Report.

In order for sexual and moral harassment to be fought effectively, it is also necessary for the issue to be incorporated into measures in national plans and policies.

In addition to the information on the Third National Plan for Equality (PNI 2007-2010) provided in the last Report, we should also mention the Fourth National Plan for Equality, Gender, Citizenship and Non-Discrimination (PNIGCD 2011-2013), which was approved by Council of Ministers Resolution no. 5/2011 of 18 January 2011. This Plan takes a triple approach designed to affirm equality as a factor for competitiveness and development, by:

1. Enhancing the cross-cutting aspect of the response to the gender dimension.
2. Combining this overall strategy with specific actions, including positive ones.
3. Bringing the gender perspective into every area in which there is discrimination. Strategic Area no. 9 – Gender Violence – includes a measure (no. 60) intended to *promote and pursue the fight against sexual and moral harassment in the workplace by promoting awareness-raising and informative actions* targeted at companies in the public and private sectors, organisations in general, and central and local Public Administration bodies.

Sexual harassment at work, which has only been seen as a social issue since the 1970s, continues to be a real problem in workplaces, despite the fact that it is almost always "invisible" and thus almost non-existent from a statistical point of view.

It is important to note the role played in this regard by the Commission for Equality at Work and in Employment (CITE), which is the national mechanism for equality and is tasked with pursuing equality and non-discrimination for women and men at work and in employment and vocational training. In this field CITE is

the body that receives and analyses complaints linked to breaches of the legislation on equality at work and in employment. It also issues formal opinions on this subject.

During the reference period covered by the present Report, CITE received 428 complaints related to parenthood, equality and sex-based discrimination, and the reconciliation of work and family life. Of these, only 16 concerned sexual and moral harassment.

Table 27

Nr. of complaints lodged with CITE, 2009-2012

	2009	2010	2011	2012	Total
Sexual Harassment	1	4	1	1	7
Moral Harassment	1	4	0	3	8
Sexual and Moral Harassment	0	1	0	0	1
Total	2	9	1	4	16

Source: CITE

Data from the Working Conditions Authority (ACT) show that the number of reported cases of harassment has been rising significantly, although it has to be said that ACT's statistics do not give a breakdown that would distinguish between situations of sexual harassment, moral harassment, and breach of the so-called "duty of effective occupation" – i.e. the employer's duty to give workers appropriate work to do.

Very few cases actually come before the courts. However, the media and some NGOs report that they are aware of far more situations than those that are the object of formal complaints to the proper authorities.

Table 28

ACT notifications for moral and/or sexual harassment or breach of the duty to give workers effective work to do, 2009-2011

	Establishments visited	Notifications issued
2009	409	77
2010	497	79
2011	606	140

Source: ACT

With regard to the control of the rules and standards linked to equality and non-discrimination, and, within this overall area, harassment, the number of coercive procedures was as follows:

Table 29

Equality and non-discrimination, 2009/2012

Year	2009	2010	2011	2012 (*)
Equality and non-discrimination	**132**	**73**	**58**	**56**
Equality of access to employment and at work	(**)	13	7	8
Display of rights and duties regarding equality and non-discrimination	(**)	27	18	13
Prohibition on discrimination	(**)	9	8	13
Harassment (***)	(**)	18	21	22
Other	(**)	6	4	-

Source: ACT

(*) Data collected in accordance with new parameters, including with regard to information and consultation processes.

(**) The data for 2009 are not broken down.

(***) The data make no distinction between Moral and Sexual Harassment.

In 2012, ACT formally initiated 22 coercive procedures (official notifications) due to situations involving harassment at work with the objective or effect of affecting a person's dignity or creating an intimidating or destabilising environment.

When CITE follows up complaints in this field, the adversarial principle always requires it to give the entity against which a complaint has been lodged the opportunity to respond. All the arguments and elements provided by the parties are evaluated as a whole, after which CITE issues a formal opinion, and where applicable recommends the appropriate procedure.

CITE only issues opinions on complaints regarding harassment based on gender discrimination. If it concludes that harassment has occurred, the complaint is then forwarded to ACT, which has powers of inspection.

With a view to raising employer awareness of the issue of sexual and moral harassment in the workplace, as part of the work of its tripartite committee, in 2012 CITE began coordinating a tripartite working group with representatives from the social partners, the Offices of the Secretaries of State for the Public Administration and Equality, ACT, the Directorate-General of Employment and Working Relations (DGERT), and the Commission for Gender Equality (CIE). The goal was to design a corporate guide on preventing and fighting situations involving harassment at work.

This guide was completed in March 2013 and is merely informative in nature. Its purpose is to serve as an instrument that will support public and private employers in every sector and of every size, which want to voluntarily pursue an active policy designed to prevent, combat and eliminate forms of behaviour that might constitute harassment at work.

Its primary objective is not to impose new duties on private or public employers, but rather solely to help them – and their male and female workers – to understand the phenomenon of sexual and moral harassment in the workplace.

Another point worth making is that this guide is a support instrument designed to offer simple assistance with identifying harassment situations and to serve as inspiration for the construction of procedures for preventing and fighting this type of phenomenon in the workplace – something that in practice can only be achieved with the commitment and concertation of representatives from both the public or private employer and its workers of both sexes, and whenever possible by their together involving the authorities with responsibility for health and safety at work.

Also with a view to finding out more about the situation and increasing awareness of the issue of harassment in the workplace, CITE presented a draft project for a national survey on this subject. The idea is to look at the sexual and moral harassment of both men and women in a national sample group, as part of the Programme for the Equality Area in Portugal, under the EEA Grants Financial Instrument (reprogramming of this fund for 2009-2014).

In addition to carrying out the survey, the project will seek to create various training tools designed to prevent and fight the phenomenon of harassment in the labour market. The following partners have committed to the project: KS (Norwegian social partner), the Working Conditions Authority (ACT), the Portuguese Bar Association (OA), the Centre for Judicial Studies (CEJ), the Institute of Social and Political Sciences (ISCSP), Lisbon Municipal Authority (CML) and a medium-sized marketing enterprise, GRAFE. The project got underway in 2013 and is expected to last two years.

Answers to queries from the European Committee of Social Rights

1The Committee recalls that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc (Conclusions 2003, Italy). It therefore asks whether the employer can be held liable towards the above-mentioned categories of persons and asks for a detailed description of the liability of employers in the above-mentioned cases.

The Committee takes note of the information regarding the cases of sexual harassment brought before the Commission for Equality in Labour and Employment. It asks that the next report provide information on the means of redress for cases of sexual harassment.

In Portugal employers are only liable for their own actions, and for those of which they are aware but do not stop – i.e. when there is acquiescence or connivance on their part.

Employers only have disciplinary authority over their own workers.

2. The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The report contains no information regarding the burden of proof and therefore, the Committee asks what is the situation in this regard.

The rule on the distribution of the burden of proof contained in paragraph (5) of Article 25 (Prohibition of discrimination) of the Labour Code (*Whosoever alleges discrimination shall be responsible for indicating the worker or workers compared to whom he/she considers him/herself to have been discriminated against, and the employer shall be responsible for proving that the difference in treatment is not based on any discriminatory factor*) can only be applicable to situations in which harassment is based on discrimination. In this situation, one is *de facto* facing cases of discrimination; in addition to which this measure is the result of a Community imperative (Article 2[2][a] of Directive no. 2006/54/EC of 5 July 2006).

In other words, in situations in which sexual or moral harassment is based on discriminatory factors, it is the worker who must allege and provide evidence that he/she has been harassed and name the specific person(s) in relation to whom he/she has been discriminated against, while the employer must prove that its action or conduct was not motivated by any form of discrimination.

In situations in which harassment is not based on discriminatory factors, Article 342(1) of the Civil Code says that it is up to the worker to prove that harassment occurred.

The public sector is covered by Article 15 of the Regime governing Labour Contracts for Public Functions (RCTFP), under which harassment is always considered a form of discrimination. The rule governing the distribution of the burden of proof therefore applies.

3. The Committee asks that the next report provides information on the kinds and amount of compensation.

It also asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed.

In the event the court declares a worker's dismissal for reasons linked to harassment unlawful, he/she is entitled to either compensation for all material and non-material damage suffered, or reinstatement in the same establishment at the company, with no prejudice to his/her professional category or seniority (Article 389[1][a] and [b], CT).

If the worker opts for compensation rather than reinstatement, it is the court that decides its amount, which will be between 15 and 45 days' basic pay and seniority bonuses for each complete year of service or part thereof. The amount of the worker's salary and the degree of unlawfulness present in the case are factors in this decision (Article 391[1], CT). The court will also count the time between the dismissal and the transit *in rem judicatam* of its decision (Article 391[2], CT), albeit the compensation can never total less than 3 months' basic pay and seniority bonuses (Article 391[3], CT).

If the court accepts a request from the employer not to reinstate the worker (possible in cases involving micro-enterprises or workers occupying management or board positions) – something it can do if there are facts and circumstances that would make the worker's return seriously prejudicial to and disturbing of the company's operations – the worker is then entitled to compensation of between 30 and 60 days' basic pay and seniority bonuses for each complete year of service or part thereof, with a minimum total of at least 6 months (Article 392, CT).

ARTICLE 28
THE RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

The general legal framework in what concerns the rights of workers' representatives to protection in the undertaking and facilities to be granted to them was described in the 2nd Implementation Report and the 5th Report has only updated that information, marking the entry into force of Decree-Law no. 215/2005 of 13 December, which transposes into national law the Council Directive no. 2001/86/EC of 8 October, supplementing the Statute for a European company with regard to the involvement of employees, and Law no. 8/2008 of 18 February, which transposes into national law the Council Directive no. 2003/72/EC of 22 July, supplementing the Statute for a European company with regard to the involvement of employees.

In what concerns this matter, it should be noted that Article 404 of the Labour Code (CT) foresees that the workers may defend and pursue their collective rights and interests through the creation of:

- trade unions;
- Workers' committees and subcommittees;
- Workers' occupational safety and health representatives;
- Other structures provided for in specific legislation, namely the European Works Councils.

In what regards the rights of workers' representatives to protection in the undertaking and facilities to be granted to them, we highlight the following aspects:

- The matters concerning equality and non-discrimination mentioned in the 2nd Report are laid down in Article 24(1) and (2)(d) and Article 25(1) and (7) of the Labour Code.

- The rules regarding unfair sanctions and the credit of hours granted to the workers' representatives are now established in Articles 331 and 408 of the Labour Code, with the amendment of Article 331(2)(a). These articles now establish that dismissal or other penalty allegedly applied to punish an infraction is presumed unfair when it takes place during the period of six months after any of the facts mentioned in Article 331(1) of the Labour Code;

- In what concerns the workers' representatives absences, it is important to mention that this matter is now provided for in Article 409 of the Labour Code with the amendment of article 409(5) of the same Code, which establishes that the infringement of the provisions of paragraph 1 is considered a serious offence and is now applicable to all structures of employee representation.

Furthermore, in what regards absences from work, the Labour Code foresees that the provisions concerning the grounds for justification of absences and respective duration, on the basis of a collective labour regulation instrument or employment contract, will not be applied to an elected member of a workers' collective representation structure, whenever this is considered more favourable to the worker[38] (Article 250).

The rules concerning the protection of workers in the event of disciplinary procedure, dismissal or transfer are now provided for in Articles 410 and 411 of the Labour Code, with the following amendments:

- Article 410(2) of the Labour Code establishes that, during the legal proceedings for the determination of a disciplinary, civil or criminal responsibility, initiated on the grounds of an abusive exercise of rights by a member of a workers' collective representation structure, the provisions of paragraph 1 of the same Article are applied to the worker concerned;

- The concept of "extinction" was added to paragraph 1 of Article 411 of the Labour Code[39] and the time limit for the notification is now specified in its paragraph 2[40].

In what concerns the workers' committees, coordinating committees or subcommittees, it should be underlined that the rules on the number of the respective members, the workers' meetings in the workplace convened by the workers' committees, the procedures on the workers' meetings in the workplace, supports to the workers' committees and dissemination of information, the credit of hours granted to the committees' members, and the elections of committee and subcommittee' members are now foreseen, respectively, in Articles 417, 419, 420, 421, 422 and 433 of the Labour Code.

In this regard, we highlight the following changes:

- Article 419(2) of the Labour Code now establishes that an employer who forbids workers' meetings in the workplace commits a very serious offense instead of a serious offence, as it was previously established (Articles 468(1)(2) and 685 of the Labour Code, approved by Law no. 99/2003 of 27August);

- Article 420(2) of the Labour Code foresees that when there is a meeting to be held during working hours, the workers' committee must submit a proposal aimed to ensure the performance of urgent and essential services;

- Article 420(3) of the Labour Code establishes that, after receiving the notification mentioned in paragraph 1 and, where appropriate, the

[38] According to the explanatory memorandum of the Draft Law no.216 / X.

[39] "The worker member of a collective representation structure cannot be transferred from the workplace without his consent, unless the transfer is due to the closing or total or partial move of the establishment's facilities where he works"

[40] "The employer must communicate the transfer of the worker referred to in the previous paragraph to the representation structure from which he is a member, within the same notice period as the one used to communicate the transfer to the worker."

proposal mentioned in paragraph 2 of the same article, the employer shall provide an adequate place for the meeting, inside the company or nearby, whenever the promoting entity makes a request for it and taking into account the notification and proposal aspects as well as the need to comply with the provisions set in the final part of article 419(1)(a) or (b) of the Labour Code. The infringement of this provision constitutes a very serious offense (Article 420(a) of the Labour Code);

In what regards trade unions, it should be noted that the rules on the right of union activity in the company, the workers' meetings in the workplace, the number of trade union delegates, the right to use facilities in the undertaking or establishment with 150 or more workers, the posting and distribution of trade union information, the credit of hours granted to trade union delegates and the credit of hours and absences' justification of trade union leading members, are now foreseen, respectively, in Articles 460, 461, 463, 464, 465, 467 and 468 of the Labour Code.

In this regard, we highlight the following changes:

- Article 461(1)(b) foresees that workers may have meetings in the workplace, convened by one third or 50 employees of the respective undertaking, or by the trade union committee or inter-trade union committee, during the working hours of most workers to a maximum period of fifteen hours per year, which counts as effective service, provided that the performance of urgent and essential services is ensured;

- Article 468(8) establishes that when justified absences continue or are expected to continue for more than one month due to reasons related to the worker, the suspension of the employment contract scheme is applied, without prejudice of the provisions established in an applicable collective labour regulation instrument that foresees trade union duties on a full time basis or other specific situations related to the worker's entitlement to his earnings;

- Article 468(9) of the Labour Code stipulates that the infringement of the provisions set in paragraph 1 of the same article is considered a very serious offence instead of a serious offence, as it was established in the previous legislation;

The legal framework of the European Works Council is now provided for in Law no. 96/2009 of 3 September.

Therefore, the rules concerning the composition of the European Works Council, the nomination or election of the members of the special negotiating body and the European Works Council, and the protection of the workers' representatives are now laid down in Articles 13, 26 and 28.

In what concerns this matter, we highlight the following:

- Article 13(1) establishes that in what concerns the composition of the European Works Council the provisions of Article 6(1) shall apply; this article stipulates that in what concerns the negotiations referred to in Article 5, the workers of the undertaking or community-scale group of undertakings are represented by a special negotiating body composed of members who are workers employed in each Member State, and each State is allocated one seat per each portion of workers employed in that Member State, which equals 10% or a fraction thereof of the number of workers employed in all the member States taken together;

- Article 26(1) which stipulates that within a period of two months after the administration board's initiative or the request referred in Article 5(1) to start the negotiations, or the fact foreseen in Article 12 which provides for the compulsory establishment of a European Works Council, the workers' representatives of the establishments or undertakings in the country are appointed according to the following order:

  a) By agreement between the workers' committee and trade unions or between the workers' committee of the group of undertakings and trade unions;
  b) If there are no trade unions, the workers' representatives are appointed by the workers' committee or by agreement between the workers' committees of the group of undertakings;
  c) If there is no workers' committee, by agreement between the trade unions that, together, represent more than half of the establishments or undertakings' unionized workers.

The rules concerning the workers' occupational safety and health representatives, the support to workers' representatives and the meetings with the management bodies of the undertaking are now provided for in Articles 21, 24 and 25 of Law no. 102/2009 of 10 September.

In what regards this matter, we highlight the following changes:

- Article 21(4) of Law no. 102/2009 maintains the rule on the number of workers' representatives; however, it now includes the following words: "unless otherwise provided for in the applicable collective (labour) regulation instrument";

- Article 25(3) of Law no. 102/2009 establishes that the credit of hours referred to in Article 21(7) shall not be affected for the purposes of the meeting referred to in Article 25(1) of Law no. 102/2009.

Considering an analysis that was made on a sample of collective agreements (95), published between 2009 and 2012, it was concluded that:

- 25 collective agreements have more favourable provisions in terms of the credit of hours granting to:

- ✓ Workers' committees - 2 collective agreements;
- ✓ Workers' committees and coordinating committees - 1 collective agreement;
- ✓ Trade union delegates - 11 collective agreements;
- ✓ Trade union delegates and members of inter-trade union committees - 2 collective agreements;
- ✓ Trade union delegates, members of trade union and inter-trade union committees - 1 collective agreement;
- ✓ Trade union leaders - 6 collective agreements;
- ✓ Trade union leaders and delegates - 2 collective agreements;

- 2 collective agreements foresee the credit of hours for candidates to trade union bodies and 1 collective agreement for members of statutory bodies;

- 1 collective agreement establishes that workers elected for trade union governing bodies are entitled to a credit of hours corresponding to eight days per month without earnings loss, in order to carry out their trade union duties;

- 2 collective agreements provide for the performance of full time duties;

- 1 collective agreement foresees the establishment of an inter-trade union committee composed of the trade unions that signed that agreement; 4 members of these trade unions are entitled to perform their duties on a full time basis;

- 1 collective agreement establishes that the workers' committee members, trade union representatives, trade union leaders and trade union delegates may cumulate their credits of hours;

- 1 collective agreement establishes the number of trade union delegates in trade union committees, 2 collective agreements establish the number of trade union delegates and 1 collective agreement establishes the number of members of a trade union administration board;

- 1 collective agreement stipulates that trade union delegates are entitled to use in a month all the credits of hours not used in the two months immediately prior to that one;

- 1 collective agreement foresees that trade union leaders cannot be transferred to another workplace without their consent, and 1 collective agreement establishes that trade union delegates, members of a trade union administration board, or equivalent body, cannot be transferred from the workplace without their consent;

- 6 collective agreements have provisions on justified absences;

- 1 collective agreement stipulates that it is unfair to apply a disciplinary sanction to a worker who was a member or candidate to a workers'

representation structure, during the period of one year after the cessation of his duties or application;

- 3 collective agreements provide for the presumption of unfair dismissal;

- 1 collective agreement foresees that trade union leaders, delegates or other workers with tasks delegated by them, who are dismissed on the basis of an unfair sanction, are entitled to a compensation whose amount is calculated according to the respective duration of service, varying between 120 and 180 days of the basic salary and years of pensionable service for each year or fraction, but not for less than three months. Another collective agreement establishes that the amount of compensation for unfair dismissal of union leaders and delegates, members of the workers' committee, strike delegates or workers who participate in strike pickets is doubled;

- 1 collective agreement establishes that the amount of compensation for unfair dismissal of union leaders and delegates, members of the workers' committee, strike delegates or workers who participate in strike pickets is doubled;

- 1 collective agreement stipulates that trade union delegates are entitled to an adequate place in the workplace, at their request, for the performance of their trade union duties, even in workplaces with less than 150 workers;

- 1 collective agreement foresees that the performance of duties, namely as members of a trade union administration board, or secretariats of trade union committees and sections and of workers' committees, is taken into account in terms of shift work exemption.

The following table provides data on the inspections made to verify the conditions in which the collective representation of workers is carried out.

Table 30

Conditions in which the collective representation of workers is carried out

Years	2009	2010	2011	2012 (*)
Requests for general interventions (Trade Unions)	2.472	2.753	2.862	2.233
Infractions fined within the scope of collective representation structures	236(**)	15	17	3

Source: ACT (Working Conditions Authority)
(*) Data collection subject to new standards, including those concerning information and consultation procedures.
(**) These data have not been broken down

Answers to queries from the European Committee of Social Rights

1) The Committee refers to its interpretative statement in the General Introduction on the duration of protection for workers' representatives and wishes to be informed as to how long the protection for worker representatives lasts after the cessation of their functions.

Article 410(3) of the Labour Code establishes that the dismissal of a candidate member of any of the trade union governing bodies, or someone who performs or has performed duties in the same governing bodies for less than three years is considered an unfair dismissal.

2) The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the general introduction as well as to its question on travelling expenses and asks the next report to provide all the necessary information.

Article 35 of Decree-Law no. 215/2005 of 13 December and Article 38 of Law no. 8/2008 of 18 February establish that:

- The legal persons/companies that participate in the establishment of a European Cooperative Society must (paragraph 1):
    - Pay the expenses of the special negotiating body during the negotiations, so that it may properly perform its duties;
    - Provide the necessary material means to the special negotiating body so that it may fulfil the respective mission, including facilities and places for the posting of information;
    - Pay the expenses of at least one expert of the special negotiating body.

- The European Cooperative Society/European limited liability company must (paragraph 2):
    - Provide the necessary financial means to the members of the workers' committee and of the restricted council, in case there is one, for their operating expenses;
    - Provide the necessary material means to the workers' committee so that it may fulfil the respective mission, including facilities and places for the posting of information;
    - Pay the expenses of at least one expert of the workers' committee.

- The operating expenses include the ones concerning the organization of meetings, translations, accommodation and travel expenses, as well as expert fees (paragraph 3). However, these may be regulated differently by agreement with the governing or management body, except in what concerns expert fees (paragraph 4);

- Travel and accommodation expenses may be paid on the basis of the missions' scheme of the establishments or companies where the workers' representatives are employed and the expert's expenses are paid according to the rules applicable to members from the same Member State (paragraph 5);

- The application of the criteria laid down in paragraph 5 cannot result in a payment of travel and accommodation expenses less favourable to one member of the special negotiating body or of the European Works Council than to another (paragraph 6);

- The expenses concerning each member of the special negotiating body shall be paid by the participating company from whose branch or establishment that member is an employee (paragraph 7);

- The participating companies pay the expert's expenses, in proportion to the respective number of workers (paragraph 8);

- The expenses of a member of the special negotiating body that is not an employee of any participating company, branch or establishment are paid by the participating companies whose workers are represented by him, in proportion to the respective number of workers (paragraph 9).

In accordance with Article 47(1) of Decree-Law no. 215/2005 of 13 December, the violation of Article 35(1) and (2) is considered a very serious offense.

Pursuant to Article 50(1) of Law no. 8/2008 of 18 February, the violation of Article 38(1) and (2) is considered a very serious offence.

Article 22 of Law no. 96/2009 of 3 September establishes that the administration board shall (paragraph 1):

- Pay the expenses of the special negotiating body during the negotiations, so that it can properly perform its duties;
- Provide to the European Works Council the necessary financial resources to carry out its duties and the ones of the restricted council;
- Pay the expenses of at least one expert of the special negotiating body or of the European Works Council;
- Ensure that members of the special negotiating body and the European Works Council receive the necessary training for the performance of those duties, without loss of earnings.

The expenses with the observers referred to in Article 3(7) are not covered by paragraph 1 of Article 22 (paragraph 2);

- The expenses referred to in paragraph 1 are namely those concerning the organization of meetings, translations, accommodation and travel expenses, as well as expert fees (paragraph 3);
- In what concerns the European Works Council, the provisions of paragraph 3 can be regulated differently by agreement with the

administration board, except in what concerns expert fees (paragraph 4);

- The administration board may cover travel and accommodation expenses of members of the special negotiating body and of the European Works Council on the basis of the missions' scheme of the establishments or companies where they are employed and the expert's expenses are paid according to the rules applicable to members from the same Member State (paragraph 5);
- The application of the criterion laid down in paragraph 5 cannot result in a payment of travel and accommodation expenses less favourable to one member of the special negotiating body or of the European Works Council than to another (paragraph 6);
- The special negotiating body, the European Works Council, the restricted council and the workers' representatives are entitled to material and technical resources necessary to perform their duties, including facilities and places for the posting of information, within the scope of the information and consultation procedure (paragraph 7);
- The violation of paragraph 1 and paragraphs 6 or 7 is considered a very serious offence (paragraph 8).

ARTICLE 29
THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

The general legal framework concerning collective redundancy procedures has been described in the 2nd Implementation Report. In what regards the nature, reasons and scope of any given reform, it was specified in the 5th Report that, after the Tripartite Agreement for a New Regulating System of Industrial Relations, Employment Policies and Social Protection, signed in June 2008, the revised Labour Code, approved by Law no. 7/2009 of 12 February, has also foreseen the reduction of the collective redundancy procedure models and the introduction of a proportionality rule in the prior notice deadlines, according to the rules also referred in that report, as follows:

- Within five days after the notification of the intention to carry out a collective redundancy, the employer shall promote an information and negotiation phase with the workers' representative structure, in order to settle an agreement on the scale and effects of the measures to be applied (Article 361(1) of the Revised Labour Code)[40];

- Once the agreement has been settled, or if there is no agreement, within 15 days after the initial notification the employer may decide to proceed with the redundancy (Article 363 (1) of the Revised Labour Code)[41];

- The notification of the redundancy decision must comply with a prior notice deadline of fifteen, thirty, sixty or seventy five days, in case the worker has been employed, respectively, for less than one year, from one to five years, from five to ten years and for ten or more years (Article 363(1) (a) to (d) of the Revised Labour Code)[42].

In the meantime, the Revised Labour Code was subject to two amendments in what concerns the workers' entitlement to compensation in case of collective redundancy:

One of the amendments was made by Law no. 53/2011 of 14 October, which established that, in case of termination of the employment contracts signed as from 1 November 2011 (new contracts), the worker is entitled to a compensation based on twenty days of basic salary and seniority payments for each full year of service, calculated as follows (Article 366-A, added to the Labour Code):

[40] Previously this deadline was of 10 days, in accordance with Article 420(1) of the Labour Code, approved by Law no. 99/2003 of 27 August.
[41] Previously this deadline was of 20 days, in accordance with Article 422(1) of the Labour Code, approved by Law no. 99/2003 of 27 August.
[42] The prior notice deadline previously established in Article 398(1) of the Labour Code, approved by Law no. 99/2003 of 27 August, was of 60 days before the date set for the termination of the employment contract, regardless of the worker's years of service.

a) The monthly amount of the worker's basic salary and seniority payments to be considered in the calculation of the compensation amount cannot be higher than 20 times the guaranteed minimum monthly wage;
b) The total compensation amount cannot be higher than 12 times the worker's monthly basic salary and seniority payments or, when the limit mentioned in the previous point is applied, it cannot be higher than 240 times the guaranteed minimum monthly wage;
c) The daily amount of the basic salary and seniority payments results from the division of the monthly basic salary and seniority payments by 30;
d) In the case of a year fraction, the compensation amount is calculated proportionally.

The other amendment was applied by Law no. 23/2012 of 25 June, which revoked Article 366-A of the former Labour Code, whose scheme now corresponds to Article 366 of the current legislation. This article defines the alignment conditions of the employment contracts signed before 1 November 2011 and the new employment contracts signed under the Law no. 53/2011 of 14 October, in the following terms (Article 6 of Law no. 23/2012 of 25 June):

In case of termination of the employment contracts signed before 1 November 2011, the compensation foreseen in Article 366 of the Labour Code is calculated in the following terms (Article 6(1) of Law no. 23/2012):

a) In what concerns the employment contract's duration until 31 October 2012, the compensation amount corresponds to one month of the worker's basic salary and seniority payments for each full year of service;
b) In what regards the employment contract's duration as from the date mentioned in the previous point, the compensation amount corresponds to the one established in Article 366 of the Labour Code (20 days of the worker's basic salary and seniority payments for each full year of service).
c) The total compensation amount cannot be lower than three months of the worker's basic salary and seniority payments.

For the purposes of calculating the compensation amount referred to in point (b), it is established that (Article 6(3)(b) of Law no. 23/2012):

a) The amount of the worker's basic salary and seniority payments to be considered cannot be higher than 20 times the guaranteed minimum monthly wage;
b) The daily amount of the basic salary and seniority payments results from the division of the monthly basic salary and seniority payments by 30;
c) In the case of a year fraction, the compensation amount is calculated proportionally.

When, from the application of the provisions of point (a) of the penultimate paragraph (concerning the employment contract's duration until 31 October 2012), results a compensation (Article 6(4) of Law no. 23/2012):

a) equal or higher than 12 times the worker's monthly basic salary and seniority payments, or equal or higher than 240 times the guaranteed minimum monthly wage, the rule established in point (b) of the mentioned paragraph is not applicable;
b) lower than 12 times the worker's monthly basic salary and seniority payments, or lower than 240 times the guaranteed minimum monthly wage, the total compensation amount cannot be higher than these amounts.

In the current legislation, it is also established the imperative nature of this scheme in relation to the previous collective labour regulation instruments that foresee higher amounts, thus ensuring the effectiveness and uniformity of the amendments (Article 7(1) of Law no. 23/2012).

It is also important to highlight that, in accordance with Article 366(3) and (4) of the Labour Code, the compensation for collective redundancy is paid by the employer, except for the part covered by compensation funds or similar mechanisms provided for in specific legislation. It is however ensured that if these entities do not pay the entire compensation amount that is of their responsibility, the employer assumes that payment and becomes entitled to the worker's rights in what concerns that amount. However, this specific legislation has not yet been approved.

The Law is comprehensive in foreseeing this type of employment contract termination, both in material or procedural terms (Articles 359 to 366) and regulates also the causes and effects of unlawful actions (Articles 381, 383 and 388 to 392). Therefore, it was not necessary to regulate this scheme.

During the reference period of this report and in what concerns the concluded collective redundancy procedures[43], it is important to mention the following:

- In 2009, 379 companies with a total of 37.591 workers undertook collective redundancy procedures. From a total of 5.814 workers to be covered by the redundancy plans, 5.522 were dismissed, 208 terminated their employment contracts by mutual agreement and 49 were subject to other measures.

- In 2010, 294 companies with a total of 22.480 workers undertook collective redundancy procedures. From a total of 3.729 workers to be covered by the redundancy plans, 3.462 were dismissed, 73 terminated their employment contracts by mutual agreement and 194 were subject to other measures.

- In 2011, 641 companies with a total of 34.777 workers undertook collective redundancy procedures. From a total of 6.992 workers to be covered by the redundancy plans, 6.526 were dismissed, 224 terminated their employment contracts by mutual agreement and 173 were subject to other measures.

- In 2012, 1.129 companies with a total of 82.555 workers undertook collective redundancy procedures. From a total of 11.183 workers to be covered by

[43] See the website: www.dgert.mtss.gov.pt

the redundancy plans, 10.488 were dismissed, 104 terminated their employment contracts by mutual agreement and 584 were subject to other measures.

Within the scope of employment and vocational training measures, the IEFP, IP (Institute of Employment and Vocational Training, PI), as an employment public service, does not differentiate its candidates according to the reasons that led them to unemployment. Therefore, workers that became unemployed due to collective redundancy procedures, individual dismissal or other modalities of employment termination are treated in equal terms.

However, and taking into account the high number of workers involved in some collective redundancy procedures, the parties concerned may request the employment services' participation in information sessions on the access conditions for the registration in employment services, the rights and duties of the unemployment benefits beneficiaries, and the current employment and vocational training programmes and measures adequate to the workers' characteristics and interests.

The employment services' participation takes place during the information and negotiating phase with the workers' representation structure, promoted by the employer, and foreseen in Article 362(3) of Law no. 7/2009 of 12 February, of the Labour Code.

In addition to the procedures described in this report and, as from 2007, Portugal has promoted several projects aimed to support workers who become unemployed due to changes in the world trade structure, caused by globalisation, as well as to support those people who were dismissed directly because of the global economic and financial crisis and who, in most cases, were subject to collective redundancy procedures.

These projects have been promoted by the IEFP, IP and financed by the European Globalisation Adjustment Fund (EGF)[44]. Four of the projects that have been approved so far were aimed to support about 4.000 unemployed people due to the following major collective redundancy procedures:

[44] European Globalisation Adjustment Fund (EGF), governed by Regulation (EC) no. 1927/2006 of 20 December, amended by Regulation (EC) no. 546/2009 of 18 June.

Table 31

EGF applications (2007 to 2011)

Year	EGF application
2007	Automotive Sector, Lisbon and Alentejo regions
2009	Company Qimonda Portugal, SA
2010	Company Rohde – Sociedade Industrial de Calçado Luso-Alemã
2011	Manufacturing Sector of Components and Accessories for Motor Vehicles, Northern and Central Portugal - Leoni Wiring Systems Viana, Lda, Kromberg & Schubert Portugal, Lda. and Delphi Automotive Systems – Portugal, SA / Industrial establishment of Guarda.

Source: IEFP, IP

The employment support and incentive measures vary according to the target groups of each project. In general, actions are being developed in order to provide for the retraining and requalification of the workers concerned, as well as their return to the labour market, through active employment measures, which may consist in:

- Vocational training or other training actions;
- Support to self employment;
- Support to recruitment;
- Allowance for vocational training carried out on the person's initiative;
- Support to the creation of small-sized companies;
- Integration Plans.

As it was previously mentioned in this report, the employment services do not differentiate, in negative or positive terms, the workers whose unemployment was due to collective redundancy.

The following table shows data on the implementation of employment and vocational training measures, aimed at all the unemployed, including those who were subject to collective redundancy procedures.

Table 32

Nr. of Unemployed Persons covered by Employment and Vocational Training Measures (2008 to 2011)

Year	Employment Support Measures	Training with Dual Certification - Adults	Other Training Support Measures
2008	72.458	26.161	172.719
2009	83.186	33.869	248.566
2010	80.918	33.309	245.393
2011	72.295	32.106	232.478

Source: *IEFP, IP*

The annual activity reports of the labour inspection do not provide separate data in what regards this issue. However, the labour inspectors monitor and verify the collective redundancy procedures.

In 2009, a procedure to detect redundancy situations was initiated in cooperation with other bodies of the labour administration, aimed to trigger an inspection monitoring procedure of all known cases. The following table shows the data concerning this issue.

Table 33

The right to information and consultation in collective redundancy procedures

Year	2009	2010	2011	2012 (*)
Collective redundancy	(**)	178	160	246
No. of Companies	(**)	98	102	439
No. of Workers	(**)	178	6.157	5.529

Source: *ACT* (The Working Conditions Authority), 2013

(*) Data collection subject to new parameters, including the ones concerning information and consultation procedures.

(**) There are no separate data

Answers to queries from the European Committee of Social Rights

1. The report does not indicate any specific definition of the notion of collective redundancy. The Committee recalls that the collective redundancies referred to in Article 29 are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity (Conclusions 2003, Statement of Interpretation on Article 29). It asks that next report explain the notion of collective redundancy as applied in the national system.

The Committee asks also whether the Portuguese law provides for any exceptions for certain categories of workers or enterprises as to the procedures applied in the case of collective redundancies.

The concept of collective redundancy (previously foreseen in Article 397(1) of the Labour Code, approved by Law no. 99/2003 of 27 August) was transcribed in the 2nd Application Report and corresponds almost entirely to the current provisions of Article 359(1) of the revised Labour Code, approved by Law no. 7/2009 of 12 February that are also reproduced in the present report, as follows:

"It is considered that collective redundancy is the termination of employment contracts promoted by the employer, carried out simultaneously or successively, in a period of three months, covering at least two or five workers, depending on whether the company is, respectively, a micro or a small-sized company, on the one hand, or a medium-sized or large company, on the other. Such termination must be based on the shutting down of one or more sections or similar structures, or on the reduction of the number of workers due to market, structural or technological reasons."

The classification of the above mentioned companies is laid down in Article 100 of the Labour Code, whose paragraph 1 stipulates that:

a) A micro company employs less than 10 workers;
b) A small-sized company employs 10 to 50 workers;
c) A medium-sized company employs 50 to 250 workers;
d) A large company employs 250 workers or more.

Article 359(2) of the Labour Code specifies, as an example, the definition of other elements from the collective redundancy concept, such as:

a) Market reasons – the reduction of the company's activity due to a predictable decrease in the demand of goods or services or to the subsequent practical or legal inability to put those goods or services in the market;
b) Structural reasons – economic and financial imbalance, change of activity, restructuring of the work organization or replacement of main products;

c) Technological reasons – changes in technical or manufacturing procedures, the automation of production, control, or load handling tools, as well as the use of computer technology or the automation of communication means in the services.

The Portuguese law does not contemplate exceptions for categories of workers or companies in the case of procedures applicable to collective redundancies.

However, it establishes that the procedures applicable to collective redundancies must be followed in the situations of:

- A total and permanent shutdown of the company, determining the expiry of the employment contract, however complying with the procedure applicable to collective redundancy, with the necessary adjustments (Article 346(3) of the Labour Code);
- An insolvency procedure that may determine the shutdown of the establishment, the termination of employment contracts that was due to the shutdown, or that occurred before the shutdown, concerning an employer whose work is not considered essential to the company. This insolvency must take place after a collective redundancy procedure, with the necessary adjustments (Article 347(2), (3) and (6) of the Labour Code).

2. The Committee recalls that Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. The Committee has stated that "this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached" (Conclusions 2003, Statement of Interpretation on Article 29).

As to the content of prior information, with a view to fostering dialogue, the Committee has stipulated that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies. The Committee asks that next report provides information on the content of prior information.

In the 2nd Report it was stated that, in accordance with Article 419 of the Labour Code (current Article 360), the information and consultation procedure starts with the employer's notification to the workers' representatives of his intention to carry out a collective redundancy. This notification must be complemented by the following relevant information: the description of the reasons given for the redundancy; the staff list according to the company's organizational sectors; and a statement of the criteria set for the selection of the workers to be dismissed, the number of workers and professional groups covered, the period during which the dismissal is intended to take place and, where appropriate, the calculation method of the compensation to be granted to the workers apart from the one established by law or eventually by a collective labour regulation instrument.

Also, within five days after the notification of the intention to carry out a collective redundancy, the employer shall promote an information and negotiation phase with the workers' representative structure, in order to settle an agreement on the scale and effects of the measures to be applied, as well as of other measures to reduce the number of workers to be dismissed, namely: the suspension of employment contracts; the reduction of the usual working periods; professional retraining or requalification; early retirement or pre-retirement.

The employer and the workers' representative structure may both be assisted by an expert at the negotiation meetings; the minutes of the negotiation meetings must include the matters agreed, as well as the divergent positions, opinions, suggestions and proposals of each party (Article 361 (1), (4) and (5) of the Labour Code; paragraph 1 of this article has reduced the ten-day period, previously foreseen in Article 420 of the former Labour Code, to a period of five days).

Furthermore, the relevant service of the Ministry responsible for the labour area participates in the negotiation meeting, in order to promote the compliance with the substantive and procedural rules and the reconciliation of the parties' interests. Also, at the request of either party, or on the initiative of the service responsible for the labour area, the regional services of employment, vocational training and social security specify the measures to be implemented in the respective areas, in accordance with the legal framework of the adopted solutions.

Therefore, an employer who intends to carry out a collective redundancy procedure must communicate that intention in writing to the workers' representatives, providing the previously mentioned information (e.g. the reasons given for the redundancy; the criteria for the selection of the workers to be dismissed and the number of workers to be dismissed); and only within five days after that notification, the information and negotiation phase begins, in order to settle an agreement on the scale and measures to be applied, as well as other measures aimed to reduce the number of workers to be dismissed. It is also important to mention that this procedure is carried out with the participation of the competent service of the Ministry responsible for the labour area, in order to ensure the compliance with the established substantial and procedural rules.

Moreover, the negotiation meetings' minutes must include the matters agreed, as well as the divergent positions, opinions, suggestions and proposals of each party (Article no. 361(5) of the Labour Code).