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EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF PORTUGAL

- Article 1, 9, 10, 15, 18, 20, 24 and 25 for the period 01/01/2011 – 31/12/2014
- Complementary information on Article 6§4
(Conclusions 2014)

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CYCLE 2016

REVISED EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of
the revised European Social Charter

submitted by

PORTUGAL

for the period from 1 January 2011 to 31 December 2014
on articles 1,9, 10, 15, 18, 20, 24 and 25

11 th R e p o r t

submitted by the **Government of Portugal**

for the time period from 1 January 2011 until 31 December 2014

(Articles 1, 9, 10, 15, 18, 20, 24 and 25)

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.

It also includes response to the European Committee of Social Rights with regard to Article 6§4 of the 2014 Conclusions.

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 eleventh Report that has been prepared in accordance with the reporting system adopted by the Committee of Ministers on 2 April 2014 for the presentation of the national reports concerning their national implementation of the revised European Social Charter.

The Report deals with Group 1 (areas of Employment, Training and Equal Opportunities) concerning Articles 1, 9, 10, 15, 20, 24 and 25, and the period under review is from 1 January 2011 to 31 December 2014. It also includes response to the European Committee of Social Rights with regard to Article 6§4 of the 2014 Conclusions.

The eleventh 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

Part I

ARTICLE 1	THE RIGHT TO WORK	1
Paragraph 1		1
Paragraph 2		13
Paragraph 3		20
Paragraph 4		22
Responses to the European Committee of Social Rights		24
ARTICLE 9	THE RIGHT TO VOCATIONAL GUIDANCE	30
Responses to the European Committee of Social Rights		39
ARTICLE 10	THE RIGHT TO VOCATIONAL TRAINING	39
Responses to the European Committee of Social Rights		48
ARTICLE 15	THE RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE, SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY	55
Paragraph 1		55
Paragraph 2		63
Paragraph 3		67
Responses to the European Committee of Social Rights		72
ARTICLE 18	THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER PARTIES	80
Responses to the European Committee of Social Rights		87
ARTICLE 20	THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX	90
Responses to the European Committee of Social Rights		102
ARTICLE 24	THE RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT	109
Responses to the European Committee of Social Rights		115

ARTICLE 25 THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER 119

Responses to the European Committee of Social Rights 126

PART II

Response to the European Committee of Social Rights with regard to Article 6§4 of the 2014 Conclusions 129

TABLES

Table no. 1	Physical and financial execution of employment support programmes and measures, 2011-2014	8
Table no. 2	No. of users served and no. of integrations (2012-2014)	9
Table no. 3	No. of prison inmates in work, 2011-2014	13
Table no. 4	Inspection actions regarding equality and non-discrimination, 2011-2014	14
Table no. 5	No. of inspection actions – immigrant workers	16
Table no. 6	No. of inspection actions – minors	16
Table no. 7	No. of illegal minors detected by labour inspectors	17
Table no. 8	No. of situations with signs of trafficking in human beings for labour exploitation	18
Table no. 9	Inspection action data – personality rights	19
Table no. 10	Inspection actions regarding vocational training questions	23
Table no. 11	Job offers and placements (IEFP) / Total hirings in Portugal (2011-2014)	29
Table no. 12	Registered unemployment / Human resources who intervene in the placement process	30
Table no. 13	Characterisation of users covered by face-to-face guidance Interventions (2011-2014)	33
Table no. 14	Characterisation of the beneficiaries of online guidance interventions (17 May 2012 to 2014)	34
Table no. 15	Short-Duration Training Units – No. of persons covered	42
Table no. 16	Learning Courses – No. of persons covered and financial execution	44
Table no. 17	Education and Training Courses for young people – No. of persons covered and financial execution	44
Table no. 18	Technological Specialisation Courses – No. of persons covered and financial execution	44
Table no. 19	Basic Competency Training Programme – No. of persons covered and financial execution	45

Table no. 20	Adult Education and Training Courses – No. of persons covered and financial execution	45
Table no. 21	Portuguese for All Programme – No. of persons covered and financial execution	45
Table no. 22	Modular Training – No. of persons covered and financial execution	46
Table no. 23	Modular Training – No. of persons covered and financial execution	46
Table no. 24	Execution of RVCC processes at CNOs	47
Table no. 25	Execution of RVCC processes at COEPs	47
Table no. 26	Number of students	52
Table no. 27	Amount spent on scholarships per year and number of beneficiaries	54
Table no. 28	No. of persons covered by specific training measures funded directly by IEFP	59
Table no. 29	No. of persons covered by Vocational Assessment and Guidance activities for Persons with Disabilities and Vocational Training measures funded under POPH	60
Table no. 30	No. of persons covered by Vocational Assessment and Guidance activities for Persons with Disabilities and Vocational Training (FP) measures funded under by IEFP and within the framework of POPH	60
Table no. 31	Financial execution with regard to the specific training measures funded directly by IEFP	60
Table no. 32	Financial execution with regard to the activities and measures funded under POPH	61
Table no. 33	No. of persons with disabilities and incapacity covered by general vocational training measures implemented by IEFP, IP	61
Table no. 34	No. of persons with disabilities and incapacity covered by specific employment support measures	64
Table no. 35	No. of persons with disabilities and incapacity covered by general employment support measures	64
Table no. 36	Financial execution of employment support measures for persons with disabilities	65

Table no. 37	No. of persons with disabilities and incapacity registered as unemployed with Employment and Vocational Training Centres and no. of placements made	65
Table no. 38	No. of persons benefiting from supported employment measures	66
Table no. 39	Summary data on the variation in the application of Executive Law no. 29/2001	67
Table no. 40	No. of accessible beaches	69
Table no. 41	No. of persons covered and financial execution	71
Table no. 42	No. of projects and amounts funded, by subprogramme and year	72
Table no. 43	Number of students with disabilities in higher education	73
Table no. 44	No. of infractions regarding failure to respect the rights of foreign workers	82
Table no. 45	No. of recorded occurrences regarding workers posted in Portugal	83
Table no. 46	No. of participants in entrepreneurship support activities	84
Table no. 47	No. of user visits – Employment Support Office	84
Table no. 48	No. of user visits – Qualification Support Office	84
Table no. 49	No. of user visits – Legal Support Office	85
Table no. 50	Inspection actions regarding the posting or secondment of workers within the scope of the provision of services to another State	85
Table no. 51	Residence permits	88
Table no. 52	Assessment of the legality of negotiated Collective Labour Regulation Instruments (IRCTs) and arbitration decisions (2011-2014)	95
Table no. 53	Communications of the non-renewal of term labour contracts with workers who are pregnant, have recently given birth or are breastfeeding (2010-2014)	114
Table no. 54	Prior opinions on the dismissal of a worker who is pregnant, has recently given birth or is breastfeeding, and is currently on initial parental leave (2011-2014)	114

Table no. 55	Failure to comply with Labour Code (CT) procedures regarding the dismissal of women who are pregnant, have recently given birth or are breastfeeding (2011-2014)	114
Table no. 56	No. of new coercive procedures regarding the termination of labour contracts	115
Table no. 57	Inspections of enterprises in a business crisis situation with a view to determining procedural legality	123
Table no. 58	Inspections re employers' labour obligations with regard to worker protection	125
Table no. 59	Average time (days) between the date of the TCO application and the date of the order, by year and by District Centre	128
Table no. 60	Cases concluded, by year and by District Centre	128
Table no. 61	Number of working days between application and publication	131
Graph 1	Variation in the no. of discrimination cases brought under Law no. 46/2006	74

Part I

ARTICLE 1 THE RIGHT TO WORK

Paragraph 1

The employment policy developed and implemented during the reference period – January 2011 to December 2014 – remained subject to the legal framework provided by Executive Law no. 132/99 of 21 April 1999, which envisaged this policy as an instrument for guaranteeing the right to work. As such, it set the goal of preventing and resolving employment-related problems, including improving job quality, promoting full employment and fighting unemployment, all within the broader context of ensuring socioeconomic development and improving the population's levels of well-being.

Within this legal framework, the Public Employment Service (PES) is responsible for performing the role of the major executor of the employment policies in the field. Its objective is always to contribute to improving the organisation and functioning of the job market, particularly by supporting both workers in their search for appropriate employment and employers in their recruitment of staff.

The main instruments that set the guidelines for the policies and measures implemented during this period were the:

- Commitment to Growth, Competitiveness and Employment (CCCE)

This social concertation agreement was signed in 2012 by the Government and a number of Social Partners. It set out the need to adopt both immediate and structural measures on the level of the country's economic policies, active employment and training policies, labour legislation, unemployment benefit, and labour relations.

Within this overall framework, Portugal implemented a vast plan of actions linked to more direct interventions by the local units of the PES. In particular:

- a) Restructuring the job centre network and strengthening its role in supervising and working with the unemployed with a view to either placing them quickly or, when appropriate, increasing their vocational competencies.
- b) Increasing the job offers attracted by the job centres.
- c) Increasing the connection between the unemployed persons registered with the job centres and the training offered by the training centres.
- d) Creating a simplified and more effective mechanism for the first interview given to unemployed persons, exceptionally but whenever necessary including the use of external services, in such a way as to ensure a correct definition of the person's profile, which is in turn essential to a more efficient intervention in the future.

- e) Making it obligatory for the IEFP's central and regional services to process unemployed persons' files, with the goal of both standardising and updating the information and freeing up the job centres to perform their functions of matching the offer of and demand for jobs.
 - f) Having the job centres systematically engage in close contracts with the enterprises and business fabric of the sector and region they work with and belong to.
 - g) Strengthening support for the employability of unemployed persons by creating the post of "career manager".
 - h) Redistributing resources, and above all increasing the IEFP job centres' human and material resources.
 - i) Increasing the use of the latest information technologies, with a view to securing gains in efficiency and releasing human resources to supervise and work with both the unemployed and enterprises.
 - j) Articulating the active and passive employment measures in such a way as to improve transitions between unemployment and jobs, foster the social inclusion of groups that are more vulnerable and possess less schooling, and also fight phenomena involving the improper use of social benefits.
 - k) Cooperating with various partners in order to support the placement of unemployed persons.
 - l) Creating mechanisms for constantly evaluating the job centres.
- Programme to Relaunch the Public Employment Service (PRSPE)

Approved by Council of Ministers Resolution no. 20/2012 of 9 March 2012, this programme provided a more concrete and clearly scheduled framework for, and definition of, the specific measures associated with the actions described above, with a view to speeding up and boosting the hiring and training of unemployed persons, contributing to an increased supervision of potential long-term unemployment situations, changing the active and passive employment measure system and the articulation between the different measures, and imprinting a new dynamic on the way in which the job centres operate.

- Strategic Plan for Initiatives to Promote Youth Employability and Support Small and Medium-Sized Enterprises – *Impulso Jovem* ("Youth Drive")

This Strategic Plan was approved by Council of Ministers Resolution no. 51-A/2012 of 14 June 2012, and was scheduled to remain in effect until the end of 2013. Its objective was to drive the integration of young people into the labour market and reduce youth unemployment. Council of Ministers Resolution no. 36/2013 of 4 June 2013 made some adjustments to the Plan, in order to make some of its instruments more rational and simpler. After the Plan's conclusion at the end of 2013, the "Youth Drive" measures were included in the *Garantia Jovem* ("Youth Guarantee").

- National Plan for the Implementation of a Youth Guarantee (PNIGJ)

Approved by Council of Ministers Resolution no. 104/2013 of 31 December 2013. The purpose of this National Plan is to ensure that all young persons below the

age of 30 benefit from a good offer of a job, education or training, or an apprenticeship or traineeship within four months of becoming unemployed or finishing formal education.

Over the course of 2011-2014, various active employment measures were drawn up and launched within this overall framework, with a view to achieving a broad range of goals and reaching a wide set of target groups. They can be summarised as follows:

- Stimulus 2012 Measure (created by Ministerial Order no. 45/2012 of 13 February 2012) – Financial support for employers which enter into full-time or part-time employment contracts that can either be indefinite or have a fixed term of at least 6 months, with unemployed persons who have been registered with the employment service for at least 6 consecutive months. The support requires the employer to provide the workers in question with vocational training, and to ensure the net creation of new jobs.
- *Passaportes Emprego* (“Job Passports”) (measures regulated by Ministerial Order no. 225-A/2012 of 31 July 2012, as amended by Ministerial Order no. 65-B/2013 of 13 February 2013) – Created within the ambit of the “Youth Drive” Strategic Plan, the Job Passports involved four formats – the Passport to a Job, the Passport to a Job in Agriculture, the Passport to a Job in the Social Economy, and the Passport to a Job in Youth and Sports Associations and Federations – each of which was designed to respond to the sector’s specific particularities. The Passport to a Job measure was the most widely used.

The objectives of the Job Passports were very similar to those of the other traineeship measures, albeit with a number of particularities, such as the fact that they included a mandatory period of vocational training. They were initially designed to last for at most 6 months, but this was subsequently extended to 12 months. The various traineeship formats ended along with the Youth Drive measure.

- Refund of the Single Social Charge (TSU – the employer’s social security contribution), of which there are two formats – RTSU +45 years (regulated by Ministerial Order no. 3-A/2013 of 4 January 2013, as amended by Ministerial Order no. 97/2013 of 4 March 2013), and RTSU Startups (Ministerial Order no. 432/2012 of 31 December 2012) – These hiring support formats, which could be accumulated with the Stimulus 2012 and Stimulus 2013 measures, were also adapted over the course of 2012-2014. They made it possible for the employer’s TSU social security contribution to be refunded if the employer hired certain categories of person and created net new jobs.

This measure was initially targeted at young unemployed between the ages of 18 and 30 who had been registered with the employment service for at least 12 consecutive months, together with young workers in the same age range who had been registered for at least the same

period because their labour contracts were suspended due to unpaid wages. However, in 2013 the measure was extended to other groups, namely unemployed persons aged 45 and over, and those between the ages of 30 and 44. In the case of these new groups, the length of the consecutive registration period required for eligibility was adapted on a case-by-case basis.

Another Worker Hiring Support measure was also created for Startup enterprises (knowledge-based), in the shape of another TSU Refund format.

None of these RTSU measures are now in force; since mid-2014 there has been a single hiring support measure called *Estímulo Emprego* ("Job Stimulus").

- Vocational Traineeships Programme (PEP, created by Ministerial Order no. 92/2011 of 28 February 2011, as amended by Ministerial Orders nos. 309/2012 of 9 October 2012, 3-B/2013 of 4 January 2013, and 120/2013 of 26 March 2013) – This programme was intended to complement and develop the competencies of young people looking for a first or new job, in such a way as to improve their employability profile. It was progressively adopted over the course of the reference period, namely in terms of the target group, the universe of beneficiary entities, and the forms of support available from IEFP. However, this measure has since been revoked and the Job Traineeships and Internships measure, which includes incorporates both its objectives and the types of support it provided, has been created.
- Incentive to Accept Job Offers Measure (regulated by Ministerial Order no. 207/2012 of 6 July 2012) – Financial support for unemployed persons entitled to unemployment benefits who accept job offers presented by the employment service of, or place themselves in, full-time employment with a remuneration whose amount is less than of the unemployment benefit they are receiving. The objective of this measure is to help ensure that unemployed persons receiving benefits return to the labour market quickly. It is targeted at unemployed who are receiving unemployment benefits and have been registered with the employment service for more than 3 months.
- Active Asset and Heritage Programme (PPA, created by Ministerial Order no. 33/2013 of 29 January 2013) – Included a vocational traineeship measure (*Estágios Património*, "Heritage Traineeships"), and a measure promoting integration into socially useful work projects (*Contrato de Emprego Inserção Património*, "Heritage Job Insertion Contract"). The Active Asset and Heritage Programme was particularly designed to: support the conservation and maintenance of the country's natural, cultural and urbanistic heritage; incorporate unemployed persons into activities that fulfil temporary social or collective needs, enhancing their vocational reconversion and with a view to improving their employability profile and achieving their future integration into the labour market (CEI

Heritage); and promote young people's transition to working life and their integration into the labour market, complementing a pre-existing qualification with practical experience in a working context (Heritage Traineeships). This programme, which was created in 2013, is no longer in force.

- Stimulus 2013 Measure (Ministerial Order no. 106/2013 of 14 March 2013) – Financial support for employers which entered into full-time or part-time employment contracts that could either be indefinite or have a fixed term of at least 6 months, with unemployed persons who were registered with the employment service. The support required the employer to provide the workers in question with vocational training, and to ensure the net creation of new jobs. This measure extended the maximum period of support available under the Stimulus 2012 Measure, which was 6 months, to 18 months.
- Employment Incentive Measure (regulated by Ministerial Order no. 286-A/2013 of 16 September 2013, as amended by Ministerial Order no. 17/2014 of 27 January 2014) – Financial support for employers which, between 1 October 2013 and 30 September 2015, enter into labour contracts regulated by the Labour Code (CT). Does not require the net creation of jobs. The support is equal to 1% of each worker's monthly pay, for the period between the date on which the labour contract effectively commences and 30 September 2015 or the date on which the contract ends, whichever comes first.
- *Estímulo Emprego* ("Job Stimulus") Measure (created by Ministerial Order no. 149-A/2014 of 24 July 2014) – Financial support for employers which enter into full-time or part-time employment contracts that can either be indefinite or have a fixed term of at least 6 months, with unemployed persons who are registered with the employment service. Requires the provision of vocational training to the workers in question, and the net creation of jobs. This measure incorporated the earlier Stimulus 2013 and Refund of the Single Social Charge measures into a single format.
- *Estágios Emprego* ("Job Traineeships") Measure (created by Ministerial Order no. 204-B/2013 of 18 June 2013, as amended by Ministerial Orders nos. 375/2013 of 27 December 2013, 20-A/2014 of 30 January 2014, and 149-B/2014 of 24 July 2014) – This measure is designed to complement and develop the competencies of young people looking for a first or new job, in such a way as to improve their employability profile. It has also been used (following the earlier adaptations of the Vocational Traineeships Programme to promote the professional integration of unemployed persons in more unprotected situations. The traineeships last for 9 months, and IEFP contributes to the cost of the following forms of support and rights: the trainee's allowance, the meal allowance, and accident insurance.

This measure also provides for the *Estágios de Inserção* ("Insertion Traineeships") format for persons with disabilities or incapacity. In

addition to the benefits listed above, this format also includes support for a travel allowance for the trainee.

The Job Traineeships measure makes it possible to apply a strategic interest regime to large projects linked to major investments with great potential for the creation of new jobs. Under this regime the traineeships can last for 6, 9 or 12 months.

- *Emprego Jovem Ativo* (EJA, Active Youth Asset Employment) Measure (created by Ministerial Order no. 150/2014 of 30 July 2014) – This measure drives and supports the development and implementation of projects providing teams of young people with practical experience in a working context. Each team comprises 1 qualified young person, and 2 or 3 young people who are disadvantaged in terms of their qualifications and employability. The purpose is to improve their socioprofessional insertion conditions. The projects last 6 months and include an insertion plan for each of the two types of participant. The team members are supervised by a counsellor appointed by the entity that promotes the project.
- *Investe Jovem* (“Youth Invest”) Programme (regulated by Ministerial Order no. 151/2014 of 30 July 2014) – This programme is designed to promote enterprise creation by young unemployed persons by providing them with the following forms of support: (i) financial support for the investment; (ii) financial support for the creation of the promoters’ own jobs; (iii) technical support in the entrepreneurship field in order to strengthen competencies and help structure and consolidate the project. Projects also benefit from the Technical Support for the Creation and Consolidation of Projects (ATCCP) format, which was created in 2009 as part of the Support Programme for Entrepreneurship and the Creation of Self-Employment (PAECPE).
- Algarve Training Programme (PFA) – The only regional measure launched during the reference period, its objectives are to fight the seasonality of unemployment in the Algarve region, stimulate and strengthen the productivity and competitiveness of the enterprises in the sectors most affected by seasonality in the region, and increase its workers’ employability by increasing their vocational qualification. Financial support is given to employers that renew fixed-term labour contracts or convert fixed or open-term contracts into indefinite ones and provide the workers in question with a means of vocational qualification.

The employment policy and measures implemented during the reference period were thus characterised by the use of instruments with a variety of scopes, seeking to respond to the increasing weight of the multiple problems that have arisen in the labour market as a result of the negative variations in the economy. They were the object of a number of different adaptations over the course of the period, in a search for solutions that are more appropriate to the evolution observed in the labour market. Special efforts were made to integrate broader target groups, make it possible for

all public and private sector employers to make use of measures, look for consensuses and establish partnerships, widen the financial support bases by making the measures more attractive, and permit and foster integration paths that accumulate more than one form of support.

In the summary table showing the physical and financial execution of the most important employment support programmes and measures between 2011 and 2014, we have grouped the items by thematic area.

We would briefly note the following:

- a) The set of measures described above provided support to more than 540,000 unemployed persons over the course of the reference period, and the financial support associated with them amounted to practically 950 million Euros.
- b) The very significant increase in physical and financial execution in both of the last two years of the period, especially 2014. If we look at the data for 2011 and 2014 individually, we see a rise of about 112% in the number of unemployed covered, and an even greater increase (approximately 221%) in the amounts involved.
- c) Taking the overall data (2011/2014) as our point of reference, we see that around half (49%) the unemployed persons integrated into the employment support measures concerned were specifically covered by the social insertion and reinsertion support measures based on doing socially necessary work of a temporary nature; while the funds made available for this purpose amounted to about 18% of the total financial support granted.
- d) The proportion of measures designed to support traineeships and internships is very large in terms of the number of persons covered over the course of the period (31%), and even more so when it comes to the financial support allocated to them, which amounted to over 574 million Euros (61% of the total).
- e) The measures designed to support the hiring of unemployed persons (associated with the net creation of jobs in the supported enterprises) included 17% of all the persons covered between 2011 and 2014. In this respect it is important to highlight the fact that in 2011 (a year in which there was a major downturn in the labour market and a significant increase in unemployment) no hiring support measures implemented solely by IEFP were in the process of execution, and the forms of support that were made available were part of joint measures with the Social Security Service, which covered 4% of the unemployed persons who received support in 2011.
- f) In subsequent years the proportion of unemployed assisted by the various hiring support measures increased exponentially, to the point that in 2014 they represented 28% of all the users covered by this category of measure. In other words, it is in this area that the increase in physical execution between the beginning and end of the reference period was greatest.
- g) The measures to support unemployed persons who create their own job or enterprise naturally represent a smaller percentage of the

whole – around 3% of the users covered and 2% of the financial support granted.

Table no. 1

Physical and financial execution of employment support programmes and measures, 2011-2014

EMPLOYMENT MEASURES / PROGRAMMES	2014		2013		2012		2011	
	Persons Covered	Amount Paid Out (€)	Persons Covered	Amount Paid Out (€)	Persons Covered	Amount Paid Out (€)	Persons Covered	Amount Paid Out (€)
TOTAL	205 904	437 414 764	139 938	241 075 216	99 215	134 440 592	97 199	136 016 669
Professional Insertion	70 498	250 192 997	43 986	156 969 670	25 429	88 427 228	30 159	78 840 785
Traineeship and Internship Measures	70 498	250 192 997	43 986	156 969 670	25 429	88 427 228	30 159	78 840 785
Hiring Support	56 856	126 748 480	24 591	35 296 015	8 537	7 868 826	3 665	8 140 998
Stimulus 2012/2013 and Job Stimulus	56 817	126 582 684	24 560	35 003 689	8 145	6 788 138	0	0
Hiring Support via TSU Refund – Startups	28	100 208	21	23 944	0	0	0	0
Other Hiring Support	11	65 588	10	268 382	392	1 080 688	3 665	8 140 998
Support for Creation of Jobs/Enterprises	3 147	2 109 398	3 713	352 742	3 223	701 581	5 139	14 459 407
Self-Employment Creation Support - PAECEPE	2 609	0	2 643	7 163	2 533	205 533	2 819	3 477 690
Line of Support for the Creation of Enterprises and Jobs – PAECEPE	538	2 109 398	1 070	345 579	690	496 048	2 320	10 981 717
Social Insertion – Socially Necessary Work	75 403	57 463 228	67 648	46 911 085	62 026	35 099 778	58 236	26 952 239
Socially Necessary Work	72 481	49 756 181	64 611	38 486 074	59 018	25 854 370	55 103	17 238 395
CEI and CEI+	63 185	27 107 922	59 471	24 157 242	59 018	25 854 370	55 103	17 238 395
CEI - Heritage	9 296	22 648 259	5 140	14 328 832	0	0	0	0
Insertion Enterprises (1)	2 922	7 707 047	3 037	8 425 011	3 008	9 245 408	3 133	9 713 844
Other Measures (2)	-	900 661	-	1 545 704	-	2 343 179	-	7 623 240
Job Offer Stimulus Programme (PEOE) – Investment*	0	32 535	13	146 931	76	1 031 441	344	5 884 586
PEOE/ILES – Increased Allowances	1	3 967	0	1 509	5	47 737	106	424 853
Insertion Enterprises – Investment*	0	0	138	25 449	60	10 103	34	140 187
Insertion Enterprises - Training*	565	864 159	637	1 088 985	723	1 003 702	628	1 173 614
Youth Drive*	0	0	0	282 830	0	250 196	0	0

Source: IEFP

(1) Applications under the Insertion Enterprises Measure were suspended in 2011, and the measure was revoked in 2015, so the data for these enterprises refers to those that were already operating and continued to do so.

(2) Measures that are not included in the physical execution data because they are already taken into account under the respective primary measure, or because they are not accounted for in terms of number of users covered or to be covered (albeit the respective costs are calculated).

* The Job Offer Stimulus Programme was revoked in 2009. However, a number of costs associated with the investment in the supported employment initiatives were carried over into subsequent years.

Within the scope of the lines of intervention targeted at more vulnerable groups of users, as part of which a number of measures were designed to promote the latter's employment and socioprofessional insertion, we should particularly note IEFP, IP's participation from 2012 onwards in the 4th National Plan Against

Domestic Violence 2011-2013 (PNCVD, approved by Council of Ministers Resolution no. 100/2010 of 17 December 2010) and the 5th National Plan for the Prevention of and Fight Against Domestic and Gender Violence 2014-2017 (PNPCVDG, approved by Council of Ministers Resolution no. 102/2013 of 31 December 2013).

The primary objective of IEFP, IP's intervention in these Plans is to give priority to assisting the victims of domestic violence, particularly when they register for employment, participate in technical interventions, or are forwarded to and integrated into active employment and training and labour-market placement measures.

The following table gives the data on the execution of IEFP, IP's interventions within the scope of these Plans.

Table no. 2

No. of users served and no. of integrations (2012-2014)

Year	2012	2013	2014
Interventions			
Users served	228	387	514
Integrations			
Jobs	11	26	33
Employment and training measures	47	105	223
Other interventions	30	67	39
Total	88	198	295

Source: IEFP, IP.

As part of the various employment measures/programmes, IEFP undertakes supervision and control actions based on a set of instruments that allow it to monitor their execution and their compliance with the applicable legal and regulatory rules and standards. These actions include financial, accounting, factual and technical components and are implemented in the following formats:

- Hiring support – consultation via an interface with the Social Security Service, in order to gauge fulfilment of the requirement to create a net number of jobs or maintain the existing level of employment, which are mandatory conditions for payments to be made during the contractual period.
- Traineeship and internship and job insertion contracts – monitoring via an IT application: of the work done by the trainees and other users (attendance charts); evaluation reports on the work done; online surveys of the trainees and other users by IEFP; visits to the project locations.
- Satisfaction surveys: applied to the applicable IEFP services, the promoter entities, and the users.

- Supervisory, evaluation, control and auditing or inspection actions by both IEFP itself and competent Portuguese and Community entities, as well as by other bodies and entities that are approved for the purpose.

Public sector employment

Where the legal framework applicable to public sector employment is concerned, the entry into force of Law no. 12-A/2008 of 27 February 2008 prior to the reference period had already resulted in a significant change in the labour regime governing Public Administration staff, which was brought closer to the common regime provided for in the Labour Code.

In the wake of the 2008 economic crisis, from 2010 onwards a range of measures were taken with the goal of ensuring the State's sustainability. These particularly included measures to contain public spending.

For the purposes of our analysis here, in this respect we should especially note that 2013 saw the creation for the first time in the Portuguese Public Administration of a programme offering severance by mutual agreement to workers with a public sector labour contract (see Ministerial Order no. 221-A/2013 of 8 July 2013).

This programme, which was initially only intended for public servants in the general Technical Assistant and Operational Assistant careers, was subsequently extended to other professional groups in the Public Administration.

Of particular note in relation to the current legal framework is the 2014 publication of the General Public Sector Labour Law (LTFP), as approved by Law no. 35/2014 of 20 June 2014, which repealed Law no. 12-A/2008 of 27 February 2008.

The LTFP embodied the abovementioned measures designed to curb public spending, and sought to combine the essence of the labour regime in a single Law and in a rational, technically rigorous and systematically organised manner. It has also strengthened and accentuated the process of bringing the public sector regime closer to the common labour regime.

In this respect it is important to highlight Article 4 of the LTFP which, albeit without prejudice to the necessary adaptations, expressly requires that workers with a public employment labour bond be subject to the terms of the Labour Code in the following matters:

- a) Collective labour regulation instruments.
- b) Personality rights.
- c) Equality and non-discrimination.
- d) Parenthood.
- e) Workers with disabilities or chronic illnesses.
- f) Student workers.

- g) Work organisation and working hours.
- h) Non-working hours.
- i) The promotion of health and safety at work.
- j) Workers' committees, and trade unions.
- k) The peaceful resolution of labour conflicts.
- l) Strikes.

The LTFP is applicable to the State's direct and indirect administrations and the autonomous local and regional administrations. It does not apply to the staff of independent administrative entities or State Business Sector entities (EPEs), nor does it encompass the staff of the personal offices of members of the Government, or local authority and regional government and administration officeholders.

Like the previous regime, the LTFP provides for three forms of public sector employment bond: appointment; the public sector labour contract; and the service commission.

The public sector employment bond created by the public sector labour contract is the predominant format in the Public Administration.

The appointment format continues to be reserved to career structures linked to the fulfilment of the responsibilities, competences and activities of public servants in the following areas: permanent serving members of the Armed Forces on military missions; the external representation of the Portuguese State; state security; the criminal investigation services; public security and safety in both the community and institutions; and inspection roles.

The service commission is the format intended for the exercise of positions that are not incorporated into specific career structures – i.e. primarily senior offices.

As we said above, the LTFP has consolidated a range of subjects that were previously addressed by a number of different complementary legislative acts. These particularly include:

- a) The Regime governing Public Sector Labour Contracts (RCTFP) approved by Law no. 59/2008 of 11 September 2008.
- b) The Disciplinary Statute approved by Law no. 58/2008 of 9 September 2008.
- c) The Regime governing the Reassignment of Workers approved by Law no. 80/2013 of 28 November 2013.

In this respect we would emphasise the importance of the staff reassignment regime that was approved by the aforementioned Law no. 80/2013 and has since been incorporated into Articles 245 *et seq.*, LTFP.

This regime is playing a decisive role within the ambit of the measures designed to restrain public spending, particularly when bodies, departments or services are reorganised following the elimination, merger or restructuring of certain units.

When a body, department or service is reorganised, it may be necessary to rationalise its staff roster and for workers to be reassigned or requalified in accordance with Articles 256 and 258 of the LTFP.

When it comes to the pay structure in the public sector, Article 146 of the LTFP says that the following can be component elements of a worker's remuneration: basic pay; pay supplements; and performance bonuses.

It is important to note that within the scope of the additional measures to control the public debt, since 2010 various State Budgets have prohibited any acts that result in increases in base pay, particularly changes in the position on pay scales, promotions, and advancements in professional career structures.

At the same time, in addition to the prohibition on pay rises or other increases in remuneration, since 2010 there has been a progressive – albeit transitional – reduction in public sector pay. The amount of the reduction depends on the base remuneration of the staff in the various Public Administrations and the State Business Sector and of local and regional government and administration officeholders.

Article 159 of the LTFP provides for a number of remuneratory supplements. Law no. 59/2013 of 23 August 2013 ordered a survey of the make-up of the various supplements that existed in the Public Administration. Further to this requirement, Executive Law no. 25/2015 of 6 February 2015 set out the specific obligations or conditions that can serve as grounds for the award of remuneratory supplements to the workers covered by the LTFP, as well as the way in which they are to be incorporated into the Single Table of Supplements (TUS).

The Public Administration's permanent activities must be performed by persons with whom the public sector employer has entered into a legal public employment relationship, while activities of a temporary nature must be carried out by persons with whom there is a fixed-term legal public employment relationship, which can be date-limited or not.

Article 295 of the LTFP allows indefinite public labour contracts to be terminated by agreement between the public employer and the worker.

However, paragraph (2) of the same article says that whenever the worker belongs to a senior technical career structure, the labour bond can only be terminated following the issue of a formal opinion by both the Member of Government with responsibility for the Finance and Public Administration area and the member of government who exercises authority (direction, superintendence, or oversight) over the public sector employer in question.

Paragraph 2

The information given with regard to Paragraph 2 in the 7th Report is generally still valid, particularly in terms of the updates made in this area by the new Labour Code (CT) that resulted from the passage of Law no. 7/2009 of 12 February 2009. However, we would essentially point to a number of changes that have been made since then, inasmuch as they concern matters that were again raised by the European Committee of Social Rights (ECSR) in the 2012 Conclusions:

- Article 23 (Concepts regarding equality and non-discrimination), which partially corresponds to the earlier Article 32 of Law no. 35/2004 of 29 July 2004.
- Article 24 (Right to equality in access to employment and at work), which partially corresponds to Article 22 of the previous CT.
- Article 25 (Prohibition on discrimination), which partially corresponds to Article 23 of the previous CT.

As regards work by prison inmates, there were no legislative changes of note during the reference period. We will thus simply update the statistical information on work done by citizens who are in prison.

The following table gives a breakdown of the number of inmates who worked in prison between 1 January 2011 and 31 December 2014, including those working for external entities.

Table no. 3

No. of prison inmates in work, 2011-2014

Year	Working for the prison itself	Working for external entities (inside and outside the prison)	Total
2011	3,553	990	4,543
2012	3,694	960	4,654
2013	3,575	1,078	4,653
2014	3,680	1,367	5,047

Excludes persons who are unfit to plead and persons who are subject to the PDL regime (imprisonment during free time – i.e. precisely when they are not working).

Source: MJ - DGPJ

Turning to the inspection activities of the Working Conditions Authority (ACT), the successive activity plans in the four years of the reference period addressed the need to intensify the inspection work aimed at protecting the most vulnerable groups and workers from situations of inequality and discrimination, and preventing such situations from occurring in the first place. As such, ACT's annual activity reports for 2011-2014 reflect the actions the

inspection services have taken to prevent discrimination and control working and employment conditions, and namely the focus on vulnerable groups of workers.

The pursuit of an inclusive labour market, an approach that sees gender equality as a citizenship question, the reconciliation of family, personal and professional life, respect for differences and the universality of the guarantees associated with the labour contract, and the protection of vulnerable groups of workers (one example being minors, above all in terms of the use of their labour in performances, advertising and similar activities) all motivated inspections by ACT's departments and services.

Whether these inspection actions were conducted as a result of requests or complaints or at the ACT's own initiative, they not only included information and awareness-raising actions in the field, but also the imposition of sanctions with regard to both specific matters regarding equality and non-discrimination, and other related areas and other infractions discovered at the same time.

As can be seen from the following table, this inspection work was progressively intensified over the course of the last three years of the four-year reference period:

Table no. 4

Inspection actions regarding equality and non-discrimination, 2011-2014

Year	Visits	Warnings	Infractions reported	Fines (minima)
2011	684	105	77	€ 233,018
2012	149	23	36	€ 39,048
2013	112	20	38	€ 90,660
2014	309	82	38	€ 266,016

Source: ACT

Gender equality

The 4th National Plan for Equality, Gender, Citizenship and Non-Discrimination 2011-2013 (PNIGCND) was published by Council of Ministers Resolution no. 5/2011 of 18 January 2011. It represented a phase in which the national policy in the gender equality field was developed in fulfilment of commitments made on both the national and international levels: in the case of the former, namely in the Programme of the 19th Constitutional Government, and the Major Options of the Plan (2011-2014); in the case of the latter, particularly as part of the Strategy for Equality between Women and Men 2010-2015, and the European Union Strategy for Employment and Growth – Europa 2020, which sets out the new EU strategy for jobs and sustainable and inclusive growth, whose concerns ACT sought to reflect in its inspection activity plans.

In order to promote these and other related measures, working simultaneously from the perspective of an approach that cuts across every sector of activity and from one centred on this particular phenomenon and derived from specific requests for intervention, throughout the four-year period ACT sought to ensure that its activity plans identified all the various concerns regarding the questions of equality and non-discrimination. This is an area that inherently forms part of the work that ACT does each year with the objective of preventing discrimination in general and controlling the working and employment conditions of vulnerable groups of workers.

Immigrant workers

As such, one of the responses to the concerns regarding vulnerable groups was the action designed to integrate immigrant workers. This action made use of targeted information and control activities intended to ensure equal treatment in the access to employment and the working conditions of such workers, and to prevent nationality-based discrimination at work and in employment.

The 2nd National Plan for the Integration of Immigrants 2010-2013 (II PII) approved by Council of Ministers Resolution no. 74/2010 of 12 August 2010 was another of the reference instruments underlying ACT's inspection work.

Given the growing representativeness of immigrant workers in Portugal, it was considered necessary and a priority to adopt a set of policies and concrete measures that would promote and improve their reception and integration from both a sectoral perspective, with emphasis on the Labour area, and a cross-cutting perspective in terms of the questions of racism and discrimination, gender equality and citizenship.

Consequently, by ensuring the concerted action of different ministries and defining each one's areas of competence, II PII identified a range of measures distributed across various vertical and transversal sectoral areas whose primary purpose was to promote the full integration of Portuguese society. These measures are based on a set of guideline principles, among which the following deserve special mention:

- i) Equal opportunities for all, reflected particularly in the reduction of disadvantages in access to work, rejecting any discrimination based on ethnicity, nationality, language, religion or gender and combating legal or administrative dysfunctionalities.
- ii) Special attention to gender equality, in recognition of the dual vulnerability of persons who are both women and immigrants.
- iii) The simultaneous and inseparable affirmation of immigrants' rights and duties.

In the pursuit of its inspection work ACT looked at every sector of economic activity, but paid special attention to the civil construction, hotel and restaurant trade, agricultural, industrial cleaning, and retail sectors.

Table no. 5

No. of inspection actions – immigrant workers

Year	Visits	Warnings	Infractions reported	Fines (minima)
2011	2,416	79	220	€262,469
2012	1,087	87	586	€827,109
2013	875	130	366	€ 629,222
2014	794	177	461	€ 558,531

Source: ACT

Minors

The action targeted at minors' employment and working conditions involved inspecting compliance with the minimum age of admission and compulsory education requirements, the conditions under which underage workers take part in performances, advertising and similar activities, the fulfilment of duties to communicate and authorise work done by minors, the transfer of civil liability for work-related accidents, and health monitoring.

The following tables provide a set of indicators with regard to the actions undertaken by the labour inspectors in this field that are significant to an analysis of the way in which the phenomenon of underage labour is evolving in our country.

Table no. 6

No. of inspection actions – minors

Minors	Visits	Warnings	Infractions reported	Fines (minima)
2011	107	4	10	€10,552
2012	77	5	27	€28,482
2013	49	10	8	€ 10,243
2014	69	11	39	€ 24,666

Source: ACT

Table no. 7

No. of illegal minors detected by labour inspectors

Year	Illegal minors detected
2011	2
2012	1
2013	1
2014	0

Source: ACT

The methodologies employed by ACT included the communication of situations in which minors were working illegally to other relevant entities, in such a way as to initiate mechanisms that would provide their families with supervision and support.

In the light of all this and of the satisfactory results achieved in the fight against child labour, we consider that this phenomenon can be said to have been eradicated in Portugal, albeit it is always necessary to maintain an ongoing cooperative and joint effort to regulate the economic and social aspects of life linked to work by minors, with a view to safeguarding childhood.

Other vulnerable groups of workers

Another of ACT's main objectives was to target its inspection work at preventing discrimination and illegal working and employment conditions with regard to other vulnerable groups of workers. Particular emphasis was placed on ensuring the guarantees associated with special protection statuses for certain types of worker, and preventing discrimination in work and employment in accordance with differentiation factors that are protected by law.

Trafficking in human beings for labour exploitation

Yet another primary goal was to identify situations in which there were indications of trafficking in human beings for labour exploitation, and report them to the competent entities. Here ACT paid particular attention to late-night entertainment establishments, including pick-up bars and similar places, industry, agriculture, civil construction, and seasonal activities.

Table no. 8

**No. of situations with signs of trafficking in human beings
for labour exploitation**

Year	Information reports
2012	15
2013	147
2014	24

Source: ACT

Inasmuch as one of the reasons for the crime of human trafficking is to exploit the victims' labour, ACT also took part in the implementation of the 2nd National Plan against Trafficking in Human Beings 2011-2013, as approved by Council of Ministers Resolution no. 94/2010 of 29 November 2010. In this respect the labour inspectors play the special role of flagging any relevant situation they detect during their visits to enterprises and other economic agents, and reporting it to the criminal police authorities.

The information reports referred to in the above table, which have been drawn up by the labour inspectors and statistically treated on an autonomous basis since 2012, were sent to the competent authorities.

Under this Plan, and following on from the objectives that were already established in the 1st Plan, ACT is strategically charged with investing in a process of reflection on the different topics and realities that characterise human trafficking for both sexual and labour exploitation purposes, from the perspective of all the countries concerned – destination, transit, and origin.

To this end ACT participates in a range of working groups with a variety of other official bodies tasked with detecting human beings in such situations, which are working together to establish a prevention and intervention plan for these cases.

In this respect ACT held a number of training actions designed to enable labour inspectors better identify, flag and inspect situations in which trafficking of human beings for labour exploitation may exist.

Workers with reduced capacity to work, disabilities, or chronic illnesses

The labour regime applicable to these workers is regulated in Articles 84 to 87 of the Labour Code.

The statistics on this topic are not broken down and are included in the general data regarding inspection interventions in the equality and non-discrimination field.

Part-time work

With regard to other aspects that may be directly related to the freedom to exercise a profession, we should note the special protection afforded to persons who work part time.

The Portuguese socio-labour reality does not include a significant amount of part-time working.

The legal regime governing the part-time labour contract is set out in Articles 150 to 156 of the Labour Code (CT). This is complemented by the specific provision under which certain workers with family responsibilities can opt for this part-time regime (Article 55, CT: any worker with one or more children under the age of 12, or children with disabilities or chronic illnesses regardless of age, who live with and are sustained by him/her, is entitled to work part time).

Personality rights

A number of personality rights that are provided for in the Labour Code and whose general legal framework is set out in Articles 70 to 81 of the Civil Code rub shoulders with the questions of equality and non-discrimination. They include the right to the protection of or from: the freedom of expression and opinion; physical and moral identity; the privacy of personal life; personal and biometric data; medical tests and examinations; means of remote surveillance; the confidentiality of messages; and access to information. The following table offers some statistics on the inspection activities linked to these rights:

Table no. 9

Inspection action data – personality rights

	Personality rights	Warnings	Infractions reported	Fines (minima)
2011	Means of remote surveillance	4	1	€5,610
	Notification of the existence of means of remote surveillance	62	11	€3,060
	Other	1	1	€9,180
	Total	67	13	€17,850
2012	Means of remote surveillance	2	9	€35,088
	Notification of the existence of means of remote surveillance	39	5	€1,836
	Other	-	1	€9,180
	Total	41	15	€11,016
2013	Means of remote surveillance	6	3	€15,797

	Personality rights	Warnings	Infractions reported	Fines (minima)
	Notification of the existence of means of remote surveillance	22	4	€816
	Other	-	-	-
	Total	28	7	€16,613
2014	Means of remote surveillance	7	3	€23,460
	Notification of the existence of means of remote surveillance	13	8	€2,448
	Other	-	-	-
	Total	20	11	€25,908

Source: ACT

Judicially speaking, cases regarding the protection of workers' personality rights are the subject of special proceedings and possess urgent status (Articles 186-D *et seq.* of the Code of Labour Proceedings published by Law no. 295/2009 of 13 October 2009).

The Labour Code addresses personality rights in Articles 14 to 22.

Where public sector employment is concerned, we should note that the Constitution requires that, as a rule, public employment bonds be created by means of a competitive public procedure (see Article 47 of the Constitution of the Portuguese Republic – CRP).

With the exception of "*public functions that are not predominantly technical in nature*", which the Constitution reserves to Portuguese citizens, "*foreigners and stateless persons who find themselves or who reside in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens*", including the right to be considered for public functions (see Article 15[1] and [2], CRP). More details on this question will be given in the answer to the Committee's request for additional information.

Paragraph 3

The employment policy in Portugal is governed by respect for the principles enshrined in the Constitution of the Portuguese Republic, as well as by those issued by international organisations and particularly the International Labour Organisation (ILO).

It is thus important to note that the fact that the services of the PES are free of charge has always been expressly laid down in the legislative acts which form the framework for the employment policy.

During the reference period this framework was primarily provided by Executive Law no. 132/99 of 21 April 1999, whose Article 5(b) says that the organisation and *modus operandi* of the Public Employment Service must comply with the principle that use of the PES must be free of charge and voluntary for both workers and employers.

In this regard it is also important to mention that both IEFP, IP's organisational structure and all the technological adaptations that have been made in recent years are designed to facilitate user access and promote the IEFP's closeness to users.

From the organisational point of view, during the reference period and within the framework of the Programme to Relaunch the Public Employment Service (PRSPE, referred to under Article 1, Paragraph 1) there was a change in the way in which the Public Employment Service is organised. This alteration essentially affected the local organisational units and promoted both the integration of various employment services into a single unit covering more territory, and the integration of employment and vocational training services into new organisational units called Employment and Vocational Education Centres.

Following this restructuring, IEFP, IP's network of local organisational units is made up of 29 employment and vocational education centres, 23 job centres, and 1 vocational training and professional rehabilitation centre, for a total of 53 local units. Some of these local organisational units were in turn broken down into permanent or temporary employment services and/or vocational training services, with a view to ensuring higher quality services and greater closeness to users.

In parallel to this and as a way of ensuring the complementarity of the existing network of services, a major investment was made in alternative channels for the provision of services, including the development and implementation of the Matching Intervention Model (MIA). MIA is based on a set of functionalities, service provision formats and instruments supported by technological solutions. The model has emphasised a more intensive use of information technologies as a means of making procedures more flexible and responsive and improving interactions with both unemployed and employers.

Finally, it is important to say that in 2012 IEFP carried out an exhaustive study of both the resources and the efficiency of the interventions of the Public Employment Service (PES) over the decade to 2011. Although this study does not cover most of the period that is of interest to the present Report, it is worth mentioning some of its conclusions, in that the systematic data gathered by the monitoring process are clearly also valid for the period up to 2014. Indeed, resulting interventions made between 2011 and 2014 have further improved the efficiency of the PES's work.

While it is true that at the beginning of the reference period the PES was still confronted with a tendency for unemployment to both rise (with particular emphasis on the situation of young people) and take on a different composition, these trends were accompanied by efforts to adapt the PES to the new reality in terms of the organisational structures it mobilised, the

programmes and measures it implemented, the interventions it undertook, and the methodologies it employed. In doing so it achieved gains in efficiency and efficacy, especially by making better use of resources (in increasingly short supply) and improving the internal organisation of its departments and services.

Where public sector employment is concerned, we would note that the Public Administration recruits its staff by means of a competitive appointment procedure to which any interested citizen is at liberty to apply.

Ministerial Order no. 145-A/2011 of 6 April 2011¹⁵ requires that this competitive procedure be publicised by the entity responsible for holding it. This must be done by publishing the job offer in Series 2 of *Diário da República* (the Official Journal), on the Public Employment Exchange (www.bep.gov.pt), on the entity's own webpage, and in a national newspaper.

The Public Employment Exchange (BEP) is an online service provided by the Portuguese State, and gives details of jobs in the public sector and at any European institution.

Access to the BEP database is free. Public sector staff and other users simply have to register with the platform in order to be able to apply for the available job offers, competitive procedures or programmes.

BEP also has a specific section with offers of Public Sector Traineeships and Internships for unemployed persons or young people looking for their first job.

Paragraph 4

In order to ensure the ability to effectively exercise the right to work, particularly by promoting counselling services that are appropriate to its different types of actual and potential users, IEFP, IP undertook the following actions:

- a) In 2012 it implemented an e-guidance website that is accessible to both job seekers registered with their local employment services and citizens in general.
- b) In 2013 it redefined the way in which the local services work in terms of counselling, by structuring the typology of counselling services to be made available in accordance with users' different employability profiles and needs.
- c) It continued the policy of cooperation between its local services and the network of 64 resource centres, with a view to developing and implementing counselling interventions that are more appropriate to persons with disabilities or incapacity.
- d) In 2014 it complemented its counselling services' response capability by implementing a vocational qualification and teaching centre (CQEP) with competencies in the counselling field in every unit of the vocational

¹⁵ Amended Ministerial Order no. 83-A/2009 of 22 January 2009, which regulated the details of the competitive recruitment procedure.

training services network. More details about these actions can be found in the information regarding Articles 9 and 15.

The Labour Code covers this question in Articles 130 to 134, which simultaneously enshrine the employee's right to vocational training and the employer's duty to provide it. The training's objectives are also defined in systemic terms, and the responsibility of both the State and the employer is mentioned.

The data on inspection actions linked to vocational training during the four years covered by the present Report are as follows:

Table no. 10

Inspection actions regarding vocational training questions

Year	Vocational training	Warnings	Infractions reported	Fines (minima)
2011	Continuous training	6	27	€ 27,438
	Minimum number of hours of continuous training	-	1	€1,530
	Other	1	6	€4,488
	Total	7	34	€33,456
2012	Continuous training	7	7	€6,120
	Requirement to draw up a training plan	-	-	-
	Other	-	3	€2,856
	Total	7	10	€8,976
2013	Continuous training	3	14	€13,056
	Requirement to draw up a training plan	1	1	€1,530
	Total	4	15	€14,586
2014	Continuous training	12	14	€13,974
	Requirement to draw up a training plan	-	1	€714
	Total	12	15	€14,688

Source: ACT

Where public sector employment is concerned, as part of phase one (Article 258, LTFP) of the requalification process referred to in relation to Paragraph 1, the worker is incorporated into a vocational requalification process by means of a specific training programme that is designed to develop his/her professional competencies. These programmes include vocational training actions.

As the entity that manages the requalification system, INA-DGQTFP (Directorate-General for the Qualification of Public Sector Workers) is responsible for promoting the requalification of staff by making vocational training available to them.

Responses to the European Committee of Social Rights

The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Charter on the ground that the Merchant Navy Criminal and Disciplinary Code provide for prison sentences against seafarers who abandon their posts even when the safety of the ship or the lives or health of the people on board are not at stake.

Regarding the Committee conclusion of non-conformity no further steps were taken to bring the situation into conformity by Portugal. However, some clarification should be given in this respect, as pointed out during the 127th meeting Governmental Committee European Social Charter Strasbourg, 27-31 May 2013, as follows:

“As it was stated either by the former Portuguese representative in the Committee and within the seventh national report a bill was before Portuguese Parliament to repeal the provisions of the abovementioned code in order to get the situation in conformity with the Charter. However, in June 2011, we had a new Government, alongside with a financial adjustment Programme with European Union, IMF and European Central Bank.

The reforms required by financial adjustment Programme that Portugal is implementing till June 2014 requires major reforms within Public Administration and due to this fact the Organism responsible for implementing and verifying compliance with applicable laws, regulations, norms and technical requisites, say, the Port and Maritime Transport Institute (IPTM, IP) is now being restructured, which means a setback on the way taken to repeal the provisions of the code. Despite the fact that the situation has not changed some findings should be noted:

Firstly, even though this Committee does not take position on legal issues, but bearing in mind the legal framework pointed out at the Portuguese national report, it should be stressed that even though the provisions of articles 132 and 133 of the Merchant Navy Criminal and Disciplinary Code have not been expressly repealed in practice, this norms have been tacitly repealed by the Constitutional, Criminal and labour legislation that has entered into force since the 1943 Code.

Secondly, with regard to the penal sanctions resulting from the abovementioned articles, they are set out in a 1943 law that have not been applied for almost 30 years – namely after the Constitution of 1975, and do not comply with the principles of subsidiarity of the criminal law, which states that a penalty must be necessary and adequate, in accordance with 1975

Constitution and its following amendments - particularly article 18 related to the fundamental rights and guarantees regarding individual freedom and security.

Thirdly, moreover most of the disciplinary and labour regime applied to maritime workers is set out in collective labour agreements, which also define the disciplinary statute governing such workers and, in accordance with the CRP and the principle of the most favourable treatment of workers, exclude hierarchically superior laws like articles 132 and 133 that lay down regimes that which contradict constitutional principles and establish an illegal and/or less favourable treatment for workers.

Fourthly, also the national situation is in full compliance with the rules of ILO Conventions, and there is no lawsuit registered on this specific matter presented either by maritime workers or trade unions against Portugal based on violation of their rights. In the last years, and due to this situation of non-conformity we have been taken close look on this issue, and till now there is no lawsuit registered related to this kind of situation”.

*The Committee concludes that the situation in Portugal **is not in conformity** with Article 1§3 of the Charter on the ground that it has not been established that employment services operate in an efficient manner.*

Answered in the text on Paragraph 3

The Committee asks to be kept informed of the results of the labour Market reforms and employment policies introduced in this context.

Answered in the text on Paragraph 1

The Committee asks to be kept informed on the implementation of the different programmes/measures mentioned in the report, and whether they have had a positive impact on employment opportunities.

Answered in the text on Paragraph 1

Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks the next report to indicate whether employment policies are monitored and how their effectiveness is evaluated.

Answered in the text on Paragraph 1

Given the lack of information in the report, the Committee believes that these concepts have not yet been applied or interpreted by the courts. The Committee requests confirmation of this point and asks that the next report contain the information requested if available.

Our research suggests that in most cases there was no need for the courts to develop the letter of the law in this area, and that they have been able to confine themselves to matching the facts of each case to the legal definitions and the relevant framework provided by legal doctrine.

However, we are able to offer an example in which the Porto Court of Appeal did expound on the “concept of discrimination”¹⁶:

“Equality is also included on the level of Article 23, but this time by stating the different forms of discrimination that are to be prohibited. The concept of discrimination involves criticising and making a negative value judgement in relation to certain practices that result in a disadvantageous treatment of workers or job applicants in certain situations. According to the growing understanding in the equality field, that which is at stake – and is forbidden – is not different treatment in its own right, but rather the unreasonableness of the differentiation and the absence of reasons that would justify it. Moral harassment, also known as mobbing, is covered in Article 24, and the legislator considers it to be one of the forms of discrimination. It can effectively exist not only when it is determined that it was the employer’s objective to affect the worker’s dignity, but also in cases when, as the final part of the aforementioned article expressly says, while this was not the goal, the resulting effect was to affect the person’s dignity or create an intimidating, hostile, degrading, humiliating and destabilising atmosphere.”

An example of the concrete application of the concept of discrimination can be seen in a sentence issued by the Barcelos Labour Court on 7 May 2001¹⁷, in which the court found a service order unlawful for requiring time off for breastfeeding to be included in the calculation of the absenteeism rate. The court said that this would manifestly benefit male workers, because there is no possibility of their needing to be dispensed from work in order to breastfeed.

The Committee requests that the next report indicate whether it is also responsible for dealing with all other types of discrimination in employment and, if so, what it does in this area.

The equality at work and in employment mechanism in Portugal is the Commission for Equality at Work and in Employment (CITE). Its composition is tripartite and equilateral, with members from the State, trade unions and employers’ federations. Its primary areas of responsibility are the pursuit of equality and non-discrimination between women and men in the labour world, the protection of parenthood and the reconciliation of professional, family and personal life, to which end it fosters and monitors the social dialogue in relation to these matters.

¹⁶ Case no. 0843819; Convention no. JTRP00042178- www.dgsi.pt

¹⁷ http://www.cite.gov.pt/imgs/downlds/22_Anos_Jurisprud.pdf

CITE performs the following functions:

- It issues formal opinions and analyses complaints at the request of any interested party.
- It issues prior opinions on the dismissal of workers who are pregnant, have recently given birth or are breastfeeding, or workers of either sex who are on parental leave.
- It issues prior opinions on cases in which an employer intends to refuse to authorise workers of either sex with children under the age of 12 to work part-time or flexible hours.
- It provides legal information and support.
- It assesses the legality of collective labour regulation provisions regarding equality and non-discrimination between women and men at work and in employment.
- It provides assistance to the victims of gender-based discrimination at work, in employment and in vocational training.
- In cases of individual conflict, it takes steps to promote conciliation when asked to do so by both parties.
- It makes recommendations to the members of the Government with responsibility for the employment and Public Administration areas, as regards the adoption of legislation that promotes equality and non-discrimination between men and women at work, in employment and in vocational training, in the protection of parenthood and in the reconciliation of work and family life.
- It promotes social dialogue in the field of equality between men and women in the labour world.
- It promotes and draws up studies on gender equality in the labour market and the design, development and implementation of projects.
- It provides training for strategic audiences on gender equality in the labour field.
- It cooperates at the national and international levels with both public and private entities, namely enterprises, with regard to actions and projects linked to its mission.

The Committee therefore asks whether posts in the public administration are reserved for nationals and, if that is not the case, which posts are accessible to nationals of the States Parties to the Charter.

Under Article 15(1) and (2) of the Constitution of the Portuguese Republic (CRP), foreigners in principle "enjoy the same rights and are subject to the same duties as Portuguese citizens". Exceptions include the "exercise of public functions that are not predominantly technical in nature" – i.e. functions that predominantly entail the exercise of public authority.

This means that the general principle of equivalent status is not fully applicable to the public service, because the "exercise of public functions that are not predominantly technical in nature" is constitutionally reserved to Portuguese citizens (see Opinion of the Consultative Committee of the Public Prosecutors' Office PGR no. 22 1990, which was issued unanimously on 29-05-1991 and was

drawn up with a view to interpreting the applicability of Article 15(2) of the CRP to the exercise of public functions by non-Portuguese Community citizens).

The fact is that one of the requisites for the formation of the public employment bond is the possession of Portuguese nationality, "*when not dispensed by the Constitution, international convention or a special law*" (Article 17, LTFP).

One example is provided by the Treaty of Friendship, Cooperation and Consultation between the Portuguese Republic and Federal Republic of Brazil, as approved by Resolution of the Assembly of the Republic no. 83/2000 of 14 December 2000 and ratified by Decree of the President of the Republic no. 79/2000 of 14 December 2000 (regulated by Executive Law no. 154/2003 of 15 July 2003). Articles 12 and 14 say that Portuguese citizens in Brazil and Brazilians in Portugal who benefit from equal status, enjoy the same rights and are subject to the same duties as the nationals of each of the two States, except for the rights which the Constitutions of the two Contracting Parties expressly reserve to their own nationals.

In the European Union the free movement of workers is enshrined in Articles 39, 40, 41 and 42 of the Lisbon Treaty [respectively Articles 45, 46, 47 and 48 of the Treaty on the Functioning of the European Union (TFEU)], and Regulation (EEC) no. 1612/68 of the Council of 15 October 1968.

The rules governing free movement for workers are set out in Article 39 of the Treaty of Lisbon (TL) and Article 45 of the TFEU; under Article 39(4) TL, free movement for workers does not apply to public sector employment.

The Member States can thus limit the right of access by migrants to certain public administration jobs linked to specific functions of the State and related entities.

The scope of this limitation includes posts that are linked to specific activities in the Public Administration when it exercises public authority and pursues its responsibility to safeguard the general interests of the State (e.g. the armed forces, police and other security forces, the judiciary, tax authorities, and the diplomatic corps), which as a rule can only be occupied by nationals of the state in question.

Having said this, the Court of Justice of the European Communities (CJEC) has been very restrictive in its interpretation of this derogation, so the Member States are only authorised to limit the right of access to public sector jobs if the latter involve the exercise of public authority and the responsibility to safeguard the general interests of the State. These criteria must nonetheless be evaluated on a case-by-case basis, in the light of the nature of the tasks and responsibilities involved in each position.

The Committee refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue.

There is no additional information, inasmuch as the rights and duties regarding the acceptance of appropriate work were last updated in Law no. 5/2010 of 5 May 2010 – i.e. before the present reference period.

The Committee asks the next report to provide updated information on the operation of the Public Employment Services (PES), in particular on the number of placements made by the employment services. The next report should therefore include information (for the different years of the reference period) on:

- *the number of vacancies notified to the PES;*
- *the number of placements made by the PES (and the placement rate, measured as a percentage of the total vacancies notified);*
- *the placements made by the PES as a percentage of total hirings in the labour market.*

The Committee also asks what is the number of counsellors in the PES involved in placement services, and the ratio of placement staff to registered jobseekers. The report containing no information, the Committee considers there is nothing to show that employment services are operated in an efficient manner.

The following table gives figures for job offers made and placements achieved in 2011-2014.

Table no. 11

Job offers and placements (IEFP) / Total hirings in Portugal (2011-2014)

Year	Movement during year		Offers / Placements (%)
	Job offers	Placements	
2011	99,488	60,135	60.4
2012	91,846	57,057	62.1
2013	137,461	82,622	60.1
2014	162,197	102,977	63.5
Total	490,992	302,791	61.7

Source: IEFP, IP - Business Object

As we can see, from 2012 there was significant growth in both the number of job offers attracted by the PES, and the number of placements it made. IEFP has no data on the total number of hirings in Portugal, and so it is not possible to calculate the PES's market penetration rate.

There now follows some information on the human resources in the PES who intervene more directly in the placement of unemployed persons, and the ratio of those resources to the number of unemployed registered with IEFP.

In this respect it is important to point out that in 2012 the PES conducted an overall reorganisation of its work that was designed to make procedures more

flexible and responsive and improve its interaction with both the unemployed and employers. The position of career manager (a central role with regard to demand) was created in order to make it possible to ensure that unemployed persons' paths are monitored, thereby helping minimise the influx into long-term unemployment; and the systematisation of the existing position of offer manager (a key role on the offer side of the equation) was improved, thereby helping increase the quality and speed of the way in which job offers are treated, and consequently increasing employer loyalty and improving the way in which offer and demand are matched up.

These positions are occupied by a varied range of technical staff – job specialists, senior job specialists, guidance counsellors and senior guidance counsellors – who simultaneously continue to be responsible for other interventions in the placement, counselling, or measure/programme management fields, depending on their technical profile.

As the following table shows, in December 2014 the Public Employment Service had 990 technical staff who intervened more directly, albeit not exclusively, in the placement of 546,312 registered unemployed persons – i.e. a ratio of 570 unemployed to each specialist.

Table no. 12

Registered unemployment / Human resources who intervene in the placement process

Registered at the end of December 2014		Technical staff with career and job offer management functions	Registered users/HR (%)
Registered unemployed	564,312	990	0.2

Source: IEFP, IP

**ARTICLE 9
THE RIGHT TO VOCATIONAL GUIDANCE**

In 2012, as part of the Central Administration Reduction and Improvement Plan (PREMAC) and following approval of the Organic Law governing the Ministry of the Economy and Employment, which restructured the Institute of Employment and Vocational Training (IEFP, IP), Executive Law no. 143/2012 of 11 July 2012 revoked the existing organisational structure and approved a new one.

This restructuring did not affect the public service's existing attributes and maintained its mission of "promoting information, guidance counselling, qualification and vocational rehabilitation, with a view to placing workers in the labour market and to their professional progression".

Following publication of the Organic Law, Ministerial Order no. 319/2012 of 12 October 2012 approved IEFP, IP's new articles of association, under which it also continues to possess guidance-related competences at various levels of its organisational structure, in such a way as to ensure that its users effectively enjoy the right to guidance. Concretely speaking, it attributed the following competences to:

- The Department of Employment (DE): to ensure the diagnosis of the needs of both the active population and employers, and the development of different forms of response, by enhancing the dynamism of the processes of matching the demand for and offer of jobs, providing information and guidance, promoting active employment measures, supporting insertion into the working life, and stimulating entrepreneurship and the creation of self-employment and enterprises, with particular attention to the groups that are most disadvantaged and exposed to social exclusion.
- The Directorate of Guidance and Placement Services (DSOC):
 - a) To design and implement information networks with a view to keeping the vocational information and guidance system and its methodologies and technical contents updated, in accordance with the needs of the different socioprofessional groups and public service users.
 - b) To ensure the design and development of rules, standards and procedures in the self-information and vocational information and guidance fields, and to prepare and implement psychological diagnostic techniques and models, within a constantly updated technical/scientific framework.
 - c) To design and disseminate technical models and instruments for vocational information and guidance purposes and for the development of employability competencies, in accordance with the needs of the different socioprofessional groups and in forms which are adapted to populations with special difficulties in achieving insertion into the working life that are derived from specific difficulties or socially disadvantaged situations.
 - d) To work in articulation with the psychology and guidance services that are under the oversight of the Ministry of Education, from the perspective of the shared use of intervention resources and instruments, with the goal of increasing the efficacy in this domain and within the overall framework of an integrated academic and vocational guidance system.
- The Job Centres and Employment and Vocational Training Centres: to provide vocational information and guidance services, with particular attention to priority target groups, namely young persons, the long-term unemployed, women, disadvantaged social groups, and ex-trainees.

Among the actions developed and implemented with regard to vocational information and guidance, we would especially note that in May 2012 the **Vi@e-guidance website** (<https://vias.iefp.pt>) (“vias” = pathways) was made available to the public, and that May 2013 saw the publication of an internal directive containing the Guidance Counselling Referential (RAO), which sets the goalposts for face-to-face and online guidance activities at IEFP, IP.

The objective of the Vi@e website is to increase the accessibility of the guidance services to encompass a larger number of citizens and their diverse needs, minimising geographic, time-related and other conditioning factors, in such a way as to make it easier to anticipate the successive transitions that take place over a lifetime and to make the corresponding decisions. In addition, the website is intended to serve as a support for all the different parties that may potentially intervene in guidance processes.

To this end the website is organised into four thematic paths, each of which offers a range of information and exploratory activities designed to allow users:

- a) To get to know themselves better (personality, interests, values, capabilities and competencies) and explore professions and training and job opportunities in Portugal and abroad.
- b) To perform a self-diagnosis and develop cross-cutting competencies, particularly in the relational, time-management and learning areas.
- c) To learn job-search techniques, including drawing up CVs, answering adverts, making spontaneous job applications and preparing for job interviews.
- d) To develop enterprising attitudes and behaviours and get to know the factors that should be taken into account when creating one’s own job or enterprise.

The website also has a Multimedia Centre with technical instruments designed to support guidance work, together with articles and publications, legislation, videos and other resources of general interest to users.

The website can be accessed by anyone, regardless of whether he/she is registered with IEFP, IP’s direct contact services. Users simply need to register on the website.

The **Guidance Counselling Referential** is the framework instrument for IEFP, IP’s guidance work, and one of its objectives to ensure greater fairness and quality in the service provided to users. It defines the concept, purposes, target groups and intervention axes of the guidance counselling work at IEFP, IP, together with the main methods and techniques used.

The Referential says that IEFP, IP’s guidance services are to be targeted at all the users of its employment and vocational training services. It also extends its guidance work to individuals inserted in educational establishments, social support entities, prisons and others, within the scope of local partnerships.

With a view to supporting the professional insertion of unemployed persons, IEFP, IP’s Employment Services continue to cooperate with the **Professional**

Insertion Offices (GIPs), particularly at the level of the development and implementation of certain guidance and counselling interventions.

The number of persons covered by technical vocational guidance interventions during the reference period was: 240,935 in 2011; 262,391 in 2012; 280,493 in 2013; and 215,509 in 2014. The following table contains data on their characterisation by gender, age, qualifications, and type of situation when registration occurred.

Table no. 13

Characterisation of users covered by face-to-face guidance Interventions (2011-2014)

Variable \ Year	2011	2012	2013	2014
Gender				
Male	127,381	130,001	134,326	99,882
Female	113,554	132,390	146,167	115,627
Total	240,935	262,391	280,493	215,509
Age group				
< 18 years	4,689	3,941	2,316	1,741
18-24 years	37,355	46,290	53,753	46,237
25-34 years	56,558	58,328	72,946	56,312
35-54 years	111,184	118,962	125,764	89,973
≥ 55 years	31,149	34,870	25,714	21,246
Total	240,935	262,391	280,493	215,509
Qualifications				
< 1 st Basic Edu. Cycle (<Yr. 4)	13,427	10,530	9,997	8,887
1 st Basic Edu. Cycle (Yr. 4)	52,625	43,332	38,872	27,934
2 nd Basic Edu. Cycle (Yr. 6)	57,241	49,117	47,828	33,810
3 rd Basic Edu. Cycle (Yr. 9)	69,883	78,511	76,374	55,067
Secondary (Yr. 12) and Post-Secondary Education	40,427	64,344	76,879	62,049
Higher Education	7,332	16,557	30,543	27,762
Total	240,935	262,391	280,493	215,509
Type of situation/registration				
Unemployed – 1 st job	14,536	18,743	29,603	30,861
Unemployed – New job	190,773	217,208	227,973	163,529
Employed	5,307	4,455	4,268	3,150
Occupied	4,898	4,943	8,009	9,257
Non-job seeker user	25,421	17,042	10,640	8,712
Total	240,935	262,391	280,493	215,509

Source: IEFP, IP/ PG-EP

The total number of registered users of the Vi@s website was: 3,881 in 2012; 11,425 in 2013; and 17,729 in 2014. The following data takes account of the profile that users gave when they registered: in 2012, 3,234 registrations were made by recipients of guidance services (unemployed, students, persons in work), and 647 by potential agents in the guidance process (guidance specialists, employment/training specialists, teachers, parents or guardians, employers); in 2013, the respective figures were 10,720 and 705; and in 2014, 16,874 and 855.

The following table characterises the beneficiaries of guidance services by qualification (the only element available in the registration data).

Table no. 14

**Characterisation of the beneficiaries of online guidance interventions
(17 May 2012 to 2014)**

Year Qualif.	2012				2013				2014			
	Unemployed	Student	In Work	Total	Unemployed	Student	In Work	Total	Unemployed	Student	In Work	Total
< Year 4	2	3	2	7	28	2	3	33	68	2	2	72
Year 4	6	1	1	8	199	0	8	207	835	13	22	870
Year 6	45	4	4	53	319	37	12	368	1,499	51	43	1,593
Year 9	150	38	35	223	1,332	132	69	1,533	3,403	201	145	3,748
Second.	564	96	155	815	3,191	223	186	3,600	5,300	373	215	5,888
Post-Sec.	126	10	34	170	611	31	37	679	661	34	33	728
Short Degree	48	2	23	73	233	7	10	250	237	5	23	265
Bachelor's	808	92	461	1,361	2432	162	353	2,947	2,351	127	230	2,708
Master's	190	28	103	321	543	40	108	691	569	20	70	659
Post-Grad	116	7	67	190	329	5	55	389	263	11	40	314
PhD	7	0	6	13	18	1	4	23	26	0	2	28
Total	2,062	281	891	3,234	9,235	640	845	10,720	15,212	837	825	16,874

Source: IEFP, IP/IS-SI

The number of IEFP, IP staff serving as vocational guidance counsellors was: 245 in 2011; 257 in 2012; 255 in 2013; and 251 in 2014.

The figures for financial execution linked to vocational information and guidance were: €47,342.70 in 2011; €36,072.36 in 2012; €73,032.93 in 2013; and €39,909.07 in 2014.

Within the framework of the training services linked to IEFP, IP, vocational guidance is provided by specific organisational structures and teams. Until 2012/2013, those structures were the New Opportunities Centres (CNOs), which were then abolished and in 2014 gave way to the newly created Qualification and Vocational Education Centres (CQEPs).

In general, the current CQEP network pursues the former CNOs' responsibilities with regard to promoting vocational guidance processes, developing and implementing competency recognition, validation and certification processes, and promoting the availability of qualification responses that are more articulated with and a better match for both individual needs and the labour market.

However, when it comes to vocational guidance processes, the CQEPs' sphere of intervention has been broadened because, unlike the CNOs, which only covered the adult population, they also target young people. The CQEPs are thus the entryway to the National Qualifications System for every citizen.

Under Ministerial Order no. 135-A/2013 of 28 March 2013, which regulates the creation and functioning of the CQEPs, the latter possess the following responsibilities with regard to guidance processes:

- a) The provision of information, guidance and forwarding services to young persons aged 15 and over, or who are attending the last year of basic education (year 9) regardless of age, based on the different offers of education and vocational training, the possibilities of pursuing their studies and the available job opportunities, while seeking to match the options to individual profiles, needs, motivations, expectations and capabilities.
- b) The provision of information, guidance and forwarding services to adults aged 18 and over, based on different qualification formats, particularly competency recognition or offers of education and vocational training, job opportunities or professional progression, while seeking to match the options to individual profiles, needs, motivations, expectations and capabilities.
- c) The development and implementation of information and dissemination actions regarding the available offers of education and vocational training and/or the importance of lifelong learning, at or among basic and secondary education schools, IEFPP, IP centres, legally certified training entities and enterprises and other employers.
- d) The implementation of information, guidance and dissemination formats by various means, such as to make it possible to foresee qualification needs in advance and make it easier to match the demand for and offer of training solutions.
- e) The establishment of partnerships with other relevant entities in the CQEP's territory, such as to contribute to a more integrated and consistent intervention in both the process of identifying concrete qualification needs and the organisation of responses in the education and vocational training field that are useful to populations.

Every Employment and Vocational Education Centre and every Vocational Training and Rehabilitation Centre promotes a CQEP. IEFPP, IP thus belongs to a

network of 30 COEPs incorporated into direct management centres and 22 COEPs incorporated into shared management centres, all of which are part of a larger national network managed by the National Agency for Qualification and Vocational Education (ANQEP, IP).

The Ministry of Education and Science also possesses responsibilities in the vocational guidance field. The Ministry has adopted the Lifelong Guidance concept. Therefore, and with a view to ensuring the effective exercise of the right to vocational guidance, the Portuguese Government has undertaken to provide or promote, as necessary, a universal guidance and orientation service, catering to the needs of all interested persons including those with disabilities, in order to solve problems related to their occupational choices and professional career, with due regard to the individual's characteristics. This assistance must be available free of charge to both young persons and adults. Three free public services are thus provided:

- The Psychology and Guidance Service (*Serviço de Psicologia e Orientação – SPO*), which works mainly at education institutions and focuses on the youth population, guiding them through their school pathways.
- The Public Employment Service (*Serviço Público de Emprego – SPE*) which, acting within the network of Employment and Vocational Training Centres directly managed by the Institute for Employment and Vocational Training (*Instituto do Emprego e Formação Profissional e de gestão participada – IEFP*) and the shared management centres, focuses on the creation of employment and worker training, mainly targeting the adult population.
- Finally, the Qualification and Vocational Education Centres (*Centros para a Qualificação e o Ensino Profissional – COEPs*), comprising a network of 242 centres scattered throughout the country, where any person, young or adult, can complete the initial reception, diagnostic, information and guidance process, with a view to finding the pathway best suited to meeting their expectations and interests in the light of the responses available in the country. The specialists who intervene at this stage use a methodological instrument – the “Methodological Guide – Lifelong Guidance for Qualification and Vocational Education” (*Guia Metodológico - Orientação ao Longo da Vida nos Centros para a Qualificação e o Ensino Profissional*).

There is a broad range of legal frameworks regarding guidance. In order to ensure guidance services for all students, Executive Law no. 190/91 created guidance services within the Education System. Their main goal is to support students in succeeding during their school/training path and taking a vocational decision. Each school cluster has at least one guidance specialist. Although many of them operate in close liaison with and use the facilities of secondary schools, the COEPs are not directly linked to the education system and are regulated by Ministerial Order 135-A/2013 of 28 March 2013.

In 2012 a new programme was implemented to address students aged at least 13. These students can be integrated in their schools, simultaneously pursuing the school curriculum and obtaining practical vocational experience (apprenticeship) in enterprises. Guidance services play a major role and are closely involved in the whole of this process – in the preparation, the programme and the respective follow-up by the school guidance services, including closer “on programme” monitoring.

Executive Laws nos. 176/2012 and 139/2012 strengthened the role of the guidance services. Two recent Joint Ministerial Orders (nos. 4653/2013 and 13/2014) set out this role in detail.

The government approved a strategy for 2013-2015 in the educational sector, with the aim of improving the quality of guidance interventions and widening user access. A plan to achieve these goals was implemented. It comprises different fields, including:

Widening access:

- Information and Communication Technologies (ICT) have a key role to play in offering support to practitioners and widening access to guidance interventions. Online guidance tools, which are part of a significant investment by the Directorate-General of Education (DGE), can be used autonomously and are available to both parents and students, including students with disabilities.
- The *Info Cursos* website (<http://www.infocursos.mec.pt>) developed by the Ministry of Education and Science offers information about all the public and private universities and the degree courses at tertiary level. For each degree course it is possible to obtain information about labour market integration ratios, the minimum entry grades in the previous academic years, and other information, including statistics concerning dropping out and degree changing or, for example, differences in gender distribution, final average grades, etc. The information about secondary education pathways is also made available by the Directorate-General of Education.
- A national database on learning opportunities is under construction, and will be linked to the Ploteus database, whose use is being promoted.
- Several booklets were published with the aim of supporting parents and teachers in helping children and students to make good and informed career decisions.
- The Portuguese Euroguidance website enables students, teachers, counsellors and parents to submit their questions and doubts. An e-mail address is also available.

Practitioner development:

- Peer learning meetings were organised, involving about 300 counsellors, promoting the sharing of good guidance practices.
- Training courses on different matters – e.g. Guidance on VET; Guidance for Students with Special Needs; Guidance and Mobility – were organised in the last two years. About 400 school psychologists attended the courses. School psychologists also received e-guidance training.

- A conference is held every year, with experts from CEDEFOP, ELGPN and other organisations invited as keynote speakers.
- Documents from Euroguidance, ELGPN, CEDEFOP and the OECD are translated and made available online.

Quality Assurance

- Guidelines for guidance intervention were defined.
- Better tools and methodologies were developed.
- A quality assurance system according ELGPN guidelines is currently being implemented.

In Portugal, guidance isn't embedded in the curriculum, and teachers play an important role with regard to guidance. School guidance services are located in institutions all around the country, currently employing about 778 school psychologists.

The Directorate-General of Education is making a major investment designed to ensure that every student has access to guidance. The number of school psychologists has been growing, and the counsellor-student ratio is expected to reach 1/1,200 in September. The target group comprises all students from preschool to Year 12.

Most school guidance counsellors have a background in Psychology, mainly with a specialization in Educational Psychology. Of those with a pre-Bologna degree, a number hold a Master's degree or PhD., while post-Bologna graduates must hold at least a Masters' degree. Specialised post-graduate courses are offered by higher education institutions, the Directorate-General of Education, and the Order of Psychologists (professional association).

To ensure that every student has access to guidance interventions, networks are established linking guidance services belonging to schools, Qualification and Vocational Education Centres, and Inclusion Resource Centres (RCIs). School guidance services and centres for qualification and vocational training collaborate to work with Year 9 and Year 12 students in order to promote smooth transitions from the school system to the VET system and the labour market. The RCIs work closely with schools to deliver guidance interventions to students with disabilities. This work is focused on preparing the transition from the school system to the VET system and from both of them to the labour market. There are 90 RCIs and about 400 psychologists.

With regard to the Competency Recognition, Validation and Certification processes, 298,674 guidance processes involving 879 Diagnostic and Guidance Specialists took place at the New Opportunities Centres (CNOs) in 2011-2013. These only catered to the needs of the adult population. In 2014, with the operational start-up of the Qualification and Vocational Education Centres (COEPs) that replaced the former CNOs, guidance processes were broadened to encompass young people, and their functions were performed by Guidance and Competency Recognition and Validation Specialists. So far, 12,428 adults and 3,336 young people have benefited from guidance from the 946 technical specialists currently working in this area.

Responses to the European Committee of Social Rights

The report did not contain any information as to expenditure, staffing and number of beneficiaries of vocational guidance within the education system. The Committee asks that next report contain such information.

With regard to vocational guidance in a school context, in the 2014/2015 academic year 823 psychologists and 2 teachers who are also school guidance counsellors worked in 811 organisational units, providing support to 271,361 3rd cycle (Years 7-9) students, including students taking vocational courses. The work of these professionals can naturally also encompass the needs of secondary students who want to re-orient their education/training pathways.

The report did not contain any information as to equal treatment of nationals of other States Parties as to access to vocational guidance. The Committee asks that next report contain information whether the situation continues to remain the same or whether any eventual changes have occurred in this regard.

Under the Constitution of the Portuguese Republic and the Law governing the Bases of the Education System, every Portuguese child and young person and every foreign child and young person resident in Portugal, regardless of his/her situation (i.e. children of immigrants in an irregular situation) is entitled to access to education *under the same conditions*. This right is regulated by Executive Law no. 67/2004 of 25 March 2004, which says that “all foreign citizens who are minors, whose situation has not been regularised, whose age is below the legally permitted minimum for autonomously entering into a labour contract and who are economically dependent on their household shall have access to education *with the same rights as the law attributes to minors in a regular situation in Portuguese territory*” (our italics). As such, whatever his/her situation, every student – Portuguese or foreign – has access to the means needed for just and effective equal opportunities, including access to the School Social Action (ASE) formats and to the vocational guidance formats offered at the school level, even if his/her school enrolment is still conditional.

ARTICLE 10 THE RIGHT TO VOCATIONAL TRAINING

The vocational training framework is provided by two fundamental instruments: the National Qualifications System (SNQ), which is a reference framework for the whole of the national education and training system; and the System for Regulating Access to Professions (SRAP), which is the framework that structures access to and the exercise of specific occupations in Portugal.

The stated objectives of the SNQ are: to raise the level of young people’s basic training by diversifying education and training offers and strengthening professionalising pathways; and to make flexible qualification offers available to

adults, particularly ones that are structured on the basis of competencies that have been acquired over the course of a lifetime. It is seen as essential to enhance, value and recognise the competencies adults have already acquired through education, training, professional experience and/or other means.

Until the end of 2013, the executive instrument defined by the SNQ was the Human Potential Operational Programme (POPH), which fell under the National Strategic Reference Framework (QREN) 2007-2013. From the point of view of the implementation of the SNQ, 2014 was already encompassed by the Partnership Agreement between Portugal and the European Commission – “Portugal 2020”. This Agreement covers five European Structural and Investment Funds – ERDF, the Cohesion Fund, ESF, EAFRD and EMFF – and defines programming principles that in turn outline the economic, social and spatial development policy that is to be promoted in Portugal in 2014-2020.

The SNQ’s dual-certification formats include the following:

- Learning Courses – initial vocational training for young people that allows them to alternate between the classroom and on-the-job training, thereby allowing them to pursue their studies while emphasising their insertion into the working life.
- Vocational Courses – initial training for young people that emphasises their insertion into the working life while also allowing them to pursue their studies.
- Education and Training Courses for young persons – initial vocational training for young persons who have dropped out of, or are at risk of dropping out of the regular education system.
- Education and Training Courses for adults aged 18 or over who have not completed basic and/or secondary education, with a view to their (re)insertion into and progression in the labour market
- Technological Specialisation Courses – non-higher, post-secondary-level courses designed to provide a level-5 National Qualifications Framework (QNQ) qualification based on specialised technical training.
- Higher Technical Vocational Courses (CTSPs) – also level-5 non-higher, post-secondary-level courses taught at polytechnics and designed to provide a qualification based on specialised technical training.
- Modular Training – based on the short-duration training units included in the National Qualifications Catalogue’s (CNO) training referentials as part of the continuous training framework.

With the necessary adaptations, these various formats also apply to groups with particular insertion difficulties.

The SNQ is a flexible system and permits the creation of other dual-certification training formats – namely with a sectoral scope – undertaken by enterprises and incorporated into business innovation, modernisation and reconversion processes, as well as formats designed to be part of the modernisation of the Public Administration.

The SNQ is coordinated by the members of the Government with responsibility for the vocational training and education areas, and includes a variety of supervisory bodies on which the social partners are also represented – namely the General Council of ANQEP, IP (National Agency for Qualification and Vocational Education).

The entities with responsibility for developing and implementing the SNQ are the aforementioned COEPs (Qualification and Vocational Education Centres), basic and secondary education establishments, the vocational training and rehabilitation centres that are managed either directly by IEFPP, IP or under protocols, other entities certified by the training entity certification system, and enterprises that promote the training of their own workers.

The vocational training measures designed to qualify human resources that were mentioned in previous Reports were maintained during the reference period, while a number of others were created – the case of the Working Life Measure (MVA) and the abovementioned Higher Technical Vocational Courses taught by polytechnics.

The Working Life Measure is targeted at young and adult unemployed persons registered with IEFPP, IP's employment services, regardless of their academic qualifications. It was created in 2013 (Ministerial Order no. 203/2013 of 17 June 2013) with a view to monitoring unemployed persons more regularly and effectively, and enhancing the likelihood of their rapid return to the working life. To this end personal employment plans are adjusted to each unemployed person's needs and potential, favouring the acquisition of competencies that are relevant to the labour market and enhance or increase the value of the competencies the person already possesses, mobilising the unemployed for subsequent qualification or vocational reconversion processes.

This measure thus promotes a more frequent contact with the unemployed who are registered with the IEFPP, IP's centres, by undertaking more systematic and integrated actions that help keep this target group active while improving their employability and qualification levels.

The Working Life Measure seeks to increase the quality and speed of the active employment measures, particularly with regard to vocational qualification, by developing:

- Modular training pathways based on short-duration training units, predominantly using the National Qualifications Catalogue (CNQ) as their reference and enabling trainees to acquire specific or cross-cutting technological competencies and personal and entrepreneurial ones,

which are gradually capitalised in such a way as to obtain a qualification, thereby enhancing the trainees' employability.

- Practical training in a working context, which complements the unemployed person's modular training pathway or the competencies he/she has previously acquired in different contexts.
- Vocational or dual-certification processes involving the recognition, validation and certification of competencies acquired over the course of a lifetime by formal, non-formal and/or informal means.

Also with regard to those of IEFP, IP's interventions designed to increase employability, we should note the launch in October 2013 of a training module called Cross-cutting Training – Activation and Job-Search Techniques, attendance at which is a mandatory stage in the Personal Employment Plan for all registered unemployed who have either never taken part in job-search technique actions, or last did so more than two years ago.

This format is based on three Short-Duration Training Modules (UFCDs) that last 25 hours each and can be taken autonomously in the light of each unemployed person's profile. The actions are organised by IEFP, IP's own centres, the shared-management vocational training centres and other certified external training entities.

The number of persons covered between November 2013 and the end of December 2014, was as follows:

Table no. 15

Short-Duration Training Units – No. of persons covered

Short-Duration Training Units	2013	2014	Total
Personal Development and Job-Search Techniques	5	157	162
Assertive Communication and Job-Search Techniques	10	251	261
Entrepreneurial Competencies and Job-Search Techniques	1	86	87

Source: IEFP, IP/ IS-SI

The Modular Training formats included in the National Qualifications Catalogue (CNQ) consist of the construction of flexible-duration training pathways, based on 25 or 50-hour short-duration training units (UFCDs) that are in the same Catalogue. However, 2013 saw the beginning of a pilot project for the incorporation into the CNQ of 93 10-hour UFCDs in different education and training areas that were created by splitting 25-hour UFCDs included in level-2 and level-4 pathways in technological areas that are more sought after by trainees and more popular with employers linked to sectors that produce tradeable goods and services (Order no. 1039/2013 of 18 January 2013). The

idea was to provide a more effective response to the current needs of employers and the labour market.

Since 2012, IEFP, IP has established the practice of regularly or periodically defining priority vocational areas and opportunities that are considered strategic for economic growth – especially in tradable goods and services sectors. This selection process is based on strategic guidelines set at the national level, as well as on information on variations in the vocational training in the Employment and Vocational Training Centres' areas of influence, in particular:

- The information provided by the registrations with the employment and vocational training services.
- The information from the shared-management vocational training centres with a sectoral vocation, whose closeness to enterprises means they have access to privileged information about the needs for competencies in their sectors of activity.
- The information obtained directly from enterprises and other local and regional entities.
- The inputs from the members of the Consultative Councils – tripartite bodies that operate at the local and regional levels.
- The information in reports on the variations and situation in local labour markets.

In other words, the basis for the choice of priority training areas and opportunities is the cross-referencing of the strategies defined at the national level and the regional and local training needs identified in the ways described above.

We are able to provide IEFP, IP execution data for the following initiatives:

Learning Courses (CAs)

Created by Ministerial Order no. 1497/2008 of 19 December 2008, CAs award a dual certification, include a significant element of training in a working context and are intended for young persons below the age of 25 who have completed the 3rd basic education cycle (year 9). These dual courses are IEFP, IP's primary offer of training for young people, in accordance with the importance given to them in Axis 3 of the Industrial Development Strategy for Growth and Employment 2014-2020 (EFICE, Council of Ministers Resolution no. 91/2013 of 23 December 2013):

Table no. 16**Learning Courses – No. of persons covered and financial execution**

	2011	2012	2013	2014
No. of persons covered	22,862	32,537	40,246	38,910
Financial execution	70,344,308.89€	83,775,442.73€	118,107,515.29€	111,737,382.86€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

Education and Training Courses for young people
Intended for young persons under the age of 23 who are at risk of dropping out, whether or not they have completed their compulsory education:

Table no. 17**Education and Training Courses for young people – No. of persons covered and financial execution**

	2011	2012	2013	2014
No. of persons covered	6,785	5,601	5,142	3,036
Financial execution	12,539,982.14€	8,350,142.78€	7,060,770.71€	5,208,179.34€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

Technological Specialisation Courses (CETs)
Post-secondary courses that award a level-5 vocational qualification:

Table no. 18**Technological Specialisation Courses – No. of persons covered and financial execution**

	2011	2012	2013	2014
No. of persons covered	1,305	1,353	1,486	1,864
Financial execution	3,516,968.52	3,458,876.63	3,419,925.65€	2,879,776.78€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

Basic Competency Training Programme (PFCB)
Enables trainees to acquire basic competencies in reading, writing, arithmetic and information and communication technologies that are needed to attend an Adult Education and Training (EFA) course or be forwarded to a basic level competency recognition, validation and certification (RVCC) process. This programme is intended for adults who have not attended or completed the

first four years of school, or who have, but even so have not acquired basic knowledge of reading, writing and arithmetic:

Table no. 19

Basic Competency Training Programme – No. of persons covered and financial execution

	2011	2012	2013	2014
No. of persons covered	4,693	9,044	8,861	9,277
Financial execution	2,939,235.57€	4,069,837.00€	3,445,377.00€	2,442,767.86€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

Adult Education and Training Courses (EFAs)

Dual-certification courses for adults with low levels of qualification:

Table no. 20

Adult Education and Training Courses – No. of persons covered and financial execution

	2011	2012	2013	2014
No. of persons covered	37,636	41,067	53,008	48,830
Financial execution	86,791,795,34€	78,147,143,76€	86,495,818,35€	71,559,676,53€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

The Portuguese for All Programme (formerly “Portugal Welcomes”)

General and technical Portuguese language training designed to facilitate the initial reception and socioprofessional integration of immigrants:

Table no. 21

Portuguese for All Programme – No. of persons covered and financial execution

	2011	2012	2013	2014
No. of persons covered	1,953	1,582	1,778	2,348
Financial execution	578,024,07€	201,992,46€	281,465,67€	358,914,36€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

Modular Training

This diversified training offer is designed to promote the adaptability of people in work by improving competencies that can be of a general nature or specific to an occupation. The increase in unemployment levels and consequently in the number of unemployed registered with IEFP, IP's employment services led to the creation of training solutions based on modular training formats and focused on the needs of this specific target group. The Working Life Measure mentioned earlier was created in this context in 2013, and provides Modular Training for unemployed persons that is distinct from the Modular Training for Active Employed Persons:

Table no. 22

Modular Training – No. of persons covered and financial execution

	2011	2012
No. of persons covered	165,679	255,451
Financial execution	32,569,049.05€	42,380,943.26€

Source: 2011, 2012 IEFP Activity Reports (in Portuguese)

Table no. 23

Modular Training – No. of persons covered and financial execution

		2013	2014
No. of persons covered	Modular Training – Active Employed	83,421	81,994
	Working Life	238,287	298,738
	TOTAL	405,129	679,470
Financial execution	Modular Training – Active Employed at CEFPs*	9,783,151.93€	3,093,891.96€
	Working Life at CEFPs*	30,725,563.17€	58,413,100.31€
	TOTAL CEFPs*	40,508,715.10€	61,506,992.27€
	Modular Training (Active Employed + Working Life) at CGPs**	28,230,364.00€	28,822,428.00€
	TOTAL CEFPs + CGPs	68,739,079.10€	90,329,420.27€

Source: 2011, 2012, 2013 IEFP Activity Reports; IEFP Physical and Financial Execution Report Dec. 2014 (all in Portuguese)

*Data only for the Employment and Vocational Training Centres (CEFPs – i.e. excluding the Shared-Management Centres (CGPs)).

** Data for the Shared-Management Centres, which in financial execution terms do not distinguish between the Modular Training for active employed persons (Modular Training – Active Employed) and that targeted at unemployed persons (Working Life).

Occupational and/or Academic Competency Recognition, Validation and Certification (occupational or dual-certification RVCC)

Intended to help increase adult qualification levels by enhancing occupational competencies acquired in different contexts over the course of a lifetime, as well as to provide a new training opportunity for adults who have not completed, or have dropped out from, formal education/training systems.

As we have already said, until 2012/2013 these processes were undertaken under the aegis of the New Opportunities Centres (CNOs) incorporated into IEFP, IP's Employment and Vocational Training Centres. The CNOs were then abolished, and the Qualification and Vocational Education Centres (CQEPs) were created in 2014. Among other functions, the CQEPs took over responsibility for the RVCC process. The 2011-2014 execution data thus reflect this change in the legislative and organisational process, which took place over the course of 2012-2014:

Table no. 24

Execution of RVCC processes at CNOs

	2011	2012	2013
No. of certificates issued	36,050	14,234	637
Financial execution	19,857,221.16€	9,552,735.58€	765,842.36€

Source: 2011, 2012, 2013 Activity Reports *(in Portuguese)*

Table no. 25

Execution of RVCC processes at CQEPs

	2014
No. of persons registered with CQEPs during the year	2,244
No. of persons forwarded to training offers	4,401
No. of persons in competency recognition processes	1,568
No. of certificates issued	26
Financial execution	778,050.69€

Source: IEFP Physical and Financial Execution Report Dec. 2014 *(in Portuguese)*

Responses to the European Committee of Social Rights

The Committee concludes that the situation in Portugal is not in conformity with Article 10§4 of the Charter on the ground that it is not established that the right to vocational training for long term unemployed is guaranteed.

The response can be found in the text on Article 10, which covers all the offers available to the long-term unemployed.

The report contains no information as to higher education. The Committee asks that this information is included in the next report.

Since 2011 the Portuguese Government introduced reforms that meet the need to adapt to the diversity of supply in Higher Education in Portugal to the academia and labour market needs of qualified people; to optimise the available resources, to rationalise the network of institutions and to promote internationalisation.

There has been an increase in the awareness of the importance that Higher Education represents in national economy, namely by enlarging the access to a wider public, to gain from more qualified citizens, to reinforce the importance of mobility and soft skills as keen to personal and professional development.

From 2012 there has been a strong investment in rationalising the educational supply, particularly by adapting HEI course vacancies according to the needs of the national labour market, taking into account factors such as the rate of employability per degree registered within the HEI. This setting of vacancies tends to favour courses with higher rates of employability, namely in the areas of science, engineering, technology, maths and information technology.

In June 2013, an important step was taken with the merger of two of Portugal's most important HEI – the University of Lisbon and Technical University of Lisbon – making the University of Lisbon the fourth largest in the Iberian Peninsula, with 18 faculties and institutes, 48,000 students and a teaching staff of 3,500. The goal of this merger was to unite, in the same institution, different areas of knowledge, thereby creating better conditions to accompany the contemporary evolution of science, technology, arts and humanities. This new institution also seeks to strengthen its research capability, particularly in border and interdisciplinary convergence areas, to open new opportunities for higher education, promoting the dynamics of internationalisation.

In April 2014, a Memorandum of Understanding was signed between the universities in the northern region - the University of Porto, University of Minho and the University of Trás-os-Montes e Alto Douro (UTAD), that aims to create a Consortium of Universities of the North (UniNORTE), which will enable the articulation and promotion of strategic institutional co-operation between these universities and to pro-actively participate in the build-up of a regional strategy. It will also promote student and teacher mobility, attract international students, aid research and encourage joint applications for European funds.

Later, in April 2014, 11 universities and polytechnics in northern Portugal and in Galicia signed an agreement, named IACOBUS (universities of Minho, Trás-os-Montes e Alto Douro, Porto Católica, Coruña, Vigo and Santiago de Compostela and the polytechnics of Viana do Castelo, Bragança, Cávado e Ave and Porto) to organise cultural, scientific and pedagogical exchanges between the respective academic communities within the framework of a programme for the mobility of researchers and lecturers between the two regions.

Co-ordination between educational supply and the sharing of human and material resources between higher education institutions is encouraged, based on logic of improving quality, diversifying educational experiences offered to students and better meet the needs of society. To this effect, it is foreseen that consortiums shall soon be regulated.

In early 2014, a Ministerial Order 627/2014 of 15th January¹⁸ changed the Regulations for the Attribution of Study Grants to Students in Higher Education (Ministerial Order 8442-A/2012 of 22 June, amended by Amendment Declaration 1051/2012 of 14 August) and extended the conditions of eligibility to receive a scholarship, with the candidate's family's fiscal and contributory obligations ceasing to be an excluding factor for these students to access the system of direct school social action.

The system for awarding study grants to students in higher education has been restructured, enabling an enlargement of the social dimension of the higher education system, optimising the use of available financial resources and allowing all students to access this level of education, while avoiding drop-outs for financial reasons. It should be noted that the number of scholarships recipients amounted to approximately 62,000 students in 2013-2014, with an increase in the average value of the scholarship and a reduction in the average time waiting for a decision on the applications from 106 days in 2010-2011 to 33 days in 2013-2014. Continuing this work to simplify the process allows an effective improvement in the efficiency of the education social action system.

The legal framework for higher education degrees and diplomas (Decree-law 74/2006 of 24 March) was revised by Decree-law 115/2013 of 7 August¹⁹, aiming to:

1. Clarify the requirements regarding the composition of the teaching staff in HEI of both universities and polytechnics for each of the cycles of study leading to an academic degree;
2. Regulate, in precise terms, the requirements regarding the accreditation of backgrounds and experiences, whether at the procedural level or at the level of quantitative limits; and
3. Clarify that courses can only be taught in institutions accredited and registered for the effect.

¹⁸ <http://dre.pt/pdfgratis2s/2014/01/2S009A0000S00.pdf>

¹⁹ <https://dre.pt/pdfgratis/2013/08/15100.pdf>

There has also been a large investment in the attractiveness of Portuguese HEI. Ministerial Order 3833/2014, of 12 March²⁰, came to establish the development of a global strategic project for the internationalisation of Portuguese higher education with the following goals:

1. Promote agreements with foreign HEI in the areas of student, teacher and researcher mobility;
2. Create joint courses;
3. Promote participation in European or international projects and obtaining foreign funding; and
4. Attract students from specific regions (especially from Europe, Africa, Brazil and China) by establishing specific legal frameworks for international student.

Still on internationalisation, and aiming to attract a greater number of international students to Portuguese HEI, Decree-law 36/2014 of 10th March was approved establishing a new framework for the access of international students to Portuguese Higher Education, seeking to ensure that Portuguese higher education institutions can create adequate conditions to attract more foreign students to complete a first cycle of studies, especially through specific access and admission mechanisms. This regime is associated with a particular procedure for setting tutorial fees that must be linked to the actual cost of the education received. It came into force at the beginning of the 2014-2015 academic year.

It is also considered important to offer courses in English, to foster international study programmes and to create an international brand to promote Portuguese higher education to the world that can be disseminated on a global scale. The distance learning model will also be restructured. A national strategy for the internationalisation of higher education, that already exists in several European countries, is being designed, contributing to the creation of an international brand to promote Portuguese higher education to the world that can be disseminated on a global scale.

In May 2014 the Portuguese Government outlined a complete framework of strategic measures regarding Higher Education, in order to reaffirm measures taken, but also to define the steps that will be taken in future. This framework includes the following areas of intervention:

1. Shifts in demand for higher education/Access and Equity – consider the dramatic changes in PT's student population, namely caused by the reasons abovementioned regarding dropout.
2. Strategic higher education policy with the setting of concrete goals for medium/long-term future. Greater links to employment policies.
3. Quality assurance and quality improvement has been an ongoing project of PT's higher education system since 2006 that needs to keep on being developed and reinforced.

²⁰ https://www.igfse.pt/upload/docs/2014/Despacho3833_2014.pdf

4. Funding levers/Affordability/Financing mechanisms all need to be considered by the government and higher education institutions in order to respond more effectively and efficiently to the financial challenges that PT has been facing in recent years.
5. System design/challenges to broader linkages – related to regional development as mentioned above.
6. Internationalisation – compare experiences, good practices. It is a very new area for PT.

In 2014 two important new programmes were launched. Due to the asymmetry of the population and the fact that some regions and institutions have difficulty in getting students through the national access competition, the “+Superior” programme was created, seeking to improve territorial cohesion by increasing the number of students in those regions that normally receive fewer students through the national higher education access competition.

The programme targets the settling of highly specialised population through with an advanced education, so that they can contribute more actively in the development of the regions in question. It will be launched for the next academic year and is conceived to guarantee funding, having received the support of important partners, including the HEI, the Regional Co-ordination and Development Commissions in mainland Portugal and the Regional Government of the Madeira Autonomous Region.

Also, the “Retomar” programme was launched to support the return of students who dropped out of higher education for economic reasons. This programme intends to combat education drop-out by granting special scholarships to help students return to higher education, increasing the number of graduates and promoting higher qualifications among NEET. However, the programme is aimed at young people under the age of 30 who recently dropped out of higher education. This programme is included in the Youth Guarantee initiative, and is currently in the final phase of drafting.

Another very important measure that was taken, in order to optimise the use of available educational resources within higher education (particularly at the polytechnic level), and to increase the number of people with higher education qualifications, a number of new short cycle professional higher education programmes (TeSP), that do not confer degrees have been created through Decree-law 43/4014 of 18th March²¹. This is a new training offer that has been created in accordance with the qualifications framework within the Bologna Process, approved in Bergen in 2005, which anticipated the existence of a “short cycle linked to the first cycle”, and the Framework Law of the Education System (Article 15.1), which grants HEI the right to offer non-degree courses.

This new course consists of a cycle of higher studies that does not lead to an academic degree, with 120 ECTS taught over four semesters, at ISCED level 5 and offered in an appropriate pedagogic environment (polytechnic). It includes general and scientific training, technical training and workplace

²¹ <http://dre.pt/pdf1sdip/2014/03/05400/0207402081.pdf>

training, and involves a high level of co-operation with the labour market (creation of courses, establishment of study plans preceded by consultations with the region's employers organisations and socio-professional and/or enterprise associations, ANQEP and IEFP and the existence of a compulsory internship of one semester at the end of the course).

Those who can apply for this new course must have completed secondary school or equivalent, those who have been admitted through the special access regime for those aged 23 years or older, those who have passed 10th and 11th grade exams and who passed a skills assessment exam, and those with a technological specialisation diploma, a higher vocational technical diploma or a higher education degree. The implementation of the TeSP is accompanied by the gradual cessation of the technological specialisation courses (CET), with no new students being admitted to technological specialisation courses at HEI from the 2015 and 2016 academic year, inclusive.

The vocational education supply in the Portuguese higher education system consisted, until 2014, of Technological Specialization Courses, that could be offered by all higher education institutions and which will gradually cease, and, since then, of Professional Higher Technical Courses, that can only be offered by polytechnic institutions.

Higher education institutions manage their own human resources, with no distinction between teachers who are specifically assigned to these courses. Since the public expenditure for higher education institutions is global, there is also no data on the value specifically applied to vocational education.

Table no. 26

Number of students

Academic year	Technological specialization courses
2011/12	7 064
2012/13	7 453
2013/14	8 796
Academic year	Professional higher technical courses
2014/15	405

Source : DGES, MEC

In terms of quality assurance, the operating conditions of the Higher Education Assessment and Accreditation Agency (A3ES) remain, guaranteeing its independence in relation to both the government and the institutions. The regular cycle of evaluation/accreditation of the system is on-going, and will end in 2016.

The international evaluation of the A3ES was concluded successfully, resulting in the recognition that all its goals in terms of the promotion of quality in higher education in Portugal were achieved. The national Agency has therefore been formally admitted as a full member in the European Association for Quality Assurance in Higher Education (ENQA), since June 2014.

Our Agency has also requested its registration in the European Quality Assurance Register (EQAR) that was accepted in November 2014. With these two important milestones completed A3ES has finally completed its full integration in European Higher Education Area.

The Committee asks the next report to contain information on the system of fees and financial assistance in secondary and higher education. It asks also for information on the means used to supervise and ensure efficiency of training.

Basic (1st to 3rd cycles – Years 1 to 9) and secondary education both currently fall within the compulsory education system, so no fees are payable in the public school system.

In addition to the Constitution of the Portuguese Republic [Article 36(5)], relevant legislation includes:

- Law no. 85/2009 of 27 August 2009 – Established the compulsory education regime for children and young persons of school age, and made preschool education universal for children aged 5 and over.
- Executive Law no. 176/2012 of 2 August 2012 – Regulates the regime governing compulsory education enrolment and attendance for children and young persons between the ages of 6 and 18, and established measures to be adopted as part of students' school paths in order to prevent academic failure and dropping out.
- Executive Law no. 35/90 of 25 January 1990 – Defined the regime under which compulsory education is free of charge.

On the subject of assistance, students in need who are subject to compulsory education can receive support under the School Social Action system (ASE), which is regulated by Executive Law no. 55/2009 of 2 March 2009 and a series of other legislative acts that annually establish ASE measures for each academic year.

Regarding the topics covered in Article 10.5, including 'vocational training' in higher education in Portugal, we would highlight the Technological Specialization Courses (CET) and the Professional Higher Technical Courses (CTeSP)²² that include a training component in a working context, which aims to apply the knowledge and understanding to the practical activities of the respective professional profile and includes the execution of activities under supervision. For that purpose, higher education institutions must establish protocols with external entities that develop appropriate professional activities, in which the different aspects related to the duration, supervision and evaluation of the training component are set out.

The frequency of these courses is subject to the payment of a fee. In Technological Specialization Courses that fee could not be higher than the

²² The first CTeSP started in 2014-2015, so there is less data available.

minimum value set for the 1st cycle degree. In Professional Higher Technical Courses it cannot exceed the maximum value set for the 1st cycle degree.

Students enrolled in these courses are covered by the existing system for providing financial assistance in higher education. A student of CET or TeSP lies, as regards the granting of direct support (grants) or indirect support, in equal opportunities as any student enrolled in undergraduate education - 1st cycle, integrated master's degrees or master's - 2^o cycle.

It should be mentioned that under the NSRF (National Strategic Reference Framework) in force, between 2007 and 2013, CET's were supported by POPH²³. The courses that were supported by POPH (granted by the European Social Fund), did not charged tuition fees to their students, or charged a reduced fee.

Also, regarding bank loans to higher education students, even though the protocol allowed loans to students of technological specialization courses, the data provided by the Fund of mutual counter (9 September 2014), did not identify any students from CET as having subscribed to this type of loan.

Table no. 27

Amount spent on scholarships per year and number of beneficiaries

Year	2011		2012		2013		2014		Total	
Type of course	Amount spent scholarships (€)	Number beneficiaries	Amount spent on scholarships (€)	Number beneficiaries	Amount spent scholarships (€)	Number of beneficiaries	Amount spent scholarships (€)	Number beneficiaries	Amount spent scholarships (€)	Number beneficiaries
CTeSP	-	-	-	-	-	-	3.722	7	3.722	7
CET	1.676.936	1.198	1.801.534	1.354	2.932.884	2.717	3.525.832	3.040	9.937.188	5.979
Total	1.676.936	1.198	1.801.534	1.354	2.932.884	2.717	3.529.555	3.047	9.940.911	5.986

Source : DGES, MEC

²³ The POPH (Human Potential Operational Programme) is the programme which implements the thematic agenda for human potential inscribed in the National Strategic Reference Framework (NSRF)

ARTICLE 15

THE RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE, SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY

Paragraph 1

The Portuguese education and training system guarantees the principle of equal opportunities and non-discrimination, thus fulfilling the precepts established in the Portuguese Constitution. It is an inclusive system, as such promoting the social inclusion and active citizenship of all, irrespectively of nationality and/or any special educational needs (SEN).

There is a broad legal framework designed to guarantee the rights of persons with disabilities:

- Executive Law no. 35/90 of 25 January 1990 says that students with SEN resulting from physical or intellectual disabilities must attend compulsory schooling.
- Executive Law no. 3/2008 of 7 January 2008 defines the specialised support provided in state, private and cooperative preschool, compulsory and upper-secondary education with the aim of creating the conditions needed to adjust the educational process to the SEN of students with major limitations in terms of activity and participation in one or more areas.
- Executive Law no. 20/06 of 31 January 2006 defines the procedures regarding the teacher placement application system, creating the special education recruitment group for the first time. It repealed Executive Law no. 35/03 of 7 February 2003.
- Law 85/2009 of 27 August 2009 established compulsory schooling for children and young people of school age and guarantees the universal right to preschool education for children aged 5 years and over.
- Law 46/2006 of 28 August 2006 makes discrimination with regard to disability and severe health risks illegal.
- Joint Ministerial Order no. 891/99 defines guidelines for integrated support for children (from 0 to 6 years old, and preferably from 0 to 3) with disabilities, and children at high risk of impaired development and their families.

The National Qualifications System (SNQ) was designed to be a more flexible and comprehensive framework, and currently includes a variety of qualification pathways aimed at young people and adults who want to fulfil their different profiles and interests (certified modular training, competency recognition, validation and certification processes, vocational courses, learning / apprenticeship courses...), thus contributing to greater integration of all citizens

into qualification processes and a greater opportunity to participate in lifelong learning activities.

Mainstream schools are now supported by a national network of Information and Communication Technology Resource Centres for Special Education (CRTICs), which assess students' needs for assistive technology, and by a network of Resource Centres for Inclusion (CRIs). These Centres, which in the past took the form of special schools, provide specialised support through partnerships with mainstream schools.

The transformation of the special schools into CRIs has become an essential tool for the implementation of Article 24 of the United Nations Convention on the Rights of Persons with Disabilities. The Ministry of Education and Science has already completed the accreditation process needed to expand national CRI coverage.

The principle of permeability between the mainstream and special pathways is guaranteed by the Basic Law on Education, which states that special education should be organised according to several models for integration into mainstream schools. It can be applied in specific institutions when children and young people with SEN require specialised and differentiated support which implies a significant adjustment to the educational or teaching and learning process that is demonstrably unachievable in mainstream education with the correct integration, or when that integration proves demonstrably insufficient.

In the early intervention area (support for children from 0 to 6 years old, and preferably from 0 to 3), Joint Ministerial Order no. 891/99 of 19 October 1999 laid down regulatory guidelines for integrated support for children with disabilities or children at high risk of impaired development and their families. Early intervention is an integrated support measure that focuses on the child and the family and involves a variety of services in the areas of education, health, and social and other community services.

The specialised support provided in state, private and cooperative preschool, basic education and upper-secondary education aims to create the conditions needed for the adjustment of the educational process to students' SEN. The goals of special education are educational and social inclusion, educational access and success, autonomy, emotional stability, the promotion of equal opportunities, and preparation for further study or post-school or professional life.

Teachers from the special education recruitment group, who possess specialised training in specific areas, are placed in schools to promote support activities for students with permanent SEN.

The national network of ICT Resource Centres for Special Education was created within the framework of the inclusion policy for students with permanent special needs in mainstream schools, dating back to 2007/2008. The CRTICs aim to assess whether and to what extent students with permanent special needs need to resort to assistive technology and ICTs. The Ministry of

Education and Science funds part of the products and technologies recommended by the CRTICs.

CRTICs also play an important role in disseminating information and training teachers, staff and families to use the devices they recommend, as well as in dealing with different kinds of disabilities.

There are 25 CRTICs spread across the country, located in schools. Each one supports a large group of schools at the district level. CRTICs operate in accordance with central guidelines, submitting annual activity plans and activity reports to the central department that coordinates them (the Directorate-General of Education, DGE).

The Qualification and Vocational Training (CQEP) network also focuses on responding to the need to ensure the integration of persons with disabilities into the active/working life (Article 2, Ministerial Order no. 135-A/2013). Whenever necessary a CQEP can ask for a specialised intervention by solidarity and social security bodies with responsibilities in the disability and rehabilitation field, and by the social networks in those areas, in order to ensure that the special needs of persons with disabilities are fully met.

When proposing to establish a CQEP, the promoting entity must show that the location and accessibility of the facilities are adequate for the needs of the target group under the provisions of Article 5 of Ministerial Order no. 135-A/2013.

Other measures include:

- Special schools for the bilingual education of deaf students and for the education of blind and partially sighted students.
- Structured teaching units for students with autism, and specialised support units for students with multiple disabilities and congenital deafness and blindness.
- Special schools and specialised support units are created whenever justified by the number of students at a school or adjacent school cluster and the nature of the response, the specific facilities and the forms of professional specialisation required. A significant number of local authorities provide school transport for students, as do many special education schools.
- Children and young people with permanent SEN benefit from special access and attendance conditions.
- The provision of education in this area must focus on a limited group of students whose needs require specialised human and material resources, and it is the school that is responsible for managing those resources in such a way as to meet the needs of all its students.
- The Ministry of Education and Science makes a significant contribution by providing teachers, support for school social action, and co-funding (with families) for private charities with socio-educational schools. The largest group in this sector is the Portuguese Association of Parents and Friends of Children with Intellectual Disabilities (APPACDM).
- Whenever students have permanent SEN which prevent them from acquiring the learning and competencies defined in the common

curriculum, the school must complement each student's Individual Education Programme with an Individual Transition Plan (ITP) three years before he/she reaches the age limit for the end of compulsory education.

From a training perspective, several measures have also been undertaken:

- The National Qualifications Catalogue includes 22 qualifications for persons with disabilities (e.g. Agent in Geriatrics, Administrative Assistant, Carpenter, Cook, Waiter, Upholsterer, Auto Mechanic, among others).
- In 2009, ANOEP published the "Methodological guide for the access of persons with disabilities to competency recognition, validation and certification – basic level" (in Portuguese). This Guide sets out the operational and methodological principles that should be taken into account when dealing with the access of persons with disabilities to the National Competency Recognition, Validation and Certification System, according to the "Referential for Key Competencies in Adult Education and Training – Basic Level".
- The overall School RVCC Referential (in particular the "Referential for Key Competencies in Adult Education and Training – Secondary Level"), includes content with regard to the issues of active citizenship, rights and duties and moral open-mindedness, for example. To this end RVCC teams work with adults on such issues as rights and duties, tolerance and diversity, prejudices, stereotypes and social representations, and inclusion issues can also be addressed in this context.

In non-higher education, in the 2013/2014 academic year there were 65,000 children and young people (0-18) with special needs in schools, of whom 63,657 attended mainstream education and 1,343 were enrolled in 75 special education schools across the country.

Initial teacher training is carried out at higher education institutions in both the university and non-university (polytechnic) sectors. Preschool teachers and 1st and 2nd basic education cycle (Years 1-6) receive their initial training at teacher training institutions incorporated into polytechnics or universities; teachers at the 3rd compulsory education cycle and upper secondary levels (Years 7-12) do their initial training at universities. Under the changes introduced as part of the implementation of the Bologna Process, a Master's degree is now the minimum academic qualification for access the teaching profession.

Specialised training takes place at higher education institutions and aims to qualify staff for particular specialised educational positions, duties or activities of a pedagogical or administrative nature, which are directly applicable to the operation of the educational system and schools.

There is no specific requisite regarding the education of students with special educational needs for admission to initial teacher education. Entrance to initial teacher training courses is dependent on the grades obtained at the end of secondary education (Year 12), and there are exams with specific content

(Portuguese or Mathematics) for admission to the first years of teaching, and in the core subject (Biology, History etc.) for more advanced teaching.

Some higher education institutions include curricular units related to the teaching of students with special educational needs or other diversities in their study plans. However, the best way to describe the formative situation in Portugal is that training to work in inclusive settings with these students is done at post-graduate level – i.e. during teacher specialisation and short courses. This may be why many regular teachers express difficulty and concern about increasingly having students with special educational needs in their classes.

Within the overall framework of the vocational training overseen by the Institute of Employment and Vocational Training (IEFP), the Qualification of Persons with Disabilities and Incapacity Measure (QPDI, Executive Law no. 290/2009 of 12 October 2009, and Normative Order no. 18/2010 of 29 June 2010) permits the grant of support for entities that undertake qualification actions aimed at persons with disabilities and incapacity in geographic areas that are not financially covered by the European Funds, and specifically by the Human Potential Operational Programme (POPH).

The support provided by IEFP, IP under the QPDI Measure consists of the promotion of actions designed to ensure the acquisition and development of vocational competencies for the pursuit of an activity in the labour market, with a view to enhancing the employability of persons with disabilities and incapacity, equipping them with competencies adjusted to their entry into, return to, or continued presence in the world of work.

Table no. 28

No. of persons covered by specific training measures funded directly by IEFP

Specific Rehabilitation Measures	No. of persons covered			
	2011	2012	2013	2014*
Qualification of Persons with Disabilities and Incapacity Measure – Cooperative Actions	1,550	1,916	1,694	1,294
Shared-Management Centres – Rehabilitation	2,769	2,869	2,804	3,246
TOTAL	4,319	4,785	4,453	4,540

Source: 2011, 2012 and 2013 IEFP Activity Reports (in Portuguese)

*Provisional data

At the same time, IEFP, IP was designated Intermediate Body with regard to POPH Typologies 6.2/8.6.2/9.6.2 – Qualification of Persons with Disabilities and Incapacity. In this respect it provides technical support for both initial and continuous qualification actions undertaken by private not-for-profit entities.

The following tables contain some physical and financial execution data with regard to this area.

Table no. 29

No. of persons covered by Vocational Assessment and Guidance activities for Persons with Disabilities and Vocational Training measures funded under POPH

Intermediate Body	No. of persons covered			
	2011	2012	2013	2014*
Vocational Assessment and Guidance of Persons with Disabilities and Incapacity (IAOQE)	1,396	1,390	2,358	2,528
Vocational Training	5,548	5,648	8,775	8,323
TOTAL	6,944	7,038	11,133	10,851

Source: 2011, 2012 and 2013 IEFP Activity Reports (in Portuguese)

*Provisional data

Table no. 30

No. of persons covered by Vocational Assessment and Guidance activities for Persons with Disabilities and Vocational Training (FP) measures funded under by IEFP and within the framework of POPH

IAOQE and FP Measures	No. of persons covered			
	2011	2012	2013	2014*
Vocational Assessment and Guidance of Persons with Disabilities (IAOQE)	1,518	1,744	2,534	2,602
IEFP, IP	122	354	176	74
Intermediate Body	1,396	1,390	2,358	2,528
Vocational training (FP)	7,098	7,564	10,469	9,617
IEFP, IP	1,550	1,916	1,694	1,294
Intermediate Body	5,548	5,648	8,775	8,323
TOTAL	8,616	9,308	13,003	12,219

Source: 2011, 2012 and 2013 IEFP Activity Reports (in Portuguese)

*Provisional data

Table no. 31

Financial execution with regard to the specific training measures funded directly by IEFP

Specific Rehabilitation Measures	Financial execution (unit: euros)			
	2011	2012	2013	2014*
Training for Persons with Disabilities – Cooperative Actions	8,865,271	11,090,231	699,287	0
Shared-Management Centres – Rehabilitation	8,508,580	6,872,790	6,675,733	6,646,352
TOTAL	17,373,851	17,963,021	7,375,020	6,646,352

Source: 2011, 2012 and 2013 IEFP Activity Reports (in Portuguese)

*Provisional data

Table no. 32

Financial execution with regard to the activities and measures funded under POPH

POPH (Intermediate Body) – Typologies 6.2/8.6.2/9.6.2	Paid out (unit: euros)		
	IAOQE	Vocational Training	TOTAL
2011	303,899	32,098,686	32,402,584
2012	293,494	30,185,909	30,479,403
2013	416,897	43,540,010	43,956,908
2014 *	359,823	33,466,222	33,826,045

Source: 2011, 2012 and 2013 IEFP Activity Reports (in Portuguese)

*Provisional data

Within the overall framework of the coordination and management of its centres, and particularly the guidelines on drawing up their annual activity plans, IEFP, IP recommends that the centres integrate persons with disabilities and incapacity into programmed vocational training actions.

The numbers of persons with disabilities and incapacity who attended general vocational training measures implemented within the framework of IEFP, IP's centres during the reference period were as follows:

Table no. 33

No. of persons with disabilities and incapacity covered by general vocational training measures implemented by IEFP, IP

General Vocational Training Measures	No. of persons covered			
	2011	2012	2013	2014*
Learning – Direct Management	123	125	151	177
Learning - Hubs	87	178	260	237
Grants for Training at the Worker's Initiative	6	1	0	0
Technological Specialisation Courses	5	2	0	9
Adult Education and Training Courses	707	854	993	1,037
Youth Education and Training Courses	55	49	33	15
Trainer Training	0	3	5	5
Modular Training	1,159	1,955	2,875	4,338
Training for Inclusion	174	225	260	274
Portuguese for All	5	3	6	9
TOTAL	2,321	3,395	4,583	6,101

Source: 2011, 2012 and 2013 IEFP Activity Reports (in Portuguese)

*Provisional data

In addition to the above, IEFP, IP's interventions also included following up on a technical support measure that enabled rehabilitation entities to continue the process of offering training responses underpinned by training models which,

while safeguarding the differences and particularities of their target groups, were also capable of ensuring that attending vocational training would also guarantee recognition by and insertion into the labour market and make it possible to achieve dual certification.

In this respect it is worth emphasising both the work done to analyse and issue formal opinions on training referentials which, albeit not included in the National Qualifications Catalogue (CNO), were nonetheless submitted to IEFP, IP by training entities, and the publication in the CNO of 14 new training referentials adapted to the characteristics and needs of persons with altered mental functions, multi-disability and others not in a position to access regular education/training pathways (Family and Community Support Assistant, Pastry-maker / Baker, Warehouse Operator, Machinist / Metalworker, Equine Handler / Trainer, Graphic Finishing Machine Operator, Joiner, Dressmaker / Milliner, Geriatric Agent, Auto Panel Beater, Auto Painter, IT Operator, Upholsterer, and Maintenance Operator), which were thus added to the 9 already made available in 2010.

The network of Inclusive New Opportunities Centre (CNOIs), which were created with the primary goal of ensuring the recognition, validation and certification of the academic and occupational competencies of persons with disabilities and incapacity, remained in operation until 2012. In 2011 and 2012, the 8 CNOIs (promoted by: *Cercipeniche*; *Associação de Paralisia Cerebral de Coimbra*; *Casa Pia de Lisboa*; *Centro de Educação e Formação Profissional Integrada*; *Centro de Formação Profissional do Alcoitão*; *Centro de Reabilitação Profissional de Gaia*; *Agrupamento de Escolas Lima de Freitas – Arrábida*; and *Associação de Saúde Mental do Algarve*) served 1,914 such persons, 326 of whose competencies were fully or partially certified. However, the majority of persons with disabilities used regular CNOs, which provided them with the necessary physical accessibilities and means of communication and information.

Also during the reference period, and as a result of the publication on 29 June 2010 of the Specific Regulations governing the Investment Support for Occupational Rehabilitation Entities Measure (Annexe IV to Normative Order no. 18/2010), 2011 saw a number of applications for the co-funding of work to build new facilities or adapt, remodel or convert existing ones, and of the purchase of indispensable equipment for the implementation of occupational rehabilitation actions.

In this context a number of actions deserve special mention:

- The publication of a normative circular containing application guidelines and forms and an Application Support Guide.
- The provision of technical assistance and clarifications for rehabilitation entities when they submitted their applications.
- All the work linked to the development of the projects in question – namely analysing applications and processing requests for reimbursements and balances.
- On-site verification visits.

The funding for this Measure provided for support of up to 75% of the eligible investment costs, as follows:

- A non-refundable grant of up to 70% of the support, with a maximum of € 200,000.
- A refundable grant of up to € 100,000, repayable over 5 years under the terms of a written agreement between IEFP, IP and the beneficiary entity.

55 of the 57 applications received were approved. €2,082,061.73 was paid out to the entities concerned, which represents an overall execution rate of 86.30%. Of particular note within this average execution figure were the Lisbon and Tagus Valley (94.46%) and Algarve (92.06%) regions.

Paragraph 2

The measures regarding the employment of persons with disabilities referred to in the 7th Report remain in force.

They were complemented by increases in the support provided for under certain measures, and by giving priority access to given measures to persons with disabilities or incapacity. In this respect we should especially mention the following:

- The Stimulus 2013 Measure created by Order of the Secretary of State for Employment no. 106/2013 of 14 March 2013. Designed to provide incentives for hiring unemployed persons registered with Employment and Vocational Training Centres or Job Centres, this measure offered increased financial support for the hiring of persons with disabilities or incapacity.
- Hiring support in the form of the refund of the TSU employer's social security contribution, created by Ministerial Order no. 204-A/2013 of 18 June 2013. Consists of the refund of a percentage of the TSU paid by employers which enter into full-time or part-time employment contracts that can either be indefinite or have a fixed term of at least 6 months, with unemployed persons registered with IEFP. In the case of persons with disabilities or incapacity, this refund is always 100% of the TSU.
- The *Estágios Património* ("Heritage Traineeships") Measure created by Ministerial Order no. 33/2013 of 29 January 2013. Persons with disabilities or incapacity are given priority access to the measure.
- The *Estágios Emprego* ("Job Traineeships and Internships") Measure created by Ministerial Order no. 204-B/2013 of 18 June 2013. Designed to improve the employability of both young unemployed persons between the ages of 18 and 30, and persons over the age of 30 who have obtained a new qualification in the last 3 years. However, persons with disabilities or incapacity are entitled to access the measure whatever their age or level of qualification, and the amount of their trainee allowances is increased by 10%.

Table no. 34

No. of persons with disabilities and incapacity covered by specific employment support measures

Occupational rehabilitation of persons with disabilities and incapacity	2011	2012	2013	2014*
Vocational Assessment and Guidance of Persons with Disabilities	122	354	176	545
Workstation Adaptation / Elimination of Architectural Barriers	3	1	3	3
Protected Job Centres	251	247	243	234
Supported Employment Contract with Employers/Enclaves	145	133	140	146
Placement Support and Post-Placement Supervision	637	818	863	1,840
Support Product / Technical Aid Attribution System	1	68	236	257
Insertion Traineeships and Internships	116	228	253	987
Employment-Insertion Contract for Persons with Disabilities and Incapacity	298	774	1,281	2,004
OED Lisbon (Office for employment of Persons with Disabilities in Lisbon Municipality)	145	133	140	146
TOTAL	1,718	2,756	3,335	6,162

Source: IEFP

*Provisional data

This was complemented by support provided to persons with disabilities or incapacity under a variety of other employment support measures:

Table no. 35

No. of persons with disabilities and incapacity covered by general employment support measures

Measures	2011	2012	2013	2014*
Employment programmes	1,255	1,184	1,619	1,947
Job Traineeships and Internships	137	100	321	188
Stimulus	0	76	145	290
Hiring Support via TSU Refunds	0	1	43	176
Other Hiring Support	32	2	0	0
Job and Enterprise Creation Support	19	12	13	13
Insertion Enterprises	216	210	191	185
Employment-Insertion Contract	515	470	610	718
Employment-Insertion Contract +	336	313	296	377

Source: IEFP

*Provisional data

The following table gives information on the amounts of funding spent on each of the measures:

Table no. 36

Financial execution of employment support measures for persons with disabilities

Occupational rehabilitation of persons with disabilities and incapacity	2011	2012	2013	2014*
Vocational Assessment and Guidance of Persons with Disabilities	73,680	67,281	4,923	1,336
Workstation Adaptation / Elimination of Architectural Barriers	69,995	21,007	17,151	0
Protected Job Centres	993,122	1,135,679	1,099,702	973,080
Supported Employment Contract with Employers/Enclaves	297,253	297,022	379,593	516,181
Placement Support and Post-Placement Supervision	676,151	640,962	769,243	1,162,643
Support Product Attribution System	14,739	467,086	1,446,600	1,771,286
Insertion Traineeships and Internships for Persons with Disabilities and Incapacity	246,998	496,894	659,930	165,407
Employment-Insertion Contract for Persons with Disabilities and Incapacity	793,441	2,252,774	4,179,861	1,913,950
OED Lisbon (Office for employment of Persons with Disabilities in Lisbon Municipality)	152,663	189,228	138,241	142,469
TOTAL	3,318,042	5,567,932	8,695,244	6,646,352

Source: IEFP

*Provisional data

The following table gives the numbers of persons with disabilities or incapacity registered as unemployed with Employment and Vocational Training Centres and the number of placements made:

Table no. 37

No. of persons with disabilities and incapacity registered as unemployed with Employment and Vocational Training Centres and no. of placements made

	2011	2012	2013	2014
Registered unemployed	10,408	11,913	12,537	12,080
Placements	572	506	627	973

Source: IEFP

In order to make it possible for persons with disabilities to use the services and technical provisions made available by IEFP and to support the (re)insertion of persons with disabilities or incapacity in a personalised way that is appropriate

to each individual situation, IEFP created services designed to support the intervention of the job centres and employment and vocational training centres:

- It accredited 64 entities with disability and rehabilitation experience that are either public but not part of the central administration, or private not-for-profits, as resource centres for the support of both interventions by job centres and employment and vocational training centres and specialised interventions in the occupational rehabilitation field. These accreditations took effect on 1 January 2013, and are valid for three years, at the end of which they can be renewed for another three.
- It created a system that uses the Internet to remotely interpret Portuguese sign language, which is also complemented by a face-to-face interpreting system. The goal is to create conditions for the deaf to be able to access services – particularly the technical employment and vocational training measures and interventions offered by IEFP, IP – under conditions that are equal to those enjoyed by other citizens. This service only began operating at the end of 2014, and we do not yet have any information on its impact.

According to the 2011 Census, there were 310,414 employed persons with at least one disability in Portugal. The vast majority were in the open labour market, inasmuch as IEFP data shows that only around 380 people are currently benefiting from the supported employment regime (Protected Employment Centres, or Supported Employment Contracts with Employers).

Table no. 38

No. of persons benefiting from supported employment measures

Supported employment measures	2011	2012	2013	2014*
Protected Employment Centres	251	247	243	234
Supported Employment Contract with Employers/Enclaves	145	133	140	146
TOTAL	396	380	383	370

Source: IEFP

*Provisional data

With regard to the employment of persons with disability in the public sector, Executive Law no. 29/2001 of 3 February 2001 remains in force. It establishes a job quota in Public Administration organs, departments and services for persons with at least 60% disability or incapacity (on condition that they are capable of doing the work they apply for, either without limitations, or with functional limitations that can be overcome by adapting their workstation, or with technical aids).

We should also note that workers who are rendered permanently incapable of performing their usual functions as the result of a work-related accident or occupational illness are entitled to have their workstation adapted, be given a job that entails compatible functions, to work part-time, or to be given vocational training, whichever is most appropriate to their being able to go on working. These provisions are set out in Executive Law no. 503/99 of 29 November 1999, which contains the regime governing work-related accidents and occupational illnesses, as applicable to public servants.

Table no. 39

**Summary data on the variation in the application of
Executive Law no. 29/2001**

	2013	2014
No. of competitive appointment procedures opened with reference to the quota for persons with disabilities	205	252
Total number of positions to be filled (general + quota)	2,203	1,979
No. of positions reserved for the quota for persons with disabilities	243	267
No. of persons with disabilities recruited under the quota (and of whom DGAEP was informed)	1	5

Source: INR

Paragraph 3

In order to favour the autonomy and social integration of persons with disabilities, a range of social responses are developed and implemented by private charities that are funded by the Social Security System under cooperation agreements. This subject was discussed at length in earlier Reports and there have been no changes since then

On the question of the rights of persons with disabilities, it is worth highlighting the National Strategy for Disability 2011-2013 (ENDEF), which was developed in the light of Portugal's ratification of the Convention on the Rights of Persons with Disabilities. ENDEF's general objective was to implement anti-discrimination measures and provide better living conditions for persons with disabilities in the various aspects of social life.

ENDEF included 5 Axes and a total of 133 Measures:

- Axis 1 – Disability and Multiple Discrimination
- Axis 2 – Justice and Exercising Rights
- Axis 3 – Autonomy and Quality of Life
- Axis 4 – Accessibility and Design for All
- Axis 5 - Administrative Modernisation and Information Systems

ENDEF was closely monitored and this provided a high level of information for all three years, which showed that all the entities responsible for both execution and reporting responded well.

The process of implementing ENDEF 2011-2013 also demonstrated how important its objectives and measures were, while its monitoring proved to be a useful diagnostic tool for the development of initiatives and projects that implied raising awareness of the need for change. The Strategy turned out to be a reference at the national level, as a driving force for increased social inclusion and a contributor to the promotion of cross-cutting policies designed to improve the quality of life of persons with disabilities.

Now that ENDEF 2011-2013 is over, a working group is currently developing a new strategy with new lines of action inspired by various national plans to promote accessibility, always in harmony with the goals of the Europe 2020 Strategy, particularly those regarding social inclusion and participation.

This new strategy's priorities will naturally be derived from the principles arising out of the main international and national texts on promoting the rights of persons with disabilities – particularly the Convention on the Rights of Persons with Disabilities:

- To lend continuity to cross-cutting policies for promoting the rights of persons with disabilities, consolidating interventions that took place under earlier plans.
- Emphasise "accessibility" and "universal design" in a way that cuts across the 5 structural axes: Prevention, Capacitation, Competitiveness, Innovation, and Quality of Life.
- Guarantee a plan to implement measures with a monitoring and evaluation methodology based on indicators and goals proposed in the 5 strategic areas of action agreed by the partners.

The object of Executive Law no. 163/2006 of 8 August 2006 was to define the accessibility conditions that must be fulfilled when public spaces, collective facilities and public and housing buildings are designed and constructed.

The scope of this Executive Law was complemented by the lines of action of the National Strategy for Disability 2011-2013, Axis 4 of which was called Accessibilities and Design for All. This axis contained 37 measures designed to ensure the planning and promotion of accessibility and the application of a universal design that is for all or inclusive, in ways that cut across every subject and area. This included on the one hand the physical accessibility of buildings and other constructions, the removal of obstacles and barriers to access to both physical facilities and equipment and services, and the availability of devices that facilitate mobility and orientation; and on the other hand, technological accessibility as part of access to communication. 25 of the 37 measures targeted at the planning and promotion of accessibility and the application of a universal design were executed, for an execution rate of 67.57%.

While we are on the subject of accessibility, with regard to information and communication we should especially note the creation of an information leaflet and a video for persons with disabilities on elections to the European Parliament, produced in different formats, using accessible language, subtitled video and sign language.

In 2014, the National Institute for Rehabilitation (INR, IP) launched the 1st Edition of the "Most Accessible Council Area" Award, which seeks to reward important and innovative municipal interventions and initiatives whose goal is to ensure accessibility within the municipal area for every citizen, especially those with special needs and/or restricted mobility.

The "Accessible Beach – Beach for All!" Programme got underway in 2004, within the scope of an institutional partnership between INR, IP, the Portuguese Environment Agency (APA, IP) and the Portuguese Tourism Agency (TP, IP).

This programme, which is intended to promote compliance with the legislation on accessibility and particularly the relevant provisions of Executive Law no. 163/2006 of 8 August 2006, Law no. 46/2006 of 28 August 2006 (The Anti-Discrimination Law) and the United Nations Convention on the Rights of Persons with Disabilities, seeks to ensure that Portuguese beaches provide accessibility conditions which make it feasible for everyone to use and enjoy them fairly, with dignity, safety and comfort and with as much autonomy as possible, regardless of the user's age, possible difficulties with locomotion, or other mobility-restricting forms of incapacity.

The following table shows the variation across the reference period plus 2015 in the number of accessible beaches:

Table no. 40

No. of accessible beaches

	Mainland	Azores	Madeira	Total
2015	178	14	11	203
2014	171	14	9	194
2013	162	10	7	179
2012	162	15	7	184
2011	153	14	8	175

Source: INR

ENDEF 2011-2013 Measure 63 was "Develop and implement a pilot project that creates a personal assistance service". The monitoring work done in 2012 included a range of steps, actions and activities with a view to putting this pilot project into practice.

The project was indeed developed and in a way which involved an investment that was adapted to the Portuguese context, with measures promoting opportunities for choice and self-representation and stimulating the autonomy

and independence of persons with disabilities, in conformity with Article 19 of the UN Convention.

The project's concrete implementation, which includes providing specific training to possible assistants, has already begun with the drawing up of a proposed definition for a reference profile and an idea of the number of beneficiaries.

At the present time a working group with representatives from INR, IP, IEFP, IP and ANQEP is tasked with creating a professional profile for the role of personal assistant, with the objective of qualifying individuals to pursue the goal of an independent life.

Turning to measures designed to support persons with disabilities in the process of overcoming obstacles, we would point to the system for attributing support products / technical aids. This system was already described in earlier Reports and there is no updated information on it.

Legislative acts that entered into force during the reference period:

- Ministerial Order no. 192/2014 of 26 September 2014

Regulates the creation and maintenance of the registration database for the Support Product / Technical Aid Attribution System (BDR-SAPA), and the treatment of information regarding the referencing, prescription, attribution, co-funding and re-use of such products / aids.

- Ministerial Order no. 78/2015 of 17 March 2015

Approved the model for the product / aid prescription form for use in the Support Product / Technical Aid Attribution System (SAPA), which is set out in and forms an integral part of the Ministerial Order.

- Order no. 14278/2014 of 26 November 2014

Using the list set out in ISO 9999:2007 as its reference, approved the list of support products / technical aids, and identifies the composition of the applicable multidisciplinary technical team, depending on the product / aid in question. Also approved the list of products / aids that are considered reusable.

The system is coordinated by the Social Security Institute (ISS), the Directorate-General of Health (DGS), IEFP, IP, and INR, IP.

The following data are of particular interest:

Table no. 41

No. of persons covered and financial execution

2011

Entity	No. of persons covered	No. products attributed	Amount (€)
Social Security Institute	2,932	4,848	3,648,043.54€
Directorate-General of Health	21,573	21,607	6,296,983.13€
Institute of Employment and Vocational Training			24,131€

2012

Entity	No. of persons covered	No. products attributed	Amount (€)
Social Security Institute	2,349	4,040	3,951,321€
Directorate-General of Health	15,264	15,264	4,151,788€
Institute of Employment and Vocational Training	85		516,009€

2013

Entity	No. of persons covered	No. products attributed	Amount (€)
Social Security Institute	1,930	3,862	4,333,645€
Directorate-General of Health	14,564	15,711	4,440,753€
Institute of Employment and Vocational Training	215		1,256,588€

Source: INR

Measures have been taken in Portugal to overcome the existing obstacles to access to means of communication by persons with disabilities. Examples include the Multiyear Plan and the new regime governing state incentives for the media.

The Multiyear Plan lays down the obligations to which inclusive television broadcasts by both the public service and private television operators are subject. These obligations – subtitling, Portuguese sign language, audio description, and accessible navigation menus – apply to news programmes, fiction, documentaries, and TV magazines. They take account of the rights of viewers with special information and communication needs, as enshrined in the Portuguese Television Law and the UN Convention on the Rights of Persons with Disabilities.

The new regime governing state incentives for the media approved by Executive Law no. 23/2015 of 6 February 2015 says that the available typologies include incentives for the media to be accessible. This format is designed to

help develop projects and programmes with a regional or local scope that ensure or promote the accessibility of media contents and information and communication technologies for persons with disabilities.

2009 saw the creation of the INR, IP funding programme *Intervir Para a Participação* ("Intervene for Participation"), which is aimed at NGOs that provide services for persons with disabilities or incapacity. It is divided into three subprogrammes - "Include More", "Specific Participation", and "For All" - in accordance with the nature, object and activities of the organisations in question. The priority areas targeted by this funding programme are capacitation, employability, and autonomy.

Table no. 42

No. of projects and amounts funded, by subprogramme and year

Year	Programme name	No. of projects approved for funding	Amount of INR funding
2011	Include More	94	1,042,354.11€
	Specific Participation	63	445,685.32€
	For All	182	603,060.04€
	TOTAL	338	2,091,099.47€
2012	Project funding programme	236	1,277,564.46€
	Operational support	22 NGOs	250,000€
	TOTAL		1,527,564.46€
2013	Project funding programme	360	1,494,934.42€
	Operational support	22 NGOs	315,000€
	TOTAL		1,809,934.42€
2014	Project funding programme	312 projects	1,534,685.00€
	Operational support		500,000€
	TOTAL		2,034,685.00€

Source: INR

Responses to questions posed by the European Committee of Social Rights

The Committee asks the next report to provide updated information on the projects under way, and to provide information on the number of persons with disabilities attending mainstream vocational training; the number of those attending special training facilities; the percentage of persons with disabilities entering the labour market following mainstream or special training.

Answered in the text on Paragraph 1.

As regards higher education, the Committee notes that, in 2009, a 2% quota of the total places available or two places in every course were reserved for students with physical or sensory impairments. The Committee reiterates its question as to whether this quota is sufficient to satisfy the requests and what is

provided for students with mental disabilities. It furthermore requests updated data on the number of students with disabilities in higher education.

The quota established for students with disabilities is sufficient to satisfy all requests from candidates in higher education institutions as we can see by the results of the students placed the 1st option, for the first cycle.

Since 2011 to 2014, 498 students joined the 1st cycle (HE), through the Special Quota for Physical or Sensory Disability, with the following conditions:

Table no. 43

Number of students with disabilities in higher education

Year	Students Placed	Hearing disability	Visual disability	Motor disability	Other
2011	126	43	20	51	12
2012	116	36	22	41	17
2013	123	41	19	53	10
2014	133	39	41	37	18 a)

a) Included: Dyslexia / Dysorthographia, Asperger's Syndrome and Cerebral Palsy.
Source: DGES

The Committee reiterates its request for updated data and recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

Answered in the text on Paragraph 2.

For example, the report indicates that, owing to the many provisions in force and the scarce coordination between the competent bodies, "it is very difficult to obtain evidence of discriminatory acts and the procedures tend to be very protracted". The Committee requests the next report to comment on these remarks and to provide updated information on the implementation of Law 46/2006.

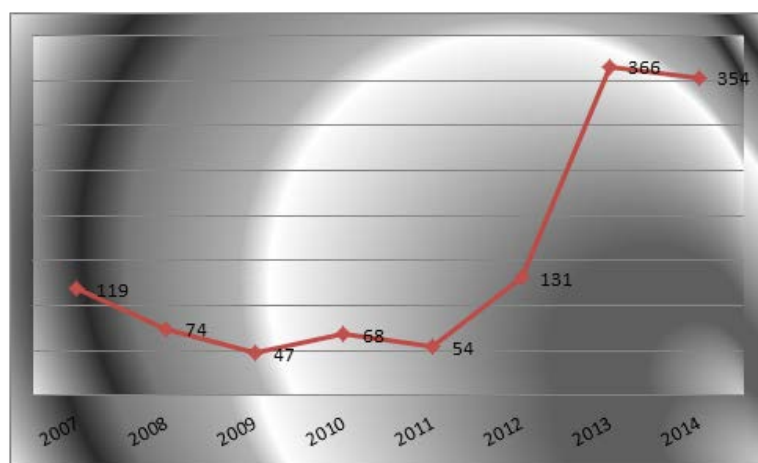
The discriminatory acts included in the annual reports are reported by the person who feels that he/she has been the object of discrimination. In most cases these allegations are sent to the competent entities, which then question whoever is said to have discriminated against someone due to their disability or increased risk of bad health.

A lack of evidence or witnesses often means that these are situations in which a person says they have been discriminated against and the alleged discriminator denies it. The Public Administration's inter-departmental procedures in this respect have been improving, and this is in turn leading to improvements in the procedural details required to bring possible anti-discrimination lawsuits. Notwithstanding this improvement, even so there is room for the procedures to be faster.

The following graph shows the variation in the number of discrimination-based cases brought under Law no. 46/2006.

Graph 1

Variation in the no. of discrimination cases brought under Law no. 46/2006



Source: INR

The Committee asks next report to provide information on the number of people with disabilities in sheltered employment and their rate of transfer to ordinary employment.

Answered in the text on Paragraph 2.

In the light of these comments, the Committee reiterates its question as to how the quota system is implemented in practice and whether workers employed under the above mentioned schemes are subject to the usual terms and conditions of employment including pay.

Answered in the text on Paragraph 2.

However, the 2010 Report on measures to combat discrimination, contest the fact that NGOs representing persons with disabilities are systematically consulted and that their opinion are taken into consideration. The Committee request next report to comment on these allegations.

The National Council for the Rehabilitation and Integration of Persons with Disabilities (CNRIPD) was abolished in 2011 and replaced by the National Council for Solidarity, Volunteering, Family, Rehabilitation and Social Security Policies (CNPSVFRSS). However, until the new Council becomes fully operational, the process of consulting NGOs in the disability field is being carried out by the Disability Commission, which includes representatives from both the state and the NGOs and whose purpose is to debate policies and laws related to the topic of persons with disability.

In addition, the National Institute for Rehabilitation (INR, IP), which is the body under the oversight of the Ministry of Solidarity, Employment and Social Security with responsibility for promoting the rights of persons with disabilities, holds public hearings to which it invites disability-related NGOs.

Families with children and young person with disabilities have the right to a supplement in addition to the family benefit. The amount of this supplement increases 20% for beneficiaries living in one-parent families. Persons with disabilities can also be apply for a housing benefit (rate benefit) of € 176, 76. The Committee asks for detailed information in the next report on the benefits and other forms of financial assistance to which persons with disabilities may be entitled.

The range of possible family benefits that are currently available does not include any allowance of this kind.

However, benefits for persons with disabilities do exist within the family protection subsystem, and they are listed and explained in the following table.

Social Benefits – Disability

Typology	Concept	Legal Basis
Social Invalidity and Old Age Pension (SPIV)	The Social Pension is paid monthly to the elderly and invalids. The social old age pension is attributed to persons aged 65 and over. The social invalidity pension is attributed to persons aged 18 and over who have been recognised as invalid for the purposes of engaging in any professional occupation.	Executive Law no. 464/80 of 13 October 1980, as amended by Executive Laws nos. 141/91 of 10 April 1991 and 18/2002 of 29 January 2002, Law no. 3-B/2010 of 28 April 2010, and Executive Law no. 167-E/2013 of 31 December 2013.
Dependency Complement	Monthly cash benefit awarded to pensioners in a dependent situation.	Executive Law no. 265/99 of 14 July 1999, as amended by Executive Law nos. 309-A/2000 of 30 November 2000 and 13/2013 of 25 January 2013.

<p>Disability Bonus (children and young persons) + 20% increase for single parents</p>	<p>Family allowance for children and young persons, intended to compensate for the increase in family costs linked to the beneficiaries' dependents below the age of 24 with disabilities of a physical, organic, sensory, motor or mental nature that require pedagogical or therapeutic support.</p> <p>+</p> <p>The additional protection for single-parent families takes the shape of an increase in the amount of the family allowance for children and young persons (+20% of both the benefit and any other increases or bonuses provided for by law).</p>	<p>Executive Law no. 133-B/97 of 30 May 1997, with the text given to it by Executive Laws nos. 341/99 of 25 August 1999 and 250/2001 of 21 September 2001, and as amended by Law no. 82-B/2014 of 31 December 2014 (State Budget for 2015).</p> <p>Executive Law no. 133/2012 of 27 June 2012, which amended and republished Executive Law no. 176/2003 of 2 August 2003, as amended by Executive Laws nos. 41/2006 of 21 February 2006, 87/2008 of 28 May 2008, 245/2008 of 18 December 2008, 201/2009 of 28 August 2009, 70/2010 of 16 June 2010, 77/2010 of 24 June 2010 and 116/2010 of 22 October 2010, and by Article 64 of Law no. 55-A/2010 of 31 December.</p>
<p>Allowance for attending a special education establishment</p>	<p>Monthly benefit intended to compensate for costs that directly result from the application to children and young persons below the age of 24 with disabilities, of specific special education measures which require attendance at private for-profit or cooperative establishments or the provision of specific educational support by a for-profit entity outside the establishment.</p>	<p>Executive Law no. 133-B/97 of 30 May 1997, with the text given to it by: Executive Law no. 341/99 of 25 August 1999; Regulatory Decree no. 14/81 of 7 April 1981, as amended by Regulatory Decree no. 19/98 of 14 August 1998; and by Executive Law no. 250/2001 of 21 September 2001; and as amended by Law no. 82-B/2014 of 31 December 2014 (State Budget for 2015).</p>
<p>Lifetime Monthly Allowance (SMV)</p>	<p>Monthly benefit intended to compensate for the increase in family costs linked to the beneficiaries' dependents below the age of 24 with disabilities of a physical, organic, sensory, motor or mental nature whose situation makes it impossible for them to provide for their means of subsistence normally by engaging in a professional occupation.</p>	<p>Executive Law no. 133-B/97 of 30 May 1997, with the text given to it by Executive Laws nos. 341/99 of 25 August 1999 and 250/2001 of 21 September 2001, and as amended by Law no. 82-B/2014 of 31 December (State Budget for 2015).</p>
<p>Allowance for Assistance to Children with Disabilities or Chronic Illnesses</p>	<p>Cash support given to persons who ask for leave from work to take care of their (biological, adopted, or of their spouse) children due to disability or chronic illness, for a period of up to 6 months, extendable up to a maximum of 4 years.</p>	<p>Executive Law no. 91/2009 of 9 April 2009, as amended by Executive Laws nos. 70/2010 of 16 June 2010 and 133/2012 of 27 June 2012.</p>
<p>Allowance for 3rd party assistance</p>	<p>Cash benefit intended to compensate for the increase in family costs caused by a situation of dependency of those of the beneficiary's descendants who are entitled to the family allowance for children and young persons when increased by disability, or to the Lifetime Monthly Allowance, and who require permanent assistance from a third party.</p>	<p>Executive Law no. 133-B/97 of 30 May 1997, with the text given to it by Executive Laws nos. 341/99 of 25 August 1999 and 250/2001 of 21 September 2001, and as amended by Law no. 82-B/2014 of 31 December (State Budget for 2015).</p>

Source: ISS

The report also explains that a number of services, including home assistance, are provided by private charities funded by the Social Security service under cooperation agreements. The Committee asks whether these services are free of charge.

It is important to clarify that Private Charities (IPSSs) and equivalent institutions which receive financial support from the State for the operation of the social responses they provide under cooperation agreements, must abide by the current legal and normative provisions in the cooperative field.

Whether or not these services are provided free of charge depends on the type of social response/service. There is a range of social responses whose use does not entail any co-payment by families – in particular the "Social Assistance (A/AS)"; "Insertion Community"; " Temporary Accommodation Centre"; "Family Support and Parental Advice Centre "; "Early Childhood Intervention"; "Children's and Youth Home" and "Temporary Reception Centre" formats and other responses/services aimed at children and young persons, families and the community.

At the same time there are social responses which not only receive co-funding from the Social Security System, the Health System (the case of the National Integrated Continuous Care Network, RNCCI) and the Education System (preschools, for example), but also require some part-payment by families (the user or his/her family), the rules for which are laid down in the Annexe to Ministerial Order no. 196-A/2015 of 1 July 2015, which regulates the criteria and format on which the cooperation between IPSSs and ISS, IP is based.

The amounts families have to pay vary depending on *per capita* income level, and must be set out in each institution's internal regulations. This group of social responses includes: Crèches, Family Crèches, and Free-Time Activity Centres; Residential Homes, Occupational Activity Centres, and Autonomous Residences; and Residential Structures for Elderly Persons, Day Centres, Night Centres, and Home Assistance.

The Committee reiterates its request for information in the next report on grants available to individual people with disabilities for home renovation work, lift installation and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing.

The Housing Recovery Support Solidarity Programme (SOLARH) is designed to provide finance in the form of an interest-free loan from the Institute of Housing and Urban Rehabilitation (IHRU) for ordinary or extraordinary conservation and improvement work on the permanent home of individuals or households who meet the conditions set out in Executive Law no. 39/2001 of 9 February 2001. The goal is not only to provide qualified owners with the funds needed to restore minimum habitability and health/hygiene conditions, but also to help increase the offer of rental properties at reasonable rents that are compatible with the incomes of less well-off social strata.

In cases in which the housing is being adapted in order to create the conditions that will enable a person with disabilities to gain access to work, the renovation work can be financed by providing support products / technical aids. Law no. 32/2012 of 14 August 2012 made the first amendment to Executive Law no. 307/2009 of 23 October 2009 on the legal regime governing urban rehabilitation

and the fifty-fourth amendment to the Civil Code, approving measures designed to make urban rehabilitation faster, more flexible and more dynamic.

We should especially note the amendment to the Civil Code rules on the freehold ownership of separate units in the same building – namely the right of owners whose household includes a person with restricted mobility, subject to prior notification of the building administration and in compliance with the technical accessibility rules and standards contained in specific legislation, to install the following:

- a) Access ramps.
- b) Lifting platforms, when there is no lift with a door and cabin large enough to permit use by a person in a wheelchair.

In the cultural field, the report mentions the programme "For All", which finances artistic and cultural activities of persons with disabilities and supports inclusive art exhibitions. The Committee asks the next report to provide more information on the initiatives taken to ensure access of disabled people to cultural, leisure and sport activities and an assessment of their impact.

The public bodies under supervision of the Culture Secretary of State reported the main activities developed and implemented in different museums at national level.

Examples of activities implemented in 2014 by:

1. Teatro Nacional de São João (National Theatre – Oporto)

- Training activities for 8 workers on "Assistance to people with special needs";
- Overall assessment of the accessibility conditions of the Theatre by external entity and delivery of Proposal with improvement measures.

2. Monastery of Santa Clara-a-Velha (Coimbra)

- Conference "ColorADD - Color Identification System for color blind" by Designer Miguel Neiva, as part of European Heritage Days 2014
- "Research Workshop - Learning in the Monastery" directed to students with special needs (9 students)
- Heritage for All Project - for students with special educational needs
- Guided tours - Portuguese Association of Parents and Friends of persons with disabilities of Coimbra (300 people)
- Guided tours - Cerebral Palsy Association of Coimbra (31 people)
- Guided tours - National Association for the Support of the Elderly (26 people)

3. Guarda Museum (Guarda)

- "The return of Espelhito and Adventures", theatrical visit to the museum (15 participants with disabilities)

- Halloween Day: Pumpkins Contest decorated directed to schools, kindergartens and others, in which CERCIG - Cooperative Education and Rehabilitation Guard Misfits Citizens (16 participants with disabilities)
 - International Day of Older Persons and the World Music Day (4 participants with disabilities)
- 4. Joaquim Manso Museum (Nazaré)**
 - "Letters in thought": poets meet, express feelings (41 students with special educational needs)
 - 5. Museum of Ceramic (Lisboa)**
 - Project: "The Museum of Ceramics at their fingertips." Tactile route. (46 visitors with disabilities)
 - Project: "The sun rises every day", for elderly people (140 participants)
 - 6. Centro Nacional de Fotografia (Photography Portuguese Center of photography)**
 - Training aiming at raising awareness about "Inclusive attending: welcome and accompany with specific needs" (16 participants)
 - Training courses in the area of accessibility, addressed particularly to culture professionals
 - Partnership agreement with an entertainment tourist agency aiming at preparing visits directed to public with special needs
 - 3 institutional videos with translation to Portuguese sign language

Examples of activities implemented in 2013 by:

- 1. Monastery of Santa Clara-a-Velha (Coimbra)**
 - Guided tours - Cerebral Palsy Association of Coimbra (73 participants with disabilities)
 - Guided tours - Association of the Blind people (9 blind participants)
- 2. Guarda Museum (Guarda)**
 - Literary project interchange "word Mar - Portugal and Brazil: our language, a word treasure" (10 participants with disabilities)
 - The return of Espelhito and Adventures" (15 participants with disabilities)
- 3. Joaquim Manso Museum (Nazaré)**
 - "Give color to your flower" (9 students with disabilities)
- 4. Museum of Ceramic (Lisboa)**
 - Project: "The Museum of Ceramics at their fingertips." Tactile route. (46 visitors with disabilities)
- 5. José Malhoa Museum (Caldas da Rainha)**
 - Workshop for Painting Expression - Protocol with the Special Education Center (10 participants with disabilities /session)

Examples of activities implemented in 2012 by:

1. Monastery of Santa Clara-a-Velha (Coimbra)

- Heritage for All Project - guided tours for the visually impaired, publishing a booklet in Braille (44 participants with disabilities)
- Guided tours - Cerebral Palsy Association of Coimbra (79 participants with disabilities)
- Guided tours - Portuguese Association of the Blind (11 participants with disabilities)
- Guided tours - Psychiatric Hospital Sobral Cid (15 participants with disabilities)

2. Guarda Museum (Guarda)

- "The return of Espelhito and Adventures" (15 participants with disabilities)

3. José Malhoa Museum (Caldas da Rainha)

- Workshop for Painting Expression - Protocol with the Special Education Center (10 participants with disabilities /session)

**ARTICLE 18
THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE
TERRITORY OF OTHER PARTIES**

There is nothing to add in relation to the general framework described in the previous Report.

In terms of Action Plans, we would highlight the 2nd National Plan for the Integration of Immigrants (II PII) approved by Council of Ministers Resolution no. 74/2010 of 12 August 2010. This governmental action plan was implemented between 2010 and 2013 and was designed to consolidate a strategy of taking an overall approach to the various immigrant integration policies that had initially been launched under the 1st such Plan (I PII) in 2007.

In recognition of both the success of I PII and the need to go on working in an integrated institutional manner, II PII identified 17 areas of intervention – reception/welcome; culture and language; employment, vocational training and entrepreneurial dynamics; education; solidarity and social security; health, housing; justice; racism and discrimination; access to citizenship and civic participation; immigrants' associations; elderly immigrants; relations with countries of origin; promotion of diversity and interculturalism; gender-related questions; and human trafficking – for a total of 90 measures and 408 annual and multiannual targets.

Putting these measures into practice required a number of ministries to work together, and a network of Focal Points (RPF) was created in order to implement and monitor the Plan.

This Network met regularly and was made up of representatives from the following ministerial entities: Presidency of the Council of Ministers; Ministry of Agriculture, the Sea, the Environment and Spatial Planning; Ministry of Foreign Affairs; Ministry of the Economy and Employment; Ministry of Education and Science; Ministry of Defence; Ministry of Justice; Ministry of Health; Ministry of the Interior; Ministry of Solidarity, Employment and Social Security; and the Office of the Secretary of State for Culture.

Interim execution reports were drawn up in order to annually gauge the Plan's degree of implementation. Both these and a final overall report were presented to the then Consultative Council for Immigration Affairs (COCAI). The final overall evaluation of II PII showed that 79% of the measures were executed. This was a very positive sign and deserves a special mention, the merit for which is shared by all the partners from the different ministries and the civil society representatives involved.

If we were to point to just a few of the more important achievements in this field, it would be the following:

- The work of the immigrant support networks, especially the National and Local Immigrant Integration Support Centres (CNAIs), was consolidated to the extent that it constitutes a reference response to immigrant-related questions in Portugal (Measure 1).

- The Working Conditions Authority (ACT) held actions on "Rights and duties in the labour area" for the specialist staff of the National Immigrant Support Centre, Local Immigrant Integration Support Centres (CLAIIs), and other partner institutions (Measure 16).

- A new paragraph (para. 4) on the renewal of immigrants' residence permits in cases in which their employers fail to make the applicable social security payments was added to Article 63 of Regulatory Decree no. 2/2013 of 18 March 2013. This legislative amendment cleared up a grey area, confirming that when an immigrant applies to renew his/her authorisation to reside in Portugal, but there is insufficient information in the Social Security system for the application to be approved and this is not the worker's fault, if he/she proves that he/she has lodged an official complaint, then additional steps can be taken to determine the real situation and it may be possible to renew the permit anyway (Measure 22).

While still on the subject of Action Plans, reflection on the results achieved through II PII showed that it was necessary to develop a new national strategy with regard to migrations that would be articulated across every relevant area. This new strategy was developed over the course of 2014.

The resulting Strategic Plan for Migrations (PEM) is based on 106 measures incorporated into 5 priority axes: I – Immigrant integration policies; II – Policies for the promotion of the inclusion of the new Portuguese; III – Migratory flow coordination policies; IV – Policies to strengthen legal migration and the quality

of migration-related services; and V – Policies for the provision of incentives, monitoring and support for the return of Portuguese citizens to Portugal.

In order for these axes to be correctly implemented it will be necessary to ensure the involvement of different ministries. The PEM reference period will be 2015-2020.

With regard to the work done by ACT, we would note some of the main procedures that must be followed whenever a labour contract is entered into with a foreign citizen:

The employer must communicate: the fact that it has signed a contract with a foreign or stateless worker before work begins; and that the contract has terminated within 15 days of its end. In order to make this process faster and easier, the Labour Code (CT) requires these communications to be made via e-forms.

The rights of foreign workers in Portuguese territory are protected under Article 15 the Constitution of the Portuguese Republic (CRP), but these safeguards are further reinforced by Labour Code Articles 4 (Equal treatment for foreign or stateless workers), 5 (Form and content of labour contracts with foreign or stateless workers), 6 (Secondment and posting in Portuguese territory) and 7 (Working conditions of seconded or posted workers).

The data on the variation in the number of infractions detected by labour inspectors and directly linked to failures to comply with the above Articles are as follows:

Table no. 44

No. of infractions regarding failure to respect the rights of foreign workers

Year	2011	2012	2013	2014
Infractions re foreigners reported	234	123	63	42

Source: ACT

In 2011 it was decided for the first time that the IT system should autonomously treat the statistics on the inspection work regarding the posting or secondment of workers in Portuguese territory. The resulting data are as follows:

Table no. 45

No. of recorded occurrences regarding workers posted in Portugal

Workers Posted in Portuguese Territory	Inspection Visits	Warnings	Information Given	Infractions Reported
2011	41	0	32	10
2012	13	0	10	1
2013	37	1	18	6
2014	16	0	8	1

Source: ACT

Measures Adopted – Support for access to the labour market

- Immigrant Entrepreneurship Promotion Project (PEI)

The Office of the High Commissioner for Migrations (ACM) designed the PEI project with the goal of fostering entrepreneurship among immigrant communities. This project has been underway since 2009, in collaboration with local institutions such as municipalities, immigrants' associations and NGOs. ACM also holds PEI actions at the National Immigrant Support Centres in Lisbon and Porto.

The following activities during the reference period deserve a special mention:

- The "Business Creation Support" (CAN) course. This is a capacitation course using practical methodologies to stimulate the consolidation of ideas for businesses in such a way as to help make them viable and sustainable.
- Meetings designed to provide entrepreneurs with monitoring and guidance. Held after the above course is over, these meetings provide advice for restructuring the original business idea, help in identifying the best sources of financial or complementary support and forwarding the entrepreneurs to them, and support in putting the idea into practice or managing the business after its formal creation.
- The launch of the publication "*Capacitar para o Empreendedorismo: Guia de Apoio à implementação do projeto Promoção do Empreendedorismo Imigrante*" (Capacitate for Entrepreneurship: Support guide for the implementation of the Promote Immigrant Entrepreneurship project).

Table no. 46

No. of participants in entrepreneurship support activities

Year	2011	2012	2013	2014
Participants	286	349	305	68

Source: ACM

- Employment Support Office

The primary task of the Employment Support Office (GAP) is to help people actively look for a job, draw up CVs and introductory letters, search for available job offers and formally make individual job applications. In particular, it organised a Mutual Help Group for Job Searches (GEPE) at the Lisbon CNAI in 2014.

Table no. 47

No. of user visits – Employment Support Office

Year	2011	2012	2013	2014
User visits	9,512	6,241	6,017	5,527

Source: ACM

- Qualification Support Office

The majority of the Qualification Support Office's (GAQ) users are citizens from other Portuguese-Speaking countries and the Ukraine. The most frequent questions concerned the offers of training for adults or young persons, and the recognition/equivalence of tertiary-level qualifications.

Table no. 48

No. of user visits – Qualification Support Office

Year	2011	2012	2013	2014
User visits	776	998	839	709

Source: ACM

- Legal Support Office

In addition to handling questions about taking Portuguese nationality and/or the regime governing entering, remaining in and deportation of foreigners from Portugal, the Legal Support Office (GAJ) provide assistance with labour law matters.

Table no. 49

No. of user visits – Legal Support Office

Year	2011	2012	2013	2014
User visits	13,490	13,551	10,449	10,575

Source: ACM

Where the right of Portuguese nationals to leave the country in order to engage in a gainful occupation in the territory of other parties is concerned, Article 27 of the CRP says that: "No one may be wholly or partially deprived of their freedom, except as a consequence of a judicial conviction and sentence imposed for the practice of an act that is legally punishable by a prison term or the judicial imposition of a security measure".

The Labour Code expressly states that workers are entitled to go and work abroad under various formats:

- When they are posted or seconded by a Portuguese company that is going to provide a service abroad (Article 8, CT).
- Via a private placement or recruitment agency (Executive Law no. 260/2009 of 25 September 2009).
- When they are directly hired by a company that is foreign or has its registered office in another country.
- On their own account.

In 2011 it was decided for the first time that the IT system should autonomously treat the statistics on the inspection work regarding the posting or secondment of workers in order to provide services to another State.

The relevant data collected up until 2014 are as follows:

Table no. 50

Inspection actions regarding the posting or secondment of workers within the scope of the provision of services to another State

Posting / Secondment to another State	Inspection Visits	Warnings	Information Given	Infractions Reported
2011	201	5	186	78
2012	148	5	137	49
2013	369	20	221	82
2014	255	6	213	96

Source: ACT

In addition, ACT was notified that a total of 30,367 workers (28,040 male and 2,327 female) were posted or seconded to another State as referred to in Article 8 of the Labour Code during the reference period:

- 2011 – 3,621 communications
- 2012 – 4,167 communications
- 2013 – 4,892 communications
- 2014 – 7,147 communications

Some communications referred to more than one person.

Under Article 2 of Regulatory Decree no. 9/2012 of 19 January 2012, the mission of the Directorate-General of Consular Affairs and Portuguese Communities abroad (DGACCP) is to ensure the effectiveness and continuity of the Ministry of Foreign Affairs' (MNE) consular work overseas, of the provision of consular protection, and of the coordination and implementation of the policy of supporting emigration and the Portuguese communities abroad.

Article 3(2)(c) and (e) of Ministerial Order no. 30/2012 of 31 January 2012 says that as part of the social and legal support provided to Portuguese who want to emigrate and those who already work and reside abroad, the Directorate of Emigration Services (DSE) must: monitor operations that tend to result in Portuguese citizens working abroad, providing both them and employers with the necessary information and support; and, acting in articulation with the competent ministries, enter into international agreements on emigration, participating in their negotiation and monitoring their implementation, whenever possible in close collaboration with the host countries.

- The *Working Abroad – Inform yourself before you leave* campaign

The third *Working Abroad – Inform yourself before you leave* campaign was launched in May 2012. Like the two earlier ones (2003 and 2006), it was the outcome of a partnership between the Office of the Secretary of State for the Portuguese Communities (GSECP), the Directorate-General of Consular Affairs and Portuguese Communities (DGACCP), the Institute of Employment and Vocational Training (IEFP, IP), the Social Security Institute (ISS, IP), and the Working Conditions Authority (ACT).

This campaign possesses an essentially preventative component, inasmuch as it is designed to make those who may potentially seek to live and/or work abroad aware of the need to inform themselves about a wide range of subjects before they leave Portugal, in order to avoid illegal situations or labour exploitation in the destination country. In particular, these include:

- Living and working conditions in the destination country.
- Knowledge of the language.
- Occupations subject to regulation.
- Access to healthcare and social security.
- Fiscal benefits and obligations.
- Legal and administrative formalities.
- The kinds of things to be careful about.

- Useful contacts.

This initiative was publicised by means of generic leaflets, posters and a brochure, along with specific leaflets on the main destination countries for Portuguese emigrants – Angola, Australia, Brazil, Canada, France, Germany, Luxembourg, Spain, Switzerland and the United Kingdom – which were distributed by the different partners' reception centres, one hundred Emigrant Support Offices (GAEs), local authorities in the Greater Lisbon and Tagus Valley area, the Madeiran Communities, the Regional Directorate for Communities – Azores (DRC-A), the Portuguese Union of Construction Workers (STCP), the Northern and Southern Unions of Hotel, Tourism, Restaurant and Similar Workers (STIHTRS-N and -S), the Portuguese Catholic Mission for Migrations (OCPM), and the Portuguese consular network.

Working in collaboration with Portugal's diplomatic and consular representations, files were also created on Angola, Australia, Brazil, Canada, France, Germany, Luxembourg, Mozambique, the Netherlands, Qatar, Spain, Switzerland, the United Arab Emirates (UAE), the United Kingdom and the United States (USA). All this material is organised and can be consulted on the Portuguese Communities website at www.portaldascomunidades.mne.pt

In parallel, and in partnership with other institutions, DGACCP holds and takes part in information sessions and seminars. Whenever a citizen has doubts or needs additional information, he/she can ask the DGACCP offices in Lisbon and Porto for clarifications in person or by telephone or e-mail. If we look at the history of these contacts we can see that most of them concern requests for information about how to evaluate offers on the internet, and different aspects of failures to fulfil contracts.

Responses to the European Committee of Social Rights

1. *In its previous conclusion (Conclusions 2008) the Committee asked for statistics relating to the granting and refusal rates of work permits. It reiterated that this information is essential for assessing whether the existing regulations are applied in a spirit of liberality. The Committee notes that the report does not provide this information. Therefore, the Committee holds that it has not been established that the existing regulations are applied in a spirit of liberality.*

*The Committee concludes that the situation in Portugal **is not in conformity** with Article 18§1 of the Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.*

2. *The Committee further asks Portugal to provide information in the next report on the number of work permits granted to applicants from non-EEA States, as well as on work permit refusal rate with respect to applicants from such States, as this information is relevant in order to assess the degree of liberality in applying existing regulations governing access to national labour market. In this regard, the Committee observes that an absence or an*

extremely low number of work permits granted to nationals of non-EEA States parties to the European Social Charter, together with a very high work permit refusal rate with respect to applicants from such States, due to the application of rules like the so called “priority workers” rule (according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower), would not be in conformity with Article 18, paragraph 1, since it would prove an insufficient degree of liberality in applying existing regulations with respect to access to national labour market of nationals of non-EEA States parties to the European Social Charter.

3. In its previous conclusion (Conclusions 2008) the Committee asked for statistics relating to the granting and refusal rates of work permits. It reiterated that this information is essential for assessing whether the existing regulations are applied in a spirit of liberality. The Committee notes that the report does not provide this information. Therefore, the Committee holds that it has not been established that the existing regulations are applied in a spirit of liberality.

Where “authorisations to work” (i.e. work permits) are concerned, we would repeat the information given in earlier Reports: Portugal does not issue work permits, but rather “authorisations to reside” (i.e. residence permits) in Portugal for the purposes of engaging in a gainful occupation (subordinate, independent, and qualified), in line with the ‘Single Permit Directive’.

From a statistical point of view, Eurostat promoted the adoption of a harmonised reporting regime for statistical information on ‘single permits’ within the scope of the Statistical Regulation on immigration and international protection (Regulation EU 862/2007). When it comes to the available data on residence permits that match the single permit format, it is only since 2013 that the EU Member States have been required to report statistics in accordance with Regulation 862/2007, which is to say just the total number of each type of permit (first issues, status changes, and renewals), broken down by the reason for the issue of the permit (family reunification, education, work, other).

We have the following statistics for the reference period:

Table no. 51

Residence permits

Type of permit	Main Reason				
	Total	Family	Education	Occupation	Other
TOTAL	135,796	3,726	568	23,997	107,505
First Permit	9,326	2,331	13	5,587	1,395
Change of status	1,179	0	551	611	17
Renewed	125,291	1,395	4	17,799	106,093

Source: MAI

As regards the legislation which entered into force in 2011 (Law No 23/2007), the Committee understands that under the new system it is possible to complete the formalities for obtaining residence and work permits in the country of destination as well as in the country of origin. It also understands that residence and work permits are now a single document. It asks the next report to confirm that this is the case.

During the reference period, Law no. 23/2007 was amended by Law no. 29/2012, of 9 August 2012 (entered into force on 8 October 2012). The legislation on the applicable fees was also changed – the table attached in annexe to Ministerial Order no. 1334-E/2010 was altered by Ministerial Order no. 305-A/2012 of 4 October 2012.

The amendment to Law no. 23/2007 added the following types of residence visa/permit:

- The residence visa for a subordinate worker to engage in a highly qualified activity (Article 61-A).
- The authorisation to reside for the purpose of investment-related activities (Article 90-A).
- The 'EU Blue Card' authorisation to reside (Article 121-A).

On the question of access to work, every type of authorisation to reside grants the right to engage in a gainful occupation in the same situations as Portuguese citizens. We would also note that the document which grants permission to reside and permission to engage in an occupation is indeed one and the same thing.

As far as fees are concerned, following the publication of Ministerial Order no. 305-A/2012 of 4 October 2012 the cost of the different types of permit remained the same as before:

- Extension of a residence visa: €64.20 (norm: €60.00).
- Reception and analysis of an application for the grant or renewal of a residence permit: €80.20 (norm: €75.00).
- Renewal of a temporary residence permit: €32.20 (norm: €30.00);
- Each original permanent residence permit: €213,70 (norm: €200.00);
- Renewal of a permanent residence permit: €37.50 (norm: €35.00).

In conclusion, we confirm the Committee's understanding, except for the fact that the residence permit only allows its holder to engage in a gainful occupation in Portuguese territory.

The Committee asks what rules apply to self-employment of foreign nationals under the new legislation. It asks in particular, what conditions should be satisfied (e.g. the required level of investment) in order for a non-EU national to take up a self-employment.

The requisites for the grant of this permit have not been changed.

The Committee, while recognising that the cost of the residence permit and its renewal is not excessive, asks Portugal to provide information in the next report on the measures eventually adopted in view of reducing them.

The cost of these fees has not been changed.

The Committee asks Portugal to provide information in the next report about the measures eventually adopted (either unilaterally, or by way of reciprocity with other States parties to the Charter) to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, with a view to facilitating the access to national labour market. Such information shall concern the category of dependant employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.

See the text on the Article.

ARTICLE 20 THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX

List of legislation passed or approved in this field during the reference period:

2011

- Law no. 3/2011 of 15 February 2011, prohibiting all discrimination in access to and the pursuit of independent work, and transposing Directives nos. 2000/43/EC and 2000/78/EC of the Council and 2006/54/EC of the European Parliament and the Council.
- Regional Legislative Decree no. 3/2011/A of 3 March 2011, creating the Azores Regional Commission for Equality at Work and in Employment (CRITE-A).
- Order no. 7130/2011 of 11 May 2011, amending Order no. 15606/2009, which approved the specific regulations defining the regime governing access to support granted within the scope of the Human Potential Operational Programme (POPH, intervention typology no. 7.4).
- Law no. 53/2011 of 14 October 2011, making the second amendment to the Labour Code approved in annexe to Law no. 7/2009 of 12 February 2009, establishing a new system that provides several formats for compensation for the termination of labour contracts, albeit only applicable to new contracts.

2012

- Council of Ministers Resolution no. 19/2012 of 8 March 2012, ordering the adoption of measures to promote gender equality in positions on corporate boards of directors and supervisory boards.
- Executive Law no. 76/2012 of 26 March 2012, approving the organisational structure of the Commission for Equality at Work and in Employment (CITE) – the so-called “Organic Law governing CITE”.
- Executive Law no. 133/2012 of 27 June 2012, amending: the legal regimes governing the social protection provided by the welfare system in the event of illness, maternity, paternity, adoption and death and the family costs covered by the family protection subsystem and the Social Insertion Income (RSI) system; the legal regime regulating the refund of benefits that are paid out improperly and the law governing the conditions in terms of income which families must comply with in order to be eligible for social benefits under the social security system; and the statute governing survivors’ pensions and the legal regime governing social protection in the event of maternity, paternity, adoption under the convergent social protection regime.

2013

- Council of Ministers Resolution no. 13/2013 of 8 March 2013, approving a range of measures designed to ensure and promote equal opportunities and results for women and men in the labour market.
- Ministerial Order no. 106/2013 of 14 March 2013, creating the “Stimulus 2013” employment support measure, which promoted the hiring and vocational training of unemployed persons, and revoking Ministerial Order no. 45/2012 of 13 February 2012.
- Resolution of the Assembly of the Republic no. 41/2013 of 3 April 2013, on the promotion of equality between men and women in the labour field.
- Resolution of the Assembly of the Republic no. 45/2013 of 4 April 2013, on the fight against direct and indirect forms of wage discrimination.
- Resolution of the Assembly of the Republic no. 46/2013 of 4 April 2013, in pursuit of non-discrimination against women in the labour field.
- Resolution of the Assembly of the Republic no. 47/2013 of 4 April 2013, in pursuit of the fight against impoverishment and the worsening of poverty among women.
- Resolution of the Assembly of the Republic no. 48/2013 of 4 April 2013, on the defence and effective valorisation of women’s rights in the world of work.

2014

- Council of Ministers Resolution no. 18/2014 of 7 March 2014, adopting measures with a view to the promotion of wage equality between women and men.
- Council of Ministers Resolution no. 11-A/2014 of 6 March 2014, promoting a greater balance in the representation of women and men on corporate decision-making bodies, and instituting mechanisms for promoting wage equality.
- Ministerial Order no. 84/2015 of 20 March 2014, creating and regulating the "Promotion of Gender Equality in the Labour Market" measure.

1)

There were a number of legislative amendments on this subject between 1 January 2011 and 31 December 2014, namely:

a)

The Labour Code (CT) amendment that entered into force in August 2012 (Law no. 23/2012 of 25 June 2012), making changes to Article 368 – "Requisites for dismissal on the grounds that a job has been abolished". Following the amendment, paragraph (2) said that in the event the section or equivalent organisational unit in question includes multiple jobs with the same functional content, in order to determine which job to eliminate the employer must define criteria with regard to the staff in question that are relevant and non-discriminatory in relation to the objectives underlying the elimination; and paragraph (4) said that, for the purposes of subparagraph (1)(b), once the job has been eliminated it is deemed impossible in practical terms for the labour relationship to continue to exist when the employer demonstrates that it has complied with those criteria.

However, in Ruling no. 602/2013, as published in Series I of the *Diário da República* (Official Journal) of 24 October 2013 and with legal effect from the date of that publication, pursuant to Article 119(1)(g) and (2) of the Constitution of the Portuguese Republic (CRP), the Constitutional Court declared paragraphs (2) and (4) of Article 368 of the CT, with the text given to them by Law no. 23/2012 of 25 June 2012, unconstitutional with generally binding force on the grounds that they were in violation of the prohibition on dismissal without just cause enshrined in Article 53 of the CRP.

Under Article 282(1) of the CRP: "A declaration of unconstitutionality or illegality with generally binding force has effect as of the moment at which the norm declared unconstitutional or illegal came into force, and causes the revalidation of any norms that the said norm may have repealed".

The previously repealed versions of paragraphs (2) and (4) of Article 368 of the Labour Code revised by Law no. 7/2009 de 12 February were thus reinstated as of 24 October 2013.

Law no. 27/2014 of 8 May 2014 then redrafted Article 368(2) of the CT as follows:

2 — In the event that the section or equivalent organisational unit includes multiple jobs with the same functional content, in order to determine which job to eliminate, in its decision the employer must respect the following relevant and non-discriminatory criteria with regard to the staff in question, in the following order:

- a) Worse performance assessment, with parameters that were known to the worker in advance.*
- b) Lesser academic and vocational qualifications.*
- c) More burdensome for the enterprise to maintain the labour bond with the worker.*
- d) Less experience in the role.*
- e) Less seniority in the enterprise.*

b)

The Labour Code (CT) revised by Law no. 7/2009 of 12 February 2009 created a procedure for the issue of substantiated assessments of whether collective agreements comply with the law on equality and non-discrimination. This procedure can cause conventional norms that are contrary to the principle of equality and non-discrimination to be declared null and void by the courts (Article 479, CT).

Within 30 days of the publication of a negotiated collective labour regulation instrument (IRCT) or of an arbitration decision in compulsory or required arbitration proceedings, the competent department or service of the ministry with responsibility for the labour area – in this case CITE, as part of the competence given to it in Article 479 of the Labour Code (CT) and Article 3(i) and (j) of the Organic Law governing CITE approved by Executive Law no. 76/2012 of 26 March 2012 – must issue a substantiated assessment of the legality of the IRCT or decision's provisions with regard to equality and non-discrimination.

CITE has been exercising the competence provided for in Article 479 of the CT since 2011, and to this end formed a tripartite working group and approved a methodology for analysing and regulating the group's meetings.

In the meantime, Law no. 23/2012 of 25 June 2012 amended Article 479 of the CT, giving CITE more time to consider these clauses, and the parties longer to voluntarily remedy and legal irregularities detected by CITE and thereby prevent the substantiated opinion from being sent to the Public Prosecutors' Office.

This amendment, which came into force in August 2012, means that if CITE finds any discriminatory provisions in an IRCT, it notifies the parties that they have 60 days in which to change them [Article 479(2), CT].

If the parties fail to comply within this deadline, CITE then sends its assessment of the IRCT to the Public Prosecutors' Office's representative at the competent court [Article 479(3), CT].

If he/she considers that an illegal provision does exist, this prosecutor then has 15 days in which to ask the court to declare the provision null and void [Article 479(5), CT].

If the court does issue such a declaration, it is sent to the competent department or service of the ministry with responsibility for the labour area, for publication in the *Boletim do Trabalho e Emprego* [Article 479(6), CT].

After Law no. 23/2012 of 25 June 2012 amended Article 479 of the CT, the methodology used by the Tripartite Commission for Collective Bargaining (CTNC) to assess the legality of IRCTs changed substantially.

The fact is that the amendment was discussed by the Commission, and the resulting consensual change was made when both the employers' associations and the trade unions pointed out that it would be more appropriate if the parties to an IRCT were consulted about the possibility of negotiating and agreeing its amendment before steps were taken to ask a court to declare the nullity of any of its provisions.

During the course of 2012 it became clear that when new IRCTs were drafted, the parties were already more aware of the possible illegality of clauses linked to parenthood or gender questions, to the point that corrections to one IRCT led the trade unions and/or employers' associations to make the same corrections to others they were involved with, as part of their routine annual negotiations. In other words, the unions and associations became aware of CITE's work and started correcting unlawful clauses on their own initiative.

In practice, one can say that the amendment to Article 479 was not only effective, but meant that there was no need for any Commission meeting in 2013, inasmuch as the contracting entities agreed to change clauses that CITE's technical team considered illegal as soon as they were notified as part of the prior hearing process.

All this allows us to conclude that CITE's work helped raise the awareness of the social partners – both employers' associations and trade unions – of the need for IRCTs to evolve in such a way as to avoid clauses that discriminate on the basis of gender. The fact is that the publication of new IRCTs or even changes to existing ones is revealing that there are less and less non-compliant situations in this area.

Table no. 52

Assessment of the legality of negotiated Collective Labour Regulation Instruments (IRCTs) and arbitration decisions (2011-2014)

Year	No. of IRCTs assessed	Substantiated opinions sent to the Public Prosecutor's Office		AUD files opened/analysed		Recommendations issued	
		Total no.	No. of clauses concerned	Total no.	No. of clauses concerned	Total no.	No. of clauses concerned
2011	187	21	68	--	--	10	22
2012	117	7	35	12	32	13	43
2013	130	0	0	9	41	0	0
2014	183	2	2	23	50	2	7

Source: CITE

c)

Council of Ministers Resolution no. 13/2013, as published on 8 March 2013 (RCM 13/2013), approved a range of measures generically designed to promote equal opportunities and results for women and men in the labour market.

RCM 13/2013 lists the main guidelines for the pursuit of these objectives, among which we would emphasise the following:

- Draw up and disseminate a report on wage differences by branch of activity [Para. (1)(a)].
- Draw up and present to the social concertation forum a technical document designed to support the preparation of negotiated collective labour regulation instruments, in such a way that their contents include the gender equality dimension and such as to prevent any forms of discrimination [Para. (1)(b)].
- Adopt legislative measures with a view to contracting and promoting vocational trainee/internships specifically for persons who belong to the least represented sex in sectors of activity that traditionally employ a majority of persons of the same sex [Para. (1)(f)].
- Integrate the gender equality dimension into every specific measure designed to relaunch employment, taking particular account of the differentiated situations of women and men in the labour market, the existence of especially vulnerable groups (workers with responsibility for single-parent families, the very long-term unemployed, discouraged unemployed persons, and immigrants), and the different impacts that the measures may have on women and men in the short, medium and long terms [Para. (1)(g)].

In order to achieve the objective set out in subparagraph (1)(a) of RCM 13/2013, CITE formed part of the working team that designed and drew up the "Report on Wage Differentiations with regard to 2011, by Branch of Activity" (*in Portuguese*). This report offers an initial "snapshot" of the reality in Portugal where wages differences between men and women in the various different

economic activities are concerned.

A total of 84 economic activities were covered (there was no information for another 4), for each of which the pay gap between women and men was analysed in comparison with both the basic average monthly wage and average monthly earnings. The variables used for each of these two income indicators were gender, age, level of academic qualifications, and level of vocational qualifications.

In fulfilment of the objective set out in subparagraph (1)(b) of RCM 13/2013, and following work to gauge whether collective agreements complied with the law on equality and non-discrimination, CITE drew up the "Informative Guide to Writing Collective Labour Regulation Instruments Clauses from the Gender Equality and Non-Discrimination Perspective" (*in Portuguese*).

Naturally without seeking to restrict the freedom and will of the parties to negotiations, this informative guide hopes to serve as a tool for preventing irregularities and supporting the promotion of equality between men and women at work, when IRCT clauses are written.

d)

Council of Ministers Resolution no. 18/2014, which was published on 7 March 2014 (RCM 18/2014), approved a set of measures that were generically designed to intensify specific measures with the ability to fight the tendency towards a wage inequality that penalises women.

RCM 18/2014 lists the main guidelines for the pursuit of these objectives:

- Paragraph (2) says that every three years, the enterprises in the State Business Sector (SEE) must arrange to draw up a report on the remuneration of women and men, with a view to diagnosing and preventing unjustified differences.
- Under paragraph (3), SEE enterprises must use these reports to design concrete measures for incorporation into the equality plans they are required to draw up by paragraph (1) of Council of Ministers Resolution no. 19/2012 of 8 March 2012. The measures must respond to any male/female wage inequality situations identified in the reports.
- Paragraph (4) requires private enterprises with more than 25 staff to draw up a quantitative and qualitative analysis of the wage differences between women and men, and then use that diagnosis to design a strategy for correcting any of those differences that are unjustified.

e)

Council of Ministers Resolution no. 19/2012, which was published on 8 March 2012 (RCM 19/2012), approved a set of measures generically intended to promote an effective plurality in the representation of women and men in decision-making positions in both the public and private sectors.

RCM 19/2012 lists the main guidelines for the pursuit of these objectives:

- As referred to above, paragraph (1) makes it obligatory for all SEE

enterprises to adopt the equality plans provided for in Council of Ministers Resolution no. 70/2008 of 22 April 2008. Those plans must tend to achieve effectively equal treatment of and opportunities for men and women, eliminate forms of discrimination, and facilitate the reconciliation of personal, family and working life.

- Paragraph (2) is targeted at the plural presence of both women and men in appointments at board of directors and supervisory board level in the SEE.
- Paragraph (3) says that when the State holds shares in a private enterprise, it must propose to the other shareholders that the enterprise adopt gender-equality promotion policies.
- Paragraph (4) recommends that listed private-sector enterprises adopt equality plans and measures that lead to the plural presence of women and men on their boards of directors and supervisory boards.

f)

Various Resolutions of the Assembly of the Republic on equality and non-discrimination in the labour market were published between 2011 and 2014, namely:

- Resolution of the Assembly of the Republic no. 41/2013 of 3 April 2013, on the promotion of equality between men and women in the labour field.
- Resolution of the Assembly of the Republic no. 45/2013 of 4 April 2013, on the fight against direct and indirect forms of wage discrimination.
- Resolution of the Assembly of the Republic no. 46/2013 of 4 April 2013, in pursuit of non-discrimination against women in the labour field.
- Resolution of the Assembly of the Republic no. 47/2013 of 4 April 2013, in pursuit of the fight against impoverishment and the worsening of poverty among women.
- Resolution of the Assembly of the Republic no. 48/2013 of 4 April 2013, on the defence and effective valorisation of women's rights in the world of work.

2)

Projects and activities undertaken by CITE that help promote equality and non-discrimination between men and women at work and in employment:

a)

In 2011 and 2012, acting in partnership with ACT, CITE developed and implemented the Gender Equality Instruments and Methodologies Project (PIMIG) for use in ACT's inspection work. The objectives were to: increase the prominence of the gender dimension in inspection actions; train and raise the awareness of labour inspectors with regard to the acquisition of specific competencies that help them identify and characterise gender-based discriminatory situations in the workplace, particularly in terms of indirect discrimination; and design inspection support instruments that make it possible to highlight situations in which the labour legislation on gender equality is not being complied with. This project made it possible to motivate ACT's inspectors with regard to the principles linked to gender equality and the way in which the subject is incorporated into inspection work, and to improve the effectiveness of that work when it involves controlling labour practices which entail gender-

based discrimination and failures to comply with the respective labour legislation. It also helped make the labour inspectors' work more effective when it comes to detecting and rectifying wage discrimination between women and men.

The project also included drawing up a brochure entitled "Instruments to Support Inspection Actions in the Fight against Gender Discrimination at Work", which includes a "Practical Guide to Support Inspection Actions in Pursuit of Gender Equality" (*both in Portuguese*).

As part of the work to design this Guide, a training action was held in 2012 with a view to testing the application of the questionnaire designed to support inspection visits, which forms part of the Guide. Around twenty ACT labour inspectors from all over the country (focal points for the project) took part.

The brochure was launched in October 2012. It was made available to a range of different groups – particularly labour inspectors, social partners and gender-equality experts. It was publicly presented that month at the international conference on "Contributions to a gender perspective in labour relations: from inspection actions to collective bargaining", which was promoted by CITE. The brochure is available in Portuguese on the CITE website.

b)

In 2013 and 2014, CITE developed and implemented a project entitled "Study and develop a tool for diagnosing gender pay gaps (GPGs) in enterprises: GPG calculator", which was funded by the POAT/ESF Programme.

The goal of this study was to contribute to greater knowledge of the "pay gap" concept, raising the awareness of economic agents in general and corporate managers and public policy-makers in particular of the fact that women have to work more days than men to earn the same amount; and thus to stimulate the taking of decisions that will eliminate the pay gap in Portugal and reverse the statistics which show the continued existence of complex, persistent forms of discrimination and inequality in the labour market, namely in terms of the remunerations earned by women and men.

Two electronic tools were developed in order to analyse gender pay gaps in enterprises: the Self-reflection Questionnaire on Wage Equality between Men and Women in Enterprises, and the Gender Pay Gap Calculator, both of which are available in Portuguese on the CITE website <http://calculadora.cite.pt/index.php/welcome/home> for free use.

The Gender Pay Gap Calculator makes it possible to insert worker data, calculate existing pay gaps in enterprises, identify concrete situations in which there are pay gaps between women and men, and determine whether or not the differences can be explained by objective factors, or whether they are due to the variable 'gender'.

c)

In order to mark both the European and the Portuguese National Equal Pay Days (28 February and 6 March respectively), CITE designed and launched Campaigns to Raise Public Awareness of the Persistence of Wage Inequality between Women and Men.

The idea was to make public opinion in general and the media in particular, society as a whole and also the political class aware of the continued existence of a pay gap between women and men. On 6 March in both 2013 and 2014, CITE promoted advertising campaigns on public transport in Greater Lisbon and a number of outdoor displays in cities around the country. Also as part of this campaign and in order to increase the awareness of the main agents in the labour market, on the same days CITE gave a symbolic present alluding to National Equal Pay Day to the CEOs of the largest Portuguese companies (including those on the PSI 20 Index), the social partners, employers' and business associations, and relevant opinion-makers.

The campaign itself involved designing posters of varying sizes and with different messages (3 messages in 2013, and 2 in 2014), which were disseminated by a variety of means, particularly on public transport and via street hoardings.

In publicising this campaign CITE was joined free of charge by the companies Carris – Transportes de Lisboa (Lisbon buses), Transtejo, SA/Soflusa, S.A (Lisbon cross-river ferries), TST – Transportes Sul do Tejo (buses in the southern part of Greater Lisbon), Fertagus – Travessia do Tejo, SA (Lisbon cross-river trains), and MTS – Metro Transportes do Sul (Lisbon cross-river metro), which displayed posters inside their vehicles and/or at their stations and other passenger boarding locations.

The street campaign took the shape of outdoor displays.

The campaign was also promoted on the CITE website and via Facebook, where up-to-date information and statistics on the pay gap between women and men were also available to users.

A press release on the campaign was sent to the media.

d)

In January 2014, CITE began implementing the transnational "Sexual and Moral Harassment in the Workplace" project, which was funded by the EEA Finance Mechanism's (EEA Grants) PT07 – "Mainstreaming gender equality and promoting work-life balance" programme.

The project's objectives are to diagnose and characterise sexual and moral harassment in the labour market in Portugal, raise the awareness of strategic groups about harassment in the workplace, and exchange experiences and good practices in this area between Portugal and Norway.

The project includes: a national survey (applied to a sample at the national level) of harassment in the workplace, to encompass the sexual and moral harassment of men and women; the creation of a number of training instruments designed to prevent and fight the phenomenon of harassment in the labour market; and pilot training actions.

The project is being promoted by CITE and enjoys the collaboration of the following partners: KS (Norwegian social partner), the Working Conditions Authority (ACT), the Portuguese Order of Lawyers (OA), the Centre of Judiciary Studies (CEJ), the Interdisciplinary Centre for Gender Studies (CIEG) at the Higher Institute of Social and Political Sciences (ISCSP), Lisbon Municipal Authority (CML), and a medium-sized marketing enterprise, GRAFE.

e)

Over the years CITE has developed a process of networking with enterprises and organisations in order to promote gender equality at work and in employment.

Within the overall framework of its mission, responsibilities and areas of competence, and in the light of both the Europe 2020 strategy and the Portuguese State's priorities with regard to gender equality within the context of that strategy, CITE designed, developed and implemented a project with and for enterprises, the purpose of which was to create an enterprise forum called IGEN – Enterprises for Gender Equality Forum. Given the challenges posed by the need for competitiveness, our commitment is to help ensure that enterprises really assume a collective culture of social responsibilities, incorporating the principles linked to gender equality between women and men into their management strategies in a clear commitment to the promotion of occupational equality and the fight against every form of gender discrimination at work and in employment.

In order to make this a reality, in the first half of 2012 CITE invited a range of enterprises that had in one way or another already demonstrated good gender equality practices or shown interest in promoting them to formally join the Forum. Joining entails signing an agreement setting out the Forum's goals, working methodology, the ways in which work would be organised and the members' responsibilities.

Membership implies that each partner enterprise must define commitments to do better in matters linked to gender equality, in accordance with the needs highlighted by in-house diagnoses. These commitments are attached in annexe to and form part of each membership agreement.

28 enterprises joined IGEN in 2013 and 2014.

In these membership agreements CITE committed itself to:

- a) Drive, promote, monitor and support every phase of the Forum's development.
- b) Strengthen the mechanisms for exchanging experiences and practices that promote gender equality at work and in employment and

vocational training.

- c) Ensure that up-to-date gender indicators and national and international policy instruments are available to the partner enterprises.

The enterprises also committed to:

- d) Actively participate in the Forum's working meetings and activities.
e) Allow the Forum to publicise both their actions and good practices and, subject to prior agreement, the progresses they make with regard to equality and non-discrimination.

Activities are monitored every 6 months. The primary objective is to monitor and disclose the progresses that are made towards achieving the targets included in each initial membership agreement, as well as to monitor new commitments and progresses in the gender equality field. A renewed agreement containing these new measures is signed each year.

The first Annual Report was produced in 2014.

3)

The reference period encompassed part of the implementation of two National Equality Plans (PNIs):

IV PNI (2010-2013), which sought to affirm equality as a factor for competitiveness and development, using a triple approach: increase the extent to which the gender dimension is taken into account right across every aspect of life; conjugate this strategy with specific actions, including positive ones; and introduce the gender perspective into every area in which discrimination exists. IV PNI's Strategic Area no. 2 – "Economic Independence, Labour Market and Organisation of Working, Family and Personal Life" – incorporated measures designed to promote a reduction in pay gaps, particularly Measures nos.:

- 20) Promote the implementation of equality plans in enterprises, within the framework 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 which promote a reduction of wage asymmetries in public and private sector enterprises and organisations in general, by using existing referentials, giving awards, particularly the "Equality is Quality" Prize, and conducting awareness-raising campaigns.

V PNI (2014-2017), which includes a major component designed to increase the extent to which the gender dimension is taken into account right across sectoral and inter-sectoral policies, the multiple discrimination approach, and the adoption of positive measures, as an appropriate means of overcoming situations in which there is a greater imbalance between women and men. V PNI's Strategic Area no. 3 – "Economic Independence, Labour Market and Organisation of Working, Family and Personal Life" – includes measures whose strategic objectives are to reduce the ongoing inequalities between women and men in the labour market, particularly in terms of wages, and strengthen

the mechanisms that enable women to gain access to economic decision-making positions.

Responses to the European Committee of Social Rights

The Committee concludes that the situation in Portugal is not in conformity with Article 20 of the Charter on the ground that, in equal pay cases, legislation only permits comparisons of pay between employees working for the same company.

With regard to this conclusion, we would note that the minimum, required, cumulative criteria for the issue of a "Ministerial Extension Order" are set out in Council of Ministers Resolution no. 90/2012 of 31 October 2012, as amended by Council of Ministers Resolution (RCM) no. 43/2014 of 27 June 2014, which does not alter the information we sent in our letter dated 16/05/2013. That letter, with the change required by RCM 43/2014, would now read as follows:

"With regard to Article 20 (Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), the European Committee of Social Rights concluded that: 'the situation in Portugal is not in conformity with Article 20 of the Charter on the ground that, in equal pay cases, legislation only permits comparisons of pay between employees working for the same company'.

The European Committee of Social Rights had already given its opinion on the subject of this Article in previous Conclusions²⁴, so here we will simply reiterate part of the grounds for our response, with which the Minister of Labour and Social Solidarity concurred in an order dated 20 May 2009:

'The revised Charter contains two norms on the subject: the right of men and women workers to equal pay for work of equal value (Article 4§3), and the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, namely in terms of remuneration [Article 20(c)].

The Committee of Experts has argued that Portuguese legislation does not comply with these Charter rules because "the scope of the comparison of wages for determining equality or equal value of job is limited to the same enterprises". This aspect was referred to in the last two Portuguese Reports on these articles and commented on by the experts in the respective conclusions.

In relation to Article 20, the last Portuguese Report (2008) said that 'if this comparison were to be made "outside enterprises", as the Committee – which does not limit the comparison to enterprises that engage in the same activities – would like, then the same work or work of equal value done for different

²⁴ 2006 Conclusions: "the situation in Portugal is not in conformity with Article 20 of the Revised Charter on the ground that under Portuguese law the scope of the comparison of wages for determining equality or equal value of jobs is limited to the same enterprise."

2008 Conclusions: "the situation in Portugal is not in conformity with Article 20 of the Revised Charter on the ground that it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims."

employers would have to be paid the same amount, regardless of the types of activity pursued by the enterprises and the productivity differences between them. The activity of enterprises, and even in the case of enterprises with the same activity, their productivity, are key elements in determining workers' pay. The way work is organised, the investments in equipment and facilities and the quality of raw materials in particular influence enterprises' productivity and profitability. That productivity and profitability in turn influence pay, and enterprises with lower levels of productivity and profitability cannot pay the same remunerations. This means that it is not possible for there to be such a thing as two comparable enterprises, in the sense that they possess identical characteristics – work organisation, investment, level of equipment and facilities, quality of raw materials, productivity and profitability – in a way that would allow them to become elements in a comparison between them. Indeed, while both Article 4§3 and Article 20(c) of the Revised European Social Charter enshrine the “right of men and women workers to equal pay for work of equal value”, without discrimination on the grounds of sex, neither of them requires the comparison to be made outside the scope of each given enterprise.

The experts commented on this Report as follows: ‘The Committee recalls that it has come to a conclusion of non-conformity on the question of equal pay in preceding conclusions on the ground that the scope of comparison of jobs and wages for determining equality of pay did not extend outside the company directly concerned. The report indicates that it does not seem possible to compare two or more enterprises for wage purposes because the differences in organisation of work, investment, type of business, etc., are key elements which determine workers' remuneration. The Committee however recalls that appropriate methods of comparison must be devised enabling to compare the respective values of different jobs, and that pay comparisons to determine work of equal value beyond a single employer must be possible. As there is no indication that it is possible to carry out such pay comparisons outside a given employer, the Committee reiterates its conclusion of non-conformity.’

‘(...) we must maintain our position, given that:

- The Charter does not say that it must be possible to make the comparison to determine whether work is of equal value for equal pay purposes between different enterprises.

- Enterprises with productivity and profitability differences cannot pay the same remunerations.

- If it were to be accepted that the comparison could be made between different enterprises, pay changes at one could lead to pay rises at another, at any time, with unpredictable financial and administrative costs (...)’

What is more, the same line of reasoning ‘(...) is accepted by one of the Committee's experts, Mr S. Evju, who issued a dissenting opinion in which he adopted the same arguments that Portugal has been putting forward on this matter.’

However, the general introduction to the 2012 Conclusions²⁵ contains an interpretative declaration on Article 20: *'Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:*

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.'

On this interpretative declaration, we would emphasise the following:

Under Portuguese law, collective labour agreements (IRCTs) are required to regulate other rights and duties pertaining to workers and employers (particularly the base pay for every occupation and professional category) [Article 492(2)(e) of the Labour Code (CT)] and to expressly state the amounts of the base pay for every occupation and professional category, if they have been agreed [Article 492(1)(f), CT].

As such, *'(...) when collective labour agreements identify and define "categories" and link certain amounts of remuneration to them, they play the role of instruments for wage fairness: the "table" of categories is applied to the tasks that are concretely performed by workers, and this makes it possible to group the latter by the fact that their functions are the same or similar (...).'*²⁶

In addition, application of all or part of a current collective agreement can be extended by ministerial order to employers or workers within the sector of activity and professional sector defined in the agreement (Article 514(1), CT).

Article 514(2) of the CT says that such extension orders can be given in the light of social and economic circumstances that justify them, namely when the situations they cover are economically and socially identical or similar where the scope of both the extension and the collective agreement is concerned. The minimum, required and cumulative criteria that must be in place in order to issue such a "Ministerial Extension Order" are set out in Council of Ministers Resolution no. 90/2012 of 31 October 2012, as amended by Council of Ministers Resolution no. 43/2014 of 27 June 2014.

²⁵ http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GeneralIntro2012_en.pdf.

²⁶ António Monteiro Fernandes, *Direito do Trabalho*, Almedina, 2006, 13th Edition, p. 448.

We should also note that when social and economic circumstances justify it, there is no trade union or employers' association involved and a "Ministerial Extension Order" is not possible, Article 517(1) of the CT permits the issue of a "Ministerial Working Conditions Order". This type of order allows the Government to *'(...) create a set of specific norms in order to regulate concrete situations'*.²⁷

In this respect we would point out that when a collective agreement provides for "working conditions" (i.e. the contractual conditions under which workers provide their labour), and in particular the pay of each occupation and professional category at the enterprises encompassed by the agreement, the result is that the workers covered are all placed in the same situation. A "Ministerial Extension Order" is designed to standardise working conditions, while a "Ministerial Minimum Conditions Order" serves *'(...) to overcome shortcomings, in the absence of any other collective labour regulations instruments (...)'*.²⁸ All of this ensures that pay within the scope of the aforementioned instruments is equal.

Even so, we would also recall a number of other aspects linked to equality and non-discrimination:

- Any provision in either an IRCT or internal company regulations that establishes an occupation or professional category which specifically concerns workers of one sex is automatically deemed applicable to workers of both sexes [Article 26(1), CT].
- Any provision in either an IRCT or internal company regulations that lays down working conditions – particularly pay – which are only applicable to workers of one sex and for a professional category which entails the same work or work of the same value, is automatically deemed to be replaced by the most favourable provision applicable to workers of both sexes (Article 26(1), CT).
- Once it has consulted the interested parties, the Commission for Equality at Work and in Employment (CITE) has 30 days counting from publication of a negotiated IRCT or an arbitration decision in compulsory or required arbitration proceedings to issue a substantiated assessment of whether the IRCT or arbitration decision's gender and non-discrimination-related provisions comply with the law (Article 479, CT, and Executive Law no. 76/2012 of 26 March 2012).
- As part of its role of fostering and accompanying social dialogue, CITE has the following responsibilities (Article 4, Executive Law no. 76/2012):
 - When asked to do so, to assist the social partners and other entities with responsibility for drawing up IRCTs on matters regarding equality and non-discrimination between women and men at work and in employment and vocational training, the protection of parenthood, and the reconciliation of work with family and personal life.
 - Raise the awareness of trade union and employers' association negotiators with regard to matters linked to equality and non-discrimination between women and men at work and in employment

²⁷ Pedro Romano Martinez, *Direito do Trabalho*, Almedina, 2010, 5th Edition, p. 211.

²⁸ Pedro Romano Martinez, *Direito do Trabalho*, Almedina, 2010, 5th Edition, p. 1,258.

and vocational training, the protection of parenthood, and the reconciliation of work with family and personal life.

Given the above, we consider that Portuguese legislation is fully compliant with Article 20 of the Charter, which provides for the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

(End of excerpt from the modified 2013 letter)

It also takes note of the awareness-raising actions undertaken by the Commission for Equality at Work and in Employment (CITE) to include gender-equality matters in collective agreements. It asks that the next report describe the impact of such steps on the content of collective agreements.

Throughout 2013 and 2014, CITE continued its awareness-raising activities and the habitual dissemination actions it takes within the areas of competence provided for in Article 4(a) and (b), and under Article 5(b), of its “Organic Law”. In doing so it sought to foster and accompany the social dialogue with the social partners and other entities with responsibility for drawing up IRCTs, and to raise the awareness of both union and employer negotiators.

CITE held a number of awareness and training actions, with curricular plans that included the topic of the integration of gender equality into IRCTs.

7 training actions (21 hours each) were held in 2014. They were attended by 131 negotiators, union leaders and legal experts, of whom 42 were men and 89 were women.

CITE also produced the Informative Guide to Drawing Up IRCT Clauses from an Equality and Non-Discrimination Perspective (*in Portuguese*), which is a technical document intended to support the preparation of negotiated IRCTs in such a way as to ensure their contents integrate the gender equality dimension and to prevent any forms of discrimination. (See point 1(c) of the present Report).

According to the report, all professional activities are governed by the principle of equal treatment. The Committee asks for confirmation that there are no jobs that women are not allowed to do and that there are no restrictions on the type of tasks they are allowed to carry out.

Within the overall framework of rules on equal access to employment and work, we would especially point to the fact that Article 24(1) of the CT²⁹ says that workers and job seekers: have the right to equal opportunities and treatment with regard to access to employment, training, promotion and advancement

²⁹ With the text given to it by Law no. 28/2015 of 14 April 2015, which enshrined the concept of gender identity as part of the right of access to employment and work (eighth amendment to the Labour Code approved by Law no. 7/2009 of 12 February 2009).

in career structures and the conditions governing their labour, and cannot be privileged, benefited, prejudiced, deprived or any right or exempted from any duty for any reason, namely their ancestry, age, sex, sexual orientation, gender identity, marital status, family situation, economic situation, education, social origins or status, genetic heritage, reduced capacity for work, disability, chronic illness, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions or trade union membership, and that the State must promote equal access to such rights. The right to equal opportunities and treatment applies particularly to [Article 24(2), CT]:

- Selection criteria and hiring conditions, in every sector of activity and at every hierarchical level.
- Access to every type of vocational and occupational guidance, training and reconversion at any level, including the acquisition of practical experience.
- Pay and other material forms of remuneration, promotion at every hierarchical level, and selection criteria for workers who are to be dismissed.
- Membership of or participation in collective representation bodies, or any other organisation whose members engage in a given occupation, including the benefits they confer.

The provisions of Article 24(1) and (2) in no way prejudice the application of:

- Legal provisions regarding the pursuit of an occupation by a foreigner or stateless person [Article 24(3)(a), CT];
- Provisions regarding the protection of genetic heritage, pregnancy, parenthood, adoption and other situations concerning the reconciliation of work and family life [Article 24(3)(b), CT].

Given that workers are entitled to equal opportunities and treatment, there cannot be jobs that women are not authorised to do, or tasks that are subject to gender-based restrictions, notwithstanding the applicability of the provisions of Article 24(3)(a) and (b) of the CT.

Article 58 of the Constitution of the Portuguese Republic enshrines the right of every man and woman to work. Subparagraph (2)(b) reads as follows:

*"2. In order to ensure the right to work, the state is charged with promoting:
b) Equal opportunities in the choice of profession or type of work, and the conditions needed to avoid the gender-based preclusion or limitation of access to any position, work or professional category.*

The legal regime governing the promotion of health and safety at work (Law no. 102/2009 of 10 September 2009) regulates the conditions applicable to the protection of workers' genetic heritages, and the protection of workers who are pregnant, have recently given birth or are breastfeeding in the case of activities that are capable of posing specific risks of exposure to harmful agents, processes or working conditions, as provided for in Article 62(6) of the CT.

Article 62 – “Protection of the health and safety of workers who are pregnant, have recently given birth or are breastfeeding” – lays down that such workers are entitled to special health and safety in the workplace, in such a way as to avoid exposure to risks to their health or safety.

The report mentions several plans and strategies to promote gender equality, in particular the Third National Plan for Equality. The Committee asks that the next report present concrete information on the implementation of these plans and strategies and their impact and, more generally, for updated information on the situation of women in employment and training as well as on all special measures and action plans taken to remove de facto gender equality.

National Equality Plans (PNIs)

Council of Ministers Resolution no. 5/2011 of 18 January 2011 approved the 4th National Plan for Equality – Gender, Citizenship and Non-discrimination 2011-2013 (IV PNI). This Plan comprised 14 strategic areas, the second of which was “Economic Independence, Labour Market and Organisation of Professional, Family and Personal Life”. This strategic area in turn included 10 measures, with the following objectives:

- Promote female entrepreneurship.
- Promote the reconciliation of work and family and personal life for women and men.
- Reduce wage asymmetries.
- Promote equality plans in enterprises.

The 5th National Plan for Equality – Gender, Citizenship and Non-discrimination 2014-2017 was approved on 30 December 2014. This Plan, which is in force at the time of writing, is made up of 7 strategic areas, the third of which is “Economic Independence, Labour Market and Organisation of Professional, Family and Personal Life”. This strategic area has 9 measures, with the following strategic objectives:

- Reduce the inequalities between women and men that persist in the labour market, particularly at the pay level.
- Promote female entrepreneurship, as an element that mobilises women for the active economic life, and disseminate good practices.
- Incentivise the implementation of equality plans in private enterprises, and monitor compliance with the norms governing the implementation of such plans in the State Business Sector (SEE).
- Strengthen the mechanisms that enable women to gain access to economic decision-making positions.

ARTICLE 24

THE RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT

Among the amendments that were made to the Labour Code during the reference period and specifically with reference to the subject of Article 24, we would particularly note the following:

Law no. 53/2011 of 14 October 2011

Established a new system that provides several formats for compensation for the termination of labour contracts, albeit only applicable to new contracts (i.e. entered into after the entry into force of the new Law).

Concretely speaking, new limits were imposed on the compensation payable for the termination of new contracts in the following cases: termination of a labour contract in the service commission format; resignation of a worker because the location of his/her workplace is definitively changed and this causes him/her serious detriment; lapse of a temporary or term labour contract; termination of a labour contract because the employer was a natural person who has died, a legal person that was abolished, or an enterprise that was shut; collective dismissal; dismissal due to elimination of a job; and dismissal due to unsuitability (see Government Bill no. 2/XII/1³⁰).

These new limits mean that, in the case of labour contracts entered into after the Law entered into force, workers are now entitled to compensation equal to 20 days' base pay and seniority bonuses for each complete year they have worked for the employer.

This compensation is also subject to the following rules:

- a) The amount of the worker's base monthly pay and seniority bonuses for compensation purposes cannot be more than 20 times the national guaranteed monthly minimum wage (RMMG).
- b) The overall amount of the compensation cannot be more than 12 times the worker's base monthly pay and seniority bonuses, or when the limit provided for in subparagraph (a) applies, 240 times the RMMG.
- c) The daily value of the base monthly pay and seniority bonuses equals the monthly amount divided by 30.
- d) The compensation for part of a year is proportional to the yearly amount.

In addition, the previous rule that compensation in the above situations could never be less than 3 months' pay was abolished.

The legislative amendment was made in the light of both the Tripartite Agreement for Competitiveness and Employment (ATCE) signed by the Government and the majority of the social partners on 22 March 2011, and the commitment made to the European Union, the International Monetary Fund

³⁰ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=36350>

and the European Central Bank as part of the Memorandum of Economic and Financial Policies (see Government Bill no. 2/XII/1).

Law no. 23/2012 of 25 June 2012

This Law amended the rules governing dismissal for objective reasons (elimination of a job, and unsuitability), and the compensation payable when labour contracts are terminated.

Norms regarding the elimination of jobs (transferring the responsibility/power to determine which worker should be dismissed to the employer, subject to certain preconditions and mandatory criteria), and did away with the obligation to transfer that worker to another job compatible with his/her professional category, albeit also subject to compliance by the employer with certain relevant and non-discriminatory criteria [see Article 368(2) and (4) of the Labour Code (CT), with the text given to it by this Law) were submitted to the Constitutional Court for review. In Ruling no. 602/2013³¹, as rectified by Ruling no. 635/2013, the Court declared these norms unconstitutional, and the previous ones were therefore revalidated [see paragraphs (f) and (g) of the Decision, point III of the Ruling, and Article 282(1) of the Constitution of the Portuguese Republic (CRP)].

The Law made dismissal on the grounds that the worker is unsuitable for the job permissible even in situations in which no changes have been made to the position. It also extended the ability to dismiss an unsuitable worker to situations in which he/she fails to achieve previously agreed objectives and no changes have been made to the position, although this restriction was retained for technically complex and managerial posts [Article 375(2) and (3) of the CT, with the text given to it by this Law]³².

However, where dismissal on the grounds of unsuitability was concerned, the Constitutional Court also declared the norm which revoked the requirement whereby a worker could only be dismissed if the enterprise had no other available position compatible with his/her professional qualifications [Article 375(1)(d) of the CT, with the text given to it by this Law) to be unconstitutional.³³

With regard to the compensation for the termination of labour contracts, the Law *“defined the conditions governing the alignment of labour contracts predating 1 November 2011 and new labour contracts entered into under Law no. 53/2011 of 14 October 2011. (...) This alignment shall only apply from 31 October 2012, as of which date and as provided for in the Memorandum of Understanding and the Commitment for Growth, Competitiveness and Employment, the amount of the compensation shall be equal to the European Union average.*

As such, for the purposes of calculating the compensation due, the period of time up until 31 October 2012 shall be governed by the provisions of the Labour

³¹ <http://www.tribunalconstitucional.pt/>

³² See Statement of Reasons for Government Bill no. 46/XII, which gave rise to Law no. 23/2012 of 25 June 2012, at <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=36764>.

³³ See paragraph (h) of the Decision, and point III of Ruling no. 602/2013.

Code with the text given to it by Law no. 7/2009 of 12 February 2009, and the new amounts shall only be applicable from that moment onwards. In cases in which the amount of the compensation to which the worker is entitled up until 31 October 2012 exceeds 12 base pays and seniority bonuses, or 240 guaranteed monthly minimum wages, the worker shall be entitled to that amount, and the period after 1 November 2012 shall not be taken into consideration for the purposes of the calculation of the total amount of the compensation.

On the contrary, in cases in which the amount determined up until 31 October 2012 does not exceed that limit of 12 base pays and seniority bonuses, or 240 guaranteed monthly minimum wages, it shall be increased by the amount that results from the application of the criteria established as of 1 November 2012, notwithstanding which the total compensation may not exceed the aforesaid limit of 12 base pays and seniority bonuses, or 240 guaranteed monthly minimum wages.”³⁴

In order to ensure the regime’s uniformity, it was made binding on earlier collective labour regulation instruments (IRCTs) that provided for higher amounts.³⁵ The Constitutional Court declared the Law’s provisions in this respect to be in conformity with the CRP.³⁶

Law no. 69/2013 of 30 August 2013

This Law adjusted the amount of the compensation payable for the termination of labour contracts.

With regard to this regime we would particularly emphasise the following:

- a) In cases in which a fixed-term labour contract terminates because the employer exercises its option to allow it to lapse, the worker is entitled to compensation equal to 18 days’ base pay and seniority bonuses for each complete year he/she has been employed, calculated in accordance with Article 366 of the CT [Article 344(2), CT].
- b) In cases in which a term contract whose termination date is not set in advance lapses, the worker is entitled to compensation calculated in accordance with Article 366, which is to say it is equal to the sum of the following: (i) 18 days of base pay and seniority bonuses for each complete year of employment with regard to the first 3 years of the contract; (ii) and 12 days of base pay and seniority bonuses for each complete year of employment with regard to the following years [Article 345(4) and (5), CT].
- c) In cases of collective dismissal, workers are entitled to compensation equal to 12 days of base pay and seniority bonuses for each complete year of employment [Article 366(1), CT].

³⁴ See Statement of Reasons for Government Bill no. 46/XII, which gave rise to Law no. 23/2012 of 25 June 2012, and Article 6 of the latter Law itself (since revoked by Law no. 69/2013 of 30 August 2013).

³⁵ See Article 7(1) of Law no. 23/2012, since replaced by Article 8 of Law no. 69/2013.

³⁶ See paragraph (k) of the Decision, and point III of Ruling no. 602/2013.

d) For the purposes of the amount of the compensation payable for termination of an indefinite labour contract, a transitional regime distinguishes between contracts entered into before and after 1 November 2011, protecting the earlier situations. In both cases, and with regard to the duration of contracts entered into from 1 October 2013 onwards (date on which the new Law entered into force), the compensation is equal to the sum of the following: (i) 18 days of base pay and seniority bonuses for each complete year of employment with regard to the first 3 years of the contract (this only applies if the contract was not yet 3 years old on 1 October 2013); (ii) and 12 days of base pay and seniority bonuses for each complete year of employment with regard to the following years. The calculation of the compensation is also subject to the rules set out in paragraphs (4) to (6) of the same Article.

Article 6 of the Law also established a transitional regime for the end of both term and temporary labour contracts, again protecting existing situations and applying the new regime from 1 October 2013 onwards.

This regime was “designed to conclude the process of revising the labour legislation, as provided for in the Memorandum of Understanding on Specific Economic Policy Conditionality and the Commitment for Growth, Competitiveness and Employment, defining a new amount for the cases in which compensation is due for termination of a labour contract”; and “the new adjustment of the amounts payable in compensation for the termination of a labour contract is targeted at convergence with the European average, while simultaneously protecting workers’ expectations”.³⁷

Law no. 27/2014 of 8 May 2014

This Law laid down that: *“In the event the section or equivalent organisational unit includes multiple jobs with the same functional content, in its decision determining which job to eliminate the employer must respect the following relevant and non-discriminatory criteria with regard to the staff in question, in the following order: (a) Worse performance assessment, with parameters that were known to the worker in advance; (b) Lesser academic and vocational qualifications; (c) More burdensome for the enterprise to maintain the labour bond with the worker; (d) Less experience in the role; (e) Less seniority in the enterprise”* [Article 368(2), CT].

In addition, in the wake of the Constitutional Court Ruling³⁸ referred to above, the Law amended Articles 368(4) and 375(1)(d) of the CT, such that workers can only be dismissed due to elimination of a job or to unsuitability if there is no other job with the worker’s professional category available at the enterprise.

The Statement of Reasons for Government Bill no. 207/XII,³⁹ which gave rise to Law no. 27/2014, particularly includes the following explanation:

³⁷ See Government Bill no. 120/XII (2), with the replacement text submitted by the PSD/CDS-PP coalition and published in the form of Separate Sheets included with *Diário da Assembleia da República* (Journal of the Assembly of the Republic) no. 38 of 1 June 2013, at <http://www.parlamento.pt/DAR/Paginas/Separatas.aspx>.

³⁸ See paragraphs (g) and (h) of the Decision, and point III of Ruling no. 602/2013.

³⁹ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=38239>.

“On the subject of Law no. 23/2012 of 25 June 2012, among other changes the latter made amendments to the regime governing the termination of labour contracts – concretely with regard to dismissal for objective reasons, and particularly dismissal on the grounds that the job is being eliminated and dismissal due to unsuitability.

It should be noted that those amendments resulted from the commitments undertaken by the Government and the Social Partners that signed the Tripartite Agreement “Commitment for Growth, Competitiveness and Employment”, as well as from the international commitments which the Portuguese State made to the European Central Bank, the European Commission and the International Monetary Fund in the Memorandum of Understanding on Specific Economic Policy Conditionality.

In Ruling no. 602/2013, on the subject of dismissal for objective reasons the Constitutional Court declared the norms contained in Article 368(2) and (4) of the Labour Code approved by Law no. 7/2009 of 12 February 2009, with the text given to it by Law no. 23/2012 of 25 June 2012, and the part of the norm contained in Article 9 of the latter Law that revoked Article 375(1)(d) of the same Labour Code, unconstitutional with generally binding force, all on the grounds that they violated the prohibition on dismissal without just cause enshrined in Article 53 of the Constitution.

As mentioned above, the amendments proposed herein to the regime governing the termination of labour contracts – concretely speaking, the legal regime governing dismissal due to elimination of a job and dismissal due to unsuitability – are intended on the one hand to fulfil the commitments undertaken in the Commitment for Growth, Competitiveness and Employment and the Memorandum of Understanding on Specific Economic Policy Conditionality, and on the other hand to overcome the declarations of unconstitutionality with regard to this matter that resulted from Constitutional Court Ruling no. 602/2013.

As such, with regard to dismissal on the grounds that the job in question is being eliminated, the present Government Bill objectively provides for a set of relevant and non-discriminatory criteria which the employer must take into account when it selects the worker to be dismissed, without prejudice to compliance by the employer with the legal requirement to provide grounds for its decision that are derived from the respective legal regime.”

In order to prevent the dismissal of women who are pregnant, have recently given birth or are breastfeeding, Article 144(3) of the Labour Code revised by Law no. 7/2009 of 12 February 2009 says that the employer has 5 working days in which to communicate the reason for not renewing such a woman’s term employment contract to the entity with competence in the field of equal opportunities for men and women (in this case, the Commission for Equality at Work and in Employment – CITE).

Table no. 53

Communications of the non-renewal of term labour contracts with workers who are pregnant, have recently given birth or are breastfeeding (2010-2014)

	2011	2012	2013	2014	Total
No. of communications from employers regarding the non-renewal of term labour contracts with workers who are pregnant, have recently given birth or are breastfeeding	1,143	774	713	697	3,327

Source: CITE

Protection in the event of dismissal is also provided under Article 63(1) of the CT, which says that a worker who is pregnant, has recently given birth or is breastfeeding, and is currently on initial parental leave in either of its formats, can only be dismissed once the entity with competence in the field of equal opportunities for men and women – CITE again – has issued a prior opinion on the case.

The following table shows the number of such prior opinions which CITE issued between 1 January 2011 and 31 December 2014:

Table no. 54

Prior opinions on the dismissal of a worker who is pregnant, has recently given birth or is breastfeeding, and is currently on initial parental leave (2011-2014)

	2011	2012	2013	2014	Total
No. of prior opinions on the dismissal of a worker who is pregnant, has recently given birth or is breastfeeding, and is currently on initial parental leave	111	173	150	89	523

Source: CITE

During the reference period CITE received the following complaints concerning failures to comply with Articles 63 and 144 of the Labour Code:

Table no. 55

Failure to comply with Labour Code (CT) procedures regarding the dismissal of women who are pregnant, have recently given birth or are breastfeeding (2011-2014)

	2011	2012	2013	2014	Total
Failure to comply with the procedure provided for in Article 144 of the CT	4	7	8	3	22
Failure to comply with the procedure provided for in Article 63 of the CT	5	5	15	7	32
	9	12	23	10	54

Source: CITE

As part of its work to verify the legality of situations involving the subject matter of Article 24 of the Charter (addressed in Articles 338 to 401 of the Labour Code), the Working Conditions Authority initiated the following coercive procedures:

Table no. 56

No. of new coercive procedures regarding the termination of labour contracts

	2011	2012	2013	2014
Termination of labour contracts – coercive procedures	487	605	521	443

Source: ACT

Responses to the European Committee of Social Rights

The Committee asks whether in those cases where the probationary period lasts for more than 60 days, the employer is obliged to provide reasons for termination of the employment relationship.

During the trial period, and in the absence of written agreement to the contrary, either party may unilaterally terminate the contract without prior notice or alleging just cause, and without any right to compensation [Article 114(1) of the Labour Code (CT)].

If the trial period has already lasted for more than 60 or 120 days, the employer must give 7 or 15 days' notice respectively before unilaterally terminating the contract [Article 114(2) and (3), CT].

In the words of the Constitutional Court with regard to the *ratio legis* for trial periods⁴⁰, such periods “exist so that the parties can determine – within the framework of a labour-law relationship they have already lived – whether their expectation as to the suitability of the hiring matches the effective conditions under which the work is actually taking place”.

On the same subject António Monteiro Fernandes⁴¹ says that: “the law presumes that the termination of the contract is determined either by the worker’s unsuitability, or because the working conditions offered by the enterprise are unsatisfactory”, so “one cannot exclude the hypothesis that the law may be being abused (...)” and “a dismissal during that period may be discriminatory, based on ideological reasons or reasons that have nothing to do with the working relationship, or simply arbitrary, and if this is the case, cannot be considered to be covered by the ‘franchise’ provided in Article 114, whereupon the general regime governing dismissals applies”.

⁴⁰ See Constitutional Court Ruling no. 632/2008, Series I of *Diário da República* no. 6, 09/01/2009, p. 165.

⁴¹ *Direito do Trabalho*, 2014 17th edition, Almedina, pp. 301-302.

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter. The Committee asks whether the legislation complies with this approach.

Article 343(c) of the Labour Code says that a labour contract lapses when the worker retires due to old age or invalidity.

The employer's will and initiative have nothing to do with this circumstance. The employer does not intervene in any way, so there would appear to be no violation of Article 24 of the Revised European Social Charter.

However, in cases in which a worker takes old-age retirement and thus receives the applicable pension, the law admits the possibility that he/she goes on working, whereupon his/her labour contract is deemed to have become a term contract 30 days after the date on which both parties become aware of the retirement, but the worker has nevertheless continued to work [Article 348(1), CT].

This means that when a labour contract lapses due to old age, the employer is not obliged to go on employing the worker, but that even in cases in which the latter has asked for and begun to receive a retirement pension, the employer can continue to employ him/her, albeit under a more precarious form of labour relationship. This situation does not appear to be unfavourable to the worker, because the labour bond could perfectly well have ceased altogether at the moment when he/she retired and the employer is thus under no obligation to maintain the contract.

In Ruling no. 581/95,⁴² among other matters the Constitutional Court considered the constitutionality of the norms contained in Article 5 of the regime attached in annexe to Executive Law no. 64-A/89 of 27 February 1989, which for the first time in Portuguese law created the solution that is now provided for in Article 348 of the Labour Code. On the norm set out in paragraph (1), the Court said that if a worker *"does not ask for retirement and is not given it, the labour contract does not lapse (...). The norm contained in Article 5(1) thus creates a programme targeted at cases in which a worker has reached the age of 65, wanted to retire and obtain a retirement pension, but agreed with his/her employer that the labour relationship would continue anyway"*.

However, the Ruling goes on to say that the same is not true of the norm included in paragraph (2) of Article 5 of the same regime [as attached to Executive Law no. 64-A/89, which is similar to the regime set out in Article 348(2) of the CT]. This paragraph apply the same regime to workers who reach the age of 70 without having taken retirement and the applicable pension. The Court said that this distinction had to be made because: *"here, regardless of the worker's will, the original contract gives way to a term contract. The fact*

⁴² <http://w3.tribunalconstitucional.pt/acordaos/acordaos95/501-600/58195.htm>

'retirement' has nothing to do with it, although the time that constitutes the worker's right to opt for this path (...) has passed."

Be this as it may, in the light of both the fact that the two precepts [paragraphs (1) and (2) of Article 5 of the regime attached in annexe to Executive Law no. 64-A/89 of 27 February 1989] were respectively evaluated against the constitutional guarantee of job security (Article 25, CRP⁴³) and the principle of equality (Article 13, CRP⁴⁴), and the argument that they created "a regime under which workers belonging to an age group above the retirement age were dismissed automatically and without just cause", in the aforementioned Ruling the Court considered that the material content of the two precepts was the same and that it was therefore possible to verify whether they were constitutional or not at the same time.

In both the abovementioned Ruling and a subsequent one⁴⁵ (which partially repeated the text of its earlier counterpart), the Court found that neither of the norms contained in Article 5 was unconstitutional. It particularly gave the following grounds for this finding:

"Old-age retirement – like other social security benefits – is based on the principles of human dignity and solidarity. The idea is that of: the 'reintegration of the status of the person' as an individual asset and a component element of the community; and of the organisation of material and legal resources to 'remove the causes' that limited that person's physical capacity or economic sufficiency (see Giuseppe Chiarelli, 'La Sicurezza Sociale', in Scritti di Diritto Pubblico, Milan, 1977, pp. 635-636).

Thus it is that in Article 63, the Constitution guarantees everyone the right to social security (para. 1) and that a system must be created to protect citizens 'in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of, or reduction in, means of subsistence or the ability to work' (para. 4)" [at the time of the Ruling; currently para. 3]. "And, with regard to old-age retirement, the law lays down that 'the eventuality old age includes the situation in which the beneficiary has attained the minimum age that is legally presumed to be appropriate to ceasing to engage in a professional activity' – an age which as a rule is 65 years old (see Articles 3 and 22 of Executive Law no. 329/93 of 25 September 1993).

Now, if one is looking for a reasonable justification for the option the legislator embodied in the norms before the Court, one must also turn to the 'system memory'. The system in question is the one that guarantees that when a worker reaches retirement age, he/she enjoys the alternative of resting, with the

⁴³ "Workers are guaranteed job security, and dismissal without fair cause or for political or ideological reasons is prohibited."

⁴⁴ "(Para. 1) All citizens possess the same social dignity and are equal before the law. (Para. 2) No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation."

⁴⁵ Constitutional Court Ruling no. 747/95, <http://w3.tribunalconstitucional.pt/acordaos/acordaos95/701-800/74795.htm>

guarantee of a 'substitute' for the remuneration he/she previously earned in return for his/her labour.

This is not a question of basing the argumentation on an idea of 'presumed incapacity'. In harmony with the considerations that underlie the legal 'institute' retirement, it is a matter of stating that advanced age leads in its own right to the eventuality of tiredness and reduced capacity, and that this gives the worker the right to go and rest, with a guarantee of his/her subsistence.

This recovery of the person's status via social security and in the name of dignity, which constitutes a right within the system, is combined here, as we control the constitutionality of the norms in question, with an analysis of the 'commutative perspective' of the labour contract (and without prejudice to the special way in which the balance between the various freedoms is achieved in this type of contract).

The thing is that if a worker has been given a dignified alternative to his/her labour contract, it would not be reasonable that, from the moment at which the factual presupposition which justifies that alternative – reaching retirement age – is created, the employer should be obliged to retain workers over the age of 65 in its service.

However much the labour contract may constitute an appropriate stage for 'forms of legitimate paternalism' (C. S. Nino), there is here a logic of proportionality that in certain ways suggests the importance of the values of 'equivalence' in the various contractual obligations.

The norms before us require an agreement (which is, in a sense, a restatement of the old contractual conditions) between the employer and the worker, under which they maintain the labour relationship; and the transmutation of the original contract into a term contract is nothing more than a logic whereby one goes back to both the mechanisms for reaching an agreement and the grounds for it.

We thus have a regulation that replaces the silence of the previous labour law. That law also laid down that the labour contract lapsed as a consequence of reaching retirement age, but said nothing about the effects of any agreement of wills to 'put it off' (in a different sense, see the legal regime governing the public service, which makes retirement compulsory for public servants who reach the age of seventy).

However, one must thus conclude that the 'conditioned stability of employment' which Law no. 107/88 pointed towards – and which Executive Law no. 64-A/89 implemented – possesses the justification needed to limit the desire for optimisation which, as is the case with all the fundamental guarantees, is involved in the constitutional norm contained in Article 53. Work as a means of self-realisation, remuneration as a condition for dignity, and the equivalence of contractual obligations all exist in a balanced relationship here, where the worker reaches retirement age, can take retirement and the

applicable pension, and there opens up the possibility of a 'renegotiation of the work' in question.

The norms before the Court are thus also intended to fulfil the methodical directives set out in Article 18 of the Constitution; and because they are justified, do not conflict with the principle of equality".

Given all this, and bearing in mind that in the light of CRP Articles 53 on job security and 13 on the principle of equality, the Constitutional Court found norms equivalent to those now contained in Article 348 of the Labour Code, on the conversion of the labour contract into a term contract following old-age retirement or the worker's 70th birthday, to be constitutional, it is our opinion that the Portuguese legislation is in complete compliance with Article 24 of the Revised European Social Charter.

The Committee recalls that under Article 24 temporary absence from work due to illness or injury cannot be a valid ground for dismissal. It asks whether a time limit is place on protection in case of temporary incapacity.

There is no time limit on the protection against dismissal in cases of temporary absence from work due to illness or accident. It is true that a temporary inability to work caused by a fact in relation to which the worker is not at fault and which lasts for more than a month – namely illnesses or accidents – does result in temporary suspension of the labour contract (Article 296, CT), but on the day immediately after the impediment ends, the worker simply has to place him/herself at the employer's disposal in order to start work again (Article 297, CT).

ARTICLE 25 THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

WAGE GUARANTEE FUND – practical approach

A – What is it?

The objective of the Wage Guarantee Fund (FGS) is to ensure that workers are paid credits derived from their labour contract, the breach of its terms (unlawful dismissal) or its termination, when their employer cannot pay them because it is in an insolvent or difficult economic situation.

An enterprise is deemed to be in an insolvent situation when it has no way to pay its debts. It then asks a court to declare it insolvent, and its creditors (the entities it owes money to) decide whether the enterprise should be recovered or declare bankruptcy and be wound up.

This payment by the FGS is not automatic; the worker must apply for it, and must do so within a time limit.

B – What conditions must be met in order to apply to the FGS?

Employer

- The employer must have been declared insolvent by a court (and the sentence must have been handed down); or
- In the case of a 'Special Revitalisation Project' (PER), the judge must have appointed the judicial administrator; or
- The employer's application must have been approved by the Agency for Competitiveness and Innovation (IAPMEI, IP), within the framework of an extrajudicial enterprise recovery process.

Worker

- The worker must have a labour contract or a *subordinate labour relationship* ((boss/employee) with an employer that engages in an activity in Portugal; or
- Must work, or have habitually worked, in Portuguese territory, but for an employer that engages in an activity in the territory of two or more EU or EEA Member States, including when the employer is declared insolvent by a court or competent authority of another EU or EEA Member State; and
- The employer must owe him/her money (wages; holiday, Christmas and/or meal allowances; compensation for termination of a labour contract or for not fulfilling its terms and conditions).

The Fund only pays credits when the worker submitted his/her FGS application no later than a year and a day after his/her labour contract terminated.

C – How does this payment work? How much does the FGS pay out?

The FGS covers payments which the employer ought to have made to the worker in the six months prior to the date on which proceedings for insolvency or corporate bankruptcy began, or the application to the PER or the Extrajudicial Enterprise Recovery System (SIREVE) was made. There is also a cap on the amount of these payments, which is described below.

The payments can include:

- Wages.
- Holiday, Christmas and/or meal allowances.
- Compensation for termination of a labour contract, or for not fulfilling its terms and conditions.

If none of the overdue payments ought to have been made during the previous six months, or the amounts owed are less than the overall limit set out below, the Fund can cover payments up to the same limit that ought to have been made more than six months earlier but after the insolvency, recovery, bankruptcy or extrajudicial conciliation proceedings began.

How much does the worker get?

Monthly limit

The most the FGS pays out in terms of monthly pay is 3 times the guaranteed monthly minimum wage (RMMG) that was in force on the date when the employer ought to have paid the wages.

Overall limit

The FGS pays each worker a maximum equivalent to 6 monthly wages. The overall limit on guaranteed pay-outs is thus 18 times the current RMMG. This overall limit is updated each year in accordance with the RMMG for the year.

Credits paid out to workers are subject to the following deductions: the worker's own Social Security contributions; and Personal Income Tax (IRS) that would have been retained by the employer (this also applies to the current IRS surcharge, if applicable).

D – How does the worker get paid?

Payments are made by the Social Security Financial Management Institute (IGFSS), either by bank transfer or by letter-cheque.

The FGS is entitled to refuse to pay a worker's credits if there is proof of abuse of the system – namely collusion or simulation.

The full amount due to each worker is paid in a single payment.

E – When does the worker get an answer?

Once the President of the FGS Management Board (a position that is automatically occupied by the President of the IGFSS Management Board) issues the final order, payment takes around 30 days. The applicant is notified accordingly. If the decision is positive – i.e. payment of all or part of the amount applied for is approved – the notification includes the amount payable and of any deductions regarding Social Security contribution and/or IRS tax.

F – What are the worker's obligations?

The worker must communicate any fact or situation that constitutes an infraction with regard to his/her rights in relation to the Social Security Service.

Working Conditions Authority (ACT)

At this point it is important to note the special protection afforded to workers' credits – namely those derived from termination of their labour contracts – in the form of privileged credit status.

A simplified definition of the concept of credit privilege might be: the faculty which the law, in the light of the reason for the credit, gives to certain creditors – in this case, workers (but it could be the State, a legal person, or another natural person) – to be paid with preference over other creditors.

Credit privileges take two forms: movable, and immovable. The latter are always special privileges; the former can be general or special.

Special privileges with regard to movable assets only apply to the value of given movable items that form part of the debtor's assets; whereas general movable privileges apply to the value of all the movable items included in the debtor's assets on the date on which the attachment order or equivalent legal act is issued.

The law gives workers' credits derived from labour contracts – namely those derived from termination – the following advantages:

- a) A general privilege with regard to movable assets; and
- b) A special privilege with regard to the immovable (real estate) property where the worker works (to the extent that it belongs to the employer).

These privileges are then ranked in accordance with and in relation to the general Civil Code norms on the subject (Articles 747 *et seq.*), taking precedence over other credit claims.

In addition to this special protection, when these types of worker's credit are more than 3 months overdue, companies in a reciprocal, dominant or group relationship with the employer as defined in the Commercial Companies Code (CSC) become jointly responsible for their payment.

Subject to certain conditions, 'partners' (i.e. including shareholders in non-joint-stock limited companies), managers, directors and board directors can also be jointly responsible under the combined terms of Article 335 of the Labour Code and Articles 78, 79 and 83 of the CSC.

As a last resort, if a worker cannot receive labour-related credits derived from termination of his/her labour contract by the above means because his/her employer is insolvent or in a difficult economic situation, the Wage Guarantee Fund (FGS) will pay them as described in the previous section.

Ministerial Order no. 473/2007 of 18 April 2007 approved the model for applications to the FGS for payment of credits derived from labour contracts and the latter's breach or termination, when those payments cannot be made by the employer due to insolvency or a difficult economic situation.

When ACT intervenes in this field, one of the things it seeks to do is help overcome situations in which a worker has not filed a claim for his/her credits with the court handling the employer's insolvency proceedings, or with IAPMEI if

he/she has requested conciliation proceedings, as well as cases in which the employer has not issued a declaration stating the nature of the overdue credits.

Given the particular consequences of the difficult socioeconomic situation both the country as a whole and enterprises have been going through, during the reference period ACT focused especially on matters linked to what its activity reports called "business crisis situations". Given that suspending labour contracts or temporarily reducing normal working hours due to facts linked to the employer are unilateral decisions taken by that employer, and that they have serious repercussions for both workers' pay, and the public purse in the sense that via the social security system the State is required to pay a high percentage of the workers' remunerations (to replace those the employer would otherwise have paid), it is necessary to closely monitor whether or not the preconditions for such suspensions or reductions continue to exist.

The entity with competence to conduct this monitoring under Article 307 of the CT is ACT. Whenever the preconditions cease to exist, and acting on its own initiative or at the request of any interested party, ACT must end the measure.

This was another reason why ACT paid particular attention to business crisis situations, working to assess the procedural legality of employer-driven reductions in working hours and temporary suspensions of labour contracts, business closures and temporary reductions in activity, collective dismissals, the elimination of jobs, and situations in which wages were overdue.

Table no. 57

Inspections of enterprises in a business crisis situation with a view to determining procedural legality

	Situation	No. of enterprises	Infractions	No. of workers
2011	Collective dismissals	102	160	6,157
	Dismissals due to elimination of jobs	133	159	8,520
	Unpaid wages	707	352	7,166
	Reductions in and suspension of working / lay offs	171	27	4,616
	Temporary closures	16	2	53
	Definitive closures	142	52	649
	Insolvencies/Bankruptcies	94	5	1,211
	TOTAL	1,365	757	28,372
2012	Collective dismissals	439	246	5,529
	Dismissals due to elimination of jobs	1,050	309	5,369

	Situation	No. of enterprises	Infractions	No. of workers
	Unpaid wages	1,873	1,262	22,825
	Reductions in and suspension of working / lay offs	190	21	5,714
	Temporary closures	60	24	612
	Definitive closures	371	146	1,937
	Insolvencies/Bankruptcies	217	82	2,588
	TOTAL	4,200	2,090	44,574
2013	Collective dismissals	224	111	4,700
	Dismissals due to elimination of jobs	949	343	5,864
	Unpaid wages	1,519	998	20,299
	Reductions in and suspension of working / lay offs	148	35	3,844
	Temporary closures	53	47	380
	Definitive closures	281	110	1,357
	Insolvencies/Bankruptcies	150	19	1598
	TOTAL	3,324	1,663	38,042
2014	Collective dismissals	108	70	122
	Dismissals due to elimination of jobs	444	279	140
	Unpaid wages	802	672	2,315
	Reductions in and suspension of working / lay offs	49	10	61
	Temporary closures	32	28	24
	Definitive closures	145	90	75
	Insolvencies/Bankruptcies	62	18	95
	TOTAL	1,642	1,167	2,832

Source: ACT

ACT's inspection work also included collecting evidence with a view to the bringing of criminal charges in situations involving fraud, unlawful closure of a business, engaging in prohibited acts in cases of temporary closure, failure to punctually pay wages, and other crimes linked to the social security system.

The labour inspectors' work resulted in the following:

- 2011 – 36 cases were reported to the Public Prosecutors' office for possible criminal proceedings. Most involved facts uncovered with

regard to unlawful closures, or criminal liabilities linked to closures due to facts for which the employer was responsible. Of these 36 reports involving business crisis situations, 32 concerned unlawful closures, 2 failures to pay wages on time, 1 lockout, and 1 case of 'prohibited acts'.

- 2012 – 42 such cases were reported: 31 concerned unlawful closures, 8 failures to pay wages on time, 1 lockout, and 2 cases of 'prohibited acts'.
- 2013 – 43 such cases were reported: 31 concerned unlawful closures, 8 failures to pay wages on time, 1 lockout, and 3 cases of 'prohibited acts'.
- 2014 – 55 such cases were reported: 22 concerned unlawful closures, 5 failures to pay wages on time, 2 lockouts, and 26 cases of 'prohibited acts'.

As we can see from the following table, ACT also intervened with regard to the fulfilment of employers' labour-related obligations in relation to the protection of workers in these situations:

Table no. 58

Inspections re employers' labour obligations with regard to worker protection

	Situation	No. of enterprises visited	No. of workers
2012	Requests for declarations of overdue wages	n.a.	579
	Requests for the FGS application form	n.a.	123
	Monitoring of FGS situations	n.a.	216
2013	Requests for declarations of overdue wages	291	1,420
	Requests for the FGS application form	116	504
	Monitoring of FGS situations	140	602
2014	Requests for declarations of overdue wages	150	255
	Requests for the FGS application form	57	52
	Monitoring of FGS situations	101	59

Source: ACT

As a way of informing both employers and workers about the labour-related credits due when a labour contract is terminated, in 2014 ACT launched a

compensation simulator on its website www.act.gov.pt. 1.7 million users used the simulator in its first year / The simulator was used 1.7 million times in its first year.

Responses to the European Committee of Social Rights

In its previous conclusion (Conclusions 2008) the Committee asked a number of questions to which it has received no reply. In particular, the Committee asked whether the guarantee fund could intervene when businesses cease trading without being able to honour their commitments, but have not been formally declared insolvent. It also asked what was the average time that elapses between the filing of claims and the payment of any sums owed.

The Committee recalls that under Article 25 protection must extend to the sums due for paid holidays other types of paid absence. The Committee asks what different types of claims are covered by the guarantee system.

During the reference period itself (i.e. to 31 December 2014) there were no changes in the regime governing the FGS, as set out in Articles 317 to 326 of Law no. 35/2004 of 29 July 2004, as amended by Law no. 9/2006 of 20 March 2006, Executive Law no. 164/2007 of 3 May 2007, and Law no. 59/2008 of 11 September 2008.

However, these Articles were provisional and only remained in force until the specific legislative act referred to in Article 12(6)(o) of the CT was approved. They were thus recently revoked by Executive Law (DL) no. 59/2015 of 21 April 2015, which approved the new FGS regime provided for in Article 336 of the CT. Under the new DL, the FGS is responsible for paying credits derived from labour contracts or their breach or termination which the employer cannot pay because it is insolvent or in a difficult economic situation.

With the exceptions provided for in the transitional norm set out in its Article 3(3), the current DL applies to applications submitted after the date on which it entered into force (4 May 2015).

It should be noted that the new regime transposes Directive no. 2008/94/EC of the European Parliament and the Council of 22 October 2008, regarding bringing the Member States' legislations on the protection of employees in the event of the insolvency of their employer closer together. The FGS now covers workers who work, or have habitually worked, in Portuguese territory but for an employer that engages in an activity in the territory of two or more EU or EEA Member States, including when the employer is declared insolvent by a court or competent authority of another EU or EEA Member State.

We should also point out that the new regime has adapted the FGS to the Revitalise Programme (PR). Following the creation of the 'Special Revitalisation Project' (PER) by Law no. 16/2012 of 20 April 2012, and the approval of the Extrajudicial Enterprise Recovery System (SIREVE) by Executive Law no. 178/2012 of 2 August 2012, as amended by Executive Law no. 26/2015 of 6 February 2015,

the current regime condenses the adaptations deemed necessary to ensure that the credits of the workers of enterprises covered by these revitalisation or recovery plans have access to the FGS.

Under the previous regime the FGS only applied to the workers of enterprises that were declared insolvent by a court (with the issue of the respective sentence), or had signed up to SIREVE.

The FGS thus now also applies to the workers of enterprises covered by a PER, who can therefore access the Fund on condition that their applications were made – or rejected – during the proceedings or between 1 September 2012 and the date on which DL 59/2015 entered into force. Such applications are now automatically (re)assessed, under a measure that was designed to broaden the scope of the FGS's application.

Under the new regime the FGS is still an autonomous fund that does not fall within the scope of the social protection guaranteed by the Social Security System, its only links to which are because the latter provides part of its funding and it is managed by the Social Security Financial Management Institute (IGFSS, IP).

Workers now have one year in which to apply to the Fund.

The most the FGS pays out in terms of monthly pay is 3 times the guaranteed monthly minimum wage (RMMG) that was in force on the date when the employer stopped paying the wages it owed.

The most the FGS can pay applicants is the equivalent of 6 months' pay.

This means that the overall guaranteed limit is equal to 18 times the current RMMG. With effect from 1 October 2014, Executive Law no. 144/2014 of 30 September 2104 set the present RMMG at 505.00 €. As such, the maximum amount payable to a single worker by the FGS is 1,515.00 € per month of wages, and 9,090.00 € overall.

With a view to promoting a logic of both stability over time and legal certainty, the new regime kept the rule whereby the FGS only takes responsibility for paying credits that fell due in the 6 months before the enterprise's insolvency proceedings were brought or a PER or SIREVE application was made. Having said this, these credits can now be paid for up to a year and a day after the labour contract was terminated.

In order to protect the public interest, the current DL includes an anti-abuse rule under which the FGS can refuse to pay guaranteed credits when it identifies abusive situations – namely collusion or simulation. It also allows the value of the credits to be reduced if the amounts applied for do not match the average figures on the pay slips for the 12 months before the application (assuming that those wages were themselves actually paid).

Table no. 59

Average time (days) between the date of the TCO application and the date of the order, by year and by District Centre

FGS: District Centre	Average no. of days between TCO request and Order			
	2011	2012	2013	2014
Average	221	272	372	314
AVEIRO	268	185	276	153
BEJA	166	199	301	240
BRAGA	240	433	509	406
BRAGANÇA	333	404	358	255
CASTELO BRANCO	62	118	176	78
COIMBRA	286	389	322	161
ÉVORA	109	150	327	236
FARO	298	459	407	367
GUARDA	134	164	259	134
LEIRIA	85	188	321	267
LISBON	179	251	310	261
PORTALEGRE	283	215	416	164
PORTO	250	298	421	351
SANTARÉM	215	157	403	395
SETÚBAL	220	242	388	365
VIANA CASTELO	234	298	478	364
VILA REAL	83	293	288	178
VISEU	139	202	290	167
ISSA (Azores)	212	225	187	232
ISSM (Madeira)	429	508	462	455

Source: Social Security Statistics System (SESS/FGS/10.02)
Database on 03/07/2015

There are a number of stages in the process: prior analysis, opinion, proposed decision, draft decision, prior hearing, decision, and conclusion.

Table no. 60

Cases concluded, by year and by District Centre

FGS: District Centre	No. of cases concluded			
	2011	2012	2013	2014
Total	22,741	17,004	38,552	41,939
AVEIRO	3,390	2,418	4,052	2,483
BEJA	21	13	275	54
BRAGA	3,629	2,341	6,562	7,982
BRAGANÇA	46	18	244	100
CASTELO BRANCO	311	376	465	528
COIMBRA	1,117	230	1,901	792
ÉVORA	91	47	105	305
FARO	173	135	1,120	802
GUARDA	148	150	446	272
LEIRIA	1,892	772	1,596	1,370
LISBON	3,174	3,379	9,059	10,390

PORTALEGRE	20	140	165	54
PORTO	6,327	4,241	7,609	11,118
SANTARÉM	1,085	896	721	1,055
SETÚBAL	207	498	1,465	1,793
VIANA CASTELO	380	370	764	840
VILA REAL	59	122	195	165
VISEU	399	340	898	746
ISSA (Azores)	82	262	294	373
ISSM (Madeira)	190	256	616	717

Source: Social Security Statistics System (SESS/FGS/00.13)
Database on 03/07/2015

PART II

Response to the European Committee of Social Rights with regard to Article 6§4 of the 2014 Conclusions.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 6§4 of the Charter on the grounds that:

- *that the right to call a strike is primarily reserved to trade unions, and the establishment of a trade union is subject to an excessive timeframe;*
- *it has not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company falls within the limits set by Article G of the Charter.*

On the subject of the application of Article 6§4 of the Revised European Social Charter (Right to bargain collectively – collective action), the European Committee of Social Rights (2014) considers the timeframe of up to thirty days for the formation of a trade union to be excessive, and that the Portuguese legal regime is thus not in conformity with Article 6§4 of the Charter, which reads as follows:

*“Article 6
Right to bargain collectively*

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1) ...;
- 2) ...;
- 3) ...;

and recognise:

- 4) *the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.”*

Within the context of the said Article 6§4, the Committee's conclusion is based on the view that an excessive legal time limit for those of an enterprise's workers who are not trade union members to form a trade union undermines the right to strike; and this because such workers can only exercise the right to strike if they form a union, which can take up to thirty days, and if it does take that much time, this may be too long for the collective action they want to take.

For the reasons we have given in previous Reports, this conclusion is detached from both the real scope of Article 6 of the revised ESC and the legislator's thinking on the subject, because it does not take account of the unity of the legal system, above all with regard to the right to strike, the right to form trade unions, every worker's right to join a trade union, and the right to collective bargaining and to enter into collective agreements. The fact is that where the Portuguese legal order is concerned:

- a) As a rule, the right to strike [Article 531, Labour Code (CT)] is indeed granted to trade unions. However, if no trade union calls a strike, the worker's assembly at an enterprise can declare one, on condition that the majority of the workers who belong to the assembly are not union members. This rule is based on the one hand on respect for the rights of trade unions to defend and promote the defence of the rights and interests of the workers they represent, and on the other on the guarantee of the workers' right to strike in accordance with the principles of a democratic right, based on the sovereignty of the workers who are not represented by trade unions and on the pluralism of expression and participatory democratic organisation in enterprises.
- b) The right to form trade unions [Article 440, CT] entitles workers to create such unions at every level, in order to defend and promote their socioprofessional interests. The right to strike is not the only grounds for forming trade unions which then pursue this vocation. The law grants unions a range of fundamental rights. Among others, these include the rights to enter into collective agreements, to take part in the formulation of labour legislation, to initiate and intervene in lawsuits and administrative procedures, to provide their members with economic and social services, and to take part in corporate restructuring processes.
- c) Unlike allowing a minority group of workers who are not represented within the enterprise by a trade union to haphazardly form one, giving every worker the right to join (without then being the object of discrimination) a trade union that represents his/her area of activity and profession [Article 444, CT] adequately permits the exercise of the freedom to join and belong to trade unions and engage in union activities in enterprises.
- d) The right to collective bargaining and to enter to collective agreements [Article 443, CT] is granted to trade unions. The fact that this right is reserved to unions simultaneously means that they are entitled to declare strikes in the case of conflicts of interest in which the effective exercise of the right to collective bargaining and to enter into collective

agreements is in question. This is entirely in conformity with the provisions of Article 6§4 of the Revised European Social Charter.

Outside this particular context, when it comes to the legal regime governing the formation of trade unions provided for in Article 447 of the CT, we would refer to our earlier comments on this matter. This legal regime does effectively mean a trade union can only function once its articles of association have been published in *Boletim do Trabalho e Emprego* (BTE, the “Labour and Employment Bulletin”). The reasons for this are linked to questions of public order and legal certainty. However, we would clarify the fact that the rule which gives the public administration department in question up to thirty days to arrange for that publication [Article 447(4)(a), CT] is only designed to legally stipulate the date on which a trade union must be considered to have become legally operational if publication in the BTE has not occurred by then. If for some reason the articles of association are not published within that time limit, the trade union can begin to function thirty days after its articles of association were registered with the department [Article 447(7), CT]. In other words, thirty days is a maximum and not a norm.

We should also point out that the reality of the situation in many such cases is that applications for registration and publication are not accompanied by all the necessary documents, which means that the Public Administration has to take additional steps to obtain them from the applicants. Despite this, in 2011-2014 the average times between an application and publication were:

Table no. 61

Number of working days between application and publication

Year	Working days between application and publication
2011	13
2012	14
2013	14
2014	18

Source: DGERT

With regard to Article 6§4, the ECSR also concluded that:
it has not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company falls within the limits set by Article G of the Charter.

Article G (Restrictions) reads as follows:

“1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection

of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed."

In this respect we would highlight the following:

The Constitution of the Portuguese Republic "(...) requires the law to define the conditions under which, during a strike, two types of service, which cannot be [allowed to be] affected by strikes and thus prevail over the right to strike, must be provided: (1) the services needed for the safety, security and maintenance of equipment and facilities; (2) the minimum services indispensable to the fulfilment of essential social needs. These are two different types of limitation on the right to strike. (...)"⁴⁶

Within this context the law says that the prior notice of the intention to strike must contain a proposed definition of the services needed for the safety, security and maintenance of equipment and facilities and, if the strike is to take place at an enterprise or establishment that is intended to fulfil essential social needs, a proposal for minimum services [Article 534(3) of the Labour Code (CT)]. In the event the services are defined in a collective labour regulation instrument, the latter can allow the prior notice not to contain a proposal for those services, on condition that the instrument in question is duly identified in the notice (Article 534(4), CT).

During the strike, the trade union that declares it, or the strike committee in the case referred to in Article 521(2) of the Labour Code⁴⁷, and the workers who take part in the strike must provide the services needed for the safety, security and maintenance of equipment and facilities (Article 537(3), CT).

At enterprises or establishments intended to fulfil essential social needs, the trade union that declares the strike, or the strike committee in the case referred to in Article 521(2) of the Labour Code, and the workers who take part in the strike must provide the minimum services indispensable to fulfil those needs (Article 537(1), CT).

Article 537(2) of the Labour Code lists a number of sectors in which enterprises and establishments are deemed to be intended to fulfil essential social needs:

- Postal services and telecommunications.
- Medical, hospital and medicine-related services.
- Public health, including the holding of funerals.

⁴⁶ Canotilho, J. J. Gomes e Moreira, Vital, *Constituição da República Portuguesa Anotada*, Volume I, revised 4th edition, Coimbra, 2007, p. 757.

⁴⁷ "Article 531.

Competence to declare a strike

1 – *The decision to resort to a strike pertains to trade unions.*

2 – *Without prejudice to the provisions of the previous paragraph, the worker's assembly at the enterprise may decide to resort to a strike if the majority of workers are not represented by trade unions, the assembly is called for that purpose by 20% of, or 200, workers, the majority of the workers participate in the vote, and the decision is passed by the majority of voters in a secret ballot."*

- Energy and mine-related services, including fuel supplies.
- Water supplies.
- Fire services.
- Services that involve dealing with the public and fulfil essential needs which the State is responsible for fulfilling.
- Transport, including ports, airports and railway and bus stations, serving passengers, animals, perishable foodstuffs and goods that are essential to the national economy, to include their loading and unloading.
- The transport and security of money and monetary instruments.

The imposition of minimum services is justified *"(...) because striking is not an absolute right and its exercise must be conjugated with that of other rights which are also enshrined in the Constitution. Specifically, in a conflict between the exercise of the right to strike and the fulfilment of a community's essential needs, the latter right prevails, and so limits on the former type of exercise are permissible.*⁴⁸

The *"(...) constitutional limitation of the right to strike shows that, like other rights, workers' rights require both methodical work to make them concord [with other rights] and judgements as to their reasonableness and relative importance. They do not abstractly prevail over certain collective constitutional values, particularly those regarding services that are of primary social importance, such as services in the fields of health, safety and security, civil protection, prisons, the collection of urban waste, water supplies, and other similar 'services of general economic interest', in which continuity is both a value in its own right (principle of the continuity of public services), and an organisational and procedural dimension of the guarantee and implementation of a variety of rights, ranging from constitutional rights, freedoms and guarantees, such as the right to life, physical integrity, freedom and security, to the right to health and essential goods.*"⁴⁹

The services provided for in Article 537(1) and (3) of the CT and the means needed to ensure them must be defined either in a collective labour regulation instrument (IRCT), or by agreement between the workers' representatives and the employers encompassed by the prior notice or their employers' association (Article 538(1), CT).

If there is no IRCT provision and no agreement on the definition of the minimum services provided for in Article 537(1) of the CT, the competent department or service of 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, will invite the entities referred to in Article 538(1) of the CT to negotiations on an agreement with regard to the minimum services and the means needed to ensure them (Article 538(2), CT).

⁴⁸ Martinez, Pedro Romano, *Direito do Trabalho*, 5th Edition, Almedina, 2010, p. 1325.

⁴⁹ Canotilho, J. J. Gomes e Moreira, Vital, *Constituição da República Portuguesa Anotada*, Volume I, revised 4th edition, Coimbra, 2007, p. 757.

When the strike is substantially the same as at least two previous strikes for which the minimum services defined by arbitration possessed the same contents, during these new negotiations the department or service referred to in Article 538(2) of the CT will propose that the parties accept that same definition. If they reject this proposal, their refusal must be recorded in the minutes of the negotiations (Article 538(3), CT).

If there is no agreement in the three days following the prior notice, the minimum services and the means needed to ensure them will be defined (Article 538(4), CT):

- By duly substantiated joint order of the minister with responsibility for the labour area and the minister with responsibility for the sector of activity.
- In the case of an enterprise in the State Business Sector, by an arbitration tribunal formed in accordance with the specific law on compulsory arbitration [Executive Law no. 259/2009 of 25 September 2009, which regulates both the legal regime governing compulsory arbitration, and arbitration regarding minimum services during strikes and the means needed to ensure them, in accordance with Articles 513 and 538(4)(b) of the CT].

The definition of minimum services must respect the principles of need, appropriateness and proportionality (Article 538(5), CT).

The ministerial order or arbitration tribunal decision are effective as soon as the entities referred to in Article 538(1) of the CT are notified of them, and they must be affixed at the premises of the enterprise, establishment, department or service, in places intended for the display of information for workers (Article 538(6), CT).

We would particularly note that minimum services and the means needed to ensure them are only defined by ministerial order or an arbitration tribunal, as applicable, as a last resort [see Article 538(1) to (3), CT].

Specifically with regard to arbitration tribunal decisions in these cases, it is worth mentioning that: *“in order to ensure that the State is not at one and the same time party to and arbiter in the setting of minimum services, in the absence of an IRCT provision or an agreement with the workers’ representatives, the Labour Code gives the competence to define minimum services (...)”*⁵⁰ to an arbitration tribunal, whenever a strike is decided at an enterprise belonging to the State Business Sector. *“This guarantees the impartiality and independence of the entity taking the decision.”*⁵¹

In the light of the above, we conclude that the requirement to provide minimum services is designed to ensure the fulfilment of essential social needs. At enterprises belonging to the State Business Sector, in the absence of

⁵⁰ Silva, Luís Gonçalves da, *Estudos de Direito do Trabalho (Código do Trabalho)*, Volume I, Almedina, 2004, p. 164.

⁵¹ Silva, Luís Gonçalves da, *Estudos de Direito do Trabalho (Código do Trabalho)*, Volume I, Almedina, 2004, p. 165.

agreement these services are defined by decision of an arbitration tribunal, inasmuch as "(...) it would not seem appropriate for it to be the Government, in the person of one of its ministers, which determines the minimum services (...)." ⁵²

⁵² Martinez, Pedro Romano, *Direito do Trabalho*, 5th Edition, Almedina, 2010, p. 1329.