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CENTRO DE RELAÇÕES LABORAIS

# ANNUAL REPORT ON THE EVOLUTION OF COLLECTIVE BARGAINING

# 2018

EXECUTIVE SUMMARY

*ANNUAL REPORT ON THE EVOLUTION OF COLLECTIVE BARGAINING IN 2018*

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# ANNUAL REPORT ON THE EVOLUTION OF COLLECTIVE BARGAINING IN 2018

## EXECUTIVE SUMMARY

1. This report represents a continuation of the series that began in 2016, with the preparation of an annual report on collective agreements in 2015, and is designed to correspond to the model that has been adopted to comply with the responsibility entrusted to the Centre for Labour Relations (CRL) by Article 3(1)(d) of Executive Law no. 189/2012 of 22 August 2012 (the Organic Law governing the Centre for Labour Relations – CRL).

2. It is vital that every "Reports on collective bargaining" present a substantial level of substance and methodological consistency, which implies that the object and the analysis focus are maintained.

3. Thus, the 2018 Report retains the same parameters, using the same sources, covering an equivalent period of time, and maintaining its structure (Chapter I).

4. For the purpose of providing context, fundamental economic (2.1) and normative (2.2) aspects of 2018 are described in Report (Chapter II).

5. Chapter III shows, in a general and mostly quantitative perspective, the evolution of collective agreements in 2018, placing them in the context of the evolution registered since 2005 and highlighting some of the most relevant dimensions of collective bargaining (as in previous Reports).

6. Quantitatively (3.1.1., II), it is clear that in 2018 we continue to observe an increase in the number of agreements, but at a lower rate when compared to the previous year. However, the annual numbers observed before 2011 remain to be achieved.

7. In 2018, as in 2017, we observe an increase in the number of collective agreements (Firm-level Agreements (AEs), Group-level Agreement (AC), Sectoral-level Collective

Agreements (CCs),) where Firm-level Agreements (AEs) were the predominant type, however, there is a smaller difference in relation to the number Sectoral-level Collective Agreements (CCs), in absolute and relative terms. (3.1.1.III).

8. The number of workers (potentially) covered by collective agreements in 2018 are in line with the numbers observed in the previous year. This number has been growing since 2014, with a slight prevalence of firm-level agreement, however it is still lower than it was in the 2005-2010 period.

9. As noted in the 2017 Report, there is also a trend towards a fall in the coverage rate of agreements currently in force, although the coverage rate of published agreement has actually risen since 2015 (3.1.1. IV). The number of workers covered by Collective Labour Regulation Instruments (IRCT) is now close to that registered in 2010, but is still below the number observed between 2005 and 2009, with a positive evolution since 2015 (3.1.1. IV).

10. In terms of wages (3.1.2.I), in 2018 the average length of time for which pay tables remained in effect before they were replaced was 22.1 months, lower in comparison to the previous year (29.4 months in 2017), and it's the third consecutive year since 2009 in which this number dropped in relation to the year before. The nominal year-on-year (YoY) variation in wages continued the 2016 upward trend, and the real wage variation was positive for the third consecutive year (in 2018, the annualised average nominal inter-table wage variation for the total number of agreements was 3.3%). The minimum wage defined in the collective agreements continues to converge to the Portuguese Minimum wage (3.1, II) in all sectors.

11. The expansion of the personal scope of collective agreements continues to be implemented, basically, by administrative extension orders (PEs). In 2018, there was a fall in the total number of PEs and AAs compared to 2017 (3.1.3).

12. In 2018, the Ministerial Order governing Labour Conditions (PCT) was published for office workers not covered by specific collective regulation, which replaced the 2006 PCT. The framework of the previous regime (3.1.4) is maintained in large.

13. In relation to the end of collective agreements (3.1.5.), in 2018, three agreements were signed to terminate a previous collective agreement (in two cases, the termination was followed by the conclusion of a new agreement) and no notice was published on the expiry of any agreement (two requests for publication of notice concerning the date of the end of the agreement were rejected and two others expired, due to lack of interest in bringing proceedings or to the withdrawal of the request).

14. In matters of extrajudicial collective-dispute resolution processes, in 2018 there was a slight decrease in conciliation requests (58) and an increase in mediation requests (12), and for the second consecutive year the number of conciliation processes ending in an agreement was higher to those ending without one and two mediation processes ended with one (which did not happen in the previous year), although most of this type of processes still end without an agreement.

15. In 2018, an arbitration decision was published in a compulsory arbitration process, something that had not occur since 2012, and a notice of request for a necessary arbitration (3.2.2) has also been published.

16. Chapter IV analyses the contents of the agreements negotiated in 2018, enriched, when possible and appropriate, by comparing them with the situation in 2017 and, in some cases, in 2016. Following on the perspective of previous Reports, the Chapter begins by giving an overview on the data related to published agreements (4.1) and to administrative extension orders (4.2), it then goes on to address collective agreements in the Public Business Sector (4.3). Subsequently (4.4.), the contents of the collective agreements published in 2018 are analysed in respect to several subjects, some of them being included in the report for the first time.

17. The following aspects stand out among the general data on collective bargaining in 2018 (4.1.):
    - Regarding collective agreements with autonomous contents (i.e. excluding Accession Agreements), a total of 220 agreements were published (a growth when compared to 208/2017). 18.63% were first agreements, 20.45% were overall revisions and 60.9% were partial revisions;

- Compared to 2017, in general, the number of first agreements and overall revisions increased by 45.76% and partial revisions by 10%;
- 311 IRCT were published in 2018, one more than the previous year - despite the increase in the number of agreements and a mandatory arbitration decision and a PCT, there was a decrease in the number of accession agreements and administrative extension orders;
- Despite a slight decrease, the number of parallel agreements remains high, as mentioned in previous reports, in both absolute and relative numbers (40% of the total);
- The sectoral distribution across the 21 NACE groups in 2018 was less balanced than in 2017 (7 sectors without agreements in 2018, 4 in 2017); there are three main sectors of activity - "manufacturing", "transport and storage" and "wholesale, retail and reparation of motor vehicles and motorcycles" - although their relative weight has declined compared to previous years;
- With regard to the coverage rate of agreements by sector of activity published in 2018, we continue to see an extraordinary growth in the "Accommodation and food services" sector and a quite a large increase, in relative terms, in "manufacturing", "transport and storage" and "Information and Communication Activities";
- The average number of workers who are (potentially) covered by a collective agreement and by type of agreement has risen, in general, compared to 2017, with particular reference to group-level agreements.

18. Considering all the PEs published in 2018, issued under the Resolution of the Council of Ministers no. 82/2017, it is clear (4.2) that:
    - for the first time since 2008, there is the same number of administrative orders issued and extended agreements (3.1.3, II);
    - a substantial majority of the extensions are applied to partially revised agreements (47 PEs in 75);
    - only 6 of the 75 PEs refer to agreements concluded in previous years - 5 in 2017 and 1 in 2012;
    - 25 PEs involved the extension of parallel agreements;
    - Administrative extension orders are divided by 13 NACE groups, according to the graphic distribution, with predominance of industry and commerce.

19. As in 2017, there were legal changes impacting on the public sector (4.3.) in 2018: Article 23 of the LOE/2018 (Law governing the State Budget for 2018 (LOE/2018) established that the IRCT is applicable, when, "the acquired rights are considered to be reinstated in full from January 2018 onwards", whereby collective agreements of the public business sector have reassumed their full applicability, and the restrictions contained in previous budgetary legislation (as of 2011) have disappeared. The report shows a growth in the number of IRCTs published in 2018 (28 IRCTs: 11 AC, 16AEs and 1CCs), compared to 2017, and, above all, the significant increase in the number of companies covered by collective bargaining compared to the previous year ( 16 in 2017, 79 in 2018). A considerable number of parallel instruments continue to persist as well as the concentration of several collective agreements with the same company or group of companies.

    Concerning the effective duration of collective agreements in the Public Business Sector (SPE), they are divided into three groups:

    - First agreements (11);
    - Partial revisions amending agreement's texts published in 2017 (5);
    - Partial or global revisions involving agreements that had been in effect between 44 and 220 months (12 agreements).

20. The analysis on the contents of collective agreements in 2018 maintains the structure of previous reports (4.4.1), based on two types of approach, one broader, covering the main thematic groups and one more in depth, analysing the following subjects: scope of application of agreements; duration and organization of working time; worker qualification; equality; information and communication technologies (ICT); performance evaluation; social benefits and supplementary pension schemes; workers' representative structures .

21. In terms of contents (4.4.2), and in general terms, the perceived outlook with the analysis of the 220 collective agreements of 2018 is similar to 2017 and shows that:
    - The preponderant topics were the regulation of pay conditions and other monetary benefits, and the regime governing the applicability of the agreement in question, followed by travel and overtime;

- Some subjects are essentially regulated when overall agreements are negotiated and were therefore covered in first agreements and overall revisions. They include: personality rights; adaptability; hour banks; concentrated working hours; secondment; intermittent work; leave; temporary closure of an establishment or reduced working hours; transmission of enterprises or establishments; conflict resolution; strikes.
- Others mostly also appear in first agreements and overall revisions, although they sometimes also appear in partial revisions: categories and careers; fixed term employment contracts, contracting parties' rights, duties and guarantees; equality and non-discrimination; the workplace; disciplinary powers; part-time working; joint committees.
- In addition to the traditional subject of wage reviews, partial revisions tend to regulate certain aspects of other matters linked to salary terms and conditions: organisation of working time; travel; supplementary social benefits; definition of the duration of the collective agreement or pay table.
- In partial revisions, issues related to wages are highlighted, but other matters related to wages conditions are regulated, albeit partially, including travel expenses, supplementary social benefits and definition of the effective duration of the agreement or pay tables;
- traditionally, there are areas most often regulated in AEs (individual accession, on-call regimes, supplementary social benefits, adaptability, overtime and shift work, performance evaluation);
- the issues of parenthood and equality and non-discrimination are still relevant;
- matters associated with technological developments in the field of ICT, such as those related to electronic communication and the protection of personal data and teleworking schemes, have been growing.

22. This Report seeks to determine the extent to which they comply with the recommendations of the law (article 492, 2 and 3), as far as their wording is concerned. This analysis focuses on the universe of first agreements and overall revisions (86) published in 2018.

23. In general, collective agreements rule over a lot of the contents recommended by the law, but they are increasingly diversified (its contents are diversified). The following aspects should be highlighted:

- concerning the relations between contracting parties, agreements govern the means of resolving collective disputes arising from the application or revision of the agreement, including the possibility of conciliation, mediation and voluntary arbitration, or only one of these mechanisms, including the discipline of the conduction of the arbitration;
- the provisions concerning vocational training actions, bearing in mind the needs of workers and employers, are close to the law;
- issues concerning working conditions related to health and safety, the various aspects involving planning and implementation of health and safety measures or services, the responsibility of the company and other dimensions associated with it, are set out in the majority of the agreements;
- it also governs several matter concerning measures aimed at the effective application of the principle of equality and non-discrimination;
- Concerning other rights and duties of workers and employers, rules on base wages for all professions and professional categories are fairly common and, on the other hand, there is a growing presence of the regulation of personality rights, especially when combined with technological developments and rules on data protection;
- there is a provision of mechanisms for the peaceful resolution of disputes arising from labour contracts, with variable characteristics: allocation of responsibilities to a joint committee or other type of joint body, to an arbitration commission or labour mediation centres, except for matters relating to inalienable rights or which do not result from work accidents;
- some agreements define the services needed to ensure the safety and maintenance of equipment, facilities and premises and the minimum services that are indispensable to the fulfilment of essential social needs during strikes. On the other hand, there is a certain standardization of fixed minimum services, changing according to the attributions of each professional group. These minimum services may have a structure similar to previous agreements, to jurisprudence by the

Portuguese Economic and Social Council (ESC) and, in some cases, to the minimum services defined by the Government;

- A provision for a joint committee with the competence to interpret and complete the agreement's clauses is found in 88% of all cases and several IRCT extend their scope to areas such as revision of categories and contents of professions and resolution of individual conflicts (in 2018, joint committees published five deliberations).

24. Turning to the thematic areas under analysis, the Report (4.4.4) focuses on the application of collective agreements and, in the context of the 220 agreements of 2018, the following contents stand out:
    - with regard to their geographic applicability, agreements with a national scope (mainland Portugal and the autonomous regions) continued to be the most common, as opposed to agreements covering a given local or regional area (4.4.4.1);
    - Still few provisions related to workers who are not trade union members to unilaterally adhere to a collective agreement (4.4.4.2.);
    - Where their duration is concerned (4.4.4.3), 65.9% (118/179 revisions) involved agreements that had been in effect for less than 24 month sand, on the other hand, 53.9% of the workers encompassed by revisions were covered by agreements that were in effect for "12 <24" months;
    - The length of time for which the agreement was to remain in force was a subject that was addressed in 121 of the 220 agreements published in 2018. The most common provision was for a duration of 24 months, while as a rule, pay tables were the object of a separate provision that almost always applied to a 12-month period.
    - In 2018, it is still rare for agreements to address the issue of what happens during the grace period or after they actually expire. In most cases, agreements simply referred the question to the applicable legal regime (4.4.4.4.);
    - Not many collective agreements include clauses on the articulation or conjugation of multiple agreements (4.4.4.5).

25. The report continues to pay particular attention to matters of duration and organization of working time (4.4.5). In general terms, there were no relevant changes to the lines of approach seen in previous Reports.

26. The imposition of the maximum duration of the weekly/daily normal working period (PNT) (4.4.5.1.) continues to be present in collective agreements, being present in almost all first agreements and overall revisions. Most of the agreements has a maximum duration of 40 hours, coincident with the legal limit, and most of them adopt different regimes according to groups or professional categories.

27. In matters concerning holidays, the 2018 rules are close to those described in Previous Reports:
    - the matter is included in 41.4% of the agreements published in 2018, and in almost all the overall revisions and first agreements;
    - there are many adopted solutions, some agreements follow the applicable legal regime, while others prefer other solutions, either by increasing the length of annual holidays, or, going back to the 2003 Labour Code, establishing solutions to increase them, more or less along the lines of the applicable legal regime.

28. In terms of the analysis of the regimes whereby agreements render working time more flexible (4.4.4.5.2.), two aspects are of particular note:
    - the regimes built on collective agreements governing the organization of working time often establish close links between the rules on adaptability and/or the hour-bank and those relating to other working time management tools, such as overtime, shift work and night work;
    - a certain standardization is found depending on the sectors and the intervening contracting parties.

29. Amongst the various flexible working regimes, adaptability is still the most common, often as the only one provided for in an agreement. There are not many cases where both the adaptability and hour-bank schemes are applied together, and even less contemplate the hour bank alone. Concentrated working hour are rarely provided for, alone or in conjunction with another instrument.

This subject continues to be essentially regulated in first agreements and overall revisions.

30. Flexible working regimes are most often addressed in Firm-level Agreements. This is not only associated with the total number of this type of agreement in 2018, since, although slightly, we see the same trend in terms of percentage. On the other hand, and as noted in previous reports, the tendency towards some standardization by sectors or contracting parties is accompanied by a significant diversification of contents and balances to respond to the specific requirements of organizational models, production processes, etc.

31. The characteristics of the conventional models of adaptability found in collective agreements published in 2018 (4.4.5.2.c) do not deviate from the profile designed in previous Reports: the contracting parties tend to establish their own combinations of the structural elements of the regime (margins within which the length of the working day can vary, rules on defining working hours, length of periods of reference, etc.), sometimes adding other elements (for example, reimbursement of extraordinary expenses incurred by workers, create new procedures to access the regime, consequences of the expiry of the regime). To this extent, the reference to the law or reproduction of legal rules is not often observed.

32. Regarding the provision for hour-banks in the 2018 collective agreement (4.4.5.d), there is a clear multitude of regimes, as is the case with respect to adaptability. Here again, the tendency towards some standardization is coupled with the need to adapt to the organizational and professional reality to which the agreement applies, through the construction of specific equilibriums by modulating the contents of the regime (number of hours related to the regime, use of the hour-bank, compensation for additional hours worked, etc.). The creativity of collective agreements is also seen in the frequent adding of rules on particular issues (such as requiring the employer to have a checking account or his own book with a record of the hour-bank; articulation with the awarding of a meal allowance, especially when there is a reduction of the working day; provision for the compensation of expenses due to the variation of the working day, supply of means of transport). The report gives an account of the adopted solutions that shows that even when there is a common contracting trade

union (which presupposes a certain uniformity of the underlying reality), there is room for different regimes according to the type of company or sector of activity.

33. Besides the low number of agreements that regulate concentrated working hours (4.4.5.e) (even decreasing when compared to previous years), agreements take a light touch on the regime.

34. In relation to on-call regimes (4.4.5.f) there is a slight percentage decrease compared to 2017. These regimes are primarily provided for in firm-level agreements (AEs and CCs), which seems to be due to the fact that they are designed to the specific characteristics of each business organization (and activity). The structure of the regimes follows on from the observed in previous years:
    - collective agreements present very different solutions among themselves, even as to size and conclusion (agreement or management act);
    - provision for waiver schemes based on the employee's personal circumstances;
    - establishment of different compensation mechanisms, in particular with availability benefits;
    - regulation of the obligations regarding on-call regimes;
    - compensation of actual work and, where appropriate, the payment of travel expenses.

35. Overtime continues to be one of the subjects that are most often addressed in the collective agreements published in 2018, being regulated in 85% of first agreements and in 100% of overall revisions – showing that overtime is still an important issue to the contracting parties and to the daily life of labour relations. The governing power of agreements focuses mainly on wages, with other issues being given less attention (admissibility of overtime, possibility of worker's leave, conjugation with night work and shift work regimes).

36. Following the analysis initiated in the previous Report, an analysis is made to the mechanisms whereby working time can be flexibly managed when that is in the workers' interest (4.4.5.h). Sometimes, the worker's interests are also taken into account in the implementation or operation of other flexibility mechanisms (adaptability, hour bank).

However, the most widely used instrument for this purpose is the regulation of flexible working hours, which has increased slightly in 2018. The agreements, in addition to defining the notion of flexible working time, build their regime in very variable terms, either as regards the level of depth or the rules included in it (the content and extent of the management margin conferred on the employee, the employee's duties, the flexibility of his working hours, etc.).

37. The exemptions from fixed working hours (4.4.5.i) are covered by a significant part of the collective agreements published in 2018, either by referring to the applicable legal regime or through more detailed regulation, introducing solutions to that regime within the adaptation limits that the CT allows. Most of the agreements replicate the legal regime. In all others, the agreements regulate situations related to the admissibility of the regime, the indication of the allowed solutions, the terms in which the regime expires and, less commonly, the limits on the duration of PNT. There are many ways to determine the exemptions from fixed working hours benefit: there are agreements that accept the legal regime, but they merely specify the basis for calculating the benefit, but there are, however, many different solutions.

38. There is a slight increase in the number of agreements covering issues related to the promotion and qualification of workers (vocational training and worker-student - 4.4.6.). References are more common in first agreements and overall revisions and they essentially follow the legal framework, not distancing themselves from previous years.

39. In relation to vocational training (4.4.6.2), although there are agreements covering initial vocational training, lifelong learning issues are more frequently regulated. In general, the role of the employer in initial training is essentially associated with the recognition of the worker's competences and skills acquired in vocational training or with the promotion of the worker's initial vocational training. With regard to continuing vocational training, the depth of the subjects, as well as the participation of the employer, worker and, sometimes, the workers' collective representation structures, follow closely the wording of the law. The vocational training necessary to obtain and maintain professional qualifications in regulated professions, requires a greater concern from all interested parties.

40. Regarding the worker-student status (4.4.6.3.) and similarly to previous years, the agreements published in 2018 focus on the flexibility of working time, promoting the reconciliation of academic studies with student-worker activity, regulating matters such as dismissals, working hours, leaves and holidays, as well as the financing of the studies or their co-financing. As described in former Reports, it is noted that the agreements provide that the skills acquired by the worker during his vocational training may contribute to the advancement of his professional career.

41. For the second consecutive year, the Report has a separate chapter on the subject of equality in industrial relations (4.4.7.). There is a growth trajectory of these issues in the last three years, essentially mirroring the legislative changes that have occurred in this regard and, in many cases, partially or totally reproducing the legal regime. This trend can be seen in the three topics studied - moral harassment, reconciliation of family life and work and parenthood, and equal working conditions in general (gender equality and positive discrimination measures in favour of disabled workers).

42. On the question of reconciliation of family and professional life (4.4.7.3), the report highlights the many references in agreements' texts and its growing presence, which is described in two aspects:
    - The protection of motherhood and fatherhood, including its articulation with the social protection regime (article 34 of the CT) and the catalogue of workers' rights provided for in article 35 of the CT, which contains a set of leaves for the exercise of paternity, as well as the possibility of modulating the organization of working time;
    - the protection of the conciliation associated to the balance between working time and non-working time.

43. With regard to the general provisions on the application of the principle of equality and non-discrimination (4.4.7.4), the agreements often devote special attention to the specific conditions experienced by certain groups of workers - illness, disability, age, work related accidents - sometimes advocating the protection of workers with reduced working capacity, regardless of the cause of this condition. On the other hand, the protection of workers according to their age is present when the agreements forbid

the establishment of a maximum age for access to employment (except for the limits established by law) or when it exempts them of night, shift or overtime work above a certain age.

44. This Report has also begun to address, in an independent section, issues related to information and communication technologies (ICTs) in the IRCT negotiations (4.4.8). The analysis is developed around four topics - teleworking, electronic surveillance, electronic communication and workers' individual records. These issues are primarily governed by first agreements and overall revisions at company level (AEs and ACs) and, as a rule, with respect to the rights and duties of the parties involved in the working relationship. Legal frameworks are often reproduced, and the importance that the parties increasingly attach to these issues is very clear. The Report focuses on the dimensions mentioned, giving note of the solutions found in collective agreements.

45. For the first time, this Report proceeded with the independent treatment of the presence of performance evaluation systems in collective bargaining (4.4.9). In 2018, the matter was mainly regulated in firm-level agreements, followed by collective agreements, a distribution that seems to indicate a close connection with the business reality. The diversity of approaches and the main issues covered by collective agreements are displayed in the report.

46. In 2018, references to the regulation of workers' representatives and union activity in the company (4.4.10) are made in 91 of the 220 published agreements, which represents an increase both in absolute and in proportional terms compared to the previous year. The distribution by collective agreement solutions shows, in proportional terms, that this issue is more often included in collective agreements and group-level **a**greements. The subjects covered do not present significant changes in their wording, level of depth and solutions, in relation to the model identified in the previous Reports. Due to its importance in the collective agreements published in 2018, attention should be drawn to the right to information and consultation, which is often enshrined as a general principle, and reference is often made to Directive 2002/14/EC of 11 March 2002. The agreements also regulate the right to assembly at the workplace, the right to post and distribute information, organisation of the trade

union representatives working time, access to the enterprise's premises and the right of trade union delegates to meet management bodies.

47. Following on the analysis initiated in the 2016 Report there is a chapter related to the provision, in the collective agreements published in 2018, of benefits intended to complement the ones granted by the General Social Security Regime in the case of occurrences that are covered by this regime and the provision for benefits of other kind, related with the worker's personal and family situation. The establishment of protection mechanisms in disease situations, through a very variable range of benefits and with great modulation of solutions, continues to be a crucial issue in this matter. As for the supplementary benefits for old-age or invalidity pension funds, the tendency is for them to concentrate on the banking and insurance sectors, while in other cases the agreement rules are almost always limited to safeguarding existing schemes for workers admitted until a certain date.

48. As usual, the Report ends by talking about collective bargaining in the Public Administration (Chapter V). In 2018, 177 Public-sector-employer Agreements (ACEPs) where published, of which 133 are revisions of existing agreements (105 are "overall revisions" and 28 "partial revisions"), which corresponds to an increase of 32.33% in concluded ACEPs.

    The strengths of collective bargaining in Public Administration in 2018 did not change significantly compared to 2017, confirming the vitality of collective agreements at local government level.