CRL
CENTRO DE RELAÇÕES LABORAIS

COLLECTIVE BARGAINING

2016 ANNUAL REPORT

EXECUTIVE SUMMARY

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1. The report on collective bargaining published in 2016 is the second in the series "Reports on the evolution of collective bargaining" (RNC) published annually by the Centre for Labour Relations (CRL), is presented.

2. The structure of the previous report was adopted, preceded by an analysis of the convention regimes with a background of the economic and legal context in which collective bargaining is developed, including the large macroeconomic variables and the amendments to the legal provisions that may have possible effects on collective bargaining (cf. Chapter II RNC 2016).

3. The main data on collective agreements in the 2005-2006 is presented (cf. Chapter III RNC), in an quantitative approach, including data on the following:
   a) Number of collective agreements published each year and the number of workers potentially covered (no. 3.1.1). One of the most important issues concerns the marked difference between the number of workers covered by existing agreements and those covered by the agreements published each year, which indicates that a significant part is not regularly renewed. In 2016, the tendency to resume the predominance of sectoral-level collective agreements[1] remained, as shown by the greater number of collective agreements in relation to group-level agreements[2] and firm-level agreements, even though the number registered remains very far from those up to 2011.
   b) Only a brief overview of remuneration is presented, as it is analysed in depth in the publications of the Directorate-General for Employment and Labour Relations (DGERT) (no. 3.1.2). The main changes seen in 2016 were the following:
      - The decrease in the wage tables' effectiveness average period over the previous year, for the first time since 2009. In 2016, this period was 38.1 months, 5.5 months less than in 2015;
      - The growth in nominal wage variation, compared to the previous year, for the first time since 2008, and the positive real wage variation, which had not occurred since 2013. Thus, in the year under analysis, the annualised average

[1] Top-level branch agreements/sector agreements
[2] Signed by one or several employers that are not part of an employer organization and one or more trade unions

nominal inter-table wage variation for the total number of conventions was 1.5%.

c) Extension of the scope of the collective agreements, either through Administrative extension order[3] or Accession agreement[4] (no. 3.1.3).

d) Expiration of agreements (3.1.4): the main data on the procedures for the expiry of agreements from 2005 onwards is presented, with the publication of 44 notices of expiry. Three notices of expiry were published in 2016, less 4 than in 2015. In this report, the analysis of expiry processes was examined in order to verify the succeeding situation. From the 44 expired agreements, 28 did not give rise to new agreements. Following the expiry of the remaining 16 agreements, 21 new ones have emerged, either entirely or partially coinciding in scope.

4. In the general analysis of the period between 2005 and 2016, the main data on the conciliation, mediation and arbitration procedures (no. 3.2) was collected. 2016 is one of the years with the lowest number of conciliation applications (38), well below the average of more than 68 requests registered in the twelve years of the period under analysis. The 9 mediation applications entered in 2016, although less than the 11 in 2015, are within the average of the period, which is slightly over 12. In 2016 there is no register of new arbitration proceedings related to the bargaining of agreements, maintaining the trend registered since 2012.

5. The third and most extensive part of the report focuses on collective bargaining in 2016 (cf. Chapter IV RNC), including a general analysis of key quantitative data (nos. 4.1 to 4.3) followed by an analysis of the contents of the agreement regimes (4.4).

6. In 2016, 146 agreements were published, which is a small increase compared to the 138 agreements in 2015. Much more significant is the increase in the number of workers covered by the published agreements, from 490,377 to 749,348, which corresponds to an increase of more than 52%. Despite this significant improvement in the coverage of the agreements, the average number of covered workers between 2005 and 2011 (1,495,952) is still far from being met.

   Another significant feature of 2016 was the huge increase in Accession agreements (cf. footnote no. 3) (AA), the number of which (29) is almost three times higher than the annual average of just over 10 agreements registered between 2005 and 2015. It should be noted that most AAs (24) refer to three agreements, all of which are Collective agreements (cf. footnote no. 2).

[3] Administrative extension of collective agreements on non-signatory firms.

[4] Agreements by a trade union, employers' association or firms in order to become a signatory of a collective agreement already in force.

7. With regard to the contracting parties, in addition to maintaining the exclusivity of the granting of agreements by trade union associations, there are still a significant number of parallel agreements[5]: 53 agreements, corresponding to more than 36% of the total.

8. In the distribution by subtype, the data that stands out the most in the year under review is the increase in the number of first agreements (18), which doubled compared to 2015 (9). The vast majority of published texts still correspond to partial reviews (about 68% of the total).

9. The breakdown by economic activities shows a concentration in the three sectors that had already been identified in 2015: manufacturing, wholesale and retail trade; repair of motor vehicles and motorcycles and transportation and storage. The agreements of these economic activities represent about 77% of the total.

10. Another trend that continues in 2016 concerns the relevance of Collective Agreements (cf. footnote no. 2) in the coverage of collective agreements. The average number of workers covered by this type of agreements (9,405), which is much higher than in other modalities, has increased compared to 2015.

11. In 2016, 35 Administrative extensions orders (cf. footnote no. 3) were issued, only one less than in 2015. The time between the publication of the agreement and the issuance of the respective Administrative extension increased slightly, within a 5 and 7 months range, when last year the range was between 4 and 5 months. On the other hand, the time to the Administrative extension issuance was further analysed, identifying the duration of the different phases that integrate it, concluding that the longer period is the one that precedes the publication of the Administrative extension issuance notice.

12. This report attempted to see whether it would be possible to gauge the extent to which the limitations imposed by budgetary legislation on collective bargaining in the Public business sector were reflected in the published agreements (no. 4.3). However, the collected data are insufficient to draw relevant conclusions.

13. Following last year's report method, two types of analysis were made of the content of the 2016 agreements: a more general one, in which the agreed terms were registered by large thematic sections, and a more developed one, focused on several subjects, grouped around the three main areas that had already been selected in 2015: scope of the agreements, working time and matters related to the promotion of workers' qualification. There was, however, a concern to broaden the scope of the analysis, both in general and in depth. Thus the 2016 report includes:

[5] Different collective agreements signed by the same employer with different trade unions

- A new section (no. 4.4.3) on matters that, according to the recommendations set forth by law (article 492, (2) and (3), of the CT), should be dealt with in the agreements;
- And four new topics to be further explored (no. 4.4.4): maximum limit for normal working hours and duration of annual leave (4.4.5.1); social benefits and supplements of social security benefits (4.4.7); and workers collective representation structures rights (4.4.8).

14. The conclusions of the general analysis (no. 4.4.2) are almost identical to those of the previous year, highlighting the clear prevalence of issues related to remuneration and other cash benefits, the validity[6] of the agreements and working time. There is still a tendency for a separation between those topics that are preferentially dealt with in first agreements and in the overall revisions and the issues covered in the partial reviews, where remuneration is the main topic.

15. Also as to the new topic dedicated to contents recommended by article 492, (2) and (3) of the CT (no. 4.4.3), only the first agreements and the overall revisions were considered, in a total of 46 agreements, since in partial revisions, due to the fact that they only partially update an agreement, it is not possible to verify to what extent they comply with the aforementioned recommendation. This legal provision comprises a diverse set of matters, which, in turn, are articulated with several legal provisions regulated in the Labour Code itself.

16. Thus, the wide scope of themes and the diversity of contents found in the agreements led to a delimitation of the analysis, which we attempted to illustrate with the changes found regarding:
    - Relations between contracting entities, namely the means of resolving collective disputes arising from the application or revision of the agreements;
    - Designed education and vocational training;
    - Working conditions related to safety and health at work;
    - Measures aimed at the effective application of the principle of equality and non-discrimination;
    - Rights and duties of workers and employers associated with remuneration;
    - The solutions found for the resolution of disputes arising from employment contracts, namely through conciliation, mediation or arbitration;
    - The definition of services necessary for the safety and maintenance of equipment and facilities, minimum services indispensable for meeting urgent social needs during strikes;

[6] Period of time in force.

- Expected contents regarding the effects of the agreement in the event of expiry, in relation to workers covered by it, until other Collective labour regulation instrument[7] (IRCT) is enforced;
- The provision of a joint commission with competence to interpret and integrate its clauses, as well as other powers conferred in the agreements.

In overall terms, there is a remarkable diversity in the different recommended topics inclusion in the agreements. The only area covered by all agreements is that of remuneration and classification of occupations. Matters relating to health and safety at work, equality and non-discrimination and joint committees follow it.

It is important to note the multiplicity of areas covered by the topic of equality and non-discrimination. The principle is touched upon, in particular, concerning the employment of workers with disabilities or chronic diseases; and access to employment, career progression and education and vocational training for all workers.

Parenthood stands out as the most versed, either due to the cross-sectional nature of the topic in several legal provisions regarding parenting rights, or because a specific treatment was devoted to the set of parenting leaves and benefits related this subject [no. 4.4.3.2 - art. 492, (2 d), of the CT].

17. In the first group discussed in detail on the application of agreements (no. 4.4.4), we highlight the following points:
    - National collective agreements predominate widely, accounting for more than 80% of the total;
    - Regarding the application at a personal level, the only relevant note refers to the clauses on non-union affiliated workers adherence, although they remain rare (only found in 9 agreements). The amount set for the contribution due for the application of the agreement is almost always the same (0.65% of the monthly remuneration), except in one case, where a single payment of an amount equal to the national minimum wage is foreseen;
    - Regarding the temporal scope of application, it is worth mentioning the decrease in the period in which agreements remained unchanged: in 2016, 70% of the agreements (90 in 128) were changed before reaching 24 months, and in 2015 about 58% of the agreements were in that range. On the other hand, the percentage of agreements that were only revised after 4 years decreased, standing at just under 18% (in 2015 these were more than 28%);
    - Almost half (44.6%) of the agreements provide a validity period (cf. footnote no. 6) between 12 and 24 months, with very few exceptions (only 3) where this period is

[7] Collective instruments, including collective labour agreements and administrative instruments.

over 48 months. In most cases different deadlines are provided for wage tables, 12 months as a rule;

- As in 2015, there are few agreements with clauses relating to the grace period[8] (22) and expiry (only 13), most of which comply with the law in general. The effects of expiry are referred to in eight agreements, duplicating the law in general, with one or another issue which the law does not mention;
- In 2016, 3 notices of expiry were published (less than half of those in the previous year), in which we tried to find out the subsequent development of the bargaining process;
- Finally, the clauses dealing with the application, in combination or otherwise, of rules of different agreements were analysed. In this area, and following the broad notion of articulation clauses already covered in the previous report, reference is also made to the provisions dealing with the workers to whom an earlier version of the agreement continues to apply, in whole or in part.

18. In the section working hours (no. 4.4.5), the first issue analysed was the maximum duration of the normal working hours, which was a subject covered in almost all the first agreements and overall revisions, of which we highlight:
    - Some agreements (6 out of 43) establish a maximum working hours limit of less than the 40 hours established by law;
    - The establishment of different maximum working hours limits for certain groups of workers, according to their classification of occupation or other variables (e.g. type of work schedule or unit to which they are part of);
    - In the cases where the top limit is extended, the maximum working hours under previous versions of the agreement is safeguarded.
19. The length of the annual holiday period - which contributes to the definition of annual working hours - is dealt with in all first agreements and overall revisions, as well as in a relevant number of partial revisions. The most obvious conclusion is that most agreements foresee a solution different from the law, either by establishing a period of more than 22 working days (the most frequent duration being 25 days) or by granting an increase based on several factors, such as age, length of service, length of stay and attendance.
20. Working time flexibility schemes (working time adaptability and working time accounts) are present in 25 agreements (around 17% of the total), with a decrease compared to 2015, where these themes where included in 26% of that year's agreements. This decrease is an inversion of the tendency that had been detected in

[8] Survival of ended but not renewed collective agreements under certain conditions and for some time.

the previous report, where these issues are increasingly dealt with by collective agreements.

21. Specifically for working time adaptability regimes, the conclusions for 2016 are not very different from the ones for 2015. Thus:
    - Several agreements establish an additional requirement for the application of the collective working time adaptability regime, requiring the approval of the worker;
    - In almost all agreements, maximum limits for the extension of the PNT are set lower than those allowed by law, being the most frequent 2 hours per day and 50 per week;
    - The reference period for the normal working hours calculation in average terms is almost always less than the 12 months allowed by law (with one exception);
    - Pre-warnings are foreseen for the provision of working time adaptability, of variable duration, between 5 and 60 days;
    - When the actual hours worked do not ensure compliance with the average normal working hours, the obligation to compensate the unpaid hours is increased, almost always equal to that due to overtime work;
    - In agreements regulating to group adaptability, this is treated in terms identical to those of the law. As for the situations of exemption from subjection to this regime there are some innovative solutions, broadening the situations of exemption beyond those provided by law.

22. The agreement regulation for working time accounts registered a sharp decrease in 2016, only in 15 agreements, which corresponds to a reduction of around 40% compared to 2015. The features of agreement regimes are similar to those noted in the previous report:
    - The consent of the worker is often required for the application of the regime, even if this is provided for in the agreement;
    - Some agreements require grounding for the application of working time accounts (which is not included in the law), explaining the reasons invoked by the employer or, in some cases, admitting that the application is the initiative of the worker and for his own interest;
    - The limits allowed for work in addition to daily and weekly normal working hours are variable, although most of the agreements dealing with the topic apply the maximum duration allowed by law (4 hours daily, 60 weekly and 200 annually);
    - The most frequent period of compensation or adjustment of the balance of hours is the end of the first quarter of the subsequent calendar year;
    - As a rule, the notice to require the provision of additional hours is 5 days;

- As a rule, compensation for hours worked in excess is made in cash, with a variable increase of between 50% and 100%, or payment in the same terms as those due for overtime work. Although rare, there are cases where overtime work is paid at normal value;
- It is often envisaged that hours not worked and not compensated in the period due to reasons unrelated to the worker are deemed to have been fulfilled, without reduction of pay or any other disadvantage to the worker.

23. Compressed hours are only foreseen in 4 of the 2016 agreements, allowing for the extension of the working time by up to 4 hours per day. Almost always, despite the agreement, the consent of the worker is required in order to be subject to this regime.

24. In 2016 there was a significant increase in the agreements governing on-call regimes[9], which were dealt with in 23 agreements, from which 9 were Parallel agreements (cf. footnote no. 5) (in 2015 there were only 13 agreements where the topic was addressed, with a repetition of the regime in 6 Parallel agreements (cf. footnote no. 5). The characteristics of these regimes are identical to those already mentioned in 2015, notably:
    - These regimes are almost always included in firm-level agreements;
    - As a rule, these regimes are only applicable to certain groups of workers;
    - Obligations related to on-call work (cf. footnote no. 9) are regulated, in particular regarding the duty to remain on stand by and available on-call, as well as the corresponding counterparts, which usually involve the payment of an on-call allowance (cf. footnote no. 9) and the remuneration of the hours actually performed as overtime work.

25. Overtime work is present in almost all collective agreements. In 2016 it appears in all of the overall revisions and only one of the first agreements did not touch upon it, and it is still frequent to find updates on this topic in partial revisions. Once again, the conclusions of the analysis of agreements in this area are not far from those carried out in 2015. Thus:
    - Often the solutions found are different from the legal regime, especially regarding the additional value resulting from the provision of overtime work. In several cases, the values established by the law before the decrease in 2012 are set, with increases of 50% and 75% for the first hour and other hours on working days, respectively, and 100% for additional work on public holidays and weekly rest

[9] On-call means being on standby, ready and available to work

days. And higher values can also be found, sometimes foreseeing higher amounts when the overtime work surpass certain limits;

- One point in which there is a greater approximation to the legal regime is the maximum number of hours of overtime work, adopted in most agreements;
- Legal prescriptions are sometimes quoted, as with the grounds for using overtime work and the situations of exemption from the compulsory provision of the same;
- A point not dealt with by law but which some agreements address is the payment by the employer of the extra expenses (meals and transport) inherent to the execution of overtime work;
- Rules relating to the link between overtime work and night work or shift work as well as the combination with working time adaptability and working time accounts are common.

26. In the field of promotion of workers' qualifications (no. 4.4.6), this year the issues concerning education and vocational training and the status of the student-worker were analysed. There are a fair number of agreements dealing with these matters, especially in the case of first agreements and overall revisions. In these sub-types, education and vocational training is referred to in almost 96% and the status of the student-worker in about 74%.

27. In terms of education and vocational training, the following solutions stand out:
    - The relevance that some agreements give to the initial education and vocational training, with a number of consequences, whether in the access to certain job categories or by the reduction of the periods of practice or internship required for their exercise;
    - The articulation of training with the experimental period, either including it in the latter (as the law provides) or establishing different durations for the experimental period depending on the training provided;
    - The development of certain regimes where education and vocational training is required for the practice of regulated professions;
    - The relevance of training in career development, in particular in the health sector;
    - The articulation of education and vocational training with the regulation of working time, especially when it is provided outside the normal working period;
    - The development of solutions for situations not fully clarified by the law, such as determining the hours of training in the year of admission to work and in cases of suspension;

- The provision of the obligation of the employer to develop education and vocational training actions aiming at the reclassification or retraining of workers, either for reasons related to the company or for reasons related to the worker;
- Some agreements regulate permanence obligations associated with education and vocational training provided by the employer, sometimes in broader terms than the law provides for the so-called permanence agreements;
- Finally, some agreements reaffirm the principle of equal treatment also in this area, both in access to training and in the provision of facilities for attending education and vocational training programs.

28. Agreements schemes on the status of the student worker relate above all to the link between working time and schooling obligations, which was already pointed out in the previous report and which is also found in the legal regime. A point that is not dealt with in the law but which appears in some agreements is the granting of different forms of support to working students, in particular regarding the financing of tuition and the costs of school materials and books.

29. One of the subjects analysed for the first time is social benefits and supplementary pension schemes (no. 4.4.7). Although the number of agreements that regulate these points is not very high, emerging in 37 agreements, from the analysis carried out it is possible to draw some conclusions that seem relevant, given the meaning that this type of perks can have for workers:
    - As far as social security is concerned, the most frequent benefit is the supplement to the sickness allowance, intended to cover all or part of the difference between the remuneration and the value of the benefit provided by social security. As a rule, temporary limits are imposed on the granting of this benefit, the most frequent being 90 days a year;
    - Also related to protection due to illness are the attribution of health insurance and access to health plans (less frequent);
    - The complementation of remuneration in situations of impossibility to work derived from accidents at work and occupational illness is another of the social benefits provided in several conventions;
    - Retirement protection through the supplementation of retirement pensions appears in some agreements, usually through the provision of defined contribution pension plans and, more rarely, defined benefit plans, almost always only for workers who receive this benefit by application of previous versions of the agreement;
    - Finally, a number of benefits were found related to the worker's personal or family situation, such as the granting of school subsidies, support for children with

disabilities, birth or adoption allowances and child allowances, as a rule associated with attendance to kindergartens and nurseries.

30. Another issue being considered for the first time concerns the rights of workers collective representation structures (no. 4.4.8), which are mentioned in 45 of the agreements published in 2016, almost all (40) of which are first agreements and overall revisions. Most references refer to union activity in the enterprise and to the status of trade union representatives, but work councils are also mentioned. In addition to the references to the legal regime and the implementation or development of some of the provisions that integrate it, there are some innovative solutions, such as:
    - The extension to union delegates of the possibility of convening mass meetings when there are no trade union or inter-union commissions;
    - The regulation of the access of union representatives to the premises of the enterprise in other situations than participation in mass meetings, which is provided by law;
    - The implementation or development of matters subject to the right of information and consultation of trade union delegates;
    - The extension to trade union associations of certain rights of information which the law provides for work councils, in particular in the field of the organisation of working time;
    - The recognition of the right of union representatives to meet with management bodies or management;
    - The granting of credits for working time longer than those provided by law in favour of trade union delegates or trade union leaders;
    - And the provision of regimes for the requisition of workers for the exercise of union functions, without loss of remuneration.
31. The report concludes with a reference to collective bargaining in public administration (cf. Chapter V RNC), which presents the main features of the respective legal regime, given the differences with regard to the regime applicable to labour relations under private law. The data presented are almost exclusively of a quantitative nature and derive from the elements published by the Directorate-General for Administration and Public Employment (DGAEP), the most important being:
    - The total number of IRCTs (cf. footnote no. 7) published was 425, of which 3 Collective Career Agreements (cf. footnote no. 2), 414 Public Employer Collective Agreements (cf. footnote no. 5) and 8 Accession Agreements (cf. footnote no. 4);

- Most Public Employer Collective Agreements, (cf. footnote no. 2) deal with the duration and organisation of working time, and there are also several agreements which include safety and health issues and joint committees;
- Almost all agreements involve local administration (421), with only 3 pertaining to regional administration and one to central administration;
- With regard to workers, there is a strong predominance of agreements negotiated by unions (372), with only 8 agreements granted by a trade union federation. There are also 45 agreements awarded by trade union groups;
- The eight Accession Agreements (cf. footnote no. 4) published in 2016 complied with the local administration agreements.