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CENTRO DE RELAÇÕES LABORAIS

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2015 ANNUAL REPORT

EXECUTIVE SUMMARY

Title: *COLLECTIVE BARGAINING 2015 ANNUAL REPORT (EXECUTIVE SUMMARY)*

Date of publication: July 2016

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EXECUTIVE SUMMARY

1. This is the first report from the series "Collective bargaining annual reports" (RNC) to be published annually by the Centre for Labour Relations, covering the universe of Collective Labour Regulations Instruments [1] (IRCTs), either negotiated or non-negotiated, published in 2015. It also includes the presentation of the main data on the evolution of collective bargaining in the ten years prior to 2015 and a brief analysis of the collective labour agreements in Public Administration this year.

2. It presents an introduction, focusing on the economic and legislation context of collective bargaining. In the first chapter of the 2015 Report, we present some data on the main macroeconomic variables and the second one includes a summary of the most recent changes in the Legal System regarding collective bargaining.

3. Analysing the period between 2005 and 2015 (cf. chapter III RNC), a general overview of collective labour agreements is presented, in a quantitative approach, including the main data relating to:
   - The number of collective labour agreements published each year and their scope, that is, the number of workers covered, either by the total number of the agreements in force or by the agreements published in the different years. In this respect, the number of workers covered by existing collective labour agreements is much higher than the one covered by the agreements published each year. This difference, which has widened considerably since 2011, indicates, on the one hand, that the number of collective labour agreements in force does not decrease significantly and, on the other, that a relevant percentage of the agreements is not updated or renewed regularly (no. 3.2.1);
   - Remuneration, a matter of fundamental importance in collective bargaining, is not analysed in depth because it is dealt with in other publications, in particular in the periodical publications of the Directorate-General for Employment and Labour Relations (DGERT). Anyway, we include some of the data from these publications, from which we can infer that, in the first years (2005 to 2008) of the period, there was a growth in nominal wage variation, followed in subsequent years by a decreasing nominal variation. The deflated wage variation shows much lower

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

values, with negative rates since 2013, although presenting signs of recovery in 2014 and 2015. It is also noted that the average period of effectiveness of the previous wage tables has been increasing in recent years, exceeding 12 months. In 2009, this period was 13.7 months; in 2010 it was 15.9 months, reaching 43.6 months in 2015 (no. 3.2.2);

- The extension of the scope of the collective bargaining agreements, either by the legal provision called Administrative extension of collective agreements[2] or through Accession Agreements[3]. Due to their importance, special attention is given to the Administrative extension of collective agreements (cf. footnote no. 2) and the implications of recent legislative changes, which have led to a radical decrease in the number of published Administrative extensions (cf. footnote no. 2), which only in 2015 presents signs of some recovery (no. 3.2.3);
- The expiration of the agreements, with the presentation of the main data on the procedures for the expiry of agreements that have taken place since 2005, led to the publication of 41 notices of expiry. These have evolved unevenly, and at least in part can be explained by the vicissitudes that the legal regime of the expiry of agreements suffered after the Labour Code of 2003 (CT 2003). Thus, until 2009, the number of notices of expiry published by the Labour Administration in the Labour and Employment Bulletin (BTE) was lower than the number of declined applications because it was considered that whenever the agreement predicted that it would remain in force "until replaced by another", this rule prevailed, under the dispositions of the law. The change of regime resulting from the Labour Code of 2009 explains a large number of notices published that year. The publication of notices has declined in subsequent years, but increased in 2015 (no. 3.2.4);
- Procedures for resolving collective labour disputes, including conciliation, mediation and arbitration (no. 3.3).

4. The analysis shows that, although the number of agreements published in 2015 (138) was slightly lower than in 2014 (152), the number of workers covered by collective labour agreements has increased significantly. It almost doubled compared to 2014 (from 246,643 to 490,377), surpassing the figures recorded in 2012 (327,622) and 2013 (241,539). However, the coverage of the agreements published in 2015 is still very far from what was achieved in previous years, about one third of the average number (1,495,952) recorded in the 2005-2011 period.

   We should also highlight the relationship between the coverage of collective labour agreements and their type: to a large extent, it is the number of collective bargaining

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

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

agreements published which determines the variation in the number of covered workers. This was also the case in 2015, when the increase in workers covered by agreements resulted almost exclusively from the increase in collective bargaining agreements published this year.

5. Most of the report refers to collective bargaining in 2015 (cf. chapter IV RNC), starting with a presentation of the general data on the number of agreements published and their coverage (no. 4.1), including the legal provisions for extending the scope of the agreements (no. 4.2).

6. As for the contracting parties, the high number of Parallel collective labour agreements[4] (around 35% of the total number of collective labour agreements of the year) is worth mentioning, as well as the lack of bargaining circumstances, on the workers side, by non-trade union entities, under the power of delegation set forth in article no. 491 (3) of the Labour Code (CT).

7. The distribution by subtype shows that the vast majority (around 70%) of the 2015 publications correspond to partial reviews, with a significant number of overall revisions (almost 24%) and 9 first agreements (representing 6.5% of the total).

8. The average number of workers covered by type of agreement (Collective Bargaining Agreements[5], Firm-level Agreements or Collective Labour Agreements) in 2015 shows that Collective bargaining agreements[6] have a much higher coverage than the other Collective labour agreements.

9. It was in 2015 (no. 4.2.1) that the modification of the legal regime of Administrative extension of collective agreements (cf. footnote no. 2) of 2014 was more noticeable, with the extension of the criteria for the issuance of Administrative extensions enabling the number of Administrative extensions of collective agreements (36) to more than double comparing to the average for the period 2011 to 2014. Even so, this number is far from what was usual in previous years, being just over a third of the average number of Administrative extensions of collective agreements issued between 2005 and 2010. It should be noted, however, that this reduction is partly due to the decrease in the number of annual IRCT (cf. footnote no. 1) bargaining reports published. Another distinguishing note of 2015 in relation to previous years relates to the reduction of the difference between the number of requests for the issuing of Administrative extensions of collective agreements and the number of published Administrative extensions.

[4] Different collective labour agreements signed by the same employer with different trade unions.
[5] Signed by one or several employers that are not part of an employer organization and one or more trade unions.
[6] Top level branch agreements /Sector agreements.

As for the time between the publication of the agreement and the issuance of the Administrative extensions (cf. footnote no. 2), half of the Administrative extensions of 2015 were issued between 4 and 5 months after the publication of the respective agreement.

10. The content of the 2015 agreements has been subject to two types of analysis: a more general one, in which the agreed terms were registered by large thematic sections (no. 4.3.2); and a more developed one, which focused on three broad areas, where it was sought to study interrelated subjects, so that the thematic nuclei presented some internal coherence: scope of the agreements (geographical, personal and temporal); working time, with a focus on working time flexibility schemes (working time adaptability, working time accounts and compressed working time), overtime work and work on-call[7]; and matters relating to the promotion of workers' qualifications (professional training, student worker status and work of minors) - nos. 4.3.3 to 4.3.5.

11. The choice of these three main themes is due to the following reasons:
    - The information on the scope of the agreements, in their various aspects, seems essential to understand the legal provisions in their essence and the scope of many of the solutions contained in the clauses;
    - Working time is, along with remuneration issues, the most frequently used topic in collective labour agreements, including partial revisions. We also attempted to explore the interrelationships and balances that each agreement finds in the various legal provisions associated with working times. Since it is not feasible to analyse all the themes related to the duration and organisation of working time, some have been selected which correspond to new forms of organisation of working time in which the law grants significant room to collective autonomy (working time adaptability, working time accounts, compressed working time and work on-call[8]), as well as one in which the intervention of collective labour agreements has traditionally played a decisive role (overtime work);
    - The third and last group focuses on the qualifications, firstly because of their importance to the professional valorisation of workers, but also due to the possibility of promoting complementary analysis to the work developed in the Employment and Training Report, where the subject of professional training is considered in another perspective.

[7] On-call means being on standby, ready and available to work.
[8] On-call employees are on standby until called to work.

12. The general analysis (no. 4.3.2) highlights the importance of the issues associated with remuneration and other cash benefits, the validity[9] of the agreements and working time. A second note refers to matters that are only dealt with in the first agreements and in the overall revisions, such as those related to trade union activity, rights and duties of workers and employers and disciplinary power. In the partial revisions, in addition to the expected regulation of the remuneration conditions, there is some openness to bargaining of matters related to the duration and organisation of working time.

13. In the analysis of the application scope of the agreements (no. 4.3.3), the following points are highlighted:
    - Regarding the geographical scope (no. 4.3.3.1), collective labour national agreements, which account for almost 75% of the agreements published in 2015, are largely predominant;
    - Regarding the personal scope of application (no. 4.3.3.2), in addition to the information necessary for the delimitation of individual employment relationships covered by the agreement, some clauses were found on the individual adherence of non-union affiliated workers, sometimes with regulation on conditions and effects, including the obligation to pay a contribution for bargaining costs;
    - The temporal scope of application (no. 4.3.3.3) is regulated in almost all agreements, even in partial revisions, although to a variable extent, depending on the aspects dealt with, which include: the validity period (cf. footnote no. 9), automatic renewal, the terms on which the expiration and revision of the agreement should be promoted and, more rarely, the grace period [10] and expiry;
    - The agreements negotiated in 2015 remained unchanged for less than 24 months in most situations (about 58%), but there is a significant percentage of cases in which this time was over 4 years (slightly more than 28%);
    - As far as the validity provided for in the agreements (cf. footnote no. 9), the duration of 24 months for the general clauses prevails, with most agreements providing for an autonomous period of time for wage tables, almost always of 12 months;
    - The study of the clauses of the few agreements (only 11) which refer to expiry and grace period (cf. footnote no. 10) (no. 4.3.3.4) shows that they comply with the legislation in general, with a difference or two as to the minimum time of the grace period (cf. footnote no. 10);

[9] Period of time in force.
[10] Survival of ended but not renewed collective agreements under certain conditions and for some time.

- Specifically on expiry, the 7 notices published in 2015, 4 of which relate to firm-level agreements in the area of transportation, were analysed. In all 7 cases, the expiry was proposed by the employers;
- Lastly, due to its relative novelty, the few clauses (in only three cases) dealing with the application, in combination or otherwise, of rules of different agreements (no. 4.3.3.5) are taken into account.

14. Concerning working time, flexibility schemes (working time adaptability and/or working time accounts) arise in 36 agreements. The distribution of these by subtype shows that the subject is treated in almost all of the first agreements (7 out of 9) and in about half of the overall revisions, with an increased tendency to deal with these issues in relation to the previous two years (no. 4.3.4.2).

15. Working time adaptability in agreements (no. 4.3.4.3) do not deviate much from the legal framework, although there are some specificities such as:
    - The requirement of agreement by the worker to be subject to the system of collective working time adaptability or to a greater extension of normal working period;
    - The predominance of maximum limits for normal working period (PNT) lower than those allowed by law for working time adaptability to IRCTs (cf. footnote no. 1), with these limits usually being set at 2 hours a day and 50 per week;
    - Also in relation to the period for the average PNT tabulation, the agreements rarely use the maximum duration allowed by law (one year), with a large diversity in the solutions; the period of shorter duration found was 10 weeks;
    - When the different timetables to be implemented in the reference period are not previously fixed, the agreements establish the notice period for the working time adaptability, accepting varied solutions, ranging from 5 to 15 days, sometimes with short-term notices in emergency situations;
    - Some agreements exclude the possibility of using the working time adaptability on non-working days;
    - When the working times actually met did not allow for the average duration of the PNT to be respected, as a rule, the agreements regulating this point provide for the payment of unpaid hours with extra compensation, almost always equal to the one due for overtime work;
    - The conditions for the extension of the working time adaptability to workers not originally covered by it and, on the opposite side, dispensation or exemption from subjection to that scheme are two other issues which frequently come up in the

agreements dealing with this matter, where also different or complementary solutions to those encompassed in the law are occasionally found.

16. Working time accounts (no. 4.3.4.4) are dealt with in 25 of the 2015 agreements, of which the large majority (20) are collective labour agreements. Also here, the agreement regimes are not very different from the general features outlined in the law, with some specificity worth noting. As such:
    - Some agreements require that the employer justifies the need to work on a working time accounts basis, stating several motives or reasons, an issue not addressed by the law, and there are cases where it is admitted that the use of the working time accounts should be the initiative of the employee and for reasons of the employee's interest;
    - Sometimes the provision of work in a working time accounts basis on weekly rest days or holidays is excluded;
    - Unlike working time adaptability, in most agreements working time accounts use the maximum duration allowed by law (4 hours daily, 60 weekly and 200 annually);
    - The period of compensation or adjustment of the balance of hours is fixed in the majority of agreements, being the most common solution to allow the compensation in time to be made until the end of the first quarter of the subsequent calendar year;
    - The advance notice required to advise the worker of the need to carry out additional hours is, more often than not, fixed at 5 days;
    - When the additional work is not compensated in time there are varied solutions for the compensation in cash. In some cases the payment of an added value equal to that due for the execution of overtime work is foreseen. In other cases, different values are stipulated, such as the payment of hours not compensated with increments of 50% or 100%. Also regarding remuneration, there are agreements that establish the right of the worker to receive a specific benefit simply by being subject to the working time accounts regime, regardless of whether the work performed exceeds the PNT;
    - The agreements very frequently foresee the hours not worked as compensated when the adjustment is not carried out in the period of compensation for reasons oblivious to the worker and the obligation of the employer to provide the respective current account periodically.
17. Compressed working time (no. 4.3.4.5) are foreseen in 3 of the 2015 agreements, all of them allowing for the extension of the normal working period up to 4 hours per day. For situations of concentration of work in 3 days per week, it is expected that the

calculation of the PNT will be done within a period of 45 days, as provided by law, but there is one case stating that this period may extended to 90 days with the approval of the worker.

18. The on-call (cf. footnote no. 7) (no. 4.3.4.6) correspond to a situation created by collective labour agreements, which are not set forth by law, which is why this topic was analysed in greater depth, being mentioned in 13 of the agreements of 2015, of which 6 are Parallel collective labour agreements (cf. footnote no. 4). The most common features of these regimes can be summarised as follows:
    - The nature of the subject, closely linked to the demands of the productive process or the provision of essential public services, implies its inclusion almost exclusively in Firm-level agreements;
    - As a general rule, the regime is restricted to certain categories of workers, whose functions justify being on stand by and available on-call outside their normal working period;
    - Among the rights associated with on-call situations is the granting of variable remuneration supplements and the employer's obligation to ensure transport or travel costs in the event of a call.
19. Overtime work (no 4.3.4.7) is present in almost all collective labour agreements. It is regulated by all the first agreements and the overall revisions published in 2015 (with one exception), as well as in about 22% of the partial revisions, mainly focused on remuneration changes. The main points of the agreement regimes analysed are:
    - The implementation or development of the basis provided by law for the use of overtime work;
    - The variety of solutions regarding the extra compensation due for the provision of overtime work, which includes the compliance with the current legal regime, the enforcement of values identical to those established by law before the decrease in 2012 and the forecast of substantially higher increases;
    - The imposition of the duty of the employer to support increases in expenses (such as meals and transportation) in which the worker has to incur due to working outside the usual working time parameters;
    - The relative frequency of rules on the link between overtime work and night work or shift work, as well as on the combination with the working time adaptability and working time accounts regimes;
    - The situations of exemption from the provisions of additional work granted or recognised to the worker (such as health reasons, rights associated with parenting or student-worker status).

20. Regarding the promotion of workers' qualifications (no. 4.3.5), education and vocational training is the one that finds the greatest development in the agreements analysed, although only in the first agreements and in the overall reviews (no. 4.3.5.1). In this area, it is important to note (no. 4.3.5.2):
    - The relevance granted by some agreements to 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 importance of education and vocational training, both initial and ongoing, for the performance of regulated professions;
    - The value that certain agreements grant to the role of employees who work as trainers in the company;
    - The provision of solutions to regulate the effects of attending education and vocational training within working hours;
    - The provision of the minimum number of hours of continuous training per year, as required by law;
    - And the duties of continuity after attending certain training courses, when the employer pays these.
21. The status of student-worker appears essentially in first agreements and overall revisions, appearing in partial revisions when there are updated compensation clauses that include it (no. 4.3.5.1). The contents (no. 4.3.5.3) deal mainly with flexibility and reduction of working times in order to reconcile the academic paths with work performance. Some agreements provide for duties related to the employer's partially financing the costs associated with the purchase of school supplies. A frequent solution is the forecast of the termination of benefits associated with the student-worker status in case of lack of success at school.
22. The work of minors (no. 4.3.5.4) is dealt with in about 10% of the agreements published in 2015. In addition to the classic reference to the law or its duplication, in whole or in part, there are some innovative solutions or points also provided for by law. Of these, the prohibition of hiring of minors found in some agreements, as well as restrictions, even tighter than the ones mandatory by law, imposed on the admission of minors or the provision of overtime work or night work, are highlighted. It is also worth noting, due to its originality, the obligation to coordinate the booking of holidays of minor workers with those of the respective parents or guardians, even if they do not provide service in the company.

23. The legislative framework of collective bargaining in Public Administration (cf. chapter V RNC) is different from the regime applicable to labour relations subject to the Labour Code, so the part of the report on this subject is preceded by a brief explanation of that framework, highlighting the main stages of legislative developments and the most relevant particularities in relation to the common labour rules, in particular those relating to the type of agreements, the legitimacy of entities with negotiating capacity, the personal scope of the agreements and their content (no. 5.1).

24. The analysis performed, based on the data collected on the DGAEP website, was exclusively quantitative, focusing on the period from 2009 to 2015 (no. 5.2). The most relevant aspects are the following:

    - The total number of IRCTs (cf. footnote no. 1) published was 534, of which only 7 are Accession Agreements (cf. footnote no. 3) and almost all Collective Bargaining Agreements of Public Employees (ACEP) - 521;
    - The years 2014 and 2015 concentrate the overwhelming majority of agreements (489), with 156 ACEPs published in 2014 and 331 in 2015, with only one Collective Bargaining Career Agreement in each of these years;
    - This concentration was due to the bargaining of the reduction of the normal working hours to limits lower than 40 hours, which the law established in 2013 and which the Constitutional Court declared that it could be subject to change by collective bargaining. This decision, made at the end of 2013, together with the subsequent declaration of unconstitutionality (in 2015) of the rule that required the intervention of representatives of the Government in the ACEP execution in the local administration, led to this exponential growth of agreements in the last two years of the period under review.

Regarding 2015 specifically (no. 5.3), the clear breakdown of the year into two periods is highlighted, with the temporal border being the Decision of the Constitutional Court of October of that year. More than 75% of the 331 ACEPs were published in the last three months of the year, all of them relating to the duration of the normal working period.