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Discretion and (de)centralization in wage bargaining in the construction, hospitality, urban transport and waste management sectors: A Study on Portugal

BARWAGE Report No. 10

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July 2024



Funding

BARWAGE is a project funded by the European Union (SOCPL-2021-IND-REL, ID 101052319). © 2024 Utrecht University, Central European Labour Studies Institute (CELSI), Fondazione Giuseppe di Vittorio, WageIndicator Foundation. All rights reserved.

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Please cite as: Leonardi, S. (2024). Discretion and (de)centralization in wage bargaining in the construction, hospitality, urban transport and waste management sectors: A Study on Portugal. *BARWAGE Project Report No. 10*. Amsterdam: WageIndicator Foundation. DOI: 10.5281/zenodo.13239312.

Abstract

For many years, the system of collective bargaining in Portugal could be described as a system dominated by sector level agreements, with high coverage guaranteed by a pervasive practice of administrative extension decrees. Hard hit by the international financial crisis, in 2011-13, Portugal suffered a deep deregulation of the labour market and collective bargaining, under the neoliberal diktat of the Troika. The imposed freezing of the extension mechanism had a very strong impact on the level of collective bargaining coverage, almost collapsing, while firm-level bargaining was now free from any coordination by the national sector contract. Under the last Socialist Party Governments, the role of collective bargaining in the wage setting has returned to play a more relevant role, and in 2022 83% of all workers in the private sector was covered by some collective agreement. Minimum wages have evolved positively, and Portugal is today at the top of the EU Member States, with a statutory minimum wage equal to the 66% of the median. The problem seems to be the very modest growth of the wage levels above the minimum, as trade unions seem to be too weak for pushing a more dynamic collective bargaining at the different levels.

Keywords: Portugal, industrial relations, wage setting, collective bargaining

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BARWAGE

BARWAGE investigates the potential of collective bargaining as a tool for ensuring adequate minimum wages in the European Union. It explores the size of four wage-setting arenas across EU countries and industries: the national or peak level, sector-level collective bargaining, firm-level collective bargaining, and individual (non-collective) negotiations. BARWAGE uses microdata to identify what share of the workers earning under 110% of the statutory minimum wage are covered by sectoral or enterprise collective bargaining. Using coded data of 900 CBAs from 9 EU countries, the presence and nature of pay scales in the sectoral and firm-level collective bargaining agreements (CBAs) are analysed. To deepen the insight into the impact of collective wage bargaining, national level data will be used to detail the wage arenas in 2 EU countries (Netherlands and Italy). The project lasts 2 years (2022-2024) and includes 6 work packages.

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WageIndicator Foundation collects, compares and shares labour market information through online and offline surveys and research. Its national websites serve as always up-to-date online libraries featuring (living) wage information, labour law and career advice, for employees, employers and social partners. In this way, WageIndicator is a life changer for millions of people around the world.

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Introduction

This study provides evidence on the general characteristics of the Portuguese wage-setting system; the most important changes made in the last 10-15 years and ongoing trends; the typical composition of wages at the national level; and the role and weight that various trends and institutions play: the legal minimum wage, the national sectoral contract, decentralised bargaining, individual negotiation. Data are primarily based on desk research and expert consultations. Unlike Italy, and much more similar in this to Spain and France, the State and the law play a very prominent role in Portugal, in the regulation of industrial relations (Leonardi, 2016). Based on the freedoms and rights solemnly recognized by the new democratic Constitution, after the Revolution of 1974, all the milestones of a modern system of industrial relations have been ruled by some broad and ad hoc legislation, emanated in the second half of the 1970, although heavily amended by the deep reforms of the years 2003 and 2011-13. This is the case for the trade union freedom, workplace representation, collective bargaining and strike.

Trade unionism

In Portugal, as in the rest of the Latin and Southern European countries, there is trade unions pluralism, rooted on ideological backgrounds, with two main confederations, formally established at the end of the 1970: the General Confederation of Portuguese Workers (CGTP-IN, Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional), and the General Union of Workers (UGT, União Geral de Trabalhadores). The former is very close to the communist party, and the latter to the socialist party and to the liberal-conservative PSD.

The trade union density in the country averaged 17% between 2010 and 2019 (ETUI, 2024); and 15-16% in 2018 (Campos Lima and Naumann, 2023). Such an average rate is very differentiated across the sectors. The average density in the private sector is below 10%, in the public sector it is close to 30%. If we consider, for instance, the four sectors we focus more in the BARWAGE study, the situation is the following (Campos Lima and Naumann, 2023):

- o 24% in transports,
- o 12% in waste management,
- o 3,4% in accommodation,
- o 2% in construction.

The workers' representation in the workplace is exercised, as in Spain and France, through a dual channel. The issue is ruled by a law of 1976 (Lei Sindical), the same year of the new democratic Constitution, and sees a prevalence of the elective but de facto unionised works council (Comissões de Trabalhadores), operated by the company sections of the various headquarters. In terms of coverage, however, it plays a rather marginal role, estimated at around 8%, due to the very small average size of the production units (Stoleroff and Rocha, 2014).

Data from the Ministry of Labour show that less than 5% of all companies in the private sector have unionised workers, and there are less than 300 works councils registered at the Ministry.

The signatory employers can be companies belonging:

- o to one specific economic group as for instance the ACT at the telecom-group MEO, or
- o to a sector, without a multi-employer agreement signed by an employers' association, as for instance in the insurance sector.

Collective bargaining

For many years, at least until 10 years ago, the system of the collective bargaining in Portugal could be described, in a nutshell, as it follows:

- o A system dominated by branch agreements, with high coverage guaranteed by pervasive practice of “extension decrees” (Portarias de Extensão)
- o Large part of agreements negotiated 1975-1985, many without major changes since then (except wage tables)
- o No articulation between branch and company level
- o Employers’ pressure for renegotiation until 2003-4/2009 blocked by labour law: *sobrevigência*
- o Broad regulatory framework, but no bargaining process.

The Collective Bargaining Act of 1979 (Lei dos Instrumentos de Regulamentação Coletiva) established the foundations of the collective bargaining regime. These include (Campos Lima and Naumann, 2023):

- o the favourability principle (*favor laboratoris*), most favourable treatment of workers;
- o the rule that an agreement can be ended only by joint decision of the signatory parties and no party can withdraw unilaterally;
- o the extension of agreements by ministerial order.

In Portugal there’re three types of legally binding agreements without articulation:

- o at the industry level or professional/occupational agreements between unions and employers’ associations (CCT, *Contrato Coletivo de Trabalho*);
- o agreements between unions and a group of companies not represented by an employers’ association (ACT, *Acordo Coletivo de Trabalho*);
- o single employer agreements (AE, *Acordo de Empresa*). The lower-level ACT or AE agreements prevailed over industry-level agreements.

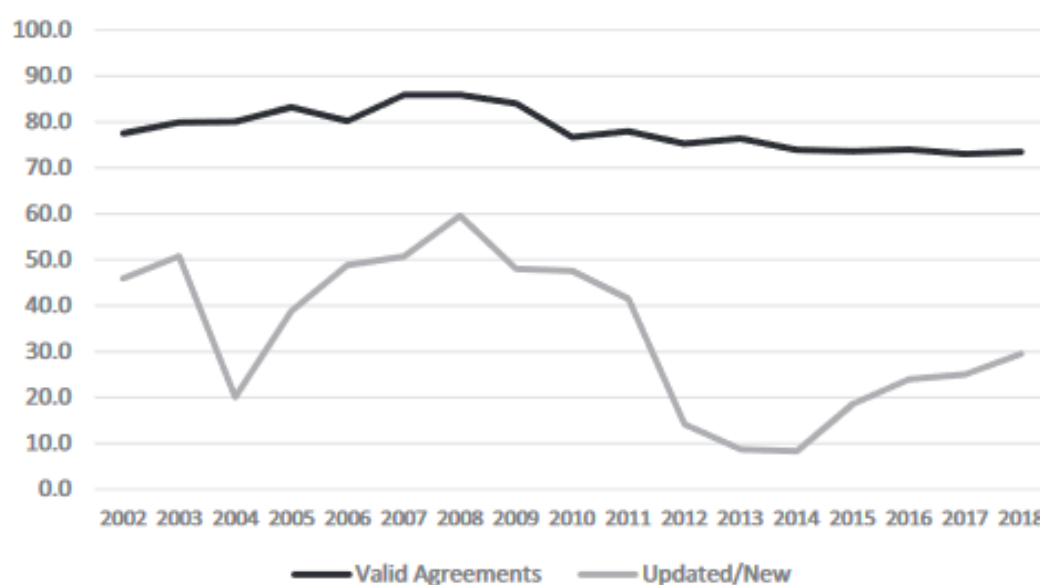
The national collective labour agreement (CCT), an authentic pillar of the Portuguese industrial relations system, has the function of establishing uniform sectoral discipline.

Decentralised bargaining at company level (ACT and AE), however, is relevant but mostly limited to a part of the largest companies. And this is due to the extremely small size of the companies - mostly small and very small - and consequently the absence of a real trade union actor to negotiate them. Here, evidently, the discretion of employers, albeit in formal compliance with the national sector contract, plays a role of absolute importance.

From 2002 to 2018, the evolution of the distribution of workers covered by collective agreements at industry level (CCT, 92%), encompassing groups of companies (ACT, 4%), and at single company level (AE, 4%), remained almost constant (see Figure 1).

In Portugal all agreements, both sectoral and company-wide, are archived in a ministerial database. Each employer is obliged to periodically fill out a questionnaire in which he must provide a series of information relating to the application of the contracts. A figure that favours more exhaustive monitoring, but which can lead to some interpretative distortions, for example, regarding the date of stipulation or the difference between the regulatory and salary contract. The case of Portugal is typical, where over 50% of companies declare that they apply a collective agreement, without specifying that perhaps it was in the 1980s, when today the renewals of the economic part do not exceed 7% (Stoleroff, 2016).

Figure 1 – Coverage rates of valid agreements and of updated/new agreements, 2002/2018



Note: The coverage of valid agreements corresponds to the concept of adjusted coverage, as a proportion of all wage workers, excluding those in public administration.

Source: Ministry of Labour, Solidarity and Social Security, DGERT and GEP/Quadros de Pessoal DGERT/MTSS (2020).

The extension decrees have for years guaranteed a very high collective bargaining coverage, corresponding to 1.3 million workers in 2010. Radical changes of the system were adopted already during the first decade of the new Century, very much oriented in relaxing the rules concerning the labour law protection and the pro-union industrial relations. The most important change in legislation on collective bargaining occurred during the creation of the Labour Code 2003/4, and reversed the favourability principle and allowed unilateral withdrawal from collective agreements. Once the favourability was eliminated from legislation, the decisive criterion for the application of a CBA, since then, is its level. Company agreements override the sector agreements. No significant derogations are possible under the present labour legislation.

In 2009, the new reform carried out by the Socialist Party government amended the Code, approved in 2003, which allowed employers to withdraw from agreements, but in practice several withdrawals were blocked because the respective agreements had a clause that guaranteed that the only way to

cancel the agreement was to sign another one with the same partners. The amendment of the Code in 2009 produced the reduction of the “sobrevigência” (ultra-activity) and the introduction of “caducidade”. In this way trade unions were forced to renegotiate expired agreements. Reforms that, at that time, provoked the strong opposition of the CGTP, while the UGT, under the General Secretary Joao Proenca, supported the revision. Nevertheless, social pacts on increase of national minimum wage, in the years 2007-2011, included CGTP within that social concertation. It was the last social pact CGTP signed.

Hardly crashed by the international financial crisis, in the years 2011-13, Portugal was subjected to a deep deregulation of the labour market, under the neoliberal diktat of the Troika. Its enthusiastic implementation by the government represented a powerful acceleration in the ongoing process of deregulation. The Memorandum of Understanding (MoU) prescribed several very severe reforms (section 4), such as to reduce unemployment benefits, to reduce employment protection to make overtime cheaper, to enhance an “organised decentralisation” of wage setting. All these prescriptions were implemented by the legislation, with very detrimental effects on the overall quality of the wage and working condition of the people and workforce.

The objective of fiscal consolidation, and therefore of containing public spending, had immediate and severe consequences on public workers with the multi-year freezing of collective bargaining and the stop to the staff turnover. Legitimised by the Troika, the government adopted its own neoliberal agenda, imposing (Stroleroff and Rocha, 2014):

- o a three-year freeze on bargaining (2012-14);
- o a cut in nominal wages between a minimum of 3.5% and a maximum of 10%;
- o the suspension of 13th and 14th wages;
- o the increase in weekly working hours from 35 to 40 hours, for the public administration employees;
- o the 50% reduction in the cost of overtime;
- o the turnover block.

The freezing in the use of the traditional tool of the extension mechanism, through administrative decrees, had a very strong impact on the overall level of the collective bargaining coverage. The Labor Code 2003/4 in combination with the complete freeze in the issuing of extension orders by the Ministry of Labour provoked the first drastic fall in the number of collective agreements and workers covered. The reforms under the Troika MoU made the rest. The ultra-activity of expired agreements was increased up to 5 years, instead of 18 months, with the abrogation of the extension effectiveness of national sector agreements (Portarias de Extensão) if the employers' association does not reach 50% of the sector.

Between 2008 and 2013 the total number of agreements published during a year dropped from 295 to 94, with national sector agreements falling from 173 to 27, of which only 9 were supported by the erga omnes extension mechanism. Workers covered by an updated contract collapsed from just under 2 million to just over 200 thousand (Source: UGT, 2013). Policy of “no extensions” pushed employers out of associations and to stop bargaining.

The reforms of 2011-12 also vanished the promise of an “organised decentralising”, provoking a new, remarkable decrease. This was mostly due to the drastic reduction of the importance of branch agreements and the largely ineffective stimulation of company agreements. In Portugal, company agreements are negotiated by unions. A few works councils negotiate agreements that are not legally recognized as such. Company level collective bargaining was now free from any coordination by the national industry wide agreement. As the expert we interviewed pointed out: “This was also the case, but union federations or confederations have always taken countermeasures against this”.

Some commentators – at that time – observed that such a strong push towards decentralisation couldn’t work, because of the very high incidence of the SMEs, with a very low number of works councils to bargain (Cruces, Alvarez, Leonardi, Trillo, 2015).

The strategies of CGTP and UGT have alternated moments of convergence and situations of friction, with the CGTP in the traditional role of antagonistic and anti-capitalist organisation, and the UGT more pragmatic and open to discussion, even with executives and platforms of a clear liberal orientation, as with the Troika government. However, both organisations contributed to weakening the credibility and consensus of the conservative governments, preparing its defeat in the elections of 2015, to the advantage of an unprecedented left-left alliance in the parliament . Based on an agreement with the radical left, the socialist government under PM António Costa adopted several important measures to improve the wages and working conditions, which very much deteriorated under the austerity measures of the years before. For instance, reducing the flexibility in the individual employment contracts, increasing the statutory minimum wage, supporting collective bargaining, enlarging the social support of the welfare state.

Yet, an approved amendment (Law 39/2019 of 4 September) reinforced the mechanisms of arbitration and mediation in collective bargaining and expanded the scope of rights that workers retain when agreements expire, adding parental rights and rights to health and safety at work. “On the other hand – as it is explained by Campos Lima and Naumann – this amendment introduced two potentially disruptive measures: the termination of collective agreements in the event of the extinction of one of the signatory organisations, increasing the opportunities for employers to withdraw from collective bargaining regulations; and the introduction of company referenda by employers’ initiative as a possible alternative to collective agreements”.

In 2023, the Socialist majority in parliament approved a reform in labour legislation that contained some relevant measures, as for instance the presumption of a work relation in platform work, the prohibition of outsourcing by companies that have made collective redundancies or job losses, the criminalisation of undeclared work, and a new type of arbitration that helps to avoid the termination of collective agreements.

Wage setting and components

In Portugal wages can be fixed at different levels, in different regions or sectors. The statutory regulation on minimum wages exists and it’s fixed by decree-law, signed by the Minister of Labor. It is now – per hour, at the current price – 4,85 Euros. Translated into purchasing power standard (PPS) it is 5.19 Euros (WSI, 2024).

Peak level social pacts on wages or wage-fixing play an important role. Several tripartite pacts on minimum wages, wages in general and collective bargaining, have been signed. These agreements are politically binding but not legally binding. In the comment of our interviewed expert: “These are political agreements, not legally binding collective agreements”. Sectoral / multi-employer collective agreements on wages or wage-fixing (e.g., wage floor, pay scales, bonuses) are the main pillar of the system. This is in fact the level which interests by far most workers covered by collective bargaining.

The backbone of the whole system, as we already said, is the sectoral collective bargaining. Overall coordination is provided by the tripartite Standing Committee for Social Concertation where the political exchange between the peak level organisations of employers and unions and the government. Coordination is also provided by at least some of the peak level organisations of employers and unions. There is no wage bargaining in public administration.

Single employer collective agreements on wages or wage-fixing (e.g., wage floor, pay scales, bonuses) exist mostly in large companies. A company agreement in a sector with a sector agreement has priority over the sector agreement.

Individual negotiations on wages between the employer and employee (e.g., employer discretion in base wage, bonuses) exists in areas not covered by collective bargaining and in cases where the CBA defines very low standards and employees negotiate higher standards at the company.

Unilateral employer decision exists in areas not covered by collective bargaining and in cases where the CBA defines very low standards and employers have a large margin to offer better pay and/or conditions.

Translated in numbers and percentages, data from the Ministry of Labour show about 25% of the workforce in the private sector receives the national minimum wage ; about 20% of the workforce in the private sector are covered by collective agreements published in each year. As our expert pointed out: “This likely means that, except these 20% are covered by collective agreements that are renewed every year, but a part is probably covered by agreements that are renewed at a pluri-annual or irregular pace. This makes it difficult to calculate the actual coverage of reasonably updated CBAs. (In a first step it would be necessary to define what is reasonably updated)”.

Still, according to the expert we interviewed, the wage setting mechanisms in Portugal are still relatively stable, “despite strong pressure from employers towards deregulation (since the 1980s) and hostile legislation and hostile government policies in some periods (2002-2005, 2011-2015), the system is still relatively stable”.

Statistics for 2022 show that 83% of all workers in the private sector are covered by some CBA. This includes CBAs from previous decades (since the 1970s). According to the OECD/AIAS, the share of employees covered by a collective agreement in relation to the number of employees with the right to bargain is equal to 77% (2024). Very close to the threshold indicated in the EU directive on adequate minimum wages, which is in fact 80%. The 83% of the total of workers covered by collective agreements are covered by sector agreements (2022).

For what concerns the discretionary space do collective agreements leave for firms and individual employees covered by collective agreements to negotiate higher or lower wages than those agreed upon collectively, it seems that there is no room for the negotiation of lower wages. Higher wages can be negotiated or unilaterally set by the employers. There is no limit for these increases.

Wage setting mechanisms vary between sectors. Taking as examples the four sectors considered in the Barwage comparative study; the situation is the following:

- Construction has four large sector agreements and no company agreements.
- Transportation has many company agreements and several sub-sector agreements
- Waste management has several company agreements and no sector agreements
- Hospitality has several company agreements and several sub-sector agreements

Adequacy of collectively bargained wage

The European Union recently set a target that the wages of 80% of workers should be covered by collective bargaining. In Portugal, nominally, the coverage is 83%. However, de facto, it is lower. According to our interviewee: “It would be necessary to create more incentives to promote collective bargaining”. An important step was done with the reform of labour legislation in 2023.

The European Union recently set a target that statutory minimum wages should be fixed at or above 50% of average wages or 60% of median wages in the country. This might result in a steady growth of the statutory minimum wage in the coming years. During the years 2006-2010 and 2016-2024, the minimum wage has registered raises considerably above the average increase of wages in the economy. In 2019, the national minimum wage represented 83.4% of the median monthly wage and 59.9% of the average monthly wage.

According to the figures released by the ETUI Observatory and published in the last Benchmarking about work in Europe, Portugal is at the top of the list of the 27 EU Member States, with 66% of the median and 47% of the average.

Minimum wages have evolved positively, but the wages above have not followed the same line of growth. Thus, there is now a serious problem because workers in positions that are traditionally linked to relatively high wages do now earn remunerations that are not very far from the minimum wage. One of the reasons for this is the lack of dynamic in collective bargaining, and particularly the trade unions’ lack of bargaining power.

Conclusion and discussions

According to Campos Lima and Naumann: “The deregulation of collective bargaining and of labour market institutions, and the persistent effects of internal devaluation have favoured the proliferation of low-wage jobs and precarious work, including bogus self-employment, intensifying the trend towards dualization. Against this trend, the trade unions have generally followed an inclusive approach, favouring comprehensive collective agreements and their extension to all workers, and participating in significant actions to integrate precarious workers in regular labour contracts” (2023). Marginalisation might also take the form of maintaining the formalities of collective negotiations while they are in fact stripped of their regulatory capacity (employers reduce collective bargaining to very low wage increases and governments block wage bargaining in the public sector).

“It is crucial that unions improve their capacity to make use of political possibilities to push their agenda and to prepare for highly probable attacks in the future. At the same time, it is important that unions continue their efforts in consolidating and extending their organisational capacities in terms of members, activists and effective structures”.

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