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EUROPEAN SOCIAL CHARTER

17th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF PORTUGAL

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29

for the period 01/01/2017 – 31/12/2020

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13 April 2022

CYCLE 2022

EUROPEAN SOCIAL CHARTER

National Report on the implementation of the European Social Charter

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THE GOVERNMENT OF PORTUGAL

Labour Rights

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29

CYCLE 2021

17Th Report

submitted by **Portugal**

for the period from 1 January 2017 to 30 December 2020

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29)

in accordance with the provisions of Article C of the revised European Social Charter and the Article 21 of the European Social Charter, which the instrument of ratification was deposited on 30 May 2002.

Also includes response to the European Committee of Social Rights regarding the 2014 Conclusions (relating to the 9th Report)

In accordance with Article C of the revised European Social Charter and Article 23 of the European Social Charter copies of this report

have been sent to

the General Confederation of Portuguese Workers – National Trade Union (Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional),

the General Workers' Union (União Geral de Trabalhadores)

and

the Confederation of the Portuguese Industry (Confederação da Indústria Portuguesa)

Preliminary remarks

Portugal hereby submits its 17th Report (2021 cycle) that has been prepared in accordance with the reporting system adopted by the decision of the Council of Ministers (CM (2014)26), of 2 April 2014, for the presentation of the national reports concerning the implementation of the revised European Social Charter.

This report is a follow-up report on thematic group 3 on labour rights, which covers Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29 of the Revised European Social Charter. It will follow up on previous reports and provisions on which the European Committee of Social Rights (henceforth the Committee) has concluded either that they do not comply or is awaiting further information and also informations regarding Portugal's response to the difficulties that came with the Covid-19 Pandemic.

The data will respect the requested reference period, which is from 1 January 2017 to 31 January 2020.

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Article 2 – The right to just conditions of work

Article 2§1 - Reasonable working time

1. Current Legislation and Enforcement:

The Labour Code (CT) considers in article 197 working time to be any period during which the worker carries out the activity or remains engaged in its performance, as well as the following interruptions and breaks that are considered included in working time:

a) The interruption of work as considered as such in a collective labour regulation instrument, in internal company regulations or resulting from company practice;

b) The occasional interruption of the daily working period inherent to the satisfaction of the worker's unpostponable personal needs or resulting from the employer's consent;

c) The interruption of work for technical reasons, namely cleaning, maintenance or adjustment of equipment, change of production programme, loading or unloading of goods, lack of raw materials or energy, or due to weather conditions affecting the company's activity, or for economic reasons, namely a decrease in orders;

d) A meal break during which the worker has to remain at or near his/her usual work area in order to be called back to work normally if necessary;

e) The interruption or pause in the working period imposed by health and safety at work regulations.

The violation of the above is a serious administrative offence. Table 1 lists the violations of Article 197 of the Labour Code regarding Working Time.

Table 1 - INFRINGEMENTS REGARDING THE DURATION AND ORGANISATION OF WORKING TIME THAT WERE SUBJECT TO SANCTIONS, 2017/2019

Subject	2017	2018	2019
Duration and organisation of working time	1.031	1.068	956
Working time	0	0	0
Recording of accessible working time	856	857	779

Content of the working time register	110	126	118
Record of employee providing services outside the company	6	7	8
Storage period of the working time record	5	4	6
Adaptability	0	8	1
Reference period	1	0	0
Time Bank	19	7	7
Working Hours	479	534	1.999
Rest break	25	34	22
Daily rest	32	28	21
Preparation of working hours	3	7	4
Mandatory elements of the working time table	227	258	275
Identification of workers	12	21	17
Display of the work schedule	166	168	1.642
Alteration of working hours	10	11	8
Exemption from working hours	0	0	1
Shift work schedule	4	7	9
Part-time work	0	4	2
Shift work	36	50	42
Night work	1	1	1
Overtime work	85	103	104

Working conditions for overtime	3	2	6
Overtime limits	36	20	26
Record of overtime work	44	77	63
Compensatory rest	2	4	9
Weekly rest period	26	31	24
Teleworking	2	0	1
Monitoring driving and resting conditions in road transport	111	233	15.876

Source: Information System of ACT

When we talk about public sector workers, it is worth informing that in terms of working time, Law no. 18/2016, of 20 June, which amended the General Labor in Public Functions Law (LTFP) and reinstated the 35 hours per week as the normal working period for public sector workers, operated the main legislative change. As we have previously noted, Law No. 68/2013 of 29 August increased the duration of working time to 8 daily hours.

Currently the CT governs the organisation and working time of public sector workers, with the specifications contained in the LTFP. The normal work period cannot exceed 7 hours per day and 35 hours per week; the workday is interrupted by a rest period of no less than 1 hour and no more than 2 hours, and the worker cannot perform more than 5 consecutive hours of work.

Pursuant to Article 105(1)(a) of the LTFP the maximum weekly working hours is 35 hours (without prejudice to the existence of lower weekly working hours provided for in special legislation and in the case of special working hours regimes), whereby Article 105(1)(a) establishes that "(...) *the reduction of the maximum limits of normal working periods may be established by collective labour regulation instrument, which may not lead to a reduction in the level of remuneration or any unfavourable change in working conditions*".

A study prepared by the Directorate General for Administration and Public Employment (DGAEP), entitled "The adaptation of work organisation models in Central Public Administration

during the COVID-19 pandemic: difficulties and opportunities"[1]. The goal of this study is to interpret the strengths and weaknesses, as well as the potential and possible threats resulting from the implementation of new models of work organisation in Central Public Administration, and in particular telework.

As for the security forces, under paragraph 1 of Article 27 of the Statute of the Military of the GNR (EMGNR), approved by Decree-Law No. 30/2017 of 22 March, it is established that the "exercise of police functions by the military of the Guard meets a reference schedule".

As a result of this statute, and by force of paragraph 2 of the same article, Ordinance No. 222/2016, 22 July[2], was approved, which "establishes and regulates the weekly reference schedule of the military of the National Republican Guard", which provides in paragraph 1 of its article 2 that the "maximum working period of the military of the Guard is 40 hours per week (...)". Also in the spirit of paragraph 2 of the same article, it is stated that the "minimum rest between services should not be less than 12 hours, except for properly justified service needs".

The following table provides a breakdown of the number of labour inspectors who were available to monitor legal provisions regarding the right to adequate working conditions at the workplace during the reference period 2017/2020.

Table 2 - EVOLUTION OF THE NUMBER OF LABOUR INSPECTORS 2017/2020

2017			2018			2019			2020		
H	M	T	H	M	T	H	M	T	H	M	T
90	213	303	95	210	305	85	207	292	111	235	346

Source: ACT Information System

The following table shows the inspection activity according to the following indicators:

→ Number of inspections where one or more aspects of labour law were inspected;

→ The numbers of establishments inspected, and

→ Number of workers covered by the inspection.

[1] "A adaptação dos modelos da organização do trabalho na Administração Pública central durante a pandemia COVID-19: dificuldades e oportunidades",

[2] The legal provision was already contained in the previous legal diploma that approved the EMGNR (Decree-Law 297/2009, of 14 October).

Table 3 - INSPECTIONS, ESTABLISHMENTS INSPECTED AND WORKERS COVERED, 2017/2019

	2017	2018	2019
Inspection visits	37.482	38.287	31.455
Initiative	13.247	12.293	11.370
Requested	8.215	9.757	10.145
Initiative and requested	2.282	1.636	2.220
Second and other visits	13.738	14.601	7.720
Establishments visited	24.584	25.200	24.189
Initiative	13.579	13.080	11.557
Requested	8.613	10.246	10.280
Initiative and requested	2.392	1.874	2.352
No. of Workers	317.838	546.288	366.651
Men	182.426	318.300	218.644
Women	135.412	227.988	148.007

Source: ACT Information System

The following table indicates the total number of inspections carried out by economic activity.

Table 4 - NUMBER OF INSPECTIONS BY ECONOMIC ACTIVITY, 2017/2019

Economic Activity CAE (NACE) - rev. 3	Inspection visits		
	2017	2018	2019
A - Agriculture, animal husbandry, hunting, forestry, and fisheries	933	784	652
B - Extractive industry	180	141	172
C - Manufacturing industries.	5,190	5,303	4,639

D - Electricity, gas, steam, hot and cold water, and air conditioning	57	74	38
E - Water supply; sewerage, waste management and remediation activities	325	385	253
F - Construction	11,257	11,353	8,025
G - Wholesale and retail trade; Repair of motor vehicles and motor cycles	4,394	5,011	4,119
H - Transport and storage	1,826	1,944	2,032
I - Accommodation, restaurants and similar	4,512	3,151	3,147
J - Information and communication activities	838	473	286
K - Financial and insurance activities	221	247	237
L - Real estate activities	857	999	643
M - Consulting, scientific, technical and similar activities	718	1,028	692
N - Administrative and support service activities	2,633	3,301	3,024
O - Public administration and defence and compulsory social security	446	468	408
P - Education	321	409	278
Q - Human health and social support activities	1,529	1,855	1,734
R - Artistic, performance, sporting and recreational activities	277	452	215
S - Other service activities	785	804	763
T - Activities of households as employers of domestic staff and production activities of households for own use	70	33	43
U - Activities of international bodies and other foreign institutions	1	1	0

NACE Ignored	112	71	55
Total	37,482	38,287	31,455

Source: ACT Information System

The following table indicates the number of workers covered by the inspections by economic activity.

Table 5 - NUMBER OF WORKERS COVERED BY INSPECTIONS BY ACTIVITY, 2017/2019

Economic Activity CAE (NACE) - rev. 3	Number of workers		
	2017	**2018**	**2019**
A - Agriculture, animal husbandry, hunting, forestry, and fisheries	5.042	4.687	3.306
B - Extractive industry	2.462	3.920	2.635
C - Manufacturing industries.	114.354	136.833	160.806
D - Electricity, gas, steam, hot and cold water, and air conditioning	138	1.445	75
E - Water supply; sewerage, waste management and remediation activities	2.613	2.470	2.542
F - Construction	26.358	29.385	28.143
G - Wholesale and retail trade; Repair of motor vehicles and motor cycles	25.324	27.213	28.986
H - Transport and storage	16.409	38.089	22.482
I - Accommodation, restaurants and similar	19.830	15.219	13.246
J - Information and communication activities	8.312	4.210	8.461
K - Financial and insurance activities	29.471	38.240	2.702

L - Real estate activities	911	1.392	1.861
M - Consulting, scientific, technical and similar activities	3.445	10.722	9.215
N - Administrative and support service activities	34.353	45.414	39.975
O - Public administration and defence and compulsory social security	1.234	2.160	8.184
P - Education	2.214	2.403	2.791
Q - Human health and social support activities	20.249	27.349	24.682
R - Artistic, performance, sporting and recreational activities	788	1.962	1.082
S - Other service activities	4.127	6.002	5.190
T - Activities of households as employers of domestic staff and production activities of households for own use	28	25	40
U - Activities of international bodies and other foreign institutions	2	4	1
NACE Ignored	174	294	246
Total	317.838	399.438	366.651

Source: ACT Information System

2. Replies to the Committee questions from the 2014 Conclusions

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

According to the information provided above and in accordance with article 197 of the CT, the inactive working times but which presuppose permanence and availability of the employee are considered working time.

3. Measures in response to COVID-19 pandemic

With regard to support measures for workers and their families in the context of the pandemic, it is important to highlight support measures in the context of suspension of school and non-teaching activities, social protection measures for illness and parenthood, and alternative ways of providing work, which are legally based on the provisions of Decree-Law no. 10-A/2020, of 13 March, and complementary legislation.

Also, in response to the consequences of the pandemic, Article 6 of DL no. 10-A/2020, of 13 March, suspended the legal limits for overtime work [Articles 120(2) and (3) and 163(1) of the General Labour Law in the Public Sector (Law No. 35/2014 of 20 June)], and 228(1) to (3) of the Labour Code, in all bodies, agencies, services and other entities:

- → Ministry of Health;
- → Security forces and services;
- → National Emergency and Civil Protection Authority;
- → Armed Forces Hospital;
- → Military Laboratory of Chemical and Pharmaceutical Products;
- → Social Action Institute of the Armed Forces, I. P.
- → Directorate-General for Reintegration and Prison Services;
- → National Institute of Forensic Medicine and Sciences, I. P;
- → Authority for Working Conditions (ACT);
- → Social Security Institute, I. P.;
- → Information Technology Institute, I. P., and the
- → Essential services of local authorities, that is, services that, being provided directly or through entities owned by them, result from Law no. 23/96, of 26 July, in its current wording, as well as essential activities in the area of civil protection and in the social and health areas, namely home support to vulnerable populations, the elderly and the disabled.

This also succeeded in private social solidarity institutions, non-profit associations, cooperatives and other social economy entities that carry out essential activities in the social and health areas, namely health services, residential or care facilities or home support services for vulnerable populations, elderly people and people with disabilities.

- → Workers with parental responsibilities (teleworking and irregular schedules).

In the periods when teleworking was not compulsory for all workers, it was allowed, at certain times, that workers with parental responsibilities could benefit from this regime, whenever their professional duties allowed it (in the case of essential workers assigned to the service, they could benefit from the aforementioned care services for dependants).

See the Resolution of the Council of Ministers no. 40-A/2020, of 29 May, extended by the Resolution of the Council of Ministers no. 43-B/2020, of 12 June, which Article 4(2)(c), established this regime as compulsory, when duties allowed, if requested by a worker with a child or other dependent under the age of 12, or, regardless of age, with a disability or chronic illness, due to the suspension of school and non-school activities in a school establishment or social equipment for early childhood support or disability, outside of the periods of school breaks in the year 2019/2020.

See, also, the Resolution of the Council of Ministers No. 92-A/2020, of November 2, which Article 4(2)(c) established this regime as compulsory, when duties allowed, if requested by a worker with a child or other dependent under the age of 12, or, regardless of age, with a disability or chronic illness, that, according to the guidelines of the health authority, is considered a patient at risk and is unable to attend school activities and training in a group or class context, under the terms of Order No. 8553-A/2020, published in the Official Gazette, 2nd series, No. 173, September 4, 2020 (school year 2020/2021). This solution was subsequently laid down in Article 5b(c) of DL no. 79-A/2020 of 1 October (consolidated version), supplemented by DL no. 99/2020 of 22 November.

It should also be noted that Article 4(6) of DL no. 79-A/2020, of 1 October (consolidated version) also exempts, among other workers, workers with dependent children under the age of 12, or regardless of age, who are disabled or chronically ill, from working in accordance with the new working hours (irregular working hours) set by the employer to minimise the risk of transmission of the SARS-CoV-2 infection and the COVID-19 disease pandemic, under the terms of Article 3 of the same law.

Article 2§2 - Paid public holidays

1. Current Legislation and Enforcement:

The legal framework for workers' annual leave entitlement is set out in Articles 237 to 247 of the Labour Code. The minimum period of 22 working days of annual leave must be scheduled by April of each year and displayed in the form of a map in the workplace.

Article 234(1) of the CT, as amended by Law 23/2012 of 25 June, was amended by Law 8/2016 of 1 April, to stipulate 13 compulsory public holidays. The following provisions are maintained:

- → The possibility of two more optional holidays being taken as public holidays, by means of a collective labour regulation instrument or employment contract (Article 235);
- → The impossibility of establishing public holidays other than those referred to above, by collective labour regulation instrument or employment contract [Article 236 (2)].

There was also no change regarding the provisions of Article 236 (1) of the CT: on mandatory public holidays, all activities that are not allowed on Sundays must close or be suspended.

On the other hand, the worker's right to compensation corresponding to a public holiday continues to be provided, without the employer being able to require the worker to perform additional work to compensate for it [Article 269 (1)].

As regards payment for overtime work on public holidays, the provisions of Article 268(1) of the Labour Code, in the wording of Law no. 23/2012, of 25 June, are maintained: *overtime work is paid at the hourly rate plus the following increments of 50 /pct. for each hour or fraction thereof, on a compulsory or complementary weekly rest day or on a public holiday (...)".* However, Article 268(3), as amended by Law No. 23/2012 of 25 June, which allowed the stipulated in its previous paragraphs (paragraphs 1 and 2) to be waived by a collective labour regulation instrument, was revoked by Article 10(a) of Law No. 93/2019 of 4 September.

Article 2 of the same Law 93/2019 of 4 September also amended Article 3(3)(j) of the CT to provide that, with regard to the payment of overtime work, the legal rules governing the employment contract may be waived by a collective labour regulation instrument if they are more favourable to the workers.

Thus, the CT establishes a minimum regime for the payment of overtime work. It should be added that the provisions of Article 269 (2) of the CT, in the wording given by Law no. 23/2012, of 25 June, are also maintained: *"An employee who performs normal work on a public holiday in a company that is not obliged to suspend operations on that day has the right to a compensatory rest period of half the number of hours worked or to an increase of 50% of the corresponding remuneration, with the choice between the two formats pertaining to the employer"*

As for public sector workers, the LTFP establishes that all public sector workers are subject to the public holidays regime provided for in the CT, with the specificities foreseen in Article 122 (3) and (4) of the LTFP. According to Articles 234 and 235 of the CT, there are compulsory and

optional public holidays, and the use of a public holiday does not affect the right to remuneration of the worker.

When holidays are not taken, or are taken but not paid or holiday pay is not paid, labour inspectors calculate the amounts in question and require employers to pay them. The following table shows the number of infringements, which led to proceedings resulting in financial penalties for employers, in relation to leave.

Table 6 - INFRINGEMENTS RELATING TO THE VIOLATION OF THE RIGHT TO ANNUAL LEAVE WITH PAY THAT WERE SUBJECT TO SANCTIONS, 2017/2019

Areas	2017	2018	2019
Annual leave entitlement	86	128	169
Duration of leave	6	9	23
Year of leave	7	6	5
Schedule of leave	16	25	33
Leave maps	44	78	96
Amendment of the leave period	4	1	1
Effects of termination of employment contract on holiday entitlement	5	8	10
Violation of leave entitlement	4	1	1
Holiday pay	72	62	85

Source: ACT Information System

The following table shows the calculated amounts owed to workers and Social Security in cases of violation of the right to paid holiday and holiday pay.

Table 7 -AMOUNTS (IN EUROS) OWED TO EMPLOYEES AND SOCIAL SECURITY DUE TO VIOLATION OF THE RIGHT TO PAID ANNUAL LEAVE AND HOLIDAY PAY, 2017/2019

Salary	2017	2018	2019
Holiday pay	851,820.54	782,704.73	475,496.75
Annual leave	141,037.59	180,030.07	138,143.59

Source: ACT Information System

Article 2§3 - Paid annual leave

In view of the pending conformity decision, only the requested question is answered.

1. Replies to the Committee questions from the 2014 Conclusions

The Committee asks that the next report provide information on the rules applying to the postponement of annual leave, namely under what circumstances postponement is allowed, what proportion of the annual leave may be postponed and until when the postponed days of leave may be used.

Pursuant to Article 240 of the CT, the rule is that the annual leave is taken before the end of the period to which it relates (no. 1). However, the same Article 240 allows the following:

- → by agreement between employer and worker, or where the worker wishes to take the leave with a family member residing abroad, the leave may be taken until 30 April of the following leave year, in accrual or otherwise with the leave due at the beginning of that leave year (no. 2);
- → by agreement between the employer and the worker, half of the annual leave due the previous year may be taken in addition to the leave due in the leave year in question (no. 3).

Article 237 establishes that the right to annual leave cannot be waived and that its use cannot be replaced, even with the worker's agreement, by any compensation, economic or otherwise. However, the worker can renounce the use of leave days that exceed 20 working days, or the corresponding proportion in the case of annual leave in the year of employment, without reducing the retribution and subsidy for the expired leave period, which will be accrued with the retribution for the work done on those days (Article 238). Article 243 establishes that the employer may change the leave period already scheduled or interrupt those already started due to imperative requirements of the company's operation, and the worker is entitled to compensation for the losses suffered as a result of not taking the leave during the scheduled

period. The interruption of leave must allow half of the period to which the worker is entitled to be taken in consecutive days.

As for public sector workers, in accordance with Article 126(2) of the LTFP, the duration of annual leave is 22 working days (with an increase of 1 working day for every 10 years of service effectively provided), but may be increased in the framework of a performance reward system, under the terms of the law or of a collective labour regulation instrument.

The reform operated by the LTFP in 2014 sought to establish greater equality between the public and private sectors by reducing the number of leave days for public sector workers (previously a minimum of 25 days) to a minimum of 22 working days leave.

Table 6 identifies the violations reported in respect of annual leave.

2. Measures in response to COVID-19 pandemic

Decree-Law no. 10-A/2020 of 3 March, which established exceptional and temporary measures related to the epidemiological situation of the new Coronavirus - COVID 19, whereby under the terms of Article 6-E *"health professionals, regardless of the nature of their legal employment relationship, are entitled to one working day of leave for every five days of leave due in 2020, or in 2019, which cannot be taken by the end of 2020, for compelling service reasons".* This benefit was also regulated by Decree-Law 101-B/2020 of 3 December.

With regard to the questions previously asked in the 2014 report, the following should be clarified:

With the publication and entry into force of the LTFP, and in accordance with the provisions of Articles 4(1)(h), 122(1) and 126(1) of this law, the holiday regime applicable to workers with a public employment contract, in the form of a public sector contract, by appointment or service commission, is now the same as that foreseen in the Labour Code (CT), approved in annex to Law no. 7/2009, of 12 February - [Cf. Articles 237 and following] with the specifications contained in Articles 126 to 132 of the LTFP.

According to this regime, leave days are normally taken within the leave year, and the leave is subject to a sunset clause.

Every worker has the right to an annual leave, which is intended to guarantee rest, relaxation and leisure. This right must be implemented in such a way as to enable the worker's physical and psychological recovery and to ensure minimum conditions of personal availability, integration into family life and social and cultural participation.

This right cannot be derogated from and is irrevocable, and cannot be replaced, even with the worker's agreement, by any economic or other compensation.

The aforementioned legal regime establishes the exceptional nature of the payment of compensation resulting from not taking leave days, which should only occur when there is a total and absolute impossibility to take them, namely due to a prolonged impediment of the worker (illness, for example) - [Cf. Article 129 of the LTFP].

It is precisely in order to guarantee the effective use of the annual leave that the law allows, exceptionally, their accrual with the leave days due the following year.

This regime is foreseen in Article 240 of the CT, which states that:

"1 - Annual leave shall be taken in the current leave year, without prejudice to the provisions of the following paragraphs,

Annual leave may be taken until 30 April of the following leave year, in accumulation or not with the annual leave from the current leave year, by agreement between employer and employee or whenever the latter wishes to take them with a family member residing abroad.

3 - Half of the annual leave of the previous leave year may be carried over to the leave year in question, by agreement between the employer and the worker.

Lastly, it is clarified that under the terms of Article 238 (5) of the CT, the worker may waive the right to take leave days that exceed 20 working days, or the corresponding proportion in the case of leave during the year of admission, without any reduction in pay and benefits in respect of the expired leave days, which are accrued with the pay for the work carried out on these days.

Article 2§4 - Elimination of risks in hazardous or unhealthy professions

1. Current Legislation and Enforcement:

As for the regime regulated by the Labour Code and the legislation concerning health and safety at work, this continues to be a fundamental element of dignifying work in Portugal.

The promotion of health and safety at Work is addressed:

→ Labour Code: Articles 281 to 284 on the prevention and reparation of accidents at work and occupational diseases, in addition to other express references to the subject of safety and health at work in other articles of the Code;

- → Law no. 102/2009, of 10 September, which establishes the legal regime for the promotion of safety and health at work (see Article 284 of the CT);
- → Other specific legislation (see last segment of legislation on the ACT[3] website).

Reference should also be made to Law 98/2009, of 4 September, which regulates the compensation scheme for accidents at work and occupational diseases (see Articles 283 and 284 of the CT).

The promotion of policies for the prevention of occupational risks and the control of compliance with legislation on safety and health at work, in all sectors of activity, is the responsibility of the ACT, in accordance with the mission and attributions outlined in Article 3 of Decree-law no. 326-B/2007 of 28 September.

The general principle in Portugal continues to be the right of the workers to carry out their work in conditions that respect their safety and health, and these conditions must be ensured by the employer or, in the situations provided for by law, by the individual or collective person who manages the installations in which the activity is carried out, applying the necessary measures taking into account general principles of prevention [Article 281(1) and (2) of the CT, and Article 5(1) of Law no. 102/2009, of 10 September]. The prevention of professional risks also continues to be a general principle, which must be based on a correct and permanent evaluation of risks [Article 5(3) and (4) of Law no. 102/2009, of 10 September and Article 127(1)(g) of the Labour Code]. And it should be noted that, without prejudice to the other obligations of the employer, foreseen in Article 15 of Law no. 102/2009, of 10 September, the implemented preventive measures should be preceded and correspond to the result of the risk assessment associated with the various stages of the production process, including preparatory, maintenance and repair activities, in order to obtain effective levels of protection of the safety and health of the workers [Article 15(3) of the same Law].

Worker awareness and training on safety and health at work are crucial in the prevention of occupational risks, and there are legal obligations in this area for the employer, the employee and the State. Namely, in the case of the employer, it is his duty to inform workers about relevant aspects for the protection of their safety and health and that of third parties, and to ensure adequate training for workers to prevent the risks associated with the activity [Articles

[3] https://www.act.gov.pt/(pt-PT)/Legislacao/LegislacaoNacional/Paginas/default.aspx

127(1)(i) and 282 of the CT and Articles 5(3)(f) and 18 to 20 of Law No. 102/2009, of 10 September].

In accordance with Article 73 of Law No. 102/2009 of 10 September, the employer must organise a safety and health at work service in one of the ways set out in Article 74 of the same law. This service has the following objectives: to ensure working conditions that safeguard the safety and the physical and mental health of the workers, to develop the technical conditions that ensure the application of the prevention measures defined in Article 15 of the same Law, to inform and train workers on safety and health at work and to inform and consult workers' representatives on safety and health at work or, in their absence, the workers themselves [Article 73(b) of the same Law; see also Article 74 for the main activities developed].

Of particular interest to Article 2(4), Charter on risks inherent to hazardous or unhealthy occupations, it should be noted that Article 4 of Law No. 102/2009 of 10 September, establishes important concepts, such as the following:

a) " Hazard" the intrinsic property of an installation, activity, equipment, an agent or other material component of the work with the potential to cause harm (paragraph g);
b) "Risk" the likelihood of injury as a result of the conditions of use, exposure or interaction with the material component of the work presenting the hazard (point h);
c) "Prevention" the set of public policies and programmes, as well as provisions or measures taken or envisaged in the licensing and in all phases of activity of the business, establishment or service, aimed at eliminating or reducing occupational risks to which workers are potentially exposed (paragraph i).

The activities or work considered to be of high risk continues to be listed in Article 79 of Law no. 102/2009, of 10 September:

→ Works in construction, excavation, earthmoving, tunnelling, with risk of falls from a height or burial, demolition and intervention on railways and highways without interruption of traffic;
→ Activities of extractive industries;
→ Hyperbaric work;
→ Activities involving the use or storage of dangerous chemical products that are capable of causing serious accidents;
→ Manufacture, transport and use of explosives and pyrotechnics;
→ Steel industry activities and shipbuilding;
→ Activities involving contact with medium and high voltage electrical currents;

- → Production and transport of compressed, liquefied or dissolved gases or the significant use thereof;
- → Activities involving exposure to ionising radiation;
- → Activities involving exposure to carcinogens, mutagens or agent's toxic to reproduction;
- → Activities involving exposure to group 3 or 4 biological agents;
- → Work involving exposure to silica.

In the scope of the employer's obligations, which must continuously ensure the exercise of the worker's activity in safe conditions, avoiding or minimizing professional risks, as per Article 15 of Law No. 102/2009, of 10 September, high risks are included, and in some norms of this law reference is even made to such risks:

- → Where access to high-risk zones is required, the employer must allow access only to workers with adequate skills and training, for the minimum time necessary [Article 5(5)];
- → The consultation that the employer must carry out with the workers' representatives for safety and health at work, or in their absence with the workers themselves, at least once a year, on the risk assessment shall include those concerning groups of workers subject to special risks [Article 18(1)(a)];
- → The adequate training to which the worker is entitled in the field of safety and health at work has to take into account the workplace and the performance of high-risk activities [Article 20(1)].

It should also be noted that work considered likely to involve risks to the genetic heritage of the worker or their descendants is prohibited or conditioned [Articles 42 to 49 of Law no. 102/2009, of 10 September and Article 281(6) of the CT].

The conditioning or prohibition of the exercise of certain activities by pregnant workers, workers who have recently given birth and workers who are breastfeeding is also foreseen [Articles 50 to 60 of Law no. 102/2009, of 10 September and Article 62 of the CT], and by minors [Articles 61 to 71 of Law no. 102/2009, of 10 September and Article 66 of the CT].

In relation to the safety and health service that must be organised by the employer, which was previously mentioned, the performance of high risk activities by the employer has an influence on the type of service [Articles 78(3)(c), 80(1)(a) and 81(1) of Law No. 102/2009, 10 September], and in case of authorisation for safety and health activities to be performed as an external service [Articles 84(1) and (2), 85(2), 86(2)(a) and (3)(j) and 90(1) of the same Law].

It should also be noted that alongside the protection, in general, of all workers, the Labour Code also emphasises protection against high risks in relation to some workers:

1. Night worker:

Night workers must not work more than an average of 8 hours in a 24-hour period, in any of the following activities [Article 224(4) to (6)]:

a) Monotonous, repetitive, sequenced or isolated;
b) Construction, demolition, excavation or earth-moving works, or interventions in/on tunnels, railways or roads when traffic is not halted, or with a risk of falling from a height or being buried;
c) Extractive industry;
d) Manufacture, transport and use of explosives and pyrotechnics;
e) Activities involving contact with medium and high voltage electrical currents.
f) Production and transport of compressed, liquefied or dissolved gases or the significant use thereof;
g) Which, depending on the assessment of the risks to be carried out by the employer, is particularly hazardous, dangerous, unhealthy or toxic.

The limit does not apply:

a) To workers who occupy a management or administration position or have autonomous decision power and exemption from working hours;
b) When overtime work is necessary for reasons of force majeure or to prevent serious harm to the company or its viability due to an accident or imminent risk of accident;
c) Activities characterised by the need to ensure continuity of service or production, namely that referred to in any of paragraphs d) to f) of no. 2 of Article 207 of the CT, provided that the worker is guaranteed the corresponding compensatory rest periods through a collective bargaining agreement.

The employer must ensure free and confidential health examinations of night workers to assess their state of health, prior to their assignment and thereafter at regular intervals and at least annually. It must also assess the risks inherent to the worker's activity, taking into account their physical and psychological condition, before the beginning of the activity and every six months thereafter, as well as before any change in working conditions [Article 225(1) and (2)].

2. Temporary worker:

The use of temporary workers in workplaces particularly dangerous to their safety or health is not allowed, unless they are professionally qualified to do so [Article 175(4)].

The contract for the use of temporary work must contain, among other elements, the characterisation of the position to be filled, the respective professional risks and, if applicable, the high risks or those related to a particularly dangerous position, the professional qualification required, as well as the method adopted by the user for the safety and health services at work and the respective contact details [Article 177(1)(c)]. Before the assignment of the temporary worker, the user must inform the temporary employment agency of the results of an assessment of the risks to the safety and health of the temporary worker inherent in the post to which he will be assigned and, in the case of high risks concerning a particularly dangerous job, of the need for appropriate vocational qualifications and special medical supervision. This information must be conveyed by the temporary employment agency to the temporary worker before the assignment [Article 186(2) and (3)]. Temporary workers exposed to high risks in particularly dangerous workplaces must have special medical supervision at the expense of the user, whose occupational physician must inform the occupational physician of the employment agency of any possible contraindication [Article 186(7)].

3. Occasional assignment of workers:

Also in the cases in which the law admits the occasional assignment of workers (Article 288 and following), their assignment to a post that is particularly dangerous to their safety or health is not allowed, except if they are specifically qualified for the job [Article 291(3)]. The assignee must inform the assignor and the assigned workers of the risks to safety and health inherent to the job to which they are assigned [Article 291(2)].

4. Working hours and interruption or break in working time

In addition, the rules of the Labour Code that determine the following are maintained:

- The interruption or pause in the working period imposed by occupational health and safety standards is considered to be included in working time [Article 197(2)(e)];
- When devising the schedule, the employer must take into consideration, as a priority, the requirements of protecting the safety and health of the workers [Article 212(2)(a)].

As a result and/or development of the transposition of Directive 89/391/EEC into Portuguese law, the Portuguese legislation contained in Law no. 102/2009, of 10 September 2009 imposes a series of obligations related to safety and health at work. These involve planning health and safety at work, organising/carrying out preventive activities and collecting, processing and

disseminating data resulting from these activities. The legislation contained in Law 98/2009, of 4 September also contemplates compensation for damages arising from accidents at work and occupational diseases.

The minimum safety and health requirements for workplaces (Decree-Law No. 347/93, of October 1), work equipment (Decree-Law No. 50/2005, of February 25), manual handling of loads (Decree-Law No. 330/1993, of September 25), the prevention of chemical risks (including those posed by carcinogens and asbestos) (Decree-Law No. 24/2012, of 6 February), physical risks (particularly with regard to exposure to noise and vibration) (Decree-Law No. 182/2006, of 6 September) and risks caused by biological agents (Decree-Law No. 84/97, of 16 April) are addressed in Portuguese legislation originating from European Union legislation.

Some special sectors of activity are particularly dangerous and therefore specific targeted legislation has been developed. This is the case of construction and public works (Decree-law no. 273/2003 of 29 October 2003), the extractive industry (Decree-law no. 324/95 of 29 November 1995), and fisheries (Decree-law no. 116/1997 of 12 May 1997).

The violations that led to sanctions in the field of health and safety at work are presented in the following table.

Table 8 - Health and Safety at Work (HSW) infractions for which penalties were imposed, 2017/2019

Areas	2017	2018	2019
Management/organisation of safety and health at work; prevention and remedy of accidents at work and occupational diseases	2.495	2.801	2.883
Special EU Directives	756	935	794
Total	3.251	3.736	3.677

Source: ACT Information System

The breakdown of violations related to management/organisation of health and safety at work, of prevention and compensation of occupational accidents and diseases, which were subject to sanctions, are shown in table 17.

The following table provides a breakdown of the violations relating to the EU OSH directives for which penalties were imposed.

Table 9 - HEALTH AND SAFETY AT WORK (HSW) VIOLATIONS FOR WHICH PENALTIES WERE IMPOSED, 2017/2019

Diplomas transposing individual EU directives	2017	2018	2019
Workplaces	40	49	31
Work Equipment	200	204	168
Equipment with visor	1	1	0
Personal protective equipment	24	24	14
Manual handling of loads	1	3	0
Safety signs	5	3	2
Physical agents	0	2	0
Noise	0	1	0
Vibrations	0	1	0
Chemical agents	53	49	62
Chemical agents ELV	3	4	4
Asbestos	50	43	58
Explosive atmospheres	0	2	0
Biological agents	0	1	0
Special sectors	432	599	517
Construction safety	429	593	513
Extractive industry	3	6	2
Fishery safety	0	0	2
Total	756	935	794

Source: ACT Information System

The annual activity plans of the Labour Inspection, during the period in question, gave priority to campaigns that included information and awareness raising on occupational risk prevention, seeking to instil in employers, workers and the active population in general a culture of prevention in terms of health and safety at work. In these four years, several campaigns have been carried out:

1. Iberian Campaign for the Prevention of Accidents at Work (2016-2018);
2. Safety and Health Campaign for Temporary Workers (2016-2018); and the
3. European 2020-22 Healthy Workplaces Lighten the Load campaign (2020-2022).

As for public sector workers, those who carry out dangerous or unhealthy activities are not entitled to additional annual leave nor to a reduction in working hours. Nevertheless, a set of norms that regulate aspects on the matter can be pointed out, namely:

1. Article 62(1) of the Labour Code provides that pregnant workers and workers who have recently given birth or are breastfeeding have the right to special safety and health conditions in the workplace in order to avoid exposure to risks to their safety and health. If the measures taken are not feasible, the worker should be excused from work for the necessary period;
2. Under Article 197(e) of the CT, breaks and interruptions for reasons of health and safety at work are considered as working time;
3. Paragraphs g) and h) of Article 71 of the LTFP provide that it is the duty of the public employer to prevent occupational risks and illnesses, taking into account the protection of the safety and health of the worker, and must compensate the worker for damages resulting from accidents at work, as well as adopt, with regard to safety and health at work, the measures that result, for the body or service or for the activity, from the application of the legal and conventional regulations in force;
4. Article 60 of the CT provides that the worker is entitled to be excused from work between 8 p.m. of one day and 7 a.m. of the following day:
    a) For a period of 112 days before and after childbirth, of which at least half must be before the expected date of childbirth;
    b) During the remainder of the pregnancy if it is necessary for her health or that of the unborn child;
    c) For as long as breastfeeding lasts, if it is necessary for her health or that of the child.

To the worker exempted from night work should be given compatible day work whenever possible.

→ Article 222 of the CT provides that the employer must organise health and safety at work activities in such a way that night workers benefit from a level of safety and health protection appropriate to the nature of the work they perform, and that the means of protection and prevention in matters of safety and health of night workers are equivalent to those applicable to other workers and are available at all times;

→ Article 225 of the CT provides that the employer must ensure free and confidential health examinations of night workers aimed at assessing their state of health, prior to their assignment and thereafter at regular intervals and at least annually. It must also assess the risks inherent to the worker's activity, taking into account their physical and psychological condition, before the beginning of the activity and every six months thereafter, as well as before any change in working conditions.

Whenever possible, the employer shall ensure that workers suffering from a health problem related to night work are assigned to day work that they are capable of performing.

Article 2§5 - Weekly rest

In light of the pending issues raised by the committee in the 2014 findings report, the following will concern only the question raised:

1. Replies to the Committee questions from the 2014 Conclusions

The Committee asks that the next report clarify:

- *whether the law guarantees that the right to a weekly rest period may not be replaced by compensation, or renounced;*
- *whether all workers are entitled to a weekly rest period, even when, under the derogations mentioned above, this might not fall on a Sunday;*
- *whether a worker might work more than 12 consecutive days before being granted a rest period.*

The right to weekly rest cannot be replaced by compensation nor can the workers' right to at least one day of weekly rest be waived, as provided for by Article 232(1) of the CT. Furthermore, according to Article 232(3), a complementary weekly rest period, consecutive or non-

consecutive, may be instituted in all or some weeks of the year, by collective labour regulation instrument or employment contract.

All workers are entitled to a weekly rest period, even in the situations set out in Article 232 (2) of the Labour Code as the provisions of Article 232 (1) and (3) of the CT are always applicable.

A worker may not work more than 12 consecutive days before being entitled to a rest period. In cases where overtime work must be performed on a compulsory weekly rest day, the worker is entitled to a compensatory paid weekly rest day, to be taken on one of the following 3 working days, in accordance with Article 229(4) of the CT. The scheduling of the compensatory weekly rest day is carried out by agreement between the worker and the employer or, in the absence of agreement, by the employer, as per no. 5 of the same Article 229. However, Article 230(1) of the CT provides that overtime work performed on a compulsory weekly rest day that does not exceed two hours, due to the unforeseen absence of a worker who should occupy the workplace on the following shift, gives rise to the right to paid compensatory rest equivalent to the missing hours of rest, to be taken on one of the three following working days. Table 1 lists the weekly rest violations reported.

As for public sector workers, Article 124 of the LTFP provides that workers be entitled to a compulsory weekly rest day, plus a complementary weekly rest day, which must coincide with Sunday and Saturday, respectively. The rest days referred to may only cease to coincide with Sunday and Saturday, respectively, when the worker performs duties in a body or service that closes its activity on other days of the week.

Weekly rest days may also cease to coincide with Sunday and Saturday for the following workers: workers necessary to ensure the continuity of services that cannot be interrupted or that must be carried out on the rest day of other workers; cleaning services personnel or personnel in charge of other preparatory and complementary work that must necessarily be carried out on the rest day of other workers; workers directly assigned to surveillance, transport and electronic security system processing activities; workers who work at exhibitions and fairs; personnel in inspection services of activities that do not close on Saturday and/or Sunday; and in the other cases provided for in special legislation.

In accordance with Article 115 of the LTFP, the weekly rest day of night workers must coincide with Sunday, at least once in every four-week period;

Overtime work performed on a regular working day, on a compulsory or complementary weekly rest day or on a public holiday is paid at a higher rate according to the percentages established in Article 162(1) and (2) of the LTFP.

Article 2§6 - Written information and working times

1. Current Legislation and Enforcement:

The Labour Code (Article 106) requires employers to provide their employees with written information on relevant aspects of their employment contracts. The following table shows the number of violations verified with regard to this obligation.

Table 10 - VIOLATIONS OF THE DUTY TO INFORM WORKERS THAT WERE SUBJECT TO SANCTIONS, 2017/2019

Areas	2017	2018	2019
Duty to inform workers	10	25	26

Source: ACT Information System

In accordance with Article 40 of the LTFP, a public employment contract must be written and signed by both parties. The contract shall also contain at least the following information:

a) Name or denomination and domicile or headquarters of the contracting parties;
b) Type of contract and respective term when applicable;
c) Contracted activity, career, category and remuneration of the worker;
d) Place and normal working period;
e) Date of start of activity;
f) Date of conclusion of the contract; and
g) Identification of the body that authorized the contracting.

In turn, Article 41 of the LTFP stipulates that an appointment takes the form of an order and can consist of a mere declaration of agreement with a proposal or previous information that, in this case, is an integral part of the act. This order refers to the enabling legal norms and the existence of an adequate budget allocation.

2. Replies to the Committee questions from the 2014 Conclusions

The Committee asks that the next report clarify the situation with regard to the public sector employees with appointments, what percentage of the public function they represent, and in particular whether they receive, upon starting of the employment relationship or soon thereafter, written information referring to the applicable legislative provisions and including therefore the elements of information required under Article 2§6 of the Charter.

In accordance with Article 8 of the LTFP, the public employment relationship is established by appointment in the cases of performance of functions within the scope of the following responsibilities, competences and activities:

- → Generic and specific missions of the Armed Forces in permanent structures;
- → External representation of the State;
- → Security intelligence;
- → Criminal Investigation;
- → Public safety, both in free environment and in institutional environment;
- → Inspection.

This typology does not represent the standard relationship and is only used in the situations listed. By December 2020, in the universe of workers in public functions around 10% where by appointement[4]. As far as appointed workers are concerned, the duty to inform seems to be guaranteed through the information and order that precede the acceptance of their appointment.

Article 2§7 - Night work and the impact on mental health

1. Current Legislation and Enforcement:

Article 223 of the CT states that night work is considered work performed during a period having a minimum duration of seven hours and a maximum duration of eleven hours, including the interval between midnight and 5 a.m. The night work period may be determined by a collective labour regulation instrument, in accordance with the provisions of the preceding paragraph; in the absence of such a determination, the period between 10 p.m. of one day and 7 a.m. of the following day shall be considered as such.

2. Replies to the Committee questions from the 2014 Conclusions

[4] Source:DGAEP. The list can be consulted in: https://www.dgaep.gov.pt/upload/DIOEP/EPP_BI.html

The Committee asks that the next report clarify whether public sector night-workers (whether with contracts or with appointments) are also entitled to regular medical examinations and possibilities for transfer to daytime work.

Article 225, "Protection of night workers", provides that the employer must ensure free and confidential health examinations of night workers aimed at assessing their state of health, prior to their assignment and thereafter at regular intervals and at least annually. Whenever possible, the employer shall ensure that workers suffering from a health problem related to night work are assigned to a day work that they are capable of performing.

According to Article 60 of the CT, a worker with a child has the right to be released from work between 8 p.m. of one day and 7 a.m. of the following day: during a period of 112 days before and after childbirth, of which at least half before the foreseeable date of childbirth; during the remaining period of pregnancy, if it is necessary for her health or for that of the unborn child; during the entire period of breastfeeding, if it is necessary for her health or for that of the child. A worker exempted from night work shall, whenever possible, be given a compatible daytime schedule, and shall be released from work whenever it is not possible to apply the provisions of the previous number.

Article 76 also provides that minors under 16 years of age may not work between 8 p.m. of one day and 7 a.m. of the following day.

However, with the previous conclusion of conformity pending new information, it should be clarified that the norms applicable to workers in the private sector are also applicable to public sector workers, and therefore the protection of night workers guaranteed by Article 225 of the CT is extended to them.

In accordance with Article 101 of the LTFP, the regime of the Labour Code in matters of organisation and working time is applicable to workers with a public employment contract, with the necessary adaptations and without prejudice to the provisions of the following Articles.

Article 4 - The right to a fair pay

Article 4§1 - Sufficient pay

1. Current Legislation and Enforcement:

The 21st Constitutional Government's Programme stipulated the commitment to increase families' disposable income in order to relaunch the economy and defined an income policy based on the concept of decent work and, in particular, guaranteed the increase of the National Monthly Minimum Wage (RMMG), guaranteeing workers a progressive valorisation of their work, reconciling the objective of strengthening social cohesion with that of the sustainability of the wage policy.

In compliance with the provisions of the first point of the tripartite agreement on the application of the RMMG[5] in 2016, 10 reports monitoring the said agreement were presented by the Government and discussed in social dialogue[6].

The increase in the RMMG is an instrument capable of improving living conditions and cohesion and promoting the sustainability of economic growth, and is an important benchmark for the labour market, both in terms of decent work and social cohesion, and in terms of the competitiveness and sustainability of companies. The amount of the RMMG and the continued existence of significant number of workers living in poverty justify the national plan to put in place an extraordinary and coordinated effort to raise the RMMG, for a limited time, to levels that promote greater economic and social modernisation and an effective reduction of inequalities. It is important to note, however, that the rate of workers at risk of poverty has remained stable, with small variations between 10 and 11% in recent years according to EUROSTAT data.

Between the years of 2016 and 2018, the Government presented and discussed in the Standing Committee for Social Dialogue (CPCS) monitoring reports on the RMMG update, the results of which consistently indicate that there were no negative impacts of the RMMG increase on employment or on the growth prospects of the Portuguese economy. Also, according to its opening remarks, the results of the monitoring of the impacts of the RMMG update suggest that

[5] http://www.gep.mtsss.gov.pt/trabalho#sal%c3%a1rio+m%c3%adnimo

[6] The agreement can be consulted here: https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3d%3dBAAAAB%2bLCAAAAAAABAAztTC0BAAd7JFVBAAAAA%3d%3d

its increase trajectory contributed to restore dignity and value to work and to improve the levels of social cohesion, reducing poverty and reducing wage asymmetries, without compromising the sustainability of the Portuguese economy and without jeopardising the growth of employment and the reduction of unemployment.

Thus, over the past few years, the RMMG has been steadily increasing.

Table 11 - INCREASE OF THE NATIONAL MINIMUM MONTHLY WAGE

Year	RMMG value (euros)	Variation (In %)	Legislation
2017	**557**	5.1	DL no. 86-B/2016, of 29 of December
2018	**580**	4.1	DL no. 156/2017, of 28 of December
2019	**600**	3.4	DL no. 117/2018, of 27 of December
2020	**635**	5.8	DL no. 167/2019, of 21 of December

Source: GEP

Within this framework, with the goal of ensuring better wages and strengthening the fight against inequalities, the 22nd Government included in its Programme a commitment to increase further the national minimum wage in 2023 to € 750, within a framework of tripartite social dialogue.

Despite the COVID-19 disease pandemic having significantly changed the economic and social context, the defence and promotion of adequate wages and decent incomes remain fully relevant, and are concerns that cut across the various exceptional measures to support jobs implemented by the Government over recent months.

In fact, from a historical point of view, experience shows us that the response to a crisis situation should not be based on a strategy of lowering salary costs, at the risk of limiting aggregate demand and worsening the at-risk-of-poverty rate for workers, compromising not only social cohesion but also domestic consumption variables, which play a critical role in times of decreasing external demand. On the contrary, it is important to ensure that the recovery path of the economy and employment takes place within a framework of reinforced resilience, safeguarding, from the start, the quality of employment and affirming the central importance of wages and income as an unavoidable dimension of a broad and consistent strategy of economic recovery.

Thus, while maintaining the objective of reaching € 750 in 2023 and creating the conditions to achieve this goal, the Government believes that the objective of promoting the increase of the national minimum wage should be considered in the light of the current economic and social framework, through an adjustment to the trajectory that would be predictable for the year 2021.

On the other hand, as can be seen in the following table, there has been a tendency to increase the value of the National Minimum Wage in relation to the average and median wage of full-time workers, with a variation of around 2 percentage points between 2017 and 2020 for the average and 5 percentage points for the median.

Table 12 – MINIMUM WAGE RELATIVE TO THE AVERAGE AND MEDIAN WAGES OF FULL-TIME WORKERS (%)

	2017	2018	2019	2020
Mean	42,99 %	44,52 %	44,55 %	45,83 %
Median	60,16 %	63,26 %	63,29 %	65,11 %

Source: OCDE

Failure to pay remuneration or payment of an amount lower than stipulated in the law establishing the national minimum wage (only for situations provided for in article 275 of the CT[7], namely for "practitioner, apprentice trainee or trainee in a certified training situation not applicable to situations exceeding one year or 6 months if he is a worker qualified with a technical-professional course or course obtained in the professional training system qualifying for the respective profession (...) or worker with reduced working capacity") or in a collective labour regulation instruments (IRCT), can lead to the intervention by the labour inspection bodies.

National legislation also provides for the payment of:

[7] "Article 275 CT - Reduction of the minimum monthly salary guaranteed related to the worker
1 - The minimum monthly salary guaranteed has the following reduction in relation to:
a) Practitioner, apprentice, intern or trainee in a certified training situation, 20 %;
b) Worker with reduced work capacity, the reduction corresponding to the difference between the full capacity for work and the effective capacity coefficient for the contracted activity, if the difference is greater than 10%, with a limit of 50%.
2 - The reduction provided for in sub-paragraph a) of the previous number shall not be applicable for a period of more than one year, including training time at the service of another employer, as long as it is documented and aims at the same qualification.
3 - The period established in the preceding paragraph is reduced to six months in the case of an employee qualified with a technical-vocational course or a course obtained through the vocational training system qualifying for the respective occupation."

a) Christmas bonus;

b) Holiday pay,

c) Additional payments in cases of exemption from working hours,

d) Night work and performance of related duties,

e) Overtime work and the prohibition to make deductions from wages.

The following table shows the number of violations verified with regard to remuneration.

Table 13 - REMUNERATION VIOLATIONS FOR WHICH PENALTIES WERE IMPOSED, 2017/2019

Areas	2017	2018	2019
Remuneration	403	365	437
Christmas bonus	62	117	127
Holiday pay	72	62	85
National Minimum Monthly Wage	6	12	4
Remuneration - type of violation	4	1	2
Remuneration Slips	14	9	34
Remuneration - compliance time	209	131	144
Unmeasured working time	2	1	1
Night work	4	3	1
Performance of related functions	0	0	0
Overtime work	7	14	21
Compensations and discounts	11	9	18
Payment of the Christmas bonus in twelfths	12	4	0
Unpaid leave	0	2	0

Source: ACT Information System

Where wages have not been paid, the inspectors will calculate any unpaid amount and notify the employer to pay the outstanding amounts. The following table shows the amounts that were calculated during the reporting period.

Table 14 - AMOUNTS (IN EUROS) OWED TO EMPLOYEES AND SOCIAL SECURITY DUE TO VIOLATIONS RELATED TO WAGES, 2017/2019

Salary (€)	2017	2018	2019
Basic Salary	6,945,506.56	4,338,476.76	2,593,389.87
Christmas bonus	730,240.42	622,735.80	534,539.96
Holiday pay	851,820.54	782,704.73	475,496.75
Annual leave entitlement	141,037.59	180,030.07	138,143.59
Other	3,017,000.40	7,029,534.06	3,655,972.01

Source: ACT Information System

As for public sector workers, it should be noted that:

With regard to wages, Law no. 159-B/2015, of 30 December extinguished the extraordinary solidarity contribution (CES), created by the 2015 State Budget, while Law no. 159-A/2015, of 30 December extinguished the wages reductions in the Public Sector, defining the terms in which it took place (40% reversal in wages paid from 1 January 2016; 60% from 1 April 2016; 80% from 1 July 2016 and complete elimination of the salary reduction from 1 October 2016).

There was also a gradual increase in the national minimum wage, which also applied to public sector workers.

The value of the meal allowance was also increased in 2017, rising from €4.27 (a value that had remained unchanged since 2009) to €4.52 from 1 January 2017 and €4.77 from 1 August 2017 - [Cf. Article 20(1) of the 2017 State Budget Law].

Regarding the professional valorisation of central, regional and local public sector workers, it should be noted that the prohibitions on wage increases for public sector workers, established in 2011, are no longer in force.

Thus, the rules regarding changes in salary ranking are currently applicable, as well as the possibility of awarding performance bonuses. In 2018, the process of unfreezing careers progressions and limiting real wage losses began, subject to prior assessment of the respective budgetary impact.

In January 2020, workers earning the Public Administration basic salary or whose monthly basic salary is up to the value of the monetary amount of level 5 of the Single Remuneration Table (TRU) had a salary update of €10.00, and the salaries of workers who were not in this condition were updated by 0.3%.

In 2015, an assessment was also made of the existing salary supplements[8] in the Public Administration, which was made available pursuant to the terms of Article 6(4) of Decree-Law no. 25/2015, of 6 February, and which contains the information communicated by the top leaders of the bodies and services referred to in paragraph 3 of the same article.

Article 4 §2 Rate of remuneration for overtime work

1. Current Legislation and Enforcement:

The 21st Constitutional Government, in its Programme, lists a set of commitments concerning labour issues in order to fight job insecurity and to strengthen the dignity of work. In this context, the Government proposes, among others, the following measures: "Repeal the possibility, introduced in the 2012 Labour Code, of the existence of an individual hour bank by mere "agreement" between the employer and the worker, remitting the hour bank to the sphere of collective bargaining or group agreements, where the regulation of the organisation of working time belongs. It aims to restore balance to labour law, as well as to eliminate the confusion introduced in the regulation of flexibility in the organisation of working time, which has allowed the dispersion and individualisation of different working hours within the same companies".

Taking into account the commitments inscribed in the Government Programme in labour matters and following the tripartite discussion on the *Green Paper on Labour Relations 2016*, the Government presented to the Social Partners sitting on the Standing Committee for Social Dialogue a set of proposals aimed at reducing segmentation and insecurity in labour relations and promoting collective bargaining, which resulted in a tripartite Agreement signed by the Government and the majority of the Social Partners to Combat job insecurity and reduce labour segmentation and promote a more dynamic collective bargaining. Accordingly, the Government resolved, through the aforementioned Resolution of the Council of Ministers No. 72/2018, of 6

[8] https://www.dgaep.gov.pt/upload/homepage/Noticias/Noticias_2015/Suplementos_remuneratorios_compilacao_dos_elementos_comunicados_20_03_2015.pdf

June, which approves the Action Programme to combat job insecurity and promote collective bargaining, to implement the proposals agreed in the Standing Committee for Social Dialogue.

It is in this context that the draft law that gave rise to Law no. 93/2019 of 4 September, which made the fifteenth amendment to the Labour Code, approved by Law no. 7/2009 of 12 February, came into being, among others. This law broadened the scope of matters of the 2009 Labour Code that may only be removed by provisions of a collective bargaining agreement that are more favourable to the worker, with regard to compliance with and remuneration guarantees, as well as the payment of overtime work, by revoking Article 268(3) and amending paragraph j) of Article 3(3) of the CT 2009.

According to Article 218(1)(a) of the CT, employees who occupy management or executive positions or who have the power to make autonomous decisions are not entitled to an increase in pay for overtime.

2. Replies to the Committee questions from the 2014 Conclusions

In this regard, the Committee pointed out that the right of employees to an increased rate of pay for overtime may be subject to exceptions in certain specific cases, particularly in the case of managerial, directorial and administrative positions.

However, the Committee has decided that certain limits should apply, especially on the number of overtime hours not paid at a higher rate (Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000, 16 November 2001, §45) and asks whether national legislation meets this standard.

Article 218 of the CT establishes that workers in one of the following situations may be excluded from the scope of the limits on working time, by written agreement:

a) Holding an administrative or management position, or a position of trust, supervision or support for the holder of such positions;
b) Execution of preparatory or complementary work which, due to its nature, can only be carried out outside working hours;
c) Teleworking and other cases of performing regular work outside the establishment, without immediate control by the hierarchical superior.

Article 218(2) also provides that the IRCT may provide for other situations of admissibility of exemption from working hours, which are regulated in Article 219 of the CT. The employer and the employee may agree on one of the following forms of unmeasured working time:

→ The maximum limits on the normal working period do not apply;
→ The normal working period can be increased by a given daily or weekly amount;
→ The parties agree a given normal working period;

In the absence of an agreement between the parties, the method of not being subject to the maximum limits on normal working hours shall apply. It should be noted that Article 219(3) states that the exemption does not affect the right to a compulsory or complementary weekly rest day, to a public holiday or to a daily rest day. It should be noted that even workers in an unmeasured working time regime must register their working time (cf. Article 202 (1) of the CT).

Article 265(1) of the CT establishes that workers who are exempt from any work schedule are entitled to a specific additional remuneration determined by collective labour regulation instrument. If there is no applicable collective labour regulation instrument, then this remuneration cannot be less than:

- → One hour of overtime per day;
- → Two hours of overtime per week, when the exemption regime nonetheless includes complying with the normal working period;

Article 265(2) provides that a worker who holds an administrative or management position may waive the remuneration referred to in the preceding paragraph.

Breach of the right to specific remuneration for unmeasured working time constitutes a serious administrative offence. Table 12 identifies the number of infractions reported for lack of remuneration for unmeasured working time.

Table 1 lists the number of violations reported in this matter in Adaptability.

Reply to the Committee:

In flexible working time arrangements, working hours are calculated based on the average weekly hours worked over a period of several months. During this period, weekly working hours may vary between the maximum and minimum values specified, with none of them counting as overtime and therefore qualifying for a higher rate of pay. This does not constitute a violation of Article 4(2) if the conditions set out in Article 2(1) are respected:

(i) the maximum weekly (over 60) and daily (up to 16) working hours are respected;

(ii) flexibility measures operate within a legal framework that provides adequate guarantees to clearly circumscribe the discretion left to employers and employees to vary, by collective agreements, the working hours.

(iii) flexible working time arrangements provide a reasonable reference period for the calculation of average working time.

The Committee asks whether flexible working time arrangements (adaptability or hour bank arrangements) meet these conditions.

Article 204 of the CT addresses "Adaptability by collective bargaining agreement", determining that, by collective bargaining agreement, the normal working period can be defined in average

terms, in which case the daily limit established in no. 1 of the previous article (i.e. eight hours per day and forty hours per week) can be increased up to four hours and the weekly duration of work can reach sixty hours, not counting overtime work performed due to force majeure. The normal working period thus defined cannot exceed fifty hours on average over a period of two months - cf. Article 204(2) of the CT.

According to Article 205 of the CT, the employer and the employee may, by agreement, define the normal working period in average terms.

The agreement may provide for an increase in the normal daily working period of up to two hours and that the weekly work may reach fifty hours, only overtime work performed due to force majeure will not be counted in such an agreement.

If the working week is less than forty hours, the reduction may be up to two hours per day, or, if agreed, in days or half days, without prejudice to the right to meal allowance.

According to Article 207[1] of the CT, under an adaptability regime, the average length of time to be worked is determined with reference to the period agreed in the applicable IRCT, which cannot exceed 12 months. If the IRCT does not stipulate it, the period is 4 months.

Article 207(2) provides that in the situation referred to in the final part of the preceding paragraph, the reference period may be increased to six months where such a situation is concerned:

a) Workers who are members of the employer's family;
b) Workers who occupy a board director's or senior management post, or who have the power to take autonomous decisions;
c) Activities characterised by long distances between the place of work and the worker's place of residence, or between different places of work;
d) Activities involving the permanent security and surveillance of persons or goods – i.e. work as a guard or caretaker, or for a security or surveillance enterprise;
e) Activities characterised by the need to ensure continuous service or production – i.e.:
    1. Reception, treatment or care services provided by a hospital or similar establishment, including the work of trainee doctors, or by a residential institution or prison;
    2. Ports and airport;

3. The press, radio, television, cinema production, the post office, telecommunications, ambulance services, fire brigades, or civil protection services;
4. The production, transport or distribution of gas, water or electricity, refuse collection, or incineration facilities;
5. Industries whose working process cannot be interrupted, on technical grounds;
6. Research and development;
7. Agriculture;
8. Passenger transport by a regular urban transport service;
9. A foreseeable surge in activity, particularly in agriculture, tourism, and postal services;
10. Rail transport staff who work intermittently aboard trains, or whose task is to ensure the continuity and regularity of rail traffic;
11. Chance, or force majeure;
12. Accidents or an imminent risk thereof.

Without prejudice to the provisions of a collective agreement, the reference period may only be altered during its term when objective circumstances so justify and the total number of hours worked does not exceed those that would have been performed had the adaptability scheme not been in force, in which case the provisions of Article 205(3), with the necessary adaptations, shall apply (cf. Article 207(3) of the CT).

Article 208 addresses the hour bank by collective agreement, determining that an hour bank system may be established and that the organisation of working time must comply with the following:

- → The normal working period may be increased up to four hours per day and may reach sixty hours per week, with a limit of two hundred hours per year;
- → The annual limit referred to in the previous number may be waived by a collective agreement if the purpose of using the regime is to avoid a reduction in the number of employees, and this limit may only be applied for a period of up to 12 months.

According to Article 208(4), the IRCT must regulate:

1. The compensation for additional work, which must take at least one of the following forms:
    a. Equivalent reduction in working time;
    b. Increase of the holiday entitlement;

c. Payment in cash;

2. The amount of advance notice the employer must give the workers when they need to work;
3. The period within which any compensatory reduction in working hours must be given – the workers make the choice within this period, or if they do not choose, by the employer – and the advance notice of the use thereof that one party must give to the other.

Law no. 93/2019, of 4 September, revoked Article 208-A "Individual hour bank" and made changes to Article 208-B, which regulates the group hour bank (which in turn was further amended by Law no. 120/2015, of 1 September.

Thus, Article 208-B states that the collective agreement that establishes the hour bank regime provided for in Article 208 may provide that the employer can apply it to all the workers of a team, section or economic unit when the conditions referred to in Article 206(1) are met.

The hour bank regime may also be instituted and applied to all workers of a team, section or economic unit, provided that it is approved in a referendum by the workers who will be covered by it, under the terms of the following paragraphs.

The normal working period may be increased by up to two hours per day and may reach 50 hours per week, with a limit of 150 hours per year. The employer drafts the hour bank regime, which should regulate:

1. The scope of application, specifying the team, section or economic unit to be covered and, within these, the professional groups excluded, if any;
2. The period, not exceeding four years, during which the regime will apply;
3. The issues referred to in Article 208(4): communicates the draft hour bank regime in the places where the work schedules are displayed, and communicates it to the workers' representatives and to the inspection service of the ministry responsible for the employment area, at least 20 days before the date of the referendum.

Where the draft hour bank regime is approved in a referendum by at least 65% of the workers who are covered by it, in accordance with paragraph 4(a) (i.e. the scope of application, indicating the team, section or economic unit to be covered and, within these, the professional groups excluded, if any), the employer may apply the said regime to all of these workers.

If there is a change in the team, section or economic unit, the above shall apply as long as the remaining workers are at least 65% of the total number of workers covered by the proposed

referendum. The referendum is regulated by specific legislation. If the number of workers covered by the draft hour bank regime is less than 10, the referendum is conducted under the supervision of the inspection service of the ministry responsible for labour. The implementation of the hour bank regime ceases if, halfway through the period of implementation, one third of the workers covered by it petition the employer for a new referendum and that referendum is not approved in accordance with no. 6, or is not held within 60 days. In this case, the application of the hour bank regime ceases 60 days after the referendum is held, and the compensation for the work done in excess must be paid within this period. If the hour bank project is not approved in a referendum, the employer can only hold a new referendum one year after the previous one.

The application of the hour bank regime instituted as above is excluded in the following situations:

- → The workers covered by a collective agreement which provides otherwise or, in relation to the regime referred to in paragraph 1, to a worker represented by a trade union which has lodged an opposition to the decree extending the collective agreement in question; or
- → Workers with children under 3 years of age who do not express their agreement in writing.

Finally, it is important to mention the condensed working hours, provided for in Article 209 of the CT, according to which the normal daily work period may be increased up to four hours per day:

a) By agreement between an employer and an individual worker, or by collective agreement, in such a way as to concentrate the normal weekly working period into at most four working days;
b) By collective agreement, in order to create a work schedule that contains at most three consecutive days of work followed by at least two days of rest, while respecting the normal weekly working period on an average basis within each 45-day reference period.

Workers who are subject to a condensed working hours regime cannot be covered by the adaptability regime at the same time (see Article 209[2]).

Reply to the Committee:

The Committee asks whether flexible working time arrangements (adaptability or hour bank arrangements) meet these conditions.

The follow-up to the decisions on the merits of Complaint No. 60/2010, of 17 October 2011, the European Council of Police Unions (CESP) against Portugal, states the following: In its decision on

the merits of Complaint No. 60/2010, of 17 October 2011, the Commission found that there had been a violation of Article 4(2) of the Charter on the grounds that police officers on active prevention duties (active prevention, on-call duty where actual work is performed) were paid at a rate lower than the basic hourly rate of pay and the extra supplement paid for shift duty amounts to an hourly rate that is hardly higher or slightly lower than the basic hourly wage (§§ 30-31). Both active shift and prevention duties can fall outside normal working hours.

The Commission takes note of the intervention of the Portuguese delegation at the GR-SOC meeting of 10 October 2013 (Resolution CM / ResChS (2013) 18) according to which the Portuguese authorities acknowledge and understand the measures that should be taken to remedy the violation. The Portuguese Government is in talks with the Criminal Police to find a solution. However, the means available for this purpose have not been sufficient due to financial aspects and economic circumstances.

The Committee takes note of the comments provided by the European Council of Police Unions that the Government has not implemented the Committee's decision of 17 October 2011 on Complaint No. 60/2010 and the situation of non-compliance remains detrimental to police officers, who are often required to work overtime.

In accordance with Article 162(2) of the General Labour Law in Public Functions (LTFP), overtime work performed on a compulsory or complementary weekly rest day or on a public holiday entitles the worker to an additional 50% of remuneration for each hour worked.

If the worker so wishes, and if the public employer agrees, overtime pay may be replaced by compensatory rest time, under the terms of Article 162(7) of the General Labour Law in Public Functions, and, for this purpose, the same calculation formula used for calculating the increase in remuneration (a 50% increase for each hour of work carried out) shall be used

In effect, in this case, what is at stake is the reimbursement in time, instead of the payment of the remuneration due for overtime work. It is the opinion of this Directorate-General that in converting remuneration into rest time, the greater cost of the hourly value of overtime work must be considered - and the percentages added to the hourly value - whereby there will be an increase in the rest time.

The workers are also entitled to compensatory rest for overtime work, in accordance with Article 229 of the Labour Code [applicable to public sector workers by virtue of the remission in Article 120(1) of the General Labour Law in Public Functions], in the following situations:

- → When the workers do overtime that prevents them from taking their daily rest - (in accordance with no. 3 of this article, the worker is entitled to paid compensatory rest equivalent to the missing hours of rest, to be taken on one of the following three working days);

→ When the workers work on a compulsory weekly rest day - (in accordance with no. 4 of this article, the worker is entitled to a paid compensatory rest day, to be taken on one of the following three working days).

Thus, overtime work performed on a regular working day, on a compulsory or complementary weekly rest day or on a public holiday is paid at a higher rate according to the percentages established in Article 162(1) and (2) of the General Labour Law in Public Functions. In any case, and by way of paragraph 7 of the same article and diploma, the public employer and the employee may agree on the replacement of overtime pay by compensatory rest calculated taking into account the aforementioned increases.

Reply to the Committee:

Rules applied to on-call duty, zero hour contracts, including whether inactive periods of on-call duty are considered as time worked or as a rest period and how these periods are remunerated.

Regarding the situation that led to the conclusion of non-compliance, the following should be noted:

Decree-Law 299/2009, of 14 October 2009, converted the special corps of police personnel in the Public Security Police (PSP) into a special career, having defined and regulated its structure and regime; however, Decree-Law 243/2015, of 19 October, which approved the statute governing the police personnel in the Public Security Police (PSP), revoked this diploma.

In accordance with the provisions of Article 131 of the aforementioned Decree-Law No. 243/2015, police officers are granted a fixed and permanent remuneration supplement, called supplement for service in the security forces, based on the special work regime, on their permanent availability and on the encumbrances and restrictions inherent to the police profession.

Police officers shall also benefit from remuneration supplements granted in accordance with the particular requirements of specific positions and functions that imply, namely, hardship, unhealthiness, risk and physical and mental stress.

Article 154 of the same diploma, in turn, determined that "until the approval of the diploma referred to in Article 142 (which provides for the regulation of supplements), the remuneration supplements provided for in Decree-Law 299/2009, of 14 October, amended by Decree-Law 46/2014, of 24 March, remain fully in force, under the terms and conditions provided for therein".

The shift and stand-by supplement is provided for in Article 105 of Decree-Law 299/2009 of 14 October.

Article 4 §3 Right to equal and fair pay for men and women

1. Current Legislation and Enforcement:

On equal pay for men and women, without prejudice to what has been reported in previous National Reports on the implementation of the Revised European Social Charter, the following should be noted:

Article 13 of the Constitution of the Portuguese Republic enshrines the principle of equality in general, while Article 59(1)(a) establishes the principle of "equal pay for equal work". This constitutional principle of equal pay for all, regardless of age, gender, race, citizenship, territory of origin, religion and political or ideological beliefs, means that all workers are entitled to the remuneration of their work in accordance with its volume, nature and quality, with respect for the principle of equal pay for equal work and in such a way as to guarantee a proper living

On the other hand, Article 270 of the Labour Code says that when the amount of remuneration is determined, one must take account of the volume, nature and quality of the work, with respect for the principle of equal pay for equal work.

The Code also stipulates that workers have a right to equal working conditions, particular with regard to pay, and that the elements that determine the latter cannot entail any gender-based discrimination (Article 31[1], CT). Therefore, equal pay implies that, for equal work or work of equal value (Article 31(2) of the CT): any type of variable pay, namely pay per task, is established based on the same unit of measurement; pay calculated according to working time is the same. Having said this, differences in pay are not considered discriminatory when based on objective criteria that are the same for women and men – namely those involving merit, productivity, lack of absences, or length of service (Article 31[3], CT).

On the other hand, without prejudice to the above-mentioned, leave, absence or dispensation related to parental rights cannot justify differences in workers' pay [cf. Article 31(4) of the CT] and the violation of the right to equal pay between men and women constitutes a very serious administrative offence [Article 31(6) of the CT].

We would also note that the legal norms that regulate labour contracts can only be waived by collective agreements which do not contradict those norms and whose provisions, namely with

regard to equality, non-discrimination and pay-related guarantees, are more favourable to workers [Article 3[3][a] and [j], CT].

The provisions of collective agreement or in-house company regulations regarding working conditions – particularly remuneration – that apply solely to one of the sexes and to professional categories that entail work which is equal or of equal value are deemed automatically replaced by the most favourable provisions applicable to workers of both sexes [Article 26[2], CT].

It should be noted that within 30 days of the publication of a collective agreement or arbitration award in compulsory or necessary arbitration proceedings, the competent service of the ministry responsible for labour, after hearing the interested parties, shall make a reasoned assessment of the legality of its provisions on equality and non-discrimination (see Article 479 of the CT).

The following legislative changes took place in the reporting period:

→ Law no. 60/2018, of 21 August approved measures to promote equal pay for women and men for equal work or work of equal value and introduces the first amendment to Law no. 10/2001, of 21 May, which establishes an annual report on equal opportunities between men and women, to Law no. 105/2009, of 14 September, which regulates and amends the Labour Code and to Decree Law no. 76/2012, of 26 March, which approves the Organic Law of the Commission for Equality in Labour and Employment (CITE). Law no. 60/2018 aims to promote equal pay for women and men and to effectuate the principle of "equal pay for equal work or work of equal value". This law determines the development of statistical instruments so that they make available sex-disaggregated information, based on legal and administrative sources available, on a pay transparency basis. This law recommends It proposes a combination of informational measures and measures to assess and correct discriminatory pay gaps, establishing four types of mechanisms to implement the principle of equal pay for equal work or work of equal value.

Of particular note is the annual statistics[9] provided by the Office for Strategy and Planning (GEP) indicating pay gaps by company (corporate balance sheets on pay gaps) and by sector (sectoral barometers of pay gaps between women and men). This means that companies, regardless of

[9] https://www.gep.mtsss.gov.pt/trabalho

their size, now have the obligation to ensure a transparent remuneration policy based on objective and non-discriminatory criteria.

Once the pay gaps have been identified, the ACT will be able to notify large companies (in a first stage, companies with 250 or more employees and, subsequently, companies with 50 or more employees) to present a plan for the evaluation of these differences, based on the evaluation of the components of the jobs, to be implemented over a one-year period.

Table 15 - VIOLATIONS REGARDING EQUAL WORKING CONDITIONS THAT WERE SUBJECT TO SANCTIONS, 2017/2019

Areas	2017	2018	2019
Equal working conditions	0	4	3

Source: ACT Information System

Finally, any worker or trade union representative may now ask CITE to issue a binding opinion on the existence of pay discrimination on the grounds of gender for equal work or work of equal value.

During the relevant period, CITE received three complaints regarding remuneration and supplements and delivered its opinions. These opinions are non-binding administrative decisions, but failure to comply with them is considered illegal unless a court decides otherwise.

CITE also provides regular general information and disseminates legislation on equality and non-discrimination, as well as legal support and clarification in the area of its competences, through its website[10], a helpline (free of charge) and specialised face to face service to the public.

Full operationalisation of the principle of equality also entails the existence of other national instruments, some of which are cross-cutting in nature, such as the 5th National Plan for Gender Equality, Citizenship and Non-Discrimination 2014-2017 and the ENIND - National Strategy for Equality and Non-Discrimination - Portugal + Equal 2018-2030[11], while some are specific to other areas, but incorporate this dimension.

The 5th PNI (2014-2017), delivering on the commitments made regarding the implementation of public policies to promote gender equality and combat non-discrimination on the grounds of

[10] www.cite.gov.pt

[11] Respectively approved by Council of Ministers Resolutions nos. 103/2013 of 22 June 2007 and 61/2018 of May 21.

sex, both at national level, namely in the 19th Constitutional Government's Programme and in the Major Planning Options, and at international level, namely in the Convention on the Elimination of All Forms of Discrimination Against Women, the Beijing Declaration and Platform for Action, the European Pact for Gender Equality (2011-2020), the Strategy for Equality between Women and Men 2010-2015 and the Europe 2020 Strategy, included in the Strategic Intervention Area no. 3 - "Economic Independence, Labour Market and Organisation of Professional, Family and Personal Life", the strategic objective of "Reducing the inequalities that persist between women and men in the labour market, namely in terms of wages" and measures aimed at strengthening the diagnosis and knowledge of the pay gap between men and women, namely measure 46) Evaluating the evolution of the pay gap between women and men in Portugal, by activity.

The ENIND - National Strategy for Equality and Non-Discrimination - Portugal + Equal 2018 - 2030, which embodies the national public policy in the area of gender equality, marks a new programmatic cycle that begins in 2018, aligned in terms of time and substance with the 2030 Agenda for Sustainable Development. It is based on three Action Plans that define the Strategic and Specific Objectives up to 2030, as well as the concrete Measures to be pursued within the scope of those objectives.

Integrated in the ENIND, the Action Plan for Equality between Women and Men (PAIMH) has as a Strategic Objective 2 - "Ensure the conditions for full and equal participation of women and men in the labour market and in their professional activity", and as a Specific Objective 2.2 "Eliminate the pay gap between women and men", which is materialized with measures that aim to promote the reduction of the pay gap between men and women, namely:

2.2 3 Production of white papers/studies/projects promoting the elimination of income disparities.

2.2 4 Dissemination across sectors of unbiased job evaluation systems.

With regard to initiatives to promote equal pay for women and men, every year since 2013, CITE has celebrated the National Equal Pay Day with the aim of raising public awareness to reverse the persistent difference between what women earn and what men earn by disseminating information regarding pay inequalities on its website and in the written press. It has also designed and launched public awareness campaigns on the persistent pay gap between women and men.

In 2019 the National Campaign for Equal Pay - "I deserve equal" was launched with the aim of raising awareness, clarifying and motivating the whole of society towards a paradigm shift. This campaign emphasises that reconciling the interests of male and female workers and employers is a clear priority in the law on equal pay for women and men, pointing out that equality between women and men is a right and not a privilege.

This campaign was publicised on television, radio, online press, billboards, public transport and ATM machines.

The campaign ran in two periods, from 1 to 15 September, to mark the 40th anniversary of CITE, and from 1 to 15 November 2019, to celebrate National Equal Pay Day (8 November).

CITE organised the Seminar "Gender Equality in the Labour Market: Equal Pay Day", which took place on 2 November 2017 in Lisbon.

As part of the cooperation relations between CITE and ACT with the aim of developing joint actions to raise the awareness of employers, as well as to achieve a more fluid articulation between the legal work of CITE and the inspection activity of ACT, the two entities, in a joint initiative, promoted the National Action for the Promotion of Gender Equality at Work.

This Action lasted for one year, from September 2016 to September 2017, focusing on four issues: equal pay, harassment, parental/work-life balance protection and access to work, employment and vocational training. The aim was to raise public and social awareness about the problem of gender discrimination in the labour market, making it clear that gender discriminatory behaviour is reprehensible and unacceptable[12].

CITE has also developed training references for strategic targets, which include the issue of equal pay. Under the Conciliation and Gender Equality Programme of the EEA Grants Financial Mechanism 2014-2021, the Commission for Equality in Labour and Employment (CITE), is the promoter of the Project "Equality Platform and Standard", which started in October 2019 and is scheduled to end in April 2023, with the objectives of:

[12] https://cite.gov.pt/documents/14333/193244/Diptico_IGUALDADE_16.06.2016.pdf/8720c8ef-83ba-4b42-bead-1c187a36da42

https://cite.gov.pt/documents/14333/193244/MONOFOLHA_salario_16.06.2016.pdf/49c47b17-1db3-440c-b547-0972845e4c60

a) To build an IT platform to monitor the implementation of public policies under the Agenda for Equality in the Labour Market and in Companies, identifying a set of monitoring indicators;
b) To develop a Portuguese Standard - Management System for Equal Pay for Women and Men, based on the Icelandic Equal Pay Standard (standard ÍST 85: 2012), which defines technical requirements for public and private entities wishing to implement a system for managing equal pay for women and men.

The drafting of the Portuguese Standard - Management System for Equal Pay for Women and Men (NP SGIRMH), began in late September 2020 with the constitution of the Technical *Committee for Standardisation CT 216*, composed of 27 members, which includes representatives of social partners, public administration, academia and certification bodies, as well as individual experts.

Four working groups were created under this Commission:

1. Legislation and applicable law in the area of equal pay;
2. Methodology for determining and measuring the value of jobs and tools to support its implementation;
3. Analysis of the Icelandic Standard to determine and select what is applicable in the national context;
4. Certification requirements and methodology of the standard's management system.

CT 216 holds bimonthly plenary meetings and the working groups meet regularly to read, analyse and propose changes/adaptations to the text of the Icelandic Standard ÍST 85:2012 - Equal wage management system - Requirements and guidance, which is the reference for the discussion and drafting of the Portuguese Standard Management System for Equal Pay for Women and Men.

Given the most recent data from Eurostat[13], the pay gap between women and men in Portugal in 2019 was 10,9 % (2,0 p.p. more than in 2018), a figure that places Portugal below the European Union average (whose pay gap was 13,7% in the same year).

[13] The indicator commonly used in the EU framework to measure the gender pay gap is the so-called *gender pay gap in unadjusted form* - The indicator measures the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. It should also be noted that, according to the methodology used, this indicator is calculated for firms with 10 or more

According to the most recent information from the Personnel Data Sheets (GEP/MTSSS) for Portugal, and following a different methodology from that used by Eurostat to calculate the pay gap between men and women, by considering all wages paid in all companies with employees, and not only in companies with more than 10 employees, the decrease in the pay gap is noticeable, with regard to the basic pay between men and women, which was 14.4% in 2018 and decreased to 14.0% in 2019. With regard to earnings, there has also been a decrease in the gender gap (-0.7 p.p.) from 17.7% in 2018, to 17.1% in 2019. This difference translates into an average loss of 223 euros/month for women compared to men, i.e. a decrease in the average monthly difference of -2.3 euros/month compared to 2018.

It should be noted that a large part of the Portuguese business fabric is made up of micro and small businesses (excluded from the Eurostat calculation methodology). As such, and although the indicator calculated by the GEP/MTSSS does not allow international comparisons, it provides a more complete picture of the reality of the national market.

Table 16 - AVERAGE MONTHLY BASIC PAY AND EARNINGS BY GENDER AND GENDER PAY GAP IN PORTUGAL, 2017-2019

	2017	2018	2019
Average monthly basic salary (€)			
M	1,008.7	1,034.9	1,069.2
W	859.2	886.0	920.0
Average monthly earnings (€)			
M	1,233.5	1,269.7	1,307.7
W	1,009.4	1,044.2	1,084.6
Pay gap between men and women (%)			
Basic	14.8	14.4	14.0

paid employees and only for aggregated sections B to S without O. - *Gender pay gap in unadjusted form* (online data code: SDG_05_20) / Accessed 29 June 2021.

Earnings	18.2	17.8	17.1

Source: GEP/MTSSS.

The evolution of the gender pay gap indicator over the 2017-2019 period shows an improvement in the pay equity conditions between women and men.

Overall, there is a decrease in the gender pay gap in Portugal between 2018 and 2019, both in average monthly basic pay (-0.4 pp) and in average monthly earnings (-0.7 pp).

Taking into account the existing pay gap in 2019, with regard to qualification levels, the pay trend of previous years, in which the pay gap between men and women tended to widen as the level of professional qualification increased, is beginning to fade, namely between "Highly qualified professionals" and "Qualified professionals".

At the “Senior Management" level, between 2018 and 2019, there is a decrease in the pay gap in both basic pay (-0.6 pp) and earnings (-0.8 pp), where in 2019, the gap in basic pay was 25.5% and in earnings it was 26.5%.

However, it should be noted that the pay gap increased in basic pay between 2018 and 2019 between "Middle Management" and "Semi-qualified Professionals" (+0.6 pp, respectively) and between "Trainees, Practitioners and Apprentices" (+0.2 pp), while decreasing at the other qualification levels.

With regard to earnings, the pay gap decreased across all qualification levels between 2018 and 2019, with greater expression at the level of "Highly qualified professionals" and "Skilled professionals" (-0.9 pp, respectively), as well as in "senior managers" and "Unqualified professionals" (-0.8 pp, respectively).

At the "Middle Management" level, in 2019, the disparity in basic pay was 13.8% (it was 13.1% in 2018) and in earnings was 15.4% (it was 15.9% in 2018).

As for "Semi-skilled professionals" in 2019, they also saw the gap in basic pay increase to 10.5% (it was 9.9% in 2018), while in earnings the gap decreased to 14.5% (it was 14.7% in 2018).

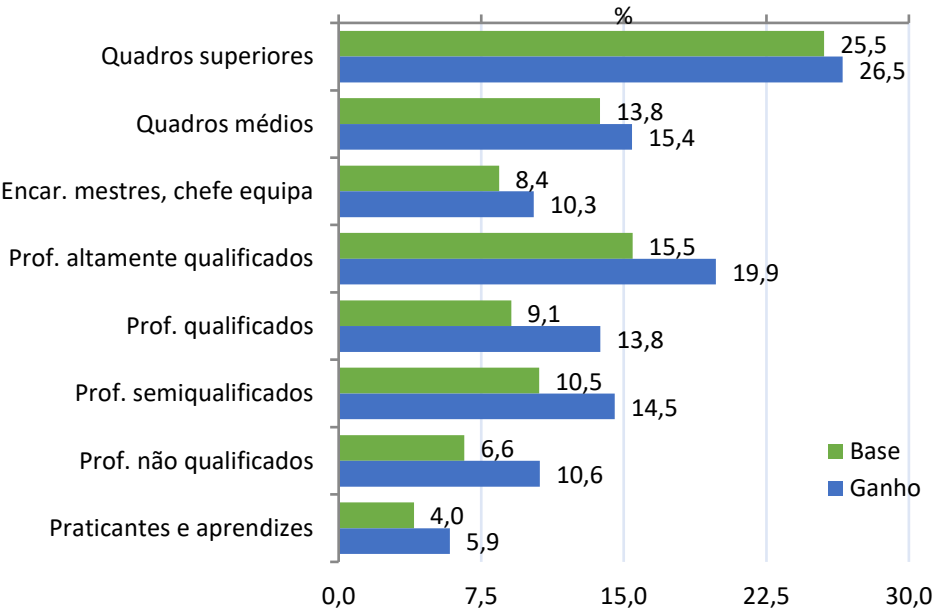
As for "Trainees, Practitioners and Apprentices" in 2019, they also saw the gap in basic pay increase to 4.0% (it was 3.8% in 2018), while in earnings the gap decreased to 5.9% (it was 6.3% in 2018).

Between 2018 and 2019, "Highly skilled professionals" saw the widest decrease in the pay gap, both in basic pay (down from 17.4% to 15.5%, respectively) and in earnings (down from 28.8% to 19.9%, respectively). "Skilled professionals” also experienced a pay gap decrease in the period

in question, both in terms of basic pay (down from 9.8% to 9.1%) and earnings (down from 14.7% to 13.8%).

As for "unskilled professionals" there was also a slight decrease in the pay gap compared with the previous year, for both pay (basic pay went from 6.8% to 6.6% and earnings from 11.4% to 10.6%).

Table 17 - PAY GAP BETWEEN WOMEN AND MEN BY PROFESSIONAL QUALIFICATION IN PORTUGAL, 2019 (%)



Source: GEP/MTSSS.

Compared to the previous year, in 2019, the pay gap decreased in practically all levels of education (except for workers with post-secondary education not exceeding level IV) in terms of basic pay and in almost all levels of education in terms of earnings (except for workers with post-secondary education not exceeding level IV and with a higher vocational training course).

It should be noted that, in 2019, the largest decreases in the gender pay gap were observed among workers with doctoral degrees, with the gap decreasing to 14.7 % (from 18.7 % in 2018) in basic pay (-4.0 pp) and to 15.4 % (from 19.5 % in 2018) in earnings (-4.1 pp).

Similarly, the gender pay gap in 2019 for the group of workers with education below basic education also decreased compared to 2018, both in basic pay (7.6 % in 2019, compared to 8.9 % in 2018) and in earnings (12.2 % in 2019, compared to 14.0 % in 2018).

In 2019, the largest gaps continued to be found among male and female workers with a technical bachelor's degree (27.7 % in terms of basic pay and 28.7 % in terms of earnings), although these

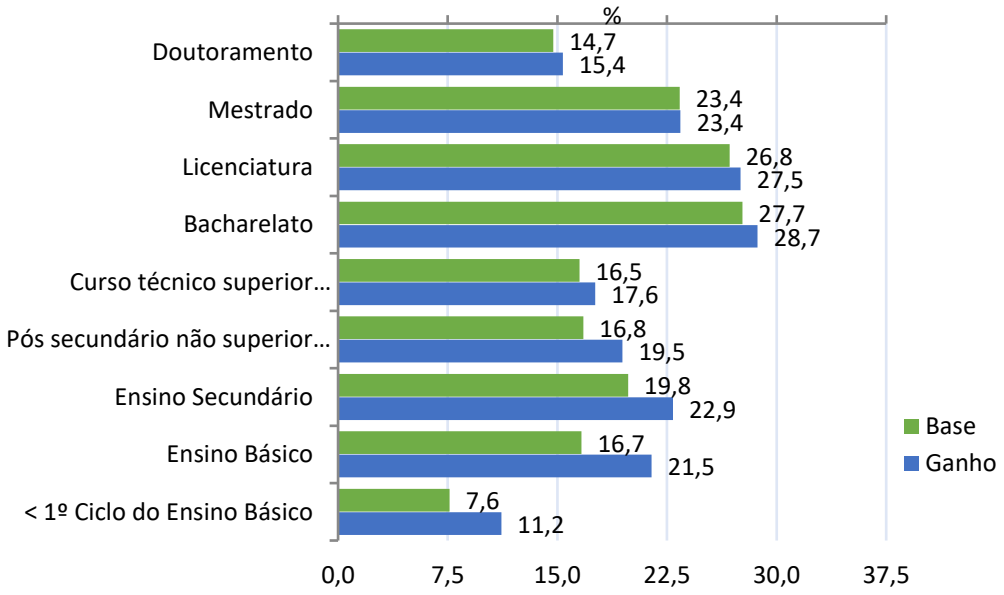
gaps decreased compared to 2018 (29.1 % in terms of basic pay and 30.2 % in terms of earnings) and among male and female workers with a bachelor's degree (26.8 % in terms of basic pay and 27.5 % in terms of earnings), for whom the gaps also decreased compared to 2018 (27.2 % in terms of basic pay and 28.0 % in terms of earnings).

The pay gap between 2018 and 2019 for workers with a Master's degree slightly decreased for both basic pay (from 23.5 % to 23.4 %, respectively) and earnings (from 23.9 % to 23.4 %, respectively).

For male and female workers with post-secondary education not exceeding level IV, between 2018 and 2019, there was a widening of the pay gap in both basic pay (from 14.9 % to 16.8 %, respectively) and earnings (from 18.0 % to 19.5 %, respectively).

On the other hand, for workers with post-secondary education not exceeding level IV, between 2018 and 2019, there was a decrease in the gap in basic pay (from 17.1 % to 16.5 %, respectively), and an increase in earnings (from 17.0 % to 17.6 %, respectively).

Table 18 - PAY GAP BETWEEN WOMEN AND MEN BY EDUCATIONAL ATTAINMENT LEVEL IN PORTUGAL, 2019 (%)



Source: GEP/MTSSS.

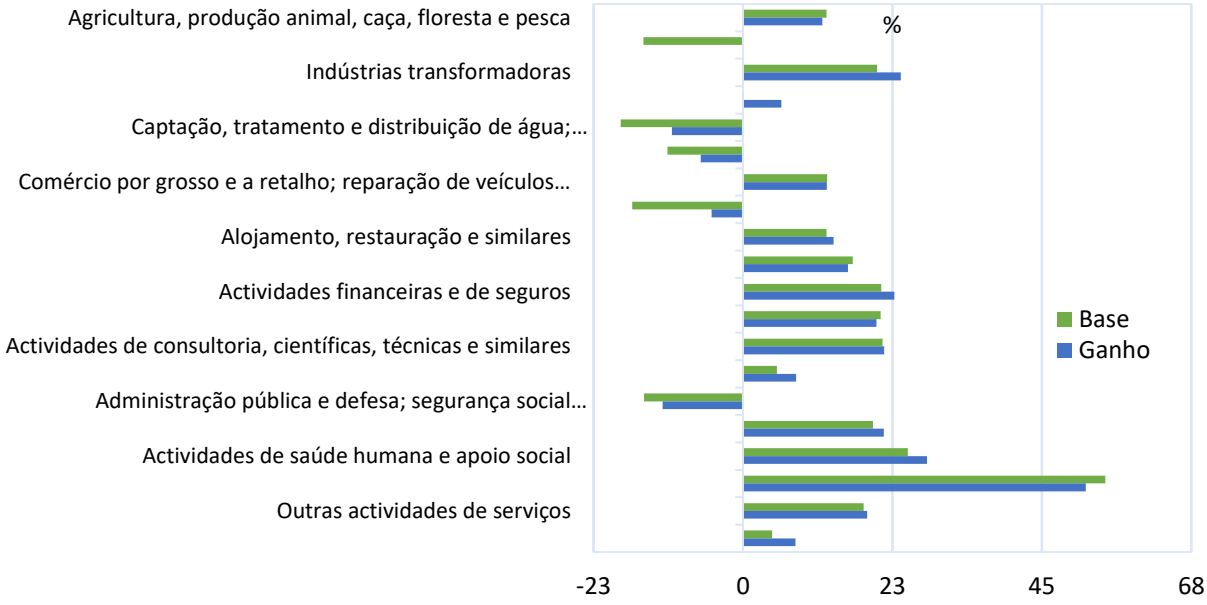
In terms of basic pay by economic activity, "Activities of international organizations and other extra-territorial institutions" continues to be the sector in which men earn the highest pay (€2,217.9), followed by "Arts, entertainment, sports and recreation" (€2,061.5).

For women, the highest basic pay is found in "Electricity, gas, steam, hot and cold water and air conditioning" (€2,049.8) and "Activities of international organisations and other extra-territorial institutions" (€2,120.3). Comparing these two sectors, women earn € 3.32 less than men in the former and € 97.68 less in the latter.

"Electricity, gas, steam, hot and cold water and cold air" continues to be the sector where both genders earn the highest salaries (€ 2,845.3 for men and € 2,680.9 for women) in terms of earnings.

The biggest pay gaps continue to be seen in "Arts, entertainment, sports and recreation", where men earn €1,125.3 more in basic pay and €1,182.2 more in earnings than women, even though it's an activity sector with a low number of workers and in "Financial and insurance activities", where men earn €379,2 more in basic pay and €600,7 more in earnings.

Table 19 - PAY GAP BETWEEN WOMEN AND MEN BY ECONOMIC ACTIVITY IN PORTUGAL, 2019 (%)



Source: GEP/MTSSS.

In 2019, the rate of low wages, calculated from the payrolls, which over the past few years had been following a downward trend in both sexes, stabilised at the same levels as in 2018 and 2027 (0.2 %), both for men (0.1 %) and women (0.3 %).

In respect of the universe of the best-paid workers in 2019, women continue to be clearly under-represented, and there is no evidence of a clear and expected narrowing of that gap. The vast majority of the top 1 % of employees with the highest earnings are men (76.4 %), having decreased in favour of women (23.6 %) by only 0.6 pp in comparison with 2018.

With regard to the top 0.1 % of workers with the highest earnings, the relative weight of men (88.4 %) is even higher in comparison to women (11.6 %), with a decrease of -1.2 pp in disfavour of women compared to 2018. In other words, the pay gap has widened further.

As for the top 0.01% of workers with the highest earnings, the inequality is even clearer, with women accounting for only 5.6 % of this group (1.3 pp more than in 2018).

2. Replies to the Committee questions from the 2014 Conclusions

The Committee asks how court decisions have dealt with the opinions of the CITE

The opinions issued by CITE are merely administrative and non-binding decisions, and therefore their non-compliance does not constitute an unlawful act, therefore legal action must be taken so that the existence of possible discrimination can be recognised.

Furthermore, although CITE's opinion concludes that there are indications of discrimination, this Committee has no intervention in any legal proceedings that may be brought, nor does it have any knowledge of whether or not the complaining worker has filed the appropriate legal action.

The CRP also states, in paragraph 3 of the same article, that wages enjoy special guarantees under the terms of the law.

The 2009 Labour Code, in the general provisions on equality and non-discrimination, defines, in Article 23(1)(c) and (d) - Concepts of equality and non-discrimination, the concepts of "equal work" and "work of equal value":

a) Equal work, that in which the work performed for the same employer is equal or objectively similar in nature, quality and quantity;
b) Work of equal value, that in which the work performed for the same employer is equivalent, taking into account the qualification or experience required, the responsibilities assigned, the physical and mental effort and the conditions in which the work is carried out.

With regard to issues concerning pay discrimination, Article 31 - Equal Working Conditions, provides that:

1. Workers have a right to equal working conditions, particular with regard to pay, and that the elements that determine the latter cannot entail any gender-based discrimination.
2. Equal pay implies that for equal work or work of equal value:
    a. Any form of variable remuneration – namely task or output-based pay – must be established based on the same unit of measurement.

b. Remuneration calculated based on working time must be the same.

3. The differences in pay are not considered discriminatory when based on objective criteria that are the same for women and men – namely those involving merit, productivity, lack of absences, or length of service.
4. Without prejudice to the above, leave, absences or dispensation from work for reasons linked to the protection of parenthood serve as grounds for differences in workers' remuneration.
5. Job description and job evaluation systems should be based on objective criteria common to both men and women in order to exclude any discrimination based on sex.
6. A violation of Paragraph 1 is a very serious administrative offence, and a violation of Paragraph 5 is a serious administrative offence.

Article 31 results from the assimilation of Articles 28 of the previous Labour Code, on working conditions, and of Article 37 of Law no. 35/2004, of 29 July, on equal pay.

The aforementioned Article 31 of the Labour Code consolidates the principle of "equal pay for equal work", which is enshrined in Article 59(1)(a) of the Constitution of the Portuguese Republic and in Article 1 of Directive 75/117/EEC, of 10 February.

This article determines the formula by which an effective equality of remuneration shall be determined, in accordance with the criteria listed in paragraphs 2(a) and 2(b). In other words, equal pay implies the elimination of any discrimination based on sex with regard to the quantitative determination of remuneration, that is to say, the criteria for determining the variable remuneration must be identical for both sexes and the remuneration for work calculated according to time must be equal.

Pay differences are accepted as lawful when based on objective criteria common to men and women, namely distinctions based on merit, productivity, assiduity or seniority of the workers. In other words, when minimum rates of pay are exceeded, the employer may establish wage supplements that distinguish workers, namely according to their productivity. What is not permitted is the establishment of arbitrary and discriminatory factors of comparison.

Leave, absence and dispensations related to parental protection may not constitute grounds for pay differentials. As for attendance bonuses, the non-payment of these to workers who have taken justified absences constitutes a violation of the principle of equality.

The Labour Code, in the general provisions on remuneration, defines the notion of remuneration and its components.

Thus, Article 258, under the heading General Principles on Retribution, considers that:

1. Remuneration is the benefit to which the worker is entitled in exchange for his or her work under the terms of the contract, the norms that regulate it or custom.
2. Remuneration comprises the basic salary and other regular and periodic payments made, directly or indirectly, in cash or in kind.
3. Any benefit provided by the employer to the worker is considered remuneration.
4. The guarantees provided for in this Code shall apply to the payment qualified as remuneration.

Moreover, Article 260, under the heading Benefits Included or Excluded from Remuneration, provides as follows:

1 - The following are not considered as remuneration:

a) Amounts received as daily allowances, travel allowances, transport expenses, installation expenses and other equivalent, due to the worker for displacements, new installations or expenses incurred in the service of the employer, except when, due to the frequency of such displacements or expenses, those amounts, in the part that exceeds the respective normal amounts, have been provided for in the contract or should be considered as an integral part of the worker's remuneration;
b) Bonuses or extraordinary benefits granted by the employer as a reward or bonus for the company's performance;
c) Benefits arising from facts related to professional performance or merit, as well as the attendance of the employee, whose payment, in the respective reference periods, is not guaranteed in advance;
d) Participation in company profits, if the worker’s contract guarantees her/him a fixed, variable or mixed remuneration, appropriate to his work.

2 - The provisions of subparagraph a) of the preceding paragraph shall apply, with the necessary adaptations, to the allowance for absences and food.

3 - The provisions of paragraphs 1(b) and 1(c) shall not apply:

a) To bonuses that are due by virtue of the contract or the norms that govern it, even if their payment is conditioned to the good services of the employee, nor to those that, due to their importance and regular and permanent nature, should, according to custom, be considered as an integral element of the employee's remuneration;

b) Benefits related to the results obtained by the company when, either in their attributive capacity or by their regular and permanent attribution, they are of a stable nature, irrespective of the variability of their amount.

With regard to public sector workers, in matters related to equality and non-discrimination, Article 4(c) of the General Labour Law in Public Functions, approved in annex, to Law No. 35/2014 of 20 June, states that the Labour Code shall apply.

In addition to the already mentioned changes made with Law no. 60/2018 of 21 August.

Reply to the Committee:

In relation to the question concerning the dismissal of an employee, following a complaint on the basis of equal pay

The Portuguese legislation determines as unlawful dismissal, or without just cause, when the employer does not respect any of the points of termination of the contract for just cause.

Article 381 of the Labour Code establishes the general grounds for unlawful dismissal, and reads as follows:

Without prejudice to the provisions of the following articles or specific legislation, dismissal on the employer's initiative shall be unlawful:

a) If it is for political, ideological, ethnic or religious reasons, even if for a different reason;
b) If the reason for dismissal is declared unfounded;
c) if it is not preceded by the relevant procedure;
d) In the case of a pregnant worker, a worker who has recently given birth or is breastfeeding or a worker on initial parental leave, in any of its forms, if the prior opinion of the competent entity in the area of equal opportunities between men and women has not been requested.

In cases where dismissal is unlawful, the unlawfulness of dismissal can only be decreed by a judicial court and in that case, the employee has the right to oppose to the court. Article 387 of the Labour Code is the legislation that establishes the assessment of the dismissal and determines that:

a) The fairness and lawfulness of the dismissal can only be assessed by a court of law.
b) The worker may object to his/her dismissal, by submitting a request on the appropriate form, to the competent court, within 60 days, counting from the reception of the communication of dismissal or from the date of termination of his/her contract, if later, except in the case foreseen in the following article.

c) In the judicial review of dismissal, the employer may only invoke facts and grounds contained in the decision to dismiss communicated to the employee.
d) In cases of judicial review of dismissal for reasons attributable to the employee, without prejudice to the assessment of procedural irregularities, the court shall always rule on the verification and merits of the grounds invoked for the dismissal.

If the dismissal is declared unlawful, the employee will have the right to a dismissal indemnity or, the employer must reinstate the employee.

Thus, Article 389 of the Labour Code establishes the following as effects of the unlawfulness of dismissal:

1. If the dismissal is declared unlawful, the employer is condemned:
a) To compensate the worker for all damages caused, both pecuniary and non-pecuniary;
b) To reinstate the worker in the same establishment of the company, without prejudice to his category and seniority, except in the cases provided for in Articles 391 and 392
2. In the case of a mere irregularity based on procedural errors due to the omission of evidential steps referred to in Article 356 (1) and (3), if the justifiable reasons for dismissal are declared valid, the worker shall only be entitled to compensation corresponding to half of the amount that would result from the application of Article 391 (1).
3. Breach of the provisions of paragraph 1 above shall constitute a serious administrative offence.

The compensation due to the worker in case of unlawful dismissal is provided for in Article 390 of the Labour Code, which states that:

1. Without prejudice to the compensation provided for in paragraph a) of no. 1 of the preceding Article, the worker shall be entitled to receive the wages he or she has ceased to earn since the dismissal until the court decision declaring the dismissal to be unlawful has become final.
2. To the remuneration referred to in the previous number is deducted:
a) The amounts that the worker receives upon termination of the contract and that he/she would not receive if it were not for the dismissal;
b) The compensation for the period that has passed since the dismissal until 30 days before the action is filed, if the action is not filed within 30 days of the dismissal;
c) The unemployment benefit granted to the employee during the period referred to in no. 1, and the employer shall pay that amount to social security.

In accordance with the national legislation in force, in substitution of his/her reinstatement, the worker can opt for compensation, such possibility is foreseen in Article 391 of the Labour Code establishing that:

1. In lieu of reinstatement, the worker may choose compensation, until the end of the discussion at the final hearing, and the court shall determine the amount, between 15 and 45 days of basic salary and seniority for each full year or fraction of time worked, taking into account the value of the salary and the degree of unlawfulness arising from the terms of Article 381.
2. For the purposes of the preceding paragraph, the court shall take into account the time that has elapsed since the dismissal until the formal judicial decision.
3. The compensation provided for in no. 1 above shall not be less than three months' basic salary and seniority payments.

The current legislation also establishes, on the other hand, the possibility for the employer to request the court to exclude the reinstatement of the worker, such possibility is foreseen in Article 392 of the Labour Code and has the following wording:

1. In the case of a micro-company or an employee holding an administrative or managerial position, the employer may request the court to exclude his/her reinstatement, based on facts and circumstances that make the return of the employee seriously prejudicial and disruptive to the functioning of the company.
2. The provisions of the preceding paragraph shall not apply whenever the unlawful dismissal is based on political, ideological, ethnic or religious grounds, even where a different reason is invoked, or when the employer maliciously creates the grounds for opposition to reinstatement.
3. If the court excludes the reinstatement, the worker shall have the right to compensation, determined by the court between 30 and 60 days of basic salary and seniority payments for each full year or fraction of seniority, under the terms of paragraphs 1 and 2 of the previous article, which may not be less than the amount corresponding to six months of basic salary and seniority payments.

Reply to the Committee:

The Committee questions whether comparisons of pay outside the company are possible in equal pay litigation when the difference identified in the pay conditions of male and female workers performing work of equal value is attributable to a single source. This can mean employees working for the same legal person or group of legal persons, employees from several companies or establishments covered by the same collective labour agreement or regulations.

According to the legislation in force, pay gaps are verified within each company, and it is not possible for an employee to make a comparison with an employee of another company, even if both employees are covered by the same collective agreement.

In effect, the only alternative that an employee has to correct any difference in treatment will be through the verification of compliance with the remuneration rates that may be established in a collective agreement.

Reply to the Committee:

The Committee recalls that when a dismissal occurs because of a complaint by an employee about pay discrimination, the employee should be able to challenge the dismissal in court. In this case, the employer must reinstate the worker in a similar position. If reinstatement is not possible, the employer must pay a compensation to the worker, which must be sufficient to compensate the worker and to deter the employer. The competence to determine the amount of compensation should lie with the courts and not with the legislator (Conclusions XIX-3, Germany).

The Committee therefore requests information about legislation in this regard.

Under the terms of Article 389 of the Labour Code, if a dismissal is declared unlawful, the employer is condemned:

1. To compensate the worker for all damages caused, both pecuniary and non-pecuniary;
2. To reinstate the worker in the same establishment of the company, without prejudice to his category and seniority, except in the cases provided for in Articles 391 and 392

Article 390 of the Labour Code provides that, without prejudice to the compensation provided for in paragraph a) of no. 1 of the preceding Article, the worker shall be entitled to receive the wages he or she has ceased to earn since the dismissal until the court decision declaring the dismissal to be unlawful has become final. According to Article 391(1) of the Labour Code, in lieu of reinstatement, the worker may choose compensation, until the end of the discussion at the final hearing, and the court shall determine the amount, between 15 and 45 days of basic salary and seniority for each full year or fraction of time worked, taking into account the value of the salary and the degree of unlawfulness arising from the terms of Article 381.

The court must take into account the time that has elapsed since the dismissal until the final court decision, and the compensation provided for in no. 1 above shall not be less than three months' basic salary and seniority payments.

It should be noted that in Portugal, in the period under review, Law No. 60/2018, of 21 August, was published, approving measures to promote equal pay for women and men for equal work or work of equal value.

Article 9 of this law provides that the courts shall immediately inform the competent authority in the area of equal opportunities between men and women (i.e. the Commission for Equality in Labour and Employment - CITE) of final judgments condemning pay discrimination on the grounds of sex.

Article 4§ 4 - Reasonable period of notice for termination of employment

1. Current Legislation and Enforcement:

During the reference period there were no changes regarding the notice periods of 15, 30 or 75 days in the case of dismissal due to individual redundancy or inadequacy (Articles 371 (3) and 378 (2) of the Labour Code).

Article 372 of the Labour Code provides that the provisions of No. 4 and the first part of No. 5 of Article 363 and Articles 364 to 366 apply to workers dismissed due to individual redundancy.

As regards the matter in question, it should be noted that Article 363(4) of the Labour Code provides that if the minimum notice period is not observed, the contract terminates after the missing notice period following the communication of dismissal, and the employer must pay the remuneration corresponding to this period.

In addition, during the notice period, the employee is entitled to time credit corresponding to two working days per week, without loss of pay.

The time credit can be divided over some or all days of the week, at the worker's initiative, and the worker must give the employer three days' notice of the use of the time credit, unless an acceptable reason can be given. The violation of the provisions of Article 364 of the Labour Code constitutes a light administrative offence.

Under the terms of Article 365, during the notice period, the employee may terminate the employment contract, by giving at least three working days' notice, maintaining the right to compensation, calculated in accordance with Article 366.

2. Replies to the Committee questions from the 2014 Conclusions

The Committee requests information on the collective agreements which provide for increased notice periods and/or severance pay pursuant to Article 339, paragraph 2 of the Code. It notes from the Comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Convention No. 158 on Termination of Employment (1982): Observation, adopted in 2012, published at the 102nd ILC session (2013)) that the legislation on dismissal has recently undergone structural adjustments and asks for the information to reflect these changes.

In this regard, it should be noted that:

- → After the reference period of the previous report on this subject (9th Report) there were changes in the Labour Code, a law that regulates the matter of termination of the work contract (including termination by individual and collective redundancy, by inadequate adaptation, with just cause);
- → These changes occurred through:
    1. Law no. 69/2013, of 30 August (which amended Article 366 - which deals with compensation in the case of collective dismissal - and to which it refers Article 372, concerning dismissal by individual redundancy, and Article 379, concerning dismissal by inadequate adaptation);
    2. Law no. 27/2014, of 8 May (which amended Article 368, concerning the requirements for dismissal by redundancy, and Article 375, concerning the requirements for dismissal by inadequate adaptation);
    3. Law no. 93/2019, of 4 September (which amended Article 370, on consultations in the event of dismissal by redundancy).

Articles 372 and 379 of the Labour Code were not expressly amended, but given that they refer to Article 366, which was amended in 2013 (cf. Law No. 69/2013 of 30 August), it can be stated that the regime of dismissal by redundancy and by inadequate adaptation also underwent changes. However, these changes relate to compensation for collective dismissal and do not deal with notice periods.

Reply to the Committee:

On the other hand, the Committee requests information on the applicability of the provisions of Article 364(1) of the Labour Code in cases of dismissal by inadequate adaptation and in cases of redundancy.

Now, according to the terms of Article 372, the provisions of Article 364 are applicable to the worker dismissed due to redundancy, and according to the terms of Article 379(1), the provisions of Article 364 are applicable to the worker dismissed due to inadequate adaptation.

The Committee considers that the notice periods applicable to the termination of fixed-term employment contracts during the trial period (cf. Article 112(2) of the Labour Code) and in very short-term contracts for seasonal activities in the agricultural or tourism sector (cf. Article 142(1) and (2) of the Labour Code) are insufficient in view of Article 4§4 of the Charter and also that the notice periods applicable to the termination of employment contracts under the general terms are insufficient when the contract is less than four months old.

It seems relevant to mention that, in 2019, Article 112 of the Labour Code was amended by Law no. 93/2019, of 4 September, which amended the notice period provided for in paragraph 1(b) to 180 days for workers who:

- → Hold positions of technical complexity, with a high degree of responsibility or requiring special qualifications;
- → Hold positions of trust;
- → Are looking for their first job or are long-term unemployed.

In addition, Article 112 (4) now provides that the trial period, according to any of the previous numbers, is reduced or excluded, depending on whether the duration of the previous fixed-term contract for the same activity, of the temporary employment contract performed in the same workplace, of the services contract for the same object, or of the professional internship for the same activity, was shorter or equal to or longer than the duration of the trial period, provided that, in any of the cases, they were concluded by the same employer.

Reply to the Committee:

The Committee requests information on the periods of notice and/or compensation applicable to fixed-term employment contracts outside the trial period, the deadlines for termination of these contracts, the deadlines for termination of employment contracts of workers on service leave (cf. Article 163 et seq. of the Labour Code), the deadlines for termination of temporary employment contracts (cf. Article 180 et seq. of the Labour Code), and the grounds for termination of employment contracts due to insolvency, death of the employer, or transfer of the establishment.

According to Article 400 (3) of the Labour Code, in the case of fixed-term employment contracts, termination can be made with a minimum notice period of 30 or 15 days, depending on whether the duration of the contract is at least six months or less. In the case of a permanent contract, for the purposes of the prior notice period, the duration of the contract already elapsed shall be taken into account (cf. Article 400(4) of the Labour Code).

According to Article 344 of the Labour Code, the fixed-term employment contract expires at the end of the stipulated period, or at its renewal, if the employer or the employee communicates to the other party the desire to terminate it, in writing, respectively, 15 or eight days before the end of the contract. If a fixed-term employment contract terminates due to the end of its term, the employee shall be entitled to compensation corresponding to 18 days of basic salary and seniority for each full year of seniority, calculated in accordance with Article 366, unless the termination is the result of a declaration by the employee under the terms of the preceding paragraph. According to Article 345 of the Labour Code, the permanent employment contract

expires when, foreseeing its termination, the employer communicates its termination to the employee with a minimum notice period of seven, 30 or 60 days, depending on whether the contract has lasted up to six months, six months to two years or for a longer period. In the absence of the above-mentioned communication, the employer shall pay the employee the amount of the retribution corresponding to the missing notice period.

If a permanent employment contract expires, the worker is entitled to a compensation calculated in accordance with Article 366, which corresponds to the sum of the following amounts:

- → to 18 days of basic salary and seniority payments for each full year of seniority, for the first three years of the contract;
- → to 12 days of basic salary and seniority payments for each full year of seniority, in the subsequent years.

In accordance with Article 163 of the Labour Code, either party may terminate a service commission contract, upon prior written notice of at least 30 or 60 days, depending on whether the commission has lasted, respectively, for up to two years or for a longer period. The lack of prior notice does not prevent the termination of the service commission, and the party at fault is obliged to compensate the other party under the terms of Article 401 of the Labour Code.

As regards the deadlines for terminating temporary work contracts, Article 182(7) establishes that the provisions of Article 344 or 345, depending on whether it is a fixed-term or permanent contract, shall apply to the termination of the temporary work contract.

Lastly, with regard to the termination of employment contracts due to insolvency, death of the employer and transfer of the establishment, see the provisions of Article 346 of the Labour Code, according to which, the death of an individual employer terminates the employment contract on the date the company closes, unless the successor of the deceased continues the activity for which the employee is employed, or if there is a transfer of the company or establishment.

The extinction of the employing legal person, when there is no transfer of the company or establishment determines the termination of the employment contract.

The total and definitive closure of a company determines the termination of the employment contract, and the procedure set out in Articles 360 et seq., with the necessary adaptations, shall be followed. However, this regime does not apply to micro-businesses, whose closure must be notified to the employee with the prior notice provided for in Article 363 (1) and (2) of the Labour Code.

In the event of the expiry of the contract, the worker is entitled to compensation calculated in accordance with Article 366, for which the company's assets are liable.

Article 347 of the Labour Code, which addresses "Insolvency and corporate recovery", states that the judicial declaration of insolvency of the employer does not terminate the employment contract, and the insolvency administrator shall continue to fully satisfy the obligations to employees until the establishment is definitively closed.

Before the definitive closure of the establishment, the insolvency administrator may terminate the employment contract of an employee whose collaboration is not essential to the functioning of the company and the employee shall have the right to the compensation provided for in Article 366.

The termination of employment contracts resulting from the closure of the establishment or carried out under the terms of Article 347(2) (other than micro-businesses) must be preceded by the procedure set out in Article 360 and following, with the necessary adaptations.

The regime of the transfer of the establishment is set out in Articles 285 et seq. of the Labour Code, according to which, in the event of a transfer, by any means, of the ownership of a business or establishment or part of a business or establishment constituting an economic unit, the employer's position in the employment contracts of the respective employees is transferred to the purchaser, as well as the responsibility for the payment of a fine imposed for the commission of a labour-related administrative offence. This regime is also applicable to the transfer, assignment or reversion of the operation of a business, establishment or economic unit, and, in the case of assignment or reversion, the person who immediately before exercised the operation is jointly and severally liable.

With the transfer set out in numbers 1 or 2 of the CT, the employees transferred to the purchaser maintain all contractual and acquired rights, namely remuneration, seniority, professional category and functional content and acquired social benefits.

Article 4§ 5- Limits for wage deductions

1. Current Legislation and Enforcement:

In accordance with Article 174 of General Labour Law in Public Functions, during the term of the public employment relationship, the public employer cannot compensate the remuneration owed with credits that he has over the employee, nor can he make any deductions or discounts on the amount of that remuneration.

The only exceptions are:

a) Deductions in favour of the state, the social security service, or any other entity when required by law, a judicial decision that has transited in rem judicatam or the official record of the outcome of conciliation proceedings, when the employer has been notified thereof;
b) Indemnities or compensation which the worker owes the employer and whose payment has been ordered under a judicial decision that has transited in rem judicatam or in the record of conciliation proceedings.
c) Fines or the restitution of any amount which the worker has been convicted of in the context of a disciplinary procedure and has not paid voluntarily;
d) The cost of meals at the workplace, the use of telephones, the provision of food, fuel or materials, when requested by the employee, as well as other expenses paid by the public employer on behalf of the employee and consented to by the latter;
e) Other discounts or deductions, provided for by law.
f) With the exception of paragraph, a) of the preceding number, deductions shall not exceed, as a whole, one sixth of the remuneration.

Article 175 adds that the worker may not assign, against payment or free of charge, his pay claims to the extent that they cannot be attached.

2. Replies to the Committee questions from the 2014 Conclusions

In order to verify whether the circumstances authorising compensation and deductions from remuneration are clearly and precisely defined by law and regulations, by a IRCT or by court decisions, the Committee requests information on the reasons authorising a reduction in pay (such as reduction of working hours, force majeure, temporary suspension of activity).

As regards the reasons for the reduction of pay (such as reduction of the work period, force majeure, temporary suspension of the activity), it is important to refer to the provisions of Article 129(d) of the Labour Code, which states that the employer is prohibited from reducing

pay, except in the cases provided for in this Code or in a collective bargaining agreement. In effect, the Labour Code foresees situations that justify a reduction in pay: when the employee, who was previously a full-time worker, becomes a part-time worker; when there is a temporary suspension of the employment contract for a reason that can be attributable to the employee or the employer; when there is a change to a lower category with a decrease in pay.

In the case of a worker, who was previously a full time employee, changing to part time, he is entitled, under the terms of Article 154 of the CT:

1. To a basic salary and other benefits, of a salary nature or not, provided by law or by a collective bargaining agreement, or, if more favourable, to those earned by a full-time worker in a comparable situation, in proportion to the respective normal working week;
2. To food allowance, at the amount established in a collective agreement or, if more favourable, at the company's rate, except when the normal daily work period is less than five hours, in which case it is calculated in proportion to the respective normal weekly work period.

According to Article 153 of the Labour Code, part-time employment contracts must be in writing and contain the identification, signatures and address or registered office of the parties, and an indication of the normal daily and weekly work period, with comparative reference to full-time work. In the absence of the indication of the normal daily and weekly work period, it is assumed that the contract is concluded on a full-time basis.

When the contract is not in writing, it is considered to be concluded on a full-time basis.

Article 155 of the Labour Code provides that part-time workers may work full-time, or vice-versa, on a permanent basis or for a fixed period, by written agreement signed by both parties.

The employee may terminate the agreement referred to in the previous number by written communication sent to the employer up to the seventh day following the conclusion of the agreement, except where the agreement to modify the working period is duly dated and the signatures are duly authenticated by a notary in person.

When the transition from full-time to part-time work takes place for a fixed period, once that period has ended, the employee is entitled to resume working full-time and receive the corresponding remuneration.

Article 294 of the Labour Code establishes that the temporary reduction of the normal work period or the suspension of the work contract may be based on the temporary impossibility,

respectively partial or full, of providing work due to a fact related to the employee or the employer.

The following also allow the reduction of the normal work period or the suspension of the work contract: a) the need to ensure the company's viability and the safeguarding of jobs, in a situation of a business crisis; b) the agreement between the worker and the employer, namely an early retirement agreement.

An employment contract may also be suspended on the initiative of an employee for lack of timely payment of wages.

During the reduction or suspension, the rights, obligations and guarantees of the parties that do not imply the effective provision of work will be maintained, as established in Article 295(1) of the Labour Code.

Article 296 of the Labour Code addresses the facts that determine the suspension of an employee and it can be read therein that the suspension of an employment contract is caused by a temporary impediment due to a fact that is not the employee's fault and which lasts for more than one month, namely illness, accident or fact arising from the application of the military law.

Article 298 of the Labour Code, under the epigraph, reduction or suspension in a business crisis situation, determines that the employer may temporarily reduce the normal work periods or suspend the work contracts, for market, structural or technological reasons, catastrophes or other occurrences that have seriously affected the normal activity of the company, provided that such measure is indispensable to ensure the viability of the company and the safeguarding of jobs.

The reduction may cover:

- → one or more normal working periods, daily or weekly, and may concern different groups of workers, in rotation;
- → Reduction in the number of hours corresponding to the normal daily or weekly working period.

The reduction or suspension regime applies to cases in which this measure is determined within the scope of a declaration of a company in difficult economic situation or, with the necessary adaptations, in a company restructuring process.

Article 303 of the Labour Code provides that during the period of reduction or suspension, the employer must, in particular, pay the workers' salary on time, as well as the increment to which

they may be entitled in the case of professional training, and pay the workers' social security contributions.

At the same time, Article 305 of the Labour Code, during the period of reduction or suspension, gives the worker the right to receive a monthly amount equal to at least two thirds of his normal gross salary, or the value of the minimum monthly salary corresponding to his normal working hours, whichever is higher [cf. paragraph a) of no. 1], and to maintain the social benefits or social security benefits to which he is entitled and that the respective basis of calculation is not altered as a result of the reduction or suspension [cf. paragraph 1(b)].

Article 305(2) of the Labour Code states that during a reduction period the workers' salary is calculated in proportion to the number of hours worked. Article 305(3) establishes that, during a reduction or suspension period, the worker is entitled to a salary compensation to the extent necessary, together with the salary for work done in or outside the company, to ensure the monthly amount referred to in paragraph 1(a), up to three times the minimum monthly salary.

The employer pays 30% of the amount of the compensation and social security pays 70%.

Article 309 et seq. of the Labour Code provides that, in the event of temporary closure or temporary reduction of the activity of a business or establishment, which is not a result of a business crisis, the worker is entitled to: a) If due to unforeseeable circumstances or force majeure, 75% of the salary; b) If due to the fault of the employer or due to the employer's interest, the totality of the salary.

Reply to the Committee:

The Committee also mentions Article 280 of the Labour Code and requests information on the part of the minimum wage that cannot be reduced in the case of simultaneous deductions for competing reasons, such as social security contributions, alimony claims, union fees, tax deductions and bank loans.

In accordance with Article 279 of the Labour Code, during the term of an employment contract, the employer cannot offset outstanding remuneration with any credit he has against the employee, nor can he make any deduction or discount from it.

This rule does not apply to:

a) Deductions in favour of the state, the social security service, or any other entity when required by law, a judicial decision that has transited in rem judicatam or the official record of the outcome of conciliation proceedings, when the employer has been notified thereof.

b) Indemnities or compensation which the worker owes the employer and whose payment has been ordered under a judicial decision that has transited in rem judicatam or in the record of conciliation proceedings.
c) The financial penalty referred to in Article 328(1)(c);
d) Repayments of capital or payments of interest on a loan granted to the worker by the employer.
e) The price of meals taken in the workplace, the use of telephones, the provision of supplies, fuel or materials when requested by the worker, or other expenses incurred by the employer on the worker's behalf and with his/her agreement.
f) Loans or advances against pay.

Except for that mentioned in subparagraph (a), the total amount of such deductions cannot exceed one sixth of the worker's remuneration. The prices of meals or other goods supplied to the worker by a food cooperative, by agreement between the cooperative and the worker, are not subject to the limit mentioned in the previous number.

In view of the above, the only allowable deductions are those intended to compensate employers in the execution of judicial decisions or conciliation agreements; monetary fines; penalties imposed in disciplinary proceedings; the repayment of loans granted by the employer; the cost of meals provided at the workplace and other benefits in kind incurred by the employer; the repayment of loans or salary advances. Moreover, these deductions are subject to the aforementioned ceiling of one-sixth of the worker's salary. According to Article 458 (1) to (3) of the Labour Code, union fees may be deducted from the workers' salary, if this is stipulated in the collective agreement and when authorised by the worker, or if the worker expressly requests that they be deducted.

Under the terms of Article 280 of the Labour Code, the employee may only provide credit for remuneration, whether free of charge or in exchange for payment, insofar as it is attachable. In order to identify the respective protected earnings, amount it will be necessary to articulate the referred rules with the provisions set out in the Civil Procedure Code (CPC), in particular Articles 735 et seq.

Specifically, on the attachment of salary and the respective protected earnings amount, we quote the judgement of the Oporto Court of Appeal of 10/05/2018, which highlights the following:

I - The legislator's option to establish a limit for attachment of amounts paid as a salary, pension, social benefit or other benefit of a similar nature that ensures the subsistence of the debtor is

contemplated in Article 738 of the Civil Procedure Code in a way that respects the principle of human dignity inherent to a State governed by the rule of law, as enshrined in the Constitution.

II - The amendment to Article 738 of the Civil Procedure Code introduced by Law 114/2017 of 29 December, the 2018 State Budget Law, consisting only in the addition of paragraph 8 to that article, now expressly contemplates a minimum amount of existence that cannot be attached to the income of individuals who carry out the activities set out in Article 151 of the IRS. This extends to them the possibility of reducing the attachment of credits earned by them in the exercise of such activities, when the income earned from them is intended to ensure their subsistence, similarly to what is already provided for in number 1 for other benefits.

III - Even before this amendment, the limits on the amounts that can be seized provided for in Article 738(1) and (3) of the Civil Procedure Code are deemed to apply not only to the claims that are expressly listed, but rather to all claims having the same characteristics as those in respect of their purpose, in other words, in respect of which an identical assessment can be made to that which guided the legislator, in the sense that they refer to benefits intended to ensure the livelihood of a debtor who has no other income.

IV - The credit of the Executed Party for remuneration for services rendered in the course of her professional activity, when she has no other source of income, can only be considered as a remuneration intended to ensure her subsistence, and should not be attached under Article 738(1) and (3) of the Civil Procedure Code.

As regards the relationship between reductions and the minimum wage, we would also like to refer, due to its relevance, to the provisions of Article 738 (1) to (3) of the Civil Procedure Code, which establish a legal amount that should not be attached that, at most, corresponds to the equivalent to the minimum wage, are also relevant.

Reply to the Committee:

The Committee further notes that there is a wide extent of payments in kind authorised by law and requests information on the extent to which such payments in kind are granted and the corresponding deductions are made in practice.

According to Article 259 of the Labour Code, payments in kind must be intended to satisfy the personal needs of the worker or his/her family and may not be valued at a higher value than that which is customary in the region, and the value of the payments in kind may not exceed the monetary part, except as provided for in a collective bargaining agreement.

Authorisation for payment in kind is made in order to meet the personal needs of the worker or his/her family [Article 259(1) of the Labour Code]. The deduction of simultaneous benefits in kind cannot exceed 50% of the minimum wage [Article 274(1) and (2) of the Labour Code].

Article 5 - The right to organise

1. Current Legislation and Enforcement:

The legal regime applicable in the reference period between 2017 and 2020 regarding trade union freedom, the constitution, registration, acquisition of legal personality and content of the bylaws of trade unions and employers' associations, as well as regarding the principles of democratic organisation and management of these associations, remains regulated in Articles 440, 442, 443 et seq., 447 to 451 and 456 of the Labour Code. However, the amendment to the aforementioned Labour Code by Law no. 93/2019 of September 4 introduced changes to the aforementioned Article 456 (Extinction of associations and cancellation of registration), now providing that the communication of extinction of a employers' association must be accompanied by the identification of the members covered by each of the collective agreements to which it is a party.

With regard to the freedom of association of police personnel, Law No. 14/2002, of 19 February, regulating the exercise of union activity by police personnel of the Police (PSP), as amended by Law No. 49/2019 of 18 July, remains in force.

As regards data on membership it should be noted that the Constitution of the Portuguese Republic [Article 35(3)] does not allow the collection of such information (on trade union membership), unless consent of the owner or trade union authorisation and subject to compliance with certain legal guarantees such as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, whose Article 9(1) prohibits the processing of personal data revealing trade union membership.

The number of trade unions formed in all sectors of activity was as follows:

Table 20 - TRADE UNIONS 2017-2020

Year formed	2017	2018	2019	2020
Trade unions	9	12	14	7
Federations	0	1	0	0
Unions	0	0	0	0
Confederations	0	0	2	0

TOTAL	9	13	16	7

With regard to the establishment of employers' associations, regardless of the sector of activity, the following were recorded in the period in question:

Table 21 - EMPLOYERS' ASSOCIATIONS 2017-2020

Year formed	2017	2018	2019	2020
Employers' Associations	1	2	1	0
Federations	0	0	0	0
Unions	0	0	0	0
Confederations	0	0	0	0
TOTAL	1	2	1	0

It should be noted that the legal framework on workers' right to information and consultation described in the previous report has not changed because of the pandemic situation. In effect, the Labour Code determines that any draft law, draft decree-law or draft regional decree-law concerning labour legislation may only be discussed and voted upon by the National Parliament, the Government of the Republic, the Legislative Assemblies of the autonomous regions and the Regional Governments after the workers' committees or the respective coordinating committees, the trade union associations and the employers' associations have been able to express their opinion on it (Article 470).

The Standing Committee for Social Dialogue may issue an opinion on any project or proposal regarding labour legislation (Article 471). In this regard, it should be noted that the adoption of specific measures applicable to companies that have established an exceptional and transitory work reorganisation regime, with a view to minimising the risks of transmission of the infection by SARS-CoV-2 and the COVID-19 disease pandemic were preceded by consultations/hearing of the social partners on the Standing Committee for Social Dialogue.

As for workers in public functions, it is only necessary to update the references made to the legislation in force at the time of drafting[14] - mentioning the provisions contained in the General Labour Law in Public Functions, approved by Law No. 35/2014 of 20 June - and to adapt the text insofar as this appears necessary.

a) In Articles 55 et seq., Portuguese Constitution;
b) In the Labour Code (with regard to the private sector[15]); and
c) In the General Labour Law in Public Functions[16] (specifically addressed to the public sector).

In a first glance, it can be said that freedom of association has an individual dimension and a collective dimension, regulated in the General Labour Law in Public Functions and in the Labour Code[17].

Trade union freedom as individual freedom presupposes both the freedom to form trade unions and the so-called freedom of membership.

In order to collectively defend and pursue their interests, Public Administration staff can form:

a) Workers' committees and subcommittees; and
b) Trade unions (see Article 314, General Labour Law in Public Functions).

As is also the case with companies, the legislator has thus created a *"dual channel"* to ensure the representation of public sector workers.

It should be noted that freedom of registration is always associated with the express prohibition of discriminatory acts, namely those resulting from the choice of membership or non-membership of a trade union.

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[14]Namely the Regime governing Labour Contracts for Public Functions (RCTFP) approved by Law no. 59/2008, of 11 September

[15] And to the public sector by remission of the General Labour Law in Public Functions.

[16] Annex to Law no. 35/2014, of 20 June - A General Labour Law in Public Functions, has since been amended by the following law Law no. 82-B/2014, of 31/12; Law no. 84/2015, of 07/08; Law no. 18/2016, of 20/06; Law no. 42/2016, of 28/12; Law no. 25/2017, of 30/05; Law no. 70/2017, of 14/08; Law no. Law no. 73/2017, of 16/08; Law no. 49/2018, of 14/08; Law no. 71/2018, of 31/12; DL no. 6/2019, of 14/01; Law no. 79/2019, of 02/09; Law no. 82/2019, of 02/09; Law no. 2/2020, of 31/03

[17] By reference to the aforementioned General Labour Law in Public Functions

See Article 406 of the Labour Code [applicable by virtue of Article 314(2) of the General Labour Law in Public Functions]:

1 - All agreements or acts that seek the following shall be deemed null and void:

a) To subject the worker's employment to the condition that he/she joins, or does not join, a trade union or resigns from the one he/she belongs to;
b) To dismiss, transfer or in any way prejudice a worker due to the exercise of the rights regarding participation in organisational structures intended for collective representation purposes or to his/her membership or non-membership of a trade union.

2 - Breach of the provisions of the paragraph above shall constitute a serious administrative offence.

The General Labour Law in Public Functions and the Labour Code (applicable to the public employment contract by reference to the General Labour Law in Public Functions) also guarantee several collective projections of trade union freedom, namely:

a) Autonomy and independence

The structures of collective representation of workers shall be independent from the State, political parties, religious institutions or associations of any other nature, and any interference by them in their organisation and management, as well as their reciprocal financing, shall be prohibited. [Article 405(1) of the Labour Code]

b) The freedom to decide the organisation and internal regulations.

This freedom can be seen in the drawing up of statutes (which are not subject to administrative approval), in the issuing of internal regulations and in the free and democratic election of the members of the corporate bodies, as well as in the democratic organisation of its management and activity (cf. Article 445 of the CT).

c) The right of workers to engage in trade union activities at their public sector employer.

Both staff and trade unions have the right to engage in such activities within their organ, department or service, namely via union delegates and committees and inter-union committees (cf. Article 340 of the LTFP).

d) The right to collective bargaining

In accordance with Article 347(2) of the LTFP, only the unions that, in accordance with their respective statutes, represent the interests of workers with this type of contract and are duly registered can exercise the right to collective bargaining of public sector workers.

The objective of collective bargaining may be to [cf. Article 347(3) of the LTFP]:

a) Reach an agreement on matters that are part of the status of public workers, to be included in legislative acts or administrative regulations applicable to such workers;
b) Conclude a collective bargaining instrument applicable to public sector workers.

The trade unions have, therefore, legitimacy for collective bargaining in both of the above-mentioned aspects (Articles 349 and 364 of LTFP), showing that they have qualitative, quantitative and statutory representativeness criteria.

c) The right to participate in labour legislation (cf. Articles 15 and 16 of the LTFP);

In accordance with Article 16 of LTFP, any draft law, draft decree-law or draft regional decree-law relating to the matters referred to in Article 15 may only be discussed and voted upon by the National Parliament, the Government of the Republic, the Legislative Assemblies of the autonomous regions and the Regional Governments after the workers' committees and the trade unions have been able to express their opinion on it.

d) Rights related to the provision of economic and social services to the members [cf. Article 338(1)(b) of the LTFP]

It assures trade unions the right to provide services to their members, within the scope of the purposes assigned to them, including the right to intervene in administrative or judicial proceedings related to the interests of their affiliated workers [cf. Article 338(2) of the LTFP].

e) Right to declare and manage a strike (cf. Article 531 of the Labour Code)

It is up to the trade unions to decree and manage strikes, under the terms of Article 531 et seq. of the Labour Code, this being the natural consequence of collective autonomy.

Article 270 of the Constitution allows the law to establish restrictions on the exercise of the rights of expression, assembly, demonstration, association and collective petition, and on the passive electoral capacity by military personnel and militarized agents of the permanent staff on active service, as well as agents of the security services and police.

Thus, by virtue of the application of the Military Condition Law to the military of the National Republican Guard (GNR), this right is not foreseen.

However, according to the Statute of the Military of the GNR, "the military of the Guard enjoys all rights, freedoms and guarantees recognized to other citizens, with the exercise of some of these rights and freedoms subject to constitutionally provided restrictions, in the strict measure of the requirements of the respective functions, as well as those arising from the legislation applicable to the military of the Guard" (no. 1 of art. 18). The military of the Guard may not be privileged, benefited, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, gender, sexual orientation, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation or social condition" (paragraph 2 of the same article). In this sense, "the military of the Guard has the right to present proposals, petitions, participations, complaints and requests, always on an individual basis and through the competent hierarchical channels" (Art. 24).

The law on freedom of association in the Public Security Police dated back to 2002, and was a milestone in the dignification of the police function and recognition of the essential rights of PSP professionals, reinforcing the democratic culture of that security force.

In 2019, and 17 years after its entry into force, it was important to assess its impact on trade union activity in the PSP.

With the amendment to the law in 2019, a limit of 33 justified absences per year was established, which are unpaid but count for all other legal purposes, namely as length of service for all members of the leadership of unions.

The current law also guarantees a credit of four paid days per month of those management functions, but defining limits according to representativeness.

In turn, the regime of paid credit hours per month for trade union delegates now depends on the number of police officers on duty in the respective organic unit.

With the changes introduced in 2019, conditions have been created to strengthen the dignity of social dialogue and the operationality of the security forces

With regard to the number of unionised PSP elements in the reference period, the following should be highlighted:

- → 2017: 14,180 unionised workers corresponding to 67.88% of the total number of PSP staff
- → 2018: 15385 unionised workers which represents 74.08% of the total number of PSP staff

→ 2019: 13983 unionized workers representing 66.66% of the total workforce of the PSP

→ 2020: 14155 unionised workers, representing 68.86% of the total workforce of the PSP.

Decree-Law No. 243/2015, of 19 October, which approved the new Police Staff Regulations of the Public Security Police, with the latest amendment introduced by Decree-Law No. 77-C/2021, of 14 September, which established the supplement for service and risk in the security forces at 100 euros. The previous supplement for service in the security forces was composed of a variable component of 20% of the basic remuneration and a fixed component of 31.04 euros, thus constituting a remuneration due for the police condition, in its various aspects, which includes the risk inherent to the exercise of the profession. The currently existing PSP police officers' unions are shown in the following table.

Table 22 - PSP POLICE UNIONS - JULY 2021

Designação	Data Constituição *a)*
Sindicato de Oficiais de Polícia	29/06/2002
Sindicato Nacional de Oficiais de Polícia	15/02/2003
Sindicato Nacional da Carreira de Chefe da PSP	29/10/2003
Associação Sindical dos Profissionais de Polícia	15/06/2002
Sindicato Independente dos Agentes de Polícia	22/09/2002
Sindicato Nacional da Polícia	22/03/2004
Sindicato dos Profissionais de Polícia	08/08/2002

Sindicato Unificado da Polícia de Segurança Pública	29/05/2008
Associação Sindical Autónoma de Polícia	08/06/2012
Sindicato de Agentes da Polícia de Segurança Pública	08/11/2012
Sindicato Vertical de Carreiras da Polícia	29/01/2014
Sindicato de Polícia pela Ordem e Liberdade	15/02/2016
Sindicato Independente Livre da Polícia	15/04/2016
Sindicato dos Polícias do Porto	08/02/2017
Sindicato dos Polícias de Braga	08/03/2018
Organização Sindical dos Polícias	15/02/2018
Sindicato da Defesa dos Profissionais de Polícia	24/04/2019
Sindicato dos Polícias de Viseu	22/05/2019
Sindicato do Corpo de Polícia	08/08/2019

Sindicato Nacional de Polícia, ***designação alterada para:***	08/11/2018
Sindicato Especial de Polícia	08/07/2019
Federação Nacional dos Sindicatos de Polícia	15/04/2010
Federação dos Sindicatos de Polícia	08/11/2018

a) The dates refer to the publication of the respective constitution in the Labour and Employment Bulletin.

Regarding the prevalence of union membership throughout the country and in all sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organizations for the protection of their economic and social interests or from joining such organizations.

Trade unions only have to communicate annually to DGAEP the respective number of members [under the terms of Article 345(7)(a) of LTFP] if they wish to benefit from time credits for members of their management bodies, which is not always the case.

Some considerations should be made regarding the criteria of representativeness of trade unions that are provided for in the General Labour Law in Public Functions for various purposes, namely for:

→ Attribution of time credits to trade unions board members (Article 345 of LTFP);
→ Legitimacy for collective bargaining (Article 349 of LTFP)
→ Legitimacy for collective agreements (Article 364 of LTFP)

Article 315 of the LTFP provides that public sector workers elected to the collective representation structures of workers benefit from time credits for the exercise of their functions. The practical implementation of this right, insofar as workers elected as directors of trade unions are concerned, is found in Article 345 of the above mentioned LTFP, and for the purposes of determining the number of directors entitled to credits, the representativeness of the trade unions is relevant, assessed in accordance with criteria of a quantitative nature, namely by the number of members.

Article 345 (13) also establishes, based on quantitative criteria related to the number of members, the method for determining the number of members of the board of directors of a

federation, union or confederation who may enter into agreements in order to be transferred from a public sector work to exercise union activities in those structures of collective representation, and the respective remunerations shall be paid by the assigning public employer.

Without prejudice of other development that this issue may deserve further on (namely under the pretext of the right to collective bargaining - Article 6 of the CSE), it is important to highlight the importance of the representativeness criteria defined in Articles 349 and 364 of the LTFP in the context of the legitimacy of the trade union associations to participate in collective bargaining and, more specifically, to enter into collective labour agreements. In this context, the legally stipulated criteria have not only a quantitative nature (associated to the membership rate) but also a qualitative nature, namely, in what concerns trade union confederations, the fact of having, or not, a seat in the Standing Committee for Social Dialogue [cf. Articles 349 (1)(a) and 364 (2)(a)].

It should, however, be noted that, although the aforementioned criterion is purely abstract in its formulation, i.e. it does not identify, from the outset, the trade unions that may participate in collective bargaining and conclude collective agreements for general and special careers (the only requirement is to be a member of the CPCS), they end up being, in concrete terms, identified in Article 9(2) of Law 108/91 of 17 August, a fact which, as we have seen, is criticised by the European Committee of Social Rights in the conclusions presented in the 2014 National Report. In order to facilitate the understanding of the legitimacy criteria provided for in the LTFP, which entitles trade unions to engage in collective bargaining and collective agreements, the table below is presented:

Legal Criterion	Exercise of rights foreseen in the LTFP
Trade union confederations with a seat on the Standing Committee for Social Dialogue	→ General collective bargaining - 349(1)(a) → Sectoral collective bargaining - 349(1)(d) → Collective agreements for general careers - 364(1) → Collective agreements for special careers - 364(2)(a) → Collective agreements for public employers - 364(3)(a)

Trade union associations with a number of unionised employees corresponding to at least 5% of the total number of public sector workers	→ General collective bargaining - 349 (1)(b) → Collective agreements for general careers - 364(1)
Trade unions representing workers from all public administrations and, in the State administration, all ministries, provided that the number of unionised workers corresponds to at least 2.5% of the total number of public sector workers	→ General collective bargaining - 349 (1)(c) → Collective agreements for general careers - 364(1)
Trade unions that present a single proposal for the conclusion of a Collective Agreement and that together meet the criteria of Article 349(1)(b) and (c)	→ Collective agreements for general careers - 364(4)
Trade unions representing at least 5% of the total number of workers in a special career	→ Sectoral collective bargaining - 349(1)(d) → Collective agreements for special careers - 364(2)(a)
Trade unions representing workers exercising functions in the public employer	→ Collective agreements for public employers - 364(3)(a)

Article 6 - Right to collective bargaining

Article 6 §1 - Joint consultation between workers and employers

1. Current Legislation and Enforcement:

The legal regime applicable in this matter did not change between 2017 and 2020:

→ At a company level, the legal regime governing the participation of workers, through their workers' committees, continues to be regulated by Articles 415 to 439 of the Labour Code;

→ The system of establishing European Works Councils or procedures for informing and consulting employees in Community-scale companies or groups of companies remains governed by a specific law: Law No. 96/2009 of 3 September 2009, which transposed Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale companies and Community-scale groups of companies for the purposes of informing and consulting employees;

→ During the collective bargaining process the representatives of trade unions and employers' associations should consult the workers and employers concerned, if necessary and in due time [Article 489 (2) of the Labour Code];

→ In the area of safety and health at work, the regime continues to be regulated by Law No. 102/2009 of 10 September 2009 (see Article 8).

Article 6§2 - Bargaining Procedures

1. Current Legislation and Enforcement:

In 2017 and 2018, Tripartite Agreements were signed within the scope of the Standing Committee for Social Dialogue, which contain objectives and commitments in this area, namely:

→ "Tripartite Commitment for a Medium-Term Social Dialogue Agreement"[18] of 17 January 2017 [No. 2 - promotion of actions for the development of collective bargaining, specifically:

[18] https://cip.org.pt/wp-content/uploads/2017/01/2017-01-17_Compromisso_Trip_Acordo_Concertacao_MP.pdf

1. Commitment not to terminate collective agreements for a period of 18 months;
2. Presentation of the Green Paper on Labour Relations to evaluate the labour framework and the subsequent signing of an social dialogue agreement that includes this issue;
3. Integrate measures to promote collective bargaining into labour legislation;
4. Changes to the normative framework for issuing ministerial extension orders, reducing the timeframes for issuing them and establishing objective indicators for weighting their issue;

→ Agreement "Combating Precariousness and Reducing Labour Segmentation and Promoting Stronger Collective Bargaining"[19], dated 18 June 2018 [specifically: i) abolish the time limit for the application of collective agreement rules to temporary workers so as to strengthen the level playing field with other workers in the company where they work; ii) eliminate individual hour bank, leaving the adoption of an hour bank to collective bargaining or group agreement reached in consultation with the workers; iii) include the payment of overtime work in the core of the Labour Code rules that can only be excluded by collective bargaining agreements when these provide in a more favourable manner for the workers; iv) prevent loopholes arising from the expiry of the collective bargaining agreements, requiring: a) that the terminations be based on economic and structural reasons or on inadequacies in the regime of the terminated agreement; b) the duty to communicate the terminations to the Labour administration, thus creating conditions for the preventive monitoring of potential situations of negotiation failure and subsequent breach of the agreement; c) allowing either party to request arbitration to suspend the validity of a collective agreement and, should the court consider an agreement feasible, to order the mediation of an agreement, thus avoiding the expiry of collective agreements; v) preventing the misuse of the mechanism for voluntary extinction of an employers' association or trade union to promote the expiry of a collective agreement in this manner; vi) promoting the collective dimension of IRCTs, setting a reasonable time limit for individual adherence to collective agreements by workers who are not members of a trade union and a maximum duration for the validity of such adherence]; and

[19] https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3d%3dBAAAAB%2bLCAAAAAAABAAztTC0BAAd7JFVBAAAAA%3d%3d

→ "COVID-19 Commitment Document"[20], of 12 May 2020 [where the parties involved commit to act, within their respective spheres of action, towards the recovery of the economic activity, promoting various conditions, based, among other things, on social dialogue and collective bargaining].

As a result of the aforementioned agreements, between 2017 and 2020, some changes were made to the collective bargaining regime in order to strengthen collective bargaining and make it more dynamic, namely through Law no. 93/2019, of 4 September. Among these changes, the following are of particular importance:

- → The introduction of Article 3 (3)(j) of the Labour Code, prohibiting the regulation of matters relating to the payment of overtime work in a manner less favourable to the law;
- → The introduction of Article 185 (10) of the Labour Code, extending to temporary workers the collective labour regulation instrument applicable to the user's workers performing the same functions;
- → Introduction of limits to the choice of collective agreement applicable by a worker not affiliated to any trade union association Article 497 of the CT];
- → Duty to provide grounds for terminating a collective agreement on economic or structural grounds or on grounds of inadequacy of the regime of the terminated agreement [Article 500(2) of the Labour Code];
- → The obligation to communicate the termination of a collective agreement and the documents that accompany it to the competent service of the ministry responsible for labour [Article 500(3) of the CT];
- → Annulment of the termination of an employers' association or trade union association for the purpose of terminating the existing collective agreement [Article 502(7)];
- → Introduction of an arbitration mechanism for the suspension of the period following repudiation in which the agreement continues to have effects (and lapse) of a collective agreement and mediation [Article 501-A];
- → Repeal of the individual hour bank regime, leaving it to the scope of collective bargaining or group agreements reached after consultation with workers.

[20] https://www.ces.pt/storage/app/media/Declaracao%20de%20Compromisso_Assinada%20pelos%20Parceiros%20CPCS%2012.5.pdf

Table 23 - No. of collective labour regulation instruments entered into 2017-2020

	2017	2018	2019	2020
Collective contracts	91	96	105	61
Collective agreements	21	26	30	11
Company agreements	96	98	105	97
Voluntary arbitration decisions	0	0	0	0
Total	208	220	240	169

Source: DGERT

As for Public Sector Work, the LTFP expressly foresees that there can be (or coexistence of) three different types of public employment relationship (Article 6):

1. The labour contract for public functions (Article 7);
2. Appointment (Article 8);
3. The service commission (Article 9).

Within this framework, continuing the example established by Law no. 12-A/2008, of 27 February (LVCR), the contract is the legal relationship that covers the majority of public sector workers); the appointment and the service commission may only be considered in cases expressly provided for by law (cf. Articles 8 and 9).

Article 13 of the LTFP exhaustively lists the specific sources of the labour contract for public functions, expressly stating, "The labour contract for public functions may be regulated by a collective bargaining instrument (...)".

Article 13(3) identifies the conventional collective regulation instruments, namely:

a) Collective Labour Agreement

Collective labour agreements (the most important collective labour regulation instrument) can be:

→ Collective career agreements – applicable to a career or set of careers, regardless of the organs, departments or services in which the staff in that/those career(s) serve (Article 13(6) of the LTFP) or

→ Collective public employer agreements (ACEP) - collective agreements applicable within the scope of the body or service where the employee performs duties (Article 13(7) of the LTFP).

b) Adherence Agreement

Article 378(1) of the LTFP says that "trade unions, and in the case of collective agreements for a public employer, the applicable public employers can adhere to current collective labour agreements or arbitration decisions".

c) Voluntary Arbitration Decision

At any time the parties can also agree to submit labour-related issues, in particular those arising out of questions linked to the interpretation, completion, entry into or revision of a collective labour agreement, to arbitration (Article 379, LTFP).

As for the non-negotiated collective regulation instruments, the LTFP established the Necessary Arbitration Decision as the only non-negotiated collective regulation instrument applicable to public sector labour bonds. In effect, the specific rules on the personal scope of the application of collective labour agreements (370 et seq.), namely the extension of the subjective incidence of collective labour agreements to workers not affiliated to the signatory trade union (370) removed practical relevance from the figure of the Extension Regulation, which will have contributed to its disappearance in the regime applicable to public sector workers and to the repeal of those regulations that were issued under the RCTFP.

The only non-bargaining collective regulation instrument is therefore, pursuant to Article 13(4) of the LTFP:

Required arbitration occurs when either party in negotiations on a collective labour agreement notifies both the other party and the Directorate-General of the Administration and Public Sector Employment (DGAEP) that it is invoking this mechanism [Article 383(1), LTFP].

The LTFP expressly indicates, in Article 375(4), a situation that justifies the use of necessary arbitration: "Once the period of one year has elapsed after the expiry of the collective labour agreement, without a new agreement having been concluded and all other means of resolving collective disputes having been exhausted, any of the parties may initiate the necessary arbitration (...)".

The labour agreement negotiation process begins when one party sends the other a proposal for a new agreement or the revision of an existing one [Article 359(2)]. Such proposals must be made in writing and be accompanied by sufficient reasoning [Article 359(3)].

The recipient entity of the proposal must reply in writing, explaining its reasons, within 30 days following receipt of the proposal, unless there is an agreed time limit or a longer period indicated by the proponent; and the reply must express *"a position with regard to all the clauses in the proposal, which it must accept or refuse or else make a counter-proposal"* [Article 360(1) and (2)].

Whenever possible, the parties must prioritise both the negotiations about pay, performance bonus and the organisation of working time, with a view to agreeing the overall resulting increase in costs, and those about health and safety at work [Article 488(1)]. However, the unfeasibility of the initial agreement on the above matters does not justify the termination of negotiations [Article 361(2)].

During the negotiation, the parties' representatives must provide the relevant information and make the necessary consultations to the interested public sector workers and employers, under the terms foreseen in the LTFP [Article 362 (2)].

It is also important to mention that in the preparation of the proposal and the reply and during the negotiations, the DGAEP and the other bodies and services provide the parties with the necessary information that they have and that is requested by them (Article 363).

If the negotiations lead to agreement about all the matters under discussion, the text is signed and deposited with the DGAEP [Article 356(1), RCTFP]. In the event of no agreement, the parties may resort to the collective dispute resolution methods provided for by law (Articles 387 et seq. of the LTFP).

Table 24 - No. of Collective Labour Regulation Instruments entered into 2013-2020

IRCT	2013	2014	2015	2016	2017	2018	2019	2020	Total
Collective career agreements	0	1	1	2	0	0	2	0	6
Public Employer Collective Agreements	8	156	331	414	133	176	115	48	1381
Adherence agreements	0	2	5	8	0	1	0	0	16
Voluntary arbitration decisions	0	0	0	0	0	0	0	0	0
Necessary arbitration decisions	0	0	0	0	0	0	0	0	0
Total	8	159	337	424	133	177	117	48	

Source: DGAEP

It should be noted in this regard that the exceptional suspension of deadlines associated to the survival and expiry of a collective labour agreement, established by Law 11/2021, of 9 March, only refers to the survival provided for in Article 501 of the Labour Code, i.e., without application to workers with a public sector labour bond. It is not surprising, however, that these measures were specifically aimed at safeguarding the validity of collective agreements of the common labour regime, since the rules of validity and survival of collective agreements of the LTFP are different and tend to be of a more protective nature[21].

It should be noted that, although a study of the content of Collective Labour Agreements concluded in the context of public employment has not yet been systematically carried out, there are no provisions specifically related to the constraints caused by the pandemic associated with the COVID-19 disease. The absence of specific provisions in this area is justified by the fact that most of the measures adopted - to safeguard the continuity of labour relations, the contain the pandemic situation and the special protection for workers in this context - originated in normative acts (there was a particularly large number of legislation and other normative acts published on this matter during the period in question).

[21] The guarantee of automatic renewal of collective labour agreements is a supplementary provision contained in Article 343(2)(b) of the LTFP, which has no equivalent in the Labour Code.

Article 6 §3 – Conciliation and arbitration

1. Current Legislation and Enforcement:

The non-compliance noted in relation to Article 6§3 does not concern mechanisms for conciliation/mediation of collective disputes, but is limited to non-voluntary arbitration mechanisms.

The following can be said about the necessary arbitration, foreseen in Articles 510 and 511 of the CT:

1. Necessary arbitration is only admissible if the following legal requirements are met simultaneously:
    a) No collective agreement between the parties, 12 months after the expiry of the previously applicable agreement;
    b) The absence of another collective agreement applicable to at least 50% of the workers;
    c) Existence of a request, signed by either party, after 12 months from the expiry of the agreement;
    d) Prior public hearing on the request for arbitration, by means of a notice published in the Labour and Employment Bulletin, in which all employees and employers may oppose the arbitration;
    e) By reasoned order, namely indicating the reasons of public interest that justify it and the protection of legally protected rights. Under the terms of the Administrative Procedure Code (CPA) all administrative acts are subject to the duty to state reasons, on penalty of nullity and non-production of any effect, and must observe the general principles of administrative activity set out in Articles 3 et seq. of the CPA.
2. The order requiring the necessary arbitration may not fix the subject matter of the arbitration. It is up to the parties to define the subject matter of the arbitration and if they fail to reach an agreement, it is the arbitrators (the presiding arbitrator and the arbitrators appointed by the parties) who define that subject matter taking into consideration the circumstances and the positions assumed by the parties on the subject matter of the arbitration, so no discretion on such subject matter exists.
3. The result reached by the necessary arbitration may, at any time, be disregarded by a collective agreement concluded between the parties.
4. Between the 2017 and 2020, no necessary arbitration was ordered.

A collective labour conflict is said to exist whenever an organised category of workers and an organised category of employers say (or just one of them says) that they want different things with regard to existing (or future) collective regulations on labour relations.

A distinction is commonly made between two types of collective conflict:

a) Legal conflicts - Are linked to the interpretation and implementation of existing legal norms.
b) Conflicts of interest - Concern changes to existing norms or the creation of new precepts.

However, legal conflicts can be settled, in the framework of the LTFP, by:

A joint committee created by the collective agreement itself [Article 366(2)][22];

b) conciliation [Article 388(1)];

c) mediation [Article 391(1)]; or

d) arbitration (Article 379)

The parties are responsible for choosing the mechanism that offers the best response to the conflict in the circumstances.

As we said, within the framework of the LTFP the parties can resort to conciliation in order to solve both legal conflicts and conflicts of interest.

Conciliation can be initiated:

a) By agreement of the parties [Article 388(1)(a)];
b) By initiative of one of the parties [Article 388(1)(b)].

The parties may agree to regulate the conciliation procedure. If they do not do so, the process will follow the procedure described in Articles 388 and 389 of LTFP.

With regard to a conciliation requested by one of the parties, two different situations must be distinguished (which correspond to different procedures):

a) Cases of failure to respond to the proposal to conclude or revise a collective bargaining agreement

[22] In this case only legal conflicts will be involved, and the Joint Commission will be responsible for interpreting and integrating the clauses of the Collective Agreement which have given rise to questions or interpretative disputes.

The recipient of a proposal must respond in writing and setting out its own arguments within 30 days, unless some other time limit has already been agreed, or is suggested by the author of the proposal [Article 360(1), LTFP]. Failure to respond or to make a counter-proposal within this time limit [and as laid down in Article 360(2) of the LTFP] entitles the proposing party to ask for conciliation without any further conditions [Article 360(3)].

b) The remaining cases.

Whenever a conciliation request is based on any other reason (other than the lack of response to a proposal for the conclusion or revision of a collective labour agreement), the procedure begins with the sending of 8 days' prior notification in writing to the other party [Article 388(1)(b)]. Only after sending the prior notice, and after eight days, should the interested party request to DGAEP the intended conciliation, so that the draw for the arbitrator may then take place.

The parties may, at any time, agree to submit collective disputes to mediation and may, for this purpose, use public mediation services or other labour mediation formats [Article 391(1)].

If there is no agreement, a month after conciliation begins any party can ask any person on the official list of presiding arbitrators to act as mediator [Article 391(2)]. In this case, the party must immediately specify the object of the desired mediation [Article 391(3)].

Unless the parties agree otherwise, the mediation process then proceeds in accordance with Articles 391 and 392 of LTFP.

At any time the parties can also agree to submit labour-related issues, in particular those arising out of questions linked to the interpretation, completion, entry into or revision of a collective labour agreement, to arbitration (Article 379, LTFP).

Voluntary arbitration is governed by agreement between the parties, or otherwise by Article 381(3) to (8) [cf. Article 381 (2)]. Way there must be an arbitration convention that immediately determines the object of the dispute and subjects its resolution to an arbitration decision.

Necessary arbitration begins when one party so notifies the other(s) and the DGAEP, and it is legitimate if conciliation and mediation are frustrated and there is no agreement for voluntary arbitration.

Arbitration is also required when, one year after the expiry of the collective labour agreement, no new agreement has been concluded and all means of resolving collective disputes have been exhausted. [Article 375(4)]

The DGAEP monitors the process from beginning to end. However, the process starts without any need for a prior decision (by the DGAEP or any other entity). Article 383(1) of the LTFP clearly states that required arbitration is initiated when one party sends the duly reasoned notifications to that end.

However, the DGAEP can be called on to intervene early in the process, with regard to the formation of the arbitration tribunal. Moreover, it should, at that moment, verify the legal preconditions for carrying out the appointment by lot (general requisites regarding arbitration; and specific requisites regarding the lottery itself).

The general requisites for there to be a required arbitration are:

a) Procedural requisites

The communication referred to in Article 383(1) of LTFP must have been sent.

The communication in question must be substantiated and forwarded to the other party or parties and to DGAEP.

b) Substantial requisites

A collective labour agreement must have ended over a year ago and no new one must have been entered into [Article 375(4) of the LTFP].

There must be a proposal for a new agreement. Moreover, there must have been, “prolonged and unfruitful negotiations” (expression based on ILO guidelines).

It should be noted that the wording of the LTFP, unlike the Labour Code, makes no mention of the concept of "Mandatory Arbitration", referring only to "Voluntary Arbitration" and "Necessary Arbitration".

In any case, it has been understood that the wording of Article 383(1) of the LTFP[23] - "The necessary arbitration is triggered by reasoned communication by any of the parties to the party that opposes it in the negotiation of the collective labour agreement and to the DGAEP" - covers more than just the situation provided for in Article 375(4) of the LTFP, including the situation provided for in Article 508(1)(a) of the CT/2009 and respective admissibility requirements, with the necessary adaptations, that is:

[23]And already before Article 374(1) of the RCTFP vis-à-vis Article 567(1)(a) of the CT/2003

"In the case of a first agreement, at the request of any of the parties, provided that there have been prolonged and unsuccessful negotiations, conciliation or mediation has been frustrated and it has not been possible to settle the conflict through voluntary arbitration (...)".

Table 25 - Collective Conflict Resolution (RCC) Mechanisms initiated between 2013 and 2020 within the scope of collective bargaining.

RCC Mechanisms	2013	2014	2015	2016	2017	2018	2019	2020	Total
Conciliation	6	94	9	0	0	1	0	2	112
Mediation	0	4	0	0	0	0	0	0	4
Voluntary arbitration	0	0	1	0	0	0	0	0	1
Necessary Arbitration	0	0	0	0	0	0	0	0	0
Total	6	98	10	0	0	1	0	2	

Source: DGAEP.

Article 6 §4 Collective action

1. Current Legislation and Enforcement:

Also on this point, we believe it is necessary to update the legal framework made within the scope of the contributions to the previous National Report, with particular relevance to the repeal of Law 23/98 of 26 May by Law 35/2014 of 20 June, which approved the General Labour Law in Public Functions and the new regime that it established in terms of collective bargaining.

Thus, it is important to underline that in a logic of systematization and consolidation, the matters of collective bargaining (previously provided for in Law no. 23/98, of 26 May) and collective bargaining (provided for in the Regime governing Labour Contracts for Public Functions[24]) are now addressed together, in a unified perspective in the LTFP, which incorporated both dimensions in its Article 347, under the design of collective bargaining (in a broad sense).

Thus, Article 347(3) of the LTFP now includes these two aspects of the right to collective bargaining (in a broad sense). On the one hand [(paragraph a)], collective bargaining (in a narrow

[24]Also repealed by Law No. 35/2014, of 20 June.

sense) with a view to obtaining "an agreement on matters that integrate the statute of workers in public functions, to be included in legislative acts or administrative regulations applicable to these workers", which corresponds to the dimension previously defined in Law no. 23/98, and today foreseen in Articles 350 et seq. of the LTFP. On the other hand [(paragraph b)], collective bargaining materialised in the conclusion of "a conventional collective regulation instrument applicable to public sector workers", corresponding to the dimension defined by the RCTFP and by Law no. 12-A/2008, of 27 February (LVCR), and today provided for in Articles 355 et seq. of the LTFP.

An important aspect to be taken into account, and with relevance for the considerations made by the Committee on the legitimacy of trade unions to engage in collective bargaining, is the fact that the LTFP is, in this respect, substantially stricter than Law no. 23/98, of 26 May, given that it is now not enough, for this purpose, that the said trade unions "(...) under the terms of their respective statutes, represent the interests of public sector workers and are duly registered" (cf. Article 2 of Law no. 23/98). In effect, although the LTFP continues to require the adequacy of the trade unions' statutory object in order to legitimize the participation in collective bargaining [cf. Article 347(2)], it adds criteria of a quantitative nature (associated with the membership rate) and of a qualitative nature, namely, in what concerns trade union confederations, the circumstance of having, or not, a seat in the Standing Council for Social Dialogue [cf. Article 349(1)(a)].

Where the Public Administration is concerned, the question of parity between, or joint consultation of, workers and employers does not pose itself in the same ways as it does in the private sector approach.

We have therefore chosen to summarise the various channels for the consultation (and participation) of workers (and the bodies that represent them).

The General Labour Law for Public Functions, approved by Law No. 35/2014 of 20 June, repealed Law No. 23/98 of 26 May and Law No. 59/2008 of 11 September[25], integrating the regimes established therein, particularly with regard to collective bargaining and the right of participation of public administration workers.

[25] Which approved the Regime Governing the Labour Contract for Public Functions and the respective Regulation

National legislation also provides, in Law No. 102/2009 of 10 September 2009[26], for the participation of the most representative organisations of employers and workers in the promotion and evaluation, at national level, of policy measures in the field of safety and health at work.

The regime under consideration currently rests on the following pillars:

1. Public Administration workers are guaranteed the right to collective bargaining [Article 347(1) of the LTFP];
2. The employees' right to collective bargaining is exercised exclusively by the trade unions that, under the terms of their respective statutes, represent the interests of employees in public functions and are duly registered [Article 347(2) of the LTFP];
3. The purpose of collective bargaining is (Article 347, paragraph 3):

a) Reach an agreement on matters that are part of the status of public sector workers, to be included in legislative acts or administrative regulations applicable to such workers;
b) Conclude a collective bargaining instrument applicable to public sector workers.

The legitimacy of the trade unions to participate in collective bargaining is more demanding in the LTFP, and now depends on criteria (qualitative and quantitative) of representativeness (Article 349 of the LTFP). Thus, the following entities have legitimacy for collective bargaining, in representation of workers:

1. Trade union confederations with a seat on the Standing Committee for Social Dialogue [Article 349(1)(a)];
2. Trade union associations with a number of unionised employees corresponding to at least 5 % of the total number of public sector workers [Article 349(1)(b)];
3. Trade unions representing workers from all public administrations and, in the State administration, all ministries, provided that the number of unionised workers corresponds to at least 2.5 % of the total number of public sector workers [Article 349(1)(c)];
4. In the case of sectoral collective bargaining, where matters concerning special careers are at stake, the trade unions with a seat on the Standing Committee for Social Dialogue and the trade unions that represent at least 5% of the total number of workers included in the special career in question [Article 349(1)(d)];

[26] Applicable to public sector workers by virtue of Article 4(1)(j) of the LTFP.

a) The law identifies the matters that are subject to collective bargaining (as well as those that are excluded from such bargaining) and the negotiation procedure (Articles 350 and 351 of LTFP);
b) The LTFP created a conflict solving mechanism – the supplementary collective bargaining (Article 352 of the LTFP).
c) The Law also identifies the areas and subjects in which there is a right of participation. The right of workers to participate in labour legislation is foreseen in Articles 15 and 16 of the LTFP;
d) In collective bargaining concerning the status of public sector workers, the Public Administration and trade unions must ensure the assessment, discussion and resolution of the issues raised in a global and common perspective to all services and organisms and workers as a whole, respecting the principle of pursuing the public interest [Article 348 (4) of the LTFP];
e) Law No. 102/2009 of 10 September 2009, in its Article 8, provides for the participation of the most representative organisations of employers and workers[27] in the promotion and evaluation, at national level, of policy measures in the field of safety and health at work.

Portuguese law also establishes other mechanisms for worker (and trade union) consultation and participation.

We will look at this in more detail under Articles 21 22 of the Revised European Social Charter. For now, we will simply note that participatory channels are in place for:

a) Workers' committees (see Article 224 et seq. of the Regulations).
b) Trade union delegates [see Article 343 (1) and (2), of the LTFP].
c) Or for workers' representatives for safety and health at work (cf. Article 18 of Law no. 102/2009, of 10 September).

During the period of the state of emergency in Portugal, declared on the grounds of a public calamity situation caused by the COVID-19 disease, some constitutionally guaranteed rights, freedoms and guarantees of workers were restricted, including the right of participation of workers and employers' representative structures in the drafting of labour legislation.

[27] Namely those that sit on the Standing Committee for Social Dialogue (CPCS) and that are part of the Advisory Council for the Promotion of Health and Safety at Work of the Authority for Working Conditions.

In this way, reference should be made to the Decree of the President of the Republic no. 17-A/2020 of 2 April[28] which, during the period of its validity[29], suspended "(...) the right of workers' committees, trade union associations and employers' associations to participate in the drafting of labour legislation, insofar as the exercise of such right may represent a delay in the entry into force of urgent legislative measures (...)" for the purposes set out in that Decree.

Also in the Decree of the President of the Republic no. 20-A/2020, of 17 April[30], the right to participate was subject to restrictions, although in a more mitigated manner, having been determined that it could be limited in the time limits and conditions for consultation, insofar as the exercise of such right could represent a delay in the entry into force of urgent legislative measures for the purposes set out in that Decree.

2. Responses to Committee questions in accordance with the 2014 Conclusions

The Committee questioned whether the determination of minimum services is subject to administrative or judicial review. In this regard, the national report indicates that if an agreement is not reached within three days of the prior strike notification, the minimum services and the means necessary to guarantee them should be defined by joint decree duly reasoned by the ministers responsible for the area of labour and the sector of activity in question, and in the case of a State-owned company, by an arbitration tribunal constituted in accordance with specific mandatory arbitration law. The report highlights that both the arbitral award and the joint decree are subject to appeal, namely:

in the case of an arbitration award, this appeal is lodged before the courts of justice - more precisely the Court of Appeal;

in the case of the joint decree, before the Administrative Courts.

The Constitution enshrines the right to strike (Article 57, of the CRP), and summarily prohibits lockouts [Article 57(4)].

The ordinary law regulates the exercise of this right (Articles 530 et seq., CT; Articles 392 et seq., of the LTFP). Both the Labour Code (see Article 544) and the LTFP (see Article 406) repeat the prohibition on lockouts.

[28] Which proceeded to the 1st renewal of the declaration of the state of emergency issued by the Decree of the President of the Republic No. 14-A/2020, of 18 March.

[29] From 3 to 17 April 2020.

[30] Which proceeded to the 1st renewal of the declaration of the state of emergency issued by the Decree of the President of the Republic No. 14-A/2020, of 18 March and which was in force from 18 April to 2 May 2020.

The right to strike means that any worker can stop fulfilling his/her contractual obligations under certain conditions. This is what Article 536(1) of the Labour Code refers to [applicable by virtue of Article 314(2) of the General Labour Law in Public Functions]:

"A strike suspends the contract of employment of an adhering worker, including the right to remuneration and the duties of subordination and attendance."

A strike thus places workers *"outside their contract"* (in terms of the effects that characterise the latter), although:

The rights, duties and guarantees of the parties that do not imply the effective provision of work, the rights foreseen in social security legislation and the benefits due for work accidents or professional illnesses [Article 536(2) of the Labour Code] are maintained;

The suspension period counts for seniority purposes and does not affect the effects resulting from it [Article 536(3) of the Labour Code].

Striking does, however, have other types of effect (economic, social, etc.): Effects in the employer's sphere (public employers); effects in the sphere of citizens/users; and multiplicative effects on society in general. Indeed, it is commonly said that when a strike affects essential services, the conflict involves a *"triangular relationship"* between workers (and trade unions), employers and users.

It is precisely the impact that strikes have in the spheres of both public sector employers and citizens/users that led the legislator to subject strikers to certain duties or obligations, which can even go as far as requiring them to work normally.

The CRP and both the Labour Code and the LTFP expressly refer to two obligations to work during strikes:

A) To provide the services needed to ensure the safety and maintenance of equipment and facilities; and

B) To provide the minimum services that are indispensable to the fulfilment of essential social needs [see Article 57(3), of the CRP; and Articles 537 of the CT, and 399, of the LTFP).

In the event of a strike in sectors of activity intended to satisfy pressing social needs, the minimum indispensable services to meet those needs must be defined.

Whenever the minimum services and the means necessary to ensure them are not previously agreed between the parties or regulated by collective labour regulation instrument, and if an agreement between the parties cannot be reached by the end of the 3rd day after the strike

notice, an arbitration panel is responsible for fixing the minimum services and the means necessary to ensure them [Article 398(3) of the LTFP].

Prior to this, and in order to avoid the establishment of the arbitration panel referred to above, the member of the Government responsible for the area of Public Administration[31] shall convene the representatives of the workers and the representatives of the public employers involved, in order to negotiate an agreement in respect of the minimum services and the means necessary to ensure them [Article 398 (2)].

The attempt to promote an agreement referred to above takes place following a communication from the public employer, under the terms of Article 398(4) of the LTFP.

Should this attempt to promote an agreement be unsuccessful, then (on the 4th day after the strike notice) an arbitration panel will be formed, under the terms foreseen in Article 400 of the LTFP.

The parties shall be notified of the arbitral award up to 48 hours before the beginning of the strike period [Article 404(1) of the LTFP], and this award is equivalent to a first court decision for all legal purposes [Article 404(4)].

Article 405 of the LTFP states that the necessary arbitration regime foreseen in the same law and the arbitration regime of minimum services foreseen in Decree-Law no. 259/2009, of 25 September are to be subsidiarily applicable[32].

According to Article 22(1) of Decree-Law No. 259/2009, of 25 September (applicable subsidiarily by virtue of Article 405 of the LTFP), in conjunction with Article 404(4), the arbitral award may be appealed, with "devolutive effect", to the Court of Appeal, under the terms stipulated in the Civil Procedure Code for appeals.

A strike is, as a rule, decreed by the trade unions [Article 531(1) of the Labour Code][33].

However, within the framework of the LTFP, workers' assemblies can also decide to resort to striking, on condition that:

[31] Competence, as a rule, delegated to the Director-General of DGAEP

[32] Regulation of mandatory arbitration, necessary arbitration and arbitration on minimum services.

[33] Applicable by reference to Article 394(3) of the LTFP

The majority of the workers in the organ, department or service in question are not represented by trade unions; and

The assembly was expressly convened for that purpose by 20% of the workforce or 200 workers, a majority of the workers in the body or service take part in the vote and the declaration of strike is approved by secret vote by a majority of those voting. (Article 395 of the LTFP).

Table 26 - STRIKES COMMUNICATED TO DGAEP BETWEEN 2013 AND 2020

Strikes communicated to DGAEP	2013	2014	2015	2016	2017	2018	2019	2020
Sectoral Strikes	84	66	87	79	151	288	374	185
General Strikes*	22	1	0	0	0	0	6	9
Total	106	67	87	79	151	288	380	194

*"General strikes" are those that are referred to as such in the prior notices issued by trade unions.

Table 27 -MINIMUM SERVICE ARBITRATIONS INITIATED BETWEEN 2013 AND 2020

Minimum Service Arbitration	2013	2014	2015	2016	2017	2018	2019	2020
	9	3	19	4	11	19	27	8

In relation to the definition of minimum services during a strike - and because this issue is also specifically provided for by the LTFP in the context of the public employment contract - it will always be said, very briefly, that since the purpose of this measure is to ensure the satisfaction of unavoidable social needs, the conditions indicated in Article G of the CSE for restricting the right to strike will apparently be met.

Indeed, paragraph 1 of the aforementioned Article G of the European Social Charter provides that: "The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals."

There can be no doubt that the need to define services is provided for by law, although naturally the law does not specify what these services are, since only in the specific case will it be possible

to ascertain the unavoidable nature of these services, either by agreement between the parties or by recourse to an arbitration panel if such an agreement cannot be reached.

On the other hand, the safeguarding of minimum services essential to meet unavoidable social needs, namely in the services identified in Article 397(2)(a) to (K) of the LTFP[34], is intended precisely to guarantee (in a democratic society) respect for the rights and freedoms of third parties and to protect public order, national security and public health, in accordance with the aforementioned Article G of the ESC.

3. Measures in response to COVID-19 pandemic

Indeed, the epidemiological situation in Portugal [and throughout the world] has imposed the need to decree a number of extraordinary measures, some of which have involved the restriction of rights and freedoms, within the scope of the declaration of a state of emergency due to a public calamity situation.

In this context, and as far as the matter under review is concerned, the provisions of paragraph c) of the Decree of the President of the Republic no. 14-A/2020, of 18 March[35], which determined the suspension of "(...) the exercise of the right to strike insofar as it may compromise the functioning of critical infrastructures or health care units, as well as in economic sectors vital to the production, supply and provision of goods and services essential to the population;". Thus - during the periods of validity of the aforementioned diploma, and of the Decrees of the President of the Republic no. 17-A/2020, of 2 April and no. 20-A/2020, of 17 April, which successively renewed the state of emergency until 2 May 2020 - the right to strike, under the terms referred to above, was conditioned.

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[34] a) Public safety, whether in a free environment or in an institutional environment; b) Mail and telecommunications; c) Medical, hospital and pharmaceutical services; d) Education, with regard to final assessments, examinations or tests of a national character that have to be held on the same date throughout the national territory; e) Public health, including funerals; f) Energy and mining services, including the supply of fuel j) Transportation of passengers, animals and perishable alimentary products and goods essential to the national economy, including their loading and unloading; k) Transportation and security of monetary values.

[35] First Decree of the President of the Republic declaring a State of Emergency in Portuguese territory for the year 2020, in the context of the pandemic caused by the disease COVID-19, which was in force between March 19 and April 2, 2020.

Another fundamental right, which is in some way also associated with trade union activity, and which was also subject to restrictions during the state of emergency, is the right to assemble and demonstrate.

In effect, both the Decree of the President of the Republic no. 14-A/2020, of 18 March, and those that renewed the state of emergency declared herein, provided for the possibility that "(...) the competent public authorities, based on the position of the National Health Authority, may impose the necessary restrictions to reduce the risk of transmission and implement measures to prevent and combat the epidemic, including limiting or prohibiting the holding of meetings or demonstrations that, due to the number of people involved, may increase the transmission of the new Coronavirus;".

In this regard, it should be noted that the Constitution of the Portuguese Republic provides that in the event of a state of emergency being declared, some of the rights, freedoms and guarantees may be suspended [see Article 19(3) of the CRP].

In terms of common law, Article 9(2) of Law 44/86 of 30th September states, "When a state of emergency is declared (...) the partial suspension of the exercise of rights, freedoms and guarantees (...) may be determined".

Alongside these measures, others were enacted, namely those relating to compulsory confinement and teleworking, measures that will certainly have contributed to the fact that strikes were not called and/or were reconsidered.

Nevertheless, during the pandemic period, workers were still able to make their demands, which assumed particular importance due to the special overload to which workers of services considered essential were subjected, as was the case of health workers and others who, albeit more indirectly, saw their working conditions worsened, as was the case of justice and education workers.

Article 21 - The right to information and consultation

1. Current Legislation and Enforcement:

Participation and social dialogue appear to be fundamental factors for reaching a consensus on policies and practices to improve working conditions and well-being in the workplace.

As regards employees' rights to information and consultation within companies and establishments, the legal framework described in previous reports is essentially maintained.

According to the legal regime described in the 9th Implementation Report, the right of workers to be informed and consulted in enterprises and establishments is exercised through workers' committees and subcommittees, trade union delegates, European works councils, workers' councils, and workers' health and safety representatives.

However, it should be noted that in the context of information and consultation of workers and workers' representatives in the event of transfer, for any reason, of ownership of a company or business or part of a company or business constituting an economic unit, the transferor and the acquirer must inform the representatives of the respective workers or, if there are none, the workers themselves, of the date and reasons for the transfer, its legal, economic and social consequences for the workers and the measures planned in relation to them, as well as the content of the contract between transferor and acquirer, without prejudice to the provisions of Articles 412 and 413 of the Labour Code, with the necessary adaptations if the information is provided to the employees [Article 286(1) of the CT, as amended by Article 2 of Law No. 14/2018 of 19 March, Article 2 of Law No. 18/2021 of 4 August].

Furthermore, the transferor and the acquirer must consult the representatives of the respective workers, prior to the transfer, in order to obtain an agreement on the measures they intend to apply to the workers following the transfer, without prejudice to the legal and conventional provisions applicable to such measures [Article 286(4) of the Labour Code, as amended by Article 2 of Law No. 14/2018 of 19 March, Article 2 of Law No. 18/2021 of 4 August].

2. Replies to the Committee questions from the 2014 Conclusions

The Committee notes that the CT provides that the violation of the right of workers to be informed and consulted constitutes an administrative offence entailing fines for employers (Article 2 of Law No. 18/2021 of 4 August). It requires the next report to indicate the amount of the fine.

The Committee also reiterates its request concerning the damages that may be claimed by workers.

As regards the amount of the fines, Article 554 of the Labour Code, under the heading "Amount of the fines", provides the following:

1. Each level of severity of labour-related administrative offences corresponds to a fine that varies according to the company's turnover and the degree of culpability of the offender, except as provided in the following article.
2. The minimum and maximum penalty for a light administrative offence are as follows:
    a) If committed by a company with a turnover lower than € 10,000,000, from 2 to 5 UC in case of negligence and from 6 to 9 UC in case of intent;
    b) If committed by a company with a turnover equal or higher than € 10,000,000, from 6 to 9 UC in case of negligence and from 10 to 15 UC in case of intent;
3. The minimum and maximum fines for a serious administrative offence are as follows:
    a) If committed by a company with a turnover lower than € 500,000, from 6 to 12 UC in case of negligence and from 13 to 26 UC in case of intent;
    b) If committed by a company with a turnover equal or higher than € 500,000 a lower than € 2,500,000, from 7 to 14 UC in case of negligence and from 15 to 40 UC in case of intent;
    c) If committed by a company with a turnover equal or higher than € 2,500,000 and lower than € 5,000,000, from 10 to 20 UC in case of negligence and from 21 to 45 UC in case of intent;
    d) If committed by a company with a turnover equal or higher than € 5,000,000 and lower than € 10,000,000, from 12 to 25 UC in case of negligence and from 26 to 50 UC in case of intent;
    e) If committed by a company with a turnover equal or higher than € 10,000,000, from 15 to 40 UC in case of negligence and from 55 to 95 UC in case of intent;
4. The minimum and maximum fines for a very serious administrative offence are as follows:
    a) If committed by a company with a turnover lower than € 500,000, from 20 to 40 UC in case of negligence and from 45 to 95 UC in case of intent;
    b) If committed by a company with a turnover equal or higher than € 500,000 a lower than € 2,500,000, from 32 to 80 UC in case of negligence and from 85 to 190 UC in case of intent;
    c) If committed by a company with a turnover equal or higher than € 2,500,000 and lower than € 5,000,000, from 42 to 120 UC in case of negligence and from 120 to 280 UC in case of intent;

d) If committed by a company with a turnover equal or higher than € 5,000,000 and lower than € 10,00,000, from 55 to 140 UC in case of negligence and from 145 to 400 UC in case of intent;

e) If committed by a company with a turnover equal or higher than € 10,000,000, from 90 to 300 UC in case of negligence and from 300 to 600 UC in case of intent;

5. The turnover relates to the calendar year preceding that in which the infringement was committed.
6. If the company has no activity in the calendar year before the infringement was committed, the turnover of the most recent year will be used.
7. In the first year of business, the limits for companies with a turnover of less than € 500,000 apply.
8. If the employer does not indicate the turnover, the limits for companies with a turnover of € 10,000,000 or more apply.
9. The abbreviation UC stands for unit of count.

The maximum amounts of the fines for very serious administrative offences, as provided for in Article 554(4) of the Labour Code, are doubled in situations involving breaches of norms governing the rights pertaining to organisational structures that represent workers, and the right to strike (Article 556[1], of the CT).

If there is more than one agent responsible for the same administrative offence, the fine corresponding to the company with the higher turnover will be applied [Article 556(2) of the Labour Code].

The following table shows the inspection activity regarding the protection of collective representation rights.

Table 28 - PROTECTION OF COLLECTIVE REPRESENTATION RIGHTS, NUMBER OF VERIFICATIONS CARRIED OUT PER AREAS, 2017/2019

Areas	2017	2018	2019
Information, consultation, participation	49	41	33
Adequate means and facilities	17	21	13
Trade union membership fees	18	15	13
Strike	32	69	88

Time credit	27	18	28
Discrimination against union representatives	12	7	21
Plenaries	12	17	13
Discrimination against works council representatives	7	5	17
Total	174	193	226

Source: ACT Information System

The following table shows the number of violations regarding workers' representation activities that have been sanctioned.

Table 29 - VIOLATIONS REGARDING WORKERS' REPRESENTATION ACTIVITIES THAT HAVE BEEN SANCTIONED. 2017/2019

Areas	2017	2018	2019
Workers' representation activities	3	8	10

Source: ACT Information System

The following table shows the violations in the area of worker participation in occupational safety and health that have been subject to sanctions.

Table 30 - THE FOLLOWING TABLE SHOWS THE VIOLATIONS IN THE AREA OF WORKER PARTICIPATION IN OCCUPATIONAL SAFETY AND HEALTH THAT HAVE BEEN SANCTIONED.

Areas	2017	2018	2019
Worker Participation	60	48	20
Information	32	27	15
Consultation	28	21	5

Source: ACT Information System

As for public sector workers, taking into account that the present matter is currently regulated by the LTFP and that several provisions of the common labour legislation are also applicable by reference to the latter(in particular under Articles 4(1)(k) and 314(2), it is necessary to make the corresponding update.

Thus, the LTFP reproduced several provisions that were already contained in the Regime governing Labour Contracts for Public Functions, and the current regime is very similar to that which is applied to private labour relations.

In these terms, the right to information and consultation of public sector workers in the bodies and services covered by the LTFP is exercised through the workers' committees and subcommittees, the trade union representatives and the workers' representatives for safety and health at work.

→ Workers' Committees and Sub-Committees

Workers shall have the right to establish, in every public employer, a workers' committee in order to defend their interests and to exercise the rights provided for in the Constitution and in the law. The creation of workers' subcommittees is provided for in paragraph 2 of the same article.

According to the provisions of Article 324 (1) of the LTFP, the workers' committee is entitled, namely, to:

a) Receive all the information necessary to carry out its activity;
b) Exercise management control over the respective public employers;
c) Participate in procedures relating to workers, within the scope of reorganization processes of bodies or services;
d) Participate in the drafting of labour legislation, directly or through the respective coordinating committees.

On the other hand, workers' subcommittees may exercise these rights, under the terms foreseen in the Labour Code [Article 324(2)].

The workers' committee has the right to meet periodically with the top manager of the service or with the management body of the public employer for discussion and analysis of matters related to the exercise of their rights, and at least one meeting should be held every month [Article 325(1) of the LTFP].

The workers' subcommittees have the same right in relation to the managers of the respective peripheral establishments or decentralised organic units [Article 325(3)].

Workers' subcommittees have the right to information about:

a) Activity plan and report;
b) Budget;

c) Management of human resources, according to the staffing charts;
d) Financial statements, including balance sheets, management accounts and management reports;
e) Projects for reorganising the body or service.

It should also be noted that various acts carried out or documents issued by the bodies and services of the Public Administration, under the terms indicated in Article 327 of the LTFP, are subject to the prior opinion of the workers' committees and subcommittees.

On a final note, these structures of collective representation of workers have the right to supervise the public employer's management (Article 328 with the limits referred to in Article 329).

→ Trade Union Representatives

Under Article 343 of the LTFP, trade union representatives have the right to information and consultation about the matters that form part of their responsibilities

In accordance with the provisions of this article, the right to information and consultation covers, in addition to others referred to by law or identified in a collective bargaining agreement, the following matters:

a) Information on the recent and probable future evolution of the activities of an organ, department or service, peripheral establishment or devolved organisational unit, and its financial situation.
b) Information and consultation on the situation, structure and probable future evolution of employment in the organ, department or service, and on any expected anticipatory measures, particularly when jobs are threatened.
c) Information and consultation with regard to decisions that are capable of leading to substantial changes at the level of the way work is organised, or in terms of labour contracts.

If they so wish, the trade union representatives shall request, in writing - from the management body of the organ or service or from the head of the peripheral establishment or of the devolved organic unit - information concerning the matters indicated above [Article 343(3)], and this information shall be provided, in writing, within 10 days, unless a longer period is justified on account of its complexity, which must never exceed 30 days [Article 343(4)]. However, paragraph 6 of the same article excludes, within the scope of the right to information and consultation, access to matters subject to the secrecy regime provided for by law.

→ Workers' occupational safety and health representatives;

As established in Article 4(1)(k) of the LTFP, the provisions of the Labour Code and respective supplementary legislation, with the legally foreseen exceptions, in the matter of workers' committees, trade unions and workers' representatives in matters of safety and health at work, are applicable to public sector workers - without prejudice to the provisions of the LTFP itself and with the necessary adaptations.

Taking into account that the matter in question, namely what is established in Law No. 102/2009, of 10 September will certainly be the object of reference by the MTSS in the part relating to the common employment relationship, we will not describe it in greater detail.

Reply to the Committee:

Although the Committee has concluded that the Portuguese legislation complies with the provisions of Article 21 of the ESC, it requests additional information, particularly with regard to:

The object of the right provided for in Article 21 of the Charter.

The amount of the fine imposed on the employer for failure to provide adequate information to workers;

The damages that may be claimed by workers (if the employer fails to provide information).

Thus, considering that the answer to the questions transcribed in sub-paragraphs b) and c) is found in the common labour regime, the only thing that needs to be mentioned with regard to the question in sub-paragraph a) is that the object of the right provided for in Article 21 of the ESC is reflected, with regard to public service workers, in Article 326 of the LTFP (Content of the information), which states that the workers' committee has the right to information about:

a) Activity plan and report;
b) Budget;
c) Management of human resources, according to the staffing charts;
d) Financial statements, including balance sheets, management accounts and management reports;
e) Projects for reorganising the body or service.

In Article 343 of the LTFP, regarding the right to information and consultation of trade union representatives, namely:

a) Information on the recent, and probable future, evolution of the activities of an organ, department or service, peripheral establishment or devolved organisational unit, and its financial situation.

b) Information and consultation on the situation, structure and probable future evolution of employment in the organ, department or service, and on any expected anticipatory measures, particularly when jobs are threatened.

c) Information and consultation with regard to decisions that are capable of leading to substantial changes at the level of the way work is organised, or in terms of labour contracts.

3. Measures in response to COVID-19 pandemic

No specific legislative measures are known to guarantee respect for the right to information and consultation during the pandemic period. In any case, it makes sense to mention some measures of general application that facilitated the functioning of collective bodies during the pandemic crisis[36], as is the case of the provisions of Article 5 of Law 1-A/2020, of 19 March, which determined that the participation by electronic means, namely video or teleconference, of members of collective bodies of public or private entities in the respective meetings, would not hinder the regular functioning of the body.

[36] They may also have facilitated the functioning of workers' committees and their participation in meetings with the governing bodies of the public employer.

Article 22 - The right to take part in determining and improving working conditions and the working environment

1. Current Legislation and Enforcement:

Several of the legislative references that are relevant to the object of this article have already been made in this document, namely in the description of the general legal framework regarding the "Right to information and consultation" (Article 21 of the ESC).

As this is a compliance situation, it is only appropriate to update and so we inform you that as for workers in public functions,

article 16 of LTFP, any draft law, draft decree-law or draft regional decree-law relating to the matters referred to in Article 15 may only be discussed and voted upon by the National Parliament, the Government of the Republic, the Legislative Assemblies of the autonomous regions and the Regional Governments after the workers' committees and the trade unions have been able to express their opinion on it.

Paragraph 2 of the same article refers to the Labour Code (Articles 472 to 475) for the procedures to be observed with regard to the publication of draft and proposed legislation and the opinion of the representative structures mentioned above.

Further on, in the scope of the rights of trade unions, Article 338(1)(c) and (d) of the LTFP expressly refers to the rights to:

- → Participation in labour legislation; and
- → Participation in procedures relating to employees, within the scope of reorganisation processes of bodies or services.

  Public sector workers have the right to create collective representation structures to defend their rights and interests, namely workers' committees and trade unions associations, without prejudice to the restrictions established by special law [cf. Article 314(1) of the LTFP].

  Article 235(1) of the Regulations requires that the following acts undertaken by public sector employers must obligatorily be subjected to a formal prior opinion from workers' committees:

a) The regulation of the use of technological equipment for remote surveillance in the workplace [Article 327(1)(a)];
b) The treatment of biometric data Article 327(1)(b)];

c) The drawing up of the organ, department or service's internal regulations Article 327(1)(c)];

d) The definition and organisation of the work schedules applicable to all or part of the organ, department or service's staff [Article 327(1)(d)];

e) Preparation of the holiday map of the body or service's workers [Article 327(1)(e)]; and

f) Any measures resulting in a substantial reduction in the number of workers of the body or service or a substantial worsening of their working conditions and, furthermore, decisions likely to bring about substantial changes in terms of the organisation of work or contracts [Article 327(1)(f)].

It is also worth highlighting, with relevance to the right provided for in Article 22 of the ESC under analysis, the power granted by law to workers' committees, in matters of supervision of the public employer's performance, since such management measures may contribute to the "improvement of working conditions and of the working environment".

Thus, it should be noted that in the exercise of the right to supervise the employer's performance, the workers' committee may, under the terms of Article 398 (2) of the LTFP:

a) Evaluate and issue an opinion on the budgets of the body or service and respective changes, as well as monitor their implementation;

b) Promote the appropriate use of technical, human and financial resources;

c) Promote, among the management bodies and workers, measures that contribute to the improvement of the public employer's activity, namely in the fields of technical equipment and administrative simplification;

d) To present to the competent bodies of the public employer suggestions, recommendations or criticisms aimed at the initial qualification and lifelong training of workers and, in general, at improving the quality of life at work and safety and health conditions;

e) To defend, before the management and supervisory bodies of the public employer and the competent authorities, the legitimate interests of the workers.

The LTFP also guarantees workers and trade unions the right to develop union activity within the body or service of the public employer, namely through trade union representatives, trade union committees and inter-union committees [Article 340(1) of the LTFP].

Trade union representatives enjoy the "right to information and consultation with regard to the matters that form part of their responsibilities" [Article 343(1) of the LTFP].

This right particularly encompasses:

a) Information on the recent and probable future evolution of the activities of an organ, department or service, peripheral establishment or devolved organisational unit, and its financial situation.

b) Information and consultation on the situation, structure and probable future evolution of employment in the organ, department or service, and on any expected anticipatory measures, particularly when jobs are threatened.

c) Information and consultation with regard to decisions that are capable of leading to substantial changes at the level of the way work is organised, or with regard to labour contracts [Article 343(2) of the LTFP].

The following table shows the violations detected as part of the inspection work relating to the control of rules and standards designed to protect the safety and health of workers and ensuring that workers are informed, trained and consulted regarding activities undertaken in the field of occupational safety and health and participate in them.

Table 31 - HEALTH AND SAFETY AT WORK (HSW) VIOLATIONS FOR WHICH PENALTIES WERE IMPOSED, 2017/2019

Areas	2017	2018	2019
General Prevention Principles	172	222	228
Worker Participation	60	48	20
Information	32	27	15
Consultation	28	21	5
Training	116	122	132
Lack of adequate HSW training	114	120	131
Training (appointed workers / persons responsible for implementing emergency measures / workers' representatives)	2	2	1
Organisation of Health and Safety at Work Services	196	229	187
Organisation of HSW Services without sufficient means	1	0	0

Workers' representatives for HSW	0	0	2
HSW Services main activities	31	46	55
Protection of genetic heritage	0	3	0
Occupational safety service	0	0	2
Exposure of lactating worker to ionising radiation	0	1	0
Health monitoring	736	893	857
Emergency activities – Fire, first aid and staff evacuation	2	2	1
Provision of external HSW services without authorisation	9	9	5
Simultaneous or successive activities at the same workplace	17	25	23
Internal Health and Safety at work Service	1	4	0
Work-related Accidents and Occupational Illnesses	1,072	1,131	1,296
Work-related accident insurance (lack of)	767	797	921
Work-related accident insurance (lack of or insufficient declarations)	170	193	172
Work-related accident insurance (failure to identify the insurer on the pay slip)	19	17	95
Work-related accident insurance – independent worker (lack of)	98	100	83
Obligation to guarantee occupational accident pensions	2	0	0
Insurance for Absolute Permanent Disability or Death on Fishing Vessels	0	0	0
Occupational rehabilitation and reintegration obligations	0	1	0
Report of work-related accident to insurer (lack of)	13	16	15
Uninsured Employer - written report to the court	3	0	0
Obligation to provide first aid	0	0	1

Display at the enterprise of rights and obligations of victims and persons responsible	0	6	3
Employer with no transferred responsibility	0	0	3
Domestic service	0	0	1
On board work - Insurance for total permanent incapacity or death	0	0	2
On Board Work - Accident Reporting Period	0	1	0
Obligatory documents - Communication of work-related accidents to ACT and missing documents	74	63	57
Essential requirements regarding safety of machinery	1	3	16
Special HSW EU Directives[2]	763	935	794

Source: ACT Information System

[1] Decree-Law 103/2008, 24 June.

[2] The data regarding special Community Directives are broken down in Table 8.

Article 26 - Right to dignity at work

1. Current Legislation and Enforcement:

Law no. 73/2017, of 16 August, and Law no. 93/2019, of 4 September, made the following changes to the Labour Code:

→ Article 29, by force of Law no. 73/2017, of 16 August, paragraph 1 now expressly provides for the prohibition of the practice of harassment and its paragraph 4 now provides that this practice gives the victim the right to compensation, applying the provisions of Article 28 of the same Code, i.e. this right to compensation covers both material and non-material damages, under the general terms of the law.

Moreover, paragraph 5 now states that the practice of harassment constitutes a very serious administrative offence, without prejudice to possible criminal liability under the terms of the law.

And paragraph 6 provides that the whistle-blower and the witnesses indicated by him/her cannot be disciplinary sanctioned, unless they act with intent, on the basis of statements or facts contained in the records of judicial or administrative proceedings, initiated for harassment until a final decision is taken, without prejudice to the exercise of the right to a fair hearing.

It should be noted that the previous provisions on what is understood by harassment and sexual harassment have been maintained (see paragraphs 2 and 3).By virtue of Law no. 73/2017, of 16 August, Article 127 (1) now provides in subparagraph k) the adoption by the employer of codes of good conduct for the prevention and combat of harassment at work, whenever the company has 7 or more employees. Moreover, in paragraph l) the opening of a disciplinary procedure whenever it becomes aware of alleged situations of harassment at work. Violation of the provisions of paragraphs k) and l) constitutes a serious administrative offence (paragraph 7 of the same Article 127).

Law no. 93/2019, of September 4, also amended the employer's duties, with Article 127(1) now providing that the employer must respect and treat the employee with courtesy and probity, rejecting any acts that may affect the employee's dignity, that are discriminatory, harmful, intimidating, hostile or humiliating to the employee, namely harassment.

By virtue of Law no. 73/2017, of 16 August, Article 283 (8) now provides that the responsibility for the compensation of damages arising from occupational diseases resulting from the practice of harassment lies with the employer, and, by virtue of Article 283 (9) , the responsibility for the

payment of the compensation of damages arising from occupational diseases provided for in the previous paragraph lies with social security, under the terms legally provided, the latter being subrogated to the worker's rights, to the extent of the payments made, plus interest on arrears.

By virtue of Law no. 73/2017, of 16 August, Article 331 (2)(b) now provides that dismissal or other sanction applied allegedly to punish an offence is presumed to be abusive, when it takes place up to one year after the complaint or other form of exercise of rights relating to equality, non-discrimination and harassment.
Law no. 93/2019, of 4 September, also amended Article 331(1)(d), which now states that a disciplinary sanction is considered abusive if the employee claims to be a victim of harassment or is a witness in judicial and/or administrative proceedings for harassment.

By virtue of Law no. 73/2017, of 16 August, Article 394 (2)(f) now provides that the offence to physical or moral integrity, freedom, honour or dignity of the worker, punishable by law, including the practice of harassment reported to the inspection service in the labour area, practised by the employer or his representative, is one of the behaviours of the employer that constitutes just cause for termination of the employment contract by the worker. Law No. 93/2019, of 4 September also amended Article 394(2), and paragraph b) now includes the culpable violation of the worker's legal or conventional assurances, namely the practice of harassment by the employer or by other workers.

With regard to public sector workers, Law No. 73/2017 of 16 August 2017 established that the provisions of the Labour Code and its complementary legislation on harassment apply to these workers - introduction of Article 4(4)(d) of the General Labour Law in Public Functions, approved in annex to Law No. 35/2014 of 20 June.

Law No. 73/2017 of 16 August also introduced the following amendment to the General Labour Law in Public Functions:

The public employer is required to adopt codes of good conduct to prevent and combat harassment at work and to initiate disciplinary proceedings whenever it is aware of alleged situations of harassment at work - new paragraph K) of Article 71(1) of the LGTFP.

Law no. 73/2017 of 16 August, further states that ACT and the Inspectorate-General for Finance provide email addresses for receiving complaints of harassment at work, in the private and public sectors, respectively, and information on their respective websites on identifying harassment practices and on measures to prevent, combat and react to harassment situations.

The Inspector-General of Finance shall include in its annual report the statistical data concerning the activity developed under this law.

Within the Standing Committee for Social Dialogue (June 2018) a set of proposals and measures resulted in Law No. 93/2019 of 4 September, which amended the Labour Code.

Law no. 93/2019, of 4 September, also amends the Labour Code and its regulations, namely strengthening the guarantees of the workers against acts that may affect their dignity, that are discriminatory, harmful, intimidating, hostile or humiliating to the workers, namely harassment.

Thus, with regard to the Labour Code, the present Law has introduced the following changes:

1. The employer must respect and treat the worker with courtesy and probity, avoiding any acts that may affect the worker's dignity, that are discriminatory, harmful, intimidating, hostile or humiliating for the worker, namely harassment - new wording of Article 127(1)(a) of the Labour Code.
2. A disciplinary sanction motivated by the fact that the worker has alleged to be a victim of harassment or is a witness in legal and/or administrative proceedings of harassment is considered abusive - introduction of Article 331(1)(d) of the Labour Code.
3. The application of abusive sanctions is considered a very serious administrative offence - introduction of Article 331 (7) of the Labour Code.
4. The culpable violation of the legal or contractual assurances of the employee, namely the practice of harassment practised by the employer or by other employees constitutes just cause for the termination of the contract by the employee - new wording of Article 394(2)(b) of the Labour Code.

From 1 January 2017 to 31 December 2020, CITE received 24 complaints regarding sexual and moral harassment, of which 2 were from men.

Only issues opinions on complaints regarding harassment based on gender discrimination. If it concludes that harassment has occurred, the complaint is then forwarded to ACT, which has powers of inspection.

Table 32 - COMPLAINTS LODGED WITH CITE, 2017-2020

	2017	2018	2019	2020	Total
Sexual Harassment	1	0	0	0	1
Moral Harassment	2	2	12	3	19

Sexual and Moral Harassment	1	3	0	0	4
Total	4	5	12	3	24

Source: CITE

The effective combating of sexual and psychological harassment also requires its integration into policy measures and national plans.

The Action Plan for Equality between Women and Men 2018 - 2021 (PAIMH) includes, in Strategic Objective 2 - "Ensure the conditions for full and equal participation of women and men in the labour market and in professional activity", measures aimed at combating and preventing harassment in the workplace, namely the measure:

2.2.5 - Carrying out information and training activities and disseminating tools and methodologies to combat and prevent sexual and moral harassment in the workplace, in the light of the new legislation.

Concerning initiatives to prevent and combat sexual and moral harassment:

CITE promoted the preparation of the instrument "Guide for the preparation of a code of good conduct to prevent and combat harassment at work", a support tool for companies to comply with the new provisions on sexual harassment that were introduced in the Portuguese Labour Code by Law No. 73/2017, of 16 August, which has strengthened the legislative framework for the prevention of the practice of harassment at work, both in the private and in the public sector.

Law No. 73/2017 establishes the mandatory adoption of a code of good conduct for the prevention and combat of harassment at work, whenever the company has seven or more employees - new subparagraph (k) of Article 127(1) of the Labour Code.

As part of the cooperation relations between CITE and the, and with the aim of developing joint actions to raise the awareness of employers, as well as to achieve a more fluid articulation between the legal work of CITE and the inspection activity of ACT, the two entities, in a joint initiative, promoted the National Action for the Promotion of Gender Equality at Work.

This Action lasted for one year, from September 2016 to September 2017, focusing on four issues: equal pay, harassment, parental/work-life balance protection and access to work, employment and vocational training.

The aim was to raise public and social awareness about the problem of gender discrimination in the labour market, making it clear that gender discriminatory behaviour is reprehensible and unacceptable.

2. Replies to the Committee questions from the 2014 Conclusions

The Committee asks whether employer liability applies in cases where a worker under the employer's authority sexually harasses, on premises under the employer's responsibility, a person who is not under the employer's authority.

Article 128 of the Labour Code, approved by Law 7/2009 of 12 February, establishes various obligations of the worker, in which paragraph a) of no. 1 of the above-mentioned normative rule stands out, which provides that the worker has the duty to respect and treat the employer, hierarchical superiors, work colleagues and people who have dealings with the company with courtesy and probity.

In the exercise of its disciplinary power, if the employer becomes aware that the employee has violated any of the legal provisions set out in Article 128 of the Labour Code, among which the above-mentioned one stands out, it may initiate the disciplinary procedure set out in Articles 328 et seq. of the Labour Code.

Reply to the Committee:

As to whether the employer's liability applies when it fails to take measures to protect a worker under its authority from sexual harassment perpetrated in the workplace or in connection with work by a person not under its authority.

Regarding this issue, it should be noted that harassment at work is not considered a crime, but a very serious administrative offence [Article 29(4) of the Labour Code] which may give rise to a right to compensation if deemed discriminatory, as provided for in Article 28 of the Labour Code - Compensation for discriminatory acts - The practice of discriminatory acts against a worker or job applicant gives them the right to compensation for material or non-material damage, under the general terms of the law.

If the harassment situation is classified as sexual coercion, however, it may be deemed a crime, as provided for in Article 163 of the Penal Code, which provides, in this respect, as follows:

a) Whosoever by means of violence, serious threat, or whosoever to that end and after rendering another person unconscious or unable to resist, constrains that person to undergo or engage in a significant sexual act with the perpetrator or a third party, shall be punished by a term of imprisonment of between one and eight years.

b) Whosoever, by means not included in the previous paragraph and by abusing authority resulting from a family, guardian or ward-based relationship or a relationship involving hierarchical, economic or work-related dependency, or by taking advantage of fear he/she has caused, constrains another person to undergo or engage in a significant sexual act with the perpetrator or a third party, shall be punished by a term of imprisonment of up to two years.

However, since the general rule is that the sexual coercion crime is considered a semi-public crime, whose criminal procedure depends on the filing of a complaint by the victim, the worker should be the one to file the complaint.

However, Article 128(1)(c) of the Labour Code states that it is the employer's duty to provide good physical and moral working conditions. Therefore, taking into account the question raised, as this is a person who is not under the authority, power and direction of the employer, the latter is limited in its action as it does not hold disciplinary power over this person, however, taking into consideration that it is the employer's duty to provide good working conditions, from a physical and moral point of view, it appears that the failure to adopt measures to combat the practice of harassment may constitute a breach of the duty referred to above.

Reply to the Committee:

As to whether, in the light of the relevant case-law, harassment is in practice more often considered within the framework of the provisions on discrimination *(…)*

Regarding the question raised on compensation actually granted in harassment cases

Although the legislation in force grants the victim the right to compensation for material and non-material damages, under the general terms of the law [cf. Article 29(4) and Article 28, both of the Labour Code], such compensation is established in the context of any legal action that may be brought.

CITE only intervenes in the scope of complaints addressed to it, analysing them and issuing recommendations in this area. Although within the scope of its own competences, CITE is competent to assess complaints that are lodged with it or situations of which it is aware that indicate the violation of legal provisions on equality and non-discrimination between women and men at work, in employment and in vocational training, it has no intervention in any legal proceedings that may be brought, and therefore has no data that would enable it to respond to the question asked by the Committee.

Reply to the Committee:

As to the question of whether a worker can obtain compensation or be reinstated when he/she was pressured to resign due to harassment.

In accordance with the legislation in force, namely Article 394 (1) of the Labour Code, in the event of just cause, the employee may immediately terminate the contract.

In accordance with Article 394(2)(b) of the Labour Code, the culpable violation of the worker's legal or contractual guarantees, namely harassment practised by the employer or by workers, constitutes just cause for termination.

For this purpose, the employee must, in accordance with Article 395(1) of the Labour Code, communicate the termination of the contract to the employer, in writing, with a brief indication of the facts that justify it, within 30 days following the discovery of the facts.

Article 396 of the Labour Code states that in the event of termination of the contract based on culpable breach of legal or contractual assurances by the worker, namely harassment practised by the employer or by other workers, the worker is entitled to compensation, to be determined between 15 and 45 days of basic salary and seniority for each full year of seniority, taking into account the value of the salary and the degree of unlawfulness of the employer's behaviour, and may not be less than three months of basic salary and seniority.

In the case of a seniority fraction, the compensation amount is calculated proportionally.

In the case of termination of a fixed-term contract, the compensation may not be less than the value of the outstanding wages.

As regards the reinstatement of the harassed worker, this is not provided for in the Labour Code and is therefore not possible.

ACT, in fulfilling its mission and attributions, took into account the National Strategy for Gender Equality and non-discrimination, published by the Resolution of the Council of Ministers No. 61/2018 of May 21, in its two central expressions:

- → action for equality between women and men;
- → combating discrimination on grounds of sexual orientation, gender identity and expression and sexual characteristics.

The number of enforcement procedures, with regard to the monitoring of rules and standards related to equality and non-discrimination and, within this overall area, harassment, is recorded in the table below.

Table 33 - EQUALITY AND NON-DISCRIMINATION INFRACTIONS FOR WHICH PENALTIES WERE IMPOSED, 2017/2019

Areas	2017	2018	2019
Equality and non-discrimination	35	37	87
Equality of access to employment and at work	4	2	3
Display of rights and duties regarding equality and non-discrimination	4	8	6
Prohibition on discrimination	3	4	54
Moral Harassment	22	17	14
Sexual Harassment	2	0	0
Code of conduct on harassment at work	0	2	3
Disciplinary procedure for harassment	0	0	4
Equal working conditions	0	4	3

Source: ACT

For public sector workers, the provisions of Article 29 of the Labour Code (CT), approved in annex to Law no. 7/2009, of 12 February, shall apply in matters of harassment, by virtue of the referral contained in Article 4(1)(d) of the General Labour Law in Public Functions (LTFP), approved in annex to Law no. 35/2014, of 20 June, which generically refers to the CT in matters of "harassment".

Under the current wording of Article 29 of the Labour Code, the practice of harassment is prohibited, which consists of "…undesirable behaviour, namely that based on one or more discriminatory factors and undertaken during access to or as part of employment, at work or during vocational training, with the objective or effect of disturbing or constraining the person,

affecting his/her dignity or creating an intimidating, hostile, degrading, humiliating or

destabilising environment", and the Public Employer has the duty to "provide good working conditions, both from a physical and moral point of view" - [Cf. Article 71(c) of the LTFP].

It is the responsibility of the ACTto supervise the compliance with labour standards, within the private sector, and it is also responsible for carrying out the processing of labour-related administrative offences, under the terms of Law No. 107/2009, of 14 September, and for promoting the improvement of working conditions - (cf. Article 2 of Regulatory Decree No. 47/2012, of 31 July).

However, within the Public Administration it is necessary to consider the provisions of Article 4(2) and (3) of the LTFP, in the wording given by Law no. 25/2017, May 30. 25/2017, of 30 May, according to which, in situations in which the application of the Labour Code and complementary legislation, by force of the listed references, results in the attribution of competences to the service with inspection competences of the ministry responsible for the area of labour (the ACT, as we have seen), these must be understood as attributed to the service with inspection competences of the ministry that manages, supervises or oversees the public employer in question and, cumulatively, to the Inspectorate General of Finance (IGF), in what concerns its coordination competences, as audit authority in this area.

Thus, in accordance with the regime exposed, this Directorate-General does not have any competencies in the matter described, and it is not up to this Directorate-General to take steps to assess the existence of situations of harassment in the Public Administration, as it is not competent to practice these acts. However, we inform that, under Article 4 of Law No. 73/2017, of 16 August, the Authority for Working Conditions and the Inspectorate-General for Finance provide email addresses for receiving complaints of harassment at work, in the private and public sectors, respectively, and information on their respective websites on identifying harassment practices and on measures to prevent, combat and react to harassment situations.

Article 28 - Right of workers' representatives to protection in the company and benefits to be granted to them

1. Current Legislation and Enforcement:

As regards the rights of workers' representatives to protection within the company and the facilities to be granted to them, the general legal framework described in the previous Report remains in place. Nevertheless, within the scope of the adoption of measures necessary to combat the COVID-19 pandemic, in addition to the regime described, measures were taken to strengthen the protection of workers against unlawful dismissal in the difficult economic and business environment)Article 8 -C of Law no. 1-A/2020 of 19 March), in particular, the prohibition of redundancy imposed on employers benefiting from the "simplified" lay-off and the other support measures provided for and regulated in Decree-Law no. 10-G/2020, of 26 March, which cover all workers, including workers' representatives.

In addition to this, there is a strengthening of the powers of the ACT in relation to dismissals that have already taken place, where there are indications of unlawfulness, as established in Articles 24(1) and (2) and 26(1) and (2) of Decrees No. 2-B/2020, of 2 April and No. 2-C/2020, of 17 April, and Article 8-C of Law No. 1-A/2020, of 19 March, added by Law No. 14/2020, of 9 May.

Therefore, in order to reinforce workers' rights and guarantees, whenever a labour inspector verifies evidence of a dismissal in violation of Articles 381, 382, 383 or 384 of the Labour Code, approved in annex to Law no. 7/2009, of 12 February, in its current wording, a minute is drawn up and the employer is notified to rectify the situation (cf. Article 8-C, no. 1 of Law no. 1-A/2020).

Article 8-C, no. 2 of the above-mentioned Law establishes that, with the aforementioned notification to the employer and until the employee's situation has been rectified or the judicial decision has become final, depending on the case, the employment contract in question does not terminate, and all the rights of the parties are maintained, namely the right to remuneration, as well as the inherent obligations before the general social security regime.

Paragraph 3 of the same Article concludes that the competence for the aforementioned judicial decision is conferred to the labour courts.

2. Replies to the Committee questions from the 2014 Conclusions

The Committee therefore requests that the next report provide information on the facilities mentioned above.

With regard to the facilities referred to by the Committee concerning the protection of workers' representatives in the undertaking and facilities to be granted to them, the legal framework described in the 9th Implementation Report has been maintained.

Numerous articles of the Labour Code ensure that the structures of collective representation of workers can exercise and develop their activity within the company.

The right to hold workers' meetings in the workplace convened by the workers' committees, the procedures to hold workers' meetings in the workplace, supports to the workers' committees and dissemination of information, the time credits granted to the committees' members, and the elections of committee and subcommittee' members are now foreseen, respectively, in Articles 417, 419, 420, 421, 422 and 433 of the Labour Code.

The workers' committee may call general meetings of workers to be held in the workplace (Article 419).

The workers' committee has the right to assemble and to display information and a notice in the company for a workers' meeting in the workplace, and must inform the employer at least forty-eight hours in advance of the date, time, foreseeable number of participants and the place where the meeting is to take place [Article 420(1). For its part, the employer shall provide to the workers' commission or sub-commission an adequate place for the meeting, as well as the material and technical means necessary for the exercise of its functions.

Workers and trade unions have the right to develop trade union activity in the company, namely through trade union delegates, trade union commissions and inter-union commissions, they may have meetings in the workplace, convened by one third or 50 employees of the respective undertaking, or by the trade union or inter-union commission (Articles 460, 461 (1), both of the CT).

Board members of trade unions representing workers who do not work in the company may participate in the meeting, subject to the promoters giving the employer at least six hours' notice (Article 461(3) of the Labour Code).

An employer that prohibits a workers' meeting at the workplace or the access of a union board member to company premises where workers' meetings are being held commits a very serious administrative offence [Article 461 (4) of the Labour Code].

The trade union representative has the right to post, in the company's premises and in an appropriate place provided by the employer, notices, communications, information or other texts related to union life and to the socio-professional interests of the workers, as well as to

distribute them, without prejudice to the normal functioning of the company [Article 465(1) of the Labour Code].

With regard to workers' representatives for safety and health, legislation provides for support for workers' representatives, meetings with the company's management bodies, (cf. Articles 21, 24 and 25 of Law no. 102/2009, of 10 September).

Enterprises' management bodies must make appropriate facilities available to workers' HSW representatives, along with the material and technical resources they need in order to perform their functions (Article 24[1] of the aforementioned Law).

The workers' representatives for safety and health at work also have the right to distribute information regarding safety and health at work, as well as to display it in a suitable place intended for that purpose [cf. Article 24(2) of the aforementioned Law].

Workers' HSW representatives are entitled to meet the enterprise's management body at least once a month in order to discuss and analyse matters linked to health and safety at work [Article 25 (1) of the aforementioned Law].

Training for workers' representatives is provided under the terms of Articles 131 to 134 of the Labour Code.

In this context, it is important to mention, briefly, that the guarantees of equality and non-discrimination provided for in the Labour Code [namely those in Article 24(1) and (2)(d) and Article 25] are applicable to public sector workers by virtue of the remission of Article 4(1)(c) of the LTFP.

With regard to the protection of workers elected to collective representation structures, this is provided for in Articles 317 and 318 of the LTFP, in:

a) Protection in case of disciplinary procedure, dismissal or resignation (Article 317 of the LTFP);
b) Protection in mobility (Article 318 of the LTFP).

Thus, under the terms of Article 317 of the LTFP:

1. The preventive suspension of an employee elected to a collective representation structure does not prevent the worker from having access to the places and activities included in the normal exercise of those functions [Article 317(1)];
2. During the legal proceedings for the determination of a disciplinary, civil or criminal responsibility, initiated on the grounds of an abusive exercise of rights by a member of

a workers' collective representation structure, the provisions of the previous number shall apply to the that worker [Article 317(2)];

3. The dismissal or resignation of a candidate member of any of the trade union governing bodies, or someone who performs or has performed duties in the same governing bodies for less than three years is considered an unfair dismissal or without justifiable reason [Article 317(3)];
4. In the case where the dismissed or resigned worker is a union representative or a member of a workers' committee, and a restraining order has been filed to suspend the dismissal or resignation, this will only not be granted if the court concludes that there is a serious probability that the just cause or justification invoked exists [Article 317(4)];
5. Legal actions concerning disputes relating to the dismissal or resignation of the workers referred to in the previous number are of an urgent nature [Article 317(5)];
6. In the event of unlawful dismissal or resignation of an employee who is a member of a collective representation structure, the latter has the right to choose between reinstatement in the body or service and compensation calculated in accordance with the terms of this law or established in a collective bargaining agreement, never less than the basic salary corresponding to six months [Article 317(6)];

In turn, Article 318 (1) of the LTFP guarantees that workers elected to collective representation structures, as well as candidates, until two years after the end of the respective mandate, cannot be transferred to another place of work without their express consent and without hearing the structure to which they belong.

Paragraph 2 of the same article states, however, that the provisions of paragraph 1 are not applicable when the change of the place of work results from a change of premises of the body or service or from legal norms applicable to all its workers.

In what concerns the aspect of this right set forth in Article 28(2) of the CSE, namely regarding "(...) the enjoyment of appropriate facilities that allow the employees' representatives to quickly and effectively perform their functions (...)", it is important to identify the main aspects foreseen in the LTFP:

a) Workers' meeting at the workplace
    1. Convened by workers' committees (Article 322 of LTFP[37]);

[37] Article 322 of the LTFP, in turn, refers to the regime foreseen in the Labour Code

2. Convened by the competent body of the trade union, the union representative or the trade union or inter-union committee (Article 341 of the LTFP).

b) Time credit (which counts for all purposes as effective work) generically provided for in Article 315 of the LTFP, for public sector workers elected to workers' collective representation structures and specifically stipulated:

In Article 323, for members of workers' committees and subcommittees, as well as members of coordinating committees;

In Article 344, for trade union representatives;

In Article 345, for members of the management of a trade union;

In Article 21(7) of Law No. 102/2009, of 10 September, for workers' representatives for safety and health at work;

c) Agreements of assignment in the public interest[38] for the exercise of functions in a trade union or employer confederation, or in a private entity with equivalent representation in the economic and social sectors [Article 244(1) and (2) of the LTFP and Article 345(12) to (14) of the LTFP];

d) Absences for trade union duties

Absences by workers elected to collective representation structures in the performance of their duties and which exceed the time credit are considered justified absences and count, except with regard to pay, as effective working time [Article 316(1)].

In the case of trade union representatives, in addition to the absences corresponding to the use of time credit, only absences due to the practice of necessary and unavoidable acts in the performance of their functions are considered justified and count, except for the purposes of pay, as effective working time [Article 316 (2)].

The right, generically provided for in Article 316 for workers elected to structures of collective representation of workers, is then specified in Article 346 for members of the management

[38] Under the terms of the LTFP (Article 241) it is possible to enter into an agreement between a public employer and an employer outside the scope of application of the LTFP to make a worker available to provide his/her subordinate activity, while maintaining the initial contractual relationship. The assignment in the public interest may work both ways, i.e. a worker may be assigned by an entity covered by the LTFP to an entity outside the scope of application of that law and vice-versa.

bodies of trade unions[39], which states that these, in addition to time credit, may also benefit from the right to justified absences, which count, for all legal purposes, as effective service, except for pay [cf. Article 346(1)].

The other members of the board are entitled to justified absences, up to a limit of 33 absences per year, which count, for all legal purposes, as effective service, except in relation to pay [cf. Article 346(2)].

When absences due to trade union activity extend beyond one month[40], the regime of suspension of the contract for reasons concerning the worker is applied [cf. Article 346(3)].

It should be noted that the absences of a worker elected to a collective representation structure of workers, under the terms of Article 316, constitute, in accordance with Article 134(5) of the LTFP, the only exception to the mandatory rule prohibiting the regulation of absences (and respective duration) by collective labour regulation instrument.

e) Leave of absence for participation in electoral processes

   Article 346-A of the LTFP provides for leave of absence for employees who participate in the electoral processes of trade unions[41], in specified circumstances and within certain limits.

f) Leave of absence for consultations regarding workers' collective interests (Article 346-E of the LTFP).

   In the case of electoral consultations provided for in the statutes or of others concerning the collective interests of workers, namely congresses or others of an identical nature, workers may be granted leave from duty under terms to be defined on a case-by-case basis by order of the member of the Government responsible for Public Administration.

3. Measures in response to COVID-19 pandemic

It is important to clarify in this regard that although DGAEP has not received any evidence of violation of the right of workers' representatives to protection in the respective bodies or

[39] Whose identification is communicated to DGAEP and to the body or service in which they perform their functions

[40] Provision not applicable, under the terms of Article 346 (4) of the LTFP, to board members whose absence from the workplace, beyond one month, is determined by the accumulation of time credits.

[41] Holding of meetings to form trade unions or for the purposes of amending the articles of association or electing the managing bodies.

services, nor in relation to the reduction or denial of legally granted facilities for the performance of their functions.

Article 29 - Right to information and consultation in collective redundancy procedures

During the pandemic situation and/or because of it, there were no changes to the legal norms that regulate the right to information and negotiation in the scope of collective redundancy procedures.

Likewise, we do not perceive that, in practice and in the mentioned period, this right was in any way restricted or conditioned.