

**Labour Market Reforms and the Crisis in Portugal:  
No change, U-Turn or New Departure?**<https://doi.org/10.23906/wp56/2017>

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**1. Introduction**

Since 2009, Portugal's fiscal deficit and debt to GDP ratios sharply increased as global and domestic economic conditions worsened. This led to rising pressures on the external financing of Portuguese debt with steep hikes in interest rates, reflecting a deterioration of investors' confidence (European Commission, 2014: 3). Consecutive downgrades of Portuguese sovereign bonds by rating agencies and widening financing needs made it harder for the Portuguese government to refinance itself and continue repaying its debt. Unable to face its debt commitments, Portugal became in April 2011 the third European Union (EU) member state (after Ireland and Greece) to request financial assistance to the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF), commonly known as troika.<sup>1</sup> In order to receive the €78 billion loan, the Portuguese government signed in May a Memorandum of Understanding (MoU) outlining an extensive 3-year program of fiscal consolidation and structural reforms, including the labour market. These changes to the labour market were not, however, an absolute novelty since they built on a long flux of reforms concentrated particularly around the labour code (LC) reforms of 2003 and 2009, and the social pact of 2011.

The Portuguese labour legislation was not stagnant until the crisis: changes took place, to various degrees, in the dimensions of

**ABSTRACT**

Drawing on quantitative and qualitative data, this paper studies labour market reforms in Portugal from 2000 to 2013. The paper examines how the main dimensions of labour market legislation (employment protection, security in unemployment, collective bargaining and activation policies) evolved in the period and specifically assesses the impact of reforms implemented during the sovereign debt crisis. We aim to show if, and how, such regulatory changes operated a remaking of the socioeconomic power balance in industrial relations.

The paper shows that the changes introduced during the troika years were qualitatively different relative to past reforms. Even if these reforms built on previous trends, we highlight three path-shifting changes. First, there was a sizeable reduction of security in employment and in unemployment for workers with permanent contracts (insiders). Second, at the same time, a significant decentralization of wage bargaining shifted the balance of power towards employers, while a move from joint to statutory regulation, stalled social concertation. Third, both these trends were not offset by any significant unemployment compensation strategy or activation effort targeted at outsiders: no recalibration occurred in a dualised labour market. Overall, this shift in the power balance between insiders, outsider and employers configures a new departure for Portuguese labour market relations. A worsened situation for insiders and outsiders indicates that there was both a flexibilization across the board and that segmentation endured, but now at a lower level of security. In conclusion, the austerity-driven reforms brought the Portuguese labour market to a liberalised dualisation.

Keywords: labour market reforms; Portugal; crisis; troika

labour law prior to 2011. Thus, instead of focusing solely on reforms passed during the crisis, this paper deploys a longer timeframe, better able to contextualize and assess such changes. Doing so will show whether they represented a structural break with the past, both in legal terms and in the way legislation expresses patterns of power distribution in industrial relations. With that in mind, we ask the guiding question: was labour market reform during the crisis a new departure, an acceleration or a U-turn relative to earlier trends?

In order to examine the directionality of labour market reforms we look at four main dimensions: regulation of standard and non-standard employment, unemployment benefits, wage and collective bargaining, and active labour market programs (ALMP). We argue that only the combined analysis of the four dimensions gives us a full picture of the overall reform trajectory.

The paper is organized as follows: the next section will elaborate the analytical framework, discuss reform typologies and assess how such reform paths interact with crisis development. Then, we formulate hypothetical reform paths to be assessed in the empirical section. Next, we present the methodology, data and case-selection. The empirical part opens with an historical overview and analysis of Portuguese labour market dynamics from the 1970s up until 2011. Next, we analyse the Portuguese reform trajectories during the crisis and discuss our main findings. We conclude by restating the main empirical findings and the most important interpretative conclusions.

## 2. Reform trajectories and the role of economic crisis: a framework for analysis

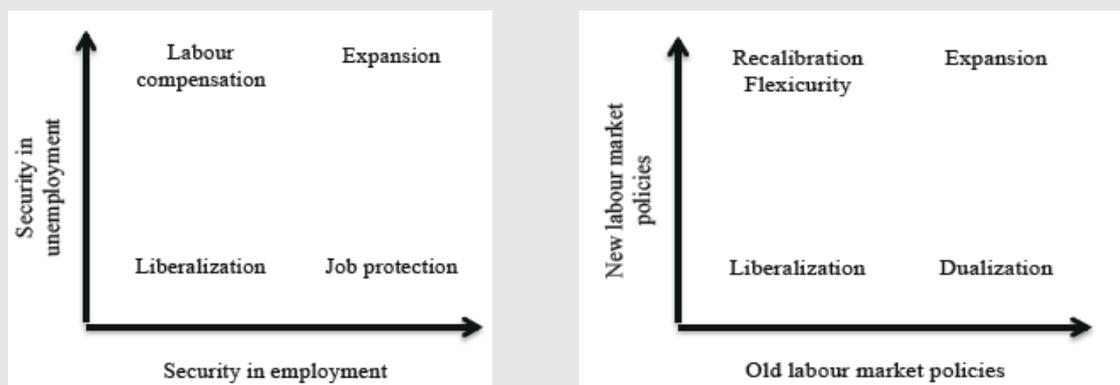
The varieties of labour market reform can be grouped into four main types: expansion, liberalization, dualisation

and recalibration. Expansion and liberalization lay at opposite poles regarding the desirable extent of state regulatory intervention in the labour market. Labour regulatory standards, or rights, imply an invasion of contract by status, the subordination of free market bargain to political norms of social justice (Marshall, 1950). Expansion strengthens labour market regulation across its various dimensions, de-commodifying labour. Conversely, liberalization de-regulates across the board. Liberalization yields a steady expansion of market relations in areas previously reserved to democratic and collective decision-making, weakening the position of labour vis-a-vis the employers (Baccaro & Howell, 2011: 551).

Dualisation and recalibration address the internal segmentation within the labour market. The former is defined as the institutionalization of forms of dualism in which the interests of those in «standard» full-time jobs with benefits (insiders) are promoted over those in various «atypical» employment relationships (outsiders) (Thelen, 2014: 6). As regards recalibration, the focus is on the need to fix long-standing, structural socio-economic imbalances between insiders and outsiders (atypically employed, women, long-term unemployed, unskilled). Therefore, the central aim is to find the best mix of policies that foster both economic competitiveness and social solidarity while promoting a more equitable distribution of the risks and opportunities of modern labour markets (Ferrera & Hemerijck, 2003: 90; Clasen, Clegg & Kvist, 2012: 5).

Since the 2000's, the labour market reform agenda transitioned from the earlier debate on the desirable extent of state regulation to one structured around the so called «recalibration agenda», focusing labour market segmentation rather than the expansion or retrenchment policies per se. More broadly, this transition reflects the move from old social policies addressing old social risks

Figure 1: Reform trajectories in Industrial and Post-Industrial Economies



Source: Authors' elaboration based on Häusermann, 2012

to a focus on new social policies designed to manage new social risks. As regards the labour market, old social policies deal «with the welfare coverage of the typical risks of income and job loss prevalent in the industrial era, typically affecting the male breadwinner, through means of income protection, i.e. passive transfers and job protection regulations» (Häusermann, 2012: 113). Figure 1 (left panel) shows possible reform trajectories of old social policies. The policy options on how to best reconcile economic competitiveness and social solidarity are cast as trade-offs between protecting the worker's job (job protection) or compensating the worker while unemployed (labour compensation).

By contrast, new social policies strive to cover the risks emergent in the post-industrial society, such as atypical employment, long-term unemployment, working poverty, family instability and lacking opportunities for labour market participation due to care obligations or obsolete skills. Measures focus on employability, activation and needs-based social protection in order to cover new risk groups neglected by the old male breadwinner model and which are unable to secure their own social protection via employment (Häusermann, 2012: 114). The existence of new risks and social policies entails a re-conceptualization. The tensional issue becomes the extent to which policies should target post-industrial social risks rather than the needs of an industrial society. As Figure 1 (right panel) shows, governments can either expand or retrench benefits and rights or they can opt for trade-offs. If old policies dominate, the likely reform trajectory is dualisation since insiders stand to benefit vis-a-vis other groups. If policies addressing new risk groups dominate, recalibration obtains.

In post-industrial societies, the tension about the extent of state regulation does not evaporate. The cleavage between expansionist and liberal reforms is still there: the liberalization of both new and old social policies relatively empowers the market; conversely, an expansion of both policies via stronger state regulatory standards shifts the balance of power towards labour. This is a useful reminder when considering reform options under severe economic crisis in a heavily constrained policy environment, to which we now turn.

### 2.1. Labour market reforms in times of crisis

As an important regulatory instrument of political and socio-economic relations, labour market policy plays a role in the responses governments formulate to cope with crises. In order to evaluate how crises affect the direction of labour market reforms, we start by identifying the type of responses governments can put forward to deal with crisis. Next, we elaborate on the relationship between crisis responses and the direction of labour market reforms.

Policy responses to crisis depend on the domestic political actors' shared interpretation of the situation and the hierarchical ordering of economic problems and political risks (Farnsworth & Irving, 2011). This is so because the way people interpret and frame the crisis shapes their interests, policy attitudes and choices. Hence, actors deploy frames, such as metaphors, symbolic representations and cognitive cues, to make sense of, «persuasive accounts of what is happening, why it is happening, what can be done about it, how and by whom» (Hart & Tindall, 2009: 6).

The deployment of such frames is never neutral. When societies face major, disruptive emergencies, the fate of politicians and policies hanging in the balance, both governments and their critics try to shift blame, «consolidate/strengthen their political capital, and advance/defend the policies they stand for» (Boin, Hart & McConnell, 2009: 82). This generates «framing contests» (Hart & Tindall, 2009: 9) in which actors strategically deploy frames striving to convince others that their policy proposals (congruent with their interests and vision) are plausible and acceptable solutions to the crisis, i.e., legitimate and justifiable courses of collective action. As a narrative strives for hegemony, counter-hegemonic efforts are bound to contest it. Thus, the definition of the crisis narrative is inherently a contentious political process. Narrative frames are at once the instrument and the outcome of political struggles, and therefore influenced by the relative distribution of – material, organizational, ideological and cognitive – power resources.

Clasen, Clegg & Kvist suggest that crises can be defined as a demand shock, a fiscal emergency, or as a structural challenge. First, when faced with a massive output shock, governments may opt to support demand by a temporary fiscal expansion (public investment and outlays) in order to prevent a recessionary spiral. The drive behind an expansionary response, focusing unemployment protection or prevention, may also be political, such as re-election prospects. Second, partly as consequence of previous stimulus measures and public recapitalization of banks, economic crisis yields rising public debts and deficits. This is when the interpretation of the crisis as a fiscal emergency may emerge. If so, deficit reduction imperatives take over the policy agenda, ushering in generalized austerity. The crisis can also be defined contemporarily or subsequently as an opportunity to address structural challenges with a view to enhance long-term competitiveness (rather than short-term fiscal consolidation). When taken as a structural challenge, the crisis may offer a means to overcome resistances by various political and institutional obstacles (2012: 7-8).

## 2.2. Hypothetical reform outcomes

What kind of labour market reform emerges as crisis unfold? The expansion of labour market policies is plausible only when the view of the crisis as demand shock prevails, typically in its initial stages. In the face of economic downturn, labour market policies (unemployment benefits, subsidized employment incentives, and ALMP) expand to work as economic stabilizers. As noted above, this can follow either an economic counter-cyclical logic of preventing a recessionary spiral or a political logic of responding to insiders' demands. In either case, the priority target for extra labour market support is the core workforce. The literature suggests that (old and new) left parties and unions are expected to advocate for expansionary policies. By contrast, conservative and liberal parties, employers unions and financial institutions are likely to oppose them (Picot & Tassinari, 2014).

As the crisis deepens and its interpretation changes to fiscal emergency, the need to control public deficits becomes paramount, leading to expenditure and protection cuts. Three possible reform trajectories emerge: retrenchment across the board in order to achieve internal devaluation (liberalization), a trade-off protecting insiders at the relative expense of outsiders (dualisation) or a trade-off supporting outsiders at the relative expense of insiders (recalibration).

The pressure created by high deficits and/or national debt creates the opportunity for liberalizing protections and security in the labour market. This means the weakening of workers' rights (both in standard and non-standard employment), accomplished through deregulation of dismissal protection as well as decentralization and limitation of mandatory extension in collective bargaining. Such liberalizing push follows the political logic of preventing tax increases while exploiting the resentment towards the unemployed and taking advantage of the reduced contestation resulting from the "there is no alternative (TINA) narrative". The expectation of its advocates – international financial forces, right-wing and liberal parties, domestic representatives of capital, such as employers, economic interest associations and lobby groups – is that the labour market clears by adjusting downward the price of labour so that economic activity can pick up and employment can rebound.

A reform outcome of dualisation in an already segmented labour market follows the logic of imposing the cost of reforms on labour market outsiders, rather than on insiders. The literature regards left-wing parties and trade unions as advocating the interests of insiders as their core constituency. Therefore, insiders are expected to mobilize their power resources in trying to hold the labour market status quo, opposing deregulation

and the restructuring of benefits. In terms of labour market policies, this means deregulation of non-standard employment, retrenchment of needs-based unemployment benefits and of ALMP.

Recalibration is the third reform alternative. The opportunity for recalibration opens as the perception of the crisis shifts to fiscal emergency and/or structural challenge. Here, the crisis offers the chance of enhancing long-term competitiveness and combating structural imbalances, such as the insider/outsider gap. This outcome implies the reduction in long-standing imbalances in labour market policies and social protection, targeting the peripheral workforce as the recipient of extra labour market support. This works through the erosion of dismissal protection of standard employment accompanied by re-regulation of non-standard employment, the mending of gaps and inequities in unemployment protection and improved ALMP. Recalibration may take two possible routes. It can either take the form of social pacts in which governments, unions and employers negotiate a «modernizing compromise» (Ferrera & Gualmini, 2004) or governments can act unilaterally using the opportunity to overcome institutional and path-dependency inertia in favour of outsiders (Rhodes, 2012).

## 3. Data and methods

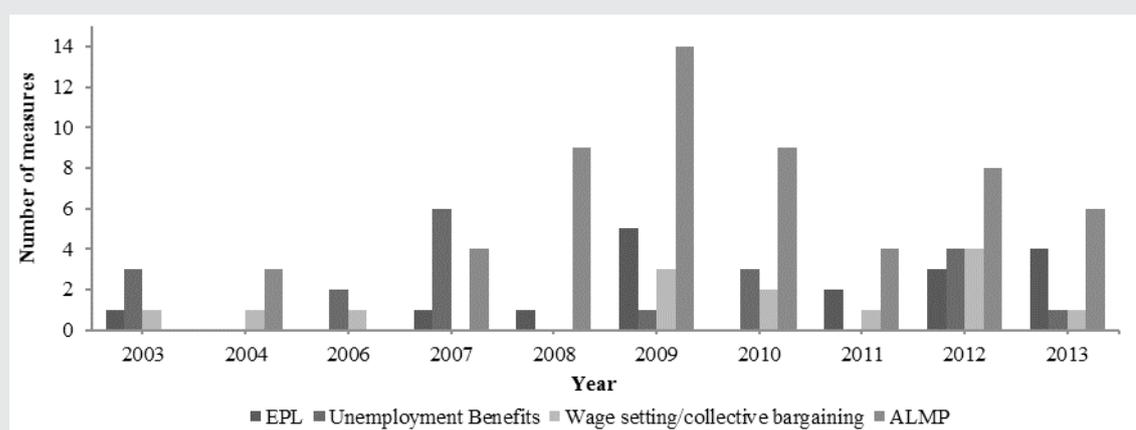
The data we use to assess directionality of regulation of standard and non-standard employment, unemployment benefits, wage and collective bargaining and ALMP is mostly quantitative, retrieved from various datasets. Table 1 details the type of data and sources used. When needed, qualitative data from the Labour Market Reforms (LABREF) Database (European Commission 2014) is used.

The choice of labour market reform in Portugal before and after the crisis allows us to address long-standing issues of change and continuity in the literature on labour market reform. First, one should recall that, up to the sovereign debt crisis, there had been many calls from international organizations such as the OECD and the EU to reform what was deemed one of the strictest labour markets in Europe. Therefore, external pressure for change preceded the crisis period paving the way for a diachronic comparison (Figure 2). The years from 2000 to 2013, while keeping constant euro membership and attending constraints, market-conforming pressure, and EU/OECD pressure, can be broken down into three main reform contexts: reform without crisis pressure (until 2009); reform with crisis pressure but without MoU (2009 to mid-2011); and reform with crisis and MoU pressure (mid-2011 to 2013). Second, Portugal was one of the EU members hardest hit by the financial crisis, subsequently converted into a sovereign debt crisis, leading to a program of financial assistance

Table 1: Datasets and indicators of labour market legislation

Labour dimension	Variables and indicators	Period	Databases <sup>2</sup>
Employment Protection Legislation (EPL)	Individual dismissal of workers with regular contracts	2000-2013	OECD Employment Protection Database
	Regulation of temporary contracts		
Bargaining and wage setting	CWB: Collective Wage Bargaining	2000-2014	ICTWSS Data Base. Version 5.1
	Mandatory extension of collective agreements to non-organised employers		
Security in unemployment	Composite index of security in unemployment	2010 - 2013	Moreira et al., 2015
	Maximum duration for the least and most entitled groups of unemployed	2007 - 2014	European Commission. Employment and social developments in Europe 2015
Active Labour Market Programmes (ALMP)	Spending effort on Active Labour Market Programmes	2000-2014	OECD Social Expenditure: Aggregated data /Pordata
Temporary employment	Employee with a Fixed-term Contract	2000-2015	OECD Employment and Labour Statistics/Pordata

Figure 2: Labour market reforms in Portugal by policy field (2003-2013)



Source: LABREF database

combined with a set of structural reforms externally supervised. This suggests a relation between crisis, bailout conditionality and labour market reforms. The choice of case and period allows us to probe the difference the crisis, and specifically the MoU, made in relation to previous reform trends. Specifically, to what extent did the MoU worked as a critical juncture for overcoming veto points and agents, creating fluidity in policy-making and crystalizing new distributive outcomes? This is key for explaining and interpreting the direction of reform in times of crisis, adding a new perspective to the extant literature. Our framework and methodology provides a distinctive analytical leverage as regards existing research, which either looks only at some aspect of labour market regulation and/or confines the analysis to the period following the onset of the crisis, or even just the MoU in May 2011 (Ramalho, 2013; Moreira, et al., 2015; Lima, 2016; Santos & Fernandes, 2016; Távora & González, 2016).

## 4. Historical background

### 4.1. The making of Portuguese labour market relations (1974 to end of 1990s)

The post-1974 Portuguese labour market was marked by the stringent legislation on individual and collective dismissals for workers with permanent contracts.

When the Portuguese democratic transition took on a more moderate line, after the waning of the dual power «revolutionary period» in November 1975, that did not end the on-going influence of organized labour on policy and labour market institutions. The Revolution's social-revolutionary legacy was conveyed in a political economy favouring the workers movement: a large nationalized public sector in the economy and finance, the (short-lived) land collectives in the South, extensive labour and social rights in the 1976 Constitution, sizeable participation and oversight rights in enterprises, favourable collective bargaining and strike law. The constitutional right to work translated into labour law that prioritized employment security over flexible dismissals.

In the liberalizing period following the post-revolutionary era, Portugal opted for a job protective political strategy prioritizing the maintaining of high employment through job security, traded-off for comparatively high inflation, low unemployment protection, low wages and wage arrears (Bermeo, 1994; Glatzer, 2005; Fishman, 2010). Barreto & Naumann (1998) argue that the strictness of employment protection for permanent contracts goes back to the comprehensive set of social and employment rights enshrined in the 1976 Constitution, devised under the revolutionary aim to construct a «socialist society». Others argue instead that this feature reflects the legacy of authoritarian corporatism coupled with a family-

oriented ideology, in which the family is the cornerstone of social solidarity (Karamessini, 2008: 517). This explains the «the urgency of safeguarding the earnings and career stability of the male bread-winner» (Esping-Andersen, 1999: 23).

A high collective bargaining coverage is another important feature of the Portuguese labour market. It rose from 70% in 1980 to its peak during the 90s, touching 98% in 1991, keeping ever since upwards of 90% (Visser, 2016), despite declining union density<sup>3</sup>. Prior to the onset of the crisis, coverage was ca. 92% (Naumann, 2013). This resulted from legal extensions of industry agreements<sup>4</sup> and 'after-effect' rules whereby expiring agreements remained valid until renegotiated<sup>5</sup> (Ramalho, 2013).

During the 1980s and 1990s, there was domestic, European and international pressure to change the rules of collective bargaining and to cut dismissal costs of permanent workers (OECD, 1994).<sup>6</sup> Regarding the former, it was believed that trade union resistance prevented modernization since much of the regulatory content had remained the same since the 1970s and 1980s. According to Távora and González (2016: 259), the social-revolutionary circumstances had redrawn regulations in favour of labour, enabling the introduction in collective agreements of a number of 'rights' that unions had since been reluctant to forgo.

Since mid '80s there were recurrent, though mostly failed, attempts to cut dismissals costs. European integration from 1986 came as the final blow to the remnants of a import substitution industrialisation (ISI) protected economy. The European Economic Community (EEC) sponsored the opening of a still underdeveloped economy to trade, capital flows and competition through economic liberalization, leading employers and the center-right government to seek major reforms. The pressure of the government's «labour package» to liberalize dismissals was such that the union confederations General Union of Workers (UGT) and General Confederation of the Portuguese Workers (CGTP) – deeply antagonistic and politicized<sup>7</sup> – set up formal relations and co-organized the first general strike in 1988, which was partially successful in preserving union rights and most legal protections on job security and strike law. As Glatzer points out (1999: 106), in spite of strong reform pressures, deeply liberalizing reforms were prevented by a combination of high constitutional barriers and by the fact that attempted reforms, such as in 1988, were met with strong opposition from trade unions and left-wing parties, derailing social pacts.

Unable to lower employment protection for standard workers, Portuguese authorities, as elsewhere in Southern European, liberalized the use of fixed-term contracts and allowed the replacement of service

contracts (“recibos verdes”) for employment contracts (Glatzer, 2012). The idea was to institutionalize a trade-off between labour and capital in which employment protection would answer workers’ demands while temporary contracts would satisfy the flexibilizing demands of companies (Centeno & Novo, 2012: 8).

A highly segmented (dualised) labour market emerged in which insiders enjoy high levels of employment protection, higher income, better social benefits and protection by unions; whereas atypical workers (temporary contracts, service providers) face very low levels of security, worse social benefits and lower income. The latter are mostly young qualified people working in the service sector (Centeno & Novo, 2012: 9). After fixed-term and service contracts were first regulated in 1976, the number of atypical workers in the employed workforce grew fast up until 2001 (except for a drop in 1990-1994).<sup>8</sup>

In addition to patterns of employment protection, the high share of atypical workers results from an abuse of temporary contracts by employers. To hire a worker for a de facto permanent position through a temporary contract has become a commonplace fraud in Portugal (Soeiro, 2012). The irony is that the state administration itself has resorted to fixed-term contracts and service contracts to fill in permanent positions (Glatzer, 2012).<sup>9</sup>

#### 4.2. The Activation Turn, Recalibration and LC reform (2000-2009)

The late 1990s brought increased international pressure on Portugal and other European countries to reform their labour markets. As a way to prepare the economies for the European Monetary Union (EMU), reforms were passed to ease adjustment in the face of asymmetric shocks and to permit the correction of macroeconomic imbalances (Turrini et al, 2015: 1). Namely, it was launched the European Employment Strategy (EES) in 1997<sup>10</sup> that was then integrated into the 2000 Lisbon Strategy which aimed at achieving sustainable growth, with more and better jobs (Keune, 2008: 92; Costa, 2009). This was to be achieved through a policy strategy that tried to combine labour market flexibility and economic security (Ferrera & Hemerijck, 2003). Specifically, the idea behind “flexicurity” was, on the one hand, that more flexible labour markets would reduce the costs of firms in adjusting to the dynamics of a highly integrated global economy, improving Europe’s competitiveness. On the other hand, increased labour participation and higher income security would contribute to higher levels of social inclusion (Van Vliet & Nijboer, 2012).

The literature, the EU and OECD mention Denmark, and to a lesser extent, Netherlands as examples of successfully deployed flexicurity (OECD, 2004; Commission, 2006). The Danish model builds on the combination

of flexible labour markets, generous unemployment benefits and a strong emphasis on activation. Therefore, the goal of EU and OECD authorities was to disseminate this model to other member states. In Portugal, ALMP policies got preeminence in this context. Authorities saw them as an instrument to address the enduring qualifications deficit of the workforce (Valadas, 2012). The urgency to train workers in new skills increased as the transition to a knowledge-based economy gained pace and the competition from developing and/or the newly industrialized countries became stronger (Valadas, 2011). ALMP were also deployed to fight long-term unemployment and support groups with special social insertion and employability problems (e.g. young people, elder workers, women, ethnic minorities and disabled people) (Hespanha & Matos, 2000: 91).

Beginning in early 2000s several ALMP measures were implemented, such as: tax and subsidies for companies hiring young workers and long-term unemployed; training programs for young and experienced workers; funds for the establishment of companies by unemployed (Dias & Varejão, 2012: iii). Yet, despite the ambitious goals, expenditure on ALMP was consistently lower than the Eurozone average (see below).

In connection with flexicurity and its focus on activation, the Portuguese policy debate was driven by the need to fix the enduring dualism in the labour market. These concerns underpinned the enactment of the LC in 2003. Promoted by the centre-right coalition in power, it introduced major changes to labour regulation and collective bargaining (Law No 99/2003, August 27). Regarding EPL, and contrary to the goal of de-segmentation, it extended the maximum duration of fixed-term contracts to six years. Regarding the latter, it restricted the ‘after-effect’ period of collective agreements and abolished the principle that collective agreements can only establish more favourable conditions than those set by the general law (Távora & González, 2014: 7). A ‘collective bargaining crisis’ emerged in 2004 because the unions argued that the reform presented employers with the opportunity to let existing agreements expire and/or that it pressured unions to negotiate more flexible conditions (Lima, 2008; Naumann & Lima, 2010). No tripartite social pact was signed. In order to overcome the crisis, employers and unions signed in January 2005 a bipartite agreement (without the center-right government) reaffirming the relevance of collective bargaining (CES 2005). Building on this agreement, the Socialist government led by José Sócrates, which came to office in March 2005, sought to make social concertation relevant again. During its first term (2005-2009), six social pacts were signed (of which, two were signed by CGTP).

The reformist impulse continued with the Socialist government passing a major revision to the LC in 2009 (Law No 7/2009, February 12). The process leading to this reform had started a couple of years before with the preparation of two important reports on labour market relations: one in 2006 (Dornelas, et. al. 2006) and the other in 2007 (Comissão do Livro Branco das Relações Laborais, 2007). The tripartite agreement signed in June 2008 (CES 2008) also paved the way for the 2009 LC revision.<sup>11</sup> Given that this reform was in the making for a few years, it cannot be considered a response to the financial crisis that had broken in the US in September 2008 and which was having its first effects on Europe in 2009 (see below). Instead, as pointed out by Pedroso (2014, 13), this reform was a programmatic change envisioned by the Socialist government.

The 2009 LC reversed some of the measures passed in the 2003 LC, namely it reinstated the favourability principle (but only in relation to specific 'core' domains)<sup>12</sup> and clarified the after-effect periods.<sup>13</sup> On the other hand, the code enabled the expiration of successive renewal clauses and granted bargaining powers to non-union representative structures in companies with more than 500 employees, although this still required trade union authorization (Távora & González, 2016: 256).

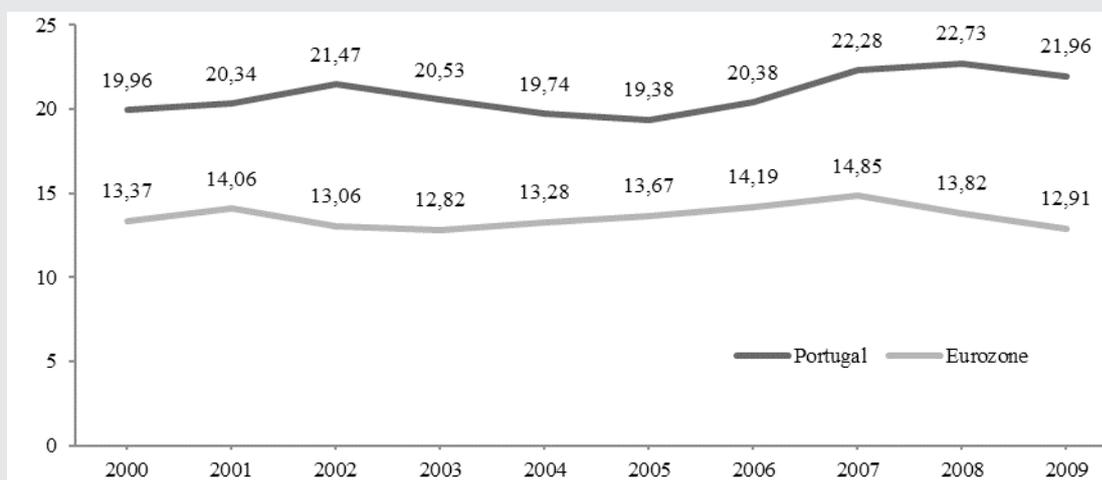
As regards EPL, despite attempts to ease dismissals, the *stato quo* remained until the crisis broke. However, changes were made to fixed-term and permanent contracts.<sup>14</sup> Regarding the latter, albeit the reasons for dismissal remained, significant changes in deadlines, steps involved and consequences related to dismissals were included in the 2009 LC. Furthermore, the time employees had to launch an unfair dismissal claim was reduced from 1 year to 60 days. Also, the maximum duration of fixed-term contracts was reduced from six to three years. This reversed the 2003 LC. Moreover,

the Code determined that a job cannot have been previously occupied by another short-term or temporary worker, or by a services provider. The 2009 LC also re-defined the concept of employment contract in order to facilitate the identification of "false" independent work and introduced severe penalties for offenders against these stipulations (Naumann & Lima, 2010). However, measures favouring fixed-term contracts were countered by others that did not. In 2007, the Socialist government doubled the maximum duration of temporary contracts to 24 months, even in the absence of a temporary or exceptional increase of company activity (Law No.19/2007 on Temporary Agency Work).

The labour market reforms undertaken in the 2000s were praised by the international organizations that had recommended and monitored their implementation: OECD, IMF and the EC (González & Figueiredo, 2015: 302). However, segmentation endured despite such appraisals. Figure 3 shows that the share of temporary contracts by early 2000s was consistently around 20%, well above the Eurozone average, with a tendency to widen from 2006 to 2009.<sup>15</sup> In 2009, Portugal still had the second largest share of workers in temporary contracts (second only to Spain) (OECD/Pordata, 2017).

Also, the Portuguese labour market is segmented due to significant mobility barriers. Workers «feel 'trapped' in unstable and insecure jobs, interrupted by repeated unemployment spells» (Eichhorst et al., 2016: 2). According to the IMF, Portugal evinced the lowest probability of transitioning from a temporary to a permanent contract in 2010 (around 12%, vs. 47% in Austria or 45% in the United Kingdom, see, IMF, 2010: 8)

**Figure 3: Share of temporary contracts in total of employees in Portugal (2000-2009)**



Source: OECD Employment and Labour Statistics/Pordata

The goal of de-segmenting the Portuguese labour market – as stated in the White and Green Papers supporting the 2009 revision (Lima, 2008) – was not achieved. In fact, excepting ALMP, liberalization was the general trend during the first decade of 2000: most measures lowered workers’ rights across the board (Figure 4). This was especially the case with EPL for temporary contracts and the generosity of unemployment benefits. Regarding collective bargaining, the many changes slightly decentralized the system, but the “after-effect” rule remained, and representativeness, the extension mechanism and favourability principle were not substantially modified. In sum, the reforms of employment legislation allowed «flexibility on the margins of the labour market while leaving those with permanent contracts largely protected» (Moreira et al., 2015: 205).

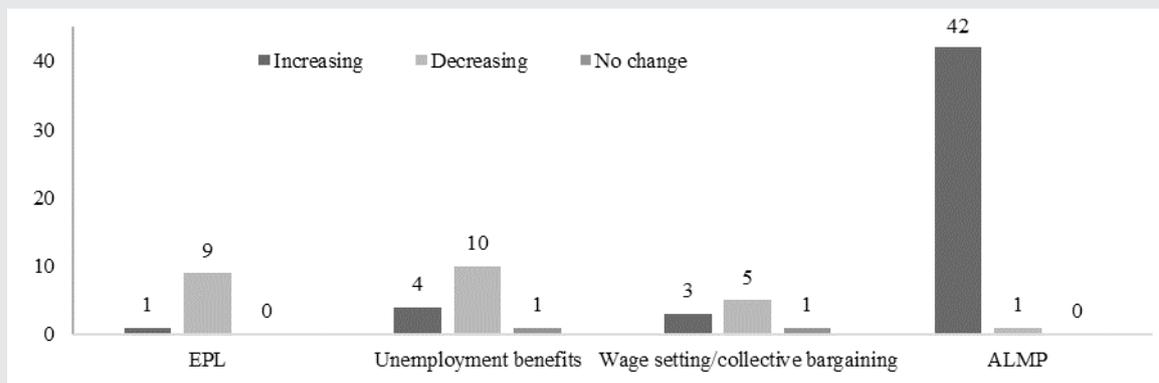
4.3. From Crisis to Bailout (2009-2011)

Following the outbreak of the financial crisis and facing a general election, the Socialist government enacted a set of counter-cyclical policies explicitly aligned with the European Economic Recovery Plan of 26 November 2008 and the Measures adopted by the European Council of 11-12 December 2008 (Cabinet of the National Coordinator of the Lisbon Strategy and the Technological Plan, 2009: 6). In this context, the fiscal stimulus program

“Initiative for Investment and Employment” (Law No 10/2009, of 10 March) aimed to support the families and companies potentially most affected by the crisis. As regards employment, the government implemented measures to intervene in job creation and overcoming the loss of jobs caused by crisis, ensuring social support for the underprivileged (ibid.).<sup>17</sup>

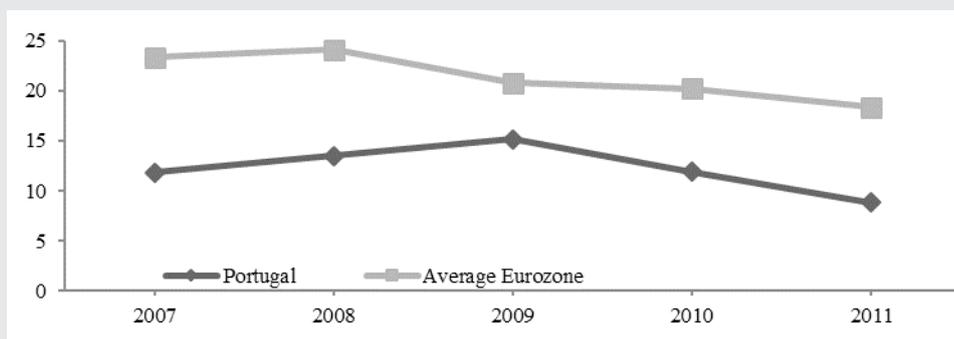
However, the expansionary measures were short-lived. Late 2009, the EU charted a different course. Partially as a result of expansionary measures, debt to GDP ratios worsened across Europe while the view of the crisis as fiscal emergency surged. Instead of expansionary measures, the new understanding was that fiscal consolidation was the best policy response because it would inspire business-boosting confidence and accelerate economic recovery (Krugman, 2015). On 17 September 2009 EU leaders first agreed to formulate exit strategies to phase-out stimulus measures (Van den Noord, 2011). On 1-2 December 2009 the ECOFIN Council agreed on principles for the coordinated exit strategy of public support schemes (ECOFIN, 2009), which were accepted by the European Council of 11 December 2009. Member states should start their exit strategies no later than 2011 (European Council, 2009).

Figure 4: Direction of labour market reforms in Portugal (2003-2011)<sup>16</sup>



Source: LABREF database

Figure 5: Spending effort on ALMP in Portugal (2007-2011)<sup>18</sup>



Source: Own calculations based on OECD Social Expenditure: Aggregated data /Pordata

In this context, the government made a U-turn in its policy response to the crisis and started fiscal consolidation and austerity. March 2010, the Socialist government launched an austerity program, known as Program for Stability and Growth (PEC, acronym in Portuguese), which was updated three times in the following months: PEC-2 (May 2010), PEC-3 (September 2010) and PEC-4 (March 2011). In fact, using the example of ALMP (one major aspect of the government's counter-cyclical policy), we can follow the spending increase in 2008 and 2009, but, as Figure 5 shows, it fell sharply in the next years as austerity took centre stage.

Despite increasing discontent with the austerity program, the government reached a tripartite agreement with the employer confederations and UGT in March of 2011 (CES, 2011). This agreement covered a wide range of issues but focused heavily on labour market reforms, including the reduction of compensation for dismissals (and the creation of an employer fund to finance these payments) and changes to collective bargaining rules and decentralization (Távora & González, 2014: 11). However, the measures included in the tripartite agreement never came pass because the Socialist government fell in March 2011, after the rejection in parliament of the fourth version of austerity program launched the year before.

The political crisis combined with the deterioration of the economic situation and debt markets led the acting government to ask for financial assistance. May 2011, a 'Memorandum of Understanding on Specific Economic Policy Conditionality' was signed between the Portuguese authorities and the Troika (EC, ECB, IMF). The bailout conditionality consisted in a program of fiscal and current-account-adjustment measures, with the primary emphasis on fiscal austerity and internal devaluation, promoted by, among others, structural reforms. Theodoropoulou (2014: 5) notes that «both fiscal and structural measures [targeted], among other things, national social and labour market policies, even though, in formal constitutional terms, these policy areas [fell] outside the EU competence».

According to the MoU's Section 4, the Labour Law presented a set of rigidities: excessive employment protection of permanent contracts, generous unemployment benefits; rigid working-time arrangements; and a wage bargaining system incapable of keeping wage growth aligned with productivity and external competitiveness due to excessive centralization and mandatory extension of collective agreements. The goal was to fix them. Differently from other sections, labour market prescriptions were very specific, since many of them had been included in the March 2011 tripartite agreement.

June 2011 a centre-right coalition (PSD/CDS-PP) won a parliamentary majority and became the responsible for implementing the MoU. The new government asserted that «austerity in state spending, subject to models of efficiency, would constitute, with time, a lever for the improvement of productivity, for the strengthening of potential for growth and for job creation» (Stoleroff, 2013: 313).

Next, we break the historical narrative to analyse labour market reforms adopted during the Troika years. Throughout, the guiding question will be whether such measures further segmented, liberalized or recalibrated Portugal's labour market.

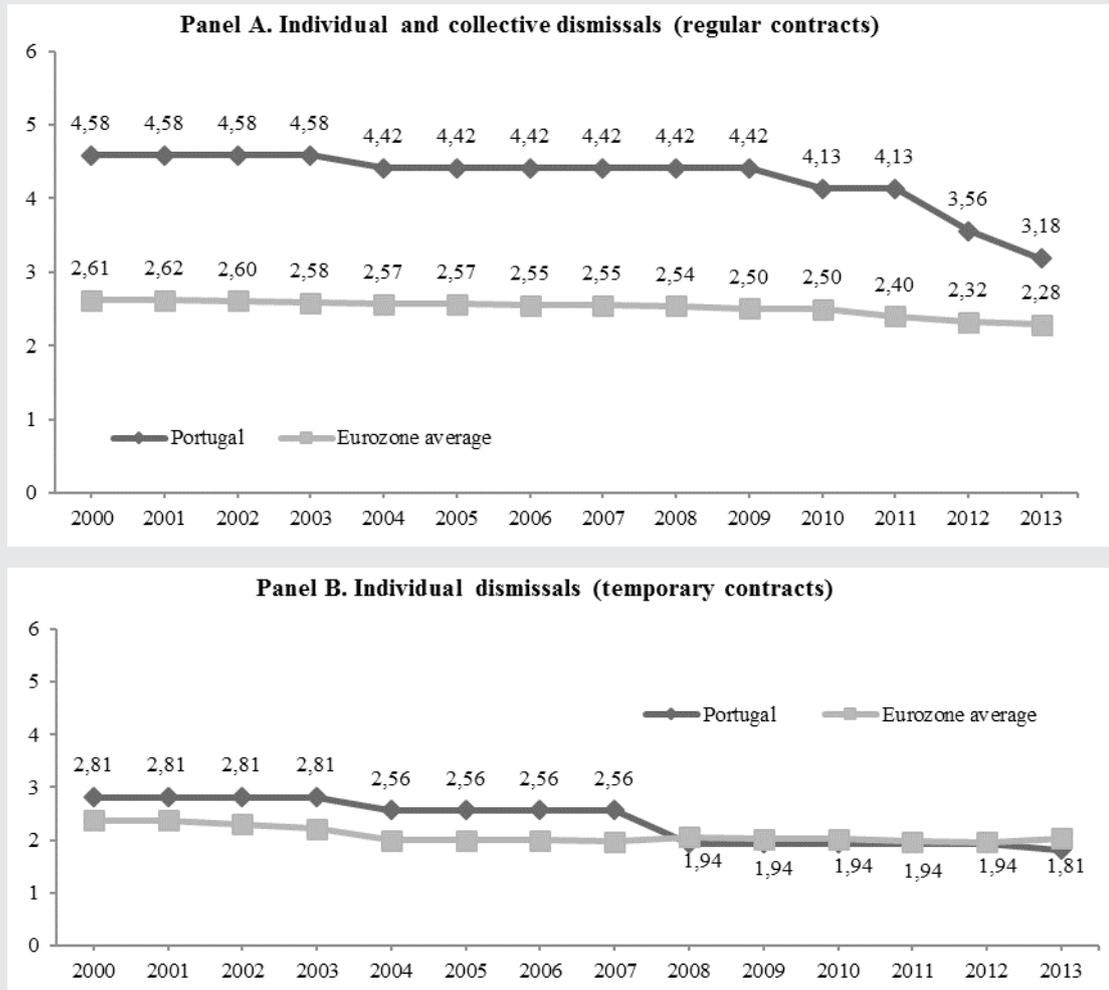
## 5. Labour Market Reform under the MoU

### 5.1. Employment protection

Employment protection for regular contracts underwent changes during the first decade of the 21<sup>st</sup> century. Despite pressure from employers and international organizations such as the OECD and the European Union, neither the 2003 LC nor its revision in 2009 brought about major reforms. Still, minor changes led to a decrease in the restrictiveness of EPL for regular workers: according to the OECD index, from 4.42 to 4.13 (still well above the Eurozone average, see Figure 6). Regarding fixed-term contracts, the major change came in 2007 with the extension of temporary contracts to 24 months. Contrary to permanent contracts, this brought a significant decrease in EPL for fixed-term contracts, from 2.56 to 1.94 (below the Eurozone average).

Thus, the reduction of EPL for regular workers became a main goal of the structural reforms in the MoU and reiterated by the tripartite agreement of January 2012 (CES, 2012). According to the MoU, EPL reforms aimed at: reducing labour market segmentation, fostering job creation and easing job switching. In general, reforms introduced during this period were mainly concerned with lowering the cost to employers of dismissing regular workers (Moreira et al, 2015: 206). Firstly, by reducing the cost of severance payments and aligning them across different types of contract, in particular temporary and permanent contracts, while at the same time narrowing the gap between strictness of EPL in Portugal and the EU average. In line with the MoU, the compensation for employee dismissal for new contracts was reduced from 30 to 20 days per year of tenure with a cap of 12 times the employee's monthly wage or 240 times the minimum wage (the minimum of the two). Furthermore, the 3-month minimum severance payment was abolished. These changes were included in the LC revisions of 2011 (Law 53/2011, of 14th October) and of 2012 (Law 23/2012 of 25th June). While in 2011 these changes were only applied to new hires, in 2012 they were extended to all employees.

Figure 6: Security in Employment in Portugal (2000-2013)



Source: OECD Employment Protection Database

The amendment to the Code in 2013 (law 69/2013 of 30 August) adopted by the center-right government further reduced severance pay for new hires, namely: for collective dismissal, the pay was reduced to 12 days per year; for individual dismissal in permanent contracts, the compensation was reduced to 18 days of base remuneration and seniority for the first three years of the contract's performance plus 12 days for the following years. With the 2013 amendment to the LC, the government went beyond the terms of the MoU, which stated that severance payment would be reduced from 30 to 20 days. The 2013 LC revision also created a transitory regime for reducing the severance pay in the case of existing individual dismissals of employees in permanent and fixed-term and temporary contracts.

Secondly, protection of regular workers against the risk of unfair dismissal was weakened by broadening the interpretation of fair dismissal in the case of unsuitability for the task, eliminating the regulation that protected senior workers in cases of dismissal, and eliminating the requirement that employers offer an alternative job in cases of unfair dismissal (Ramalho, 2013: 9). These changes were signed into Law 23/2012,

June 25. Nevertheless, after one year of these reforms being in place, the Constitutional Court partly revoked the changes easing dismissals of workers (Decision 602/2013). As a result, in 2014, the Portuguese government introduced legislation (Law 27/2014, May 8) that defined new criteria for employers when determining individual dismissals in the case of job extinction. Under these new rules, priority for dismissal was given to individuals with the lowest evaluations of performance, the lowest qualifications, the highest costs to the company, the lowest level of experience, and the fewest number of years in the company (Moreira et al., 2015: 207). These criteria were highly contested. Neither the two union confederations nor CIP, the largest employer confederation, supported it. Nevertheless, the government moved ahead and, having gained parliament approval, the new rules came into force by June 2014 (Távora and González, 2014: 19).

Consequently, EPL for workers on regular contracts fell sharply from 4.13 in 2011 to 3.18 in 2013. This cut brought the country's regulations closer in line to the Eurozone average, fulfilling one of the MoU's goals.

Moreover, there were changes regarding EPL for workers in temporary contracts. On the one hand, in 2011, severance payments for new hires in fixed-term contracts were reduced from 36 days (in case of contracts whose duration was less than 6 months) or 24 days (in case of contract whose duration was equal to or more than 6 months) to 20 days per year of service (Law 53/2011 of 14 October). On the other hand, meeting the demands of employers, the government temporarily extended the duration of fixed-term employment contracts up to 18 months (Law 3/2012) and then up to 12 months (Law 76/2013). These changes also lowered employment protection of workers in temporary contracts from 1.94 in 2012 to 1.81 in 2013 (farther below Eurozone average).

EPL underwent unprecedented cuts from 2011 to 2013. Yet, the MoU's goal of fixing segmentation was not achieved. There was a reduction of the regulatory gap between permanent and temporary contracts, but at a lower level of security. Since protection of workers on both contracts was lowered, the overall result was segmented liberalization.

This finding contributes to the ongoing debate over the relevance and extent of these reforms. For Lima (2015: 25), reforms represented an unparalleled attack against the values enshrined in the Constitution. Moreira et al., (2015: 204) consider that the reforms fundamentally «reshaped the model of labour market regulation in the South of Europe». By contrast, Theodoropoulou (2014: 25) concludes that there has been no 'paradigm shift' since EPL in Portugal remains relatively protective. For the EU and the OECD, reforms did not go far enough and further changes are needed to lower EPL for permanent contracts (European Commission, 2014: 61; OECD, 2017: 14).

## 5.2. Unemployment Protection

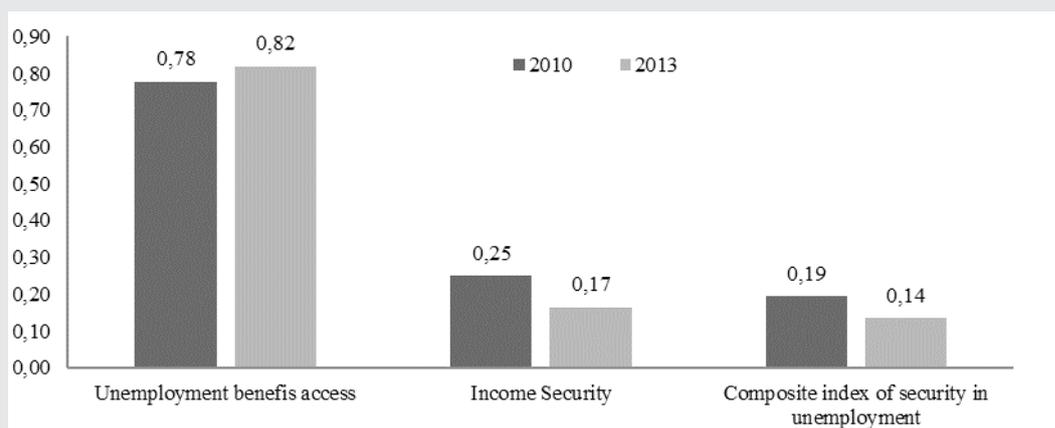
The regulation of unemployment benefits had been

changing before the MoU was signed. In 2009, as the Socialist government was enacting counter-cyclical policies, unemployment protection and improved support for families with children were implemented (Law 10/2009, 10 March). However, as the crisis deepened and austerity spread across Europe, the government reverted the expansionary policies including the support for the unemployed. In this context, in 2010, the net replacement rates were capped at 75% of the reference and at three times the Social Support Index (SSI) (Law 72/2010). Furthermore, it was decided that during the first year of unemployment, job seekers must accept a job offer if the gross wage offered equaled the unemployment benefit plus 10% (Law 72/2010).

The MoU signed in 2011 deepened the extent of these measures. The goal was to fix the enduring problem of long-term unemployment. In tandem with the guidelines of the MoU and of the Tripartite agreement of January 2012, the centre right government of Passos Coelho passed a comprehensive law on unemployment insurance (Law 64/2012, March 15), which, according to Silva and Pereira (2012), was the most significant reform in the history of this area of labour market in Portugal. According to the composite index of security in unemployment (Moreira et al. 2015), protection fell 25% between 2010 and 2013 from 0,19 to 0,14 (Figure 7).

The bulk of this decrease resulted from the significant reduction of income security of the unemployed, which dropped from 0,25 to 0,17 between 2010 and 2013. In this period, the government reduced the cap on unemployment insurance benefits from €1.257 to €1048.10 and introduced a 10% cut in benefits after six months. Furthermore, the duration of the benefits was reduced to 18 months (plus an additional period of social unemployment benefits depending on the contributory). Pedroso (2014: 24) points out that «the hardest hit were young precarious workers since an unemployed person under 30 with less than 15 months experience in his/her previous job saw the period in which he/she was entitled

Figure 7: Security in unemployment in Portugal (2010 and 2013)<sup>20</sup>



Source: own elaboration from Moreira et al. (2015)

to unemployment benefits slashed from 270 days to 150 days». In 2013, the government decided to impose a 6% tax levy on unemployment benefits above €419.13, a measure included in the state budgets of 2013 and 2014.<sup>19</sup>

While some measures lowered unemployment protection, others eased access and broadened the coverage. The contribution requirements for unemployment insurance were cut from 15 to 12 months (Law 64/2012, March 15). Unemployment benefits were extended to include a specific category of self-employed, which provided services predominantly to a contracting entity (80% or more of the income comes from the same entity) (Law 65/2012, of 15 March). Still, a temporary increase of 10% in benefits for unemployed couples (and lone parents) with children was put in place. These changes contributed to a slight increase in access from 0,78 to 0, 82 between 2010 and 2013 (Figure 7). According to Moreira et al., (2015), the increase in access and coverage together with a decrease in income security was an attempt to recalibrate unemployment protection. However, the impact on the coverage was limited: after a slight increase from 2011 to 2013, coverage fell in 2014 and 2015 (Tiago, 2016).

The measures fell short of fixing segmentation regarding unemployed benefits. In fact, neither the changes in access and coverage nor the modifications in income security significantly benefited outsiders. Figure 8 shows the least protected while in unemployment saw their situation worsened between 2007 and 2014. According to the European Commission, in Portugal (as in Ireland, France and the Netherlands), the maximum duration for the most vulnerable and those with the lowest entitlement (due to limited periods of contribution, type of contract or age) was further reduced (2016: 146).

To sum up, both unemployed insiders and outsiders saw

a reduction in their level of protection. In fact, Figure 8 shows the gap between the two increased from 2007 to 2014. Instead of solving segmentation in unemployment benefits, the MoU and the legal changes that followed actually worsened it.

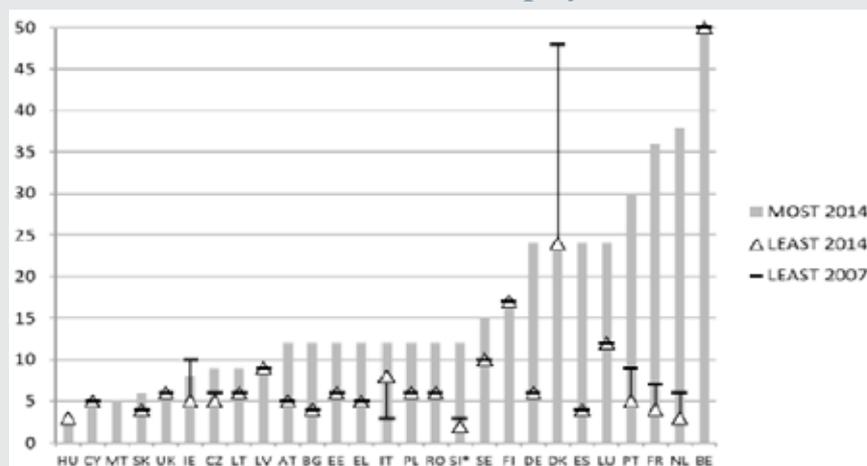
### 5.3. Wage setting and collective bargaining

As noted, the bailout did not start reform pressure on wage setting and collective bargaining. Recall that the 2003 LC created the possibility of expiration of collective agreements that had not been re-negotiated. The 2009 LC clarified the legal after-effect of collective agreements and granted bargaining powers to workers' councils, though requiring trade union delegation. The 2009 revision, despite opposition from CGTP, was supported by a tripartite agreement. In March 2011, the tripartite agreement sought organized decentralisation of collective bargaining as a way to align wage developments with productivity at the firm level (CES, 2011: 23).

The conditionality laid out in the MoU superseded the March 2011 social pact. It stated that the wage bargaining system was incapable of keeping wage growth aligned with productivity and external competitiveness. The cause lay in the excessive centralization and the mandatory extension of collective agreements. Indeed, Figure 9 shows from 2007 a discrepancy between Portuguese and Eurozone levels of collective bargaining centralization, and a convergence after 2011.

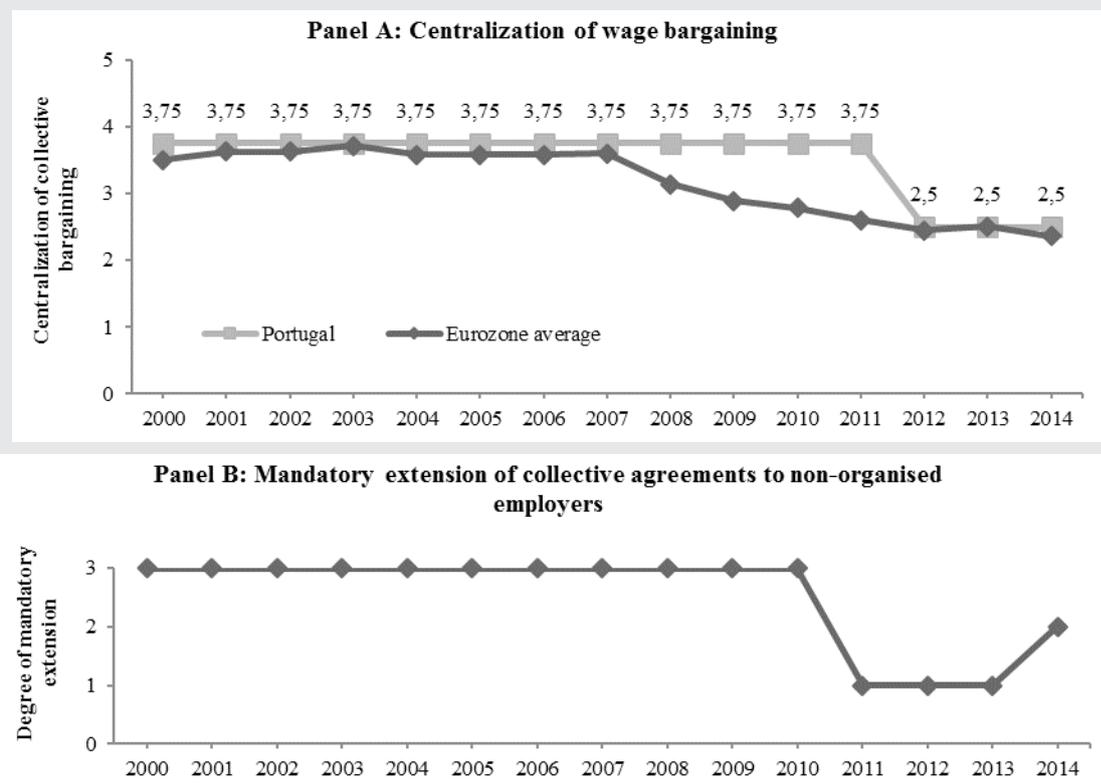
The MoU sought to: define new criteria for the extension of collective agreements; shorten the survival period of expired agreements which had not been renewed; decentralize collective bargaining towards the plant level in firms with a minimum of 250 employees, with

**Figure 8: Maximum duration of unemployment benefits for the least and the most entitled unemployed in number of months**



Source: European Commission (2016)

Figure 9: Wage Bargaining in Portugal (2000-2014)



Source: Visser (2016)

or without union mandate; create a tripartite Labour Relations Center (Ramalho, 2013: 7). Even if many such measures had already been included in the March 2011 tripartite agreement, the MoU went beyond in the restrictions on the extension of collective agreements.

In accordance with the method prescribed by the MoU – that reforms be implemented after consultation with social partners –, changes were negotiated at the national level, leading to the tripartite agreement of January 2012 (with CGTP's opposition), which then became Law n<sup>o</sup> 23/2012, a revision of the LC.

Of all the MoU's prescriptions, a couple of crucial reforms stand out (and explain the downward variation in Figure 9). First, the «organized decentralization of collective bargaining», allowing works councils in firms with at least 150 employees to negotiate agreements at plant level (previously, as part of the 2009 revision of the LC, the threshold had been set at 500 employees), but under a mandate from trade unions (Law 23/2012, revision of the LC).

Second, after freezing administrative extensions from May 2011, criteria were introduced in October 2012 for extending collective agreements to workers and firms not affiliated to the negotiating associations (Resolution of Council of Ministers 90/10 October 2012). The new criteria required the employer organisation to

represent 50% of workers in the relevant sector (ILO, 2014: 12). This measure, which «may have set the bar too high, ruling out extensions in the majority of cases» (OECD, 2017: 53), expressed a break both with social dialogue, in violation of MoU dispositions, and with the executive's pledge in the 2012 tripartite agreement. It met the unheard opposition of both trade union and the associations in Social Concertation (Távora & Gonzalez, 2016: 347-48). This rule was later relaxed by allowing extensions in cases where 30% of the signatory employers are small and medium enterprises (Resolution 43/2014, of June 27).

In sum, the government launched significant reforms, consistent with EU policy of budget consolidation and internal devaluation, aimed at transforming the collective bargaining system. These included decentralization of collective bargaining to the company level, limits upon the extension of collective agreements and new rules for the expiration and renewal of collective agreements. Over time, the government abandoned the pledge to reform in consultation with the social partners and met from late 2012 onwards the opposition of all social partners, including employers' associations.

However, the EC, while considering the reforms generally congruent with the MoU, observed that «further measures are necessary to make collective bargaining more dynamic» (European Commission, 2014). The OECD recently opined that «Compared

to other OECD countries, Portugal's wage bargaining system remains highly centralised and, so far, there has not yet been a strong shift towards firm-level agreements» (2017: 54) – in spite of evidence to the contrary as regards Eurozone countries (see Figure 9).

Several authors underline how these reforms had «devastating effects» on the dynamic of industrial relations and collective bargaining (Pedroso, 2014: 18). Firstly, the number of collective agreements concluded per year, already decreasing since 2008 (295 to 230 in 2010), plummeted from 2011 (170) to 2013 (94); the same with administrative extensions (from 116 in 2010 to 9 in 2013). The number and proportion of workers covered by new collective agreements reached the nadir of the democratic period in 2013 (from 1.9 M in 2008 to 0.24 M, or 10% of the workforce), with a moderate uptick in 2014/2015 (Távora & Gonzalez, 2016: 367; Lima, 2016: 29-31; OECD, 2017: 60). For all existing agreements, Lima (2016: 29) indicates a fall from 85% in 2010 to 81% in 2014, while Visser (2016) indicates a decrease in adjusted coverage from 75% to 67% for the same years.

Secondly, since late 2012 the government was unable to launch new tripartite negotiations and started enacting policy unilaterally, bringing about the paralysis of collective bargaining. The unilateral behaviour of the government endangered the social partners' autonomy, especially trade unions, while the content of reforms tipped the balance of power in industrial relations towards employers, increasing tensions between social partners, and within society.

Contrary to the earlier period, the austerity-driven years deeply reshaped the socioeconomic power balance in industrial relations. While social concertation provided legitimising pacts, reforms changed the outlook of collective bargaining by shifting the balance of power towards employers and by moving from joint to statutory

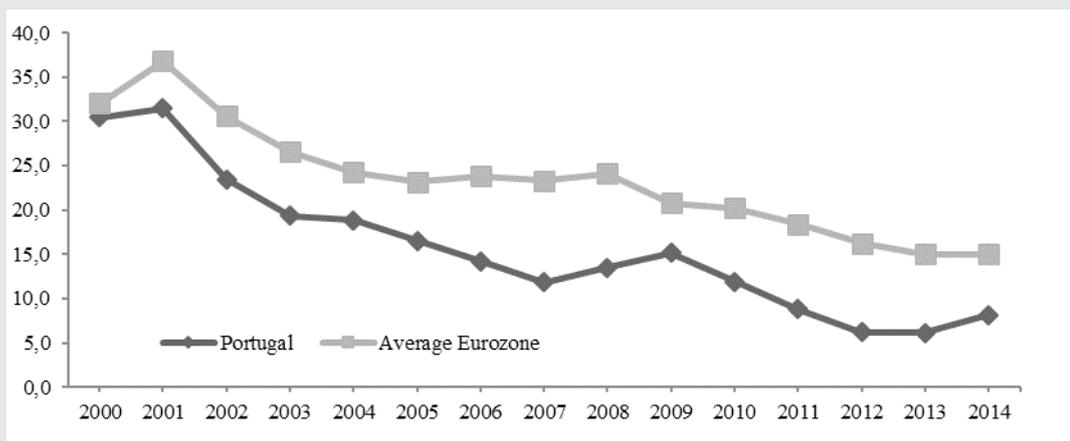
regulation, stalling social concertation.

#### 5.4. Active Labour Market Programmes

As regards ALMP, the MoU enunciates the goals of ensuring good practices and adequate resources, focusing employability, disadvantaged categories and tackling labour market mismatches. It sought also to address early school leaving and to improve the quality of secondary and vocational education and training for a more efficient access to the labour market (ILO, 2014: 100). One should note the lack of specific measures, in contrast with EPL, unemployment protection and collective bargaining. This under-specification is even more surprising given the importance of ALMPs in any recalibration policy agenda in order to fight the structural problem of segmentation.

In terms of policy measures, the hierarchy of priorities during the MoU's first year materialized in the focus on eroding employment protection and increasing flexibility. Only from 2012 were ALMPs designed and implemented. The 17 measures deployed between 2012 and 2014 break down as follows: employment subsidies (6), Youth Scheme (4), Training (3), PES (2), Direct Job Creation and Other (2) (LABREF). Of which, we highlight: (i) Estímulo 2012/Emprego, a wage subsidy for hiring; (ii) Vida Ativa, part-time high employability training modules; (iii) partial accumulation of unemployment benefits and wages (50% of unemployment benefits up to 12 months for gross wages below unemployment benefits); (iv) Impulso Jovem, a programme for tackling youth unemployment through internships, employers incentives and SME financing; and (v) Youth Guarantee Scheme (ILO, 2014: 112). Public Employment Services were revamped, including measures to improve job counselling, job search assistance and activation/sanction schemes (Santos & Fernandes, 2016: 96-97). To these one should add the activation incentives from unemployment benefit retrenchment and the

Figure 10: Spending effort on ALMP in Portugal



Source: Own calculations based on OECD Social Expenditure: Aggregated data /Pordata

development of vocational education to ease the transition from school to work.

Did the government use ALMPs to de-segment the labour market? In short, no. The spending effort in ALMP dropped in 2012 to one-third of the 2009 effort. It fell both before and after the MoU (recall the indicator controls by the rising number of unemployed and the declining GDP). It declined in 2009, and continued to fall after the formal bailout in 2011, until it stabilised at the lowest level in 2013. By then the crisis had been redefined as fiscal emergency, amid dramatic economic recession, historically high unemployment and low employment. The level of spending effort in 2014 is similar to that of 2011. Even if we ascribe the uptick in 2014 to new ALMP measures, the data does not support a recalibration strategy. Rather, we conclude that the opportunity offered by the crisis to curb the structural imbalance between insiders and outsiders was lost as regards ALMP. In fact, neither social concertation (which from 2012 was paralysed), nor unilateral action by the government (which from 2012 focused collective bargaining) were used to that effect.

The last time the ALMP spending effort rose in Portugal was between 2007 and 2009, prior to the crisis, when the gap relative to the Eurozone average grew smaller. Since then, and contrary to trends in other labour market policy fields since 2011, such as deregulation of security in employment and unemployment, and decentralization of wage bargaining, where reforms brought relative convergence with the more liberalized European norm, the evolution of ALMP spending effort did not bridge the gap.

## 6. Conclusion

The Portuguese labour market regulation changed substantially as a result of the implementation of the MoU. The Memorandum's stated goals were to recalibrate the labour market by dealing with segmentation and to enhance efficacy and competitiveness through the liberalization of various «rigidities».

Yet, this paper clearly shows there was no recalibration. The measures adopted post-2011 in terms of security in employment and unemployment, and in terms of ALMP did not especially benefit outsiders. EPL dropped for both insiders and outsiders, even if the regulatory gap narrowed. As regards unemployment benefits, the scenario was no different. Neither the changes in access or coverage, nor the modifications in income security significantly improved the situation of outsiders. In fact, the situation worsened for the least entitled to unemployed benefits between 2007 and 2014. Regarding the spending effort on ALMP, an important tool to support outsiders' efforts for social insertion

and employability, it dropped in 2012 to one-third of the 2009 effort and it stabilised at the lowest level in 2013.

The paper also shows there was a clear liberalizing trend. The level of security in employment, especially for individual dismissal of standard worker, and security in unemployment, especially generosity of income security, fell significantly. The main changes in collective bargaining are congruent with this trend. A more decentralized system and the curbing of the mandatory extension of collective agreements erode the institutional mechanisms that protect wage levels from market fluctuations. Note that this liberalization was not offset by any unemployment compensation or activation strategy.

There was a shift in the balance of power between labour market insiders, outsiders and employers. The fact that the situation worsened for insiders and outsiders indicates that there was both a wide flexibilisation of the market and that segmentation remained. After austerity adjustment, segmentation endures though at a lower level of security. A more liberalized dualisation obtained.

Our finding is consistent with the argument that the MoU's goal was never to recalibrate the Portuguese labour market (as openly stated), but to internally devalue it in order to boost competitiveness and growth (Caldas, 2015: 11). This shows that the crisis as opportunity was not seized neither to fix segmentation in the labour market, nor to fight poverty, including working poverty, and income inequalities in the country.

Lastly, we conclude that the changes brought about during the troika years were qualitatively different from the reforms adopted in the past. Even though the reforms adopted after the MoU built on previous changes, the main difference was that for, the first time, the protection of insiders was significantly lowered in its various dimensions (employment, unemployment and collective bargaining). This, we conclude, configures a new departure for Portuguese labour market relations.

Future research will focus on explaining how did such sizeable changes in the Portuguese labour market come about. For example, the literature suggests the center-right government used the crisis as a window of opportunity to implement a reform agenda that would otherwise been implausible or impossible (Moury & Freire, 2013; Moury & Standing, 2017). How? The MoU strengthened the government's political and institutional power both within the political system and vis-à-vis society, allowing it to overcome the representation of organized interests and veto points, with the exception of the Constitutional Court. Finally, Portugal offers an instance for the tension between responsibility and responsiveness governments

face when under the combined pressure of international institutions and markets and the constraints of policy legacies (Mair, 2009; 2013). In this respect, the resort by the government from late 2012 to unilateral actions that no social partner demanded indicates it was acting responsibly for a different constituency: the creditors, the Troika and international debt markets. A democratic price accrued in terms of unresponsiveness to domestic demands of citizens and organized interests in society and the economy.

NOTES

**1** The authors wish to thank Catherine Moury for detailed comments, all the participants in the kick-off meeting of the research project «Democracy in Times of Crisis: Power and Discourse in a Three-Level Game», and particularly Amílcar Moreira who generously made available his dataset on unemployment protection in Southern Europe. Research for this paper was supported by the project «Democracy in Times of Crisis: Power and Discourse in a Three-Level Game» (PTDC/IVC-CPO/2247/2014).

For a detailed history and evaluation of the bail-out, see (Abreu, et al. 2013; Moury & Freire, 2013: 41–44; Observatório das Crises e Alternativas, 2013)

**2** OECD (2017), “Employment Protection Database”. Visser, Jelle 2016, “ICTWSS Data Base. Version 5.1.” Amsterdam Institute for Advanced Labour Studies AIAS. Moreira, Amílcar et al (2015). “Austerity-Driven Labour Market Reforms in Southern Europe: Eroding the Security of Labour Market Insiders.” *European Journal of Social Security* 17; OECD (2016), “Social Expenditure: Aggregated data”, *OECD Social Expenditure Statistics*; Pordata (2016), *População desempregada*. OECD (2017), *Temporary employment (indicator)*, *Employment and Labour Market Statistics*; European Commission (2016). *Employment and Social Developments in Europe 2015*. Luxembourg: Publications Office of the European Union.

**3** Union density fell from the post-Revolution peak of around 60% in 1977 to 19% in 2010, the third steepest decline in the OECD, see (Pontusson, 2013: 800).

**4** According to this principle, the state is able to extend the impact of collective agreements to all companies within one industry (Eurofound, 2015: 27).

**5** The purpose of this rule is twofold: on the one hand, “to avoid disputes and individual claims during the period of negotiation on the new agreement and, on the other hand, to protect the standards of pay and working conditions included in the previous collective agreement” (Bruun, 2014: 253).

**6** Within the scope of the OECD Job Strategy launched in 1994, Portugal was pointed out as one of the countries a general reduction of employment protection was necessary.

**7** The revolutionary transition from authoritarian corporatism to democracy produced the long-term party politisation of both UGT (with PS and PSD) and CGTP (with PCP), while opening up space for non-politically aligned unions.

**8** Even though EPL for regular contracts changed before the 2000s, these did not fix Portugal’s dualised labour market. For example, in 1989, a wide reform package was approved which, inter alia, broadened the concept of just dismissal to include the circumstances of the firm and placed limits on automatic re-engagement of employees found to be unjustly dismissed. In 1991, the definition of fair dismissal was again broadened, this time to include the worker’s unsuitability for the job as grounds for firing. At the same time, steps were taken to discourage temporary contracts: they could be renewed only twice - total duration of the contract cannot exceed three years, becoming permanent if the three-year period is exceeded. However, by contrast, the period of employment required to qualify for social security, redundancy pay and retirement pensions was extended (Glatzer, 1999: 105), which clearly hurt outsiders and, in 1996, a strategic social plan between social partners and the government was agreed to widen the use of fixed-term contracts.

**9** For a discussion of the reasons for segmentation beyond the strictness of employment protection for insiders, see (Rubery & Piasna, 2016).

**10** Keune (2008: 93) describes the EES as “a new, soft type of governance [that] does not impose specific rules and regulations at national level. Instead, the European Council monitors national policies. It adopts a series of common objectives, guidelines and indicators for monitoring, based upon proposals from the Commission”.

**11** The agreement was signed by the government and all social partners, with the exception of CGTP.

**12** These included ‘personality rights’ (such as freedom of expression and opinion, personal integrity, privacy of personal and family life, protection of personal data, prohibition of unjustified surveillance), equality and non-discrimination, protection against unilateral wage reductions, working time limits and employers’ information obligations (Távora & González, 2016: 256).

**13** Should any of the parties request the expiration of an agreement, its after-effect period would be 18 months, whereas successive renewal clauses would have the maximum duration of 5 years.

**14** For a detailed analysis of the process leading to the 2009 LC reform, see (Zartaloudis & Kornelakis, 2017).

**15** Please note that temporary employment is only one of the dimensions of precarious work (Diogo 2012). In Portugal, one has to include also scholarship holders and interns (Varela, et al., 2014: 953).

**16** Directionality is classified as “increasing” (resp., “decreasing”) if reform has an increasing (resp., decreasing) effect on the associated underlying policy setting (generosity of unemployment benefits; stringency of regulation on employment protection, wage setting; the availability, generosity, or effectiveness of ALMPs) (Turrini et al., 2015: 6).

**17** The program consisted of both passive and active labour market policies. The former included, among others, the reduction of social security contributions and the prolonging of unemployment benefits for some people. The latter included the extension of professional internships for the young; support for youth contracting; and the establishment of a program of training-qualification placements (Cabinet of the National Coordinator of the Lisbon Strategy and the Technological Plan, 2009: 18-24).

**18** ALMP expenditures per unemployed persons expressed as a percentage of GDP per capita ((Expenditures/total of unemployed people)/GDP per capita)\*100)\*1000.

**19** Before, unemployment benefits were exempt from taxation.

**20** The composite index (third column) = UB Access\*Income Security [Gross Replacement Rate\*Duration]

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