

Panel: Living with Austerity in the EU Periphery

Discussant: Ken Dubin

Hélène Caune, helene.caune@sciencespo.fr
Università degli Studi, Milan

First version, comments welcomed

Portuguese Employment Policy in Times of Crisis: The Increasing Polarisation of Portuguese Trade Unions

Abstract

The article presents a case study of the three labor Code reforms implemented in Portugal in the last decade. The analysis focuses on the politicization of the successive reforms of 2003, 2009 and 2012 and addresses the link between specific politicization and Europeanization mechanisms from different perspectives: decision-making processes and agenda-setting, political cleavages and reforms coalitions.

Beyond the content of public policies, the article also shows how different actors' coalitions (governing political parties, trade-unions, peripheral actors) deal with national membership to the EU and how it affects political debates and social protest. If policies do not crucially differ from one partisan government to another, the economic crisis has considerably deepened the polarisation between both Portuguese trade unions (*Confederação geral dos trabalhadores portugueses* and *União geral dos trabalhadores*). If the former has been disadvantaged in the policy process it has nevertheless gained popular support as while as labor legislation is getting increasingly flexible. The policy cases under study plea for analysing social reforms in the light of European orientations, an angle that is underestimated in the welfare studies literature.

The article reveals an increasingly politicization of the EU influence. In the 2000s (2003 and 2009), successive governments managed to avoid over-politicization of labor legislation reforms. To do so, they set -up academic experts groups to prevent early confrontation and negotiations with and between social partners. In the early 2010s, the economic crisis and the new European pressure of the bailout negotiated with the troika crucially changed the decision-making process; experts groups were not set up, the right-wing government used the terms of the Memorandum to implement difficult social reforms. The politicization of the EU and its influence over national policies is getting more controversial, not among political parties, but among trade-unions.

Introduction

From the beginning of European integration in the 1950s to the end of the 1990s, the influence of European institutions over the definition of social policy at the national level have remained weak. It is only in the 1990s that soft method of governance have been developed (Pierson and Leibfried 1995, Hantrais 1997) and strengthened in the 2000s (De la Porte and Pochet 2002, Zeitlin, Pochet and Magnusson 2005, Zeitlin and Heidenreich 2009). The European sovereign debt crisis now calls for an analysis of the nature and the effects of European influence on the definition of national social policies and the construction of reforms' coalitions in the context of financial assistance and the EU/IMF bailout. The Memorandum agreed in this context constitutes a new kind of external pressure over the member state. This evolving interaction between Portugal and European institutions calls for an evaluation of the effects of Europeanization in a public policy field that traditionally enjoys a great deal of national autonomy.

The introduction of the article first posits the argument within the literature on Europeanization. Our approach takes Europeanization as an interaction and considers “the range of institutional, strategic and normative adjustments implied by European integration¹” (Palier and Surel 2007, 39). The study hence analyzes the way national actors deal with the various types of European activities (Council Presidency, soft-methods of governance, framing of EU objectives and policies) and their influence on Portuguese *policies* (the direction of public policies) and *politics* (decision-making processes, actors' coalitions). The aim of the article is to define the role of European policies and politics in the reforms of the Portuguese labor Code of the last decade. To do so, it studies decision-making processes and agenda setting, political cleavages and reforms coalitions in the light of both their degree of politicization and European pressures. One of the main hypotheses is that the context of the economic crisis weakens conflicts between governing parties and radical parties. Pro-European parties

¹ Our traduction.

in opposition are more likely to cooperate and Eurosceptic parties are more likely to oppose governmental policies (De Giorgi, Mourry and Ruivo 2014).

Europeanization and politicization

Following S. Hutter and A. Kersch, politicization can be analyzed in terms of three particular dimensions: the policy salience of the reforms, the number of actors involved in the debates and the degree of polarization among political parties (2014, 270).

The first dimension of politicization (policy salience in public debates) constitutes a condition of politicization. Non-debated and non-salient public problems are not likely to reach a strong degree of politicization (Hutter and Kersch 2014, 270, Guinaudeau and Persico 2013).

The second dimension (the number of actors involved in the public debates) indicates the degree of openness of the political process. The more different types of actors are involved in the debates and constraint the executive as potential veto players, the more the politicization of a problem is likely to be important. This article mainly focuses on political parties (governing and in opposition) and on trade-unions. Both collective actors are analyzed at their unit level but also in interaction to the political context in which they are embedded.

Finally, the third dimension, the degree of polarization among political parties, is particularly important because it reveals the level of conflicts over reforms projects and in different public policy fields. The more controversial are the reforms' projects, the more likely for political problems to be polarized. This last dimension, polarization, is particularly interesting in this paper. It opens the discussion on the logics of political controversies in a European context and in times of crisis.

The article analyzes the links between Europeanization and politicization and aims at answering the following questions: does the strengthening of European pressures on national employment policies play a role in the process of politicization of these reforms? How do political and administrative actors handle these pressures and how do they use it? Under which conditions do these pressures constitute a resource or a

constraint for the various actors involved in the definition of employment and labor market policies? Finally, how do the peripheral actors of these reforms, such as trade-unions, or more generally the citizens, react to the evolution of European pressures in this field?

Several authors have shown that EU influence on national policies tends to be underestimated by political parties (Green-Pedersen 2012; Van Der Eijk and Franklin, 2004). In the literature on welfare states and social policies reforms, EU influence is also poorly addressed. This article is interested in the increasing European influence on national policies and on political coalitions. Studying a European member state concerned with the EU/IMF bailout constitutes an extreme case. The article underlines the growing, but ambiguous, politicization of European influence on national policies. It confirms that the economic crisis is a major factor of politicization related to European integration (Kriesi and Grande 2012; Statham and Trez 2012) and identifies the consequences of such politicization on governing coalitions as well as on left-wing coalitions. Finally, the article shows that, in the context of the bailout, the dissensus of European citizens identified by L. Hooghe and G. Marks (2008) is not that constraining anymore. The analysis of the labor Code reforms in the last decade shows that political leaders (even those opposed to the reforms) do not tend to underline this dissensus over European integration. Nonetheless, a major peripheral actor puts forward the opposition to the European project: the CGTP-IN, the major Portuguese trade-union, close from the Communist Party. The support/opposition to European integration thus creates a major difficulty for Portuguese social dialogue because it contributes to strengthen a (already high) polarization between the two trade-unions. Considering the importance influence of coalitions between social partners to explain social policy change, the hypothesis is that division and fragmentation of the social movement is likely to have an influence on trade-unions capacity to influence the content of employment legislation reform. The article shows that, not only both Portuguese trade-unions have a weak influence on the definition of the content of the reform, but also, that European integration constitutes an increasing cleavage that corresponds to classical divisions between the CGTP-IN and the UGT. However, from a public policy perspective, the growing social and public opposition to Europe remains, for the time being, a latent

phenomenon that is not really constraining for political leaders. In time of crisis, the constraining effects of European politicization on political elites and national decision-making processes identified by L. Hooghe and G. Marks (2008) must hence be nuanced.

Process-tracing and frame analysis

In order to understand the nature of European influence over Portuguese policies and politics and to analyze Europeanization and politicization, this article relies on a combination of qualitative methods. First, process-tracing analysis allows for identifying the different sequences of political decision during each reform of the labor Code. Second, frame analysis is used as a tool to evaluate how the various actors involved in the definition of the reforms try to legitimate their orientations. To feed both perspectives, the study relies on three main sources. The first type relies on semi-directive interviews² (27 in Lisbon, 31 in Brussels³). These interviews with key-actors of the reforms at the national level, but with the actors involved in European decisions in Brussels and/or at the national level, are useful to understand the logics of their actions as well as the structure of their interactions. The second source used in this study is the written sources produced by these actors; the parliamentary debates of each labor Code reform; and press articles written at that time. The analysis of such sources allows for tracing the evolution of the debates on labor legislation, for identifying the frames and the types of arguments mobilized by different actors as well as the most problematic stakes. Finally, the participative observation conducted within the General Secretariat of the European Commission (November-December 2007), a few months after the Portuguese Presidency on the Council in the first semester 2007, have also contributed to my understanding of the various political activities of political and administrative actors within the Commission, and of the

² In order to guarantee the confidentiality of interviewees, the quotations in this article cannot be attributed to one particular actor. This choice may be frustrating for the reader but the institution to which the actor belongs nonetheless allows for putting their words and defended positions in context.

³ 29 other interviews were conducted in Paris, in the context of the comparative (France-Portugal) PhD dissertation that has inspired this article (Caune, 2013).

resources they rely on. The constraints they try to overcome within the organization do not constitute the object of this article (see Caune 2014), the participative observation has nonetheless allowed for a better understanding of the interactions between political and administrative that evolve at the European and national levels.

The article is organized as follows. The first part describes the political context during the definition of the first Portuguese labor Code (2003). If the polarization among governing parties remains weak, the successive governments nevertheless set-up experts' commission in order to avoid early and over politicization of the debates with and between social partners. The second part stresses that the successive reform, in 2009, was crucially influenced by Portuguese authorities' commitment regarding their European responsibilities. In 2007, the Portuguese Council Presidency greatly favored a growing politicization at the left of the Portuguese political spectrum. Finally, the third part focuses on the crucial influence of the 2011 negotiations with the troika in the context bailout to explain the content of the 2012 labor Code reform. The Memorandum was negotiated in between the collapse of the socialist government when it failed to pass a fourth adjustment plan in March 2011 and the early legislative election in June 2011 that led to the return to power of a right-wing coalition. The Memorandum is a major source of political pressure, and the government used this constraint as a political resource to increase flexibility on the labor markets.

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Radical left polarization: the example of the labor Code reform in 2003

In the early 2000s, when Portugal engages in its second Council Presidency, the Portuguese labor legislation has not been deeply reformed since the fall of Salazar's dictatorship in 1974. In 2000, the first reform of the labor Code is initiated by the socialist government led by António Guterres and is finally implemented in 2003 by the social-democrat (*Partido social democrata* – PSD) government led by José Manuel Barroso.

During the 2000 Council Presidency, the Portuguese socialist leaders were particularly committed to the development of European policy, particularly in the social and employment field. At the national level, the creation of the Commission for Analyzing and Systematizing Labor Legislation (*Comissão de Análise e Sistematização da Legislação Laboral*, CCL), one month before the end of the Portuguese Presidency of the Council, constitutes an illustration of the socialist government's commitment to be in line with the objectives and the principles they were defending at the European level.

At that period, Portuguese authorities also directly addressed European requirements in the context of the European Employment Strategy (EES). In such context, the Commission put specific pressure in the field of training policies (primary education and life-long learning). At the national level, political actors reached a rare consensus with the signature of the tripartite Agreement on employment, labor market, education and training⁴ in February 2001. The signature of the CGTP-IN must be highlighted. While the social agreements of the 1990s were general agreements orientated towards public revenue (fiscal and economic policy, Social Security), the 2001 Agreement addresses employment relations at a medium scale. In Portugal, such agreement is the only type to have a chance to be agreed upon a wide range of social partners, or put in other words, the more likely to be accepted by the CGTP-IN (Casimiro Ferreira 2005, 83).

However, the multidimensional changes involved in the definition of the first Portuguese labor Code raised fewer consensuses and politicization was not avoided even if the proponents of the reform implemented depoliticization strategies. In the following paragraphs, the article addresses the main stake of politicization during the process of this reform.

Experts' commission: a governmental strategy to avoid over-politicization

⁴ *Acordo sobre política de Emprego, Mercado de Trabalho, Educação e Formação.*

The first Portuguese labor Code is largely inspired by the work of the experts' commission set up by the socialist government in 2000 (during the Council Presidency and one year before the defeat of the socialist party at the legislative elections of March 2002). The dynamic created by the experts' commission has largely participated in, if not the depoliticization of the debate over labor legislation, at least in the weakening of political conflicts.

Composed by eleven jurists specialized in labor legislation, the CCL is chaired by António Monteiro Fernandes, professor of labor law at the Superior Institute of Work and Enterprise (*Instituto Superior de Ciências do Trabalho e da Empresa*, ISCTE) of the University Institute of Lisbon⁵. Between 1995 and 1997, he was Secretary of State for Work under the socialist government led by Antonio Guterres. Nonetheless, the CCL is also composed of members of the *Universidade Clássica* of Lisbon, closest from the center-right and the catholic movement⁶. The composition of the CCL illustrates the need, for the government, to remain capable of showing openness towards distinct perspectives. In the context of the difficult Portuguese social dialogue, the main stake of the reform process was to avoid an over-politicization of the debates so that it would be possible to go as far as possible in the systematization of the existing labor law. Mobilizing a team of academic experts was strategically used as a tool to depoliticize the debates from the initial stage of the reform⁷. The members of the CCL were selected in concertation with trade-unions organizations and governing political parties.

The political objective was to prevent the debates to be initiated and early discussed in the Permanent Commission of social dialogue (*Comissão Permanente de Concertação Social*, CPCS) between social partners. The objective was clearly to

⁵ An interviewee reminds the close links between the Socialist Party (*Partido Socialista*) and the ICSTE, a real breeding ground for academic experts mobilized by politicians, especially socialists.

Interview P16. Researcher specialized in Portuguese industrial relations. Center of research and studies in sociology (*Centro de investigação e estudos de sociologia*) at the ICSTE.

⁶ Interview P19. May, 31th, 2011. Member of the Commission of analyze and systematization on labor legislation (CCL).

⁷ Interview P19. May, 31th, 2011. Member of the Commission of analyze and systematization on labor legislation (CCL).

Interview P20. May, 30th, 2011. Member of the Commission of the White Book on labor relations (CLB).

exclude the CPCS from the reform's initial framing. By calling for an initial framing by academic experts and well-known jurists, the socialist government framed the main objective of the reform as a needed rationalization of existing legislation that was contradictory. This objective was broadly consensual. Irrespective of their various positions, political leaders, bureaucrats, academic experts and social partners, did agree with the systematization objective⁸.

The CCL was hence mandated to rewrite the Portuguese labor legislation, the so-called "*pacote laboral*". The decree that framed the functions of the commission framed the debate towards the most technical aspects. In October 2001, the CCL presented its first report to the government and social partners, a report that did not fundamentally changed the contents of the legislative norms (Cristóvam 2001).

Weak polarization among governing parties

After the legislative elections of March 2002, the return to power of the PSD with José Manuel Barroso as Prime Minister poorly influenced the definition of the new labor Code. As soon as it get back to power, the new government set up a new working-group that presents, on the basis of the work of the CCL, a pre-project of law (*anteprojecto*) to the new Minister of labor and social security, Bagão Felix, in July 2002. The propositions included in the new project do not dramatically differ from the positions of the CCL, and invalidate the hypotheses often presented in the welfare state literature on the importance of partisan politics in the definition of social policies (Garrett 1998, Levy 2001, Ebbinghaus 2010).

During fall 2002, the debates over the future labor Code importantly mobilized the radical left wing. At the Parliament, Communist deputies were radically opposed to governmental propositions concerning the new regime of collective agreements and

⁸ For example: Interview P13. May, 24th, 2011. Professor in law, labor law, Universidade Nova de Lisboa ; Interview P19. May, 31th, 2011. Member of the Commission of analyze and systematisation on labor legislation (CCL). Interview P20. May, 30th, 2011. Member of the Commission of the White Book on labor relations (CLB).

caducity⁹. The Communist depute Vicente Merendas sum-up previous positions of the same group: “*the regime of caducity of collective agreement instituted by the labor Code affects workers fundamental rights and other important social and economic rights*”¹⁰.

The new regime of caducity also crystallized the opposition of some socialist deputees. For instance, for Luís Carito this proposition corresponds to “*a civil conception of labor legislation with which [the socialists are] in deep disagreement*”¹¹. Left-wing members of the Assembly opposed the reform and called for the respect of international conventions, especially those agreed within the International Labor Organization on wages protection¹² and unions’ rights¹³. The Portuguese Constitution constituted another political resource as it guarantees the banning of firing without a “just cause”¹⁴. Finally, analyzing parliamentary debates reveals that actors unfavorable to the reform mobilized different legislative or regulatory sources, not only national ones. If the Portuguese members of the Parliament usually did not put forward European requirements, European framing was nevertheless used in the national arena. European benchmarking or the Portuguese

⁹ Until 2003, a law of 1969 established that collective agreement remained until it would be replaced another one. In 2003, the new labor Code allows employers’ organizations to denounce a collective agreement and to obtain a two-years delay after which the collective agreement becomes obsolete. Workers now can be protected by the labor Code instead of by the collective agreement. The new regime of caducity of collective agreement ends up the principle of maintaining collective agreements (*sobrevigência*). This principle was a guarantee to workers because it assured that negotiated right negotiated in the framework of collective agreements could not be weakened, even when they became obsolete; regulations could not weaken the legislative order, except if these latter were more favorable to workers’ rights.

¹⁰ « *O regime da caducidade das convenções colectivas de trabalho instituído pelo Código do Trabalho é aniquilador de direitos fundamentais dos trabalhadores, de importantes direitos económicos e sociais* ». Source: IX legislatura, sessão legislativa n°9, diário n°112, 10 de abril de 2004.

¹¹ Intervention of Luís Carito. Socialist Party: « *o reconhecimento dos mesmos direitos de personalidade ao trabalhador e ao empregador encerra uma concepção civilista do direito do trabalho, com a qual estamos em frontal desacordo* ». Source : IX legislatura, sessão legislativa n°1, n.º do diário 110, 11 de Abril de 2003.

¹² See Odete Santos’s intervention, Communist Party. Source: Idem.

¹³ See Custódia Fernandes’s intervention, Socialist Party. Source : IX legislatura, sessão legislativa n°1, n.º do diário 110, 11 de Abril de 2003.

¹⁴ See Odete Santos, Communist Party. Source: IX legislatura, sessão legislativa n°1, n.º do diário 105, 27 de março de 2003.

“delay” vis-à-vis other member states, was used as an argument to legitimate policy changes. European institutions were not directly mobilized in the political debates.

Left-wing politicization

Employers representatives generally favor the proposition of law, even if the representatives of the Confederation of Trade and Services (*Confederação do Comércio e Serviços de Portugal* – CCP), of the Confederation of Portuguese Industry (*Confederação da Indústria Portuguesa* – CIP) and of the Association of Portuguese Entrepreneurs (*Associação Empresarial de Portugal* – AEP) regretted that the project was not enough orientated towards flexibility and would not solve what they considered the « *taboos* » of workers’ benefits agreed during the Carnation Revolution process in the mid 1970s (Cristóvam et Quintas 2002).

Workers representatives were much less in favor of the project. Both trade-unions organizations, the General Confederation of Portuguese Workers, (*Confederação geral dos trabalhadores portugueses*, CGTP-IN), close from the Communist Party, and the General Workers Union (*União geral de trabalhadores*, UGT), close from the socialist and European social-democrats, traditionally have difficult relationships due to their opposed strategies in terms of occupying the political space. However, both organizations found common ground on two specific issues. First, they were both concerned with the changes of strikes regulations (for instance, the introduction of trade-unions compensations in case of illegal strikes). Second, they both opposed the new regime of caducity of collective employment contracts. Even if the UGT is traditionally more favorable to the negotiation with public authorities than the CGTP-IN, it nevertheless joined the CGTP-IN in the common strike organized on January 20th, 2003.

During the decision-making process that introduced the first labor Code in 2003, politicization was also strengthened by a wide public debate among the Portuguese civil society. The League of Catholic Workers (*Liga dos Operários Católicos*) considered that the text would penalize the weakest workers, especially mothers (Cristóvam 2002c). Governmental propositions were largely discussed in the public

debate, especially by the Portuguese Catholic church that judged some disposition as “immoral” as they tend to introduce social instability at the heart of labor relations (Pernot 2005, 5). The involvement of such peripheral actors crucially increased the politicization of the debate.

The parliamentary majority adopted the text in April 2003 in spite of important social opposition, from the left (the Communist Party, some Socialists at the Parliament, the unions) and from Catholic movements. The new labor Code strengthened firms’ internal flexibility and introduced new clauses aiming at favoring workers’ geographic and functional mobility. Flexibility also concerned the duration of the “normal working-time period» (*período normal de trabalho*)¹⁵. Firms’ external flexibility (i.e., their capacity in hiring and firing) was also developed. Yet, in the field of firing, the Portuguese Constitution – adopted in 1976 after a revolutionary period largely influenced by the Communist – has been particularly protective vis-à-vis workers’ rights. Article 53 was set up to guarantee the right to “employment security” and to ban firing without “*just cause*”. This Constitutional deadlock had been at the heart of the political debate on the reform of labor legislation during the 2000s. The reform of 2003 softened the principle of “just cause” and introduced new motives of firing. The use of short-term contracts was also facilitated¹⁶ and the duration of trial periods was extended. Finally, the introduction the new regime of caducity of collective negotiations was another important change.

To conclude this first part on the analysis of labor Code politicization in 2003, it must be underlined that, despite governmental attempts to depoliticization (with the mobilization of academic expertise), the reform process was largely politicized (high policy salience, high number of actors involved in the process, and weak, but growing polarization between political parties, with poles divided between, on the one hand,

¹⁵ The normal duration of weekly working-time can be extended to 4 hours a day maximum in the limit of 60 hours a week with a 7 days notice (instead of 2 hours a day with a limit of 50 hours a week with a 14 days notice in the previous legislation).

¹⁶ Their use was previously limited to three years, that could be renewed twice. In the new legislation, the use of short-term contracts is limited to six years and can be renewed three times.

governing parties - the PSD and the PS - and, on the other hand, the extreme left, accompanied by the CGTP-IN. Opposition also came from some Catholic movements opposed to the changing employment relations introduced in the labor Code. However, the influence of political coalitions in power (Socialist Party until 2002 and PSD from 2002) should not be overestimated. Despite the change of government in 2002, the role and the mandate of the experts' commission and the content of the reform have not been dramatically transformed.

The 2009 labor Code reform: European activities of national leaders as a source of politicization

As they criticized the 2003 labor Code, socialist leaders promised the rewriting of the text in case of electoral victory (the law of 2003 was designed to be revised every four years). The “Code Bagão Felix” (from the name of the Minister of work under the former Barroso government) is a crucial issue in the 2005 legislative electoral campaign¹⁷. With this election, the Socialist Party won an historical victory (45,03% of the suffrage) and, for the first time since the fall of the dictatorship, disposed of an absolute majority of seats¹⁸. Despite a comfortable majority, the Socialist Party and the government led by José Sócrates did not hold its electoral promise. The Socialist Party came back to power with a fiscal consolidation program as the country exceeded the limit of 3% of deficit set in the Stability and Growth Pact. The socialist government rapidly set up a new experts' commission, the Commission for the White Book on Employment Relations (*Comissão do Livro Branco das relações laborais*, CLB). The CLB is chaired by Professor António Monteiro Fernandes, who was also the Chair of the CCL in the early 2000s¹⁹.

¹⁷ See: « Partido Socialista rejeita revogação do Código do Trabalho », *Público*, January, 11th, 2005.

¹⁸ With 58,92% of the votes, the left holds 143 seats (on 203).

¹⁹ Besides the Chairman, two other members (ou of thirteen) were also part of the CCL set-up in 2000 by the former socialist government.

Political leaders initially framed the debate over the new reform of the labor Code as a necessity to overcome the gap between Portuguese and other member states' performances. Reducing labor market rigidities was a crucial priority for the socialist Minister of work, José Vieira da Silva. In order to justify important reforms and increase flexibility on the labor markets, political leaders highly mobilized the argument according which Portugal has to catch up with European standards.

In 2007, the debate over the reform of the labor Code was largely influenced by national leaders' European activities. In the second semester of 2007, Portugal was in charge of the Presidency of the European Council. In that period, European employment policy is developed and "flexicurity" principles are widely debated by trade-unions representatives in Brussels (the European Trade-Unions Confederation). Due to the Portuguese Council Presidency, Portuguese trade-unions are particularly mobilized (especially the CGTP-IN). The European model of flexicurity proposes to combine flexibility on the labor markets and security for the workers²⁰. It is strongly criticized by national trade-unions, especially in conservative-corporatist and Mediterranean countries, that is in countries with a very different social protection system from the flexicurity model. Trade-unions opposition to the flexicurity model was particularly harsh in Portugal. When Portuguese authorities organized a tripartite social summit at the beginning of the Council Presidency, the CGTP-IN strongly criticized both the government and employers' representatives for their excessive interpretation of the agreement between European social partners over the flexicurity model and criticized the reforming coalition for being "more papist than the Pope"²¹. Before the Summit, the CGTP-IN organized in Lisbon a demonstration to call for a more social Europe. The European model of flexicurity discussed in the context of the development of European employment policy also crystallized crucial tensions between the two Portuguese trade-unions, the CGTP-IN and the UGT. The UGT is clearly more favorable to the European project while the CGTP-IN is increasingly in line with the deception of citizens in times of economic crisis.

²⁰ See European Commission, 2007, Communication on common flexicurity principles (2007/0359final).

²¹ Or, according to the Portuguese language, « mais papistas que o Papa ». Source : *Balanço da Presidência Portuguesa e a Situação do País*, December, 27th, 2007.

European activities of Portuguese political leaders had an influence on the reform process and on the political debates. Indeed, political leaders had to handle two-levels of political responsibility: the Presidency of the Council (and the debates on the European flexicurity model), and their opposition at the national level.

When the Permanent Commission for Social Dialogue (*Comissão Permanente de Concertação Social – CPCS*) initiated the discussions over the White Book on Employment Relations in June 2007, the role of the EU in the definition of employment and labor market policies had been widely discussed. On the basis of the work produced by the CLB, and of negotiations in the CPCS, the government signed in 2008 a Tripartite Agreement with social partners (except the CGTP-IN) dedicated to the definition of a new regulatory system of employment relations, employment policies and social protection. In the field of internal flexibility, the socialist government softened its more radical stance on working-time organization. The government introduced an “hour bank” system (*banco de horas*), accompanied by the principle of “concentrated schedule” on specific days of the week. Even if the maximal duration of working-time was not increased, firms were allowed to extend the “normal period of work”. For collective employment contracts, the “normal period of work” could be increased until 12 hours a day as soon as the mean in two months does not exceed 50 hours a week. In the field of external flexibility, the agreement did not allow for an extension of the reasons that make firing possible²². The socialist government avoided a debate on the reform of the principle of “just cause” established in the Portuguese Constitution (a principle weakened by the previous reform in 2003), and agreed to abandon the measure according which “the incapacity of workers to adapt to new working conditions could be a motive for firing”. The agreement yet introduced changes to ease firing procedures and to reduce severance pay. For the majority of workers with long-term employment contracts the trial period was increased from three to six months.

The CGTP-IN denounced the treason of the Socialist Party. It was especially critical of the changes introduced by the Socialist Party in the field of employment security,

²² Maria da Paz Campos Lima, « Main Challenges to the Labor Code Revision in New Tripartite Agreement », *European Industrial Relations Observatory*, October, 14th, 2008.

workers' rights and the guarantees of collective negotiations²³. Under Sócrates government, the reform of the labor Code was one of the most applauded by right-wing political actors.

Whereas the text was supposed to come into force on January 1st, 2009, the Portuguese President asks the Constitutional Court to evaluate the effects of the changes regarding the extension of trial periods²⁴. As the Constitutional Court considered that such a measure would infringe on the Portuguese Constitution, the article in the labor Code had been modified, and the text was finally approved at the Parliament. The new labor Code came into force on February 17th, 2009²⁵.

To conclude this second part on the 2009 labor Code reform, it must be stressed that the 2009 labor Code reform was crucially influenced by Portuguese authorities' commitment regarding their European responsibilities. The Portuguese Council Presidency greatly favored a growing politicization at the left of the Portuguese political spectrum.

Politicization of European integration in times of crisis

One year later, in May 2010, when the Greek government found an agreement with the troika and as the Irish, Spanish and Portuguese public debt were dramatically growing, austerity measures were rapidly introduced and justified as “a necessity to reassure the markets” (Magalhães, 2012, 312). Because of economic and political pressures, especially outside the country and from the European Union, the Socialist Party was forced to negotiate with the PSD, in opposition. But when the socialist government led by José Sócrates collapsed in March 2011 after the reject of its fourth

²³ Maria da Paz Campos Lima, « Massive Demonstration against Proposed Labor Reforms », *European Industrial Relations Observatory*, July, 3rd, 2008.

²⁴ The mobilization of the President followed a request of the CGTP-IN who considered that various measures proposed in the text would be unconstitutional, but the President only maintained a request concerning the measure devoted to the increasing of trial period.

²⁵ Maria da Paz Campos Lima, « New Labor Code Comes into Force in Wake of Controversy », *European Industrial Relations Observatory*, April 14th, 2009.

economic adjustment plan and austerity program, the EU/IMF bailout was considered as inevitable and was negotiated during spring 2011 (i.e., between the collapse of the Socialist Party in March and the early legislative elections in June). For this reason, the PSD and other opposition parties such as the CDS-PP were also involved in the negotiations with the troika.

When the PSD was elected in June 2011, the new government's priority objective was to implement the Memorandum negotiated with the troika. The Memorandum offered a considerable window of opportunity for right-wing political leaders who wished to implement flexibility measures, reduce labor costs as well as the amount and duration of unemployment insurance. The difficult social measures agreed in the Memorandum were even more developed as the "cleaning" of the bailout was presented as a first priority objective. In such a political and economic context, politicization was particularly ambiguous and the EU was likely to generate political conflict.

How the socialist government tried to avoid the bailout and however collapsed

On March 23rd 2011, two years after the adoption of the last reform of the labor Code, the fall of the socialist government led by José Sócrates is a symptom of growing political conflicts among Portuguese parties after the adoption of three adjustments plans in one year. The first plan was adopted in March 2010 despite the abstention of the PSD. The two following plans were negotiated between the Socialist Party and the PSD as the leader of the PSD, Pedro Passos Coelho, finally accepted to participate in the negotiations instead of keeping a critical position that would prevent PSD's political leaders to be considered as responsible for austerity measures (Magalhães, 2012, 312).

Despite Portuguese austerity measures and the three economic adjustment plans implemented by the socialist government, unemployment rates (12% in 2011), public debt (93% of the GDP in 2011), public deficits, interest rates and borrowing costs rose sharply. When they passed the threshold of 7%, bailout's negotiations became imminent, as the government had declared a few weeks earlier (Magalhães, 2012, 313). The Prime Minister José Sócrates proposed a fourth plan, directly negotiated

with the European Commission, in order to increase Portugal's chances to avoid a formal agreement with the troika (Moury, Freire 2013, 45). The fourth austerity package was then considered as José Sócrates's swan song (Gorjão 2012, 66). The Socialist government recognized that if the plan would not been accepted by the Parliament, it would make the Portuguese sovereign debt crisis impossible to govern and would lead to its resignation (Magalhães, 2012, 313). The PSD rejected the fourth austerity package in order to call for early legislative elections.

Negotiating the bailout before early elections: a shield to avoid over-politicization?

After the reject of the plan by the members of the Parliament, the President of the Republic Anibal Cavaco Silva dissolved the Republic Assembly. The EU/IMF bailout was negotiated between March 2011 (the fall of the socialist government) and June 2011 (early legislative elections). Due to the collapse of the socialist government, the troika took negotiations with the PSD and the CDS seriously. Portuguese political actors recognize today that most measures were proposed by national negotiators (political leaders from the governing parties but also high civil-servants used to European activities) rather than imposed by the troika (Moury and Freire 2013, 46). Opposition parties had an important influence on the measures agreed with the troika. The reform of the Single Social Tax (*taxa social única*) initially was a key proposition of the PSD (Moury, Freire 2013, 46). Bilateral negotiations between the troika and the PSD have sometimes seriously constrained socialist leaders and weakened their capacity to resist EU/IMF political pressures. In the field of employment and labor market policies, the replacement of collective negotiations by negotiations with workers' committee within the enterprise is another example of how the PSD's policy preferences were included in the Memorandum (Moury, Freire 2013, 47).

In May, Portuguese authorities agreed a three year, 78 billion euro, bailout with the EU and the IMF²⁶ (modify in 2012²⁷). The financial package and the loan agreement required a budgetary adjustment and important cuts in public spending. It contained a

²⁶ Council Decision 2011/344/EU.

²⁷ COM/2012/0364 final.

project of reform of the national health system, of public administration organization and of the judiciary system. Privatization programs and reforms of the financial sector, the amelioration of the structure of banks' financial capital were also defined. Measures aiming at increasing Portuguese competitiveness and at sustaining economic growth also implied a reform of labor legislation. The Memorandum thus placed strong emphasis on employment and labor market policies. This new form of external pressure on the definition of employment policies in Portugal led to increasing politicization characterized by a left-wing polarization.

In the field under study in this article, the Memorandum agreed on May 2011 set up different kinds of objectives related to unemployment insurance system, working-time organization, wages setting mechanisms, competitiveness and active labor market policies²⁸. The freeze of minimum wages, avoided in previous adjustment programs (including the fourth one negotiated with the European Commission) was finally imposed in the Memorandum as the EU and the IMF considered it was a key element of economic adjustment in Portugal²⁹ (Moury, Freire 2013, 45).

Polarization of parties' positions regarding the EU/IMF influence

As P. Magalhães reminds, two specific issues characterized the June 2011 electoral campaign (2012, 314). The first was the responsibility of Portugal's financial situation that makes an external bailout necessary. The second issue concerned the types of policy measures needed to overcome the sovereign debt and economic crisis. The Socialist Party makes the PSD responsible for pushing the country in the harms of the IMF as right-wing leaders abstained on the fourth austerity package proposed by Sócrates government a few weeks earlier. By contrast, the PSD considered the electoral campaign as a test between the unsuccessful political measures implemented so far by the Socialist Party while the PSD instead favored the weakening of the state and of public regulations. The PSD hence engaged in the elections of June 2011 with

²⁸ *Portugal: Memorandum of understanding on specific economic policy conditionality*. May, 3rd, 2011.

²⁹ Another condition relates to the pace of privatization that the troika wanted to reinforce while Portuguese leaders favored a delay influenced by the markets (Moury, Freire 2013, 46).

the objective of legitimizing a “new economic paradigm” (Magalhães, 2012, 315). In the field under study, the PSD proposed to amend the principle of “just cause” guaranteed by the Portuguese Constitution, a measure that has remained an important stake since the first labor Code established in 2003.

The election of June 2011 signed the clear defeat of the Socialist Party as it lost more than 8% of the votes since the last elections of 2009. The Socialist Party was at its weakest score since 1987 and the PSD won by more than 10 points. The Socialist Party’s strategy to make 2011 legislative elections a choice between neoliberalism and the defense of the welfare state was a complete failure, and the fact that the Memorandum with the troika was already signed when elections took place surely did not help.

“More papist than the Pope”: the 2012 reform and the politicization of European pressures

As soon as the PSD came back to power in June 2011, the new right-wing government led by Pedro Passos Coelho clearly stated that austerity measures would be even more rigorous than the ones required by the troika³⁰. In the end of September 2011, the government presented a project of law to the Permanent Commission of Social Dialogue (CPCS) in order to reform the labor Code as planned in the Memorandum. Contrasting depoliticizing strategies of expertise mobilization implemented by the successive governments during the reforms processes of the 2000s, the terms of the Memorandum allowed for avoiding the setting-up of an experts’ commission. The direction of the reforms was already largely framed by the agreement between Portuguese authorities and the troika.

At the CPCS, the main conflict between the government and social partners concerned the increase of the normal daily working-period of half an hour without financial compensation as both the UGT and the CGTP-IN were strongly opposed to such a change.

³⁰ « Une deuxième tranche du plan d'aide au Portugal débloquée », *Le Monde*, 12 août 2011.

After the announcement of the public budget for 2012, the UGT and the CGTP-IN jointly called for a general strike on November 24th, 2012. In fall 2012, when the Parliament initiated the debate over the reform of the labor Code, the context was a climate of difficult social dialogue. The government nevertheless managed to negotiate an Agreement on employment with the social partners (but not the CGTP-IN). The Agreement signed on January, 18th, 2012 introduced important cuts in the spending of unemployment insurance and reduced the labor costs³¹. The text also increased flexibility in firing procedures and reduced dismissal compensation. External flexibility was also developed since employment contracts can now be suspended in times of crisis. Internal flexibility was also deepened as the hour bank system (*banco de horas*) was extended and can now be negotiated within the framework of individual employment contracts (until then, it was only possible through collective negotiations). The cost of overtime hours was largely reduced. Many measures favorable to the workers were suppressed (the right to compensatory rest following a certain amount of overtime hours, as well as four days of public holidays).

Finally, the government step back on the most controversial measure, vigorously opposed by trade-unions, as the project of increasing the normal daily working-time period by half an hour without any financial compensation was abandoned. This political concession to trade-unions can be explained because the government needed to gain the support of the UGT whose withdrawal would seriously compromise the Agreement. The Agreement of January 2012 was finally transposed in a law, on June, 18th, 2012. During the parliamentary debates, and although the support towards European integration has been difficult to handle in times of crisis, the Socialist Party stayed firm on its pro-European stand and did not abandoned this constitutive feature when the country was tied by the Memorandum of the troika, a Memorandum that the socialists deeply participated in negotiating and which had been implemented by the PSD. Due to its traditional support vis-à-vis European integration, it was politically

³¹ The payment of overtime hours will be reduced by half. The instruments of collective regulations (*Instrumentos de Regulamentação Colectiva de Trabalho*, IRCT) that defines the highest costs of overtime will be suspend for two years and the right to compensation rest should be abandoned. See: «Dez regras do Código do Trabalho que vão mudar», *Económico*, 25 juin 2012.

difficult for the Socialist Party to vote against the transposition of the Agreement on employment in the Parliament. Yet, considering the harsh flexibility reforms, a vote in favor of the text was also difficult for the Party. The Socialist Party hence abstained on the text, which was nevertheless adopted by the governing coalition parties (PSD and CDS-PP).

Portuguese citizens first welcomed with fatalism the implementation of the measures planned in the Memorandum as counterparts for the Portuguese bailout. After strong political involvement by the previous (socialist) government to avoid financial assistance from the EU and IMF, the bailout signed in May 2011 was considered as an option that could not be avoided. Since the beginning of this downward spiral, unemployment rates have not ceased to increase (8,9% in December 2008, 9,3% in January 2009, 13,6% in December 2011, 17,3% in December 2012, 15,4% in December 2013, and 17,6% in January 2013), even though since March 2013, unemployment rates started to decrease (15,7% in October 2013). Yet, youth unemployment have remained particularly high (35,4% in December 2013, French rates being at 23,4% and Germany at 7,8%).

The slow decrease of public deficit has been disappointing but a greater source of satisfaction for the EU and the IMF concerns the shrinking of the current external account deficit (Moury Freire, 2013, 43). The troika repetitively claimed satisfaction regarding the implementation of structural reforms in Portugal. According to the troika, Portuguese authorities had been “exemplary” in their application of the Memorandum. At least until September 2012, social strikes and public demonstrations had not been very important in Portugal. Most of the measures implemented by the government had been adopted despite the abstention of the Socialist Party. However, since September 2012, the Socialist Party and the UGT took a more opposite stand vis-à-vis the governmental parties and the implementation of the Memorandum. The Socialist Party voted against the budget of 2013, passed a motion of censure in the Parliament in March 2013 and the UGT joined the CGTP-IN for a general strike in June 2013.

The growing polarization between the governing coalition and a left-wing pole composed by the Communists, the Greens, most of the Socialists but also trade-

unions, including the rather negotiating UGT did not impede the Prime Minister to announce, in September 2012, a sharp increase in workers' social security contributions on their monthly salaries (from 11% to 18%). A huge demonstration nevertheless forced the government to step back as more than a half million of people in the streets made it the most important social protest since the Carnation Revolution³². As importantly, public protest was then supported by the CDS-PP in coalition as well as from some members of the PSD, including the former Barroso government's Finance Minister (2002-2004), Manuela Ferreira Leite. The PSD government had become increasingly unpopular and the resignation of Finance Minister, Vitor Gaspar, in July 2013, constituted a clear illustration of the growing conflicts within the governing coalition. Vitor Gaspar has indeed been a chief strategist behind Portugal's bailout and his resignation highlights the increasing unpopularity of the government's austerity measures. The government program has also suffered from the reject of the Portuguese Constitutional Court of some of the measures proposed in the welfare field.

In 2013, the municipal elections confirmed the political difficulties of the PSD after two years of harsh austerity measures. The governing party (16,17% of the votes) lose almost a third of the municipalities while the Socialist Party won the largest number of municipal chambers in its history, several big cities, and did better (36,3%) than its previous best result in 2009. The 2014 European elections have confirmed the lead of the Socialist Party (31,5% of the votes) on the coalition formed by the PSD and CDS-PP (27,7% of the votes). As the governing coalition has tried to capitalize on the bailout exit (two weeks before European elections), unpopular measures of the past few years have led to weak political results. Turnout is particularly important (65,5%) in a context of growing defiance vis-à-vis European integration.

Conclusion

Finally, the process tracing analysis of the three labor Code reforms in the last decade reveals that, in a context of difficult social dialogue in Portugal, especially between

³² "Portugal finally stands up and protests", *The Guardian*, September, 24th, 2012.

the two Portuguese trade-unions that have developed opposing strategies to occupy the political space, political leaders have mobilized academic expertise to avoid early- as well as over-politicization of the reforms proposals. Two experts' commissions were set-up in order to prepare the 2003 and the 2009 labor Code reforms. These experts' commission had a strong impact on the content of the reforms (more than the governing political parties or the various political coalitions involved in the process), but these strategies of depoliticization were not completely successful. Depoliticization was indeed not complete and the left-wing pole is getting more radical. While the General Confederation of Portuguese Workers (*Confederação geral dos trabalhadores portugueses*, CGTP-IN) were opposed to the reforms projects, successive governments were nonetheless able to convince the General Workers Union (*União geral de trabalhadores*, UGT), close from blue-collars and from the parties of the governing majority. It constituted a decisive step to allow for the pursuit of the negotiations.

The politicization of the three labor Code reforms studied in this paper was also closely influenced by evolving forms of European pressures. In 2000, as Portugal enjoys rather good economic results, European activities of national leaders (especially the definition of the Lisbon Strategy under the Portuguese Presidency of the Council) were used as political resources at the national level. Portuguese influence in the definition of European policies were mobilized in the political sphere as an argument to foster political change alongside European objectives. However, in 2007, although the sovereign debt crisis was not yet at its peak, European activities of national leaders became more constraining. Indeed, at the European level, the model of flexicurity was discussed and debated by workers' representatives. During the Portuguese Presidency of the Council in 2007, the CGTP-IN was at the frontline of social opposition to the flexicurity model. In this context, European activities constituted a constraint for Portuguese political leaders that have to assume two-levels responsibilities: vis-à-vis European partners and vis-à-vis their growing social opposition at home. In this respect, Europeanization processes have strongly influenced the politicization process.

Finally, the paper shows that, the new kind of European pressure of the Memorandum have completely changed the decision-making process, even in a policy field that previously enjoyed a wide range of national autonomy. The PSD in power has been fully committed to the implementation of the measures planned in the Memorandum. Bailout cleaning in May 2014 was used to legitimize difficult social reforms and to justify that the PSD would go even further than the measures agreed in the Memorandum. Considering the pro-European stance of the Socialist Party and the UGT, politicization of the 2012 labor Code reform was initially quite difficult as the Socialist Party and the UGT were politically committed to the implementation of the bailout. However, since September 2012, the support has eroded and the polarization of politicization with a left-wing pole has been growing. If the dissensus of Portuguese citizens towards European integration is not yet a radical constraint for political leaders in power, the politicization of European influence over national policies may become more difficult for them to handle.

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