

Governing for the Next Election or for the Next Generation?

The case of Portugal (1995-2019)

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PREFACE



The Gulbenkian Foundation, through the Future Forum, aims to contribute to the identification, study and discussion of the fundamental challenges of society's future. We aim to promote critical mass about these topics and to entail the reflection about today's public policies based on the challenges ahead.

With these objectives in mind, an initiative is being carried out to introduce Intergenerational Justice on the public agenda and to encourage the different public representatives to answer the intergenerational impact of public policies.

Policy makers face many obstacles when trying to introduce long-term policies, among which are people's general resistance to change and the politicians' aversion to the risk.

In this context, the study "Governing for the next election or for the next generation? The case of Portugal (1995-2019)" analysed 10 concrete initiatives (successful and unsuccessful) of implementation of policies that aimed the resolution of social problems, imposing costs in the present in the name of the future generations.

Notwithstanding the unfavourable environment to the introduction of this type of measures, the study identified successful cases in the last decades - some of which were extremely innovative and made the country an international reference.

We would like to thank the authors Catherine Moury, Daniel Cardoso and their team for the work done.

We believe that the Intergenerational Justice initiative, along with Foresight Portugal 2030 and other projects in the pipeline, can provide an important contribution to the reflection on the great future challenges that the country faces and to the strategical options to address it on the long term.

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INTRODUCTION



In the view of most of the Portuguese politicians we interviewed in recent months, Portuguese society is intergenerationally unfair (Moury 2018).

Although everyone interviewed mentioned both socioeconomic and policies that should be changed to foster intergenerational justice, the common perception is that there are few political rewards for trying to resolve these problems.

The researchers have long drawn attention to the obstacles policy makers face when trying to introduce long-term and general interest policies. People's general resistance to change is the first hurdle (Fernandez and Rodrik 1991). To this we can add the fact that citizens generally neglect the future, which means they prefer to receive immediate rather than delayed gratification (Jacobs and Matthews 2012) and are more sensitive to losses than to gains (Bloom and Price 1975). This situation is further aggravated by the fact that the costs of long-term reforms are assured, visible and concentrated, while the promised benefits are diffuse and less visible (Boston and Lempp 2011). These attributes make long-term public support for reforms difficult (Wilson 1980). It has also already been demonstrated that citizens have doubts about the government's credibility when it comes to implementing its long-term plans (Hovi, Detlef and Underdal 2009).

While it is true that citizens fail to value the future, politicians do so even more (Sheffer et al 2018). Politicians tend to be risk averse (Tversky and Kahneman 1981), which holds them back from passing long-term policies as these are typically extremely complex and their outcome difficult to foresee. Nevertheless, policy makers do sometimes approve reforms tackling long-term problems.

This raises the following key questions: in which circumstances are policy makers able or willing to impose costs today to invest in the solution to future social problems? Which factors play a decisive role in the enforcement or non-enforcement of long-term reforms?

We strive to provide some answers to these important questions by following a qualitative and detailed process to identify policy makers' successful and unsuccessful attempts to address the long-term problems in Portugal. This analysis has allowed us to identify the conditions which led to the approval of policies for future generations. Long-term policies are defined herein as "public policies that impose immediate costs on the government and that foster the creation of long-term national benefits" (Kraft 2018). It should be noted that this definition does not exclude the possibility of a long-term policy giving rise to short-term benefits (e.g. the increase in expenditure on pre-school education).

More specifically, our empirical research takes place in two stages. First, for each of the five different policy areas, we identify two attempts by Portuguese policy makers to address long-term problems, one of which was implemented and the other not. We selected policy areas in which the current policies are likely to have long-term consequences: 1) The Environment; 2) Public Health; 3) Fertility and the Family; 4) The Sustainability of Social Security and 5) Reforms in the Labour Market.

In order to identify these ten initiatives, we asked at least two academic experts in policies for each of the five policy areas to provide us with 1) examples of what they consider – in their area of expertise – an implemented reform with a positive long-term return; 2) examples of reforms that could have provided long-term benefits but which were not fully adopted or implemented. We selected the examples reported for both. The cases of implemented reforms were: the introduction of a tax on water resources (2005), the law to decriminalise the use of drugs (2000), the one-month extension of parental leave for cases in which leave is shared (2009) and the law that introduced performance as the main criteria for the termination of a contract due to the dissolution of the work post (2014). The non-implemented reforms were those attempting to introduce the surveying and management of natural habitats, the efficient management of public hospitals, the stability of family allowances, a single employment contract and an inheritance tax to fund Social Security. The introduction of additional taxes on pensions – the Extraordinary Solidarity Contribution and the Sustainability Contribution (2011-2014) – is a hybrid case that helps identify the conditions for the implementation (given that they were adopted despite their unpopularity) and non-implementation (as they were ultimately reverted or not implemented) of the reforms.

We then conducted a process-tracing analysis with the aim of identifying the variables that explain the results (implementation/non-implementation). This research method tracks causal mechanisms by means of a detailed within-case empirical analysis of how a causal process unfolds in a real case (see box 1).

For each policy, or measure, we asked: 1) Which problem did it seek to address? 2) What types of solution were proposed? 3) Was the measure implemented? 4) If so, how and why? If not, why not? To answer these questions, we began by describing the main stages of the formulation process and the implementation of the measures – from the state of play at the time of the public identification of the problem, to its resolution (where a policy/measure was implemented) or, in the case of non-implementation, the current state of play. Next, we focused on establishing causal inferences, that is, understanding the mechanisms that have driven change over time. To this end, we started by reading all the literature related to the specific measure or problem and, as previously mentioned, we spoke to experts in the subjects to which the policies correspond (10 in all). The following step was to analyse press releases and articles, as well as official documents from the government and international organisations published during the period under study. In addition, we interviewed the key players (20 in all) in the political process related to the measures under study. The final step was to simplify the conclusions for the reader – without losing any nuances – for an understanding of the political processes surrounding the various subjects addressed.

Box 1

What is process-tracing?

Process-tracing is a systematic study of the empirical data selected in light of the research questions put forward by the researchers. In this methodology, the researcher should acquire in-depth knowledge about the case and gather all information about the development of the events over time (through interviews, press releases, secondary sources) in this specific case. The aim of this comprehensive study is to draw conclusions on the links between the empirical data – in other words, to understand which actions and conditions led to a specific outcome. The researcher should analyse the change and the sequence by characterising each key step in the process (Collier 2011).

This report is structured as follows: we start by presenting the literature on the conditions which, in other contexts, were decisive to the implementation of long-term reforms. We then present ten case studies, together with the conclusions on the factors that explain the implementation or non-implementation of the measures corresponding to each of these case studies. A final chapter draws some conclusions on the factors identified in Portugal and demonstrates that our results are in line with the literature.

WHICH CONDITIONS FAVOUR THE IMPLEMENTATION OF LONG-TERM REFORMS?



In this section, we conduct a literature review to glean an understanding of the conditions that favour the implementation, or non-implementation, of long-term policies.

This literature review includes the scarce literature on investment and long-term reforms, as well as literature on structural reforms, general interest reforms and the reduction of expenditure on the welfare state. Lastly, we propose a series of recommendations aimed at policy makers seeking the approval of this type of policy.

1. **OBTAINING AN ELECTORAL MANDATE FOR REFORM AND RAPID ACTION**

Various studies suggest that presenting and discussing reform during the electoral campaign raises the probability of it being implemented when the government is formed. They also conclude that the successful reforms are put in place at the start of the government mandate (during the so-called honeymoon period) (Williamson 1994, Tompson 2009). Other studies found clear evidence of the government's popularity in this period being immune to unpopular measures such as severe cuts in expenditure (König and Wenzelburger 2014).

2. **NOT WASTING A "GOOD" CRISIS (BUT MOVING CAUTIOUSLY)**

During a crisis, the failure of past governments becomes evident and the public (and sometimes investors) want the government "to do something" (Williamson 1994, Drazen and Easterly 2001, Hart 2013, Agnello et al 2015, Shahidi 2015). Financial crises often result in policy makers requesting either aid from international creditors or favourable action by the central banks on their debt securities; such support entails expenditure cuts and structural reforms. In this context, governments may use the crisis to impose their preferred policies that would not otherwise be approved (Vreeland 1999, Rogers 2009, Moury and Standring 2017).

However, policy makers should think twice before adopting this strategy. Firstly, during financial crises, investment (notably in infrastructure) tends to be the first thing to be cut (Mehrotra and Vålilä 2006, Breunig and Busemeyer 2012, Jacques 2019). Secondly, when the crisis comes to an end, the government runs the risk of being pressured to revert the measures introduced. For example, the cuts made to public sector salaries during the IMF conditionality programmes were not maintained in the long term (Rickard and Caraway 2019, Moury, Cardoso and Gago 2019).

3.

USING EUROPEAN CONSTRAINTS

A well-developed research line has highlighted the fact that delegating to the EU level may help policy makers tackle difficult reforms (Dyson and Featherstone 1996, Moravcsik 1994, Lobo and Lewis-Beck 2012). In Italy, for example, a small technocratic elite decided to submit the country to constraints associated to the Economic and Monetary Union (EMU) so as to impose policy changes that would not otherwise have been approved or maintained (Dyson and Featherstone 1996). Similarly, after the crisis, the Danish government used the Excessive Deficit Procedure to approve sensitive reforms that would otherwise have been politically impossible (de la Porte and Natali 2014).

4.

COMMUNICATING, COMMUNICATING, COMMUNICATING

Another important result identified in the literature relates to the importance of communicating the reforms to the public and stakeholders. Two options have proved efficient: developing research institutions that inform the public about the risk of delaying measures, and using effective communication strategies.

4.1. Fostering sound research by independent/advisory institutions

Various scholars (Williamson 1994, Tompson 2009) have shown that when a proposed policy is based on sound research, it is more likely to be implemented. However, these findings contrast with others (Pierson 1994) arguing that the successful reforms were, for example, often hidden in technical formulas that most of the electorate found difficult to understand (Wenzelburger 2011). A recent article analysed both scenarios and concluded in favour of the former, that is, the government loses less popularity when it communicates and does not conceal the unpopular reform (Elmelund-Præstekær, Klitgaard, and Schumacher 2015). Communication is even more effective when it comes from actors from outside the government (Tompson 2009). This study also suggests that governments should set up permanent and independent bodies in advance to inform the public. Therefore, the independent agencies should, in the future, be responsible for the following tasks (Boston 2014):

1. Developing systems for the early detection of problems, conducting analyses, making forecasts and publishing regular reports;
2. Explaining the consequences of failing to respond to impending problems;
3. Explaining the consequences of inaction.

4.2. Framing the issue correctly

Another important outcome of the research shows that the way in which the government frames the long-term policy proposal has a significant impact on its implementation. Two strategies have proved effective: focusing on the short-term and on the losses caused by inaction. Firstly, it is desirable to focus on the short-term benefits and gains as citizens have a bias in relation to the future. For example, surveys and polls about climate change show that parties framing the issue in terms of long-term economic and environmental risks do not attract many voters. On the other hand, presenting the problem as a current health issue, or as an opportunity to create new industries with more jobs, is more electorally advantageous (Ansolabehere and Konisky 2014). Secondly, the literature suggests that citizens are more sensitive to losses than to gains (Weyland 1998). Hence, politicians that want to make reforms should strive to present the initiatives as preventing imminent catastrophes rather than as providing a better future (Weyland 1996, Wenzelburger and Hörisch 2016).

5. NEGOTIATING

The literature also indicates that the reforms are more likely to be approved and maintained when they are assured of the participation of stakeholders and the opposition parties at the time of adoption (Schludi 2005, Tompson 2009, Hausermann 2010), even when the measures are proposed by minority governments (Boeri et al 2006, Tompson 2009, Moury and Fernandes 2018). Moreover, the involvement of stakeholders avoids both the rapid dismantling of the reforms in the future (Tompson 2009), and their being “sabotaged” by the agents implementing the reform (such as civil servants) when they are put into effect in situ (Meyers and Vorsanger 2003, Hausermann 2010, Lindvall 2017).

If governments are to obtain consensus on the reform, they must make some concessions to the losers (Bonoli 2000, Boeri et al 2006). It is therefore preferable to make reforms at a time of economic growth (Tompson 2009). Another strategy is that of “divide and conquer”, in other words, to structure the reform so that it penalises only some of the players that initially oppose it (Boeri et al 2006, Tompson 2009). If compensating or dividing does not bear fruit, a third option is to deal with the least controversial problems first and leave the more contentious matters until later. Hence, long transition periods (Boeri et al 2006) or the adoption of consecutive reforms (Tompson 2009) may also prove fruitful strategies. However, ideally, long transition periods should be accompanied by an automatic monitoring strategy (Tompson 2009), such as the inclusion of explicit deadlines in the original legislation.

In any case, the government is unlikely to be successful with a consultation-based approach unless it is in a credible position to threaten to go ahead unilaterally if dialogue fails (Tompson 2009). When the government cannot proceed alone, or does not want to do so, the stakeholders have little incentive to make concessions; thus, it is vital that the government is cohesive and has firm objectives.

Nevertheless, the strategies of compensation, division and/or delay run the risk of undermining the general reasoning behind the long-term policy proposals. This was what happened, for example, during the 2008 crisis in Portugal when the labour market reforms targeting mainly new contracts strengthened the division between more senior workers and their younger (and future) counterparts (Cardoso and Branco 2018). Therefore, in its efforts to reach a consensus, from the long-term perspective the government must bear in mind the interests of the younger and future generations who are not at the negotiating table. One possible option is to offer collateral payments, such as reducing working hours in exchange for the reform of early retirement.

6.

BEING PERSISTENT: FAILURES HAVE THEIR USES

Another hypothesis in the literature posits that reforms that have been blocked, reversed or very limited should not be seen as failures: these play an important role in creating the right conditions for more successful attempts in the future (Tompson 2009).

7.

WORRYING ABOUT THE RESILIENCE OF THE REFORM

Policy makers should not assume that general interest policies will only survive because of the extensive benefits they bring. This is often not what happens, for two reasons (Patashnik 2008): on the one hand, the dismantling of long-term reforms may be advantageous from an electoral perspective (take, for example, raising pensions immediately before an election). On the other hand, companies whose interests have been harmed by the reform are likely to counterattack when the issue becomes less salient (Culpepper 2011). A number of authors have reflected on this temporal inconsistency and proposed some solutions. The first is to channel the new revenue generated by the reform to an identifiable trust fund that is separate from the rest of the budget (Patashnik 2000); not only does this make the investment more credible but also reversal becomes more visible, and it therefore garners greater support among citizens (Jacobs and Matthews 2012). The second alternative to ensure the maintenance of long-term policies is to “lock them in”. For example, a new budgetary rule may be introduced which requires a qualified majority for the spending of an investment fund or, alternatively, a provision in the constitution can grant the judiciary the power to overturn laws that are in violation of the basic rights of younger or future generations (Boston 2014). A third possible solution (Patashnik 2000, 2008) is to create stranded costs – costs that have been incurred but cannot be recovered – when initiating a long-term reform. For example, if an investment is channelled to a trust fund, a

heavy penalty should be established to discourage it being spent before a specified time. The fourth and perhaps most important strategy (Patashnik 2008) is to ensure that the reforms create specific support groups that will benefit from these reforms and will mobilise to defend them. Policy makers should therefore foster the organisation of these intermediaries so that they become advocates of their long-term policies.

CONCLUSION

In this text, we have analysed the literature on Political Science and Economics to identify which factors enable policy makers to approve and implement long-term reforms. The literature suggests, first, that there is no single strategy that is applicable in every circumstance and, second, that the successful reforms may follow distinct paths. However, some conclusions can be drawn that serve as recommendations for current and future policy makers. Namely:

- 1.** Obtain an electoral mandate for the reform and take rapid action
- 2.** Do not waste a “good” crisis (but move with caution)
- 3.** Use the European constraint
- 4.** Communicate the risks of inactions and the benefits of the reform
- 5.** Negotiate with stakeholders and the opposition. Be willing and ready to compensate them, to divide the opponents, or to delay the more complicated matters
- 6.** In case of failure, try again!
- 7.** Create mechanisms to protect your reforms after the mandate.

1.

ENVIRONMENT



1.1

MEASURE IMPLEMENTED:

WATER RESOURCES TAX (TAXA DE RECURSOS HÍDRICOS TRH)

DECREE LAW NR. 97/2008, OF 11 JUNE

Overview of the measure

The Water Resources Tax (*Taxa de Recursos Hídricos* - TRH) was introduced in 2005 by the Socialist Party (*Partido Socialista* - PS) Government through the Water Law and was implemented three years later by the same government (Decree Law nr. 97/2008). This tax was aimed at users such as agricultural and industrial producers that have a major environmental impact due to their intensive use of water resources (Ribeiro et al 2014). The TRH paid by the user depends on the purpose of the water usage, and the revenue gathered goes to the Environmental Fund (50%) and the Portuguese Environment Association (*Associação Portuguesa do Ambiente* – APA - 50%).

Context of the measure

The growing scarcity of water resources and the reduction in the quality of the water available for consumption are the two major issues permeating this debate (Bilhim 2015). Countries such as France and England pioneered the tackling of these issues by adopting measures for the management of water usage. In 1964, the French government adopted the so-called *redevance* – an instrument targeting the users of water to finance water resources policies (Machado 2003). On the other hand, England adopted legislation in 1973 which regulated the taxes on water usage charged by the Environmental Agency with the aim of recovering the costs of water management (Machado 1998). In the 1970s, the debate began within the then European Community (EC) on the need to articulate water policies with a view to harmonising the legislation in the Member States (Bilhim 2015).

Parallel to this, Portugal's debate on the creation of economic and financial mechanisms for the management of water date back to 1975 (Interview 1). It was led primarily by Luís Veiga da Cunha, in the book *A gestão da água - princípios fundamentais e sua aplicação em Portugal* (Water management – basic principles and their application in Portugal) in which experts in water resources defended the creation of a tax linked to water usage and pollution, inspired by the French and English experience (Interview 1). However, the measure did not advance.

In 1997, the European Commission (EC) presented a proposal for a directive to meet the objective of articulating water policies within the Member States. While the directive was negotiated at the European level, José Sócrates (PS), then Minister of the Environment, set up a working party in June 2000 with eleven members, largely engineers and academics, to study and propose measures for the water sector (Directive nr. 13799/2000 of 06 July).

In October 2000, the European Parliament and Council approved Directive 2000/60/CE, henceforth Water Framework Directive (WFD). The WFD obliged the Member States, among other things, “to guarantee the amortisation of the costs of water services (...) so that the resources would be used efficiently and it would be the polluters that paid”, but without specifying how this was to be done (EUR-Lex 2017). The Member States had three years to transpose the WFD into national legislation.

Implementation of the measure

Following the approval of the WFD in October 2000, Portuguese domestic politics went through a turbulent period that culminated in the resignation of the Guterres Government (PS) in December 2001. As a result, an early election was called for 17 March 2002, which was won by the Social Democratic Party (*Partido Social Democrata* - PSD) in coalition with the Social Democratic Centre – People’s Party (*Centro Democrático Social - Partido Popular* CDS-PP). Five days later, on 22 March 2002, the working party formed in June 2000 by José Sócrates presented the draft bill of the new Water Law at the 22nd plenary meeting of the National Water Council (*Conselho Nacional da Água* - CNA).

The draft bill proposed the setting up of the National Water Authority (*Autoridade Nacional da Água* - ANAG) and brought an “innovative aspect” to the financial and economic regime for water by establishing the “application of a tax for unlicensed users” (*Conselho Nacional da Água* - CNA p. 294). The PSD therefore included the goal of including “the general legal framework for water (Water Law)” in the Government Programme (Programme of the XV Constitutional Government p. 187). However, the draft Water Law was only presented on 17 February 2004 at the 26th plenary meeting of the National Water Council. This was in favour of the adoption of the new Water Law and the National Water Council considered it to be well supported in terms of the economic and financial regulation.

Despite the favourable opinion, the Water Law did not advance as a result of government instability and the subsequent dissolution of the Assembly of the Republic following the resignation of the Prime Minister, Durão Barroso, in July 2004. In the six months running up to the parliamentary election, the government was headed by Santana Lopes (PSD) and in February 2005 new parliamentary elections were called. PS, led by José Sócrates, won the elections and included the intention to approve the Water Law in its Government Programme (Programme of the XVII Constitutional Government 2005). The Draft Water Law was therefore presented in May 2005, and included the TRH:

An economic-financial regime is established underpinned by a water resource tax, thus recognising the scarcity of this resource and the need to guarantee its economically efficient use, with the amortisation of the costs of water services, namely environmental services, and based on the principles of user-pays and polluter-pays,. Draft Law Nr. 51/X p.3.

The agriculture sector raised the most objections to the introduction of the TRH as it was the biggest user of water in Portugal and feared it would pay a high tax (*Interview 1*). To contain opposition to the measure, the Government conducted economic studies and presented the actual amounts that would be paid by each sector as well as how each of them would be affected by the TRH. Initially, it was decided to charge the agricultural sector a symbolic TRH given that exempting the sector from the tax would be “recognising a privilege” that the Government did not want to do (*Interview 1*). According to the former Minister of the Environment, Nunes Correia, the process for the implementation of the TRH was negotiated with the sector through the farmers’ associations. A scale was adopted of amounts ranging from 0% to 100% of the tax to be implemented over a five-year period and steadily increasing until the full amount was reached.

In addition to seeking consensus from the farmers, the Government chose to exaggerate the European constraints. The former Minister of the Environment, Nunes Correia, informed us that the WFD “pushed” for the creation of a water resource tax but did not explicitly require it (Interview 1). The WFD was therefore used by the PS Government as an argument to enable the creation of the TRH in Portugal and to reduce opposition from sectors such as agriculture, helping justify the implementation of the tax in a general context of a “new policy” for water management:

Therefore, although not explicitly imposed by the Framework Directive, [...] it clearly pushed in this direction and was used as an argument by saying to those with greater reservations, [...] “gentlemen, the Directive [...] obliges us to do this” and so, in fact, the Directive helped make the TRH possible. I recognise that the Directive contributed to attenuating or silencing the voices of the people who did not like it, and this helped create the image that it was irreversible, which was politically important. It is not by chance that it had not been easy to approve before, it was the Directive that made the difference, also because this measure came within a very general context of a new water management policy. Interview 1, Francisco Nunes Correia, Former Minister of the Environment in the PS Government, Lisbon, 16/04/2020

Lastly, it should be noted that the main centre right (PSD and centre left (PS political parties were in agreement on the matter and there were no significant ideological differences. According to Nunes Correia, the environment portfolio is the most conducive to agreement as environmental issues involve the common good (Interview 1).

The Water Law was approved in December 2005, with PS, PSD and CDS-PP voting in favour and PCP, BE against and, therefore, the TRH was also approved (Parliamentary Debates 30 September 2005). However, it was only regulated in June 2008 (Decree Law nr. 97/2008) and the way in which it was to be applied was only specified in January 2009 when the PS Government published Directive nr. 484/2009, which guided the “correct and homogeneous” application of the TRH throughout the country (Directive nr. 484/2009).

As regards the application of the TRH, the 2009 Despatch stated that even though the tax targeted large-sized users, it would also imply costs for the end consumers. That is, domestic users would also end up paying the tax. Therefore, the water supply services should transfer the economic burden of the TRH to the users of the water services in invoices.

The amount of TRH to be paid is disclosed annually by the Portuguese Environment Agency (*Agência Portuguesa do Ambiente - APA*) and the revenues collected are consigned to the Environment Fund (50%) to finance sustainability projects, and to the APA (50%) for the inspection, planning and management of water resources.¹

The TRH was again changed (Decree Law nr. 46/2017) in 2017 during the PS Government led by António Costa, with the introduction of the «S» component aimed at supporting the sustainability of the urban water services. This component has since become part of the tax calculation base for the TRH. As a result of this change, urban consumers started paying an additional 50 cents a year for the use of water to offset the distribution cost in the interior of the country.

¹ Until 2012, revenue collected from the TRH went to the Regional Hydrographic Administration (*Administração de Região Hidrográfica - ARH*), the Water Institute (*Instituto da Água - INAG*) and to the fund for the protection of water resources.

Conditions that permitted the implementation of the Water Resources Tax (TRH)

1. Use of external constraints

The PS Government responded to opposition, mainly from the agricultural sector, by arguing the TRH was required under the *Water Framework Directive*. In addition, the Government took advantage of the window of opportunity opened by the WFD. By making the reform of the water legislative framework mandatory, it allowed the passage of the TRH along with a set of other measures as part of the package of Water Law measures.

2. Consensus and incrementalism

Despite different political orientations and ideologies, the PS and PSD converged on the matter of establishing financial and economic instruments to foster the sustainable use of water. Moreover, the approval process of the TRH was negotiated with the sectors affected by its application: a transition process was negotiated for agriculture, with the payment of very low amounts that would then be steadily increased. The PS Government thus strategically created special conditions for the levying of the TRH to control opposition and to obtain a consensus so that the measure would be passed.

3. Policy transfer

The debate on the introduction of a Water Resources Tax in Portugal dated back to 1970 and was based on the experience of European countries like France and England. These countries had already implemented water taxation policies after the Second World War. Hence the introduction of the TRH was based on international experience.

4. Involvement of environmental experts

TRH was welcomed by environmental professionals and started to be discussed back in 1970. Later, in 2000, when the introduction of the TRH was politically assessed, engineers and academics from the area were part of the first working party deliberating on the “new policy” for water. The draft Water Law foreseeing the introduction of the TRH received a favourable opinion from the National Water Council (CNA), also composed of engineers and experts in the field of water resources.

1.2.

MEASURE NOT IMPLEMENTED: MAPPING OF NATURAL AND SEMI-NATURAL HABITATS

Overview of the measure

The *Habitats Directive* (Directive 92/43/CEE), a community directive that created a Europe-wide ecological network - Natura 2000 - was approved in 1992. Member States were instructed to identify the habitats in their territories that would be part of Natura 2000 and inform the European Commission (CE). The habitats were then to be mapped and studied and management plans for their protection drawn up. Portugal was given until 2010 and 2012 (depending on the habitat) to conclude this process but did not meet the deadlines. In 2018, the European Commission took Portugal to the Court of Justice of the European Union (CJEU) on the grounds of non-compliance with the directive. In September 2019, the CJEU ruled in favour of the EC – there were no management plans and the *Special Areas of Conservation* (SAC) had not even been designated (Ruling C-290/18). In March 2020, the Portuguese Government designated the SAC, but did not conclude their management plans (Regulatory Decree nr.1/2020).

Context of the Measure

Natura 2000 seeks to conserve threatened species and habitats and is one of the main instruments of the EU's nature conservation policy. Member States were given until 1995 to identify habitats in their territories to integrate in Natura 2000. Once identified, these habitats should be validated by the European Commission and assigned the transitory category of *Sites of Community Importance*. The EC's validation served to trigger the process of mapping and studying these habitats with a view to drawing up plans for their management and providing them with greater protection. Member States were required to designate them *Special Areas of Conservation* (SAC) within six years.

The *Habitats Directive* has only been partially implemented in Portugal: Natura 2000 covers 21.5% of the territory, 2% above the EU average. However, its protection is not guaranteed. This directive is particularly important for Portugal as it is the country with the 4th highest number of endangered species in Europe - 57% of habitats and 44% of the national species have an unsatisfactory conservation status (Zero - Associação Sistema Terrestre Sustentável 2016). Moreover, Portugal is located in a world region with exceptionally high concentrations of biodiversity together with a great loss of habitats (Myers et al. 2000). National instruments were already in place to meet the existing needs for the conservation of nature in the national territory, notably the National Network of Protected Areas. In fact, the National Network of Protected Areas overlaps with Natura 2000 (Interview 4). Notwithstanding, the area of Natura 2000 that does not overlap has become a “no-man's land”. It is the opinion of the President of the League for the Protection of Nature that Natura 2000 lacks direction because its management is delegated to the municipalities rather than the Institute for Nature Conservation through the Sectorial Plan of Natura 2000, and it is not prioritised by the municipalities (Interview 4).

(Non) Implementation of the measure

In August 1997, the first list of the *sites* to be integrated in Natura 2000 was approved in the Council of Ministers, two years behind schedule (Resolution of the Council of Ministers nr 142/1997). However, the environmental NGOs (ENGO) believed that some important habitats had been overlooked. As a result, a new list was approved in 2000 (Electronic Official Journal 2000).

The Directive's imprecision and the concepts used, notably with regards the protection of the Special Areas of Conservation (the most important), delayed its implementation in some Member States (Pérez 2014). For example, the actual aim of the measures to be implemented – compliance with “ecological requirements” for the maintenance of habitats (Directive 92/43/CEE) – was not defined in the directive. The European Commission began issuing clarifications on the Directive at this stage in response to Member States' questions. Several appeals were made to the Court of Justice of the European Union (CJEU) with the same objective.

The EC validated the 60 *Sites of Community Importance* in 2004 and 2006 based on the lists approved in Portugal. Portugal then had until 2010 and 2012 to map, study and draw up management plans and designate them *Special Areas of Conservation*. At the peak of the economic crisis, in 2010, public expenditure on the environment was cut. At the time, the number of projects undertaken by ENGO increased fivefold, corroborating what the President of the LPN had emphasised (Interview 4) that the ENGO were substituting the state when it came to nature conservation. In 2012, Portugal had not mapped the habitats, designated *Special Areas of Conservation*, or drawn up management plans. As a result, in 2013, the EC questioned Portugal about the implementation of the Directive.

Parliamentary elections took place in 2015 when economic recovery was already underway. All the parties with parliamentary seats made reference to nature conservation in their electoral programmes, though only the Left Block (*Bloco de Esquerda* - BE) referred specifically to the *Habitats Directive* (Bloco de Esquerda, Legislative Electoral Manifesto 2015 p.51). These elections resulted in a Socialist Party (PS) Government supported by the Portuguese Communist Party (PCP), BE and the Ecologist party, the Greens (PEV). The only mention of nature conservation was in the agreement between the PS and PEV, but it was limited to one very vague sentence (PEV and PS, Joint Position of the PS and PEV on the Political Solution p. 10, 10 November 2015).

The Directive had still not been implemented and the EC questioned Portugal yet again. Then, in 2016, the Government made funds available for the mapping on which the management plans would be based and which would be followed by the designation of the SAC (Interview 3).

Jorge Palmeirim, biologist and President of the League for the Protection of Nature, explained that the delays of successive governments was due in part to an unwillingness to make the investment necessary to comply with the Directive – the mapping, management plans and maintenance of Natura 2000 (Interview 3). In fact, the EU only funds 20% of the total amount necessary to develop and maintain Natura 2000; as a result, many of the Member States struggled to pay for it (Kettunen et al 2011). In Portugal, Natura 2000 covered 21.5% of the national territory, thus adding to its cost (Interview 3).

In addition, the notion of restriction that is associated to Natura 2000 contributed to its “bad reputation” both in Portugal and all other Member States (Interview 4, Kettunen et al 2011). Indeed, the protection granted to the Natura 2000 network could hamper the profitability of these areas (Interview 3), even though some economic activities, such as ecological tourism, are permitted (Kettunen

The lack of evaluation and communication of the opportunities and benefits of Natura 2000 as well as of the consequences of non-compliance with the Directive meant there was little incentive to implement it.

et al 2011). In the Portuguese case, this was particularly relevant given that most of the Natura 2000 network is on private property (Costa et al 2007), and there are no economic incentives for private owners to preserve the habitats on their property (Interview 3). Other than the NGO, the European Commission (EC) and small political parties, there are no groups in Portugal that benefit from its implementation and therefore give it their support.

Lastly, the lack of evaluation and communication of the opportunities and benefits of Natura 2000 as well as of the consequences of non-compliance with the Directive meant there was little incentive to implement it. Thus, priority was given to national instruments, such as the National Network of Protected Areas, which are well known to the public and are guided by more comprehensive objectives that are in contrast to the extremely technical objectives of Natura 2000 (Treib 2003, Interview 3).

In January 2018, the European Commission advanced to the Court of Justice of the European Union, accusing Portugal of not designating the *Special Areas of Conservation* and of presenting insufficient measures for the protection of the Natura 2000 network; this led to a change in Government strategy (Interview 3). Using the already existing management instruments as its justification, the Government argued that its non-compliance was purely with formally designating the SAC and that it did not deem management plans to be essential due to the existence of national instruments. From this perspective, the *Special Areas of Conservation* (SAC) would be protected irrespective of the designation (Interview 3).

The Court of Justice of the European Union did not consider the measures presented by the Portuguese Government to be sufficient. The upshot of this was that Portugal was ordered to pay the costs and urged to comply with the Directive. The ruling was published in the run-up to the campaign for the 2019 parliamentary elections. At that time, an alliance of environmental associations went to the European Commission to accuse Portugal of permitting the degradation of Natura 2000 (Tomás 2019). However, the topic of nature conservation did not mark the electoral campaign despite the environment having been catapulted to the top of the agenda following social mobilisation on climate change. Moreover, there was no special debate on the *Habitats Directive* at the parliamentary level, which added to its lack of visibility, especially in light of the lack of interest shown by the main parties. For example, the President of the League for the Protection of Nature stated that only the small parties demonstrated any interest in meeting to discuss the matter (Interview 4).

In March 2020, the Government designated the *Special Areas of Conservation* but did not present any management plans. In an interview, the President of the League for the Protection of Nature stated that he believed the Government would try to get around the problem given that there were still no concrete measures to be applied (Interview 4). Since the designation of the *Special Areas of Conservation*, the European Commission has still not officially requested the outstanding management plans, or more specifically, the measures to be implemented.

Conditions that prevented the implementation of the Mapping of the Natural and Seminatural Habitats

1. Lack of congruence between external pressure and Member States' preferences

Given the financial requirements implicit to the development and maintenance of Natura 2000 and the lack of concrete penalisation for non-compliance with the Directive, the *Habitats Directive* was not made a priority in the environmental policy of the different governments in the 2000s. The policy makers tended to prefer national environment policy instruments that are less technical and can meet different objectives, notably those of a socioeconomic nature. Natura 2000 does not seem to be viable from the cost-benefit perspective, particularly when national instruments are in place, and this partly explains why it was not made a priority policy.

2. Absence of organised actors that would benefit from its implementation

The implementation of Natura 2000 was hampered not only by its restrictive nature but also by its demanding objectives and technical characteristics. The pros and cons of Natura 2000 were not well known, and this gave the authorities and the owners of land within the Natura 2000 network little incentive to implement it. As a result, the environmental NGOs, the (small) pro-environment parties, and the European Commission (EC) have been the only actors pressuring for the implementation of the Directive.

3. Generality and vagueness of the Directive

Difficulties in interpreting the Directive led to the need for various clarifications, which delayed the implementation process. The different transpositions and the need for intervention from the Court of Justice of the European Union were not just problems for Portugal and are illustrative of the turbulence in the implementation of the Directive in question.

2.

HEALTH



2.1.

MEASURE IMPLEMENTED:

DECRIMINALISATION OF THE CONSUMPTION OF DRUGS AND THE POSSESSION OF DRUGS FOR PERSONAL USE

LAW NR 30/2000 OF 29 NOVEMBER

Overview of the measure

Law nr. 30/2000 of 29 November enacted the decriminalisation of the consumption of drugs in Portugal. Possession for personal use started to be distinguished from drug trafficking based on the definition of a maximum amount for possession. Users started to be referred to the Commissions for the Dissuasion of Drug Addiction (*Comissões para a Dissuasão da Toxicodependência* - CDT) to evaluate the consumption and level of dependence on the drugs. Addicts can be referred for treatment and all others are subject to administrative sanctions. One year after decriminalisation, the Decree-Law Nr. 183/2001 of 21 June established a deterrent system for consumption, formalised and diversified the strategies to reduce the risk and minimise the harm caused by drugs in light of the specificities of each consumer. This gave rise to a new paradigm in the policy for drugs in which the criminalisation of drug addicts was replaced by an approach guided by a public health rationale.

Context of the Measure

The first mention of the decriminalisation of drugs is found in the *Legislative Package on Drugs* by António Almeida Santos (historic leader of PS) who, in 1976, defined drug addiction as a disease. However, it was only 25 years later that drug use would be decriminalised.

Some important responses to the drug addiction problem came in the 1980s. The Taipas Centre for the treatment of drug addicts opened in Lisbon in 1987 and, in the next two years, the first Centre for Drug Addicts (*Centro de Atendimento a Toxicodependentes* - CAT) opened in Oporto and the Service for the Prevention and Support of Drug Addicts (*Serviço de Prevenção e Atendimento a Toxicodependentes* - SPAT) opened in Algarve. These responses established a public prevention network that came under the Ministry of Health. This Ministry's growing responsibility in the field of drug addiction reflected the initiative of health professionals on the ground and encompassed a path towards the "pathologisation" of the drug addict –the means of response was changed even without altering the legal framework for drugs (Augusto 2016).

Nevertheless, no immediate gains were made in the consumption and public health indicators between the above-mentioned implementation of responses in the 1980s and the late 1990s (Goulão 2015). At the same time, the visual impact in the cities furthered the perception of a growing problem (Goulão 2015, Sampaio 2000a). In fact, consumption rose exponentially in the 1990s when 1% of the Portuguese population were addicts, with consequences for public health such as the rise in HIV cases (Van Het Loo, Van Beusekom, and Kahan 2002). Between 1996 and 1998, there was a higher prevalence of drug use in Portugal than in the rest of Europe; drug addiction was no longer marginal but extended across all society, highlighting the inadequacy of the response (Augusto 2016).

As a result, the topic took hold in the political and scientific field. For example, the journal *Revisita Toxicoddependências* was launched in 1995, coordinated among others by Nuno Miguel, future member of the Commission for the National Strategy to Combat Drugs. In addition, the Eventual Commission for the Monitoring of Drug Addiction and Drug Trafficking in Portugal was set up in the Assembly of the Republic (AR), and the Portuguese Anti-Prohibitionist Association (SOMA) was formed, with founders such as Paulo Mendo (Minister of Health 1993-1995, PSD).

Implementation of the Measure

In line with the aforementioned initiatives, in 1998, the PS Government set up the Commission for the National Strategy to Combat Drugs for which various experts were invited to produce a policy document on drugs. In 1999, this Commission presented its main conclusions: 1) combatting drug use requires an international response; 2) drug addiction is a disease and the State must assure the means for treatment, which entails a new legal framework; 3) pragmatism and the rejection of prejudice; 4) the need for prevention policies. Thus, the Commission for the National Strategy to Combat Drugs proposed the decriminalisation of the consumption of drugs and of possession for personal use as a coherent and effective drug policy.

The National Strategy for the Fight Against Drugs (Sampaio et al. 1999) was approved by the Government in 1999 (Resolution of the Council of Ministers nr. 46/99 of 22 April). The Portuguese Institute for Drugs and Drug Addiction (IPDT) was also set up that same year, tasked with gathering information and coordinating the fight against drugs and addiction (Decree Law nr.31/99 of 05 February). However, decriminalisation depended on the AR and would only come in 2000.

The five parties with parliamentary seats for the 1999 elections placed particular importance on drug addiction in the electoral programmes and, with the exception of the CDS-PP, they all considered it a disease. The decriminalisation of drug use would come after these elections, which were therefore an opportunity to endorse the new drugs policy.

In 2000, in the second Guterres Government (PS), four draft laws (BE, PCP, PSD, Government) and a draft resolution (PEV) on drugs were presented to the Assembly of the Republic. Despite general convergence, these proposals took different approaches to cannabis and the issue of sanctions. Moreover, PSD and CDS-PP advocated calling a referendum. The bills went before the AR, where the members decided to refer them to the Health and Drug Addiction Committee (the very name of the Committee illustrates the priority given to the problem), and also to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees so as to gather input and work on common positions.

In October 2000, the Assembly of the Republic approved the decriminalisation of the consumption of drugs, with only PSD and CDS-PP voting against. In the case of PSD, it is important to stress that they were divided. The Young Social Democrats were in favour of the decriminalisation of drugs and 21 MPs would have voted differently if the drafts laws and resolution had gone to a plenary vote before being referred to the committees. Support from some important figures such as the President of the Bar Association, António Pires de Lima, and the then President of the Republic, Jorge Sampaio, also eased its passage. In fact, Sampaio organised discussion platforms on the subject, fostering the debate, and in June 2000, he placed himself unequivocally on the side of decriminalisation (Sampaio 2000b). The law came into effect in summer 2001.

The policy to reduce risks and minimise harm was crucial to averting the dangers associated to the use of drugs, the increased use of which was not seen relative to countries with prohibitionist models.

The opposition to the measure both before and after its approval in the Assembly of the Republic rested on two types of concern: the increase in consumption and therefore in the associated risks, and the incompatibility of decriminalisation with international commitments made by Portugal. Indeed, in 2001, The United Nations Organisation (UN) expressed its concern over the path Portugal was following. However, after a mission in Portugal in 2004, it concluded that the policy adopted was not in contradiction with international conventions (World Drug Report 2009 p.183). Moreover, the positive results of the Portuguese solution were mentioned in reports later produced by the UN (United Nations Office on Drugs and Crime 2009).

The policy to reduce risks and minimise harm was crucial to averting the dangers associated to the use of drugs, the increased use of which was not seen relative to countries with prohibitionist models. Even though already in place in the field, the new policies were poorly received and were delayed due to the difficulty in mobilising their defence (Barbosa 2009). Risk reduction and minimising harm entail a paradox that is difficult to avoid when the ultimate goal is the fight against drugs and putting an end to their use – combatting the consequences of their use entails their acceptance (Fernandes and Ribeiro 2002). For example, the rooms for assisted consumption, foreseen in the law since 2001, only opened in 2020 and just in Lisbon. However, already existing strategies like the syringe exchange brought positive results when, once formalised, the situation was seen to improve. (Barbosa 2009). In addition, the partnership between the Institute for Drugs and Addictions (IDT) and the Non-Governmental Organisations allowed greater proximity in the field and the involvement of civil society (Barbosa 2009, Domosławski 2011). Decriminalisation, the dissuasive system, investment in treatment and in risk reduction and minimising harm, as well as a greater scientific understanding of the problem, brought results that legitimised the choices made and undermined the scenario described by the opposition.

The consensus on the new policy remains even today, as demonstrated by successive government programmes and the stable expenditure for the fight against drug addiction. European recognition of the good results of the Portuguese policy have also fostered continuity along this path.

Conditions that permitted the implementation of the Decriminalisation of the Consumption of Drugs and Possession of Drugs for Personal Use

LAW NR 30/2000 OF 29 NOVEMBER

1. Situation of a social and sanitary emergency

The alarming consumption figures, the spread of diseases and the social transversality of the phenomenon placed it at the top of the political agenda and a sense of urgency made it easier to obtain majorities.

2. Clear electoral mandate

The 1999 elections and the centrality of drug addiction in the electoral programmes (notably that of PS) provided a mandate for the approval of decriminalisation right in the first year of the legislature.

3. Weakened opposition

The Government was able to pass this innovative reform because not only was there a majority (PS, BE, PCP, PEV) in favour of decriminalisation in the Assembly of the Republic, but PSD was divided: 21 MPs requested exemption from having the whip withdrawn if the draft laws were voted on immediately in plenary; Young Social Democrats were firmly in favour, unlike the rest of the party.

4. Search for consensus

The subject was discussed at various levels: in scientific publications, in the associative movement, at political initiatives such as those organised by the President of the Republic, Jorge Sampaio. At the parliamentary level, consultation was sought through parliamentary committees that allowed the opposition to be involved in the process of drawing up the final draft, harmonising the initial draft laws and reducing the chances of conflict. The fact that well positioned figures in political circles and the professional groups to which they belonged (doctors, lawyers, etc.) took a public position and that these voices were from across the political spectrum, especially from the two main parties - PS and PSD -, made it possible to solidify consensus and involve civil society in the debate. In addition, the implementation process of the new drugs policy involved civil society in that the NGOs and relevant social actors in the new bodies took part in the monitoring of the policies implemented and this engendered actors that supported the measure in the long-term.

5. Production and communication of scientific evidence

The investment in scientific knowledge, as well as the creation of public bodies dedicated to drug addiction, meant the solutions to the problem were anchored in the scientific evidence. Implementation was based on monitoring and evaluation mechanisms, such as the annual reports of the Service for Intervention in Addictive Behaviours and Dependencies (*Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências* - SICAD), which made data available that constantly legitimised the reform, communicated its benefits, and highlighted the risks of being without such a reform.

2.2

MEASURE NOT IMPLEMENTED:

IMPROVEMENT IN THE EFFICIENCY OF HOSPITAL MANAGEMENT IN THE NATIONAL HEALTH SERVICE (NHS)

Overview of the measure

The Central Administration of the Health System compares hospitals' performance by means of benchmarking. The National Health Service (NHS) debt and the asymmetries of results between similar hospitals have captured the attention of professionals in hospital management and health economics, who have warned of the need to make hospital management more efficient.

Context of the measure

Rising health costs, notably for medication, along with the ageing of the population and the increase in chronic diseases, pressure health systems and create sustainability problems (OECD and European Observatory on Health Systems and Policies 2017). According to the EU and OECD report "Health at a Glance 2018", Portugal spends around 9% of GDP on health, roughly 1% below the EU average and 3% below the OECD average. Health expenditure *per capita* (in purchasing power parity) in Portugal is also below the European Union average (OECD and European Union 2019). In hospitals, specifically, Portugal spends less *per capita* than the EU average (roughly €200 less) (OECD and European Union 2019). However, the percentage of health expenditure for hospitals (42%) is above the EU average (38%) (OECD and European Union 2019), which indicates the significant weight of hospitals in health expenditure. Moreover, the importance of the sustainability of the NHS is illustrated by the fact that 65% of health funding in Portugal is public (OECD and European Union 2019).

The country continues to struggle with the chronic indebtedness of the NHS. By way of example, in 2018, the negative balance of the NHS rose to €848m (Espírito Santo 2019); just 5 of the 43 public hospitals presented a positive balance and only 20% of hospitals paid their debts within less than 90 days (Expresso 2019). Of the debts in arrears, 40.5% are to suppliers (Maia and Campos 2019), including the pharmaceutical industry (Santos 2019). It is worth noting that the NHS hospitals' debt to the pharmaceutical companies has been the equivalent of "more than one year's supply", according to the Portuguese Association of the Pharmaceutical Industry (APIFARMA).

Hospital indebtedness is cyclical, largely due to underfunding and underbudgeting. Without a sufficient or timely budget, the hospitals get into debt with their suppliers, prioritising other obligations like paying salaries (Pereira 2019). When the expenses are invoiced, the debt reaches alarming proportions and the Ministry of Finance injects capital so that it can be paid. However, no mechanisms are put in place to prevent the hospitals from getting into debt again soon after.

Hospital indebtedness is cyclical, largely due to underfunding and underbudgeting.

In this context, politicians and professionals in the field have warned of the need for both a better evaluation of hospital management and gains in efficiency. In addition, European institutions have called for instruments to be put in place to evaluate efficiency in health as a prerequisite for the creation of public policies. To illustrate the importance of efficiency in hospital management, it is estimated that roughly 1/5 of health expenditure in Europe is squandered (OECD and European Union 2019).

(Non) Implementation of the measure

The large share of public expenditure allocated to health, together with the chronic indebtedness of the NHS, has taken centre stage in the public debate. In this context, changes have been made in NHS management aimed at boosting efficiency, notably as regards the contracts between the financing body (State) and the supplier (hospitals), bringing the model of hospital management in line with that of business management, defining objectives, having price lists for medical acts/procedures and striving for greater autonomy in hospital management (Nunes and Ferreira 2019). The creation of EPE Hospitals (Public Business Entities - *Entidades Públicas Empresariais*) in 2005 is an example of this endeavour. However, the new models have not resolved problems systematically identified by both the professionals and political parties, such as the increase in debts to suppliers (Nunes and Ferreira 2019).

The analysis of the 2015 and 2019 electoral programmes of the parties with parliamentary seats until the 2019 parliamentary elections revealed that while all refer to the management of the NHS, they present different proposals for its improvement. For example, the Left Bloc (BE) and the Portuguese Communist Party (PCP) advocate the end of the political appointment of hospital managers and the introduction of public tenders that would make the choice of the management body more transparent and demanding. PSD and CDS-PP defend paying managers by objectives, as well as funding hospitals on the basis of health gains rather than medical acts performed. In the case of the Socialist Party, its Government Programme for 2015-2019 also included the introduction of performance incentives, as well as support for scientific research in the area of health services administration (Programme of the XXI Government Constitutional p.97).

Although there have been some proposals regarding hospital management, the party debate tends to focus more on the public/private binomial and investment in health than on the organisation and evaluation of NHS hospitals with a view to improving efficiency. Given the complexity of the problem and the ramifications of the debate, it was important for our study to gather data on the concrete measure aimed at responding to the problem of the efficiency of hospital management. Three measures already approved were highlighted by our interviewees and were repeatedly mentioned in parliamentary debates as the maxim for evaluation and the guarantee of efficient management in NHS hospitals, namely the programme contract, the management contract and the activities and budget plan (PAO).

The programme contract, introduced in 2003, is the only one of the three measures that has been fully implemented. It is drawn up between the State and the hospital and establishes the number of services to be rendered, the respective prices, the objectives and the desired quality of care. The funding and programming of the activity in the programme contract are multi-annual to foster long-term results-oriented management (Nunes 2016). These contracts permitted gains in efficiency, such as reducing average waiting times (Alves 2010), but they have not been able to deal with the common unforeseeable needs in hospitals that are a constraint when evaluating their results (Interview 6).

The management contracts established between the State and the hospital boards of directors aim to increase hospital managers' autonomy and, hence, their accountability. Although provided for in the law since 2007, they have not yet been implemented in the NHS according to our interviewees. Without these contracts, there is a lack of clarity about the managers' objectives, how they are evaluated and, hence, whether or not they will be reappointed to their respective positions (Interview 5). Thus, neither the board of directors' autonomy nor their accountability has been increased by the hospital management.

Finally, the Activities and Budget Plans (PAO), foreseen since 2013, guide the hospitals' operational activity. Their approval, granted by the Ministry of Health and Ministry of Finance, gives the public managers the autonomy to execute them. However, few PAO are approved. For example, only 1 of the 11 hospitals that should have had their PAO approved in 2019 through the triangulation of the data provided actually received this approval (Interview 5, Interview 7). Generally, they are "vetoed by being put in the drawer", that is, they are neither approved nor rejected and the hospital boards are therefore deprived of the autonomy the PAO should grant them (Interview 6).

In light of the difficulty in implementing the measures and ensuring their effectiveness, as well as the persistence of the problems identified (indebtedness, the high costs in health, asymmetry of results across hospitals), in 2018 the PS Government set up the Mission Structure for the Sustainability of the Health Budget, henceforth Mission Structure, tasked with recommending solutions for the long-term sustainability of the NHS. The Mission Structure also serves as the bridge between the Ministry of Finance and the Ministry of Health. To date, the work carried out by the Mission Structure has not been disclosed. However, the parliamentary hearings in which it participated shed light on its diagnosis of the sustainability problem of NHS hospitals, as well as some of its recommendations.

The Mission Structure's diagnosis coincides largely with what has been outlined above and refers principally to three problems: 1) rising health costs due to the increase in the price of medication, medical equipment (bandages, thermometers, syringes, etc.) and in salaries; 2) underfunding of NHS hospitals; and 3) the indebtedness of hospitals. In addition, the Mission Structure identified practices that perpetuate these problems: excessively tight budgets, as well as the lack of penalisation for indebtedness and bad management on one hand, and of rewards for good management and meeting objectives on the other. The analysis of the parliamentary debates, the measures themselves, articles in the press, and the interviews allows the following observations to be made explaining why these problems have been difficult to resolve.

First, in relation to expenditure, the price of medication has been rising and represents approximately $\frac{1}{4}$ of hospital expenses (Interview 5). The negotiation and control of these prices takes place between the State and the industry, or at the supranational level when the exporting and importing States have distinct interests. All those interviewed agreed that this is a politically sen-

The debate around health becomes easily politicised because it is such a politically salient issue. As a result of this salience and the complexity of the sector, events that are not representative of the whole are ultimately instrumentalised and this hampers the structural discussion.

sitive issue that can only be resolved at the international level. Due in part to the high NHS debt, the pharmaceutical industry is in a strong negotiating position given that the supply of medication cannot be called into question (its consequences would entail very serious political costs for the government). One of the factors for the rising expenses noted by two of the interviewees involves the universality of the NHS: as a matter of principle, the price of medication cannot act as an obstacle to the provision of health care, which makes the NHS particularly susceptible to the inflation of pharmaceutical products (Interview 5). However, when it comes to health costs, although the interaction of the domestic and foreign policy spheres puts the Portuguese State in a weak negotiating position, there is also little incentive for the Government to act alone: the political risks of a possible defeat are too high.

Second, the debate around health becomes easily politicised because it is such a politically salient issue. As a result of this salience and the complexity of the sector, events that are not representative of the whole are ultimately instrumentalised and this hampers the structural discussion. Two of the interviewees also referred to the population's "illiteracy" on health matters, which further complicates the full understanding of the challenges facing the sector (Interview 5). The Government therefore feels pressured to adopt a policy with short/medium term solutions and finds it difficult to focus the debate on long-term gains. According to the same interviewees, this policy of "putting out fires" makes the process of formulating measures more restrictive, excluding actors on the ground; this leads to measures that are out of step with the reality of hospitals and do not tailor the available resources to the hospitals' needs, further aggravating already existing problems.

Third, the health policy involves a triad of programme objectives that may not be compatible with each other (Weale 1998, Blank and Burau 2010): greater access, higher quality and cost containment. For example, the government cannot maintain the same levels of access and quality when it pursues a cost control policy. This "dilemma" was also raised in interview (Interview 6). For the purposes of illustration, during the adjustment programme agreed with the Troika at the time of the sovereign debt crisis, the cuts in health expenditure resulted in inequalities in access to health care (Nunes and Ferreira 2019). According to another interviewee, the opposition often frames measures aimed at boosting the efficiency of hospital management as cost containment (Interview 7). They are therefore publicly perceived as a threat to access levels and the quality of health.

This conflict of principles is also reflected in the implementation phase and within the government. The fact that the Ministry of Finance prioritises compliance with budgetary targets and the Ministry of Health focuses on the access and quality of health care has contributed to the blocking of measures (Interview 5).

Conditions that prevented the implementation of the Improvement in the efficiency of hospital management in the National Health Service (NHS)

1. Political salience of health and the political importance of “putting out fires”

Health is an extremely politicised sector in which the political debate tends to revolve around events rather than structural problems; this leads to a policy of “putting out fires”, in other words, to short/medium term solutions. These events, which are often sporadic or unrepresentative of the sector as a whole, are easily instrumentalised by the opposition. The use of health as a political weapon leads to a short/medium term approach to health policy in an attempt to minimise the capital of complaint and protect the government. The fact that the government is held responsible for an extremely salient sector (given that 65% of health financing is public) makes it difficult to focus the political discourse on long term benefits, especially by the government, and therefore leads to the acceptance of short/medium term costs.

2. Dilemmas in health

Health policy with the general objectives of promoting health and well-being is usually guided by three more specific goals – quality, access and cost efficiency/containment. As the three goals cannot be fulfilled simultaneously, policy makers are forced to manage the “impossible” balance between the goals. The opposition often uses cost containment to build a narrative of deteriorating access and quality, which makes it particularly complex to resolve problems related to the efficiency of hospital management, which is commonly associated with disinvestment in the sector.

3. Interaction of different levels of decision-making

Even if the responsibility is attributed to actors in the field (like hospital managers), or policy makers (such as the government), certain problems involve stakeholders found at the various levels of decision making; this is the case of the price of medication and medical equipment. Although, on one hand, the Government can take measures at the national level, on the other hand, the multinational dimension of the industry entails the internationalisation of the negotiations which, given the high NHS debt to suppliers, can weaken the State’s negotiating position and make it more vulnerable.

3.

FAMILY



IMPLEMENTED MEASURES

Extended parental leave in cases of shared leave, family allowance and pro-family tax policy are measures with similar contextual explanations and will therefore be analysed in the same section.

Overview of the measures

State support to families is made through three main instruments: financial support (such as family allowance and tax deductions); legal regulation (such as parental leave); and support in services and facilities, such as nurseries (de Almeida 2011). In this section, we analyse extended parental leave when shared, family allowance and the pro-family tax policy in Portugal. Extended parental leave in cases where it is shared is considered an example of implementation and the remaining cases are considered non-implementation due to their instability over time.

MEASURE IMPLEMENTED:

3.1.

EXTENDED PARENTAL LEAVE IN CASES WHERE IT IS SHARED BETWEEN THE PARENTS

LAW NR 7/2009 OF 12 FEBRUARY

In Portugal, extended leave in cases where it is shared was approved in 2009 by the Socialist Party Government, led by José Sócrates. The measure established that if parents opted to share parental leave, they would benefit from a bonus of 30 days paid leave, as long as each parent took 30 consecutive days or two consecutive 15-day periods on their own after the mandatory six weeks of maternity leave. Moreover, the measure introduced a novelty - the possibility of the father staying alone with the child during the period of 30 consecutive days or two periods of 15 consecutive days.

MEASURES NOT IMPLEMENTED:

3.2.

THE CONTINUITY OF FAMILY ALLOWANCE

Initially, family allowance was a contributory social support benefit for families and was limited to workers in industry and commerce (de Almeida 2011). Successive changes were made to the measure during the different PS and PSD/CDS-PP Governments. These changes either aimed to maintain family allowance for all families, or to restrict it to the most socially vulnerable families (Interview 8). Moreover, changes were made to the amount of the allowance which, together with the possible broadening or restriction of the benefit, made it difficult to forecast how much a family could expect to receive if they had one more child.

3.3.

THE CONTINUITY OF PRO-FAMILY TAX POLICIES

Tax deductions are extremely important tax instruments in Portugal (Branco and Costa 2019). Unlike allowances that favour the poorest, tax deductions can benefit higher income earners as they target families with a high enough income to pay the tax and with easier access to goods and services, such as health insurance and education (Branco and Costa 2019). Hence, the tax policies are non-consensual and were subject to constant changes in Portugal, depending on the government in office, making it difficult for families to plan child related expenses.

Context of the measures

Understanding the context in which these three policies were implemented entails considering gender inequalities in Portugal, the decline in the fertility rate of Portuguese women (and its causes), as well as the relationship between these variables.

Gender inequality and fertility patterns in Portugal

Despite the trend of declining fertility in almost all European countries, Portugal stands out as an extreme case: since 2004, it has found itself in the group of countries with the lowest fertility levels in Europe, registering just 1.40 children per woman, vis-a-vis a European average of 1.46 (Leston Bandeira et al 2014). With the economic crisis, Portugal saw a further decrease in fertility and faced a critical situation in 2013 when the number of children per woman went down to 1.21 – compared with 1.51 in the EU that same year - (Pordata). Even though the Synthetic Fertility Index increased between 2013 and 2016 (it now stands at 1.42), Portugal has been below the minimum level of generation substitution for 30 years and “for 15 years we have been below the critical threshold of this substitution” (Cunha et al 2016 p. 89).

In 2010, the European Council recommended its Member States to introduce measures that allow women to reconcile motherhood with work through improving access to nurseries, flexible working schedules and paternal leave, for example.

The EU's gender equality index was published in 2015, (European Institute for Gender Equality - EIGE). In it, Portugal was considered one of the countries with the greatest inequality between genders (Falcão and Costa 2015). The most problematic point highlighted by the EIGE was women's difficulty in achieving decision-making positions (Falcão and Costa 2015). In addition, there is a marked gender pay gap: in Portugal, women earn 16.3% less than men for the same professional activity and qualification level (Commission for Equality in Labour and Employment - CITE 20 January 2020).

The literature cites multidimensional and combined causes to explain the low birth rate and declining fertility in Portugal. Firstly, there have been fewer marriages since 1975 (Leston Bandeira et al 2014). At the time, the starting of a family and the birth of children were closely associated to marriage and, therefore, the falling marriage rate had a negative impact on fertility (Leston Bandeira et al 2014). Moreover, the predominance of Catholic marriages declined steadily, and divorce was legalised in 1975 (Leston Bandeira et al 2014).

Secondly, the schooling levels of the Portuguese population as a whole has increased due to greater access to education, notably after the Revolution of 25 April 1974 (Oliveira 2007). Reproductive patterns worldwide show that the highest fertility rates coincide with low levels of schooling (Oliveira 2007). Therefore, the higher a person's education level is, the less likely she is to have children. A higher education level is also associated with women knowing more about contraception and having access to it, postponing parenting and marriage, for example (Oliveira 2007).

Thirdly, the decline in fertility is also influenced by the economic situation and cyclical changes. The current uncertainty and insecurity in the field of work not only have an impact on income but also in marital relationships and fertility patterns (Leston Bandeira et al 2014). Associated to this, the coverage of support services in Portugal is unevenly distributed across the different regions and families struggle, for example, to enrol children in day-care centres and kindergartens (Wall et al 2016).

Finally, the fall in fertility is also explained by factors such as Portuguese emigration, notably between the 1960s and 1970s and due to the economic crisis in 2008 (Mendes and Tomé 2014). As it is usually younger strata in reproductive age that emigrate, this has thrown the structure of the population at childbearing age out of balance, especially in regions where the outflow is particularly intense (Portuguese interior) (Leston Bandeira et al 2014).

In 2010, the European Council recommended its Member States to introduce measures that allow women to reconcile motherhood with work through improving access to nurseries, flexible working schedules and paternal leave, for example.

Implementation of the measures

1. Extended parental leave in cases of shared leave

At the end of 2001, a new government led by Durão Barroso (PSD / CDS-PP) took office with aspirations to reform the Labour Code. Within the scope of this reform, Bagão Félix - Minister of Social Security at the time - proposed increasing maternity leave from 120 to 150 days, although the increase would be unpaid leave (Interview 9).

PS was not in favour of increasing unpaid maternity leave because it felt it did not promote gender equality either in family life or the labour market (Interview 9). Sónia Fertuzinhos, PS Member of Parliament at the time, informed us that this led to the Socialist Party presenting a draft law for the fifth month of leave to be paid if it was shared.

In August 2003, the changes in the Labour Code were approved. However, they did not include the extension of maternity leave to 5 months (Law nr 99/2003). The fall of the PSD/CDS-PP coalition Government was followed by early elections in February 2005. In the PS electoral programme (2005), the leadership of socialist women included the principle of shared parental leave, which had been presented during the discussion of the new Labour Code.

The parties' electoral programmes referred to their concern to create support measures for working families with children (PS), work-family balance (PSD), the right to parenthood for same-sex couples (BE) and the reconciling of work and family life (PCP). The elections were won by PS, led by José Sócrates, who formed the government in March 2005. The Government Programme stated that reconciling work and family life would "make the use of the fifth month of maternity and paternity leave dependent upon the proportion of time shared between the father and mother in the previous four months" (XVII Constitutional Government Programme).

Between the onset of the crisis (2008) and the end of 2009, when Socrates' mandate was coming to an end, the EU's initial Keynesian response to the economic crisis led to investment in budgetary stimulus packages worth €200m in the economy of the Member States, and thus a temporary increase in spending (European Commission 2008). In this context, the Government began discussing "a comprehensive restructuring of parental allowances" in April 2009, (Commission for Equality in Work and Employment - CITE 20 January 2020). It was therefore in this period of rising expenses as well as declining birth rates that the sharing of parental leave was approved. Left-wing parties were in support of the extension of parental leave when shared, and it was unanimously approved in 2009.

Under new legislation on parental leave, if parents choose to share the parental leave, one of them is entitled to 150 days parental leave on full pay or 180 days paid at 83% of the parent's reference salary (Law 7/2009 of 12 February). Moreover, parents can also take alternating leave for a period of up to 3 months, paid at 25% of their reference salary.

Since the implementation of extended parental leave when shared in 2009, there has been an increase in the use of the initial parental leave: between 2009 and 2018, the number of requests for shared parental leave tripled. In 2019, UNICEF considered Portugal the fifth most family-friendly country, behind only Sweden, Norway, Iceland and Estonia (UNICEF 2019).

Conditions which permitted the implementation of extended parental leave in cases where it is shared between parents

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1. Keynesian context

The EU's initial Keynesian response until the end of 2009 drove an increase in social spending, facilitating the implementation of extended parental leave when shared due to the external stimulus for Member States to invest in social protection. The context of increased spending stimulated by the EU was therefore used to approve the measure.

2. Involvement of stakeholders in formulating the law

Since 2003, the measure to extend parental leave when shared had been debated in the PS, notably by women. In fact, socialist women and Members of Parliament participated actively in drafting the bill at the time of the amendment to the Labour Code reform in 2003, when the PS parliamentary group proposed the extension of shared parental leave. Although unable to approve this measure at the time, PS included it in its electoral programme for the parliamentary elections in 2005 and, after winning these elections, it was kept in the government programme.

3. Consensus

The fact that the income substitution was fully guaranteed by Social Security provided for consensus on the measure between unions and employers. In addition, the parties were also in consensus on the need to reconcile work and family life (PS, PSD, BE, PCP).

Non-implementation of the measures

2. Lack of continuity in family allowances

Family allowance is a complex measure that involves, among other things, choosing between a universalist perspective of rights, that is, one in which everyone has access to the same rights, and positive differentiation whereby those in greatest need are prioritised.² Originally introduced by the *Estado Novo* (1942), workers in commerce and industry were given the right to family allowance in order to reduce the difficulties faced by heads of large families, and it targeted offspring and dependent parents in the household (de Almeida 2011).

² The aim of positive differentiation or positive discrimination is to prioritise the most socially and economically vulnerable (Rothenburg 2009)

Family allowance is a complex measure that involves, among other things, choosing between a universalist perspective of rights, that is, one in which everyone has access to the same rights, and positive differentiation whereby those in greatest need are prioritised.

It was only after the Revolution of 25 April 1974 that significant changes were made to family policies in Portugal, countering the established gender roles, the family model and the relationship between the State and the family of the previous regime (de Almeida 2011). The new Constitution of 1976 and the Civil Code of 1977 established the principle of gender equality and the non-discrimination of children born out of wedlock. Finally, between 1977 and 1978, during the first Constitutional Government led by Mário Soares (PS), the child's right to family allowance was established and could therefore be requested by any adult with dependent children (Wall 1995).

In 1979, the interim Government led by Maria de Lourdes Pintasilgo strengthened the universality of rights to social assistance – any resident national citizen (taxpayer or not) could request family allowance (de Almeida 2011). The need to create more support for families was recognised in the succession of PS and PSD Governments between 1980 and 1995. This period therefore witnessed a transition from a universalist perspective to positive differentiation.

At the time of Portugal's integration in the EU (1986), alterations were made to the broader family allowance as part of the changes in the Social Security system. The Government was striving to improve the system as it was less developed than those of other EU countries (Joaquim et al 2014). Hence, the family allowance became even more oriented towards economically weaker families with a view to furthering social development (Decree-Law 133-B / 97 of 30 May).

In 1997, the family allowance once again became a benefit that all children and youth were entitled to, with three income brackets established for households (Decree-Law No. 133-B / 97 of 30 May). The change combined the principles of universality and selectivity (positive discrimination) and the right to this social benefit was no longer restricted to those in employment (Decree-Law no. 133-B / 97 of 30 May).

In 2001, the PS Government introduced a fourth income bracket for families with children aged 12 months or below and over 12 months; moreover, it introduced an increase in the family allowance between 1999 and 2002 (Social Security, 2017). In 2003, Portugal went through a period of economic difficulty during which Social Security was reformed and yet another income bracket was added for family benefits under the Basic Law of 2003 (Decree-Law no. 176/2003 of August 2). Thereafter, the income brackets increased from four to five and were defined in line with the household income per capita, taking the minimum wage as the reference value (Decree-Law no. 176/2003 of 2 August).

In a context of budgetary constraints and falling birth rates, PS chose in 2005 to support the families in greatest economic difficulty. Hence, the family allowance for the 1st, 2nd and 3rd brackets was raised by 3% and the 4th and 5th brackets by 2.5% (Ordinance nr. 132/2006). At the onset of

the economic crisis in Europe in 2008, when the EU initially took a Keynesian approach, family allowance in Portugal increased by 25% for single-parent families and 25% for beneficiaries in the 1st and 2nd income brackets (Decree-Law nr. 245/2008 of 18 December). In addition, the 2nd and 3rd brackets became entitled to a 13th month of the family allowance, reflecting greater protection for these segments of the population (Decree Law nr. 245/2008 of 18 December).

However, as Portugal's financial situation deteriorated in 2010, the Government was forced to make financial cuts to family allowance. Thus, the 4th and 5th brackets were eliminated and therefore lost the right to family allowance (Marques 2018). The Memorandum of Understanding (MoU) with the Troika (European Commission, European Central Bank and International Monetary Fund), which entailed reducing expenditure, foresaw cuts in family allowance in order to lower social expenses by at least €350m (Memorandum of Understanding on Economic Policy Conditionality 2011).

After José Sócrates (PS) resigned in 2011, the 2011 parliamentary elections were won by PSD, led by Passos Coelho, in coalition with CDS-PP. Responsible for implementing the MoU, the new government prioritised compliance with their financial commitments over support policies for families (Marques 2018). In 2012, families' living conditions deteriorated and data indicate that 18.7% of the Portuguese population was at risk of poverty at the time, with even higher figures among people under 18 (24.4%), in single-parent families (33.1%) and families with two (19.8%) or more children (40.4%) (Wall et al 2015).

The PSD/CDS-PP Government mandate came to an end in 2015, after which PS formed a minority government with the parliamentary support of the left parties (BE, PCP and PEV). The reversal of cuts to family allowances began in February 2016 with the supplementary benefit for children and youth in single-parent families increasing from 20% to 35% (Decree-Law No. 2/2016 of 06 January). After the crisis and due to the declining birth rate, the increase in the both allowance and income brackets was a way of encouraging people to have children (Interview 8).

3. Lack of continuity of the pro-family tax policy

Although the nature of family support tax policies and the family allowance is different, they are both linked with the commitment to a welfare state that provides benefits, goods and services. While family allowance is a direct family support measure, tax policies are an indirect form of provision. In Portugal, there has been inconsistency in both direct (as noted above) and indirect financial support and this can affect the decision to have children. For example, the withdrawal of the family index from income tax brackets make tax less progressive. Portugal has had a high level of indirect social expenditure and this has become a hallmark of its fiscal and welfare regime. Over time, indirect expenses through tax deductions have grown and both PS and PSD have used taxation as a way of mobilising middle-class votes (Branco and Costa 2019). For example, the analysis of the electoral programmes of these parties between 2005-2015 showed that whereas the PS sought to guarantee social support, PSD supported families by reducing the tax burden. CDS-PP is the party that makes most reference to fiscal policies in support of families and criticises the tax system for penalising families.

There has therefore been no continuity in tax policies as the changes were made due to both the alternation of PS and PSD governments and also economic cycles with greater or lesser budget constraints. This gives families little security with regards the financial costs of having another child, which may impact their decision to expand the family.

At the start of the 2008 financial crisis, the 2010 State Budget presented by José Sócrates' PS government reduced tax deductions for expenses in health, education and training; these are areas in which families had the most tax deductions and a ceiling has since been placed on abatement from the 3rd tax bracket (from €7410) (Aníbal and Rodrigues 2010). As part of the control of expenditure due to austerity, the MoU sought to reduce social expenses and tax deductions for health care as most of the Portuguese tax expenses were related to health (Branco and Costa 2019).

After José Sócrates' resignation (PS) in 2011 and the victory of PSD, led by Passos Coelho, in coalition with CDS-PP in the subsequent parliamentary elections, changes were made to tax policies in light of the growing tax burden triggered by the crisis. In 2013, the tax burden for households increased when the eight income brackets were reduced to five (Branco and Costa 2019, Wall et al 2013). These new limits on tax deductions meant an increase in the tax burden for families whose income came from work, particularly for families with children (Wall et al 2013).

In 2014, an income tax reform was approved, which introduced a family quotient, among others (Law No. 82-E / 2014 of 31 December). As a result, taxable income started to be divided by the total number of people in the household, where each income earning member was worth 1 and each offspring or parent/grandparent living in the household was worth 0.3 (Santos 2014). The weighting of these values started to determine the income tax rate, and this implied a greater reduction in the income tax rate for large families.

PS considered the family quotient to be unfair as it benefited children due to the parents' income rather than benefiting children equally (Interview 9); hence, after winning the elections in 2015, it replaced the family quotient with a fixed deduction of €600 per child, with a top-up of €125 for children up to the age of three (Guerreiro 2019). In 2018 and 2019, a 35% deduction on income tax was introduced for general family expenses, with a maximum of €250 per taxpayer and €500 per couple (Autoridade Tributária e Aduaneira 2019). Health expenses could be deducted for up to 15% with a limit of €1000 per household, and education and training expenses up to 30% (Autoridade Tributária e Aduaneira 2019).

There has therefore been no continuity in tax policies as the changes were made due to both the alternation of PS and PSD governments and also economic cycles with greater or lesser budget constraints. This gives families little security with regards the financial costs of having another child, which may impact their decision to expand the family.

Conditions that did not permit the continuity of pro-family measures

1. Conflict of objectives

Family allowance and pro-family tax policy can have conflicting objectives, namely increasing the birth rate and redistributing wealth. It is the second objective that has predominated in Portugal and these policies are therefore very dependent on the ideological positioning of governments. In the alternation of legislatures between PS and PSD, PSD / CDS-PP, it is clear from the speeches and political decisions that family allowance and taxation have been subject to changes in line with the parties' ideology (either more universalist, or more restrictive). This variation sometimes targeted the most socially vulnerable groups (with lower incomes and more children), in the case of the family allowance, and at other times defended a reduction in the family tax burden.

2. Economic instability

The inconsistency of fiscal policy and family allowance is explained by budgetary difficulties in the periods of economic crisis when there was rising unemployment and public debt. During the 2008 crisis, the reduction in the income tax brackets for the purposes of family allowance, as well as in income tax deductions led to an increase in the tax burden and more restrictions on family allowance. After the economic recovery, the income brackets for family allowance and the income tax brackets that had been eliminated were reintroduced.

3. Lack of institutionalisation of policies

There was further instability in family policies due to the fact that these measures can be modified through the State Budget – no laws or amendments to the constitution are required. This creates a self-sustaining effect: when fiscal consolidation is necessary, both family allowance and pro-family tax policies are more likely to be cut than more institutionalised policies such as pensions, for example.

4. Complexity of the problem to be resolved

It is extremely difficult to boost birth rates through family policies as the individual decision of whether or not to have children is influenced by multiple factors and dimensions. Hence, a single policy has a residual effect on the birth rate as the decision to have children is affected by personal and economic factors. In addition, policies become more vulnerable to ideological or economic changes in the case of complex problems. Resolving these structural issues entails more deep-seated changes, such as correcting imbalances in the labour market and reducing job insecurity.

4.

**SOCIAL
SECURITY**



4.1.

HYBRID CASE:

THE IMPLEMENTATION OF THE EXTRAORDINARY SOLIDARITY CONTRIBUTION (CES) AND NON-IMPLEMENTATION OF THE SUSTAINABILITY CONTRIBUTION (CS)

Overview of the measures

In 2011, the Extraordinary Solidarity Contribution (*Contribuição Extraordinária de Solidariedade* - CES), a provisional measure, was approved by the PS Government (Law nr 55-A/ 2010 of 31 December). In its first version, it applied a 10% cut to pensions over €5000 paid by Social Security and *Caixa Geral de Aposentações* (CGA – the public employees’ pension system). In 2014, when the CES was still in force, the PSD/CDS-PP Government proposed a new but permanent measure: the Sustainability Contribution (CS), which, according to the Government, would respond to the need to ensure the survival of the Social Security system. The application of the CS would start at a minimum rate of 2% on pensions over €1000 and go to a maximum rate of 3.5% for pensions over €3500; the revenue obtained would go to Social Security. However, in September 2014, also during the PSD/CDS-PP Government, the Constitutional Court declared the measure to be unconstitutional. The CES was extinguished by Law nr 159-B/2015 of 30 December, setting the end of 2017 as its term.

Context of the measures

In Portugal, enrolment in Social Security is mandatory and universal and there are two main pension systems: the *Caixa Geral de Aposentações* (CGA) for public employees and the General Social Security System (*Regime Geral de Segurança Social* - RGSS) for private sector workers (Carolo 2015). Although not unified, the pension system is entirely public and covers the risks of “death, disability, old age, illness, and unemployment” (Carolo 2015, p. 10).

The demographic characterisation of the Portuguese population is one of the main challenges for the sustainability of the Portuguese Social Security system. The average life expectancy is currently 81 years and the number of elderly people has exceeded that of the young since the 2000s (Oliveira and Gomes 2019). It is also important to note that Portugal has one of the OECD’s highest replacement rates for old age pensions, that is, the average difference between the last salary and the first pension: 59% among the organisation’s countries, 90% in Portugal for full contributory careers (OECD 2019).

In 2007, Social Security was reformed by the PS Government with the sustainability factor of Social Security as its major novelty. This is linked with the evolution of life expectancy and has a direct impact when calculating the amount of pension attributed. The EU and OECD considered the 2007 reform exemplary as Portugal had reacted with foresight to strengthen public finances given the adverse future scenario common to all the EU’s Social Security systems (Carolo 2015).

During the Troika period, the sustainability factor introduced in 2007 was increased and the reference year for the average life expectancy was changed to 2000, thus further reducing early retirement. After the bailout and under the PS Government (2015-2019), the sustainability factor was eliminated for all those who, at the age of 60, had a total of 40 years of service even though they had not reached retirement age.

In 2008, just one year after this reform, there was a marked slowing of the Portuguese economy following the financial collapse of the Lehman Brothers (Moury and Standring 2017); after a short-lived policy of fiscal expansion, in 2009 the European Union pressured Portugal to adopt fiscal consolidation policies (De Giorgi, Moury and Ruivo 2015). During this period, the imbalance between contributions and expenditure was further aggravated by rising unemployment, putting the sustainability of Social Security in jeopardy.

Implementation of the measures

CES in the PEC III

In response to the economic crisis, the PS minority Government prepared three austerity packages known as the Stability and Growth Programme (*Programa de Estabilidade e Crescimento* - PEC) I, II and III which were approved thanks to the abstention of the largest opposition party, the Social Democratic Party (PSD). The reductions in social contributions foreseen in PEC III encompassed a 10% cut in pensions over €5000 (Diário de Notícias 2010). CES was included in the State Budget for 2011, approved by Law nr 55-A/ 2010 of 31 December, as an austerity measure responding to the cyclical economic difficulties Portugal was experiencing.

In 2011, the Socialist Prime Minister, José Sócrates, refused to request financial assistance but agreed to negotiate what became known as the “shadow programme” with the EU. This led to the intervention of a group of representatives from the European Commission (CE) and Central European Bank (ECB) in Portugal, to draw up a plan in conjunction with the Government (Dinis and Coelho 2012, Moury and Standring 2017). The measures included the broadening of the CES to pensions over €1500.

This extension of the CES was never implemented because the PEC IV was rejected in the Assembly of the Republic with PCP, BE and PEV voting against along with the PSD, which was ahead in the polls in 2011 and saw a real opportunity of coming to power. No sooner had the PEC IV been rejected than Sócrates presented the Government’s resignation. On 6 April 2011, at the start of the electoral campaign, the interim government requested a bailout and called in the Troika (EC, ECB, IMF).

CES in the MoU

The negotiations for the Financial Assistance Programme (Memorandum of Understanding, MoU) with the Troika took place during the electoral campaign for the 2011 parliamentary elections with the participation of PS (the then government), PSD and CDS-PP; they were concluded on 17 May 2011. The programme foresaw a €78m bailout. On pensions specifically, in line with the proposal included in the PEC IV, the MoU stipulated a cut in pensions over €1500, with progressive rates so that at least €445m would be collected (for 2012); pensions were frozen and the indexing of pensions suspended (for 2012), except for the lowest pensions; tax allowances for personal income tax were converged for income from work and pensions, resulting in the collection of €150m (for 2012 and also for 2013).

The CS's link with VAT and workers' contributions to Social Security – both considered by the CC to be temporary instruments that could be easily changed – also fostered the perception that CS was not a structural measure.

Implementation of the MoU

After the PSD/CDS-PP won the elections in 2011, it rapidly complied with the cuts in expenditure on pensions agreed in the MoU by extending the CES in January 2012, with the 25% cut in pensions over €5030.64 and 50% cut for pensions over €7545.96 coming into force (Martins 2015). The following year, the State Budget for 2013 included a new version of the CES: pensions between €1350 and €1800 would be cut by 3.5%; and a 16% rate would be applied to pensions between €1800 and €3750 (State Budget 2013). In addition, pensions over €3750 were cut by 10% and an additional tax of 15% was established for pensions between €5030.64 and €7545.96 and of 40% for those over €7545.96. Therefore, the Government went further than the MoU given that the cuts began for pensions over €1350 rather than €1500, as agreed. According to the findings from our interviews, the Government felt it was necessary to go beyond the MoU because it would be impossible to achieve the €445 in levies agreed with the Troika unless cuts were made to the lowest pensions, which was politically damaging and unfair from the social standpoint (Interview 10).

In August 2013, the Government began negotiations with the unions on the Law for the Convergence of CGA and Social Security pensions, which implied a 10% cut in pensions over €600 paid by the CGA, with the aim of cutting costs. Following the Constitutional Court's rejection of this measure, resulting from the PCP, BE and PEV's request for inspection in December 2013, the Government presented an amended budget redesigning the CES in the first quarter of 2014. This budget lowered the amount at which CES would start being applied (from €1350 to €1000) to offset the revenue that would not be obtained from the Convergence Law. The CES (as of €1000) became much more comprehensive than initially defined (€1500) in the MoU.

In 2015, one year after the Troika's departure, the parliamentary elections resulted in a minority PS government with parliamentary support from the parties to its left (BE, PCP, PEV) – unprecedented in Portuguese democracy – under a new slogan of reversing austerity. It is in this context that the CES started to be applied only to pensions over €4611 (Martins 2015). In the same year, Law nr 159-B/2015 of December 30 foresaw the termination of the CES for 2017.

The Sustainability Contribution (CS)

Following the Constitutional Court's rejection of the cut to public service salaries over €675 a month, in May 2014, the Troika demanded alternative measures. The Troika also called into question the amount of the pension cuts, claiming that the €1000 threshold was too high. However, the Government was not willing to lower this amount as it feared repercussions in the Constitutional Court (Pires and Martins 2015). It therefore insisted on prolonging the adjustment programme to give the

Constitutional Court time to analyse other measures before being obliged to go ahead with alternatives. However, the IMF and the Government did not agree on the deadlines for the adjustment programme's extension. The IMF doubted that the problems could be resolved in just three months (the Government's preference) and the Government could not extend the programme further as it ran the risk of not being able to enact a change in the political cycle and capitalising on the final year before parliamentary elections. So without agreement on the extension of the programme, the Government chose not to present alternatives on how to meet the agreed objectives with the Troika, and thus renounced the last tranche of the loan in June 2014 (Pires 2015), declaring Portugal's "clean" exit from the programme on 4 May 2014. Two months later, with the CES still in place but after the adjustment programme, the PSD/CDS-PP Government proposed the Sustainability Contribution (CS) as a lasting measure to replace the temporary CES. The Government justified the measure on the grounds that it partially fulfilled the goal of guaranteeing the sustainability of the public pensions systems.

The details of the CS were not included in the agreement between the Government and the Troika. However, the European Commission's reports on compliance with the programme, as well as some of the revisions to the MoU already made reference to the need to adopt more structural and permanent measures to guarantee budgetary consolidation in the post-intervention stage, namely a pension reform. To this end, a working party was formed and it was decided that the reform would be based on three axes; the increase in the retirement age through the sustainability factor; the convergence of the pension systems (Social Security and CGA), rejected by the Constitutional Court and remedied by the extension of the CES; and the stepping up of the proof of income when attributing survivors' pensions to the beneficiaries of other benefits from CGA and Social Security. The CS also envisaged increasing VAT from 23% to 23.25% and allocating the revenue to Social Security, as well as the increase in the worker's contribution to Social Security from 11% to 11.2%.

Following this, the Sustainability Contribution was presented in June 2014. The Government argued that the CS was not in response to a crisis situation but would be addressing a structural problem: the imbalance between contributions and benefits in Social Security (Interview 10). The CS was approved on 4 August 2014 in the Assembly of the Republic with PSD and CDS-PP voting in favour and PS, BE, PCP and PEV voting against; moreover, PCP and BE presented a request for the constitutional review of the measure. In August 2014, the President of the Republic (Cavaco Silva) submitted the CS to the Constitutional Court (CC) for this review, where it was rejected and the Government's arguments rebutted. Firstly, the similarity between the CES (which had been altered several times) and the CS made it difficult to classify the CS as a structural and stable measure. In addition, the CS's link with VAT and workers' contributions to Social Security – both considered by the CC to be temporary instruments that could be easily changed – also fostered the perception that CS was not a structural measure. Lastly, although the CS rates were more progressive than those of CES, average incomes were disproportionately affected which, in the opinion of the CC, made the CS socially unjust as the aim seemed to be to collect quick revenues at the expense of progressivity.

The Constitutional Court's rejection of the CS in summer 2014 came when the financial assistance programme was nearing its end. If the Government were to fulfil the objectives of the CS, one of the reforms tied to the last tranche of the bailout, it would have to reformulate the proposal to get around the CC's rejection. As a result, the Government negotiated with the Troika to extend the programme. As no agreement was reached on this extension (the Troika wanted it to be longer than the period proposed by the Government), the Government chose not to present alternatives, and hence to forgo the last tranche of the financial assistance in June 2014 (Pires and Martins 2015).

Conditions that permitted the implementation of the CES/ adoption of CS

1. Financial crisis and bailout

PEC III, the austerity package prepared by PS, presented the CES as one of the measures to be implemented at a time of crisis. In 2011, with the signing of the Memorandum of Understanding (MoU), Portugal assumed responsibility for complying with the agreed objectives, including the lowering of pensions of €1500 and over. According to our interviewees from the Government, this crisis situation opened a “window of opportunity” to undertake reforms they deemed necessary for the sustainability of Social Security. Faced with a majority Government anchored in international obligation, the opposition was unable to stop the measures in Parliament so had to take frequent refuge in the Constitutional Court. However, the Court recognised the exceptional nature of the crisis situation so allowed the CES to pass as a temporary measure. Between 2011 and 2014, the scope of the CES was broadened by the PSD/CDS-PP Government. The extensions guaranteed the progressivity of the contribution in order to ensure its constitutionality.

2. Salience of the problem in the political debate and the existence of previous reforms

The reforms made to Social Security between 2000 and 2007 initiated the debate on the sustainability of the Social Security system and set the precedent for policies related to expenditure (cuts). CES came in a deteriorating context due to the link between the crisis and unemployment (more expenditure and less revenue for Social Security). It therefore combined a salient structural problem with a cyclical problem that served as the grounds for legitimating its implementation.

Conditions that prevented the continuity of CES / implementation of CS

1. End of the adjustment programme

The end of the adjustment programme, aggravated by the fact that the Government had forgone the last tranche, closed the “window of opportunity” that had been opened by the crisis and then by the Troika’s presence in Portugal. No less important is the fact that the CS had been proposed in summer 2014, when the Government was preparing to start the last year of its legislature. This meant that the Constitutional Court’s rejection of the CS was not overcome, and the measure fell due to the lack of political conditions to advance.

2. Lack of consensus and change of Government

In October 2015, the parliamentary elections paved the way for a PS government, supported by PCP, BE and PEV in the form of a parliamentary agreement. The fundamental goal of this agreement was to bring about effective change in the political cycle, proposing to give back the cuts made under the Troika. Even though it was PS that had advanced with the CES (2011), it had been subject to extensive alterations during the bailout period in that it no longer targeted only the highest pensions but had started to cover pensions close to the average salary. The changes to the CES allowed the PS to distance itself from this measure and, given the slogan of the parliamentary agreement, to revert it during its mandate. Hence, CES was gradually reverted from 2015 and terminated in 2017.

3. Constitutional Court

In contrast to the CES, which the Constitutional Court had allowed to pass as a provisional and exceptional measure due to the crisis context, this was not the case with CS. The Government's argument for the CS included the crisis context of budgetary discipline but it lacked the weight of the adjustment programme which was about to end. Moreover, contrary to the Government's claim, the CC did not see the CS as a solution for the structural problem of the sustainability of Social Security, anticipating the possible instability of the measure, as had happened with the CES. In addition, as a structural response, the CS lacked depth and scope and did not bring substantial change to the Social Security paradigm. As a result, the Constitutional Court, which had not blocked the CES, later became the obstacle to the Sustainability Contribution's implementation.

4.2.

MEASURE NOT IMPLEMENTED: **CREATION OF AN INHERITANCE TAX**

Overview of the measure

In 2015, the Socialist Party (PS) proposed a tax on legacies over €1m (known as the “inheritance tax”), with the aim of diversifying Social Security's sources of funding and promoting greater fiscal justice, reducing the inequalities in wealth that are perpetuated across generations. The Government planned to advance with the tax in 2017 but was unable to do so. The proposal returned to the public debate in the campaign for the 2019 parliamentary elections at the initiative of the Left Bloc (BE), which included it in its electoral programme, unlike PS.

Context of the measure

In 2004 the inheritance tax was abolished in Portugal, even though this had not been included in the programme of the coalition Government of the Social Democratic Party (PSD) and the Social Democratic Centre-Popular Party (PSD/CDS-PP). According to the press at the time, CDS-PP had pressured for its inclusion on the political agenda during the electoral campaign, in the Assembly of the Republic and within the Government. In practice, inheritances became free of tax in Portugal, which joined the group of nine European Union Member States, such as Austria, Romania and Sweden, that had no such tax.

The absence of an inheritance tax comes in a context of growing economic inequality in Portugal. For the purposes of illustration, at the European level, it belongs to the group of the second most unequal countries in Europe in terms of income distribution along with Italy and Greece, below Romania and Lithuania and above countries like Poland and the Czech Republic. The 20% with the highest incomes earns 5.22 times more than the 20% with the lowest incomes. This inequality is perpetuated over time and crystallises the intergenerational transmission of wealth and of poverty. According to the Bank of Portugal, in 2017, the families belonging to the richest 10% held 53.9% of the total wealth of families. Portugal is also the country with the third oldest population in the EU, which jeopardises the sustainability of the Social Security system (Reis and Gomes 2019).

The measure serves as a solution in a context in which taxation on income from work is not enough to meet the challenges facing the welfare system, which is threatened by the ageing population, the decline in earnings from employment and the concentration of wealth in the older generations.

According to the OECD and IMF, wealth is generationally strengthened. Taxing its transmission is therefore a form of redistribution. This proposal is in line with the conclusions of the study on intergenerational justice and inheritance conducted by the Resolution Foundation (Corlett 2018): the measure serves as a solution in a context in which taxation on income from work is not enough to meet the challenges facing the welfare system, which is threatened by the ageing population, the decline in earnings from employment and the concentration of wealth in the older generations (Corlett 2018). However, it does have limitations; these include the difficulty in taxing movable property given the easy circulation of capital. According to the IMF, the revenue from this tax has declined in the OECD (by about 40% since 1970), albeit with some exceptions (such as France and Belgium).

(Non) Implementation of the measure

In 2015, the first reference was made to the inheritance tax in a report entitled “A Decade for Portugal” drawn up by academics linked to the PS, including Fernando Rocha Andrade (future Secretary of State for Fiscal Affairs). The document would be a key element of the PS electoral programme. According to the political representatives and journalists we interviewed, the launch of the popular book by Thomas Piketty, “Capital in the 21st Century”, together with his visit to Lisbon in the aftermath of the Troika’s intervention, generalised the debate on the alternatives to austerity and triggered the PS proposal. At the press conference after Piketty’s visit to the national PS headquarters, António Costa defended the diversification of the funding sources of Social Security and the return of the inheritance tax. Thus, the PS programme for the 2015 parliamentary elections included a tax on legacies over €1m and the allocation of this revenue to Social Security. In our interview with Rocha Andrade, he stated that despite the estimated revenue given in the report (€100m/year), the measure had still not been studied and so the PS chose not to give further details in its programme (Interview 2). Similarly, the parties from the left did not discuss this tax in the electoral campaign or include it in their programmes. According to the BE Member of Parliament we interviewed, the tax was not omitted because of any lack of agreement on the measure but due to doubts about its feasibility and popularity. He added that the more the “upper classes”, who were most affected by the tax, were able to manipulate how it was perceived through the media, the greater the opposition to the tax became. On the other hand, PS preferred to focus on cutting other taxes and on the discourse of the reversal of austerity rather than making the introduction of a tax its electoral banner (Interview 2).

These elections led to the PS forming a government with the parliamentary support of the left-wing parties in the Assembly of the Republic, after making agreements with each of the parties - BE, the Portuguese Communist Party (PCP) and the Ecologist Party “the Greens” (PEV). This unprecedented situation created an opportunity for the introduction of measures like the inheritance tax despite not being included in the agreements defining the objectives through which the BE, PCP and PEV

guaranteed the minority Government of António Costa their support. According to the BE Member of Parliament, the measure was not a priority because it was expected to be difficult to implement. Nevertheless, the PS included the measure in its government programme (2015-2019).

According to the news published in *Dinheiro Vivo* and *Jornal de Negócios*, this led at the start of the legislature to a “race for living donations” to escape the tax even though there was no indication at the time whether it would go ahead (Tiago 2016). Rocha Andrade and the journalist we interviewed who was working on the matter both claimed that the imminence of the inheritance tax represented an opportunity for law firms to profit from donation processes. For the purposes of illustration, one law firm posted in its site that: “[...] the most sensible approach is to assume that the measure will advance [...] We believe that now is the time for trouble-free action and forward planning, before the tax “exists” (...).”³

During the preparations for the 2017 State Budget one year later, the tax was the subject of deliberation in a working party on Social Security made up of representatives from the Government, PS and BE. However, according to Rocha Andrade and the BE Member of Parliament, the conclusion was reached that the inheritance tax would not be a viable way of taxing assets due to its unpopularity and difficult application.

This unpopularity is confirmed in a Calouste Gulbenkian Foundation study on the perceptions of intergenerational justice; for example, when asked whether inheritances should be taxed so as to create a fund to be used by future generations, 50.4% of the respondents in the study disagreed (Maximiano 2018). Of the 49.6% who agreed with this measure, 8.2% felt that all inheritances should be taxed, 21.7% felt that the wealth of the recipient of the inheritance should be taken into account, while 19.6% believed the size of the inheritance should be considered (Maximiano 2018). The measure’s unpopularity was also heightened by the taxation on the transfer of businesses between family members through inheritance. According to Bank of Portugal data, businesses are the most important asset (35.4%) of the wealthiest families. Moreover, 99% of the Portuguese business fabric is made up of small and medium enterprises, frequently with family management (Pordata). In the opinion of the BE Member of Parliament, the measure goes against a certain “conservatism in Portuguese society which values the family and its relationship with property” (Interview 3). Moreover, it could be seen as an “attack” on private property, one of the fundamental values of the market economy. The survey of the news about the measure shows that nearly all articles between April 2015 and August 2016 were published in *Jornal de Negócios* and *Dinheiro Vivo*, two economic journals. The journalist we interviewed, who is connected to these publications, confirmed that the measure aroused interest in the business sector which, according to Rocha Andrade, was a major obstacle to the inheritance tax.

In relation to the enforceability of the tax, the Government and BE concluded that it was impracticable. First, because capital has a great potential to escape, making it necessary to increase inspection and creating the risk of the tax being too “expensive”, relative to the income collected. Second, the tax was not included in the dual taxation agreements at EU level so these would need to be revised, and this would entail a great technical and diplomatic effort (Interview 2). Lastly, according to Rocha Andrade, the inheritance tax could conflict with the strategy of attracting foreign investment, based on the attractive fiscal conditions for pensioners from central and northern Europe, for example, commonly known as “nonhabitual resident” (Interview 2).

³ Nuno Cerejeira Namora, Pedro Marinho Falcão & Associados, Sociedade de Advogados, «Fazer Partilhas Em Vida Para Fugir Ao Imposto», December 2015, <http://www.sociedadeadvogados.eu/newsletter/2015/12.php>.

In short, besides the high political cost of the measure due to its potential unpopularity, the tax was also abandoned because of its difficult application. It was in this context that the Additional Municipal Tax on Property (AIMI), otherwise known as the “*Mortágua* tax” emerged: a tax levied on taxpayers with real estate assets worth over 600 thousand euros. This tax was implemented with the 2017 State Budget and ultimately served as a tax on large fortunes, according to the BE Member of Parliament; and, according to Rocha Andrade, it did not raise the problems associated to the inheritance tax.

In 2019, the Left Bloc brought the tax back into the public debate. According to the BE Member of Parliament, the tax was included in its electoral programme more out of ideological conviction than pragmatism. However, PS dropped the proposal. This measure was never a priority for PS for the abovementioned reasons. Contrary to the 2015 parliamentary elections, the PS formed the government without needing parliamentary agreements. Nevertheless, it did negotiate measures with the parties to its left to allow the passage of the State Budget for 2020 but the inheritance tax was not considered.

Conditions that led to the non-implementation of a tax on inheritances (Inheritance Tax)

1. Unpopularity of the measure

The introduction of taxes is generally perceived to be unpopular. In the case of the inheritance tax, it is also felt that taxing inheritances is a socially sensitive issue that brings electoral costs for those who actively propose them. Moreover, no groups were formed in support of the measure when it was in the discussion stage; quite the contrary, in fact.

2. Complexity of the measure and the lack of scientific studies

The initial format and potential revenue from the measure resulted from the application of formats already in use in other countries (such as Ireland) and not from a sound study of the Portuguese situation; this made it difficult to adopt a strategy to communicate the potential short/medium term gains, and the losses should the measure not be implemented. The more complex the measure, the greater the need for studies, notably in relation to the easy movement of capital which would make taxation difficult; the incompatibility with other fiscal strategies (attracting foreign investment, for example, through nonhabitual residents); and the difficulties of making the measure compatible with dual taxation agreements currently in force between Portugal and other countries. Without certainty, the discussion on the measure ended up being played out in the media and the Government always tended to play a reactive rather than active role in this debate.

3. Adoption of an alternative measure

The taxing of immovable assets was made possible through the “*Mortágua* tax” in the 2017 budget, which was easier to apply. This measure also made PS abandon the idea of taxing assets through inheritances, as opposed to “paving the way” for the implementation of the inheritance tax later in the legislature.

5.

WORK



5.1

MEASURE IMPLEMENTED:

CHANGE IN THE CRITERIA FOR DISMISSAL DUE TO THE DISSOLUTION OF THE WORK POST

LAW NR 27/2014 OF 08 MAY

Overview of the measure

Between 2012 and 2014, the Government of the Social Democratic Party and the Social Democratic Centre-Popular Party (PSD/CDS-PP) introduced a change in the selection criteria for dismissal due to the dissolution of a work post. From 1976, whenever a company had to resort to this solution, seniority (first in, last out) was the criteria guiding the decision of which person would be dismissed in situations where there were various work posts with the same job description. After a long legislative process that included a veto by the Constitutional Court and strong resistance from the social partners and opposition, the Government reached a wording that was acceptable to Parliament and ratified by the President of the Republic, leading to Law no. 27/2014 of May 8. This wording determined that a set of hierarchically organised criteria would be used as the basis for dismissal, with performance being the most important.

Context of the measure

Portuguese labour law dates back to the post-dictatorship period and is therefore strongly influenced by the democratic political context that began in 1974 (Távora and González, 2016). In a scenario of low wages, political authorities developed a legal framework that aimed to maintain high levels of employment by protecting employees on permanent contracts (Fishman 2010).

Over the decades and notably since Portugal's entry into the European Economic Community (EEC) in 1986, successive governments, both centre left and centre right, have made this model more flexible. The liberalisation of the Portuguese labour market was part of a more comprehensive strategy to prepare the national economy for opening up to globalisation, trade, capital flows, and competition through economic liberalisation (Cardoso and Branco 2018).

The first important step in this liberalisation process came in 1989 with the adoption of the “labour package” by the PSD government led by Cavaco Silva (Decree Law nr. 64-A/89 of February 27). This vast set of reforms introduced a striking innovation in terms of the termination of the employment contract by extending dismissal to the dissolution of the work post (Rebelo, 2014). In 1991, the definition of dismissal of workers on open-ended contracts with just cause was again broadened, this time to include the worker's unfitness for the job as grounds for dismissal (Cardoso and Branco 2018).

Apart from these two reforms, Portuguese labour law on dismissals remained largely unchanged until the Eurozone crisis in 2009. In an attempt to tackle the steadily deteriorating economic and financial situation, the José Sócrates socialist Government, which had already resigned, requested external financial assistance in May 2011. This was made available by a set of three international organisations: the European Union (EU), the European Central Bank (ECB) and the International Monetary Fund (IMF) – the Troika. This moment was perceived by both the Socialist Party Government and the PSD-CDS as a window of opportunity to take more decisive steps towards the flexibilisation

of labour legislation (Moury and Standring, 2017). The measures included in the Memorandum of Understanding (MoU), signed by the Portuguese Government, PSD, CDS, and the Troika, included the alteration of the criteria for dismissal due to dissolution of the work post.

Implementation of the measure

On winning the 2011 parliamentary elections, the PSD/CDS-PP Government immediately started to implement the MoU. In the labour area, the Government rapidly established contacts with unions and employers' confederations to jointly assess the best way to implement the measures contained in the MoU. After negotiations, the various parties (with the exception of CGTP-IN (General Confederation of the Portuguese Workers) signed a Tripartite Agreement, "Commitment to Growth, Competitiveness, and Employment", in January 2012; this contained most of the MoU measures, including the amendment to the criteria for dismissal due to the dissolution of the work post (Social and Economic Council, 2012).

In the interviews we conducted, the representatives of UGT (General Union of Workers) – the central union that signed the agreement, stated that despite the loss of rights for Portuguese workers implicit to the agreement, these measures were crucial due to the serious economic situation the country was facing at the time, as well as taking into account the commitments made by the Portuguese Government to international organisations (Interview 16).

Employers' confederations broadly agreed with the terms of the Tripartite Agreement, including the amendment to the dismissal criteria. According to the former Secretary of State for Employment, Pedro Martins, "this was something employers welcomed as it valued productivity instead of seniority" (Interview 15). After gaining the support of the social partners, the Government began the legislative process to adopt the reforms of the labour legislation and, in February 2012, presented Draft Law nr. 46/XII to the Assembly of the Republic.

On the subject of dismissal due to dissolution of the work post, the Draft Law considered that the "mandatory application of strict legal criteria for the selection of the work post to be extinguished, [...] (required) the company to resort to a solution that may not best fit its needs or those of the workers" (Draft Law no. 46/XII). However, the choice of the person to dismiss should be in line with relevant and non-discriminatory criteria, under penalty of the dismissal being unlawful.

According to the former Secretary of State for Employment of the PSD/CDS-PP Government, Pedro Martins, changing the dismissal criteria would not only stimulate productivity, but also correct problems of generational equity given that the first in/last out logic was detrimental to younger workers (Interview 15). Despite opposition from the left parties in Parliament, the Draft Law was approved by a majority with parties supporting the Government, PSD and CDS-PP, voting in favour and PS abstaining, giving rise to Law no. 23/2012 of June 25. In this case, the fact that the Government had the support of the majority of members in Parliament was crucial for approval. In addition, PS was not in a position to oppose the measure as it was in the MoU, signed by a Government previously supported by it a few months earlier.

However, Members of Parliament from the Left Bloc (BE) and Portuguese Communist Party (PCP) questioned the constitutionality of the approved amendments of the Labour Law and requested the opinion of the Constitutional Court. Following the Court's evaluation, it declared some of the measures unconstitutional, notably the alteration of the criteria for dismissal due to the dissolution of the work post (Ruling 602/2013). According to the Constitutional Court, the arbitrary nature of the measure violated the principle of just cause in the dismissal provided for in Article 53 of the Constitution.

In 2014, the Government again sought to change the criteria for dismissal due to dissolution of the work post, putting forward Draft Law nr. 207/XII which dealt exclusively with this matter. According to Pedro Martins, the Troika was putting great pressure to move forward with the measure through a new wording (Interview 15). Moreover, the measure was important to the Government, which no longer considered the last in/first out rule the most suitable as it increased unemployment, notably youth unemployment.

The Government therefore proposed a set of relevant and non-discriminatory criteria that the employer had to comply with when selecting the worker to be dismissed, provided that the employers respected the legal requirement to provide grounds for dismissal that stems from the respective legal regime (Bill no. 207/XII). The criteria were as follows, in order of importance: performance, academic and professional qualifications, cost to the company, experience, seniority, and economic and family situation (Draft Law nr. 207/12).

Despite the social and political protests, the measure was approved and ratified giving rise to Law no. 27/2014 of May 8 as the Government enjoyed the majority support in parliament. This law is still in force, even though the PSD and CDS-PP coalition was replaced by a minority socialist Government with parliamentary support from BE, PCP and the Greens in parliament in 2016. There was little change to Labour legislation during the legislature from 2016 to 2019, and it was one of the sources of greatest tension between the socialists and their left-wing partners. The PS's intransigence on the reversal of changes to the labour legislation made during the crisis was one of the reasons for the non-renewal of agreements for parliamentary support between the PS and the parties to its left (Patrício 2019).

Conditions that permitted the implementation of the alteration to the criteria for dismissal due to the dissolution of the work post

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1. Economic crisis and external pressure

The high unemployment triggered by the crisis enabled the Government to frame the measures as solutions to stimulate job creation, especially amongst young people for whom the unemployment rate was particularly high at the time. In addition, Portugal was under external intervention and this was one of the measures contained in the MoU signed with the Troika.

2. Government tenacity and perseverance

The absolute majority in the Assembly of the Republic was crucial to the adoption of the measure. Given the political, institutional, and social resistance to the measure, the Government's insistence and persistence seems to have been a critical factor for its adoption.

3. Initial support from the social partners and the largest opposition party

An initial version of the measure was supported by unions (apart from CGTP-IN), employers and PS. Although these social partners later changed their position, this initial support was indicative of some consensus on the need to change something in this area.

5.2.

MEASURE NOT IMPLEMENTED: SINGLE EMPLOYMENT CONTRACT

Overview of the measure

One of the characteristics of the Portuguese labour market is its segmentation, in which workers with permanent contracts coexist with workers on fixed term contracts. To address this problem, the Socialist Party (PS) and the Social Democratic Party (PSD) considered the possibility of introducing a single employment contract which would substitute the fixed term and open-ended contracts by merging the characteristics of the two. Economists close to PS and PSD discussed this proposal, which the PSD had included in its electoral and government programme in 2011. However, the single contract was not implemented during the PSD Government even though correcting the segmentation of the labour market was one of the objectives of the Memorandum of Understanding (MoU) with the international creditors executed by the PSD. In 2015, PS even included the measure in preliminary drafts of its electoral programme but omitted it from the final version.

Context of the measure

The Portuguese labour legislation of the post-dictatorship period provided workers on open-ended contracts with strong protection, through collective bargaining for example, guaranteeing job security (Kovács 2004). The aim was to compensate for low salaries through strong labour protection. However, this protection was an obstacle to the flexibility of companies' human resources management, notably with regards dismissals (Kovács 2004). In order to respond to companies' demands for flexibility, the fixed term contract was introduced in 1976 through Decree Law nr. 781/76 of 28 October; however, this did not affect pre-existing open-ended contracts (Cerejeira 2015). The creation of fixed term contracts therefore resulted in two parallel contractual systems with different levels of protection –labour market segmentation.

The high level of workers on fixed-term contracts has been given as one of the main problems of the Portuguese labour market. According to Eurostat, in 2018, 22% of workers with a contract were in this situation, a much higher percentage than the European Union average (14%). This is aggravated by the large number of self-employed workers – 16.5% of all workers (Pordata), also higher than the EU average (14.2%) (ILO/Pordata 2018). In addition to greater professional stability, the workers with open-ended contracts enjoy greater employment protection (for example, redundancy pay) and social protection (easier access to unemployment benefits) than workers on fixed-term contracts and the self-employed. From the generational perspective, there is also some disparity among workers in that most workers on fixed term contracts are aged between 18 and 24 years (Cerejeira 2015, Silva and Pereira 2013). The single contract therefore sought to “correct” the labour market segmentation.

(Non) Implementation of the measure

The proposal of a single contract entered the public debate in Portugal in 2010 at the hand of PSD. More specifically, the measure was proposed by a group called “Mais Sociedade” (More Society) which had drawn up PSD’s electoral programme, namely the reformist agenda of Passos Coelho, who was elected president of PSD in 2010 and later Prime Minister (2011-2015). Essentially, the measure aimed to merge the two contractual systems (open-ended and fixed term) to bring balance to the contracting models, job security and the flexibility of companies. The proposal was also in keeping with the OECD which criticised the Portuguese labour market for being much more rigid than other countries and for its high level of duality (OECD 2019). Therefore, the single contract would be an open-ended contract, but it would have a longer probationary period and would allow economic reasons to be invoked as grounds for individual dismissal, which could only be done in collective dismissal. In the case of individual dismissal, economic reasons could only be given as the grounds for the termination of the contract due to the dissolution of the work post. PSD claimed that the measure also fostered job creation and workers’ mobility between companies. However, according to the electoral programme, the measure would not have retroactive effects.

This programme was prepared when the Portuguese government was negotiating the Memorandum of Understanding with the Troika (European Commission, European Central bank and the International Monetary Fund) and all parties with parliamentary seat at the time except the Left Bloc, the Portuguese Communist Party and the Ecologist Party- the Greens, who refused to participate in the negotiations. The section on the labour market was one of the longest and referred to the need to implement reforms in labour legislation, notably with a view to combatting labour market segmentation, fostering job creation and facilitating workers’ mobility. Although the MoU did not mention the single contract, its objectives coincided with PSD’s proposal.

When PSD won the parliamentary elections in June 2011, it formed a coalition government with CDS-PP and included the single contract in the government programme for 2011-2015. The terms of the measure in the government programme were almost exactly the same as those of the electoral programme (Programme of the XIX Constitutional Government p.32). Even though not explicitly mentioned in the MoU, according to Pedro Martins, Secretary of State for Employment between 2011 and 2013, the Troika favoured the measure, unlike the employers, who preferred to continue being able to opt for fixed-term contracts, or the unions, which feared jeopardising workers who, until then, had had an open-ended, stable and safe contract.

In interview, Pedro Martins gave three reasons for the proposal not being the best way to combat labour market segmentation. First, there was no consensus on its effectiveness. The actual Secretary of State said that a measure flexibilising open-ended contracts without eliminating fixed-term contracts would not antagonise the employers so much and that, even so, it would encourage the use of open-ended contracts. Second, the crisis in the labour market had already led to a series of changes and so it would not be advisable to implement a measure as complex as the single contract. Third, there was a possibility that the measure would be thrown out by the Constitutional Court and would create short-term political instability (Interview 15). In fact, article 53 of the Constitution states “workers are guaranteed job security and dismissals without just cause, for political or ideological reasons, are prohibited”. The flexibilisation of dismissals with the single contract therefore raised questions, notably in relation to dismissal due to the financial health of the company, which is only very exceptionally contemplated in the Portuguese legislation. As a result, the single contract was not a priority for either the Government or the Troika, given the various measures that were planned for the labour market and the opposition from employers and unions (Interview 15).

The single contract returned to the political debate during the 2015 parliamentary elections. Mário Centeno, who had already advocated the single contract in 2012 as a way of combatting labour market segmentation (Centeno and Novo 2012), coordinated the document “Uma Década para Portugal” (A Decade for Portugal) on which the economic dimension of the PS electoral programme for the 2015 parliamentary elections was based. The document refers to the single contract as the “contract for employment equality”. The proposal was included in the draft electoral programme presented in May 2015 but was the subject of internal opposition and ultimately excluded from the final version of the programme (Expresso/Lusa 2015). In addition to the internal opposition, the main protests to the measure came from the Left Bloc and the trade unions (UGT and CGTP) according to the news at the time; José Abraão, leader of UGT, was concerned that the measure could lead to greater job insecurity (TSF 2015).

Finally, in May 2015, António Costa, then General Secretary of the Socialist Party and future Prime Minister, closed the issue of the single contract for the PS at the congress of the socialist strand of CGTP when he stated that there were no reasons for implementing it. As an alternative, António Costa defended combatting the abuse of the fixed-term contract and trying to limit its use, as well as enabling employers and workers to reach agreements above “the legal minimum” to avoid dragging labour conflicts into court, but without ever allowing individual dismissal without just cause.

Conditions that prevented the implementation of the single employment contract

1. Lack of consensus

Opposition from the unions, left wing parties and, above all, the employers. As representatives of the workers, both the unions and left-wing parties saw the single contract as yet another way of limiting employment rights. The employers disagreed with the measure as it removed the flexibility in the management of human resources provided by segmentation. Lastly, there was no scientific consensus on the whether the measure would effectively resolve labour market segmentation.

2. Lack of external pressure

This measure was not in the MoU and it was not considered one of the most urgent of the reforms required by the Troika.

3. Constitutional constraints

There were some legal obstacles to the implementation of the single contract, notably in terms of respect for job security and the protection of workers enshrined in the Constitution. Hence, individual (non-collective) dismissals on economic grounds could be unconstitutional insofar as they could constitute dismissals without just cause.

CONCLUSION



According to Portuguese policy makers, it is difficult to implement long-term policies that foster intergenerational justice (Moury 2018). Notwithstanding, our study showed that measures with long-term effects have been adopted in Portugal in the last decades – some of which were extremely innovative and made the country an international reference.

In this context, the following key question guided our research: in which circumstances were policy makers able, or willing, to impose short-term costs to invest in solutions to long-term social problems?

A major finding of our study reveals that various means are required to achieve long-term reforms: there is no single way of doing so. This is in line with authors who have identified the factors that permit ambitious structural reforms (Williamson 1994, Tompson 2009).

From among the various factors we identified as important to the implementation, or non-implementation, of long-term policies, first and foremost we highlight the willingness of government to involve the opposition and relevant stakeholders, and for commitments to be made. This was a significant factor for the approval of long-term measures as it reduced the likelihood of protests against them. A good example of this is the decriminalisation of the consumption of drugs. The issue was discussed in parliamentary committees, had the support of the radical left and the President of the Republic, and involved scientists and the associative movement as well as important political figures on the right. The involvement of stakeholders was also of relevance to the extension of parental leave and to the TRH. In the case of parental leave, the Government ensured that the measure did not imply a direct cost for either the employers or the workers, resulting in both giving their agreement. In the case of TRH, the Government negotiated the conditions of the measure with the agricultural sector – the largest user of water in Portugal – so as to control the opposition. In contrast, in the case of the single employment contract, the strong resistance from employers and unions on one hand, and divergences within the PSD/CDS-PP Government in 2011 and the PS Government in 2015 on the other, meant that no attempt was made to reach consensus so that the measure could move forward. This was also the situation with hospital management; like the labour market, health is a salient area of public policy that tends to be polarised and where it is difficult to focus the debate on the structural dimension.

However, this search for consensus was not always enough for the measures to be passed. In the case of changing the criteria for dismissal due to the elimination of the work post, the initial consensus between PSD, CDS-PP, PS and the social partners was lost when the PSD/CDS-PP Government had to make alterations to the law after it was blocked by the Constitutional Court. The reformulation did not have the support of the other parties and the Government advanced unilaterally with its implementation. In this respect, the Government's persistence and leadership were vital to the approval of the long-term measure.

Secondly, for roughly half the long-term measures approved, scientific production and communication was found to be important to the drafting of the laws, the justification of their adoption and thus their legitimation. This was crucial in the case of the TRH and the decriminalisation of the consumption and possession of drugs. In both, the investment in scientific knowledge and the involvement of experts were essential to anchor the solutions to the key challenges on scientific evidence. In the case of drugs, specifically, the SICAD annual reports made information available that demonstrated its benefits and made the risks of its absence abundantly clear. In contrast, the lack of studies was one of the reasons why the inheritance tax, for example, did not move forward. Without concrete facts to draw on, the Government was never able to effectively communicate the benefits of the measure, and without proof, the media ended up leading the debate and the Government tended to be more reactive than active. The same happened with the mapping of habitats when the Government made no attempt to effectively communicate the benefits of the measure to the landowners and local authorities. This was aggravated by the fact that there was no strong pressure group to defend the measure, which allowed successive governments to delay its implementation.

Scientific production and communication are particularly important in the case of measures that are highly complex either due to the size of the problem to be resolved or the sphere in which the solution takes place. It is very hard to use family measures, for example, to influence the birth rate given that numerous factors are involved in the individual choice of whether or not to have children. The problem of the birth rate cannot be resolved simply through family measures but entails more deep-seated changes such as corrections in the labour market. A public policy area also becomes more complex when there are various levels of decision making, complicating government action. In this scenario, scientific studies and communication are a first step towards taking action and, without this step, government action becomes more difficult as in the case of the inheritance tax, for example, analysed above.

Third, the use of European constraints to lessen internal opposition facilitated, for example, the implementation of the TRH: the PS Government argued that the tax was a European demand although the Water Framework Directive did not explicitly require it. Our study also showed that an external influence can serve as a window of opportunity for the adoption of long-term measures. In the case of extending parental leave in 2009, the resurgence of “Keynesian” policies in the European Union whereby Member States were encouraged to spend on social policies allowed the Government to propose a policy it wanted but which, in other political and economic circumstances, would have been difficult to adopt.

In relation to this point, the 2010-2014 crisis was an important moment for the approval of long-term measures. This was the case, for example, of the new criteria for dismissal, which were adopted due to a combination of pressure from the Troika and the ideological position of the PSD/CDS-PP Government (2011-2014) which used the context of the bailout to lobby in favour of the measure. However, as noted by studies in this area, policy makers should use crises with caution because, when they end, the reforms run the risk of being reverted (Rickard and Caraway 2019, Moury, Cardoso and Gago 2019). For example, the Extraordinary Solidarity Contribution (CES) was reverted once the Memorandum of Understanding with the creditor organisations came to an end.

Fifth, the literature cites a clear electoral mandate as an important condition for the adoption of long-term measures; however, it was not found to be one of the most relevant factors for the policies in our analysis. Neither the inheritance tax nor the single employment contract was implemented despite being in the electoral programme of the PS and PSD governments. Although research shows that most of the measures in the electoral programmes in Portugal are implemented (Moury and Fernandes 2018), our findings reveal that a long-term measure is not necessarily implemented because it is part of the programme.

Lastly, long-term policies are more easily adopted when the governments are under pressure to resolve a problem. As noted above, drawing up and implementing long-term reforms is a lengthy process and this is not in keeping with the mediatic times we live in; these reforms require persistence, involve many resources and the results may have immediate electoral costs and benefits that are only visible in the future. This means that governments have little incentive to adopt measures with long term effects. What our study shows is that public opinion, organised civil society (NGOs, social partners, social movements) and the media play a vital role in this context. Social pressure to respond to a given social problem may create the political incentives for governments to prevail over the power of immediacy. In democracy, the more social participation there is, the more likely the Government is to move towards long-term policies. This was a key factor in the case of the decriminalisation of drugs. On the other hand, the lack of pressure to take measures was one of the reasons for the slow implementation of the mapping of natural habitats.

In the following table, we try to assess the weight of each of these variables by presenting a truth table for each of the ten policies analysed herein. This enables us to identify the (combinations) of conditions that are sufficient and/or necessary for the implementation and the resilience of a long-term policy.

Table 1
Truth table

Policy	Search for consensus with stakeholders	Scientific production and communication	External constraint	Clear electoral mandate	Saliency of the issue	Implemented and resilient
TRH	1	1	1	1	0	1
Habitats	0	0	1	0	0	0
Decriminalisation of the use and possession of drugs	1	1	0	1	1	1
Hospital Management	1	1	1	0	0	0
Parental leave	1	1	0	1	1	1
Family allowance	0	0	0	0	1	0
CES/CS	0	0	1	0	0	0
Inheritance tax	0	0	0	1	0	0
Criteria for dismissal	0	1	1	0	0	1
Single contract	0	0	0	0	0	0

It can be concluded from Table 1 that no single condition is sufficient to guarantee the adoption of a long-term policy. In other words, there is no one recipe for success. However, the truth table also shows us that the search for consensus with stakeholders is a necessary condition. That is, even though the search for consensus does not guarantee success, it is a requirement insofar as none of the successful and resilient policies we analysed were approved by the government without previously searching for consensus from the interested parties (in the case of changing the criteria for dismissal due to the elimination of the work post there was an initial consensus before the Constitutional Court's intervention). While the involvement of stakeholders in the drawing up of the reform carries the risk of threatening its original objective, it seems to be a necessary price to pay for long-term and long-lasting change, at least in Portugal.

What seems to be sufficient to guarantee the adoption of resistant long-term policies is the combination of the search for consensus with: i) the salience of the problem for the population or ii) the existence of external constraints. Whenever one of these conditions was satisfied, the reform was approved and survived. This means that if the measure is not salient, the Government can get around this situation by using external constraints to justify the need to implement the measure – but only if the Government makes an effort to take the objectives of the stakeholders into account.

Based on the analysis of the 10 long-term measures studied herein, we make the following recommendations:

1. Involve stakeholders. Be willing to make concessions, for example, by enabling the reform to be phased in rather than taking immediate effect.

2. Use European constraints to get around sectorial vested interests. But be aware of the risk of reversals in the post-crisis phase. It is therefore important to consider mechanisms that can “lock the policy in”. This entails seeking consensus with the stakeholders and the opposition, even when there is no external pressure.

3. Invest in the production of knowledge about the measure and effectively communicating the gains it will bring and the losses that will come from non-implementation, during both the electoral campaign and the Government's mandate. The electoral mandate is not, in itself, a condition for the approval of long-term measures, which makes effective communication vital. Citizens should be informed of the risks of inaction so that they can become sources of pressure that stimulate long-term policies. The more costly inaction is in the present, the more likely this level of pressure will occur, but it could and should also be fostered through informing the population.

4. Consider the constitutional limits or, as others have proposed (Ekeli 2007; Ekeli 2009), introducing ways of incorporating the rights/needs of future generations into the Constitution, for example by limits on the use of natural resources or the protection of biodiversity.

LIST OF INTERVIEWS

Interview 1

Francisco Nunes Correia, Former Minister of the Environment in the PS Government, Lisbon, 16/04/2020

Interview 2

Carlos Pimenta, Former Secretary of State in the PSD Government, Lisbon, 17/04/2020

Interview 3

Célia Ramos, Former Secretary of State for Land Use Planning and Nature Conservation, PS, Lisbon Government, 14/04/2020

Interview 4

Jorge Palmeirim, Biologist and President of the League for the Protection of Nature, Lisbon, 05/05/2020

Interview 5

*, Lisbon, 11/12/2019

Interview 6

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Interview 7

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Interview 8

José Vieira da Silva, Former PS Minister of Solidarity, Work and Social Security, Lisbon, 04/02/2020

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Sónia Fertuzinhos, PS Member of Parliament, Lisbon, 30/04/2020

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Fernando Rocha Andrade, Former Secretary of State, Coimbra, 03/3/2020

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* Requested anonymity.

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