INTERNATIONAL LABOUR OFFICE

Governing Body
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Institutional Section

INS

SEVENTH ITEM ON THE AGENDA

Eighth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Portugal of the Dock Work Convention, 1973 (No. 137), submitted under article 24 of the ILO Constitution by the Union of stevedores, cargo handlers and maritime checking clerks in central and southern Portugal, the Union XXI – Trade union association of administrative staff, technicians and operators at the container cargo terminals in the Port of Sines, the Union of dockworkers in the Port of Aveiro, and the Union of stevedores, cargo handlers and checking clerks at the Port of Caniçal

I. Introduction

1. In a communication dated 22 March 2013, supplemented by further information sent on 28 January 2014, the Union of stevedores, cargo handlers and maritime checking clerks in central and southern Portugal, the Union XXI – Trade union association of administrative staff, technicians and operators at the container cargo terminals in the Port of Sines, the Union of dockworkers in the Port of Aveiro, and the Union of stevedores, cargo handlers and checking clerks at the Port of Caniçal, submitted a representation to the International Labour Office alleging non-observance by Portugal of the Dock Work Convention, 1973 (No. 137).

2. The Dock Work Convention, 1973 (No. 137), was ratified by Portugal on 9 January 1981, and remains in force in that country.

3. The following provisions of the ILO Constitution concern the submission of representations.

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations, as amended by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation and informed the Government of Portugal thereof on 26 April 2013.

5. At its 319th Session (October 2013), the Governing Body decided that the representation was receivable and appointed a tripartite Committee for its examination. This Committee is composed of Ms Rosanna Margiotta (Government member, Italy), Mr Kris de Meester (Employer member, Belgium), and Mr Sam Gurney (Worker member, United Kingdom).

6. The Government of Portugal sent its observations in communications dated 30 January and 24 April 2014.

7. The Committee met on 11 November 2014 and asked the Office to invite the Government and the workers' organizations to submit additional information on four specific points. The Government of Portugal submitted additional information on 29 January 2015.

8. The Committee met on 26 March and 9 June 2015 to examine the representation and adopt its report.

II. Examination of the representation

A. Allegations of the complainant organizations

9. In a communication dated 22 March 2013, supplemented by information sent on 28 January 2014, the complainant organizations state that Portugal ratified Convention No. 137 under Government Decree No. 56/80 of 1 August 1980 and that, pursuant to article 8(2) of the National Constitution, duly ratified or adopted international agreements are directly applicable in domestic law once they have been officially published.

10. The complainant organizations recall that the legal framework governing dock work was established under Legislative Decree No. 280/93 of 13 August 1993, of which section 2(a) stipulates that the dock labour force shall be exclusively comprised of workers in possession of a card certifying that they are duly employed and shall perform their duties under an employment contract of an indefinite duration. According to the complainant organizations, this national legislation fulfilled the main objective of Convention No. 137, which was – and still is – to guarantee the stability of employment and remuneration of dockworkers. For their part, dockworkers should be available to carry out regular work in the port and depend on their work as such for their main annual income. The collective agreements concluded at the level of the various national ports, established in accordance with the Convention, also set out to attain this objective.

11. The complainant organizations allege, however, that Act No. 3/2013 of 14 January 2013, which amended the regulations governing dock work, introduced measures infringing the provisions of Convention No. 137. This Act, in particular by amending section 2(a) of Legislative Decree No. 280/93, introduced a new definition of the dock labour force that omits a number of specific characteristics provided for under the Convention. Furthermore, according to the complainant organizations, the Act also introduced the concept of temporary employment relationships, which are incompatible with Convention No. 137, inasmuch as it de facto places the workers recruited under these conditions outside the scope of the Convention.

12. The complainant organizations point out that Article 1 of Convention No. 137 contains clearly expressed objectives, namely that the dockworkers that it covers be guaranteed the lasting improvement of their situation by such means as regularization of employment and stabilization of income, and other measures relating to their conditions of work and life. In return, dockworkers are obliged to be available, at any moment, to undertake work in the ports. In Article 3(1), the Convention also provides for the establishment and maintaining of registers for dockworkers, to be periodically reviewed so as to achieve levels adapted to the needs of the port. Furthermore, the Convention confirms, under Article 3(2), that registered dockworkers shall have priority of engagement for dock work. According to the complainant organizations, it is clear from the provisions of the Convention that the dockworkers under consideration include only those who are employed on a permanent or regular basis and who derive their main annual income from this work.

13. Furthermore, the complainant organizations recall that the concept of the dock workforce contained in section 2(a) of Legislative Decree No. 280/93 was in conformity with the approach of Convention No. 137, because it applied to: "all workers holding an appropriate occupational card, who are employed as cargo handlers under an employment contract of an indefinite duration". However, Act No. 3/2013 totally changed the content of section 2(a) of Legislative Decree No. 280/93 by amending the definition of the dock workforce, which now covers: "all workers who have appropriate skills or occupational qualifications to carry out their work, are involved in handling cargo and are covered by a labour contract".

14. According to the complainant organizations, this amendment to the definition of the dock workforce sets out to incorporate all workers involved in cargo handling, irrespective of the terms of their employment contracts, including workers employed on a daily contract or for any period of time, thereby precluding any regularity or continuity in the employment relationship. In fact, the amendment did away with the basic characteristics of dockworkers' occupational qualifications, in particular the requirement to hold an occupational card entitling them to do their work and the existence of a contractual employment relationship of an indefinite duration. The adoption of Act No. 3/2013 implies that all workers are considered to be an integral part of the dock workforce as soon as they are recruited under a temporary or fixed-term contract, irrespective of whether this is only

for a specific working period or on a casual basis, or for a very short-term work contract or one of a longer duration, but still limited in time. Section 7 of Act No. 3/2013 acknowledges the temporary or fixed-term employment relationship in ports, stating that: (1) the provisions of section 142 of the Labour Code, approved by Act No. 7/2009 of 12 February, shall apply to cargo handling, provided that the total duration of the short-term contracts concluded with the same employer for handling cargo shall not exceed 120 days of work in a calendar year; (2) the fixed-term contract for cargo handling may be concluded for a period of less than six months, provided that its duration shall not be less than that foreseen for the task or service to be performed; (3) the renewal of fixed-term contracts for cargo handling shall not be limited, but may not exceed three years; and (4) cargo handling in the form of an intermittent service shall be authorized.

15. The complainant organizations are of the opinion that the employment contracts introduced under section 7 of Act No. 3/2013 are not, on account of their temporary nature, in line with Convention No. 137, given that they fail to comply with the objectives of permanent and regular employment contained therein (Article 2(1) of the Convention). Not only are these workers under a temporary contract not obliged to be available to undertake regular work in the port, they are also precluded from relying on this work for their main annual income. As a result, these workers, who do not benefit from an employment contract of an indefinite duration, cannot be considered as being incorporated in the dock workforce within the meaning of Convention No. 137.

16. Furthermore, the complainant organizations consider that by withdrawing the requirement that dockworkers be in possession of an occupational card from the definition of the dock workforce, the Act infringes the provisions of Article 3 of Convention No. 137.

17. The complainant organizations therefore allege that by introducing this new definition of the dock workforce, the national legislation clearly infringes Convention No. 137 as it establishes a scheme allowing workers recruited for a specific period of time for limited or casual work to be incorporated into this definition and thereby benefit from the same employment protection reserved for dockworkers working on a permanent or regular basis, to which the Convention refers.

18. The direct outcome of the 2013 legislative reform is the increasing employment of casual workers recruited under temporary contracts to the detriment of those who have made the occupation of dockworker their source of permanent and regular employment, which has forced the trade unions in the sector to take strike action. The complainant organizations denounce the fact that workers in ports who have made the occupation of dockworker their source of permanent and regular employment no longer have priority of engagement for available jobs, as provided for under the Convention.

19. According to the complainant organizations, the possibility of being able to review periodically the strength of the registers so as to achieve levels adapted to the needs of the port, as specified under Article 4 of the Convention, should not justify considering those workers recruited on a casual basis to respond to ad hoc needs as being an integral part of the dock workforce alongside dockworkers who enjoy a permanent contractual relationship.

20. Finally, the complainant organizations recall that, generally speaking, industrial relations in the country's ports have been regulated by collective agreements concluded at the level of each port. They refer to the 2012 collective labour agreement applicable in the ports of Douro and Leixões, the 2001 collective agreement applicable in the Autonomous Region of Madeira, and the collective agreement in the port of Praia da Vitória (Azores). In each of these collective agreements, there is a specific provision that defines the dock workforce as being made up of dockworkers who perform an occupational activity under an employment

contract of an indefinite duration. The complainant organizations provide various examples of the collective agreements in force in the country's ports (on the mainland) and in the autonomous island regions of the Azores and Madeira.

21. Recalling the wording of Article 7 of Convention No. 137, according to which "the provisions of this Convention shall, except in so far as they are otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations", the complainant organizations regret the adoption of an Act that unnecessarily overlaps the provisions of Convention No. 137 and the existing collective agreements between the social partners in the sector. The complainant organizations denounce not only the fact that the abovementioned provisions of Act No. 3/2013 contravene Convention No. 137, but that section 6 of this same Act stipulates that the provisions contained in collective agreements which are contrary to Legislative Decree No. 280/93 of 13 August 1993, as amended by the Act of 2013, must be brought into line within a period of 12 months after the Act has entered into effect, failing which they will be invalid. In other words, the national legislature is requiring the signatory parties to collective agreements in the port sector, concluded in accordance with Convention No. 137, to bring these agreements into line with the provisions of Act No. 3/2013, failing which they will be null and void. According to the complainant organizations, the national legislature once again exceeded its competence by unilaterally imposing the amendment of collective agreements concluded in the port sector.

22. In concluding, the complainant organizations call for the full respect of Convention No. 137, which implies removing the definition of the dock workforce contained in section 2(a) of Act No. 3/2013 and reintroducing the previous definition contained in section 2(a) of Legislative Decree No. 280/93 of 13 August 1993 into the national legislation pertaining to the port sector.

B. The Government's observations

23. In its communication dated 24 January 2014, the Government states that the new Act No. 3/2013 pertaining to work in ports is in keeping with both the letter and the spirit of Convention No. 137. The Government recalls that, given the context of technological change that characterized the sector when the Convention was in the process of being adopted, the Convention's main objective was to guarantee protection to dockworkers throughout their working life by applying measures relating to the conditions under which they obtained a job and the level of performance required. The Convention's second objective was to anticipate to the greatest extent possible – and at any moment – fluctuations in work and the workforce required for the economic and social viability of port activities. Convention No. 137 therefore contains generic formulations that must obviously be adapted to the situation in each country and be amended whenever necessary. These formulations include the definition of dockworkers and dock work, of permanent or regular work, of minimum periods of employment or income, and of registered dockworkers.

24. The Government observes the Convention's recognition that ports should adopt the best available techniques to reduce the time ships spend in ports to lower transport costs. These developments and their repercussions must be accompanied by an improvement in working conditions in this sector of activity. Referring to Article 2(2) of the Convention, which provides that the dockworker's protection is contingent upon the economic and social situation of the country and port concerned, the Government explains that this balance is key to the new port regulations that set out to modernize the legal framework governing dock work with a view to making it more flexible and in accordance with the provisions of the Labour Code. The Government specifies that this approach is in line with the

Memorandum of Understanding on Specific Economic Policy Conditionality, signed on 17 May 2011 by Portugal, the European Commission, the European Central Bank and the International Monetary Fund, which expressly provides that the legal framework governing dock work be revised so as to make it more flexible and closer to the provisions of the Labour Code. In this respect, the Government adds that reviewing dock work regulations was only one of the components of the national global objective to cut port expenditure, in other words costs inherent in port activities. There were two further targets: to reduce dues for using ports, which were collected by the port authorities, and to cut rates imposed by operators of port terminals, by overhauling concession agreements. As a whole, the national global objective has made it possible to cut costs in the region of 25 to 30 per cent.

25. The Government states that the port sector plays a major role in Portugal's economy, and that adopting measures to increase the efficiency of cargo handling and reduce the costs of this activity were therefore necessary. The dock workforce accounts for one of the most significant items in the cost structure; regulations on dock work dated back more than 20 years (Legislative Decree No. 280/93 of 13 August 1993) and had never been amended, despite the technological innovations in ships and port equipment. Added to these technological considerations is the fact that skills are more specialized and the quality of dockworkers is higher, as well as the need to correct the injustices encountered by workers who wish to enter the occupation or who suffer from an unfair distribution of work.

26. The Government states that the Act of 2013 has reduced the range of activities involved in the handling of cargo defined in 1993, and they now only include docking and undocking, supervision, loading and unloading, transhipment and the handling and storing of goods. Apart from this amendment, Act No. 3/2013 reviewed the concept of "the dock workforce". The new legal framework particularly emphasizes the need for workers to possess competences and skills in performing specific tasks. In order to carry out the duties of a dockworker, a person now has to show proof of his or her qualifications and have a labour contract in accordance with the labour legislation in force, subject to the specific characteristics of the sector.

27. The Government draws attention to the fact that the legislative amendment adopted in 2013 was undertaken in the light of the provisions of Convention No. 137. As regards the definition of dockworker, the Government recalls that the Convention specifically stipulates, in Article 1(2), that this term shall be defined by law and practice, and it does not impose a model employment relationship – such as a contract of an indefinite duration. According to the Government, the Convention does not provide for any particular type of contractual relationship, and neither does it require that dockworkers should have a regular and permanent job. The issue of the regularity or permanence of employment in ports is not contingent upon the type of employment relationship established between the dockworker and the employer. Depending upon the situation prevailing in the port and/or country, the Convention calls upon the national legislature to establish rules applying to dockworkers as a whole in order not to favour one worker over another and to share the available work among them. Consequently, the Government considers that it was free to define the concept of dock work and the dock workforce in Act No. 3/2013, as it had done in Legislative Decree No. 280/93. In its opinion, the only limitations prescribed by the Convention concern the need to protect employability and tackle precarious jobs.

28. The Government recalls that, under Article 1(2) of the Convention, member States are bound, as part of their legislative activities, to consult those bodies directly concerned (employers' and workers' organizations). The Government states that it fully complied with this obligation inasmuch as a process of discussion and social dialogue preceded the adoption of Act No. 3/2013, in which the authorities concerned and the most representative employers' and workers' organizations in the port sector were involved. According to the Government, the most representative cross-section of all the operators and stakeholders in

the sector came together at the negotiating table to ensure that the legislative outcome would reflect the balance of interests of all those present. The bodies consulted included employers' organizations (Association of Port Operators of the Ports of Douro and Leixões, Association of Operators of the Port of Lisbon, and the Sousa Group of the Autonomous Region of Madeira), dockworkers' organizations (the General Union of Workers (UGT), the National Federation of Unions of Port Workers of Portugal (FNSTP), and the Common Trade Union Maritime-Port Front), representatives of port users, the port administrations of Leixões, Aveiro, Lisbon, Setúbal and Sines, representing the mainland ports, and the Port and Maritime Transport Institute (regulating authority of the sector).

29. The Government encloses the detailed schedule of meetings for discussing the bill to amend the legislation, which took place from July to September 2012, although they were perturbed by strikes called by the Common Trade Union Maritime-Port Front in August 2012. It maintains that the text of Act No. 3/2013 is not therefore the outcome of unilateral drafting and it was not drawn up without consultations and against the interests of the social partners. Its final wording is the result of the participation of all the parties in the sector after months of social dialogue, which was endorsed by the Agreement on the Port Labour Market on 12 September 2012. The Government makes it clear that this Agreement was signed by all the employers' organizations consulted, as well as by the UGT and the FNSTP. A number of dockworkers' trade unions admittedly distanced themselves from the social dialogue agreement, despite the fact that they were invited to participate in all stages of the negotiation.

30. Furthermore, in order to encourage all the stakeholders to support the new legal framework, the Government invited the trade unions and employers' organizations on 27 November 2012 – before the Parliament adopted the law – to sign an agreement on the application of the new legal framework governing the port sector, which guaranteed job security and the maintenance of existing working conditions to all dockworkers already employed. The Government is of the opinion that this gesture is proof that Act No. 3/2013 does not set out to make working conditions in the sector more precarious or encourage the dismissal of workers, and neither will it result in this situation. The Government states that the employers' organizations made a commitment, under this agreement, to:

(a) safeguard the jobs of all their dockworkers employed at present under a contract of an indefinite duration, irrespective of whether they are part of their own workforce or of that in port enterprises in which they have shares, guaranteeing that the implementation of the new port regulations shall not result in any dismissals, including in the case of those dockworkers assigned to tasks that shall no longer be classified as "dock work" after the application of the new law;

(b) guarantee work to all those dockworkers engaged under an employment contract of an indefinite duration, provided that there is not a significant drop in demand for port services;

(c) continue to comply with the pay scales in force of all dockworkers at present under a contract of an indefinite duration, and to apply them to all their workforce, including those workers who, in the light of the new legal framework, shall no longer be considered as dockworkers, in order to ensure that no one shall lose their contractual level of remuneration following the implementation of the new law;

(d) submit, before the end of the current year (2013), a new draft collective agreement in ports in which the employers rightly assume that the one in force is incompatible with the new legal framework; or, if it is agreed that it undermines the development potential of the port economy, to adapt it to the new legal framework; and, especially, to modernize the port labour matrix to increase labour productivity, cut operational costs in ports and thus stimulate the competitiveness of national ports.

31. The Government is of the opinion that the process leading up to the adoption of Act No. 3/2013 was conducted in accordance with the manner prescribed by Chapter IV of the Dock Work Recommendation, 1973 (No. 145), in view of the need to establish a climate of confidence and continuing cooperation between the dockworkers and their employers, thereby avoiding disputes and tensions, which would be conducive to the introduction of social and technological changes.

32. As regards the need to adapt the collective agreements in force to the new legal framework, the Government states that Act No. 3/2013 does not eliminate the scope for freedom offered by collective bargaining, as claimed by the complainant organizations, but provides that its amendments shall only enter into effect after a period of 12 months, during which time the collective agreements in force will be brought into line with the new legislative framework. All the trade unions, even those that have not signed the Port Labour Market Agreement of 12 September 2012, are invited to participate in the bargaining process on collective agreements.

33. As regards the definition of the dock workforce, the Government questions the complainant organizations' interpretation that only workers with a contract of an indefinite duration may be included in this definition and, consequently, that the Convention provides that all dockworkers should be recruited for an indefinite period of time. According to the Government, the Convention states, under Article 2(1), that it shall be national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable. Furthermore, Article 2(2) provides that dockworkers shall be assured minimum periods of employment or a minimum income (as established under national legislation). It also makes clear that the extent of the "minimum periods of employment or a minimum income" shall be contingent upon "the economic and social situation of the country and port concerned". According to the Government, a close reading of the Convention does not reveal any preference (either implicit or explicit) for any particular type of contract (indefinite duration or fixed term). On the contrary, it clearly expresses the idea that the employment relationship should be linked to a country's economic and social situation at a given moment.

34. Referring to the Recommendation No. 145, the Government recalls the wording in Chapter III, Section A, Paragraph 7 of the Recommendation, to the effect that the employment relationship between the employer and the dockworker shall take the form of permanent or regular employment in so far as practicable. In other words, the working relationship is determined either by a permanent or regular job. When the economic and social situation is difficult, as is the case in Portugal, there is an obligation to guarantee employment and/or a minimum income. In this respect, Paragraph 8(2) of the Recommendation specifies the following possibilities: (a) employment for an agreed number of hours of shifts per year, per month or per week; (b) remuneration in the form of "attendance money"; (c) unemployment benefit when no work is available. The Recommendation also insists on the fact that efforts should be made to protect the interests of workers, and to avert or minimize as far as possible any reduction of the workforce, without prejudice to the efficient conduct of dock work operations (Paragraph 9).

35. The Government states that, in the light of the above comments, Act No. 3/2013 is in conformity with Convention No. 137 and Recommendation No. 145. As regards bringing the Act into line with components in the Labour Code (particularly in the case of fixed-term and irregular contracts), the Government is of the opinion that this does not undermine the provisions of the Convention because there is no question of overstepping the general limits of dockworkers' protection. On the contrary, the inclusive nature of the Convention is respected since, henceforth, workers with other employment relationships and those who do not benefit from a contract of an indefinite duration, shall be considered as dockworkers. Furthermore, in setting out to respect both the Convention and the Labour

Code, the new Act introduces provisions relating to dock work of a fixed-term or casual nature (section 142), accompanied by restrictions on the length of these contracts and guarantees against an abusive use of them. It makes clear, for instance, that: (a) working time specified under fixed-term contracts concluded with the same employer shall not exceed 120 days in a calendar year; (b) a fixed-term contract may, in the case of cargo handling, be concluded for a period of six months, provided that it shall not be shorter than the time calculated for the task in hand; (c) from a legal standpoint, there shall be no restrictions on renewals of a fixed-term contract, provided that it shall not exceed three years; (d) cargo handling may be conducted in the form of casual work; (e) the employer shall notify the dockworker employed under an intermittent contract of the beginning of each period of work at least ten days in advance (on the understanding that a shorter period might be prescribed under a collective agreement).

36. As regards the complainant organizations' allegations that anyone wishing to work in a port has to hold an occupational card, the Government acknowledges that Legislative Decree No. 280/93, which defined the dock workforce, stipulated that it was made up of workers, all of whom had an occupational card allowing them to handle cargo, under the terms of a contract of an indefinite duration. Dockworkers were therefore not only required to have a contract of an indefinite duration but also an occupational card. According to section 5 of the Legislative Decree, only persons in possession of such a card might be contracted with a view to carrying out dock work. Furthermore, only someone holding an occupational card was authorized to work in ports. The Institute of Dock Work would have been responsible for issuing this card (Legislative Decree No. 358/84 of 13 November 1984). The Government indicates that the Ministry of Employment and Social Security, as well as the Ministry of Agriculture and the Sea, should have adopted the Order to which sections 2 and 3 of Legislative Decree No. 358/84 referred, with respect to the occupational card required for port work.

37. However, the Government states that no regulations were drafted and adopted on this matter. Consequently, this "occupational card" never really existed. Since 1993, no occupational card has been issued to any dockworker. The Government states that Act No. 3/2013 simply deleted a provision that had never been implemented.

38. The Government indicates that the only outcome of the 1993 provision concerning the occupational card was to use the lists of dockworkers drawn up before 1993, according to the workers' length of service, by the dock work coordination centres or the Institute of Dock Work to establish the dock workforce. These lists of dockworkers resulted in restricting entry of newcomers to the dock workforce by only employing them under contracts of limited duration. Those applying to work as a dockworker were therefore refused unless they accepted precarious employment. The Government considers that Act No. 3/2013 prevents this unfair situation by allowing more workers to take up a career as dockworkers in a transparent way, and not on the basis of lists established in an arbitrary manner.

39. The Government states that the official figures of the dock workforce have been stagnating since 1993. In reality, there was a steady increase in the number of persons working in ports during the period under consideration, as workers were allowed to take on dock work without requiring a contract of an indefinite duration. However, as these workers were not included in any registers, they were not recognized as dockworkers but as casual workers. The Government points out that the Legislative Decree of 1993 gave a restricted group of dockworkers an advantage on the labour market and prevented newcomers to the sector from entering the occupation, which gave rise to a proliferation of precarious jobs in port work.

40. The situation has led to an increasing use of workers employed under contracts of limited duration who were not recognized as dockworkers as they were not included in the lists of dockworkers. The 1993 Act has generated an inequitable labour market which placed some dockworkers in a precarious situation because they did not receive the compensation provided by law while performing the tasks assigned to workers who had to hold occupational cards under the law.

41. As an example, the Government explains that the collective agreements signed since 1993 froze the division of dockworkers in different categories: type-A workers holding a contract without limit of time before 1993; type-B workers holding a fixed-term contract signed after 1993; and type-C workers (or casual workers) holding a fixed-term contract or a contract of uncertain duration. The Government states that the hourly cost of type-A workers was higher than that of type-B workers, with type-B workers having a higher cost of those of type-C. Under this distinction, a priority scheme was established by which a type-B worker could not be assigned to a job before a worker of type-A and a type-C worker could not be assigned to a job before assigning all type-B workers. The division of labour in ports was therefore based on the length of service of workers, regardless of whether they held the technical capacity to perform the work in question.

42. Furthermore, according to the Government, as dock work was being organized by shifts and workers were necessarily scheduled to work on all shifts because of the priority scheme, dock work was widely remunerated through overtime pay to workers with the most seniority, even before work was distributed to the so-called casual workers. For years, this dual system allowed dockworkers included in the lists to work up to 1,500 hours of overtime per year, while those who were not included in the lists of dockworkers earned less than a third of this remuneration.

43. The Government adds that the new Act No. 3/2013, in the spirit of the guiding principles of Convention No. 137 and the Labour Code, introduced new rules in the activity of dockworkers: (i) removal of the occupational card (like many other professions, it is important to possess the skills or qualifications in order to perform specific tasks; and is therefore considered a dockworker anyone who has the adequate professional qualifications and is employed by a enterprise operating in dock work); (ii) fixed-term employment contracts signed with the same employer may not exceed a total of 120 days per calendar year; (iii) a fixed-term contract may have a duration of six months for the functions of dock work, provided that this period is not less than the required period for carrying out the work; (iv) the legal form of the fixed-term employment contract allows unlimited renewals within a maximum period of three years; (v) the realization of work by dockworkers can be carried out through intermittent work, namely, the employer must notify workers under an intermittent employment contract of the beginning of each employment period by a notice of at least 10 days (a shorter period may be agreed by collective agreement); (vi) the use of overtime work in this area must be within the limits of the specificity of the sector. Thus, the new law sets a time limit to ensure access to the profession to anyone who is willing and able to perform this overtime work. For example, the calculation of overtime now rests solely on the actual work rather than on availability and allocation of shifts.

44. Finally, the Government gives an account of new provisions under Act No. 3/2013 pertaining to the training of dockworkers, which has been made possible by bringing working conditions in the sector in line with the Labour Code. As regards vocational training, the wording of section 6.1 of Act No. 3/2013 stipulates that workers involved in cargo handling shall receive vocational training from their employer at regular intervals so that they might correctly and safely carry out their duties, and that this training shall be dispensed by accredited bodies. Although vocational training corresponding to port workers' duties is compulsory, the employer has to guarantee two further types of training. Basic training shall always be given to workers so that they are able to assume their tasks

as soon as they enter the dock workforce. In addition, Act No. 3/2013 provides for further training at regular intervals to update skills, irrespective of the provisions of section 131 of the Labour Code concerning a worker's right to individual continuous training. In practice, dockworkers might henceforth benefit from a "minimum number of hours of training per year either at the enterprise or by means of a training leave enabling them to be trained on their own initiative" (section 6(1)(b) of Act No. 3/2013).

45. As regards social benefits, the Government recalls that Recommendation No. 145 makes provision, under exceptional conditions of shortage of work (unavoidable reduction of the workforce), for the need to take adequate measures to give dockworkers financial protection by such means as unemployment insurance or other forms of social security; or allowances, subsidies or other benefits paid by the employers. The Government points out that section 4 of Act No. 3/2013 provides for a special early retirement scheme, advocating that the provisions of the Labour Code (sections 318 et seq.) be applied to dockworkers covered by the transitional scheme stipulated under sections 11–15 of Legislative Decree No. 280/93 of 13 August 1993, when they have not reached the age of 55 years.

46. In reply to the request of the tripartite Committee concerning the total number of dockworkers employed prior to and after the 2013 legislative reform, the Government provided statistics on the number of workers employed in eight national ports, including those of Leixões, Lisbon, Setúbal and Sines. According to the statistics provided, the total number of workers slightly increased from 1,421 to 1,525 for those eight ports following the entry into force of the 2013 law.

47. In conclusion, the Government states that the new legal framework governing the port sector does not undermine the right to work, as claimed by the complainant organizations. On the contrary, it makes it possible to create jobs in ports and provides universal access to the occupation of dockworker for all those who wish to take up this career. Act No. 3/2013 on dock work, negotiated with and signed by dockworkers in Leixões, Sines, Viana do Castelo, Madeira and the Azores, seems like a formula that serves the country's best interests because it promotes the efficiency and competitiveness of Portuguese ports.

III. The Committee's conclusions

48. The Committee has based its conclusions on the review of the allegations of the complainant organizations and the observations communicated by the Government, on the reading of the provisions of Convention No. 137 and Recommendation No. 145, as well as on the 2002 General Survey on dock work of the Committee of Experts on the Application of Conventions and Recommendations. The Committee has also taken note of information contained in the comments made by the Committee of Experts when examining reports submitted by the Government of Portugal under article 22 of the ILO Constitution on the application of Convention No. 137.

The context of the 2013 reform of dock labour

49. The following provisions of Convention No. 137 are relevant to this issue:

Article 1

1. This Convention applies to persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income.

2. For the purpose of this Convention the terms ***dockworkers*** and ***dock work*** mean persons and activities defined as such by national law or practice. The organisations of employers and workers concerned shall be consulted on or otherwise participate in the

establishment and revision of such definitions. Account shall be taken in this connection of new methods of cargo handling and their effect on the various dockworker occupations.

…

Article 5

In order to secure the greatest social advantage of new methods of cargo handling, it shall be national policy to encourage co-operation between employers or their organisations, on the one hand, and workers' organisations, on the other hand, in improving the efficiency of work in ports, with the participation, as appropriate, of the competent authorities.

50. The Committee observes that, in order to give effect to Convention No. 137, Portugal adopted Legislative Decree No. 280/93 of 13 August 1993, which established the legal framework governing dock work. This framework is supplemented by collective agreements concluded in the principal mainland ports and the autonomous island regions of the Azores and Madeira between the employer and dockworkers' trade unions in the ports concerned.

51. The Committee notes that, according to the complainant organizations, Act No. 3/2013 of 14 January 2013, amending regulations pertaining to dock work, introduced measures infringing the provisions of Convention No. 137.

52. The Committee notes the detailed information submitted by the Government concerning the process that resulted in the adoption of Act No. 3/2013. It notes that, according to the Government, the amendment of the legal framework governing dock work was not only necessary to adapt it to developments in workers' skills and new working methods in the sector, but also to correct injustices encountered by workers who were unable to enter the occupation under the scheme set up in 1993 or who suffered from an unfair distribution of work.

53. The Committee notes the consultations held and the discussions that took place between the employers' organizations and the dockworkers taking part in these negotiations. The employers' organizations included the Association of Port Operators of the Ports of Douro and Leixões, the Association of Operators of the Port of Lisbon, and the Sousa Group of the Autonomous Region of Madeira; and the dockworkers' organizations included the UGT, the FNSTP representing the following trade unions: the Union of Stevedores, checking clerks and cargo handlers at the ports of Douro and Leixões; the Union of cargo handlers of the Archipelagos of Madeira; the Union of dockworkers of the Autonomous Region of Madeira; the Union of dockworkers of the Eastern Group of the Azores; the Union of dockworkers of Western and Central Group of the Azores; the Union of dockworkers of the island of Terceira; and the Union of dockworkers at sea and on land in Sines, and the Common Trade Union Maritime-Port Front (Common Front) constituted by the following trade unions: the Union of stevedores, cargo handlers and maritime checking clerks in central and southern Portugal; the Union of dockworkers in the Port of Aveiro; the Union XXI – Trade union association of administrative staff, technicians and operators at the container cargo terminals in the Port of Sines; the Union of stevedores, cargo handlers and checking clerks at the Port of Caniçal; and the Union of dockworkers, cargo handlers and controllers of Viana do Castelo. The consultations also included port users, such as the Portuguese Shippers' Council (CPC), the National Association of private users and dealers of public service port areas (UNAC), the Association of Portuguese navigation agents (AGEPOR), the Association of Shipowners of the Merchant Shipping (AAMC), the port administrations of Leixões, Aveiro, Lisbon, Setúbal and Sines that make up the continental port system and the Port and Maritime Transport Institute.

54. The Committee notes the very detailed information provided by the Government on the meetings to discuss the bill to amend the legislation that were mainly held from July to September 2012, and that were perturbed by strikes called by the Common Front in August

2012. The Committee observes nonetheless that following these consultations the employers and dockworkers signed on 12 September 2012 the Agreement on the Port Labour Market, which endorsed the amendment of the legal framework governing dock work. The Government notes that this Agreement was signed by all the employers' organizations consulted, as well as by the UGT and the FNSTP, with the exception of a number of dockworkers' trade unions, including the complainant organizations in the present representation.

55. The Committee also notes that, on 27 November 2012, before the Act was adopted by Parliament and at the Government's initiative, an agreement on the application of the new legal framework governing the dock sector was proposed to dockworkers' organizations which had not signed the 12 September 2012 Agreement on the port labour market. The proposed draft agreement was discussed by all trade unions and employers' organizations concerned but was rejected by the trade unions which had refused the agreement signed on 12 September 2012.

56. ***The Committee notes that, in accordance with the provisions of Articles 1(2) and 5 of the Convention relating to consultation, the process of reviewing the legal framework governing dock work was undertaken with all the stakeholders in the sector, even with the complainant organizations took industrial action.***

57. ***The Committee encourages the Government to continue opting for social dialogue in the event of future reforms in the port sector and to submit information on the results obtained by virtue of measures taken in a tripartite context with a view to continuous improvement of working conditions and efficiency in ports.***

Definition of the dock workforce

58. The following provisions of Convention No. 137 are relevant to this issue:

Article 1

1. This Convention applies to persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income.

2. For the purpose of this Convention the terms ***dockworkers*** and ***dock work*** mean persons and activities defined as such by national law or practice. The organisations of employers and workers concerned shall be consulted on or otherwise participate in the establishment and revision of such definitions. Account shall be taken in this connection of new methods of cargo handling and their effect on the various dockworker occupations.

Article 2

1. It shall be national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable.

2. In any case, dockworkers shall be assured minimum periods of employment or a minimum income, in a manner and to an extent depending on the economic and social situation of the country and port concerned.

Article 3

1. Registers shall be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice.

2. Registered dockworkers shall have priority of engagement for dock work.

3. Registered dockworkers shall be required to be available for work in a manner to be determined by national law or practice.

59. The following provisions of Recommendation No. 145 are also relevant to this issue:

Paragraph 7

In so far as practicable, permanent or regular employment should be provided for all dockworkers.

Paragraph 8

1. Where permanent or regular employment is not practicable, guarantees of employment and/or income should be provided, in a manner and to an extent depending on the economic and social situation of the country and port concerned.

2. These guarantees might include any or all of the following:

(a) employment for an agreed number of hours or shifts per year, per month or per week, or pay in lieu thereof;

(b) attendance money, payable for being present at calls or otherwise available for work when no employment is obtained, under a scheme to which no financial contribution from the dockworkers is required;

(c) unemployment benefit when no work is available.

Paragraph 9

Positive steps should be taken by all concerned to avert or minimise as far as possible any reduction of the workforce, without prejudice to the efficient conduct of dock work operations.

60. The complainant organizations are of the opinion that Article 1 of Convention No. 137 clearly contains an objective, namely that the dockworkers it covers be guaranteed the lasting improvement of their situation by such means as the regularization of employment and stabilization of income. Article 3 provides for the maintaining of registers of dockworkers, which are to be periodically reviewed, and confirms the priority of registered dockworkers for dock work. In return, these dockworkers are required to be available, at any moment, to undertake work in the ports. According to the complainant organizations, it is clear from the abovementioned provisions of the Convention that the dockworkers entitled to be considered as part of the dock workforce are those who are engaged in the occupation on a permanent and regular basis and who derive their main annual income from this work. The complainant organizations also believe that the amendment to the definition of the dock workforce, which was introduced in 2013, sets out to incorporate in the definition all workers involved in cargo handling, irrespective of the terms of their employment contracts, including workers employed on a daily contract or for any specified period of time, thereby precluding any regularity or continuity in the working relationship.

61. The complainant organizations denounce the fact that the legislative reform of 2013 did away with the basic characteristics of dockworkers' occupational qualifications, in particular the existence of a contractual relationship for an indefinite period and the requirement to hold an occupational card. Under this new definition, all workers shall be considered as being an integral part of the dock workforce as soon as they are recruited under a temporary or fixed-term contract, irrespective of whether this is for a specific working period or on a casual basis, or for a very short-term labour contract or one of a longer duration, but still limited in time: they maintain that this is contrary to the objectives of the Convention.

62. The Government recalls that, under Article 2(1) of Convention No. 137, it is incumbent upon national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable. Furthermore, Article 2(2) provides that dockworkers should be assured minimum periods of employment or a minimum income depending on the economic and social situation of the country and port concerned. According to the Government, the Convention does not give any preference, either implicit

or explicit, for any particular type of contract, whether fixed term or permanent. It insists rather on the link between the working relationship and the economic and social situation.

63. The Government also refers to Paragraph 7 of Recommendation No. 145, which stipulates that the employment relationship between the employer and port worker should take the form of permanent or regular employment. When this is not practicable, the Recommendation provides, under Paragraph 8, for a number of possibilities, such as employment for an agreed number of hours or shifts per year, per month or per week; remuneration in the form of "attendance money"; or unemployment benefit when there is no work. Paragraph 9 of the Recommendation also refers to the fact that efforts should be made to protect the interests of workers, and to avert or minimize as far as possible any reduction of the workforce, without prejudice to the efficient conduct of dock work operations.

64. The Government considers that, in the light of the above, bringing the legal framework governing dock work into line with components in the Labour Code under Act No. 3/2013, especially with respect to the recognition of fixed-term and irregular contracts, does not infringe either Convention No. 137 or Recommendation No. 145. On the contrary, the inclusive nature of the Convention is respected since, henceforth, workers with employment relationships other than a contract of an indefinite duration will be considered as dockworkers. The Government concludes that the definition of the dock workforce contained in Act No. 3/2013 must be considered as being in conformity with the provisions of the Convention.

65. The Committee refers to Article 1(2) of the Convention, under which the terms "dockworkers" and "dock work" mean persons and activities defined as such by national law or practice. The organizations of employers and workers concerned must be consulted on the establishment and revision of these definitions. The Committee notes that, in this particular case, the Government of Portugal complied with the requirement contained in the Convention to consult the organizations of workers and employers concerned.

66. The Committee notes that the Convention leaves it up to national law and practice (including collective agreements) to define the dock workforce. Furthermore, the Committee recalls that, in paragraph 100 of the 2002 General Survey on dock work, the Committee of Experts explained that there can be no universal and absolute definition of dockworker. The wording of the Convention takes into account any differences that may exist between one country and another.

67. The Committee points out that the possibility of extending the scope of application in the Convention to occasional dockworkers was raised during the preparatory work relating to the adoption of the Convention by the International Labour Conference in 1973 .[1] The Committee notes that Recommendation No. 145 provides, under Paragraph 36, for the possibility of extending the application of the Recommendation to occasional and to seasonal dockworkers in accordance with national law and practice. The Committee therefore considers that neither Convention No. 137 nor Recommendation No. 145 contain any provision that excludes dockworkers from their scope of application on the basis of their type of employment contract.

68. The Committee notes that the instruments on dock work make it an obligation to consult the organizations of employers and workers concerned in the establishment and revision of the definition of the terms "dockworkers" and "dock work". The Committee observes, on

[1] *Social repercussions of new methods of cargo handling (docks)*: Report V(2), International Labour Conference, 57th Session, Geneva, 1972, pp. 28–32; Report of the Committee on Dock Labour, *Record of Proceedings*, International Labour Conference, 58th Session, Geneva, 1973, pp. 277–288.

the basis of the information examined, that consultations were held with the social partners on the process of amending the legislation, which resulted in the adoption of Act No. 3/2013.

69. ***In these circumstances, the Committee considers that the definition of the dock workforce, contained in section 2(a) of Act No. 3/2013, does not contravene the provisions of Article 1 of Convention No. 137, given that under this provision, the possibility of including other categories of workers other than those benefiting from a permanent contractual relationship in the definition of dockworkers is left up to national law and practice.***

The occupational card foreseen in 1993

70. Article 3 of Convention No. 137 reads as follows:

> 1. Registers shall be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice.
>
> 2. Registered dockworkers shall have priority of engagement for dock work.
>
> 3. Registered dockworkers shall be required to be available for work in a manner to be determined by national law or practice.

71. The complainant organizations consider that, by removing from the definition of the dock workforce the requirement that dockworkers should hold an occupational card, Act No. 3/2013 also infringes the provisions of Article 3 of Convention No. 137.

72. The Government states that, although section 5 of Legislative Decree No. 280/93 did provide that only those persons holding an occupational card could be contacted with a view to carrying out dock work, this occupational card was never issued. Consequently, no dockworker ever held an occupational card in Portugal and Act No. 3/2013 merely deleted a provision that had never been implemented.

73. The Committee also notes that, according to the Government, the only outcome of this provision on the occupational card was to restrict, in an informal way, access to the occupation of dock work on the basis of lists of dockworkers established before 1993 by the dock work coordination centres or the Institute of Dock Work. The Government indicates that the only criterion was length of service to determine the dock workforce that could benefit from contracts of an indefinite duration while preventing at the same time the entry of newcomers on these lists and by confining them to precarious employment contracts. In the Government's view, the lack of implementation of the regulations has resulted in an arbitrary and unfair situation that had to be corrected.

74. The Committee notes that, under Article 3 of Convention No. 137, registers shall be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice. The registered dockworkers shall have priority – even exclusivity – of engagement. In return, they shall be required to be available for work.

75. Finally, the Committee notes that, in paragraph 216 of the 2002 General Survey, as well in its comments on the application of Convention No. 137, the Committee of Experts noted that Portugal was among those countries that had not registered its dockworkers. The Committee of Experts admitted that the absence of registers for dockworkers in this case did not imply that dockworkers in Portugal did not benefit from the measures of protection required under the Convention.

76. ***In these circumstances, the Committee concludes that the deletion of the provision pertaining to an occupational card from the definition of the dock workforce contained in section 2(a) of Act No. 3/2013 does not constitute an infringement of Article 3 of Convention No. 137.***

Impact of the 2013 legislative reform on employment in ports

77. The complainant organizations denounce the fact that section 6 of Act No. 3/2013 requires the signatory parties to collective agreements in the various mainland ports and the Autonomous Regions of Madeira and the Azores to bring those agreements into line with the provisions in the Act within a period of 12 months after the Act enters into force.

78. The Government states that this provision of the Act does not eliminate the scope for freedom offered by collective bargaining. The social partners have a period of 12 months for negotiating with a view to bringing the collective agreements in force into line with the new legislative framework. Furthermore, all the dockworkers' trade unions, including those that have not signed the Port Labour Market Agreement of 12 September 2012, are invited to participate in this bargaining process.

79. The Committee notes that, according to the complainants, a consequence of the 2013 legislative reform is that it has opened up the possibility of employing casual workers recruited under temporary contracts, to the detriment of those who have made the occupation of dockworker their source of permanent and regular employment. This prompted the trade unions to react with strike action. The complainant organizations denounce the fact that port workers who have made the occupation of dockworker their source of permanent and regular employment no longer have priority of engagement for available jobs, as provided for under the Convention.

80. The Committee notes the Government's observations that the reform introduced by Act No. 3/2013 enables more people to take up the career of dockworker in a transparent manner. The Government acknowledges that, since 1993, new dockworkers have been authorized to work in ports as casual workers without being registered on the lists of the dock workforce. According to the Government, the Legislative Decree of 1993 gave a restricted group of dockworkers an advantage on the labour market and prevented newcomers in the sector from entering the occupation, resulting in a proliferation of precarious jobs. The Government states that the situation has led to work in ports being increasingly dependent on workers under fixed-term contracts who were not recognized as dockworkers as they were not included in the lists of dockworkers. The regime of the 1993 Act has generated an inequitable labour market which put some dockworkers in a precarious situation. The Committee notes the example presented by the Government concerning the distribution of dock work according to categories of workers (type-A worker employed under a contract of an unlimited duration before 1993; type-B holds a fixed-term contract signed after 1993; and type-C casual workers) that took more account of "seniority" of the worker than his/her ability to perform the job in question.

81. The Committee also notes the details provided by the Government on the manner in which the new Act No. 3/2013 respecting the guiding principles of Convention No. 137 by introducing the following new rules in dock work activity: (i) a dockworker is anyone who has the adequate professional qualifications and is employed by an enterprise operating in dock work); (ii) fixed-term employment contracts signed with the same employer may not exceed a total of 120 days per calendar year; (iii) a fixed-term contract may have a duration of six months for the functions of dock work, provided that this period is not less than the required period for carrying out the work; (iv) the legal form of the fixed-term employment

contract allows unlimited renewals within a maximum period of three years; (v) the realization of work by dockworkers can be carried out through intermittent work, namely, the employer must notify workers under an intermittent employment contract of the beginning of each employment period by a notice of at least 10 days (a shorter period may be agreed by collective agreement); (vi) the use of overtime work in this area must be within the limits of the specificity of the sector. The new law thus sets a time limit to ensure access to the profession to anyone who is willing and able to perform this overtime work. For example, the calculation of overtime now rests solely on the actual work rather than on availability and allocation of shifts.

82. Finally, the Committee notes the statistics provided by the Government on the number of workers employed in eight national ports since the legislative reform of 2013 (the total number increasing from 1,421 to 1,525).

83. ***The Committee therefore invites the Government to submit information to the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) on the measures taken by the authorities concerned and the employers' organizations signatory to the agreement of 12 September 2012 for the new legal framework governing the port sector and on the impact of the 2013 reform on the number of dockworkers in the country, including up-to-date comparative statistical data on the dock workforce in the country, as well as information on the number of temporary or casual dockworkers.***

84. ***The Committee refers to the concerns of the complainants in relation to the impact of the labour reform on existing collective bargaining agreements and requests the Government to submit information to the Committee of Experts on the compliance of collective agreements in force in the country's various ports with the new legal framework governing dock work in accordance with Act No. 3/2013.***

IV. The Committee's recommendations

85. ***In the light of the conclusions set out above concerning the issues raised in the representation, the Committee recommends that the Governing Body:***

(a) approve the present report;

(b) encourage the Government to continue opting for social dialogue in the event of future reforms in the port sector and to submit information to the Committee of Experts on the results obtained by virtue of measures taken in a tripartite context with a view to continuous improvement of working conditions and efficiency in ports (paragraph 57);

(c) invite the Government to submit information to the Committee of Experts on the measures taken both by the authorities concerned and the employers' organizations signatory to the agreement of 12 September 2012 for the new legal framework governing the port sector including up-to-date comparative statistical data on the dock workforce in the country, as well as information on the number of temporary or casual dockworkers (paragraph 83) and on the action taken to bring the collective agreements in force in the country's various ports in line with the new legal framework governing dock work in accordance with Act No. 3/2013 (paragraph 84);

(d) entrust the Committee of Experts with following up on the issues raised in the present report with respect to the application of the Dock Work Convention, 1973 (No. 137);

(e) make this report publicly available and close the procedure initiated by the representation of the Union of stevedores, cargo handlers and maritime checking clerks in central and southern Portugal, the Union XXI – Trade union association of administrative staff, technicians and operators at the container cargo terminals in the Port of Sines, the Union of dockworkers in the Port of Aveiro, and the Union of stevedores, cargo handlers and checking clerks at the Port of Caniçal, alleging the non-observance by Portugal of Convention No. 137.

Geneva, 9 June 2015 *(Signed)* R. Margiotta

K. de Meester

S. Gurney

Point for decision: Paragraph 85