8

Solidarity in Hard Times

The Politics of Labour Market and Social Protection Reform in Portugal (2010–2020)

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8.1 INTRODUCTION

This chapter deals with solidarity towards those made more vulnerable due to less security in employment and degraded social protection during hard times.[1] Stable, long-term employment paying a living wage shrunk over previous decades, as short-term, unstable, poorly paid jobs spread. Higher insecurity and instability affected standard and temporary employment, the latter rising everywhere. Particularly in segmentation-prone Birmarckian systems, such as the Portuguese, where social security is closely linked with enduring labour market participation, rising precarity in atypical employment (averaging 21 per cent from 2000 to 2018) is often compounded by weak or spotty social protection. The twin fragmentation of work and breakdown of the standard employment relation brought about a 'precarious periphery' and a 'destabilization of the stable' (Castel, 2003; 2007), accompanied by widespread 'privatization of risk' in the labour market and social protection due to increasing social and economic risk shifts from government and employers onto ordinary individuals and their families (Hacker, 2006).

These trends did not start with the Great Recession; they have prevailed for some time in advanced industrial economies, but found in crisis policymaking under conditionality an opportunity to evade constraints that hitherto had tamed or 'embedded' them. Looking at the Portuguese case, we study weather and how domestic politics and institutions mattered to counteract the dualisation, precarisation, and liberalising trends in employment relations and social protection during the Great Recession and beyond.

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In the Fall of 2008, eurozone countries responded to the financial crisis by enacting counter-cyclical measures: the €200Bi European Economic Recovery Plan, the nationalisation or capitalisation of financial institutions (e.g. Ireland, Spain, Portugal, UK) or adopted rescue plans (e.g. France, Germany) (Degryse, 2012). The initial response did not lift market pressure. Investors remained cautious, particularly towards the economic prospects of Southern European countries and Ireland, most of which ran current account deficits and were weakened by high private debt, bursting housing bubbles, and bank crises. Government bond yields remained high, increasing borrowing costs.

Early in 2010, trying to reassure debt and investment markets, the European Commission made a U-turn asking peripheral, indebted countries to enact fiscal consolidation measures and deregulatory structural reforms. However, economic and financial prospects worsened. Unable to finance itself in the markets, Greece asked for a bailout from the EU, implemented from May 2010. Ireland was next, in November 2010, followed by Portugal, Spain, and Cyprus. The funding depended on conditionality spelled out in adjustment programmes signed with a 'Troika' of creditors (the EC, the IMF, and the ECB).

Creditor and EU institutions demanded that southern eurozone countries liberalise their labour markets to facilitate internal devaluation and export-led recoveries in order to regain economic competitiveness, employment growth, and thus stable financial footing (Armingeon & Baccaro, 2012; Perez & Matsaganis, 2019). The opportunity presented by the crisis for market-making institutional reform through political regulation within the 'new European governance' would be wasted if resistance to (re)commodification put up by 'problematic' Southern European 'national political legacies' could not be overcome. As bluntly put by J. P. Morgan, initially

> it was thought that these national legacy problems were largely economic: over-levered sovereigns, banks and households, internal real exchange rate misalignments, and structural rigidities. But, overt time it has become clear that there are also national legacy problems of a political nature. The constitutions and political settlements in the southern periphery, put in place in the aftermath of the fall of fascism, have a number of features which appear to be unsuited to further integration in the region [such as] the constitutional protection of labor rights [and] the right to protest if unwelcome changes are made to the political status quo.
>
> (2013: 2, 12)

Across Southern Europe, reform outcomes varied against the backdrop of a general liberalising thrust (Thelen, 2014). The literature evinces how reforms were enacted and contested, detailing policymaking processes that brought together external and hierarchical pressures from European actors and market-based international institutions, national executives and parties, interest representatives, industrial and popular protest and social movements (Bermeo & Pontusson, 2012;

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Petmesidou & Guillén, 2014; Guillén & Pavolini, 2015; Della Porta et al., 2016; Theodoropoulou, 2018; Fishman, 2019). While these factors combined to yield outcomes described as flexibilisation and retrenchment with instances of recalibration (Pavolini et al., 2016), domestic politics was one important driver of variation from country to country. If, for some, the centralisation of power in the executive and/or its ideological preferences determined the extent and direction of reforms (Cioffi & Dubin, 2016; Moury & Standring, 2017; Picot & Tassinari, 2017), others underline the effect of changing coalitional politics and blame allocation mechanisms (Asensio & Popic, 2019; Branco & Cardoso, 2022).

Here, we expand on the latter line of enquiry, exploring how political dynamics and institutions mattered in shaping employment and social protection statuses – crucial bases for the solidarity towards the vulnerable – in the decade between the Great Recession and the COVID-19 pandemic. Sections 8.2 and 8.3 detail how political actors and institutions, namely a broad, informal 'bailout coalition' of parties and social partners, and the Constitutional Court, helped to moderate or reverse liberalising and dualising labour market reforms from 2011 to the end of 2012, and the radicalisation of policy outputs following the 'bailout coalition's demise in early 2013, and attending increase in the Court's vetoes.

What happens when the conditions underlying the adoption of reforms change? From 2015, coming out of the crisis, did governments roll back unpopular reforms in 'response' to voters, or have they been 'responsible' vis-à-vis financial markets, creditors, and international institutions, thus preserving crisis-era reforms (Moury & Afonso, 2019)? Supply-siders expect reforms to remain because of functional reasons (economic efficiency) or for creating their own constituency of policy winners. Conversely, reversals can be expected to occur as soon as the conditions needed for the enactment of unpopular reforms are removed. Abated conditionality, under resumed growth and a larger fiscal space, creates the opening for the previous losing 'distributive coalitions' to act politically and bring about reversals (Branco et al., 2019).

What happened in Portugal? And – what role for politics? Section 8.4 explores how, from 2015 to 2019, amid waning conditionality economic recovery and improved labour market performance, the centre-left Socialist executive and supporting left partisan allies enacted a social policy agenda of reversals and recalibration – while keeping with the tenets of fiscal consolidation and European governance. With the backing of a renewed social concertation, policies favouring the labour market and social protection outsiders were enacted. Contrary to the crisis period, the gap between insiders and outsiders closed due to re-regulation of fixed-term, temporary, and self-employed work, improved work–family balance and gender equality in care and pay, revived social safety net, and bolstered disability protection.

Section 8.5 steps back from policy analysis to wrap the chapter around the theme of how political dynamics and institutions shape policy, and how policy kindled cleavages and solidarities during the crisis and beyond. We delineate how labour market and social protection policy responses during the crisis engendered social fault lines and cleavages, all the while promoting different kinds of class, group, and national solidarities, which then impacted the 2015 general elections, from which the Geringonça coalition arose. The Conclusion reiterates our main findings and briefly explores the theme of policy responses and solidarity during the COVID-19 pandemic.

8.2 COALITIONAL POLITICS AND LABOUR MARKET REFORM UNDER AUSTERITY AND CONDITIONALITY (2010 TO 2014)

8.2.1 *Before the MoU: Informal Political Cooperation Emerges under Austerity*

As the crisis worsened and fiscal and debt conditions deteriorated during 2010, the minority Socialist executive veered towards fiscal consolidation and flexibilisation.[2] Increasing austerity by the PS cabinet depended on the parliamentary cooperation of opposition centre-right parties (PSD and CDS). Three austerity packages (Stability and Growth Programmes, or SGPs) and the budget laws for 2010 and 2011 were passed with their assent. Negotiations towards a social concertation agreement, reliant on co-opting the moderate trade union UGT, bore fruit in March 2011, when a Tripartite Agreement (TA), combining cuts in severance pay, decentralisation of collective bargaining, and improved ALMP, was signed (CES, 2011).

This informal political cooperation between parties and social partners comprised an 'austerity coalition' cemented by a sense of duty and the need to avoid sharing the blame for a debt default. It was opposed in parliament by PCP and the Left Block (BE) – whose potentially lethal motions to censure the PS government were defeated by the abstention of PSD and CDS. In social concertation, the largest and PCP-aligned trade union, CGTP, rejected the 2011 TA.

As the crisis worsened with rising unemployment, popular protest, and strikes, the PSD's position became untenable. It could not go on losing political capital by supporting the PS cabinet, given very favourable opinion polls (De Giorgi et al., 2015). The situation came to a head with the SGP 4 (March 2011). On 23 March, a negative coalition of PCP, BE, PSD, and CDS defeated SGP 4 in parliament. PM Sócrates resigned; on 6 April, the PS caretaker government asked for international financial assistance; negotiations ensued.

[2] Section 8.2 draws heavily on Branco & Cardoso (2022).

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8.2.2 *Coalitional Politics Shapes Initial Labour Market Reforms under the MoU*

The MoU was signed on 17 May between the Troika and the caretaker government, but also by PSD and CDS, after consultation with social partners, in exchange for a €78bn bailout package. On 5 June, the centre-right coalition PSD-CDS won the general elections with an absolute majority, and took the executive.

Informal political cooperation continued despite PS and PSD trading places between government and opposition – now, a 'bailout coalition' – as it was held by international creditors as key for long-term fiscal adjustment and structural reforms, as noted by the incoming centre-right finance minister (Gaspar & Avillez, 2014: 256).

The MoU prescribed liberalisation and decentralisation to reform an 'overly rigid' labour market due to 'excessive' employment protection for permanent contracts, 'generous' unemployment benefits, and collective bargaining unable to keep wage growth aligned with productivity and external competitiveness. It also sought to combat dualism by focusing on segmentation, outsider and long-term unemployment protection, and ALMP (Directorate-General Economic and Financial Affairs, 2011: 24–25, 51–52, 77). This asymmetric blend of liberalisation and pro-outsider recalibration recalled the March 2011 social pact, as noted by Labour Secretary Pedro Martins, PSD, PS MPs in parliament (DAR, 1/9/2011), and UGT (2012: 2). January 2012, a TA was signed by the conservative government, UGT, and employers' confederations (CES, 2012), and then legislated by parliament.

Employment protection for insiders was hit. Dismissal compensation for new permanent contracts was cut from 30 to 20 days per year of tenure (and capped at 12 × the employee's monthly wage or 240 × the minimum wage), and then extended to all employees (Laws 53/2011 and 23/2012). Protection for fixed-term contracts was also hit. Severance pay for new hires went from thirty-six (shorter contracts) or twenty-four (those longer than six months) days per year of service to twenty. The renewal of fixed-term contracts was temporarily extended to eighteen months (Laws 53/2011 and 3/2012).

Unemployment protection reform lowered the cap on benefits from €1257 to €1048, cut 10 per cent in value after six months, and halved duration to eighteen months. On the other hand, the required contributory period was cut from fifteen to twelve months, coverage was extended to economically dependent self-employed workers, and benefits for unemployed couples and monoparental families were temporarily increased by 10 per cent (Decrees-law 64 and 65/2012; Law 23/2012).

Collective bargaining reform went a step further relative to the 2011 TA with the 'organised decentralisation of collective bargaining', allowing work councils in firms with at least 150 employees to negotiate agreements at plant level, under a mandate from trade unions (Law 23/2012).

How can policy outputs until the end of 2012 be said to be relatively more moderate? First, the unemployment protection reform, while cutting the amount and duration of benefits, shortened the required contributory period, widened access to economically dependent self-employed workers, allowed the partial accumulation of unemployment benefit with a new contract wage, and launched a host of 12 ALMP programmes to improve youth employability and correct segmentation.

Second, some measures fell 'short of the MoU'. Law 23/2012, following the 2012 social pact, broadened the criteria for just cause dismissal under 'inadaptation', but did not include as criteria 'the failure to meet "goals" set by the employer'. The cabinet minister acknowledged, 'the MoU went further than what was agreed in social concertation' (DAR 31/3/2012). The UGT claimed credit for 'preventing the single just cause dismissal criteria the Troika really wanted to introduce for the entire workforce' (2012: 8). The same is the case with the criteria for plant-level bargaining (at least 150 employees *instead of none*) and the *no change* in criteria for extending collective agreements, including a safeguard clause requiring the agreement of social partners for any future change (UGT, 2012: 10).

Third, the half-an-hour increase in daily working time for the private sector (not in the MoU) proposed by the government (14/12/2011) was defeated by a combination of industrial protest (general strike by UGT and CGTP, 24/11/2011) and social concertation. A deal-breaker for UGT, it was dropped by the executive on 16 January, two days before signing the 2012 TA.

This relatively moderate policy output reflects the bailout coalition's composition and policy process. Despite enjoying an absolute majority, the executive governed within a broad informal coalition and multilateral bargaining in parliament and social concertation. It followed the political calculus that a broader coalition disperses blame attribution and strengthens the legitimacy of reforms, easing compliance and consent.

In opposition, PS's preferences partially converged with the government. Recall that the PS had negotiated the 2011 TA and the MoU mostly comprises measures the Socialist government wanted to enact, and thus there would be room for agreement with the conservative executive as long as the enacted policy kept within its confines (Moury & Standring, 2017). A Socialist MP explained the party's stance on the 2012 Labour Code reform: 'There are some matters we agree with; others result from the Memorandum; some others come from the Tripartite Agreement' (DAR 31/3/2012). The Socialists abstained in three motions to censure the government presented by PCP and BE until March of 2013. Given that PS's censure would not have toppled the government, the abstention reads as tacit support. The PS cooperated with the government on major legislation during the first 15 months: voted in favour of Laws 3/2012 and 47/2012; abstained in the labour reform Law 23/2012 (which embodied the January 2012 TA); and the 2012 budget law.

The January 2012 TA was in line with, if not more generous than, the MoU. UGT leveraged its informal veto power in social concertation to shape policy outputs under increasingly constrained circumstances, from the social pact to the MoU in 2011, and again from the social pact to the labour reform in 2012. It influenced policy by pushing for recalibration, keeping measures within the MoU's confines ('there are no measures worse than the MoU') or even short of the MoU (blocking 'the single just cause dismissal criteria the Troika really wanted to introduce for the entire workforce'); and by preventing worse measures, not in the MoU, such as the half-an-hour increase in daily working time. UGT claimed credit for the outcome (2012: 8, 15–16). The social partners' moderating influence on policy via social concertation was recognised in parliament by government and the Socialist opposition alike (DAR 1/9/2011, 31/3 and 12/5/2012).

8.2.3 *The Bailout Coalition's Demise Ushers in the Second Phase of Reforms*

As the economy contracted throughout 2012 and unemployment soared to 16 per cent, bond yields stayed above 8 per cent. Worried that too much austerity would trigger a recessive spiral that would undermine general political support and fracture the governing coalition, the IMF urged the government to stimulate the economy.

In September, the executive announced a supply-side solution to jump-start economy: the revision of the TSU regime (mandatory social contribution on salary paid by workers and employers). Employer's share would drop from 23.75 per cent to 18 per cent to 'boost competitiveness and job creation', offset by a 7 p.p. increase (11 per cent to 18 per cent) paid by salaried workers.

A nerve snapped, and protests spread across the country with millions taking to the streets. Along both trade unions, employer confederations told the finance minister they would fight the measure (Gaspar & Avillez, 2014: 283). 'The pillar of social stability was attacked', one employer representative said (Távora & Gonzalez, 2016: 338). The proposal was dropped, and replaced in the 2013 budget law with a huge tax increase, raising the average rate of personal income tax by 3 p.p. to 13 per cent and the collected revenue by 28 per cent. This was a stopgap remedy. Going forward, the solution would be permanent public expenditure cuts of €4bn, particularly in the welfare state (IMF, 2013).

This sequence of events broke the 'bailout coalition' as PS and UGT moved to opposition. The Socialists first voted against the 2013 budget law (27/11/2012) and then presented a motion to censure the government (28/3/2013). Thereafter, PS voted with PCP and BE on all motions to censure presented until the end of the legislature in 2015. Despite the combined opposition of PS, PCP, and BE, the governing parties passed labour laws 69/2013, 76/2013, 27/2014, and 55/2014, and the budget laws for 2013, 2014, and 2015. Favourable opinion polls and the prospect of holding office eased the move from cooperation to conflict (De Giorgi et al., 2015). Moreover, acting responsibly was preventing the PS from being responsive to its electorate and popular protest. Further labour market liberalisation, welfare retrenchment, public sector cuts, and privatisations would destroy the party's power resources. In May 2014, the newly elected PS leader António Costa vowed to 'turn the page of austerity' and never enter into a coalition with either or both PSD and CDS after the upcoming 2015 elections.

UGT also moved to opposition, refusing to sign any TA until the end of the Programme in May 2014. It blasted the executive's newfound disrespect for the MoU's social dialogue process, the collective bargaining freeze, and the push to further flexibilisation and deregulation by revisiting policy that had already been settled via social pact. The huge demonstrations of 1/5/2013 resulted from UGT's collaboration with CGTP, as did the general strike in 27/6/2013.

Henceforth, the executive relied solely on PSD and CDS. Unconstrained by the informal coalition, its preferences aligned with the Troika: 'our interests are, in essence, fully aligned. There is no difference in goals', stated the finance minister (Gaspar & Avillez, 2014: 262).

As a result, from late 2012 LMP went 'beyond' the MoU and the 2012 TA in that it undermined collective bargaining, furthered liberalised employment relations, while dropping recalibration. First, in October 2012 the executive unilaterally ruled that collective agreements could only be extended to a whole sector if the negotiating employer organisation represented more than 50 per cent of employment in said sector (Council of Ministers Resolution 90/2012). This directly contradicted the MoU and 2012 TA. All trade unions and employers' associations opposed the measure as too restrictive, arguing it would undermine collective bargaining. Given the executive's unilateral stance, employer confederations wrote a joint letter to the IMF asking for the measure to be dropped, for compromising social peace and stability and distorting competition between firms (Bulfone & Afonso, 2020: 835). Also, the duration of collective agreements was cut from five to three years, their validity after expiry from eighteen to twelve months, and the favourability principle was inverted with priority given to company-level agreements over sectoral conventions (Laws 48-A/2014 and 55/2014; Afonso et al., 2021). Second, just cause dismissal compensation, which had been cut from thirty to twenty days, was, in 2013, further reduced to twelve days for all contracts – invoking the MoU's directive to align severance pay with the EU average (trade unions, notably UGT, insisted on eighteen days). Trade unions also argued that, according to both MoU and 2012 TA, it should apply only to new hires – not to all contracts. UGT threatened to reject the 2012 TA and cancel all further talks. The executive then finessed the proposal regarding new hires (employment contracts entered into force after 1/10/2013): compensation for collective dismissals was cut to twelve days per year; for individual permanent contracts, it was cut to eighteen days of base remuneration and seniority for the first three years of the contract plus twelve days for the following years (Law 69/2013).

Third, changes to the criteria for just cause dismissal (suitability and job extinction) also broke with the MoU and the 2012 TA, which stated the employer was responsible for their definition. Law 23/2014 featured a definition vetoed by the

Constitutional Court. In response, the executive unilaterally decided new criteria for employers when determining individual dismissals in the case of job extinction. These criteria were highly contested by trade unions and the largest employer confederation, CIP. Nevertheless, they were passed into Law 27/2014.In sum, LMP reforms under conditionality varied from a first phase where recalibration (e.g. unemployment protection) coexisted alongside hard liberalising measures (e.g. EPL for insiders) to a second phase where recalibration was dropped and liberalisation further deregulated employment protection and security and eroded collective bargaining. This is explained by the changing coalitional politics and blame allocation underpinning policymaking. Whereas initial reforms resulted from a broad informal political coalition through multilateral policymaking spanning the governing centre-right parties, the PS in opposition, the moderate trade union (UGT), and employer confederations in social concertation, its breakdown in late 2012 led to the conservative executive's increasing centralisation and the shutting down of social concertation, yielding more radical policy outputs against the opposition of the PS, both trade unions, and often employer organisations.

In the end, , the labour market regulation underwent a structural reform: (i) security in employment and in unemployment for standard workers (insiders) declined substantially; (ii) reform of collective bargaining shifted the balance of power towards employers, while a move from joint to statutory regulation stalled social concertation; (iii) despite initial inroads, neither trend was offset by a robust unemployment compensation strategy or activation effort targeted at outsiders, and no de-segmentation occurred in a historically dualised labour market. A worse situation for both insiders and outsiders points to wide flexibilisation and enduring segmentation, henceforth at a lower level of security, a pattern of 'liberalised dualisation' (Cardoso & Branco, 2018).

8.3 THE ROLE OF THE CONSTITUTIONAL COURT

The Portuguese Constitutional Court is composed of thirteen judges appointed for non-renewable terms of nine years, of which ten judges are appointed by parliament by a two-thirds majority, the remainder co-opted by sitting judges. Despite the super-majority requirement suggesting that legislative non-veto power actors would be included in the appointment of judges, in practice, the major centre-left (PS) and centre-right (PSD) parties jointly draw up a list of candidates. Usually, judges are evenly split between left- and right-wing parties, a political bargain that extends to two of the remaining judges, leaving one 'neutral' (Coroado et al., 2017). Comparatively, constitutional review is quite generous: the power to initiate proceedings is assigned to a wide array of legal and political actors and institutions (inter alia, President of the Republic, President of Parliament, MPs, the PM, the General Public Prosecutor, and the Ombudsman), with no time limits to request the review (Violante, 2019: 124).

The Portuguese Court is an important veto player in a political system with scant horizontal or vertical dispersion of power. Among the 'Programme Countries', the Portuguese was the first Court to deliver severe drawbacks to austerity policies. This is all the more significant given that historically the Court counter-majoritarianism has been comparatively low (Violante, 2019: 121). This pattern changed during the crisis, under conditionality.

Table 8.1 breaks down the eight vetoes over twelve rulings. From June 2011 to May 2014, the period of conservative government under conditionality, we find two vetoes in the aforementioned first phase v. six in the second. The constitutional challenges were presented by various litigants: opposition MPs (from the PS and other parliamentary minorities) and the President of the Republic, offering a check on absolute majority governance. Particularly in the second phase marked by executive

TABLE 8.1. *Constitutional Court rulings on austerity measures (2010–2014)*

Year	# Ruling	Subject	Litigants	Outcome
2010	399/2010	Surtax on personal income tax	President of the Republic	Court approves measures
2011	396/2011	Budget Law for 2011	Opposition MPs	Court approves measures, but: *imposes legal test to further cutbacks in public salaries and social benefits*: must be transitional in nature, due to compelling interest and follow the standard of 'proportional equality'
2012	353/2012	Budget Law for 2012	Opposition MPs	*Court vetoes measures*: annuls the suspension of 13th and 14th wage salaries for civil servants and pensioners from 2012 to 2014
2013	187/2013	Budget Law for 2013	President of the Republic	*Court vetoes measures*: struck down suspension of holiday allowance for civil servants, and pensioners; and surtax upon unemployment benefit recipients to pay social security contributions
2013	474/2013	Civil Service Law	President of the Republic	*Court vetoes measures*: struck down flexibilisation of the dismissal of civil servants for violating principle protection of legitimate expectations and of legal certainty
2013	602/2013	Labour Code reform	Opposition MPs	*Court vetoes measures*: struck down by violating constitutional ban of dismissal without just cause and provisions of collective labour regulation instruments
2013	794/2013	Civil Service Law	Opposition MPs (PS)	Court approves measures

2013	862/2013	Civil Service Law	President of the Republic	*Court vetoes measures*: struck down provisions to retrospectively cut by 10% pensions of retired civil servants (CGA fund) and less favourable formula for calculating pensions, for violation of the protection of legitimate expectations
2014	413/2014	Budget Law for 2014	Opposition MPs (PS)	*Court vetoes measures*: struck down additional contribution from unemployment benefit, the cut in survivors' pensions, and additional public wage cuts
2014	572/2014	Budget Law for 2014	Opposition MPs (PS)	Court approves measures
2014	574/2014	Public pay cuts	President of the Republic	*Court partially vetoes*: accepts pay cuts in 2014 and 2015, but vetoes future cuts
2014	575/2014	Pension and tax policy	President of the Republic	*Court vetoes measures*: struck down alignment rules of public sector pensions (CGA) with general social security system (RGSS) for violating the principle of equal protection and trust; struck down new 'sustainability contribution' as permanent levy on public sector pensions for violating the principle of trust

Source: own elaboration from Saurugger et al., 2020; Canotilho et al., 2015; Fasone, 2014.

centralisation of power and unilateral policymaking, the request for constitutional review provided the centre to left parliamentary opposition with an effective way to challenge reforms enacted by the conservative executive. Whereas in the first phase the check worked via bargain within the bailout coalition, in the second phase, the Court assumed more forcefully the role as veto player and ultimate check on the executive.

Looking at the Court's rhetoric, the vetoes do not spring from a principled refusal of any retrenchment of pensions or wages based on right to work or other constitutionally entrenched social rights. The reasoning turns on general principles of constitutional law, such as equal protection, the protection of legitimate expectations, and proportionality, elaborating early on the standard of 'proportional equality' (Ruling 396/2011). With such standards the Court envisions a fairer, more balanced enactment of austerity reforms. All workers and pensioners, either in the public or private sectors, ought to endure the burdens of austerity in roughly equal shares. The economic and financial emergency ought to be addressed by policies of a general nature and not by the continuous imposition of austerity measures upon public sector workers or pensioners. At the same time, however, the Court forcefully upheld the right to 'an essential core of an existential minimum', a 'constitutional parameter of a decent existence', so that 'there will always be a limit [to the reversibility of rights and expectations], even in a state of economic emergency' (Ruling 187/2013). Recalling that, from the social revolutionary inception, the democratic regime's legitimacy is closely linked to the provision of social rights, the Court's agency can be seen as an exercise in national sovereignty, a check on the demands from international creditors at a time when the remaining political institutions had their bargaining power constrained by strong financial needs (Cisotta & Gallo, 2014).

8.4 TURNING THE PAGE OF AUSTERITY: THE GERINGONÇA (2015–2019)

Following the general election in the Fall of 2015, the Socialist Party formed a minority government, taking office in November 2015, supported in parliament by the radical left parties PCP, BE (Left Bloc), and PEV (Greens). This novel coalition tore down the wall of political cooperation in government between PS, PCP, and BE, a legacy of the 1974–1976 revolutionary period – and came to be known in Portuguese political parlance as *geringonça*, or 'contraption'.

The Geringonça's political agenda was to end austerity and foster economic growth while keeping European fiscal commitments, and specifically to reverse the 'damaging effects of austerity on salaries and pensions' (Calado et al., 2019: 680). On the one hand, a substantial reversal of crisis-era austerity social policies occurred, albeit keeping some structural reforms (De Giorgi & Cancela, 2019; Moury, Cardoso & Gago, 2019). On the other, the executive, backed by a restored social concertation, enacted an expansive recalibration agenda in labour market and social protection. However, some key differences remained between the PS and the supporting left parties, which erupted in late 2019, showing the limits of the Geringonça as a progressive coalition.

8.4.1 *Policy Reversals and Income Recovery*

The Geringonça reversed most austerity policies enacted during the crisis: restored public sector wages and career progression, unfroze and hiked the mandatory minimum wage, increased public pensions and other social benefits, lowered taxes for the middle class, working families, and small and medium businesses, and stopped the privatisation of public transport companies in Lisbon and Porto. These measures boosted income recovery and internal demand, favouring economic growth with a sharp decline in unemployment.

The sustained raise in the minimum wage, covering ca. 22 per cent of salaried employees, is noteworthy. Enacted yearly, backed up by social concertation agreements in 2017 and 2018, it rose 26 per cent from €505 in 2015 to €635 in 2020, without harming labour market performance (2015 to 2019, the employed population grew 8 per cent while the unemployment rate dropped from 12.4 per cent to 6.5 per cent)

In addition to the reversal of cyclical measures, there were reversals of structural labour market and social protection reforms. All told, there were six structural policy reversals from the end of MoU in May 2014 to the end of 2019: two Constitutional Court vetoes to new permanent 'Sustainability Contribution' on all public pensions and new rules aligning CGA pensions with RGSS pensions (2014); a return to a 35-hour working week for the public sector (2016); eighteen months' suspension of any unilateral requests for cancellation of collective agreements (2017); end of representativeness criteria for extension of collective agreements (2017); and end of 10 per cent cut to unemployment benefit after six months (2017) (Branco et al., 2019: 213).

However, core structural LMP reforms remained despite the strong push to reverse them from radical left parties in parliament and CGTP in social concertation, to wit: severance pay cut; new criteria and definition of fair dismissal (unsuitability for the task and job extinction); and cut in unemployment benefit duration. Despite the overall political support coalition, the agreement between the PS, radical left parties, and trade unions, especially CGTP, was much harder on reversing crisis-era LMP structural reform than on reversing austerity cuts.

8.4.2 *An Expansive and Inclusive Recalibration Agenda*

The Geringonça enacted an inclusive recalibration agenda. Consequently, the gap between insiders and outsiders shrank because precarious short-term and self-employed workers, women, youth, long-term unemployed, those with disability and the elderly have been better protected, in the labour market and welfare. This agenda was enacted bringing back social concertation: the framework Tripartite Agreement in 2017 and the full-blown Agreement in 2018 led to a major Labour Code reform in September 2019. Next, we'll break down this agenda and focus on the coalition's inner strife around labour market reform.

8.4.2.1 Social Safety Net and Disability

The value and criteria for access to the Social Insertion Income and the supplemental income for the elderly were restored, expanding coverage and income security. A set of regulatory decisions and most importantly the reversal (in 25 per cent) of the previous cut in SII value stopped and reverted the downward trend in the number of beneficiaries (Pereirinha et al., 2020). In 2017, the protection of people with disability was expanded with the creation of a new social benefit.

8.4.2.2 Work–Family Balance and Gender Equality

Acknowledging the widening gender pay gap (from 8.5 per cent in 2007 to 17.5 per cent in 2017), legal action was taken, after consultation with social partners, to reduce occupational gender segregation and promote a more effective work life, stipulating actions from the labour inspectorate and sanctions against discriminatory treatment. The Social Dialogue for Reconciliation proposed adaptability of working hours and bank of hours to workers with children aged under 12 or with children with a disability or a chronic disease. It also pushed for provisions in collective agreements promoting reconciliation (Campos Lima & Carrilho, 2018).

Tackling gender inequality in care, Laws 90/2019 and 100/2019 reinforced the parental leave regime, particularly for fathers. Fathers are entitled to a mandatory initial parental leave of twenty working days, to be used within six weeks of the birth of a child, five of which must be used immediately after birth. Following this leave, fathers also have the right to an additional five working days of leave, as long as it takes place simultaneously with the mother's initial parental leave.

8.4.2.3 Collective Bargaining

Reversing crisis-era policy, the Council of Ministers (Resolution 82/2017) replaced the representativeness criteria for extension of collective agreements by a consideration of social policy goals, such as gender equality, thus promoting inclusiveness through collective bargaining while preventing the dualisation and inequality wrought by the steep reduction of extension ordinances during the crisis years.

The 2018 Tripartite Agreement (enacted in the 2019 Labour reform) fosters collective bargaining, preventing gaps in coverage from expiring agreements and promoting the collective dimension of labour regulation. Specifically, it creates arbitration mechanisms as a last instance before the expiring of agreements; broadens the scope of rights that workers keep after collective agreements expire, adding parental, health, and security rights; and sets company referendums organised by employers, under surveillance of trade unions and worker representatives, to decide on implementing 'working time accounts' to replace the previous regime of employer–employee individual agreements (Campos Lima & Carrilho, 2019).

Collective agreements recovered to near pre-crisis levels. The total number of new agreements (and extensions) rose from 138 (36) in 2015 to 208 (84) in 2017, as the number of employees covered rose from 490,377 to 820,083. However, the qualitative shift since 2012 towards company-level continues at the expense of branch and multi-employer agreements, suggesting a convergence towards 'a decentralised model of industrial relations' (Stoleroff, 2019: 184).

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8.4.2.4 Self-Employed Workers

The executive improved the contributory careers and social rights of self-employed workers (17 per cent of employment in 2018). After improvements in 2012 and 2013 (unemployment benefit extended to economically dependent self-employed workers and self-employed employers), the Geringonça granted access to cash benefit assistance to children and grandchildren as well as for children with chronic disease or disability (major extant gaps relative to employees) (Decree-law 53/2018). Also, it set a more generous definition 'economically dependent', broadening access to unemployment benefits (Decree-law 2/2018). The record of contributions was aligned with salaried workers (360 days / previously 24 months) and contributions to social security dropped from 29.6 per cent to 21.4 per cent while employers' range from 7 per cent to 10 per cent (previously 5 per cent) (Decrees-law 2 and 53/2018). The waiting period for sickness benefits were cut from thirty to ten days. For the first time, regulation of UBER and electronic platform drivers (Law 45/2018), as regards employment contracts and working time.

8.4.2.5 Fixed-Term and Temporary Workers

The 2019 Labor Code reform re-regulates fixed-term and temporary contracts (22 per cent of the worforce in 2018), to reduce dualisation and steer companies to hire open-ended contracts: inter alia, cuts maximum duration; penalises companies for excessive use by additional social security contribution; restricts use when starting new businesses with less than 250 employees; and limits renewal by closely matching initial contract period with period necessary to satisfy company temporary needs. On the other hand, very short-term contracts increase from fifteen to thirty-five days, up to a maximum of seventy days per year with the same employer, and can now be held outside agricultural seasonal activities or touristic events. Also, seeking to boost open-ended contracts for first-time jobseekers and the long-term unemployed, it extends the trial period from 90 to 180 days.

8.4.3 *The Geringonça and the 2019 Labour Code: Compensation and Political Exchange*

The Labour Code reform generated mixed reactions among trade unions and radical left parties. While limits to the use and duration of fixed-term contracts were welcomed, measures extending very short contracts and the trial period for first-time jobseekers and long-term unemployed were decried as potential new sources of precarious work. CGTP, which had not signed the 2018 Social Pact, also opposed measures regarding collective bargaining, claiming the full restoration of the *favor laboratoris* principle (lost in the 2003 Labour Code reform) and the reversal of rules that allow agreements to expire on the basis of unilateral decision (Campos Lima & Carrilho, 2018).

BE, PCP, and The Greens voted against the new Labour Code (25/9/2019), then asked the Constitutional Court to review the extension of the trial period to 180 days when hiring first-time jobseekers and long-term unemployed and the increase in duration of very short-term contracts to thirty-five days. The Court later struck down the extension of the trial period for first-time jobseekers (Ruling 318/2021).

Despite the recalibration agenda and pressure from radical left parties and trade union allies (especially CGTP), the Geringonça did not touch Troika-era core labour market reforms: cuts in dismissal compensation, new definition of fair dismissal (case of unsuitability for the task), new criteria for dismissal (case of job extinction), and shorter duration of unemployment benefit – and the 2019 Labour Code reform did not reverse them. Why?

We argue the answer lies in a compensatory political exchange strategy involving the PS minority government with (i) trade unions, especially those allied with left parties BE and PCP and (ii) employers' confederations (Branco et al., 2019: 225). The continuity of crisis-era core labour market reform was made palatable to the Geringonça left allies by way of compensation in income policy and public sector regulation: large minimum wage hike, end of all cuts in salaries and pensions, and the redrawing of income tax brackets in the Budget Law for 2018. Employers have acquiesced to all 'income recovery' policies, but have forcefully signalled that no further reversals of core labour market reforms are acceptable. Until the Labour Code vote in September of 2019, with general elections in sight, there was ongoing tension (but no break) with the supporting left parties. The triangular compensation strategy both made the Geringonça possible and drew its limits, for the government did not wish to lose the ongoing support of employers in social concertation (in turn, needed for a successful income recovery policy). In fact. the Geringonça would finally break down in the Fall of 2021 over these same issues.

8.5 POLICY, CLEAVAGES, AND SOLIDARITIES IN PORTUGAL (2011–2019)

Above, we have detailed how social policy changed between 2010 and 2019. This section surveys the impacts of these changes upon societal cleavages and solidarities.[3]

European governments' policy responses during the Great Recession and beyond can be broadly classified as retreat of state interventionism or new forms of

[3] We employ Taylor-Gooby, Leruth, and Chung's definitions of 'cleavage' as division between variegated social categories, spawning different interests and norms and leading to social action, and 'solidarity', in this context, as the recognition of common interests or identities that support political action (2017: 2).

interventionism (Taylor-Gooby et al., 2017: 13). From 2011 to 2014, Portuguese policies retrenched the intervention of the state, with major focuses on austerity and individualisation, while new forms of interventionism prevailed from 2015 to 2019, with major responses in social investment and fightback policies.

Table 8.2 shows that from 2011 to 2014 policy orientation combined major retrenchment of the intervention and regulatory reach of the state, mainly through austerity cuts, enhancement of individual responsibility, and labour market deregulation, with minor responses in new forms of state intervention (e.g. the 2011 emergency social plan) and social investment policies (mainly a host of ALMP). Such policies kindle social cleavages, pitting advantaged and disadvantaged groups, old age (pensions) and youth (unemployed and unprotected), workers (say, civil servants) and non-workers (unemployed), middle class and vulnerable (less so secure v. precarious workers since liberalised dualisation impacted insiders without empowering outsiders). On the whole, such policies created extended 'losers' of the economic adjustment, without forging meaningful, inclusive solidarities, rather the potential for a broad and inclusive political fight-back coalition – which is generally the Geringonça's origin story.

On the other hand, recall that coalitional politics worked until the Fall of 2012 to moderate or blunt some of the dualising and inegalitarian effects of austerity reforms, and how the Constitutional Court vetoed legislation that would have entrenched some of said cleavages, therefore precluding even more inegalitarian, counter-solidaristic outcomes. Finally, note that these policy responses did not follow the path of welfare chauvinism with the emergence of a negative cleavage pitting denizens vs. immigrant and refugees, and the promotion of nationalism.

In the aftermath of the crisis, from 2015 to 2019, amid waning conditionality, economic recovery, and improved labour market performance, the Geringonça coalition enacted a social policy agenda of reversals and recalibration, closing the gap between insiders and outsiders, within the tenets of fiscal consolidation, new European governance, and market-based constraints. Nearly all social protection cuts ended and a handful of structural measures were reversed. Executive partisan and ideological turnover in 2015 was decisive to bring about reversals. Until that moment, absent such change, structural reversals were possible only through the Constitutional Court, as no other channels for change were available (Branco et al., 2019).

Policymaking from 2015 to 2019 yielded fewer cleavages while garnering broad-based support from middle classes while at the same time including precarious and outsider groups. There occurred three main policy responses within the broad category of 'new forms of interventionism': interventionism, social investment, and fight-back, variously embodied by the policy agenda of 'income recovery' with the reversal of prior austerity cuts, structural reversals in the labour market, and social protection, and an expansive recalibration agenda in the labour market and social protection. These promote an important set of solidarities: cross-alliance between

TABLE 8.2. *Policy responses in Portugal (2011–2019): Impact on cleavages and solidarities*

Conservative government 2011–2014	**Geringonça coalition 2015–2019**	**Type of response**	**Policies**	**Cleavages**	**Solidarities**
		Retreat from interventionist state			
MAJOR	NO	Cuts/austerity	Cutbacks; privatisations Prioritise pensions, healthcare not working-age benefits Prioritise wage supplements and low income tax; cut benefits Prioritise social insurance	Advantaged groups v. disadvantaged intergenerational Workers v. non-workers Secure v. precarious	None None None
MAJOR	NO	*Individual responsibility*	Privatisation; means testing; some forms of social investment	Middle class v. vulnerable	None
		New forms of interventionism			
MINOR	MINOR	Interventionism	State-led investment to create jobs; welfare spending to maintain demand from the poor		Class alliance between working-class and middle-class groups
MINOR	MAJOR	Social investment	Prioritise training and family support	Groups whose engagement in work skill level can be enhanced v. other	Groups marginal to the labour market
NO	NO	Pre-distribution	High minimum wage, rent and utility price control; better job opportunities	Low-waged v. high-waged	Across lower age groups
NO	MAJOR	Fightback	Anti-austerity measures; higher benefits; corporate tax		Solidarity of disadvantaged
NO	NO	Welfare chauvinism	Residence and citizenship tests; immigration control; national protectionism	Denizens v. immigrants	Nationalism

Source: own elaboration, adapted from Taylor-Gooby et al., 2017: 13.

working-class and middle-class groups, groups marginal to the labour market in need of inclusion, rights and protection, and solidarity of the disadvantaged.

Finally, we examine weather crisis-era *policies* generated a new *politics* down the line. In other words, how changes in solidarities and cleavages engendered by Troika-era policies influenced the electoral behaviour of social groups or strata that supported the Geringonça parties in the 2015 elections.

In the Fall 2015 elections, the conservative alliance fared badly with unemployed and low-income voters, those hardest hit by the economic crisis, while pensioners favoured the Socialists, and public sector and (especially) unionised voters were likelier to vote for either the PCP and the BE (Fernandes et al., 2018: 505–506). The higher-income strata (closely correlated with higher socio-economic class and status, and certain occupations such as big and small business owners, managers, and liberal professions) tended to vote for right-wing parties (Cancela & Magalhães, 2020: 117). It shows these strata did not punish PSD-CDS for adopting measures that impacted them during the crisis (such as levies on higher pensions or the steep progressive reform of taxes upon wage and pension income). The neoliberal, supply-side policy agenda (steep cut in the corporate tax, internal devaluation based on the flexibilisation of the labour market and downward adjustment in wage salaries) helped to keep electoral support despite some material loses. Conversely, this helped PS, CDU, and BE consolidate the support of groups with lower salaried income, paving the way to a parliamentary coalitional majority.

While from 2002 to 2011 the pensioner vote was apportioned equally between centre-right and centre-left parties, this electorate disproportionately voted for the centre-left Socialist Party in 2015. Pensioners were particularly hit during the crisis: freeze in pension updating; cuts in annual benefit value; one-off tax levies. The voting pattern of pensioners extended to the larger and very sizeable block of the elderly vote, always more prone to turn out. While up until 2011 this vote block favoured both PS and PSD, in 2015 (and also in 2019), the centre-right parties, especially PSD, fared much worse with the elderly (Cancela & Magalhães, 2020: 107). The making of an inter-class, intergenerational solidarity underpinned the Geringonça. Indeed, the other group particularly hit by the crisis, the young and unemployed (Rodrigues, Figueiras, & Junqueira, 2016), voted for left-wing parties in 2015.

The 2015 elections evince a cleavage between poor and rich and intergenerational solidarity between young and old, punishing centre-right incumbents. The Geringonça enacted a broad, inclusive, and solidaristic social policy agenda, both compensatory and expansive. Many reversals undid measures that had targeted the losers of the crisis, specifically pensioners, production workers, and low-salaried workers, such as the increase of the minimum wage, and the broadening in coverage and generosity of the minimum income and old-age support schemes. The PS-led government and radical left allies also enacted more inclusive policies, improving social protection for outsiders, such as those in atypical employment, a core base of the radical left, with measures such as the re-regulation of temporary employment (Bulfone & Tassinari, 2020). This set of policies were responsive to the intergenerational solidarity coalition that helped bring Geringonça to office in the first place.

8.6 CONCLUSIONS

In this chapter, we have probed how Portuguese domestic politics and institutions were able to counteract external pressures to liberalise the labour market and social protection regimes. The first conclusion is that *domestic political actors and institutions matter, even under formal external conditionality*. This was the case in the first years of the crisis (2010–2012) when an informal coalition of parties and social partners adopted, alongside significant liberalisation for insiders, a set of recalibration measures and moderated or blocked others in the MoU. It was again the case from late 2012 when the Constitutional Court vetoed further austerity and deregulatory measures. Finally, it was again the case from 2015 when, following the end of the Adjustment Programme, the centre-left government and supporting left partisan allies enacted a social policy agenda of reversals and recalibration – albeit keeping with the tenets of fiscal consolidation, European governance and market-based constraints.

On the other hand, there are *limits in the ability to moderate liberalisation, both under and without conditionality*. From 2012, no longer constrained by the informal bailout coalition, the PSD-CDS government fully aligned its preferences with the Troika. As a result, LMP 'went beyond' the MoU and the 2012 Social Pact in that it undermined collective bargaining and furthered liberalised employment relations, while dropping recalibration. From 2015, the progressive coalition could not agree on the reversal of core labour market structural reforms adopted during the crisis. Such reversals were strongly opposed by European institutions and international creditors and by employer confederations, which the Socialist government did not wish to antagonise, despite pressure from its left allies, which ultimately led to the fracture of the Geringonça over the 2019 Labour Code.

Ideological orientation also matters. The decade of labour market and social protection reforms can be demarcated between the Great Recession under conditionality with centre-right government and the post-crisis period with abated conditionality under a left-of-centre progressive coalition. Ultimately, reforms passed during the crisis worsened the security and protection of insiders and outsiders, while decentralising and weakening collective bargaining. The gap between outsiders and insiders narrowed not because the former fared better, but because the latter became less protected. Dualisation endured at a lower level of security – a pattern of 'liberalised dualisation'. In the post-crisis period, under the Socialist government and left partisan and trade union allies, the pattern of liberalised dualisation was partially reversed in that those in non-standard, atypical, and temporary contracts became better protected, both in the labour market and in social protection.

Lastly, we explored the impact of policy upon politics, looking at patterns of societal solidarities and cleavages issuing from labour market and social policy reforms. The analysis of the pivotal 2015 election showed that the 'losers' of the crisis (young workers, the unemployed, those in standard employment, civil servants, and pensioners) significantly punished the centre-right government and voted for opposition parties. The Geringonça was forged by an intergenerational solidarity among those made more vulnerable during the crisis, both insiders and outsiders, the young in atypical employment and pensioners. We argue that the broadly inclusive policies enacted by the Socialist government and supported by left partisan and trade union allies were responsive to these emerging bonds of solidarity, though not devoid of tensions and contradictions.

The COVID-19 pandemic hit in March 2020, with huge economic and social impacts. After a spell of healthy growth from 2016 to 2019, GDP dropped 8.5 per cent in 2020. Growth resumed in 2021 (+ 4.9 per cent), and will reach pre-pandemic levels only in 2022 (OE 2021: 47). After a budget surplus of 0.1 per cent in 2019, 2020 recorded a −7.3 per cent deficit, and then −4.3 per cent in 2021. The unemployment rate, after plunging to 6.5 per cent in 2019, has risen to 8.2 per cent in 2020, and is expected to level down during 2021. After the pandemic hit, 40 per cent of the employed saw their working hours decrease by July 2020. While feelings of job insecurity abated from the April peak, still 15 per cent of respondents fear losing their job by the end of year. The pandemic also hit hard work–life balance and gender equality. Women struggle with work–life balance more than men, particularly if they have young children, while poor work–life balance increases in proportion with teleworking parents, particularly for women, as they spend disproportionate time in caring activities or doing homework (Eurofound, 2020b).

During 2020 the Portuguese government enacted policy responses with an estimated cost of €5300M in direct public outlays (OE, 2021: 32), funded by a mix of national and European funds (SURE and REACT programmes). According to the Eurofound COVID-19 EU Policy Watch, the wide array of national-level responses (including Tripartite Agreements) focused on economic, labour market and social recovery, the protection of workers and the workplace, income protection beyond short-term work, and preventing social hardship (see also Eurofound 2020a). Concretely, in addition to the €504M supplement to the NHS, there were employment protection measures (e.g. simplified lay-off, active labour market policies, €800M), family support (extraordinary income support benefit and others, exceeding €250M), support to people in economic hardship (extraordinary income support benefit to non-standard workers) and to business companies (delaying of tax payments, €600M). In the Budget Law for 2021, and considering only direct expenditures (€3079M, 1.5 per cent of GDP), the major social protection and economic stimulus measures are: employment protection and activation (€965M),

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extraordinary income support benefit (€450M), PPE and other health (€300M), additional public sector employment in health and education (€210M), extraordinary pension raise (€99M), subsidy for medical staff (€60M), raise in the minimum value of unemployment benefit (€75M), and COVID-19 health income replacement benefit (€24M) (OE 2021: 65; see also Moreira et al., 2020).

These measures were adopted with broad political support, including the main centre-right apposition party, PSD, all social partners in social concertation, and the President of the Republic. For example, all twelve states of emergency declared until March 2021 met the approval of PSD in parliament. The supplementary COVID-response budget in mid-2020 and for 2021 were approved with the tacit assent of the centre-right PSD and the left Geringonça partners PCP and BE. This brings us to a final point regarding the behaviour adopted by the opposition towards the executive. Cooperation between government and opposition has been the pattern in Portugal during the pandemic, unlike in other Southern European countries (De Giorgi & Santana-Pereira, 2020). This chapter evinced how during hard times or national emergency the traditional governing parties PS and PSD, but also the social partners, have been able to cooperate in the legislative process, be it during the first phase of reforms under the Troika, or the ongoing pandemic, to bring about relatively more egalitarian and protective policies. But there is variation in the mode and intensity of said cooperation (Branco & Cardoso, 2020; De Giorgi et al., 2015): when there was none and conservative executive unilateralism prevailed, as during the latter stages of the Troika period, inverse outcomes obtained, and solidarity waned.

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