

DIADSE – DIALOGUE FOR ADVANCING SOCIAL EUROPE

Country report: Spain

POLICY PAPER

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In Spain, the labour market was traditionally characterized by the abuse of fixed-term contracts, the tightness of the legal framework in order to modify the working conditions and the lack of coordination of the collective bargaining. As a consequence of the above, during the first years of the economic crisis, while unemployment was rising dramatically, real wages increased. The described situation stimulated a discussion on the urgent need of a labour market reform.

In our country, the serious and intense economic crisis is a relevant factor in order to understand the failure of the tripartite social dialogue between the government, unions and business associations. During the analysed period, labour market reforms have been passed without the support of social partners, due to curtailment of labour rights introduced by the reforms. While the Socialist government gave more importance to social dialogue, the conservative government has paid little attention to it. It should be noted that while the 2010 and 2011 labour market reforms were preceded by negotiations between the social partners and the Socialist government, no form of social dialogue took place for the 2012 reform (conservative government). Furthermore, the conservative government ignored the agreement reached by the Social Partners and approved a very aggressive reform. It shows that social dialogue was perceived as more of a drawback than an advantage.

In contrast, bipartite dialogue has been reinforced between unions and business associations. It is clear that in Spain, one of the strategic responses of the social partners to the failure of tripartite social dialogue has been to strengthen and develop bipartite social dialogue at all levels: sectoral and enterprise. Social partners have signed relevant agreements regarding the maximum period of collective agreements and wage moderation, among other issues. The 2012 Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC II) represents a clear step towards these trends. In particular, this agreement seems to have produced some positive effects on collective bargaining coverage since it has encouraged social partners to renegotiate the collective agreements. At enterprise level there are serious doubts as the freedom of unions or work councils in order to negotiate the working conditions because sometimes the agreement (for example, the reduction of wages) is signed to avoid more dramatic consequences such as layoffs.

The lack of agreement has increased the labour conflict in the judicial field as well as in the collective disputes. Not only have there been more general strikes over the period, but there have also been significant judicial conflicts. In particular, unions have expressed their disagreement with the labour market reform, calling for general strikes, bringing judicial actions and negotiating against labour market reform. Despite the increased number of strikes during the last period, the economic impact has not been particularly high in comparison with previous years. It should be noted that the impact appears to be higher during the PP stage than the Socialist period. In 2012 the number of participants increased (33.8%; the highest number since 2009). However, the economic impact decreased to 14.8% and there was shorter strike duration.

Over recent decades, employment protection legislation has been the focus of policy-makers' attention in Spain. High temporary rates and wild volatility of employment have been explained by the costs gap between permanent and temporary workers. International and Communitarian institutions, as well as internal Spanish lobbies and think tanks, have pressured successive governments to pass reforms in order to address this problem.

From the perspective of the Social Agents, even if the objective could be peacefully accepted, the optimal strategy remains quite controversial. While business associations pretended (and pretend) to reduce labour costs (including everything related to redundancies, such as severance payments and procedural costs), worker representatives believe that the main objective must be the protection of employees, and therefore severance payment levels constitute a red line.

The labour market reform of 2010 –which provoked a general strike– attempts to preserve existing equilibrium. Therefore, it raised the cost of terminating temporary employees, but it tried to ease the causes for lawful redundancies and to clarify the consultation procedure. In 2012, the new reform under the conservative government made a clear commitment to the reduction of judiciary control over redundancies, and unlawful dismissal and redundancy costs were reduced. Two general strikes were called as a consequence of the 2012 labour market reform.

These measures not only heightened tensions and hindered social dialogue, but also led to an imbalance in all types of labour relations and working conditions negotiation. As redundancies were much easier to carry out, worker representatives are frequently compelled to accept almost every internal flexibility measure proposed.

The potential impact of this reform on reducing the duality of the labour market is reduced. As soon as unemployment began to scale down, Spanish firms again began hiring temporary workers instead of permanent employees. From the perspective of employers, temporary workers are still perceived as being the best tool to face uncertainty. Obviously, lower costs for terminating permanent jobs could theoretically increase the use of open-ended contracts. Nevertheless, temporary employment remains cheaper and easier to terminate while also reducing the strength of worker representatives.

In matter of collective bargaining, the social partners achieved a pre-agreement on the main points of the reform but the new CEOE chair refused it. So that the 2012 reform was approved without the agreement of social partners. The Labour Reform passed in 2012 attempted to decentralize collective bargaining and to grant more power to employers at the bargaining tables. From the perspective of unions this reform has undermined their position which is focused on the sectoral agreements. The legal

modification enhanced the role of the collective agreements at enterprise level. The purpose of decentralization has probably been achieved to a certain extent, but not to the desired level, especially by the conservative government. Its practical results are not so clear and it is evident that the number of employees covered by firm-level agreements has not risen dramatically. On the one hand, decentralization has proven to be difficult in a country with so many very small companies, most of which lack the necessary employee or union representatives to initiate a formal process of collective bargaining.

Salaries have decreased for the majority of the workforce, especially in the lower ranks of the labour market. Salaries began to decrease in 2008 (for the lowest decile) and in 2010 (for the second and third lowest deciles). Internal devaluation is not a result of the 2012 Labour Reform, and a better explanation most likely relates to the less-skilled and those in the worse paying occupations. At a company level, it has been very common to negotiate agreements in which workers agreed to work fewer hours with a commensurate reduction in pay in an effort to minimize labour shedding and preserve human capital. In return, employers promised to resort to layoffs only as an extreme measure, when all other possibilities (for example internal flexibility, training) have been exhausted. When it comes to opt-out agreements at the firm level, statistics also show that they have not had a big impact on the structure of collective bargaining. In 2013, which is the year having the highest number of opt-out agreements, there were 2,512 firm-level agreements opting out of some kind of working conditions (wages, for the most part) established by sectoral agreements. These firm level agreements covered only 159,550 employees.

The desired effect, as recognised by social partners interviewed for this report, is not to encourage redundancies, but to avoid them from compelling workers and their representatives to accept poorer working conditions. As redundancies constitute a true and credible threat, the alternative (e.g. lower salaries, more working hours) could be easily perceived as the best option. The effects on social dialogue are also clear, as the law gives more power –also because of the change in collective bargaining– to the traditionally considered “strong side” of the bargaining table: the employer.

Wage adjustment has probably taken place in the areas of the economy that are not covered by formal collective agreements or through the elimination or reduction of salary components that are unilaterally granted by companies and not established by collective agreements. One should also not rule out an important degree of informality in the Spanish labour market, which entails that a disproportionate number of employees are either misclassified (meaning they work in a position that is actually higher than the one formally recognized by the company for wage purposes) or work longer hours than those formally admitted by the company.

The legal uncertainty caused by some judicial interpretations of the 2012 Reform has also deterred companies from using all of the resources that were tentatively granted by the new legal framework. The best example of this may be seen with the end of the automatic continuation of collective agreements beyond their expiry date. The 2012 Reform wanted to limit the automatic continuation of collective agreements beyond their expiry date. This was an important legal development, which clearly agreed to provide more power to employers at the bargaining table. Although this change may seem important and should be expected to produce dramatic effects in the balance of power between labour and management, the real effects of the change are not so remarkable. It is due to the Supreme Court decision of December 2014, which is extremely controversial, guarantees that employees continue to enjoy the same employment conditions (including wages, working hours, etc.) while a new collective

agreement is being negotiated. Thus, the Court guarantees a floor of working conditions that permits unions to request improved or increased conditions at the renewal negotiations.

Aside from the technical deficiencies of the 2012 Reform -especially concerning the expiration of collective agreements-, its most serious drawback is probably the lack of any type of consensus regarding this Reform. It was an externally imposed reform (ECB, European Commission, etc.), more so than one that was internally-generated: not only was it not endorsed by the social partners, it was probably not even fully understood by the political party that approved it in 2012. The lack of social and political support explains the opposition to the Reform by the “progressive” association of judges immediately following its approval. This opposition has had its opportunity to deploy its effects in different aspects of the Reform, one of which is the mentioned Supreme Court decision of December, 2014 on the continuation of working conditions of an expired collective agreement.

After an initial period (2008-2010) in which the Spanish welfare state avoided austerity plans, more recently (2010-present) cuts have affected the most important programs of the welfare state and, particularly, social security. Social security reforms may be divided in two main types. On the one hand, retirement pension reform is doubtless the most well-known by the public. On the other hand, unemployment system reform has been developed more “quietly”, given that it has been implemented by successive and partial legal changes.

Retirement pensions are the social policy having the greatest weight in public expenditure. Therefore, their sustainability is crucial for achieving the objective of healthy public finances, especially in the context of economic depression. Although this is a complete and systematic reform, it may be divided in two main parts, from a chronological point of view.

The first chronological period is marked by Law 27/2011. A crucial factor related to its negotiation should be highlighted: the social partners and the socialist government at the time of agreement of its principal elements. The final result is a reform of the public pension system that should be considered rather ambitious by Spanish standards (it increases the retirement age from 65 to 67 years and the legal age of early retirement from 61 to 63 years and extends the pension calculation period from 15 to 25 years and increases the number of contribution years required to reach 100% of the regulatory base from 35 to 37).

The second period began in 2013 and was initiated by the new conservative government, which imposed various reforms without negotiating with the social partners. Focusing on main novelties, this new regulation makes access early retirement more difficult and creates two different mechanisms that reduce public expenditure on pension over the middle and long-term: the annual revaluation of the pensions index (in place since 2014) and the sustainability factor (which will go into effect from 2019).

As for the unemployment system reform, it draws special attention to the reduction of the expenditure on unemployment subsidies (i.e., by reducing the percentage applicable to the regulatory base from 60% to 50% when calculating the amount of benefit after the sixth month of receiving it, increasing the so-called “subsidy for unemployed older than 55 years old” from 52 to 55 years of age and eliminating the “special subsidy for unemployed older than 45 years old”); the promotion of part-time and self-employment as employment policy and the strengthening of control mechanisms of the unemployed. Furthermore, the cause for workers accepting part-time work appears to be different in

Spain as compared to the other EU members. During the economic and financial crisis, part-time work has become mainly involuntary. In Spain, two out of three part-time workers would like to have a full time job, one of the highest rates in the European Union and also one of worst evolutions; in 2007, this was the case for only one out of three Spanish part-time workers.

Finally, the current political landscape (the caretaker government) and the announcement of new reforms (by the different party groups) have not contributed to improve the described situation.