



Derecho del Trabajo, Cambios
Económicos y Nueva Sociedad

Social partners and Labour Market Reform in Spain (2008-2015)

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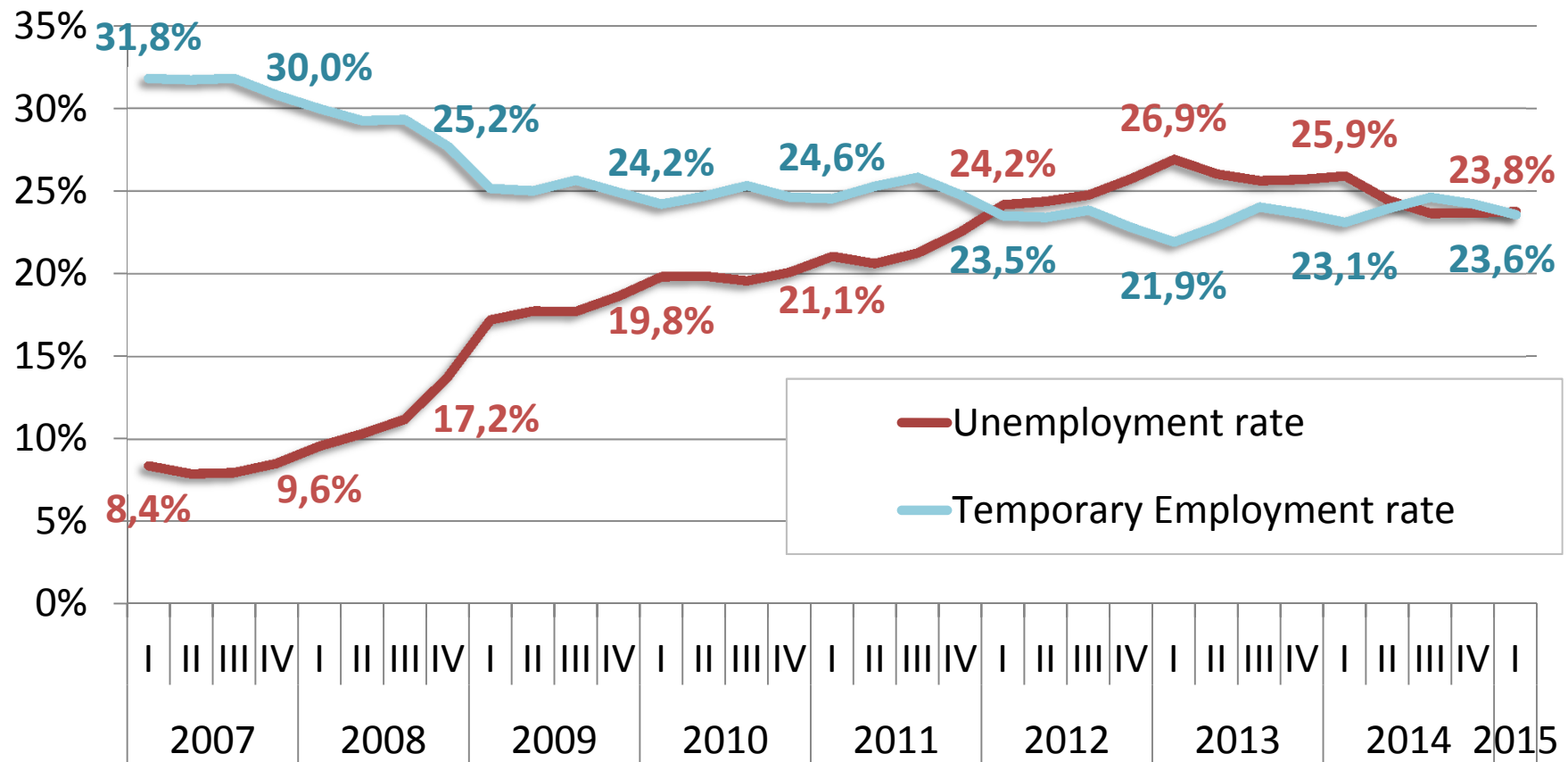


The role of social partners on Labour Market Reforms: an overview

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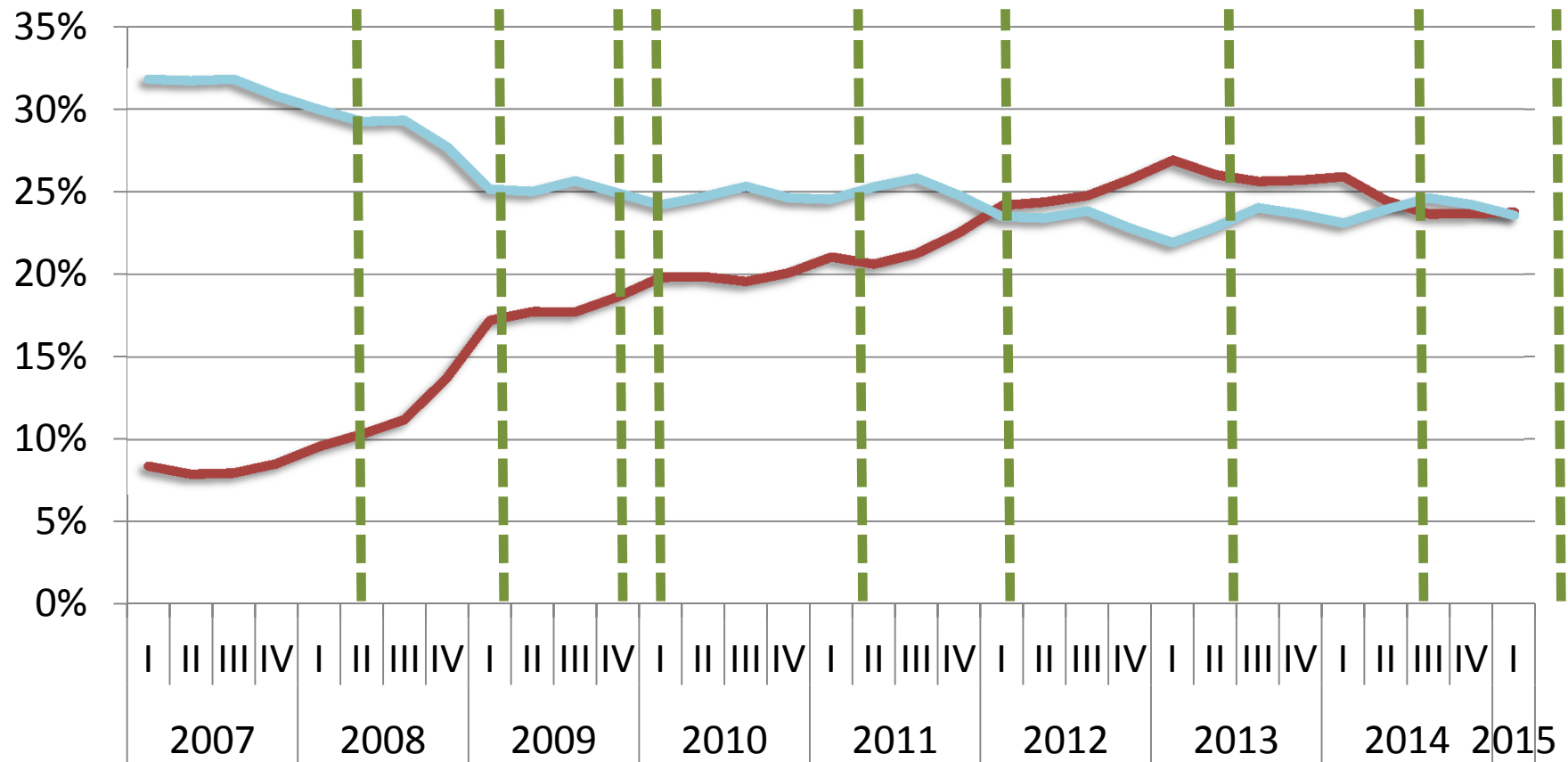


Spanish employment crisis



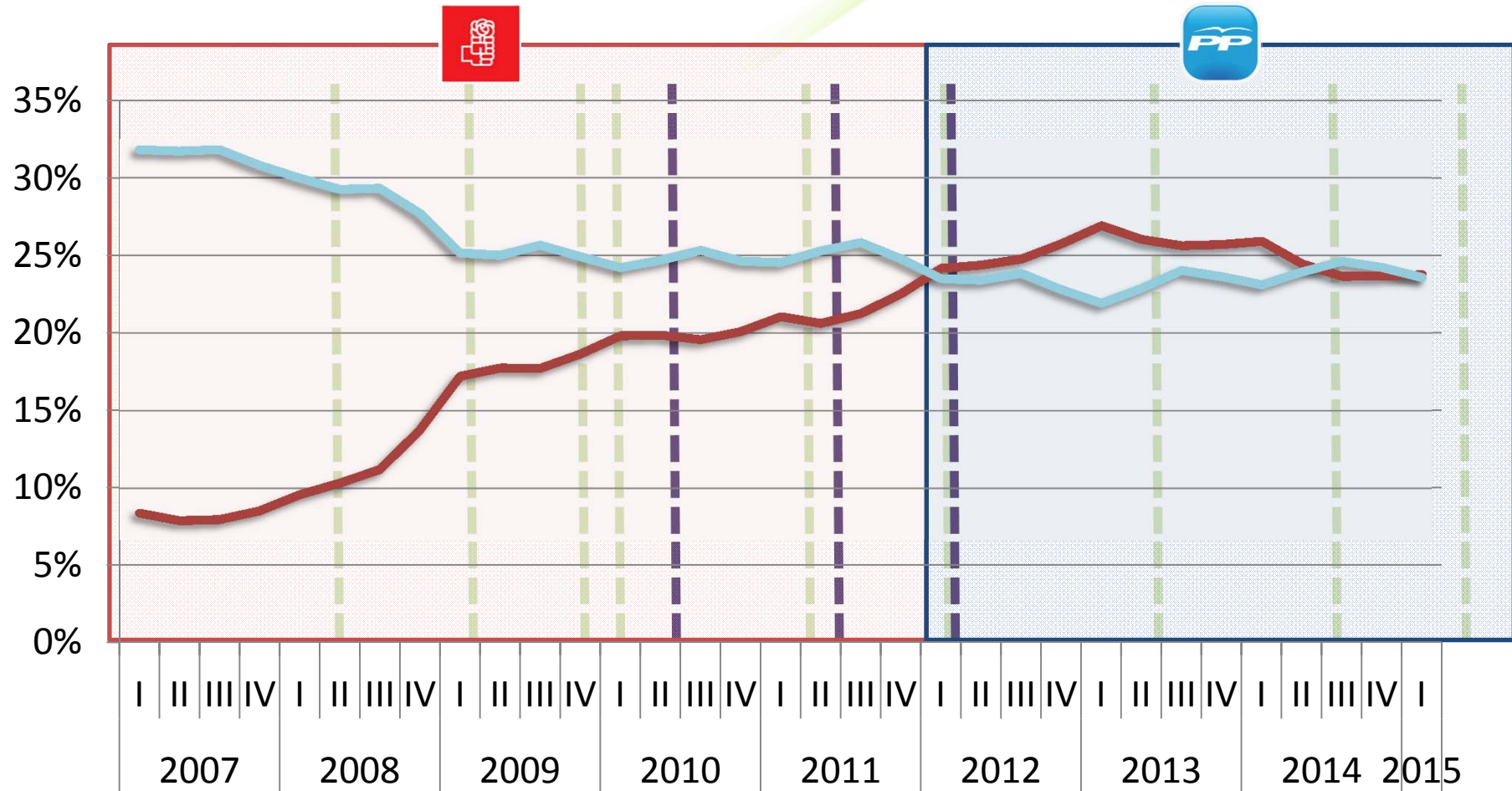


Social partners agreements





Relevant labour market reforms





Social dialogue & reforms under the socialist Government

- Late start (fall/winter 2009)
- First failure of social dialogue → Non consensual reform (2010)
 - BUT: some of them postponed
- Change of Minister of labour → Social dialogue enhanced
- Collective Bargaining Agreements reform: New Conflict between trade unions and employers



Social dialogue & reforms under the conservatives Government

- Absolute majority + international pressure
→ show of force needed

2012, January 25th. **Second Agreement for Collective Bargaining and for employment.**

2012, February 9th. **Ministry of Economy to European Commissioner for Economic and Monetary Affairs**

“Tomorrow we approve the reform of the labour market. You’ll see its going to be extremely, extremely, you know, aggressive”

2012, January 10th. **Council of Ministres approves Royal Decree-Law**



Social dialogue & reforms under the conservatives Government

- Slow recovering of social dialogue
 - 2014, September 20th- Agreement on proposals to strengthen employment and economic growth
 - 2015, June 8th, *Third Agreement for Collective Bargaining and for employment*



Employers' position on Labour Market Reforms

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Employers' Demands in Spain

1. Before Labour Market Reform 2010, CEOE's proposals were focused on: **reducing severance payment** until an intermediate level between that for indefinite contracts and one for temporary contracts; **promoting part-time employment**; **making collective dismissal more flexible** (in order to reduce severance payment); **improving internal flexibility**; **reducing social security contributions**. DIAZ FERRAN, G., "Proposals for an effective labour market reform", El Pais, 3-3-2010

2. Regarding Labour Law Reform 2010: «For CEOE and CEPYME, Government's proposal about labour market reform, internal flexibility and reduction of working hours, youth employment and unemployment does not give a mayor and sufficient answer to the necessities neither of companies nor whole society». CEOE-CEPYME, "Report on Government's Document-Proposal for Labour Market Reform", 15-06-2015.

➤ In September 2010, a general strike against this labour market reform was called.

3. Regarding collective bargaining, their proposals were: i) simplify the number of levels of bargaining, promoting the distribution of topics; ii) reconsidering "general efficacy", iii) promoting non-application of branch collective agreement; iv) "ultraactivity" must not be regulated by the law. CEOE, "Proposals on collective bargaining reform", 20-10-2010. (ANA BELÉN'S Presentation)

4. Regarding Labor Market Reform 2012: «A substantial step in the modernization of our labor legislation»; «an effort to improve the efficiency and flexibility of our labor market», CEOE, "The reforms which are necessary to leave the crisis", 2013.

➤ In November 2012, a new general strike against this labour market reform was called.



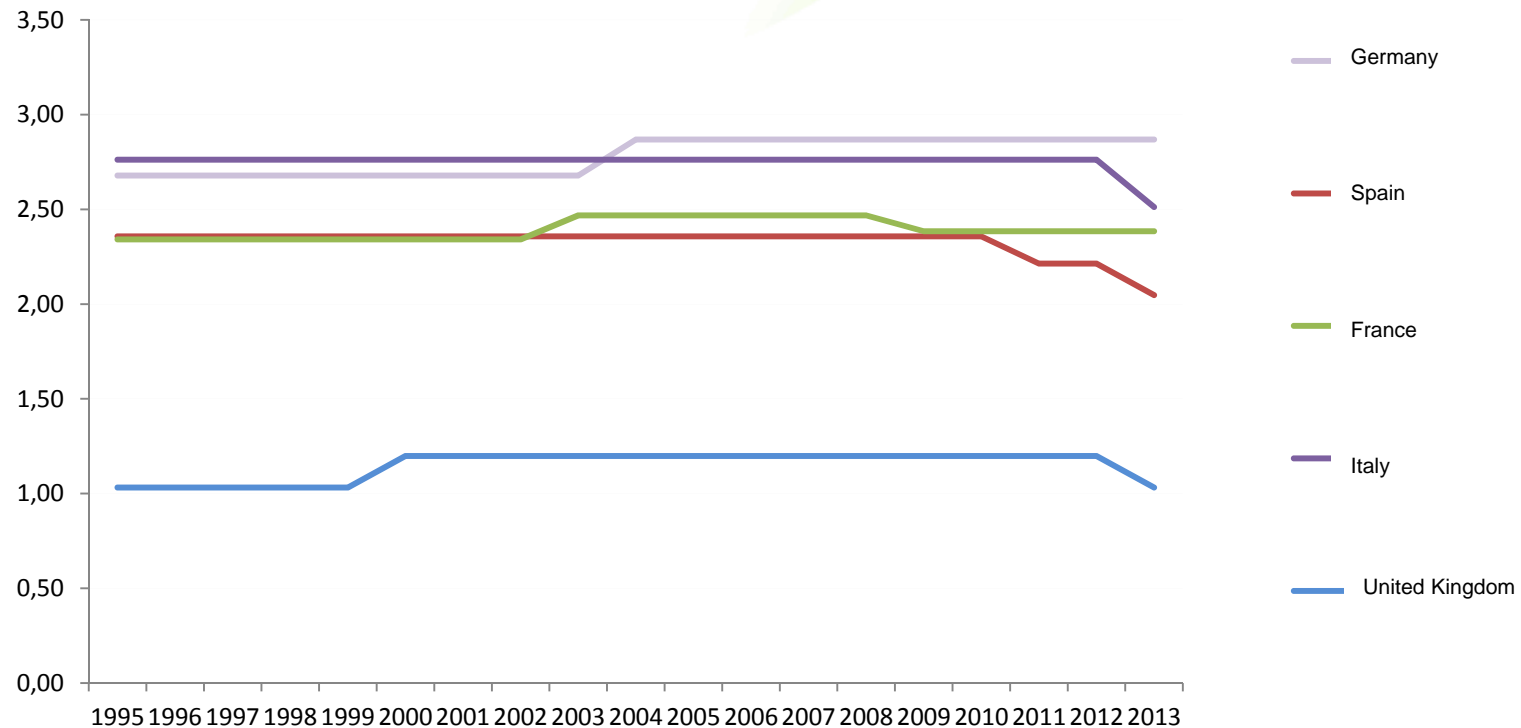
Employers' Demands in Spain

Topic	LMR 2010	LMR 2012
Internal Flex.	✓	✓ ✓
External Flex	✓	✓ ✓
Collective Barg.	✓ (2011)	✓ ✓
SS Contributions	✗	✗



And if we pay attention to dismissal particularly...

Employment Protection Legislation (individual and collective dismissal)

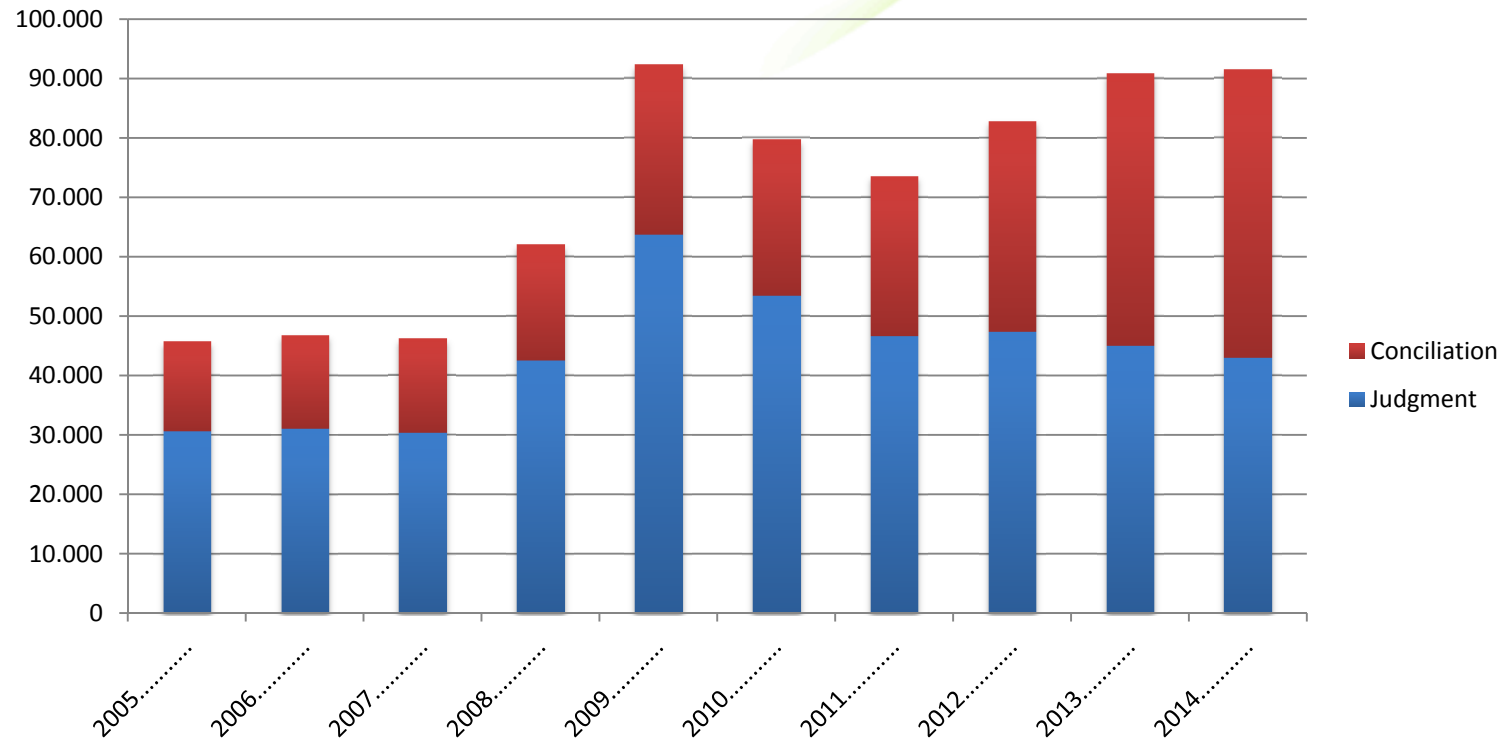


Source: OECD and own elaboration



And if we pay attention to dismissal particularly...

Cases about individual dismissal

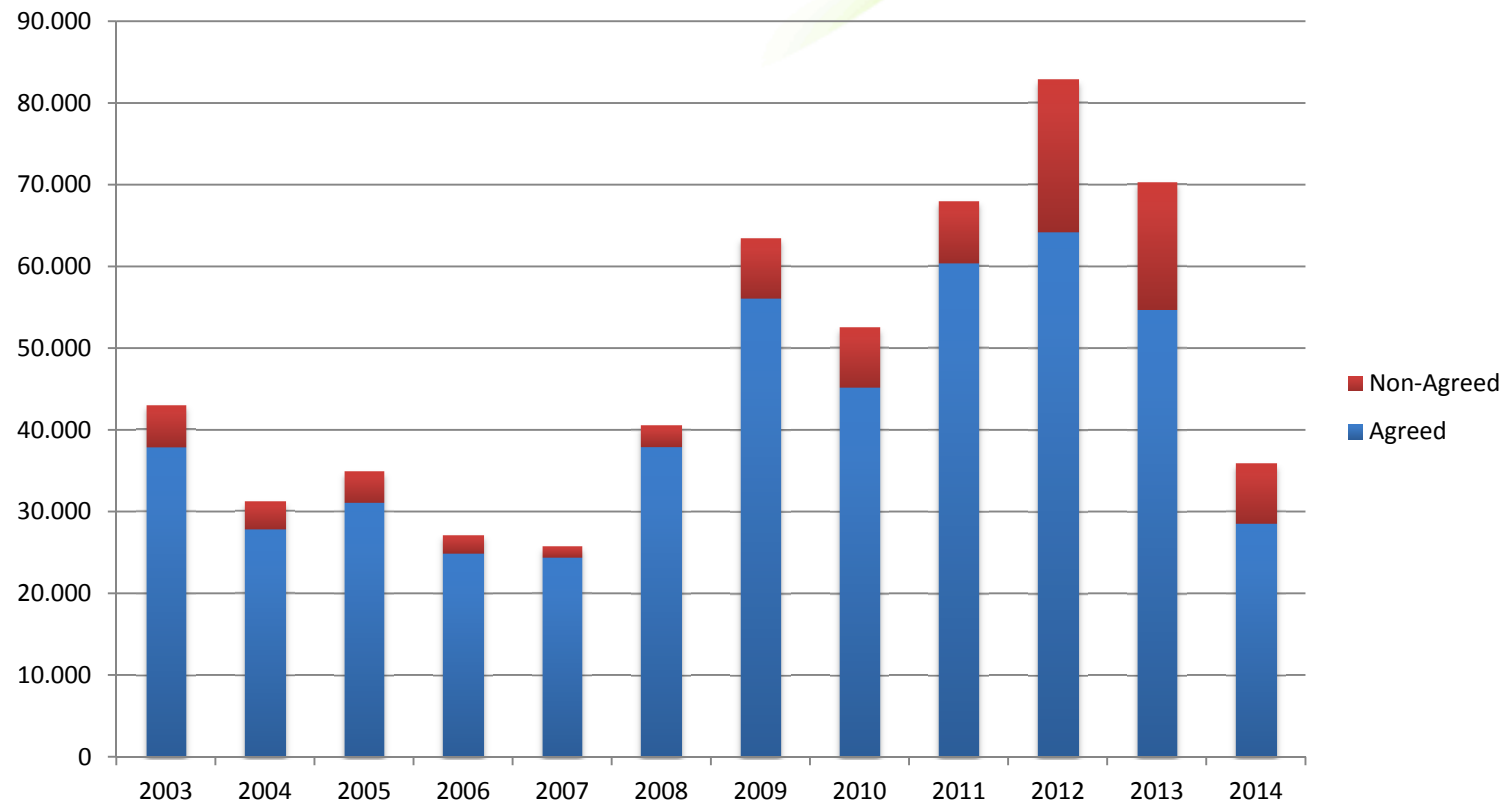


Source: Ministry of Employment



And if we pay attention to dismissal particularly...

Workers affected by collective dismissals



Source: Ministry of Employment



Employers' Demands in Spain

Forthcoming...

CEOE-CEPYME has proposed new measures:

1. A **probationary period of one year, increase employer's capacity on internal flexibility** (deciding the application of contract suspension, reduction of working time and variable salary; reduce the number of cases of null dismissal, abolish "ultraactivity"). CEOE-CEPYME, "Proposals for improving business environment", 11-06-2014.
2. Other CEOE's proposal are: **reduce the number of temporary contracts, promote part-time work, make learning contracts more flexible, reduce social security contributions**. CEOE, "Draft of proposals for the National Reform Plan 2015", February 2015.



Trade Union's position on Labour Market Reforms

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Unions: The collective bargaining is the main priority

- The union's strength focuses on the collective bargaining:
 - The union density rate is lower than 20%.
 - A very high level of collective bargaining coverage of around 80-85%. Legally enforceable for all employees.
- The Spanish Government has regulated issues which don't fall within its competence.
- III Acuerdo para el Empleo y la Negociación Colectiva 2015, 2016 y 2017 [BOE 20-6-2015]



The decentralization of collective bargaining

- The reform gave priority to collective bargaining agreements at the firm level over those at the sector level for many important employment matters (wage, hours, overtime, shifts, job classification, work-family reconciliation, etc.). So that collective agreements could adjust more closely to the specific needs of a firm.
- The new rule does not allow the application of the favourability principle. It means that companies are entitled to decide on lower wages rather than on sector agreements.



The decentralization of collective bargaining

- **The reactions (Unions)**
 - Bringing judicial actions against the reform [STC 119/2014, 16 July; STC 8/2015, 22 January]
 - Monitoring of collective agreements at firm level [if only companies negotiate the issues of opt-out; if there have been formal elections or not; the collective agreement covers only one establishment or the undertaking as a whole].
 - Including minimum wages at sector level.
- **The proposal (Unions)**
 - To have the competence for setting the structure of collective bargaining. Every sector may have a different structure.
 - The main role should be for sector collective agreements.



The decentralization of collective bargaining

- The structure of collective bargaining has not been modified in a strong way in practice.
 - It is true that the reform has achieved some positive results in order to reduce the number of collective agreements at provincial level. However, the number of collective agreements at the firm level has not undergone a relevant change (only cover 10% of the employees). So we could say that the purpose of decentralization is not a reality yet.
 - Only companies with at least 6 employees may call worker representatives elections. However, 78% of the companies have less than 6 employees. In addition, elections are held in each establishment. It means that in some cases an enterprise may negotiate an agreement which regulates working conditions for one establishment and not for the undertaking as a whole.



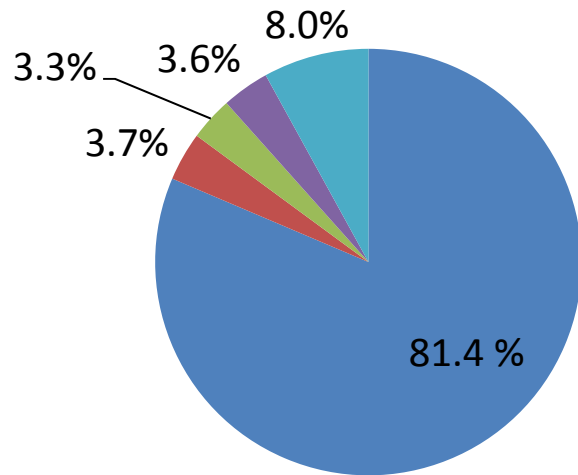


The flexible opt-out rules

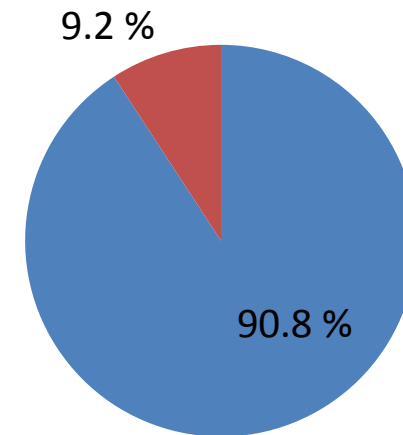
- The reform has introduced a practically full opt-out from working conditions with respect to the single issue (salary) that existed previously. Economic, technical, production or organizational reasons.
- According to the Spanish statistics, the number of requests has reached 6,146 from March 2012 to May 2015. The potential number of affected workers is around 279,748.



The flexible opt-out rules



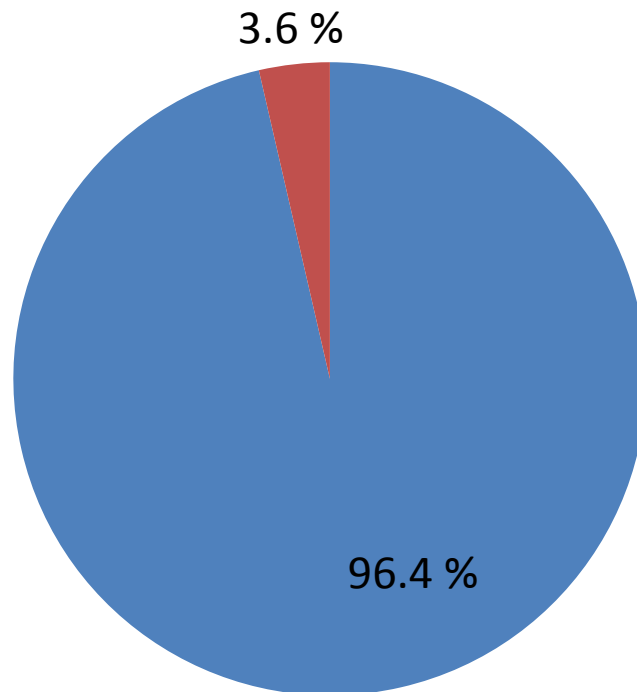
- Wage
- Wage and Social Security Improvement
- Wage and working day
- Wage, Working day and timeable and working time arrangements
- Others



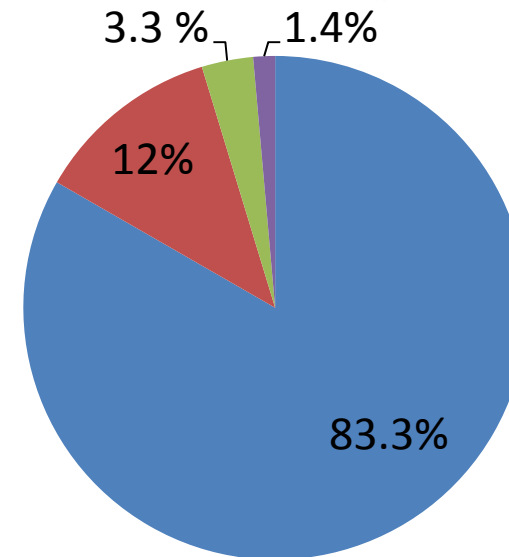
- Agreement between enterprise and worker representatives
- Others (Mediation, Arbitration)



The flexible opt-out rules



- Sectoral agreement
- Company agreement



- 1-49 employees
- 50-249 employees
- 250 or more employees
- No information



The flexible opt-out rules

- **The reactions of unions:**
 - Including clauses in the sector agreements which establish very clear limitations justifying financial loss for using it or to confer over the final decision with the trade unions.
 - There could be serious doubts about the freedom of the parties in negotiating them. So that they strengthen the role of the Joint Committee in order to monitor it (Comisión Paritaria).



The extraordinary duration of collective agreements

- Collective bargaining agreements can now be prolonged for a maximum period of only one year after their end date (the so-called period of *ultra-activity*), in order to provide incentives to social partners to renegotiate rapidly new agreements adapted to any changes in economic conditions. If the parties don't achieve an agreement it should be applied the collective agreement at sector level.
 - This measure affects new collective agreements and previous collective agreements in the review phase.
 - What would happen if there would not a collective agreement at sector level? The risk of vacuum...
- **The measure may be modified by the parties because the law allows it.**



The extraordinary duration of collective agreements

- **Reactions of Unions:**

- Agreement May 2013 encouraging their affiliates to renew collective agreements.
- 55% of collective agreements regulate the issue of expiration in a different way. But 45% of collective agreements do not include a specific clause about it or refer to the article 86.3 of the Workers' Statute (the period of one year). Regarding the first group of collective agreements, a broad majority (72%) extend the period of validity of the collective agreement until parties achieve a new agreement. Other collective agreements increase the period of validity between 1 year and 3 years [Sample of collective agreements]
- Bringing judicial actions [SSTS 22 December 2014 and 17 March 2015].

- **The proposal of Unions:**

- To modify the Workers' Statute including an unspecified period of validity.
- To stimulate the renegotiation of the collective agreements through the collective bargaining.



Spanish Government's priorities on Labour Market Reforms

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Spanish Government's priorities

- To increase employment – to reduce unemployment.
 - Internal flexibility.
 - Wages.
 - Working time.
 - External flexibility.
 - Fixed-term contracts.
- To reduce judicialization of labour relations
 - In search of legal certainty.



Government's main measures adopted with a view to increasing employment

- Reduction of social security contributions.
 - Flat rate.
- Internal flexibility.
 - Working time.
 - Part time work.
 - Wages.
 - Collective bargaining.
- External flexibility.
 - Fixed term contracts.
 - Open ended contracts. Dismissal costs.



- Measures aimed at keeping salaries in line with productivity
 - Reform of collective bargaining
 - Decentralization.
 - Working conditions after expiration of collective agreements.
- Fixed-term contracts
 - No real reform in this area.
 - Open-ended contract for companies employing fewer than 50 employees.
- Part-time contracts
 - Enhanced working time flexibility.



Judicialization of labour relations

- Reasons justifying redundancies
 - Labour courts should limit themselves to verifying the existence of the reasons.
 - They should not require that the redundancies be the appropriate response to the company's problems.
- Collective dismissals
 - Growing judicialization.
 - Legal uncertainty.



Thank you
Dank
Gracias