

DIADSE – DIALOGUE FOR ADVANCING SOCIAL EUROPE

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I Introduction

II Main domestic labour and social law reforms

1. Social Dialogue structures, Employment Protection Legislation and labour market segmentation

1.1. Introduction

Spanish Employment Protection Legislation has been historically accused of being responsible for the malfunction of the labour market. Even in good times, international institutions focused on this regulation. International Monetary Fund experts in 2006 Article IV Consultation, stated that “Employment protection legislation thus continues to remain among the most restrictive in the OECD, restraining the necessary response to rising global competitive pressures”. To put this conclusion in context, in 2006 Spain had 720 thousands of new jobs, which meant that was the second economy in the EU by employment creation, just after Germany.

When the financial and economic crisis hit Spain, the labour market was not only performing quite well in jobs creation, but also in reduction of temporary employment. When the economy slowed down and unemployment begun to rise, after two years of expansion fiscal policies and passive employment policies, pressure on Spanish Government forced the first attempts to face this problem during the crisis. Previous efforts on reducing temporary employment rate were insufficient or directly useless.

In this context, the Royal Decree 10/2010, 16 June is the first milestone in the path towards a less expensive dismissal, not only regarding severance payments but also other costs related to the termination of employment.

In order to understand the aim of this reforms, some lines on the previous legal regulation are required. Spanish Workers’ Statute established that, as general rule, the employment relationship had to be concluded by permanent contracts. Temporary hiring was –and still is– restricted to exceptional circumstances. However, business people preferred to hire a big number of workers using this via.

The legal hiring scheme, therefore, assumes that the general rule is that every contractual relation on which somebody provides services for another one within the scope of his or her organization and administration, is a permanent salaried relation. Only when there is a real cause for fixing a term for the end of the contract or when the worker is hired to complete a specific task or to replace a worker which has the right to return to his job, it is allowed to conclude a temporary contract. It is true, by the way, that there are some other fixed term contracts in the law (formative figures, for people with disabilities, to encourage partial retirement...) but their quantitative relevance is – and was then– very small.

The actual world, though, differs from this ideal picture of a world of open-ended employment contracts. Less than 10% of the registered employment contracts –it is mandatory to submit a copy to the public employment service office– are open ended, and the temporary employment rate only went down because of the job destruction.

The most rational explanation to this behaviour was related –apart from the loose control over the true reasons for temporary hiring– to the difference between the protection offered by permanent and temporary contracts.

In Spain, before the crisis started, the end of a temporary contract required a severance of eight days of salary for each year actually worked for the company. Apart from that, only a notice of 15 days was due to the worker in case of an employment duration larger than a year.

If the employee was hired under a permanent contract, the costs of dismissal increased significantly. In case of individual termination, assuming the employer had a fair cause –we would refer later to its definition and interpretation– a notice of 30 days was required, with simultaneous offering of a severance payment. In this case, the severance payment was fixed in 20 salary days for each year worked.

But this was not the actual cost of a dismissal, because the company had also to face the risk of a judiciary procedure, on which the dismissal could be declared unfair or even null, with the effect of readmission being mandatory. In case of unfair dismissal, the law stated a severance payment of 45 five salary days for year worked. The “Contrato para el fomento de la contratación indefinida” (Contract for enhancing permanent hiring) stated a lower compensation (33 salary days), and could be used with unemployed which were young (16 to 30 years old), women to be hired for activities in which her gender were under represented, mature (over 45 years old), in risk of long term unemployed (more than six months) or with a disability. Anyway, this type of contract never had a real quantitative impact in the labour market.

In fact, in 2008, one out of three individual dismissal procedures were won by the worker, and in more than 20% of the trials ended with a judicial settlement, which usually means at least partially accepts the claims of the plaintiff. In all this cases, the cost for the employer is much higher than the severance payment. Not only because of the higher amount of money compensating the worker, but also because of the procedural costs and the effects of uncertainty, especially in small and medium enterprises.

In order to have the full picture, there is another cost related with individual dismissals that could be as high as the severance, or even more. It is the so called “salarios de tramitación” (the salaries that the worker would have perceived between the date he was fired and the time the judge declares the unfairness of the dismissal, procedural salaries, from now on). If –as usually happened– the judicial decision took more than 60 days after the filing of the case, the state would reimburse to the company the salaries from that moment. The law, since 2002, opened a back door for employers to avoid those procedural salaries. If the company recognized in the first 48 hours the unfairness of the dismissal and made available the severance pay for the worker, the procedural salaries should not be paid. Consequently, most of the employers opted for this “express dismissal”, which was a fast solution with a certain costs: the severance payment for unfair dismissal with no notice nor judiciary risks. In 2008, 82% of the permanent workers who gained access to unemployment benefits had been fired using this “tool”.

Collective redundancies have in Spain a wider definition than in Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, as it uses the whole firm as reference and not only the establishment. In this case, as it well known, a process of Information and consultation is mandatory. In 2008, Worker’s Statute determined a period of not less than 30 days (15 in case of firms with less of 50 workers). If this process finished with an agreement, the “labour authority” should allow the collective redundancie, but in other case, this authority had some margin to make a decision. It's important to keep in mind that the “labour authority” was a political office, even if its resolution should be

motivated. This political influence cause was perceived as a veiled threat; if there were no agreement, employers had little hope, except in the most egregious of cases, of getting the approval. Thus, most of procedures ended on agreement, even if that implied a very big severance for redundant workers.

This overview explains clearly the extent of the cost gap among temporary and permanent workers. Obviously, if the job was easy to carry out and with a short learning curve, the rational choice for an employer was to hire a temporary worker. Thus, if economy worked poorly, the firing –technically just non-renewal– was easier, faster and, above all, cheaper.

In this context, the aim of reducing the gap of costs is admirable, and even difficult to dispute. The optimum instruments to reduce it are a different matter, and successive reforms explored different ways, not devoid of ideology, on which social partners agreement was certainly hard to achieve.

1.2. The Reforms under the Socialist Government

As explained, there was no need of a deep economic (and employment) crisis to technically justify a deep reform, even though politically and socially this conclusion was not so obvious. Indeed, in 2006 socialist government introduced a useful tool to fight against labour market duality, as it was the automatic transformation in open ended contract the employment relations with workers hired twice or more for at least 24 months during three years. This measure, by the way, was approved as result of the social dialogue, and it was included in the “Acuerdo para la mejora del crecimiento y del empleo” (Agreement for the improvement of economic growth and employment), signed on May, 9th, by the main trade unions (UGT and CCOO) and employers’ associations (CEOE and CEPYME).

In the beginning of 2010, the economic background was totally different. Unemployment rate almost reached 20% of active population and 2,1 million jobs were lost. The economic perspectives were quite bad and the financial pressure to the government was high. As major structural reforms were required from the BCE and other institutions, labour market reform became imperative.

By the end of 2009, President Rodríguez Zapatero announced the reform that should be negotiated by the social partners. On February of 2010, designed a roadmap for the negotiations, expressly including fostering of open ended contracts and new obstacles to multiple successive temporary contracts with same worker with the same employer. After several missed deadlines, the socialist government approved the first major Labour Market reform during the crisis (Royal Decree-Law 10/2010).

This reform affected directly the cost of employment termination in several ways. First of all, it changed the definition of what should be considered just cause to make employees redundant. Formally, the causes of redundancy did not change. Before and after the reforms, the reason justifying redundancies should be economic, technical, organisational or production. The innovation affected to the definition of what kind of facts could be included in each of these types of causes. The previous explanation just said that the causes would be presumed valid if the proposed measures contribute towards overcoming a negative economic situation in the company –in case of economic causes–, or if these are technical, organizational or production measures,

towards guaranteeing the future feasibility of the company and of employment in it through a more adequate organization of its resources.

The new text approved in 2010 by the socialist government simply referred to a “negative economic situation” for the economic reasons for redundancy. In this case, the employer should prove the alleged results and “the minimum reasonability” of the redundancy. This expression, strongly contested by academics and professionals and also Trade Unions, was later amended, but showed clearly the intention of the government; reducing to the minimum judiciary capacity to evaluate business decisions. After the parliamentary procedure, the reasonability had no adjectives, and should be addressed to preserve or improve the firm’s competitive position in the market. The negative situation was also explained more specifically; present or foreseen losses, or persistent reduction of revenues, both of them affecting the firm viability or its ability to sustain the level of employment.

All the other causes were also redefined, trying to reduce uncertainty in judiciary interpretations of the law, and the reasonability was also established as a parameter of fairness for redundancies. It is clear that legislator was trying to reduce one of the costs previously analysed.

The consultation with the workers’ legal representatives was also modified; whereas the duration should be no less than 30 days or 15 days, depending on the business size, now the legislator change the limit as a maximum, instead of minimum. This measure was also intended to reduce the cost of economic dismissals, as it could be effective in less time. In the same vein, the notice for individual redundancies was reduced from 30 to 15 days. Furthermore, the law created a new representative system for companies with no worker representatives. A commission, whose members are workers of the firm or trade union representatives would be the voice of the employers on the consultation process. This measure, which was supposed to give certainty to the process, in practice was just the opposite, and several later reforms have been needed to clarify who has to be part of the commission.

As the main objective was to reduce the breach of costs between open-ended and temporary workers, the government also included some changes in the regulation of the latter. First of all, it planned a progressive growth for the compensation they received by the end of their contracts. As explained before, it was established in 8 salary days for year worked. The new law increased by one day per year this payment for the new contracts signed after 1st of January of 2012 (a year and a half after the approval of the Decree Law), and another day each year until 2015. Thus, finally temporary contracts are compensated with 12 salary days per year worked, which is exactly the same that was fixed for Temporary Work Agencies employees.

As the difference was still too big (and socialist party did not want to reduce severance payments for permanent workers), the reform created a kind of subvention to redundancies (initially for all of them, after the changes made in Parliament just for fair dismissals). The wages guarantee fund (FOGASA) assumed the payment of 8 salary days of the severance payment for the workers hired after the decree –law. This measure was intended to be temporary, as the law ordered the creation of a capitalization fund for severance payments, inspired (slightly) in the 2003 Austrian severance payment

reform that should substitute the payments by FOGASA. It can be anticipated that this capitalisation fund was never enacted, as it was foreseeable¹.

The final result that the law tried to establish was a labour market where costs of terminating a temporary and a permanent contract were very close. As definition for the causes for redundancy were easier to apply, the Government expected a reduction of unfair dismissals. If this had happened, the severance payment would have been of twenty salary days for each year worked. If the FOGASA or the designed fund had paid eight days of that severance payment, the cost would have been the same as in temporary contracts (12 salary days per year).

Despite the efforts of the government to balance employment protection with competitiveness and economic efficiency, Trade Unions understood this reform as a claudication to the “Troika”, and a general strike was called, as explained before.

The last months of Rodríguez Zapatero’s government were really hard for Spanish economy. The economic and financial pressures, PSOE’s weakness on parliament and the certainty of the defeat on next elections drove the latest reforms without a clear direction. The temporary stoppage of the restriction on successive temporary contracts, the introduction of a new cost to collective redundancies affecting workers over 50 years in response to Telefonica’s redundancy announcement and other minor changes were counterproductive with the previous policies. Those policies were simply stop-gap responses to imminent problems.

1.3. The Reforms under the conservative government

After just fifty one days in office, the new conservative government under President Rajoy passed another Labour Market reform that was quite intense; the Ministry of Economy and Competitiveness even called it “very aggressive”. As stated above, the government just ignored the agreement reached days before the new Decree-Law by the Social Partners. The new Government, supported by a comfortable absolute majority, wanted to make gestures that demonstrate its power and its determination to change the course of Spanish economy. On that logic, social dialogue was perceived more as a drawback than an advantage.

In any event, the diagnosis of the Decree-Law 3/2012, and later the law with the same number, coincide to a large extent with previous reforms. The government said the reform was complete and balanced, even though most analysts dissent on the latter. The alleged equilibrium between internal and external flexibility was actually a liberalization of both kinds of measures.

But focusing on employment protection legislation, the truth is the efforts were aimed more to reduce the cost of redundancies than to fight against duality. Obviously, the cost breach between temporary and permanent workers was reduced, but an overview clearly shows that this was not the main intention of the reform.

As it had done the socialist party before, the 2012 reform tried to redefine the definitions of the causes for redundancies. Whether the preceding reform tried to limit the jurisdictional control over the cause for redundancies to the “reasonability”, in this case the legislator tried to suppress any kind of analysis about the reasons that moved the businessman to make his employees redundant. The Explanatory Memorandum of the

¹ It was supposed to be funded with no additional cost for employers and to reduce the severance payments in the same amount that the fund should pay to each worker. Obviously, maths do no work on those parameters, as the experts said in a report a year later.

Law is transparent on this point when it states that “Now it is clear that judiciary control over those redundancies must keep to the evaluation of the existence of some facts: the causes”. In other words, the government rejected any kind of judgment on the opportunity of the measures adopted by the employer. The judge’s role is just to verify that some facts have really occurred.

The new definition tries to be purely objective, without any room to interpretation, at least relating to redundancies based on economic causes. These are now defined widely, including not only economic losses or reduction on revenues, but also a decrease on sales. The relevant criterion now is not the risk for the continuity of the firm but the persistence of the situation described. And to avoid restrictive interpretations of what has to be included in this notion of persistence, the law says “At all events, the decrease shall be considered persistent if during three consecutive trimesters the level of incomes or sales is lower than the one registered the same trimester on previous year”. If this fact happens, the law is clear, and the redundancy cannot be declared unfair for lack of causes. Nevertheless, and as might be expected, social justice courts have been reluctant to be considered as a simple spectator, and have understood that the right to legal protection demands an active role of the judge. Therefore, courts still analyse not only if the facts alleged (p.e.: reduction of sales) are true, but also if there is an actual connection with the redundancies, and even if the number of workers dismissed is proportionate to the causes.

Along with these changes in the definition of the motives on which an employer can justify the redundancy, one of the points of the reform that caused more opposition was the abolishment of the administrative approval on collective redundancies. As it has been said earlier in this report, the approval was mandatory for Employment Authority when the employer reached an agreement with workers representatives, but there was a big margin of decision in other cases. Therefore, the companies had real incentives to bargain a deal, even with a good cause for redundancies. Now, without this mixed political and administrative control the bargaining power has changed substantially. As the causes cannot be challenged –or at least it is not easy– workers representatives are now compelled to accept lower severance packages. As the Trade Union representatives have stated, nor the administration –that could weight social aspects of a massive redundancies– nor social courts have the power to put pressure on the employers in order to improve the sum offered to redundant employees.

These changes have an obvious effect on the cost of collective redundancies, but there are other elements in the reform that help this objective. One of the Trade Union “red lines” has been the level of the protection against dismissal. While the procedure or the motives for fair dismissal are quite relevant, the number of salary days paid to the worker has a high symbolic value. Even though during the election campaign Mr. Rajoy promised that he would not reduce “layoff costs”, the Decree-Law passed lowered severance payments from 45 to 33 salary days for each year of working services.

Despite this level of compensation was applicable to the Contract for enhancing permanent hiring –approved because of the agreement between Social Partners– and its potential scope of application was virtually applicable to every worker after the last broadening in the socialist reform, it was barely used.

Finally, the Decree-Law abolished –with some little exceptions– the procedural salaries. Therefore, the risk of defending in court the fairness of the dismissal or redundancy has plummeted. Nowadays, even if the employer thinks he or she has not a good case, it could be a good strategy trying to defend it, there is no additional risk.

If all these elements are analysed together, the change on labour relations is crystal clear. After the reform the employer knows that it is easier to justify the redundancy because the possible causes are wider. Even if courts find the dismissal or the redundancy unfair, the consequences are minimum. There is no penalty for going to court, as the salaries that the worker would have perceived until the sentence is communicated are not owed anymore. And in case of an adverse ruling, the amount of money shall not be very high, because the difference between fair and unfair dismissal is only 13 salary days per year worked.

Notwithstanding all these changes, employers keep recognising the unfairness of their dismissals and redundancies, as it will be shown later. The explanation to this could be found in a perception (not necessarily true) of a bias towards workers on social judges. Another possible explanation is that the gap on fair/unfair severance payment for workers with low seniority does not worth the effort of litigation.

The potential impact of this reform on reducing the duality of labour market is reduced. Obviously, lower costs for terminating permanent jobs could theoretically increase the use of open ended contracts. Nevertheless, temporary employment it is still cheaper, easier to terminate and reduces the strength of workers representatives.

The desired effect, as recognised by social partners interviewed for this report, is not to encourage redundancies, but to avoid them compelling the workers and their representatives to accept worse 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.

2. Social dialogue structures and measures reforming collective bargaining and employees' representation systems

2.1. Introduction

The reforms carried out in Spain since 2008 have deeply affected the collective bargaining system. In order to understand these reforms, it is important to know that this system is regulated by the law and has a constitutional foundation. The constitutional basis may be found in article 37 of the Spanish Constitution (1978), which states that the law shall guarantee the right to collective bargaining between worker representatives and employers, as well as the binding force of the agreements. Following the Constitution, the first regulation of collective bargaining was approved by the Legislature in 1980, as a part of the Workers' Statute (Estatuto de los Trabajadores). This legal regulation draws a lot from the corporatist system of the dictatorship, as well as from the social agreement reached by the main employers' association (CEOE) and one of the two main labour unions (UGT) in 1979 (Acuerdo Básico Interconfederal).

The collective bargaining system of 1980 has three important features. Firstly, the agreements reached by a certain majority of representatives have general efficacy ("erga omnes"), binding all the employers and employees within the bargaining unit. Secondly, sectoral agreements have primacy over company-level agreements, and in practice most companies and workers are covered by a sectoral agreement rather than by a company-level agreement. It is true that in 1994 an important Labour Reform (Law 11/1994) was introduced to give more power to the negotiations at company-level, but sectoral

agreements continued to be the main and prevalent source of wages and other working conditions. And thirdly, collective agreements continue to be binding after their expiry date, until a new collective agreement is reached in the unit (this automatic continuation is called "ultractividad").

These three basic features characterized the Spanish labour relations system for decades. Additionally, the regulation of the composition of the negotiating bodies and of the majorities required to reach an agreement with general efficacy shaped a system in which most workers were covered by a sectoral collective agreement negotiated by the two main national unions (CCOO and UGT) and by employer associations affiliated with CEOE. Hence, these three main social partners had the power to set the (minimum) wages of an overwhelming majority of the working population. Before 2008, Spain could be considered a country with a very high level of collective bargaining coverage.

2.2. The Reforms under the Socialist Government (2008-2011)

During the first years of the economic crisis, while unemployment was rising dramatically, real wages increased². This contributed to put pressure on the social partners to modify the collective bargaining system. In 2008 Rodríguez Zapatero is re-elected as President of the Government. During his first term (2004-2008), the social dialogue was extremely fruitful, with over 20 agreements signed by the main social partners. At the beginning of his second term, in 2008, the President expressed his will of renewing the labour relations system through the social dialogue. Even though in February, 2010 an agreement was reached by CEOE, CEPYME, CCOO and UGT (I AENC 2010-2012), the reform of the collective bargaining system -among other matters- was still a pending subject. Indeed, in the I AENC the parties stated their common purpose of starting negotiating on the reform of the collective bargaining system. However, pressure from the European Central Bank, the European Commission and other international actors led the Government to change its approach to the reform process. After May, 2010, the path was accelerated and only a month later, in June, the Government passed a Royal Decree Law (RDL 10/2010) introducing important modifications in such matters as employment protection, employment duality, and internal flexibility. This reform was introduced without any agreement by the social partners; indeed, the unions showed their refusal by calling a general strike to take place in September, 2010. The 2010 Labour Reform did not touch upon the legal regulation of collective bargaining. Most likely because the Government considered this subject a very sensitive one for the social partners, the Law approved in September, 2010 by the Parliament (Law 35/2010) granted the social partners six more months to negotiate on the specific topic of collective bargaining. It is worth saying that this specific topic was consistently considered by the social partners as "their own sphere of bilateral discussion".

The political context for this negotiation was not favourable. General elections were expected to take place relatively soon -in about 12 months- with surveys forecasting a clear victory of the Popular Party (Conservative). This lowered the interest of employers in reaching an agreement, as they could rationally expect that a conservative, more pro-business government would push for a reform of the collective bargaining system in line

² "Since the beginning of the crisis in the first quarter of 2008, Spain has lost 17.5% of its employment (22.8% in the private sector), while the average real wage increased 7.6% until the second quarter of 2012" (CARDOSO, M.; DOMÉNECH, R.; GARCIA, J.R.; ULLOA, C.A., "Labour markets reforms and unemployment: Estimating the effects of wage moderation in the Spanish economy", 2013, Published on VOX, CEPR's Policy Portal).

with the employers' needs or goals. This may explain that after several months of dialogue, with the Government insistently asking for an agreement and even granting an extension of the period initially established (six months), the process eventually failed, causing the Council of Ministers to approve in June, 2011 a Royal Decree Law (RDL 7/2011) reforming the collective bargaining system.

It was clear that by approving a reform of the collective bargaining system without the agreement of the social partners -and especially of the unions, which represent a large part of the constituency of the Socialist Party- the Socialist government was running a substantial risk regarding the upcoming general elections. However, the Government had a powerful reason to approve the reform: it was one of the commitments accepted by the Government at the European Council which had taken place in Brussels in March. In this regard, the Government was explicit when expressing the view that the immediate fulfilling of this commitment should help consolidate the external confidence in the stability and current and future strength of the Spanish economy.

The view of the European Commission concerning the collective bargaining system in Spain was clear: the system was "unwieldy" and in need of an "overhaul" reform³. This view was reiterated just a few days before the approval of the Decree Law 7/2011. According to the Commission's view, the main problems of the Spanish system were: (1) the "predominance of provincial and industry agreements leaves little room for negotiations at firm level"; (2) the "automatic extension of collective agreements, the validity of non-renewed contracts"; and (3) "the use of ex-post inflation indexation clauses contribute to wage-inertia, preventing the wage flexibility needed to speed up economic adjustment and restore competitiveness".

The main issues of discussion between employers and unions in the first months of 2011 were the relationship between sectoral and company-level agreements, and the automatic continuation of agreements after their expiry date (*ultractividad*). By the end of March, 2011, it was clear that CEOE was tightening up its position as a result of pressure from some of its more influential member associations (such as Anfac, which represents the automotive industry, one of the most important in Spain). These associations wanted a more radical decentralization of collective bargaining, something that unions would accept only if the decentralization process were to be controlled by the social partners at sectoral level.

The reform approved by the Government in June, 2011, sought to arrive at a fair balance between the unions' and the employers' positions in the last few weeks of dialogue. Regarding the two main issues -decentralization and automatic continuation after expiry-, the Government chose the middle path.

On the issue of decentralization, the Reform allowed firm level agreements to deviate from sectoral agreements: firm level agreements could set wages below the sectoral minimum wage. But this possibility could be disallowed by sectoral agreements. Thus, the ultimate power remained with the sectoral unions and employers' associations: if these sectoral partners wanted to prevent firm level negotiation below the sectoral minimum standards, they could do so. Hence, the decentralization could be "watched over" (*Mercader*) by the sectoral partners both at national and regional levels.

³ European Commission, Recommendation for a Council Recommendation on the National Reform Programme 2011 of Spain and delivering a Council opinion on the updated Stability Programme of Spain, 2011-2014 (SEC [2011] 817 final, Brussels, 7.6.2011).

On the issue of the automatic continuation of expired contracts, the 2011 Reform was not ambitious. The basic rule continued the same: the signatory parties decide whether or not the agreement will be binding after its expiry date; they also decide the conditions of this extension. The default rule is the automatic continuation of the agreement. There was no substantial change here. Admittedly, the Decree law introduced new provisions concerning the maximum duration of the negotiations aimed at renewing an expired agreement. This maximum duration, however, had hardly any consequence: it just triggered a mediation procedure which could obviously end without an agreement, and the expired collective agreement could continue being applicable and binding unless otherwise agreed by the parties.

The 2011 Reform, which contained some other provisions, of a more technical nature, was not the “overhaul” reform looked-for by the European Commission. From this perspective, the Government had to pretend that it was honouring its commitment, but, being fully aware that the general elections would take place in about six months, it could not go to the point of accepting the proposals made by the employers: it could not run the risk of another general strike during the fall.

2.3. The Conservative Labour Reform of 2012

The dissolution of the Parliament in late September, 2011 implied that there was no time to discuss the Reform in the Parliament. The landslide victory of the Popular Party in November, 2011 caused the social partners to accelerate their negotiations: in just two months after the general elections, the main social partners were able to reach a social pact for the next three years (“II Acuerdo para el Empleo y la Negociación Colectiva 2012, 2013 y 2014”) on a number of matters, including the structure of collective bargaining, wages, and internal flexibility, among others. Surprisingly, this social pact was neglected by the Government when it approved on 10 February 2012 the Royal Decree Law 3/2012. This was going to cause a general strike in March and the end of social dialogue in Spain for quite a few years.

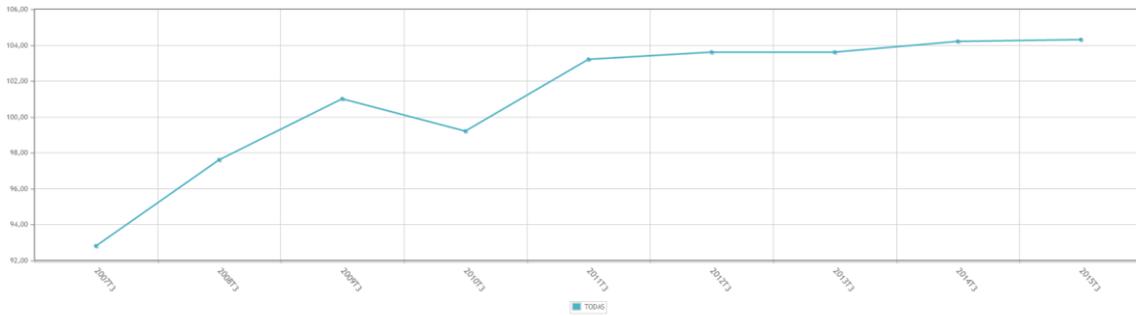
The 2012 Labour Reform can be considered the most important labour reform in Spain since 1980. This is especially true when it comes to collective bargaining. The two main changes introduced by the new regulation of collective bargaining were the partial elimination of the automatic continuation of collective agreements after their expiry date, and the primacy of firm level agreements over sectoral ones. Note carefully that these were two of the three main changes required by the European Commission a few months earlier. The third concern of the Commission was “ex-post inflation indexation clauses”, which, according to the Commission, “contribute to wage-inertia, preventing the wage flexibility needed to speed up economic adjustment and restore competitiveness”. The Reform did not prohibit or restrict these clauses -it could not do it, since such a prohibition would probably be unconstitutional-, but it did endorse wage flexibility by granting full primacy to firm level agreements in wage matters, by allowing firm level agreements opting out of wage and other working conditions established in sectoral agreements, and also by establishing the default rule of putting an end to the continuation of collective agreements beyond a certain period after its expiry date.

2.4. Decentralization of collective bargaining

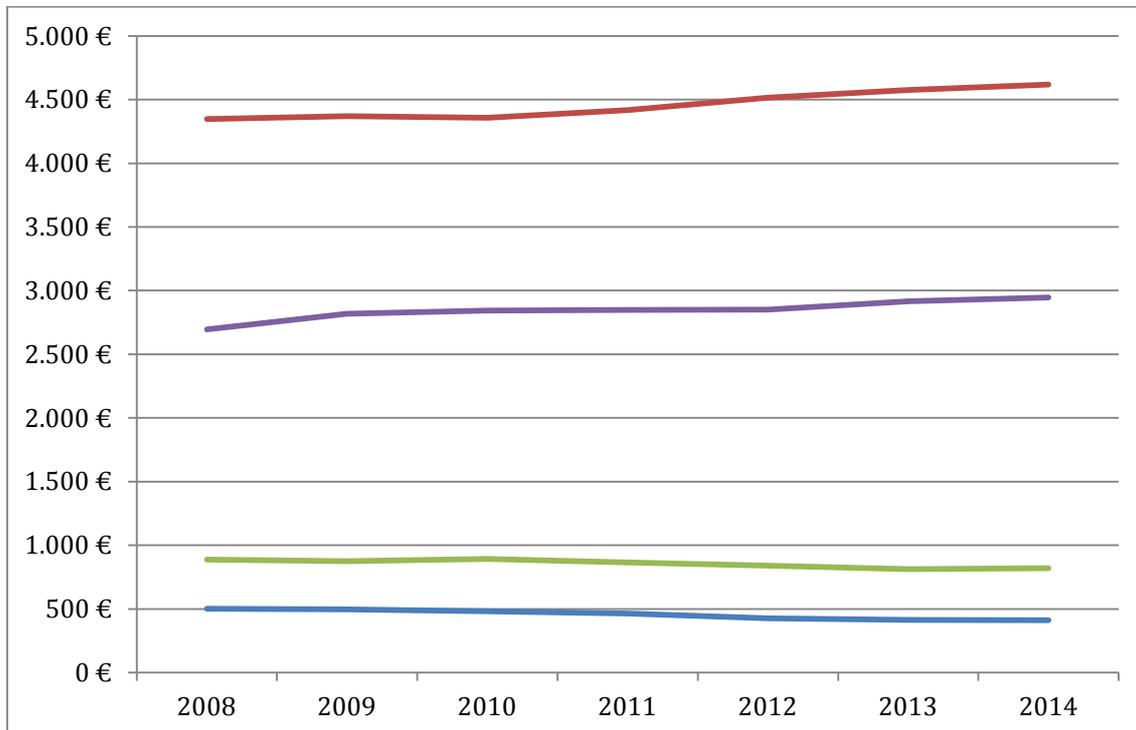
The goal of decentralizing collective bargaining is clear in the 2012 Labour Reform. However, its practical results are not so clear, and what can be said is that the number of employees covered by firm level agreements has not risen dramatically. In 2011, while

929,000 employees were covered by firm level collective agreements, 9,733,800 were covered by sectoral collective agreements. In 2013, the number of employees covered by firm level agreements was 932,700, while the number of those covered by sectoral agreements was 9,332,700.

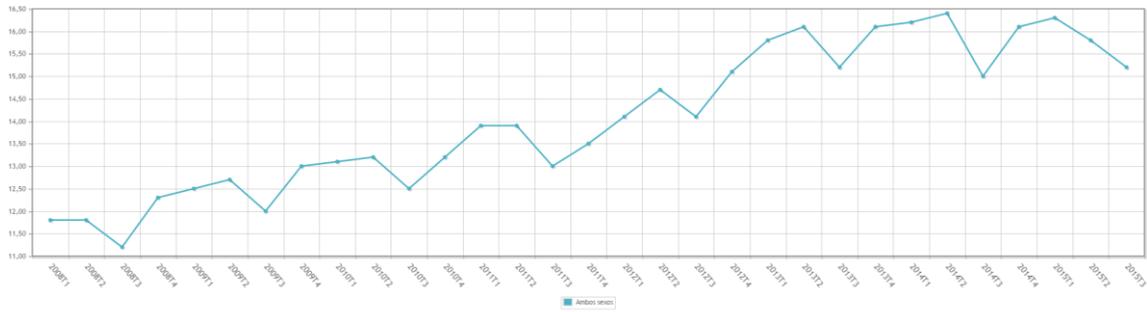
Labour costs in general have not decreased dramatically either, as shown by the harmonized labour cost index. This graph shows the evolution of salaries and wages per hour worked over the period 2007-2015.



However, salaries have decreased for the majority of the workforce, especially in the lower ranks of the labour market. In 2008, the average salary of the lowest decile was €501.25, while in 2014 it was €411.17. The following graph shows the evolution of the main job's mean salary (two lowest and two highest deciles) over the period 2008-2014 (Source: Instituto Nacional de Estadística, Labour Force Survey):

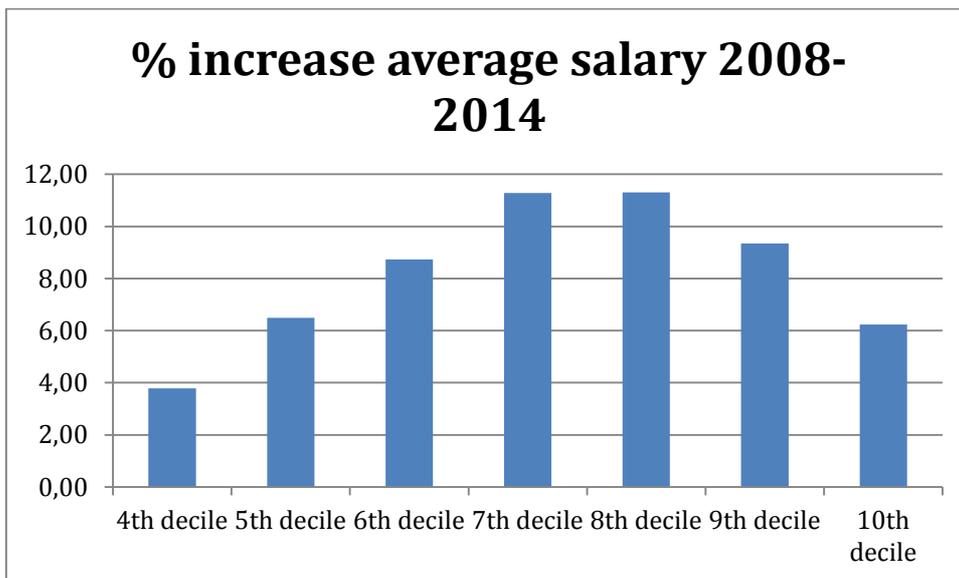


A partial explanation of these data can be the surge in part-time employment, as shown in this graph (Source: Labour Force Survey):

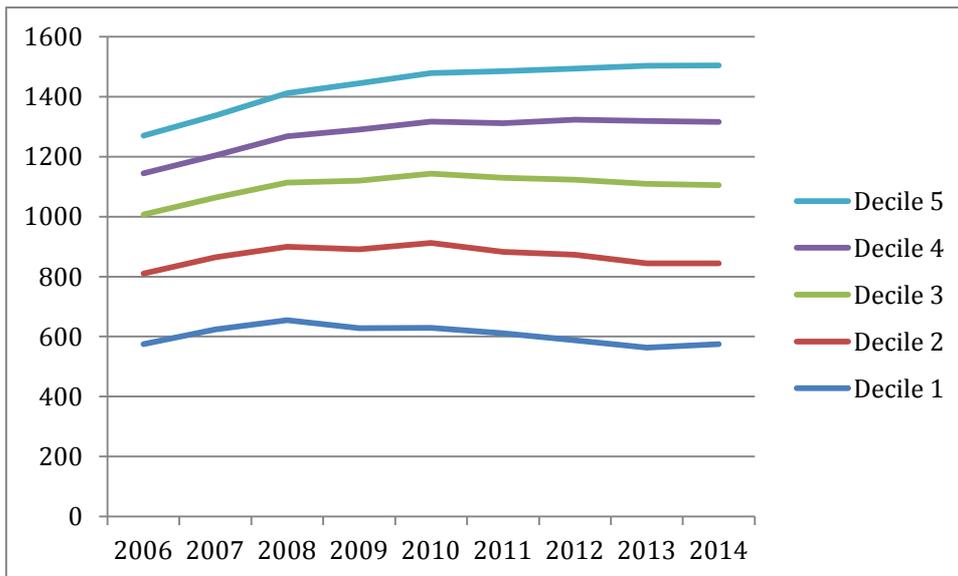


In 2008, the percentage of part-time employment was between 11 and 12.5; in 2014 the percentage escalated to almost 16.5.

However, this is just a partial explanation. Average salaries have decreased even if you take into account only full-time employees. In 2008, the average salary for a full-time employee of the lowest decile was €655.07; in 2014, that salary is €575.37. The average salary of the lowest decile has been reduced by 12-plus percent. The same down trend can be observed for the second and third lowest deciles: for the second, the reduction observed is 6-plus percent, and for the third, the reduction is only around 1 percent. For all the other deciles, average salaries have risen over the period 2008-2014, as shown in this graph:



As one can observe in the next graph, 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 has likely to do with the appalling condition of the Spanish labour market over the last eight years, especially for the less skilled and in the worse paid occupations.



When it comes to opt-out agreements at firm level, the statistics also show that they have not caused a big impact on the structure of collective bargaining. In 2013, which is the year with 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.

2.5. Automatic continuation of collective agreements

The other important amendment passed by the Legislature in 2012 was to put a limit to the automatic continuation of collective agreements beyond their expiry date. The traditional rule was that absent an agreement to the contrary, the collective agreement continued to be in force until a new collective agreement was reached. Since the 2012 Reform, the legal rule is that absent an agreement to the contrary, the collective agreement continues to be in force one year after its expiry date.

Though 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. The explanation for this is the legal uncertainty that the new legal provision caused: for instance, could a company pay the national minimum wage to the employees who were no longer covered by a collective agreement setting higher wages? Some authors answered in the affirmative, while others held a different opinion. This critical issue was eventually clarified by a Supreme Court decision in December, 2014. This judgment of the Spanish highest court settled the issue by establishing that the employment conditions (including wages, working hours, etc.) contained in a collective agreement that was no longer applicable as a result of the new legal provision had to be respected by the company, as they were automatically incorporated in the employment contracts.

The continuity of employment conditions (particularly wages) guaranteed by the Supreme Court ruling was a severe reverse for the 2012 Labour Reform. Most likely, this ruling was not intended either by the Government or the Legislature, but in 2015, with general elections to take place soon, the Government dared not to pass any further amendment.

2.6. Conclusion

The Labour Reforms passed in 2010, 2011 and 2012 attempted to decentralize collective bargaining and to grant more power to employers at the bargaining tables. Both goals have probably been achieved to a certain extent, but not to the extent desired, especially by the conservative government. On the one hand, decentralization has proven to be difficult in a country with so many very small companies, most of which lack the employee or union representatives needed to initiate a formal process of collective bargaining. Wage adjustment has probably taken place in the areas of the economy not covered by any formal collective agreement or through the elimination or reduction of salary components unilaterally granted by companies and not established by collective agreements. One should not rule out, either, an important degree of informality in the Spanish labour market, which entails that a disproportionate number of employees either are misclassified (meaning they work in a position which 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.

On the other hand, the legal uncertainty caused by some judicial interpretations of the 2012 Reform has also deterred companies from using all the resources tentatively granted by the new legal framework. The best example of this is what happened with the notional end of the automatic continuation of collective agreements beyond their expiry date. This was an important legal development, which clearly attempted to provide more power to employers at the bargaining table. However, the decision by the Supreme Court of December, 2014, which is extremely controversial, guarantees that employees continue to enjoy the same employment conditions while a new collective agreement is being negotiated. Thus, the Court guarantees a floor of working conditions which allows unions to ask for higher or better conditions at the renewal negotiations.

Leaving aside the technical deficiencies of the 2012 Reform -concerning especially the expiration of collective agreements-, its most serious drawback is probably the lack of any type of consensus around this Reform. It was a Reform more externally imposed (ECB, European Commission, etc.), than internally generated: not only was it not endorsed by the social partners, it was probably not fully understood either by the Political Party which approved it in 2012. Unsurprisingly, right now, this same Political Party is willing to “renegotiate” the Labour Reform with the Socialist Party as part of a desperate attempt to remain in power. The lack of social and political support explains the opposition to the Reform shown by the “progressive” association of judges immediately after its approval. This opposition has had its opportunity to deploy its effects in different aspects of the Reform, one of them being the Supreme Court decision of December, 2014 on the continuation of working conditions of an expired collective agreement.

3. Social Dialogue Structures and Measures Reforming Social Security Reforms

3.1. Introduction

The financial crisis suffered from 2008 to 2013 has determined the course of the reforms that have affected Spanish Social security within the analysed period. This is relatively obvious whether it is considered that Spain is one of the European countries that suffered the crisis most intensely, with one of the highest unemployment rates and inequality and social precariousness rocking intensely.

The different governments who have faced the crisis have had to manage two contradictory trends. On the one hand, the explosion of unemployment requires rather much public expenditure if it desires the level of social coverage to be maintained. This can be called “social trend” and it means that the first governmental objective is to assure a proper level of social protection.

On the other hand, the assumption of principles of austerity policy applied by European countries mainly demands an important reduction of public expenditure in order to diminish the deficit as soon as possible. This is the “financial trend”, which means that the objective of reducing public deficit must be put before any other thing, including living conditions of most part of the society, because the future profits derived from its implementation will compensate the sacrifices in the short run.

After a first period (2008-2010) in which the Spanish welfare state avoided austerity plans, that is to say, the social trend was given preference to the financial trend; more recently (2010-nowadays) cuts have affected the most important programs of the welfare state and, particularly, social security. In other words, the financial trend has been imposed finally. Accordingly, long-term sustainability of Spain’s public finances has become synonym of social security sustainability and it has meant important reductions in the public expenditure on social security plans and programs.

Reforms developed on Social Security can be divided in two main types. On the one hand, the retirement pension reform is doubtless the most well known by the public opinion. This reform is quite profound and it could you could in a sense say that it is the most important one from mid-90s. According to Stability Program 2014-2017, between 2010 and 2060, retirement pension expenditure will reduce by 0.4% of GDP, whereas the number of retired people will be the double. Its impact on the whole system and the importance of retirement pension within Spanish welfare state (it is the first social program and the most redistributing) justifies the attention paid by politics, media, social partners and the whole society.

On the other hand, unemployment system reform has been developed more “silently”. The procedure carry out was not a systematic and structural reform, but successive and partial legal changes. This different reformist strategy have made unemployment system transformation went unnoticed by Spanish public opinion, despite its impact is relatively as important as retirement pension reform. According to the same official information mentioned above, in 2030, the expenditure on unemployment subsidies and the unemployment rate would be 1.7% and 8.9% respectively. In 2005, the expenditure on unemployment subsidies was 2.1% of GDP, whereas the unemployment rate fall to 8,7%. This means, with approximately the same unemployment rate, a reduction of 0.4 % of GDP.

The following sections will be dedicated to analyse these two main branches of Spanish social security system, paying special attention to the role of social partners in their reform.

3.2. The retirement pensions reform.

Retirement pensions are the social policy which has the largest weight in public expenditure. Therefore, their sustainability is crucial for achieving the objective of having healthy public finances, especially in a context of economic depression. «Their reform is surely one of the most effective levers in the Government’s hands to improve the long-term sustainability of our public finances – and, perhaps even more crucially,

to influence market perceptions of long term solvency risks, which can have immediate effects on sovereign risk premia and on credit availability»⁽⁴⁾.

Despite this is a complete and systematic reform, it may be divided in two main parts from a chronological point of view. Moreover, each part was managed by different governments and shows completely different characteristics.

The first chronological period is marked by Law 27/2011⁽⁵⁾. A crucial factor related to its negotiation must be underlined: the social partners and the socialist government at the time agreed its main elements. After the general strike in September 2010, organized by the two main unions to protest against the labour market reform and fiscal consolidation plans, both parts are under pressure to recover social dialogue, especially in a field, the retirement pensions, whose reforms had been agreed by social and political consensus from mid-1990's.

In January 2011, the document titled “Social and Economical Agreement” (Acuerdo Social y Económico 2011) was signed by the Spanish Government and the social partners. Seven months later, it passed into law (Law 27/2011) with minor changes. The final result of the process was a tripartite agreement on reform of the public pension system, which must be considered a rather ambitious by Spanish standards. Its main elements, which would be implemented gradually between 2013 and 2027, are the following ones:

- i) It rises the retirement age from 65 to 67 years and the legal age of early retirement from 61 to 63 years.
- ii) It extends the pension calculation period from 15 to 25 years and increasing from 35 to 37 the number of contribution years required to reach 100% of the regulatory base.
- iii) It creates new incentives to promote remaining on the labour market. For every additional year that workers decide to remain in the labour market after the official retirement age, he will obtain: if the number of work years is less than 25, a 2% annual coefficient will be applied; if the number of work years is between 25 and 37, a 2.75% annual coefficient will be applied; and if the set number of work years has been completed, a 4% annual coefficient will be applied.
- iv) It introduces some measures for women and young people. On the one hand, women who have interrupted their careers as a consequence of a birth or adoption will be able to claim nine months of contributions per child before the age of 67 years, up to a maximum of two years. On the other hand, young workers will be able to use research grant and apprenticeship as a contributory period up to a maximum of two-year.
- v) It establishes the so-called “sustainability factor”, a tool to evaluate the system every five years considering some important factors (such as life expectancy, employment rate, etc.) and to trigger the adjustments that are necessary to ensure its sustainability. It planned it would start to work in 2027.

⁴ DE LA FUENTE, A.; DOMÉNECH, R., “The financial impact of Spanish pension reform: A quick estimate”, *Journal of Pension Economics and Finance*, vol. 12, 01, 2013, p. 113.

⁵ Law 27/2011, of 1st July, regarding the actualization, adaptation and *modernization* of the *social Security* system (Ley 27/2011, de 1 de agosto, sobre actualización, adecuación y modernización del sistema de Seguridad Social –BOE 02/08/2011, N° 184-)

The European Commission and the European Council welcomed the 2011 reform, but with some cautions: «in 2011, Spain adopted a pension reform that marks a significant step towards enhancing the long-term sustainability of public finances. However, the worsening of the economic prospects in Spain is limiting the impact of the reform on the projected age-related public expenditure. In addition, the reform still needs to be complemented by concrete measures to underpin the Global Employment Strategy for Older Workers for 2012-2014»⁽⁶⁾.

In other words, despite the importance of the reform, more adjustments were required. Following these recommendations, the Spanish Government (conservative at that time) opened the door to the second period mentioned above, in which Royal Decree-Law 5/2013⁽⁷⁾ and Law 23/2013⁽⁸⁾ have a dealing role⁽⁹⁾.

On the one hand, Royal Decree-Law 5/2013 amended, inter alia, the following points:

- i) It approves a more flexible regulation aiming to allow workers who achieve the legal age of retirement to combine either a full-time or part-time job with entitlement to 50% of pension benefits.
- ii) It makes the access early retirement more difficult. On the one hand, for voluntary early retirement pensioners must be four years younger than the legal age of retirement and have contributed to the social security system for a minimum of 35 years (previously, 33 years). On the other hand, both voluntary and forced early retirement beneficiaries will see pension benefits reduced by means of different annual coefficients, which will be increased compared to the previous reform.
- iii) It raises the number of years that a worker must have contributed to the social security system to qualify for partial retirement from 30 years to 33 years. In addition, the maximum working time has been reduced from 75% to 50% of the worker's original working time.
- iv) It tightened the eligibility criteria for receiving non-contributory unemployment benefits for those older than 55. This point will be explained below.
- v) It proposes the appointment of a committee, made up of independent experts, who will be entrusted with the task of producing a report about the sustainability of the pension system. Government's purpose is to apply it before it was planned.

The works of this committee were the base of the Law 23/2013 whose single purpose is create two different mechanisms, but rather close each other: the annual revaluation of pensions index (in force from 2014) and sustainability factor (which will goes into from 2019).

⁶ Recommendation for a Council Recommendation on Spain's 2012 national reform programme and delivering a Council opinion on Spain's stability programme for 2012-2015 {SWD(2012) 310 final}.

⁷ Royal Decree-Law 5/2013 of 15 March 2013, on measures fostering the continuity of older employees' working lives and promoting active ageing (Real Decreto-ley 5/2013, de 15 de marzo, de medidas para favorecer la continuidad de la vida laboral de los trabajadores de mayor edad y promover el envejecimiento activo -BOE 16/03/2013, Nº. 65-)

⁸ Law 23/2013, of 23rd December on the sustainability factor and the revaluation index in the social security pensions system (Ley 23/2013, de 23 de diciembre, reguladora del Factor de Sostenibilidad y del Índice de Revalorización del Sistema de Pensiones de la Seguridad Social -BOE 26/12/2013, Nº. 309-)

⁹ For more details SUÁREZ CORUJO, B., *El sistema público de pensiones.: crisis, reforma y sostenibilidad*, 2014.

On the one hand, the revaluation index sets the annual pension increase using a formula by amending article 58 of the General Social Security Law. It replaces the former reference index, which was the Spanish consumer price index (IPC, in its Spanish acronym) by the new revaluation index set out in General State Budget Law. The index is calculated using a complex mechanism based on the revenues and expenditures of the system. In any case, the result cannot be lower than 0.25% or higher than the variation in the consumer price index in the previous annual period, plus 0.50%.

On the other hand, the sustainability factor is defined as an automatic mechanism that links the initial amount of retirement pensions to life expectancy. It will start to be applied 1st January 2019. The sustainability factor will be calculated by reference to the following variables: a) the mortality tables for the retired pensioner population under the social security system as prepared by the social security authorities and; b) 67 years old as the legal retirement age. Combining these two elements the sustainability factor can be obtained by taking into account the life expectancy those who are 67 years old in two different periods of time and it must be reviewed every five years.

Compared to the first period, this has been characterized by the Governments unilateral action, excluding social dialogue. Actually, both main unions oppose the new reform. On the one hand, the General Workers' Confederation (UGT, in its Spanish acronym) has criticised both the lack of social dialogue and consultation prior to the reform and its effects on social protection: «we have one of the harshest, most regressive and harmful pension reforms for workers' interest. But we also have one of the Social Security reforms which have caused more damage to the political and social dialogue, since it was imposed unilaterally by the Government»⁽¹⁰⁾. On the other hand, Confederation of Workers' Commissions (CCOO, in its Spanish acronym) has also published a note on the pension reform highlighting the same elements: lack of dialogue and its impact on social protection risk of poverty.

Finally, the employers' organisation, the Spanish Confederation of Employers' Organisations (CEOE, in its Spanish acronym), has asessed the reforms as useful tools to guarantee the financial sustainability of social security and, hence, its continuity in the future⁽¹¹⁾.

3.3. The Unemployment System Reform

Whereas in a first period (mostly, during the socialist government) the unemployment system was not reformed in any sense, that is, neither to expand it, nor to reduce it; during a second (dealing by the conservative party) some other changes, along with cuts, have been introduced. In other words, as the government was forced to cut the unemployment system as a part of austerity plans, it took the opportunity to introduce some other reforms whose content is more ideological than financial and, therefore, which is not directly linked to the reduction of public expenditure. This directly links to the lack of social dialogue that characterizes unemployment system reform during this time.

Additionally, in spite of the fact that a complete and broad reform has not been presented, some partial reforms have been carried out, with a final result that is rather

¹⁰ UGT, *Informe de UGT al Real Decreto Ley 5/2013, de 15 de marzo, de medidas para favorecer la continuidad de la vida laboral de los trabajadores de mayor edad y promover el envejecimiento activo*, 2013. Own translation.

¹¹ CEOE-CEPYME, *Nota valorativa de la CEOE y CEPYME sobre el programa nacional de reformas 2014*, 2014, p. 19.

profound. This “hidden” reform of Spanish unemployment system is based in this three different main objectives:

- a) The reduction of the system as a part of Welfare State

In spite of that some other objectives of the reforms developed in the last years can contribute to achieve this one (i.e. if requirements to access to any subsidy is hardened, the control over the unemployed is intensified and sanctions are raised, it follows obvious effects on the number of beneficiaries and on the financial situation of the whole system), we are going to refer only to those which are directly connected with this aim.

In this sense, the main rule is without doubt the Royal Decree-Law 20/2012 (RDL. 20/2012) ⁽¹²⁾. According to its Statement of purposes, this reform is justified because «the continuous modifications of the unemployment system have made it less coherent, discouraging active life and producing situations which are contrary to the principle of equity. This distorts the aim of the system as a whole and it risks the protection of the neediest, who are affected owed to the impact of current design in the sustainability of the social protection system» ⁽¹³⁾. In other words, partial modifications suffered by the system during the last years would produce a double effect: on the one hand, they would discourage the active life; on the other hand, they risk the economic viability of the unemployment system, which would affect the neediest specially.

Nevertheless, the solutions showed by this Royal Decree-Law are not directly linked to these previously detected problems, but they turn up mixed, acting to give “coherence” to the system and to reduce public expenditure in this concrete field at the same time. Most measures adopted affects unemployment assistant benefits, whereas contributory benefit, which was the centre of reforms of 90’s, was affected by some changes in its final amount. Specifically, this rule adopts four main restricting measures:

- i. It reduces from 60% to 50% the percentage applicable to regulatory base in order to calculate the benefit amount after the sixth month of receiving it and it eliminates part of the contributions given by the Social Security in name of the unemployed.
- ii. It increases the age from 52 years old to 55 of the so-called “subsidy for unemployed older than 55 years old” (S-55) and eliminates the “special subsidy for unemployed older than 45 years old” (SS-45). This measures are adopted in order to promote the «active ageing» and «with the aim of assuring its sustainability in the long term and launching the extension of the active life». After that, Royal Decree-Law 3/2015 tightened the eligibility criteria for S-55. Accordingly, workers older than 55, whose unemployment contributory benefit has ceased and whose income is null, will not be entitled to unemployment benefits if they have children younger than 26 years of age whose combined income is higher than 75% of the minimum inter-professional wage.
- iii. It restricts the general requirement for accessing to protection by reinforcing «the link between the right to access to a subsidy and beneficiaries’ personal assets»;

¹² Royal Decree-Law 20/2012, of 13th July, on measures aimed at assuring budgetary stability and promoting competitiveness (RDL 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad -BOE 14/07/2012, No. 168-).

¹³ Own translation.

- iv. Finally, it also makes more difficult became beneficiary of the Active Insertion Income (AII -Renta Activa de Inserción-) «to reinforce its link to the employment and assure a higher effectiveness in the use of public resources».

b) The promotion of part-time and self-employment as employment policy

As it was described above, the current dramatic situation of Spanish labour market requires actions capable of reducing the unsustainable rate of unemployment. In this sense, unemployment system has been used as well as a tool of employment policy or, more correctly, as an instrument to reduce the social impact of unemployment. On this point, it is possible to find a clear governmental strategy in which unemployment system is used as an incentive for the promotion of part-time employment and self-employment.

Regarding the first one, it is possible to distinguish two different dimensions linked to the unemployment system. The first technique is focused on avoiding lay-offs and reducing its consequences as much as possible. The second one is a pure work-sharing version, based on the promotion of part-time work as the only way to achieve the objective of having more people working in spite of vacancies do not increase vividly.

In the first field, two of the most important tools of the so-called “internal flexibility” are the “suspension” of employment contract and the “reduction” of the working day. Both of them have been affected by 2010 and 2012 Labour Reforms (¹⁴). Inspired by German model called *kurzarbeit* (¹⁵), they have tried to promote these forms of internal flexibility as an alternative to lays-off. In this sense, unemployment system appears as an indispensable complement if a broadly application is pursued.

Accordingly, the Royal Decree Law 2/2009 (¹⁶) established two different measures, which have not been changed substantially afterward. On the one hand, the employer is compensated for his Social Security contributions (which are maintained in both cases despite the employee does not work) by the creation of a subsidy of 50% of those contributions for common contingencies during the time when measures are applied and until a maximum of 240 days per worker. On the other hand, for employees, the so-called “right to replenishment of benefits” was created (¹⁷). This measure is planned for those cases in which, after the suspension or reduction for working time, the employee was definitively dismissed. In this situation, the worker has the right: a) to add the duration of internal flexibility measures to the benefit generated by the termination of employment relationship until a maximum of 180 days; b) to replenish the benefit with that time if it was not consumed; c) to restart the former benefit, consumed during the

¹⁴ Law 35/2010, of 17th September, of urgent measures for the reform of the labor market (Ley 35/2010, de 17 de septiembre, de medidas urgentes para la reforma del mercado de trabajo –BOE 18/09/2010, No. 227). Law 3/2012, of 6th July, on urgent measures to reform the labor market (Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado de trabajo –BOE 07/07/2012, No. 162)

¹⁵ GONZÁLEZ ORTEGA, S., “La fascinación por los modelos o el «kurzarbeit» a la española”, en Mercader Uguina, García-Perrote Escartín, I. (eds.) *La reforma del mercado de trabajo : Ley 35/2010, de 17 de septiembre*, Lex Nova, Valladolid, 2010 (Cap. 7).

¹⁶ RDL. 2/2009, of 2 March, on urgent measures for maintaining and promoting employment and protecting unemployed people (RDL 2/2009, de 2 de marzo sobre medidas urgentes para el mantenimiento del empleo y el fomento del empleo y la protección de las personas desempleadas BOE 07-03-2009, N°. 57. Then transformed in Law 27/2009, of 30 December, -BOE 31-12-2009, N°. 315-).

¹⁷ Articles 15 y 16 de la Law 2/2009 respectively.

application of the suspension of employment contract or the reduction of working hours in case there is not entitled to opt (¹⁸).

Nevertheless, both of them were born as temporal measures, that is, they were created in a context of crisis and for the time it persists. Although this policy had rather good results according to the data (¹⁹) and the effects of crisis still continue, it was not renewed, so it finished on 1st January 2014.

Concerning self-employment, it is obvious that both EU and Spain have put it in the centre of political debate. “Entrepreneurship” has become the key word of employment policies in Europe. The Europe 2020 strategy recognises entrepreneurship and self-employment as the key for achieving smart, sustainable and inclusive growth, and several flagship initiatives address them (²⁰). According to this general scheme, Spanish government has promoted a complete set of measures that includes incentives, subsidies, business consultancy, and so on. Even the Youth Employment Program has been called “Strategy for Entrepreneurship and Youth Employment” (²¹).

Two main examples must be highlighted. On the one hand, new rules permit the harmonization of working and the reception of benefits if some requirements are fulfilled. This possibility was completely forbidden until the reform of Law 11/2013 (²²). On the other hand, the use of the so-called “capitalization” is now easier. Its functioning is quite similar to the previous one because receiving the benefit in a lump-sum payment to finance some kind of entrepreneurial activities is an exception to the general rule which must be allowed by employment program. This program began in the 80’s to promote the participation in social economy. Then, it has been progressively enlarged, even during this economic crisis. Today it includes other collectives such as disabled or young people and other activities related to self-employment and entrepreneurship.

c) The strengthen of mechanisms of control of unemployed people

The last trend related to unemployment system in the context of economic crisis is focused on the control of unemployed persons and the elimination of any possibility of fraud. Although any government can support these objectives, as they are the centrals or one of the most important parts of an employment policy, it is possible to affirm that they have acquired a central role.

Spanish unemployment system has accelerated its travel toward the disciplinary model and the economic crisis has reinforced this trend. Three are the most important control

¹⁸ In case of finding a new job, unemployment benefit is suspended for a maximum of 12 month. If employment relationship continues after this limit, benefit definitively expired. Otherwise, Spanish unemployment system regulates a right to option between the former suspended benefit and the new one generated owed to the new job. The right to replenishment translates these rules into the area of internal flexibility.

¹⁹ GONZÁLEZ ORTEGA, S., “Suspensión del contrato y reducción de jornada por causas económicas, técnicas, organizativas o de producción o derivadas de fuerza mayor”, en García-Perrote Escartín, I., Mercader Uguina; J.R. (eds.) *La regulación del mercado laboral: un análisis de la Ley 3/2012 y de los aspectos laborales del Real Decreto-ley 20/2012*, Lex Nova, Valladolid, 2012, pp. 283-287.

²⁰ Several times is mentioned in EUROPEAN COMMISSION, *Communication from the Commission. EUROPE 2020. A strategy for smart, sustainable and inclusive growth*, European Commission, Brussels, 2010.

²¹ The complete text can be read in:

http://www.empleo.gob.es/es/estrategia-empleo-joven/descargas/EEEJ_Documento_en_INGLES.pdf

²² Law 11/2013, of 26 July, on entrepreneurship, growth and job creation (Ley 11/2013, de 26 de julio, de medidas de apoyo al emprendedor y de estímulo del crecimiento y de la creación de empleo -BOE 27/07/2013, N.º. 179-).

measures adopted from the beginning of the crisis: 1) the requirement of being registered as unemployed and maintaining this situation whereas the benefit is being perceived has been strengthened; 2) the adoption of new rules on travelling abroad whereas the benefit is being perceived; 3) it is obliged to certify what kind of activities for searching a new job has been developed (²³).

In conclusion, unemployment system has been reformed rather profoundly in spite of this strategy has been carry out by the effect of various and successive partial reforms. However, all of them have three aims in common: a) the reduction of the system as a part of Welfare State, b) the promotion of part-time and self-employment; c) the strengthen of mechanisms of control of unemployed people.

Another additional common characteristic can be put in. Despite the importance of unemployment system and the magnitude of the problem of unemployment in Spain, the Popular Party's government, the only one who decided to reform it, has implemented these reforms outside of social dialogue. The fact that this transformation has not developed by a single reform and the kind of policies applied may explain the governmental unilateral actuation.

III Position and role of the social partners on the social reforms

1. Introduction

In the period 2008-2012 Spain's response to the financial crisis included tripartite national social dialogue only at a consultative level. Due to the depth of the crisis the Spanish government focused on the implementation of a series of harsh measures in a very short time. Sometimes a social dialogue approach has been attempted, but it has eventually failed and the government has proceeded unilaterally without the support of social partners.

There have been other cases of labour market reforms without agreement in Spain. For example, the 2002 labour market reform which modified the dismissal rules; the 2011 labour market reform on the employment contracts; and the 1994 labour market reform which changed the working conditions, the collective bargaining, the hiring, the dismissal, among other issues.

2. The process of social dialogue during the economic crisis

It is appropriate to make a distinction between two political stages because the process of social dialogue has been very different in each one of them. Firstly the report describes the period of Socialist government and secondly the conservative stage. While it is true that there was the failure of social dialogue in both cases, the Socialist government made relevant efforts to achieve a social agreement on the labour market reform.

2.1. The period of Socialist government (2008-2011)

During its period, the Socialist Government maintained talks and permanent contact with social partners on a large number of issues including the labour market, industrial relations and industrial policy. However, views concerning the appropriate measures to

²³ Most of them introduced by Law 1/2014, of 28 February, on the protection of part-time workers and other urgent measures in the social and economic order (Ley 1/2014, de 28 de febrero, para la protección de los trabajadores a tiempo parcial y otras medidas urgentes en el orden económico y social -BOE 01/03/2014, No. 52-).

be taken soon began to diverge and the parties reached a deadlock in January 2009. Attempts to renew the national social pact broke down in March 2009. In spring 2010, with a severely deteriorated macroeconomic and financial situation, social dialogue was considered to have officially broken down. When the debt crisis put further pressure on the Government to act, it adopted a more unilateral approach in regulating several policy fields. However, in matters related to labour market and industrial relations, the Government continued to engage in tripartite dialogue before deciding reforms. On 16 June 2010, the Government approved a labour reform by decree (Royal Decree 10/2010, 16 June), without the support of employers' and workers' organizations. The reform introduced a flexibilization of labour market regulation, i.e. the possibility for companies to lay-off workers at lower costs. Additional austerity measures were also introduced and they, too, met with dissent from the social partners. The final text of the labour market reform was approved by Law 35/2010, 17 September, which set a deadline of six months to negotiate a reform on collective bargaining. It is relevant to underline that the reform established that the government would pass a new reform even if the parties did not achieve an agreement.

The bipartite negotiation process restarted at the beginning of 2011. In January 2011 it was agreed "Acuerdo sobre criterios básicos para la reforma de la negociación colectiva"⁽²⁴⁾. The agreement meant a relevant step in order to achieve a collective bargaining reform. Unions (CCOO and UGT) and business organization (CEOE-CEPYME) established in the text that the reform was absolutely necessary and they aimed to reach an agreement about it. The deadline was the 19 March of 2011. The social partners committed themselves to sign an interconfederal agreement which included the agreements of the reform ⁽²⁵⁾.

A tripartite social pact (the Economic and Social Agreement for Growth, Employment and the Sustainability of Pensions) was signed in February 2011. This comprehensive pact covered old age pensions, youth unemployment, active labour market policies, the reform of collective bargaining and industrial and energy policy. Regarding labour market regulation and employment policy, the pact made commitments in three main areas. The efficacy of active labour market policies; the transition to stable employment; and coordination between the national, regional and local government levels, the lack of which was an obstacle to the effectiveness of employment policies. The pact also committed itself to implementing some of the elements of the 2010 reform which had not been carried out so far.

The most controversial aspect of the pact was the reform of old age pensions. It rose the pensionable age from 65 to 67 years, a measure that was heavily contested by large factions among the trade unions. Even though the pact had some elements of flexibility, making it possible for employees to be entitled to full pension without having reached 67 years of age, the criticisms highlighted the fact that in a labour market like the Spanish one, with high rates of temporary employment and frequent unemployment spells, it would be difficult to reach maximum pension levels.

It seemed that the social dialogue had been recovered. The mentioned draft agreement on collective bargaining reform (January 2011) was approved by the unions. However the business association (CEOE-CEPYME) refused to pass the final text unexpectedly

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http://www.fsc.ccoo.es/comunes/recursos/99922/doc31555_Borrador_del_Acuerdo_sobre_empleo_y_negociacion_colectiva.pdf

²⁵See the Agreement: <http://www.ugt.es/actualidad/2011/febrero/c02022011.html>

(²⁶). Finally, the reform was approved by the Royal Decree 7/2011, 10 June. It is clear that the legal measures are related to unions and business association's proposals during the negotiating process. In deep the Government included some measures proposed by unions and other suggested by CEOE-CEPYME. However, when there were opposite interests, the labour market reform approved intermediate solutions.

2.2. The conservative stage

The right-wing Government (The PP party) elected in November 2011 soon made clear its intention to reform the labour market again. Despite the Government and some representatives of the labour ministry engaged in separate talks with the unions and employer organization, there was no attempt to enter into a tripartite social dialogue. Since taking power in 2011, the PP Government has adopted an approach which was based on unilateral decision-making and disregarded of tripartite social dialogue. Tripartite social dialogue has played virtually no role in the design of employment law and industrial relations. It is true that during the reform process, there were meetings where the Government tried to justify the legal measures. However, every union's proposals were refused.

By January 2012 a new bipartite Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC II) was signed²⁷. However the Spanish Government disregarded the Agreement and the new labour market reform (Real Decree 3/2012, 10 February, and the Law 3/2012, 6 July), was passed. In fact, the Government did not take into account some of the contents of the 2012 Interconfederal agreement when it drafted the law proposal. The Labour Minister Mrs. Fátima Báñez said that while the Government had full respect for social dialogue, the outcome of the social dialogue among trade unions and employers set out in the January 2012 agreement was clearly insufficient to tackle the problems of the Spanish labour market. 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 on the 2012 reform.

By far, the most important impact of the 2012 Reform Law has been on tripartite social dialogue, which has not been restored since the Law was passed. In the next reforms there were not any consultations with the social partners. The tripartite social dialogue was practically non-existent in 2012. The activity of Spanish Government focused on cuts and deficit reduction. However it was other examples of bipartite social dialogue such as "V Acuerdo sobre solución autónoma de conflictos laborales" by CEOE-CEPYME, CCOO and UGT in February 2012 or the extension of the IV Agreement on vocational training. Following with bipartite agreements, unions and business organization agreed in May 2013 the agreement about the issue of maximum validity period of collective bargaining (²⁸). In addition it was meetings between Government and social partners to address the youth unemployment (²⁹).

²⁶ Interviews with Unions. The business association's change of mind was showed when CEIM (the Madrid Confederation of Employers and Industries-CEOE) proposed the single employment contract. See the CEIM proposal about the collective bargaining reform, May 2011: <http://www.ceim.es/upload/file/juntaDirectiva/2011/250511/propuestaCEIMnegociacionColectiva062.pdf>

²⁷ <http://www.boe.es/buscar/doc.php?id=BOE-A-2012-1778>.

²⁸ <https://boe.es/boe/dias/2013/06/14/pdfs/BOE-A-2013-6449.pdf>.

²⁹ Memoria CES, 2012, p. 17.

3. The factors of contention in Spain

The scholars suggest that the presence or the absence of a social dialogue response should be dependent on four factors: 1) a legacy of tripartite policy-making; 2) a serious economic crisis that fundamentally threatens the country's economic and financial viability; 3) the organizational strength of the union movement; 4) independently of the unions' organizational strength, whether or not they are allowed to organize freely ⁽³⁰⁾. The Spanish case meets the main instruments in order to reach the social dialogue. It is true that the country's union density rate (union members/workers) is lower than 20 per cent. However, it is very relevant the unions' power for negotiating collective agreements due to effectiveness of collective agreements which are mandatory for employees even if they are not members of unions. However, as explained above, the labour market reforms were approved without the support of social partners. For that reason it is necessary to identify the factors of this situation.

3.1. The economic situation

A crisis that hits hard is often sufficient to produce an absence of social dialogue ⁽³¹⁾. In Spain the economic crisis has been very long and deep. The high unemployment rate reflects clearly that the crisis has affected specially in our country in comparison with the most of European countries. Due to the European pressure the Spanish Government had decided to reform the Workers' Statute drastically. It meant that reform proposes were not welcome by social partners. In particular, the social partners point out that the economic crisis has been a strong factor to explain the lack of consensus ⁽³²⁾.

3.2. The red lines during the negotiations

The need of the collective bargaining reform was established in the following documents: "Declaración para el Diálogo Social" of 2004" and "Declaración de la economía, el empleo, la competitividad y el progreso social" of 2008, agreed by unions, business association and the Government. However it looks clear that the negotiation process is showed more difficult when there are red lines which parties defend in a strong way. Regarding the Spanish labour market reform it should be established that the collective bargaining reform could weak the unions' position. In particular the field of structure of collective agreement was one of the most controversial issues for social partners. It is true that there were some points of agreement between them. For example that the provincial level was dysfunctional. In addition parties were agreed in order to set out instruments to promote a coordinate structure. But there was no consensus about the role of enterprise collective agreement in the sense that this level of negotiation had priority or not over the sectoral level.

The reform of the validity's period of collective agreements (called "ultra-activity") was also a red line during the negotiations. While unions defended that the question should not be changed, the business association-CEOE- proposed the elimination of this period or at least the reduction of the period.

³⁰ Baccaro, L. and Heeb, S., Social dialogue during the financial and economic crisis Results from the ILO/World Bank Inventory using a Boolean analysis on 44 countries, 2011, p. 3.

³¹ Baccaro, L. and Heeb, S., Social dialogue during the financial and economic crisis Results from the ILO/World Bank Inventory using a Boolean analysis on 44 countries, 2011, p. 7.

³² Interview with social partners.

3.3. The lack of leadership

From 2008 to 2010 there was developed a very long period of negotiations between the Government and social partners. At the same time the job destruction was dramatic. This period showed that the position of both parties (CCOO-UGT and CEOE-CEPYME) was weakened. In particular there were a lot of scandals which affected Gerardo Díaz, Chair of CEOE. In December 2010 Gerardo Díaz was replaced by Juan Rosell⁽³³⁾. According to social partners the change in the CEOE presidency provided an additional incentive to favour a process of social dialogue as the new president adopted a more favourable approach to the negotiations⁽³⁴⁾. While it is true that social partners achieved a pre-agreement on collective bargaining reform (January 2011), at the end the new Chair of CEOE refused it.

4. The strategies and collective actions

From our point of view, in some issues as the collective bargaining, the failure of social dialogue would cause more negative effects than others. The social partners are who must implement the reform in practice and the collective bargaining represents the cornerstone for unions. In this sense after the reform CCOO and UGT expressed the following words: “the reforms without consensus ...mean the failure and only the agreements between the social partners are able to achieve the purposes of the Government, more over when the issue belongs to them...”⁽³⁵⁾. However, in Spain there was no evidence that some labour market reforms with agreement of social partners achieved their purposes⁽³⁶⁾. Furthermore it is clear that social partners, in special unions, have adopted different strategies to avoid or reduce the impact of the last labour market reforms.

4.1. The development of bipartite social dialogue

Recent researches seem to confirm the gap between tripartite and bipartite social dialogue. Not only is there some evident functional differentiation between these two processes in regard to the issues they deal with, but also they have followed opposite trends. Its very nature makes tripartite social dialogue right for negotiating social security issues and, more generally, industrial, environmental and macroeconomic policies. By contrast, bipartite social dialogue is more suitable for matters related to employment policy, labour market regulation, industrial relations, training. Whilst tripartite social dialogue is to a large extent subject to the political will of the Government and hence more uncertain, bipartite social dialogue has proved to be more resilient to political influences⁽³⁷⁾.

³³ Noticias CEOE, January 2011, nº 354.

³⁴ Interviews with unions.

³⁵ Vid. <http://www.fsc.ccoo.es/comunes/temp/recursos/99922/976947.pdf>

³⁶ For example the 1997 Labour Market Reform. See BENTOLILA, S. and JIMENO, J.F., La reforma de la negociación colectiva en España, 2002, pp. 8-9. Vid. <http://www.eco.uc3m.es/~ricmora/ee/lecturas/BentolilaJimeno2002.pdf>

³⁷ Molina, O. and Miguelez, F., Imposition: Social dialogue in austerity times in Spain, 2013, ILO, p. 36. According to the doctrine, it happened in the early 1990s, after the failed attempts to negotiate a tripartite social pact to face the economic crisis and the run-up to the European Economic and Monetary Union. The state-dependent character of industrial relations and the highly contingent character of tripartite social dialogue due to economic and political circumstances, led the social partners to strengthen bipartite social dialogue. The latter proved to be an effective tool in leading the adjustment of collective bargaining within the new EMU framework and constraints.

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 the all levels: sectoral and enterprise levels. Perhaps the 2012 Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC II) represents a clear step of these trends. At company level it has been very common to negotiate agreements in which workers accepted 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 extrema ratio, when all other possibilities (for example internal flexibility, training) have been exhausted.

Strikes

The economic crisis as well as the impact of austerity measures has increased industrial disputes. Unions have called for general strikes as response to the imposition of austerity policies and labour reforms affecting both the private and public sectors of the economy. Furthermore, there have been general strikes in specific sectors such as education and health.

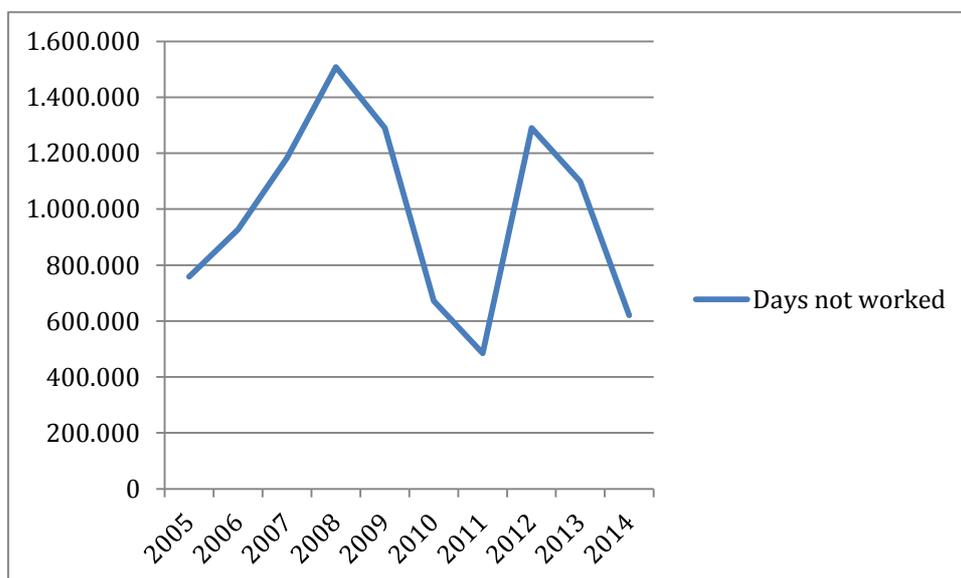
Table: General strikes

<i>Date</i>	<i>Scope</i>	<i>Motivation</i>	<i>Participants</i>	<i>Government</i>
<i>June 2010</i>	<i>Public sector</i>	<i>Against the May 2010 austerity package</i>	<i>CCOO UGT CSIF</i>	<i>The Socialism Government</i>
<i>September 2010</i>	<i>All the economy</i>	<i>Against the labour market reform and austerity package</i>	<i>All trade unions</i>	<i>The Socialism Government</i>
<i>January 2011</i>	<i>All the economy</i>	<i>Against the Social and Economic Agreement and pension reform</i>	<i>All trade unions except CCOO and UGT</i>	<i>The Socialism Government</i>
<i>March 2012</i>	<i>All the economy</i>	<i>Against the Labour Market Reform passed in February 2012</i>	<i>All trade unions</i>	<i>The PP Government</i>
<i>November 2012</i>	<i>All the economy</i>	<i>Against the austerity measures</i>	<i>UGT and CCOO</i>	<i>The PP Government</i>

Despite the increased number of strikes in the last period, the economic impact has not been particularly high in comparison with previous years. It should be noted that the impact looks higher during the PP stage than the Socialist period. In 2012 the number of

participants increased (33,8%; the higher number since 2009). However the economic impact decreased 14,8% and was a shorter duration of strikes (³⁸).

Graph: Days not worked



Source: Ministerio de Empleo y Seguridad Social

4.2. Bring judicial actions

The failure of social dialogue has meant that unions started a judicial battle against the labour market reforms. Judicial actions could be classified into general measures and specific measures. The first kind of measures was addressed to obtain the nullity of whole labour market reform alleging that the reform violated the Spanish Constitution. In particular, union alleged the violation of right to negotiate of the articles 28 and 37 of the Spanish Constitution. However the Spanish Constitutional Court has concluded that the reform is according to the Constitution (³⁹).

The second one focused on the first enterprise collective agreements in order to obtain their nullity. As said above, the sectoral level is the most appropriate for unions because it represents their negotiation power. But the labour market reform gives priority enterprise collective agreements over the sectoral level for a group of employment issues. Some collective agreements at company level were approved violating the rules of negotiations because establishments have not representatives. The Courts have held that these agreements are contrary to Workers' Statute. In the same sense the Courts have reduced the impact of some legal changes such as the maximum period of validity of the collective bargaining.

4.3. To negotiate against the labour market reform

In Spain, unions (CCOO and UGT) have opposed the government-imposed reforms, on the grounds that these reforms restrict established collective principles and rights, and depress wages. Both confederations view the present government's reforms as being

³⁸ Memoria CES, 2013, p. 25.

³⁹ STC 119/2014, 16 July; STC 8/2015, 22 January.

primarily ideological rather than economically motivated. One of the main strategies of unions has been to negotiate collective agreement at sectoral level whose content is contrary to the labour market reform. The purpose of these kinds of measures is to express the disagreement with the legal modifications and also to try their application in some sectors. For example, after the 2012 labour market reform firms can opt-out more easily from a collective agreement and pursue internal flexibility measures. Employers can unilaterally introduce changes in working conditions (wages, working hours, work schedules) whenever there are objective economic, technical, production or organizational reasons. In the absence of an agreement with worker representatives, the employer willing to opt out may now unilaterally refer the matter to arbitration by a public tripartite body (“*Comisión Consultiva Nacional de Convenios Colectivos*”). In relation to the economic cause, it is necessary to allege two consecutive three-month periods in order for the decrease in revenue and sales levels to be considered persistent. So, it is very common to find 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 (⁴⁰). However, some clauses have been declared illegal by Courts because the labour market reform has not given power to the unions for negotiating them (⁴¹).

⁴⁰ For example, V Convenio Colectivo estatal del corcho (BOE 21-09-2012); Convenio Colectivo sector agencias de viaje (BOE 22-08-2013); Convenio Colectivo estatal sector de fabricantes de yesos, escayolas, cales y sus prefabricados (BOE 20-03-2013); Convenio Colectivo estatal estaciones de servicio 2010-2015 (BOE 3-10-2013); VI Convenio Colectivo sector de derivados del cemento (BOE 28-03-2014).

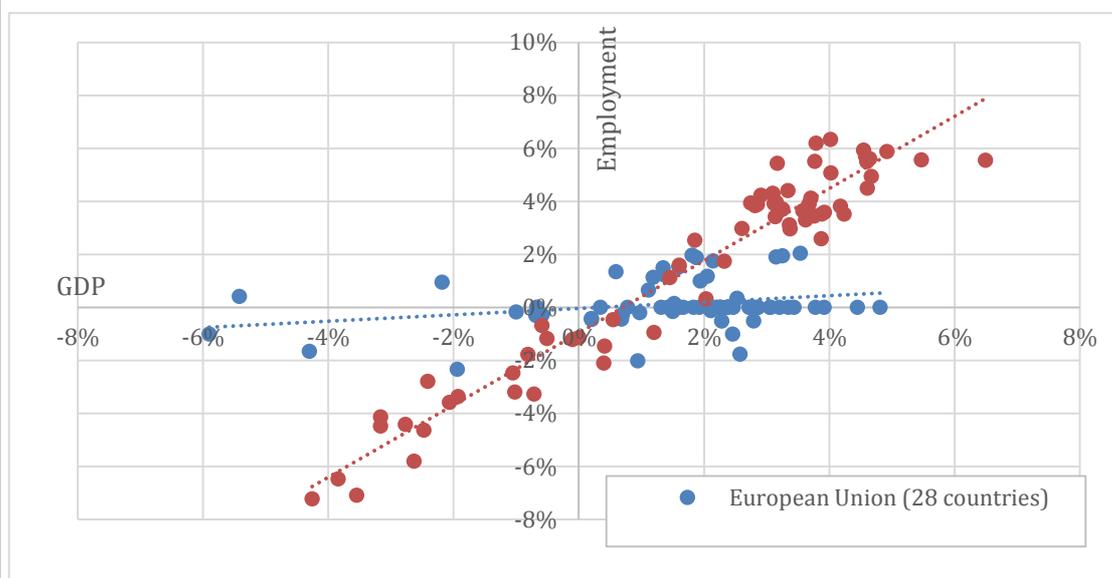
⁴¹ STSJ Andalucía, Sevilla, 14-06-2012, JUR 2012\329162; STSJ Andalucía, Sevilla, 17-01-2013, AS 702; STSJ Andalucía, Granada, 22-05-2013, AS 2006.

IV Labour market effects of the reforms

1. General overview: the main objectives of the reforms.

The Labour Market in Spain is known for two main characteristic features. First, it can be described as “bulimic”. When the economy grows, it creates jobs at quite impressive rates. Thus, between 2000 and 2007 –times of prosperity– the employment growth at annual rates around 4%, while in the European Union⁴² was barely changing or, since 2004, at half of the Spanish rate. On the other hand, when the financial crisis arrived, Spanish economy expelled workers equally fast. In six years, 16.7% of total jobs disappeared, triggering unemployment rate. This represents an employment destruction five times higher than among de European Union, which, by the way, began the loss of jobs a year later. In the last quarters, despite of the reforms, this effect has not changed. The rate of employment growth, now that signs of economic recovery are appearing, is again higher than the European Union average.

Figure1: GDP (chained linked volumes) and employment; Annual percentage change 1999-2015



Data source: Eurostat

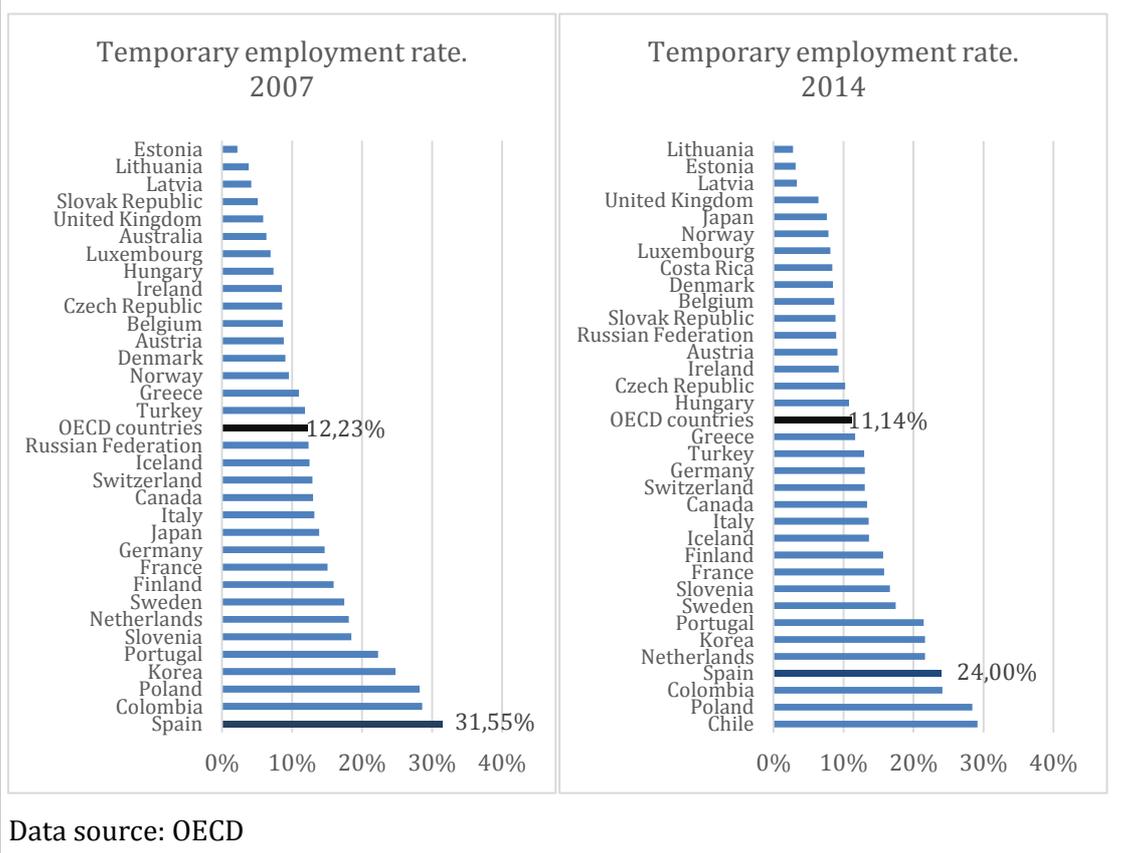
The Spanish problem in this matter can be easily understood in the figure above. The issue is not a higher or lower rate of change on employment, but the reaction of the labour market to economic cycles. In healthy economies, business are capable to adapt their production or they costs labour costs without employment destruction. In Spain, by the contrary, even small changes in GDP cause immediate response in the employment volume.

The second essential feature of this labour market –and this relates to the first– is the abuse of temporary contracts. The extremely high temporary rate of Spanish employees is used as a quantitative adjustment tool by the firms. But even during the worst years in the crisis, workers with fixed-term contracts represent a high proportion of total

⁴² In order to make homogenous comparisons from 2000, the references to European Union are made to 27 countries, excluding Croatia.

workforce. In 2007, as shown in the next figure, temporary employment in Spain, over 30% of employees, was the highest not only in the European Union, but in the OECD. Seven years later, despite of a marked reduction of 7.5 points, Spanish labour market gets a second position in Europe and fourth in the OECD. As it will be described later in this report, this downturn does not seem to be caused by a deep change in the functioning of the market; as soon as employment has begun to rise so has done the temporary rate.

Figure 2

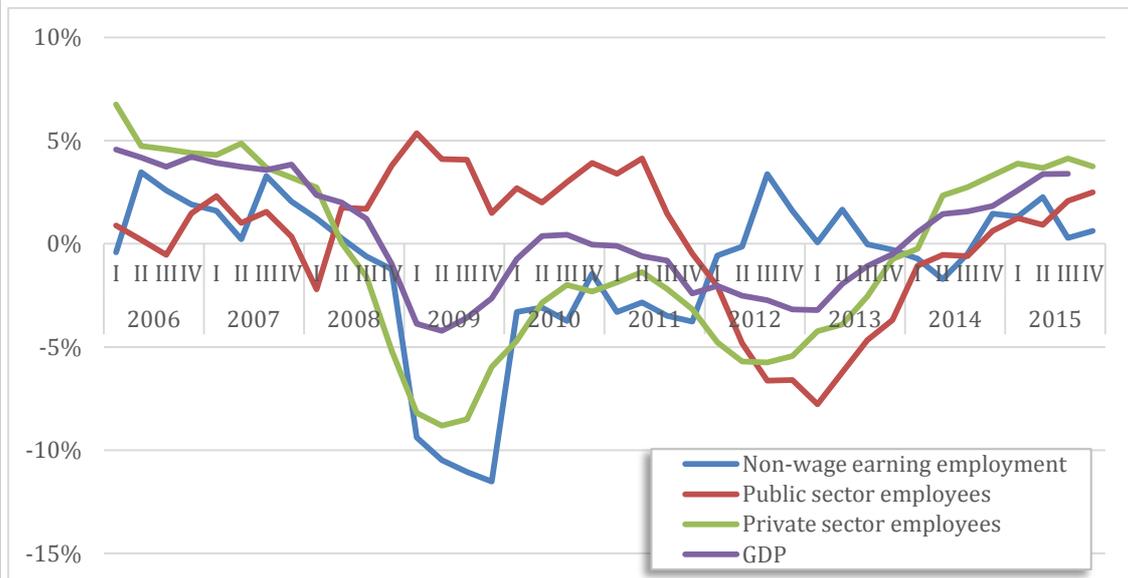


These two “essential characteristics” of Spanish labour market have been the core of most of the reforms analysed in previous sections. The fight against duality and the so-called “rigidities” of employment contracts –pointed as responsible for the “bulimic” behaviour– were at least mentioned in all of the reform laws. The precise measures adopted included reforms in collective bargaining, in dismissal and layoff costs and procedures among others. Spanish public data, even if not as complete as researchers would like, offer a wide picture of the quantitative effects of the reforms.

Despite of partial effects, which will be detailed in the next sections, the overall results do not seem quite promising. As shown in the next graphic, Spanish private employment levels still overreact to small changes in GDP trends. In the last quarters, employment level has again grown faster than the economy, which means that the new jobs have less productivity than the existing ones. As happened before the financial crisis, the quality of employment is displaced for the amount of jobs created.

Thus, while in 2009 GDP was falling at a 4% rates, the private sector was losing 11.5% of its jobs. Nowadays, With a quite strong growth rate (3.4% in the third quarter of 2015), Spanish business have increased its employment volume in 4,1%.

Figure3: Types of occupation – GPD Interannual growth rate



Data source: Spanish National Statistics Institute, Labour Force Survey (EPA)

2. Improving internal flexibility

It's not easy to measure such a vague concept as "internal flexibility". In one hand, it is needed to define what kind of changes a firm should be entitled to do in order to adapt their employment conditions to the market situation. In the other hand, even if the items to analyse were clearly defined, it would be hard to measure them. Most of them are business decisions that are neither published nor collected by official statistics.

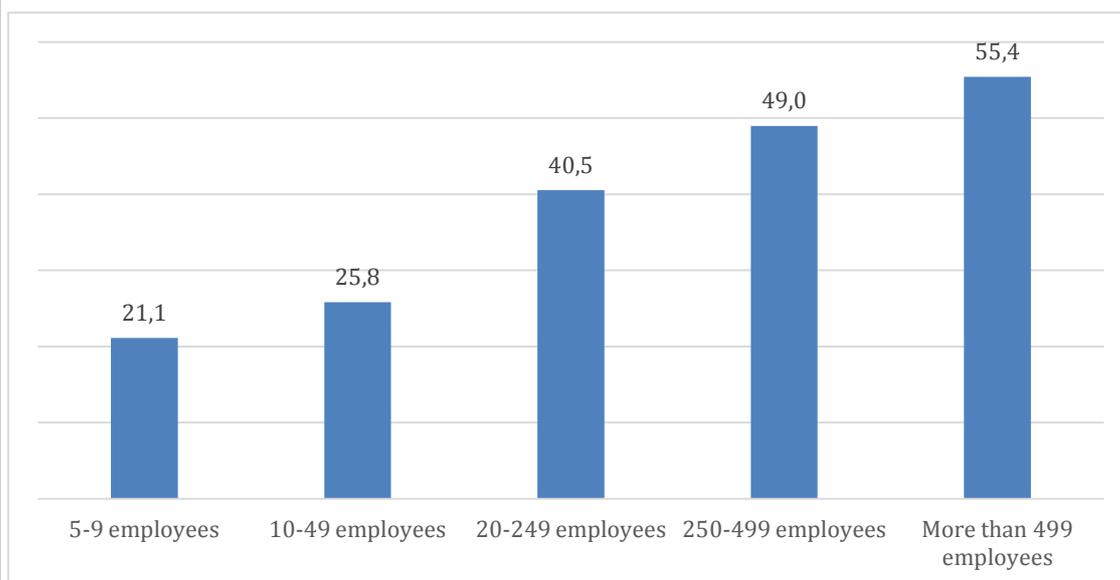
Spanish government started a survey on those issues in 2013 (Annual labour survey). Unfortunately, there are no retrospective data, so it cannot be used to make an evaluation of the reforms. By the way, it offers some interesting items that can be marked here. This survey only covers firms that, in average, have had at least five employees affiliated to social security. Even this restriction leaves out approximately 17% of business and salaried workers it is a quite good source of information, as very small enterprises are less likely to adopt the kind of measures that a labour market reform could offer.

First of all, in 2014 only 24.3% of surveyed firms declared having adopted "internal flexibility measures), a decrease of 2.8 percentage points from the previous year. In fact, use of this flexibility mechanisms was lower for almost every size and economic branch. Only the biggest firms (500 employees or more) in industry and construction sectors have implemented these decisions more in 2014 than in 2013.

Anyway, as the economic background has improved, the data mentioned above not necessarily implies a negative trend from the moment the laws for the labour reforms were passed. The most interesting result, in any case, is related with the firm size. Business with at least 50 employees are clearly more likely to implement the measures analysed in the survey.

As we do not have data to compare this situation with the pre-crisis (and pre-reforms) one, we cannot assure that the new rules establishing special workers commissions as legitimate interlocutors has not been effective. Maybe without those “ad hoc” commissions, created in 2010 reform, many small firms in which there are no legal representatives of employees the share of them adjusting conditions would have been even smaller. At any rate, the truth is there still huge obstacles to them, as the path shown in Graphic 4 is clear: bigger is the firm, higher is the probability of adaptation of working conditions.

Figure 4: Business adopting internal flexibility measures (%). 2014



Source: Yearly Labour Survey (*Encuesta Anual Laboral*). Ministry of employment and Social Security.

A probably more effective way to analyse the impact of the reforms described is the declared intentions of the firms asked about their hypothetical reaction to changes in their economic situation. So, when the question is how they would act in case of a reduction in demand, 62% said in 2014 (67% in previous year) that they would reduce labour costs (among others). Half of these, would opt for reducing the number of temporary workers, while only 12,9% would try to reduce salaries and a 23,1% would prefer reducing working time and its retribution. The share of firms that would prefer to dismiss workers (including both temporary and permanent) is almost a 60%, and it is slowly higher in enterprises with at least 50 workers. It is not very reliable to deduce a tendency as we only have data for two years, but the fact is in 2013 this proportion was 4.6 points lower.

Therefore, one of the objectives of the reforms under socialist and conservatives is clearly not achieved. There are not available data to sustain whether the use of internal flexibility as response to a negative shock is today higher than it was before the crisis. But the evidence shows without any doubt that Spanish firms would react to a negative shock by reducing employment.

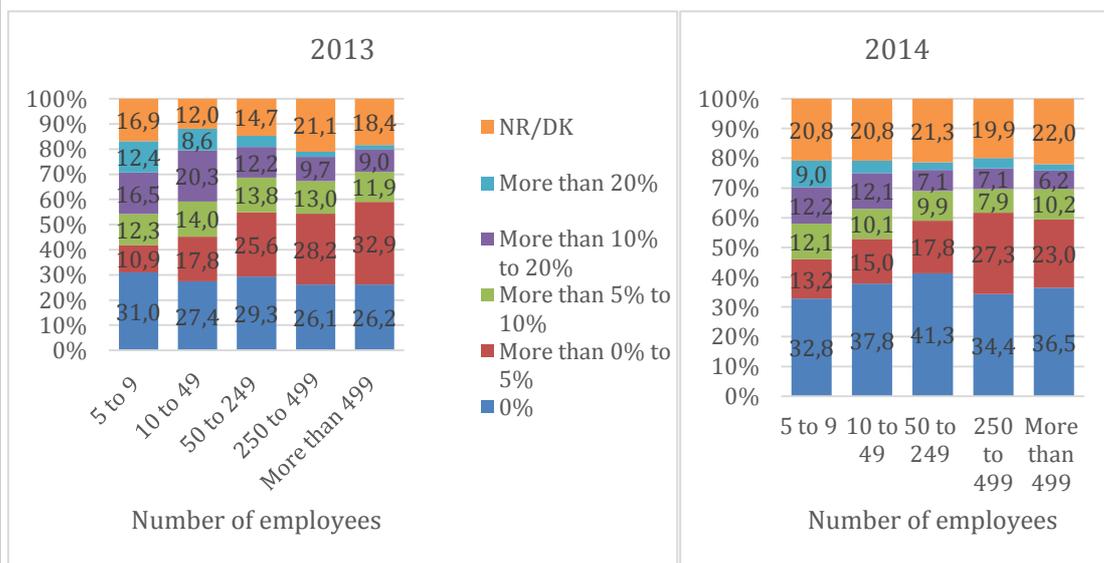
The explanation of this (at least partial) failure could be related with multiple factors. As some of the social partners interviewed for this study said, Unions have loose some of their influence. As they have been weakened (by political strategies but also by their

inability to reach small working centres), the agreements with the firms have become harder to achieve. By the way, 2014, most of the flexibility measures were adopted after an agreement with the workers representatives. When the affected issue was working time, the conformity was reached in more than ninety percent of the firms; when the adjustment it is related to the removal or non-wage benefits it fails to 80%, but it is still a really high share.

From another point of view, cultural inertia could be preventing the effectivity of the reforms. As quantitative adjustment –especially by reducing the number of temporary workers– has been the most common tool to address negative shocks, businessmen are not willing to change their habits. Even if now it is quite easier to undertake an adjustment in working conditions, reducing workforce is a safe and well known road that has been travelled successfully several times.

Other possible approach is the use of the flexibility measures as a labour costs reducing tool. There are no data of the amount that it is actually saved as consequence of internal changes, but since 2013 the Ministry of Employment and Social Security has published a survey (Yearly Labour Survey) on which business owners are asked about several items related with human resources management. One of the items is precisely the reduction of labour costs. As shown in Figure 5, most of business do not perceive an effective reduction on their labour costs. Over half of the companies consider either there are no savings or they do not know the amount of them, regardless of their size.

Figure 5: Savings on Labour costs resulting from internal flexibility measures adopted



Source: Yearly Labour Survey (*Encuesta Anual Laboral*). Ministry of employment and Social Security

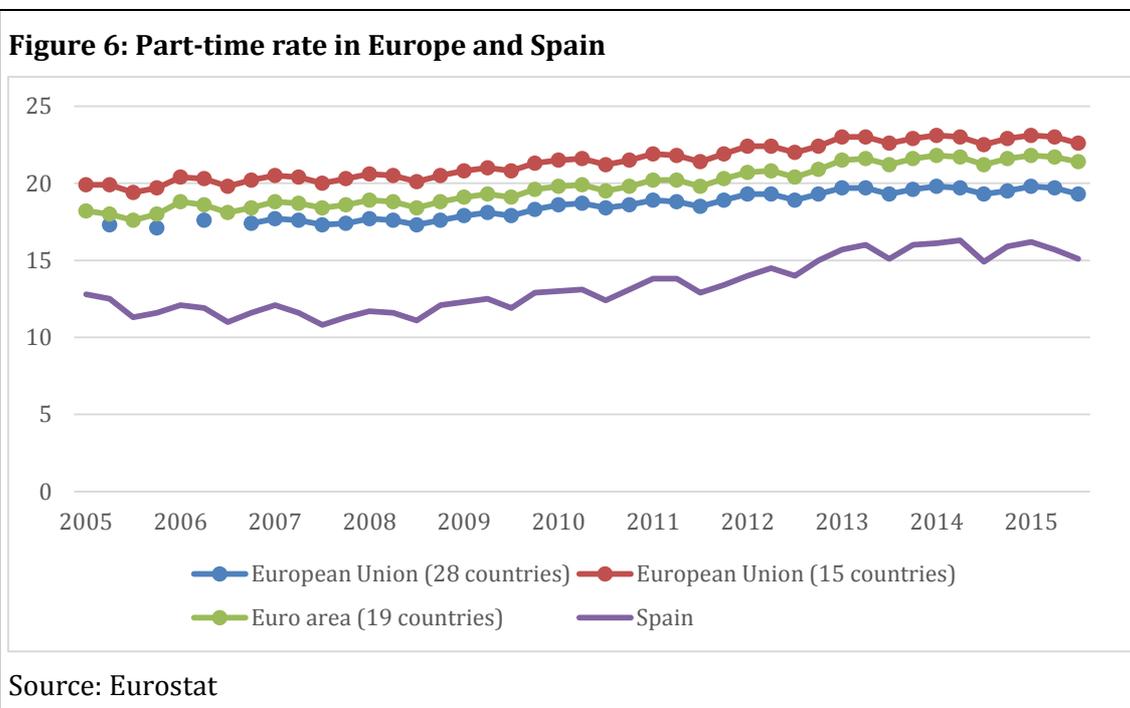
However, there are some differences depending on the number of workers that can be remarked. First of all, the largest savings are found in small companies, while this effect was bigger in 2013 than in 2014. In the first of these years, about 10% of the companies with more than 499 workers employed reduced their costs by at least a 10% by applying flexibility measures; this share was almost three times higher in the smaller companies. In 2014, even the difference was smaller, it was still remarkable, as it was two and a half times higher from the smaller firms.

3. Part-time employment developments

Another objective of the labour market reforms, sometimes implicit and another explicit, has been to affect working time, mainly by to paths. The first one, by raising the use of part-time working. This kind of labour relation has been understood as an improvement on Work–life balance, but also a job-sharing effect. If labour demand is fixed, an increase of part-time rate should have a positive impact on the unemployment levels. If some economy needs “N” hours of work, more people will be employed as smaller is the working time of the average worker. Unfortunately, economic literature has shown some evidence against the main hypothesis of this reasoning. With more part-time workers or with shorter average worktime the employers could change the work-capital ratio and employees could reduce their demand on goods and services, depressing domestic demand and, therefore, labour demand.

Aside from the pros and cons of a higher part-time rate, the fact is that this has happened in the last years, there has been a bigger use of this kind of contract in Spain. In the last ten years, the share of part-time has grown 5.6 points between the second quarter of 2007 and the same period of 2014. It was precisely then when the part-time rate reached its maximum in Spain (17.7% of salaried workers), but has stalled since and even moved backwards; last data available (last quarter of 2015) shows a rate of 16,9%.

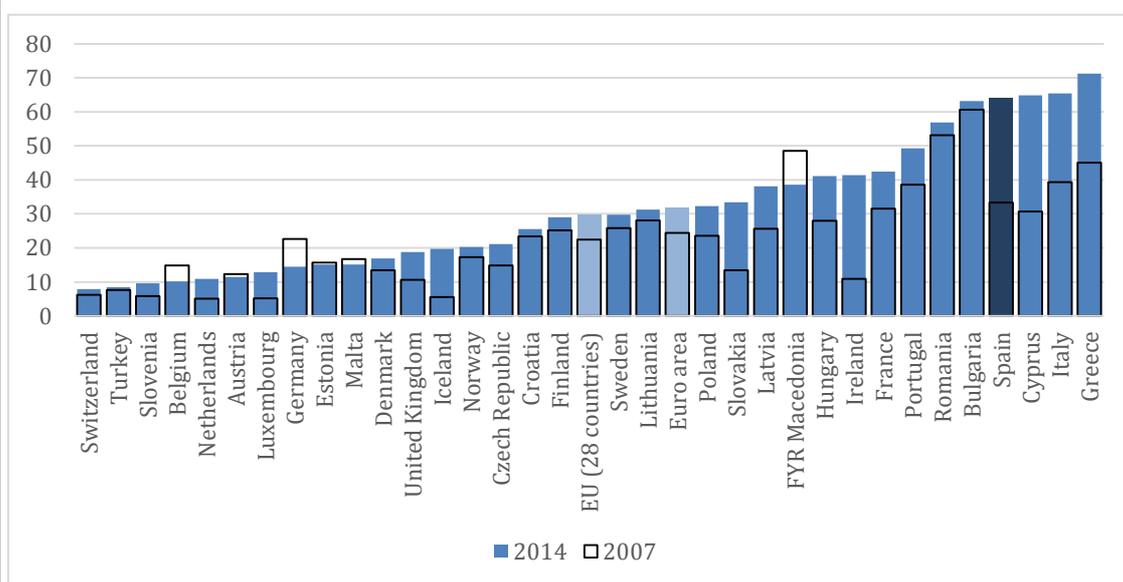
However, if those data are put in European context, the measures adopted under successive Governments seem to be less effective than expected. As shown in figure 6, the relevance of part-time work has been improving everywhere, not only in Spain. Therefore, the most plausible explanation has to be found in changes in the global understanding of unemployment relations, and not in local legislative changes.



Furthermore, the reason for the workers to accept a part-time seems to be different in Spain compared to other UE members. During the economic and financial crisis the part-time work has become mostly involuntary. In Spain two out of three part-time workers would like to have a full time job, which means one of the highest rates in the

European Union and also one of worst evolutions; in 2007 this situation was suffered only by one out of three Spanish part-time workers.

Figure 7: Share of part-time workers that would like but could not find a full-time job



Source: Eurostat

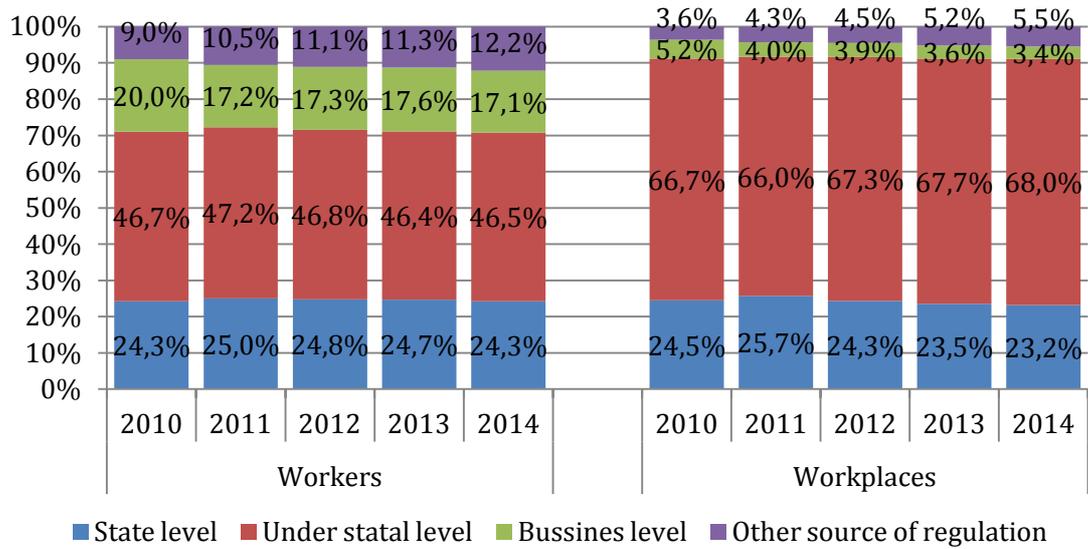
4. Collective bargaining and salary levels: towards an internal devaluation

It has been repeatedly said that one of the main problems of Spanish labour market development was caused by an inadequate collective bargaining structure. Consequently, both socialist and conservative reforms have tried to reinforce firm-level agreements, by establishing priority on several subjects.

At the same time, in the 2012 reform government reduced the *ultractivity* of denounced collective bargaining agreements to one year. This limitation, that generated some doubts on the regulation applicable to working conditions after the expiration, was intended to encourage social agents (specially the workers representatives) to reach a new agreement, even if the employer offered worse conditions. One of the risks was a reduction on the coverage of bargaining agreements.

This fear seems now to be well founded. The workers not-covered by collective bargaining are now 12.2%, more than three points above it was before the reforms. As it can be saw in the figure below, the coverage of business level agreements has not increased, neither on workers nor workplaces covered, and understaate level –mostly provincial– are quite stable.

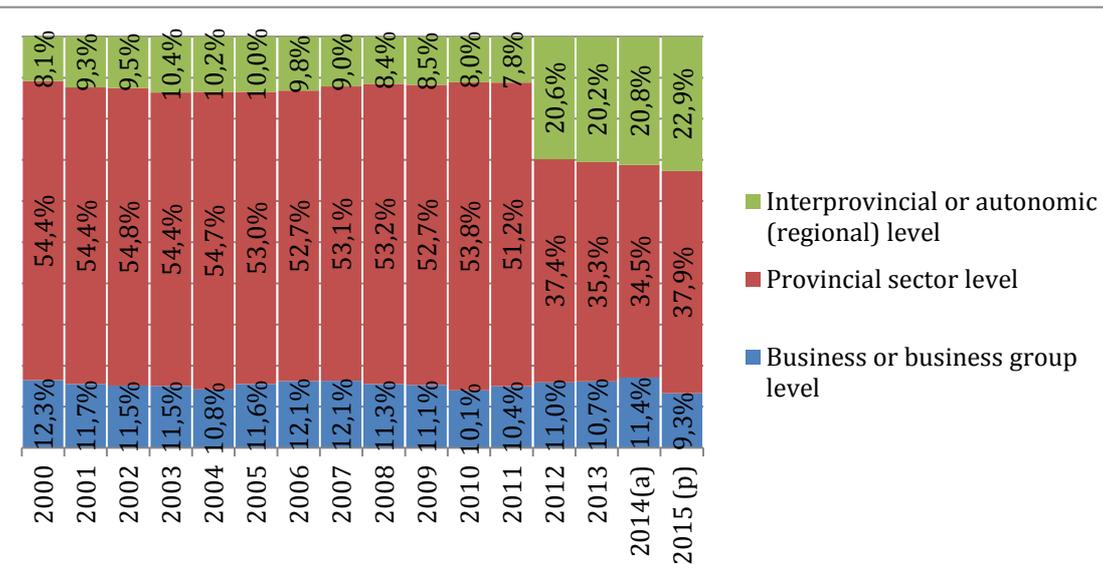
Figure 8: Coverage of collective bargaining by level



Source: Annual Labour Cost Survey (National Statistics Institute)

Attending to dynamic data –agreements registered each year instead of the ones that are being applied at a precise moment– the results differ. This data, presented on figure 9, show a clear increase in upper autonomic (but not country wide) agreements. The only conclusion coherent with this data is that there is a small step back on provincial-level new agreements, but the old ones are still in force.

Figure 9: Workers covered by collective bargaining agreements registered by year in which their effects began.



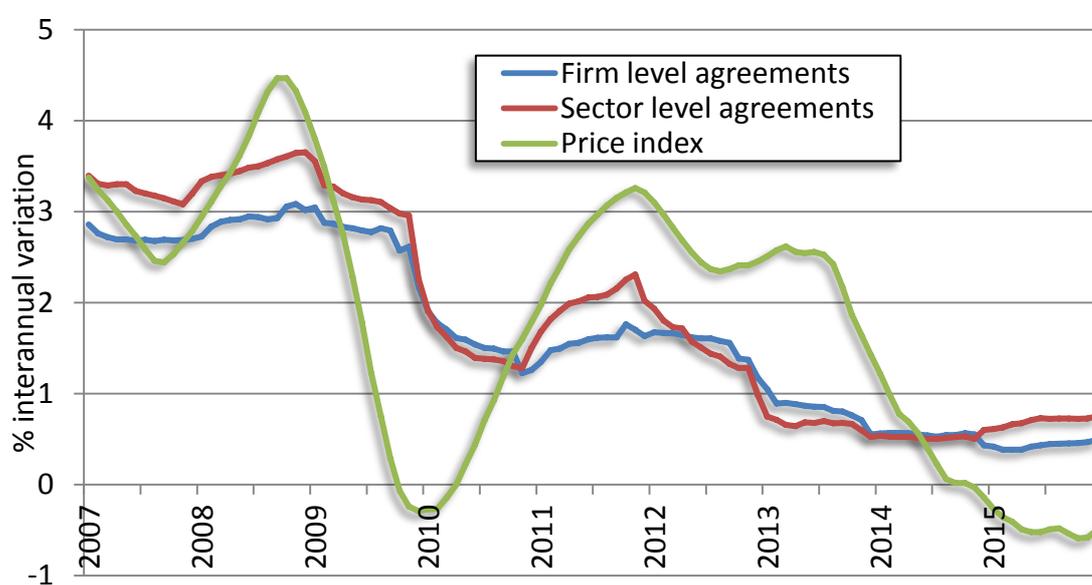
Source: Ministry Of Employment and Social Security

In conclusion, the reforms affecting the Spanish collective bargaining agreements have had little effect on working conditions. The main impact has been a small but consistent

reduction of coverage, and an increase of agreements on autonomic level, which by the way are not being effective on displacing the existing provincial level agreements.

The set off measures described in this section and other above, have caused (probably in conjunction with other factors), by the way, some effects on salary fixation. The legal changes easing individual and collective dismissals, the menace of opting-out of collective bargaining, the internal flexibility enhance (with no needing of workers representative agreement) have fostered the euphemistically called “internal devaluation”, that seems to impact specially in lower income workers. The revenue of the three lower deciles of salaried workers have lost purchasing power during the crisis (14.6%, 7.4% and 3.2% respectively, between 2007 and 2014), while the workers with higher incomes now get better salaries (among 6 and 11% in real euros, depending on the decile, for the same years).

Figure 10: Wage increase in collective bargaining agreements



Source: Ministry of Employment and Social Security

5. The fight against duality

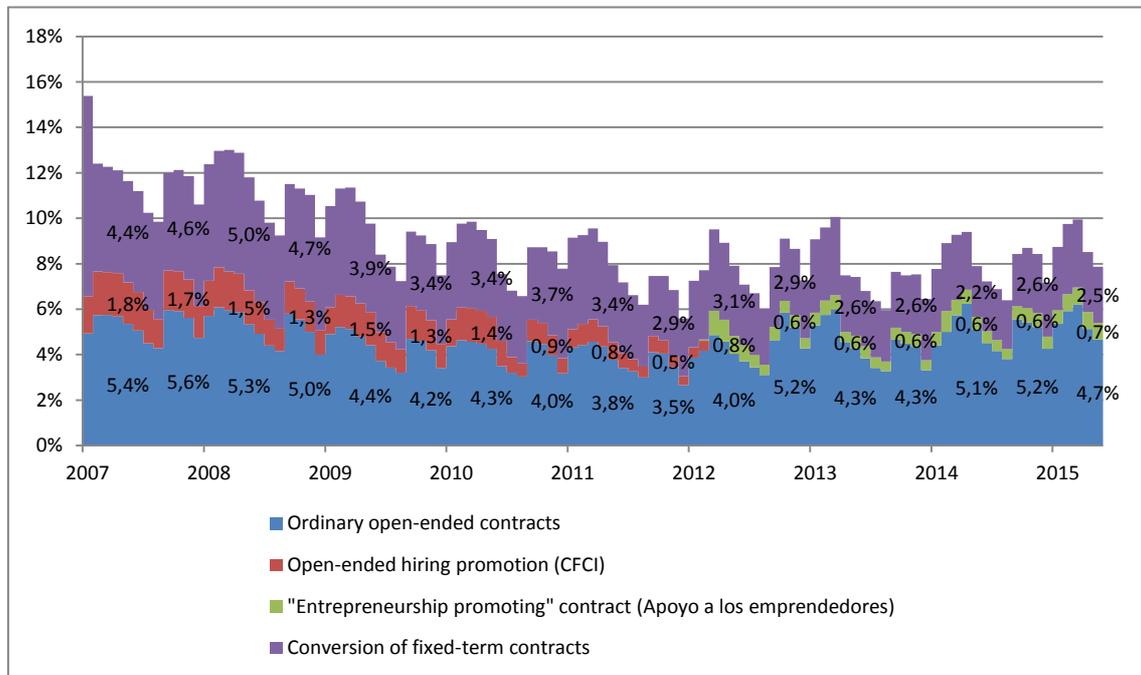
The last item that has to be analysed in this section is, as announced, the problem of the extremely high use of temporary contracts, which has important effects on business productivity and competitiveness and also on the working conditions and the organization of industrial relations.

Despite of the efforts made in the reforms, most of the registered employment contracts are still for temporary jobs. The leading measure –the “entrepreneurship promoting” indefinite contract– has been ignored by Spanish firms, and less than 1% of the contracts are of this kind. The sum of non-fixed terms employment contracts in 2015 was 5.7% of all the employment contracts, which is a level lower not only to the pre-crisis hiring dynamics, but also to the figures registered in 2009, the worst year regarding jobs destruction.

The government, however, has achieved some other objectives related with the fight against the excessive use of fixed term contracts. An accepted explanation for Spanish

high temporary employment rate is the difference of termination of employment costs between fixed term and not fixed term workers. Therefore, as explained in the section above, Spanish government increased the severance payment to temporary employees, but also tried to reduce other costs related with the termination of permanent employment.

Figure 11: Non fixed term employment contracts registered



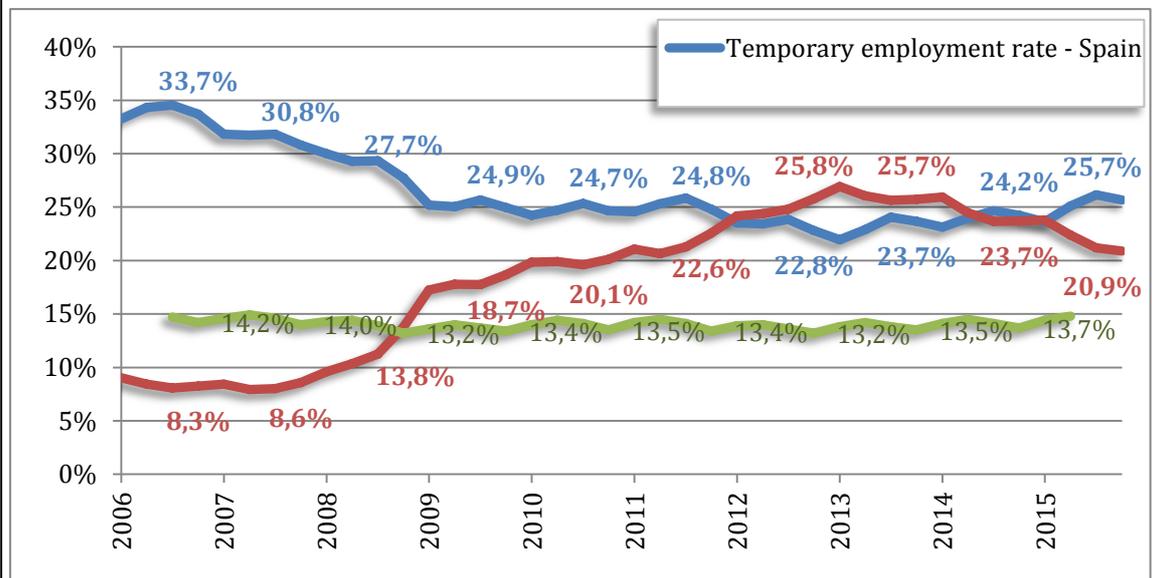
Source: National Public Employment Service (*SEPE*).

Therefore, statistics show that Labour courts have reduced remarkably their rulings in favour of the employees. In the years before the crisis, around 34% of the rulings were at least partially favourable to the worker; nowadays, this share has been reduced to a 27%. Though, the rulings completely against the employee are also less common (8% last year for 13% in 2007). This actual obvious contradiction is solved if judicial conciliation are taken in account. In 2007 approximately 24% of the court cases were solved by an agreement in this conciliation; in the last year, this percentage growth until 41%. So, the payoff to the dismissed workers is probably reducing its amount, but the official data do not give information enough to estimate if the difference of costs have been actually reduced. On the other hand, the number dismissals admitted as unlawful by the employers has increased in the last quarters. In 2012 the so called “express dismissal” was supposed to disappear, and in this year and in 2013 it was intensely reduced. Yet, since 2014 the trend has reversed.

In any case, the aggregate effect of all these measures seems to be a failure. The reduction in temporary rates produced in the last years was only an adjustment of employment. As soon as unemployment has begun to scale down, Spanish firms are again hiring temporary workers instead of permanent employees. As shown in the last figure of this section, the curve for temporality is just mirroring the curve for

unemployment. Temporary workers are still perceived as the best tool to face uncertainty.

Figure 12: Unemployment and temporary employment rate



Source: Labour Force Survey