

Chapter 8

The reform of collective bargaining in the Spanish metal and chemicals sectors (2008–2015): the ironies and risks of de-regulating employment regulation

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Introduction

The chapter is based on research conducted in 2014. It is structured in two parts. The first part seeks to outline the background of the system of collective bargaining in Spain and some of the forces for change emerging from the post-2008 recession and neoliberal policies on regulation. Secondly, the text focuses on reflections and experiences arising from a range of individuals within the state, employers, trade unions and academia. It is critical of the reforms, but also focuses on the degree of uncertainty and concerns about the political and organisational risks that may subsequently emerge. The narrative concludes with a review of some of the main points and the evolution of a more disorganised and dualist system of labour relations, which is ironic given that those plugging neoliberal reforms couched their arguments and support for so-called ‘deregulation’ in terms of a dualist labour market. In our view, a large part of the ‘social partners’ across the board are becoming aware that Spain is now more dualist and fractured as a labour market and system of regulation.

1. Background of the reforms

1.1 Introduction

The collective bargaining system in Spain was considered by some to be one of the strongest in Europe by virtue of its coverage, although implementation has been an issue. From the development of the liberal democratic political system in the late 1970s – after the end of the Franco

dictatorship (1939–1975) – collective bargaining was being developed systematically. Forms of pseudo-bargaining had existed at various levels during the latter years of the Franco dictatorship, albeit led and managed by management and the state, which dominated a state-organised trade union (Martínez Lucio 1998; Martínez Lucio and Hamann 2009). However, there were instances in which management did negotiate with certain elements of the emerging independent labour movement which, while formerly still clandestine, did manage to engage with certain ‘works council style’ elections in some instances. With the advent of democracy and the consolidation of various labour rights through the Worker’s Statutes and Organic Law of Trade Union Freedoms the pattern of bargaining in companies and workplaces became normalised. Local provincial bargaining for a range of sectors, such as construction and hospitality, made it possible for the terms of conditions of various workers in small to medium sized firms to be determined collectively, even where labour representation was weaker. Such smaller firms relied on higher level agreements (Sissons *et al.* 1991). In addition, the steady emergence of sectoral bargaining in, for example, the chemical industry managed to establish a basis for a more articulated structure of bargaining, with minimums being established for particular sets of workers (Hamann 2011: 150–154).

While national agreements and pacts of a tripartite nature were high in number and varied according to scope, there was also, according to some, continuous dialogue at the higher level, which ideologically or strategically framed the local practice of social dialogue (Guillen *et al.* 2008). The number of pacts – on a range of issues – since the late 1970s indicates, for some, a continuity in dialogue at state level. There has been much discussion of whether this level of bargaining really did effectively influence the structure of bargaining as the pacts were more concerned with reforms and modernisation in terms of labour relations on issues such as learning. Frameworks for setting collective increases in pay at peak level did exist, with overall changes in the content of bargaining, especially pay, being established through national bipartite agreements at specific times. However, whether this national-level activity on specific elements of the employment relationship was acting as a vehicle for sustaining a systematic dialogue beyond specific pacts and becoming embedded in systematic neo-corporatist structures is questionable (Martínez Lucio 1998). However, a culture of social dialogue between the majority unions, the main employer federations and the state was

apparent, which at key moments of political divergence was invoked to stabilise industrial relations (Roca 1983).

Thus, union involvement in policy making has depended on the government's willingness to negotiate with unions and employers (Martínez Lucio 1998). In addition, crucial parts of the government's economic, social and labour market policy agenda were not negotiated with the unions, but instead adopted directly, often against vociferous trade union opposition (Hamann 2012). There are two views of the tradition of social pacts. The first tends to see it as a strategic process that aims to legitimate government decisions and placate organised labour on a range of issues: however, this has not led to deep institutional relations over longer term issues in economic and social policy (Martínez Lucio 1998 2000; Hamann 2012). That is not to imply that complex informal processes and modes of information sharing are not possible within tripartite bodies such as the Social and Economic Council (Consejo Económico y Social). Hence, a series of ongoing dialogues on a range of issues has existed, although they are increasingly focused on the supply-side dimensions of the economy and less on the demand side (Martínez Lucio 1998). For some, marketisation and strains on political exchanges in Spain have been extensive. Others (Guillén *et al.* 2008; González Begega and Luque Balbona 2013), as we have argued above, suggest that the sheer amount of agreements – both nationally and regionally – means that they cannot be dismissed as merely minimal or symbolic. As Encarnación (2003: 8) argues: 'Spain is deservedly regarded as the paradigmatic model of a pacted transition ... every kind of pact has been attempted in Spain: from secretive gentlemen's agreements to grand social and economic accords enjoying tremendous public fanfare'. In addition, the impact of coordinated national bargaining and political exchanges has affected wage increases across time, suggesting an ongoing national dialogue even if the forums are not always transparent, continuous and concrete (see Martínez Lucio and Hamann 2009 for a more extensive discussion).

During the 1980s through to the late 2000s collective bargaining was able to cover around 80 per cent of the workforce. In 2005, for example, 4,647 collective agreements were signed covering 8,745,700 workers (Consejo Económico y Social 2005: 330). From 1997 to 2004 there were between 3,700 and 4,200 agreements annually, and between 7 to 8 million workers were covered. This covered a range of topics related

to pay, working hours and training, although one of the criticisms concerning collective bargaining is that beyond the larger firms there was a tendency for SMEs to rely on either national sectoral agreements or provincial sectoral agreements for their wage increases and working hours in terms of content, and rarely engaged with broader issues and the contents of collective bargaining.

Underpinning this relative stability and consistency was the role of the two major trade union confederations, CCOO and UGT, which, since the late 1980s, had begun to work more closely together in terms of their strategies towards the development of collective bargaining. These trade unions receive the bulk of the vote in the trade union elections which every four years determine the nature of works councils and individual workplace representatives. These competitive elections have tended to result in a union increase in the share of union delegates in such bodies, from around 55 per cent in 1978 to 75 per cent in 2007 (Beneyto 2008). As stated, such elections have normally had a turnout of over 80 per cent of the workforce, so one can discern a strong institutional underpinning to the process of social dialogue. However, low union membership density – between 10 and 20 per cent over the past 30 years – and related financial difficulties have led to concerns about the ‘crisis of representation’ in Spanish unions. Jordana (1996) has argued that trade union membership in the 1970s was significantly overstated and thus the picture of subsequent decline is misleading. As in France, formal union ‘representativeness’ for the purposes of reaching collective agreements and for participation in tripartite bodies, is judged according to the results in the workplace elections (see below) in which all employees, whether union members or not, are entitled to vote. Thus the Spanish union movement has been labelled a ‘voters’ trade unionism’ rather than a ‘members’ trade unionism’ (Martin Valverde 1991: 24–25). In other words, organisational influence depends on electoral success as much as on membership figures. In these terms, the main Spanish unions appear to be more favourably regarded and more widely supported by workers than their membership figures might indicate.

However, throughout the 1990s onwards there emerged a political discourse on the right and in neoliberal-leaning parts of the Socialist Party which questioned the actual effectiveness and perceived ‘rigidities’ of collective bargaining structures and labour market regulation, especially in terms of employment termination. This narrative built on the centrist-

market leaning politics of the González Socialist government in the 1980s and early 1990s, which tended towards policies of privatisation and limited social regulation and investment (Smith 1990). The Spanish labour market had adopted certain features of labour market regulation from previous regimes. These features did not reflect any progressive or pro-labour features of the previous regime or of the social elites driving the transition to democracy, but emerged from a symbolic contract with the working class based on the nature of its exploitation in political terms. It was a system of political quiescence which established a series of regulatory characteristics of work organisations which elites felt would defuse any need for alternative or independent forms of labour representation (see Foweraker 1989). It is essential we understand this historical context:

regardless of this forced internal and external dispersal of trade unionists the state could not allow a vacuum to develop in terms of the industrial relations system. Coercion no matter how extensive could be but one part of a politics of industrial relations and the regulation of employment in favour of employers and capital more generally ... In terms of representation, the Organización Sindical Española was developed. This 'vertical union' brought worker representatives and employer representatives into the national level of this state body down to the regional and sectoral level (Ellwood 1978). ... Secondly, a system of 'representation' was developed within the workplace and in companies. In effect, this system of representation was neither independent nor free of state influence but began to operate, albeit on the terms of employer interests. Thirdly, and more importantly with regard to its later effect and ongoing influence until recently, the state passed what are termed labour ordinances, a set of detailed regulations on employment categories and classifications to some extent. They configure the position and jobs of individuals and while employers maybe did not always take them seriously the ordinances assisted in the organising of employment relations and the need for regularity and certainty – albeit one that was state directed and for the most part favoured employers. Even employment termination became regulated in terms of how it was processed and remunerated with relatively high levels for redundancy, although there is a question mark over whether these were consistently paid. (Martínez Lucio and Hamann: 2009: 126)

These legacies, and the manner in which they were crystallised within contemporary industrial relations, were beginning to be seen as problematic. There had been reforms of the labour ordinances through a range of discussions under the González governments (from introducing flexibility in the labour market through fixed-term contracts to discussions regarding the reform of the collective bargaining system, which was seen as ‘too centralised’). The cost of dismissals for employers was steadily reformed and slightly reduced as well prior to the 2008 crisis. Throughout the 1990s a series of reforms of these features of the employment relationship were enacted – partly through social pacts – as the cost of labour dismissals to employers was steadily decreased through a series of agreements and the reforms of the labour ordinances (Sala 2013). However, there was an emerging political discourse that argued for a more robust assault on these regulations, tied to a growing ‘Tea Party’ style influence within the Spanish right, even if during the 1996–2004 the Aznar Conservative Popular Party (PP) government’s relations with trade unions had in policy terms been more than reasonable (partly buffered by the use of extensive training funds from the state which were delivered and administered in large part by trade unions and employer federations) (Rigby 2010).

The role of sectoral bargaining began to emerge as a point of contention for some on the right of the political spectrum. National and provincial sectoral bargaining were the main point of reference within the system due to the large number of small and medium sized firms that lacked their own agreements (Sanz de Miguel 2012). Some saw the sectoral level of bargaining as creating a degree of inflexibility within the system of labour productivity and relations, and of obscuring the weaknesses of the system, thereby providing trade unions with the appearance of more influence than what they really had. It was seen by some members and officials of various employers’ organisations as a way of subsidising and organisationally carrying the trade union movement (interview data from authors).

Hence, well before the crisis we begin to see the advanced embryo of a more assertive neoliberal critique of the system of regulation in terms of its coverage. The system of industrial relations regulation was seen a framework of control which, according to the political right, hobbled productivity increases. This narrative resurfaced in the post-2008 period, especially towards the end of the Socialist Zapatero government

(2004–2011) and the current Conservative PP government, which fixed its sights on the question of labour costs as an alleged impediment to economic renewal. We will return to this later.

The crisis was therefore steadily linked to this question of labour in ideological terms. However, the origins of the crisis are more complex. The first is that the housing market in Spain, which has been viewed as a major vehicle of ‘economic development’, was becoming increasingly volatile and the target of speculation, being partly fuelled by economic and monetary union and the relaxation of regulations and constraints in the financial sector (Conefrey and Gerald 2010). The emphasis on the construction industry as an absorber of labour and human resources was important in bringing a range of working class constituencies and new migrants on board, as well as generating state revenue from the building, sale and employment aspects of this dimension. A growth model emerged that was premised on the continuing development of this sector. In addition, the absence of a proactive industrial policy in relation to manufacturing and related research and development strategies from the 1980s onwards were seen to contribute to a pattern of growth linked to the development of – and links between – the finance, housing and hospitality sectors. The financing of this growth through a highly deregulated mortgage and loan system was linked to remuneration systems within the banking sector for elite employees and created an unregulated loosening of finance.

This was also a state that had – since the 1970s – under democratic governments on both the right and the left begun to de-industrialise Spain, which had previously become a major manufacturing country in terms of automobiles, steel, white goods and other related sectors. The nature of growth had shifted from value added production to a speculative property market and financially driven model. This created a state reliant on – potentially volatile – tax revenues. Another narrative of a critical nature is that Spain had joined the euro at too high a rate and was unable to use its external economic and exchange policy to readjust in the face of changes and crisis. There were discussions in some circles of withdrawal from the euro, or of scenarios for a potential withdrawal, but this was limited and did not really become a general discussion. The question of the euro and its regulation has not been a central feature of formal political discourse to the extent one would have imagined compared with some other contexts.

However, the right in Spanish politics have pointed to a specific set of structures that were also unable to sustain the nature of economic development in terms of the regional structure of the state and the manner in which debt had accumulated at that level. During the early 2000s the public deficit and debt was fairly low and within the Maastricht criteria. However, this situation began to steadily unsettle and eventually deteriorated in the past ten years or so. The right thus turned its focus on the structure of the state and the labour market as a vehicle of reform, partly legitimated by the fixation with the ‘cost of labour dismissal’ and the perceived ‘archaic’ system of labour relations and bargaining; this was further supported through references to the discourse of deregulation that emerged from within the European Union and various international financial rating agencies.

Returning to industrial relations, one major point of contention was the failure to renovate collective agreements. Many agreements were not always re-negotiated and re-signed: instead, they were automatically revised, meaning that certain indicators within that agreement would be adjusted in line with inflation, for example. In 2010 of the 5,067 registered agreements, 3,607 were subsequently revised (Fulton 2013). In effect, the failure to sustain social dialogue within the workplace meant that the process of collective bargaining was slowing down and becoming truncated, such that it relied on a process of automatic renewal in the absence of new agreements. For many on the right this indicated the growing bureaucratic inertia within labour relations and its dysfunctional qualities. In effect, according to this narrative, industrial relations were seen to be failing as a workplace vehicle for dialogue: it was viewed as being out of sync with the needs of the economy and in that respect a ‘relic’ of a previous regime of regulation. This led to the stigmatising of labour relations and regulation and to ironic association with the dictatorial legacy of the past. We are therefore witnessing an anti-industrial relations narrative emerging on the right that predates the crisis but is being accelerated by it (Fernández Rodríguez and Martínez Lucio 2013).

This narrative has been bolstered by very high levels of unemployment which brought to the fore the failures of labour market processes (although the cause of this unemployment is the subject of much debate). Spain has had one of the highest levels of unemployment in Europe since the early 1980s, although the extent of hidden and undeclared labour may

have meant the figure was lower. In 2007 unemployment was just over 8 per cent, which was considered low by comparison with previous levels. By 2013, however, the figure was 27 per cent (Statista 2014). This was, according to the political left, due to the failure of the economic growth model (as discussed earlier), but for the right – which won the elections in 2011 – it was the outcome of an archaic system of labour regulation. In 2012 unemployment among young people under 25 years of age was 55 per cent (Eurostat 2013). This engendered an insider/outsider discourse which viewed the ‘insiders’ as being protected by redundancy legislation and the processes of collective bargaining.

1.2 Reform processes

The initial response to Spain’s crisis was a strategy along ‘Keynesian’ lines. The Zapatero socialist government (2004–2011) implemented a series of public works programmes during its latter years, from 2008 and 2009, which emphasised state-led employment and financial injections into infrastructure projects. It was called ‘Plan E’. This was a short-term reaction framed by the belief that the crisis was temporary. This short-termist ‘Keynesian’ moment was not in keeping with the neoliberal ‘continuity’ policies of Zapatero, which maintained a marketised economic policy and did not develop the public sector or the role of the state extensively in the wake of the previous conservative government. Some scholars, such as Field (2009), consider that this government did not depart from the economic policies of the previous governments – which were mainly neoliberal – despite the underlying structural problems of the economic growth model. Zapatero’s social agenda focused mainly on social values and issues related to ‘liberal individualism’. Hence Plan E was a short-term response to declining consumption trends and increasing unemployment after 2008.

In addition, towards the final year or so of Zapatero’s government, policy became couched in terms of public expenditure cuts and increases in indirect taxation. This has been a major feature of the later right-wing government’s critique of the left. The fact that the Socialist government began to move steadily towards austerity policy before the 2011 election is taken to mean that any critique of the right after 2011 should be deemed unjustified. In addition, some labour reforms – as we will discuss in terms of employment contracts – were propagated during the last two

years of the Socialist government. It attempted to create a series of pacts on employment and flexibility within the labour market, emphasising the need for labour reforms. The election of the PP government in 2011 brought forth a more savage austerity policy based on public sector expenditure cuts, reductions in public sector incomes and the containment of future public expenditure projects through privatisation proposals, especially in the health sector and aspects of the public media.

This strategy was developed through the PP's majority in the Spanish parliament, which meant that the government was able to vote through changes irrespective of the level of parliamentary opposition. In addition, it used a series of laws to change the nature of employment regulation and did so in a forceful and direct manner. However, as we will show below, this was not without recourse to a series of negotiations with organised labour, although trade unions mobilised in a series of general one-day strikes during this period. However, according to González Begega and Luque Balbona (2013) industrial disputes had been part of a complex interplay of political signals and mobilisations which were used to punctuate an ongoing dialogue between the state and labour throughout the previous periods of social concertation in the 1990s and up until 2011. These mobilisations were clearly becoming important to reclaiming much needed public space and legitimacy for unions after a spate of popular social movements had linked them to the apparatus of the state due to the emphasis that unions placed on servicing. However, the growing exhaustion of popular mobilisation in the wake of a government that has the institutional means to impose reform has led to a steady reformulation of priorities within organised labour. The systematic deployment of coercive features of the state in relation to social and economic conflict has been apparent and the circumscribing of social and political rights (in terms of the redefining of the nature of assemblies in public space and the limitations on the specific locations of mobilisations and demonstrations) have brought forth a more coordinated authoritarian character.

Furthermore, the link with the Troika and the key institutions of the European Union and the International Monetary Fund have been significant. The imposition of a series of recommended changes to the ambit and reach of the state by external agencies, and the detailed recommendations of the way finance policy was to be conducted, were utilised by the government in Spain as not just a point of legitimacy for

its changes but also as a way to castigate the previous government and civil society for its ‘failures’ to ‘constrain’ Spain’s ‘negative’ economic behaviour. This political link with external agencies was paralleled by a growing shift in policy discourse on the labour market and labour regulation. The fundamental obsession with labour costs and the impact of the supposed difficulty of making people redundant has concocted the view that the problem emerges from the existence of a protected and highly regulated workforce:

The IMF assessment is certain to come as a disappointment to the Rajoy government, which pushed through an ambitious labour market reform last year that made it cheaper for companies to fire workers and easier to depart from collective wage deals. Though the Fund praises the reform, saying it has had ‘some positive effects’, it warns that more drastic action is needed. It wants wages and work arrangements to be made more flexible still, and calls on Madrid to end the much-criticised ‘duality’ between temporary and permanent work contracts. ‘The reform effort must continue’, said James Daniel, the Fund’s mission chief for Spain, in a conference call with journalists. (Buck, *Financial Times* 2013)

This demonising of Spanish workers has been a part of the ideology of the external agencies who have continuously applied pressure on the government to pursue labour market reforms (Fernández Rodríguez and Martínez Lucio 2013). This ideology links those external interests with those of the internal market facing reformers (particular groups of employers and mainstream economists), paving the way for the reforms to come in the labour market legislation.

1.3 Content of the labour relations reforms

As already mentioned, ‘rigidity’ has been considered the main problem in the Spanish labour market, and in every economic crisis this discourse has reappeared, influencing the development of measures deployed to introduce more ‘flexibility’ (Fernández Rodríguez and Martínez Lucio 2013). Given the fact that the current crisis has been considered by most of the media and analysts as the worst since the 1929 crash, it was not surprising that the advocates of labour market liberalisation call for drastic changes in labour legislation in order not only to respond to

the crisis, but to frame a new industrial relations landscape in which deregulation would lead to greater economic efficiency and employment growth.

Indeed, the Spanish economy has been facing strong challenges during the crisis. During the years 2008–2011, the economic crisis was particularly intense in Spain and there was a period of job destruction. The year 2009 can easily be considered one of the worst years in Spanish history in terms of economic activity and unemployment. It is estimated that during that year more than one and a half million people lost their jobs, increasing the number of unemployed to more than 2 million since 2007. This represented a major challenge for the Spanish economy whose economic model (based in part on a speculative construction sector and related services) had collapsed (López and Rodríguez 2011). The beginning of the sovereign debt crisis in Greece during the autumn of 2009 increased the external pressures from financial markets and European partners, and soon the Spanish government was put under severe pressure, forcing Zapatero to make a u-turn in its anti-crisis policies (Meardi 2012). A set of unprecedented political measures were taken to avoid a debt crisis. Cutting public wages and freezing them for the following years, and trimming social expenditure, were coupled with reforms related to labour market regulation that have had a very strong impact upon collective bargaining.

In this section we will turn our attention to the main reforms in the field of collective bargaining during the past couple of years. There is still not much literature in English about these reforms, except for some papers (Meardi 2012; Molina and Miguélez 2013). However, there is an increasing body of work on the matter in Spanish, although slightly biased towards labour law studies, with very few sociological or industrial relations research based papers.

To give an overview of the reforms, we will divide this section into three main parts. In the first, the main features of the Spanish collective bargaining system will be described in order to understand the key points of the reforms, which will themselves be described in the second section. Finally, the third section will be devoted to evaluating the scope of the changes undertaken in recent years.

(i) A brief description of the collective bargaining system

As already mentioned, the Spanish industrial relations model situates collective agreements at the core of its employment relations. Labour rights are specified in the Workers' Statute, in which trade unions are deemed the key actors in the development of collective agreements. Those labour agreements cover a wide range of issues in different sectors and different companies, shaping the employment conditions of a substantial part of the Spanish workforce (Nonell *et al.* 2006). This covers aspects such as the way wages are fixed, work and employment conditions and the general regulation of collective relationships at different levels (including health and safety at the workplace, training, measures to fight against the dualisation of the labour market).

The basic principles of the system can be summarised in three points:

- (i) Legitimacy of the 'most representative union' to participate, an issue that depends on support in the works council elections, not the number of affiliated workers. This means that nationally only CCOO and UGT are deemed to be the 'most representative unions', accompanied by some Basque and Galician smaller unions in those autonomous states.
- (ii) The principle of statutory extension. This establishes that any collective agreement higher than the company level must be applied to all companies and to all workers forming part of the geographical and industry level in question. It is irrelevant whether they have participated in the bargaining process or not. This sets the limits for further agreements, thus guaranteeing a certain set of minimums in the company level bargaining.
- (iii) 'Ultra-activity' refers to the following principle: if an agreement has not been renewed, it remains valid after its expiry.

Negotiations usually take place between trade unions and employers' associations. However, in some cases they are also signed by the government in order to add an element of legitimacy. Different sets of dialogues may occur at four different levels: national, regional, industry and company/organisation. As already mentioned they cover a broad range of issues, such as training, job classification, sickness, maternity arrangements and health and safety. Since 2005 there has also been

a sharp increase in the number of agreements covering employment, particularly regarding an increase of permanent employees at the workplaces. The results of the negotiations had effects on all employees in the area that the collective agreement was covering. Therefore, if an agreement was reached in a sector of the economy and in a province, then the companies of that sector which were based in that province would be subjected to those labour conditions, although as stated above the aspects that were adhered to varied. The negotiations were driven by employers and works councils but, at the higher levels beyond the organisation, the agreement could be signed only by representatives of the 'most representative unions' at the national or regional level. The law describes how negotiations are to be conducted and the composition of both sides. Agreements tended to last two years or more, and almost invariably started from the beginning of the year (though negotiations could begin at any time). It is important to notice that lower level agreements used to include a clause providing additional payments if inflation exceeded an agreed level.

During the years 1997–2007, the Spanish economy experienced a boom that helped to increase GDP and the number of people employed (up to 20 million people), leaving the unemployment rate at a historical low rate of 7.95 per cent by 2007. Collective bargaining also expanded. By 2008 the data of the *Estadística de Convenios Colectivos* (Collective Agreements Statistics) showed a number of 5,987 collective agreements under which 1,605,195 companies and 11,968,148 workers were covered by jointly agreed employment conditions. This has been considered a historical maximum (Aragón Medina *et al.* 2009). However, from 2009 the numbers began to collapse drastically. By 2013, the number of collective agreements dropped to 1,963 (provisional data of February 2014), with approximately 5,892,600 workers covered. This represents a drastic change in Spanish industrial relations: according to the official statistics, in just five years the number of collective agreements decreased significantly to little more than one-third of the number signed in 2008, covering less than half of the previous number of workers (the number of people working has also decreased notably, with the Spanish unemployment rate standing at around 25 per cent).

We have already mentioned that the emergence of industrial relations in Spain post-1975 was still influenced by a political project shaped around the construction of a positive notion of labour citizenship. The *Estatuto*

de los Trabajadores (Workers' Statute) and some other laws were inspired by social democratic perspectives (Alonso 2007). Nevertheless, the deepening of the crisis during the 1980s, the rise of unemployment and the new policies adopted by the PSOE to join the European Economic Community (EEC) had led to a change of direction that remained stable as a discourse for the rest of the democratic period. As already mentioned, some orthodox economists from the Bank of Spain started to suggest a number of possible reforms as they perceived that the automatic pay increases negotiated in collective agreements were a threat not only to controlling inflation but to the 'competitiveness' of Spanish firms and corporations, thus highlighting the rigidity of the model. For instance, Bentolila and Jimeno (2002) claimed that the Spanish economy was approaching a new scenario which required a drastic reform of Spanish industrial relations – and saw the rights discussed above merely as a political compromise of the transition period to democracy that was now obsolete in a more developed modern democracy.

Such a new economic scenario could be defined by the following trends:

- (i) Increasing demand, both qualitatively and quantitatively, for skilled workers had effects on the way negotiations were conducted, with a 'dualisation' of the Spanish labour market in terms of skills. Pay increases and decisions taken at a higher level than the organisation would have the effect of raising the unemployment rate of non-skilled workers, it was argued.
- (ii) Spain had joined the EU internal market, which implied freedom of movement for goods, capital and labour. This entailed substantial challenges for unskilled workers who faced competition from new groups of overseas workers from other parts of Europe (for example, central and eastern European countries) and beyond.
- (iii) Spain had also joined the Economic and Monetary Union and therefore had adopted the euro as its new currency. Therefore, economic policy could no longer rely on monetary policy. Currency devaluation had been a salient policy during the democratic period, and had helped to boost the Spanish economy after the 1993 crisis. However, joining the euro had become an absolute priority for Mr Aznar's PP government, which claimed that it was essential for situating Spain among its European peers in terms of economic

modernisation. It was also known that further adjustments in the future might be perceived as a direct impoverishment of the working conditions of Spanish people (through wage cuts) once devaluations could no longer be used. According to Bentolila and Jimeno (2002), to avoid situations of high unemployment and slow economic growth more flexible wages and higher productivity would be required.

- (iv) Increasing heterogeneity in every sector of production meant that not every company showed equal levels of competitiveness, some being more technology-based and innovative than others. Established sectoral arrangements with regard to regulation did not take this into account, leading many companies to face problems in terms of rigidities and lack of flexibility.

From the beginning of the 1990s onwards, employers' associations expressed their discontent about the way collective bargaining had been established and the governments of the PSOE and PP began to respond. The labour market reform of 1994 had included elements that implied a certain decentralisation of industrial relations. They deregulated certain aspects of labour regulation and decentralised collective agreements (where regional agreements could prevail over national ones, an important issue, given the disparity between levels of economic development among different regions). It also allowed the option of including clauses that would leave open the possibility of a '*descuelgue salarial*' (a company is able to abstain from adhering to pay agreements in the sector if it is in financial difficulties). However, few measures were taken in that direction and Spain joined the euro with a system of collective bargaining that was criticised by some employers and sympathetic orthodox academics. Their view was linked to the free dismissal discourse we mentioned earlier (Fernández Rodríguez and Martínez Lucio 2013).

Hence the crisis was seen as the perfect excuse to trigger the reforms. Given the traditional low investment in technology or R&D by Spanish companies, it was clear that wages – understood broadly as 'labour costs' – would be at the forefront of future adjustments and the crisis has proved this, according to some. According to such scholars, Spain has undertaken a policy of internal devaluation to exit the crisis and labour market reforms have been launched to achieve that goal.

(ii) The nature of the collective bargaining reforms

The Spanish government responded to the crisis with several measures, particularly labour market reforms. These latest reforms are linked to the new spirit of austerity that has shaped Spanish economic policies since 2010, exemplified by Mr Rodríguez Zapatero's decisions from May 2010 to the end of his government, and later on by Mr Rajoy's conservative government. This period has been characterised by the adoption of a more unilateral approach to policymaking on the part of the government, particularly the PP (Molina and Miguélez 2013). Three reforms were launched in little more than eighteen months by the two cabinets that have run the country during the crisis, all of them bypassing social partnership to a great extent.

In 2010, in a context of deep economic crisis and a certain panic derived from the Greek debt crisis and the interest rate rise on Spanish bonds, a first labour market reform was passed. It complemented the first austerity measures announced in May in parliament by the Zapatero government (Azpitarte Sánchez 2011). Published in the official State Bulletin in June 2010 just a few weeks after the drastic reorientation of economic policy and reformed slightly in a second version in September of the same year, it was justified in terms of the extraordinary circumstances of the crisis. The negative evolution of economic indicators was portrayed as the result not only of the financial crisis, but also of imbalances and problems in the Spanish labour market and industrial relations. In this sense, the government seemed to accept the recommendations by the Bank of Spain, whose head had advocated reform in that direction, and various employers' associations.

This reform covered many issues. The most relevant for our topic were the following:

- (i) It lowered dismissal costs and broadened the notion of 'objective causes' for firms to justify redundancies.
- (ii) It also accepted that companies and employees could reach agreements in which they would voluntarily place themselves outside the framework of collective bargaining agreements at the sectoral level, easing the preconditions for the *descuelgue salarial*.

- (iii) It added a number of incentives for promoting indefinite (permanent) contracts.
- (iv) It increased the participation of temporary work agencies (which had been steadily evolving, albeit through a regulated framework, but which was now being pushed more rigorously).

The reform was met with criticism from the trade unions and a general strike took place in September 2010. However, this did not influence government policies. The reform paved the way for further decentralisation of industrial relations and reinforced a certain neoliberal spirit that had been present in PSOE's policies since Felipe González's leadership, as mentioned earlier. There were expectations that the reform would set the pace for economic recovery and help to soften the pressure from the markets and European authorities. This reform was passed amidst further measures towards privatisation and deregulation during the last year in office.

However, the monetary turbulence did not stop the following year. The Troika (ECB, IMF and European Commission) organised loans to 'rescue' the economy of three countries (Ireland, Portugal and Greece twice), imposing strict conditions in exchange. All these events helped to raise risk premiums to unprecedented levels in countries such as Spain and Italy. Under strong market pressure, the next reform was launched in August 2011, a few months before the elections. It is important to highlight that in the same period the main political parties – the PSOE and PP – implemented a change in the Constitution in order to give priority to external debt payments in the national budget and thus appease the international financial markets. The measures taken with this last reform abandoned the plan of converting fixed-term contracts into indefinite ones for a period of two years (until December 2013; this was a reform based on a political decision taken some years before). During that time, employers were allowed to offer only fixed-term contracts with no further employment commitments. It also made it possible to offer on-the-job training contracts to workers under the age of 30. However, the essential points of the reform related to collective bargaining:

- it gave preference to company agreements over sectoral agreements;
- it reduced the possibility of so-called ‘ultra-activity’, introducing an external mediator in order to obtain a final decision; the mediator can re-write the agreement;
- employer’s opting out of wage schemes agreed at higher levels;
- more internal labour market flexibility.

This implied a substantial reform in the content of collective bargaining, especially once the agreements become decentralised at the company level. However, the most profound reform took place in February 2012 under the PP government. This last reform can be considered a landmark in Spanish industrial relations, reshaping the balance of power. It introduced the ‘flexibilisation’ of wages inside the workplace and was followed by another strike in March 2012. It permits the employer to impose decreases, allows firms to place themselves outside the framework of collective bargaining agreements and cheapens dismissal costs further. The contents of the reform were and remain controversial, and represent a significant ‘development’ in Spanish industrial relations, based on the explicit goal of adapting Spanish industrial relations to the principles of flexicurity. Meardi (2012) identifies the following developments as particularly important:

- The employer’s unilateral prerogative to introduce ‘internal flexibility’ (changes in job tasks, location and timetables), without the need for trade union or works council consent.
- A new employment contract, called the ‘*contrato de apoyo a los emprendedores*’, which lays down one year’s probation without employment security. This has been criticised by some academics (Palomeque López 2013) as a fake indefinite contract.
- Reduction of compensation for dismissals in some cases (from 45 to 20 days per worked year), the removal of the ‘bridge payments’ which the employees dismissed were entitled to while waiting for a court ruling and the removal of administrative permission for collective dismissals (the famous EREs).
- Absolute priority of company-level agreements over multi-employer ones, and the employer’s prerogative to reduce wages without union consent, subject to arbitration.
- Reduction of the time extension (ultra-activity) of collective agreements, previously indefinite, to a maximum of two years, after which all established rights from previous agreements terminate until

a new agreement is signed (in Spain, some agreements have been extended for up to ten years).

As a result, at present, company agreements have complete precedence in key areas, even if the provincial-level agreement covering their industry is still in force. Agreements at the level of the organisation are able to set terms on basically every issue (wages, hours, promotions, work/life balance), irrespective of those already in industry-level agreements. In addition, where a company faces particular financial difficulties, it is able to suspend many of the agreed terms and conditions. The areas covered by this suspension include essential issues such as working time, pay systems and pay increases, shifts and increased functional and geographical mobility. While unions should be consulted on these proposals, if they do not agree the issue has to go to arbitration for a decision.

This reform represents a fundamental U-turn in the traditional arrangements of collective bargaining in Spain since the return to democracy. Trade unions were opposed to the reform, considering it a challenge to workers' rights and they organised two general strikes in 2012; employers found the reform appropriate but felt it fell short of what they wanted (Lacasa 2013). No form of systematic or deep tripartite social dialogue has been restored since the Law was passed (Molina and Miguélez 2013). While institutions such as the IMF have claimed that additional reform of the labour market should be undertaken, the Spanish government has asserted that the results of the reform have been positive, despite the fact that more unemployment has been created.

(iii) Discussion of the reforms

The reforms resulted from a combination of two main political and economic trends, one external and one internal to the country, that have finally linked up to transform the landscape of Spanish industrial relations. The external one is the EU's neoliberal policies and its development of flexicurity principles as the basis of its doctrine regarding employment policy. This neoliberal drive has been reinforced by the dominance of the European Central Bank in European policy-making and German leadership in promoting austerity policies. The internal one is represented by the employers' associations and right-wing political demands for higher labour flexibility and reductions in labour costs: the two are linked, as we discussed above.

Palomeque López (2013) has indicated that the labour market reform of 2012 tries to comply with a philosophy of flexicurity, but fails to introduce any kind of security. According to this view, the main ideas behind this reform are as follows:

- It reinforces the power of the individual employer, who is entitled to manage all working conditions and change employees' contractual position almost at will.
- It helps to facilitate the modification of working conditions and dismissal by the employer, increasing managerial prerogatives.
- Authorities have detached themselves from the workplace and many bureaucratic procedures and authorisations (such as the one for collective dismissals) have been eliminated. The role of the state is decreasing substantially in employment relations.
- Dismissal costs are being reduced substantially, from a norm of 45 days per year to only 20.
- Possibilities for opting out are being generalised, which means that company-level agreements prevail over the others. It is interesting to note how many collective agreements have ceased to exist, as we mentioned earlier. The end of ultra-activity is helping to speed up that process.

In economic terms, it is clear that wage settlements have been deeply affected since the reform: losses in real wages have already happened and are expected to keep on happening in the near future (Molina and Miguélez 2013). The number of collective agreements has decreased notably, as data from August 2014 show.

In gender terms, Lousada Arochena (2013) claims that the reforms have been extremely negative with regard to gender equality and work/life balance, given that some reforms have promoted specific types of employment (part-time particularly, but also tele-work) which do not guarantee work/life balance, not only because part-time work substitutes for full-time work, but also because there is an expectation that women will end up being offered those type of positions. Spanish jobs have traditionally featured very long working hours – a heritage of a very masculine and traditional approach to work where taking care of the family is reserved for housewives – and the 2012 reforms do not seem to take this into account. Internal flexibility is likely to damage work/life balance.

Table 1 Number of signed collective agreements in Spain, 2000-2014

Year	Number of collective agreements (total)	Number of covered workers (total)	Number of collective agreements (company level)	Number of covered workers (company level)	Number of collective agreements (higher levels)	Number of covered workers (higher levels)
2000	5252	9230400	3849	1083300	1403	8147100
2001	5421	9496000	4021	1039500	1400	8456500
2002	5462	9696500	4086	1025900	1376	8670600
2003	5522	9995000	4147	1074200	1375	8920900
2004	5474	10193500	4093	1014700	1381	9178900
2005	5776	10755700	4353	1159700	1423	9596000
2006	5887	11119300	4459	1224400	1428	9894900
2007	6016	11606500	4598	1261100	1418	10345400
2008	5987	11968100	4539	1215300	1448	10752900
2009	5689	11557800	4323	1114600	1366	10443200
2010	5067	10794300	3802	923200	1265	9871100
2011	4585	10662800	3422	929000	1163	9733800
2012*	4006	9899000	2893	826800	1113	9039600
2013*	2408	6956800	1702	460500	706	6496400
2014*	1135	3873800	774	253800	361	3620000

Note: * Provisional data.

Source: Collective Agreements' Statistics, Ministry of Labour, Spain.

Regarding quality of work, some scholars (Prieto 2009) have highlighted the low quality of most of Spanish jobs due to the current economic structure. The implemented reforms do not seem to have improved the situation but rather to have worsened it; internal flexibility and the policies enabling employers to opt out of collective bargaining have helped to decrease wages for the first time in Spanish history.

Some other reforms have been undertaken in many fields linked to employment, with hyperactive governments trying to reverse declining economic activity, based on a particular perception of its causes. One of the key reforms has been that of old age pensions, which raises the compulsory retirement age from 65 to 67 years. The plan was heavily criticised as the high rates of temporary employment and the frequent unemployment spells of younger workers would make it very difficult for them to reach the maximum pension levels (Molina and Miguélez 2013). There have also been constant references to facilitating entrepreneurship, a stronger focus on activation policies and other developments. All these reforms can be linked to the principles of ‘flexicurity’ – or rather ‘flexi-insecurity’.

Therefore the reforms in Spain can be fully understood as structural reforms of the labour market: they represent a new cornerstone in the deregulation in Spanish industrial relations. It can be considered to be more of a paradigmatic reform than an institutional one, as it represents a substantial change, as we can already observe in the statistics. It is certainly a reform that favours employers (Valdés dal-Ré 2012). Lately the government has claimed that the economy is improving and praises the labour market reform as key to improving competitiveness and halting the destruction of employment. However, positive effects of the reforms with regard to employment creation have so been conspicuous by their absence.

1.4 Overview of Part 1

The reforms inflicted on labour regulation in Spain have taken directions that one could not have imagined ten years ago. The extent to which dismissal from employment has been facilitated from the point of view of employers and the major restructuring of collective bargaining and de facto decentralisation have raised many concerns. These reforms have been pushed through directly by the majority PP government since its election, with very little social dialogue at the national level. Opposition

to these reforms have been extensive and have been led by both trade union and social movements, although the relations between these two constituencies has been unclear. The reforms and the crisis have led to problems and tensions between civil society organisations and labour organisations. The extent of the reforms has brought a new pattern of fragmentation and decentralisation within industrial relations. Running parallel with this have been the ongoing increases in unemployment and reforms of the welfare state, which have led to rising levels of poverty and social degradation. The systems and actors of regulation – especially the trade union movement – have seen capacity issues emerge in terms of their ability to sustain the support and management of collective bargaining and collective regulation in general. What we need to know now, in the context of these changes, is how local levels and arenas of bargaining and labour relations more generally have been undermined and affected by such changes. Have we seen a real withering of social dialogue or institutional dialogue in terms of management and labour? How have the restriction of higher tiers of bargaining and the ability of local levels to circumvent the content of such higher tiers influenced the form and content of collective bargaining and labour relations at the level of the firm and the workplace? How have specific themes of a more social nature changed due to this more fractured approach and what effects have there been in terms of gender equality, for example?

The narrative and intervention of the Troika cannot be seen simply as an external lobby or point of influence that has caused such developments or assisted them directly. Our argument is threefold. First, under the Socialist governments of the past the commitment to social dialogue was not as extensive as was once imagined. There was a flirtation with marketisation of the economy, while attempting to establish floors in terms of rights and regulations at work. Second, the neoliberal dimensions of social democracy and on the right in particular have for some time been nurturing and developing an anti-trade union and anti-regulation discourse. This has been driven by a fundamental ideological critique of the rights of organised labour drawn from current Anglo-Saxon narratives, with particular and direct input from new US rightist elements. Thirdly, this means that the policy changes in terms of labour relations in the past few years have been accepted and driven from within Spain but with legitimacy derived from the European Union, both ideologically and technically, irrespective of the crisis. The crisis has accelerated and sustained this shift and provided the Spanish right with

the means to pursue an agenda which was steadily emerging towards the end of its last mandate. To this extent the reforms are grounded nationally in a way that may make their future removal somewhat difficult.

2. Research findings

2.1 Case study selection

Our aim is to examine the impact of the labour market reforms since 2008 on collective bargaining in Spain. We focus on the results of different case studies at company level, as well as interviews with national experts and key social partners. As already mentioned, national regulatory frameworks are mediated by institutional arrangements and moulded by various struggles over particular national practices and we observe the way the reforms have been shaped and contextualised. Hence we use many of the comments and views of the individuals we interviewed. We aim to build an analysis that uses the voices and concerns of the individuals involved in the process. The narrative is organised as follows:

- A discussion of the methodology utilised and an outline of the expert interviews and case studies we carried out.
- A discussion of the basic elements and traditions of collective bargaining in Spain.
- Specific aspects of the reforms.
- A general and tentative conclusion regarding the longer term effects and developments emerging from the reforms.

In our conclusion we try to outline the main issues and longer term impact of the reforms. While we have seen a greater degree of unilateral activity on the part of employers and a reduction in the breadth and impact of collective bargaining – much of which is quite extensive – we nevertheless continue to see collective bargaining playing an important role, albeit a recalibrated one. What is more, we have seen a series of anomalies and contradictions emerge from the reforms as the question and process of joint regulation becomes more politicised and fragmented. Finally, the interviews with HR professionals, trade unionists, employer organisations and experts suggest that there is a fear that the value of social dialogue and the importance of coordination is not appreciated by those driving or, shall we say, enamoured of such reforms.

2.2 Methodology

As already mentioned, the methodology of this research was based on interviews with various people in Spanish industrial relations. We interviewed a number of individuals in two main categories: experts and actors engaged with collective bargaining at sectoral or company level. All the interviews were carried out by the three members of the Spanish team of researchers (the authors) and were recorded and transcribed.

This research has been based on interviews with different people in the field of Spanish industrial relations. We have interviewed a number of individuals linked to two main categories, experts and social actors engaged with collective bargaining processes at a sector or company level. The experts were the following: a former Minister of Labour, two key academics linked to trade unions, the ex-director of labour relations of an employers' association, one academic linked to a neo-liberal think tank, and one expert from a leading law firm. Regarding social actors, we interviewed six representatives from the main trade unions in different levels and three leaders of employer's associations, plus different individuals linked to six company case studies, two from the automobile industry, three from the broader metal manufacturing industry, and an additional one from the chemical sector. In addition, we invited some of those experts to a national workshop, which led to a discussion around different views of the reforms. All the interviews, which numbered 28 and were conducted during 2014, were carried out by the three members of the Spanish team of researchers (the authors) and were recorded on digital audio and transcribed. We feel the research was different in its focus compared to other projects covering these topics because we were more concerned with the way the reforms were understood by key experts and participants. We focused in on how the outcomes were understood and what kinds of risks and challenges were seen to emerge from these types of developments. How would the decreasing reliance on sector level bargaining, the greater decentralisation of collective bargaining, and the challenges to local management and trade unionists of such changes, for example, impact on labour relations and with what effect in terms of the culture of social dialogue (very generally put) and the emergent consensus within the Spanish system of industrial relations of the last four decades.

2.3 Peculiarities of the manufacturing sector in terms of collective bargaining

Key features: collective bargaining in Spain

As already mentioned, the Spanish model of industrial relations puts collective agreements at the core of its employment relations, and trade unions and employers' associations are key actors in the development of such agreements. These labour agreements cover such aspects as the way wages are fixed, work and employment conditions, and the general regulation of collective relationships at different levels (including health and safety at the workplace, training and measures to combat labour market segmentation).

The system's basic principles are as follows. The legitimacy of the 'most representative union' with regard to participation depends on support in the works council and trade union elections, not the number of affiliated workers. In terms of the principle of 'statutory extension', this establishes that any collective agreement higher than company level must be applied to all companies and to all workers forming part of the geographical and industry level in question. It is irrelevant whether they have participated in the bargaining process. This sets the limits for further agreements, thus guaranteeing a certain minimum in relation to company-level bargaining. Finally, there is the extension of collective agreements: 'ultra-activity' refers to an agreement remaining valid if it has not been renewed.

Negotiations usually take place between trade unions and employers' associations. However, in specific cases they are also sometimes signed by the government in order to provide further legitimacy. Different sets of dialogues may occur at four different levels: national, regional, industry and company/organisation. As already mentioned, they cover a broad range of issues, including training, job classification, sickness, maternity arrangements and health and safety. The results of the negotiations affect all employees in the area that the collective agreement covers. Therefore, if a certain agreement is reached in a particular cluster of the manufacturing sector and in a particular province, then the companies in that sub-sector and based in that province would be subjected to those labour conditions, although what aspects are adhered to varies in practice. The negotiations are driven by employers and works councils but, at the higher levels above the organisation, the agreement can be signed only by the 'most representative unions' at national or regional

level. The law describes how negotiations are to be conducted and what the composition of the two sides is to be. Agreements tend overall to last two years or more, and almost invariably start from the beginning of the year (though negotiations can begin anytime within that year).

In the case of manufacturing in Spain, the sector's characterised features are of interest in considering how reforms have altered the development of collective agreements. It should be noted that traditionally manufacturing has been at the core of Spanish industrial relations, with strong and militant unions, well-organised employers' associations and a long history and tradition of industrial conflict. However, the sector itself differs greatly from the classic image of big corporations in industry. In fact, the manufacturing sector, as well as its various sub-sectors, are in general highly fragmented in terms of company size. Therefore sub-sectors such as metal feature many small firms embedded in the local economy plus a few bigger companies, mostly multinational subsidiaries. Therefore, national agreements were rarely concluded and province-based agreements dominated, although there may be company-level agreements in larger firms. According to a representative of the metal employers Confemetal, this was due to the peculiarities of the sector, which, in a way, mirror the economic structure of the country (based on small and medium-sized companies):

the national agreement is posted on the website of ... Confemetal, you can check it, you can download it. The second chapter details how the sector is structured and well, recognizing the reality of the industry, we find ... that provincial agreements predominate. Logically, state-level bargaining would then be limited to those issues. Provincial agreements, sector-level agreements and company-level agreements, that is what exists. That is precisely the level around which collective bargaining is structured in the metal sector. It is a sector – in line with the rest of Spanish industry and the Spanish economic structure – which is dominated not only by SMEs, but particularly by micro-companies; 92 per cent [of Confemetal members] are SMEs, which are very tiny with fewer than 10 workers, and who expect a certain protection through provincial agreements (Metal employers federation official)

Despite attempts to conclude a national agreement, provincial-level agreements remained the norm. Ultra-activity and the automatic

extension and continuity of previous collective agreements in cases where there were no new discussions or agreements related to their renewal was a common feature. Besides, while important agreements might be achievable in the metal, chemicals and perfumes sectors, there has been criticism of the low number of detailed and good agreements at the lower level in the sector. There appears to be a reliance on the upper levels' providing frameworks for lower level agreements which are not then fully 'customised' to the conditions of the company, although these implementation pacts in some cases can be quite thorough and the actual sector agreements – as in the case of chemicals – fairly broad and encompassing.

While there is a dominant trade union structure due to the results of the four annual works council elections, which gives the left-wing CCOO and socialist UGT a dominant position in works councils and bargaining mechanisms at various levels, there are exceptions, as in the Basque Country, where there are also nationalist unions and radical minority unions in various sectors.

2.4 Impact of the reform on the process of collective bargaining in the manufacturing sector: social dialogue and contents of collective bargaining

Purpose and politics of the reforms

The ongoing reforms implemented by the Spanish state in relation to collective bargaining have led to a range of legislative changes and innovations aimed at 'modernising' collective bargaining and focusing the process and outcomes of bargaining on economic competitiveness. The aim has been to allow companies to reduce wage costs and to ensure a greater degree of flexibility in terms of the deployment of labour with regard to contracting, internal organisational deployment and dismissals. Wage costs (Fernández Rodríguez *et al.* 2014) underlie many of these reforms. In neoliberal circles, the cost of labour in Spain and the characteristics of the Spanish workforce have been mythologised into a vision of an intransigent and inflexible workforce. Furthermore, the government believes that the high unemployment since 2008 can be dealt with only by reducing labour costs in terms of wages and the cost of dismissal, which require legislation on reforming collective bargaining (decentralising it) and employment protection. Third, the reforms come

in the context of an EU strategy to reduce Spain's public deficit and debt – in great part caused by the banking crisis – that has focused on the need to reduce labour costs. To this extent there has been an ongoing questioning of the nature of social dialogue in democratic Spain.

This system is regarded by government and certain employer circles as having a series of rigidities (couched within a highly ideological view of the Spanish labour market):

- The high cost of dismissal in terms of compensation for years worked.
- There is a complex labyrinth of national sectoral, provincial, sectoral and company agreements that are not always clearly linked.
- Collective agreements remain in place if there is no subsequent renewal (ultra-activity).
- There are few mechanisms for redeploying and reutilising employees within the firm and various 'inflexibilities' in terms of the use of working time.

Thus since 2011 legislation has proceeded to focus on the following:

- reducing the cost of dismissal in terms of redundancy payments for firms;
- enabling firms to opt out of agreements and change their contents if they have an 'economic, technical, organisational or productive' reason to do so under the law;
- making it possible to lay down terms and conditions of employment if an agreement is not renewed due to ultra-activity;
- enabling firms to develop more mechanisms for a flexible workforce.

The 2012 reform implied drastic changes in what were considered the pillars of the collective agreement system in Spain. For instance, it gave absolute priority to company-level agreements over multi-employer ones and gave employers the prerogative to reduce wages without union consent, subject to arbitration. Furthermore, the reform made a reduction of the time extension (ultra-activity) of collective agreements obligatory, limiting it to a maximum of two years. This means that established rights from previous agreements would terminate until a new agreement is signed. Additional measures include allowing employers to unilaterally introduce 'internal flexibility' (changes in job tasks, location and timetables), without the need for trade union or works council

consent and further reducing dismissal costs, particularly controversial being the removal of the need for administrative permission for collective dismissals. According to many scholars, industrial relations in Spain seem to be on the verge of a transition and it is worth examining these changes, which are being made across different economic sectors.

During the period of our research *El Mundo* (25 July 2014), along with other newspapers, reported the results of a study that attributed the creation of 400,000 new jobs in the private sector (not including agriculture) to the labour reforms. The lowering of the costs of dismissal was seen as a major factor. However, in addition, employers could also now reduce wage levels if the economic, organisational, productive and technical conditions of the firm 'require' it. Companies can opt out of agreements in certain circumstances and where there is no agreement national state bodies can 'arbitrate'. The attribution of job creation effects to collective bargaining reform has brought the deregulation of industrial relations centre-stage in the government's response to the crisis.

At the workshop we held, a participant who broadly supports the reform argued:

In the first place, I think the idea that the crisis highlighted the need for reforms of the collective bargaining system is key. This need did not start yesterday, but it is a long-term problem ... The Spanish system is practically the only one, along with the Portuguese ... and the Greek, that combines automatic exemption, standing requirements – ridiculous compared with other countries – and ultra activity ... This reform is not my reform, it would not be my reform, but the decentralisation of collective bargaining fits my views very well, the limits on ultra-activity too ... I would have gone further, because, in my view, the challenge is to create a system where we can talk, properly, of collective agreements that are collective contracts. That is, that apply to those companies and individuals who have chosen to be part of those contracts, and there must be mechanisms to extend them afterwards if they gather a sufficient number of companies and workers. I mean ... national agreements for small companies, company-level bargaining for the large ones. With high coverage, but this is not yet observed. What do you notice instead? ... These agreements work because they are very tough. They have ... been

forced to accept concessions, but they can never be part of the core collective bargaining system in Spain. Contracts have to be respected and you cannot provide companies what I call ‘the red button’. That is, for years we do not worry, we pay salary rises and when there is a difficult situation: ‘pa’ [strikes the table]. I set the timer to zero, threatening dismissals and wage cuts. This is not the way forward. But this is the part of the reform that has had more impact. I think that the resistance of the social partners and their disengagement from the reform have meant that the positive effects we were looking for did not emerge. This is because there is an enormous resistance to abandoning the fragmentation of collective bargaining in Spain, this sectoral-provincial level which makes no sense... (Economist linked to neo-liberal think tank)

When looking at the reforms in question we need to appreciate that in some cases their main effect has been to change the nature of bargaining and its general impact in terms of how expectations and calculations have been modified. The latter is very important because in many cases it has been the threat of using the legislation that has impacted on industrial relations and encouraged more moderate attitudes or conciliatory responses from trade unions. In one large metal company, for example, this was seen to be important in sending a signal to the workforce. A significant reduction in wages was proposed and achieved by the firm, on the basis that most other elements of the terms and conditions of employment were not substantially reformed.

The question of opting out: ultra-activity and the bypassing of agreements

The need to stop ultra-activity in the Spanish industrial relations system was a requirement of the European Commission, particularly since 2010–2011, when the most difficult period of the crisis started. Therefore, the last PSOE government passed a first reform of the collective bargaining system. This reform abruptly tried to put an end to ultra-activity by imposing arbitration when employers and workers could not reach a new agreement. However, this is problematic from the point of view of state action, once it is obvious that any attempt to impose agreements on the social partners borders on illegality: in one way or another, this decision violates fundamental rights in a free market economy. In fact, this first reform was immediately denounced as unconstitutional (although there was no time even to begin the procedure as the government’s term of office was nearing its end). According to Valeriano Gómez, former Minister of

Labour and one of the persons behind this frustrated reform, one of the main weaknesses of the industrial relations system in Spain has been the inability to develop institutions of mediation and arbitration. Such institutions should have not only legitimacy but a real capacity to force agreements on a scale that would be meaningful and could set the terms of a balance of power between employers and employees. Therefore, in the case of labour relations in Spain, and in the absence of an agreement, the final resolution of a conflict usually ends up in the courts and their interpretation of the law, instead of using relatively neutral arbitration institutions that would try to reach a mutually acceptable agreement, adapted to the specific circumstances of the conflict. It is in this sense that we have observed how, from the workers' point of view, the recent legal reforms have been used as a kind of threat in the negotiation process. If negotiations fail and both parties go to court, it is likely that the resolution of the conflict will favour the employer's interests, since the latest legal changes have tended to strengthen their position (or that of their representatives). However, any law is subject to interpretation and the situation is very complex after a succession and accumulation of ever-accelerating reforms. The fact is that many effects of the reforms are still ambiguous and it is not easy to assess the real impact in the medium term of the dismantling of the foundations of the pre-crisis system of collective bargaining.

Social dialogue continues, but increasingly it is coerced by the employer. What we are seeing is less the de-recognition of trade unions and labour relations, as in the United Kingdom, and more one of forcing through agreements on the employer's side using the new legislative means.

The crisis makes negotiations difficult. The year that had most bargaining coverage in Spain was 2008 and since then it has gone downhill. It was logical that as the labour market developed coverage would be a little lower. However, since the reform of 2012 in February – which comes into force in February, even if it does not become law until later – the loss of coverage has been brutal. This is because, among other things, the reform of 2012 included the possibility of avoiding 'ultra-activity', which in reality involves an attempt to avoid loopholes. This process is key in collective bargaining. This has had serious consequences: when there was an expectation that collective agreements might cease to have an effect, collective bargaining slowed down notably. (UGT trade union economist)

Due to restrictions on ultra-activity we are seeing large parts of the workforce not covered by collective bargaining due to delays in negotiations:

Collective bargaining covering nearly 38 per cent of workers has not yet been concluded. (UGT trade union economist).

Ultra-activity in the form of the automatic renewal of collective agreements and the automatic linking of pay increases to inflation is therefore being challenged by the legislation, as employers can opt out and unilaterally set the conditions of work, given certain organisational and economic circumstances. We are seeing, as noted above, that many companies are left without agreements or have suspended arrangements. However, there are cases in which agreements remain valid due to specific clauses that lay down that they will remain in force until one partner bails out. In such cases the employer has to take deliberate steps to avoid the agreement and it remains to be seen in the longer term how many firms will to do so. As mentioned earlier in relation to one of our case studies – a large metal firm – there was positive dialogue on change, but this was achieved partly on the back of a legal threat from the employer to invoke the government reforms. Hence the legislation allows a certain kind of game-playing and ‘chicken’-like collective action scenarios, as in game theory. Much depends on whether the firm sees social dialogue as valuable across a range of issues and strategic dialogues and on political sensitivity to any changes within the region the firm is located in, as in the Basque Country. It appears to be more a case of threatening to use the legislation to gain significant changes, especially in terms of wage reductions. There has been a ‘recalibration’ of industrial relations through the use of and reference to the reforms.

We have seen the reforms used as a potential coercive resource to force social partners – especially trade unions – to take more ‘realistic’ positions. However, the longer term is more complex and these strategies have serious social and economic consequences. The ultra activity-related reforms are leading those companies who are making use of them and unions that have to respond to such changes to revise their agreements. There is evidence that this is being rushed and is not being used to deepen dialogue to take in more strategic issues. There is, in effect, no expansion of the remit of collective bargaining and its strategic value. The main question for the future is whether such reforms actually

deliver more economically sensitive dialogue or a more truncated minimalist one within the sphere of the firm.

However, in the metal sector the changes in terms of working hours and other conditions as a consequence of the '*descuelge*' from the collective agreement are becoming clear:

Many, many companies have withdrawn and this also has positive aspects. It is likely that the tremendous unemployment rate [in Spain] would have been higher without that wage cut, because that is a measure of flexibility for companies to survive, right? Most implementation agreements have been concluded with rates of 90 per cent and more, but the crisis, in the end ... is still enormous in the sector, lots of companies are disappearing. Another problem we have is that the weight of the industrial sector in relation to GDP is becoming smaller ... Employment and social security data are very good but of course there is very precarious employment, temporary employment and what they bring to the social security system, these nearly 200,000 workers, is very little, most of them are working part-time. That is better than nothing but they provide very little to the system. When the season ends these people hit the road again, ... you're also seeing, for example, something unusual, that I have never seen, I have been here many years ... I mean increases in working hours, the tendency was always a combination of increments and cuts, well, we have seen agreements that have increased working time; for example, in Burgos working time per year has increased no less than 16 hours, in Cádiz I don't not know whether it was 12, in Cantabria 3 or 4, something that did not occur before. (Official of the Metal Employers Organisation)

The reform of ultra-activity has been considered a key issue in the reforms. According to the representative of CEOE, it had been a long-term goal for the employers. In her view, trade unions always started from a position in which the only option was to improve on previously agreed conditions. Therefore, the reform was supposed to help to balance employment relations, putting both sides at a same and fairer level:

For example, regarding the issue of ultra-activity, what we see is that it has been rebalanced; previously there was no real balance whatsoever because, well, you knew that you would negotiate on the

basis of what you had in the previous agreement. Therefore unions always started from a bottom line in the negotiation, which was the earlier agreement, and simply demanded more wages, more free time, more holidays, more paid leave, and so on. Hence there was no equilibrium in bargaining. What we understand, then, is that reform issues such as ultra-activity have contributed to rebalancing the imbalance that existed before. However, and logically, different social partners have completely different positions on this. (CEOE official)

For trade unions, the reform implied a new opting-out strategy for firms. However, in practice and in order not to disrupt industrial relations too seriously, employers made agreements with unions to preserve the contents of the agreements for several years, as one employers' representative made clear:

Trade unions and employers are equally fearful of ultra-activity. That is, there are times when employers themselves are the ones who want to keep their ultra-activity agreement. What does this mean? This is not, let's say, a rigorous statistic, but of the new collective agreements that were signed after the reform and, theoretically, could be of limited duration in time, I presume that between 40 and 50 per cent are agreeing unlimited ultra-activity. You can see many reasons for the agreement between the two sides: the union might say, 'Hey, either we agree a limited ultra-activity or we do not accept wage moderation' or whatever. The truth is that the statistics point towards 40–50 per cent of agreements including ultra-activity. Let's say that 20 per cent of agreements have been adjusted to the legal terms of the average maximum ultra-activity: one year, a year and a half. The rest, meanwhile – perhaps around 30–35 per cent – have been looking for limited but much longer periods of ultra-activity. That is, if the collective agreement ends, there may be at least two or three years of ultra-activity. (ex-CEOE official)

However, it seems indisputable that the reforms of recent years have opened up a space to weaken the regulatory power of collective bargaining, expanding the grounds and facilitating the process by which companies can 'opt out' of the guidelines laid down in collective agreements (mainly on issues related to the working day, shifts and time distribution of work, payment mechanisms and performance systems).

There has been too little time to assess the impact and specific uses of these new ‘opting out’ options for businesses. However, in parliament on 17 September 2014, the current Minister for Employment, Fatima Bañez, claimed that ‘since the entry into force of the labour market reform in 2012 there have been 4,900 derogations from collective agreements, 99 per cent with agreement between the parties, which has saved more than 300,000 jobs’.¹

Table 2 **Opting out: agreements, companies, workers and company size**

Company size	Opting out from agreements (cases)		Companies		Workers	
	2013	2014 ^(*)	2013	2014 ^(*)	2013	2014 ^(*)
TOTAL	2,512	1,627	2,179	1,474	159,550	53,137
1–49 workers	1,965	1,342	1,770	1,241	21,328	14,281
50–249 workers	313	203	259	168	25,699	13,593
250 or more workers	189	55	108	39	109,312	24,800
Unavailable	45	27	42	26	3,211	463

Note: (*) Provisional data, last update in August.

Source : Collective Agreement Statistics, Ministry of Labour, Spain.

The Ministry of Employment generated this new statistical series, collected in Table 2, whose development will be further analysed in the future to assess the impact of ‘opting out’. While the total number of workers affected since January 2013 is still modest (212,687), it is indicative of how medium or large businesses (over 250 employees) have begun to use this route mainly to avoid wage increases agreed in collective agreements at provincial or state level. It is particularly significant that over 90 per cent of these opting-out strategies have been agreed with workers’ representatives, in many cases as an emergency prerequisite before signing new conditions in a separate company-level agreement. It is in many ways a situation that strengthens the corporate position: the end of ultra-activity agreements, together with the possibility of opting out from their contents, facilitates agreements with union representatives but always with a different dynamic, pervaded by declining conditions.

1. <http://www.europapress.es/economia/laboral-00346/noticia-economia-laboral-banez-asegura-inaplicaciones-convenios-salvado-300000-empleos-reforma-laboral-20140917104940.html>

The recent use of external companies – labour law experts – to handle negotiations is due, at least in part, to this vast array of choices. The cost of using external consulting firms is increasingly offset by their ability to negotiate the terms down, aided by more and more complex labour laws.

We now turn our attention to a general description of the kinds of issues that are being affected by these changes.

The question of content and agreements

In terms of the content of agreements, as a general consequence of the reforms we have seen an emerging focus on wages and working hours which, ironically, reinforces the narrowness of bargaining. In the interviews it was occasionally mentioned that only working hours and wages are discussed, in a very conservative scenario reinforced by the crisis.

Opting out of agreements, according to trade unions, leads to immediate wage reductions. In economic terms, it is clear that wage settlements have been deeply affected since the reform: losses in real wages have already happened and are expected to keep on happening in the near future (Molina and Miguélez 2013). The number of collective agreements has decreased notably, as shown in Table 1, based on data from February 2014. There is increasingly a new distribution of working time, a growing abuse of extra working hours and challenges to maternity leave within the framework of the culture being created by the reforms, according to one of our interviewees from the trade union CCOO.²

Changing role of the state

One irony of the reforms is that where there is a challenge and where unilateral action needs to be taken it requires an increasing role for the state in judicial terms. In theory, the state has to give the green light to the unilateral actions of employers if systematically challenged (on a range of issues) and this requires detailed scrutiny of individual cases, most recently with Coca Cola and its redundancy programmes, which were not accepted by the courts due to the lack of information provided to the works councils. In the case of French retail firm FNAC the economic argument for restructuring was seen as spurious. Hence, the reforms

2. It is difficult to find data on these issues. However, websites such as <http://www.abusopatrones.es/> provide examples of different forms of exploitation in firms and businesses operating in Spain.

have the potential to politicise restructuring and create a more political climate in the debates on the terms and conditions of employment.

Besides it is not possible to withdraw from agreements, you always need an agreement with the workers' representatives. That is, a company cannot opt out because it is required that workers' representatives sign the agreement unless there are real issues of economic crisis in the company. The real point of this reform is that it is compulsory to reach an agreement to opt out. Therefore, opting out only works in those companies that are doing really badly, that is, mortally wounded firms. In these companies, there is no problem, workers understand what is going on and sign, because they know that either they sign the opt-out or the company simply goes bankrupt tomorrow. However, those other companies where the causes are not as real, or that simply decide something like 'look, let's take the opportunity to save some money here', well, they can't opt out because they are unable to reach a deal with the workers' representatives. And for me that's a problem that the reform leaves unresolved: what happens when there is no agreement on the opting out and the derogations. (Official, FEIQUE: chemical industry employers' organisation).

The problem, however, lies in the fact that state agencies are not consistently stepping in to resolve things as planned and not really intervening to set the rates of pay and terms of conditions where there is no agreement or where there is a lack of clarity on the cited economic causes. The courts and judicial process are very slow in dealing with cases and appeals and this is creating a further regulatory vacuum in which employers can act unilaterally where they feel that they can. This dysfunctional feature of the Spanish labour courts has been a challenging aspect of labour relations in the country for some time, especially in dealing with health and safety cases (see Martínez Lucio 1998 for a broad discussion). It serves to facilitate deregulation by default, because the state – even when willing – cannot cover the increasing range of cases.

In this context, among the procedures that undoubtedly deserve more attention are those related to mediation and refereeing, which many of the interviewees consider underdeveloped and in need of reform. Currently, when discrepancies arise regarding collective agreements, an advisory committee is in charge of finding solutions to resolve the conflict. This

body – Servicio Interconfederal de Mediación y Arbitraje (Fundación SIMA) – has representatives from both trade unions and business organisations (CEOE, CEPYME, UGT and CCOO). If discrepancies are not resolved by the advisory committee they might be diverted to external arbitration. In that case, an arbitrator might be proposed by the committee, usually an expert with experience in public administration or academia. However, while the advisory committee has successfully mediated in thousands of cases, some of the experts interviewed claimed that there is room to improve the functioning of the external arbitrator. As one expert from the national employer body puts it:

The system, right now, is focused on mediation and has not made the leap forward to arbitration. Why? Because there is still mistrust ... each party uses its own mediator. There is a lack of trust in the referee as he or she cannot be a neutral figure ... In the best case, there is usually one mediator, but in most cases there are two, who talk to one another. And mediators, with all due respect, are not professionals. “They call me from time to time ... “hey, look, we have a conflict here”, because someone once put me on a list. “A conflict here at Coca Cola, if you want to come.” And I say, “I have no ... idea what Coca Cola is about. How am I to mediate the issue of Coca Cola? I don’t know, I’m an amateur, even though I’m a professional, etc. Therefore I think we should go towards a system of professional arbitration. Professionals who live from arbitration. This is happening in America, experts charge lots of money for this service because they are professionals, they are guys that play the role of judges ... And secondly, there is another view: someone from the Ministry of Labour, from the world of labour inspection, had an interesting project, which is what we might call ‘preventive mediation’. That is, find good people, almost always from outside the company, that before any outbreak of conflict commit themselves to find solutions to avoid the extension of the conflict within the company or industry ... And then there is a third element, a third possible body, which it should be investigated, I have some references: systems of internal mediation and arbitration at the company level. When we negotiated the collective agreement for Spanish Public Television three years ago, we implemented a system of internal arbitration. Television unions and the management body appointed a mediator-arbitrator, who knows the company well from inside and takes care of the arbitration, right? Internal systems are possible in large corporations, but not in SMEs. We must use external

systems. But thinking with those three possibilities I think you could go a little bit further in improving the systems, right? (former CEOE national official)

Furthermore, there appear to be legal anomalies, especially in relation to the general rights of trade unions as the reforms are clearly undermining constitutionally based rights regarding voice and representation.

In particular, during the past two years 81 lawsuits have been launched against more than 300 strikers, of whom over 260 are union representatives (several with regional management positions within the union). These lawsuits implement a section of the Penal Code adopted in 1995, but never previously used, making available prison sentences of between six months and three years for ‘coercing others to start or continue a strike’, what is also known as ‘informational picketing’. In June 2014 two trade unionists were sentenced to three years and one day in prison because they participated in a picket during the general strike of 29 March 2012. They were accused, paradoxically, of crimes against workers’ rights. What is particularly unusual about these lawsuits is that they were initiated at the request of the public authorities and not based on individual complaints (with a few exceptions). That is to say, such lawsuits seem to have become an instrument of intimidation to stop any attempt at resistance and opposition to recent reforms. During our fieldwork, we found a case in which a company’s management board seems to have taken advantage of this new attitude in the public administration as a way to intimidate union representatives (in a factory with a heavily unionised workforce and a long tradition of industrial conflict). In this case, the trial itself was launched because of a complaint by one manager of the company. This manager alleged that he had been physically coerced by some of the company workers when trying to enter his office. This happened in one of the strikes that took place while negotiating the company-level agreement in 2012. From the point of view of one of the workers concerned, this conflict is seen as another episode related to the new options opened up by the law, made use of by the management in order to impose its will on the shop floor:

Well, the attacks are impersonal but, quoting *The Godfather*, ‘it’s just business’. What is collapsing is the rules. They try to break those rules ... as they have managed to break the rules that gave power to unions and workers to negotiate and to reach agreements which

were ironclad. Above all, the loss of ultra-activity conventions is a weapon that destroys workers and unions, and takes our rights away in the most brutal fashion. It is already eating away at our wages. ... Logically ... that ends up being materialised in the corporations. In a firm with a certain tradition of industrial conflict, whose unions have power and strong principles, well maybe ... it takes several attempts to win out. So the first assault ... in the first two rounds we were more powerful because it did not succeed. We are determined to make the second attempt fail, but we know that we are, somehow, an island. And because we are an island ... we are threatened by a tsunami of labor reform ... (Trade Union representative, multinational metal firm)

The prevailing perception among the union representatives we interviewed (both at the grassroots level and in positions of responsibility in their organisations) is that legal changes are strengthening the bargaining position of employers and their representatives. If entrepreneurs traditionally avoided recourse to the labour courts (since it was considered that they favoured the protection of workers' rights), recent changes invite us to consider that workers might prefer bad agreement before going to court (because with the recent legal reforms, judgments tend to favour and protect the interests of companies).

What we are seeing is a new complexity which brings forth its own bureaucratic dilemmas. The legislation appears to facilitate a greater degree of employer prerogative, on one hand, but it also leads to a greater degree of uncertainty in terms of industrial relations processes and conflict. In the final part of this chapter we develop these general anomalies and ironic outcomes in relation to the reform of collective bargaining.

A fragmented landscape: small and medium-sized employers

One of the main concerns relates to smaller firms that depend, with regard to industrial relations, on higher level agreements and basic local company agreements that are framed within them. There is a fear among trade unionists that such firms are beginning to leave the orbit of regulated social dialogue and collective bargaining.

Trade unions involved in small and medium-sized firms and the negotiation of provincial agreements have noted that firms are beginning to test the resolve and capacity of unions and their local representatives

to counter attempts by the firm to opt out or downgrade negotiated conditions of work. Unions see a significant change in attitude, but there are some sectors in which dialogue and informal relations are strong.

New types of legal agencies have emerged and are establishing a network whereby companies can '*descollar*' from agreements – there is evidence of agreements having to be signed even with deteriorating wages so as to hang onto some semblance of collective agreement. Smaller firms are turning to legal firms and consultancies to steer through changes to agreements and to undermine provincial agreements. New agreements are being used as a template for signing reductions in pay and increases in working hours and the use of new forms of labour deployment. These are being circulated and used as a way to rethink the process of social dialogue. These law firms and consultancies are a developing industry that deal with the very form of negotiation, not to mention its contents.

Such law firms are a staple of Spanish labour relations but there is a noticeable increase in the number of those willing to participate proactively in more hostile action against trade unions. Such firms hold events and lunches to attract businesses to hire them. These new types of consultancy reflect some of the developments observed in the anti-union lobbies of the United States and the United Kingdom. They are in some cases linked to right-wing organisations and capitalise on the hostile climate towards trade unions in Spain (see Fernández Rodríguez and Martínez Lucio 2013 and 2014).

This new panorama of employers seeking to opt out of or limit the regulatory processes of collective bargaining – especially in smaller firms – will have a negative impact on workers' overall terms and conditions of employment due to the nature of industrial relations in those sectors. Trade unions have relied heavily on the role of national sectoral and provincial sectoral agreements as frameworks for such employers and groups of workers in the past. In this respect the trade union strategy was to use such frameworks to underpin at least the basic terms and conditions of work, building a platform for local agreements to enshrine and, if possible, add to these agreements. This strategy also included campaigns in relation to works council and trade union representative elections that made it possible allow for local networks and representatives to share the terms and conditions of agreements and related issues. The trade unions at regional and provincial level were able to use the quadrennial

trade union and works council elections to raise their representation in such workplaces that are normally harder to reach due to their size and location. However, entering such workplaces ‘armed’ with the relevant provincial collective agreement provided a point of legitimacy for the union as terms and conditions could be explained and compared with those elsewhere. The problem is that as companies opt out or bypass such agreements their legitimacy becomes less significant, especially as their terms and conditions of work are reduced.

However, the union strategies used to reach smaller firms, especially during such works council workplace representative elections have been an ongoing challenge, even if the union has a specialised unit for this. There is evidence that there is greater difficulty in reaching and communicating with such firms and that the climate is more hostile to trade unions accessing the workplace as employers begin to opt out of social dialogue in operational and even ideological terms. The reforms are testing the ability of the unions at the level of small and medium sized firms and at the provincial level to manage and control working conditions. The pressure on union resources due to such strategies of local support and networking means that it is difficult to survey local areas and smaller employers. This is not necessarily a direct result of the reforms in collective bargaining but as firms begin to ‘opt out’ then the local agreements relevant to them are a less effective tool for such campaigns.

2.5 General impact of the reform

The reforms do not have unanimous support among employers. The idea that this new neoliberal or Troika-driven turn in the regulation of the conduct of labour relations is something that pits capital against labour fails to pick up the value of joint regulation in terms of establishing the terms and conditions of employment, as well as social peace in the workplace and the labour market. The sectors we researched reveal very long traditions of dialogue around a range of organisational change and restructuring issues. At one large metal manufacturing company of national importance the HR manager argued that it was easy to forget the very detailed discussions and difficult choices made with unions in previous years, which had been pivotal to the peaceful restructuring of the firm. The fact that the costs in terms of redundancies may have

been higher than in some other European countries does not negate the achievements. This required a major effort from the majority unions in the face of more critical minority unions and internal factions. The HR manager went on to argue that this process and experience was central to the '*reconversion industrial*' of the 1980s. The lead industrial relations expert for the chemicals association echoed the view that there had been much progress in creating national and local frameworks for discussion, which should be appreciated:

although the issue of *ultractividad* was mainly defended by CEOE, that is, by businessmen who wanted to promote a more flexible collective bargaining and, well, it was necessary that agreements would lose their validity, for us, the chemical sector this was not so important because we were not afraid to continue with an agreement. We have thirty years' experience of negotiations, negotiations have always developed and new texts have come to an agreement. We are not at that point. We are not scared. And indeed, many entrepreneurs from our sector, they feared otherwise. They said, 'Well, if it loses its effect now and ends, we lose everything we have achieved during these thirty years: many mechanisms that are very helpful for us, such as flexibility, for example. We do not want to lose everything that we have negotiated over the years. (Official, FEIQUE: chemical industry employers' organisation)

The Confemetal representative described the reform of ultra-activity as another tool for exerting pressure in negotiations rather than something really useful for employers:

Both last year and this one there has been a return to the traditional formulas: while an agreement has not been reached, the previous one remains in full effect, partly because collective agreements clearly do cost money ... many materials are included in the agreement over the years and then, starting again from scratch ... and then the fear of losing the agreement involves the fear of deconstructing the organisation: if I lose the agreement what kind of service do I provide to companies because everything revolves around that; on the union side this is just the same. Nobody is interested in the decline of the agreement. Another issue is that, from a business point of view, the disappearance of ultra-activity is being used to obtain other benefits, it is used as a bargaining strategy ... I'm telling you that it is only in

Guipúzcoa where the agreement has ceased, the rest is exactly as it used to be. (Official, Confemetal, metal employers' organisations)

The issue may be understood differently in other sectors but in terms of key sectors such as metal and chemicals the view is that social dialogue was an essential part of the management process, even if some changes were acknowledged as important. There was also a view that the reforms were focused on allowing larger export-oriented companies to limit their labour costs in quantitative and qualitative terms and that this has resulted in a form of reverse social dumping as their circumstances and obsession with their collective agreements have unsettled the whole system of social dialogue. Even among employers there were concerns about dumping, which is seen as able to destabilise the framework of industrial relations that had brought a certain degree of industrial peace in recent decades:

The crisis coincides with the reforms of 2011 and 2012 and a major attack on the provincial agreements, accusing them of being backward and preventing flexibility in business. The reform tries to break them down and create what Article 84 of the statute specifies: matters of priority for company-level agreements, different opting out strategies ... this generates huge expectations, well, I could already opt out of provincial agreements and apply the minimum wage and trickle-down conditions, absurd things that happily have not taken place, because they have no rhyme or reason. Moreover a big issue was emerging, in the end tremendous new unfair competition between companies was arising in the sector. This might happen more often in the future and probably the companies themselves will undertake a turnaround and change the situation a bit. The legal attack on provincial agreements has therefore not led anywhere, because these agreements play a role, a very important role because you can't manage an SME unless you have such an agreement. (Official, Confemetal, metal employers' organisations)

Meanwhile, the reform of ultra-activity has not been pushed sufficiently by the social partners. According to the CEOE representative, many collective agreements are including such pacts again:

Nowadays we are surprised to realise that in our last reports in collaboration with the National Advisory Committee on Bargaining

one key issue is that the agreements keep going for years. Despite the fact that the labour market reform had raised the cessation of ultra-activity after one year ... unless otherwise agreed, well we are noticing that a large majority of the agreements are either extending the period of one year or are even stating that the agreement shall remain in effect until a new one is negotiated. ... The cessation of ultra-activity is therefore being used as a tool to revitalise collective bargaining: negotiators are using collective autonomy to, in some way, bet on security concerning renewal. It is also true that the issue of ultra-activity is still raising many questions: what happens to the higher level agreement, what happens with this regulatory vacuum, what it is applied in the case of agreements prior to the reform that had clauses which determined that the agreement was maintained until the new ... until they negotiate once again. Are these clauses still valid or not? I think that this accumulation of doubts, the fact that there were many social actors in favour of keeping the working conditions of the agreement, and that there could be a way to diminish judicial pronouncements, is making negotiators bet on maintaining ultra-activity, which, well, somehow is not making that strategy we had in mind work. (CEOE official)

Meanwhile, leading figures in the UGT claimed that the internal deregulation pursued by the government would favour the interests mainly of the biggest export firms:

The political right and large Spanish companies agree that the solution to the crisis in Spain will be one thing: ... a focus on exports. And for that, the competitive factor was maintaining the advantage of low labour costs. From here you can guess the role they want to give collective bargaining. (UGT national leader)

Divisions among employers and the perceived importance of social dialogue is something that was apparent throughout the discussions held at our national workshop and in many interviews. Tensions between metal and chemical manufacturers trying to sustain dialogue ran up against almost evangelical and anti-institutionalist neoliberal organisations in the debate. New neoliberal agencies seem out of sync with developments in the purpose and nature of Spanish labour relations, and almost totalitarian and obsessive in their 'reformist' zeal. The more critical positions seemed to have a simplistic and naïve view

that industrial relations could be reformed by the state quite easily through legislation and had no real understanding of the way industrial relations systems emerge and how they are constructed in real time and historically.

Furthermore, these reforms have not occurred in a high-trust environment in many cases, as the challenge to trade union rights and resources has intensified. The use of 'forgotten' legislation which makes it difficult to picket and demonstrate, coupled with the systematic undermining of trade unions in symbolic terms through the press has had a further adverse effect on how the reforms are understood and used. The case of one of our metal companies referenced earlier suggests that the legal dimension in relation to demonstrations and so forth is in some cases being used apart from the collective bargaining reforms to 'contain' some aspects of the unions. The collective bargaining reforms cannot be seen as technical modernisation but exist in a climate of hostility towards social dialogue that appears to be based on increasing authoritarianism (Rocha 2014). The extent to which this creates a less positive predisposition towards collective bargaining within unions does not seem to be the issue, but it does create a climate of distrust and uncertainty the longer term consequences of which are unclear.

However, various HR and labour relations managers have been becoming aware of growing pressure on the majority unions with regard to their ability or willingness to negotiate agreements making significant changes in working conditions. In the case of one petrochemical multinational there were signs that more radical and militant minority unions were pressuring and gaining ground on the majority unions. There were signs that one of the majority unions in that case was breaking from its traditional commitment to emphasising dialogue over conflict. The fragmentation of the works councils of such firms and any fissure between the majority unions would make agreements much more difficult in the future. The majority unions were seen as being responsible or passive in the face of the reforms and the new agreements that emerged which could be reflected in future works council elections. The question is how these developments impact on the extent of collective and individual conflict.

Another metal manufacturing multinational, which had decided not to engage fully with the reforms in collective bargaining in order to

sustain the commitment to social dialogue which it considers central to its corporate identity, sees health and safety and workplace stress issues emerging as a new area of concern for trade unionists, especially more radical minority unions. The fear expressed even in cases in which the reforms were not being fully engaged with and traditional forms of bargaining sustained was that the growing strain on the workforce of longer working hours or more 'flexible' forms of deployment in the organisation would lead to a greater emphasis and conflict around social and health-related issues at work, as well as a generic fragmentation of the focus of collective bargaining and labour relations generally. While the general mobilisations against the reforms and related public policy in the form of 24-hour strikes have been less apparent in the past year there is a realisation that the challenge will be less one of overt political challenge to management and more one of growing fracturing in social dialogue.

In the case of the national chemical sector agreement many firms build their local and firm-specific negotiations on the back of this highly respected agreement through implementation pacts. These allow firms to remove or underplay contentious and possibly conflict generating agendas from their local bargaining and to focus on specific local issues. This was very important to those firms in regions with a more radical or unstable labour relations panorama. The question here was that any decentralisation of bargaining and any systematic move to the realm of the firm as the basis of the regulation of employment could create a more politicised approach, according to the employers in such sectors, in relation to such issues as pay and working hours. The previous and current system have to some extent managed to contain dialogue and structure it in ways that avoid conflict and a politicisation of workplace issues.

Various HR managers interviewed pointed to the need to recognise the contribution of organised labour to Spanish economic and social development, and expressed concerns with right-wing public discourse. The role of positive informal relations and good peak-level tripartite relations is considered important in sustaining continuity and this is more apparent in larger firms. The fear was that this tradition could be lost in key sectors. A leading HR manager from a steel multinational argued that the failure to recall the sacrifices of trade unions in assisting in the restructuring of the sector since the early 1980s meant that social

dialogue could be undermined even if one thought that some rebalancing of collective bargaining relations was essential.

The consequences of hurried and fractured collective bargaining processes may even have wider implications. The impact on equality and its regulation within the firm may be serious as the crisis and shortage of resources within social partners, especially unions, mean that there is less money for training in equality. Experts in the unions dealing with equality-related issues have argued that the pressure on the unions may lead to an emphasis on defending core conditions and being unable to be proactive as they have been through their monitoring of equality plans. In terms of the firm the Spanish legislation on equality in recent years expects them to develop equality plans through their bargaining and social dialogue mechanisms. What is unclear, but was referenced in our interviews, is that collective bargaining is being suspended in some cases or truncated in terms of contents. The fact that the interests of the Spanish economy and the firm are visualised in terms of regulatory opt-outs, quick changes in terms of working conditions to allow greater management prerogative in the deployment of labour, and short cuts in setting wage levels means that a deeper culture of dialogue, especially in larger firms, on questions of equality and disadvantaged groups may be affected, especially as in Spain these are at a comparatively embryonic stage. As funds for training and social dialogue are reduced by the state – and training for bargaining purposes is also reduced – this is an area which may be significantly influenced in the coming years. The project of the 1990s and 2000s within labour relations – especially for the trade unions – was based on expanding the thematic remit and agendas of collective bargaining and of entering into new themes and deepening such issues as health and safety. The current context has seen a suspension by default of this project due to the pressures of keeping up with the task of sustaining collective bargaining and of salvaging agreements in smaller firms and for those trade unionists supporting such smaller firms:

There are continuities, however, as larger companies and established sectors are not necessarily using the legislation and are in fact working as if nothing has changed in some cases but this may be due to cases where there is a strong level of European or global corporate integration:

The labour market reform, well watch out, very few companies have implemented it. Yes, they are taking to lower wages and layoffs, in

some cases, let's say, supported by the labor reform, by which they lose money or lose or whatever. Yes, there are new elements to reduce staff, wages. But the overall state-wide implementation in companies is not very deep. This is because the labour market reform is against common sense, I think, of what the people at the company level do and at the level of workers ... In the end it leaves the worker with no resilience. That is, the idea would be a company with individual worker agreements. In some cases there are workers who believe they can negotiate individually. But ... as a trade unionist I can proudly say, the more the union presence, normally the better the wages and, let's say, better work. Work has a more sociable side. Normally this is how it is. (Trade union representative, large car manufacturer)

According to the labour relations manager of the same company he shares this view although the question of change remains important.

It's very complicated. And to put into the hands of the company, everything we have historically achieved ... well I think that is something that represents an attack on unions and non-unionised workers, actually all workers and citizens. ... The problem is that we are witnessing reform after reform. ... Politicians are not like us ... Here, both at the company and in the bargaining process, when we are wrong we rectify. (Labour relations manager, multinational car manufacturer)

As stated previously, many HR managers and employers' organisations continued to praise the role of the unions. There seemed to be a culture of regulation and dialogue which was likely to resist changes and to maintain some notion of historical memory and understanding of social dialogue.

Finally, much seems to hinge on the nature of the crisis and the question of what engenders employment. To regard collective bargaining and labour regulation mechanisms as the main cause of Spain's high unemployment is questionable and this means we need to push the discussion towards a broader debate on political economy. In the words of one of our interviewees and panellists:

Because you have to keep in mind that, I've said it many times, there is no crisis but an overall crisis of the previous [system of] growth....

No European country increased the activity rate by 60 per cent from 1994 to 2007; the European increase was only 16 per cent. Of course, now there is a lot of unemployment, but why? Because of the previous and very significant growth. At least, almost half ... of the current unemployment is the result of the exaggerated growth of the previous period. (Santos Ruesga, academic)

In this respect, the reform of collective bargaining and its tendency to reduce everything to the problem of cost and bureaucracy obscures a much deeper dilemma in the case of Spanish economic development. It also obscures the curiously positive role social dialogue has played in recent years in Spain.

3. Summary and final thoughts

The study and this text have tried to bring together some general trends and developments. It has focused on a range of predispositions and thoughts in relation to the reforms and outlines the extent of the reforms but also some of the main points of impact. It is not a formal study of labour market structures and regulations: it is instead a review of perspectives and evaluations. It has tended to focus on management and employer respondents. One could argue whether the reforms are successful or not, and whether they are creating a broad shift in the culture and practices of Spanish labour relations. From our point of view the breadth and depth of joint regulation is in decline and the impact on working conditions has been negative. This is a narrative that raises concerns about the social and economic effects of deregulation. However, we have picked up some specific concerns. The first is that many organisations and individuals in key employer bodies have expressed concern at the effects the changes will have on social dialogue and consensus. There is a worry that these changes may undermine the main voice of trade unions and their role alongside various employers and the state in resolving major challenges to the economy. The fabric of the social partners is under great stress. There is also the issue that many organisations – and management as well – will be under enormous pressure even if they appear to have a wider range of discretion and organisational choices. They will be more open to litigation and less able to seek support from the workforce for their decisions. In the research we noted a real tension between different employer and management traditions: those with a

tendency to support social dialogue and mutual collective bargaining have been under great pressure and are concerned with the long-term stability of the labour relations system. What is more it appears that the state – which is undergoing tremendous restructuring itself – is not able to service and support labour relations and social partners as effectively as they did; individuals and organisations turn more often to the judicial and mediation – as well as arbitration – services of the state for more assistance and intervention. In effect, the state is brought back into labour relations in a more direct manner but without the necessary capacity to support labour relations. The objectives of the reform were to push labour relations closer to the market away from the political – or so goes the rhetoric in official terms – but the outcomes may actually be more complex and more political as a consequence.

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