

Country report: Spain

1. Labour law reforms in 2010

Without reaching agreement with the social partners, on 11 June 2010 the government – led by Prime Minister Zapatero’s Socialist Party (Partido Socialista Obrero Español, PSOE) – presented its proposal on labour reform, which was adopted by the government on 16 June, following a debate in Parliament. The proposals included the following:

Measures regarding *temporary employment contracts* and *dismissal protection*:

- Limit temporary contracts: temporary contracts (*‘de obra o servicio’*) would last for three years at most, although an additional year could be added by collective agreement. During the parliamentary debate a derogation was introduced for the construction sector, together with the possibility of further derogations from limits by collective agreement.
- Limit successive contracts: persons employed for at least 24 months over two and a half years were to be considered as having a permanent contract.
- Increase in the minimum severance payment that employers must provide employees at the end of their fixed-term contracts. Previously, it was eight days’ wages per year worked. The idea was to keep it at that level until the end of 2011, but then from 2012 to 2015 to increase it gradually to 12 days (9 days for 2012, 10 days for 2013, 11 for 2014 and 12 days for 2015).
- Redefine fair dismissal, with 20 days’ compensation per year: the Workers Act was to be amended to include the possibility of invoking ‘economic losses, not only cyclical ones’, which would have to be documented to allow for appeals under the fair dismissal procedure, compensated on the basis of 20 days per year instead of 45 days for unfair dismissal.
- More flexible use of the recruitment incentive contract: the contract, which comes with a right to 33 days’ compensation per year of service in the case of unfair dismissal (instead of 45 days for ordinary contracts) used to be reserved for a few groups. The idea was to apply it to all precarious contracts turned into permanent contracts by 31 December 2011. The Social Guarantee Fund (*Fogasa*) would pay for 8 days’ compensation in addition to the 33 days the company pays to employees laid off to compensate the latter’s loss of income.
- Creation of a new ‘redundancy fund: within one year, a new capitalisation fund, based on the Austrian system, would be established to pay for redundancies. If employees do not use it in the course of their working lives, they can receive payment when they retire. The fund was supposed to come into being in 2012 in relation to contracts signed from that date onwards.

Measures to *encourage collectively-agreed internal flexibility* and *working time cuts*:

- Improving internal flexibility and using ‘unhooking’ clauses: businesses will be freer to amend employees’ working conditions in terms of hours, working time and functional and geographical mobility. In case of disagreement, there will be an arbitration system without resort to legal proceedings.
- Short-time working schemes: previously, unemployment benefit coverage applied only if working hours were reduced by at least one-third. Now, employers may cut working hours by 10–70 per cent. Employees will receive proportional unemployment compensation. Businesses will receive bonuses of 50–80 per cent if they undertake to provide training to the employees affected. Short-time working benefits will be based on hours off and not days off work.

Measures to encourage the *employment of young people and jobseekers*:

- New measures to support training were established with new training contracts for people under 25 years of age and incentives to reintegrate jobseekers include lower social contributions for employers.

Measures to improve the intermediation and functioning of *temporary work agencies*:

- The legal framework for the operation of placement and temporary work agencies was to be reviewed. Private employment agencies are also able to become recruitment agencies and permitted to operate in sectors formerly closed to them, such as construction and public administration. Following the parliamentary debate, the use of temporary work in the public sector was to be disallowed from 1 April 2011.

2. Labour law reforms in 2011

On 15 September 2011, Parliament confirmed a new labour market reform measure. Act 35/2010 (published in the Official Journal on 18 September 2010) had already been passed by the Council of Ministers in August 2011 and contained a series of measures, including some to encourage youth employment. It also suspended the provision of the Workers Act that restricts the use of consecutive temporary contracts.

The decree also created a *new training and apprenticeship contract for unskilled young people* aged 25–30, with the possibility of increasing the age limit to 34, depending on the duration of training undertaken. The aim of this new contract was to help people get back into the labour market, while giving them access to training. It should last for a minimum of one year and a maximum of two and could be extended for another 12 months, depending on the type of training. Working time as determined in the contract represents 75 per cent of habitual working time in the company. The remaining 25 per cent should be dedicated to training activities at a specialised centre. Employers may be completely exempted from social security contributions for the whole period of the contract; companies with 250 employees or more are exempted only up to 75 per cent. Furthermore, in order to stimulate the conversion of this contract into an open-ended contract, employers may benefit from a reduction in social security contributions up to a total of 1,500 euros per year for a maximum of three years (1,800 euros in the case of women). The workers should be covered by social protection, including unemployment benefits and a wage guarantee fund.

Apart from that, the decree also provided for a *suspension of the limit on successive temporary contracts* until 2014. The limit is aimed at combating the use of successive temporary contracts by turning the employment of all precarious workers (fixed-term, temporary and so on) working in the same job for 24 months (over a 30-month period) with two or more contracts into a permanent contract. Besides this targeted temporary measure to mitigate the employment effects of the crisis, the decree also:

- extended the maximum length of successive fixed-term contracts to three years, but with the possibility of exceeding it by an additional 12 months by industry collective agreement and by increasing the minimum severance payment that employers must give employees – but not apprentices, trainees and substitutes – at the end of their fixed-term contracts from a minimum of eight days' wages per year worked in 2010 up to 12 days by 2015;
- extended the use of so-called 'development contracts', a new type of employment contract with fewer rights;
- extended the period during which an employer may transform a temporary contract into an 'open-ended contract to promote employment', a contract form that is more advantageous for the employer who, on the termination of employment, only has to pay compensation of 33 days per year of service instead of the 45 days applying in the case of 'normal' open-ended contracts.

Another innovation in the decree is a *new definition of reasons for dismissal*. For both collective and individual procedures, the employer need show only the *reasonableness* of the connection between an organisational, productive or technological change and improving the company's situation. This notion of reasonableness did not previously exist and should

encourage employers to resort to justified dismissals (20 days compensation per year worked) instead of automatically choosing unjustified dismissal, which gives rise to compensation of 45 days' wages per year worked. However, the precise interpretation of the new legal text rests with the judiciary (for individual redundancies) and with the labour administrations, which must authorise or reject collective dismissals if there is no collective agreement. Furthermore, this new law introduces 15 days' notice (instead of 30 days) in the case of individual dismissals. Also from now on, non-compliance with the redundancy procedure will not render the employer's decision void and therefore the employee will not be entitled to reinstatement but only to a severance payment in the amount established for unfair dismissals.

As for changes to the industrial relations system, on 10 June 2011 the Council of Ministers approved a royal decree reforming the framework of collective bargaining (Royal Decree Law 7/2011). It was published on 11 June in the Official Gazette and entered into force on 12 June. The text facilitates internal flexibility for businesses and introduces mediation to resolve conflicts, but the main change is that it gives precedence to company collective agreements over provincial collective agreements. Company agreements may provide for less advantageous terms on, for example, pay, working time, organisation of leave, job categories, recruitment and work-life reconciliation. Such precedence shall apply unless a national, sectoral or regional agreement states otherwise. This is a substantial change in the hierarchy of collective bargaining, as currently provincial agreements cover about 70 per cent of businesses.

Following a landslide victory in the election of 20 November 2011, Mariano Rajoy, the new Spanish Prime Minister of the conservative *Partido Popular* (PP), presented the social partners with a roadmap for the coming labour market reform. Key topics of reform were the role of collective bargaining, recruitment modalities, absenteeism, out-of-court dispute resolution and training. The social partners were asked to deliver a negotiated text on these issues by 6 January 2012. On that day, the social partners informed the government that agreement had been reached on only some issues. The deadline was then extended to 13 January.

3. Labour law reforms in 2012–2013

On 25 January 2012, the social partners – notably, the most representative organisations, CCOO and UGT for the trade union side and CEOE and CEPYME for the employers' side – signed the Agreement for Employment and Collective Bargaining 2012–2014 (*II Acuerdo para el empleo y la negociación colectiva 2012–2014*) on wage moderation and internal flexibility in businesses. They also agreed on adapting collective bargaining structures and the conditions under which ailing businesses can derogate from the conditions laid down in sectoral or regional agreements. The agreement distinguished between ordinary internal flexibility and temporary extraordinary flexibility.

As for *ordinary internal flexibility measures*, and in particular regarding *working time*, the agreement foresees, for example, that collective agreements should make it easier for employers to do as they see fit with 10 per cent (as opposed to 5 per cent under current regulations) of annual working time and divide it – irregularly – in accordance with production or organisational needs. Collective agreements should allow for the introduction of a pool of five days or 40 hours a year for this purpose, depending on employers' needs, over the annual schedule. As for *extraordinary temporary flexibility*, the text foresees that, should it be justified by economic, technical or organisational reasons, employees may be asked to perform different tasks or roles from those listed for their occupational group, provided that these measures do not exceed six months over one year or eight months over two years. To extend this period, employers need to sign a preliminary agreement with employee representatives.

The agreement also contains 'temporary maladjustment clauses' – which essentially provide opt-out clauses – in particular in relation to pay or the division of working time, team shifts, remuneration, work and profit systems. Sectoral agreements have to determine the conditions and situations in which businesses may opt out of what was agreed. The basis will have to be 'objective parameters', such as a fall in results, sales or productivity over the past financial year or the past 12 months. The conditions for such an opt-out must be negotiated with

employee representatives. In case of disagreement, the parties involved may turn to an arbitration committee.

Finally, the agreement reasserts that sectoral and regional agreements take precedence, while pointing out that they should encourage the decentralisation of negotiations and that sectoral agreements must facilitate company bargaining in terms of working time, functional mobility and pay.

Following this agreement, the same Spanish social partner organisations signed another agreement on 7 February 2012 reviewing the *public mediation and arbitration system (SIMA) for collective disputes*. Firstly, this agreement legitimised appeals to alternative dispute settlement in cases of disagreement arising within the framework of consultation with employee representatives with regard to the application, in the company, of the opt-out clause (that is, when employers, for economic reasons, wish to opt out of wage increases provided for in a collective agreement at a higher level), or when negotiating a company agreement derogating from provisions agreed at a higher level. Secondly, to help boost sectoral bargaining, the agreement also provided that the parties to a sectoral agreement could, in turn, provide for mandatory appeal to arbitration when negotiations on the renewal of an agreement were deadlocked. Furthermore, the agreement advanced recommendations for extending the responsibilities of so-called bipartite committees on collective agreements (or *comisiones paritarias*). These committees would now also have to determine, in addition to the modalities for settling disputes that may arise from their application or interpretation, the modalities for settling disagreements during consultations on substantial changes to working conditions or opt-out clauses.

Only three days later, on 10 February 2012, the government adopted *Law 3/2012, profoundly reforming the labour market* for the third time in three years. The reform was published in the Official Journal on 11 February and came into force on 13 February, although Parliament has to pass it for it to become permanent. Key points of the reform are as follows:

- *Compensation for unfair dismissal* is reduced from 45 days' wages for every year worked (up to a ceiling of 42 monthly wages) to 33 days per year of service (with a ceiling of 24 months' wages).
- *Simpler modalities for economic redundancies*, compensated at 20 days per year. Businesses may resort to economic redundancies when they experience economic deterioration, such as actual or foreseen losses, or when invoicing or sales levels fall constantly for three quarters in a row. The objective is to make redundancies safer, in legal terms, in order to reverse the trend of employers directly applying unfair dismissals (*despido improcedente*), which are more costly – they are compensated at 45 days per year spent at the company – but faster, and thus spare them lengthy legal proceedings which may not turn out in their favour.
- *Opening up the possibility of mass redundancies in public organisations*. Businesses and organisations in the public sector may instigate staff cuts for economic, technical, organisational or production reasons. This was not previously provided for by law. This measure is supposed to make it easier to resize administrations to adjust them to budget reviews.
- *Removal of authorisation for administrative layoffs*. Permission from national, regional or local public authorities – depending on the size of the business – is no longer necessary to launch an *expediente de regulación de empleo (ERE)*, a collective redundancy programme. It should be noted that in Spain collective redundancies are defined as dismissals for economic, technical, organisational or production reasons affecting 10 employees in undertakings of up to 100 employees, or 10 per cent of the employees in undertakings with between 100 and 300 employees, or at least 30 employees in undertakings employing more than 300 employees. In practice, this means that unions will have less room for manoeuvre to negotiate proper leaving conditions.
- As regards *working time flexibility*, three new measures have been introduced:
 - (i) The new reform removes a rule that has been in force for about 15 years prohibiting standard overtime in part-time employment. In addition to what Spanish law calls *horas complementarias* (specific overtime for part-timers, subject to some formal requirements and numerical limitations: this specific form of overtime continues to be lawful), part-timers can now work standard overtime

- (*horas extraordinarias*) like any other employee. The annual limit of 80 hours must be applied for part-time employment on a pro rata basis (the limit does not apply if overtime is compensated with time-off within the subsequent four months).
- (ii) Flexible allocation of working hours over the year: after the 2010 labour reform employers could freely allocate up to 5 per cent of annual working hours over the year unless otherwise agreed in the applicable collective agreement. This rule has now been clarified: it can also be applied prior to negotiations on a new collective agreement.
 - (iii) The law no longer requires that employers obtain permission from the labour authority to temporarily reduce working hours or to institute temporary layoffs. Firms may implement temporary layoffs and temporarily reduce between 10 and 70 per cent of employees' working hours after following the legal procedure of collective consultation with employee representatives.
- *Unlimited successive temporary contracts are prohibited.* The reform restores the ban on successive layoffs for 24 months, which the previous government temporarily suspended on 26 August 2012. The ban came into force on 31 December 2012.
 - Companies with fewer than 50 employees (99 per cent of all companies) may introduce a *new employment contract*, the so-called 'employment contracts in support of entrepreneurs' (*contrato de apoyo a emprendedores* (CAE)). It is open-ended with a trial period of one year but with unrestricted dismissal possibilities and compensation during the first year.
 - *Apprenticeship contracts.* Furthermore, the reform provides that the apprenticeship contract, reserved for people below 25 years of age, will be extended to people under 30 until the unemployment rate falls below 15 per cent. The new contract encourages businesses with fewer than 50 employees and self-employed workers to recruit, as well as granting a deduction from social security contributions of 3,000 euros for the recruitment of a first employee under 30 years of age. Deductions can go up to 3,600 euros if a company recruits someone who has been without a job for at least three months, up to 4,200 euros for long-term jobseekers over 45 years of age and even 4,500 euros for women. There will be a one-year trial period for this contract, during which the employee may keep 25 per cent of their unemployment benefits and employers only have to pay 50 per cent of their social security contributions.
 - *Training account throughout working life.* All employees with at least one year of service must receive 20 hours' annual paid leave for work-related training. This leave can be accumulated over three years. The employer must also provide employees with training to enable them to adapt if their jobs are altered, for example due to technological change.
 - *The extension of expired collective agreements is limited to two years.* The reform puts an end to indefinite '*ultraactividad*', the automatic extension of collective agreements until the next collective agreement is signed, as used to be the case. This will force the social partners to speed up negotiations and sign agreements.
 - *Company agreements take precedence over higher level collective agreements.* The reform gives precedence to agreements signed directly in the workplace to facilitate internal flexibility in businesses with regard to working time organisation, working hours, pay, internal mobility or productivity systems, among other things. The 2011 reform allowed sectoral agreements to reverse this by simply stating that company-level agreements would not prevail; the 2012 reform eliminates this option and company-level agreements will now prevail over sectoral ones. The Decree also provides that businesses reporting losses for more than two quarters may resort to the opt-out clause to derogate from the conditions laid down in territorial or sectoral collective agreements.
 - In disputes on the application or modification of collective agreements, when the parties are unable to resolve matters themselves or by voluntary bilateral submission to *binding arbitration*, the law now imposes binding arbitration on the parties by a tripartite body within the Ministry of Employment (*Comision Consultativa Nacional de Convenios Colectivos*).

The trade unions immediately rejected these labour reform measures and called for protest demonstrations across the country. The employers' side, by contrast, welcomed them as a 'step forward' in the modernisation of labour law. Meanwhile the unions sought legal advice on lodging an appeal against the Decree as unconstitutional and perhaps lodging a complaint with the ILO for violating ILO Convention No. 98 on the right of association and collective bargaining. Despite two general strikes – on 29 March and 29 May 2012 – the comprehensive labour law reform named 'Emergency Act for the Reform of the Labour Market' was adopted on 28 May 2012 without any major changes to the initial text presented by the government (while the reform was already in force by royal decree, published on 12 February 2012 before the parliamentary process had begun). It was finally validated by the entry into force of Law 3/2012 of 6 July, significantly modifying several basic labour institutions, such as collective negotiation, collective dismissals and internal restructuring measures.

Compared with the initial draft, there were few changes:

- In the case of *mass redundancies in the public administration*, employees who are not civil servants recruited after an entrance exam will get better protection than civil servants with a contract. Regional nationalist elected officials pushed for this, to defend employees recruited after an exam by the regions, yet without having civil servant status.
- The *automatic extension of expired collective agreements* is limited to one year, instead of two in the initial text.
- The *new employment contract* adopted in support of SMEs and self-employed workers (CAE) and specifying a one-year trial period is limited. It was criticised because it paved the way for discretionary dismissals without pay. These contracts will be valid only as long as the country's unemployment rate is higher than 15 per cent.
- SMEs *hiring people over 45 years of age* with a permanent contract will receive bonuses.
- *Access conditions to economic redundancies* have been clarified: businesses will have to prove that sales have been declining for three quarters compared with the same three quarters of the previous fiscal year. This amendment was added so that seasonal factors could not be used against employees.
- Family members of a *self-employed worker* may register with social security with a 50 per cent cut in contributions for 18 months while sorting out the situation of small family businesses, notably in trade and catering.

As a consequence of this extensive reform, certain public agents of the labour market, mainly trade unions and some judges in the labour courts, have been applying the modifications introduced by the labour law reform restrictively. There was a certain reluctance on the part of such actors to apply said law literally due to its deregulatory impact. Concerns were heightened among union activists and academics about the impact of this major 2012 labour law reform that added to the reforms already undertaken in 2010, regarding its impact on – or rather 'trivialisation' of – collective bargaining and specifically in terms of reducing or even eliminating collective action on the part of trade union organisations.¹ This was complemented by Royal Decree-Law 20/2012, of 13 July, which among other things authorised public administrations to suspend and/or modify the agreed standards when there was a substantial alteration in economic circumstances (Article 7). Another reason for such restrictive application was the opening of a judicial procedure before the Spanish Constitutional Court (No. 5610-2012) regarding the constitutionality of certain sections of Law 3/2012 of 6 July. The Court handed down its ruling on 22 January 2015 largely validating the constitutionality of the contested sections of the labour reform.

It is noteworthy that the reforms of the labour market in Spain increasingly coincided with the elaborate Country-Specific Recommendations (CSR) of the European Commission and the Council of the EU.² In July 2011, the Council recommended additional measures to the Spanish government in order to continue with the reform recently undertaken. These measures in particular are supposed to increase firms' flexibility to internally adapt working

¹ Baylos et al. (2014), at 30.

² See the European Commission's recommendations and consolidated versions for the years 2011–2015, at http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm; for an overview see Clauwaert (2015), at 78–81.

conditions to the economic situation and to complete the legal changes regarding the collective bargaining system with a focus on correcting the system of wage indexation and enhancing the priority of firm-level conditions.³

4. Labour law reforms in 2013–2015

Importantly, from July 2012 until December 2013 Spain was subject to an EU financial stability support package. However, this was different from the financial aid packages granted to other Member States that found themselves in severe financial difficulties (for example, Greece or Portugal). The Spanish support package was intended exclusively for the country's troubled banking sector, which found itself in great distress due to the consequences of an enormous housing bubble.⁴ Financial aid was provided through the European Stability Mechanism (ESM) and supervised by the European Commission. Given that its main aim was to stabilise the banking sector, the conditionality measures under the Memorandum of Understanding of July 2012 that underpinned the aid package targeted mainly financial sector policy. The Memorandum made only brief reference to labour market reforms in relation to the CSRs under the European Semester. As part of broader structural reforms these were required to reduce Spain's excessive budget deficit and, particularly, its macroeconomic imbalances.⁵ In these two years (2012 and 2013), based on acknowledgment of the 2012 labour law reform, the EU recommendations for Spain under the European Semester focused mainly on the evaluation of the latter and proposing measures to increase employment.

In 2014 and 2015, then, new attention was directed in the CSRs to the need for real wage development consistent with job creation and the alignment of wages with productivity developments. Meanwhile, the CSR 2014 additionally raised concerns about labour market segmentation in Spain. The Commission and the Council therefore recommended new measures 'to favour sustainable, quality jobs, including through reducing the number of contract types and ensuring a balanced access to severance rights'.⁶ Furthermore, the improvement of employment opportunities for the young and tackling youth unemployment, including measures to reduce early school leaving, have received consistent attention in the CSRs since 2011.

In fact, the referring court in the *Poclava* case before the European Court of Justice (ECJ) clearly saw a connection with the reduction of dismissal protection effected by the new contract for entrepreneurs and introduced by Law 3/2012, tracing the adoption of the latter back to 'decisions and recommendations of the European Union', including the recommendations under the European Semester.⁷ The ECJ, however, did not accept this line of reasoning and notion of causality and concluded that the case was outside its jurisdiction.

Against this background, the following provides an overview of reforms adopted by the Spanish legislator over the past two to three years, organised according to issue-areas.

Public employment

As in previous years, Spain's State Budget for 2015 (Law 36/2014 of 25 December) established the basic criteria for the remuneration of *public employees* (civil servants and workers with an employment contract) and for the recruitment of temporary staff during 2015. It also regulated social security contributions for 2015 and unemployment benefits, continuing to set higher contributions for temporary contracts with the aim of promoting permanent contracts. The 'payroll' of the workforce in the public sector did not increase during 2015. Due to a slight

³ Council Recommendation of 12 July 2011 on the National Reform Programme 2011 of Spain and delivering a Council opinion on the updated Stability Programme of Spain, 2011–2014 (2011/C 212/01).

⁴ This bubble had been responsible for much of Spain's employment growth before the crisis and then for a substantial part of job losses in the construction sector following the bursting of the bubble. Suárez Corujo (2013), at 2.

⁵ Memorandum of Understanding between the European Commission and Spain, SEC (2012), July 2012, available at: http://ec.europa.eu/economy_finance/eu_borrower/mou/spain-mou_en.pdf (accessed 18 January 2016).

⁶ Council Recommendation of 8 July 2014 on the National Reform Programme 2014 of Spain and delivering a Council opinion on the Stability Programme of Spain, 2014 (2014/C 247/08).

⁷ Case C-117/14 *Nisttahuz Poclava* [2015] ECLI:EU:C:2015:60, at para 20–26.

improvement of the economic situation, the Budget Law for 2016 (Act 48/2015, of 29 October) instead included the recovery by public employees of the Christmas bonus, which was suppressed in 2012 in the context of a dramatic reduction of public spending.⁸ It also addressed the creation of ‘pregnancy leave’ in favour of female workers in public administration.⁹ However, the extension of paternity leave to 30 days (from the current 13) was postponed again to 1 January 2017.

In view of such modifications in public employment, the Basic Statute of the Public Employee (first adopted in 2007) was updated by Royal Legislative Decree 5/2015, 30 October. It applies primarily to civil servants, but also (sometimes directly, sometimes as suppletive rules) to workers with an employment contract, along with the Labour Code. The 2015 amendment was intended to consolidate the legal text through systematisation and updating in line with the provisions that have been adopted in public employment. It regulates, among other things, access procedures for workers in public administration, the basic rights and duties, the system of promotion, salary structure, the disciplinary system, types of representation, the right of assembly and collective bargaining.

Simultaneously, there was also an *update of the Spanish Labour Code* (first adopted in 1980) by Royal Legislative Decree 2/2015, 23 October. Following a first revision in 1995, the Code’s third version is now effective. However, the consolidated text does not introduce new content. A few formal or systematic changes have been made, with the main aim of updating and modernising the text in line with Spanish realities. It addresses three groups of topics: employment contracts, worker representation in the company (with the addition of the right of assembly) and collective bargaining.

Workers representation and collective labour rights

This Ministerial Order (HAP/535/2015, of 19 February 2015) on the *representation of workers* regulates the registration of bodies of worker participation in the General State Administration. With the aim of providing greater security, certainty and control in this area, the creation of these bodies was mandated by Royal Decree Law 20/2012, of 13 July. This registration required the annotation of certain acts that affect the formation and operation of unitary representations, union representatives or other possible representations of public employees (such as health and safety committees at work), both employees and civil servants.¹⁰

On 30 March 2015, two acts were adopted that affect *collective labour rights*. On one hand, Organic Law 4/2015 seeks to protect the free exercise of rights and civil liberties while ensuring the normal functioning of institutions and the provision of basic services to citizens. It replaces a previous regulation of 1992. It amends powers of control and registration of security forces regarding meetings and rallies in public places, while enabling public authorities to impose penalties in cases provided by law. The law determines that its provisions shall be interpreted in the most favourable way for the full realisation of fundamental rights and public freedoms, and in particular the rights of assembly and demonstration, the freedom of expression and information, the freedom of association and the right to strike. On the other hand, Organic Law 1/2015 modifies the Criminal Code. It amends the criminal actions related to work to adjust them to the new social reality (for

⁸ In a similar vein, Royal Decree Law 10/2015 of 11 September 2015 on public employees already expanded the number of days of paid leave for private matters (six per year or more, depending on the age of the employee or civil servant) and the time of annual leave depending on age (26 working days for 30 years of service).

⁹ It should be remarked also that for private sector-employees, the Spanish Constitutional Court limited the scope of pregnant women’s protection against layoff contained in the Labour Code (decision 173/2013 of 10 October 2013). It determined that “pregnancy, even when the company is not aware of it, will be grounds for nullity in case of layoffs only, not for the termination of the contract during the trial period”.

¹⁰ The registry is to include the following records: the results of the elections to the unitary representatives, the acts of creation of union branches, the credit hours available to the representatives, the acts of dispensation to work to exercise functions of representation, the acts for the constitution of tables of collective bargaining agreements, or the acts that recognise additional rights to representatives of public employees.

example, trafficking of human beings for labour, slavery, servitude, begging or sexual exploitation). In addition, both of the following forms of coercion are considered a criminal action: acts of coercion to prevent or limit the freedom of association and the right to strike, and acts of coercion to compel others to initiate or continue a strike. Among the latter provisions there is one (Article 315.3 of the Criminal Code) known to date back to the days of the Franco dictatorship, when it was used to suppress strikes. However, it is not only the amending law of spring 2015 that has revived the relevance of that provision. Union movements are very concerned about the fact that in recent years several hundred Spanish unionists have faced criminal and administrative procedures.¹¹ In January 2016, for instance, eight union representatives of Airbus were still subject to prolonged legal proceedings for their participation in picket lines during the last general strike in Spain in 2010.¹²

Furthermore, while Spanish legislation fully recognises the *freedom of establishment of trade unions and business associations* (Organic Law 11/1985 for unions and Law 19/1977 for business organisations), it is linked to formal requirements. These have been updated by Royal Decree 416/2015, of 29 May 2015. In both cases trade unions and employers' organisations must follow certain administrative procedures to acquire legal personality and the capacity to act. The most important is the deposition of the statutes of the organisation in a public office, whereby the law prescribes a minimum content for the statutes. The process is preferably conducted through electronic means.

The amount of the *minimum wage* remained frozen between 2012 and 2014 (EUR 21.51 per day and EUR 645.30 per month) before being increased by 0.5 per cent for 2015 (EUR 21.62 per day and EUR 648.60 per month). The amounts for 2016 will see another increase (EUR 21.84 per day and EUR 655.20 per month).

Young people at work

In order to *reduce early school leaving* (one in three Spanish young people aged 14–25 leave secondary school without a leaving certificate, in comparison with the European average of one in five) and youth unemployment (51.1 per cent in 2012), Royal Decree No. 1529/2012 was passed on 9 November 2012 to *introduce an apprenticeship system* in Spain. In Spain the social partners are involved in the National General Council of Vocational Training and the Advisory Committee for Vocational Training. The trade unions reported that the crisis has altered the conditions under which apprenticeships are implemented: in Spain, difficult labour market prospects have pushed young people to stay longer in education.¹³

Royal Decree Law 4/2013 of 22 February 2013 incorporated into Act 11/2013 measures to support entrepreneurship and to stimulate growth and job creation, especially for *young people*, in particular by a reduction of social security contributions. The first four of the following measures will last until unemployment falls back under 15 per cent.

- A *new ground for fixed-term contracts* makes it easier to get a first job for young people under 30 with no professional experience or 3–6 months (unless otherwise specified in the collective agreement), when working time amounts to a least 75 per cent of a full-time job. Businesses that decide to turn a fixed-term contract into a permanent one benefit from a EUR 500 cut (EUR 700 for women) in social contributions for three years.
- An *amended internship contract* facilitates, for young graduates under 30, the transition to a first job having to do with their field of study. Businesses see their social contributions cut in half.

¹¹ <http://www.uniglobalunion.org/news/help-keep-trade-unionists-out-spanish-prisons> and <https://www.etuc.org/documents/emergency-motion-fundamental-rights-spain> (accessed 14 December 2015).

¹² <http://www.eleconomista.es/economia/noticias/7269635/01/16/Concentracion-en-apoyo-a-los-8-de-Airbus-a-un-mes-del-juicio.html> (accessed 21 January 2016).

¹³ Steedman H. (2012) Overview of apprenticeship systems and issues – ILO contribution to the G20 Task Force on Employment. International Labour Office, Geneva: ILO, November 2012, available at: http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/genericdocument/wcms_190188.pdf (accessed 21 January 2016).

- *Temporary work agencies* may sign training and apprenticeship contracts with workers assigned in user companies.
- Businesses with fewer than nine employees and self-employed workers do not pay social contributions for a year if they permanently *recruit a young worker* under 30 for a (part-time or full-time) contract for at least 18 months.
- Employers see their *social contributions cut* for one year (or more if training continues) in the amount of 75 per cent (for businesses with 250 or more employees) or 100 per cent (for smaller businesses) if they *recruit part-time* (not exceeding 50 per cent of a full-time job) a young worker (under 30 years of age) in training, without a job, with no professional experience (or less than 3 months) or coming from another sector.
- *Young self-employed workers* under 30 years of age benefit from a suspension of their social contributions for the first year of the contract if they recruit long-term jobseekers over 45 years of age to add them to their projects.
- People under 30 years of age who start a *self-employed activity* have lower social contributions and may keep on receiving unemployment benefits for 9 months after they create their own part-time job.

Royal Decree Law 8/2014 of 4 July 2014 intends to offer, to all young people (under 25 years of age) who do not have a job and are not participating in training or education, opportunities that facilitate integration into systems of education and training (job, education, apprenticeship or traineeship). The programme provides reductions in employers' social security contributions.

Royal Decree Law 4/2015 of 22 March 2015 is designed to *reform the system of vocational training for employment*. It provides for four types of training activities: those developed by companies for their workers; those developed by public administrations for employed workers; those developed by public administrations for the unemployed and those available directly for workers who make use of training leave in their companies. The Decree provides reductions in social security contributions and even subsidies for companies organising training activities, as well as scholarships and grants for individuals participating. The parliamentary proceedings triggered by this decree resulted in Act 30/2015, of 9 September 2015. The law confirms the new rules for the Spanish system of 'training for employment', as it is virtually identical to the Royal Decree Law. The programming, management, coordination and control of vocational training are the responsibility of the public administration, with the participation of trade unions and business associations. The Act also provides for the creation of 'sectoral structures' through collective bargaining to assist in the programming and monitoring of training activities. A public foundation established by the competent authorities and the most representative trade union and employers' organisations act as partners and technical support to public employment services in this area. The Inspectorate of Labour and Social Security has established a special unit for the control, monitoring and evaluation of the reorganised system of vocational training for employment.

In a (retroactive) decision of 21 May 2013, the Supreme Court recognised the right for students, who do an *internship* within the framework of their university or vocational training in a public organisation or a private business and who are getting paid to be registered with the social security system. As a consequence, organisations or business that pays for the internships have to register them and pay a special contribution.

Older workers

Royal Decree Law 5/2013 adopted on 15 March 2013 contains measures that encourage older workers to remain in unemployment and thus reduce social security spending. This rule is in line with the recommendations and proposals of the European Union, particularly in the Europe 2010 Strategy and the 2012 White Paper on 'adequate, safe and sustainable pensions'. The Act is intended to bring retirement age up to 67 by 2027 (instead of 65 to date). It establishes the possibility of maintaining one's pension as a general rule, even if the beneficiary finds a job, provided they have reached the standard retirement age and have made sufficient contributions to be entitled to a full pension. On one hand, the government wants to limit access to early retirement (requiring 33 years of contributions, instead of 30) and part-time retirement (only possible two years before statutory retirement age, provided

33 years of contribution payments and at least six years in the company). On the other hand, the government wants to deter the layoff of people over 50 years of age by sanctioning layoff plans where they are disproportionately affected.

Atypical employment

As regards more *general employment measures*, Royal Decree Law 3/2014 of 28 February 2014 introduces a *special fixed contribution* for all recruitment by employers between 25 February and 31 December 2014 with a permanent, full-time (EUR 100 per month) or part-time (EUR 75 or EUR 50 per month) contract, provided that it significantly increases the employment rate in the company. This fixed rate, which applies to all employers regardless of company size or the age of the person recruited, implies a reduction by nearly 75 per cent of employers' social security contributions. In return, employers have to keep the employee for at least three years. To be entitled, businesses cannot have enforced unfair collective or individual layoffs within the six months before recruitment and need to be up to date regarding their tax obligations and social security contributions.

Royal Decree Law 17/2014 extends the programme to reduce employers' social security contributions to contracts concluded between 1 January 2015 and 31 March 2015. Based on previous decrees, by Act 25/2015 adopted in August 2015, the Spanish parliament maintained the exempted minimum amount in social security contributions for the purpose of promoting employment. It also maintained the Youth Guarantee for workers over 25 and under 30 (until the youth unemployment rate is below 20 per cent).

Royal Decree Law 1/2015 of 27 February 2015 is intended to *promote permanent employment*. It introduces a new programme of recruitment, ending on 31 August 2016, which involves a *reduction in social security contributions* (exemptions of a share of the wage earned) of EUR 500 for full-time contracts (proportional rule for part-time contracts).

According to the recommendations of the European Commission and the plans of the European Social Fund, Royal Decree 379/2015, of 14 May 2015, approves an aid programme for jobseekers legally residing in Spain and registered with the Spanish public employment services. The aid is intended to facilitate labour mobility and job search in the European area of free movement (for example, by covering travel and other expenses related to the recruitment process).

Given the multiple changes that the Spanish Employment Act has undergone since its first adoption in 2003, the law has recently been newly codified. The legislation deals with the general organisation of employment policy: objectives, the powers of the state and the autonomous communities, the instruments of planning, the organisation of public employment services, private placement agencies and vocational training. Royal Decree Law 3/2015, of 23 October 2015 aims to update and modernise the formal presentation according to the development of Spanish legislation. However, it does not imply any changes in content. Also, the Act is complemented by Law 30/2015, of 9 September.

Originally adopted in the early 1990s (Law 14/1994, of 1 June, and implemented by Royal Decree 4/1995 of 13 January), the Spanish law on *temporary employment agencies* has been amended several times (also to transpose the EU Directive 2008/104). Royal Decree Law 417/2015 of 29 May 2015 approves new regulation and replaces the previous one. The Decree regulates the administrative authorisation that temporary employment agencies must obtain for that activity and the registry in which authorisations and other data relating to temporary employment agencies should be incorporated. Regarding authorisation, two types exist in Spain: start and renewal. The authorisation is valid indefinitely if certain requirements are met (for example, organisational structure, staff and other resources, including a 'financial guarantee' for wage and social security debts), but may be lost for various reasons (inactivity, breaking the law and so on). For the registry, Royal Decree Law 417/2015 creates a 'central' database at the Ministry of Employment. Furthermore, it adds amendments concerning the following aspects: contracts on the provision of services between agencies and user companies; contracts of employment between agencies and workers 'on mission'; the situation of temporary workers in the user undertaking; and obligations of information between the companies involved and between these and the labour authorities.

Finally, it is noteworthy that the Spanish labour market reforms of recent years have also gone hand in hand with the strong promotion of entrepreneurship. One example in this regard is Act 31/2015, of 9 September 2015 on Self-employed workers. This amended the Self-Employed Workers Statute (approved by an Act of 2007) and contained a number of measures to improve the situation of self-employed persons and to facilitate the implementation of self-employment initiatives. The main measures concerned reductions in various social security contributions and the possibility for so-called 'economically dependent autonomous workers' to hire workers under certain conditions (for example, as replacements during maternity leave or to care for relatives).

Besides that, Act 44/2015, of 14 October adapted the provisions on employee-owned companies. These are corporations in which the majority of the capital belongs to the employees of that company (labour law applies to them). The law regulates a new type of company, called an 'investee company' (*sociedades participadas por los trabajadores*, Chapter III). Although more specific rules have not yet been elaborated, this new company is characterised by the participation of workers in profits and decision-making and the promotion of workers' access to capital. One of its characteristic features is also 'social responsibility' in the field of local development, equal opportunities for men and women, integration of socially excluded persons, job creation and reconciling work and family life.

On 20 December 2015, the Spanish tradition of *bipartidismo* came to an end, when Prime Minister Rajoy won the largest number of votes but lost his parliamentary majority.¹⁴ The ensuing political instability fostered concerns that further desired reform projects (including changing the way regions are financed, overhauling the social security system and further fixes for the job market) would have to be delayed until a new government was in place.¹⁵

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¹⁴ "Where did those million "lost" votes [of PSOE leader Sánchez] go? To the left, with Podemos, where pony-tailed Pablo Iglesias, a 37-year-old political scientist, took more than 20 per cent of the vote. And to the centre, with Ciudadanos, where baby-faced Albert Rivera, a 36-year-old Catalan lawyer, ended up in fourth place with nearly 14 per cent of the vote. [...] In Parliament, the sum of PP and Ciudadanos seats is 163 while PSOE and Podemos together hold 159", Romero A. (2015) Will a brave new Spain rise from the election stalemate? The Guardian, Opinion of 27 December 2015, available at:

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