

# Protecting occupational pensions and unemployment benefits in Spain: a weak Occupational Welfare system

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## Introduction

Until the 1980s, the Spanish state social security system was seen as the most important protection for workers vulnerable to social risks, while Occupational Welfare (OW) measures were considered irrelevant and marginal. But in the early 1980s, politicians started expressing doubts as to the sustainability of the social security system and OW measures began to play an increasingly important role in Spanish collective bargaining.

Despite its slight upward trend and the greater prominence it has gained over the decades, OW has become neither a strong pillar of social protection nor a priority item on the social partners' agenda. Only relative importance has been accorded to such issues as pension plans and funds, top-up payments for state sickness benefits and, in the context of collective redundancies, certain provisions for unemployment and retirement

In the context of the severe consequences of the Great Recession in Spain, the EU's Country-specific Recommendations pointed out the importance of promoting reforms to contain public expenditure. Since 2010, Spanish governments, both national and regional, have thus pushed through various reforms aimed at reducing the deficit, cutting social rights and thus altering the basic pillars of the Spanish welfare state.

The reforms adopted in the fields of health, education, pensions, long-term care and the labour market represent a significant change in state coverage of social risks. This weakening of the state pillar during the economic crisis has not however led to an upsurge in OW; quite the contrary, OW schemes have been partially used as a bargaining chip to limit redundancies and wage cuts, in a complex context of collective bargaining decentralisation and changes to labour laws. In this context, OW, already weak, has declined further and is still not a priority in the political or trade union debate. It could even be asserted that in Spain a 'dual retreat' is taking place, with cutbacks affecting both state and Occupational Welfare.

This chapter begins by describing the context of OW in Spain with reference to the Spanish welfare and industrial relations systems. It goes on to show the origin, main elements and importance of Spanish OW. Two sections focus on pensions and unemployment, presenting their significance, characteristics, evolution and the role of the state. The last section of the chapter offers concluding insights and considerations, summing up the main results of the research, collating information about the positions

of the social partners, and presenting certain factors to be taken into consideration in future scenarios.

## **1. Occupational Welfare in Spain: limited social protection**

Spanish OW is shaped by a blend of measures from different domains of social protection. The main Spanish laws recognise the role of private social protection over and above statutory social protection. The Constitution establishes that ‘the public authorities shall maintain a public social security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in case of unemployment. Supplementary assistance and benefits shall be optional’ (art.41). More specifically concerning the second pillar, the General Law on Social Security establishes that enterprises can voluntarily supplement welfare measures in two forms: direct top-ups of social security benefits or additional contributions to the public system<sup>1</sup>.

Spanish OW never developed as extensively as in other Continental-Northern European countries, remaining a background issue in Spanish collective agreements. While it has gained in prominence over the past few decades, it has never been a priority for the social partners.

Hand in hand with the insurance and banking sectors, enterprises have geared supplementary welfare towards financial products, thereby cutting their costs and promoting individual social protection as a third pillar supplementing and sometimes supplanting OW, and individual private health insurance and pension plans have witnessed a marked increase for over a decade.

### **1.1 Contextual information on the Spanish welfare state and industrial relations**

To understand OW in Spain we need to focus on the historical construction of Spanish welfare and labour relations, especially in comparison to other European countries. It is therefore important to provide some information on the specific features of the country’s welfare model, industrial relations system and economic context.

Most of the changes in the welfare state occurred in the mid-1970s, following the end of the Franco dictatorship in 1975. In the context of the international crisis in the 1970s, the state social security system was expected to be able to cover and provide social benefits to every citizen. At that time, OW measures were considered to be secondary and sometimes even controversial. From the early 1980s onwards, doubts

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1. Real Decreto Legislativo 8/2015, consolidated text of the General Law on Social Security.

about the sustainability of the social security system justified cuts in social benefits and OW measures began to gain in importance. One clear example was the adoption in 1987 of the law to regulate pension plans and funds<sup>2</sup> (Gala Durán 2007), which introduced incentives facilitating the development of pension plans

As with other 'late starters' in the European Union, Spain's welfare system is still developing. In terms of the models approach (Esping-Andersen 1990), several authors have theorized about a fourth distinctive model including Spain – the Mediterranean model. This model incorporates elements from Bismarckian and Beveridgean traditions and has reached an intermediate level of de-commodification, universal access and means-testing for social benefits and services (Ferrera 1995; Moreno 2001). As in other European countries, the Spanish social security system was established as the main public institution for social protection. It covers contributory services with a labour-based model of funding and coverage, topped up by non-contributory services based on universal access and funded by contributions from the state budget.

Over the last 35 years, social protection has thus developed through various instruments in the three pillars of social protection: statutory, occupational private and individual private. Table 1 summarises the main instruments.

Table 1 Social welfare pillars and protection systems

<b>1<sup>st</sup> pillar</b>	Statutory social security	<ul style="list-style-type: none"> <li>– Contributory benefits (unemployment, pensions, temporary disability, maternity)</li> <li>– Non-contributory means-tested benefits (unemployment, pensions, temporary disability, maternity)</li> <li>– Universal healthcare and social services</li> </ul>
<b>2<sup>nd</sup> pillar</b>	Occupational systems of voluntary and collective social welfare plans	<ul style="list-style-type: none"> <li>– Top-ups to sickness leave benefits</li> <li>– Company contributions to individual private health insurance or individual private pension plans</li> <li>– Top-ups to benefits for reconciling life and work</li> <li>– Top-ups to family protection benefits</li> <li>– Occupational pension systems: pension plans, company mutual social provisions, collective insurance schemes, company social welfare plans, in-house funds</li> <li>– Tripartite system of vocational training</li> <li>– Social plans and top-ups to unemployment protection, in the context of collective redundancies</li> </ul>
<b>3<sup>rd</sup> pillar</b>	Individual private welfare systems	<ul style="list-style-type: none"> <li>– Individual life, disability, disease insurance</li> <li>– Individual or associated pension plans, insured pension plans and investment funds</li> <li>– Individual health insurance</li> </ul>

Source: own elaboration.

2. Law 8/1987, on the Regulation of Pension Plans and Funds.

The collective bargaining system in Spain is conditioned by a prevalence of small and micro-size companies – more than 95% of companies have less than 10 workers. There is a long tradition of collective bargaining and collective agreements, most frequently at sectoral level (national and provincial). Workers' representation is in the hands of trade unions at sectoral level, of work councils in large companies and of union delegates in small companies. Collective agreements generally apply to all workers, whether affiliated or not –*erga omnes* – (Rocha 2014). Consequently, collective bargaining coverage is very high – 80% of workers –, despite union density being low – only 16.9% of workers are union members<sup>3</sup>.

Since the onset of the crisis in 2008 which greatly impacted Spanish welfare, the EU's Country-specific Recommendations have questioned the sustainability of the state welfare system. The recommendations have been oriented towards austerity and containing public expenditure. With regard to pensions, the Country-specific Recommendations have pointed to the need, against a background of increasing life expectancy, to increase the retirement age and/or reduce pension benefits. The recommendations have also encouraged market reforms, wage moderation and the decentralisation of collective bargaining. Following these recommendations, several legal changes were introduced in Spain, leading to a general drop in social protection, whether state-provided or private<sup>4</sup>.

## 1.2 Occupational Welfare, its uneven spread and key determinants

Spanish legislation differentiates between two main types of OW: 'complementary social protection', such as occupational, associated and individual pension plans and other mutual funds and collective insurance schemes for pensions, disability or death; and 'top-ups' for statutory social security benefits, for instance for sickness benefits. In addition, companies have also developed OW through other instruments, for example contributing to individual health and life insurance schemes or through vocational training programmes.

Spanish OW is thus made up of a range of protection measures with different levels of coverage and generosity, though generally speaking at a much less developed level than in other countries. Taking OECD data as a reference, Spanish figures for private social expenditure are much lower than average, although expenditure has increased in the last 20 years. Nevertheless, figures represent barely 1.9% of total social spending. In 2011, Spanish per capita expenditure<sup>5</sup> was 85.8% lower than that of OECD countries.

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3. Visser/AIAS database (2016).

4. It is worth mentioning that this evolution does not affect private health insurance – occupational and individual –, which has been increasing in recent years in line with the fall in state health funding.

5. At constant prices (reference year 2005) and constant Purchasing Power Parity (reference year 2005) in dollars.

Given the fact that OW measures are usually funded by employers, data on labour costs are a useful statistical source for studying the phenomenon, although some methodological limitations exist. Two data sources can be used: the Annual Survey of Labour Costs and the Quarterly Survey of Labour Costs.

Data from the Annual Survey of Labour costs shows that OW represents a low percentage of total labour costs (Table 2). In 2014, wages accounted for 73.75% of the cost of labour; compulsory contributions to the social security system amounted to 22.85%, while just 3.37% were additional costs. This distribution has not changed much over the last fifteen years, though the 2014 figure for complementary costs was the lowest ever<sup>6</sup>.

Table 2 Percentage distribution of labour costs 2001, 2005, 2010 and 2014

	2001	2005	2010	2014
Total labour cost	100	100	100	100
Wages	73.23	72.75	73.14	73.75
Compulsory contributions to S.S.	22.71	22.82	22.09	22.85
Other complementary costs	3.98	4.35	4.73	3.37

Source: Spanish Annual Survey of Labour Costs (INE 2016).

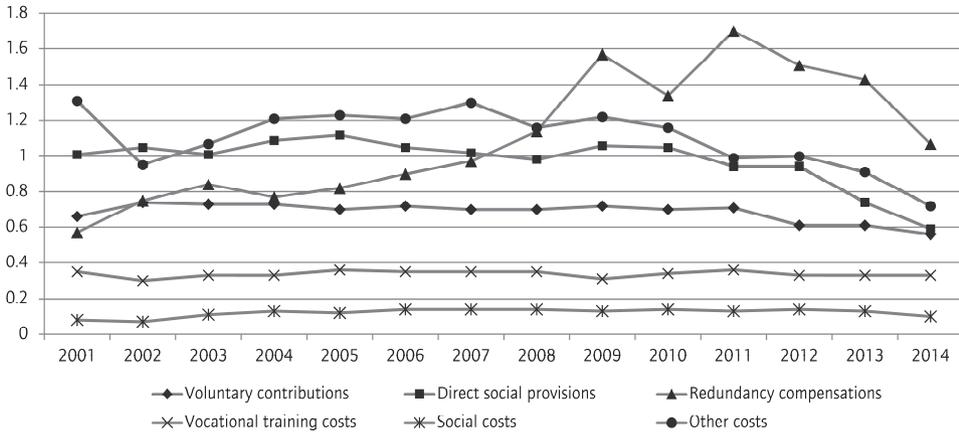
The definition of ‘Other complementary costs’ in this statistical source includes a mixed bag of items: a) voluntary contributions, including contributions to pension plans and funds – but not occupational funds –, health insurance, maternity benefits, accident insurance, other insurance plans and other contributions; b) direct social benefits paid to the worker or her/his family for *inter alia* temporary disability, unemployment, retirement, death, disability or handicap, family assistance, and medical assistance; c) expenditure on vocational training, such as the provision and maintenance of training facilities, the payment of external training staff, learning material, etc.; d) social costs, such as canteens, nurseries, sports and cultural facilities, etc.; e) redundancy pay and f) other costs.

Figure 1 shows past trends in the various elements of labour costs – excluding wages and compulsory social security contributions. No major changes have taken place in the last decade, though redundancy payments increased notably at the onset of the crisis in 2008, only to decline from 2011 onwards, possibly as a result of the new labour market legislation<sup>7</sup>. Finally, it should be stressed that there is a striking downward trend in direct social provisions, and a similar trend for voluntary contributions.

6. When addressing OW, it is important to note that this source does not differentiate between wages and wages in kind, which includes contributions to certain types of pension plans, *inter alia*.

7. The 2012 labour reform reduced compulsory compensation, while opening up the possibility of adjusting working conditions as an alternative to dismissals.

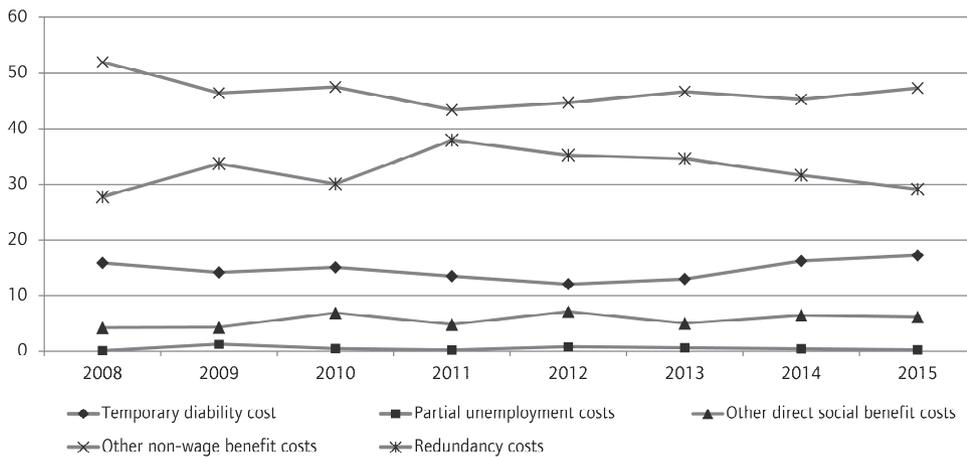
Figure 1 Labour cost elements – except wages and compulsory contributions to social security – as a % of total labour costs (2001-2014)



Source: Spanish Annual Survey of Labour Costs (INE 2016).

Using the second source, the *Quarterly Survey of Labour Costs*, allows us to look at ‘non-wage costs’. If we use this as a proxy indicator for company OW investment, then 2.9% of total labour costs in 2015 were non-wage costs (Figure 2). Representing nearly 50% of non-wage costs, the largest element of this item is ‘other non-wage benefit costs’, comprising payments to workers to offset work-related costs, and compensation for the termination of employment contracts. The second item in terms of importance is ‘redundancy costs’, accounting for up to 30% of these costs, followed by ‘supplements to state temporary disability benefits’, representing almost 20%.

Figure 2 Distribution of the labour cost components of non-wage costs 2008-2015 (Q2)



Source: Spanish Quarterly Survey of Labour Costs. INE (2015).

Less than 10% of non-wage costs are 'other direct social benefit costs', which include other supplements to state or private protection for retirement, death, medical assistance, etc.; and finally, 'partial unemployment costs', paid by an enterprise to workers affected by a temporary suspension of their contracts or short-time working, as a top-up to state unemployment benefit.

In sum, it could be asserted that OW generally plays a limited role in terms of the financial support given by enterprises to their employees. However, the importance of OW for employees varies in extent, coverage and generosity. Firstly, OW is more widespread in certain industries, with manufacturing displaying a higher percentage of supplementary costs than many other sectors: in percentage terms, voluntary contributions are almost double those in the construction and services sectors.

Even larger differences are observed in relation to company size (Secretaría Confederal 2015; Milla Molina 2006): the larger the company, the higher the percentage spent on OW. Companies with over 200 employees spend twice the average percentage of labour costs on voluntary contributions and on direct social costs, although these may amount to even less than 0.8% and 0.15% of labour costs. Collective agreements at company level frequently include provisions related to payments to top up state sickness benefits, occupational pension plans or private health insurance.

At the same time, it cannot be stated that access to OW in Spain is solely dependent on type of contract, occupational category or seniority. In fact, collective agreements do not restrict coverage to any group of employees. Top-ups to social security benefits, pension plans, health or life insurance, as well as reconciliation and training provisions, are supposed to apply to all employees within companies or sectors covered by an agreement. However, the experts interviewed and the relevant literature point to differences in terms of access, due, on the one hand, to certain specific limitations such as seniority, or to the ways in which provisions are implemented. On the other hand, measures exist outside collective agreements, geared towards certain groups of employees.

Several facets of the Spanish socio-economic system help explain why OW is less developed in Spain than in other countries. Firstly, the Spanish economy features a high proportion of SMEs and the economic system is based on activities geared to competitiveness through low costs and wages. This makes collective bargaining difficult and reduces the financial leeway for extra contributions.

Secondly, the relative strength of certain fields of the state social protection system, such as pensions and healthcare, makes private protection a non-priority target.

Thirdly, social partners' strategies do not reflect support for OW: although both employer organisations and trade unions have expressed a wish to promote certain forms of OW, such as occupational pensions, employer organisations do not want to be burdened with their financial costs, while trade unions prioritize proposals for sustaining and strengthening the current state protection system. Supplementary

benefits have never been considered, whether by employers or workers, as an important issue worth promoting (De la Puebla *et al.* 2006).

Finally, these attitudes of the social partners have hardened since the onset of the crisis. Employer organisations are pressing for cuts in labour costs through collective redundancies, reduced redundancy payments, greater flexibility in working conditions and wage cuts. Conversely, the main points on the trade unions' agenda are containing unemployment and fighting precariousness and declining wages; employers' OW contributions are considered a bargaining chip. In a context of crisis, employers are terminating social benefits, and employees themselves are in favour of this if it ensures that their wages are not cut.

Despite these positions, the main employer organisations and trade unions have signed the Third Agreement on Collective Bargaining 2015-2017 which recognises the value of Occupational Welfare and in which they have agreed to address its development.

To better understand how Occupational Welfare works in Spain, we need to analyse in detail two policy areas: pensions and unemployment.

## **2. Occupational pensions: a weak system with several schemes**

In Spain, occupational pensions are part of what is termed 'complementary social welfare'. This covers various instruments from the second and third pillars of social protection, concerning pensions, disability benefits and death.

The precursors of the current Spanish occupational pension system were employer commitments to provide for retirement, disability or death, traditionally enshrined in collective agreements. Legislation required that these commitments had to be outsourced to the current systems of pension plans or collective insurance schemes, with the aim of protecting employee entitlements in the event of business failure. Even now, some collective agreements contain provisions related to retirement, such as a mandatory retirement age or financial compensation for partial or early retirement, allowing companies to restructure their staff. These, together with loyalty or seniority awards, should have been converted into a pension plan or similar scheme, but labour inspectors still have a lot of work to do in this respect.

Several laws set out the main guidelines for this process and for the development of new instruments. The original law, 8/1987<sup>8</sup>, and its related regulations allowed companies to set up pension plans and funds, and developed a fiscal framework allowing corporation tax deductions. Throughout the 1990s, different laws introduced *inter alia* provisions to adapt pension commitments entered into by enterprises vis-a-

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8. Law 8/1987, on the Regulation of Pension Plans and Funds.

vis their employees, and reforms extending the tax breaks to personal taxable income. The law and regulations in 2002 and 2004 established differences between individual and occupational pension plans, considering the latter as a social welfare instrument linked to collective bargaining. In 2006 and 2007, the personal income tax law and other regulations reduced the limits on contributions for personal tax relief and the taxation of withdrawals.

Since the onset of the crisis, various changes to the fiscal treatment of occupational pension schemes have been introduced. In 2011, corporation tax deductions were abolished; in 2013, the reduction of social security contributions for companies setting up pension plans ended; and in 2014, restrictions were placed on personal tax relief on pension plan contributions.

## 2.1 Types of occupational pension schemes

There are various instruments providing occupational pensions: occupational pension plans, collective insurance schemes, mutual societies and company social welfare plans. The first two are the most important, and are rooted in old pension commitments covered by collective agreements. While sharing certain common features with regard to regulation and eligibility for tax relief, they nevertheless differ in some important elements.

An *occupational pension plan* is a scheme developed by an entity, corporation, company or enterprise and whose members are its employees. It can be developed by a single company or together with other enterprises and entities, contributions can be made by the company and/or by the employee and a choice can be made between a defined contribution (DC), a defined benefit (DB) or a combined system.

One of the plans' core features is their governance, exercised through a *monitoring committee*. Each plan needs to form a committee made up of employers, members and beneficiaries, in charge of monitoring and implementing it. The committee, together with the plan manager, is responsible for drawing up a declaration of principles determining the fund's investment policy.

A committee has three main characteristics. Firstly, owners (enterprises) and contributors (employees) should be represented on a 50-50 basis, unless otherwise collectively negotiated and agreed. Secondly, for DC pension plans, investment policy decisions need a majority vote of company representatives. Finally, for DB or combined DC/DB plans, decisions affecting the cost of benefits borne by the enterprise require a majority vote of company representatives.

It should be pointed out that the crisis, the resulting policies (wage cuts, weaker collective bargaining, greater entrepreneurial power, etc.) and the reduction of fiscal incentives have negatively affected such plans. The creation of new occupational pension plans was interrupted at the onset of the crisis, and contributions to some

already existing plans were even stopped. Interruptions of payments were experienced in the public administration and certain major nationalized banks. In some cases, plans were even terminated, eliminating existing rights.

In *collective insurance* schemes, the contracting party is the enterprise and contributions are made by the enterprise or its employees, with the latter and their heirs being the scheme's beneficiaries. Employees are not necessarily owners, there are no compulsory principles governing the pension plans – except for capitalization – and there is no monitoring committee managing the scheme. These factors make this an easy-to-implement tool for enterprises, although there is little access to fiscal incentives and bonuses.

Though there is no requirement for a monitoring committee, special agreements might institute such. It will then receive information from the insurance company, though without any commitment and regulation.<sup>9</sup>

Access for all is one of the core principles that employers are supposed to ensure when developing an occupational pension plan. In the case of collective insurance schemes, such access must be ensured for employers to enjoy corresponding benefits and tax relief.

However, it should be mentioned that the non-discrimination principle is not always applied in practice. For instance, occupational pension plans can have sub-plans, with different arrangements for contributions and benefits. Employees could participate in plans with different criteria established by collective bargaining or by a plan's specific features.

Under collective insurance schemes, non-discrimination is not necessarily guaranteed, since the enterprise can offer only certain workers the possibility of joining the scheme. Nevertheless, companies wanting to enjoy tax relief and benefits should comply with every core principle applying to occupational pension plans, i.e. non-discrimination (every employee is eligible to join the scheme), capitalization (financial tools for individual capitalization), irrevocability of contributions, attribution of rights, mandatory integration into a pension fund and the sacrosanct nature of vested rights.

As regards transferability, vested rights in an occupational pension plan cannot be transferred to other types of pension plan except in two cases: termination of the employment contract – insofar as this is taken into account by the plan – or a plan's termination. The financial right associated with a plan can only be transferred on the latter's termination. In the case of a collective insurance scheme, an employee would

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9. There are less common schemes available in Spain: a) company social welfare plans: a kind of collective insurance which has become one of the options for outsourcing previous collectively agreed pension commitments. In fact, this instrument was recently created as a way of using a collective insurance scheme, while satisfying the conditions for fiscal incentives; and b) mutual benefit societies: insurance entities with a company structure, monitored by members through an assembly.

only have access to the insurance on terminating his/her employment contract if he/she is a policyholder.

Once workers have reached retirement age, they receive their benefits in different forms. Benefits from an occupational pension plan can be paid as a lump sum, as temporary or lifelong income benefits, as a combination of these, or as different benefits without regular payments. Collective insurance benefits can similarly be paid as a lump sum or as regular income.

Until the cuts made by recent reforms, occupational pension plans had two main advantages over other collective insurance schemes. Firstly, there was a deferred tax system, under which contributions could be deducted from tax, while benefits were taxed. Contributions were considered as salary in kind and not as taxable income. Enterprises could reduce their tax burdens, while employees owned the resources in their accounts and were fiscally responsible for them.

Governments have promoted fiscal measures to boost top-ups to social security benefits receivable on retirement, following the path charted by the European Union. The several laws adopted to regulate occupational pensions and generate a fiscal framework provided fiscal incentives to both enterprises and workers. These have been amended, limited or extended throughout the last decade. In recent years, governments have approved several fiscal reforms reducing the incentives.

In sum, the mix of legislation on fiscal relief for both companies and employees, and on benefits related to social security contributions has been shifting over the years: (a) employer contributions to occupational pension schemes were deductible from corporation tax (until 2011); (b) exemptions from indirect taxes for companies with collective pension insurance schemes with the same contingencies as occupational pension schemes. The thresholds of these exemptions have been continually reduced since 2006; (c) contributions to occupational schemes were not considered as part of the contribution basis to the state social security system (until 2013); (d) contributions are considered as salary in kind and deducted from an employee's income tax (both individual and occupational pension plans or similar collective insurance); (e) lump sum payments were considered as salary and exempted at 40% (in 2007, a transitory regime began with a view to moving away from this system).

The role of fiscal policy in promoting the second and third pension pillar should not be underestimated, as noted by Muñoz de Bustillo (2010). In 2016, fiscal expenditure on incentives for private pensions is expected to account for 0.35% of GDP. Spanish fiscal policy promoting occupational pensions has been repeatedly considered regressive, partly due to the low participation of low-income contributors, and partly due to the specific design of the subsidies (Antón 2008).

## 2.2 The very uneven spread of occupational pensions

Table 3 shows the relative importance of each occupational pension system. Unfortunately, it is not possible to provide an accurate general coverage rate of occupational pension schemes, since there is no data on the number of insured employees but only on the number of accounts. Though not common for the second pillar, employees can have more than one account or insurance policy.

Table 3 **Participants or insured persons and beneficiaries of different types of pension schemes, 2013**

	Occupational pension plans	Collective insurance schemes	Mutual societies	Company social welfare plans
Participants/insured	2,139,292*	884,231**	294,856	38,938
Beneficiaries	79,607	335,626	40,767	378

\* Number of accounts. One person can have more than one account.

\*\* Only the number of insured persons with included pension rights.

Source: Own elaboration based on data from the Ministerio de Economía y Competitividad (2014a), and quarterly statistics on Pension Plans and Funds by INVERCO.

It is also important to note that participants may have stopped contributing, as is the case with the public administration (representing 27.5% of all beneficiaries of occupational pension plans). Taking all this into consideration, on the basis of data from the Ministry of Economy (Ministerio de Economía y Competitividad 2014), nearly 11% of the working age population contribute or have contributed to some kind of occupational pension system (Table 3).

As shown in Table 4, occupational pension plan assets amount to 3.4% of Spanish GDP. In 2014, € 1,100 million in contributions were received by these plans, with most of them coming from employers (80.8%), in a mixed DC/DB system (64% of contributions). There were 1,369 plans with 2,096,733 participants that year, representing 6.8% of the working age population.

The weakness of the Spanish occupational pension system has different causes. First of all, the average level of savings in occupational pension plans amounts to €16,860, highlighting the fact that this system is no real complement to state welfare. Moreover, there was a downward trend from 2001 to 2011 (though this has since been reversed), possibly related to the reduction in the number of participants.

Assets have risen in recent years, but they are distributed very unevenly. Most plans are small, with between 1 and 100 accounts and with very low contribution levels. In 2014, 77% of pension plans had annual contributions of below €300, a share which has increased considerably since 2007. It should be noted that the average annual salary in Spain is €22,790. This means that employees with occupational pension plans contribute on average less than 1.3% of their overall average salary.

Table 4 Main data on occupational pension plans, 2007, 2011, 2014

	2007	2011	2014
Overall assets (million of €)	31,826	31,689	35,353
Assets as a % of GDP	2.9	3.0	3.4
Number of plans	1,559	1,501	1,369
% Defined contribution	67.5	69.9	69.6
Total contributions (million of €)	1,836	1,640	1,100
% Employer contributions	77.1	87	80.8
% Defined contribution	45.3	41.3	35.37
Total benefits (million of €)		1,535	1,390
Participants	1,848,438	2,210,377	2,096,733
Participants as % of population 16-64	6.1	7.1	6.8
Average savings (€)	17,218	14,336	16,860
Beneficiaries		64,771	81,750
Beneficiaries as % of retired population (60 and more)		1.2	1.7

Source: Own elaboration from Ministerio de Economía y Competitividad (2011, 2012, 2014a, 2014b) and quarterly statistics on Pension Plans and Funds by INVERCO.

Though not easy to distinguish between the consequences of the crisis and the outcome of the reforms, the occupational pension scheme remains dormant (Secretaría Confederal 2016). Unemployment and wage restraint have been accompanied by various political initiatives, such as reducing tax breaks, bearing witness to the government's wish to bolster social security accounts by containing expenditure, together with shrinking state coverage. Law 22/2013 on the General State Budget established that the public sector should stop contributing to occupational pension plans and collective insurance schemes, including those covering pensions. Even before the onset of the crisis, the number of occupational pension plans had started to decline, dropping more than 12% between 2007 and 2014. This data is not necessarily significant, as plans can be merged for different reasons. More significant is the general reduction in the number of participants registered from 2010 onwards, though even more relevant is the decrease in the level of contributions. Between 2010 and 2014, the percentage of annual contributions below €300 increased by 10 points.

The 2014 complementary welfare report provides figures on occupational pension plans in different sectors. In this respect, it is striking that almost 50% of assets held in occupational pension plans belong to the sector 'Financial services – except insurances and pension funding', followed a long way behind by the 'IT sector' (9.5%) and the 'Electricity, gas, steam and air-conditioning supply' sector (5.9%). Interestingly, there has been a concentration of assets in the insurance sector in recent years, with an increase of around 13 points.

An analysis of collective agreements shows that, despite the non-discrimination principle and the option of creating a regime based on different contribution systems and even with different sub-plans, there may still be room for inequality. Although the

only legal requirement regards seniority (the criterion must not exceed 2 years), the same employer may end up paying different contributions for different employees. There may be diverse contribution systems or even sub-plans, while still respecting the provisions decided upon in collective agreements or similar provisions, and keeping to the plan. In fact, it seems relatively common to find collective agreements establishing dual treatment.

Table 5 presents the main data related to collective insurance schemes. A great number of companies have chosen this kind of scheme, though coverage, expressed in numbers of covered workers, is much lower than for occupational pension plans, pointing to small companies opting for the easier system of covering their employees: 91.6% of these insurance contracts cover companies with less than 25 employees. Premiums are also usually paid for by the employer, even more so than in the case of occupational pension plans. Additionally, in recent years, several collective insurance schemes have been created with a view to outsourcing the management of collective agreements as part of collective redundancy procedures, for example in relation to early retirement agreements.

Table 5 **Collective insurance schemes covering pensions, 2007, 2011, 2014**

	2007	2011	2014
Premiums (millions of €)	1,709	1,435	1,430
Paid by companies (%)	97.51	96.85	96.25
Number of enterprises	20,275	19,974	22,753
Number of insured persons	1,262,050	906,619	982,028
Beneficiaries	376,812	320,463	275,344
Income system (%)	94.70	96.53	95.53
Total benefits (million of €)	2,973	2,624	2,384

Source: Ministerio de Economía y Competitividad (2008, 2012, 2014a).

In 2014, 22,753 enterprises opted for this kind of retirement insurance instead of pension plans or other forms of outsourcing, reflecting a trend that has been rising since 2011. 982,028 workers were insured in 2014, almost 80,000 more than in 2011. However, the total amount of premiums seems to have suffered during the crisis, and 97% of premiums are still paid by the employers. There are 275,344 beneficiaries, most of them receiving benefits in a regular basis (95%).

In sum, the weakness of occupational pensions in Spain is clear from its spread and generosity. Moreover, it boosts the inequalities already present in the Spanish labour market. The presence of a segmented labour market and the significant differences in access to decent employment and wage conditions have major consequences reflected in key gender, age and nationality gaps, all of which have led to unequal access to OW in general and occupational pensions in particular. Access also depends very much on the sector and the size of the company worked for. Moreover, OW is experiencing a downward trend, the potential result of various factors. Labour and fiscal reforms are of crucial importance in this respect. While fiscal incentives for both contributions and

business taxes have been reduced, the labour reform has enabled employers to unilaterally change the most important working conditions, resulting in a general drop in wages. Moreover, in 2012, the public administration stopped contributing to such plans, severely impacting coverage and generosity.

### **3. Occupational unemployment protection: an unstructured, weak system**

In Spain, there is no formal and organised system of OW supplementing state unemployment protection. In fact, it is not easy to identify, among existing measures, any that follow OW logic.

However, we see different strategies for addressing unemployment through OW. Firstly, long-term unemployment is considered by the law as an ‘exceptional case of withdrawal’ from occupational pension funds, making it possible for employees who have lost their jobs to withdraw individual savings from the pension plan once statutory unemployment protection has expired. Regrettably, there is no data available on how occupational pensions are being used to protect the long-term unemployed. Secondly, certain measures supplementing statutory unemployment benefits can be found in collective restructuring agreements. These usually top up the legal minimum level of compensation for redundancy, but there are also several measures, called ‘social accompanying measures’, related to collective redundancies or short-time working schemes, to offset the effects on affected workers. The following focuses on the latter.

The minimum basis for such accompanying measures is established by law. State-provided bonuses have been introduced to get employers to negotiate measures to mitigate the consequences of collective redundancies. Legislation on collective redundancy schemes has changed considerably over the last 20 years, and especially since 2010, the year when austerity policies were introduced. There are three different schemes which can be implemented when an enterprise states the need for restructuring as a result of economic, technical, organisational or production problems: i.e. collective redundancies, the collective temporary suspension of contracts, and temporary short-time working schemes.

As recognised in the Labour Law transposing Directive 98/59/EC, collective redundancies, suspensions of contracts or short-time working schemes are tools available to enterprises for economic, technical, production or organisational reasons. They should be instituted in consultation with workers’ legal representatives. Changes have been made to the limits, content and role of the labour authorities in this regard in the different laws adopted since 1994. Subsequent reforms have adjusted conditions and made the process more flexible, reducing the content of social measures and ignoring the previous need to consider the real reasons for collective redundancies as a core subject of consultation. However, the most significant shift in the legislation on collective redundancies is the removal of the requirement to gain administrative approval when terminating or suspending contracts and/or reducing working time as a result of business circumstances – except for ‘major

causes'. This means that the measures are merely discussed with worker representatives during a consultation period. This period has been reduced to one month for enterprises with 50 or more employees, and to fifteen days in the case of smaller ones. Despite this, there is still a prevalence of collective agreements on redundancies and more than 85% of workers made redundant are subject to them.

Each collective redundancy instrument contains various possible social protection measures. While there is a lack of statistical information on the OW content of collective dismissal agreements, in 2012 the National Advisory Commission on Collective Agreements published an analysis of collective redundancy agreements for the years 2009, 2010 and 2011, from which the information in this section is taken.

The removal of the mandatory administrative authorization might lead to a reduction of collective agreements and their content. This is still to be assessed, but at the time of the analysis (2012) most collective redundancy agreements top up the statutory compensation level, set at 20 days of wages per year of work and with an upper limit of 12 months' wages (Escudero Rodriguez 2012).

*Extra forms of financial compensation exist.* Supplementary compensation, linear compensation, family-related compensation and vocational training compensation are formulations found in collective agreements, although these are expected to decline in importance, since they did not feature in the last labour reform of 2012.

In addition to financial compensation, several collective redundancy schemes have developed *early retirement programmes*. These often offer voluntary redundancy to employees over a certain age, with compensation above the statutory limit. In such situations, the enterprise guarantees an employee a monthly payment topping up unemployment benefit up to a certain percentage of previous wages, payable until the employee reaches the statutory retirement age or the age established by the particular agreement. Management of these programmes is frequently outsourced to a collective insurance scheme.

Another interesting idea is termed a *relief contract*, a measure coordinated with partial retirement programmes. A high percentage of a semi-retired employee's wages are paid by social security, and meanwhile a young worker is hired. Legislation has tightened the conditions for developing such schemes and they are expected to stop in 2018.

In the case of the collective *suspension of employment contracts*, social accompanying measures, encouraged by the law, can be developed. However, these social plans tend to have a very limited content, though some provide supplementary unemployment benefits compensating for the loss of income.

Although *short-time working schemes* existed previously in Spain, the first formal reference to them in labour legislation dates back to 2010. They were introduced as internal flexibility tools to maintain employment during crisis periods, allowing companies to avoid collective redundancies. Since 2010, their use has become much more frequent. Two parallel measures exist: the right of workers to receive partial state unemployment

benefit, and a system of bonuses to enterprises during periods of short-time working, which are higher when the social partners have reached a collective agreement.

An analysis of the sample of collective redundancy schemes in the years 2009, 2010 and 2011 allows us to draw some conclusions. In general terms, temporary short-time working schemes applied equally to all affected workers, although sometimes distinctions were made in relation to personal or working situations, such as pregnancy. Generally speaking, they implied a reduction of between 33% and 50% in working time and applied to a very high percentage of staff, and sometimes to all employees. Financial compensation is available under these short-time arrangements. Should the affected workers have no access to unemployment benefits, the enterprise can provide extra payments up to 90 or 95% of the net annual wages. Sometimes, this right is extended to top up unemployment benefit to 80% or 90% of gross daily wages or even 100% of net wages. There are also cases where a flat rate incentive is agreed for workers who cut back their working time, or linear financial compensation is agreed upon.

As there is no coverage data available for these occupational unemployment schemes, no evidence of unequal access exists. However, the segmented labour market must mean limited access for certain groups. Collective agreements are only present at company level and in large companies with sufficient union density, while most of the Spanish workforce is not employed by such companies. There is little information available on fiscal incentives for occupational unemployment benefits. As regards short-time working schemes aimed at reducing the number of collective redundancies, bonuses for enterprises for contributions to state systems were approved in 2009. In 2010, they were increased when a company agreed supplementary social measures to mitigate consequences for those affected. However, in 2012, they were again reduced.

In sum, although in the view of Spanish players there is no unemployment OW, certain unstructured measures are discernible when analysing collective redundancy agreements. The lack of statistical sources on the content, coverage and generosity of these agreements makes it difficult to accurately assess their importance. However, due to the characteristics of the Spanish labour market, it is difficult to envisage a properly developed system.

## Conclusions

This concluding section summarises the key elements of the current debate on OW in Spain, before looking at the main reasons for the persistent weakness of occupational schemes. It ends by highlighting the gloomy prospects for OW in the country.

Especially since the onset of the economic crisis and the subsequent austerity programmes, new challenges for social protection have led to a complex debate in Spain about how to reform the welfare system. However, OW is not a hot topic within this debate. Although OW has increased in scale over the last 20 years, it is less important than in other European countries and remains very limited in scope. In the current context of the crisis, cuts in social spending and the shift towards decentralised collective

bargaining, the OW playing field has shrunk, and it is by no means a priority in political or union debate. Labour reforms are having severe consequences, allowing employers to make unilateral changes to working conditions and to decentralize collective bargaining in a system dominated by SMEs. In a context of labour cost reductions, OW has turned out to be a bargaining chip to limit redundancies and wage cuts. In particular in the realm of pensions, a weak but wide range of instruments with varying levels of protection has been developed to supplement the state system. Occupational unemployment measures are much less developed. Generally speaking, all these measures have a clear supplementary character in Spain.

There seem to be various reasons for this underdevelopment of OW schemes. Firstly, with regard to pensions, when the move towards occupational schemes started, political and trade union efforts were geared towards safeguarding a state system, ensuring the sustainability of contributory pensions and increasing the scope of a minimum means-tested system. This last point was considered important in a country with a low labour force participation of women, high structural unemployment and a large informal economy. Ensuring unemployment protection was also important, although with very limited means-tested protection. Spain still has a high replacement rate of state contributory pension benefits, and public coverage is fairly widespread among permanent employees, meaning that contributions to OW schemes are perceived as a needless extra economic burden. With an increasing number of workers suffering in a labour market characterised by instability, rotation, the underground economy and low wages, contributing to a pension plan is not a priority for workers and trade unions. Overall it can be concluded that OW has been crowded out by the state social security system.

Secondly, the structure of the Spanish economy with its high proportion of SMEs and companies in low productivity industries hinders the spread of OW schemes, with many employees finding it difficult to gain access to Occupational Welfare.

Thirdly, a real estate bubble has increased the price of housing to such an extent that paying the rent or the mortgage is a priority. For decades, buying a house was considered by many citizens to be 'the best pension plan'. It could be argued that saving up to buy a house has diverted workers' resources from potential occupational schemes into other forms of individual social protection.

Finally, it should be remembered that collective bargaining is going through a very complicated phase which makes it difficult for the social partners to reach any agreement, including on Occupational Welfare. Recent labour market reforms have further complicated the picture. Among the various reforms adopted during the Great Recession, the most relevant and far-reaching one is the reform unilaterally implemented by the conservative Government in 2012. Law 3/2012 imposes key provisions for deregulating labour relations, clearly undermining the effectiveness of trade union activity. It contains a series of measures, including consolidating the position of an employer as the main arbiter of workplace practices, instead of collective negotiation. It has meant low redundancy payments, without arbitration, and contracts with increasingly reduced wages. Furthermore, it subordinates collective agreements to management decisions. Finally, it implies an erosion of the right to

decent work on the basis of its institutional recognition. As such, labour law is now determined by its contribution to economic growth, company productivity and employability rather than being seen as a provider of workforce security.

These reforms are thus major steps backwards for workers' rights and have given discretionary power to employers to change core rights previously covered by collective bargaining. The most significant point is that wages have been cut over the last 5 years. Additionally, many areas have shifted from collective bargaining to individual negotiations.

In this context of crisis and reduced workers' rights, collective bargaining is becoming increasingly difficult. On the one hand, promoting OW in a context of decentralised collective bargaining is becoming increasingly difficult, being much more developed in large companies and almost non-existent in sectoral agreements<sup>10</sup>. On the other hand, the main issues on today's bargaining agenda are collective redundancies, wage cuts and inequalities in the labour market, and access to social protection. Therefore, improving OW cannot be seen as an important bargaining subject, since basic decent working conditions are being called into question in Spain. As a result, unions do not see OW measures as priorities for discussion, and they are commonly used as a bargaining chip in negotiations to maintain employment and wages and to improve compliance with the law.

Therefore, there seems to be little scope for action by employers and trade unions to foster Occupational Welfare, although both recognise its potential significance, especially with regard to pensions. However, the economic and labour situation relegates such policies to second rank. Debates within trade unions about whether or not OW should be promoted, and employers' lack of will to establish such policies, keep OW and the protection it offers on the back burner.

Employers and the main trade unions (Confederación Sindical de Comisiones Obreras, CCOO and *Union General de Trabajadores* de España, UGT) are generally in favour of boosting OW in the field of pensions, as recognised in the latest general collective agreement of June 2015. However, there are two main issues causing tension between the social partners: who pays, and which instruments should be used to regulate and foster OW. The differing conditions of the pension plans and collective insurance schemes and the growth of individual pension plans create a complex negotiating context. From a business point of view, OW schemes are still viewed from two different perspectives: as a labour cost and as a human resources policy. Employers can consider contributions to occupational pensions as part of their wage policies, as an incentive to achieve specific work goals, as a hiring strategy for professional employees and as a factor for ensuring loyalty and retaining talented workers. Although some employers view OW as an opportunity for better human resources management, policies remain

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10. The consequences of labour reforms have been highlighted by the Actuary at the Secretariat of Social Protection and Public Policies of CCOO.

underdeveloped. From a union viewpoint, CCOO trade unionists understand the importance of developing OW as part of a twofold strategy. They see it in terms of workers' rights, guaranteeing a rise in their remuneration even when containment of inflation limits wage increases, and as a way of maintaining purchasing power when receiving state benefits. However, both employer organisations and the main trade unions face a lack of support from workers. OW contributions would entail wage cuts, since employers are not willing to do anything that would increase their labour costs.

As for the prospects for OW in Spain, it is difficult to envisage further growth. The priorities of the social partners differ, the public administration is pruning tax breaks, cuts in social protection are jeopardising solidarity and redistribution, collective bargaining is being dismantled and precariousness seems to constitute the basis for the new employment standards. Political and social forces are focused more on statutory welfare than on OW. The real challenge to and cornerstone of the current political debate in Spain is the downsizing of state-provided protection (Natali and Stamati 2015), as witnessed in the recent election campaigns. Various proposals have been launched by political parties, employer organisations and trade unions concerning the sustainability of the state pension system, the funding of which is already seriously at risk. Youth unemployment, precariousness and its persistence are the core risks for the sustainability of social protection, and for guaranteeing current pensions at today's levels.

Questioning the sustainability of social protection in Spain, the arguments put forward by the European institutions have contributed to broad debates over unemployment, the quality of employment, fiscal policies and population ageing. Trade unions note that recent austerity measures are having dramatic consequences and they are demanding new policies to guarantee decent employment conditions in a sustainable economic system as a fair way of safeguarding social protection and the Spanish welfare state. As a result, there seems to be no room for discussing Occupational Welfare, especially in a country where a large share of the costs of such a system would be borne by enterprises, many of which are finding it increasingly difficult to survive.

Moreover, issues of equality and redistribution are also discouraging further efforts to achieve widespread OW. The Spanish labour market is extremely segmented and there are risks of a further split, since precariousness is becoming a permanent characteristic of employment. Only 60% of the working age population is employed and 12.5% of workers live in households below the at-risk-of-poverty threshold. Moreover, segmentation reflects a major gender gap, alongside age and migration differences. The fact that 24% of working women have part-time jobs – most of them involuntarily – shows not only how difficult it is for women to gain a sufficient state pension, but also their need for direct wages, instead of occupational contributions, to protect against an uncertain future<sup>11</sup>.

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11. Employment data correspond to the third quarter 2015, *Spanish Labour Force Survey* and in-work poverty data to 2014.

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