

Chapter 7

Strengthening the decentralisation of collective bargaining in Spain

Between the legal changes and real developments

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1. Introduction

Controversy about the adequacy of the structure of collective bargaining to the changes in the economic cycle in Spain is not certainly new. In fact, it can be traced back to the early 1990s (Cruz 2015; Fernández *et al.* 2016). However, this debate has gained momentum since the onset of the Great Recession in 2008. The renewed interest in this topic can be explained by the larger scale of the impact of the current crisis in Spain compared with other European countries, especially in terms of employment. The most important consequence of this shock was the sharp rise in the unemployment rate, which still remains at dramatic levels: 18.6 per cent in the fourth quarter of 2016, the second highest in the European Union (EU), after Greece.¹

According to the mainstream narrative adhered to by various international institutions, the current Spanish government, the national employers' organisations and a number of scholars, the crisis hit Spain particularly hard for two main reasons: on one hand, the fiscal imbalances caused by the high public deficit and high external debt, which led to the sovereign debt crisis; and on the other hand, the Spanish economy's historical competitiveness problems, closely linked to domestic structural imbalances, especially in the labour market. In short, it has been argued that the legal regulations in Spain are highly 'protective' compared with international standards, particularly with regard to employment protection and collective bargaining. In this sense, it has been emphasised that the combination of these characteristics led to excessive rigidity of wage dynamics as against the change in the economic cycle, because at a time of heavy reductions in employment, wages in already settled contracts were unable to adjust downward, possibly leading firms to lay workers off (Díaz and Villanueva 2014).

The main political conclusion according to this line of argument was the need for a substantial overhaul of the collective bargaining system, aimed at fostering radical decentralisation at company level. The goal would be to increase firms' internal flexibility, thereby facilitating adjustments in wages and working conditions as a way of boosting their competitiveness and productivity.

Alternatively, it has been argued that the larger scale of the crisis in Spain is not rooted in labour rigidities, but in the weaknesses of the economic growth model consolidated since the mid-1990s. This model was characterised strongly by overheated speculative

1. Eurostat (population 15-74 years, fourth quarter of 2016).

development in the real estate and building sector, which made it extremely vulnerable to economic cycle changes, aggravating their negative effects in terms of job losses (Banyuls and Recio 2015).

It should be noted that fostering the decentralisation of collective bargaining has been a sort of 'flagship policy' of 'New European Economic Governance', launched in 2010, which has promoted a new supra-interventionism in industrial relations (Schulten and Müller 2013).

The labour law reforms adopted by various European governments, following EU recommendations, have substantially altered the collective bargaining landscape in the EU (particularly in the southern countries subjected to external intervention). Comparative analysis shows that the enacted measures have targeted not only bargaining outcomes, by putting direct pressure on wages, but also bargaining procedures by pushing more 'flexible' wage-setting arrangements (Schömann and Clauwaert 2012; Rocha 2014a; Van Gyes and Schulten 2015; Visser 2016; Piasna and Myant 2017).

More specifically, substantial legal changes aimed at reinforcing the decentralisation of collective bargaining systems have been imposed in various peripheral countries of the European Union, leading to a process that has been defined as a 'frontal assault on multi-employer bargaining systems prevailing in those countries' (Marginson 2014).

In Spain, labour law has been subject to continuous and intense modification since 2010. The adopted reforms are diverse in both character and scope, but one common goal has been to foster collective bargaining at company level. It is worth highlighting the legal reform unilaterally enforced by Spain's conservative government in 2012, which no doubt represents a landmark in labour law regulation.

Against this background, the main goal of this chapter is to analyse the decentralisation of collective bargaining in Spain since the onset of the current crisis, with particular emphasis on the contents and effects of the labour law reforms approved during this period.

This topic has already been addressed in various reports, which have focused in the initial impact of labour law changes on collective bargaining developments (Rocha 2014b; Cruces *et al.* 2015; Fernández *et al.* 2016). The time that has passed since the approval of the most important reform – in 2012 – allows us, however, to deepen and refine our analysis (in both quantitative and qualitative terms).

The present chapter is structured as follows. Section 2 addresses the regulation of the collective bargaining system in Spain. Section 3 analyses some of the main impacts of these legal reforms on collective bargaining developments. This general overview is complemented with a more detailed analysis of two sectors: retail, with special focus in the large distribution; and the metal industry. The report ends with a summary of the main findings and some conclusions for the debate.

2. Labour law reforms in times of crisis

Collective bargaining in Spain has experienced intense development from the restoration of democracy with the approval of the Spanish constitution in 1978 until the onset of the Great Recession. This is shown by the progressive extension of collective agreements and worker coverage, as well as by the increasing number of topics addressed by the social partners.

Nevertheless, in parallel with this, a common assertion in the industrial relations debate is that some key features of the national collective bargaining system have remained unchanged, such as (i) the prevalence of an intermediate degree of coordination, with collective agreements being signed predominantly at the industry level, though with some geographical decentralisation (mostly at the provincial level); (ii) the *erga omnes* extension of collective bargaining agreements, meaning that they automatically apply to all workers and firms within their scope; and (iii) the wage indexation rules frequently established by collective agreements, both sectoral and company-level (Cruz 2015).

These characteristics of the national collective bargaining system were called into question, in a number of instances, with the onset of the crisis in 2008. The main criticism, as noted above, was that they created additional rigidities hindering the responsiveness of wages to economic and firm-specific conditions, therefore aggravating the most negative impacts of the crisis (Jaumotte 2011; Bentolila and Dolado 2012).

Against this background, in this section we provide an overview of the labour law reforms adopted in Spain during this period, with particular focus on measures related to the structure of collective bargaining.

2.1 Legal reforms of collective bargaining during the Great Recession

The Great Recession has had a dramatic social impact in Spain. The labour market effects of the crisis have been much more intense than in other European countries experiencing a similar economic downturn. Thus, between 2008 and 2016, 2.3 million jobs were lost in Spain, accounting for around 37 per cent of total job losses in the EU28, with a rate of change of –11.4 per cent for the whole period (the EU28 average was 0.5 per cent).²

Different governments have followed different approaches, closely linked to changes in the anti-crisis policies at European level. Thus, there was a first, brief stage characterised by stimulus measures on the demand side.

This sort of approach – popularly labelled ‘Keynesian’ – ended with the turning point of the European Council of May 2010, which led to Spain’s Socialist government fully accepting a programme of budget adjustment and structural reforms with a neoliberal

2. Eurostat (second quarters, population 15–74 years of age). In this period 6.9 million jobs were lost in the EU28 and 7.4 million were created, with a positive net balance of 1 million.

bent, in accordance with the specific recommendations for Spain drawn up by the EU institutions within the framework of the New EU Economic Governance. This line of action was later strengthened by the new Conservative government after the general election held in November 2011, which launched an aggressive and still ongoing programme of 'fiscal consolidation' policies and 'structural reforms' (Rocha 2014b).

Against this background, since May 2010 labour law in Spain has been undergoing continuous and intensive modification through reforms unilaterally approved by Spanish governments in 2010, 2011 and 2012.³

If we focus on collective bargaining, one main goal of these reforms – particularly, those of 2011 and 2012 – has been to strengthen decentralisation to company level, following the EU recommendations for Spain in this period.

Thus, in 2011 the European Commission proposed that

the ongoing labour market reform in Spain needs to be complemented by an overhaul of the current unwieldy collective bargaining system. The predominance of provincial and industry agreements leaves little room for negotiations at firm level. The automatic extension of collective agreements, the validity of non-renewed contracts and the use of ex-post inflation indexation clauses contribute to wage-inertia, preventing the wage flexibility needed to speed up economic adjustment and restore competitiveness. The Government has requested social partners to agree on a reform of the collective wage bargaining system during Spring 2011 and has undertaken to legislate subsequently. (Council of the European Union 2011: 4)

Taking this diagnosis into account, the European Commission recommended that Spain should 'adopt and implement, following consultation with social partners in accordance [with] national practice, a reform of the collective wage bargaining process and the wage indexation system to ensure that wage growth better reflects productivity developments, as well as local and firm level conditions' (Council of the European Union 2011: 7).

In this regard, after failed negotiations between the social partners on this topic, in June 2011 the Socialist government unilaterally adopted Royal Decree Law 7/2011 on Urgent Measures to Reform Collective Bargaining (Real Decreto-ley 7/2011, de 10 de junio, de medidas urgentes para la reforma de la negociación colectiva).

Shortly after the adoption of this reform, former presidents of the European Central Bank and the National Bank of Spain Jean-Claude Trichet and Miguel Fernández Ordoñez sent a 'strictly confidential' letter to former Spanish prime minister José Luis Rodríguez Zapatero.

3. Law 35/2010 on Urgent Measures for Labour Market Reform; Royal Decree Law 7/2011 on Urgent Measures to Reform Collective Bargaining; Royal Decree Law 3/2012 on Urgent Measures to Reform the Labour Market; and Law 3/2012 on Urgent Measures to Reform the Labour Market.

This letter, sent on 5 August 2011, argued that at the present time it was essential that

the wage-bargaining reform bill adopted by the Spanish government on 10 June 2011 should more effectively strengthen the role of firm-level agreements, with a view to ensuring an effective decentralisation of wage negotiations. During the forthcoming parliamentary process, the law should be amended in order to reduce the possibility for industry-level agreements (at national or regional level) to limit the applicability of firm-level agreements.⁴

Later, the new Conservative government unilaterally launched a new and 'extremely aggressive'⁵ reform of labour law through Royal Decree Law 3/2012 on Urgent Measures to Reform the Labour Market (Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral), which was later confirmed with no substantial modifications by the National Parliament as Law 3/2012 on Urgent Measures to Reform the Labour Market (Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral).

Finally, the EU recommendations for Spain on this topic between 2012 and 2016 focused on following up the 2012 labour law reform. Overall, the results of this reform have been positive, according to the EU.

Nevertheless, regarding the decentralisation of collective bargaining the European Commission country report published in 2016 noted that 'moderate wage claims might reflect a change in the wage setting environment, but there is no evidence that firm level collective bargaining is picking up' (European Commission 2016: 36). This diagnosis did not led, however to a related proposal in the EC recommendations for Spain published in 2016 and 2017.

2.2 Strengthening the decentralisation of collective bargaining

One goal of Royal Decree Law 7/2011 on Urgent Measures to Reform Collective Bargaining was to 'promote better management of collective bargaining, while encouraging collective bargaining closer to the company [level] and better matching of sectoral collective bargaining to the situation of each particular sector of economic activity.'

In sum, two innovations in particular are worth highlighting with regard to decentralisation:

- (i) A change in Article 83.2 of the *Estatuto de los Trabajadores* (hereafter: 'Workers' Statute'), which addresses the social partners' competences with regard to regulating

4. The letter is available at: <https://www.ecb.europa.eu/pub/pdf/other/2011-08-05-letter-from-trichet-and-fernandez-ordonez-to-zapateroen.pdf> (accessed on 5/10/2016).

5. Quoting the significant expression used by the Spanish Minister of Economy in an informal dialogue with a representative of the European institutions.

the structure of collective bargaining. Basically, the new wording suppresses the possibility of establishing limitations on the negotiation of certain topics at company level.

- (ii) The reform establishes the priority of company-level collective agreements over sectoral ones with regard to the following matters:
- the amount of the basic wage and wage supplements, including those linked to the company's situation and results;
 - payment or compensation for overtime and specific remuneration of shift work;
 - the schedule and distribution of working time, work regime shifts and annual holiday planning;
 - adaptation of the job classification system to company level;
 - adaptation of contracts listed in this law to company-level agreements;
 - measures to promote reconciliation of working life and family and personal life;
 - any other matters established laid down in collective agreements of the kind referred to in Article 83.2.

It should be noted, however, that there is an important limitation on prioritising company-level agreements. Specifically, this priority will be enforced 'unless an agreement or collective agreement at state or regional level negotiated under Article 83.2 establishes different rules on the structure of collective bargaining or competition between the different agreements'. In other words, the norm provides for a prominent role for sectoral collective agreements – at state or regional level – in defining the competences of company-level collective agreements.

The next reform was promoted by the new Conservative government in 2012 through Royal Decree Law 3/2012 on Urgent Measures to Reform the Labour Market and the Law 3/2012 on Urgent Measures to Reform the Labour Market. The goals of these legal instruments included the 'modernisation of collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies'.

According to the government this new reform was necessary due to the 'inadequate system of collective bargaining' prevailing in Spain; more specifically, because since the onset of the crisis 'the system of collective bargaining had restricted employers' options in their efforts to reorganise their productive resources while maintaining jobs' (Government of Spain 2013: 5).

In this regard, the 2012 legal reform was aimed at *strengthening decentralisation of the collective bargaining system* through three mechanisms:

- (i) The reform promotes a widening of firms options with regard to the temporary suspension of sectoral or company-level collective bargaining agreements. The main innovations are: (a) easing the derogation of company collective agreements; (b) a significant relaxation of conditions and widening the range of issues subject to derogation; and (c) imposing binding arbitration when the parties are unable to reach an agreement within a particular period of time.

- (ii) There is a *limitation on the temporary extension rule concerning expired collective agreements* (so-called 'ultra-activity'). Previously, this extension was indefinite until a new agreement was reached. Now, it has been established that once the collective agreement has expired and its renegotiation has begun, if there is no new agreement and no agreement to the contrary, the agreement will continue to be applied for a maximum of one year.
- (iii) Finally, the most important measure is no doubt the establishment of the *absolute priority of company-level collective agreements over sectoral ones* with regard to the matters mentioned above, by suppressing the limitation included in the previous reform of 2011.

The establishment of this absolute priority means decentralisation without reservation of the regulation of basic working conditions, which significantly erodes the effectiveness and binding force of sectoral agreements (particularly those signed at provincial level).

The 2012 labor market reform was fully backed by international institutions such as the IMF and the OECD, the European Commission and the European Central Bank. It was also welcomed by the Spanish employers' organisations, which characterised the reform as a 'step forward' in the modernisation of labour law.

Nevertheless, this legal reform was widely criticised by labour law scholars (Baylos 2013; Ramos 2013; Pérez *et al.* 2016). It has also been strongly resisted by Spanish trade unions, which called two general strikes against this reform in 2012.

With regard to the specific issue of decentralisation, it should be noted that, in a country such as Spain, with a preponderance of small and micro companies, these measures aimed at encouraging unilateral decentralisation open up the risk of creating a landscape in which real collective bargaining may take place only in a small number of companies.

Furthermore, taking into account the asymmetry between the collective bargaining actors and the possible absence or weakness of trade unions in SMEs and micro-companies, it has been argued that the absolute priority of company-level agreements could strengthen the hand of employers wishing to regulate working conditions unilaterally, as well as the development of so-called agreements '*in pejus*'; in other words, agreements with provisions that are inferior to those of higher bargaining levels (Casas 2016).

3. Effects on collective bargaining

Evaluation of the effects of legal reforms on collective bargaining in the current economic context are subject to a number of methodological constraints, such as difficulties in differentiating between the specific effects of labour market reforms and the general effects of the crisis. The limitations of the data on collective bargaining are also a factor.

Nevertheless, analysis of the available statistical sources, as well as of the outcomes of different reports and the qualitative information provided by social partners, allows

us to highlight some of the main effects of the enacted measures aimed at fostering decentralisation of collective bargaining.

This section is divided into three parts. First, there is a statistical analysis of collective bargaining developments between 2011 and 2016. This period was chosen to take into account the two major labour law reforms that affected the basis of the collective bargaining system (2011 and 2012).

Second, a more qualitative approach is taken to two particularly interesting issues: the prioritisation of company-level collective agreements on wages; and the controversy concerning the legitimacy of the actors involved in the new collective agreements at company level.

Finally, we briefly examine the role of the most representative social partners.

3.1 Collective bargaining developments

In this section we address the evolution of three specific items in the period 2011–2016:

- (i) collective agreements and workers covered, by year of signature;
- (ii) collective agreements and workers covered, by year of economic effects;
- (iii) temporary derogations of collective agreements at company level.

The analysis is based on data from the statistics on collective agreements produced by the Ministry of Employment and Social Security.

3.1.1 Collective agreements and workers covered, by year of signature

The evolution of collective agreements by year of signature since 2011 allows us to highlight three different moments (Table 1).

Table 1 Collective agreements and workers covered, Spain, 2011–2016
(by year of signature and bargaining level)

Year	Collective agreements			Workers (1,000)		
	Total	Company-level	Above company-level	Total	Company-level	Above company-level
2011	1,365	1,035	330	2,628.9	251.8	2,377.2
2012	1,582	1,241	341	3,195.2	289.4	2,905.8
2013	2,502	1,897	605	5,247.6	376.5	4,871.1
2014	1,859	1,522	337	2,169.2	249.3	1,919.9
2015	1,606	1,277	329	3,549.0	172.9	3,376.1
2016*	1,714	1,352	362	2,705.9	262.8	2,443.1

Note: * 2016: provisional data.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).

First, it is worth noting the significant increase in the number of collective agreements signed in 2013, up by 58 per cent on the previous year. This increase can be explained as a result of the agreement on the limitation of the temporary extension rule of expired collective agreements, signed by the social partners at national level in May 2013.

The goal of this agreement was to counter one of the measures included in the 2012 labour law reform, whose aim was to establish (as noted above) a maximum of one year for the renewal of expired collective agreements. In this regard, the trade unions launched an intensive campaign to boost bargaining processes, in order to ensure the continuity of collective agreements (Moreno 2016).

In 2014 there was a sharp decline in terms of both collective agreements and workers covered, for a number of reasons: the impasse pending the Supreme Court's rulings in disputes raised on this matter and the refusal of employers' associations and companies to negotiate wage increases as Spain seemed to be finding its way out of economic recession.

The provisional data on 2015 show a slowdown in this falling trend. It is also worth noting the signing of a number of sectoral collective agreements with broad coverage of workers.

If we focus specifically on the evolution of the new bargaining units created in this period, statistical data show a clear rise in company-level agreements (Table 2), particularly in 2013, the year after the last labour law reform (whose main goal, as noted above, was to foster collective bargaining at company level).

In 2015 there was a slowdown in this trend, however. This can be explained at least partly by various court decisions that established the nullity of many of these new agreements, due to the lack of legitimacy of the unitary representation of workers at company level (see Section 3.2.2).

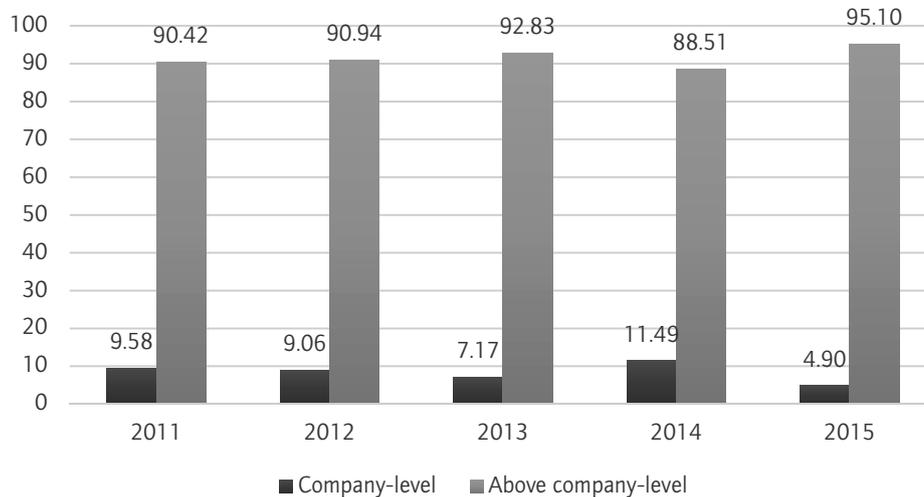
Table 2 Collective agreements signed in new bargaining units and workers covered, Spain, 2011–2016 (by year of signature and bargaining level)

Year	Collective agreements			Workers (1,000)		
	Total	Company-level	Above company-level	Total	Company-level	Above company-level
2011	263	240	23	276.7	30.1	246.6
2012	338	323	15	72.4	46.4	26.0
2013	662	625	37	270.3	55.3	215.0
2014	608	575	33	144.7	48.7	96.0
2015	545	524	21	391.7	32.7	359.1
2016*	462	438	24	113.1	45.6	67.5

Note: * 2016: provisional data.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).

Figure 1 Workers covered by collective agreements, Spain, 2011–2015 (by year of signature of the collective agreement and bargaining level; % of total workers)



Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security (definitive annual data).

Finally, it is important to note that the increase in company-level collective agreements after the 2012 labour law reform was modest in terms of workers affected: from 9.6 per cent in 2011 to 11.5 per cent in 2014,⁶ but with a new fall in 2015 (Figure 1, based on Table 1).

Moreover, taking into account the evolution of agreements by the year in which their economic effects are discerned, the share of workers covered by the company-level agreements decreased over time (see Table 3 and Figure 2).

3.1.2 Collective agreements and workers covered, by year in which economic effects became known

The evolution of collective agreements shows a continued decline in the first stage of the crisis (Table 3).⁷ This trend began to change in 2013, however, and more acutely in 2015. In the latter year, the last for which definitive data are available, around 5,600 collective agreements covering 10 million workers were registered. This means a decline in coverage of 1.6 million workers in comparison with the peak of 2008.

If we focus on the evolution of the structure of collective bargaining, the number of company-level agreements has risen since 2012. However, as noted above, the share of

6. This is the last year for which definitive data are available.

7. The time period covered by this table is longer, in order to capture the evolution of collective bargaining since the onset of the crisis.

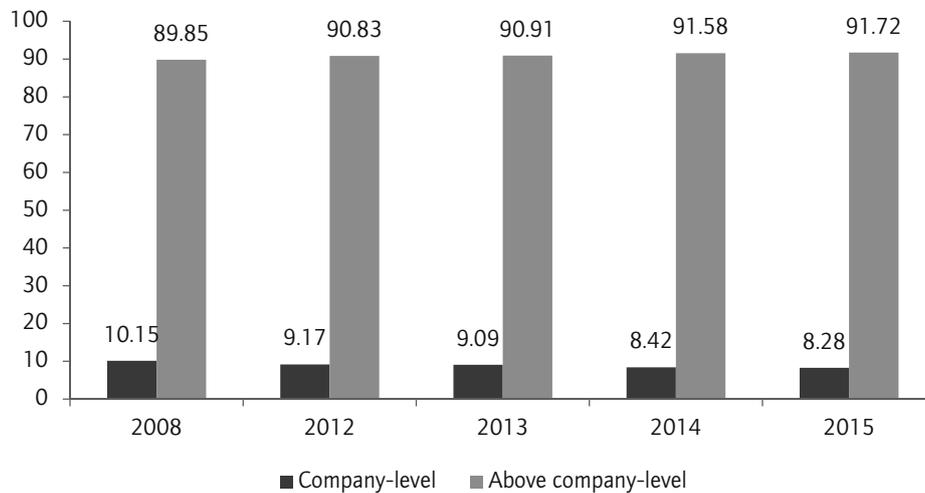
Table 3 Collective agreements and workers covered in Spain, by year of economic effects and bargaining level: 2008-2016

Year	Collective agreements			Workers (1,000)		
	Total	Company-level	Above company-level	Total	Company-level	Above company-level
2008	5,987	4,539	1,448	11,968.1	1,215.3	10,752.9
2009	5,689	4,323	1,366	11,557.8	1,114.6	10,443.2
2010	5,067	3,802	1,265	10,794.3	923.2	9,871.1
2011	4,585	3,422	1,163	10,662.8	929.0	9,733.8
2012	4,376	3,234	1,142	10,099.0	925.7	9,173.3
2013	4,589	3,395	1,194	10,265.4	932.7	9,332.7
2014	5,185	4,004	1,181	10,304.7	867.2	9,437.5
2015	5,642	4,493	1,149	10,227.3	846.9	9,380.3
2016*	4,147	3,242	905	8,963.6	620.3	8,343.4

Note: * 2016: provisional data.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).

Figure 2 Workers covered by collective agreements, Spain, 2012–2015 (by year of economic effects of the agreement and bargaining level; % of workers)



Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security (definitive annual data).

workers covered by company-level agreements has decreased over time compared with pre-crisis levels (see Figure 2, based on Table 3).⁸

It can be said, therefore, that, although the 2012 labour law reform fostered the development of new agreements at company level, *to date this process has not brought about a substantial alteration of the existing structure of collective bargaining in Spain*.⁹

The reform's limited effects, taking into account the fact that collective bargaining decentralisation was one of its major goals, can be explained in terms of a number of factors.

First, most of the new company-level agreements in this period were signed at small or medium-sized firms. Furthermore, some important new agreements were signed at state or regional level, with substantial worker coverage.

Secondly, it has been argued that the creation of new bargaining units at company level may represent a risk for many employers in terms of higher transaction costs, higher bargaining costs and potential labour conflicts associated with stimulating worker participation. These factors are especially relevant for smaller companies, which usually prefer to displace such risks to higher bargaining levels (Martín and Alos 2016).

Finally, it is important to take into account the influence of the strategies developed by the social partners — trade unions and employers — during this period.¹⁰

Another particularly relevant issue is the evolution of agreed wage increases in this period. The data show a significant trend of wage moderation, particularly since 2012, although always maintaining the purchasing power of wages agreed in the collective agreements (see Table 4). It should be kept in mind that the information presented in Table 4 concerns *average* increases; many of the collective agreements signed in this period established temporary wage freezes or even, in some few cases, temporary wage reductions.

Also, despite these moderate average wage increases, it is important to note that there has been a strong decline in real wages in Spain (Figure 3).

This process of so-called 'internal devaluation', widely recognised by national and international institutions, can be explained by some of the main effects of the austerity measures and the labour law reforms implemented in this period:

- A strong increase in precarious employment, which is shown both by the rise in the number of precarious jobs — particularly involuntary part-time employment — and

8. The figure includes information only until 2014, which is the last year for which definitive data are available.

9. The same conclusion can be also found in other recent studies on this topic. See, for example: Cruz 2015; Pérez, Rojo, and Ysás 2016. The continuity of the existing structure of collective bargaining has also been noted by the European institutions (European Commission 2016).

10. This issue is addressed in Section 3.3.

Table 4 Final agreed wages increases, Spain, 2011–2016 (by bargaining level)

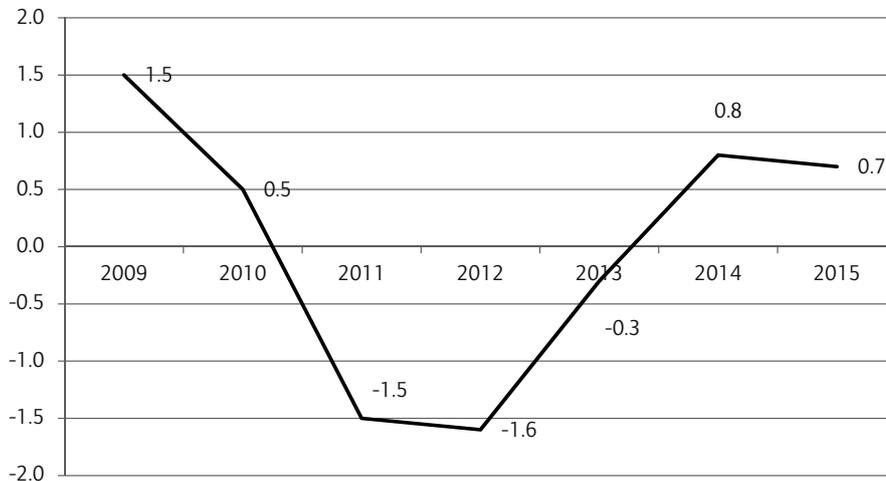
Year	Total	Company- level	Above company- level
2011	2.29	1.97	2.32
2012	1.16	1.48	1.13
2013	0.53	0.55	0.53
2014	0.50	0.37	0.52
2015	0.71	0.46	0.73
2016*	1.06	0.83	1.08

Note: * 2016: provisional data. Data from 2016: agreed wages, taking into account the effects of the final review due to the application of the wage indexation clauses.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).

- the deterioration of working conditions (Muñoz de Bustillo and Esteve 2017).
- The application at company level of some of the measures included in the labour law reforms; for example, derogations at company level from working conditions agreed in sectoral agreements; and, more acutely, the reinforced power of employers to unilaterally modify working conditions.
- The development of a number of new bargaining units at company level, which can be considered collective agreements '*in pejus*'.

Figure 3 Real wages per hour (employees), Spain, 2008–2015 (year on year change, %)



Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security (definitive annual data).

The combined effects of falling wages and austerity measures¹¹ have exacerbated the deterioration of the social situation in Spain, in comparison with other European countries (Yancheva *et al.* 2013). This has led to a general rise in inequality and poverty levels in the country: the *at-risk-of-poverty* or *social exclusion rate* increased to 27.9 per cent of the population in 2015; and *in-work poverty* – the so-called ‘working poor’ – to 14.1 per cent.¹²

3.1.3 Temporary collective agreement derogations at company level

As noted above, the 2012 labour market reform substantially changed the regulation of temporary derogations of collective agreements at company level. The main outcome has been a significant increase in the number of temporary derogations of collective agreements, especially in 2013 (Table 5).¹³

Certainly, if these figures on derogation are compared with the total number of workers covered by collective agreements, they are not so important.

Detailed analysis of the data shows that derogations are focused mainly on wages and working hours, boosting internal devaluation at company level.

It is also worth noting that around 90 per cent of these temporary derogations were agreed between employers and workers’ representatives, even though trade unions have serious doubts about the legality of the procedure, in particular with regard to the status of workers’ representatives in many of the agreements signed in the micro firms.

3.2 Dynamics of collective bargaining: a qualitative approach

The time that has passed since the last major labour law reform makes it possible for us to make a more qualitative analysis of its impact on collective bargaining outcomes. An in-depth study of all the issues involved would exceed the scope of this chapter, but it is worth addressing two topics that are particularly relevant: (i) the priority of company-level collective agreements on wages; and (ii) the controversy about the legitimacy of the signatory parties of some new company-level collective agreements.

3.2.1 Priority of company-level collective agreements on wages

The findings of a study of a sample of sectoral and company-level collective agreements signed between 2012 and 2015 allow us to discern a number of general trends concerning wage regulation in this period, more specifically with regard to wage structure and wage increases (Cruces 2016).

With regard to *wage structure*, three general aspects are particularly noteworthy:

11. For example, significant cuts affecting social expenditures and social services.

12. Living Conditions Survey 2016, National Institute of Statistics (published in 2017, data for 2016).

13. Data available since 2012.

Table 5 Temporary derogations of collective agreements at company level, Spain, 2012–16

Year	Derogations (Nº)	Workers (Nº)
2012	748	29,352
2013	2,512	159,550
2014	2,073	66,203
2015	1,437	43,173
2016	1,326	32,064

Note: 2012 = between March and December.

Source: Statistics on collective agreements (data recorded up to May 2017).

- (i) A low level of precision and clarity in the definition of elements of the remuneration structure, particularly in relation to the definition of wage supplements
- (ii) The small number of clauses regulating wage supplements specifically linked to company results.
- (iii) A trend towards incorporating more flexibility and the reduction or creation of additional wage supplements, depending on business needs.

With regard to *wage increases*, there are two main points:

- (a) The inclusion of provisions regulating moderate wage increases for this period (for the statistical development of final agreed wages, see Table 4). Nevertheless, it should be noted that some collective agreements include provisions on temporary wage freezes or even, in a small number of cases, wage cuts.
- (b) Most collective agreements establish wage indexation clauses, linked to the development of the Harmonised Prince Consumer Index (HIPC). This is a traditional feature of the Spanish collective bargaining system and its continuity in this period indicates the lack of influence of the recommendations emanating from the European institutions on the suppression of such clauses.

Against this general background, it is important to focus the analysis on the content of the *new bargaining units at company level* created in the wake of the 2012 labour law reform. This reform, as already noted, established the absolute priority of company-level collective bargaining agreements over sectoral ones in the regulation of the base wage and wage supplements.

A report on this topic found a proliferation of new company-level company agreements *in pejus*, in the form of agreements targeted mainly at cutting wage costs (Vivero 2016).

Cutting wage costs has been pursued mainly through provisions on basic wages, although collective agreements also address this goal with provisions on other aspects (wage supplements, review of wage indexation clauses, overtime and so on).

Finally, it is important to mention that a number of practices have been controversial from a legal standpoint. Particularly noteworthy are various cases of new company-

level collective agreements *in pejus* that not only enshrine wage cuts but also make them retroactive.

A Supreme Court ruling in 2015 declared that such 'retroactivation' was illegal, among other reasons because the Spanish Constitution clearly guarantees 'the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights' (Article 9.3).

3.2.2 Legitimacy of collective bargaining actors

The legal rule on legitimacy with regard to negotiating collective agreements establishes that 'the following shall be deemed legitimate to negotiate company-level agreements or agreements of lesser scope on behalf of workers: the works council; workers' delegates, as applicable; or the union representatives, if these exist, that altogether form the majority of the committee members' (Workers' Statute, Article 87).

The Workers' Statute also establishes that in cases pertaining to more than one workplace, a works council should be formed in order to negotiate a collective agreement for the whole. This new body may only be agreed on by collective bargaining (Article 63).

Analysis of bargaining processes at company level since 2012 shows that problems have arisen concerning actor legitimacy, in particular with regard to workers' representatives in smaller companies: on one hand, in some instances the workers' representatives did not comply with the legal rules governing who may legitimately negotiate. On the other hand because, even though there was formal compliance, in many cases it is not certain that the workers' representatives really acted in the workers' interests, especially in smaller companies (Alfonso and Fabregat 2016).

One clear example of this controversy can be found in the new collective agreements signed by so-called 'facility management' or 'multi-services' companies, whose business is to provide a plurality of services to third parties, usually on a permanent basis, supplying the necessary personnel and usually performed on the premises of the client company.

The emergence of this in Spain can be traced back to the 1990s. The number of such companies has been growing constantly, as has the scope of their activities.

One key factor in this development is the lack of a legal framework for such companies, which are not subject to existing regulations on temporary work agencies. There is a consensus among labour law scholars that firms in Spain are increasingly outsourcing part of their activities through multi-services companies as a way of avoiding the higher labour standards laid down by law for temporary work agencies (Vicente 2017).

The 2012 labour law reform represented a new step in this process, with the establishment of the absolute priority of company-level collective agreements over sectoral ones with regard to a number of matters. Many companies have taken advantage of this new regulation, and as a result there has been a significant increase of new bargaining agreements signed by multi-services companies in recent years.

Analysis of the contents of these agreements shows that most of them drive down working conditions in comparison with the reference sectoral agreements (Vicente 2016; Muñoz 2014).

Against this background, it is worth noting that many of the new collective agreements signed by multi-services companies in this period were denounced by trade unions, and later declared invalid by the labour courts

The main reason these agreements were rejected was that they had country-wide scope, affecting all workplaces (current and future). However, the agreements were signed by the workers' representatives *only of some workplaces*, who were not entitled to do so (according to the rules on legitimacy established by the Workers' Statute).

In other words, the labour courts concluded that these agreements were invalid because they implied 'a breach of the principle of correspondence between the representation of the body (unitary representation body involved in negotiating the company agreement) and the field on which it is projected (scope of resulting collective agreement)' (Muñoz 2014: 285).

In spite of these court judgments, collective bargaining in multi-services companies still constitute an issue of particular concern to Spanish trade unions. Indeed, in 2015 the two most representative trade unions at national level signed a joint statement in which they called for a halt to the promotion 'of new collective bargaining agreements in multi-services companies until the legal framework has been reformed' (CCOO and UGT 2015).

3.3 Role of the social partners

In this section we provide a brief overview of the views and strategies of the social partners with regard to the challenges of industrial relations and collective bargaining in this period.

The analysis is based on information from the following sources:

- The Annual Labour Survey (ALS) of 2014, carried out by the Ministry of Employment and Social Security. This survey is based on data provided by nearly 10,000 companies, and its main goal is to obtain information on: measures taken by enterprises to adapt to changes in economic circumstances; internal flexibility measures and other measures implemented in companies; industrial relations; training measures implemented by companies for their workers; and business forecasts.¹⁴
- The findings of a field survey conducted in 2015, based on eight in-depth interviews with the heads of the main national-level sectoral federations of *Comisiones Obreras*

14. The methodology and data of this survey are available at <http://www.empleo.gob.es/estadisticas/EAL/welcome.htm> (accessed on 11/10/2016).

(CCOO), the most representative trade union in Spain (Cruces 2016b). Obviously, this sample is not statistically representative, but qualitatively the information collected provides a rich overview of the union movement's main concerns and challenges with regard to the effects of labour law reform on collective bargaining.

3.3.1 Employers

We may highlight three key findings from the 2014 ALS (Lago 2016).

First, a gap can be discerned between the formal and the real goals of the 2012 labour law reform. Thus, while one of the reform's stated objectives was to promote internal flexibility in companies, as an alternative mechanism to the widespread use of external flexibility in times of crisis, survey data show that most companies have continued to resort mainly to layoffs and non-renewal of contracts as their preferred way of adjusting to slumps. Companies opting for internal flexibility – for example, related to wages and working hours – are in the minority.

Second, around 82 per cent of the companies surveyed had a sectoral collective agreement as reference for the regulation of working conditions. When asked whether the sectoral collective agreement met the company's needs, 82 per cent answered 'to a fair extent' or 'to a considerable extent'. Furthermore, 76 per cent of the companies surveyed stated their preference for keeping the sectoral agreement.

These assessments are in striking contrast with the mainstream narrative sustained by both European and national institutions, which since the onset of the crisis have called repeatedly for a radical decentralisation of collective bargaining, on the pretext that companies were crying out for it.

Finally, it is worth noting that most of the companies surveyed stated that, when faced by the next economic downturn, they would opt once more for external rather than internal flexibility.

It should be noted here that companies' preference for external flexibility cannot be explained in terms of alleged labour market 'rigidity'. More to the point is a generalised pattern of business management strongly focused on a 'low road' in pursuit of competitiveness – mainly cutting prices and labour costs – to the detriment of a more sustainable 'high road' (based on, for example, innovation, quality and differentiation of products and services, training and quality of employment).

3.3.2 Trade unions

A number of points of interest emerge from these interviews with union officials.¹⁵

First, there is a consensus that the development of collective bargaining has been difficult since the onset of the crisis, due to both the adverse economic situation and the effects of the labour law reforms adopted in this period.

15. Here only the more general issues are addressed, without taking sectoral differences into account. For a more detailed analysis, see Cruces 2016b.

It is important to note that the impact of this reform is linked not only to its implementation, but also to the ‘threat effect’ of its potential application by employers.¹⁶ According to the unionists interviewed, deployment of this ‘threat effect’ has been constant in bargaining since 2012; not only that, but it has been ‘internalised’ by many workers’ representatives.

Second, the main trade union concern just after adoption of the 2012 labour law reform was the limitation of the temporary extension rule for expired collective agreements. In this regard, a key trade union priority was to preserve collective agreements nearing expiry, even to the detriment of their contents (a deterioration of working conditions).

Third, there was also a concern about the widening of companies’ legal options with regard to the temporary suspension of sectoral or company-level collective agreements. In this sense, the trade unions have prioritised involvement in negotiations on such temporary derogations, the outcome of which is that most of them have been agreed.

Fourth, the unionists remarked that the 2012 labour reform has strengthened employers’ power to unilaterally modify working conditions at company level. They also complained about the lack of information provided on the development and scope of this process.

Finally, for the near future the unions’ strategic option is to maintain the role of sectoral collective agreements, which are considered a key tool in ensuring a minimum floor of labour rights and regulation of working conditions (especially for workers in smaller companies).

4. Labour market reforms and collective bargaining developments in the metal industry and the retail sector (large retail)

In this section we examine the effects of the crisis and labour market reforms on collective bargaining developments in two sectors: retail, with a particular focus on large retail, and the metal industry.

The analysis of each sector is structured as follows. First, there is a brief overview of industrial relations dynamics. Second, we analyse the impacts of labour market reform – particularly, that of 2012 – on the structure and development of collective bargaining. Third, we look at the position of the social partners. A brief summary concludes.

The study is based on information from various sources, including the findings of in-depth interviews with social partner representatives.¹⁷

16. For example, the threat of creating new bargaining units at company level in order to enforce the absolute priority of regulating working conditions.

17. For the commerce sector, we interviewed two union officials from CCOO-Services. For the metal industry, we interviewed two union officials from CCOO-Industria, and one from the main employers’ association CONFEMETAL.

4.1 Retail sector

4.1.1 Industrial relations

There are two main employers' organisations in the retail sector in Spain: the National Association of Large Distribution Companies (ANGED in Spanish), which brings together the most representative companies in the large retail distribution; and the Spanish Confederation of Commerce (CEC in Spanish), which represents small and medium-sized regional and provincial retail organisations.

Two other employers' organisations represent the supermarket sector, although they are not involved in collective bargaining: the Spanish Association of Distributors and Supermarkets (ASEDAS) and the Spanish Supermarket Chains Association (ACES).

As for workers' organisations, union density in the retail sector in Spain is lower than the national average: 9 per cent as against 16 per cent in 2010, according to official statistics.

Trade unions in this sector are clearly divided into two types of organisation. On one hand, there are two 'independent' unions: the Federation of Independent Workers in Retail (FETICO in Spanish), which is the most representative trade union in the large distribution sector, and the Federation of Trade Union Associations (FASGA), which is also present in the large distribution sector (particularly in one company).

On the other hand, there are the sectoral federations integrated in the two traditional trade union confederations: CCOO-Services and FeSMC-UGT (the Federation of Services, Mobility and Consumption of the General Union of Workers).

The class-based trade unions are highly critical of the other two organisations, which they label 'yellow unions' – in other words, backed by the employers. Thus, these organisations are described as 'the union departments of ANGED companies'.¹⁸

Collective bargaining in the retail sector has historically been atomised, with a large number of agreements in force. Sectoral collective bargaining is basically at provincial level, although there are also national-level, regional, interprovincial and even local agreements.

In large retail distribution, collective bargaining is organised at two levels: on one hand, there is just one sectoral agreement: the 'national collective agreement of department stores'. This agreement applies to all large distribution companies integrated in ANGED.

On the other hand there are various agreements at company level, which are not exactly statutory collective agreements (and therefore not registered in the official statistics). The aim of these agreements is to develop and/or adapt the contents of the national collective agreement.

18. Interview with a CCOO-Services union official.

4.1.2 Collective bargaining developments

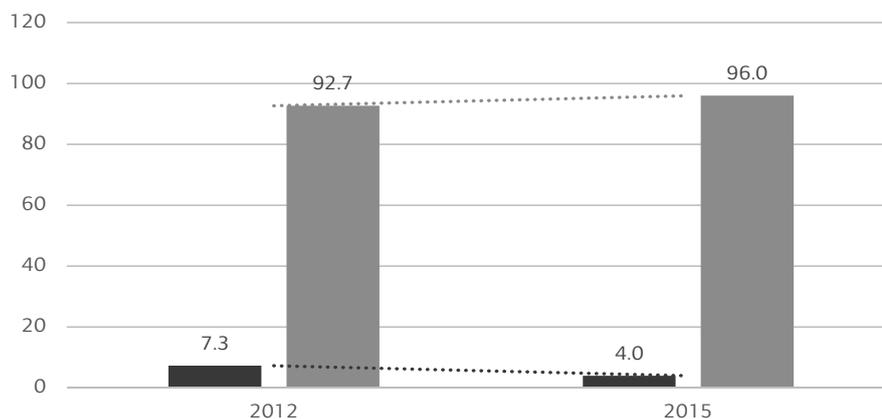
The combined impacts of the crisis and the labour market reforms approved since 2010 – particularly that of 2012 – put industrial relations under pressure.

First, there has been a decline in collective bargaining. Thus, according to the available official statistics the net balance for the retail sector is a fall of 46 collective agreements between 2008 and 2015 – a variation of 10.50 per cent – and of 10,562 workers covered (–0.56 per cent).¹⁹

Second, focusing on the potential effects of the legal measures aimed at fostering the decentralisation of collective bargaining, it is worth highlighting the following issues:

- There has been no alteration in the existing structure of collective bargaining in the retail sector, despite the establishment of new company-level collective agreements after 2012 (Figure 4). This can be explained by a number of factors: (i) most of the new collective agreements were signed by small firms, with a very low coverage; (ii) the creation of new bargaining units at sectoral level, with higher coverage; and (iii) employers have opted to take advantage of other measures in the 2012 labour reform, such as reinforcement of the unilateral power to modify working conditions at company level.
- The legal limitation imposed on the temporary extension rule for expired collective agreements has not had a real impact, although this possibility ‘was used by some employers as a threat to reinforce their bargaining position’.²⁰

Figure 4 Workers covered by collective agreements in the retail sector (NACE G), Spain, 2012 and 2015 (year of economic effects of the agreement and bargaining level; % of total workers)

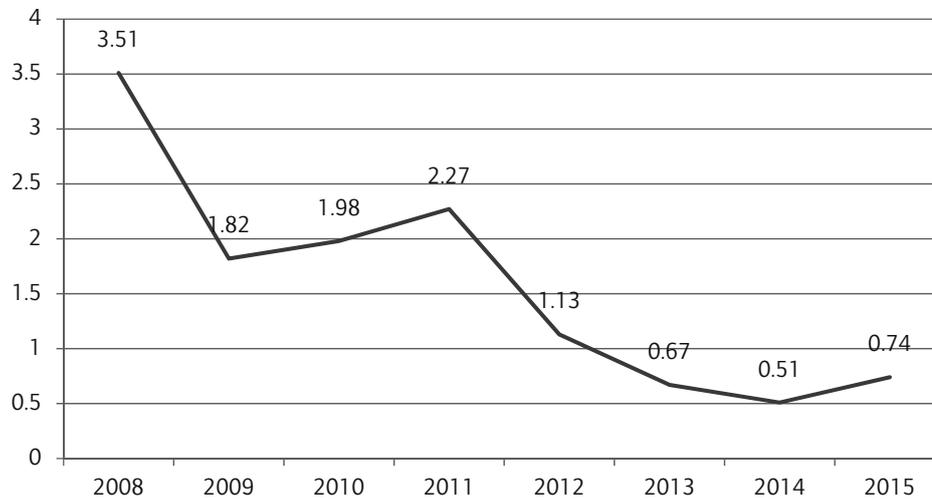


Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, annual data recorded up to October 2014 (data 2012) and March 2017 (data 2015).

¹⁹. Statistics on collective agreements, Ministry of Employment and Social Security, Annual Data.

²⁰. Interview with a union official from CCOO-Services.

Figure 5 Agreed wage increases in the retail sector (NACE G), Spain, 2008–2015 (%)



Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, annual data.

- The main effect of the labour market reform has no doubt been to boost wage devaluation, which was already occurring due to the impact of the economic crisis in the sector.

Thus, on one hand there has been a significant wage moderation trend, although with a slight recovery since 2014, in the context of the fragile improvement in economic activity (Figure 5).

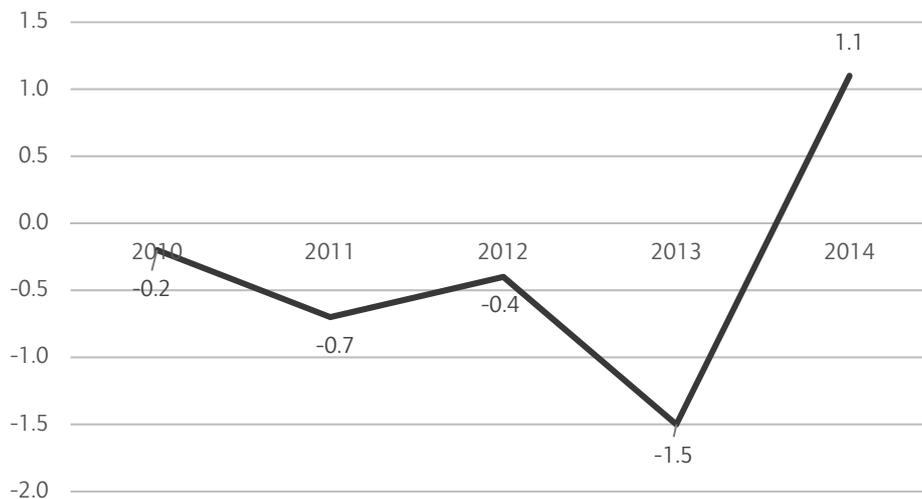
On the other hand, real wages in the sector have fallen sharply, although there were signs of recovery at the end of the period, as shown by the development of hourly wages (Figure 6).²¹

According to the class-based trade unions, the combined effects of the crisis and the labour market reforms have led to a 'wild wage devaluation' in many companies in the retail sector. In the wake of the 2012 labour market reform two mechanisms in particular have been applied by employers to implement wage devaluation.

First, effective implementation of the 'absolute prevalence' of company-level agreements over sectoral ones. The consequence of this is that most of the new company-level agreements signed after 2012 can be considered to be *in pejus* (namely, targeted mainly at reducing wage costs).

²¹ This indicator allows us to overcome the differences due to the changing full-time/part-time composition of the workforce over the years.

Figure 6 Hourly wages in the retail sector, Spain, 2008–2014 (% increase over previous year)



Source: Author's elaboration based on data on wages and hours (employees) in Spanish Annual National Accounts.

Thus, 'the fundamental difference is that, before the 2012 reform, company-level agreements were signed in order to improve the contents of sectoral agreements. After the reform, many employers want to sign new company-level agreements in order to worsen working conditions'.²²

The second mechanism involves application of the 2012 amendment of Article 41 of the Workers' Statute, which regulates procedures for substantial modification of working conditions at company level. This reform was basically aimed at reducing the role of collective bargaining in this regard and to reinforce the power of employers, thus consolidating unilateral internal flexibility.

In this regard, employers in the retail sector have enthusiastically taken advantage of this reform to adjust working conditions. The main consequence has been a reinforcement of wage devaluation, by means of wage cuts or freezes, an increase in the annual number of working days and greater flexibility with regard to working time distribution.

4.1.3 Positions of the social partners in large retail distribution

The employers' association in the large retail distribution sector, ANGED, has been pretty much in favour of the 2012 labour market reform, in particular with regard to measures aimed at reinforcing unilateral internal flexibility at company level.

The main strategy pursued by ANGED in order to exploit this reform was to include some of its key provisions in the text of the national-level collective agreement of department

²². Interview with a CCOO-Services union official.

stores, signed in 2013 with two 'independent' trade unions, FASGA and FETICO, that have traditionally aligned themselves with the employers, as noted above.²³

The content of this agreement led to a severe degradation of working conditions, through provisions such as: (i) the linking of wage increases to sales, taking as a reference the volume of sales in 2010 (in practical terms, this amounted to a real wage freeze); (ii) the extension of the annual number of working days by 28; (iii) the elimination of paid Sundays and holidays, in a context of increasing deregulation of shopping hours; and (iv) greater flexibility with regard to the distribution of working time.

The key point with regard to this agreement, however, was the insertion of a provision on substantial modification of working conditions. Accordingly, in order to comply with the new regulations on the annual number of working days and greater working time flexibility, companies may launch a period of consultation with worker's representatives, following the rules established in Article 41 of the Workers' Statute (modified by the legal reform of 2012, as noted above).

The outcome of this provision has been continuous modification of working conditions since 2013, focused on working time. The aim is to increase the annual number of working days, but especially the reinforcement of working time flexibility and worker availability. In this regard, 'Article 41 is familiar even to the last employee entering the company, because it has been a continuous process of modification after modification'.²⁴

As for the employees' side, the dynamic of industrial relations in large retail distribution is strongly conditioned by the clear divide between the traditional class-based trade unions and the two 'independent' unions (FASGA and FETICO), who are considered by the former to be 'yellow' unions.

The 2013 collective agreement was strongly criticised by the class-based trade unions (CCOO and UGT), which refused to sign it.²⁵ On their view, there were three main matters of controversy.

First, the anomalies concerning the bargaining process, specifically its short duration. Thus, 'there were only three bargaining meetings. The process began at the end of January, and the agreement was signed one month later'.²⁶

Second, the contents of the agreement, which according to the class-based unions implied a strong deterioration of working conditions, as noted above.

Finally, there was the reinforcement of unilateral flexibility via the provision mentioned above.

23. National-level collective agreement of large stores (2013–2016).

24. Interview with a CCOO-Services union official.

25. It should be noted that the class-based trade unions did not sign the former agreement (2009–2012) either, although they did in 2006 (2006–2009).

26. Interview with a CCOO-Services union official.

4.1.4 Final remarks

Collective bargaining in the retail sector has been under pressure due to the combined effects of the crisis and the labour market reforms, particularly those of 2012.

This has led, in the first instance, to a decline in collective bargaining, in terms of both number of agreements and workers covered.

Second, analysis of the effects of the 2012 reform, whose aim was to foster the decentralisation of collective bargaining, yield three main findings:

- (i) The existing structure of collective bargaining in the retail sector has not changed substantially, despite the creation of new company-level collective agreements. This can be explained by a number of different factors: (a) most of the new collective agreements were signed by small firms, with very low coverage; (b) the creation of new bargaining units at sectoral level, with higher coverage; and (c) employers have taken advantage of other measures drawn from the 2012 labour reform, such as reinforcement of their powers concerning unilateral imposition of internal flexibility.
- (ii) The legal limitation imposed on the temporary extension rule for expired collective agreements has not had a real impact, although this possibility has been used by the employers as a threat to reinforce their position in bargaining.
- (iii) The main effect of labour market reform has no doubt been to boost wage devaluation in the sector, which was already occurring due to the economic crisis. Thus, on one hand, there has been significant wage moderation; and on the other hand, there has been a sharp fall in real wages in the sector.

It is worth noting, in relation to the large retail distribution sector, that industrial relations dynamics are strongly conditioned by a clear divide between two types of trade union organisation: the class-based trade unions and two 'yellow unions', which have historically been supported by and aligned with the interests of the employers' association.

One major consequence of this divide was the 2013 agreement in the sector, which developed a number of key elements of the 2012 labour market reform and which was not signed by the class-based trade unions.

Against this background, the latter's strategy is twofold: (i) rationalisation of the structure of collective bargaining in various ways: maintaining and improving the existing national-level collective agreements; concentrating existing provincial-level agreements into new ones, in order to reduce their number; and linking the company-level agreements to sectoral agreements. (ii) Improvement of working conditions, especially in terms of wages and working time, taking into account the economic recovery ongoing since 2014.

4.2 Metal industry

4.2.1 Industrial relations

The employers' association that is party to sectoral collective bargaining is the Confederation of Metal Employers Organisations (CONFEMETAL).

It is worth noting that the composition and even the role of the employers' organisations integrated in CONFEMETAL are very heterogeneous and unstable at provincial level (which is the main level of bargaining in the metal industry). Thus, 'in Spain it is very usual that the bargaining processes at provincial level are carried out by law firms, representing the interests of the employers from different economic sectors. [This has led to a situation in which] many agreements are awaiting renewal because the lawyer involved has retired and there is no contact partner on the business side'.²⁷

The most representative trade unions at national level that are party to sectoral collective bargaining are the sectoral federations integrated in the two traditional class-based trade unions confederations: the Federation of Industry of Workers' Commissions (CCOO-Industry); and the Federation of Industry, Construction and Agriculture of the General Union of Workers (FICA-UGT) and the sectoral federations of three regional-level trade unions. Two are in the Basque Country: the Federation of Industry of Patriot Workers' Commissions (LAB) and the Federation of Industry and Construction of Basques Worker Solidarity (ELA). The third is in Galicia, namely the Federation of Industry of the Galician Inter-Union Confederation (CIGA)

Collective bargaining in the metal industry in Spain has historically been atomised, with a large number of agreements at provincial and company level. This situation is due to the strong fragmentation and atomisation of the sector itself, characterised by a high number of micro and small companies.

4.2.2 Collective bargaining developments

Collective bargaining in the metal industry has been under pressure due to the combined impacts of the crisis and the labour market reforms approved since 2010, particularly those of 2012. Analysing collective bargaining developments in the sector we found the following.

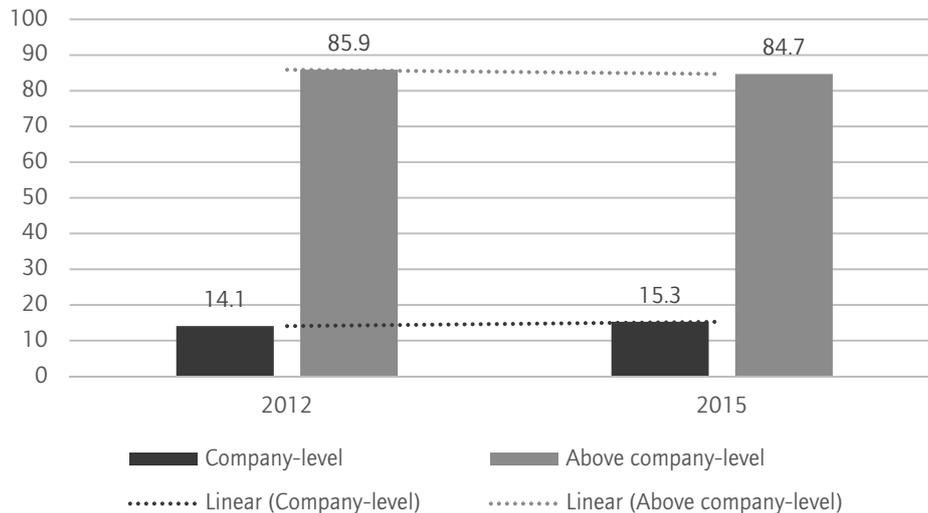
First, there has been a slight decline in collective bargaining since 2008. According to the official statistics the net balance for the metal industry is a decline of 173,000 workers covered by collective agreements between 2008 and 2015 (around -14 per cent).²⁸

Second, turning to the potential effects of the 2012 labour market reform measures aimed at boosting decentralisation of collective bargaining, one might mention the following:

²⁷. Interview with a CCOO-Industry union official.

²⁸. Statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data.

Figure 7 Workers covered by collective agreements in the metal industry,* Spain, 2012 and 2015 (by year of economic effects of the agreement and bargaining level: % of total workers)



Note: Total number of workers covered by collective agreements registered in the following subsectors (NACE code): 24, 25, 26, 27, 28, 29, 30 and 33.

Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data registered up to October 2014 (data for 2012), and March 2017 (data for 2015).

- There has been a slight increase in the weight of the company-level agreements –in terms of workers covered– although this has not caused a substantial alteration of the existing structure of collective bargaining in the metal industry (Figure 7).
- The legal limitation of the temporary extension rule for expired collective agreements has not had a real impact, although this reform has been used as a kind of threat in negotiations.
- The main effect of the labour market reform has no doubt been to boost wage devaluation, which was already occurring due to the impact of the economic crisis in the metal industry.

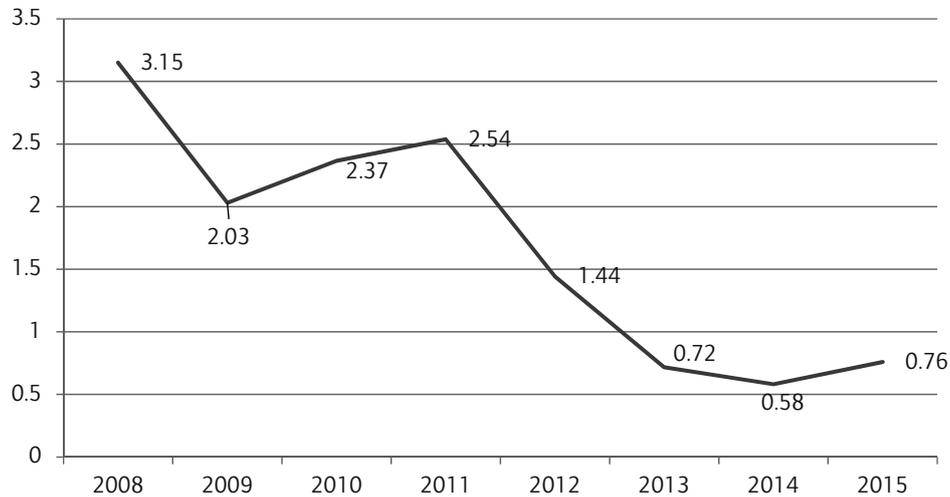
Thus, there has been significant wage moderation, although with slight signs of recovery since 2014 in the context of the fragile recovery of the economic activity (Figure 8).

At the same time, there has been a sharp fall in real wages in the sector, as shown by the evolution of hourly wages (Figure 9).²⁹

According to the trade unions, the employers have implemented three main mechanisms to enforce wage devaluation.

²⁹ This indicator allows us to overcome the differences due to the changing full-time/part-time composition of the workforce over the years.

Figure 8 Wage increases agreed in the metal industry,* Spain, 2008–2015 (%)



Note: * Simple average of wage increases in collective agreements registered in the following subsectors (NACE code): 24, 25, 26, 27, 28, 29, 30 and 33.

Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data.

First, new company-level collective agreements, which can be labelled agreements *in pejus*, namely, agreements targeted mainly at fostering cuts in wage costs.

Second, temporary derogations from sectoral collective agreements. These derogations has not been very numerous, but they have focused on wages to a large extent.

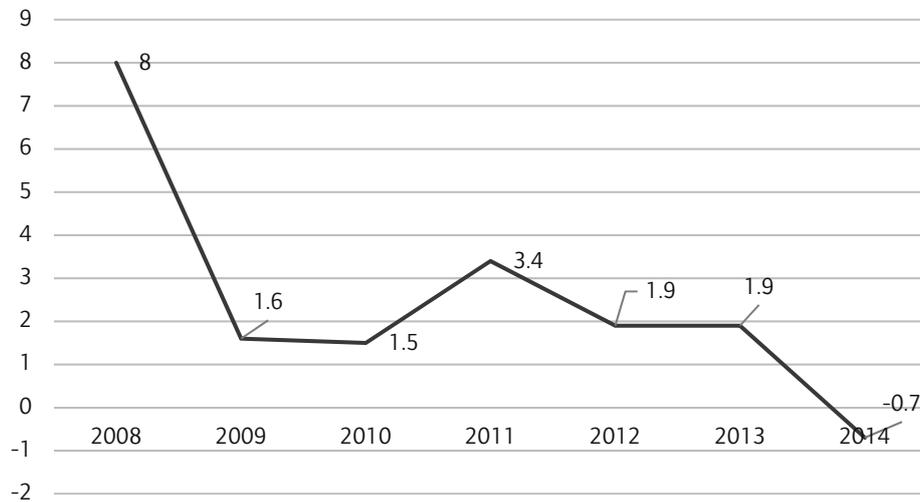
Finally and most important, the application of employers' reinforced powers – after the reform of Article 41 of the Workers' Statute in 2012 – to bring about substantial modifications in working conditions. This reform was basically aimed at reducing the existing role of collective bargaining in this area and to reinforce the power of employers accordingly, leading to consolidation of unilateral internal flexibility.

Employers in the metal industry have taken broad advantage of this reform to adjust working conditions at company level. The main consequence has been the reinforcement of wage devaluation, by means of wage cuts or freezes, an increase in the number of annual working days and greater flexibility with regard to working time distribution.

To sum up, according to the trade unions, 'employers don't really need to negotiate a new company-level agreement, especially in smaller companies, because they can generally resort to the substantial modification of working conditions made possible by the reformed Article 41 of the Workers' Statute to boost wage devaluation'.³⁰

30. Interview with a CCOO-Industry union official.

Figure 9 Hourly wages in the metal industry, Spain, 2008–2014 (% change over previous year)



Note: * Simple average of wage increases in collective agreements registered in the following subsectors (NACE code): 24, 25, 26, 27, 28, 29, 30 and 33.

Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data.

4.2.3 Positions of the social partners

The employers' confederation in the metal industry has fully backed the labour market reforms implemented since 2010 in Spain, although with some nuances regarding decentralisation of collective bargaining.

In short, employers in the metal sector agree with the measures aimed at reinforcing bargaining at company level, but at the same time – and contrary to the government's position – they are in favour of preserving the provincial level of bargaining.

This can be explained by the strong tradition of collective bargaining at provincial level, but also by their resistance to the potential weakening of the role of the employers' confederation. This confederation comprises a number of heterogeneous employers' organisations, rooted mainly, as already mentioned, at the provincial level. Therefore, 'if we lose the provincial level of bargaining and focus only on company-level agreements, there's a strong risk of losing our own organisation'.³¹

It is worth noting the strong prevalence of small and micro companies in the sector. Instead of promoting new company-level agreements most employers have been pretty much in favour of exploiting other measures included in the labor market reforms, aimed at strengthening companies' unilateral power to implement wage devaluation.

31. Interview with a CONFEMETAL representative.

This strategy is also supported by other legal measures, such as the reform of ‘ultra-activity’,³² whose potential application has been used as a threat in the bargaining process, as noted above. Thus, as recognised by the employers themselves, this ‘is being used to obtain other benefits; it is being used as a bargaining strategy’.³³

The most representative metal industry trade unions at national level have developed a threefold strategy to confront the pressures aimed at promoting decentralisation of collective bargaining.

First, the negotiation of modifications in the chapter on collective bargaining structure in the existing National Metal Industry Agreement. This was a reaction to the labour market legal reforms approved in 2011,³⁴ aimed at, among other things, undermining the role of provincial collective agreements in favour of company agreements.

An agreement was finally concluded in January 2012,³⁵ and in its preamble the social partners state that

the current intention to strengthen the company level as the basic level of bargaining cannot ignore or be unaware that our sector is made up of medium-sized and, above all, small enterprises whose dimensions and characteristics are not the most appropriate for negotiating a collective agreement. For this reason, sectoral or sub-sectoral collective agreements should continue to set the minimum conditions for companies and workers in their territorial scope.

Second, the negotiation of the first national-level statutory collective agreement in the metal industry, after 20 years of failed attempts.³⁶ One key trade union goal was to avoid the effects of the 2012 labour market reform, which among other things limited the continuity of collective agreements to one year after their expiry.³⁷

The main concern of the trade unions was that, due to the lack of a higher level agreement, most of the workers could lose the protection of an sectoral agreement with the expiration of the existing provincial agreements.

The outcome of bargaining was the first national-level industry, technology and services collective agreement in the metal sector (Convenio Colectivo Estatal de la Industria, la Tecnología y los Servicios del Metal), signed in March 2016 by CONFEMETAL and the most representative trade unions at national level (CCOO and UGT). This agreement was renewed in March 2017, with the signing of the second national-level collective agreement in the sector.

32. The limitation of the temporary extension rule for expired collective agreements.

33. Interview with a representative of CONFEMETAL, quoted in Fernández *et al.* (2016).

34. Royal Decree Law 7/2011 of 10 June, of urgent measures for the reform of the collective bargaining.

35. Agreement for the modification of the National Metal Industry Agreement (published in the Official State Bulletin, 22/2/2012).

36. Mainly due to the opposition of the employer’s association (CONFEMETAL).

37. Before this reform, this continuity was legally indefinite until a new agreement was reached.

The third strategy has aimed at mitigating the worst social effects of the crisis at company level with the negotiation of 'defensive agreements', which have been very common particularly in the automotive industry. In short, these agreements allowed temporary deterioration of working conditions – in terms of wages and especially working time flexibility – in exchange for job preservation and future investment.

4.2.4 Final remarks

Collective bargaining in the metal industry has been under pressure, as in the case of the retail sector, due to the combined impacts of the crisis and the labour market reforms approved since 2010, particularly those of 2012.

This has led, in the first instance, to a decline in collective bargaining during this period. Second, analysis of the potential effects of the measures established by the 2012 labour market reform aimed at favouring the decentralisation of collective bargaining yields the following conclusions:

- There has been a slight increase in the weight of company-level agreements, although this has not caused a substantial alteration in the existing structure of collective bargaining in the metal industry. This is because the new agreements at company level have been signed to a large extent by small firms. Also, most employers have opted to take advantage of other measures included in the 2012 labor market reform, aimed at boosting unilateral internal flexibility at company level. Finally, it is worth noting the defence of the continuity of provincial-level bargaining by the employers' confederation.
- The legal limitation of the temporary extension rule for expired collective agreements has not had a real impact, although this reform has been used as a kind of threat in negotiations.
- The main effect of the labour market reform has no doubt been to strengthen wage devaluation, which was already happening in response to the impact of the economic crisis in the metal industry. Thus, on one hand there has been significant wage moderation, although with slight signs of recovery since 2014 in the context of the fragile economic revival. On the other hand there has been a sharp fall in real wages in the sector.

Against this background, the most representative trade unions at national level have pursued a threefold strategy: (i) preserving the role of provincial collective agreements, ensuring the sectoral structure of collective bargaining and improving coordination among the different bargaining levels; (ii) mitigating the worst social effects of the crisis at company level by negotiating 'defensive agreements'; and (iii) negotiating the first statutory national-level agreement pertaining to industry, technology and services in the metal sector, which was finally reached in 2016, after 20 years of failed attempts.

It is worth highlighting that trade unions in the metal industry are not against company-level collective bargaining, but they are definitely opposed to the model of '*disorganised decentralisation*' being pushed in the European South by the labour market reforms approved under the umbrella of New European Economic Governance. This process has seriously eroded the dynamics of collective bargaining – it has even brought about

their collapse in the extreme case of Greece – as well as a profound deterioration in working conditions and living standards.

5. Summary and conclusions

Collective bargaining in Spain has been under strain since the onset of the Great Recession. This can be explained, on one hand, by the stronger impact of the crisis in Spain compared with other European countries, especially in terms of job destruction. The significant worsening of the economic and social situation created a tough context for the normal development of industrial relations. For example, there was practically a 'blockade' of collective bargaining in the first two years of the crisis.

On the other hand, the New European Economic Governance launched in 2010 established the decentralisation of collective bargaining as a key goal of country-specific recommendations (particularly for southern European countries).

The labour law reforms adopted in various European countries show some differences in terms of contents and scope. Nevertheless, comparative analysis allows us to highlight two common trends:

- (i) A certain *democratic deficit with regard to governance*, as the labour law reforms have been adopted mainly without consultation and negotiation with the social partners.
- (ii) The bias of the reforms towards *more flexible regulation of collective bargaining*, emphasising three key goals: (a) giving a major new 'push' to the decentralisation of collective bargaining; (b) fostering wage devaluation in order to reinforce the competitiveness of the national economies; and (c) deepening the asymmetry between capital and labour at company level by strengthening employers' power to regulate working conditions unilaterally.

Labour law has been subjected to continuous reform in Spain during this period, the most important being the reforms adopted by the Conservative government in 2012. This reform is unanimously considered a landmark in Spanish labour law regulation.

One of the major goals of the 2012 labour law reforms was to push the decentralisation of collective bargaining, through three main mechanisms: (i) widening employers' possibilities for temporarily suspending sectoral or company-level collective agreements; (ii) limitation of the temporary extension rule for expired collective agreements; and (iii) giving absolute priority to company-level collective agreements over sectoral ones in a number of respects.

Analysis of the effects of these measures on collective bargaining developments between 2012 and 2015 yields four main findings:

- (i) The labour law reforms enacted during this period of crisis have fostered the development of new collective agreements at company level. Nevertheless, to date this

process has not caused a substantial alteration of the formal structure of collective bargaining (in terms of the weight of sectoral and company level agreements).

In fact, if we focus on the evolution of collective agreements registered by the year in which their economic effects became known, statistical data show that the weight of the company-level agreements decreased from 10.2 per cent of workers covered in 2008 to 8.4 per cent in 2014.³⁸

There are a number of different reasons for this:

- Most new collective agreements were signed by small or medium-sized firms, with low coverage.
- The creation of new collective agreements at company level may represent a risk for many employers in terms of higher transaction costs, higher bargaining costs and potential labour conflicts associated with encouraging workers' participation.
- Employers have taken advantage of other measures drawn from the 2012 labour reform, such as: wider possibilities for temporary derogations from collective agreements at company level; and, especially, reinforcement of the employer's unilateral power to modify working conditions
- Union strategies aimed at maintaining the continuity of sectoral collective agreements, even at the expense of the devaluation of their contents (especially in terms of wage freezes or devaluation, and higher flexibility or working time).

(ii) Two controversial issues arise from the development of the new company-level agreements created after the 2012 labour law reform. On one hand, it is worth noting the signing of various new collective agreements *in pejus*, namely, agreements whose provisions are inferior to those of higher bargaining levels (particularly with regard to wages). In some cases these agreements even tried to operate retroactively, although the labour courts later struck this down.

On the other hand, there have been problems with regard to the legitimacy of the actors involved in the negotiation of some new company-level agreements, in particular workers' representatives in smaller companies.

(iii) The most important effect of the labour law reforms adopted since 2010 has no doubt been strong wage devaluation, which has exacerbated the social situation in Spain, with a general rise in inequality and poverty levels; as a result, the at-risk-of-poverty or social exclusion rate increased to 28.6 per cent of the population in 2014; and the in-work poverty rate — the so-called 'working poor' — rose to 14.8 per cent.³⁹

(iv) The 2012 labour law reforms have strongly deepened the power asymmetry between capital and labour, strengthening the capacity of employers to regulate working conditions at company level unilaterally. This has laid the foundations for a more

38. Statistics on collective agreements, Ministry of Employment and Social Security. Data related to collective agreements registered by year of economic effects (2014 is the last year available with definitive data).

39. Living Conditions Survey 2015, National Institute of Statistics (published in 2016, data related to 2014).

authoritarian pattern of industrial relations, and also for the potential consolidation in the medium term of a model of 'disorganised decentralisation' of collective bargaining. In this regard, we have noted that this disorganised decentralisation poses a number of challenges (Martín and Alos 2016):

- The characteristics of the business structure in Spain, marked by the prevalence of small and micro companies.⁴⁰ This environment is a breeding ground for patronising or even authoritarian industrial relations, thereby obstructing normal development of collective bargaining.
- The lack of a trade union in many SMEs, which can lead to the establishment of workers' representatives strongly influenced by the employers.
- The risk of unfair competition and social dumping. This largely explains the reluctance of many employers to discard the sectoral collective agreements, because they provide an umbrella for a minimum common regulation of economic and working conditions for all the companies affected.

Against this background, the general strategy of the most representative trade unions for the coming years is structured around two key goals.

First, promotion of wage growth in order to ensure the recovery of purchasing power after years of internal devaluation, and taking into account the signs of economic recovery registered since 2014.

In this regard, it is worth noting the Third Inter-confederal Agreement on Employment and Collective Bargaining 2015, 2016 and 2017, signed on 8 June 2015 by the most representative social partners at national level. In this text, which provides guidelines for the development of collective bargaining at all levels, the social partners state that 'a breakthrough in wage growth, if possible in line with economic reality in the different sectors and/or across the economy, and the absence of inflationary pressure in the Spanish economy would help to increase workers' purchasing power and further improve our competitiveness, thereby preserving and creating jobs'.

Thus, a wage increase of 'up to 1 per cent' was agreed in 2015 and one of 'up to 1.5 per cent' in 2016. Nevertheless the guideline for 2017 is still the subject of controversy at the time of writing (June 2017), because the trade unions were demanding a higher wage increase, taking into account overall economic performance, which has not been accepted by the employer's confederation.

Second, the defence of a model of '*organised* decentralisation' of collective bargaining, emphasising two key elements:

On one hand, the role of sectoral collective agreements in order to ensure a minimum floor of working conditions and rights for workers, but also to avoid the risk of unfair

40. In January 2016 there were 1.4 million companies with employees in Spain, of which 90.4 per cent had fewer than 10 workers, and 62 per cent one or two. See Central Business Register, National Institute of Statistics (data published on 29/7/2016).

competition and social dumping for companies. One clear example of this approach is the first national-level collective agreement signed in the metal industry in 2016.

On the other hand, the importance of coordination among the different levels of collective bargaining, as a way of guaranteeing flexible and fair adaptation of working conditions to companies' changing circumstances.

References

- Alfonso C. and Fabregat G. (2016) El convenio de empresa tras la reforma laboral: proceso de negociación y legitimidad, in Almendros M.A., Merino A., Sanguinetti W., Vivero J.B. and Casas M.E. (eds.) *Los convenios de empresa de nueva creación tras la reforma laboral de 2012*, Madrid, Lefebvre El Derecho, 77-96.
- Banyuls J. and Recio A. (2015) A crisis inside the crisis: Spain under a conservative neoliberalism, in Lehndorff S. (ed.) *Divisive integration. The triumph of failed ideas in Europe- revisited*, Brussels, ETUI, 39-68.
- Baylos A. (ed.) (2013) *Políticas de austeridad y crisis en las relaciones laborales: la reforma del 2012*, Albacete, Editorial Bomarzo.
- Bentolila S., Dolado J. and Jimeno J. (2012) *Reforming an insider-outsider labor market: the Spanish experience*, Documentos de trabajo 2012-01, Madrid, Fedea.
- CCOO and UGT (2015) *Declaración que presentan las Confederaciones Sindicales de Comisiones Obreras y la Unión General de Trabajadores en relación a las empresas multi-servicios*, 18 March 2015, Madrid.
- Casas M. (2016) La prioridad aplicativa de los convenios colectivos de empresa, in Almendros M.A., Merino A., Sanguinetti W., Vivero J.B. and Casas M.E. (eds.) *Los convenios de empresa de nueva creación tras la reforma laboral de 2012*, Madrid, Lefebvre El Derecho, 13-75.
- Council of the European Union (2011) *Council Recommendation on the National Reform Programme 2011 of Spain and delivering a Council opinion on the updated Stability Programme of Spain, 2011-2014*, Brussels, SEC(2011) 817 final.
- Cruces J., Álvarez I., Trillo F. and Leonardi S. (2015) Impact of the euro crisis on wages and collective bargaining in southern Europe- a comparison of Italy, Portugal and Spain, in Van Gyes G. and Schulten T. (eds.) *Wage bargaining under the new European economic governance. Alternatives strategies for inclusive growth*, Brussels, ETUI, 93-137.
- Cruces J., Lago J., Moreno R., Rocha F. and Sanz E. (eds.) (2016) *El impacto de la reforma laboral de 2012 en la negociación colectiva (2013-2015)*, Madrid, Lefebvre El Derecho.
- Cruces J. (2016a) *Retribuciones*, in Cruces J., Lago J., Moreno R., Rocha F. and Sanz E. (eds.) *El impacto de la reforma laboral de 2012 en la negociación colectiva (2013-2015)*, Madrid, Lefebvre El Derecho, 100-162.
- Cruces J. (2016b) *Valoración de los responsables sindicales de las federaciones estatales de CCOO*, in Cruces J., Lago J., Moreno R., Rocha F. and Sanz E. (eds.) *El impacto de la reforma laboral de 2012 en la negociación colectiva (2013-2015)*, Madrid, Lefebvre El Derecho, 208-236.
- Cruz J. (ed.) (2015) *La incidencia de la reforma laboral de 2012 sobre la estructura de la negociación colectiva*, Madrid, Ministerio de Empleo y Seguridad Social.
- Díez L. and Villanueva E. (2014) *Collective bargaining and unemployment during the great recession: evidence for Spain*. http://conference.iza.org/conference_files/wagerigidities_2014/villanueva_e7178.pdf

- European Commission (2016) Commission staff working document, country report Spain 2016, including an in-depth review of the prevention and correction of macroeconomic imbalances, Brussels, SWD (2016) 78 final.
- Fernández C., Ibañez R. and Lucio M. (2016) The reform of collective bargaining in the Spanish metal and chemical sectors (2008–2015), the ironies and risks of de-regulating employment regulation, in Koukiadaki A., Távora I. and Lucio M. (eds.) Joint regulation and labour market policy in Europe during the crisis, Brussels, ETUI, 499–553.
- Jaumotte F. (2011) The Spanish labour market in a cross-country perspective, Working Paper No. 11/1, Washington, DC, International Monetary Fund.
- Lago M. (2016) Análisis sobre la encuesta anual laboral de 2014, in Cruces J., Lago J., Moreno R., Rocha F. and Sanz E. (eds.) El impacto de la reforma laboral de 2012 en la negociación colectiva (2013–2015), Madrid, Lefebvre El Derecho, 191–207.
- Marginson P. (2014) Coordinated bargaining in Europe: from incremental corrosion to frontal assault?, *European Journal of Industrial Relations*, 21 (2), 97–114.
- Martín A. and Alós R. (2016) Continuidad y cambio después de la reforma de la negociación colectiva, in Pérez F., Rojo E. and Ysás H. (eds.) Balance de la reforma laboral de 2012, Albacete, Editorial Bomarzo, 121–148.
- Government of Spain (2013) Report evaluating the labour market reform, Madrid, Ministry of Employment and Social Security.
- Moreno R. (2016) La dinámica de la negociación colectiva, in Cruces J., Lago J., Moreno R., Rocha F. and Sanz E. (eds.) El impacto de la reforma laboral de 2012 en la negociación colectiva (2013–2015), Madrid, Lefebvre El Derecho, 9–72.
- Muñoz A. (2014) Estrategias de negociación y empresas multiservicios: la problemática del convenio colectivo aplicable como telón de fondo, *Revista de Información Laboral*, 7, 277–286.
- Muñoz de Bustillo R. and Esteve F. (2017) The neverending story. Labour market deregulation and the performance of the Spanish labour market, in Piasna A. and Myant M. (eds.) Myths of employment deregulation: how it neither creates jobs nor reduces labour market segmentation, Brussels, ETUI, 61–80.
- Pérez F., Rojo E. and Ysás H. (eds.) (2016) Balance de la reforma laboral de 2012, Albacete, Editorial Bomarzo.
- Piasna A. and Myant M. (eds.) (2017) Myths of employment deregulation: how it neither creates jobs nor reduces labour market segmentation, Brussels, ETUI.
- Ramos M. (ed.) (2013) Las reformas del sistema de negociación colectiva en España, Albacete, Editorial Bomarzo.
- Rocha F. (ed.) (2014a) The New European economic governance and its impact on the collective bargaining systems, Madrid, Fundación 1º de Mayo.
- Rocha F. (2014b) Crisis and austerity policies in Spain: towards an authoritarian model of industrial relations, in Rocha F. (ed.) The New European economic governance and its impact on the collective bargaining systems, Madrid, Fundación 1º de Mayo, 175–206.
- Schulten T. and Müller T. (2013) A new European interventionism? The impact of the new European economic governance on wages and collective bargaining, in Natali D. and Vanhercke B. (eds.) Social developments in the European Union 2012, Brussels, ETUI, 188–213.
- Schömann I. and Clauwaert S. (2012) The crisis and national labour law reforms: a mapping exercise, Working Paper 2012.04, Brussels, ETUI.
- Van Gyes G. and Schulten T. (eds.) (2015) Wage bargaining under the new European economic governance. Alternatives strategies for inclusive growth, Brussels, ETUI.

- Vicente A. (2016) *Empresas multiservicios y precarización del empleo. El trabajador subcedido*, Barcelona, Atelier Libros Jurídicos.
- Visser J. (2016) What happened to collective bargaining during the great recession?, *IZA Journal of Labour Policy*, 5 (9), 1–35.
- Vivero J., Cruz J., Pérez J., Sepúlveda M. and Morato R. (2016) La prioridad aplicativa del convenio de empresa en materia salarial, in Alfonso C., Almendros M., Merino A., Sanguinetti W., Vivero J. and Casas M. (eds.) *Los convenios de empresa de nueva creación tras la reforma laboral de 2012*, Madrid, Lefebvre El Derecho, 97–238.
- Yancheva A., Lagneaux F., Maquet-Engsted I., Aujean L., Arranz D. and Joseph E. (2014) Key employment and social trends in the face of a long delayed and fragile recovery, in European Commission, *Employment and Social Developments in Europe 2013*, Luxembourg, Publications Office of the European Union, 17–62.

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