The Reform of Collective Bargaining in the Spanish Manufacturing Sector with Reference to the Metal and Chemical Sectors: Legacies and Risks in the Reform of Regulation since 2008

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Project

Social dialogue during the economic crisis: The impact of industrial relations reforms on collective bargaining in the manufacturing sector (incorporating social dialogue in manufacturing during the sovereign debt crisis)

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PART 1 BACKGROUND AND THE REFORMS

1.1. Introduction

The context of collective bargaining in Spain was considered by some to be one of the strongest in Europe by virtue of its coverage, although the question of implementation has been an issue. Since the development of the liberal democratic political system in the late 1970s – after the end of the Franco dictatorship (1939-75) – there had been an ongoing extension of collective bargaining. Forms of pseudo-bargaining had existed at various levels during the latter years of the Francoist dictatorship, albeit led and managed by management and the state who dominated over a state organised trade union (Martinez Lucio, 1998; Martinez Lucio and Hamann, 2009). However, there were instances where management did negotiate with certain elements of the emerging independent labour movement which, while formerly still clandestine, did manage to engage with certain 'works council style' elections in some instances. With the advent of democracy and the consolidation of various labour rights through the Worker's Statutes and Organic Law of Trade Union Freedoms the pattern of bargaining in companies and workplaces became normalised. Local provincial bargaining for a range of sectors such as the construction and the hospitality sectors allowed for the terms of conditions of various workers in small to medium sized firms to be collectively determined even where labour representation was weaker: such smaller firms relied on higher level agreements (Sissons et al, 1991). In addition, the steady emergence of a sector level of bargaining in such sectors as the chemical industry managed to establish a basis for a more articulated structure of bargaining with minimums being established for specific sets of workers (Hamann, 2012: 150-154).

Whilst national agreements and pacts of a tripartite nature were high in number and varied according to scope, there was also, according to some, a continuous dialogue at the higher level which ideologically or strategically framed the local practice of social dialogue (Guillen, et al 2008). The number of pacts on a range of issues since the late 1970s indicates for some a continuity in dialogue at the level of state. There has been much discussion as to

whether this level of bargaining really did effectively impact on the structure of bargaining as the pacts were more concerned with reforms and modernisation processes in terms of labour relations on issues such as learning. The frameworks for setting collective increases in pay at peak level did exist, with the overall changes in the content of bargaining, especially pay, being established through national bi-partite agreements at specific times; but whether this national level activity on specific elements of the employment relation was acting as a vehicle for sustaining a systematic dialogue beyond specific pacts and becoming embedded in systematic neo-corporatist structures is questionable (Martinez Lucio, 1998). However, a culture social dialogue between the majority unions, the main employer federations and the state was apparent, which during key moments of political difference was invoked to stabilise the politics of industrial relations (Roca, 1983).

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

During the 1980s through to the late 00's collective bargaining was able to cover circa 80% of the workforce. In 2005 for example, 4,647 collective agreements were signed covering 8,745,700 workers (Consejo Económico y Social 2005:330). From 1997-2004 there were between 3,700 and 4,200 agreements annually, and between 7 million to 8 million workers covered. This covered a range of topics related to pay, working hours, and training: although one of the criticisms concerning collective bargaining is that beyond the larger firms there was a tendency for SMEs to rely on either national sector level agreements or provincial sector agreements for their wage increases and working hours in terms of content, and rarely engaged with broader issues and collective bargaining content.

Underpinning this relative stability and consistency was the role of the two major trade union confederations, the CCOO and UGT, which had, since the late 1980s, begun to work more closely together in terms of their strategies towards the development of collective bargaining. These trade unions receive the large part of the vote in the trade union elections which every four years determine the nature of works councils and individual workplace representatives.

These competitive elections have tended to see these unions increase the share of union delegates they have in such bodies from circa 55% in 1978 to 75% in 2007 (Beneyto, 2008). As stated, such elections have normally seen over 80% of the workforce vote, so one can detect a strong institutional underpinning to the process of social dialogue. Yet low union membership density - which have been between 10 and 20 percent over the past thirty years - and related financial difficulties have led to a concern with the 'crisis of representation' in Spanish unions. Jordana (1996) has argued that trade union membership in the 1970s has been significantly overstated; thus the picture of subsequent decline is misleading. As in France, formal union 'representativeness' for the purposes of reaching collective agreements and for participation in tripartite bodies, is judged according to the results in the workplace elections (see below) in which all employees, whether union members or not, are entitled to vote. Thus the Spanish union movement has been labelled a 'voters' trade unionism' rather than a 'members' trade unionism' (Martin Valverde 1991: 24-5). In other words, organisational influence depends on electoral success as much as on membership figures. In these terms, the main Spanish unions appear to be more favourably regarded and more widely supported by workers than their membership figures might indicate.

Yet throughout the 1990s onwards there emerged a political discourse on the right and in neo-liberal leaning parts of the Socialist Party which questioned the actual effectiveness and perceived 'rigidities' of collective bargaining structures and labour market regulation, especially in terms of employment termination. This narrative built on the centrist-market leaning politics of the Gonzalez Socialist government in the 1980s and early 1990s which tended to lean towards a politics of privatisation and limited social regulation and investment (Smith, 1990). The Spanish labour market had adopted certain features of labour market regulation from the previous regimes. These features were not reflective of any progressive or any pro-labour nature of the previous regime or of the social elites driving the transition to democracy, but emerged from a symbolic contract with the working class given the nature of its exploitation in political terms. It was a system of political quiescence which put in place a series of regulatory characteristics in terms of work organisations which elites felt would placate the need for any alternative or independent forms of labour representation (see Foweraker, 1989). It is essential we understand this historical context:

> '… regardless of this forced internal and external dispersal of trade unionists the state could not allow a vacuum to develop in terms of the industrial relations system. Coercion no matter how extensive could be but one part of a politics of industrial relations and the regulation of employment in favour of employers and capital more generally… In terms of representation, the Organización Sindical Española was developed. This 'vertical union' brought worker representatives and employer representatives into the national level of this state body down to the regional and sectoral level (Ellwood, 1976). … Secondly, a system of 'representation' was developed within the workplace and in companies. In effect, this system of representation was neither independent nor free of state influence but began to operate albeit on the terms of employer interests. Thirdly, and more importantly in terms of its later effect and ongoing influence until recently, the state passed what are termed labour ordinances, a set of detailed regulations of employment categories and classifications to some extent. They configure the position and jobs of individuals and whilst employers maybe did not always take them seriously the ordinances assisted in the organising of the employment relations and the need for regularity and certainty – albeit one that was state directed and for the most part in favoured employers. Even employment termination became regulated in terms of how it was processed and remunerated with relatively high levels for redundancy although there is a question mark over whether these were consistently paid' (Martinez Lucio and Hamman: 2009:126).

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

The role of sector level bargaining began to emerge as a point of contention for some on the right of the political spectrum. National and provincial sector levels of bargaining were the main point of reference within the system due to the large number of small and medium sized firms who did not have their own agreements (Sanz de Miguel, 2012). Some saw the sector level of bargaining as creating a degree of inflexibility within the system of labour productivity and relations, and of obscuring the actual weaknesses of the system providing trade unions with the appearance of more influence than what they actually had. It was seen by some members and officials of various employer organisations as a way of subsidising and organisationally carrying the trade union movement (interview data from authors).

Hence, well before the crisis we begin to see the advanced embryo of a more affirmative neo-liberal critique of the system of regulation in terms of its coverage. The system of industrial relations regulation was seen as being a framework of control which according to the political right stalled productivity increases. This narrative resurfaced in the post 2008 period especially towards the end of the Socialist Zapatero government (2004-11) and current Conservative PP government which fixed its sights on the question of labour cost as an impediment to economic renewal. We will return to this later.

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

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

However, the right in Spanish politics have pointed to a specific set of structures that were also unable to sustain the nature of economic development in terms of the regional structure of the state and the manner in which debt had accumulated at that level. During the early 00s the public deficit and debt was fairly low and within the classic Maastricht criteria. Yet this situation began to steadily unsettle and eventually deteriorated in the past ten or so years. The right thus turned its focus on the structure of the state and the labour market as a vehicle of reform partly legitimated by the fixation with the 'cost of labour dismissal' and the perceived 'archaic' system of labour relations and bargaining: this was further supported through references to the discourse of de-regulation that emerged from within the European Union and various international financial ranking agencies.

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

This narrative was bolstered by very high levels of unemployment which brought to the fore the failures of labour market processes (although what is the cause of this unemployment is the subject of much debate). Spain has had one of the highest levels of unemployment in Europe since the early 1980s although the extent of hidden and undeclared labour may have meant the figure was lower. In 2007 the level of unemployment was just over 8% which was considered to be low given previous levels, however by 2013 the figure was 27% (Statista, 2014). This was, according to the left, due to the failure of the economic growth model (as discussed earlier) but for the right, which won the elections in 2011, it was the outcome of an

archaic system of labour regulation. In 2012 unemployment for those under 25 was 55% (Eurostat, 2013). This engendered an insider-outsider discourse which viewed the 'insiders' as being protected by the nature of redundancy legislation and the processes of collective bargaining.

1.2. The Processes of Reform

The crisis of Spain was initially responded to through a strategy that assumed a partially neo-Keynesian character. Initially a series of public works programmes were developed by the Zapatero socialist government (2004-11) during its latter years from 2008 and 2009 which emphasised state led employment and injections of income into infrastructure projects: it was called 'Plan E'. This was a short term reaction framed by the belief that the crisis was temporary. This brief Keynesian moment was not in keeping with the neo-liberal 'continuity' politics of Zapatero which maintained a marketised economic policy and did not develop the public sector or the role of state extensively after the previous conservative government: some scholars such as Field (2009) have considered that this government did not depart from the economic policies of the previous governments (which were mainly neoliberal), despite the underlying structural problems of the economic growth model. Zapatero's social agenda was mainly focused on social values and questions related to liberal individualism. Hence Plan E was a short term response to declining purchasing trends and increasing unemployment after 2008. In addition, towards the final year or so of Zapatero's government, policy became couched in terms of public expenditure cuts and increases in indirect taxation: this has been a major feature of the later right wing government's critique of the left in that it began to move steadily towards a politics of austerity before the 2011 election meaning any critique of the right after 2011 could be deemed to be unjustified. In addition, the question of labour reforms, as we will discuss below in terms of employment contracts, was propagated in part during the last two years of the Socialist government. It attempted to create a series of pacts on employment and flexibility within the labour market emphasising the need for labour reforms. The election of the PP government in 2011 brought forth a more austere politics of austerity based on public sector expenditure cuts, reductions in public sector incomes, and the containment of future public expenditure projects through privatisation proposals especially in the health sector and aspects of the public media.

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

mobilisations and demonstrations) have brought forth a more co-ordinated authoritarian character.

Furthermore, the link with the 'troika' and the key institutional aspects of the European Union and the International Monetary Fund, have been significant. The imposition of a series of recommended changes to the ambit and reach of the state from external agencies, and the detailed recommendations of the way finance policy was to be conducted, were utilised by the government in Spain as not just a point of legitimacy for its changes but also as a way in which to castigate the previous government and civil society for its 'failures' to 'constrain' the 'negative' economic behaviours of Spain. This political link with external agencies was paralleled by a growing shift in the policy discourses of the labour market and labour regulation. The fundamental obsession with labour costs and the impact of supposed difficulties in making people redundant has created a view that the problem emerges from a protected and highly regulated workforce: 'The IMF assessment is certain to come as a disappointment to the Rajoy government, which pushed through an ambitious labour market reform last year that made it cheaper for companies to fire workers and easier to depart from collective wage deals. Though the Fund praises the reform, saying it has had "some positive effects", it warns that more drastic action is needed. It wants wages and work arrangements to be made more flexible still, and calls on Madrid to end the much-criticised "duality" between temporary and permanent work contracts. "The reform effort must continue," said James Daniel, the Fund's mission chief for Spain, in a conference call with journalists' (Buck, Financial Times, 2013). This demonizing of the Spanish worker has been a part of the ideology of the external agencies who have continuously applied pressure on the government to pursue labour market reforms (Fernandez Rodriguez and Martinez Lucio, 2013). This ideology links those external interests with those of the internal market facing reformers (particular groups of employers and orthodox economists), paving the road for the reforms to come in the labour market legislation.

1.3. The Substantive Reforms in Labour Relations

As mentioned before, 'rigidity' has been considered to be the main problem in the Spanish labour market, and in every economic crisis this discourse has reappeared, influencing the development of specific measures deployed to introduce more flexibility (Fernández Rodríguez and Martínez Lucio, 2013). Given the fact that the current crisis has been considered by most of the media and analysts as the worst since the 1929 crash, it was not surprising that the advocates of liberalization of the labour market would call for drastic changes in labour legislation in order not only to respond to the crisis, but to frame a new landscape in industrial relations where deregulation would lead to greater economic efficiency and employment growth.

Indeed, the Spanish economy has been facing strong challenges during the crisis. During the years 2008–11, the economic crisis was particularly intense in Spain and there was a period of job destruction. The year 2009 can be easily considered one of the worst years in Spanish history in terms of economic activity and unemployment. It is estimated that during 2009 more than one and a half million lost their jobs, increasing the number of unemployed to more than 2 million since 2007. This represented a major challenge for the Spanish economy whose economic model (based in part on a speculative construction sector and related services) had collapsed (López and Rodríguez, 2011). The beginning of the sovereign debt crisis in Greece during the autumn of 2009 increased the external pressures from financial

markets and European partners, and soon the Spanish government was put under severe pressure, forcing the Zapatero to develop a U-turn in the anti-crisis policies developed until that moment as stated above (Meardi, 2012). A set of unprecedented political measures were carried out to avoid a debt crisis. Cutting public wages and freezing them for the following years, and trimming social expenditure, were coupled with reforms related to labour market regulation that have had a very strong impact upon collective bargaining.

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

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

A brief description of the collective bargaining system

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

The basic principles of the system could be summarized in three points:

a) Legitimacy of the "most representative union" to participate, an issue that depends on support in the works council elections, not from the number of affiliated workers. This means that nationally only CCOO and UGT are deemed to be the "most representative unions", accompanied by some Basque and Galician smaller unions in those autonomous states.

b) The principle of statutory extension. This establishes that any collective agreement higher than the company level must be applied to all companies and to all workers forming part of the geographical and industry level in question. It is irrelevant whether they have participated or not in the bargaining process. This sets the limits for further agreements, thus guaranteeing a certain set of minimums in the company level bargaining.

c) "Ultra-activity" refers to the following principle: if an agreement has not been renewed, it remains valid after its expiry.

Negotiations take place usually between trade unions and employers' associations. However, in specific cases they are were also signed by the government in order to provide an element

of legitimacy. Different sets of dialogues may occur at four different levels: national, regional, industry, and company/organisation level, and as mentioned before they cover a broad range of issues such as training, job classification, sickness, maternity arrangements, and health and safety. Since 2005 there was also a sharp increase in the number of agreements covering employment, particularly regarding an increase of permanent employees at the workplaces. The results of the specific negotiations had effects on all employees in the area that the collective agreement was covering. Therefore, if a certain agreement was reached in a specific sector of the economy and in a province, then the companies of that sector which were based in that province would be subjected to those labour conditions: although as stated above what aspects were adhered to varied. The negotiations were driven by employers and works councils but, at the higher levels beyond the organization, the agreement could only be signed by representatives of the "most representative unions" at the national or regional level. The law describes how negotiations are to be conducted and the composition of both sides. Agreements tended to last two years or more, and almost invariably started from the beginning of the year (though negotiations could begin anytime during the year). It is important to notice that lower level agreements used to include a clause providing additional payments if inflation exceeded an agreed level.

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

We mentioned that the emergence of post-1975 industrial relations in Spain was still under the influence of a political project shaped around the construction of a positive notion of labour citizenship. The Estatuto de los Trabajadores (Workers' Statute) and some additional laws were inspired by social-democratic perspectives (Alonso, 2007). Nevertheless, the deepening nature of the crisis during the 1980s, the rise of unemployment and the new policies adopted by the PSOE to join the European Economic Community (EEC) had led to a change of direction that remained stable as a discourse for the rest of the democratic period. As was mentioned before, some orthodox economists from the Bank of Spain started to suggest a number of possible reforms as they perceived that the automatic pay increases negotiated in collective agreements were a threat not only to controlling inflation but to the competitiveness of Spanish firms and corporations, thus highlighting the rigidity of the model. For instance Bentolila and Jimeno (2002) claimed that the Spanish economy was approaching a new scenario which required a drastic reform of the Spanish industrial relations – and saw the sets of rights discussed above as a political compromise of the transition period to democracy that was now obsolete in a more developed modern democracy.

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

a) The increasing demand of increasingly skilled workers had effects on the way negotiations were conducted, with a 'dualization' of the Spanish labour market in terms of skills. Pay increases and decisions taken at a higher level than the organization would have the effect of raising the unemployment rate of non-skilled workers it was argued.

b) Spain had joined the EU internal market which implied freedom of movement for goods, capital and labour. This implied important challenges for unskilled workers who faced competition from immigrants from other parts of Europe (e.g. Eastern European countries) and beyond.

c) Spain had also joined the Economic and Monetary Union and therefore had adopted the Euro as its new currency. Therefore, the economic policies could no longer rely on its monetary policies. Currency devaluation had been a salient policy during the democratic period, and had helped to boost the Spanish economy after the 1993 crisis. However, joining the euro had become an absolute priority for Aznar's PP government, who claimed that it was essential for situating Spain among its European peers in terms of economic modernization: and it was known that further adjustments in the future might be perceived as a direct impoverishment of the working conditions of Spanish people (through salary cuts) once devaluations could no longer be used. According to Bentolila and Jimeno (2002), to avoid situations of high unemployment and slow economic growth more flexible salaries and higher productivity would be required.

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

From the beginning of the nineties onwards, employers' associations expressed their discontent about the way collective bargaining had been established and the governments of the PSOE and PP began to respond. The labour market reform of 1994 had included elements which implied a certain decentralization of industrial relations. They de-regulated certain aspects of labour regulation and decentralized collective agreements (where regional agreements could prevail over national ones, an important issue given the disparity of levels of economic development among different regions). It also allowed the possibility to include clauses that would leave open the possibility of a 'descuelgue salarial' (a company has the possibility of not adhering to pay agreements in the sector if it has a problematic financial context). However, few measures were taken in that direction and Spain joined the Euro with a system of collective bargaining was criticized by some segments of employers and orthodox academics close to their positions. Their view was linked to the free dismissal discourse we mentioned earlier (Fernández Rodríguez and Martínez Lucio, 2013).

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

The nature of the collective bargaining reforms:

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

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

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

a) It lowered dismissal costs and broadened the notion of 'objective causes' for firms to justify redundancies.

b) It also accepted that companies and employees could reach agreements in which they would voluntarily place themselves outside the framework of collective bargaining agreements at the sector level, easing the preconditions for the *descuelgue salarial*.

c) It added a number of incentives for promoting indefinite (permanent) contracts.

d) It increased the participation of temporary work agencies (which had been steadily evolving albeit through a regulated framework, but which was now being pushed more rigorously).

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

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

1) It gave preference to company agreements over sector agreements;

2) It reduced the possibility of 'ultra-activity', introducing the figure of an external mediator in order to obtain a final decision. The mediator can re-write the agreement.

3) Opting out by employers of salary schemes agreed at higher levels.

4) More internal labour market flexibility.

This implied a substantial reform in the content of collective bargaining, especially once the company agreements become decentralized at the company level. However, the most profound reform took place in February 2012 under the PP government. This last reform can be considered a landmark in Spanish industrial relations, reshaping the power balance in industrial relations. Followed by another strike in March 2012, it has introduced the greater flexibility in salaries. It includes possible decreases imposed by the employer plus allowing firms to place themselves outside the frameworks of collective bargaining agreements and cheapening dismissal costs further. The contents of the reform were and are controversial, and represent a significant evolution in Spanish industrial relations based on the explicit goal of adapting Spanish industrial relations to the principles of flexicurity. Some points indicated by Meardi (2012) on these developments are the following:

a) Employer unilateral prerogative to introduce 'internal flexibility' (changes in job tasks, location and timetables), without the need for trade union or works council consent.

b) A new employment contract form, called 'contrato de apoyo a los emprendedores', which foresees one year probation without employment security. This has been criticized by some scholars (Palomeque López, 2013) as a fake indefinite contract.

c) The reduction of compensation for dismissals in some cases (from 45 to 20 days per worked year), the removal of the 'bridge payments' which the employees dismissed were entitled to while waiting for a court ruling, and the removal of administrative permission for collective dismissals (the famous EREs).

d) Absolute priority of company-level agreements over multi-employer ones, and employer prerogative to reduce wages without union consent, subject to arbitration.

e) Reduction of the time extension (ultra-activity) of collective agreements, until now indefinite, to a maximum of two years, after which all established rights from previous agreements terminate until a new agreement is signed (in Spain, some agreements have been extended for up to ten years).

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

This reform represents a fundamental U-turn in the traditional arrangements of collective bargaining in Spain during the democratic period. Trade unions were opposed to the reform, considering it a challenge to worker rights and they organized two general strikes in 2012; employers found the reform appropriate but felt it fell short of what they wanted (Lacasa, 2013). Any systematic and profound tripartite form of social dialogue has not been restored to since the Law was passed (Molina and Miguélez, 2013). While institutions like the IMF have claimed that an additional reform of the labour market should be undertaken, the Spanish government has claimed that the results of the reform have been overtly positive, despite the fact that more unemployment has been created.

A Dicussion of the Reforms

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

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

It reinforces the power of the individual employer, who is entitled to manage with relatively greater freedom and change working conditions and contractual terms.

1) It helps to facilitate the modification of working conditions and dismissal by the employer, increasing managerial prerogatives.

2) The authorities to an extent detach themselves from the workplace, and many bureaucratic procedures and authorizations are eliminated (such as the one for collective dismissals). The role of the state decreases notably in employment relations.

3) Dismissal costs are substantially reduced, from a norm of 45 days per year to only 20.

4) There is a move to opting out in terms of bargaining arrangements, which implies that the company level agreements prevail over the others. It is interesting to notice how many collective agreements have ceased to exist, as we mentioned earlier. The end of ultra-activity helps to speed up that process.

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

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

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

Source: Collective Agreements Statistics, Ministry of Labour, Spain.
(*) Provisional data.

Lousada Arochena (2013) claims that the reforms have been extremely negative towards gender equality and work-life balance: specific types of employment (such as part-time work) are developed in such a way that they not guarantee a sufficient level of work-life balance - not only because part-time work can substitute full time work but because there is an

expectation that women will end up being offered those type of positions. Spanish jobs have traditionally featured very long working hours - a heritage of a very masculine and traditional approach to work where taking care of the family is reliant on women; and the 2012 reforms do not seem to take this into account as internal flexibility might undermine attempts at developing a greater degree of work-life balance. Regarding the quality of work, some scholars (Prieto, 2009) have highlighted the low quality most of the available jobs due to the specific features of the economic structure. The implemented reforms do not seem to improve the situation but rather worsen it as management can increasingly dictate how workers are deployed in temporal and functional terms.

Some other reforms have been undertaken in many fields linked to employment, with governments trying to reverse declining economic activity. One of the key reforms has been the reform of old age pensions, which raises the compulsory retirement age from 65 to 67 years. The plan was heavily criticized as the high rates of temporary employment unemployment amongst younger workers would make it very difficult for them to reach the maximum pension levels through continuous employment (Molina and Miguélez, 2013). There have been also constant attempts at facilitating the conditions for entrepreneurship, a stronger focus on labour market activation policies, and other employment related developments. All these reforms can be linked to the principles of 'flexicurity', or rather, 'flexi-insecurity'.

Therefore reforms in the Spanish case can be understood as systematic and structural reforms of the labour market: they represent a new cornerstone in the deregulation of Spanish industrial relations. It can be considered to be as much a paradigmatic as an institutional shift. It is indeed a set of reforms that pushes decision making capacity towards employers (Valdés dal-Ré, 2012). Since 2013, the government has claimed the economy is beginning to improve seeing labour market reforms as key for gaining competitiveness and halting the further destruction of employment. However, the positive effects of the reforms on employment creation have so far been non-existent.

1.4. Overview of Part 1

The reforms of labour regulation have taken on a series of directions which one would not at first have imagined ten years ago. The extent to which the dismissal of labour has been facilitated from the point of view of employers and the extent to which we have seen a major restructuring of collective bargaining - and a de facto decentralisation - has raised many concerns. These reforms have been developed through direct intervention from the majority PP government since its election: it has involved very little social dialogue at the national level. The opposition to these reforms have been exhaustive and have been led by both trade union and social movements, however the relation between these two constituencies has been unclear; and the reforms and the crisis have also led to problems and tensions in the relations between civil society organisations and labour organisations. The extent of the reforms have brought a new pattern of fragmentation and de-centralisation within industrial relations. Running parallel with this has been the ongoing increases in unemployment and reforms of the welfare state which have led to rising levels of poverty and social degradation. The actors of regulation – especially the trade union movement - have seen organisational capacity issues emerge in terms of their ability to sustain the support and management of collective bargaining and collective regulation in general. What we need to know now, in the context of

these changes, is how have local levels and arenas of bargaining and labour relations more generally been undermined and effected by such changes. Have we seen a genuine withering of social dialogue or institutional dialogue in terms of management and labour? How have the restriction of higher tiers of bargaining and the ability for local levels to circumvent the content of such higher tiers influenced the form and content of collective bargaining and labour relations at the level of the firm and the workplace?

The argument we present is that the narrative and intervention of the Troika cannot be seen simply as an external lobby or point of influence that has caused such developments or assisted them directly. The argument we sustain is threefold. First that during the Socialist governments of the past the commitment to social dialogue has not been as extensive as one would have first imagined. There has been a flirtation with marketisation in terms of the economy whilst attempting to provide a series of minimums in terms of rights and regulations at work. Second, the neo-liberal dimensions of social democrat formations and the right in particular have for some time been nurturing and developing a critical approach to trade unions and regulation. This has been driven by a fundamental ideological critique of the rights of organised labour which has drawn from current Anglo-Saxon narratives and have had a direct input from new North American right wing elements. Thirdly, this means that the policy changes in terms of labour relations in the past few years have been accepted and driven from within Spain but with legitimacy derived from the European Union both ideologically and technically, irrespective of the crisis. The crisis has accelerated and sustained this shift and provided the Spanish right with the means to pursue an agenda which was steadily emerging towards the end of its last mandate. To this extent the reforms are grounded nationally in a way that may make their further removal somewhat difficult.

PART 2 RESEARCH FINDINGS

2.1. Introduction

This part of the report will examine the impact of the labour market reforms since 2008 on collective bargaining in Spain. It focuses on the results of the study of different case studies at company level as well as interviews with national experts and key social partners. As mentioned previously, national regulatory frameworks are mediated by institutional arrangements and moulded by divergent struggles over particular national practices and we will try to observe the way the reforms have been shaped and contextualised. Hence the report will use many of the comments and views of the individuals we interviewed. We aim to build an analysis which uses the voices and concerns of the individuals involved in the process. The report will be organized as follows:

- A discussion of the methodology utilised and an outline of the interviews we did and case studies.
- A discussion of the basic elements and traditions of collective bargaining in Spain which are relevant to our specific discussion in this second part
- The specific aspects of the reforms as addressed in this part
- A general and tentative conclusion regarding the longer term effects and developments emerging from the reforms

Our conclusion tries to outline the main issues and longer term impact of the reforms. Whilst we have seen a greater degree of unilateral activity from employers and a reduction in the breadth and impact of collective bargaining – much of which is quite extensive – we nevertheless do continue to see collective bargaining playing an important role, albeit a revised one. What is more we have seen a series of anomalies and contradictions emerge from the reforms as the processes of joint regulation become more politicised and fragmented. Finally, the interviews with HRM professionals, trade unionists, employer organisations and experts suggest that there is a fear that the value of social dialogue and the importance of co-ordination is not being appreciated by those driving or, shall we say, enamoured by such reforms.

2.2. Methodology

As has mentioned in previous reports, the methodology in this research has been based on interviews with different people in the field of Spanish industrial relations. In the case of Spain, we have interviewed a number of individuals linked to two main categories, that is to say experts and actors engaged with collective bargaining processes at a sector or company level. All the interviews were carried out by individually by the three members of the Spanish team of researchers (the authors) and were digitally recorded and transcribed. They lasted from 50 minutes to about 2 hours.

We have interviewed 27 individuals. Several experts on collective bargaining linked to different political and academic institutions have been interviewed. This includes in the first place academics with different views on industrial relations such as Professor Santos Ruesga (one of the most respected economists of the country, with close links to the trade union UGT) or Associate Professor Marcel Jansen (member of FEDEA, a think tank which

advocates a certain degree of deregulation in employment relations), both working at Universidad Autónoma de Madrid. They were invited to the national workshop with some other scholars such as Carlos Prieto and Luis Enrique Alonso and provided interesting insights about the topic. From the employers' side Ana Herráez, an employment relations officer from CEOE (the main employers' association), and Fernando Navarro, CEOE's ex-director of employment relations, were interviewed. The main representatives of sector level employers' associations such as Confemetal (metal), Feique (chemistry), Sercobe (capital goods) and Stanpa (perfume and cosmetics) also agreed to share their views on the reforms of collective bargaining and their current outcomes. From the trade unions' side, we interviewed important actors from the main trade unions: Toni Ferrer, national secretary for the UGT for trade union action; and Marieta Garcia Guttierez who works in the area of collective bargaining of the UGT; and Juan Blanco and Daniel Laguna, in charge of international relations and working in the Madrid region department for organisation respectively at the CCOO. We also interviewed another officer from CCOO in a different sector, Daniel Albarracín to compare the trade and commerce situation with the one of manufacturing: there were also informal interviews with a range of individuals in both trade unions. Alberto Arévalo and Carlos Paraíso spoke on behalf of the Madrid region metal and chemical sector of CCOO while J. A. Moreno from the same union spoke about how reforms affects immigrants and general issues of equality. Finally, we have interviewed the former Minister of Labour during the period 2010-2011, Mr. Valeriano Gómez. We have also managed to conduct several case studies in the manufacturing sector. We experienced difficulties when engaging both human resource managers and trade unionists in joint interviews, and in many cases only one of the actors accepted to be interviewed. Both social partners were interviewed at a main car multinational manufacturer and we also had various informal discussions during the visit which involved various trade unionists; in another vehicle manufacturer, interviews took place with the HR manager and the CCOO representative. The HR managers from four large companies linked to the glass, energy and metal sub-sectors were interviewed but unfortunately trade unionists in such companies were not successfully contacted. The time frame made this slightly challenging. However, we gained a valuable set of qualitative insights into the changing nature of Spanish industrial relations and the prospects and challenges related to this.

2.3. The peculiarities of the manufacturing sector in terms of collective bargaining

Key Features Collective Bargaining in Spain

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

The basic principles of the system could be summarized in three:

a) Legitimacy of the "most representative union" to participate, an issue that depends on support in the works council elections and not from the number of affiliated workers.
b) The principle of 'statutory extension'. This establishes that any collective agreement higher than company level must be applied to all companies and to all workers forming part

of the geographical and industry level in question. It is irrelevant if they have participated or not in the bargaining process. This sets the limits for further agreements, thus guaranteeing a certain minimums in the company level bargaining.
c) "Ultra-activity" refers to the following principle: it an agreement has not been renewed, it remains valid after its expiry.

In relation to manufacturing – metal or chemical related- negotiations take place usually between trade unions and employers' associations. However, in specific cases they are also sometimes signed by the government in order to provide a further point of legitimacy. Different sets of dialogues may occur at four different levels: national, regional, brand of industry, and company/organisation level, and as was mentioned before that they cover a broad range of issues such as training, job classification, sickness, maternity arrangements or health and safety. The results of the specific negotiations had effects on all employees in the area that the collective agreement was covering. Therefore, if a certain agreement is reached in a specific cluster of the manufacturing sector and in a province, then the companies of that sub-sector based in that province would be subjected to those agreed labour conditions: although what aspects were adhered to varied in practice. The negotiations are driven by employers and works councils but, at the higher levels beyond the organization, the agreement could only be signed by representatives of the "most representative unions" at national or regional level. The law describes how negotiations are to be conducted and what is the composition of both sides. Agreements tend overall to last two years or more, and almost invariably started from the beginning of the year (though negotiations could begin anytime within that year).

In the specific case of manufacturing in Spain, the specific features of the sector are of interest in order to consider how reforms have accepted the development of collective agreements. It should be noted that traditionally manufacturing has been at the core of Spanish industrial relations with strongly organised unions, well-organized employers' associations and a long history and tradition of industrial dialogue and in some cases industrial conflict. However, the sector itself differs greatly from the assumed image of large corporations. Actually, the manufacturing sector, as well as its different sub-sectors, are in general highly fragmented in terms of company size. There are many small firms embedded in local economies that exist alongside larger mostly multinational subsidiaries: there is a dominance of province-based agreements and some company level agreements in the larger firms. According to a representative of the metal employers Confemetal, this was due to the peculiarities of the sector, which mirrored the economic structure of the country (which was based on a preponderance of small and medium sized companies):

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

Despite aiming to reinforce the national agreement, provincial level agreements remained the norm during most of the democratic era. Ultra-activity and the automatic extension and continuity of previous collective agreements were common in cases where there were no new discussions or agreement related to their renewal. Besides, while important agreements might be achievable in the metal, chemicals and perfumes, there is, however, criticism of the low number of detailed and good agreements at the lower level of the sectors. There appears to be a reliance on the upper levels providing frameworks for lower level agreement which are not then fully 'customised' to the conditions of the company – although these implementation pacts in some cases can be quite thorough and the actual sector agreements as in the case of chemicals quite broad and encompassing.

In these sectors there is a dominant trade union structure due to the results of the four yearly works council elections - giving the left CCOO and Socialist UGT a dominant position in works councils and bargaining mechanisms at various levels - there are exceptions as in the Basque Country where there are also nationalist trade unions and radical minority unions in various sectors. The trade union side has been fairly stable and committed to bargaining structures regardless of internal and inter-trade union discussions on questions of work intensification and change.

2.4. The impact of the reform on the process of collective bargaining in the manufacturing sector: social dialogue, content of collective bargaining

The purpose and politics of the reforms

The ongoing reforms by the Spanish state in relation to collective bargaining have led to a range of legislative changes and innovations that have aimed to 'modernise' collective bargaining and link the process and outcomes of bargaining to a greater focus on economic competitiveness. The aim has been to allow companies to reduce the salary costs it carries and to ensure a greater degree of flexibility in terms of the deployment of labour with regards to contracting, internal organisational deployment and dismissals. The first part outlined the motives of many of these reforms. Ongoing concerns in neo-liberal circles with the cost of labour in Spain and the nature of the Spanish workforce to the point where one could argue it has been mythologised into a vision of an intransigent and inflexible workforce. Secondly, the manner in which the post-2008 has given rise to high levels of unemployment which the government believes can only be responded to by reducing labour costs in terms of wages and in terms of the costs of dismissals, which require legislation on reforming collective bargaining (decentralising it) and reducing the costs of dismissals. Thirdly, the reforms come in the context of a European Union strategy to reduce the public deficit and debt of Spain – in great part caused by the crisis of banking – that has focused on the need to reduce labour costs. To this extent there has been an ongoing questioning of the nature of social dialogue in democratic Spain. Our research has tried to see what views existed towards the problems in relation to established industrial relations and its reform. The outline below presents the scheme we used to gage the views of specific actors.

This system has been seen by governmental and specific employer circles to have a series of rigidities (couched within a highly ideological view of the Spanish labour market):

- The cost of dismissal has been seen to be higher in terms of the compensation for years worked by an employee

- Collective agreements are seen to be a complex labyrinth of national sectoral, provincial sectoral, and company agreements which are not always clearly tied together

- Collective agreements remain in place if there is not subsequent renewal (ultra-activity)

- There are few mechanisms for the deployment and utilisation of employees within the firm and various 'inflexibilities' in terms of the use of working time

Hence the legislation has proceeded since 2011 to focus on the following aspects:

- The decreasing of the cost of dismissal in terms of redundancy payments by firms

- The ability for firms to opt out of agreements and change the content of them should they have according to the law an 'economic, technical, organisational or productive' reason to

- The ability to set terms of conditions of employment should an agreement not be renewed due to ultra-activity

- The ability for the firm to develop greater mechanisms for a flexible workforce

The 2012 reform implied drastic changes in what were considered to be the pillars of the collective agreement system in Spain. For instance, it gave priority to company-level agreements over multi-employer ones, and employer prerogative to reduce wages without union consent, subject to arbitration. Besides, the reform reduced of the time extension (ultra-activity) of collective agreements, limiting it to a maximum of two years. This means that established rights from previous agreements would terminate until a new agreement was signed. Furthermore, additional measures were taken, such as allowing employers to unilaterally introduce 'internal flexibility' (changes in job tasks, location and timetables), without the need for trade union or works council consent, or reducing once more dismissal costs: particularly controversial was the removal of administrative permission for collective dismissals.

During our research the newspaper *El Mundo* (25 July 2014) reported alongside other newspapers the results of a research project which attributed the creation of 400,000 new jobs

in the private sector (not including agriculture) to the labour reforms. The lowering of the costs of dismissals was seen as a major factor. However, in addition, employers could also now reduce the salary and wage levels if the economic, organisational, productive and technical conditions of the firm require it. Companies could opt out of agreements given the circumstances and where there is no agreement national state bodies can 'arbitrate'. The attribution of employment contribution to collective bargaining reform means that industrial relations de-regulation is a major part of the response to the crisis. Although as we will argue later this begins to bring the state even closer to the debate about the economic causes for restructuring.

In our workshop an individual who broadly supported the reforms argued:

> In the first place, I think it is key the idea that the crisis highlighted the need for reforms regarding the collective bargaining system. This need did not start yesterday, but it is a long time problem... The Spanish system is practically the only one, along with the Portuguese [...] and the Greek, combining automatic exemption, standing requirements - ridiculous compared to other countries - and ultra-activity ... This reform is not my reform, it would not be my reform, but the decentralization of collective bargaining fits my views very well, the limits on ultra-activity too ... I would have gone further, because, in my view, the challenge is to create a system where we can talk, properly, of collective agreements that are collective contracts. That is, that apply to those companies and individuals who have chosen to be part of those contracts, and there must be mechanisms to extend them after if they gather a sufficient number of companies and workers. I mean ..., national agreements for small companies, company-level bargaining for the large ones. With high coverage, but this is not yet observed. What do you notice instead? .... These agreements work because they are very tough. They have […] forced to accept concessions, but they can never be part of the core collective bargaining system in Spain. Contracts have to be respected and you cannot provide companies with what I call "the red button". That is, for years we do not worry, we pay salary rises and when there is a difficult situation... I set the timer to zero, threatening with dismissal and salary cuts. This is not the way forward. But this is the part of the reform that has had more impact. I think that the resistance by social partners and their disengagement with the reform have led to the positive effects we were looking for to not emerge. This is because there is an enormous resistance to abandon the fragmentation of collective bargaining in Spain, this sector-provincial level which makes no sense… (Economist linked to pro-reform think-tank)

In observing the reforms in question we need to appreciate that in some case the reforms had an effect in actually changing the nature of bargaining, and a broad impact in terms of how expectations and calculations have been modified. The latter is very important because in many cases it has been the *threat* of the use of the legislation which has impacted on the scheme of industrial relations and brought more 'moderate' attitudes or 'conciliatory' responses from trade unions. In one large metal company for example this threat of using the reforms and bypassing collective bargaining arrangements was seen to be important in sending a signal to the workforce. A significant reduction in wages was proposed and achieved by the firm, on the basis that most other elements of employment relations in terms and conditions of employment were not substantially reformed. So the reforms allowed for a trade off in terms of what was changed and what was not changed in terms of working conditions in such cases.

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

The need to limit and even halt ultra-activity in Spanish industrial relations system was a requirement of key parts of the European Commission, particularly since 2010-2011 when the most difficult period of the crisis started. Therefore, the last government of the PSOE passed a first set of reforms in relation to the collective bargaining system. This reform abruptly tried to put an end to ultra-activity by imposing arbitration when employers and workers did not reach a new agreement. However, this is problematic from the point of view of state action, once it is obvious that any attempt to impose agreements on the social partners may not be legally sound: in one way or another, this decision violates the fundamental rights of a free market economy. In fact, this first reform was immediately denounced as an unconstitutional measure (although there was no time even to begin the procedure as the political term of the government was about to end). According to Valeriano Gómez, former Minister of Labour and a key player behind this frustrated reform, one of the main weaknesses of the industrial relations system in Spain has been the inability to develop institutions of mediation and arbitration to support such changes. Such institutions should not only have a higher degree of legitimacy but also the capacity to force agreements on a scale that would be meaningful and could set the terms of the balance of power between employers and employees. Therefore, in the case of labour relations in Spain, and in the absence of an agreement, social partners usually end up resorting to the courts and their interpretation of the law, instead of using relatively neutral arbitration institutions that would try recommend changes in the content of agreements which are then mutually accepted and adapted to the specific circumstances of each cases.

It is, in this sense, that we have observed how, from the point of view of the workers, the recent legal reforms have been used as a kind of threat in the negotiation process. If negotiations fail and both parties go to court, it might be likely that the resolution of conflicts would favourable to the interests of the employers: especially as the latest legal changes have tended to strengthen their position. However, there is a broad space in terms of interpreting any law. The fact is that many effects of the reforms are still ambiguous and it is not easy to assess the real impact in the medium term of the decomposition of the foundations of the pre-crisis system of collective bargaining.

Social dialogue continues to exist but increasingly it is coerced or now forced by employers: it is less a case of a de-recognition of trade unions and labour relations - as in some aspects of the United Kingdom - as one of forcing through agreements on the employer side using the new legislative context.

> The crisis makes negotiations difficult. The year that has had more bargaining coverage in Spain has been 2008, indeed, and since then it has gone downhill. It was logical, with labour market developments (e.g. unemployment), the coverage was a little lower. However, since the reform of 2012 … the loss of coverage has been brutal. This is because, among other things, the reform of 2012 included the possibility of avoiding "ultra-activity", which in reality tries to avoid the generation of loopholes, something key in collective bargaining. This has made part of the process more annoying, because when there was an expectation that collective agreements might cease to have an effect, then collective bargaining slowed down notably. (UGT trade union economist, June 2014)

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

> There is yet to be negotiated the collective bargaining of 37, 93% of workers, that is, for the 38%. (UGT trade union Economist June 2014).

Ultra-activity in the form of the automatic renewal of collective agreements and the automatic linking of pay increases to the inflation rate is therefore challenged by the legislation, as employers can opt out and unilaterally set the conditions of work given certain organisational and economic circumstances. We are seeing, as noted above, that many companies are left without agreements or suspended arrangements. However there are cases where agreements remain valid due to specific clauses that indicate that the agreement is valid until one partner steps out. So there has to be a deliberate act by employers to avoid the agreement and it is yet to be seen in the longer term how many firms will continue to do this. As stated earlier in one of our cases – a large scale metal firm - there was a positive dialogue concerning the reform but how this was achieved is in part on the back of a legal threat by the employer to invoke the reforms. Hence the legislation allows for a certain type of game-playing and 'chicken'-like collective action scenarios, as per game theory. Much depends on whether the firm sees the role of social dialogue as being of value across a range of issues and strategic dialogues: and of the political sensitivity to any changes within the regions the firm is located in as in the Basque country. It appears to be more a case of the threat of the use of the legislation to gain significant changes especially in terms of salaries and wages, and their decrease: there is a 'recalibrating' of the industrial relations through the use of and reference to the reforms.

We have seen the reforms used as a body of potential coercive resources to force social partners especially trade unions into more 'realistic positions', however the longer term is more complex and these strategies bring serious social and economic consequences. The ultra-activity related reforms are leading those companies who engage with it, and unions that have to respond and accept such changes, to revise their agreements and there is evidence this is mainly being rushed and not being used to deepen any dialogue across more strategic issues: there is in effect no expansion of the remit of collective bargaining and its strategic value. The main question for the future is whether such reforms actually deliver a more economically sensitive dialogue or a more truncated minimalist one within the sphere of the firm based on low trust industrial relations.

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

> Many companies stepped down, and this also has positive aspects. It is likely that despite such a tremendous unemployment rate we have here maybe it would have been higher without that wage lift, because that is a measure of flexibility for companies to survive, right? Most implementation agreements have been agreed, with rates of ninety percent and more, but the crisis, in the end... is still tremendous in the sector, lots of companies are disappearing. Another problem we have is that the weight of the industrial sector in relation to GDP is becoming smaller… Employment and social security data are very good but of course there is very precarious employment, temporary employment and what they bring to the social security system these nearly 200,000 workers is very little, most of them are working part-time. That is better than nothing but they provide very little to the system. When the season ends these gentlemen again hit the road… you're also seeing, for example something unusual, that I had never seen, I have been many years here.... I mean increases in working hours, the tendency was always a combination of increments and cuts, well, we have seen agreements that have increased the working time, as an example in Burgos the working

> time per year has increased no less than 16 hours, in Cádiz I don't not know if there were 12, in Cantabria 3 or 4, something that did not occur before (Metal Employers Organisation).

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

> For example regarding the issue of ultra-activity, what we see is that it has been re-balanced, before was no real balance whatsoever because well, you knew that when you would negotiate on the basis of what you had in the previous agreement. Therefore unions always started from a bottom line in the negotiation which was the earlier agreement, and simply demanded more wages, more free time, more holidays, more paid leave, and so on. Hence there was not an equilibrium in the bargaining. What we understand then is that reform issues such as the ultra-activity have contributed to the re-balancing of the imbalance that existed before. However, and logically, different social partners have completely different positions about this
>
> (CEOE national employer body)

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

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

However, it seems indisputable that the reforms of recent years have opened up a space to weaken the regulatory power of collective bargaining, expanding the grounds and facilitating the process by which companies can "opt out" of the guidelines set in collective agreements (mainly on issues relating to working time, shifts and the time distribution of work, payment mechanisms, and performance based work systems). Still there has been too little time to assess what will be the impact and the specific uses of these new "opting out" options for businesses. However, in the parliamentary session on September 17, 2014, the current Minister for Employment, Fatima Bañez, claimed that "since the entry into force of the

labour market reform in 2012 there have been 4,900 derogations from collective agreements, 99% with agreement between the parties, which has saved more than 300,000 jobs." [1]

Table 1: Opting out data: agreements, companies, workers and company size (1)

Company size	Opting out from agreements (cases)		Companies		Workers	
	2013	2014 (*)	2013	2014 (*)	2013	2014 (*)
TOTAL	**2.512**	**1.627**	**2.179**	**1.474**	**159.550**	**53.137**
1-49 workers	1.965	1.342	1.770	1.241	21.328	14.281
50-249 workers	313	203	259	168	25.699	13.593
250 or more workers	189	55	108	39	109.312	24.800
Unavailable	45	27	42	26	3.211	463

Source: Collective Agreements Statistics, Ministry of Labour, Spain.
(*) Provisional data, last update in August.

The Ministry of Employment has generated this new statistical series collected in Table 1 and whose evolution will be further analysed in the future to assess the impact of "opting out". While the total number of workers affected since January 2013 is still moderate (212,687), it is indicative of how businesses of a medium or large scale (of over 250 employees) have begun to use this route to mainly avoid wage increases agreed in collective agreements at a provincial or state level. And it is particularly significant that over 90% of these opting out strategies have been agreed with representatives of workers, in many cases as an emergency prerequisite before signing new conditions in a separate company-level agreement. It is in many ways a situation that strengthens the position of management: the end of the ultra-activity agreements, together with the possibility of opting out from their content, facilitates agreements with union representatives but always through a different dynamic pervaded by a certain decline in conditions. The recent use of external companies (experts in the field of labour law) to handle the negotiation process is due, at least in part, to this vast array of choices. The cost of using external consulting firms is increasingly offset by the increasing ability to negotiate the terms bargaining downwards, helped by a network of increasingly complex labour laws. We return to this point later.

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

The question of content and agreements

In terms of the content of agreements, as a consequence of the reforms in general terms we have seen a focus on wages and working hours emerge which ironically reinforces the narrowness of collective bargaining. In the interviews it is mentioned occasionally that only working hours and wages are discussed, in a very conservative scenario reinforced by the crisis. Opting-out of agreements, according to trade unions, leads to immediate wage reductions. In economic terms, it is clear that wage settlements have been deeply affected since the reform: losses in real wages have already happened and are expected to keep on happening in the near future (Molina and Miguélez, 2013). The number of collective agreements has decreased notably, as data from February 2014 show in Table 1 above. There

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

is increasingly a new distribution of working time, a growing abuse in terms of extra working hours, and challenges to maternity leave due to the culture being created by the climate of the reforms according to one of our interviewees from the trade union CCOO[2].

The changing role of the state

The irony of the reforms is that where there is a challenge to the unilateral action taken this leads to an increasing role for the state in judicial terms. In theory the state has to provide the green light to the unilateral actions of employers if they are systematically challenged on a range of issues and this requires detailed scrutinising of individual cases. Recently Coca Cola has its redundancy programmes rejected by the courts due to the lack of information provided to the works councils. In the case of FNAC, the French retail firm, the economic argument used for organisational changes by the firm was seen as providing spurious arguments for restructuring. Hence, the reforms have the potential of politicising restructuring and creating a more challenging climate with regards to the debates on the terms and conditions of employment.

> Besides it is not possible to step out from the agreements, you always need an agreement with the workers' representatives. That is, a company cannot opt out because you need that workers' representatives sign the agreement unless there are real causes linked to the economic crisis in the company. The real issue of this reform is that it is compulsory to reach an agreement to opt out. Therefore, opting out is only working in those companies that are doing really badly, that is, mortally wounded firms. In these companies, there is no problem, workers understand what is going on and sign, because they know that either they sign the conditions for the opt-out or the company simply goes bankrupt tomorrow. However, those other companies where causes are not as real, or simply decide something like "look, let's take the opportunity to save some money here," well they cannot opt out because they are unable to settle a deal with the workers' representatives. And that is for me a problem that the reform leaves unresolved: what happens when there is no agreement in the opting out and in the derogations. (Labour Relations Coordinator, FEIQUE - Chemical Employers Organisation).

The problem is state agencies are not consistently stepping in to resolve things as planned and not quite intervening to set the rates of pay and terms of conditions where there is no agreement or where there is a lack of clarity on the causes. The courts and judicial processes are very slow in dealing with cases and appeals, and this is creating a further regulatory vacuum where employers can act unilaterally where they feel that they can. This dysfunctional feature of the Spanish labour courts has been a challenging aspect of labour relations in Spain for some time especially in dealing with health and safety cases (see Martinez Lucio, 1998 for a broad discussion). It plays the role of being a form of facilitator of de-regulation by default as it cannot – even when willing – cover the increasing range of cases that are emerging.

In this sense, one of the procedures that deserves more attention is, without any doubt, the ones related to mediation, which many of the interviewees consider underdeveloped and in need of reform. Currently, when discrepancies arise regarding collective agreements, there is an advisory committee in charge of finding solutions through a foundation with representatives from both trade unions and business organisations (CEOE, CEPYME, UGT

[2] It is difficult to find data regarding these issues. However, websites such as http://www.abusospatronales.es/ provide examples of different ways employers have in some cases exploitated changes in Spain.

and CCOO) whose name is Servicio Interconfederal de Mediación y Arbitraje (Fundación SIMA). If discrepancies are not resolved within the advisory committee they might be diverted to external arbitration. In this case, an arbitrator might be proposed by the committee, usually an expert with experience in public administration or is from the academy. However, while the advisory committee has mediated in thousands of cases successfully, some of the experts interviewed have claimed that there is room to improve the figure and role of the external arbitrator. As one expert from the national employer body mentions:

> The system, right now, has been focused on mediation, and has not made the leap forward to arbitration. Why? Because there is still mistrust. […] each party use their own mediator. There is a distrust in the referee as she could not be a neutral figure. […] In the best case, there is usually one mediator, but in most of the cases you find two mediators who talk among themselves. And mediators, with all due respect, are not professionals. "They call me from time to time [...]": "hey, look, we have a conflict here," "because someone once put me on a list." "There is a conflict here at Coca Cola, if you want to come." And I say, "I have no … idea what Coca Cola is about. How am I to mediate the issue of Coca Cola? I do not know, I'm an amateur, albeit professional in other ways, etc." Therefore I think we should go towards a system of professional arbitration. Professionals who live for arbitration. This is happening in America, experts charge lots of money for this service because they are professionals; they are guys that play the role of judges. [...]. And secondly, there is another view: someone from the Ministry of Labour, from the world of labour inspection, had an interesting project, which is what we might call "preventive mediation". That is, find good people, almost always from outside the company, that before any outbreak of conflict commit themselves to find solutions to avoid the extension of the conflict within the company or industry [...]. And then there is a third element, a third possible body, which should be studied, I have some references: systems of internal mediation and arbitration at the company level. When we negotiated three years ago the collective agreement for Spanish public television, we implemented a system of internal arbitration. Television unions and the management body appointed a mediator-arbitrator, who knows the company from inside and takes care of the arbitration, right? Internal systems are possible in large corporations, but are not in SME. We must use external systems. But thinking with those three possibilities I think you could go a little bit more in improving the systems, right? (Ex-senior officer CEOE national employer body)

Furthermore, there appear to be legal anomalies especially in relation to the general rights of trade unions as the reforms are clearly undermining constitutionally based rights regarding voice and representation. In particular, during the last two years 81 lawsuits have been opened against more than 300 strikers, of which over 260 are union representatives (several with regional management positions within the unions). These lawsuits are implementing a section of the Penal Code adopted in 1995 but never used before, and allows request from six months to three years in prison to "coerce others to start or continue a strike," i.e., those involved in the so-called "informational picketing". In June 2014, two trade unionists have been sentenced to three years and one day in prison because they were participating in a picket during the general strike of March 29, 2012. They were accused, paradoxically, of crimes against the rights of workers. The exceptionality of these lawsuits is that they have been initiated at the request of public authorities and not by individual complaints (albeit a few exceptions). That is to say, these lawsuits seem to have become an element of intimidation to limit any attempt of resistance and opposition to recent reforms. During our fieldwork, we found a case where the managerial board of the company seems to have taken

advantage of this new attitude in the public administration as a way to constrain a union representatives (in a factory with a heavily unionized workforce and a long tradition of industrial conflict). In this case, the trial itself has been open because of the particular complaint of one manager of the company. This manager alleged being physically coerced by some of the company workers when trying to enter his office. This happened in one of the strikes that took place while negotiating the company-level agreement in 2012. From the point of view of one of the workers concerned, this conflict is seen as another episode related to the new options open by the law, put into force by the management in order to balance power relations on the shopfloor:

> Well, the attacks are impersonal but, quoting The Godfather, it is just "pure business." What is collapsing is the rules. They try to break those rules […], as they have managed to break the rules that gave power to unions and workers to negotiate and to reach agreements which were ironclad. Above all, the loss of ultra-activity conventions is a weapon that destroys workers and unions, and takes our rights away in the most brutal way. They are already getting away with our salaries. […] In a firm with a certain tradition of industrial conflict, whose unions have power and keep strong traditions… but we know that we are, somehow, an island. And because we are an island... we are under threat of being invaded by a tsunami of labor reform...

The prevailing perception among the union representatives who were interviewed (both at the grassroots and in positions of responsibility in their organizations) is that legal changes are strengthening the bargaining position of employers and employers' representatives. If traditionally entrepreneurs avoided recourse to the labour courts (since it was considered that they favoured the protection of workers' rights), recent changes invite us to consider that workers might prefer a bad agreement before going to court (because with the recent legal reforms, judgments tend to favour and protect the interests of the companies).
What we are seeing is a new complexity which brings forth its own bureaucratic dilemmas. The legislation appears to facilitate a greater degree of employer prerogative on the one hand but it also leads to a greater degree of uncertainty in terms of industrial relations processes and conflict. There is more political calculation taking place as to decisions within industrial relations. The final part of the report will develop these general anomalies and ironic outcomes in relation to the reform of collective bargaining.

A fragmented landscape: the sphere of small and medium sized employers.

One of the main concerns relates to smaller firms who depend in terms of their industrial relations processes on higher levels of agreements and basic local company agreements that are framed within them. There is the fear amongst trade unionists that such firms may begin to leave the orbit of regulated social dialogue and collective bargaining. Trade unions involved in small and medium sized firms and the negotiation of provincial agreements have noted firms beginning to test the resolve and actual capacity of a union and its local representatives to counter any attempt of the firm opting out or downgrading negotiated conditions of work.

New types of law firms and consultancies have emerged and are establishing a network whereby companies can 'descolgar' from agreements – there is evidence of agreements having to be signed by trade unions even with deteriorating wages so as to hang onto some semblance of collective agreement in the face of a more belligerent smaller firm who is seeking specialist advice. Smaller firms are turning to legal firms and consultancies to steer through changes to agreements and to undermine provincial agreements. There are new

agreements being used as a template for signing reductions in pay and increases in working hours and the use of new forms of labour deployment. These are being circulated and used as a way to rethink the process of social dialogue. These law firms and consultancies are a developing industry which are concerned with the very form of negotiation let alone its content. Such law firms are a staple of Spanish labour relations but there is a noticeable increase in those with a more hostile view of trade unions. There are events and lunches held by such firms to attract businesses to do business with them and these new types of consultancies are reflecting some of the developments that have been observed in the anti-trade union lobbies of the USA and the UK. They are in some cases linked to right wing organisations and build on the hostile climate towards trade unions in Spain (see Fernandez Rodriguez and Martinez Lucio, 2013 & 2014).

This new panorama of employers seeking to opt out or limit the regulatory processes of collective bargaining - especially in smaller firms – will have a negative impact on the overall terms and conditions of employment of workers due to the nature of industrial relations in those sectors. Trade unions have relied heavily on the role of national sector and provincial sector agreements as frameworks for such employers and groups of workers in the past. In this respect the strategy from a union perspective consisted of using such frameworks to underpin at least the basic terms and conditions of work, building a platform for local agreements to enshrine and if possible add to these agreements, and to develop campaigns in relation to work council and trade union representative elections which allow for local networks and representatives to share the terms and conditions of agreements and related issues. The trade union at the regional and provincial level were able to use the four yearly trade union and works council elections to raise their representation with such workplaces which are normally harder to reach due to their size and location, but entering such workplaces 'armed' with the relevant provincial collective agreement provided a point of legitimacy for the union as terms and conditions could be explained and compared to those workers on site. This was the product of trade union action and legitimated the role of the organisations in the eyes of workers. The problem is that as companies opt out or bypass such agreements their legitimacy become less significant especially as their terms and conditions of work are reduced.

However, the union strategies used to reach smaller firms especially during such works council workplace representative elections has been an ongoing challenge for unions even if they have specialised units for this within the Organisation division of the trade unions. There is evidence that there is greater difficulty in reaching and communicating to such firms and that the climate is more hostile to trade unions accessing the workplace as employers begin to opt out in operational and even ideological terms from the processes of social dialogue. The reforms are testing the ability of the unions at the level of small and medium sized firms and at the provincial level in managing and controlling working conditions. The pressure on union resources and in supporting such local strategies of support and networking means that there is difficulty in surveying local territories and its smaller employers. This is not necessarily a direct result of the reforms in collective bargaining but as firms begin to 'opt out' then the local agreements relevant to them are a less effective tool for such campaigns.

2.5. The general impact of the reform

The reforms do not have a unanimous level of support amongst employers. The idea that this new neo-liberal or Troika driven turn in the regulation of the conduct of labour relations is something that pits capital against labour fails to pick up the value joint regulation has in terms of establishing the terms and conditions of employment as well as social peace within the workplace and the labour market. The sectors we have researched consisted of various traditions of dialogue that had addressed a range of issues related to organisational change and restructuring. In the case of one metal manufacturing of a large scale and of national importance the HR manager argued that it was easy to forget the very detailed discussions and difficult choices taken with unions in previous years which had been pivotal to the peaceful restructuring of the firm. That the costs in terms of redundancies may have been higher than some European countries does not negate the high number of workers that had been made redundant and the extent of change in Spanish firms since the early 1980s. This had required a major effort from the majority unions in the face of more critical minority unions and internal factions. The HR manager went on to argue that this process and experience was central to the 'reconversion industrial' of the 1980s. The lead industrial relations expert for the chemicals association echoed this view arguing that there had been much progress in creating national and local frameworks for discussion which had to be appreciated:

> …although the issue of ultractivity [and its reform] was mainly defended by the CEOE, that is by businessmen who wanted to promote a more flexible collective bargaining and that it was necessary that agreements lose their validity, for us, the chemical sector, this was not so important because we were not afraid to continue with an agreement. We have a thirty years' experience of negotiations, negotiations have always developed... We are not at that point. We are not scared. And indeed, many entrepreneurs from our sector, they feared otherwise. They said, "… we lose everything we have achieved during this thirty years: many mechanisms that are very helpful for us, such as flexibility, for example. We do not want to lose everything that we have negotiated over the years. '

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

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

The issue may be understood differently in other sectors but in terms of key sectors such as metal and chemicals there did exist the view that social dialogue was an essential part of the management process even if some changes were acknowledged as being necessary. There was also a view that the reforms were focused on allowing export oriented larger companies

to constrain their labour costs in quantitative and qualitative terms such that this has created a form of reverse social dumping as their circumstances and the obsession with the nature of their collective agreements triggers an unsettling of the whole system of social dialogue. Even among employers there was a concern with the issue of social dumping, which seen as being able to destabilize the framework of industrial relations that had brought a certain degree of industrial peace in the last decade or so:

> The crisis coincides with the reforms of 2011 and 2012 and a major attack on the provincial agreements, accusing them of being backward and preventing flexibility in business. Then well, the reform tries to break them down and create what Article 84 of the statute specifies: matters of 'applicative priority' for company-level agreements, different opting out strategies […] this creates and generates huge expectations, well, I could already opt out of provincial agreements and apply minimum wage and push down conditions… Moreover a big issue was emerging, in the end a new and tremendous level of unfair competition between companies in the sector emerged. This might happen more often in the future and probably the companies themselves will experience a turnaround and change the situation… The legal attack on provincial agreements has therefore not been leading anywhere, because these agreements play a role, a very important role because they you can't manage a SME unless you have such an agreement (Confemetal)

Meanwhile the reform on ultra-activity has not been consistently pushed enough by the social partners. According to the CEOE representative, many collective agreements are signing those pacts again:

> Nowadays we are very surprised to realise that in our last reports in collaboration with the National Advisory Committee on Bargaining, one key issue is that the agreements keep are ongoing for quite some years. Despite the fact that the labour market reform had raised the cessation of ultra-activity after one year... unless otherwise agreed we are noticing that a large majority of the agreements are either extending the period of one year or are even stating that the agreement shall remain in effect until a new one is negotiated. ... The cessation of ultra-activity is therefore being used as a tool for the revitalization of collective bargaining: negotiators are using collective autonomy to, in some way, [privilege] stability over renewal. It is also true that the issue of ultra-activity is still raising many questions: what happens at the higher level agreement, what happens with this regulatory vacuum, what it is applied in the case of agreements prior to the reform that had clauses which determined that the agreement was maintained ... until they negotiate once again. Are these clauses are still valid or not? I think that this accumulation of doubts, the fact that there were many social actors in favour of keeping the working conditions of the agreement, and that there could be a way to limit judicial pronouncements, is making negotiators maintain ultra-activity, which, well, somehow is not making the strategy we had in mind work

Meanwhile, leading individuals from the union UGT claimed that the internal deregulation pursued by the government would favour mainly the interests of the biggest export firms of the country:

> The political right and large Spanish companies agree that the solution to the crisis in Spain will be one thing: […] a focus on exports. And for that, the competitive factor

was about maintaining the advantage of low labour costs. From here you can guess the role they want to give collective bargaining.

Divisions amongst employer classes and the perceived importance of social dialogue is something that was apparent throughout the discussions held in our national workshop and in many interviews. Tensions between metal and chemical manufacturers trying to sustain dialogue ran up against the almost evangelical and anti-institutionalist, neo-liberal organisations and their narratives in the debate. New neo-liberal agencies seem out of sync with developments in the purpose and nature of Spanish labour relations, and quite obsessive in their reformist zeal. The more critical positions seemed to have a simplistic and naïve view that industrial relations could be reformed by the state quite easily through legislation and had no real understanding of the way industrial relations systems emerge and how they are constructed historically and in real time.

Furthermore these reforms were not occurring in a high trust environment in many cases as the challenge to trade union rights and resources has nevertheless intensified. The use of legislation outlined above which makes it difficult to picket and demonstrate - coupled with the systematic undermining of trade unions in symbolic terms through the press - has further undermined the way the reforms are understood and used. The case of one of our metal cases referenced earlier suggested that the legal dimension in relation to demonstrations and picketing is in some cases being used - alongside the collective bargaining reforms - to 'contain' some aspects of the unions. The reforms in collective bargaining cannot there be seen as some specific technical modernisation processes but are linked in various forms to a climate of hostility towards social dialogue. The extent to which this creates a less positive predisposition towards collective bargaining within unions does not seem to be the issue but it does create a climate of distrust and uncertainty of which the longer term consequences are unclear.

However, various HR and labour relations managers were becoming aware of a growing pressure on the majority unions with regards to their ability or willingness to negotiate agreements that consisted of significant changes to working conditions. In the case of one petrochemical multinational there were signs that more radical and militant minority unions were pressuring and winning ground in relation to the majority unions. There were signs that one of the majority unions in that case was breaking from its more traditional commitment to emphasising dialogue over conflict. The fragmentation of the works councils in such firms and fissures between the majority unions would make agreements in the future much more difficult. The majority unions were seen as being responsible or passive in the face of the reforms and the new agreements by smaller trade unions and this could be reflected in future works council elections. The questions will be how these developments impact on the extent of collective and individual conflict.

In another metal manufacturing multinational, which had actually decided not to engage fully with reforms in collective bargaining in order to sustain the commitment to social dialogue central to its corporate identity, the organisation was seeing health and safety and workplace stress issues emerge as a new area of concern for trade unionists especially the more radical minority unions. The fear expressed even in such cases where the reforms were not being fully engaged with and traditional forms of bargaining sustained was that the growing strain on the workforce of greater working hours or more 'flexible' forms of deployment in the organisation would lead to increasing conflict around social and health related issues at work – and a fragmentation of the focus of collective bargaining and labour relations generally. Whilst the general mobilisations against the reforms and related public policy in the form of

24 hour strikes have been less apparent in the past year there is a realisation that the challenge will be less one of an overt political challenge to management and more of a growing fracturing in social dialogue.

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

Various HR managers interviewed pointed to the need to recognise the contribution of organised labour to Spanish economic and social development, and expressed concerns with the public discourse of the right. The role of positive informal relations and good peak level tripartite relations is considered important in sustaining continuity and this is more apparent in larger firms. The fear was this tradition could be lost in key sectors.

The consequences of hurried and fractured collective bargaining processes may even have wider implications. The impact on equality and its regulation within the firm may be serious as the crisis and shortage of resources within social partners - especially unions - mean that there is less money for training on issues such as equality. Experts in the unions dealing with equality related issues have argued that the pressure on the unions may lead to an emphasis on defending core conditions and being unable to be proactive as they have been until now through the monitoring of equality plans and similar innovations. In terms of the firm the Spanish legislation on equality in recent years expects them to develop equality plans through their bargaining and social dialogue mechanisms. What is unclear, but what has been referenced in our interviews, is that collective bargaining is being suspended in some cases or truncated in terms of the content. The fact that the interests of the Spanish economy and the firm are visualised in terms of regulatory opt-outs, quick changes in terms of working conditions to allow greater management prerogative in the deployment of labour, and short cuts in setting wage levels means that a deeper culture of dialogue in firms on questions of equality and disadvantaged groups may be undermined especially as in Spain these are in comparative terms at an embryonic stage. As funds for training and social dialogue are reduced by the state – especially training for bargaining purposes are also reduced – this is equality is an area which may be negatively influenced in the coming years. The project of the 90s and 00s within labour relations - especially for the trade unions - was based on expanding the thematic remit and agendas of collective bargaining and entering into new themes and deepening such issues as health and safety. The current context has seen a suspension by default of this project due to the pressures in dealing with keeping up with the task of sustaining collective bargaining and of salvaging agreements as best one can in smaller firms. For those trade unionists supporting such smaller firms their ability to monitor agreements is being seriously undermined.

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

> The labour market reform, well watch out, very few companies have implemented it, eh. Yes they are taking to lowering wages and laying off people… supported by the labour reform, But the overall state wide implementation in companies is not very deep. This is because the labour market reform is against the common sense, I think, of what the people in the company level do... In some cases there are workers who believe they can negotiate individually. But we as trade unionists, I can proudly say, where there is a stronger union presence, normally better wages exist and, let's say, better work. Work has a more sociable side. Normally this is how it is. (Trade Union Representative, Large Car Manufacturer)

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

> It's very complicated. And to put into the hands of the company, everything we have historically achieved since earlier times … well I think that is something that represents an attack on unions and non-unionized workers, actually all workers and citizens. [However] …we have to allow fresh air into businesses, governments, politics … so we can think that "well, they are going to seek consensus and will seek possible solutions." [...]. The problem is that we are witnessing reform after reform … politicians are not like us. Here, both at the company and in the bargaining, when we are wrong we rectify.

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

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

> Because you have to keep in mind that, I've said it many times, there is … an overall crisis of the previous growth model. In Spain, the crisis is the crisis of growth to which I referred earlier. No European country increased by 60% their labour market activity rate from 1994 to 2007 because the European average increase was only 16%. Of course, now there is a lot of unemployment, but why? Because of the previous and very extensive growth. At least almost half of the current unemployment is the result of the exaggerated growth of the previous period. (Santos Ruesga)

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

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