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**From negotiation
to imposition:
Social dialogue
in austerity times
in Spain**

**Oscar Molina
Fausto Miguélez**

September 2013



Project financed
by the European
Commission

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and Tripartism
Department



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Foreword

This paper is part of a series of studies funded by the European Commission in the framework of a project of the International Labour Organization (ILO) on “Promoting a balanced and inclusive recovery from the crisis in Europe through sound industrial relations and social dialogue”. The project falls under a recent partnership agreement between the ILO and the European Commission, which aims to study the impact of the crisis and crisis-response policies on national tripartite social dialogue, collective bargaining and labour law in the Member States of the ILO and the European Union (EU), and the role of social dialogue actors and institutions in this context. The project builds on ILO research initiated since 2008 on best practices in the area of crisis responses, and the Global Jobs Pact adopted by the International Labour Conference in June 2009.

This study on Spain by Oscar Molina and Fausto Migueléz (Autonomous University of Barcelona, Spain) shows that social dialogue is facing challenges and tensions in the context of austerity policies and institutional reforms. During the two decades preceding the crisis, social dialogue in Spain played a fundamental role and was a distinctive trait of industrial relations. As a result of the financial and debt crisis, Spain has witnessed an unprecedented period of reforms and economic adjustment. In this context, social dialogue as a tool for socio-economic governance has been questioned for both its legitimacy and effectiveness. The crisis has put the Government and social partners under great pressure to introduce reforms in a short period of time and under a rapidly worsening socio-economic context. To a certain degree, the exogenous pressure to implement reforms and austerity has reduced the space for the Government to seek consensus – a phenomenon observed in many other countries of the European Union under the pressure of financial crisis and austerity to varying degrees. While these problems are mostly related to tripartite social dialogue, bipartite social dialogue has proved to be more resilient and has continued delivering important agreements.

An earlier version of the paper was presented and debated at the ILO-EU research workshop on “The governance of policy reforms in Europe: Social dialogue actors and institutions in times of economic downturn and austerity” (28-29 May 2012, Geneva, Switzerland).

The responsibility for opinions expressed in this paper rests solely with its authors, and its publication does not constitute an endorsement by the Governance and Tripartism Department of the International Labour Office, or the European Commission.

Moussa Oumarou
Director,
Governance and Tripartism
Department

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Acronyms

AENC	Inter-Confederal Agreement on Employment and Collective Bargaining
CCOO	Comisiones Obreras
CEOE	Confederación Española de Organizaciones Empresariales
EU	European Union
GDP	Gross domestic product
OECD	Organisation for Economic Co-operation and Development
PP	Partido Popular
PSOE	Partido Socialista Obrero Español
UGT	Unión General de Trabajadores

Introduction

The economic and sovereign debt crises are having a particularly strong impact on Spain and its economy and labour market in comparison with other EU countries. This asymmetrical situation is the result of the structural weaknesses and imbalances of the Spanish economy and the construction-based growth pattern it has followed in the years preceding the economic crisis (Godino and Molina 2011; Recio 2011). In an effort to cope with the economic and labour market crisis, Spain has undergone an unprecedented period of reforms, particularly from early 2010 onwards. Not only have there been many changes in labour market regulation, employment policy and industrial relations (six in a two-year period), but in many aspects these have implied an overhaul of the existing institutional edifice. The sovereign debt crisis has been a real turning point in the reform process as it has put the Government and social partners under strong pressure to introduce reforms in a short period and under a rapidly worsening socio-economic context. However, despite the resulting significant changes in existing labour market institutions, the economy is still in recession, unemployment is increasing and most of the structural socio-economic imbalances remain or have worsened (Fishman 2012).

It is argued that the internal devaluation strategy imposed as a consequence of the country's EU membership and its associated austerity policies are affecting the role of social partners and will have a long-lasting impact on the institutional social dialogue pillars and dominant forms of coordination in the economy. The debt crisis has led to the implementation of austerity packages aiming to reduce public deficits and the debt burden. Moreover, a constitutional reform has established a ceiling on fiscal deficit and has made fiscal austerity and debt repayment a priority in the Government's fiscal policy. However, little attention has been paid to the correction of the structural imbalances of the Spanish economy. Fiscal adjustment has been based on spending cuts, though more recently there has also been an increase in both direct and indirect taxation. As a consequence of the process of fiscal consolidation, some public services like health and education have experienced a significant drop in budget resources, an increase in private management and delivery, and a move away from universal coverage.

But the consequences of austerity policies go far beyond the economic realm. They are also affecting democratic governance and by implication social dialogue. Tripartite social dialogue has been under stress and has de facto been abandoned in recent months while bipartite social dialogue has continued delivering important agreements. The perceived reasons for the abandonment of tripartite social dialogue are multifarious as the interviews (conducted for the purpose of this paper) with social partners and Government members have made clear. On the one hand, the position of social partners as political actors has been put into question by part of the population and social movements like the 15-M or *indignados* (the outraged). The main reason for this criticism has been their inability to reach agreements in the period 2008-2010 on the reform of collective bargaining or the labour market; there is a widespread perception that social dialogue has failed to deliver timely results at a delicate juncture for the country. At the same time, the imposition of reforms by supranational authorities has reduced the legitimating role of social dialogue for the Government.

In addition to reasons closely connected with the economic context, the interviews have raised other possible explanations. First of all, the fiscal constraints have limited the opportunities for engaging in mutually profitable forms of political exchange, hence narrowing the field for tripartite agreements in a context of weak institutionalization of social dialogue. Moreover, the trade unions have raised the ideology of the governing party as an important factor in the establishment of trends for tripartite social dialogue and especially its abandonment since the early months of 2012. The characteristics and leadership of the peak organizations have also been identified as a determinant of the

evolution and outcomes of social dialogue, and in particular the difficulties it experienced in the 2009-2010 period. Finally, a recurrent argument in the case of Spain is the weak organizational coordination between trade unions and employer organizations, which is incompatible with stable tripartism as it hinders the effectiveness of pacts.¹

It is nonetheless important to highlight the existence of some significant agreements. These include the two Inter-Confederal Agreements on Employment and Collective Bargaining signed in 2009 (AENC-I) and 2012 (AENC-II), as well as the 2011 Tripartite Social and Economic Agreement.

However, social dialogue has failed to deliver far-reaching consensus on labour market reform and collective bargaining. More recently, tripartite social dialogue has been definitely abandoned. Thus recent developments seem to point towards a qualitative change. Labour market reforms have historically been preceded by negotiations and only when these failed could the Government opt for regulating on the issues concerned. In contrast social dialogue has been absent from the drafting of the most recent 2012 labour market reform proposal.

The Spanish labour market has been more volatile than any other EU market. Unemployment has risen faster, confirming a pattern similar to the one exhibited in the crises of the early 1990s. Even though there was a consensus among the relevant actors that labour market developments have not been responsive to changes in labour market regulations, the emphasis of most labour market reforms has been placed on changing legal aspects. An analysis of the discourse and perception of relevant actors shows that all of them considered it impossible to create employment under the current context but, as will be seen below, they proposed different remedies and mechanisms to halt the rapid process of job destruction.

One of the principles orienting these reforms has been the reduction of the duality between temporary/fixed-term and open-ended contracts. However, the approach and content of the reforms varied significantly in the period under consideration. In the first stage, reforms aimed at enhancing active labour market policies,² improving internal and functional flexibility³ while introducing minor changes in dismissal regulation. This was the approach followed in the 2010 and 2011 reforms, whose objective was to maintain the underlying equilibrium in labour market regulation.⁴ However, the 2012 reform made a Copernican shift in the orientation of labour market reforms as it focused on firing and dismissal costs.

The reforms during the current economic crisis also modified collective bargaining rules and structures. In addition to guaranteeing wage moderation, the modifications aimed at achieving a better link between real wages and productivity, both over time and across sectors or regions. This led to changes in the structure of collective bargaining, paving the way for a decentralized system based on the extension of opting-out clauses for companies. The management of the system is carried out from below, i.e. by the company, instead of from above, i.e. through sectoral agreements. The 2012 reform enhanced the unilateral regulatory capacity of the employer.

¹ According to Crouch (1993: 54-55), an articulated organization is one in which strong relations of interdependence bind different vertical levels such that the actions of the centre are frequently predicated on securing the consent of lower levels, and the autonomous action of lower levels is bound by rules of delegation, with the scope for discretion ultimately controlled by successively higher levels.

² Active labour market policies are those aimed at helping unemployed people back to work including job placement services, benefits administration, and labour market programmes such as training and job creation (see <http://www.oecd.org/els/emp/activelabourmarketpoliciesandactivationstrategies.htm>).

³ Internal numerical flexibility has to do with the legal and contractual framework to adjust working hours. It accordingly includes working shifts, weekends, and variable or irregular hours. Functional flexibility is captured by the possibility to employ workers in different jobs.

⁴ Interview with representative of the Ministry of Labour and Immigration.

The reforms also introduced procedural changes in the regulation of collective bargaining in order to facilitate and speed up the renewal of existing agreements. These included changes in collective dispute resolution mechanisms. Although the social partners have defended their autonomy in regard to the reform of collective bargaining, the Government passed some measures without waiting for the agreement of trade unions and employers. In some cases, the reforms led both to a regression of collective rights and to the undermining of the autonomy of the social actors.

This paper is organized in three sections. Section I provides the economic, institutional and political context in which austerity measures have been implemented and gives particular attention to the structural imbalances that have characterized the Spanish economy. Section II analyses the development of social dialogue in austerity times and emphasizes the processes involved in the negotiation of labour market and collective bargaining reforms. Section III discusses the impact of adjustment policies on the labour market, industrial relations and social dialogue. Section IV provides some concluding remarks and proposals on possible ways to revitalize tripartite social dialogue.

1. Economic and political context

The sovereign debt crisis is having a deeper and longer-lasting impact in Spain than in other European countries owing to the confluence of several causes. First, Spain shares with the other southern European economies a low and stagnant productivity that is related to its production structure and pattern of economic specialization (Mas et al. 2012). Second, it shared with Ireland a housing bubble leading to an unprecedented development of the construction sector and a rapid increase in private indebtedness (López and Rodríguez 2011). Finally, the quasi-federal state structure based on *Comunidades Autónomas* (Autonomous Communities or regions, of which Spain has 17, each with its own government) has led to the growth of overlapping institutions and competences and increasing public expenditure managed at the regional level. This unique problem load differentiates Spain from the other European countries most affected by the debt crisis and it must be taken into consideration when interpreting economic and labour market developments in the country.

Before the financial and debt crises, some commentators described Spain as a success story because of its employment creation record, an increasing gross domestic product (GDP) per capita and low unemployment.⁵ However, after four years of unprecedented job destruction, Spain's economy seems to be moving closer to a new recession (OECD 2010, European Commission 2011). Unemployment is still increasing and had already reached five million people by June 2012, equivalent to almost 25 per cent of the active population. Most analysts agree that 2013 will also register negative growth and worsening labour market conditions (European Commission 2012). GDP per capita has fallen to 2002 levels, and inequalities have grown alarmingly, challenging social cohesion in a context of declining coverage of unemployment benefits and social spending cuts. Spain lost an opportunity in the pre-crisis years to overcome some of the historical problems that made the country lag behind its neighbours. It is likely to face enormous difficulties to recover a growth path and catch up with continental and northern Europe.

1.1 The structural determinants of the economic crisis in Spain

In the early months of 2008 it was difficult to imagine that the crisis would be so deep and enduring. Even though the first symptoms of economic deceleration were already

⁵ See for example <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a99i9z4IMUn>.

noticeable, the general feeling was that the Spanish economy was in a strong position to face deterioration in the international economy whatever its origin and intensity.⁶

As has been already mentioned, an overemphasis on the exogenous and financial character of the crisis contributed to the shift in attention away from the structural domestic problems of the Spanish economy (Fishman 2012). Despite the fact that some voices had raised an alarm about the weaknesses of a growth model based on bricks and mortar (OECD 2007), the economic policy since the mid-1990s did not correct the path taken by the economy. The Socialist Government elected in 2008 argued first that there was no crisis and then blamed external factors for its inception and intensity. The economic policy paralysis that characterized its early months was rooted in a belief that the economy was well prepared for a temporary shock and little action was needed accordingly.

In the early stages of the crisis increases in unemployment were to a large extent driven by a severe contraction of the construction sector (CES 2009). However, as job destruction spread to most sectors of the economy, other factors had to be given attention. The first aspect to be considered was the difficulty companies were having in accessing credit because of the banks' increasing restrictions on lending. In spite of the essentially financial character of the economic crisis, the banking system in Spain appeared not to be as badly hit in its early months as banks in other countries. The general feeling was that the largest private banks in Spain were well buffered and provisioned. However, as the economic crisis evolved, banks became more vulnerable and a target of citizens' discontent. In this context, the small regional savings banks (*cajas*) were found to be in an extremely weak position. Some of them were rescued and large-scale mergers occurred.

The vulnerability of the banking industry was to a large extent due to its policy of providing easy access to credit in the growth years. In fact, the excessive resort to borrowing by individuals seeking to finance private consumption was a feature of the Spanish growth model.

Crouch's notion of privatized Keynesianism (Crouch 2008) becomes particularly insightful in this regard. The growth of the Spanish economy in 1998-2007 was strongly dependent on the additional resources provided to families by easy access to credit. This dependence was brought about by the housing bubble which had the effect of reducing the disposable income of a large number of families when housing prices rose rapidly. These almost doubled between 2000 and 2008. As López and Rodríguez (2011: 11) note, "Deficit spending in the years 1997–2007 was decisively transferred from the Spanish State to private households, which, in the final years of the cycle, became net demanders of financing."

⁶ This is confirmed by the Labour Minister at that time, Mr. Celestino Corbacho.

Figure 1. Inflation and negotiated wages in Spain, 1980-2012



Source: INE, National Statistics Institute.

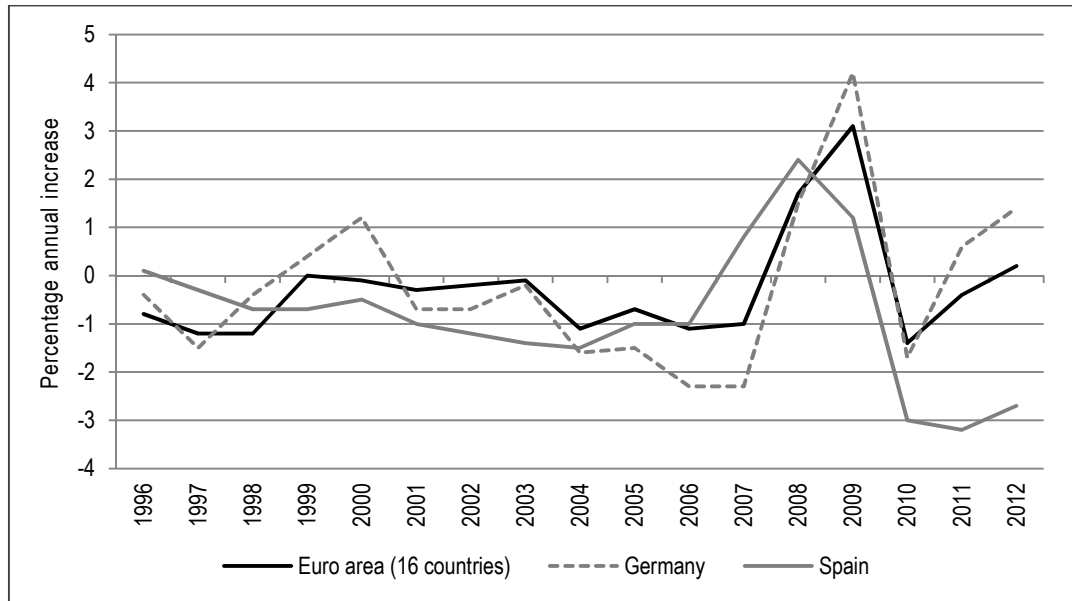
The other reasons for the excessive reliance on credit are related to labour market conditions. These include the low wages and fixed-term contracts of a significant percentage of employees. The high rate of temporary employment characterized by instability and wage levels lower than those earned by employees with similar qualifications on open-ended contracts (Jimeno and Toharia 1993, Amuedo and Serrano 2005), together with the moderate wage increases that have prevailed since the mid-1990s (see figure 1) thanks to bipartite agreements, have made it necessary for individuals to look for additional financial resources in a situation of moderate inflation but skyrocketing housing prices.

This evidence goes strongly against another recurrent argument to explain the structural problems of the Spanish economy and those of other southern European countries, i.e. excessive wage increases (Carballo-Cruz 2011, Wölfl and Mora 2011). According to this argument, the lack of capacities for coordinating bargaining processes in southern Europe triggered an increase in unit labour costs and the consequent deterioration in national current account balances. On the basis of this argument, the Spanish social partners and the Government were asked to further restrain wage increases.

However, when one looks at the outcomes of the bargaining process in terms of negotiated wage increases, the picture is one of considerable wage moderation. Figure 1 indeed shows how, since the late 1990s, average negotiated wage increases have moved along with inflation and in some years have triggered losses in earnings' purchasing power. This evidence is reinforced by the evolution of the adjusted labour share or real unit labour costs which have declined since the early 1980s (Arpaia and Pichelman 2009).

Only when productivity is taken into account does a clear picture of the real structural limitations of the Spanish economy begin to emerge, with its implications for understanding the extent and duration of the current crisis. As a matter of fact, when the evolution of wages and productivity through real unit labour costs is examined, the picture changes significantly, particularly when comparing Spain with other EU economies (see figure 2).

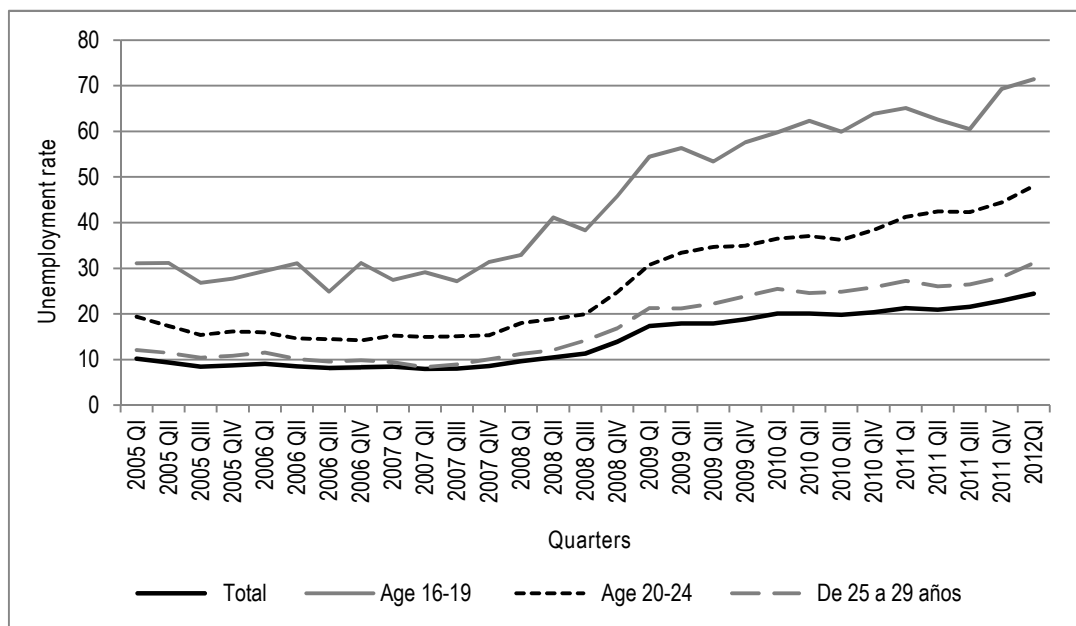
Figure 2. Real unit labour costs, 1996-2012



Source: Eurostat

The inability of three labour market reforms in two years to maintain employment levels and halt the increase in unemployment confirms that labour market regulations are not directly responsible for the deterioration in labour market performance. As figure 3 shows, the unemployment rate has maintained a steady upward trend, rising to almost 25 per cent in June 2012. This could be interpreted as a sign that the roots of labour market underperformance have little to do with employment regulations and are related to the structural weaknesses of the Spanish economy.

Figure 3. Unemployment rate by age group, 2005-2012



Source: Instituto Nacional de Estadística (INE), Labour Force Survey.

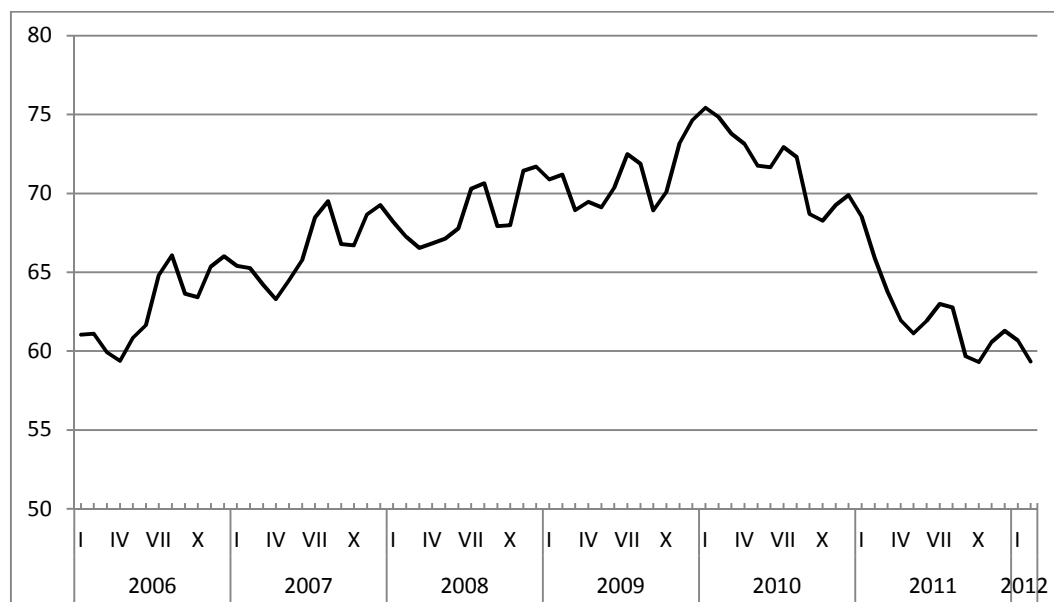
Particularly worrying in this regard is the increasingly vulnerable position of some groups (ILO 2012). This would certainly be the case of youth as shown in figure 3. The

concern for this group is also caused by the existence of a large number of early school leavers in the growth years. Many of these young workers now face long-term unemployment and little prospects of finding a job because of their low level of education. Women and immigrant workers also suffer from above-average unemployment levels.

The high and rapidly growing unemployment rate has been accompanied since 2010 by a drop in the coverage provided by unemployment benefits (figure 4). This has been due to the temporal accumulation of the unemployed receiving contributory benefits as well as to the 2009 extension approved by the Socialist Government under the PRODI programme.⁷

The Government was well aware of the need to concentrate resources on passive employment policies in a period of high uncertainty, increasing unemployment and the uncertain effectiveness of active labour market policies.⁸ However, the drop in unemployment benefits since early 2010 accompanied by rising unemployment has led to an increasingly large number of unemployed persons receiving no benefit. Furthermore, about 50 per cent of those entitled to benefits actually receive non-contributory unemployment assistance, which is significantly less generous than contributory benefits, in effect pushing the already big number of persons receiving no or little benefits to an even higher level.

Figure 4. Unemployment benefit coverage, 2006-2012



Source: Based on social security data.

Summing up, the real structural limitation of the Spanish economy has been low and stagnant productivity (Mas et al. 2012). Three elements are particularly important in the context of the growth experienced by the Spanish economy since the late 1990s. The first is the sectoral composition of GDP and the imbalanced growth path with the massive contribution of the non-tradable and strongly labour-intensive construction and tourism sectors. The second is the high rate of temporary employment which diminishes the incentives of both employers and employees to invest in specific skills and reduces future productivity (Dolado and Stucchi 2008, Ortega and Marchante 2010). Finally, the massive inflow of immigrant workers during the last ten years and the incorporation of mostly medium- to low-skilled workers in the service and construction sectors have helped keep

⁷ Programa Temporal de Protección por Desempleo e Inserción (Temporary Unemployment Protection and Inclusion Programme).

⁸ Interview with representative of the Ministry of Labour and Immigration.

wages low at a time when labour market shortages were pushing wages up. Moreover, the availability of an immigrant labour force has led some companies to opt for labour-intensive techniques.

1.2 The policy and political context

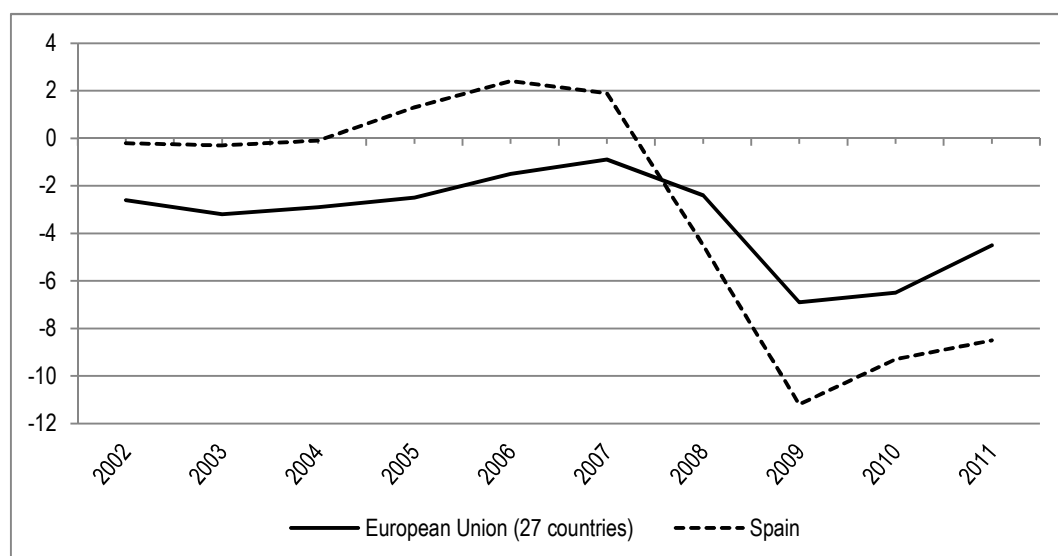
While evidence of a significant economic deceleration and a likely recession was already available to the Spanish Government by early 2008 as the unemployment rate reached 11.3 per cent in May of that year, the Government did not take any action. Only some months later did the Government accept the existence of an “accelerated deceleration” that had an exogenous character, leading it to start to enact measures aimed at encouraging economic revitalization. These consisted mostly of fiscal stimulus combining tax reduction with an increase in spending.

The increase in spending due to growing unemployment and public investment programmes as well as a sharp drop in revenues pushed deficit figures rapidly from a 1.9 per cent surplus in 2007 to a 4.2 per cent deficit in just one year. The deterioration in labour market conditions was obvious in the 18 per cent unemployment rate in 2009 and the rise in the long-term unemployment level to 4.3 per cent. Because of the high level of temporary employment, many of the people becoming unemployed were entitled to low unemployment benefits or none at all. At the same time, as the economic crisis deepened, many of those who were on open-ended contracts before they became unemployed also started to exhaust their unemployment protection with the consequent threat to social cohesion.

The Government acknowledged the structural character of the crisis and hence the need to introduce more radical reforms only when Spain’s labour market and macroeconomic conditions had deteriorated noticeably in comparison with those in other EU countries. Until that time, the Government was convinced that little could be done against a crisis with an essentially financial and exogenous character.

As a consequence of the worsening fiscal position of southern European countries and Ireland, fears of default led to the euro sovereign debt crisis. The average deficit of the European Union had increased from -0.9 per cent of GDP in 2007 to -6.8 per cent in 2009. In the case of Spain, it was worse, rising from 1.9 per cent (2007) to an unprecedented -11.1 per cent (2009). Until 2009, the strategy for exiting the crisis had been mostly regarded as a domestic affair, with each country expected to develop its own policies. However, as the debt crisis deepened, the EU adopted a more active role and put pressure on the Spanish Government to implement significant cost-cutting measures.

Figure 5. Deficits in the European Union and Spain, 2002-2011
(as percentage of GDP)



Source: Eurostat

The meeting of the Eurogroup in early May 2010 concluded with strong demands on the Spanish Government to implement austerity policies. As a result, on 12 May, the Government presented a set of "measures to accelerate the reduction of public deficit". These included a 5 per cent cut in the salaries of civil servants, along with a freeze on wage increases in the forthcoming years, non-application of cost-of-living indexation to pensions, removal of the *cheque bebé* (allowance of €2500 to families with newborn children) and a significant reduction in public works and investment. As a result of the adjustment programme, the budget deficit went down from -11.1 per cent in 2010 to -9.2 per cent in just one year. Further advances in the implementation of austerity packages consisting mostly of cost-cutting measures, with little emphasis on revenue-based adjustment or policies to stimulate demand, certainly constitute a threat for growth and the provision of public services.

After eight years of left-wing governments, the general elections held in November 2011 marked a shift towards the right-wing Partido Popular (PP) headed by Mariano Rajoy. Right after the election, the Government announced an ambitious reform plan. Generally speaking, economic policies under the PP Government have been characterized by some continuity with the policies of the previous Government. However, there are differences that need to be stressed. From the point of view of the policy agenda, austerity measures are more aggressive in areas such as health and education. In regard to the governance of adjustment, the new Government has adopted a more unilateral approach.

2. The policy process: Social dialogue and negotiated adjustment in austerity times

The previous section has provided the context for the analysis of social dialogue. An ill-advised and late diagnosis of the challenges facing the economy in the early months of the crisis, resulting in costly and largely ineffective policies, not only hampered the recovery but also aggravated the conditions in which Spain had to face the sovereign debt crisis since 2010. As will be explored in this section, another important factor to be considered is the lack of broad political and socio-economic consensus which has further limited the effectiveness of policy responses.

The above considerations about the economy and politics have to be interpreted in the context of a deep and multifaceted governance crisis. On the one hand, there is an increasing perception among citizens about the need to restructure the governance of the political system. This is thought to suffer gaps in both its institutions and the functioning and representativeness of its political parties. The social partners, and more specifically trade unions, have also been criticized by a large sector of society (including the 15-M Movement and the Indignados). They are accused of not having provided an alternative policy and to have been too accommodating to both the PP and the Socialist Party's (the Partido Socialista Obrero Español, PSOE) reform agenda because of the extent of their institutionalization and dependence on state resources.

The two major labour confederations have recently acknowledged the failure of trade unions as part of the institutional and political system to channel the citizens' demands.⁹ These demands have been aggravated by the perception that fiscal adjustment has been imposed by the technocratic EU economic governance. Moreover, the negative impact of this adjustment on social cohesion threatens the stability and the pillars of the governance system built in the late 1970s and early 1980s. The Indignados Movement can in this context be interpreted as an expression of this political and economic discontent (Armingeon and Baccaro 2011).

Adjustment policies have been characterized by a shared diagnosis of the problems affecting the Spanish economy but significant differences have been observed as to the policies required to deal with these problems. Following a first period of inaction, initial responses to the crisis consisted of fiscal measures to stimulate the economy. These were then followed by a shift to austerity measures combining spending cuts and tax increases. This change only took place when the risks of contagion of the Greek sovereign debt crisis became evident in early and mid-2010. As above noted, there was a certain continuity in the economic policies adopted by the Socialist (2010-2011) and PP (2011) governments. Furthermore, major shifts in the economic policy agenda were induced externally. However, spending cuts since the PP Government came to power in November 2011 have concentrated more on education and health than they did under the previous Socialist government.

The role of social dialogue and its impact on the adjustment have varied with time and across policy fields. During its period in power, the Socialist Government maintained talks and permanent contact with social partners on a large number of issues including the labour market and industrial relations, employment policy, industrial policy, energy policy and environmental policy.¹⁰ However, the outcomes of this process have been judged by all actors involved as disappointing as no major agreement was signed. When the debt crisis put further pressure on the Government to act, it adopted a more unilateral approach in regulating several policy fields. However, in matters related to labour market and industrial relations, the Government continued to engage in tripartite dialogue before deciding reforms.

Since taking power in 2011, the PP Government has adopted an approach which is based on unilateral decision-making and disregard of tripartite social dialogue. Tripartite social dialogue has played virtually no role in the design of economic policy and fiscal adjustment. When it did play a role, this dealt mostly with industrial policy, the labour market and collective bargaining.

2.1 A historical overview of social dialogue in Spain

Even though tripartite social dialogue in Spain has gone through several phases, it has played a fundamental role as a socio-economic governance mechanism since the country's

⁹ See <http://www.elmundo.es/elmundo/2012/09/19/economia/1348047099.html>

¹⁰ Interview with representatives of the Ministry of Labour and Immigration.

return to democracy. A series of social pacts in the early 1980s which contributed to economic adjustment at a time of deep industrial restructuring and economic crisis, was followed by increasing conflict between the Socialist Government and the trade unions, leading to the 1987 general strike.

The economic crisis of the early 1990s was also characterized by a lack of consensus and conflict between the Government and the social partners, leading to the unilateral regulation of the labour market and collective bargaining and two general strikes in 1992 and 1994. Bipartite and tripartite social dialogue resumed in 1995 and gained momentum under the right-wing Government elected in 1996. Several agreements were signed thereafter during a period of growth. It is particularly important to note the consolidation of permanent bipartite social dialogue between unions and employers, providing an anchor in the face of the instability of tripartite social dialogue.

The second term of the right-wing Government coincided with increasing conflict and attempts at unilateral regulation of the labour market and social protection; this met the resistance of trade unions. The revitalization of tripartite social dialogue began in 2004 with the election of the left-wing Government headed by Mr. José Luis Rodríguez Zapatero, while bipartite social dialogue has remained a central feature of industrial relations in Spain since the mid-1990s.

One of the reasons for the above-described historical discontinuities in tripartite social dialogue is its late and weak institutionalization. A tripartite Social and Economic Council was created only in 1991. While the Council has provided a stable forum for relations among trade unions, employer organizations and the Government, its role has been limited to consultations. There is no formal procedure establishing the obligation for the Government to engage in negotiations with social partners on any policy aspect. Meaningful tripartite social dialogue is accordingly subject to socio-economic conditions and political discretion, i.e., to the Government's willingness to negotiate the reforms. This notwithstanding, there is no clear correlation between the political ideology of the Government and tripartite social dialogue (Molina and Rhodes 2011).

Other explanations point to electoral politics (Hamann and Kelly 2011) and the weakness of the actors involved, especially the Government (Baccaro and Lim 2006, Avdagic et al. 2011). Assessments based on political exchange have also figured prominently in the analysis of policy concertation and social dialogue in Spain (Molina 2005; Oliet 2005). The idea behind this perspective is that in a context of weak institutionalization, the resources (either financial, institutional or strictly political) available to actors determine their willingness to engage in tripartite social dialogue and its success. In a context of crisis and little room to manoeuvre, tripartite social dialogue is likely to continue to be under stress, as was the case in the early 1990s and is now in the current crises.

2.2 Overview of the evolution of social dialogue over the period 2008-2012

As mentioned earlier, two well-differentiated periods regarding tripartite social dialogue can be distinguished since the beginning of the financial and economic crisis. The period of stimulus response in 2008-2009 was characterized by a significant involvement of social partners, though with little results in terms of agreements signed. The 2010 debt crisis led to the adoption of a more unilateral approach to policymaking with less room for social partnership. The only exception in this regard was the January 2011 Tripartite Social and Economic Agreement.

Table 1. Social dialogue and unilateral reforms in Spain, 2008-2012

July 2008	Memorandum of Understanding for the Recovery of the Economy, Employment, Competitiveness and Social Progress	Signed by CCOO (Comisiones Obreras), UGT (Unión General de Trabajadores), CEOE (Confederación Española de Organizaciones Empresariales) and the Government
September 2009	Agreement for the public sector between trade unions and the Government 2010-2012	Signed by CCOO, UGT, CSIF (Central Sindical Independiente y de Funcionarios) Confederación Sindical and the Government
January 2010	Inter-confederal Agreement on Employment and Collective Bargaining 2010-2012 (AENC-I)	Bipartite agreement signed by CCOO, UGT and CEOE containing guidelines for collective agreements
January 2010	Plan for Immediate Action 2010	There was neither consultation nor negotiations between the social partners and the Government.
May 2010	Austerity Plan for the Public Sector 2011-2013	There were neither consultations nor negotiations between the social partners and the Government.
June – September 2010	Labour Market Reform	Tripartite negotiations failed. The Government ruled unilaterally.
December 2010	Industrial Policy Programme - PIN 2020	The Government consulted social partners about some of the contents, but their involvement was limited.
January 2011	Social and Economic Agreement on pensions, the labour market and collective bargaining	Tripartite Social Pact signed by CCOO, UGT, CEOE and the Government.
March 2011	Law for Sustainable Economy	The Government consulted the social partners about some of the contents, but their involvement was limited.
June 2011	Reform of Collective Bargaining	Tripartite negotiations failed. The Government ruled unilaterally.
January 2012	Inter-confederal Agreement on Employment and Collective Bargaining (AENC-II)	Bipartite agreement providing guidelines for collective agreements.
March 2012	Labour Market Reform	There was neither consultation nor negotiations with the social partners. Unilateral approval by the Government.

The discontinuities in tripartite social dialogue contrast with the vitality and resilience of bipartite social dialogue. The development of bipartite social dialogue leading to agreements was the response of the social partners to the failure of tripartite negotiations in the early 1990s and early 2000s; it delivered more than 20 agreements in ten years (Molina and Rhodes 2011). As a matter of fact, in addition to the tripartite social pact signed in February 2011, two important bipartite inter-confederal agreements for collective bargaining have been signed, hence following the practice initiated in 2002. In addition to providing some general guidelines for the (re-) negotiation of collective agreements, these pacts also give overall indications for the development of bipartite and tripartite negotiations on collective bargaining and wage-setting.

The prominent role of bipartite social dialogue has been reinforced by the emphasis placed by the labour market reforms of 2010 and 2011 on enhancing negotiated forms of adjustment and restructuring through functional flexibility. Thus the social partners' strategies for mitigating the effects of the crisis on employment have focused on strengthening collective bargaining capacities at company level by widening the scope for negotiation.

The abandonment of tripartite social dialogue as a mechanism for initiating economic and labour market adjustments in response to the crisis is explained very differently by the actors involved. One of the arguments expressed by both the employers

and the PSOE¹¹ and PP¹² Government is the inability of social dialogue to keep pace with real economic developments and to provide quick and meaningful responses.¹³ This was also highlighted by other parties in the early months of the crisis.¹⁴ However, it is also important to acknowledge that the paralysis in tripartite social dialogue is to a large extent due to the Government's late reaction to labour market problems and its inaction in 2008 and 2009; these had a paralysing effect on tripartite social dialogue.

Another recurrent argument is the inefficacy of measures negotiated in the context of social dialogue.¹⁵ This was also brought up by some of the persons interviewed for this paper, referring to the fact that while the unions and the employers signed several agreements between the mid-1990s and 2008 on labour market and collective bargaining, some of these agreements had very little impact.¹⁶ The reason given for this is the nature of negotiated reforms which, because they reflect a compromise in the positions of the actors involved, are inevitably less effective.

The Government's limited room for manoeuvre owing to fiscal policy constraints has also blocked possibilities for concluding tripartite agreements. This is because the political give-and-take required to reach a tripartite agreement is less likely when there are no resources for compensating the actors for the 'sacrifices' they have to make. Something similar happened in the early 1990s, in the context of the economic crisis and adjustment to the Maastricht Criteria¹⁷ on inflation and budget deficits. On that occasion, tripartite social dialogue failed to deliver any agreement. A related argument is that there is a mismatch between macroeconomic governance at the EU level and governance at the national level.¹⁸

Trade unions also blamed the 2009-2010 CEOE leadership as a major obstacle to tripartite social dialogue. Compared to previous CEOE presidents before that period, the CEOE leadership adopted a position less inclined to social dialogue and negotiation with trade unions. Moreover, its weakened position within CEOE as a result of the scandals swirling around some companies also blocked social dialogue and tripartite social pacts.¹⁹ The signing of a tripartite social pact only four weeks after the election of a new CEOE president would support this argument.

Finally, the legitimacy dimension of tripartite social dialogue has also come out as an important aspect to be considered. From the point of view of input legitimacy, criticism from some sectors of the population of trade unions and employers in the context of the crisis and austerity policies has certainly reduced the incentives for the Government to rely on this form of socio-economic governance. Thus in the case of the recent labour market reform, the ruling party expressed the view that real legitimacy comes from Parliament and as a consequence, there is no real obligation, nor need for additional validation of agreements through social dialogue.²⁰

¹¹ Representatives of the Ministry of Labour and Immigration highlighted the resistance of trade unions to change, especially in austerity times.

¹² Representative of the Ministry of Economy and Competitiveness acknowledged that the slow reform path imposed by social dialogue required state action in order to bring about effective and timely responses to the challenges posed by the economic crisis.

¹³ Interview with representative of the Ministry of Labour and Immigration. See also Parliamentary Debates, n. 225, Comisión de Trabajo e Inmigración, Session n. 10, 10 March 2009, p. 15.

¹⁴ Parliamentary Debates, n. 59, Comisión Trabajo e Inmigración, Sesión Extraordinaria 22 July 2008, p. 35.

¹⁵ Parliamentary Debates, n. 128, Comisión Trabajo e Inmigración, Sesión 30 October 2008, p. 14.

¹⁶ Interview with representative of the Ministry of Economy and Competitiveness.

¹⁷ The Maastricht Criteria stipulate that the inflation rate should be no more than 1.5 per cent above the rate for the three EU Member States with the lowest inflation over the previous year and that the budget deficit must generally be below 3 per cent of GDP.

¹⁸ Interview with representative of UGT.

¹⁹ Interview with representative of UGT and representative of CCOO.

²⁰ See Parliamentary Debates, n. 24, Plenary Session, 11 April 2012, p. 5.

As regards the EU's supranational mandate to push for fiscal adjustment measures, the perception is that the Government is more accountable for its economic policies to supranational actors rather than to the citizens or the collective bodies representing them. Finally, the failure of tripartite social dialogue to deliver agreements in the early stages of the crisis has also had a negative effect on how it is perceived, as it contributed to the view that the social partners also had some responsibility for the way the crisis was managed.

2.3 Social dialogue in the debt crisis and the governance of austerity

Before entering into the detailed analysis of social dialogue during the crisis, it is important to note the existence of the document that provided the dialogue's general orientation in content and form since 2004. This document, "the Declaration for Social Dialogue 2004: Competitiveness, Stable Employment and Social Cohesion",²¹ was agreed soon after Zapatero's first election as Prime Minister in 2004. In addition to highlighting the role of social dialogue in the area of competitiveness, stable employment and social cohesion, it specified issues for discussion in separate processes. These included labour market policy, training, the minimum wage, employee involvement and collective bargaining reform.²² Subsequently, a broad and ambitious process of social dialogue was initiated and more than 20 agreements were signed by the tripartite partners in the succeeding years (Molina and Rhodes 2011).

In view of the worrying economic and labour market conditions, the 2004 agenda for negotiations was widened in July 2008 through a memorandum of understanding (Declaración para el Impulso de la Economía, el Empleo, la Competitividad y el Progreso Social). Signed by the social partners and the Government, it aimed to boost employment and included in the agenda for social dialogue issues such as industrial and energy policy.²³ In January 2009, the social partners and the Government decided to intensify talks in order to speed up the process of reaching an agreement on collective bargaining in a rapidly worsening economic context.

In May 2009, the social partners and the Government concluded a new meeting with a commitment to reach an agreement by July that year. Two types of measures would be negotiated as laid down in a joint UGT-CCOO document (Propuestas sindicales para un acuerdo por el empleo y la protección social).²⁴ The first were short-time policies to alleviate the effects of the economic crisis by reducing working time without destroying more jobs and enhancing unemployment protection. The second were longer-term policies to develop a more sustainable and inclusive growth model.

An agreement was finally not possible owing to the employers' demand for a reduction of their social security contributions by 5 per cent as well as the inclusion of other measures on collective redundancies. Despite that failure, social dialogue delivered an agreement in September 2009 on the civil service and public sector employment (Acuerdo Gobierno-Sindicatos para la Función Pública en el Contexto del Diálogo Social 2010-2012).²⁵

The perception of social dialogue as a mechanism for governing the response to the economic crisis and austerity policies changed quite significantly with the sovereign debt crisis. In a meeting in March 2009, the Socialist Government led an initiative to "relaunch and give momentum to social dialogue and concertation as a mechanism to generate

²¹ See full text at: <http://www.ugt.es/dialogosocial/declaraciondsocial.pdf>

²² Parliamentary Debates, n.128, Comisión Trabajo e Inmigración, Sesión 30 October 2008, p. 6.

²³ See <http://www.lamoncloa.gob.es/NR/rdonlyres/1A22106D-D247-4274-AF8B-9A7390000230/90303/DeclaraciondialogoSocial.pdf>

²⁴ See full text at: http://www.ccoo.es/comunes/recursos/1/doc14633_Propuestas_sindicales_para_un_acuerdo_por_el_empleo_y_la_proteccion_social.pdf

²⁵ See full text at: <http://www.boe.es/boe/dias/2009/10/26/pdfs/BOE-A-2009-16986.pdf>

economic growth, trust and overcome the crisis”. This initiative was supported by the PP.²⁶ However, the debt crisis and external pressures on the Government to take action especially in regard to fiscal adjustment without waiting for the outcome of social dialogue led to the breakdown of negotiations on labour market reform in June 2010. The Government decided then to regulate matters unilaterally.

Social dialogue was nonetheless resumed later that year and a tripartite social pact on pensions, the labour market and collective bargaining was signed in January 2011. Several reasons can be given to explain this change. An important reason was the change in the presidency of the employers’ organization. The involvement of the then CEOE president in investigations into the bankruptcy of some of his companies eroded his legitimacy not only within CEOE, but also with respect to trade unions and the Government. As a consequence, negotiations slowed down. The appointment of a new Labour Minister with a strong commitment to social dialogue was an additional factor in the resumption of social dialogue. Finally, a broader bargaining agenda favouring forms of exchange and compensation made it easier to reach compromises with the social partners.

By contrast, no agreement could be finalized on the reform of collective bargaining in 2011. Bipartite negotiations had evolved on the basis of some of the articles in the January 2011 social pact, but no agreement could be reached in the end. The Government intervened again unilaterally. However, bipartite social dialogue remained alive and delivered a new and important inter-confederal agreement in January 2012. By signing this agreement in a difficult social and economic context, employers and trade unions made clear their commitment to social dialogue and sent a signal to the incoming right-wing Government about its importance and the capacity and responsibility of social partners for negotiating reforms autonomously.²⁷

In spite of the January 2012 bipartite Agreement on Employment and Collective Bargaining, tripartite social dialogue was faced with great challenges in 2012. The announcement of a labour market reform which did not involve the social partners in a dialogue, the general strike in May 2012 and the acceleration of fiscal adjustment in the face of the deterioration of Spain’s macroeconomic prospects impinged heavily on social dialogue. As a result, the trade unions rejected any social dialogue with the current Government and declared that they would enter into negotiations only after a referendum on austerity policies had been called.²⁸

2.4 Economic and industrial policy in austerity times: The role of social dialogue

The Budget for 2010 marked a turning point as it was primarily based on revenue-increasing measures with the objectives of protecting core social spending and shielding welfare beneficiaries from the effects of the downturn. For the first time the Socialist Government showed that it had become well aware of the structural character of the crisis. In addition to preparing a plan for fiscal consolidation, it presented in February 2010 a roadmap for changing the country’s production model (Azpitarte Sánchez 2011). The most important contents of the plan were the Law for Sustainable Economy, a roadmap for fiscal consolidation and a scheme for the development of a process of social dialogue on reforming the labour market and the pension system.

The Law for Sustainable Economy²⁹ (Law 2/2011) approved in March 2011 was preceded by talks with social partners, political parties and other actors in the economic and civil spheres. This law constituted an ambitious plan to achieve more sustainable

²⁶ See Parliamentary Debates, n. 225, Comisión de Trabajo e Inmigración, 10th March 2009, pp. 22-26.

²⁷ The strong commitment of employers to social dialogue is made very clear by Mrs. Ana Herraiz who stresses that dialogue is part of the “DNA” of CEOE.

²⁸ See <http://www.elmundo.es/elmundo/2012/09/19/economia/1348047099.html>

²⁹ See full text at: <http://www.boe.es/boe/dias/2011/03/05/pdfs/BOE-A-2011-4117.pdf>

growth through changes in the regulation of product and factor markets, the education system, competition law, etc. Its final aim was to gradually move from an extensive growth model based on the expansion of employment to a more sustainable intensive model based on high value-added activities and productivity increases (DGAMEI 2011). However, the lack of resources has severely curtailed its impact and has led to the abandonment of many of its aspects. (Morán Criado 2010).

In addition to the Law for Sustainable Economy, the Government announced a plan for fiscal adjustment in the expectation that economic recovery would happen soon. Anticipating positive economic growth by the end of 2010, the Government decided that, in order not to jeopardize the recovery, the time was right for the implementation of austerity measures.³⁰

In the context of growing uncertainty about Greece's capacity to meet its borrowing requirements in early 2010, the Spanish Government announced the Plan de Acción Inmediata 2010 (Plan for Immediate Action 2010) and the Plan de Austeridad 2011-2013³¹ (Austerity Plan 2011-2013). The Government was aware that the increased public investment in the previous months, together with high and increasing unemployment, exerted strong pressures on public accounts and that gradual stabilization measures were required.

The Plan for Immediate Action 2010 implied a further 0.5 per cent reduction in the GDP deficit from the level already provided for by the Budget Law and imposed a ban on new contracts in the public sector. The Austerity Plan 2011-2013 envisaged additional cuts in the expenditure authorized by the Budget Law for all items with the exception of pensions, unemployment protection, research and development, and education. It also provided for cuts in the wages of public sector employees (5 per cent in 2010) and a wage freeze for 2011, a freeze on pensions in 2011, a significant drop in housing investment and the abolition of the so-called cheque bebé among others.

The Plan for Immediate Action 2010, the first austerity package, was passed in May 2010 without any consultation or negotiation with social partners. The Plan was announced by then Prime Minister Zapatero in the middle of negotiations for a reform of collective bargaining. The announcement had a negative impact on the evolution of social dialogue. A general strike in the public sector was called in June 2010 and negotiations on the reform of collective bargaining and the labour market broke down some weeks later without agreement. The trade unions criticized the Plan heavily and bemoaned the fact that they were not given prior notice of its passage. On May 12, Prime Minister Zapatero announced a policy package that includes major cuts in social protection as well as the earning of public sector employees; this marked the beginning of a new period for social dialogue characterized by rising tension and increasing obstacles to tripartite social dialogue.

The economic policy followed by the right-wing Government elected in November 2011 has been characterized by a strong commitment to austerity, hence continuing the path initiated some months before. This has resulted in the adoption of a more negative stance on tripartite social dialogue.

Industrial policy

As will be discussed later in greater detail, plans to reduce the deficit contain some elements that shape the economy and the country's production model. However, there have been specific policies aimed at introducing structural changes in the economy. Regarding industrial policy, the strategy of the 2008-2011 Socialist Government in its early stages consisted in stimulating the car industry which plays a key role in the Spanish

³⁰ See Intervention by Prime Minister José Luis Rodríguez Zapatero, Parliamentary Debates, n. 140, Plenary Session, 10 February 2010, p. 6.

³¹ See full text at: http://www.lamoncloa.gob.es/ConsejodeMinistros/Referencias/_2010/refc20100129.htm

manufacturing sector. This was mostly made by providing incentives to attract the development and construction of new car models in Spain. A total of 3 100 million euro were devoted to this goal in 2009.

Some months later the Government shifted strategy and adopted a more ambitious plan for a change in the production model towards greater sustainability and value added. The Plan Integral de Política Industrial 2010-2020 (Industrial Policy Programme - PIN 2020) under the umbrella of the strategy for sustainable economy envisaged the development of strategic sectors like information and communications (ICT) technology, biotechnology, renewable energy and the aerospace industry.³² The Government developed this approach in dialogue with the country's political parties and social partners.

Among the objectives of PIN 2020 were to raise from 15 per cent to 18 per cent the share of manufacturing in GDP by 2015 and the modernization of the industry (Legarda and Hidalgo 2011). The main obstacle to achieving these goals was the limited access to credit by companies. Because of the problems of the banking system, companies, and especially SMEs, have found it difficult to obtain the resources necessary to invest in new equipment or to start a new business.

Tripartite social dialogue on economic and industrial policy lost momentum with the onset of the sovereign debt crisis. The social partners were significantly involved in the drafting of aspects of the Law for Sustainable Economy during 2009-2010. However, the new scenario characterized by severe fiscal adjustment and a focus on spending cuts rather than expansionary policies has reduced the scope for tripartism.

2.5 Labour market reforms in austerity times: The role of social dialogue and collective bargaining

The economic crisis led to the introduction of important changes in labour market regulation and employment policy in 2010, 2011 and 2012. The regulatory mechanism chosen to cope with the impact of the economic crisis on the labour market was initially collective bargaining. An attempt was made by the social partners with the support of the Government to enhance internal flexibility and allow negotiated adaptation and restructuring measures via collective agreements. The 2010 Bipartite Agreement on Employment and Collective Bargaining 2010-2012 outlines the key aspects of this strategy.³³ However, as labour market problems persisted without the social partners reaching consensus on how to reform collective bargaining, the Government decided to act unilaterally to change labour market regulation and the collective bargaining system but maintained the overall goal of enhancing internal flexibility. In 2012 a reorientation of the strategy and objectives of labour market regulation took place with a labour market reform that changed firing and hiring regulations while at the same time regulating aspects of collective bargaining to enhance adaptability.

The policy objective driving reforms, given the structural problems of the Spanish economy, was the maintenance of employment levels in a situation of unprecedented rates of job destruction. Employment creation was never the underlying goal of reforms. Some reforms targeted specific groups like the youth and women.³⁴

The duality that characterizes the Spanish labour market, with a large percentage of employees on fixed-term contracts, has been identified by all actors involved in social dialogue as one of the key problems to tackle through regulatory reforms. The approach

³² See full text at: <http://www.minetur.gob.es/es-es/gabineteprensa/notasprensa/documents/planintegralpoliticaindustrial2020.pdf>

³³ See full text at: <http://www.empleo.gob.es/es/Guia/pdfs/pdfsnev/RES110210.pdf>

³⁴ This has been the case of the 2012 Reform. Interview with representative of the Ministry of Employment and Social Security and representative of the Ministry of Employment and Social Security.

adopted before the start of the crisis to deal with this issue was to provide incentives for hiring staff on an open-ended basis and for converting temporary contracts into open-ended contracts by reducing the employers' social security contributions.

In this regard, there seems to be a generalised consensus around the inefficacy of this strategy as showed by the little success of previous reforms in bringing down the rate of temporary employment.³⁵ As a consequence, there has been strong pressure on the 2008-2011 Socialist Government to shift to a different strategy seeking to reduce the gap between dismissal costs under temporary and open-ended contracts. In view of the already low costs of dismissing temporary employees, this has translated into strong pressures to reduce dismissal costs for open-ended contracts.³⁶ Even though the 2009 and 2010 reforms already advanced somewhat in this direction, the definitive push for the approach came with the 2012 reform.

All labour market reforms approved during the crisis were passed by the Spanish Government without an agreement with the social partners. It should be noted that while the 2010 and 2011 reforms were preceded by negotiations between the social partners and the Socialist Government, no form of social dialogue took place on the 2012 reform.

There are significant differences in the orientation and policy objectives of the various reforms. The 2010 and 2011 reforms passed under the PSOE Government aimed at enhancing internal or functional flexibility, though there were also measures to reduce dismissal costs. Even though the 2012 reform contains some important provisions to promote functional flexibility, it seems to have moved back to a preference for external or numerical flexibility (emphasis on the use of temporary workers and part-timers in the employed workforce).³⁷ Moreover, it has deviated from the previous dominant approach in so far as it has focused on facilitating exit from the labour market rather than entry into it.

In the early months of the economic crisis, the emphasis was on strengthening the efficacy and resources of the Public Employment Service (SEPE, Servicio de Empleo Público Estatal). In a context of rapidly increasing unemployment, the Socialist Party made an effort to develop a more individualized public system of intermediation and career guidance.³⁸ However, as the Minister pointed out in 2008, it was difficult to achieve coordination in this area because the management of the labour market was carried out at both the national and the regional level. For instance, the national government had responsibility for passive labour market or income replacement policies,³⁹ while the regions oversaw active labour market policies (i.e. policies aimed at bringing the unemployed to work). One of the interviewees for this paper criticized the management of employment policies in the early stages of the crisis when too much emphasis was placed on employment policies at the regional level with little coordination at the national level.⁴⁰

The 2010 Reform (Royal Decree Law 35/2010, 17 September 2010)

The 2010 reform was passed when Spain's labour market situation had deteriorated significantly in comparison to those of other EU countries, reaching an unemployment rate of 20 per cent. The mechanisms that allowed other countries, including Germany and Italy, to improve their labour market performance constituted the model for the reform. Accordingly, the main goal was to safeguard existing employment levels, or at least to halt the rapid process of job destruction.

³⁵ Interview with representative of the Ministry of Labour and Immigration..

³⁶ Parliamentary Debates, n. 59, Comisión Trabajo e Inmigración, Sesión Extraordinaria 22 July 2008, p. 35.

³⁷ External numerical flexibility refers to the capacity of the firm to adjust to a shock by hiring or firing and using atypical contracts.

³⁸ See the intervention of the Socialist Minister, Mr. Celestino Corbacho; Parliamentary Debates, n. 151, Comisión Trabajo e Inmigración, Sesión 19 November July 2008, p. 25.

³⁹ Passive labour market programmes are those aimed at guaranteeing income for the unemployed.

⁴⁰ Interview with representative of the Ministry of Labour and Immigration.

The Government announced in January 2010 its intention to push for an ambitious agenda of structural reforms, also covering the labour market, in order to reduce the deficit as well as to set the foundations for economic recovery and growth. Particularly important in this regard was the change in attitude towards the role of labour market reform. The Government had maintained until then a clear position arguing that a reform of the labour market would not contribute to the creation of employment and stimulate growth as the crisis had nothing to do with labour market regulation.⁴¹ While the trade unions endorsed the government view, employer organizations supported changes in labour law regulation aimed at easing firing regulations as the only way to halt unemployment growth.

Negotiations started formally in February 2010, on the basis of the 2010 bipartite Agreement on Employment and Collective Bargaining, which provided some guidelines for the development of social dialogue among the social partners with a particular focus on collective bargaining and the development of functional flexibility. In April 2010 the Government issued a document presenting the main points of agreement in the social dialogue on labour market regulation (Diálogo Social sobre Actuaciones en el Mercado de Trabajo).⁴² According to this document, negotiations among social partners and the Government had to focus on five issues: labour market segmentation, a review of financial incentives for hiring workers, labour market intermediation services, youth employment programme and the extension of short-time working schemes. The Government, trade unions and employer organizations agreed that the duality of the labour market was its main problem and therefore the target of reforms.⁴³

The development of social dialogue was certainly conditioned by the announcement of the first austerity package some days later, on 12 May. Although the Government had reassured the social partners of its strong commitment to social dialogue and promised that no reform would be passed without their agreement, the radical shift in Zapatero's economic and fiscal policy had a negative effect on the negotiations on the reform of the labour market. The significant differences in the stances of the unions and the employers in regard to the employers' demand for an expansion of the grounds for fair dismissal further weakened the impetus to reach a negotiated agreement. Finally, the weak position of the CEOE president, discussed earlier in this paper, also hampered the deliberations.⁴⁴

The negotiations failed definitively on 6 June 2010 and the Government sent the trade unions and employer organizations a few days later a draft document proposing measures for the reform of the labour market. Its main points were more stringent rules on fixed-term contracts; a relaxation of the causes for fair dismissal; promotion of open-ended contracts; and mechanisms to facilitate the use of short-term working schemes.

In response to the unilateral approval of the labour market reform, trade unions called for a general strike on 29 September. The trade unions denounced the reduction in dismissal costs and the fact that the reform was passed unilaterally. This came after the strike of public sector employees on 8 June as a response to the wage cuts approved in the 12 May austerity package.

**The 2011 Economic and Social Agreement for Growth,
Employment and the Sustainability of Pensions⁴⁵
(Royal Decree Law 1/2011, 1 February)**

Negotiations between the social partners and the Government on the reform of old age pensions were soon widened by October 2010 to cover other issues such as collective bargaining, employment policy and labour market regulation. After a general strike in

⁴¹ Interview with representative of the Ministry of Labour and Immigration.

⁴² See full text at: http://www.tt.mtin.es/periodico/laboral/201004/Doc_trab_DS.pdf

⁴³ See intervention by Prime Minister José Luis Rodríguez Zapatero, Parliamentary Debates, n. 140, Plenary Session, 10 february 2010, p. 7.

⁴⁴ Interviews with representative of UGT and representative of the Ministry of Labour and Immigration.

⁴⁵ See full text at: http://www.ugt.es/actualidad/2011/febrero/acuerdo_social_y_economico.pdf

September 2010 and repeated failures to reach an agreement, both trade unions and employer organizations considered it urgent to restore social dialogue and deliver agreements. They realized that after three years of economic slowdown and no broad consensus reached so far on mechanisms for exiting the crisis, their role was being questioned by the population. As a trade union official pointed out: “If social dialogue does not deliver agreements, it will weaken.” There was accordingly a lot of pressure to sign an agreement, but the context was not particularly favourable.⁴⁶

The trade unions were very much in favour of a comprehensive pact covering the labour market, collective bargaining and old age pensions. This was supported by the Government after its relations with the unions deteriorated as a consequence of the labour market reform and the general strike in September 2010. The change in the CEOE presidency provided an additional incentive to favour a process of social dialogue as the new president adopted a more favourable approach to the negotiations.

Finally, a tripartite social pact (the Economic and Social Agreement for Growth, Employment and the Sustainability of Pensions) was signed in February 2011. This comprehensive pact covered old age pensions, youth unemployment, active labour market policies, the reform of collective bargaining, R&D, and industrial and energy policy.

Regarding labour market regulation and employment policy, the pact made commitments in three main areas.⁴⁷ the efficacy of active labour market policies; the transition to stable employment; and coordination between the national, regional and local government levels, the lack of which was an obstacle to the effectiveness of employment policies. The pact also committed itself to implementing some of the elements of the 2010 reform which had not been carried out so far.⁴⁸

The most controversial aspect of the pact was the reform of old age pensions. It raised the pensionable age from 65 to 67 years, a measure that was heavily contested by large factions among the trade unions. Even though the pact had some elements of flexibility, making it possible for employees to be entitled to full pension without having reached 67 years of age, the criticisms highlighted the fact that in a labour market like the Spanish one, with high rates of temporary employment and frequent unemployment spells, it would be difficult to reach maximum pension levels.

Even though it is difficult to assess the effectiveness of the reforms because of the rapidly changing economic environment, some interviewees agreed that the 2010 agreement had a limited impact.⁴⁹ In addition to the negative economic context, one reason was the Socialist Government fear of facing strong opposition from the trade unions. This led to its unilateral approval of an extremely cautious reform plan which had no actual or very limited impact on shaping labour market developments. A similar diagnosis is made of the labour market measures of the 2011 Social and Economic Agreement. The piecemeal and fragmented character of these measures has severely limited their effectiveness (CES 2012: 406).

The 2012 Labour Market Reform (Royal Decree Law 3/2012, 10 February 2012)

The positions of the trade unions and employers on labour market regulation became increasingly discordant during 2011 as the employers openly stated that their top priority

⁴⁶ See http://elpais.com/diario/2010/10/31/economia/1288476002_850215.html

⁴⁷ Royal Decree Law 1/2011, 11 February, Urgent Actions in order to Promote Transition to Stable Employment and the Occupational Requalification of the Unemployed. See full text at: <http://www.boe.es/boe/dias/2011/02/12/pdfs/BOE-A-2011-2701.pdf>. The reform of active labour market policies is the subject of the Royal Decree Law 3/2011, 18 February.

⁴⁸ Royal Decree Law 10/2011, 26 August on urgent measures to promote youth employment and increase stability.

⁴⁹ Interview with representatives of the Ministry of Labour and Immigration.

was the facilitation of dismissals.⁵⁰ The divisions widened over the reform of collective bargaining, as the failure to sign an agreement and unilateral regulation by the Government in June 2011 made clear. Moreover, the weakening of the Socialist Government and its expected defeat in the forthcoming November 2011 elections gave employers incentives to delay social dialogue as much as possible in anticipation of the entry of a new right-wing Government.

Despite the disagreements, bipartite social dialogue continued between the trade unions and employers. By January 2012 a new bipartite Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC II) was signed. Its objective was to provide the Government with a document setting out the consensus between unions and employers on issues ranging from active labour market policies to the structure of collective bargaining.

The right-wing Government elected in November 2011 soon made clear its intention to reform the labour market. Even though the Government and some representatives of the labour ministry engaged in separate talks with the trade unions and employer organizations right after their appointment, there was no attempt to enter into a tripartite social dialogue. In fact, the Government did not take into account some of the contents of the 2012 inter-confederal agreement when it drafted the law proposal. The then recently appointed Labour Minister Mrs. Fátima Báñez said that while the Government had full respect for social dialogue, the outcome of the social dialogue among trade unions and employers set out in the January 2012 agreement was clearly insufficient to tackle the problems of the Spanish labour market.⁵¹

The trade unions and the opposition party PSOE criticized the reform process that led to 2012 Labour Market Reform. In the words of Mr. Celestino Corbacho, it marked a major discontinuity in Spain's employment relations which had in the past been characterized by social dialogue and the search for consensus.⁵² According to the trade unions, the Government deviated from a long-standing tradition of holding consultations and negotiations before formulating labour market reforms. It had failed to initiate a process of dialogue with social partners and to circulate a draft of the reform proposal.

The most important innovations of the 2012 labour market reform law can be summarized as follows: new limitations to the extension of the terms of collective agreements when they have expired (the extension is referred to as *ultra-actividad*); easier conditions for opting out from higher level agreements; the addition of measures subject to non-application by employers; widening of the causes for fair dismissal, including an enterprise's fall in earnings for a period of nine consecutive months; reduction of severance payment in cases of unfair dismissal under open-ended contracts; new forms of measuring and monitoring absenteeism as a motivation for ending employment relationships; incentives for expanding teleworking; and creation of a new open-ended contract to promote entrepreneurship with a one-year trial period.

In response, the trade unions called for mobilizations, including a general strike in March 2012. As had happened in 1994, they also announced their intention to offset some of the contents of the reform via collective agreements.

Even though the employers were positive about the reform, they criticized its softness and ambiguity on issues like the new contract for the promotion of entrepreneurship.⁵³ In addition, they argued that part-time employment had to be given greater flexibility for it to reach its full potential. Finally, they questioned the Government's reluctance to use the 2012 bipartite agreement on employment as the

⁵⁰ See http://politica.elpais.com/politica/2011/10/11/actualidad/1318365531_515976.html

⁵¹ See ABC, 3 April 2012, <http://www.abc.es/20120212/economia/abci-entrevista-ministra-empleo-201202120430.html>

⁵² A similar view was expressed by Mr. Valeriano Gómez and trade union representatives.

⁵³ Interview with representative of CEOE.

starting point for the negotiation of the labour market reform. Whilst employers regarded the inter-confederal agreement as fully valid and as a good starting point for future negotiations, the trade unions expressed the view that the Government had delegitimized the agreement by overlooking it when it drafted the reform law of 2012.⁵⁴ It is therefore very likely that the reform law will impinge negatively on tripartite social dialogue. In a recent statement, the trade unions said that they considered it impossible to restore tripartite social dialogue unless the Government changed its economic policy programme and called for a referendum.

2.6 The reform of collective bargaining in austerity times: The role of social dialogue

One of the most important outcomes of social dialogue during the crisis has been an increasing awareness of the need to enhance the capacity of collective agreements to adapt to changing conditions through the use of internal numerical or functional flexibility (working time flexibility, reorganization of jobs and functions). The use of short-time working schemes through collective agreements has accordingly been a priority in the reform process. The final aim is to compensate for the over-reliance of the Spanish labour market on external numerical flexibility (intake from the external labour market). Even though there have been some significant advances in this regard, there remains the structural problem posed by the small size of Spanish companies which severely reduces the possibility for relying on functional flexibility (movement of employees to different activities or tasks within companies) as an adjustment mechanism.

Wage settlements during the crisis have been moderate and losses in real wages have happened and are expected to happen in the coming months.⁵⁵ Additional changes have been introduced in labour law and the regulation of collective bargaining in order to guarantee and facilitate partial access to unemployment benefits. The effort of the social partners as well as the Government has been particularly important in this regard.

The trend towards the decentralization of collective bargaining has accelerated during the crisis. Before the 2012 reform, all collective bargaining reforms contained mechanisms for organized decentralization, with higher-level collective agreements establishing the criteria for lower-level agreements. The defence of a multi-level bargaining system where sectoral collective agreements monitor the process of decentralization was a strategy shared by the trade unions and employer organizations to deal with the risks posed by decentralization, as was shown in the 1997 peak inter-confederal agreement on collective bargaining. However, the 2012 reform has meant a break from previous practice as it not only enhances the regulatory capacity of company-level agreements, but also gives more regulatory power to employers while reducing the regulatory capacity of sectoral agreements.

Additionally, procedural changes were introduced in the regulation of collective bargaining in order to facilitate and speed up the renewal of existing agreements. These included changes in collective dispute resolution mechanisms. Even though the social partners have defended their autonomy in reforming collective bargaining, most of the changes were introduced by the Government without entering into a previous agreement with them. It could therefore be argued that the crisis has reinforced the statist character of industrial relations in Spain.

Inter-Confederal Agreement on Employment and Collective Bargaining 2010-2012

The reform of collective bargaining has been one of the most debated issues since the beginning of the crisis. The main problems attached to it were related first of all to the

⁵⁴ Interviews with representative of CEOE and representative of UGT.

⁵⁵ Interview with representative of the Ministry of Economy and Competitiveness.

excessive rigidity it imposed on wage setting. It has been argued that the existing structure of collective bargaining, one, delivered high wage increases because of its intermediate level of (de-)centralization and, two, limited the possibilities for a flexible adjustment of wages to a new environment. Some political parties and employers have also pointed out that the automatic extension of the terms of an agreement when negotiations on its renewal have failed (the so-called *ultra-actividad*) imposed excessive rigidities that are particularly harmful in times of crisis.

Because of its importance, bipartite social dialogue on the reform of collective bargaining has been going on for a long time. However, the crisis made clear the significant differences existing between unions and employers on the problems affecting collective bargaining and their solution. This became evident with the failure of negotiations to reach agreement on the renewal of the 2008 AINC to set guidelines for collective bargaining in 2009.⁵⁶

The trade unions and employers signed in November 2009 a document to unblock the negotiation of several collective agreements (Compromiso de Actuación entre CEOE y CEPYME, y CCOO y UGT, sobre la Negociación Colectiva pendiente de 2009).⁵⁷ Bipartite social dialogue was resumed and in January 2010 the peak organizations signed the 2010 bipartite Inter-confederal Agreement for Employment and Collective Bargaining 2010-2012 (AENC-I).⁵⁸ This Agreement, which continued the series of peak inter-confederal agreements initiated in 2002, dealt with several aspects including the transformation of temporary contracts into open-ended contracts, internal flexibility, teleworking, guidelines for wage developments (2010: 1 per cent; 2011: 1-2 per cent; 2012: 1.5-2.5 per cent), the use of opting-out clauses and the beginning of negotiations on the reform of collective bargaining.

In accordance with the commitment expressed in AENC I, negotiations were carried out on a reform of collective bargaining, but these did not deliver an agreement in 2010. However, the Labour Market Reform Law approved in September that year (Law 35/2010, 17 September) contained some important implications for collective bargaining. More specifically, the Reform Law enhanced the possibility for arriving at negotiated solutions (involving functional flexibility, working time reductions, etc.) without necessarily resorting to numerical external flexibility, i.e., lay-offs. In effect, the Reform Law enlarged the capacity of collective agreements at the company level to introduce internal flexibility by favouring greater adaptability to economic circumstances and widened the scope for the non-application of higher-level agreements on wages and other working conditions at company level.

The 2011 Reform of Collective Bargaining

After the September 2010 general strike against the Labour Market Reform Law, the social partners resumed bipartite negotiations some months later on the basis of the 2011 tripartite Social and Economic Agreement. More specifically, the negotiations were based on a document (Acuerdo sobre criterios básicos para la reforma de la negociación colectiva) contained in the Agreement which provided the starting point for the negotiation of a reform of collective bargaining.⁵⁹ After four months of bipartite talks between the unions and employers, only limited consensus was possible and no pact was signed. The

⁵⁶ Since 2002, the trade unions and employer organizations in Spain have signed at the beginning of each year a peak inter-confederal agreement (AINC) establishing the objectives and guidelines for the development of negotiations at all levels of the collective bargaining structure. The only year when no agreement was reached was 2009.

⁵⁷ See http://www.empleo.gob.es/es/sec_trabajo/ccnc/D_AspectosNormativos/Normativa/contenidos/Compromiso2009.htm

⁵⁸ See full text at http://www.ccoo.es/comunes/recursos/1/doc17657_Acuerdo_para_el_Empleo_y_la_Negociacion_Colectiva_2010,_2011_y_2012.pdf

⁵⁹ See full text at: http://www.elpais.com/elpaismedia/ultimahora/media/201101/28/espana/20110128elpepunac_1_Pes_PDF.pdf

Government had urged social partners to reach an agreement and decided to regulate unilaterally on the issue by approving a Royal Decree Law on Urgent Measures to Reform Collective Bargaining in June 2011.⁶⁰ Even though the Royal Decree reflected the limited consensus reached by the trade unions and employers, the social partners considered it a violation of their collective autonomy.⁶¹

The Royal Decree Law introduced changes in the structure of collective bargaining by establishing a series of issues for which negotiation at company level had priority. It also modified the procedures and timing for rejecting and renegotiating collective agreements in order to avoid an escalation of conflict and speed up the process.

The 2012 Inter-Confederal Agreement on Employment and Collective Bargaining (AENC 2012-2014)

Bipartite negotiations on the reform of collective bargaining resumed in the last weeks of 2011. Some of the principles that had to orient this reform were contained in the 2012 bipartite Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC-II).⁶² This Agreement has to be interpreted as a continuation of the one signed in 2010, though the signatory parties acknowledge that changes have happened in the international context and that these changes have an impact on Spain's economic growth and its labour market. Interestingly, the Agreement starts with an alert on the loss of competitiveness of the Spanish economy as a result of high nominal wage increases. It then asks for an incomes policy pact that would help to bring the wage evolution into line with productivity and Eurozone inflation.

The underlying objective of the bipartite Agreement was to bring changes in collective bargaining and the labour market back into the autonomous sphere of negotiations between trade unions and employer organizations. Failed attempts at reaching an agreement and the Government's unilateral regulation in 2011 forced the social partners to agree on the direction collective bargaining had to move and impede further attempts at unilateral intervention.

The most important and innovative aspect of AENC II in relation to AENC I, passed in 2010, is the explicit demand for the decentralization of collective bargaining within the framework provided by sector-level agreements. Sector-level agreements must provide the rules for coordination and articulation amongst different levels in the collective bargaining structure while enhancing the role played by company-level agreements. Moreover, the Agreement obliges collective agreements to include plans to develop internal flexibility by clearly distinguishing between its three elements: wages, working time and functions. It constitutes another step in the attempt to enhance internal flexibility with a view to safeguarding jobs in the short term, but with a longer-term objective of changing the mechanisms for adjusting the labour market and move from external (numerical) to internal (functional) flexibility.

Moreover, AENC II takes into account the worsening economic situation by correcting some of the conditions agreed in AENC I, including the conditions applicable to negotiated wages. Finally, AENC II further opens the door to opting out from higher-level agreements by means of company-level agreements on issues other than wages. This applies in particular to aspects related to internal flexibility where the non-implementation at company level of the terms agreed in higher-level agreements is facilitated under certain conditions and following rules arising from consultations with workers' representatives.

⁶⁰ See full text at: <http://www.boe.es/boe/dias/2011/06/11/pdfs/BOE-A-2011-10131.pdf>

⁶¹ The interview with representative of CCOO and representative of UGT concur on this aspect.

⁶² See full text at: http://www.ccoo.es/comunes/recursos/1/doc96566_Boletin_Oficial_del_Estado,_II_Acuerdo_para_el_Empleo_y_la_Negociacion_Collectiva_2012,_2013_Y_2014..pdf

The 2012 Reform of the Labour Market: implications for collective bargaining

Notwithstanding the successful attempt of the trade unions and employers to bring back the reform of collective bargaining into the purview of autonomous negotiations through AENC II, the Government regulated again unilaterally on the matter some weeks later without resuming talks with the social partners. In imposing the 2012 Reform Law, the Government overlooked all the significant innovations and guidelines for developing internal flexibility through collective bargaining that were provided for in AENC II. This astonished not only the trade unions⁶³ but also the employers who did not understand the Government's reasons for ignoring AENC-II.⁶⁴

The 2012 Reform Law introduced important modifications to certain areas covered by collective bargaining. Specifically, the Reform opens the door to unilateral changes by the employer of working conditions including wages and reduces the period for notifying the employee of such changes. Similarly, the employer has also been given more capacity to decide unilaterally on issues related to collective redundancies.

The Law also empowers the employer to regulate working conditions through the temporary non-application of collective agreements on a number of issues and significantly relaxes the conditions under which this can happen. For instance, the employer can suspend the application of collective agreements when the company registers falling earnings during nine consecutive months.

One of the most contested characteristics of collective bargaining in Spain, the so-called *ultra-actividad* of collective agreements (the extension of the validity of a collective agreement after its expiration when trade unions and employers fail to sign a new agreement) has been changed by the establishment of a two-year limit for the negotiation of a new agreement. If no agreement is signed at the end of this period, workers will be covered by a higher-level agreement and, in the absence of such an agreement, by the terms established by law.

Finally, the 2012 Reform Law regulates the very important issue of collective bargaining. It not only confirms the priority given to company-level agreements, but also makes it impossible for higher-level agreements to carry clauses establishing their precedence over lower-level agreements. In other words, the reform reduces the regulatory and governance capacity of sectoral agreements over the collective bargaining system.

The trade unions condemned most of the contents of the Reform Law as it deviates from what had been agreed under the bipartite 2012 Inter-confederal Agreement only some weeks before.⁶⁵ They also criticized the absence of any attempt to engage in social dialogue in the drafting of the reform proposal. The employers also censured the Law because of their opposition to complete decentralization. The trade unions and the employers thus agree on the need to maintain sectoral agreements, but they differ in their views about the degree of flexibility to be accorded to company-level agreements as well as about the most adequate mechanism for attaining that flexibility.⁶⁶

By far, the most important impact of the 2012 Reform Law has been on tripartite social dialogue, which has not been restored since the Law was passed.

⁶³ Interview with representative of UGT.

⁶⁴ Interview with representative of CEOE.

⁶⁵ Interviews with representative of UGT and representative CCOO.

⁶⁶ Interview with representative of CEOE.

3. Impact of the adjustment on industrial relations and social dialogue

The impact of austerity measures on industrial relations and social dialogue has consisted first of all in a crisis of tripartite social dialogue and an increase in political and industrial conflict. The imposition of austerity policies has led to several general or political⁶⁷ strikes affecting both the private and public sectors of the economy (table 2). More specifically, there have been three general strikes and one strike of public-sector employees. In addition, there have been general strikes in specific sectors such as education and health. The rise in the number of general strikes of a political nature and in working hours lost contrast with the gradual decline observed in industrial conflict (see figure 6).

Table 2. General strikes in Spain, 2010-2012

Date	Scope	Motivation	Participants
June 2010	Public sector	Against the May 2010 austerity package	CCOO + UGT + CSIF
September 2010	All the economy	Against the labour market reform and austerity package	All trade unions
January 2011	All the economy	Against the Social and Economic Agreement and pension reform	All trade unions except CCOO and UGT, the two largest confederations, which had signed the Agreement
March 2012	All the economy	Against the Labour Market Reform Law passed in February 2012	All trade unions

The trade unions and employer organizations have expressed their concerns about the negative effects of the 2012 Reform Law on the development of collective bargaining. As has been mentioned earlier, the Law, unilaterally passed by the Government, ignored the bipartite Inter-confederal Agreement of January 2012 and its specific guidelines for the development of negotiations. The social partners believe that the Law has radically modified the scenario for the negotiation of collective agreements.⁶⁸ The trade unions have already signified their intention to block the implementation of some of the Law's provisions through collective agreements. While the employers have not made their position clear on this point, it is likely that the renewal of collective agreements in the near future will be characterized by mounting conflict.

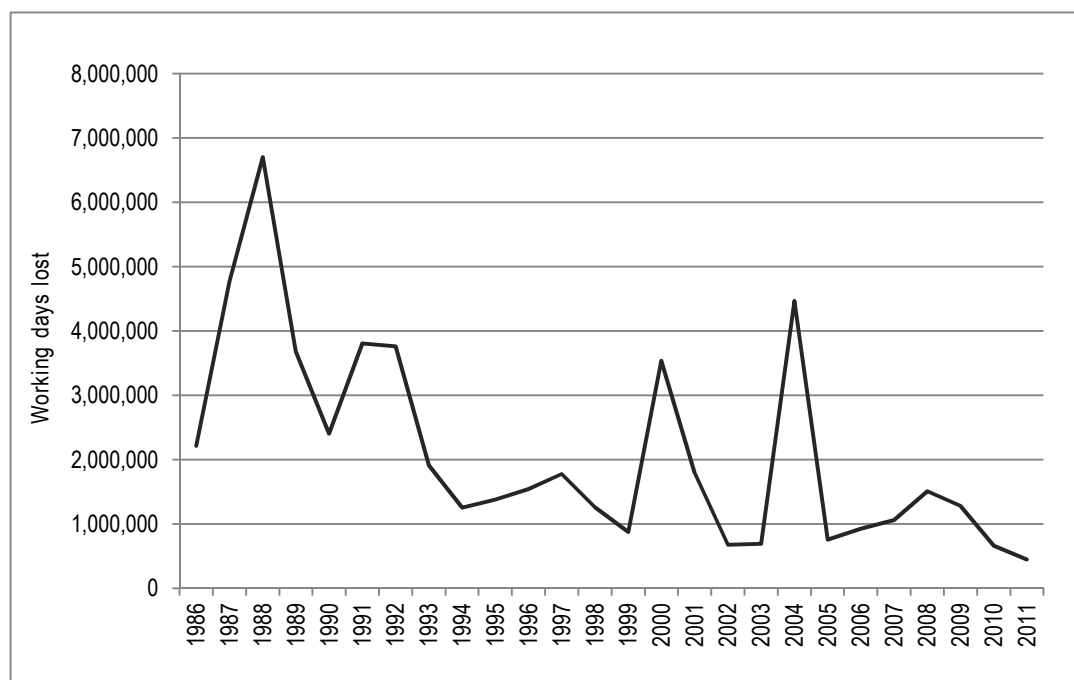
As has been made clear in the discussions in section II, there is a sharp contrast between developments in tripartite and bipartite negotiations. While austerity policies have brought tripartite bargaining to a crisis as a result of a lack of consensus on some critical aspects and, more recently, by the abandonment of negotiations by the Government, bipartite social dialogue continues to play an important role as demonstrated by the Agreements for Employment and Collective Bargaining signed in 2010 and 2012.

However, the vitality of bipartite social dialogue has not impeded an attack on the collective autonomy of the social partners, as evidenced by the repeated passage by the Government of unilateral regulations on collective bargaining. The autonomy of social partners has also been threatened as a consequence of austerity policies.

⁶⁷ A political strike is motivated by the trade unions' disagreement with government policy and has a non-contractual origin.

⁶⁸ Interviews with representative of UGT and representative of CCOO.

Figure 6. Number of working days lost (excluding general strikes), 1986-2011



Source: Boletín de Estadísticas Laborales

First of all, the 2011 Reform of Collective Bargaining, imposed unilaterally by the Government, has meant that collective bargaining, hitherto falling under the direct competence of trade unions and employer organizations, is now subject to unilateral State regulation. Collective bargaining rights have also been severely curtailed by the 2012 Labour Reform Law. For instance, the greater scope opened up for employers to make unilateral decisions and to temporarily suspend the application of collective agreements constitute a major retrenchment in the exercise of collective rights. Finally, the abolition of *ultra-actividad* (the automatic extension of the terms of a collective agreement when it expires) and the development of mechanisms for compulsory arbitration have also moved in this direction and will give the Law a more important role in determining working conditions.

Moreover, the enlargement of the employers' decision-making authority has to be considered in the context of a long-running trend towards increasing decentralization of collective bargaining. This decentralization has been mostly organized around a clear division of tasks between sectoral and company-level agreements. But the most important change introduced in the context of the crisis has been the extension of clauses enabling company-level agreements to opt out from certain provisions of collective agreements. This extension has led to an increase in the number of issues that can be subject to opting out and an expansion of the circumstances under which opting out can occur. As has already been mentioned, the argument shared by the social partners and the Government is the need to enhance the role of collective bargaining as a tool for internal flexibility.

One of the most visible impacts of the structural adjustment on collective bargaining has been the difficulties experienced in renewing collective agreements. This has been raised by many of the persons interviewed and has been directly linked to the economic crisis and the expectation of regulatory changes in collective bargaining.⁶⁹

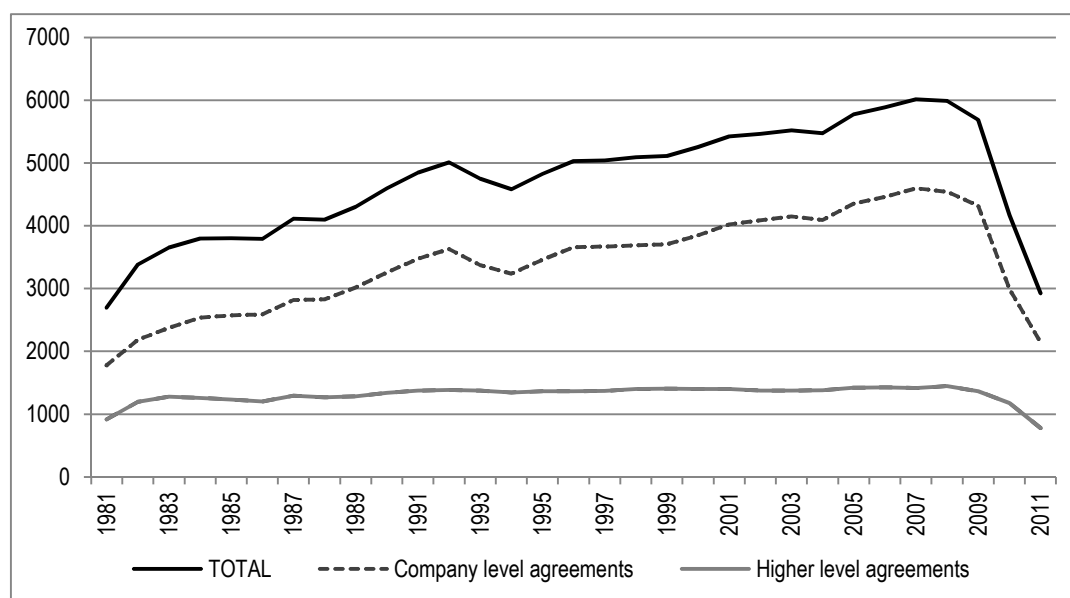
As figure 7 shows, there has been a sudden fall over the period 2009 to 2011 in the number of agreements signed or renewed. Economic crises certainly affect negotiating

⁶⁹ Interview with representative of the National Advisory Council for Collective Agreements and representative of CEOE, and representative of the Ministry of Labour and Immigration.

dynamics and further evidence is found in the drop in the number of agreements in the early 1990s in the context of another economic crisis. However, the size of the recent fall is remarkably higher, reflecting the large number of collective agreements that have expired but have not been renewed.

One of the main reasons for this fall is the expectation of further changes in the regulation of collective agreements, pushing employers to use delaying tactics so that they can negotiate agreements under a more favourable regulatory framework. Particularly important to the employers are changes in *ultra-actividad* (the automatic extension of the validity of collective agreements) to allow agreements to expire. *Ultra-actividad* has made collective bargaining somewhat rigid as wage increases, for example, negotiated in previous years to meet a certain set of conditions have to be maintained even when these conditions have changed drastically. However, *ultra-actividad* has guaranteed employees better working conditions when negotiations amongst workers' representatives and employers failed to reach an agreement. Finally, the resistance of trade unions to a downgrading of the terms of a previous agreement could also help to explain this phenomenon.

Figure 7. Number of agreements signed (including renewal), 1981-2011



Source: Boletín de Estadísticas Laborales.

4. Concluding remarks and possible ways for a revitalization of social dialogue

Tripartite social dialogue in Spain is currently under stress after several years of producing significant outcomes as a central piece of Spain's democratic system. Since the early stages of the transition to democracy, it has been a key element of socio-economic governance and a distinctive feature of industrial relations in Spain. In spite of some difficult moments, it continued playing a central role in managing the labour market and social protection in the years preceding the current economic crisis. In the middle of the debt crisis and despite the Government's austerity policies, it delivered a comprehensive social pact in 2011, showing that it retained its ability to obtain a consensus on structural reforms even at difficult junctures.

One of the strategic responses of the social partners to the instability of tripartite social dialogue was to strengthen and develop bipartite social dialogue at the highest

levels. This happened in the early 1990s, after the failed attempts to negotiate a tripartite social pact to face the economic crisis and the run-up to the European Economic and Monetary Union (EMU) (Molina and Rhodes 2011). The state-dependent character of industrial relations and the highly contingent character of tripartite social dialogue due to economic and political circumstances, led the social partners to strengthen bipartite social dialogue. The latter proved to be an ineffective tool in leading the adjustment of collective bargaining within the new EMU framework and constraints.

Recent developments seem to confirm the gap between tripartite and bipartite social dialogue. Not only is there some evident functional differentiation between these two processes in regard to the issues they deal with, but also they have followed opposite trends. Its very nature makes tripartite social dialogue right for negotiating social security issues and, more generally, industrial, environmental and macroeconomic policies. By contrast, bipartite social dialogue is more suitable for matters related to employment policy, labour market regulation, industrial relations, training. Whilst tripartite social dialogue is to a large extent subject to the political will of the Government (Hamman and Kelly 2011) and hence more uncertain, bipartite social dialogue has proved to be more resilient to political influences.

No single cause can be identified to explain the current problems of tripartite social dialogue. As has been mentioned earlier, it experienced similar difficulties in the context of the economic crisis of the early 1990s, which would support arguments that the lack of resources for exchanges among social partners partly explains the crisis. The change in government in November 2011 marked a discontinuity in the process of social dialogue, with the new Government effectively abandoning any attempt to engage in a meaningful process of tripartite social dialogue. The Government's stand on dialogue thus also helps to account for the recent social dialogue dynamics in Spain.

Furthermore, the legitimacy dimension of tripartite social dialogue seems to be particularly important in explaining recent developments. Exogenous pressures to implement reforms and austerity programmes have to a certain degree reduced the need to seek domestic consensus and legitimacy. As a consequence of the sovereign debt crisis, legitimacy as an input as well as an output of tripartite social dialogue has been weakened. As policy actors, the social partners have been criticized by some sections of the population for their inability to address the country's acute problems. Most importantly, the external imposition of economic and fiscal measures by a supranational entity (EU and EMU) and market pressures may have rendered the Governments' external economic legitimacy (reputation) more important than internal social legitimacy. As a result, the Government's perception of the benefits it can gain from tripartite social dialogue seems to have dramatically decreased. The abandonment of tripartite social dialogue has not only translated into the adoption of policies that have met strong social opposition, but has also affected future prospects for bipartite social dialogue.

The impact of tripartite social dialogue on the content and direction of reforms during the current economic crisis has not been as significant as it has been in other periods. Tripartite engagement preceding the approval of policies on the labour market, industrial relations, social security, industrial and environmental policy took place by 2011. The only exceptions in this regard were general economic policy and the austerity packages, on which no social dialogue occurred. Although only one important tripartite agreement was reached as a result, the tripartite social dialogue that took place allowed the Government to incorporate elements coming out from the discussions into its own reform measures. With the change in the Government in November 2011, tripartite social dialogue has been abandoned and this has been accompanied by a shift in the orientation of reforms affecting the labour market and industrial relations.

Regarding the ways for revitalizing tripartite social dialogue, two main approaches can be advanced. The first stresses the need for trade unions and employers to enhance their implementation capacity. As has already been mentioned, one of the common criticisms of the social partners has to do with their problems in enforcing the terms of

agreements negotiated and monitoring their implementation. This is related to the organizational characteristics of the social partners as well as to the country's production structure which consists mainly of SMEs where worker representation is very limited or inexistent. The lack of organizational linkages hinders not only implementation (Molina 2008), but also the elaboration of effective policies as it limits knowledge at the peak of conditions at lower levels. In other words, a condition for stable tripartism is the organizational coordination of the actors involved (Crouch 1993).

The second approach stresses the need to further institutionalize tripartite relations. Even though the most representative trade unions and employer organizations in Spain participate in several tripartite bodies in areas such as social security, training and public employment services, historically trade unions have demanded the further institutionalization of social dialogue. A first step in this process came with the creation of the Social and Economic Council in 1991. This tripartite body plays a purely consultative role for socio-economic issues. Similar bodies have also been created at regional and even local level. The trade unions' demand is to reinforce existing instances of participation in order to reduce the volatility and highly contingent character of tripartite social dialogue.

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