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## **Post-crisis social dialogue in Spain: The calm after the storm**

**Oscar Molina  
Fausto Miguélez**

**November 2016**

Governance  
and Tripartism  
Department

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Union

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## Foreword

This paper is one of a series of studies commissioned by the International Labour Office (ILO) in 2015, under a project entitled “Post-crisis social dialogue: Good practices in the EU-28”, which is implemented by the ILO with funding from the European Union (EU). The project documents and analyzes emerging trends and good practices in social dialogue and industrial relations in EU Member States. The project focuses specifically on developments since 2013, as countries began to exit the crisis, and examines the role played by social dialogue in promoting sustainable reforms and job-rich inclusive growth.

The research component involved eleven in-depth country studies carried out by reputed national scholars, as well as the drafting of a comparative analysis. Summaries of the draft papers were presented and discussed at a tripartite knowledge-sharing conference, organized at the Palais du Luxembourg in Paris on 20 May, 2016. The conference brought together national and international stakeholders, including government ministers and high-level officials, representatives of employers’ and workers’ organizations and of regional and international organizations, including the ILO and EU institutions such as the European Commission, the European Economic and Social Committee (EESC) and Eurofound. Participants discussed recent developments in the industrial relations landscape and exchanged experiences of social dialogue in the ‘post-crisis’ period. Following the conference, the country studies were revised. Final versions of the country summary reports and the overview chapter are to be published by the ILO in a peer-reviewed, edited volume in late 2016.

This study by Oscar Molina and Fausto Miguélez (of the Autonomous University of Barcelona) examines the challenges facing tripartite social dialogue in Spain and its potential for revitalization following the timid steps taken by successive governments and the social partners. The authors contrast this situation to the resilience of bipartite social dialogue between trade unions and employer organizations, and the positive contribution it made to coordinating collective bargaining through this difficult economic and political period. The report highlights a number of good practices in seeking to re-launch tripartite social dialogue, including a 2014 Declaration of Intent signed by trade unions, employers’ organizations and the government, and a pact on employment activation policies for the long-term unemployed. These achievements are promising, although additional efforts are needed to fully revitalize social dialogue and contribute to a stronger economic and labour market recovery. The paper considers also the role of social dialogue in key policy issues such as labour market and pension reforms, and the formulation and implementation of National Reform Programmes in the context of the European Semester.

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

Moussa Oumarou  
Director  
Governance and Tripartism Department  
International Labour Office, Geneva

Youcef Ghellab  
Head, Social Dialogue and Tripartism Unit  
Governance and Tripartism Department  
International Labour Office, Geneva



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## List of acronyms

AENC	Inter-confederal Agreement on Employment and Collective Bargaining
CCNC	National Advisory Board on Collective Bargaining
CCOO	Trade Union Confederation of Workers' Commissions
CEOE	Confederation of Employers' Organizations
CEPYME	Spanish Confederation of Small and Medium-sized Enterprises
CSIF	Confederation of Independent Trade Unions and Public Servants
ECB	European Central Bank
EU	European Union
NRP	National Reform Programme
NSDI	National Social Dialogue Institution
OECD	Organization for Economic Co-operation and Development
PAPE	Annual Plan for Employment Policy
PIN	Industrial Policy Programme
PP	People's Party
PSOE	Spanish Socialist Workers' Party
SME	Small and medium-sized enterprise
UGT	General Union of Workers





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## Introduction

Since the return of democracy, tripartite social dialogue in Spain has exhibited three main characteristics. First, it has developed outside institutional mechanisms, such as the tripartite Economic and Social Council. Second, it has mostly dealt with labour market and social policy (mostly old-age pension) issues, hence adopting a strong distributional character and having little impact on general economic policy making, except in the early 1980s. Finally, and as a consequence of the above, it has been discontinued depending on the economic cycle and, to a lesser extent, the political leaning of the governing party (Espina, 1999). These three interlinked features have been exacerbated as a consequence of the recent economic crisis and contribute to explaining the collapse of tripartite social dialogue in recent years. But, following this abandonment, the crisis has also given rise to new tensions and obstacles to a healthy recovery of tripartite social dialogue. First, the tightening of fiscal rules and the macroeconomic surveillance mechanisms have severely limited the margin of manoeuvre of governments, even in a post-crisis recovery scenario. Second, the democratic and institutional crisis has also affected the social partners, which has further reduced the incentive for governments to involve them in policy making (Molina and Miguélez, 2013; Culpepper and Regan, 2014). As a consequence, the prospects for a revitalization of tripartite social dialogue in the post-crisis period are currently very weak.

Compared to previous episodes of economic downturn, in which social dialogue was also under stress but ultimately accompanied the recovery, on this occasion it is struggling to achieve revitalization. This is even more worrying given the very negative socio-economic impact of the crisis in terms of the persistently high (long-term) unemployment rate, the extension of precarious employment and the rise in inequality. Under such conditions, the contribution of tripartite social dialogue to a socially sustainable recovery is even more crucial. Social dialogue should be a key governance mechanism for the consolidation of a strong and inclusive recovery.

The analysis of post-crisis social dialogue in this report, however, shows that Spain is still far from this scenario. Despite the economic and labour market recovery, tripartite social dialogue remains very weak and has been limited to a declaration of intent signed by trade unions, employers' organizations and Government in July 2014, and a narrow agreement on activation policies for the long-term unemployed in December of the same year. Following the abandonment of tripartite social dialogue in November 2011, very little was done to restore it, and the few steps taken more recently cannot be considered as a turning point. A long-term process of narrowing of the issues discussed and negotiated through tripartite social dialogue has also contributed to its detachment from economic policy making. In this respect, the European Semester and the negotiation and implementation of National Reform Programmes have not offered an opportunity to strengthen tripartite social dialogue. On the contrary, the low level of involvement of the social partners has exacerbated mutual distrust and the polarization of views on economic policy making, making it even more difficult to rely upon social dialogue in the recovery.

Moreover, the position of National Social Dialogue Institutions (NSDI) has been weakened in the context of the economic and financial crisis. On the one hand, their narrow advisory role has opened up a debate on whether or not they should be retained, with some voices pointing to a need for reform, including through an extension of their role and the inclusion of new actors (Plataforma Tercer Sector, 2015). On the other, austerity policies combined with public administration reforms have led to the suppression of many economic and social councils at the regional level.

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The erosion of the regulatory role of collective bargaining, its weaker capacity to protect workers' rights as well as its lower governability, have not contributed to restoring social dialogue in the post-crisis period. In addition to the gradual narrowing of the scope of social dialogue, the policy area in which trade unions and employers do retain some autonomy has been unilaterally modified by the government, thereby further reducing the incentive for governments to involve the social partners. As a result, their role in macroeconomic governance has been further eroded.

In this situation, the reactions of trade unions and employers' organizations have varied. There were attempts to restore part of the autonomy of collective bargaining lost as a result of unilateral government regulation through bipartite social dialogue. Both trade unions and employers have an interest in maintaining their institutional position in the collective bargaining system and, as a consequence, have developed autonomous mechanisms to enhance its coordination and governability. In view of the difficulties encountered in negotiating with the Government, trade unions tried other ways to make their voices heard, for instance by proposing a Popular Legislative Initiative to Parliament in April 2015 on a minimum guaranteed income. So despite using social dialogue as the main channel for their demands, they have looked for alternative mechanisms to influence policy. There has also been some movement within the main employers' organization, the Spanish Confederation of Employers' Organizations (CEOE), on behalf of a group of large companies, which has created an autonomous platform to lobby the Government.

The methodology for the study consisted of several research methods and sources. First, secondary sources were used, including articles in academic journals and books. Newspaper articles helped to reconstruct social dialogue processes in greater detail. Primary sources included documents from trade unions, employers' organizations and tripartite bodies; National Reform Programmes and other government documents; and parliamentary debates. Quantitative sources shed light on the macroeconomic context, labour market developments and industrial relations. The sources are both national (particularly in the case of industrial relations indicators) and European. Finally, interviews were conducted with the social partners, experts, government representatives and European Semester Officers. The interviews were carried out between June and October 2015 in Madrid and Barcelona. Interviews conducted in 2012 for the project "Promoting a balanced and inclusive recovery from the crisis in Europe through sound industrial relations and social dialogue" were also drawn upon. Finally, the present project benefited from interviews conducted between September 2014 and June 2015 for the Project "Diagnóstico Socioeconómico sobre las Políticas de Empleo en España 2012-2014". ("Socio-economic analysis of employment policies in Spain, 2012-14"). A list of the interviews is contained in the Annex.

This report is organized in five sections. The first sets out the macroeconomic and institutional scenario for the analysis of social dialogue in the post-crisis period. This includes a discussion of social dialogue around key policy issues, such as the labour market and pensions, as well as the formulation and implementation of National Reform Programmes in the context of the European Semester. The second section analyses the role of national social dialogue in the post-crisis period, while also highlighting the impact the crisis had on its functioning. Section three examines the impact of the crisis on such aspects of collective bargaining as coordination and structure, including a discussion of post-crisis developments. Section four analyses the impact of the crisis on the labour market and industrial relations, followed by a discussion of the most recent trends in the post-crisis period. Section five presents conclusions.

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## Section I. Industrial relations and the macroeconomic framework

### 1.1 Persistence of old problems and imbalances

In relation to the macroeconomic framework, it is important first to note the disagreement among the experts consulted concerning the adequacy of the term “post-crisis” to define the new context. Even though GDP growth has been positive since the last quarter of 2013, and this has been accompanied by some growth in employment and a timid fall in total unemployment, there remain too many macroeconomic imbalances and labour market problems to be able to talk of the crisis as being in the past.

Just before the crisis, the picture was very different. Spain had experienced an unprecedented period of growth, almost uninterrupted since the mid-1990s. As a result, the unemployment rate had fallen from 22 per cent in 1994 to a record low of 8.2 per cent in 2007. At the same time, the employment rate reached a record high 65.8 per cent in 2007. As a result of the favourable economic conditions, there was a 2.2 per cent GDP budget surplus in 2006, and Government debt fell to 35.5 per cent of GDP. Under these conditions, Spain seemed to be in a better position than other countries to face the economic crisis.

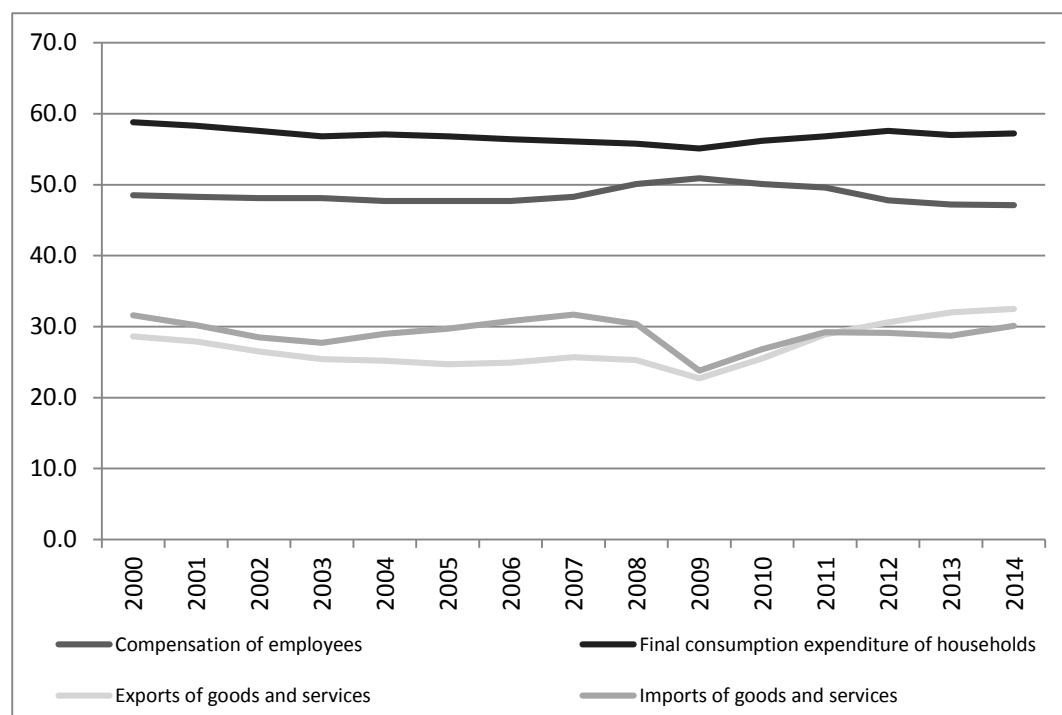
However, despite the apparent good health of the Spanish economy, a number of imbalances meant that it was a “giant with feet of clay” (Carrasco, 2014). The most important was related to the housing bubble, and particularly the over-indebtedness of the population due to cheap access to credit (Ortega y Peñalosa, 2015). There were two other related weaknesses of the Spanish economy. The first was the important role of the construction sector in the economy and in total employment, accounting for over 15 per cent of total employment in terms of direct jobs. The second was the high exposure of the banking sector to an economic downturn. Moreover, there had been a deterioration in the balance of payments, and particularly in the trade deficit, as a result of the increase in imports and the rise in real unit labour costs above the EU average. An economic structure based on high labour intensive sectors and low labour productivity (see Figure 2 below) made the Spanish economy vulnerable to competition from emerging economies.

The boom years preceding the crisis, and particularly since 2004, when the left-wing Zapatero government was elected, coincided with a period of heightened social dialogue (Molina and Rhodes, 2011), during which the trade unions and employers were actively involved in the negotiation of several reforms and were consulted on many issues, including the labour market, industrial relations and pensions. The rapid deterioration in economic and labour market conditions following the onset of the crisis, with the required adjustments, were followed by an abandonment of social dialogue. Several reasons may be put forward to explain these trends (Molina and Miguélez, 2013), but the limited scope for political exchange between governments and the social partners is certainly important. Moreover, the external pressure to adopt rapid and specific fiscal adjustments also limited the space for social dialogue.

Since the last quarter of 2013, economic conditions have started to show some signs of improvement. In terms of GDP growth, Figure 1 shows that the recovery has relied on good export performance of goods and services, partly due to the internal devaluation process. Private domestic demand has remained stagnant, hence contributing very little to the recovery. Even though this could a priori be taken as a sign of structural change in the type of growth, the reality is that tourism and its related activities (such as hotels and restaurants) have been one of the most dynamic sectors in terms of employment creation and growth, followed by retail trade and construction (Miguélez et al., 2015). These were also the sectors

leading growth in the pre-crisis years, thus suggesting that the structural problems remain. Falling growth prospects in the euro area and Latin America may therefore have a strong downward impact on the Spanish economy in the coming months. At the same time, the Government deficit remains high, at 5.9 per cent in 2014, and public debt has grown steadily, rising from 35.5 per cent of GDP in 2007 to 99.3 per cent in 2014.

**Figure 1: Demand components of GDP, 2000-2014**



Source: Eurostat

One of the main problems of the Spanish economy in the pre-crisis years was the low level of labour productivity resulting from a growth regime based on labour intensive and low productivity sectors. Since the beginning of the economic crisis in 2008, there has been an increase in productivity (see Figure 2). However, this trend is explained, not by a structural change in production and the shift towards less labour intensive and high productivity sectors, but simply by a faster decline in employment compared to GDP growth. The negative growth experienced in nominal unit labour costs has therefore contributed to improved external cost competitiveness, but without delivering a long-term shift in production methods or sectors.

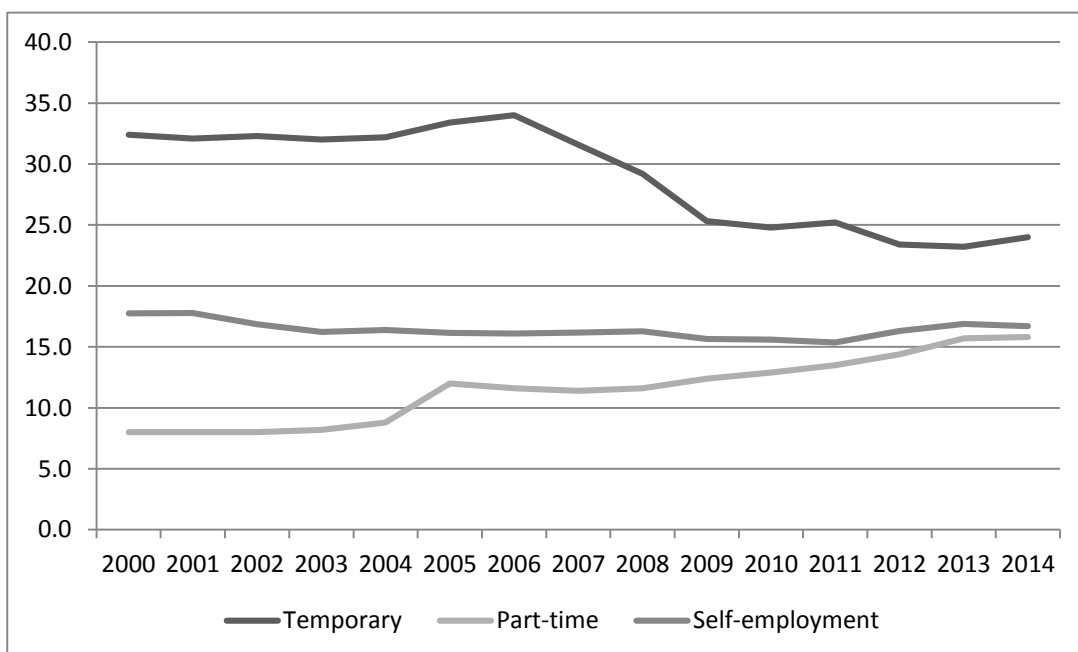
**Figure 2: Real labour productivity and nominal unit labour costs, growth rates, 2000-2014**



Source: Eurostat

The second main characteristic of the recovery is related to the type and quality of the employment created. As shown in Figure 3, the crisis triggered a fall in temporary employment, which is by definition the first area of employment destruction in the event of economic slowdown. This was accompanied by an increase in part-time employment, most of it involuntary. The rise in part-time work responds to an employer strategy to cut labour costs and explains the increase in the number of “working poor”, who rose from 10.2 per cent of those employed to 12.6 per cent in 2014. Some analysts have shown how part-time workers, and particularly women part-time workers, have experienced a significant wage disadvantage (Ramos et al., 2015). Finally, self-employment has remained fairly stable during the crisis.

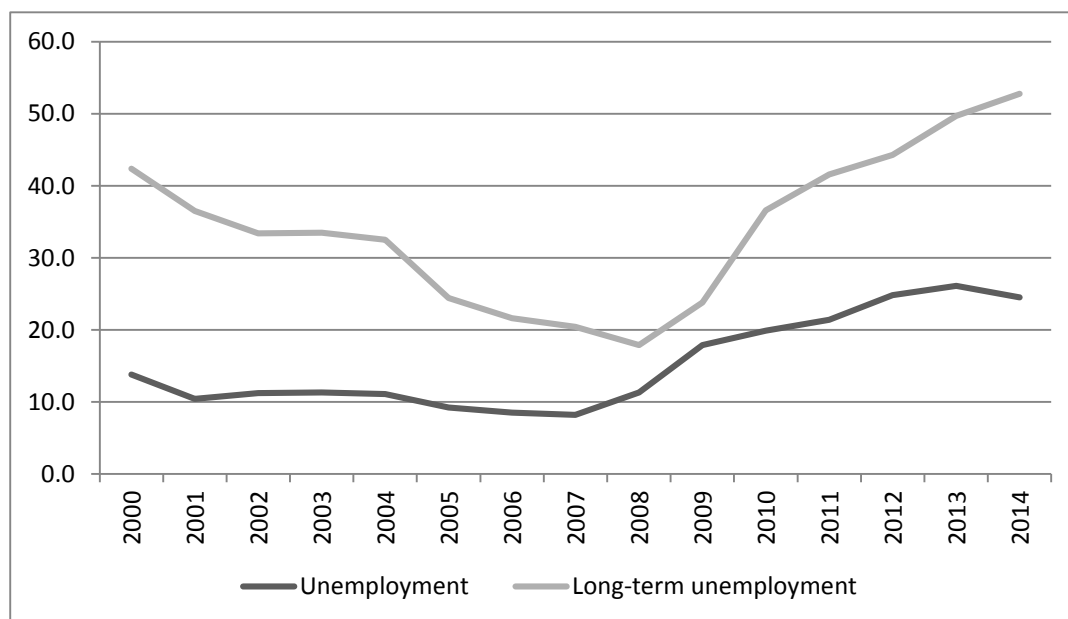
**Figure 3: Temporary employment, part-time employment and self-employment, 2000-2014**



Source: Eurostat

Even though the unemployment rate has fallen since 2014, it nevertheless remains at a very high level. More importantly, long-term unemployment increased very rapidly and is not showing any downward trend (see Figure 4). That is why many observers and some of those interviewed are sceptical about the term “post-crisis”. As pointed out recently by Stiglitz, “a two-speed economy with a 25 per cent unemployment rate cannot engage in a sustainable recovery”.<sup>1</sup> The high long-term unemployment rate is even more worrying when account is taken of the cuts in active labour market policy measures and the fall in unemployment protection coverage (Miguélez et al., 2015). In other words, many of the long-term unemployed have severe employability problems and, because of the lower level of resources for both active and passive employment policies, they face enormous difficulties not only in finding a job, but also in achieving a decent standard of living.

**Figure 4: Unemployment and long-term unemployment**



Source: Eurostat

## 1.2 Social dialogue and the overhaul of the industrial relations landscape

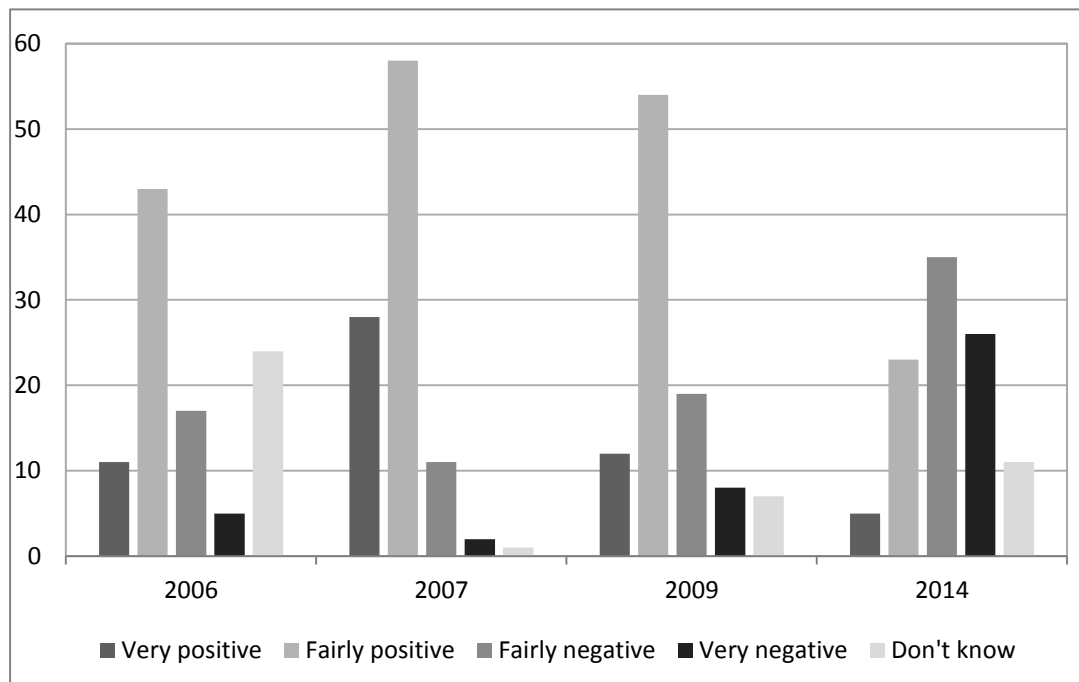
A bad and late diagnosis of the challenges facing the economy in the early months of the crisis, resulting in costly and largely ineffective policies, not only hampered the recovery, but also aggravated the conditions that Spain had to face during the sovereign debt crisis from 2010 onwards (Molina and Godino, 2013). The polarization that characterizes the Spanish political situation has also made it difficult to reach a broad political and socio-economic consensus, thus limiting the effectiveness of policy responses during both the crisis and the post-crisis period.

Analysis of social dialogue in the crisis and post-crisis periods needs to be interpreted in the light of a deep and multifaceted crisis of the democratic system (Sánchez-Cuenca, 2014). On the one hand, the crisis has triggered an increase in the belief by citizens that it is necessary to reform the political system, which is considered undemocratic, both in terms of institutions and the functioning and representativeness of political parties. The social partners, and particularly the trade unions, have also been the subject of criticism by a broad sector of society, including the 15-M and ‘*indignados*’ movements, which have accused them of not offering an alternative model and of accommodating the policies of both the

<sup>1</sup> Interview in “*El Economista*”, 13 October 2013

People's Party (PP) and the Spanish Socialist Workers' Party (PSOE) due to their high degree of institutionalization and dependence on State resources (Barranco and Molina, 2014). The two major labour confederations have acknowledged the failure of trade unions to channel the demands of citizens as part of the institutional and political system.<sup>2</sup> As a consequence, confidence in trade unions in Spain fell significantly during the crisis (see Figure 5). Political discontent has been aggravated by the perceived imposition of fiscal adjustment by the technocratic European Union (EU). Moreover, the negative impact of the crisis and the fiscal adjustment required for social cohesion have threatened the stability and pillars of the democratic system developed in the late 1970s and early 1980s. The 'indignados' movement therefore needs to be interpreted as an expression of political and economic discontent (Armingeon and Baccaro, 2011).

**Figure 5: Confidence in trade unions, Spain, 2006-2014**



Source: Eurobarometer

Adjustment policies have been characterized by a fairly broadly shared diagnosis of the problems affecting the Spanish economy but significant differences regarding the policies required to deal with them. Following an initial period of inaction, the first phase in the response to the crisis consisted of fiscal stimulus, which was then followed by a shift towards austerity measures combining spending cuts and tax increases. This change only occurred once the risk of contagion of the Greek sovereign debt crisis became evident in early to mid-2010. In this regard, there was continuity of economic policy between the late Socialist (2010-2011) and PP (2011 onwards) administrations (Molina and Godino, 2013). The major shift in economic policy was prompted externally, and was not the result of the different political leanings of the administration. However, in comparison with the Socialist administration, spending cuts have been more concentrated on education and health since the PP administration came to power in November 2012. A tight fiscal policy has been maintained, with some relaxation only since 2014. In this context, the budget for 2016,

<sup>2</sup> See: <http://www.elmundo.es/elmundo/2012/09/19/economia/1348047099.html>



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approved in the summer of 2015, has been criticized for being too optimistic in relation to the macroeconomic scenario for 2016, with a risk of non-compliance with the deficit target.<sup>3</sup>

The role and impact of social dialogue in the adjustment measures adopted has varied over time and across policy fields. First, there was some discontinuity between the pre-debt and the sovereign debt crisis, aggravated by the November 2011 change from a left to a right-wing administration. The Socialist administration maintained talks and permanent contact with the social partners on a large number of issues, including the labour market, industrial relations and employment, industrial, energy and environmental policy. However, all the actors involved judged the outcomes of this process to be disappointing. No major tripartite agreement was concluded between 2008 and 2010. The debt crisis placed further pressure on the Socialist administration to take action, which led to a more unilateral approach to regulating several policy fields, even though it maintained respect for tripartite dialogue with the social partners preceding the labour market and industrial relations reforms. Finally, the right-wing administration elected in November 2011 has adopted a more unilateral approach, allowing no space for tripartite social dialogue. This has changed only marginally since July 2014 when, for the first time, the trade unions, employers' organizations and the Government signed an agreement containing a plan for tripartite negotiations over the following months.

### **1.3 Social dialogue during the debt crisis and recovery**

Three different periods can be distinguished in tripartite social dialogue since the beginning of the financial and economic crisis (see Table 1):

- 2008-2009: the period of the stimulus response in 2008-2009 was characterized by significant involvement of the social partners, although with few results in terms of agreements signed.
- 2010-2013: the 2010 debt crisis led to the adoption of a more unilateral approach to policy making, with less room for social partnership. The only exception was the January 2011 Tripartite Social and Economic Agreement. The centre-right Rajoy government elected in November 2011 maintained the unilateral approach to policy making. The erosion of social dialogue not only affected its tripartite dimension, but also bipartite relations between trade unions and employers' organizations.
- 2014-2015: more recently, with the first signs of economic recovery in 2014, there has been a timid recovery of tripartite and bipartite social dialogue, although it remains very fragmented and discontinuous.

<sup>3</sup> See the European Commission opinion of 12 October 2015 on the Draft Budgetary Plan of Spain: [http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/pdf/dbp/2015/es\\_2015-10-12\\_co\\_en.pdf](http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/dbp/2015/es_2015-10-12_co_en.pdf)

**Table 1: Social dialogue and unilateral reforms in Spain (economy, financial stability and the labour market), 2008-2015**

July 2018	Memorandum of Understanding for the Recovery of the Economy, Employment, Competitiveness and Social Progress	Memorandum of Understanding signed between the Trade Union Confederation of Workers' Commissions (CCOO), the General Union of Workers (UGT), the Spanish Confederation of Employers' Organizations (CEOE) and the Government
September 2009	Agreement for the public sector between the trade unions and the Government 2010-2012	Agreement signed between CCOO, UGT, the Confederation of Independent Trade Unions and Public Servants (CSIF) and the Government
January 2010	Inter-confederal Agreement on Employment and Collective Bargaining 2010-2012 (AENC I)	Bipartite agreement signed between CCOO, UGT and CEOE containing guidelines for collective agreements
January 2010	Plan for Immediate Action 2010	No consultation or negotiations between the social partners and the Government
May 2010	Austerity Plan for the Public Sector 2011-2013	No consultation or negotiations between the social partners and the Government
June - September 2010	Labour market reform	Tripartite negotiations failed. The Government acted unilaterally
December 2010	Industrial Policy Programme (PIN) 2020	The Government consulted the social partners on some of the contents, but their involvement was limited
January 2011	Social and Economic Agreement on pensions, labour market and collective bargaining	Tripartite Social Pact signed by CCOO, UGT, CEOE and the Government
March 2011	Act on the sustainable economy	The Government consulted the social partners on some of the contents, but their involvement was limited
June 2011	Reform of collective bargaining	Tripartite negotiations failed and the Government took unilateral action
January 2012	Interconfederal Agreement on Employment and Collective Bargaining (AENC II)	Bipartite agreement: guidelines for collective agreements
March 2012	Labour market reform	No consultation or negotiations with the social partners. Adopted unilaterally by the Government.
July 2014	Proposals for tripartite negotiations to strengthen economic growth and employment	Tripartite agreement with no specific policy content. It is a declaration of intent for future negotiations
December 2014	Plan for employment activation	Tripartite agreement
March 2015	Reform of vocational training	Unilateral regulation by the Government after negotiations with the social partners failed
July 2015	Interconfederal Agreement on Employment and Collective Bargaining 2015-2016-2017 (AENC III)	Bipartite agreement containing guidelines for collective bargaining

Source: authors' elaboration

Before entering into detailed analysis of social dialogue during the crisis and post-crisis periods, it is important to note the document that provided the general orientations on the content and form of social dialogue since 2004, the Declaration for Social Dialogue 2004:

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Competitiveness, Stable Employment and Social Cohesion,<sup>4</sup> which was agreed soon after Zapatero was first elected in 2004. The agenda for negotiations agreed in 2004 was widened in July 2008 before the onset of the worrying economic and labour market situation. A Memorandum of Understanding for the Promotion of the Economy, Employment, Competitiveness and Social Progress was signed in July 2008 by the social partners and the executive to boost employment and broaden the social dialogue agenda to other issues, including industrial and energy policy.<sup>5</sup> At the same time, the social partners and the Government decided in January 2009 to intensify talks with a view to speeding up the process of concluding an agreement on collective bargaining in light of the rapidly worsening economic situation.

In May 2009, a meeting between the social partners and the Government concluded 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 containing proposals for an agreement on employment and social protection.<sup>6</sup> The first were short-term employment policy measures aimed at alleviating the effects of the economic crisis by reducing working time without destroying more jobs and at enhancing unemployment protection. The second were longer-term measures aimed at developing a more sustainable and inclusive growth model. It was not finally possible to conclude an agreement due to the demand made by the employers for a 5 per cent reduction in employer social security contributions and other measures related to collective redundancies. Notwithstanding this failure, social dialogue delivered an agreement in September 2009 on civil service and public sector employment for the period 2010-2012.<sup>7</sup>

The perception of social dialogue as a mechanism to govern the response to the economic crisis and austerity policies changed significantly with the onset of the sovereign debt crisis in 2010. At a meeting in March 2009, the Socialist administration proposed an initiative to relaunch and give momentum to social dialogue and concerted action as a means of generating economic growth and trust and of overcoming the crisis. The initiative was supported by the PP.<sup>8</sup> However, the debt crisis and external pressures on the executive to take action without awaiting the results of social dialogue, especially regarding fiscal adjustment, led to the breakdown of negotiations on labour market reform in June 2010, when the executive decided to adopt measures unilaterally.

Social dialogue was nevertheless resumed later that year and a tripartite social pact (the only one concluded during the crisis) on employment and pensions was signed in January 2011. This change in attitude which allowed the conclusion of the agreement can be explained by several reasons: the change in the presidency of employers' organization;<sup>9</sup> the appointment of a new Minister of Labour with a strong commitment to social dialogue; and a broader bargaining agenda with more issues on the table, thereby opening up new possibilities for

<sup>4</sup> See full text at: <http://www.ugt.es/dialogosocial/declaraciondsocial.pdf>

<sup>5</sup> See: <http://www.lamoncloa.gob.es/NR/rdonlyres/1A22106D-D247-4274-AF8B-9A7390000230/90303/DeclaraciondialogoSocial.pdf>

<sup>6</sup> 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](http://www.ccoo.es/comunes/recursos/1/doc14633_Propuestas_sindicales_para_un_acuerdo_por_el_empleo_y_la_proteccion_social.pdf)

<sup>7</sup> See full text at: <http://www.boe.es/boe/dias/2009/10/26/pdfs/BOE-A-2009-16986.pdf>

<sup>8</sup> See Parliamentary Debates, No. 225, Comisión de Trabajo e Inmigración, 10 March 2009, pp. 22-26.

<sup>9</sup> The involvement of the President of the CEOE, Díaz Ferrán, in investigations into the bankruptcy of some of his companies eroded his legitimacy, not only within CEOE, but also with the trade unions and the Government. As a result, negotiations became increasingly difficult as his position in the CEOE weakened.

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mutual gains in the negotiations, and making it easier to reach compromises with the social partners.

In contrast, no agreement could be reached a few months later on the reform of collective bargaining. Bipartite negotiations had evolved on the basis of some of the clauses in the January 2011 social pact, but no new tripartite agreement was finally possible. The Government again took unilateral action. 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, the employers and trade unions made their commitment to social dialogue clear, and also signaled its importance to the incoming right-wing executive. They thereby demonstrated their willingness and capacity to negotiate reforms autonomously, particularly in the field of the labour market and industrial relations.

Despite the January 2012 bipartite agreement on employment and collective bargaining 2012-14, tripartite social dialogue has been discontinued since 2011. The announcement in February 2012 of a labour market reform without engaging in a process of social dialogue with the social partners, together with the general strike organized in May 2012 and an acceleration of fiscal adjustment in view of the deterioration of Spain's macro-economic prospects, have had a very negative effect on social dialogue. The trade unions demonstrated their refusal to engage in social dialogue with the current right-wing administration and instead declared that they will only agree to negotiate after a referendum has been called on the austerity policies.<sup>10</sup>

### ***Social dialogue dynamic during the recovery***

During the three-year period between November 2011 and March 2014, tripartite social dialogue was completely absent. Only in March 2014 did the trade unions and employers' organizations ask the Government to restore tripartite social dialogue, resulting in some meetings held at the highest political level. The trade unions considered it particularly important to negotiate three issues: fiscal reform, active labour market policies and unemployment protection. On 29 July 2014, as a result of these meetings, the social partners and the Government signed proposals for tripartite negotiations to strengthen economic growth and employment.<sup>11</sup> The trade unions considered this to be an important step towards the abandonment of the unilateral path taken by the Government since November 2011. Moreover, based on the terms set out in this document, an agreement was signed in December 2014 on an employment activation programme,<sup>12</sup> including an extension of the guaranteed income for the long-term unemployed and the strengthening of activation measures for this category. Nevertheless, a few months later, it was impossible to reach agreement on the reform of the lifelong learning system which had up until then been managed by the trade unions and employers. The Government adopted the law reforming the vocational training and lifelong learning systems in March 2015.<sup>13</sup>

<sup>10</sup> See: <http://www.elmundo.es/elmundo/2012/09/19/economia/1348047099.html>

<sup>11</sup> Acuerdo de Propuestas para la Negociación Tripartita para Fortalecer el Crecimiento Económico y el Empleo. See: [http://www.ugt.es/Documentos%20de%20apoyo/Acuerdo\\_Propuestas\\_negociacion\\_tripartita\\_fortalecer\\_crecimiento\\_economico\\_y\\_empleo\\_29072014.pdf](http://www.ugt.es/Documentos%20de%20apoyo/Acuerdo_Propuestas_negociacion_tripartita_fortalecer_crecimiento_economico_y_empleo_29072014.pdf).

<sup>12</sup> Programa Extraordinario de Activación para el Empleo, see: [http://www.empleo.gob.es/es/destacados/HOME/activacionempleo/archivos/Acuerdo\\_PEAPE.pdf](http://www.empleo.gob.es/es/destacados/HOME/activacionempleo/archivos/Acuerdo_PEAPE.pdf)

<sup>13</sup> See text at [http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-3031](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3031)

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The importance of social dialogue in achieving a more rapid and socially sustainable recovery has been emphasized recently by the employers' organizations CEOE and the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME) in a document containing proposals to help the recovery.<sup>14</sup> In addition to identifying a number of policy areas in which appropriate reforms could foster growth, they emphasize the importance of restoring social dialogue in the recovery phase with a view to enhancing the effectiveness of the reforms.

Analysis of the dynamics of social dialogue during the crisis, and particularly since 2014, therefore shows no significant departure from earlier practices and methods of tripartite and bipartite social dialogue. The mistrust between the trade unions and the Government following its adoption of a unilateral approach to the regulation of key labour market, industrial relations and social policy issues has made it very difficult to restore any form of permanent tripartite social dialogue. Tripartite social dialogue therefore remains occasional, voluntarist and based on the willingness of the administration to involve the social partners in discussions on the content of reforms, which has been the exception rather than the rule in Spain.

This can be seen in the two sole occasions on which the Government has involved the social partners. However, the July 2014 proposal for social dialogue is only a declaration of intent to re-launch tripartite social dialogue, and is very much limited to specific labour market issues. No attempt was made to conclude a broad agreement when the economy and the labour market started to show signs of recovery. The different views and diagnosis of the economic situation by the Government and the employers, on the one hand, and the trade unions, on the other, is one of the reasons for the absence of tripartite social dialogue, as pointed out by the interviewees. The trade unions claim that it is not possible to talk of recovery or growth with an unemployment rate above 20 per cent, accompanied by high levels of temporary employment and working poor. They also consider that the only way to make the recovery socially sustainable and lasting is to reverse most of the reforms implemented in previous years, including the labour market reform and the changes to the industrial relations system. The other occasion for tripartite social dialogue was the December 2014 agreement on employment activation and protection of the long-term unemployed, which was the only tripartite agreement concluded during the four-year mandate of the centre-right Rajoy administration.

In contrast with tripartite social dialogue, bipartite social dialogue between the trade unions and employers has maintained its vitality. In July 2015, the social partners concluded the third Agreement on Employment and Collective Bargaining 2015-2016-2017 (AENC III).<sup>15</sup> Even though negotiations took longer than expected due to disagreement on wage increases,<sup>16</sup> the trade unions and employers reached consensus on guidelines for developing collective bargaining over the next three years. Bipartite social dialogue has therefore shown greater resilience than tripartite social dialogue, as indicated in earlier works (Molina and Rhodes, 2011; Molina and Miguélez, 2013).

The interviews with the social partners and government officials confirm these conclusions. Apart from the breakdown of tripartite social dialogue, which is not new, as it also occurred during previous crises and under centre-right governments, no permanent change is

<sup>14</sup>“15 Reformas para Consolidar la Recuperación” (15 reforms to consolidate recovery), see text at: [http://www.ceoe.es/resources/image/15\\_reformas\\_consolidar\\_recuperacion\\_2015\\_10.pdf](http://www.ceoe.es/resources/image/15_reformas_consolidar_recuperacion_2015_10.pdf)

<sup>15</sup> III Acuerdo para el Empleo y la Negociación Colectiva 2015-2016-2017. See: <https://www.boe.es/boe/dias/2015/06/20/pdfs/BOE-A-2015-6865.pdf>

<sup>16</sup> In particular, while employers' organizations were in favour of maintaining a policy of strong wage moderation, the trade unions argued that it was time to boost demand through higher pay increases.

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perceived. Moreover, the trade unions interviewed consider that a change in the political leaning of the government in the December 2015 elections could contribute to relaunching tripartite social dialogue. The interviews with both employers' organizations and trade unions also confirmed their strong commitment to the governance of collective bargaining through peak bipartite agreements.

#### **1.4 Policies implemented in response to the crisis and in the post-crisis years**

Since the onset of the crisis in 2008, both the centre-left Zapatero administration (2007-2011) and the right-wing Rajoy government (2011-2015) have implemented a large number of policy measures. Setting aside the differences in the orientation and content of the two administrations, there are three common traits to the reforms implemented over this period.

- First, the number of reforms negotiated with the social partners has fallen considerably in comparison with previous crisis periods. This decline became particularly intense from 2011 onwards, coinciding with the worsening of the sovereign debt crisis and the implementation of austerity packages.
- Second, the decline in social dialogue reflects the lack of a common diagnosis of the problems affecting the Spanish economy and labour market, and the respective solutions. This has happened not only during the early years of the economic crisis, but also during the recovery period. Disagreement persists between the social partners and political parties on whether there is indeed a recovery and how to speed it up.
- Third, all the economic measures implemented have been short-term and reactive in nature, or in other words have been adopted under the pressure of international financial markets and supranational institutions to address some of the imbalances of the economy. As a consequence, little has been done, particularly since 2014, when the economy showed the first indications of an upturn, to implement far-reaching structural reforms designed to establish the basis for a balanced economic recovery. This is particularly important taking into account the impact of the housing bubble on the Spanish economy and the need to build the foundation for a more sustainable growth path. The only exception was the Act No. 2/2011 on a sustainable economy, adopted in March 2011. The Act was preceded by talks with the social partners, political parties and other economic and civil actors. It contained an ambitious plan to achieve a more sustainable growth path through changes in the regulation of product and factor markets, the education system, competition law, etc. The final aim of the Act 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, in practice, the lack of resources has severely limited the impact of this project and has resulted in many of the measures set out in the Act being abandoned (Morán Criado, 2010). No attempt was made when the first signs of recovery started to appear to establish the basis for a new growth regime, or at least to put in place mechanisms to alleviate some of the social consequences of austerity policies, including the remarkable increase in income inequality.

Without exception, all the fiscal consolidation packages since 2010 have been adopted and implemented without consultation with the social partners. Indeed, the role of the social partners in policy making has been restricted to negotiation on certain labour market and social policy issues, with no involvement in economic policy. In the context of growing uncertainty about Greece's capacity to meet its borrowing requirements in early 2010, the Spanish Government announced the Plan for Immediate Action, 2010, and the Austerity

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Plan, 2011-2013.<sup>17</sup> The executive was aware that the public investment effort made in previous months, together with high and increasing unemployment, was exerting strong pressure on public finances and required some measures for gradual stabilization. The Plan for Immediate Action, 2010, implied a further deficit reduction of 0.5 per cent of GDP in addition to the measures already set out in the Budget Act, as well as a ban on new public sector contracts. The Austerity Plan, 2011-2013, envisaged spending cuts in addition to those in the Budget Act in all areas except pensions, unemployment protection, R&D and education. It also included cuts in public sector wages (5 per cent in 2010) and a wage freeze for 2011, a freeze on pensions for 2011, a significant reduction in investment in housing and the abolition of the so-called '*chèque bébé*'.

This first austerity package in May 2010 was adopted without any consultation or negotiation with the social partners. Indeed, it was announced by the Prime Minister in the middle of negotiations for a reform of collective bargaining. It therefore had a negative impact on social dialogue. A general strike was called in the public sector on June 2010 and negotiations on the reform of collective bargaining and the labour market broke down some weeks later. The trade unions criticized the plan very bitterly, together with the fact that they were not given any prior notice. The date of 12 May marked the beginning of a new period of social dialogue, characterized by increased tension and growing difficulties for tripartite social dialogue.

The economic policy followed by the right-wing administration elected in November 2011 has been characterized by a strong commitment to austerity, continuing the policy direction initiated some months earlier. This took the form of the adoption of a more negative approach to tripartite social dialogue. None of the fiscal consolidation packages adopted since 2011 have been negotiated with the social partners. The first package was adopted in December 2011,<sup>18</sup> and the second in March 2012.<sup>19</sup> The same applies to budget laws implementing the austerity policies between 2012 and 2014.

## 1.5 Explaining the abandonment of tripartite policy making

The actors involved give very different explanations for the abandonment of tripartite social dialogue during the crisis. One of the arguments put forward by employers and PSOE and PP executives is the inability of social dialogue to keep pace with real economic developments and to be able to provide quick and meaningful responses. This explanation was also advanced by other parties during the early months of the crisis.<sup>20</sup>

Another recurrent argument is the low level of effectiveness of measures negotiated through social dialogue.<sup>21</sup> This argument was also used by some of those interviewed, referring to the fact that, although the unions and employers had signed several agreements between the mid-1990s and 2008 on the labour market and collective bargaining, in some cases they had had very little effect. The argument put forward was that, by their very nature, negotiated

<sup>17</sup> See full text at:  
[http://www.lamoncloa.gob.es/ConsejodeMinistros/Referencias/\\_2010/refc20100129.htm](http://www.lamoncloa.gob.es/ConsejodeMinistros/Referencias/_2010/refc20100129.htm)

<sup>18</sup> Real Decreto-ley 20/2011, de 30 de diciembre, de medidas urgentes en materia presupuestaria, tributaria y financiera para la corrección del déficit público (BOE 31/12/2011)

<sup>19</sup> Real Decreto-ley 12/2012, de 30 de marzo, por el que se introducen diversas medidas tributarias y administrativas dirigidas a la reducción del déficit público (BOE 31/03/2012)

<sup>20</sup> Parliamentary Debates No. 59, Comisión Trabajo e Inmigración, Sesión Extraordinaria 22 July 2008, p. 35.

<sup>21</sup> Parliamentary Debates No. 128, Comisión Trabajo e Inmigración, Sesión 30 October 2008, p. 14.

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reforms reflect the equilibrium between the positions of the actors involved, and are accordingly less effective. The limited room for manoeuvre of the executive due to fiscal policy constraints has also hindered the possibility to conclude tripartite agreements. This is because the political exchanges required to reach tripartite agreement are less likely when there are no resources available to compensate the ‘sacrifices’ made by the other actors. Something similar happened in the early 1990s in the context of the economic crisis and the adjustment to the Maastricht criteria on inflation and the budget deficit, when tripartite social dialogue also failed to deliver any agreement. A related argument is that there is a misfit between macroeconomic governance at the EU level and national governance.

Last but not least, the legitimacy of tripartite social dialogue has also emerged as a particularly important consideration in explaining its abandonment. From the viewpoint of legitimacy, the criticisms made by some sectors of the population concerning the trade unions and employers in the context of the crisis and austerity policies have certainly reduced the incentive for the executive to rely on this form of governance. For example, in the case of the recent labour market reform, the party in office expressed the view that real legitimacy lies with Parliament and that there is therefore no obligation or need to validate agreements through social dialogue.<sup>22</sup> When the supranational dimension is added, or in other words, the mandate from the EU to undertake fiscal adjustment, it is commonly considered that executives are more accountable for economic policies to supranational actors than to citizens or the social partners. Finally, the failure of tripartite social dialogue to deliver agreements in the early stages of the crisis also had a negative effect on how it was perceived, by supporting the view that the social partners shared some responsibility for the way in which the crisis was managed.

## **1.6 Strategies of the social partners and the Government to mitigate the crisis**

The strategies and policies implemented to mitigate the effects of the crisis on employment have implied changes in several fields, including the regulation of hiring and firing, collective dismissals, training, active labour market policies, collective bargaining and wage setting. The role of social dialogue (either tripartite or bipartite) in these areas has varied markedly, playing almost no role in the regulation of hiring and firing and active labour market policies, and retaining a more important role in wage setting and collective bargaining:

- In the case of the regulation of hiring and firing, there was no involvement of the social partners in any of the three important reforms adopted during the crisis.
- The regulation of collective dismissals was also adopted without consensus with trade unions and employers’ organizations.
- The trade unions and employers have tried to mitigate the effects of the crisis on employment by enforcing a policy of wage moderation since 2010 through the negotiation of peak inter-confederal agreements. With the recovery in job creation observed in 2014, the trade unions have pushed for higher wage increases as a way of increasing demand and employment. However, the employers have insisted on the need to maintain a tight wage moderation policy in order to help the recovery of the economy and the labour market.
- Active labour market policies have also been reformed, without the involvement of the social partners.

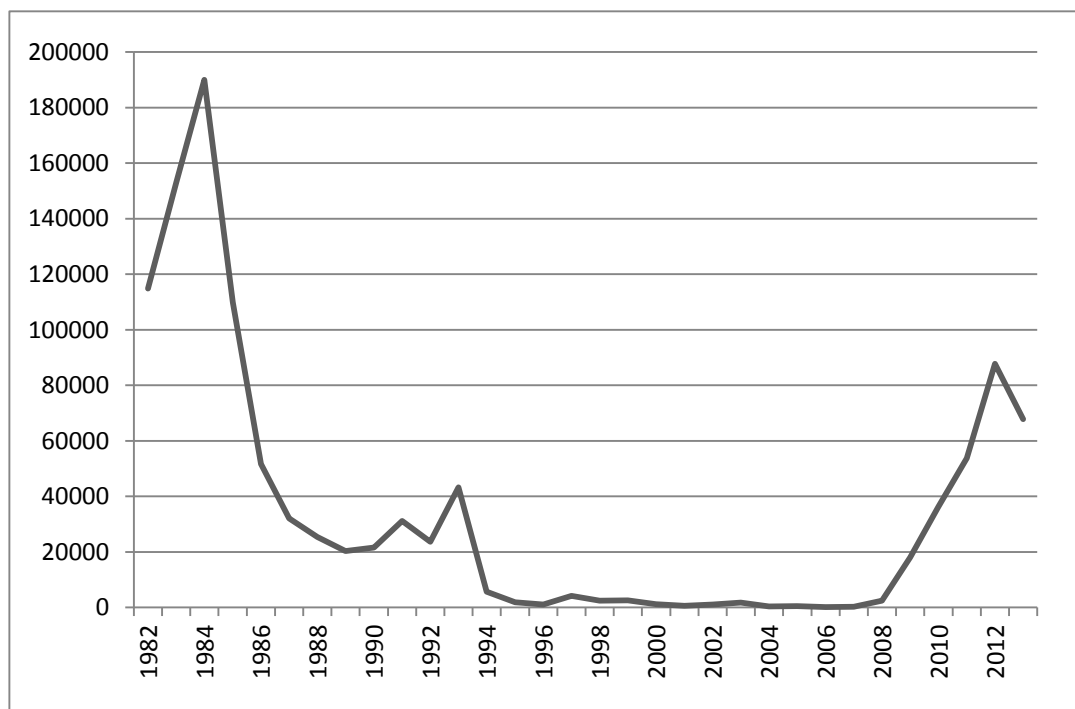
<sup>22</sup> See Parliamentary Debates No. 24, Plenary Session, 11 April 2012, p. 5.



The main strategy followed by the Government to mitigate the employment effects of the crisis has been to introduce greater flexibility, with an emphasis on certain aspects:

- a. External flexibility is the dimension that has seen the most changes during the crisis. In particular, conditions for firing employees, either on an individual or collective basis, were relaxed in all three of the major reforms adopted during the period (2010, 2011 and 2012). The February 2012 reform was particularly important in this regard in introducing a new type of contract (the so-called stable contract to support entrepreneurship) under which there are no redundancy costs during the first year.
- b. Internal numerical flexibility: some attempts were made in 2010 and 2011 to extend short-time working schemes. In particular, the main goal of Act No. 35/2010 was to increase the possibility for companies to rely on negotiated adjustment through functional/internal flexibility, without necessarily resorting to quantitative external adjustment. The reform enhanced the capacity of company collective agreements to introduce internal flexibility mechanisms, while at the same time opening more opportunities to opt out of higher level agreements on wages and other working conditions. The extension of short-time working scheme clauses was introduced as a means of maintaining employment. These clauses, which had only been used to a limited extent by Spanish companies, increased in number during the crisis, although the reform does not appear to have had a significant impact and its extension and use has followed a pattern similar to those of other crisis periods (see Figure 6).

**Figure 6: Number of workers affected by short-time working schemes, 1982-2013**



Source: *Boletín de Estadísticas Laborales*, Ministry of Labour and Emigration

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- c. Wage flexibility. Changes in the collective bargaining structure have significantly enhanced wage flexibility in two ways. First, by opening greater spaces for company collective agreements to opt out of sectoral agreements, as in the 2011 and 2012 reforms. Second, by allowing employers not to apply the terms of the collective agreement and to modify the wage conditions of their employees (the 2012 reform).

## **1.7 Involvement of the social partners in the formulation and implementation of National Reform Programmes**

Analysis of the interviews with the social partners, government officials and European Semester Officers shows that the formulation and implementation of economic policies in the context of National Reform Programmes (NRP) has not offered an opportunity for the revitalization of social dialogue, either during the debt crisis or the recovery period.

There is no formalized mechanism or pre-established process for the negotiation of draft NRPs with the social partners. Their involvement therefore very much depends on the willingness of the Government to engage them in the process. Even though the European Semester Officers interviewed acknowledge that, in view of the current social dialogue climate in Spain, this has led to mere formal consultation of the social partners, they consider that their involvement is a national matter in which they cannot interfere. In so doing, they refer to the subsidiarity principle with regard to national social dialogue. As a general principle, European Semester Officers would welcome greater involvement by the social partners in the preparation and implementation of NRPs. However, they add that the process is very bureaucratic in practice, often consisting of tiny amendments to previous NRPs. They therefore consider that the low level of involvement of the social partners in the drafting of NRPs is not particularly worrying. Moreover, in view of the strict schedule imposed by the European Commission for the delivery of NRPs, it is very often difficult to involve the social partners properly in their discussion.

The official discourse, emphasizing the importance of social dialogue and the involvement of the social partners, therefore contrasts with the reality of European Commission recommendations for NRPs, their review and the preparation of national documents. Analysis of these texts reveals that no reference was made to social dialogue in the 2011, 2012 and 2014 processes in either the documents of the European Commission or the NRPs. Moreover, over this same period, the NRPs did not contain any reference to the views of trade unions or employers' organizations. More importantly, the review by the European Commission of NRPs and progress in their implementation did not contain any reference to the need to strengthen social dialogue. Only in the 2014 NRP is there an Annex containing the comments of trade unions and employers' organizations. The 2014 NRP also highlights the importance of involving the Third Social Sector in the process. Similarly, the 2015 NRP includes the recommendations of the social partners and refers to the tripartite agreement concluded in July 2014, covering a number of issues that the social partners and the Government consider it important to negotiate through tripartite social dialogue.

The trade unions judge their involvement in NRPs to be clearly insufficient and criticize the Government for not taking into consideration or incorporating any of their recommendations. They say that it is not enough to attach an annex containing their views, if the Government does not discuss and take on at least some of them in its policies. They are particularly critical of the tight schedule imposed for the discussion of NRPs, which prevents their proper discussion and the consideration of amendments.

One of the points repeatedly emphasized by the trade unions concerning NRPs is the need to create a guaranteed minimum income due to the high unemployment rate and the falling coverage of unemployment benefits. As a reaction to this lack of involvement and consideration of trade union proposals, the two major trade union confederations have

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initiated a Popular Legislative Initiative, consisting of the collection of signatures calling on Parliament to discuss a proposal for a universal guaranteed income.<sup>23</sup> As confirmed by the interviews with trade union officials, this should be interpreted as the adoption of proactive approach using channels other than social dialogue.

The European Semester Officers consider that existing institutions of social dialogue in Spain are adequate. In particular, they note that they regularly interact with the Economic and Social Council and hold meetings with representatives from all three groups. They are aware that non-institutionalized social dialogue is dependent on the economic and political situation, and therefore believe that it is important to maintain an institutional channel of communication with the social partners.

One aspect mentioned in both the 2014 and 2015 NRPs is the need to involve the Third Social Sector in the Economic and Social Council. The Council is currently composed of trade unions, employers' organizations and a third group consisting of consumer associations, as well as agriculture, fishery and mining associations. However, the Third Social Sector is playing an increasingly important role in the formulation and implementation of NRPs, particularly in terms of combating social exclusion. The Government recognizes this and considers that the Third Social Sector will make a key contribution to achieving the social targets of the EU2020 strategy, and particularly those relating to poverty and social exclusion. Both the Government and the European Semester Officers assess positively the inclusion of the Third Social Sector in the preparation of NRPs. Their institutionalized involvement in the Economic and Social Council has also been called for recently by the Third Sector Platform<sup>24</sup>

## **1.8 Social dialogue in labour law and pension reform**

The crisis in Spain has resulted in a large number of changes in labour market regulation (Pastor, 2015). Common to all these has been the introduction of greater labour market flexibility. According to the OECD, these changes have resulted in a reduction of labour market rigidities, as measured by the Employment Protection Legislation Index (OECD, 2014). However, as clearly shown in Table 2, tripartite social dialogue on labour market reform was not significant during the economic crisis. The general rule was the exclusion, rather than the involvement, of the social partners. Moreover, in cases where there were tripartite negotiations, it was difficult to reach agreement. With the recovery of the economy and the labour market, there are some signs of revitalization of social dialogue on labour market reform, although largely on issues that are marginal relative to those regulated unilaterally by the Government in previous years.

<sup>23</sup> See [http://economia.elpais.com/economia/2015/04/21/actualidad/1429629576\\_421037.html](http://economia.elpais.com/economia/2015/04/21/actualidad/1429629576_421037.html)

<sup>24</sup> The Third Sector Platform is an umbrella organization comprising very different actors, including charities, voluntary associations, such as the Red Cross, organizations of the disabled, etc. For more information, see: <http://www.plataformatercersector.es>

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**Table 2: Labour market reforms and social dialogue in Spain, 2008-2015**

	<b>Reform</b>	<b>Social dialogue dynamic</b>
September 2010	Urgent measures to reform the labour market	Tripartite negotiations failed and the Government took unilateral action
June 2011	Urgent measures to reform collective bargaining	Tripartite negotiations failed and the Government took unilateral action
February 2012	Urgent measures to reform the labour market	The Government took unilateral action, with no tripartite social dialogue or consultations with the social partners
January 2013	Extension of the programme for the reskilling of the long-term unemployed without unemployment protection (Prepara Plan)	No social dialogue or consultation of the social partners
December 2013	Mechanisms to enhance employment stability and employability	No social dialogue or consultation of the social partners
February 2014	Urgent measures to boost employment and open-ended contracts	No social dialogue or consultation of the social partners
February 2014	Protection of part-time workers and other socio-economic policies	No social dialogue or consultation of the social partners
September 2014	Employment incentives and activation	No social dialogue or consultation of the social partners
December 2014	Extraordinary programme for employment activation	Tripartite negotiations delivered an agreement with the Government
March 2015	Urgent reform of the vocational training system	Tripartite negotiations did not deliver an agreement between the social partners and the Government

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Source: authors' own elaboration

**Table 3: Pension reforms and social dialogue in Spain, 2008-2015**

	<b>Reform</b>	<b>Social Dialogue Dynamics</b>
January 2011	Social and economic agreement on pensions, labour market and collective bargaining	Tripartite social dialogue with the trade unions and employers' organizations delivers an agreement
March 2013	Act promoting active ageing and continuity of working life	The social partners were involved in the negotiations, but criticized the very short period available and an agreement could not be signed
December 2013	Act changing the sustainability factor and revaluation index of pensions	Tripartite social dialogue was replaced by technocratic decision-making by an expert committee including representatives appointed by employers and the two main trade unions

Source: authors' own elaboration

There have been two main pension reforms since 2008. The first was the 2011 Economic and Social Agreement for Growth, Employment and the Sustainability of Pensions (Royal Legislative Decree No. 1/2011).<sup>25</sup> Following the general strike in September 2010, and repeated failure to reach a tripartite agreement, both the trade unions and employers' organizations considered it urgent to restore social dialogue and deliver agreements. They realized that, after three years of recession and no broad consensus on how to exit the crisis, the population was questioning their role. As one trade union official pointed out, "if social dialogue does not deliver agreements, it will be weakened". There was therefore great pressure to conclude an agreement, although the context was not particularly favourable. The trade unions were very much in favour of a comprehensive agreement covering the labour market, collective bargaining and old-age pensions. The executive also supported this, following the deterioration in relations with the trade unions as a result of the labour market reforms and the September 2010 general strike.

A comprehensive tripartite social pact was finally signed in February 2011 including commitments on issues such as old-age pensions, youth unemployment, active labour market policies, the reform of collective bargaining and R&D. The most controversial aspect of the agreement was the reform of old-age pensions. It envisaged a gradual increase in the pensionable age from 65 to 67 years, with the possibility of receiving a pension at the age of 65 following 38 years of contributions. The reform was bitterly contested by large factions within the trade unions. The most critical voices were those of young people, who consider it very difficult to contribute a sufficient number of years to their pension due to high rates of temporary employment and frequent spells of unemployment.

The Rajoy administration introduced two main changes in the pension system. First, in March 2013, it adopted a Decree making early retirement more difficult, modifying the conditions for access to partial retirement and promoting active ageing.<sup>26</sup> Even though the Government involved the social partners in negotiating the reform, no agreement could be reached and it finally adopted the reform unilaterally. The reform increased requirements for

<sup>25</sup> Acuerdo Social y Económico para el Crecimiento, el Empleo y la Sostenibilidad de las Pensiones. See full text at: [http://www.ugt.es/actualidad/2011/febrero/acuerdo\\_social\\_y\\_economico.pdf](http://www.ugt.es/actualidad/2011/febrero/acuerdo_social_y_economico.pdf)

<sup>26</sup> Ley 5/2013 de medidas para favorecer la continuidad de la vida laboral de los trabajadores de mayor edad y promover el envejecimiento activo, see text at <https://www.boe.es/boe/dias/2013/03/16/pdfs/BOE-A-2013-2874.pdf>

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access to voluntary or involuntary early retirement (the minimum contribution period for a full pension, the minimum retirement age, etc.), as well as for partial retirement.

The second main reform was in December 2013,<sup>27</sup> when the Government set up an expert group, including university professors, trade union officials, employers and practitioners, to formulate a proposal to reform two aspects of the old-age pension system: the so-called revaluation index, which consists of the application of a formula every year updating pension amounts taking into consideration aspects such as the total expected expenditure on pensions and inflation; and the so-called sustainability factor, which is an automatic instrument for the adjustment of pension levels to the life expectancy of pensioners. This reform was preceded, not by social dialogue, but by a more technocratic mechanism, based on the report prepared by the expert committee. However, the representatives of the two main union confederations, the UGT and CCOO, expressed different views on the committee's proposals. The CCOO was positive about the content of proposals, and only criticized the fact that the implementation of the reform would be delayed until 2019. In contrast, the UGT criticized both the content and the timing proposed by the committee.

<sup>27</sup> Ley 23/2013 reguladora del Factor de Sostenibilidad y del Índice de Revalorización del Sistema de Pensiones de la Seguridad Social, see text at <http://www.boe.es/boe/dias/2013/12/26/pdfs/BOE-A-2013-13617.pdf>



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## Section II. The role and impact of National Social Dialogue Institutions (NSDI)

### 2.1 Overview and role of NSDI

The Economic and Social Council is a tripartite institution established in 1991 to promote understanding between the social and economic partners. Even though the 1978 Constitution (Article 131.2) already contained the mandate for a tripartite consultative body, it took almost 15 years for it to be established. It is composed of employees' organizations, trade unions and other representatives of sectoral interests. The Economic and Social Council is a government advisory body on socio-economic and employment issues, which means that its voice is heard in decisions affecting the various sectors of Spanish society. It is governed by public law and has legal personality, full legal capacity and organizational and functional autonomy in carrying out its mission, and is attached to the Ministry of Labour and Immigration.<sup>28</sup>

The Economic and Social Council has two main functions. First, it issues opinions on a mandatory basis on draft bills, draft royal legislative decrees regulating socio-economic and labour policy, and draft royal decrees considered by the Government to be of particular significance in this field. Second, the Economic and Social Council also examines and analyses social issues at its own initiative. Its annual report on the national socio-economic and employment situation has become an essential reference point for understanding the situation in Spain. This latter function has become more important in the context of the economic crisis as a way of revitalizing the role of the Council.

The Economic and Social Council consists of 61 members, appointed by the Government, including:

- a. The President.
- b. Twenty members, making up the First Group, designated by the most representative trade unions, in proportion to their membership.
- c. Twenty members, making up the Second Group, designated by the most representative employers' organizations, in proportion to their membership.
- d. Twenty members, making up the Third Group, as follows:
  - Fourteen are proposed by the following organizations and associations:
    - Three by professional farming associations.
    - Three by the fishers' organizations.
    - Four by the Consumers and Users Council.
    - Four by associations of cooperatives and worker-owned companies, on behalf of the social economy.

<sup>28</sup> For more information, see: <http://www.ces.es/en/web/guest/naturaleza>



- Six experts appointed by the central Government and proposed jointly by the Labour and Social Affairs and Finance and Treasury Ministers, after consultation with the organizations represented on the Council.

The Council members fulfil their functions in full autonomy and independence. All members, including the President, have a four-year mandate, renewable for four-year periods.

The Plenary of the Council (or, where applicable, the Standing Committee when the Council delegates functions to it) issues opinions on matters referred for consultation by the Government. Each Council opinion is documented separately, with sections covering background, the Council's assessment and its conclusions, and is signed by the Secretary-General and endorsed by the President, with any dissenting opinions attached. The Council's opinions are not binding on the Government.

The Plenary of the Council, or the Standing Committee, also issues studies and reports on matters related to its mandate at the request of the Government or of Council members, or at its own initiative. The decision to prepare a report at its own initiative is taken by the Plenary of the Council, through the Standing Committee, at the request of the President, the Standing Committee, one member group or eight Council members.

**Table 4: Procedure for drawing up an opinion or report**

Opinion or report	Own-initiative report
Request to the Council by the national Government or government ministers for an opinion or report	Agreement by the Plenary to prepare the report
Referral to the working committee responsible in the field Preparation of a proposed text by the working committee Presentation of the proposed opinion or report to the Plenary of the Council, together with any amendments Approval of the opinion or report by the Plenary of the Council	
Submission of the opinion or report, together with any dissenting opinions, to the requesting body	Dissemination of the report
Source: <a href="http://www.ces.es/en/web/guest/funcionamiento">http://www.ces.es/en/web/guest/funcionamiento</a>	

## 2.2 Involvement of the NSDIs in policy formulation

The Economic and Social Council plays a very limited and indirect role in fostering non-institutionalized social dialogue, as well as in the negotiation of tripartite agreements or social pacts. Due to its advisory role, its involvement has been restricted to issuing opinions on draft legislation proposed by the executive.

However, in recent years, the Council has been adopting a more proactive approach by issuing more reports and opinions at its own initiative. The aim is precisely to influence the Government and relevant actors on the need to regulate certain issues, and how this should be done. In this respect, it may be argued that the passive involvement of the Economic and Social Council in formulating policy responses, which was aggravated during the crisis, is changing towards a more proactive approach.

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## 2.3 Impact of the crisis on NSDI

The interviews revealed a common perception of the significant and dual impact of the crisis on the Economic and Social Council.

First, as with tripartite social dialogue, the Economic and Social Council has also been under attack. Indeed, Economic and Social Councils have been abolished as part of austerity packages in several Autonomous Communities, including, up to now, in Madrid, La Rioja, the Balearic Islands, Castilla La Mancha, Cantabria, Asturias and, more recently, Valencia. In all cases, the justification given was the low impact of the Council on policy. This has also occurred in the context of the public administration reforms initiated by the Government in October 2014, which are aimed at rationalizing the public sector, including the suppression of institutions whose functions are duplicated at the national and regional levels. Economic and Social Councils are one of the targets of this reform, as it is considered unnecessary to have both national and regional structures. As a result, in many Autonomous Communities with a PP government, there has been a movement to suppress Economic and Social Councils. The trade unions and employers' organizations, together with left-wing parties, including the PSOE and the United Left, have strongly opposed their suppression.

Second, discussions in the Economic and Social Council have been affected by the frequent use (and abuse) of urgent procedures for the adoption of laws. Under the Spanish Constitution (Article 86), the use of urgent procedures to draft and adopt legislation by the executive should be restricted to cases of the "utmost and extraordinary urgency and social need". Under such conditions, the Government may adopt legislation in the form of Legislative Decrees. The difficult financial and economic situation during the period 2010 to 2014 often led the Government to legislate using Royal Legislative Decrees, which require less discussion in Parliament, and for which the opinion of the Economic and Social Council is not required.

In 2014 and 2015, the Economic and Social Council repeatedly denounced the lack of time available to issue its recommendations and opinions on particularly important issues. The trade unions share this view and consider that over-reliance on Royal Legislative Decrees is poor democratic practice. However, this situation started before the debt crisis and the austerity policies beginning in May 2010. For example, the Plenary of the Economic and Social Council adopted a joint position in 2009 calling on the Government to send it draft laws for review and opinion.<sup>29</sup>

Notwithstanding the challenges resulting from the crisis concerning the role and public perception of the Council, some of its opinions have had a significant impact. For example, in the case of the opinion on the proposal to reform the pension system issued in September 2013<sup>30</sup>, all three actors in the Council unanimously condemned the attempt by the Government to end the adjustment of pensions to inflation. This opinion had a strong public impact because of the opposition by employers' organizations to the proposal by the centre-right Government. Other opinions issued by the Council have also had a significant impact,

<sup>29</sup> See *El País*, 4 November 2009, "El CES recuerda al Gobierno que le debe enviar leyes" ([http://elpais.com/diario/2009/11/04/espana/1257289207\\_850215.html](http://elpais.com/diario/2009/11/04/espana/1257289207_850215.html))

<sup>30</sup> Opinion No. 7, 2013, approved in the plenary session on 26 September 2013, 'Sobre el Anteproyecto de Ley reguladora del Factor de sostenibilidad y del índice de revalorización del sistema de pensiones de la Seguridad Social' (<http://www.ces.es/documents/10180/631510/Dic072013.pdf>)

such as opinion No. 6 of June 2013 on the proposal for a law to support entrepreneurship<sup>31</sup>. Once again, there was consensus among the members of the Council on many problematic aspects of the proposed legislation, including its ambiguous character and the lack of specific measures for the achievement of the stated goals.<sup>32</sup>

Interviews with members of the Council also showed that, in reaction to its marginalization, there have been attempts to revitalize its role. The most important has been the adoption of a more proactive stance and the initiatives taken to prepare reports in important socio-economic issues at its own initiative. This is seen as a way of overcoming the passive and reactive nature of its main statutory function, that is issuing opinions on a mandatory basis on draft legislation, draft Royal Legislative Decrees regulating socio-economic and labour policy, and draft Royal Decrees considered by the Government to be of particular significance in this field.

There are no official initiatives to strengthen institutional support for social dialogue, or to modify its role. The only aspect that has emerged recently as a means of enhancing its legitimacy and representativeness is the incorporation of the Third Social Sector in its activities, as called for by the Third Sector Platform, which was consulted during the drafting of the 2014 and 2015 NRPs. However, there is currently no official initiative for the inclusion of this group in the Council. There appears to be consensus on the need to maintain the clear differentiation between formal/institutionalized channels of social dialogue (the national and regional Economic and Social Councils) and the non-formalized channels of bipartite and tripartite social dialogue.

<sup>31</sup> Opinion No. 6, 2013, approved in the plenary session on 1 June 2013, ‘Sobre el Anteproyecto de Ley de Apoyo a los emprendedores y su internacionalización’ (<http://www.ces.es/documents/10180/631510/Dic062013.pdf>)

<sup>32</sup> See *El País*, 11 June 2013, “Los 12 reveses a la Ley de Emprendedores”.

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## Section III. Collective bargaining during the crisis and post-crisis periods

### 3.1 Impact of the crisis on collective bargaining

The reform of collective bargaining has been one of the most widely debated issues since the beginning of the crisis. The main problems perceived are related, first, to the excessive rigidity that it imposes on wage setting. On the one hand, it is argued that the existing structure of collective bargaining: (a) delivered high wage increases, due to its intermediate level of (de-)centralization; and (b) limited possibilities for the flexible adjustment of wages to new contexts. It is also argued by some political parties and employers that the extension of the terms of an agreement once negotiations on its renewal have failed (so-called *ultraactividad*) imposes excessive rigidities that are particularly harmful in times of crisis.

When assessing the impact of the crisis on collective bargaining, it is important to bear in mind the diverging trends of legal reforms and the bipartite agreements on employment and collective bargaining concluded between the trade unions and employers. As seen in Table 5, the unilateral nature of the legal reforms introduced is in contrast with the consensus and stability demonstrated by peak bipartite social dialogue, as reflected in the three agreements on employment and collective bargaining concluded between 2008 and 2015.

Unilaterally imposed legislative changes in collective bargaining are not only likely to arouse opposition and resistance by the social partners, but it is more probable that they will fail to deliver the expected outcomes due to implementation problems. The gap that has been opened between State-imposed legal regulation of industrial relations and collective bargaining, and its governance by the social partners, constitutes a major problem for industrial relations in Spain. In contrast, the continuity and resilience exhibited by bipartite social dialogue and collective bargaining has to be welcomed as a way of enhancing the governance capacity of collective bargaining, and more generally of coordinating industrial relations.

**Table 5: Legislative changes in collective bargaining and bipartite social dialogue**

Legislative changes in collective bargaining		Bipartite agreements on employment and collective bargaining	
		February 2010 – Ist Inter-Confederal Agreement on Employment and Collective Bargaining, 2010-2011-2012 (AENC I)	Bipartite agreement between trade unions and employers' organizations
2011 – Urgent measures to reform collective	Negotiations failed - no tripartite agreement signed		
		January 2012 – IIrd Inter-Confederal Agreement on Employment and Collective Bargaining, 2012-2013-2014 (AENC II)	Bipartite agreement between trade unions and employers' organizations
February 2012 – Urgent measures to reform collective bargaining	Without negotiations - imposed unilaterally		
		May 2013 – Agreement of the Steering Committee of AENC II on the extension of collective agreements upon expiry ( <i>ultraactividad</i> )	Bipartite agreement between trade unions and employers' organizations
		July 2015 - IIIrd Inter-Confederal Agreement on Employment and Collective Bargaining, 2012-2013-2014 (AENC III)	Bipartite agreement between trade unions and employers' organizations

Source: authors' elaboration

The trend towards the decentralization of collective bargaining has accelerated during the crisis. However, this trend has not had a quantitative impact in terms of an increase in collective bargaining at the company level (see Figure 10 below), but rather a qualitative increase in the regulatory capacity of lower-level agreements over sectoral agreements (Molina, 2014). Before the 2012 reform, all collective bargaining reforms included mechanisms for organized decentralization, with higher-level collective agreements establishing the criteria for lower-level agreements (Martín and Alós, 2003). The multi-level bargaining system, in which sectoral collective agreements supervise the process of decentralization, was a strategy shared by trade unions and employers' organizations, as confirmed by the 1997 peak inter-confederal agreement on collective bargaining and all subsequent peak agreements. However, the 2012 reform constituted a breakdown in this respect, as it not only enhanced the regulatory capacity of company agreements (by extending opt out possibilities), but also gave more power to employers, while reducing the regulatory capacity of sectoral agreements. Procedural changes were also introduced in the regulation of collective bargaining to facilitate and speed up the renewal of existing agreements, including changes in collective dispute resolution mechanisms. Even though the social partners have defended their autonomy to reform collective bargaining, the executive has introduced most of the changes without negotiation.

In this regard, it is also important to note the differences between industrial relations in the private and public sectors. The main impact of fiscal consolidation on collective bargaining has been in the public sector (Molina, forthcoming). As a result of financial pressure, Spanish governments adopted austerity measures between 2010 and 2015 to reduce the public deficit. These packages were imposed unilaterally on the social partners and consisted of a series of

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measures, including cuts in social spending and policies, cuts in public sector pay, limits on hiring and the replacement of retired workers, cuts in public investment, a freeze on pension benefits and increases in working time for public employees. Even though the intensity and types of measures adopted varied, one common feature of all austerity packages was the use of public sector pay and employment as an important adjustment mechanism. Indeed, adjustment in Spain has been based more on expenditure than revenue (Dellepiane and Hardiman, 2012).

### ***Inter-Confederal Agreement on Employment and Collective Bargaining, 2010-2012 (AENC I)***

Due to its importance, bipartite social dialogue on the reform of collective bargaining has been continuing for a long time. However, the crisis has emphasized certain significant differences between unions and employers concerning the problems affecting collective bargaining and their solution. This became clear with the failure of negotiations to reach an agreement to renew the 2008 AENC containing guidelines on collective bargaining in 2009.<sup>33</sup> In November that year, the trade unions and employers signed an agreement to unblock negotiation of several collective agreements.<sup>34</sup> Bi-partite social dialogue was resumed, and three months later the peak organizations concluded the 2010 bipartite inter-confederal agreement on employment and collective bargaining for 2010-2012 (AENC I).<sup>35</sup> This agreement, which continued the series of peak inter-confederal agreements initiated some years before, covered several issues, including the transformation of temporary contracts into open-ended contracts, internal flexibility, teleworking, wage guidelines, the use of opt-out clauses and the beginning of negotiations around the reform of collective bargaining rules.

Further to the commitment expressed in the agreement, negotiations were continued with a view to agreeing on a reform of collective bargaining. However, the negotiations did not result in an agreement in 2010. The labour market reform unilaterally adopted by the Socialist administration in September 2010 (Act No. 35/2010) contained some minor implications for collective bargaining. More specifically, the reform enhanced the capacity of company collective agreements to introduce internal flexibility by favouring greater adaptability to economic circumstances, while allowing greater scope for the non-application of wage agreements and other working conditions at the company level (Del Rey, 2010; García et al., 2010). Trade unions severely criticized the reform and called for a general strike.<sup>36</sup>

<sup>33</sup> Since 2002, the trade unions and employers' organizations in Spain have signed a peak inter-confederal agreement at the beginning of each year 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 concluded was 2009.

<sup>34</sup>[http://www.empleo.gob.es/es/sec\\_trabajo/ccncc/D\\_AspectosNormativos/Normativa/contenidos/Compromiso2009.htm](http://www.empleo.gob.es/es/sec_trabajo/ccncc/D_AspectosNormativos/Normativa/contenidos/Compromiso2009.htm)

<sup>35</sup>[http://www.ccoo.es/comunes/recursos/1/doc17657\\_Acuerdo\\_para\\_el\\_Empleo\\_y\\_la\\_Negociacion\\_Collectiva\\_2010,\\_2011\\_y\\_2012..pdf](http://www.ccoo.es/comunes/recursos/1/doc17657_Acuerdo_para_el_Empleo_y_la_Negociacion_Collectiva_2010,_2011_y_2012..pdf)

<sup>36</sup> The trade unions prepared a critical assessment of the reform. See: [http://www2.ccoo.es/comunes/recursos/1/doc25209\\_Valoracion\\_de\\_CCOO\\_y\\_UGT\\_de\\_la\\_Ley\\_de\\_Medidas\\_Urgentes\\_Reforma\\_del\\_mercado\\_de\\_Trabajo.pdf](http://www2.ccoo.es/comunes/recursos/1/doc25209_Valoracion_de_CCOO_y_UGT_de_la_Ley_de_Medidas_Urgentes_Reforma_del_mercado_de_Trabajo.pdf)

## ***The 2011 reform of collective bargaining***

Following the September 2010 general strike against the labour market reform adopted by the Socialist Government, bipartite negotiations among the social partners resumed some months later in the context of the 2011 Social and Economic Tripartite Agreement. More specifically, the tripartite agreement included a document setting out the starting point for the negotiation of a reform of collective bargaining.<sup>37</sup> After four months of bipartite talks between unions and employers, consensus was only possible to a limited extent, and no agreement was therefore signed. The Government had urged the social partners to reach agreement, and decided to take unilateral action on this issue through the adoption in June 2011 of a Royal Legislative Decree on urgent measures to reform collective bargaining.<sup>38</sup> Even though the content of the reform reflected the limited consensus reached between the trade unions and employers, the social partners were critical, as they considered it a violation of their collective autonomy. The reform introduced changes in the structure of collective bargaining by establishing a series of issues for priority negotiation at the company level. It also modified the procedures and timing for the denunciation and renegotiation of collective agreements with the aim of avoiding an escalation of disputes and speeding up the process (Escudero, 2011).

## ***The 2012 Inter-confederal Agreement on Employment and Collective Bargaining (AENC II)***

Bipartite negotiations on the reform of collective bargaining resumed at the end of 2011. Some of the principles intended to orient the reform were contained in the AENC II,<sup>39</sup> which should be interpreted as a continuation of AENC I, although the signatories acknowledged the changes in the international context and their impact on economic growth and the labour market. Interestingly, the agreement starts by noting the loss of competitiveness of the Spanish economy due to high nominal wage increases. It then calls for an incomes policy agreement to help to bring wage trends into line with productivity and euro zone inflation, showing that the social partners were well aware of the problems facing the Spanish economy and agreed to make sacrifices.

The underlying objective of the agreement was to bring changes in collective bargaining and the labour market back to the scope of autonomous negotiations between trade unions and employers' organizations. The failure to reach agreement and the unilateral reform adopted by the Government in 2011 forced the social partners to agree on the direction in which collective bargaining should move with a view to preventing further attempts at unilateral intervention.

The most important and innovative aspect of the AENC II, in comparison with the AENC I, is the explicit call for the decentralization of collective bargaining within the framework of sectoral agreements, which should establish the rules for the articulation of company agreements, while enhancing the role of the latter. Moreover, the agreement also requires collective agreements to include plans to develop internal flexibility through a clear distinction between three elements: wages, working time and functions. AENC II therefore constitutes another step in the attempt to enhance internal flexibility with a view to

<sup>37</sup> See full text at [http://www.elpais.com/elpaismedia/ultimahora/media/201101/28/espana/20110128elpepunac\\_1\\_Pe s\\_PDF.pdf](http://www.elpais.com/elpaismedia/ultimahora/media/201101/28/espana/20110128elpepunac_1_Pe s_PDF.pdf)

<sup>38</sup> <http://www.boe.es/boe/dias/2011/06/11/pdfs/BOE-A-2011-10131.pdf>

<sup>39</sup> [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](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)

safeguarding jobs in the short term, but with the longer-term objective of changing the mechanisms for the adjustment of the labour market and moving from external (numerical) towards internal (functional) flexibility. It also takes into account the worsening economic situation by correcting some of the conditions agreed in AENC I, for example concerning negotiated wages.

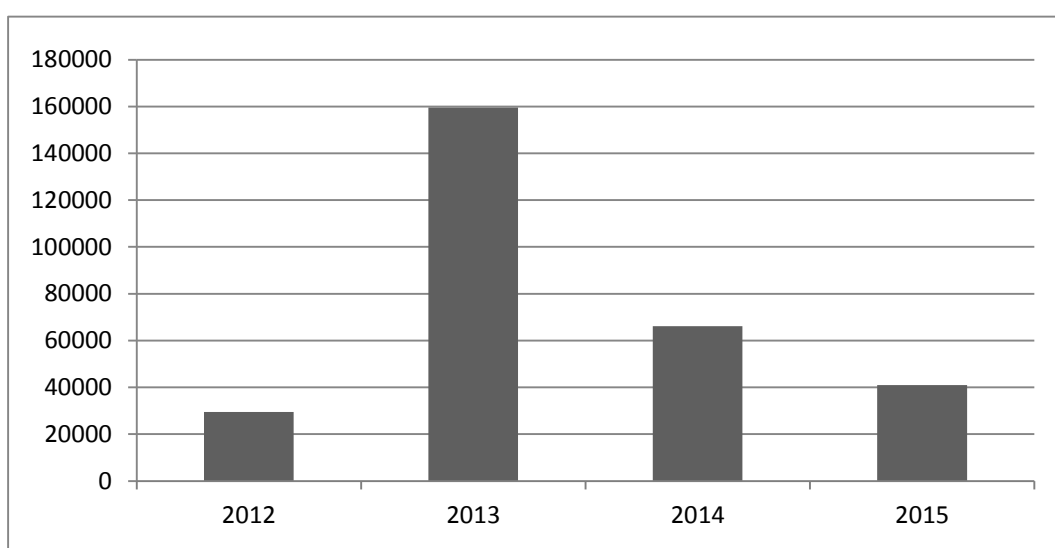
### **The 2012 labour market reform: Implications for collective bargaining**

Despite the success of the trade unions and employers in bringing the reform of collective bargaining back to the ambit of autonomous negotiations in AENC II, the executive adopted unilateral action once again a few weeks later without holding talks with the social partners. Moreover, all the significant innovations and guidelines for developing internal flexibility in collective bargaining included in AENC II were overlooked by the Government in the 2012 labour market reform. As pointed out by interviewees, this caused perplexity not only among trade unions, but also employers, who could not understand why the Government had not taken AENC II into consideration.

The reform adopted by the Government in April 2012 therefore introduced certain important changes in collective bargaining mere days after the conclusion of AENC II. More specifically, it opened the door to unilateral changes in working conditions by the employer, including wages, and reduced the period required for the notification of such decisions to employees. Employers were also given greater powers to take unilateral decisions on issues relating to collective redundancies.

Another area in which the role of employers in regulating working conditions was extended was the temporary non-application of the collective agreement in relation to a number of issues, with a significant relaxation of the conditions under which this can occur (Castro, 2012). Employers can accordingly decide temporarily not to apply the terms of the collective agreement whenever profits fall for six consecutive months (Sanguinetti, 2014). Figure 7 shows that the reform has triggered a significant increase in the number of cases of non-application of collective agreements, even though the economic situation was more favourable in 2013 than 2012. Around 90 per cent of cases of the non-application of company agreements related to wage issues (CCNC, 2013).

**Figure 7: Workers affected by the temporary non-application of the collective agreement by the employer, 2012-2015**



Source: *Boletín de Estadísticas Laborales*. Data for 2015, collective agreements registered up to November 2015.



One of the most contested characteristics of collective bargaining in Spain, the so-called *ultraactividad* of collective agreements (the extension of the terms of a collective agreement, even after its expiry, whenever the trade unions and employers have failed to conclude a new agreement), was reformed by establishing a two-year limit for the negotiation of a new agreement. If no new agreement is finally concluded, workers in those companies will be covered by a higher-level agreement and, if there is no higher-level agreement, by the terms established in the law.

Finally, a very important issue regulated in the 2012 reform is the structure of collective bargaining. The reform not only confirms the priority given to company agreements, but it also prohibits higher-level agreements from including clauses establishing their prevalence over lower-level agreements. In other words, the reform reduces the regulatory and governance capacity of sectoral agreements in the collective bargaining system.

Interviews with officials of trade unions and employers' organizations reveal a shared concern about the impact of the 2012 labour market reform on the future dynamic of social dialogue. In particular, they share the view that both the manner in which the reform was approved (ignoring an earlier agreement by unions and employers), and its content, which involves a change with regard to the existing institutional consensus, constitute an important obstacle to the restoration of tripartite social dialogue. According to the trade unions, the way in which the reform was adopted, with the lack of consideration shown by the Government for social dialogue and the views of the social partners on key issues, undermines the Government's credibility and any offers it may make to the social partners. With reference to the contents of the reform, the social partners consider that, by unilaterally changing the rules of the game in industrial relations and collective bargaining, the Government has eroded the governability of collective bargaining and, by extension, the role of the social partners.

### **3.2 Post-crisis developments in collective bargaining**

The unilateral 2012 reform has not only made it more difficult to renew some collective agreements, but more generally has also affected social dialogue between trade unions and employers' confederations. This became clear during the negotiation of a new inter-confederal agreement on employment and collective bargaining in 2014, in which more difficulties were encountered than for any of its predecessors. Moreover, during the period between the signing of the January 2012 bipartite AENC II and the July 2015 bipartite AENC III, only one agreement was concluded for the negotiated extension of collective agreements upon expiry.

#### ***The May 2013 agreement on 'ultraactividad'***

In May 2013, in the monitoring committee of AENC II, the trade unions and employers' organizations undertook to speed up the process of renewing collective agreements.<sup>40</sup> They also agreed to negotiate extensions of collective agreements while discussions were being held on their renewal. In this way, they tried to avoid the conflicts that had started to emerge concerning the renewal of certain sectoral collective agreements. As the 2012 reform limited to one year the duration of the collective agreement following expiry only in cases where the agreement did not contain any specific clause on this matter, the agreement concluded by the trade unions and employers in May 2013 recommended the inclusion of such clauses in new collective agreements. Where no such clause had been included and the collective

<sup>40</sup> Acuerdo de la Comisión de Seguimiento del II Acuerdo para el empleo y la negociación colectiva sobre *ultraactividad* de los convenios colectivos, See: [http://boe.es/diario\\_boe/txt.php?id=BOE-A-2013-6449](http://boe.es/diario_boe/txt.php?id=BOE-A-2013-6449)

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agreement had expired, the social partners recommended that the unions and employers sign an ad hoc agreement guaranteeing the validity of the collective agreement during negotiations.

Recent data on collective agreements show that 50.6 per cent of collective agreements (out of a sample of 2053) in 2014 contained a limit on their duration upon expiry. Of these, 70 per cent adopted the one-year limit established in the 2012 reform, and the remaining 30 per cent called of negotiated extensions of between one and three years. The 49.4 per cent of collective agreements analysed contained a clause extending their duration until the conclusion of a new agreement, therefore maintaining *ultraactividad*. This clearly shows the implementation problems faced by unilateral reforms, particularly when the social partners negotiate clauses that are in contradiction with those contained in the law.

### ***The 2015 bi-partite agreement on employment and collective bargaining***

More recently, the social partners have managed to renew the inter-confederal agreement on employment and collective bargaining. Negotiations started in December 2014, but in comparison with previous bipartite agreements, it proved more difficult to reach consensus among the social partners. The most important obstacle in the negotiations was wage increases, as the trade unions and employers' organizations maintained their polarized positions. In particular, the trade unions called for wage increases not lower than 1 per cent, while the employers' organizations considered it important to continue wage moderation with wage increases of below 0.5 per cent. Another important issue was the inclusion of automatic indexation mechanisms in collective agreements. Finally, the issue of the automatic extension of collective agreements (*ultraactividad*) was also covered by the negotiations, with the trade unions asking employers to guarantee *ultraactividad*, contrary to the provisions of the 2012 labour market reform.<sup>41</sup> The unions asked the employers for another agreement on this specific issue to accompany AENC III. An agreement was finally concluded consisting of wage increases of 1 per cent for 2015 and 1.5 per cent for 2016. The agreement also contained guidelines to reinforce the role of national sectoral collective agreements. However, no agreement was concluded on *ultraactividad*, as the employers considered the agreement already signed in May 2013 on this issue to be sufficient.

### **3.3 Articulation between sectoral and company agreements**

The articulation between sectoral and company agreements was first regulated by the social partners in 1997 based on two principles. The first was the clear definition of issues to be dealt with at each level to avoid duplication, and the second was the primacy of sectoral collective agreements in regulating working conditions, with company agreements playing a complementary role in cases where there were no sectoral collective agreements, or in improving the conditions contained in sectoral agreements. The 2011 reform gave regulatory priority to company agreements where they are concluded by the social partners. More recently, the 2012 reform confirmed the priority of company agreements over sectoral agreements, without the possibility for the social partners to agree on different terms.

Even though it is probably too early for a proper assessment of the institutional and long-term effects of the changes outlined in section II, there are some indications confirming their significance. The most important relate to the capacity of collective bargaining to provide additional protection for workers. The 2012 reform introduced two main elements limiting this role. The first is the capacity of the employer to unilaterally modify the working

<sup>41</sup> See *El País*, 24 March 2015.

conditions of employees, as set out in the collective agreement. Indeed, there was a remarkable increase in cases of the unilateral non-application of collective agreements immediately following the reform. Second, the non-extension of collective agreements upon their expiry also implies that many workers may be left without the additional protection provided by collective agreements, with their working conditions then being determined by the legal minimum standards established in the Workers' Charter. There is some evidence of the use of delaying tactics by employers to allow collective agreements to expire and to block negotiations with workers on new collective agreements (see Section IV). However, a recent report by the tripartite National Advisory Board on Collective Bargaining (CCNC, 2014) shows that a diversity of means are being used by employers and workers' representatives to negotiate the temporary extension of collective agreements upon expiry, while engaging in the negotiation of a new agreement.

### **3.4 Coordination of collective bargaining**

The main instruments for the coordination of collective bargaining in Spain remain the peak bipartite inter-sectoral agreements on employment and collective bargaining. These agreements not only provide general guidelines on wage increases (see Table 6), but also contain recommendations on other collective bargaining issues, including the articulation between levels in the collective bargaining structure and internal flexibility. The recommendation contained in AENC III (2012-2014), concluded in January 2012, is particularly important in emphasizing the need to include aspects related to flexicurity in collective agreements, so that greater functional flexibility is accompanied by mechanisms guaranteeing the effective protection of employees.

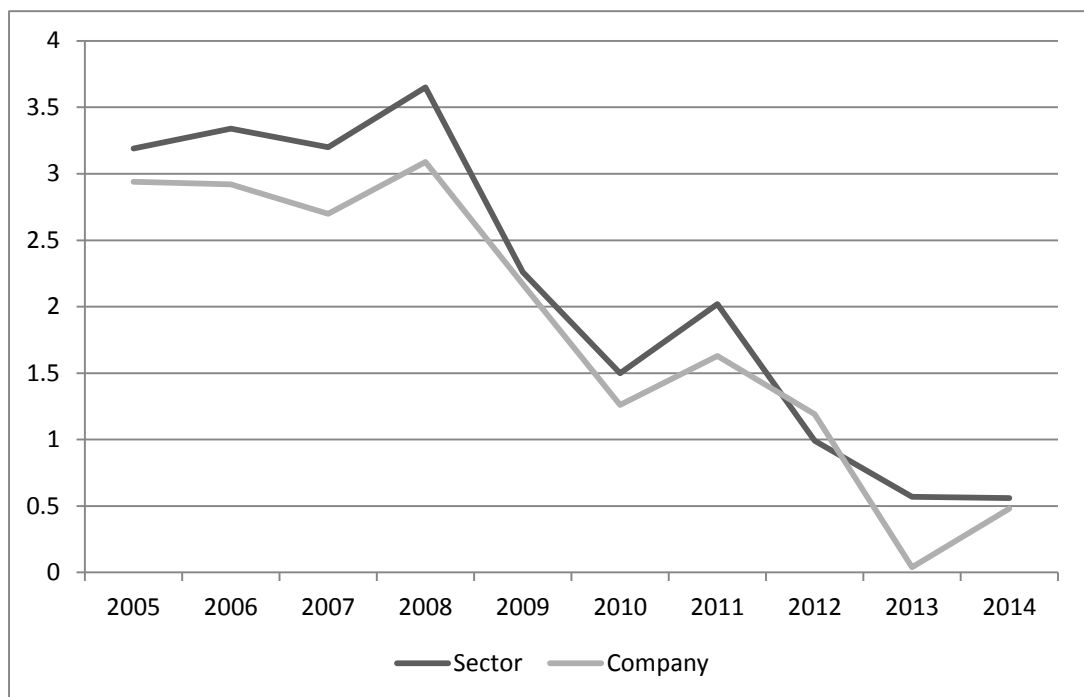
**Table 6: Coordination guidelines on wage setting negotiated by the social partners at the peak level in collective agreements**

<b>Name of agreement</b>	<b>Year</b>	<b>Wage setting guidelines</b>
Agreement on collective bargaining 2012	2002	Forecast inflation (2%) + Ex post indexation
Agreement on collective bargaining 2013	2003	Forecast inflation (2%) + Productivity + Ex post indexation
Extension of the 2003 agreement on collective bargaining for 2004	2004	Forecast inflation (2%) + Productivity + Ex post indexation
Agreement on collective bargaining 2005	2005	Forecast inflation (2%) + Productivity + Ex post indexation
Extension of the 2005 agreement on collective bargaining for 2006	2006	Forecast inflation (2%) + Productivity + Ex post indexation
Agreement on collective bargaining 2007	2007	Forecast inflation (2%) + Productivity + Ex post indexation
Extension of the 2007 agreement on collective bargaining for 2008	2008	Forecast inflation (2%) + Productivity + Ex post indexation
	2009	Forecast inflation (2%) + Productivity + Ex post indexation
Interconfederal Agreement on Employment and Collective Bargaining 2010, 2011 and 2012 (AENC I)	2010	1%
	2011	1-2%
Interconfederal Agreement on Employment and Collective Bargaining 2012, 2013 and 2014 (AENC II)	2012	1.5-2.5% (AENC I); 0.5% + Wage indexation clause resulting from the difference between the inflation registered and the ECB inflation criteria of 2% (AENC II)
	2013	0.6% + Wage indexation clause resulting from the difference between the inflation registered and the European Central Bank (ECB) inflation criteria of 2%
	2014	0.6% if GDP growth in 2013 below 1%; 1% if GDP growth in 2013 between 1 and 2%; 1.5% (maximum) if GDP growth in 2013 above 2%
Interconfederal Agreement on Employment and Collective Bargaining 2015, 2016 and 2017 (AENC III)	2015	1% maximum
	2016	1.5% maximum

Source: authors' elaboration

Even though the peak bipartite inter-sectoral agreements on collective bargaining only provide general guidelines, they have played a particularly important role in wage setting. In particular, they have contributed to the implementation of a policy of wage moderation, while at the same time introducing new criteria for wage setting. For example, AENC II used the European Central Bank inflation forecast as a benchmark for calculating the ex-post revision of wages. Partly as a result, negotiated wage increases showed a downward trend during the crisis, with the sole exception of 2011 (Figure 8). It can also be observed that in 2013 there was a sharper fall in wage increases negotiated at the company level compared to the sectoral level. Even though company agreements do tend to contain more moderate wage settlements than sectoral agreements, the 2013 figure probably reflects the changes introduced in the 2012 reform.

**Figure 8: Negotiated wage increases by collective bargaining level**



Source: Boletín de Estadísticas Laborales

### 3.5 Post-crisis developments in collective bargaining: Declining coverage and decentralization

In the post-crisis period, the two main trends that have characterized collective bargaining since the beginning of the crisis have continued. First, there has been a downward trend in the number of agreements and workers covered (see Section IV). Second, the more qualitative aspect of the decentralization of collective bargaining has been intensified as a result of the priority given to company level bargaining by the 2012 reform and the capacity of employers not to apply the terms agreed in sectoral agreements.

As indicated above, the effect of the 2012 reform on the decentralization of collective bargaining is mostly qualitative, as it gives priority to company agreements over sectoral agreements and empowers employers to opt out from or not to apply sectoral agreements (Cruz et al., 2014). As shown by Figure 9, the effect of decentralization has not been very significant in quantitative terms. Nevertheless, despite this quantitative stability, the relationship between company and sectoral agreements experienced a radical reversal after 2012.

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No attempt has been made by the government to restore collective bargaining to its original level. There has been no other reform of industrial relations or collective bargaining since February 2012. The views of trade unions, employers and the Government remain polarized on this issue, as shown by the interviews. On the one hand, the trade unions consider that the effects of the 2012 labour market reform have been very negative, including the extension of precarious jobs and the erosion of collective bargaining (UGT, 2014; Cruz et al., 2014).<sup>42</sup> They therefore expect a new government to abolish the 2012 reform and negotiate a new reform with the social partners. Employers are in general satisfied with the results of the 2012 reform (CEOE, 2012), but have recently called for further steps in the direction of the 2012 reform. Finally, in 2013, the Government undertook an assessment of the impact of the 2012 reform on the labour market and collective bargaining (MEYSS, 2013),<sup>43</sup> which conveyed a very positive general message.

<sup>42</sup> See, for instance, the paper prepared by the UGT assessing the impact of the reform on collective bargaining: <http://portal.ugt.org/actualidad/2015/abril/boletin21/002-doc.pdf>

<sup>43</sup>[http://www.empleo.gob.es/es/destacados/HOME/impacto\\_reforma\\_laboral/Report\\_evaluating\\_the\\_impact\\_of\\_the\\_Labour\\_Reform.pdf](http://www.empleo.gob.es/es/destacados/HOME/impacto_reforma_laboral/Report_evaluating_the_impact_of_the_Labour_Reform.pdf)



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## Section IV. Effects on the labour market and industrial relations

### 4.1 Active and passive employment policies

The economic recovery was accompanied by a job creation process characterized by the precarious nature of the new jobs. There are two factors behind the higher level of precarity. On the one hand, there was a reduction in the average length of temporary contracts during the crisis. Accordingly, compared to the pre-crisis period, temporary contracts in Spain are now shorter on average, and therefore more precarious. The high turnover that characterizes the Spanish labour market has consequently increased further, with around two million people every quarter moving from employment to unemployment, or vice versa. On the other, there has been an increase in part-time employment, which remains highly feminized and mostly involuntary (Alós, 2015).

Despite this situation, there has been a decline in the coverage of passive employment policy measures. By the end of 2014, only 20 per cent of the unemployed were receiving contributory unemployment benefits, with another 24 per cent receiving an assistance benefit of 426 euros, an amount that is clearly insufficient to maintain the unemployed and their families at a minimally acceptable level, if only because of the high rate of long-term unemployed. Paradoxically, the resources for unemployment benefits started to decrease in 2008, with a more pronounced decline since 2012, when the trend should have been the opposite. Compared with other EU-28 countries, expenditure on passive unemployment protection policy measures per point of unemployment is about 40 per cent lower in Spain, with the EU-28 average being 0.18 per cent of GDP, compared with 0.11 per cent in Spain (Miguelez, 2015)

In terms of active labour market policy measures, a new model has been implemented in Spain during the crisis through the so-called Annual Plan for Employment Policy (PAPE) of 2013 and the Spanish Strategy for Employment Activation, 2014-2016. The most innovative characteristic of these plans is the fact that the financing of the active policies implemented by the regions depends in part on an evaluation of their results. The Plan also rationalizes programme design, linking it to specific targets. On the negative side, there has been some re-centralization in the design and implementation of the programmes. It would therefore be desirable to achieve greater decentralization, so that the lower territorial levels can better define the specific measures appropriate to their needs.

But the most important feature of active labour market policies during the crisis was the decline in financial resources. In comparison with 2007, the resources available fell by 50 per cent in 2013 and 2014. Within active labour market policies, training for the unemployed has suffered major budget cuts that have very significantly affected the number of course participants, falling from 1,282,458 in 2008 to 301,350 in 2014. The only exception is continuous training, with the number of employed persons receiving it rising from 1.5 million in 2008 to almost 2.5 million in 2014. However, these figures have to be treated with caution, as a single employee may participate in several training courses (Lope, 2015).

Hiring incentives, traditionally the main instrument of active employment policy in Spain, have been central to the debate, because of their importance within the total resources allocated for active labour market policies, but also because of design issues. These policies have undergone a profound transformation, accelerated during the years of economic crisis, involving their rationalization and re-organization, the near disappearance of incentives for the transformation of temporary into permanent contracts and the strengthening of incentives for self-employment. With regard to hiring incentives, despite positive developments in terms of rationalization (contributing to minimizing the deadweight loss effect), there has been an increase recently, with the number of contracts benefiting from such incentives



rising from 3 per cent in 2013 to nearly 16 per cent between March 2014 and July 2015 (Molina, 2015). In overall terms, despite some positives, there remain significant problems, including the weak conditionality for companies benefiting from financial incentives to hire workers and their weak relationship with training policies.

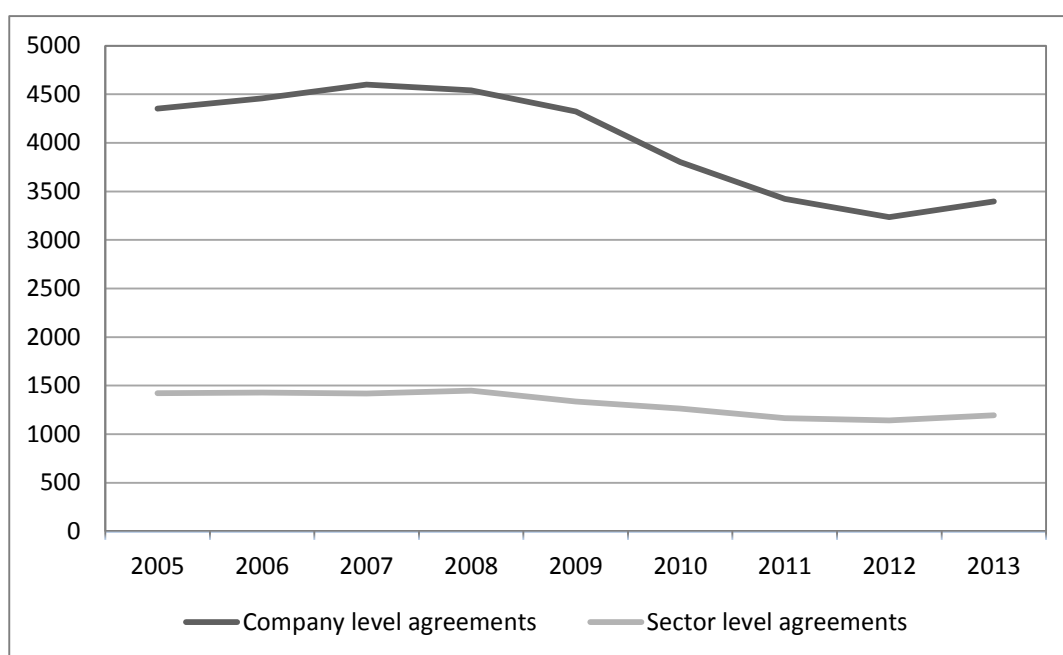
The situation of youth and women has received special attention in recent years in the context of employment policies. The position of young people in the Spanish labour market is characterized by high levels of unemployment and temporary employment. Two initiatives have been launched to address these problems: the Strategy for Entrepreneurship and Youth Employment, 2013-2016; and the National Youth Guarantee System. Both initiatives emphasize the promotion of employment (through hiring incentives), self-employment and entrepreneurship. However, neither policy appears to have had a significant impact on job creation, especially in terms of stable and high quality jobs (Rodríguez-Soler and Verd, 2015). In the case of women, significant difficulties have been encountered in achieving quantitative employment targets, despite the significant growth of part-time work, mostly by women. Moreover, there have been hardly any policy measures to address the pay gap or occupational segregation (Carrasquer, 2015).

#### **4.2 Changes in the collective agreements signed, the rise/fall in industrial action and strengthened/weakened or loss of autonomy for the social partners**

Before analysing changes in the number of collective agreements and workers covered, a methodological comment is required. The way in which data on collective agreements are collected in Spain means that information is available on both the number of collective agreements with regulatory effect and the number of workers covered in a given year, as well as the number of collective agreements concluded every year, irrespective of whether they will also have regulatory effect the following years.<sup>44</sup> The first type of data allows a stock-taking exercise and can be used to assess long-term trends. In contrast, the second type of data provides a more dynamic perspective on the evolution of collective bargaining year by year.

<sup>44</sup> The social partners and scholars have repeatedly criticized the deficiencies of statistics on collective bargaining, and have asked for improvements in both the methodology and processing of data. See, for instance, CES, 2015, p. 135, and García and Jansen, 2015.

**Figure 9: Number of collective agreements with regulatory effect in a given year** <sup>45</sup>



Source: MYESS, Boletín de Estadísticas Laborales

As noted earlier, one of the main effects of the crisis on collective bargaining has been a fall in the number of collective agreements concluded, as well as in the number of workers covered. Even though consolidated data are only available until 2012, <sup>46</sup> there is a clear declining trend (see Figure 9). This fall was particularly intense in the case of company level agreements, due to the closure and/or downsizing of some companies. Long-term employer strategies of the externalization and fragmentation of production structures, expectably reinforced during the crisis, are also likely to have contributed to this trend. In the case of sectoral agreements, the decrease probably reflects the difficulties encountered in many sectors in renewing collective agreements. The 2012 reform, by suppressing the automatic temporary extension of collective agreements, may have reinforced this trend.

Nevertheless, there has been a recovery since 2013 in the number of collective agreements. This upturn is not only linked to the improvement in the economic and labour market situation, but may also be the result of the incentives offered by the 2012 labour market reform, which gave priority to company over sectoral agreements. In the pre-2012 reform context, many companies that could have had their own collective agreement, preferred not to because of the transaction costs of bargaining and the fact that, despite the company agreement, the sectoral agreement would prevail anyway. But in the new context, an increasing number of employers may find it more favourable to negotiate their own collective agreement, as it may allow them to deviate from the provisions of sectoral agreements. As clearly shown in Table 7, the increase in the number of agreements in 2013 and 2014 can almost entirely be explained by the appearance of new bargaining units (or in other words, new collective agreements) and of new companies with their own agreement.

<sup>45</sup> For instance, a three-year collective agreement may be signed in 2010, but has effects in 2011 and 2012.

<sup>46</sup> Due to the methodology used to register collective agreements, including both new agreements and revisions/extensions of earlier ones, fully reliable and consolidated data are available with a two-year time lag. This means that data for 2013, and particularly 2014, are still preliminary and will change in the coming months.

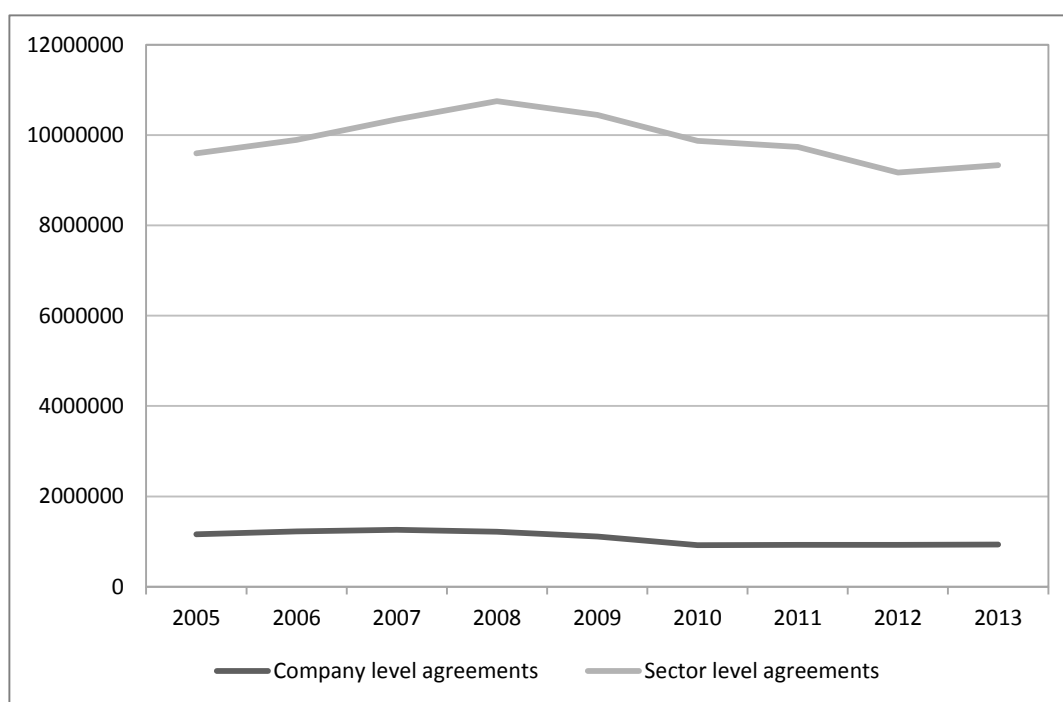
**Table 7: Collective agreements signed each year by level, 2011 - 2014**

	Existing bargaining units				New bargaining units			
	Total	Company	Group of companies	Sector	Total	Company	Group of companies	Sector
2011	1365	1035	25	305	264	241	4	19
2012	1588	1247	35	306	342	327	11	0
2013	2505	1899	55	551	664	627	20	17
2014	1837	1503	42	292	606	573	17	16

Source: MEYSS, Estadísticas de Convenios Colectivos

It is therefore possible to argue that there has been a quantitative recovery since 2013 in the number of collective agreements concluded, although it is still too early to assess whether this trend will be consolidated in the coming years. The tensions arising after the 2012 labour market and collective bargaining reform still persist, particularly concerning the renewal of agreements signed before then (CES, 2015). However, there was a 4.5 per cent decline between 2007 and 2013 in the number of workers covered by collective agreements. The decrease was much more marked in the case of workers covered by company agreements, where there was a 19.5 per cent decline between 2007 and 2013. In contrast, the number of workers covered by sectoral agreements only fell by 2.7 per cent.

**Figure 10: Number of workers covered by collective agreements**



Source: MEYSS, Boletín de Estadísticas Laborales

In terms of bargaining dynamics on a year-by-year basis, there has been a very clear fall in the number of workers covered, caused almost exclusively by a decline in the number of collective agreements renewed, as the number of new collective agreements and workers covered has increased (see Table 8). However, even though there has been a significant increase in the number of new collective agreements at the company level (that is, new agreements signed in companies where there was previously no collective agreement), rising from 451 new collective agreements in 2010 covering 144,600 workers to 753 new collective agreements in 2014 covering 137,539 workers, this is probably due to the lower average size of companies with collective agreements. This tends to confirm the hypothesis that the

collective bargaining reforms offer greater incentives for companies to negotiate their own collective agreement even when they have no previous history of this.

**Table 8: Renewed and new collective agreements and number of workers covered, 2010-2014**

Renewed collective agreements						
Year	Company		Sectoral		Total (Company + sectoral)	
	Collective agreements	Workers	Collective agreements	Workers	Collective agreements	Workers
2010	1,486	318,547	613	5,752,016	2,099	6,070,563
2011	1415	367,298	526	4,742,668	1,941	5,109,966
2012	1,462	522,521	505	3,876,834	1,967	4,399,355
2013	368	152,647	298	3,087,312	666	3,239,959
2014	502	198,413	314	3,113,860	816	3,312,273

New collective agreements						
Year	Company		Sectoral		Total (Company + sectoral)	
	Collective agreements	Workers	Collective agreements	Workers	Collective agreements	Workers
2010	451	144,600	154	877,929	605	1,022,529
2011	457	151,173	134	1,006,286	591	1,157,459
2012	517	122,908	127	1,556,161	644	1,679,069
2013	813	187,002	212	1,613,584	1,025	1,800,586
2014	753	137,539	159	1,306,160	912	1,443,699

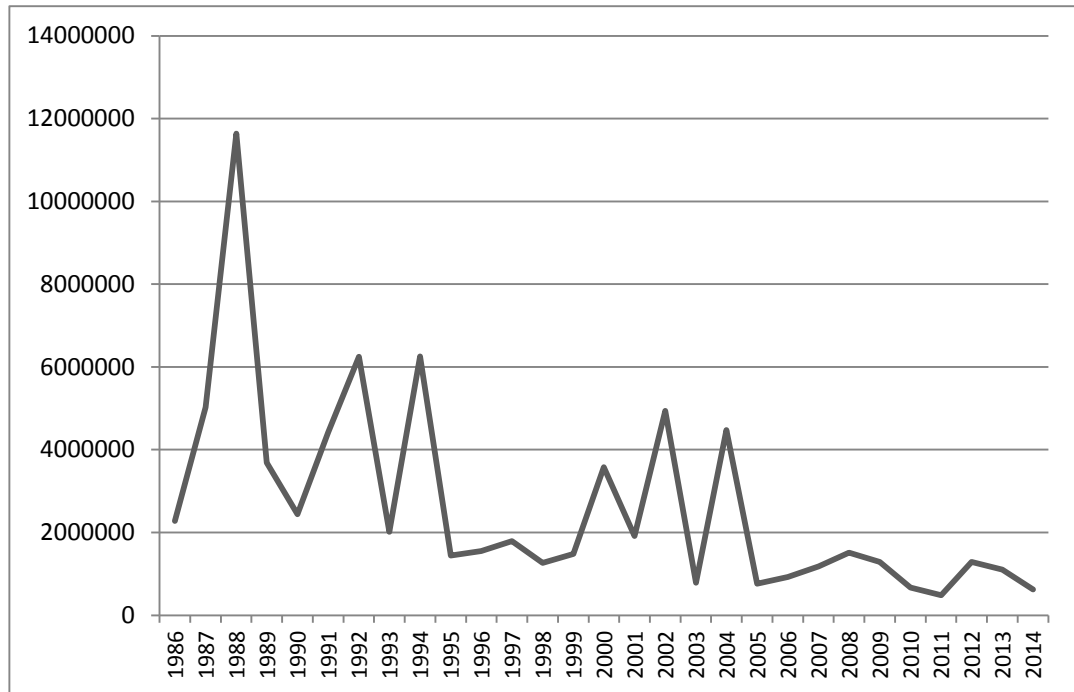
Source: MEYSS, Estadística de Convenios Colectivos

From the above data it can be concluded that the 2012 labour market reform is having a very significant impact on the structure and dynamics of collective bargaining in Spain. A trend can be seen towards the decentralization of collective bargaining as company collective agreements are given priority over sectoral agreements for the regulation of working conditions. In terms of collective bargaining dynamics, the 2012 reform has made it much more difficult to renew existing collective agreements. Between 2012 and 2013, the number of company agreements renewed fell from 1,462 to 368. In the case of collective agreements above the company level, the decrease was also important, falling from 505 in 2012 to 298 in 2013. The trade unions interviewed attributed this trend to the effect of the 2012 labour market reform, and particularly the suppression of *ultraactividad*. This has acted as an incentive for many employers to simply let old collective agreements expire without renewing them.

But, over and above the quantitative indicators of the number of collective agreements and workers covered, emphasis needs to be placed on the qualitative changes introduced by the 2012 reform in terms of the characteristics of collective agreements. In particular, it can certainly be confirmed that the main impact of the labour market reforms during the crisis has been the erosion of the regulatory and protective capacity of collective agreements. The issue is not therefore so much how many collective agreements have been concluded, or even how many workers are formally covered by them, but to what extent those collective agreements provide additional effective protection to employees. Even though the predominance of small and medium-sized enterprises (SMEs) in Spain has been identified by some authors as a hindrance to the effectiveness of collective agreements (due to the lack of workers' representation structures in most SMEs), the changes introduced in 2012 opened up a new scenario in which it is legal for employers to decide unilaterally on a temporary basis not to apply the terms of collective agreements.

The number of strikes in Spain has increased since the beginning of the economic crisis. In 2007, there were 751 economic strikes, rising to a peak in 2009 (1001 strikes) and 2013 (994 strikes). This is also borne out by the number of work days lost (Figure 11), which has displayed a long-term downward trend. However, in the context of the crisis, there was an initial increase, followed by another peak in 2012.

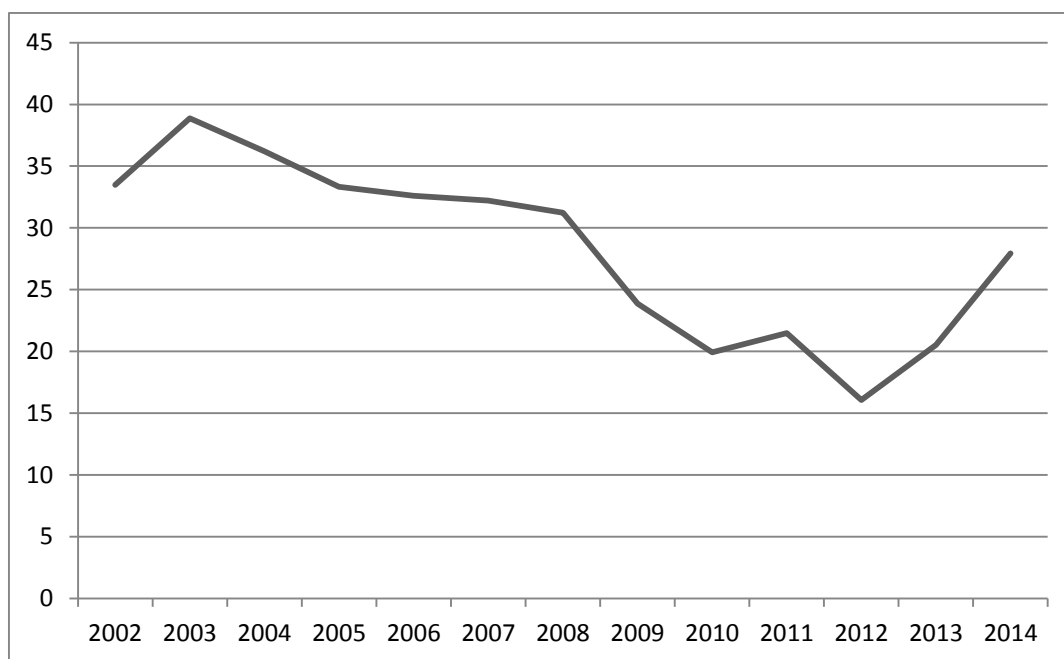
**Figure 11: Number of work days lost (excluding general strikes), 1986 - 2014**



Source: MEYSS, Estadística de Huelgas y Cierres Patronales

Behind this apparent stability during the crisis, there are some very important qualitative changes in industrial conflict. The most important one for the purposes of the present report is related to the causes of conflict. As a result of the extension of non-judicial conflict resolution mechanisms and the coordinating role of peak agreements in collective bargaining, the number of strikes arising out of collective bargaining issues (interpretation, renewal, etc.) had been following a declining trend (see Figure 12). Despite the crisis, this downward trend continued from 2008 until 2012. However, since 2012, the trend has reversed and the number of conflicts relating to collective bargaining have increased steadily. This can certainly be attributed to the impact of the 2012 reform on collective bargaining dynamics, and particularly the breakdown of the framework autonomously determined by social partners.

**Figure 12: Percentage of conflicts motivated by collective bargaining issues, 2012-2014**



Source: MEYSS, Estadística de Huelgas y Cierres Patronales

### **4.3 The changing role of the State in industrial relations**

In terms of the autonomy of the social partners in relation to State regulation, the developments in industrial relations in Spain are a clear illustration of the contradictions inherent to an industrial relations system in which the State plays a strong role (Molina, 2014). The social partners, and the trade unions in particular, have worked hard to consolidate strong autonomous collective bargaining institutions. The efforts made since the mid-1990s were particularly important in this regard in strengthening collective bargaining at the sectoral level with a view to consolidating a top-down mechanism of organized decentralization. Peak bipartite agreements on collective bargaining, conflict resolution and lifelong learning have also contributed to enhancing the coordination and autonomous governance of industrial relations. However, the reiterated unilateral regulation of aspects of industrial relations by the State during the crisis, together with the enhanced capacity of employers to unilaterally change working conditions, irrespective of the collective agreements concluded, have resulted in a loss of autonomy by the social partners

Some of the policies implemented during the economic crisis have triggered a recalibration of the role of the State in industrial relations. In particular, the regulation of industrial relations and collective bargaining, an area historically reserved for the social partners, was carried out unilaterally by the State in 2011 and 2012.

However, the involvement of the State in the regulation of industrial relations and collective bargaining is not new in Spain. From a procedural viewpoint, a pre-condition for the renegotiation of industrial relations laws in the 1990s and early 2000s was the active involvement of the State, although in different ways and to different degrees. Following unilateral intervention in 1994, the State played a guidance role and engaged in mediation to facilitate agreement between unions and employers, for example in 1997 (Molina, 2007).

Contrary to the reforms in the 1990s and 2000s, the aim of which was to enhance collective self-regulation by retrenching the law and opening greater spaces for company level bargaining under the umbrella of industry-level agreements, the most recent regulations, and particularly the 2012 reform, have reduced these spaces.

In the case of wage setting, developments during the economic crisis also show the tensions that exist between collective self-regulation and State regulation. In the 1980s, there was a clear move towards the consolidation of autonomous wage setting in the private sector, based on peak inter-confederal coordination. Even though the State was the main actor behind the wage pacts of the early 1980s, the conflict between trade unions and the Socialist government hindered any attempt to replicate incomes policy agreements. Following a number of years of uncoordinated wage bargaining and decentralization, wage-setting has been characterized since the late 1990s by truly autonomous inter-confederal coordination through peak bipartite agreements concluded on an annual basis by the most representative trade unions and employers' organizations. The economic crisis seemed to result in a temporary interruption in this practice, as the trade unions and employers' organizations failed to reach agreement on the guidelines for collective bargaining in 2009. However, a new agreement was concluded in 2010 and renewed in 2012 and 2015. All of the agreements included a strong commitment to wage moderation, as well as to the autonomous regulation of collective bargaining.

Finally, another impact of the crisis and austerity measures has been a move back to unilateral State regulation of working conditions in the public sector. In 2008 and 2009, wage increases for civil servants were agreed in the General Bargaining Forum. The wages and wage increases of salaried employees for 2008 and 2009 were negotiated in the second collective agreement for salaried employees 2006-2008 and the third collective agreement for salaried employees 2009. The two agreements established that the same increases negotiated for civil servants should be applied to salaried employees. In contrast, between 2010 and 2015, pay increases for public sector employees were imposed unilaterally.

In overall terms, these developments show the fragility of collective self-regulation in countries with statist traditions under the external pressures of economic adjustment. Despite the consolidation of collective bargaining by the social partners and the reduction in conflict rates, the State still plays the role of coordinator and regulator of last resort, as has become clear in the recent economic crisis.

There have been some attempts by the social partners to rebuild and revitalize their regulatory capacity and autonomy at both the intersectoral and sectoral levels. These attempts have taken the form of bipartite peak inter-sectoral agreements on employment and collective bargaining. There is some evidence for the resilience of pre-crisis collective bargaining dynamics and the capacity of the social partners to adapt to the new framework. For instance, bipartite social dialogue has continued during the crisis and has contributed to increased awareness of the need to enhance the capacity of collective agreements to adapt to changing conditions through internal flexibility. Moreover, the implementation of some of the most controversial clauses in the 2012 reform is being negotiated, hence reducing their potentially disruptive impact. Although the long-term impact of the recent changes remains to be seen, it is becoming clear that, in non-coordinated economies, the social partners face challenges in consolidating a strong self-regulatory system.

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## Conclusion

This analysis of social dialogue in Spain has shed light on the contrast between tripartite and bipartite (union–employer) dynamics in the post-crisis period. Although tripartite social dialogue has struggled to achieve revitalization, and there have been very few advances in this regard, bipartite social dialogue between trade unions and employers remains a defining trait of industrial relations in Spain and a source of stability and coordination in collective bargaining. Indeed, the only best practice identified by interviewees was the negotiation of bipartite agreements and the attempts made by the trade unions and employers to mitigate the potentially disruptive effects of the 2012 reform on issues such as *ultraactividad*.

Based on the evidence presented in this report, it is difficult to talk of a revitalization of tripartite social dialogue. There were still unilateral interventions of the State in 2015 in aspects that have traditionally been regulated and managed by the trade unions and employers, such as the vocational training system. The non-institutionalized dimension of tripartite social dialogue therefore remains weak, with few signs of recovery.

Institutionalized tripartite social dialogue in the Economic and Social Council has not experienced any marked change in its functioning, composition or impact. The Council remains an advisory body with very little impact on the negotiation or implementation of recovery policies. However, this institution has been identified as a potential target of austerity policies in fiscal consolidation packages, as a result of which several regional Economic and Social Councils have been abolished. Nevertheless, there have been some attempts to revitalize the role of the Economic and Social Council through the adoption of a more proactive approach to its policy advisory role.

In light of the above, the future of tripartite social dialogue in Spain remains very uncertain. The economic recovery has not been accompanied by a revitalization of social dialogue, except in certain isolated cases on very specific issues. The exclusion of the social partners from policy making, even in aspects that have historically been within their competence, has persisted, despite the improvement in the national economic situation.

Even though bipartism has continued to deliver collective bargaining agreements, the trend towards a gradual narrowing of social dialogue to industrial relations issues should constitute a matter of concern for trade unions and employers' organizations alike, as their role has been reduced to a limited number of concerns with a strong distributional component.

Moreover, when the erosion of the regulatory capacity of multi-employer collective bargaining and the governability of industrial relations by the social partners is taken into consideration, the narrowing of social dialogue becomes particularly worrying. On the one hand, this erosion may further contribute to the exclusion of the social partners from policy making. On the other, despite its resilience, bipartite social dialogue has been facing more obstacles since 2012.

The abandonment of tripartite social dialogue, together with the erosion of collective bargaining, has been accompanied by an increase in social inequality. Even though it is not possible to know the exact contribution of these changes to the increased inequality, it is clear that both the decentralization and the declining coverage of collective bargaining have resulted in increased wage disparities. The enhanced unilateral capacity of employers is another factor favouring greater wage disparities.

The crisis of tripartite social dialogue has a strong ideological and political component. The hope expressed by the trade unions concerning the possibility of revitalizing tripartite social dialogue so that it can play an effective role in post-crisis recovery is closely linked to a change of government in the recent general elections. However, the real challenge for the



social partners and social dialogue is to recover a more important role in policy making. The gradual narrowing of tripartite social dialogue to labour market issues not only diminishes its capacity to provide a basis for sustainable growth, but also diminishes the legitimacy of the social partners.

The revitalization of tripartite social dialogue first requires acknowledgment by the public authorities of the important role of the social partners in certain policy areas. One of these is rising income disparities, where the social partners have some capacity to intervene through collective bargaining. The significant rise in earnings and income inequality in Spain over the course of the crisis may well jeopardize future growth by reducing domestic demand. An incomes pact, focusing on the reduction of inequality rather than just on wage moderation, is desirable and would benefit the recovery. Other policy issues on which social dialogue would be useful include social exclusion and the long-term unemployed.

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## Annex: List of interviews

Name	Position	Place
Mr. Joan Pujol	Secretary General of Foment del Treball Nacional	Barcelona
Mr. Francisco González de Lena	Head of Cabinet of Economic and Social Council President	Madrid
Mr. Ignacio Fernández Toxo	Secretary General of CCOO	Madrid
Mr. Camil Ros (*)	UGT Catalunya	Barcelona
Mrs. Ann Westman	Economic Advisor - European Semester Officer in Madrid	Madrid
Mr. Juergen Foecking	Head of Political Sector – Permanent Representation of the European Commission in Spain	Madrid
Mrs. Cristina Faciabén (*)	Socio-economic Secretary, CCOO Catalunya	Barcelona
Mr. Jesús Barroso Barrero (*)	General Director of Active Labour Market Policies, Public Employment Service of Spain	Madrid

(\*) Interviews conducted between September 2014 and June 2015 for the Project "The Socioeconomic Diagnosis of Employment Policies in Spain 2012-2014"