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DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Spain

Different outcomes, same collective bargaining structure?

Peer Review "Towards a more dynamic collective bargaining"

Portugal, 23-24 October 2017



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1 Background to collective bargaining in Spain

In this section, the report describes main features of the Spanish system of collective bargaining, including both **tripartite and bipartite negotiations at macro level** and collective bargaining at **sectoral** and **company level**, which are compared with the Portuguese system.

As in Portugal, **tripartite negotiations at the macro level** have also experienced different phases. In both countries, generally conceptualised within a cluster that includes most of the European Southern countries, social dialogue is described as irregular and to some extent politicized (Visser, 2009).

As in Portugal, in Spain there are also **bipartite negotiations at macro level (social pacts)** which are not legally bindings. In Spain, these pacts have played a relevant role in the coordination of collective bargaining.

The following periods can be identified regarding **tripartite and bipartite negotiations**:

- During the first years of the decade of the 1980s, tripartite negotiations were conditioned by the political transition from a dictatorship to democracy, as well as a process of industrial and economic modernisation in order to prepare the country for its integration into the European Community. In this period unions accepted wage moderation in exchange for institutional recognition and a further development of social and labour rights, initiating a form of a competitive corporatist exchange.
- From 1986 to 1997 a period of crisis of the "social concertation" is identified that negatively affected collective bargaining. This crisis of social dialogue and collective bargaining happened in parallel to an economic crisis. During those years collective bargaining was carried out without the reference of cross-sectoral agreements. The most important problems at this time were the lack of coordination and the poor renewal of the contents of collective bargaining.
- After 1997, in a period of economic and employment growth, social dialogue was revitalized. Thus, from 1997 to 2008 different tripartite agreements on the reforms of labour market regulation were achieved both by the Popular Party government (1997-2004) and the Socialist Party (2004-2008). Besides, annual cross-sectoral bipartite agreements started to be concluded by the social partners. Those agreements set up non-mandatory guidelines on wage increases that improved the governability and coordination of the Spanish collective bargaining system. In addition, they encouraged the introduction of new topics in collective bargaining related, for instance to gender equality (after 2002) or internal flexibility.
- The economic crisis initiated in 2008 strongly affected concertation at macro level. During the first years, social pacts on pensions and active labour market policies were concluded. However, the situation dramatically changed after 2010, when two important reforms on collective bargaining rules were unilaterally enacted by the government (PSOE in 2011 and Popular Party in 2012). In 2014, social partners and the Government signed proposals for tripartite negotiations to strengthen economic growth and employment, which did not produce significant effects. In 2017, social dialogue bargaining boards on quality of employment, activation or youth unemployment have been set up. However, negotiations have not produced any agreement yet. In contrast with tripartite social dialogue, bipartite social dialogue between the trade unions and employers has maintained its vitality in this period. Since 2010, three so-called Agreements for Employment and Collective Bargaining were concluded. These agreements have established guidelines on collective bargaining, including references on

wage increase, favouring some degree of coordination. The last agreement was concluded in July 2015, covering the period 2015-2017.

Spain has a roughly similar **collective bargaining structure** than Portugal, characterized by a medium degree of centralization. Similar to the Portuguese situation, **sectoral collective agreements** have traditionally prevailed over company agreements in terms of workers covered. Nevertheless, a distinctive feature of the Spanish system is the traditional weight that 'intermediate' sectoral collective agreements concluded at provincial level, and to a lesser extent regional level, have had. As far as **company collective agreements** are concerned, they have played, as in Portugal, a secondary role, although they have been fostered in recent years (2012) by means of legal reforms giving prevalence to this bargaining level (see section 2).

The Spanish system of collective bargaining also guarantees a high collective bargaining coverage rate, above the European average (77.6% in Spain vs. 72.9% in Portugal according to ICTSS 2013). As in Portugal, legislation has played a key role in promoting collective bargaining. Instead of extending collective agreements by Ordinances, Spanish legislation has mostly favoured this regulatory mechanism through the general efficiency principle of collective agreements (*erga omnes* principle) that guarantees the applications of an agreement within its functional ambit to all workers and companies regardless if they are affiliated to the bargaining parties. Provisions that ensure continuation of collective agreements beyond expiry, recently modified (so-called ultra-activity principle) have also contributed to guarantee high coverage.

As in Portugal, wage increases agreed in Spain have tended to evolve in line with the inflation rate during the years prior to the crisis. From 1995 to 2007, a period of economic growth, the average annual wage increase agreed was 3.6% while the average annual inflation rate was 3.1% (Cruces et al. 2013). In 2008 and 2009, wage increases were agreed at a higher level than the inflation rate but since then, and especially since 2010, a trend of wage moderation is observed.

The National Minimum Wage (NMW) is less relevant in Spain than in Portugal. According to the Spanish Central Bank (2012), only between 0.6% and 0.9% of total employees were affected by the minimum wage from 2004 to 2009. In 2016, only 1.2% of workers received a remuneration equal or lower than the NMW (Archondo et al., 2017). The very low level at which the NMW is fixed in Spain implies that it barely influences the wages agreed in collective bargaining. Thus, traditional low wage sectors such as cleaning, retail or hotel and restaurants, tend to agree wages higher than the statutory minimum wage (Banyuls et al. 2011).

In a nutshell, main features of the Spanish system are:

- An irregular tripartite social dialogue which tend to be negatively affected by the economic crisis
- A relatively dynamic bipartite concertation at macro-level which has remained active during the last crisis, negotiating issues aiming to improve competitiveness such as internal flexibility or wage moderation.
- A structure of collective bargaining that has remained quite constant since the end of the 1990s. Under this system, the majority of workers are covered by provincial sectoral agreements and national sectoral agreements, while company agreements cover less than 10% of the total employees. Similar to Portugal, sectoral agreements are the strongest element although negotiated at provincial level instead of at national.
- A residual role of the NMW in favouring wage equality and influencing the wages agreed in collective bargaining, as opposed to Portugal

2 Assessment of collective bargaining

This section assesses the main political interventions in collective bargaining which are compared with those implemented in Portugal.

Prior to the crisis, the most important reform of collective bargaining rules was approved in 1994. Since the crisis began two reforms of the collective bargaining rules were implemented (2011 and 2012). The most important reform of collective bargaining rules was implemented by the Popular Party in 2012, by means of the Royal-decree 3/2012, later transformed in the Law 3/2012. Both reforms were not agreed with the social partners. Reforms were a response to the high level of unemployment, being oriented to foster, among other goals, wage moderation. The rationale behind the reform was that some elements of the system of collective bargaining were too rigid. The main problems identified were related to the obstacles that hamper companies to modify or adapt working arrangements in order to adjust to shocks within a framework that left little room for bargaining at company level; and the inefficiency of the system to set up wage increases that reflect productivity growth.

Bearing this diagnosis in mind, the reforms introduced very important changes in three key aspects:

- coordination and prevalence between different levels of collective bargaining with a view to promote decentralisation
- continuation of collective agreements beyond expiry (so-called ultra-activity).
- opt-out clauses

2.1 Coordination and prevalence between different levels of collective bargaining

As in Portugal under MOU (2011-2014), the Spanish government has promoted decentralisation favoured by Country Specific Recommendations¹ that noted that the predominance of provincial and sectoral-national agreements leaves little room for negotiations at the company level.

In 2011, the Government of the Socialist Party reformed the legal principle coordinating different levels of collective bargaining as part of the broader reform of collective bargaining rules (Royal-decree 7/2011 of 10th June). By means of this reform, it gave priority to company-level agreements over sectoral multi-employer (whether national, regional or provincial) in matters such as basic pay and pay supplements. However, the law allowed social partners to establish –whether at the inter-professional level or sectoral level (regional and national) – another structure of collective bargaining which could continue to prioritise the sectoral level. In 2012, the Popular Party reformed this mechanism again as a part of a deep reform of the Spanish labour market legislation (Law 3/2012). It gave priority to company-level agreements over sectoral multi-employer agreements (whether national, regional or provincial) in matters such as basic pay and pay supplements even if social partners decide to establish an alternative structure of collective bargaining.

Beside these reforms, it is important to note that the “cross-sectoral agreement on collective bargaining 2012-2014”, which was concluded one month before Royal-decree 3/2012 was enacted, encouraged the sectoral social partners to promote the decentralization of collective bargaining. More specifically, it pointed out that sectoral collective agreements should promote collective bargaining at the company level in order to regulate working time and wages, for being “the most appropriate level to regulate those issues”.

¹ The COUNCIL RECOMMENDATION of 12 July 2011 on Spain's 2012 national reform programme

2.2 Continuation of collective agreements beyond expiry (so-called ultra-activity)

As, in Portugal, this element was reformed. It was modified in 2012, as favoured by the CSR (12 July 2011) that criticized the existence of the automatic extension clauses of collective agreements (the so-called "ultra-activity" principle). Law 3/2012 reformed the so-called "ultra-activity" principle of the collective agreements". The 'ultra-activity' principle of Spanish labour law guaranteed the continuation of a collective agreement, even after its expiry date. Its aim was to protect existing working conditions even if an employer refused to sign a new agreement. However, law 3/2012 states that the ultra-activity principle has allowed working conditions to become static and rigid. Accordingly, the law reformed this principle, establishing that a collective agreement will cease to be in force one year after its completion. More specifically, it stated that from 7 July 2013, all expired and unrenewed collective agreements made before 7 July 2012 become invalid. While the trade unions were very critical on this reform, the main employer organisation, CEOE, has supported it as it can contribute, in its view, to rebalance bargaining, because in the previous situation trade unions had not incentives to agree new aspects if they were perceived as a deterioration.

2.3 Opt-out clauses

In Spain, the opening clauses which allow derogation from collective wage bargaining were regulated in 1994 (Law 11/1994). According to this regulation, multi-employer collective agreements had to establish the conditions and procedures which allow companies to derogate from collective bargaining.

In 2010, the previous Socialist government allowed the modification of wages stipulated in multi-employer collective agreements by means of negotiations within the company. According to the law 10/2010, companies have to consult the employees' representatives and negotiate the changes in a non-extendable period of 15 days.

Some months later, the government of the Popular Party took this a step further. This was preceded by a CSR (12 July 2011) that recommended "comprehensive reform of the collective bargaining process and the wage indexation system to ensure that wage growth better reflects productivity developments as well as local and company-level conditions and **to grant firms enough flexibility to internally adapt working conditions to changes in the economic environment**". Thus, it recommended favouring the use of opt-out clauses aiming to allow companies to adapt to changes. By means of the Law 3/2012, causes that allow companies to opt-out from collective bargaining were redefined in a less restrictive way. Companies are now allowed to argue not only economic causes, but also technical, productive and organizational causes. It is also made easier for companies to opt out from collective bargaining according to economic causes. New regulation allows opting out from collective bargaining if the enterprise records a drop in its revenues or sales during six consecutive months. In addition, new regulation has also reformed the procedures aiming to solve conflicts concerning opting out. It imposes a mandatory arbitration of the company and the employees' representatives, in those cases where an agreement has not been achieved to emit a binding decision. The mandatory arbitration falls upon the National Consultative Commission for Collective Agreements (Commission Nacional Consultiva de Convenios Colectivos), which is a tripartite body where the public administration is involved. Its implication in the arbitration affects, according to some authors, the autonomy of the bargaining parties (Valdés Dal-Ré, 2012).

The issue of opt-out clauses was also taken into consideration by the social partners in the "cross-sectoral agreement for employment and collective bargaining" (2012-2014). This agreement encouraged social partners to introduce opting-out clauses in collective bargaining allowing enterprises to derogate temporarily from collective agreements the following issues: working time, remuneration system, shift work and working system.

Table 1 below compares main elements of the political intervention in collective bargaining carried out in Spain and Portugal.

Table 1. Policy interventions in Spain and Portugal

	Spain	Portugal
Coordination and prevalence between different levels of collective bargaining	Legislation promotes decentralisation (2011, 2012)	Legislation promotes organised decentralisation (2011-2014); legislation stimulates sectoral agreements (2014 onwards)
Extension mechanism	No changes	Limit extension (2011-2014); return to unconditional extension (2014 onwards)
Opting-out clauses	Opt-out clauses are favoured (2012)	Legal possibility to withdraw introduced in 2003
Continuation of collective agreements beyond expiry	Reduced period of survival	Reduced period of survival

Source: Own elaboration

3 Assessment of the success factors and transferability

3.1 Results policy interventions in collective bargaining

Similar to interventions in collective bargaining in Portugal, one of the main aims of the political interventions was to achieve **wage moderation** or ensure that **wage increase is sensitive to productivity growth**. This goal has been achieved. As noted in the Spanish country report (European Commission, 2016), the trend towards wage moderation that started in 2010 has been consolidated in the following years, even in a phase of economic recovery and decreasing unemployment. Negotiated wages at collective bargaining have supported this trend, with an overall increase of 0.5 % in 2014, 0.7% in 2015 and 1% in 2016 (Collective Bargaining Statistics. Ministry of Employment).

It is however worth noting that wage moderation has been achieved without modifying the collective bargaining structure. Thus, government **promotion of decentralisation has not supported a more prominent role of company agreements**. Indeed, it seems that sectoral agreements, which in 2016 still cover 90% of all the employees covered by collective bargaining (Collective Bargaining Statistics. Ministry of Employment), are to some extent incorporating the effects of the reform. Thus, the legal changes that gave prevalence to the company agreements are not favouring a trend towards the decentralization of collective bargaining. It seems that social partners, including sectoral employer organisations, are not interested in decentralising collective bargaining. Reasons behind this lack of interest are varied. On the one hand, some sectoral collective agreements justify to continue giving prevalence to the sectoral level in order to "avoid an unfair competitive advantage between companies and the social dumping of workers" (sectoral collective agreement for the manufacturing of wood sector). On the other hand, qualitative research (Fernández Rodríguez et al., 2016) found that some managers express concern that a decentralization of bargaining could create a more politicized negotiation in relation to issues such as pay and working hours. Thus, they acknowledge that the existing structure has, to some extent, driven dialogue

in ways that avoided conflict and a politicization of workplace issues. Besides, the lack of bargaining culture at company level may also hamper its development.

It is also worth to analyse if, as reported in Portugal, other elements of the legal reforms (opt-out clauses and limitation of continuation of collective agreements beyond expiry) have produced a drop in collective bargaining coverage. As opposed to what some authors foresaw, **collective bargaining coverage in Spain** (including sectoral agreements) **has increased in recent years** and the impact of opting-out clauses affecting general efficiency of collective agreement has been scarce (García Calavia and Rigby, 2016).

Finally, Spain also records, as reported in the Host Country Discussion Paper for Portugal, an increase in the percentage of people at risk of poverty (from 23.78% in 2008 to 28.6% in 2015 according to Eursotat) and in the in-work poverty rate (from 11.3% in 2008 to 13.2% % in 2015 according to Eurostat). However, these indicators are also affected by other elements and trends (increase unwished part-time work, etc.). Moreover, the fact that collective bargaining coverage (and sectoral coverage) has remained high makes complex to clearly relate increase in **income inequality** to collective bargaining reforms.

3.2 Success factors and transferability

The government reform on collective bargaining has favoured wage moderation. A goal which was considered essential to reinforce Spanish competitiveness and contribute to reduce unemployment. However, decentralisation of collective bargaining, which was also explicitly promoted as a means to extent internal flexibility and favoured wage moderation, has not been observed. Bearing this in mind, it can be concluded that main success factor of the reform is related to the effect in the change of the dynamic of sectoral collective bargaining that results from its impact in modifying the actors' expectations and calculations.

Changes in actors' expectation may have been favoured as a result of legal reforms which have to some extent altered the balance of power between trade unions and employers. Thus, the threat of negotiating less favoured conditions at company level together with the end of the ultra-activity principle and the reforms that made easier employers to opt-out from a collective agreement and pursue internal flexibility, may have affected the dynamic of collective bargaining. This outcome contrast with the Portuguese path, at least under the MoU adjustment programme, which, according to the Host Country Discussion Paper, resulted in a breakdown of collective bargaining, especially at sectoral level.

Outcomes achieved in terms of wage moderation must also be attributed to the role played by bipartite negotiations at macro-level which have favoured coordination of collective bargaining through non-legally bindings agreements. As recognised by the European Commission (2016), the trend towards wage moderation started in 2010, two years before the most important labour market reform was approved. In this sense, attention should be drawn to the fact that in 2010, social partners signed the cross sectoral agreement for employment and collective bargaining 2010-2012 which abandoned the indexation mechanism traditionally used in Spain, based in the inflation forecasts. Rather, it established that salary increases agreed in collective bargaining should oscillate between 1% and 2%. I

Regarding the transferability potential of the Spanish reform, three main lessons learned on the effects of the reform can be highlighted:

- Industrial relations patterns and traditions historically consolidated through autonomous negotiations are relevant factors to understand the structure of collective bargaining. As in Portugal, these elements may contribute to understand resistances of social actors to imposed changes.

- Changes in the outcomes of collective bargaining may derive from modifications in the actors' expectations and calculations as a result of a new balance of power between the bargaining parties rather than from a new collective bargaining structure
- The impact in the actors' expectations and calculations may however be also affected by additional external factors beyond legal reforms which can also have an impact on the balance of power between the bargaining parties. Thus, it should be evaluated how the new dynamic of collective bargaining observed evolve within a more favourable economic and labour market scenario

4 Questions to the host country in the Peer Review

- Is there a role for bipartite negotiations at macro level as a way to foster coordination of collective bargaining through wage negotiations?
- Which factors lead social partners in Portugal to reject organised decentralisation of collective bargaining? Which structural factors (low trade union density, low % of workplaces with employee representative structure, small company size, etc.) explain the position of employer's organisations and trade unions?
- How do the employer organisations assess the return to unconditional extensions of collective agreements?
- Which incentives provide unconditional administrative extensions of collective agreements to the employer organisations in order to enter into negotiations?

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Annex 1 Summary table

Background to collective bargaining in the peer country

- An irregular tripartite social dialogue which tend to be negatively affected by the economic crisis. As opposed to Portugal, recent attempts to revitalise concertation have not produced relevant outcomes in terms of social pacts
- A relatively dynamic bipartite concertation at macro-level which has remained active during the crisis, negotiating issues aiming to improve competitiveness such as internal flexibility or wage moderation.
- A structure of collective bargaining where the majority of workers are covered by provincial sectoral agreements and national sectoral agreements, while company agreements play a secondary role. Similar to Portugal, sectoral agreements are the strongest element although negotiated at provincial level instead of at national
- A residual role of the NMW in favouring wage equality and influencing the wages agreed in collective bargaining, as opposed to Portugal

Assessment of collective bargaining

- Reforms on collective bargaining in Spain were a response to the high level of unemployment, being oriented to foster, among other goals, wage moderation. They were unilaterally enacted and influenced by CSRs
- The rationality behind the most important reform (Law 3/2012) was that some elements of the system of collective bargaining were too rigid: there were obstacles that hampered companies to modify or adapt working arrangements in order to adjust to shocks whitening a framework that left little room for bargaining at company level; the system was not efficient to set up wage increases in line with productivity growth.
- The 2012 reform introduced very important changes in three key aspects: 1) mechanism governing coordination and prevalence between different levels of collective bargaining with a view to promote decentralisation; 2) limitation to one year of the continuation of collective agreements beyond expiry (so-called ultra-activity); 3) more favourable conditions to implement opt-out clauses

Assessment of success factors and transferability

- The trend towards wage moderation that started in 2010 has been consolidated in the following years. Negotiated wages at collective bargaining have supported this trend
- Wage moderation has been achieved without been modified the collective bargaining structure. Thus, government promotion of decentralisation has not supported a more prominent role of company agreements
- Collective bargaining coverage in Spain (including sectoral agreements) has increased in recent years and the impact of opting-out clauses affecting general efficiency of collective agreement has been scarce (García Calavia and Rigby, 2016).
- Main success factor of the reform results from its impact in modifying the actors' expectations and calculations rather than in the consolidation of a new collective bargaining structure. Changes in actors' expectation may have been favoured as a result of legal reforms which have to some extent altered the balance of power between trade unions and employers

Questions to the host country in the Peer Review

- Is there a role for bipartite negotiations at macro level as a way to foster coordination of collective bargaining through wage negotiations?
- Which factors lead social partners in Portugal to reject organised decentralisation of collective bargaining? Which structural factors (low trade union density, low % of workplaces with employee representative structure, small company size, etc.) explain the position of employer's organisations and trade unions?
- How do the employer organisations assess the return to unconditional extensions of collective agreements?
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