

Wage Devaluation: A Legal and Economic Perspective

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Abstract

The financial crisis between the years 2008-2013 has changed European economies, not only by its direct effects, but also by the reforms implemented to overcome it. Countries that have suffered the crisis the most, like Spain, are probably ones that have transformed their labour market institutions more profoundly.

Salary is probably the best example of a Labour Law institution whose effects go beyond employment. Wage devaluation implemented in some of these countries served the macroeconomic purpose of devaluating the national economy. Its implementation was also justified by avoiding job destruction from an internal perspective.

Its use has not been without controversy. Whereas some studies highlight that wage adjustment has probably contributed to the recovery, others focus on its social effects. The aim of this paper is to analyse, from both a legal and economic point of view, the development of this kind of labour policy and its effects from a socio-economic perspective.

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1. Introduction

The economic crisis that starts in 2008 has had both multiple effects and stages. The so-called “public debt crisis” and “euro crisis” has produced several impacts on multiple facets, social and labour perspectives included. The efforts of various European countries to face the first period of the crisis, with a collateral increase of public debt and deficit, determined the adoption of new and contrary measures compared with the previous ones, linked to the austerity policy. In the context of the euro area, where traditional monetary policies could not be adopted, these countries were obliged to apply the so-called internal devaluation. In other words, as monetary devaluation could not been implemented (at least, for a single country or countries), prices (or costs) had to be reduced. As a consequence, most of these countries have developed different mechanisms to reduce wages, one of the most important being production costs, in order to become more competitive.

Hence, policies that focus on wage controlling or reduction have extended all over Europe. Actually, the European Commission has supported this policy as a way to recover from the crisis and it has been a common and usual point in every evaluation of National Reform Programs (¹).

In the case of Spain, one of the countries most affected by the crisis, the 2010 and 2012 labour market reforms have been the main instruments used to develop this strategy, along with successive budgetary cuts that affect civil servants. Although wage devaluation was not a declared objective of these reforms, it has been one of its most important points, as a part of the actions directed towards developing internal flexibility. Three main mechanisms have been adopted in the framework of this strategy. First, the establishment of the application priority of collective bargaining at a company level; second, the reform of “ultractividad”, that is, the non-application of the collective agreement after a certain period of bargaining without consensus; and last but not the least, the enlargement of “descuelgue” or “autodescuelgue” or the non-application of some issues, salary included, if this is justified by an economic, technical, organizational or productive reason.

In a country where unemployment has reached unmaintainable rates, all the measures that focus on avoiding dismissals seem to be welcome. Moreover, from a macroeconomic perspective, all these mechanisms would be able to contribute to the final aim of internal depreciation through wage devaluation.

Although the effects on the macroeconomic field have been late in appearing (Spain comes out of recession at the end of 2013), the effects on the social panorama rose quite soon and quite dramatically: the unemployment rate has continued to increase from 2010 to 2014, unemployment among the youth is the highest in Europe together with Greece (above 50%) (²); the poverty rate is at 21.1 % in 2012(³); Spain is the

¹ According to art. 126 TFEU. Some of these recommendations are compiled in COM(2015) 85 final 015 European Semester: Assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011.

² See the latest data in Eurostat.

³ Fuente: INE. Encuesta de Condiciones de Vida 2011. Provisional data

OECD country where inequality has increased the most and the second one if we focus on child poverty (⁴).

Additionally, some recent studies elaborated by the OECD and the ILO (⁵) have declared that the wage devaluation policy could have a negative impact on the economic recovery and on the short and medium-term Spanish growth. The main point would be that, whereas salaries were kept low, they could not contribute to increase the aggregate demand and, in this sense, the whole economic recovery. Contrarily, other international organisms, like the IMF (⁶), has sustained that the best way to fight against unemployment is through wage moderation.

The aim of this paper is to analyse, from both a legal and economic point of view, the development of this kind of labour policy and its effects from a socio-economic perspective. We will primarily focus on Spain as one of the countries where, both the effects of the crisis and the implementation of this policy, has appeared more intensely. Firstly, we will study the evolution of salaries in Spain and Europe and the impact of the reforms mentioned above on them. Secondly, we will describe the legal instruments used to achieve the objective of wage devaluation. Finally, we will balance the pros and cons of this policy in the context of economic recovery.

2. Wage as an economic policy

Before the international economic crisis, Spain was considered to be an example of success. Its Gross Domestic Product (GDP) growth rate was one of the highest in Europe, above 3%, enabling Spain to surpass the European GDP average for the first time in its history. Spain's GDP per capita was higher than Italy's in 2007, the eighth economy in the World, the fourth one in Europe (⁷). Also, the unemployment rate, traditionally high in this Mediterranean country, fell back to the European average, around 8%. All these factors permitted many to speak about "the Spanish miracle" (⁸).

Table 1. Main economic variables in 2007

	UE	SP	IT	GE	FR	IR	DK	UK	US
GDP pc	25,000	26,200	26,000	28,800	26,900	36,500	30,600	29,4000	38,900
Real GDP Growth Rate	3.2	3.5	1.7	3.3	2.3	5	1.6	3.4	1.8
Unemployment	7.2	8,2	6.1	8.7	8.0	4.7	3.8	5.3	4.6

⁴ OECD, *Crisis Squeezes Income and Puts Pressure on Inequality and Poverty. New Results from OECD Income Distribution Database*, OCDE, 2013, p. 3 y 6.

⁵ OECD, *OECD Employment Outlook 2014*, OECD Publishing, 2014, cap. 2. ILO, *Spain: Growth with Jobs*, 2014.

⁶ INTERNATIONAL MONETARY FUND (ED.), *Legacies, Clouds, Uncertainties*, International Monetary Fund, Washington, DC, 2014.

⁷ However, according to new changes in Eurostat's methodology for calculating GDP applied from June 2014, Italy was ahead by only 0.8 perceptual points. Both of them are now below the European average.

⁸ «Party's Over», *The Economist*, 15 March 2008, pp. 3-4. But Spain was not the only one. The reference the "Celtic Tiger" was also very famous, «The Luck of the Irish», *The Economist*, 16 October 2004.

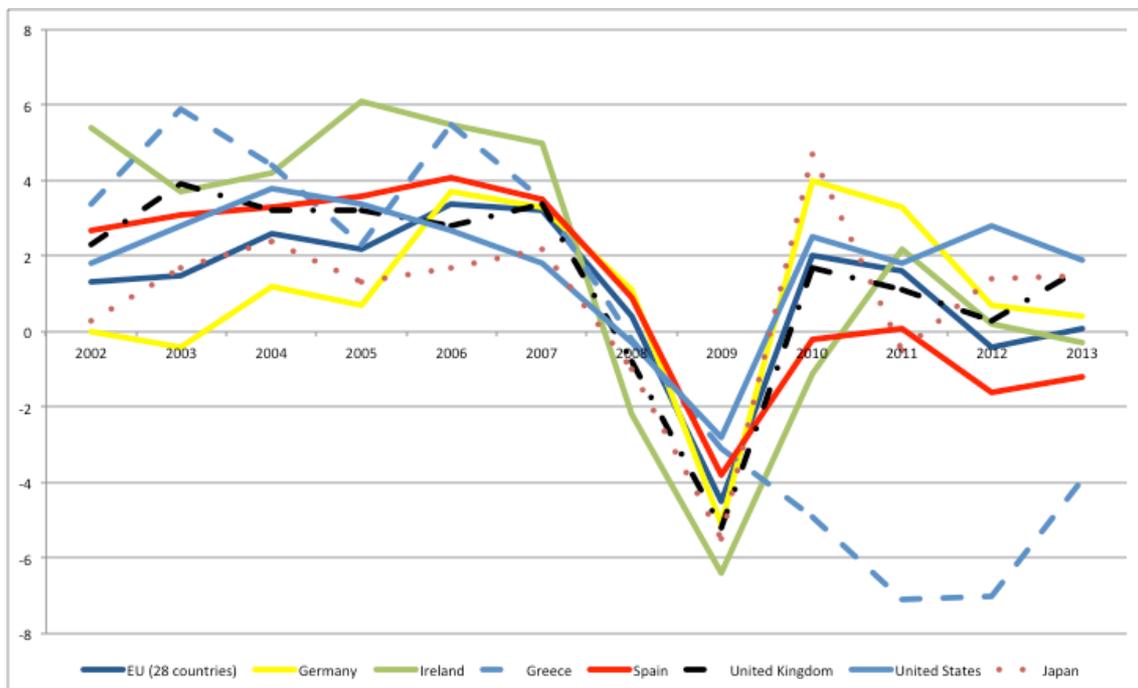
Rate									
Inflation	2.3	2.8	2	2.3	1.6	2.9	1.7	2.3	2.8

Source: Eurostat. Data for 2007

However, the economic crisis made this strong position suddenly collapse. In spite of that, even though our GDP growth rate fell less than the others at the beginning, the effects of the crisis have been rather more persistent. As chart 1 shows, generally speaking, Europe registered a less favourable trend than the US, probably because of the different strategies used to fight against the crisis on either side of the Atlantic. Eventhough it pays attention to European economy, there are strong differences among countries. It shows that most of them have suffered the so-called “W-Crisis”. This name comes from the form of the lines that represent GDP growth, which follows a trend quite similar to the letter “W”. This is the case of Spain and the whole of the EU. On the other side, Greece is still living a rather profound and much too long “U-Crisis”.

The final result is shown in chart 2, which represents the GDP per capita of all EU Members, the US and Japan. Except for the eastern European countries, Austria, Belgium, Denmark, France, Germany and Sweden as well as the rest of the states have not yet recovered the level of wealth prior to the depression (⁹). Moreover, it is important to highlight that Spain’s GDP is the fourth one which has reduced the most (-9.6%), after Greece (-18.4%), Ireland (-15.6) and the United Kingdom (-11,5%).

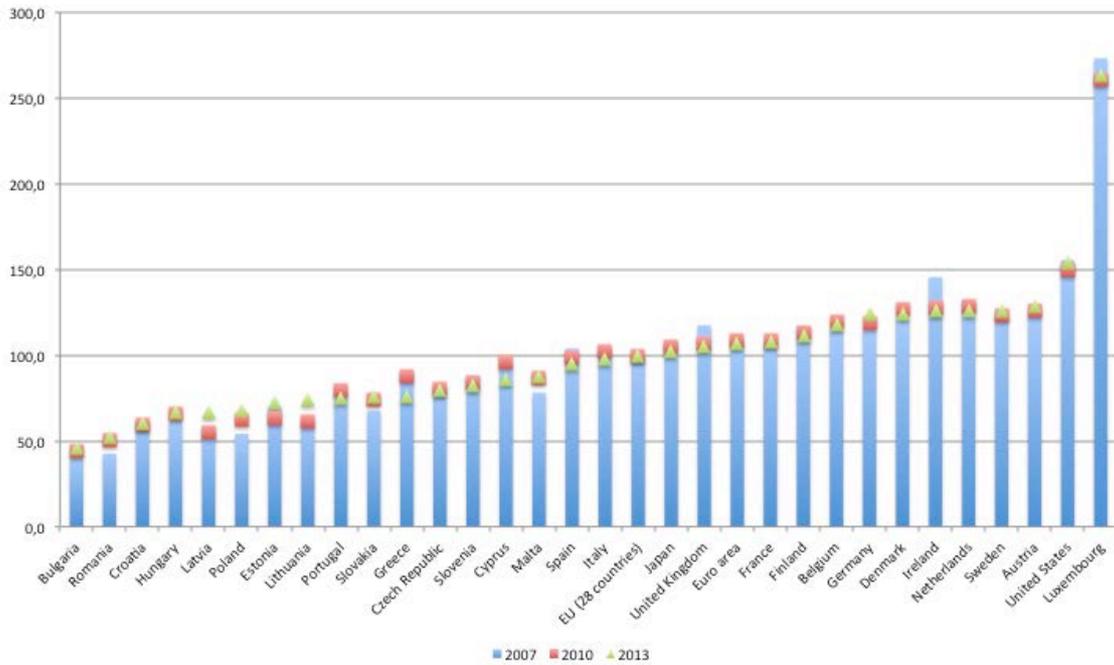
Chart 1. Real GDP growth for selected countries



Source: own elaboration based on the Eurostat.

⁹ Additionally, if we focus on these countries, neither Belgium, nor Denmark or France overcomes the barrier of 2%.

Chart 2. GDP per capita in PPS



Source: own elaboration based on the Eurostat.

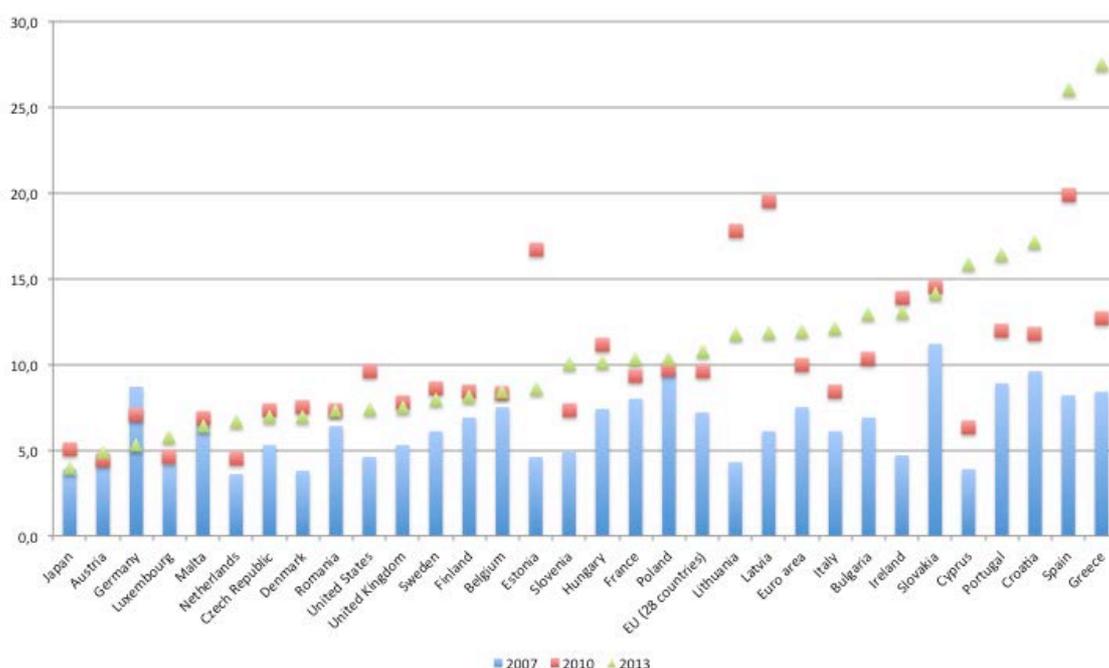
Nevertheless, in the Spanish case, the main impact of the crisis has been on the labour market. As the country was the one which created the most jobs in the period immediately before the crisis, we are now just the opposite. We are those that destroy most jobs (¹⁰). Spain is, along with Greece, the EU country with the highest unemployment rate. Its level of unemployment is more than five times higher than the country that has the lowest level in Europe (¹¹). Additionally, Spanish youth suffer the highest unemployment in Europe (along with Greece again) (¹²).

¹⁰ According to the Eurostat, at the end of 2013, Spain's unemployment rate picked up at 26.4%, which put it on the top of the unemployment ranking, in contrast to the country which has the lowest level, Austria, with 4.9%. The latest data (March 2015) is 23.0%. The Austrian unemployment rate is still one of the best, at 5.6%, but not the best one, which is Germany's with 4.7%. Anyway, the proportion is still around five times higher. It is still at 23.0%.

According to the Eurostat, Spain generated 35% of employment in the EU between 2000 and 2007, whereas, on the contrary, it has added 47.5% of the total unemployed people registered between 2007 and 2012. Spain destroyed as much employment as the entire European Union.

¹² The youth unemployment rate for Spain and Greece are 57.2% y 53.9% respectively (First Quarter 2014).

Chart 3. Unemployment rate



Source: own elaboration based on the Eurostat.

Among the policies implemented in order to overcome this difficult situation, the so-called “internal devaluation” emerges. As State members of the euro zone cannot apply a monetary devaluation, the natural way to improve their competitiveness and stimulate their aggregate demand, some of them have been forced to develop different kinds of mechanisms to reduce their costs and, hence, their prices. As one of the most important costs is wage, measures adopted in the Labour Law field took on special importance. In this sense, internal devaluation became “wage devaluation” or slowdown in wages.

Wage devaluation can produce two kinds of different effects. First, from an external point of view, as explained above, it permits States to reduce their relative prices, improving their competitiveness. In countries characterized by sizeable current-account deficits but without flexible exchange rates, like the euro-area countries, wage adjustments have the potential to promote aggregate demand by enhancing external competitiveness (“external rebalancing”).

Secondly, from an internal perspective, wage adjustment may be seen as a tool to avoid the effects of unemployment. In this sense, it would be used as a sort of employment policy, which might show the trade-off between labour costs and employment. Wage adjustments may affect the extension and persistence of unemployment by mitigating its cyclical fluctuations within a context of demand shock (“internal rebalancing”) ⁽¹³⁾. This is the reason which explains that some European countries, including Spain, have taken the so-called “German model” as an example. Actually, eventhough this policy is not directly linked to wages because it is based on part-time jobs and the suspension of

¹³ OECD, “Sharing the Pain Equally? Wage Adjustments During the Crisis and Recovery”, in *OECD Employment Outlook 2014*, OECD Publishing, 2014, p. 47.

the employment relationship, the indirect effect of these measures on salaries is quite obvious.

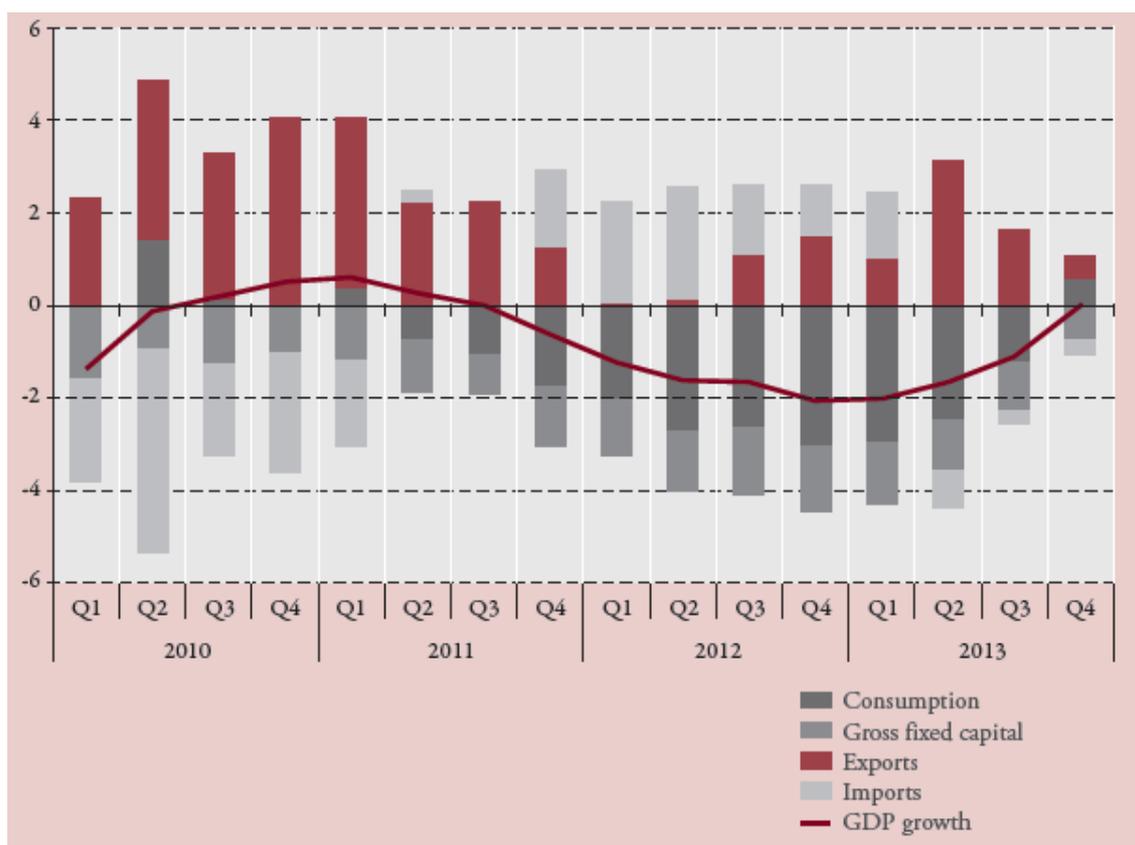
Both effects have produced important discussions about their effectiveness, efficiency and consequences. Regarding the first one, there is not a complete consensus about whether internal devaluation has stimulated exportations as the first step on the way to recovery. Whereas some international institutions highlight the performance of exports as a sign that internal devaluation is functioning (see next chart), other studies wonder if wage reductions are translating to prices effectively.

According to the first one, Spain has experienced a better performance of its global market share for exports than have other countries, such as France, Germany and Italy. Concretely, the share of exports that stay within the euro area has slightly increased in nominal terms, from 3.5 per cent in 2007 to 3.6 per cent in 2013 (during the same period, the share of exports decreased for the mentioned countries), whereas the share of exports to non-euro area countries has remained stable in Spain during the recession, while it has decreased for all the main European international partners ⁽¹⁴⁾. Moreover, very recent trends suggest that Spanish exports to non-EU countries have further increased and consolidated in emerging markets. In particular, exports to other European Union members that are not part of the euro zone grew an annual 17.6%, compared with 9.8% in the latter case. Sales in Latin American countries such as Chile, Mexico and Dominican Republic expanded 37%, while exports to Asia grew (33% in China) as did sales in the Middle East (51%) ⁽¹⁵⁾.

¹⁴ ILO, *Spain*, cit., pp. 17-18.

¹⁵ Source: Ministry of Economy and Competitiveness. Data for March 2015.

Chart 4. Contribution to GDP growth by main component



Source: ILO, *Spain: Growth with Jobs*, 2014.

This better performance is summarized in Chart 4. Solely exports contributed to a higher GDP growth from 2010 to 2013 and only from this point consumption recovered in sufficient quantities to promote wealth growth as well. In other words, whereas the internal demand was absolutely depressed, the external one was what permitted recovery to begin.

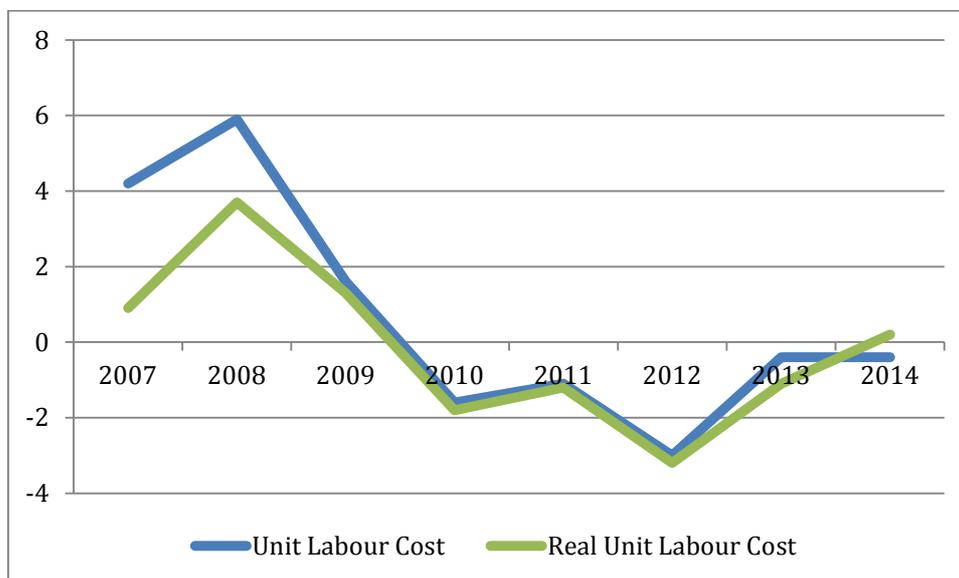
Nevertheless, this situation is also analysed from a completely different perspective. It is possible that wage adjustment serves not to improve competitiveness but to increase companies' profits. As the following chart shows, both unit labour cost (labour costs per employee) and real unit labour cost (that is, labour costs per employee without the effect of inflation) follow quite a similar trend. They increased in 2008 and decreased slightly to become negative in 2010 to reach about -3% in 2012. Only from 2013 did it get better to become positive (or almost) in 2014.

This situation is quite relevant because it means that unit labour cost reduction was not translated to a price decrease and, hence, it would be debatable if this unit labour cost reduction, that is the main consequence of wage devaluation, was being used to improve competitiveness (¹⁶). If wage adjustment does not become an improvement in competitiveness, it is quite possible that what is happening is that companies are

¹⁶ PÉREZ INFANTE, J. I., "Crisis, reformas laborales y devaluación salarial", *Relaciones laborales: Revista crítica de teoría y práctica*, 10, 2013, p. 93.

increasing their profit margin. Other researches confirm this hypothesis (¹⁷), so wage devaluation would be useful for the whole society only if wage adjustment and increasing profits end up being reflected in investment and employment

Chart 5. Unit Labour Costs and Real Unit Labour Costs



Source: own elaboration based on the INE database (CNE).

Regarding the second perspective, wage devaluation may be used as a kind of employment policy whose objective is to avoid dismissals by reducing labour costs through salary. From this point of view, a trade-off between dismissal and wage reduction emerges, this last one being the least painful option.

But, again, the problem and its solution may be analysed from different perspectives. One of them is that which considers unemployment as a problem in which institutions (Labour Law) play a very important role. From this point of view, Labour Law institutions would not permit the labour market to adjust fluidly so the solutions must come by making it more flexible. «Our analysis of microeconomic data between 2008 and 2013 suggests that the wage adjustment process in Spain, which began in earnest only in 2010, has been slow and inefficient and has hit temporary workers disproportionately hard. Whereas total employment fell by more than 16%, real aggregate wages in Spain fell by about 4.5% over the 2008-2013 period. However, this aggregate figure masks a greater underlying reduction in individual wages, which occurred at the same time as changes in the composition of the employed population: as massive labour shedding was taking place, more tenured, more educated, and more qualified workers tended to be relatively less affected» (¹⁸).

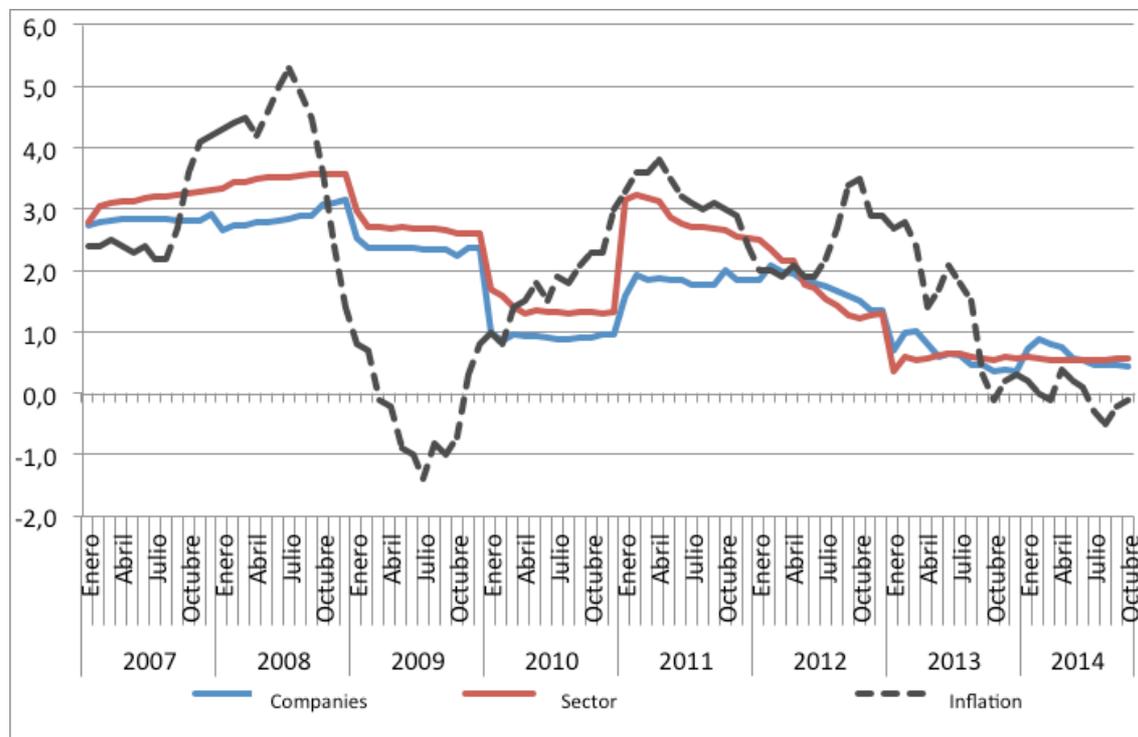
The following chart explains this situation in a simple way. Along with the collapse of GDP growth, inflation also decreased suddenly at the end of 2008. However, salaries

¹⁷ SALAS FUMÁS, V., “Relación entre beneficios empresariales y la recuperación de la economía española”, *Cuadernos de Información económica*, 242, 2014, pp. 11-20.

¹⁸ ORSINI, K., “Wage Adjustment in Spain: Slow, Inefficient and Unfair?”, *ECFIN Country Focus*, vol. 11, 2014.

took one year to follow a strong enough reduction. Only at the end of 2009 wages and prices achieve a similar level, around 1%. This would be a clear example of the rigidity of the labour market regulation, which justifies the adoption of structural reforms as those adopted in 2010 and 2012 (¹⁹).

Chart 6. Wages and inflation



Source: own elaboration based on the BEL (Boletín de Estadísticas Laborales) and the INE

Nevertheless, from other perspectives, the rise of unemployment must be explained by the general performance of the economy (²⁰). Whereas during the Golden period the construction sector created more jobs, after the crisis it counted for about half of the jobs destroyed. This means that, on the one hand, as job destruction focused on precarious and low qualified jobs, it is quite simple to conclude that statistics tend to overestimate wage increases and underestimate declines (like the one that occurred at the beginning of the financial crisis). On the other hand, institutions do not have to do much, because it would be necessary to rebalance some economic sectors in order to solve the more general economic problem of a specific State, in this case Spain. Moreover, from this explanation, the adoption of wage devaluation does not contribute to improve the economic situation, but to deteriorate it because of the depression of the internal demand as we saw previously. The final result is the chronicity of the state of economic depression and its extension, with the undesirable effects that go with it.

¹⁹ These reforms, especially the one in 2012, have been called “ablation reforms” to underline their painful effects on the worker’s right in contrast to the euphemistic use of the word “reform”. CASAS BAAMONDE, M. E., “La eficacia y la eficiencia del Derecho del Trabajo: reflexiones sobre un Derecho cuestionado por la economía y el desempleo”, *Relaciones laborales: Revista crítica de teoría y práctica*, 10, 2014, pp. 15-44.

²⁰ RUESGA BENITO, S., “El shock de empleo en la Gran Recesión 2.0.”, en *¿Qué ha pasado con la economía española?: la gran recesión 2.0 (2008 a 2013)*, Pirámide, 2014.

3. New legal instruments to address the wage devaluation

As we have said, in Spain, several labour market reforms have been approved by the previous and current government in laws enacted in 2010 and 2012, respectively. Certainly, the 2012 labour market reform has focused on wage issues in a strong way. Firstly, it has introduced measures to increase the decentralization of collective bargaining. One of the most relevant is the priority of collective agreement at the firm level over those at the sector level. Secondly, the opt-out rules have turned into a flexible instrument for enterprises. In addition, we should take into account other measures which have some effects on the wage.

3.1. The decentralization of collective bargaining

Before the aforementioned labour reform, one main characteristic of the Spanish model has been a very high level of collective bargaining coverage of around 80-85%. In addition, collective agreements at the firm level were not allowed to be applied at the same time as collective agreements at the sector level. It meant that one company could not apply its own collective agreement while a collective agreement at the sector level was in force. In practice there was a great preponderance of provincial agreements and the structure of collective bargaining was not coordinated ⁽²¹⁾.

The 2012 labour market reform gave priority to collective bargaining agreements at the firm level over those at the sector level for many important employment matters (wage, hours, overtime, shifts, job classification, work-family reconciliation, etc.), so that collective agreements could adjust more closely to the specific needs of a firm. It is a mandatory rule to include all the parties in the negotiation. Unions are not allowed to modify this rule in order to reduce the role of collective agreement at the firm level ⁽²²⁾.

In Spain, the new rule does not allow the application of the favourability principle. It means that companies are entitled to decide on lower wages rather than on sector agreements. They should only respect the legal minimum wage but not the wage set at the sector level. The Spanish Labour reform has been very drastic in comparison to other countries. For example, in France and Belgium collective agreements at the firm level are not allowed to set wages lower than wages agreed at the sector level. However, according to the last reform in France, it is allowed to negotiate wages that are lower than the sector because of employment issues when companies have economic difficulties ⁽²³⁾.

The analysis of collective agreements at a company level shows that enterprises have agreed on wage cuts in the last years. In return, employees have obtained job stability

²¹ ESCUDERO RODRÍGUEZ, R. and MERCADER UGUINA, J.R., *Informe de Estructura de Negociación Colectiva*, Secretaría de Acción Sindical CCOO, Madrid, 2009.

²² Judgment of the National High Court 12 December 2012 and Judgment of the Supreme Court 8 July 2014.

²³ See RAMOS MARTÍN, N., *Sector-level Bargaining and Possibilities for Deviations at Company Level: France*, Eurofound, 2011 and KEUNE, M., *Sector-level Bargaining and Possibilities for Deviations at Company Level: Belgium*, 2011. The Spanish model is similar to the Greek case, BUSH, K., HERMANN, C. and SCHULTEN, T., *Euro Crisis, Austerity Policy and the European Social Model How Crisis Policies in Southern Europe Threaten the EU's Social Dimension*, 2013, p. 11.

but only in some cases (²⁴). There were some agreements which reduced wages until the legal minimum wage as an exception (²⁵). Also, wage revision clauses in collective agreements have acted as a functional equivalent to indexation. There has been a sharp decline in their use since 2008 (²⁶). In addition, we should underline that some companies have increased the working time without increasing employees' wages (²⁷).

So that it is a way to reduce labour costs. Despite the labour market reform, the structure of collective bargaining has not been modified in a strong way in practice. It is true that the reform has achieved some positive results in order to reduce the number of collective agreements at a provincial level. However, the number of collective agreements at the firm level has not undergone a relevant change because these agreements only cover the 10% of the employees. So we could say that the purpose of decentralization is not a reality yet. It is due to a lack of worker representatives in some enterprises. According to the Spanish Labour Law only companies with at least 6 employees may call worker representatives elections. However, data shows that 78% of the companies have less than 6 employees. It is clear that enterprises could not negotiate a collective agreement without worker representatives. In addition, elections are held in each establishment. It means that in some cases an enterprise may negotiate an agreement which regulates working conditions for one establishment and not for the undertaking as a whole (²⁸).

²⁴ Convenio colectivo Federación Farmacéutica, SCCL (BOE 12-01-2015); Convenio colectivo Ediciones Primera Plana, SA, Logística de Medios de Catalunya, SL, Zeta Servicios y Equipos, SA (centros de trabajo de Barcelona), Zeta Gestión de Medios, SA y Grupo Zeta, SA (centros de trabajo de Barcelona) (BOE 26-03-2015).

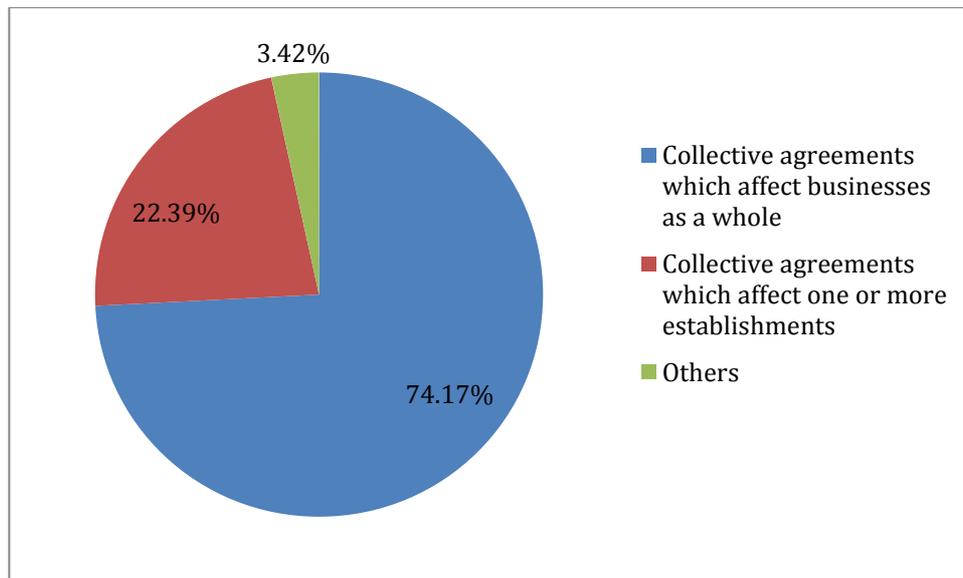
²⁵ Convenio Colectivo Claved (BOE 17-04-2013).

²⁶ EUROFOUND, *Changes to Wage-setting Mechanisms in the Context of the Crisis and the EU's New Economic Governance Regime*, 2014, p.15.

²⁷ Convenio Colectivo Eroski (BOE 30-05-2013); Convenio Colectivo Grupo Champion (BOE 10-05-2013), Convenio Colectivo Supercor (BOE 18-04-2013).

²⁸ The Spanish case is similar to the French case where collective agreements for establishments are negotiated, see ROJOT, J., "Collective Agreements in France", AA.VV. (*Collective Bargaining in Europe*), Comisión Consultiva Nacional de Convenios Colectivos, 2004, p. 109.

Chart 7. Collective agreements at a business level



Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

Some collective agreements have tried to include all the establishments with workers representatives and without workers representatives into their scopes. However, the Courts have held that these agreements are not valid (²⁹). So a company should use a different instrument to get a wage reduction. On the one hand, the company could negotiate a collective agreement for the establishments with worker representatives. On the other hand the same company could request for an opt-out for the establishments without worker representatives. Both decisions not only allow wage reduction but also the inequality between affected workers.

3.2. The flexible instrument of opt-out

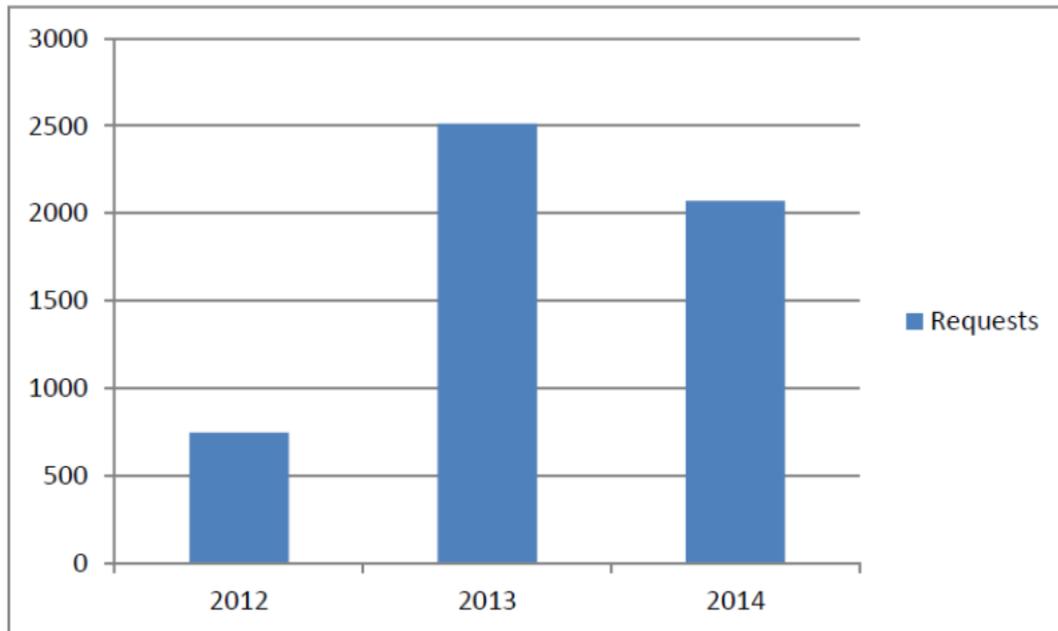
In addition, firms can now opt-out more easily from a collective agreement and pursue internal flexibility measures. For example, employers can unilaterally introduce changes in working conditions (wages, working hours, work schedules) whenever there are objective economic, technical, production or organizational reasons. In the absence of an agreement with worker representatives, the employer willing to opt out may now unilaterally refer the matter to arbitration by a public tripartite body (“*Comisión Consultiva Nacional de Convenios Colectivos*”).

In relation to the economic cause, it is necessary to allege two consecutive three-month periods in order for the decrease in revenue and sales levels to be considered persistent. According to Spanish statistics, the number of affected workers is around 277,330 from March 2012 to April 2015. Regarding the number of requests, it should be concluded

²⁹ For example, Judgment of the National High Court 13 November 2013, proceeding n° 424/2013.

that the measure is used a lot in practice by enterprises. In contrast, in the past the application of this measure was almost impossible (³⁰).

Chart 8. Number of requests (opt-out)

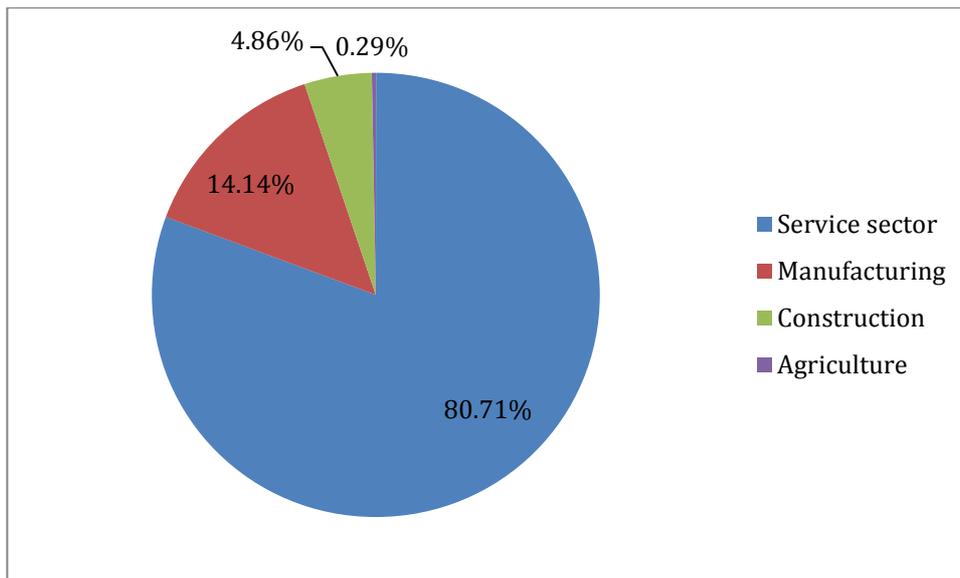


Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

It is important to underline that not all sectors have been affected at the same depth. In particular the service sector has registered the most part of requests (80.71%). Manufacturing, construction and agriculture are the least affected by the opt-outs.

³⁰ MERCADER UGUINA, J.R., “Los acuerdos de descuelgue salarial: una apuesta por la negociación de empresa”, en AA.VV, *La reforma laboral de 2010*, Lex Nova, 2010, pp. 165-167.

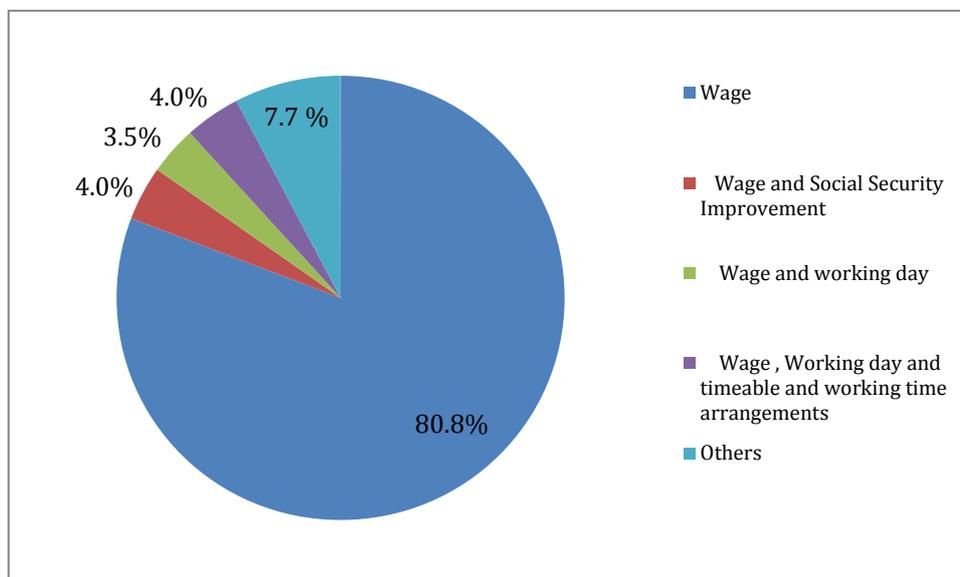
Chart 9. Number of requests by sector



Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

The reform has introduced a practically full opt-out from working conditions with respect to the single issue (salary) that existed previously. It is clear that enterprises may use the opt-out for a set of issues such as working days, timeables, working time arrangements, shift work, wages, working arrangements and social security improvements. However, wage is the most used issue in practice. In particular, 80.8% of the requests were wage issues.

Chart 10. Number of requests by affected working condition

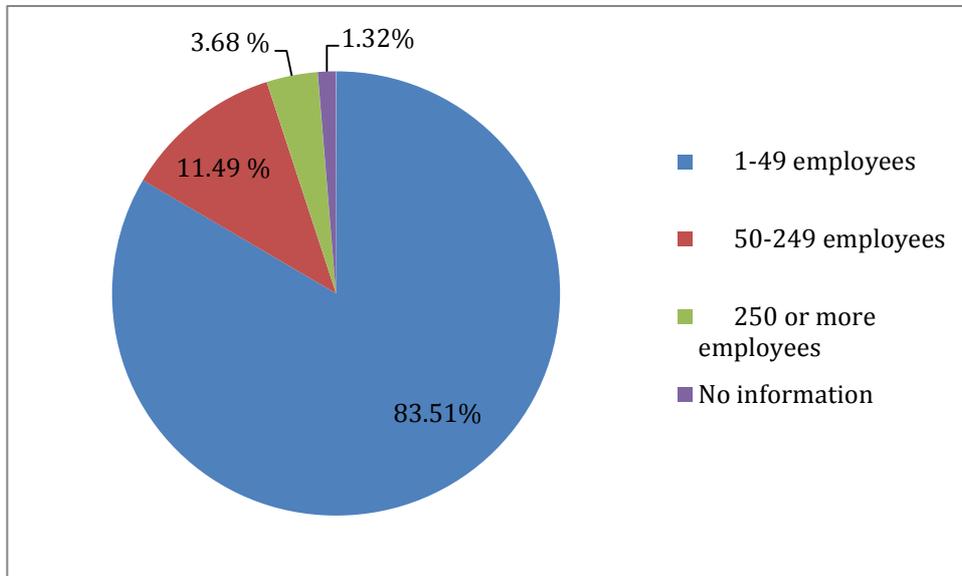


Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

If we consider the size of the enterprises which have used the opt-out, it should be concluded that it has focused on the small and medium enterprises (83.51%). It is highly

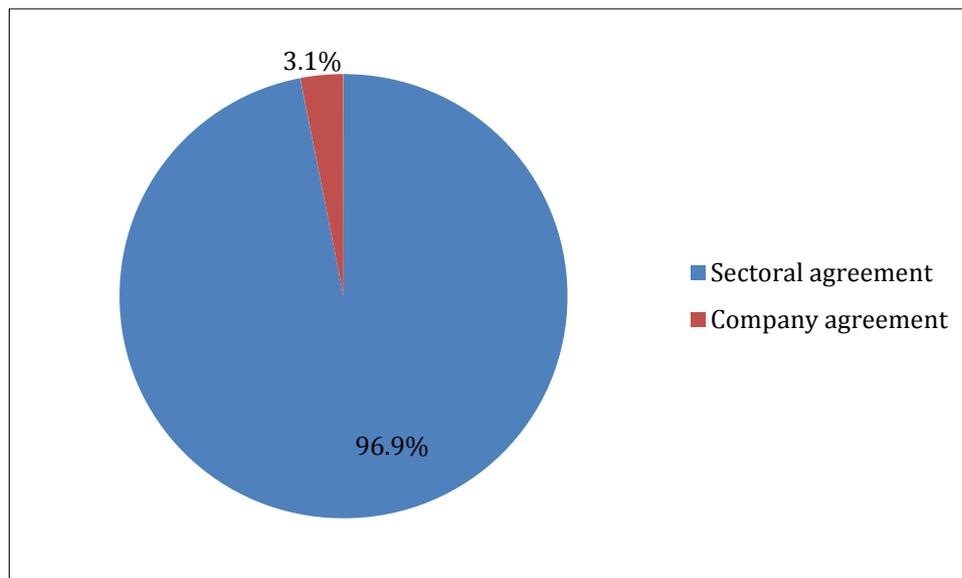
likely that these companies do not have sufficient worker representatives to negotiate their own collective agreement.

Chart 11. Size of enterprise



Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

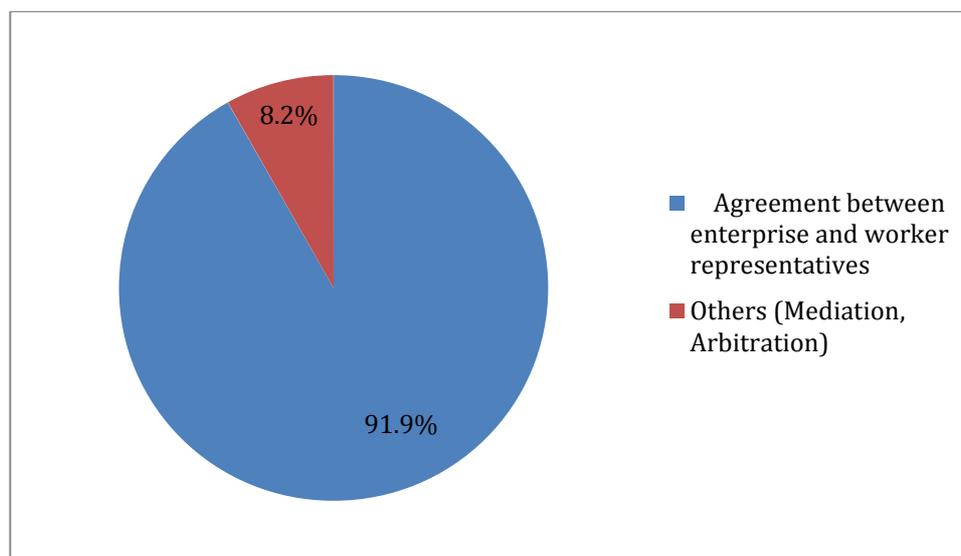
Chart 12. Scope of collective agreement



Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

It is clear that most of the enterprises were subjected to a sector agreement. It is also very relevant that almost everything has been solved by agreement between the enterprise and worker representatives. If we take into account the size of the enterprises (mainly small businesses) we could conclude that there could be serious doubts about the freedom of the parties in negotiating them.

Chart 13. Type of decision



Source: own elaboration based on “Ministerio de Empleo y Seguridad Social”

In Spain, the union confederations CCOO and UGT have opposed the government-imposed reforms, on the grounds that these reforms restrict established collective principles and rights, and depress wages. Both confederations view the present government’s reforms as being primarily ideological rather than economically motivated. So, it is very common to find clauses in the sector agreements which establish very clear limitations justifying financial loss for using it or to confer over the final decision with the trade unions (³¹). However, these clauses have been declared illegal because the labour market reform has not given power to the unions for negotiating them (³²).

3.3. Other measures

The amendments related to substantial changes in the procedures are really significant. The most noticeable of the amendments is that the reform allows the reduction of wages included in the employment contract. It is true that the law refers to a consultation period with the worker representatives. However the employer could decide on a measure if the parties have not achieved an agreement about it. The law also contemplates on the possibility of the parties submitting their dispute to a mediation or arbitration procedure. However, the culture of arbitration is almost nonexistent in Spain.

³¹ V Convenio Colectivo estatal del corcho (BOE 21-09-2012); Convenio Colectivo sector agencias de viaje (BOE 22-08-2013); Convenio Colectivo estatal sector de fabricantes de yesos, escayolas, cales y sus prefabricados (BOE 20-03-2013); Convenio Colectivo estatal estaciones de servicio 2010-2015 (BOE 3-10-2013); VI Convenio Colectivo sector de derivados del cemento (BOE 28-03-2014), MUÑOZ RUIZ, A.B., “Cláusulas potestativas de inaplicación del convenio colectivo de sector: flexibilidad normativa versus rigidez convencional”, *Revista de Información Laboral*, 2014, nº 6, pp. 285-299.

³² STSJ Andalucía, Sevilla, 14-06-2012, JUR 2012\329162; STSJ Andalucía, Sevilla, 17-01-2013, AS 702; STSJ Andalucía, Granada, 22-05-2013, AS 2006.

In addition the reform has imposed a 12-month time limit, beyond which agreements will no longer have a binding effect. Collective bargaining agreements can now be prolonged for a maximum period of only one year after their end date (the so-called period of *ultra-activity*), in order to provide incentives to social partners to rapidly renegotiate new agreements adapted to any changes in economic conditions. As a consequence, a considerable number of workers could lose the protection from being covered by a collective agreement. Responding to this concern, the social partners adopted an agreement in May 2013 encouraging their affiliates to renew collective agreements.

In particular, the measure may affect employee wages in a negative way. Although there is a legal minimum wage this issue is regulated by collective agreements. It is very common for collective agreements to set a wage higher than the legal wage (756.7 € 12 payments) ⁽³³⁾. The problem is that the parties could not reach an agreement on the legal period. In worst case scenario, the minimum wage should be applied to the affected workers.

However, the measure may be modified by the parties because the law allows it. It is very relevant to assess the impact of the labour market reform regarding this issue. The analysis of collective agreements shows that parties have modified the rule. In particular, 55% of collective agreements regulate the issue of expiration in a different way. But 45% of collective agreements do not include a specific clause about it or refer to the article 86.3 of the Workers' Statute (the period of one year). Regarding the first group of collective agreements, a broad majority (72%) extend the period of validity of the collective agreement until parties achieve a new agreement. Other collective agreements increase the period of validity between 1 year and 3 years ⁽³⁴⁾.

Recently, the Supreme Court raised the question as to whether an ended collective bargaining agreement, which was not renewed for more than one year, should continue to be in force. In a recent judgment dated 22nd December 2014, the Supreme Court understands that generally a wide interpretation should be given and that, in fact, there are two ways of interpretation. First, a ground-breaking interpretation, according to which, once the bargaining agreement has ceased to be in force, the rights and obligations of the parties there to shall be governed by the law, in such a way that the conditions of employment relations shall be those which existed before the bargaining agreement. Second, a conservative or protective interpretation, according to which, the rights of the parties should be maintained in spite of the nominal termination of the bargaining agreement.

The Supreme Court opted for the conservative interpretation, so that any right or obligation of the parties upon the termination of the ultra-activity of a collective bargaining agreement does not disappear from the moment when the said agreement ceases to be in force. That is to say that, in spite of formally ceasing to be in force, its

³³ In Spain the development of the legal minimum wage has been frozen for the past few years.

³⁴ MUÑOZ RUIZ, AB. and PERÉZ DEL PRADO, D., “Negociación colectiva de empresa: ¿hacia la recuperación económica o aún en crisis?”, *Revista de Información Laboral*, 2014, nº 10, pp. 15-40.

effect continues in the future. The Supreme Court justifies this decision upon the understanding that the rules of the extinct collective bargaining agreement had already been contractualised from the moment in which the legal-employment relationship was created, and which evolved with time as from that moment.

Furthermore, it argued that the ground-breaking theory would cause undesirable effects, given that fundamental issues such as working hours, working days or employee activities would become unregulated. As a consequence, the Court affirms that the employment conditions derived from agreements surviving the expiry of the bargaining agreement may only be modified by the procedure set forth in article 41 of the Workers' Statute. In addition, the Workers' Statute should be applied to new employees starting work in a company, and not the conditions derived from the collective bargaining agreement.

4. Conclusions

The financial crisis between the years 2008-2013 has changed European economies, not only by its direct effects, but also by the reforms implemented to overcome it. Countries that have suffered the crisis the most, like Spain, are probably ones that have transformed their labour market institutions more profoundly.

Salary is probably the best example of a Labour Law institution whose effects go beyond employment. Wage devaluation implemented in some of these countries served the macroeconomic purpose of devaluating the national economy. Its implementation was also justified by avoiding job destruction from an internal perspective.

Its use has not been without controversy. Whereas some studies highlight that wage adjustment has probably contributed to the recovery, others focus on its social effects. As we mentioned above, the number of households that have all their members unemployed rose to 12% in 2011. The percentage of poor people has grown a point per year to 21.1% in 2012 ⁽³⁵⁾. Spain is the OECD country where inequality has increased the most and the second one if we focus on child poverty ⁽³⁶⁾. Actually this international organism alerted about the negative effects of inequality in the recovery very recently ⁽³⁷⁾. Find a new balance or continue walking this way will be probably the next debate.

The latest labour market reforms have increased the power of the companies to reduce wages in a strong way. However, not all legal modifications have achieved the same results. In practice the measure most used is the opt-out, in particular by small and medium enterprises. In contrast, the priority of collective agreements of companies is more appropriate for large firms. Due to the predominance of the SMEs in Spain, the opt-out rules have produced more negative effects on wage than the priority of collective agreements at firm level. If we consider that the bargaining strength is lower in a small company than in a large company, it is very likely that employees have agreed opt-out measures but not on a voluntary basis. Whereas the impact of priority of firm agreements is still relatively low, we believe that it should be necessary to set some

³⁵ Source: INE. Encuesta de Condiciones de Vida 2011. Provisional Data.

³⁶ OECD, *Crisis Squeezes Income and Puts Pressure on Inequality and Poverty*. *New Results from OECD Income Distribution Database*, cit., p. 3 y 6.

³⁷ OECD, *In It Together: Why Less Inequality Benefits All*, OECD Publishing, 2015.

reasonable limits as in other European countries (the favourability principle). In addition, the case law has introduced the contractualization of working conditions (including wage) belong to the period of validity of collective agreements. However, the judicial criterion only affects current employees (and not includes the updating of wages) but not the future employees. There is a serious uncertainty for the future employees about if parties will achieve a new collective agreement or not with the consequences of the legal minimum wage. In addition, the current employees' wage could be reduced by the substantial changes procedures. In order to mitigate some of the negative consequences, the rise of the minimum wage could be an appropriate measure.

Finally, in our view there is not a direct link between the new legal instruments to get the wage devaluation and the job creation. It is true that in the last months there has been a weak job creation in Spain but it has not been enough to boost jobs, especially quality jobs and not precarious jobs. For us the Spanish Government has adopted some rapid measures to stimulate the competitiveness but not has decided others more equitable and effective in the medium and long term like the reconfiguration of the sector composition of the public investment.

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