

# REPORT EVALUATING THE IMPACT OF THE LABOUR REFORM



GOBIERNO  
DE ESPAÑA

MINISTERIO  
DE EMPLEO  
Y SEGURIDAD SOCIAL

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## REPORT EVALUATING THE IMPACT OF THE LABOUR REFORM: EXECUTIVE SUMMARY

### *Introduction*

*The labour reform introduces flexibility measures allowing employers and workers to adopt alternative solutions to crisis situations, so that redundancy is always the last resort.*

*It constructs a new model for labour relations which puts a stop to job destruction, lays the foundations for the creation of stable, quality employment and fosters competitiveness.*

Spain entered recession again at the end of 2011 for the second time since the start of the economic crisis, demonstrating the difficulty of generating a sound and strong recovery.

The labour market still showed significant structural weaknesses derived from its inadequate institutional design: there was excessive rigidity in the regulation of internal working conditions, very strong segmentation between the employment conditions of permanent and temporary workers, an inadequate system of collective bargaining incapable of reacting to change and an insufficient level of training for workers.

As a result, instead of being the solution, the rules regulating the labour market were an obstacle that made it difficult for the Spanish economy to grow, by making the market react with excessive volatility to changes in the cycle.

Given the seriousness of our problems, which are particularly clear in the unemployment rate, and an economy that is once again in recession, it was essential and urgent to undertake a far-reaching reform to the operating rules of the labour market.

The labour reform approved in February 2012 met this need with a broad, in-depth, balanced and dynamic modification that represented a change in the focus of employment policies. It aims to **construct a new model of labour relations that will end job destruction, lay the foundations for the creation of stable quality employment and foster competitiveness.**

Among its specific objectives are the following:

1. Favour internal flexibility in companies as an alternative to job destruction.
2. Modernise collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies.
3. Improve the employability of workers through training and effective labour mediation.
4. Promote the creation of stable and quality jobs and reduce labour-market dualism.
5. Combat unjustified absence from work.
6. Strengthen the mechanisms for controlling and preventing fraud, protecting workers' rights and the fight against unfair competition between companies.

The labour reform aims to help adapt companies and workers to the economic situation. The previous regulations did not guarantee employment stability, particularly at times of crisis, and condemned a large percentage of the population to a precarious stability that had a severe effect on the welfare of workers and drained the competitiveness of the productive

*The reform modernises collective bargaining to bring the scope of negotiation closer to the reality of the company.*

*It introduces flexibility measures so that the company and workers can adopt joint solutions in situations of crisis, and so that redundancy is always the adjustment mechanism of last resort.*

system in Spain. The use of internal flexibility mechanisms was difficult and adjustments tended to be made through redundancies.

In contrast, the new framework of labour relations introduces flexibility measures allowing companies and workers to adopt joint solutions in situations of crisis and for redundancy to be a measure of last resort. It is a reform that provides workers and companies with new tools to improve their capacity to adapt continuously to new circumstances. It is firmly committed to improving the employability of workers through training, so that they are prepared for any changes and have more opportunities to get a stable job.

The reform also includes mechanisms that encourage employers to use stable employment contracts and help reduce the precarious working conditions faced by a large number of workers. This will also have an effect on the competitiveness of companies, as they have the most interest in employing well-prepared and motivated workers and in retaining talent.

The reform strategy is therefore based on making entry into the labour market easier through permanent contracts and guaranteeing the stability of employment. It extends the possibility of using internal flexibility mechanisms that help adapt the productive structures to changing circumstances, by including greater freedom for social dialogue in the heart of the company, to make negotiation more dynamic.

The months following the approval of the reform have allowed those taking a leading role in labour relations, trade unions and employers, together with the legal and economic agents in general, to assimilate the new rules of the game and adapt the way they operate. The adaptation to these new rules will be gradual.

This assessment report presents information on the first effects that have been identified, as all the changes fostered by the report will be revealed over the reasonable period of time needed by the agents to adapt to them.

It is therefore an initial, though complete, assessment, as it includes all the information available at present. It may be said that a year after approval of the labour reform as Law it has already begun to have positive effects.

Despite seven successive quarters of recession, the faster pace of the credit squeeze and the loss of nearly 400,000 jobs in the public sector, the reform has managed to contain the increase in unemployment, stop the destruction of jobs and improve the flexibility of the labour market. It has allowed companies to adapt easier to the economic context and made our economy more competitive.

### *The starting point: the structural weaknesses of the labour market*

*The crisis highlighted the weaknesses of the institutional system of the Spanish labour market and aggravated the serious problem of the high unemployment rate.*

The crisis highlighted the weaknesses of the institutional set-up of the Spanish labour market and aggravated the serious problem of high unemployment, which led to the need to adopt a new framework for labour relations.

A significant number of the obstacles to growth in the Spanish economy were a result of the inefficient labour market, which revealed profound structural problems: excessive rigidity in the regulation of the labour market; an inadequate system of collective bargaining; a high level segmentation in employment conditions; the need to increase the employability of workers; and excessive volatility in the labour market.

#### **Excessively rigid labour market regulations**

Spain had one of the highest levels of the OECD's indicator of employment protection legislation (EPL).

The high level of labour-market rigidity was related to circumstances such as the difficulty in adopting internal flexibility measures as an alternative to redundancy: a rigid system of occupational categories; limitations to modifying the working day; limits to functional or geographical mobility and to changes in other working conditions, etc.

- **Inadequate system of collective bargaining**

The system of collective bargaining had restricted the possibilities of employers reorganising their productive resources while maintaining jobs.

One example is the undefined extension to collective agreements ("ultra-activity") when they had not been renegotiated. This conditioned the positions of the parties to collective bargaining and resulted in a large number of blocked agreements that did not allow job conditions to be adapted to the needs of the company or the economy as a whole.

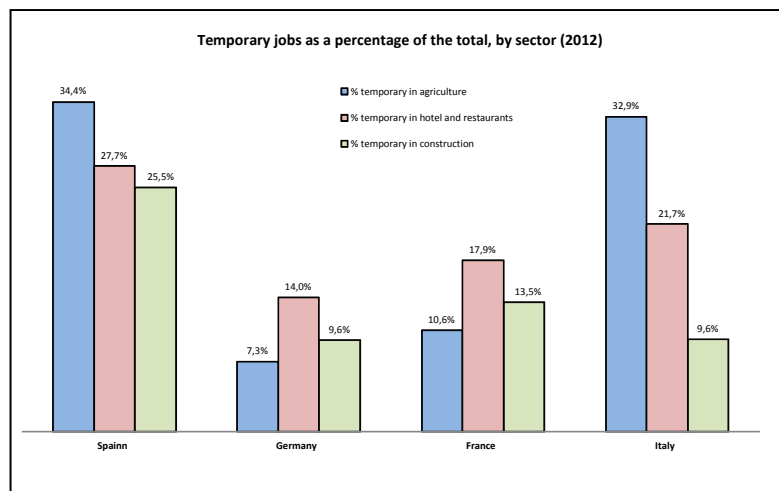
The incapacity of the collective bargaining system to meet the needs of workers and employers is clear if we look at the inertia of wages during the crisis, despite the major increase in unemployment.

*The figures for the labour market during the crisis highlights that the adjustment to the change in demand has taken place mainly through redundancies.*



- Pronounced segmentation in working conditions**

The high rate of temporary work means we can classify the Spanish labour market as "dual". Many workers have access to highly protected and stable permanent jobs. The downside, however, is the existence of an extensive group of workers, more than a quarter of the total, with temporary contracts, which are subject to excessive turnover.



Those most affected by this situation were young people, foreign workers and women. Temporary recruitment is also more frequent for jobs that require a lower level of skills.

- The need to increase the employability of workers**

Early school leaving has given rise to a high percentage of the labour force with low levels of qualifications. It is in this group where there has been most job destruction during the crisis and whose long-term employability has been negatively affected.

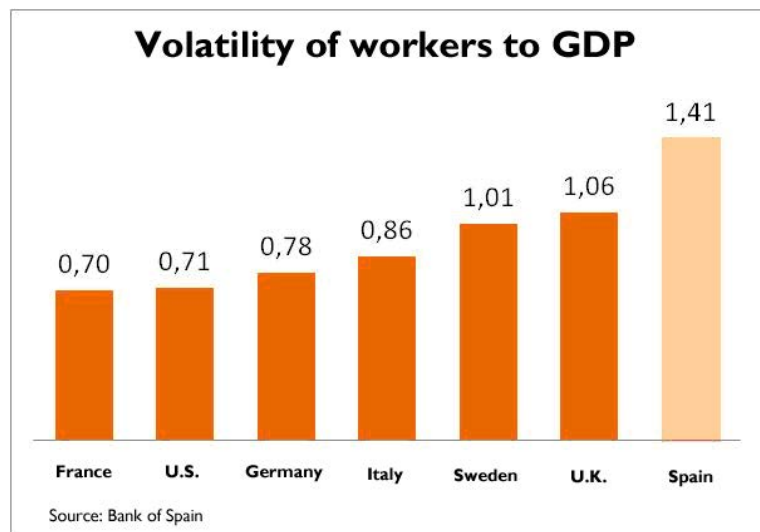
In addition, it was necessary to bring the training received by workers into line with the needs of the economy and boost continuing training.

*In Spain, job destruction has been the most common mechanism for adapting to demand conditions.*

- **A labour market excessively volatile and sensitive to changes in the cycle**

The labour market has been a key to Spain's economic growth problems. It limited productivity, put a halt to structural change, reacted with excessive volatility to changes in the cycle, created major pockets of unemployment and fostered a wage inertia that eroded competitiveness. In fact, the labour market placed additional difficulties on economic growth.

In particular, during the crisis the labour market has shown clearly that the adjustment to changes in demand has taken place mainly through redundancy. The excessive volatility of employment in the face of cyclical changes is evidence that the framework of labour relations before the reform encouraged an inadequate type of adjustment, from both the economic and social point of view.



In Spain, job destruction was the most common mechanism for adjusting to demand conditions. In addition, given the differences between the different cost of redundancy for permanent and temporary employment contracts, it has been temporary workers who have been used systematically as a mechanism for flexibility by companies in the face of cyclical changes.



## *The objectives of the labour reform: a new culture of employment*

Once an analysis of the starting position has been carried out, the main aim of the new framework of labour relations has been to promote a more efficient and employment-friendly labour market. In other words, the reform aimed to reduce the deterioration of the employment situation at times of crisis and improve job creation in phases of growth. In both cases, the aim was to make progress towards a system that would promote the creation and maintenance of stable, quality jobs.

### **Objectives of the Labour Reform:**

***Construct a new model of labour relations that puts a stop to job destruction, lays the foundations for the creation of stable and quality jobs and promotes competitiveness.***

- [1] Favour internal flexibility in companies as an alternative to job destruction.
- [2] Modernise collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies.
- [3] Improve the employability of workers through training and effective labour mediation services.
- [4] Promote the creation of stable and quality jobs and reduce labour-market dualism.
- [5] Combat unjustified absence from work.
- [6] Strengthen the mechanisms for controlling and preventing fraud, protecting workers' rights and combating unfair competition between companies.

*The reform fosters a profound change in the culture of employment and is a step towards flexicurity.*

To achieve these objectives, the reform aims to make a profound change in the culture of employment. The idea is to make progress towards flexicurity, achieving a new balance between protection of workers and flexible operation of the labour market that offers more and better job opportunities.

This new culture of employment is based on ensuring not that each job is protected individually, but that workers have the capacity to remain employed, even when there are structural changes or global crises, while allowing the economy to adapt and focus on new sources of growth.

The reform aims to create a favourable framework for business activity and entrepreneurship, and employment contracts based on trust and legal security, putting a premium on stable jobs in conditions of quality.

Equally, it promotes part-time work and new forms of work, such as telework, which promote the work/life balance and the combination of training and employment, particularly among the young.

Another of the main elements was to design activation policies that can assist the unemployed in their active and employment-committed job search with all available resources, whether public or private, and with decisive

*It expresses a change in culture and a new model of labour relations that boost flexibility and above all the capacity to adapt to change.*

action to combat fraud in order to ensure fairness and efficiency in the use of public resources.

This represents a change in culture and a new model of labour relations that boosts flexibility and above all the capacity to adapt to change. The goal is a labour market that is more resilient in the face of changing circumstances in the Spanish economy and in the rest of the world, that offers effective protection to people and their capacity to remain employed.

This will help increase competitiveness and generate growth, which is the key to future welfare. This progress is based on balanced foundations that guarantee effective protection for workers and a level playing field for negotiation between the social partners.

### ***The response to labour-market dualism***

The lack of internal flexibility, the rigidity of the system of collective bargaining and the difference between the costs of terminating contracts for temporary and permanent workers have led to a labour market structure where employers tend to have a high number of temporary workers on their workforce to face variations in economic activity, with the resulting high social cost and loss of competitiveness.

In addition, just as the economic structure partly conditions the presence of high rates of temporary employment, the institutional structure has also favoured activities that tend to make greater use of temporary employment. The question thus goes both ways. Because of this, the fight against dualism is a fundamental goal of labour reform and employment policies.

In order to tackle this labour market dualism, the reform not only acts in one direction as it did in the past, by intervening only on the process of hiring; it also sets out a broad range of measures that focus on the source of the problem: the rigidity of labour conditions and the divergences in costs of terminating contacts depending on whether or not they are permanent.

The labour reform includes a new form of contract that encourages stable jobs: the entrepreneur support contract. It also restores the ban on concluding consecutive temporary contracts for more than two years.

In addition, it boosts internal flexibility, rationalizes and clarifies the system for claiming objective grounds for redundancy and favours more dynamic collective bargaining that is more closely attuned to the needs of each individual place of work.

In other words, the fight against dualism has been tackled systematically, because acting solely on one of the elements that cause it would not solve the problem. Greater internal flexibility, more rational external flexibility, collective bargaining agreements that are more appropriate to the needs of workers and employers, and the fight against fraud, are all ways by which the reform tackles this dualism.

*Greater internal flexibility, more rational external flexibility, collective bargaining agreements that are more appropriate to the needs of workers and employers and the fight against fraud are the channels through which this reform tackles dualism.*

## *Scenario for applying the labour reform*

*The labour reform has begun to have its effects in a very negative context in terms of economic activity.*

### *The economic context and the application of the reform*

The labour reform has begun to deploy its effects in a very negative context of economic activity. The second phase of the recession has been prolonged, while GDP has fallen in all the quarters during which the reform has been applied, with particular force at the end of 2012 and the start of 2013. The decline in economic activity has been particularly damaging for many companies at the limit of their capacity for survival.

In addition, the weaknesses of the institutional design of the euro have become clear. This has generated episodes of major instability in the European financial markets and has intensified the processes of fiscal consolidation, corporate and household leveraging and the restructuring of the banking system, which has had a negative effect on the financial conditions of companies and households.

In addition, there has been a clear correction to public-sector employment. Until the fourth quarter of 2011, before the reform, it had tended to offset the fall in private employment, with nearly 400,000 public-sector jobs being created during the first part of the crisis.

Thus the results presented in this report should be studied with reference to the following restrictions and conditioners:

- The recession and economic situation as a whole has been a strong conditioning factor on the labour market.
- The increased credit squeeze in the private sector. When the labour reform was approved, the lending by financial institutions to the productive sector was falling at a rate of 3% per year; one year later it was plummeting at over 18%.
- The process of fiscal consolidation has had a very significant effect on the negative performance of public-sector employment, which has been reduced by nearly 400,000 jobs.
- The legal implementation of the reform, although given fast-track approval, has been in force for less than a year.
- Agents have adapted gradually to the new rules.

### *The labour reform within the framework of other actions*

Before starting with the study of the reform's impact, it should also be noted that it is not always possible to distinguish the effects attributable to the measures taken as part of the labour reform from other factors that have also had an effect on the labour market, such as the Second Employment and Collective Bargaining Agreement 2012-2014, or the Fifth Agreement on Autonomous Solutions to Labour Conflicts of February 2012.

In fact, the labour reform has deployed its initial efforts at the same time as the Ministry of Employment and Social Security has continued with its working agenda to promote employment, protect the rights of workers and prevent unfair competition between companies and the self-employed.

*It has had its first effects, while the Ministry of Employment and Social Security has continued with its agenda to favour employment, protect the rights of workers and avoid unfair competition for companies and the self-employed.*

Thus projects have been implemented such as the fight against illegal employment and Social Security fraud, prevention of unfair competition, the loss of rights by workers and the undue collection of benefits; the reform and modernisation of active policies and of public employment services, designed to improve the employability of workers and make it easier for them to enter the labour market; and the Youth Entrepreneurship and Employment Strategy, which is serving as a channel for participation so that the different levels of government and private initiative can together tackle the situation of youth unemployment in our country.

*The labour reform helps adopt measures that are alternatives to redundancy and boosts a more dynamic form of collective bargaining that is appropriate to the circumstances of the case.*

*The year-on-year increase in unemployment has steadied and now stands at 5% (2Q2013).*

*The cumulative data to June show a fall of 85,043 in the number of registered unemployed.*

## *Strategic objective and main results*

*Construct a new model of labour relations that puts a stop to job destruction, lays the foundations for the creation of stable and quality jobs and promotes competitiveness.*

The labour reform will make it easier to adopt measures other than redundancy and boost a more dynamic collective bargaining system that is better geared to existing circumstances. The aim is to preserve employment at low points in the cycle and favour the creation of stable and quality jobs when the necessary conditions for economic growth occur. The use of an flexible external mechanism should thus be an adjustment measure of last resort for companies in situations of crisis.

The reform favours the adoption of decisions that create stable jobs to the extent that:

- It allows a more effective management of human resources in the face of general or company-specific problems, by providing employers with the option of internal flexibility to preserve their human capital.
- It tries to ensure that collective bargaining agreements and company-level agreements provide a sufficient margin of flexibility to adapt labour conditions to economic and social circumstances.
- And it improve the efficiency of the labour market, reducing the job creation threshold.

### **Main results:**

The report includes the information and the main effects of the labour reform, which will undoubtedly have an even greater impact in a more favourable economic context. Among its main results are the following:

#### **1. The rise in the unemployment rate has moderated since the labour reform.**

The year-on-year increase in the number of unemployed, which hit 18% in the first quarter following the labour reform (2Q2012), has moderated and now stands at 5% (2Q2013). The figure for 2Q2013 is particularly positive in this respect, as it includes a fall over the quarter of 225,200, the biggest in the second quarter since 1999. The unemployment rate fell by 0.9 points in the quarter.

The rate of increase of registered unemployed fell from 12.5% to almost 3% in June 2013. The cumulative figures for the first six months of 2013 show a fall in registered unemployment of 85,043, the biggest during the recent crisis, and the best figure since 2006. The fall has been particularly strong in the second quarter, at 271,563 fewer registered unemployed.

The number of registered unemployed aged under 25 has fallen by 28,940 between June 2012 and June 2013, a year-on-year decline of 6.39%.

*For the first time during the crisis, a steeper decline in the GDP has not resulted in a faster pace of job destruction.*

**2. For the first time during the crisis, a deterioration in GDP has not led to a faster pace of job destruction.**

The figures for private-sector employment show that for the first time in the crisis, a faster pace of GDP contraction has not led to a faster pace of job destruction, which in fact has moderated.

The rate of increase of destruction of private-sector salaried jobs fell from 5.26% in 1Q2011-1Q2012 to 4.78% in 1Q12012-1Q2013, despite the greater contraction in economic activity.

The slowdown has focused on permanent jobs, which fell by 3.2% compared with 4.2% in the previous 12 months.

**3. The fall in public-sector employment has had a major effect on aggregate employment in the Spanish economy in recent quarters.**

The different levels of government are involved in a process of streamlining designed to increase their efficiency and ensure the sustainability of the public accounts in the long term. This process is vital if the Spanish economy is to return to the path of sustainable growth.

From the start of the crisis the growth of public employment partially offset the impact on employment of the destruction of jobs in the private sector. Between the first quarter of 2008 and the third quarter of 2011, the number of salaried public-sector workers increased by 347,000 according to the labour force survey (LFS). Most of the increase was in permanent jobs (291,000 more, 84% of the total). A major adjustment began in the third quarter of 2011, starting with the autonomous regions. It has continued until now, and reduced the number of public-sector workers by 374,800 between the third quarter of 2011 and the first quarter of 2013, 68% of this figure being temporary.

As a result of the streamlining process in the public sector, in the first four quarters following the labour reform 258,300 public-sector jobs were destroyed, compared with 81,800 in the four quarters before the reform. This decrease has a major distortion effect on the analysis of aggregate data for the total working population and unemployment, and should be taken into account in any analysis of the impact of the labour reform.

**4. Self-employment has progressed more favourably in the last nine quarters, particularly in the period following the labour reform, compared with its steep fall at the start of the crisis.**

Between 1Q2008 and 1Q2012 nearly 560,000 self-employed jobs were destroyed, around 16% of the total. The four quarters following the labour reform have been more positive than the four quarters before it, despite the worse economic situation.

This recent movement in self-employment has meant that this form of work has gained weight in total employment in the private sector, and

*There was an increase of nearly 23,000 in registrations of self-employed people in the first half of 2013.*

*The analysis by the Ministry of the Economy and Competitiveness estimates that the reform would have helped prevent the destruction of 225,800 jobs.*

*The recent evolution of the labour market has contributed notably to the improvement of the competitiveness of Spanish products.*

has risen above its level at the start of the crisis. Self-employment now accounts for 21.8% of private-sector employment.

The data for 2Q2013 show an increase of 37,300 self-employed over the period, including an increase of 14,400 in those with employees and 13,900 independent workers or employers without employees.

In the first half of 2013 the number of registered unemployed increased by nearly 23,000, a much more positive figure than in the rest of the years of crisis.

#### **5. More jobs would have been lost without labour reform.**

The analysis by the Ministry of Economy and Competitiveness estimates that the reform would have helped prevent the destruction of 225,800 jobs in the year before its implementation.

Despite the more intense economic contraction in 2012, combined with the impact of the process of fiscal consolidation and the financial crisis on jobs, job destruction in the private sector in the 12 months following the labour reform has been significantly lower than in the previous 12 months.

Companies would have thus used the various alternative mechanisms to redundancy to prevent the termination of employment contracts, in a more positive adjustment for both workers and employers.

#### **6. The recent performance of the labour market has significantly helped improve the competitiveness of Spanish products.**

The last quarter of 2012 saw the biggest fall in unit labour costs (ULCs) in the crisis (5.9%) and the recovery of lost competitiveness has gathered pace.

With the progress made since the reform was approved, the level of ULCs is already below the figure for 2007 and their performance since 2005 has been better than in Germany, France or Italy, and than the average in the euro area.

However, the improvement in unit labour costs cannot be the only factor for improving Spain's relative competitive position. Another necessary ingredient are the reforms that make the operation of the economy more flexible and promote competition in the markets of goods and services, such as those included in the National Reform Programme of 2013: market unity, liberalisation of professional services, promotion of competition, energy reform, etc.

These reforms in the goods and services markets complement and bolster the labour reform and are essential for the transformation of the structure of production and long-term growth.

#### **7. The Spanish economy will create jobs with lower rates of GDP growth.**

Initially, the Ministry of Economy and Competitiveness estimates that the Spanish economy will be capable of generating jobs with a growth

*The Spanish economy  
will create employment  
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growth.*

rate of between 1% and 1.2%, significantly below the figure before the reform, which was above 2%.



## *Strategic objectives and main results*

### *[1] Favour internal flexibility in companies as an alternative to job destruction.*

*The labour reform aims to reduce incentives to make labour adjustments that involve job destruction, and favours internal flexibility measures.*

The labour reform aims to reduce the incentives for workforce adjustments that involve the destruction of jobs. Instead, it favours internal flexibility measures that help reorganise resources in companies and contribute to their productivity, innovation and competitiveness.

The aim is to design a new institutional framework that helps companies to adapt to their economic circumstances. Collective bargaining is an essential tool for boosting the mechanisms of internal flexibility as an alternative to job destruction.

#### **Instruments:**

#### **1. Promote mobility and changes to the working conditions in the company.**

The reform of the labour market boosts business decisions that involve changes to the duties of workers (functional mobility) place of work (geographical mobility) and in general in working conditions (substantial modification of working conditions). These measures contribute towards a more flexible management of the company's human resources and limit the use of redundancy.

In addition, the law has removed the concept of professional category and maintains that of professional group as the sole reference for employers who want to change a worker's functions. Equally, it expressly recognises the possibility of modifying the wage for reasons of competitiveness and business productivity.

#### **2. Business decisions that suspend employment contracts and reduce the working day have been supported.**

In order to avoid situations where any problems for the business automatically result in job destruction, the reform introduces various modifications that facilitate and create incentives for the temporary suspension of contracts and reductions in the working day as alternatives to terminating employment contracts. To this end, the reform:

- Eliminates the requirement for authorisation by the public authorities for these decisions, thus speeding up the process in situations where the business is in difficulties.
- Includes Social Security incentives for companies and the restoration of unemployment benefits for workers to encourage the adoption of measures that are an alternative to redundancy.

*The use of measures other than redundancy has been far higher than that of redundancies.*

*What is more, the measures continue to be adopted through agreement in more than 90% of cases, so there are no signs of a weakened capacity to reach agreement by the parties.*

## **Main results:**

### **1. Mass use of collective measures that are an alternative to redundancy.**

Collective measures have continued to be a mechanism for adjustment available to companies, but there has been no speeding up of collective redundancies.

However, a notable number of workers have been affected by the measures replacing redundancy: temporary suspensions of contracts (up 30%) and reductions in working hours (up 49%). Overall, such measures have far outnumbered redundancies, so that the latter have fallen from 19.5% of the total to 16.5% after the reform (measured by number of workers affected).

The measures continue to be adopted, on an agreed basis in more than 90% of cases.

A qualitative analysis shows that since the labour reform, there has been more use of internal flexibility measures that reduce the final number of contract terminations.

### **2. Companies have been able to make use of other internal flexibility measures to address situations of difficulty.**

Up to 27% of companies of more than 250 employees applied measures modifying working conditions in 2012.

These measures have been basically related to wages (70% of cases) and working hours (40%). Most of the measures have been adopted by agreement (55%).

Fewer than 2% of companies have not adopted measures as they did not know the possibilities or found it difficult to do so.

### **3. A significant process of wage moderation is underway.**

The labour reform and the Second Employment and Collective Bargaining Agreement have made possible a process of wage moderation that has allowed jobs to be saved.

With the slowdown in private-sector salaried job destruction, all the indicators point to this moderation, at a time when average inflation in 2012 was 2.4%. Thus:

- The compensation per worker reflected in the National Accounts has shown a major restriction, and even significant falls at the end of 2012 (down an annual 3%) and at the start of 2013 (down 0.6%).
- Wage costs have fallen in the second half of 2012 (up to 3.6% in the last quarter), with a fall of ordinary wage costs in the first quarter of 2013 of 0.5%, the biggest in the crisis period. The fall of wage costs is even greater among SMEs (down an annual 2.4%).
- Wage increases agreed under collective bargaining agreements are at all-time lows. In all the agreements overall the rises stood at 1.23%

in 2012 (up 1.44% including the effect of the wage guarantee clauses).

The agreements that entered into force this year had even lower increases: up 0.69% overall and 0.57% for company-level agreements.

These figures are very close to the recommendations in the 2012 Agreement between the social partners, and their effect on job preservation is clear.

Provisional data for 2013 suggest a continued trend to wage moderation in the agreements affecting this year: up 0.65% for all the agreements registered to now, and 0.35% for those that are entering into force.

*The legal changes introduced aim to develop a system of collective bargaining that organises labour relations in a flexible and balanced way.*

*[2] Modernise collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies.*

Equally, the legal changes introduced aim to develop a form of collective bargaining that regulates labour relations in a more flexible and balanced way.

The introduction of the priority for company-level agreements transforms the structure of collective bargaining by increasing the weight of company-level agreements. This means that agreements can be adapted to the needs of the individual company and facilitates internal flexibility to mitigate the destruction of jobs and promote innovation in the structure of production.

#### **Instruments:**

##### **1. Temporary non-application of collective bargaining agreements.**

This is a new system under which certain conditions included in collective agreements are not applied (the "opt-out").

The aim is to make it possible on a temporary basis for companies not to apply the conditions included in the collective agreement, such as those covering the working day and wages.

##### **2. A new collective bargaining structure that guarantees by law the priority of the company-level collective bargaining agreement.**

The legal system prior to the reform put a premium on the regulation of sector-based collective bargaining agreements rather than the company-level agreements.

Under the reform, the law guarantees that the company agreement prevails when it comes to regulating those matters such as working hours, workers' functions or the system of compensation, which are considered essential for adapting the management of labour relations to the special nature and needs of companies.

##### **3. New regulations governing the periods for which collective bargaining agreements are in force**

The labour-market reform includes the possibility of renegotiating a collective bargaining agreement before it expires and has introduced limitations to so-called "ultra-activity". This means that once the agreement has expired and its renegotiation has begun, if there is no new agreement and no agreement to the contrary, the expired agreement will only be applied for a maximum of 1 year, and not indefinitely, as was the case before the reform.

This encourages more balanced and interactive collective bargaining as it creates incentives for negotiation.

*A total of 641 agreements were signed in the first half of 2013, compared with 359 in the same period in 2011 and 371 in 2012.*

*Since the labour reform there are been 2,149 opt-outs in companies, affecting over 118,00 workers.*

*The end of "ultra-activity" has given rise to the closure of many negotiations that had been languishing for some time.*

## **Main results:**

### **1. The rate of new agreements signed has increased following the reform.**

In the first half of 2013 a total of 641 agreements covering 1,245,995 workers were registered, compared with 359 (for 548,616 workers) in the same period in 2011, and 371 (for 808,621 workers) in 2012.

### **2. The number of company-level collective agreements has increased.**

The reform has also generated incentives for agreements to reflect better the company's real situation, superseding a regulation that laid down a structure that was inadequate for growth.

In particular, company-level collective bargaining has gained weight. In the first half of 2013 158 new negotiating units were identified in private companies that presented agreements affecting 33,438 workers, compared with 92 for only 8,170 workers in the first six months of 2010.

### **3. The non-application of agreements has been used as a way of adapting to the conditions of the company and avoiding redundancies.**

Since the labour reform 2,149 such opt-outs have taken place, affecting more than 118,000 workers. The rate of non-application has grown and in the first half of 2013 the figure is nearly double that in the whole of 2012.

Opt-outs basically affect wages, although they also include changes to the working day and/or the distribution of working time. The vast majority are the result of agreement (96%). A qualitative analysis shows that opt-outs have served to prevent announced redundancies.

### **4. Boosting agreements.**

The end of "ultra-activity" at a maximum of one year from appeal or the entry into force of the law has only been in effect for a short period (since 8 July 2013), but has given rise to the closure of many negotiations that in some cases had been stalled for a long time.

Thus the limitation on the extension has served to put an end to long and wasteful periods of negotiation, sometimes even lasting years, such as for example the collective agreements at the national level of "Hotel and Catering" (31 months), "Contact Centres" (34 months) "Auto-taxi" (39 months), "University education and research centres" (57 months), "Ballrooms, dancing halls and discotheques" (244 months).

A qualitative analysis of key examples of new or renewed agreements in recent months shows that clauses have been incorporated such as those relating to occupational classification by occupational groups, linking the system of compensation to the company's results and allowing for an irregular distribution of the working day.

*[3] Improve the employability of workers through training and effective labour mediation services.*

*The labour reform aims to improve the employability and professional skills of workers as a fundamental aspect for job creation and foster the competitiveness of Spanish companies in a global economy.*

*The rights of workers to continuous training are recognised by law.*

*Training will be administered under the principles of competition, transparency and assessment.*

The aim is to improve the employability and job skills of workers as a basic factor for job creation and to help Spanish companies become more competitive within a global economy.

Equally, the objective is to work together in the search for jobs to allow temporary employment agencies to act as job placement agencies, which will enable them to use their experience in improving the quality of mediation in the labour market.

**Instruments:**

**1. Training as a right under the principles of competition, transparency and assessment.**

Continuing occupational training is essential for the maintenance and creation of jobs. The occupational training of employed workers has developed notably in the last two decades. However, a significant number of workers are still lacking middle-level qualifications, and another significant group has very little training.

To deal with this, the labour market reform began the process of transforming active employment policies and the comprehensive system of occupational training, with measures such as the following:

- The right of workers to receive continuing training is recognised by law.
- Workers also have the right to receive occupational training aimed at adapting to technical changes introduced in their workplace.
- Private training centres may participate directly in the system of vocational training for employment with funding from public sources.
- The management of training will be based on the principles of competition, transparency and assessment.

**2. Reform and updating of occupational certificates.**

At the same time as the reform of the system of occupational training, and also in line with the idea of giving a greater prominence to the productive sector in determining training for employment, an intensive process of reform and updating of occupational certificates and their regulation is being carried out.

This boosts the recognition of training and experience of workers through formal accreditations, which increase their employability and also promote better training that increases the competitiveness of the model of dual vocational training.

Since 2002 these certificates have been undergoing a process of reform. It was boosted in 2012 to adapt them to the new aspects of the training and apprenticeship contract, as part of the strategy for implementing

*The labour reform and the Youth Entrepreneurship and Employment Strategy have promoted the use of training contracts.*

*The labour reform has started a process of transformation of the active employment policies.*

*So far 38% of the 100 measures in the Youth Entrepreneurship and Employment Strategy have been implemented, or their legislative process is underway.*

dual vocational training, as well as the current needs of the productive sector and the tools available for training.

### **3. Training and Apprenticeship Contract.**

This is of great importance in helping the transition from education to working life, as well as making easier the return of those young people who left education early during the boom period, so that they can acquire new skills that increase their employability.

The labour reform and the Strategy of Youth Entrepreneurship and Employment, prepared by the Ministry of Employment and Social Security and the social partners, has promoted the use of training contracts, and in particular the Training and Apprenticeship Contract, which provides reductions in employers' Social Security contributions of up to 100%.

### **4. Transformation of active employment policies.**

The labour reform implemented a process of transforming active employment policies, which it has explored in depth and will continue over the coming months.

The design of more dynamic and efficient active and passive policies is complementary to and coherent with the new framework of labour relations and recruitment: these policies enable the preventive mechanisms to be strengthened, improve the employability of workers, mitigate the social impact of unemployment and favour the transition to employment.

The Annual Employment Policy Plan 2012 is the main instrument for coordinating all the active policy measures carried out by the different regional public employment services (PES) and the National Public Employment Service (SEPE).

The new focus is result-orientated, with funds conditional on performance. It allows a link to be made between the monitoring and assessment of the results to common objectives for the National Employment Service.

### **5. Youth Entrepreneurship and Employment Strategy 2013-2016**

The Youth Entrepreneurship and Employment Strategy 2013-2016 includes the implementation of 100 measures whose aim is to establish a more positive framework for employment and entrepreneurship among the young.

So far, 38% of the 100 measures in the Strategy have been implemented or are included in legislation being prepared, 73% in the case of emergency or high-impact ones. Among these measures, which will be financed partly with EU funds, there are some that have been underway from February last, such as:



*The Youth Entrepreneurship and Employment Strategy is a collaborative instrument open to contributions from private initiative and civil society.*

*The Framework Agreements in the National Employment System will promote the development of a joint project for mediation services across the whole of Spain.*

- The reduction in employers' Social Security contributions, with reductions and credits of up to 100% for employers who recruit young people who are unemployed.
- Programmes allowing young people who leave school early to obtain the Compulsory Secondary Education certificate.
- Improvement in employability of young people who are unemployed through training programmes with a commitment to a job offer at the end or the incentive of training contracts.
- And for those who decide to start an entrepreneurship activity, there is a flat-rate 50 euros Social Security contribution for the young self-employed; the possibility of capitalising unemployment benefit has been extended; and unemployment benefit can now be drawn during the start of an entrepreneurship activity.

The strategy has a budget of 3,485 million euros, as well as funds from the European Youth Employment Initiative and the contributions from different entities, institutions and agents who are voluntary adherents to the strategy. Its measures aim to boost youth employment. The Strategy is an instrument for collaboration open to contributions from private initiative and civil society.

#### **6. Reform of labour mediation through public-private partnership.**

The public employment services have a very limited share of total job placements, so it is essential to extend the range of those intervening in the management of labour mediation and the placement of workers.

Because temporary employment companies have revealed themselves agents potentially capable of boosting the labour market, the reform of the labour market authorised these companies to operate as job placement agencies in partnership with the public employment services.

#### **7. Design of a national Framework Agreement for job placement agencies.**

With the aim of a coordinated implementation of the new model of public-private partnership, the law on procurement in the public sector has been modified to allow framework agreements in the National Employment System. This will help the development of a common project on mediation across the whole of Spain, while respecting the competences that the autonomous regions have in this matter.

The framework agreement proposes pre-selecting a number of agencies with which the different public employment services may conclude agreements under common conditions but in accordance with their specific needs (in territorial terms or by groups affected). The period of the agreement will be 2 years, which may be extended by a further 2.

It also establishes a flexible scheme of compensation for the private agencies which is results-based. Thus it includes a payment per job



*The number of bids in the general call for training for employment have doubled and those geared to young people have increased fivefold.*

*50% of the certificates in the National Catalogue of Occupational Certificates have been prepared in the last year and a half.*

found of a minimum of 6 months, establishing differences between groups, depending on the characteristics that determine their employability, such as age and length of time unemployed.

#### **Main results:**

#### **1. Competition in provision of training for employment increases its efficiency.**

The labour reform gives a fundamental role to training for employment as a tool to improve the employability of workers and the long-term competitiveness of companies. This results in both the promotion of continuous training and the transformation of the sub-system of vocational training for employment, with suppliers of the training services being selected under a competitive system.

The reform introduced the element of competition into the selection of suppliers of training courses to ensure a more efficient use of public resources.

As a result the bids have doubled in the general call for tenders; in the response to the call for training for young people the bids have increased by a factor of five. The cost per hour has fallen by 27%.

- The number of bids presented shows a substantial increase of 99% in the national call for plans and 456% in the call aimed at young people aged under 30.
- The cost per hour and participant has fallen by 21% in face-to-face classes and 18% in e-learning. In the call for young people the reduction of the average cost per student/hour is 27%.

A discussion panel has been set up in this area with the social partners to prepare the Fifth Training for Employment Agreement.

#### **2. Progress has been made on the process of preparing, reforming and updating the National Catalogue of Occupational Certificates.**

This process began in 2002, and has gathered pace so that 50% has been carried out in the last year and a half. The Catalogue now has 587 certificates, of which 414 are already published, 82 have been presented to Cabinet for approval and the remaining 91 are pending imminent publication.

This side-ranging catalogue will include certificates for all training levels (1, 2 and 3). It will make it possible to design training courses that correspond to the needs of all the productive sectors.

#### **3. The Training and Apprenticeship Contract has boosted access for young people to training and employment.**

The reform of the training and apprenticeship contract is the basis for the development of dual vocational training for employment. The use

*In the first half of 2013 use of the Training and Apprenticeship Contract has increased by 64%.*

*This contract is being used to a greater extent than before by young unskilled people.*

*Nearly 70,000 young people under the age of 30 have benefited from one of the measures in the Youth Entrepreneurship and Employment Strategy.*

of the contract since the labour reform has been very positive and represents a clear turning point with respect to its use during the crisis.

In the 12 first months of application of the reform its use increased by 22% compared with the previous 12 months, reversing the decline of the four previous quarters.

In the first half of 2013 its use has gathered pace, at 64% up on the same period in 2012. The contract is also being used more than before for young people with low skills levels. Thus the number of contracts for workers without education or with only primary education increased by 137.8% between the last two March-February periods, and now accounts for a quarter of all contracts.

The average proportion represented by this group out of all contracts has increased from 14.8% in 2009, 12.7% in 2010 and 12.3% in 2011 to 25.3% since the approval of the reform (March 2012 - May 2013).

#### **4. Active policies that respond to labour market needs.**

The reform has made progress in modernising the active policy instruments in partnership with the autonomous regions, so they respond to the real needs of companies and represent real tools for workers activation and employability.

#### **5. Nearly 70,000 young people have benefited from the Youth Entrepreneurship and Employment Strategy.**

In the five months that the Youth Entrepreneurship and Employment Strategy has been in operation, nearly 70,000 young people under the age of 30 have benefited from one of the measures already implemented.

In addition, nearly 50,000 young self-employed people have benefited from the 80% reduction (flat-rate) in Social Security and more than 20,000 have found a salaried job through one of the new incentives for recruitment that have been introduced.

#### **6. Bases for designing a public-private partnership framework in labour mediation.**

The reform laid the foundations for designing a framework public-private collaboration agreement for mediation which will take advantage of the capacities of all the authorised agents who comply with certain conditions of appropriateness.

The authorised job placement agencies now number 799, up from the 167 existing in January 2012, thus extending the number of potential partners.

#### **7. Broad backing for a national Framework Agreement for job placement agencies.**

The framework agreement has a broad backing from the autonomous regions, following its presentation at the Sectoral Conference on

*The number of authorised job-placement agencies has risen to 799 from the 167 in January 2012, thus extending the number of potential collaborators.*

Employment and Labour Issues on 11 April. A total of 14 regions have joined it as of July 2013.

Following the required Cabinet agreement, the Agreement is expected to be ready for the last quarter of 2013. Starting then, the new design of public-private partnership will be available for the provision of labour mediation services.

***[4] Promote the creation of stable and quality jobs and reduce labour-market dualism.***

Among the objectives of the labour reform is to reduce the high rates of unemployment and dualism in the Spanish labour market. This will be done by introducing specific measures that create incentives to permanent recruitment and job creation through determined forms of work.

The reform also aims to correct various legal and structural aspects of the Spanish system for terminating employment contracts. They have shown themselves to be inefficient for companies, unfair from the point of view of protecting workers, and to increase labour dualism, thus affecting the level of temporary employment, redundancies and unemployment, particularly among the young.

The move is towards a model of labour relations that boost flexibility and above all the capacity of adapting to change. The goal is a labour market that is more resilient in the face of changing circumstances in the Spanish economy and in the rest of the world, that offers effective protection to people and their capacity to remain employed. Workers are offered more opportunities for employment and a commitment to the future in the form of permanent employment contracts. In fact, the reform is an integrated and systematic way of tackling the elements that have encouraged the dualism that is so unfair for young people.

**Instruments introduced:**

**1. New form of permanent contract for SMEs and the self-employed.**

This is the Permanent Entrepreneur Support Contract, for companies of under 50 workers. It is available under the general system of employment rights and obligations, with the only special feature that it is for an initial trial period of one year.

The aim is to encourage SMEs to employ workers on permanent contracts, if despite the economic situation they continue being active and creating jobs, while giving them the flexibility they need to determine which workers are the most suitable to be given permanent contracts. Tax and Social Security incentives are planned to encourage the use of this contract.

**2. Prohibition on using successive temporary contracts for more than 24 months.**

This prohibition already existed under Spanish employment law, but the previous government suspended it in August 2011. The labour market reform restored the prohibition on 1 January 2013 with the aim of complementing and boosting the other measures designed to promote recruitment using permanent employment contracts and reduce the high rate of temporary employment and labour market dualism as soon as possible.

*The Permanent Entrepreneur Support Contract is for companies with fewer than 50 employees.*

*The labour market reform includes part-time work to make better use of its potential.*

The restoration of the ban is coherent with other measures included in the reform, which boost labour adjustments through mechanisms increasing internal flexibility and thus limit the incentives for temporary contracts.

### **3. Promoting part-time work and regulating telework.**

The level of part-time work in Spain is not comparable to that in other European Union countries, even though this form of work is a very important way of reconciling work and family life and combining work and training, as well as organising time flexibly with positive benefits for both employers and workers.

That is why the latest labour market reform addresses the question of part-time work to make better use of its potential, allowing overtime, or additional working hours to those initially agreed.

The reform also regulates distance working based on intensive use of new technologies for the first time. It is a balanced regulation of rights and obligations that closely follows the EU Framework Agreement on telework negotiated between the social partners and concluded on 16 July 2002.

The agreement aims to address certain legal loopholes and make better use of the significant potential of telework as a way of providing jobs that favour flexibility in work organisation, increase job opportunities and reconcile work and family life.

### **4. Introducing a general redundancy pay of 33 days per year worked with a maximum of 24 monthly payments, in the case of unfair dismissal.**

The labour market reform simplifies the framework for redundancy payments and makes payment for unfair dismissal general for all permanent contracts, at 33 days per year of service with a maximum of 24 monthly payments. Before the reform it was only payable to certain groups of workers.

This brings the cost of terminating employment contracts into line with the average in European countries. The aim is to boost company competitiveness, remove the incentives for the use of temporary contracts and thus mitigate labour-market dualism.

### **5. Elimination of the so-called “express dismissal”.**

Before the labour reform, the main tool available to Spanish companies to make workforce adjustments were the so-called "express redundancies". They had shown themselves to be clearly dysfunctional for a labour market aiming to move towards "flexicurity" and reduce employment dualism.

On the one hand, in exchange for some security in decision-making, companies assumed a high cost of dismissal, which removed incentives from recruiting workers on permanent contracts. On the other, it meant that the workers most affected by workforce adjustments were not only

*Companies that adopt contract termination measures affecting more than 50 workers have to implement a re-employment plan.*

those with temporary contracts, but young people with little time in the company.

**6. Reform of contract terminations on economic, technical, organisational or production grounds.**

The aim is to combine a better response to the difficult situation faced companies with better protection for workers.

The reform of the labour market reformulates the legal definition of these redundancies to ensure that judicial control is focused on assessing compliance with the redundancy procedure and whether or not there are grounds for it, in line with most European legislation in this respect.

Objective criteria have been introduced for judicial assessment, and at the same time other references to reasons have been removed that left the door open to restrictions.

In addition, the reform aims to reorganise the social measures complementing the termination of employment contracts to bring Spanish legislation more into line with the aims sought by EU law on this question (Directive 98/59/EC).

**7. Removal of administrative authorisation for collective redundancies.**

The reform puts an end to the requirement that collective redundancies on economic, technical, organisational or production grounds must be authorised by government. However, it maintains the information and consultation procedure with workers' representatives in accordance with the demands of EU legislation.

The labour reform therefore aims to bring our legal system into line with that of our neighbours (only Greece maintains the authorisation regime), introduce economic rationality into the processes for restructuring companies that involve an adjustment of the workforce and accommodate the consultation period better to the purpose included in EU legislation. In other words, for negotiation on the possibility of avoiding or reducing collective redundancies and mitigating their effects on workers.

**8. Fostering the social elements of collective redundancies.**

The new regulation on the procedure and grounds for collective redundancies is accompanied by other aspects aimed at that these redundancies are accompanied by certain social elements or guarantees.

First, it sets out that through collective agreements or during the consultation process itself priorities may be agreed on which workers should remain (such as those with family burdens, those above a certain age or people with disabilities). These conditions must be respected by the employer when selecting the workers to be affected by collective redundancies.

*Permanent employment contracts halted their rate of decline in the 12 months following the reform.*

*The Entrepreneur Support Contract has incorporated nearly 120,000 people into the labour market.*

In addition, the new regulation on collective redundancies expressly states that companies that adopt a redundancy plan affecting more than 50 workers must offer them a re-employment plan that includes training and professional guidance, and active job search measures.

#### **Main results:**

##### **1. Recruitment on permanent contracts.**

The use of permanent employment contracts slowed its rate of decline in the 12 months following the reform, despite the adverse environment and strong uncertainty, falling 1.2% compared with 13.5% in the 12 previous months.

Recruitment using initial permanent full-time contracts increased by 4.8% and part-time contracts by 3.3%, while conversions to full-time contracts fell by 15%, similar to the previous period.

The labour reform has reduced labour-market dualism, despite the difficult context, by reducing the proportion of temporary contracts from 25% in the fourth quarter of 2011 to 23.1% in the last quarter.

##### **2. The decline in job destruction has focused on permanent contracts, which are most affected by legal changes.**

In the four quarters following the labour reform 540,200 salaried jobs in the private sector were destroyed, compared with 628,000 in the four quarters before the reform. In other words, 87,800 fewer jobs were destroyed, despite lower rate of growth.

The reduced job destruction is a result of more moderate destruction of jobs with permanent contracts, which offset the greater destruction of temporary jobs. In the four quarters before the reform 380,700 permanent jobs in the private sector were destroyed, while in the four quarters after the reform the total was 278,600. In other words, 102,100 salaried jobs in the private sector fewer were destroyed after the labour reform.

##### **3. The Entrepreneur Support Contract has been a way of providing access to stable permanent employment.**

Within the general framework of recruitment that has been strongly affected by uncertainty and prolongation of the recession, the Entrepreneur Support Contract has incorporated nearly 120,000 people into the labour market, 40% of them young. It accounts for 24% of initial permanent full-time contracts since March 2012.

These contracts have maintained the level of employment after a year very close to that of the rest of initial permanent contracts.

##### **4. Part-time contracts have increased significantly since the labour reform.**

The modifications reduced by the labour reform to favour part-time contracts have contributed to their greater use. In the four quarters following the labour reform, the number of part-time jobs increased by

*In the four quarters following the labour reform, the number of part-time jobs increased by 155,700.*

*In the first half of 2013 the number of permanent part-time contracts increased by 8.9% on the figure in the first half of 2012.*

155,700, while in the four quarters before the reform more than 60,000 jobs of this kind were lost.

In the private sector, compared with a reduction of 48,900 jobs before the reform, they have increased by 166,500 after it.

Thus the rate of increase in part-time employment over recent quarters has been the higher than at any time during the crisis.

Data on employment contracts registered in the National Public Employment Service (SEPE) reveal that in the first half of 2013 permanent part-time contracts, excluding contracts for domestic workers, increased by 8.9% compared with the first half of 2012.

The growth in part-time employment in the labour force survey (LFS) for 2Q2013 shows very similar data to 2Q2011, both in terms of size and composition: the number of part-time jobs increased by 92,500, of which the vast majority, at 88,500, were jobs in the private sector.

The increase in part-time employment should be valued positively, given that the number of these kinds of jobs is still very limited in Spain, despite their importance for the work/life balance and the transition between periods of training and employment.

#### **5. Collective redundancy has not increased its rate of growth.**

In the 12 months before the reform the number of workers affected by collective redundancies increased by a year-on-year rate of 36%, while in the first year of its application the increase was 9%.

This increase was actually mainly at the start of the period of application: in the second half of 2012 the annual increase was 3%.



*The reform modified the regulation on terminating contracts on the grounds of labour absenteeism, introducing a more rational definition of the grounds and achieving greater consistency with the true reason and consequences of the case.*

#### ***[5] Combat unjustified absence from work.***

##### **Instruments introduced:**

The reform modified the regulation governing the termination of employment contracts due to absenteeism, and introduced a greater objectivity in the definition of the causes, thus achieving greater coherence with the real reason and consequences of this situation.

##### **1. Suppression of the requirement to link the absence from work of the worker with that of the workforce in general.**

The reference to collective absenteeism lacked justification and has been replaced by an individual record of the worker's lack of attendance during the year before the reference period (which must be over 5% of working days).

This provides a greater adjustment to the individual nature of both the possible fault and of the consequences this gives rise to, which are limited to the individual and not to the workforce as a whole.

In addition, the 2012 reform also modifies the circumstances excluded from the calculation of the effects of absence from work, making the regulation more balanced by incorporating cases of cancer treatment and other serious medical conditions.

##### **2. Coordination agreements with autonomous regions.**

Aside from the legal changes introduced by the labour reform, there has been significant progress in the fight against absenteeism through the agreements concluded with the autonomous regions.

This mechanism for collaboration and coordination allows the study of the behaviour of the Temporary Incapacity benefit within each region and establishes the appropriate controls over this benefit in a coordinated manner, guaranteeing the provision to workers who are really in bad health.

##### **3. Reform of the law on mutual societies before the end of the year.**

In addition, a new regulation will be approved later in 2013 on mutual societies covering occupational accidents and diseases. These private entities work with the Social Security system, in particular with respect to the benefits derived from temporary incapacity to work.

The new regulation will greatly help the fight against labour absenteeism and the sustainability of the Social Security system.

##### **Main results:**

The quarterly labour cost survey carries out a detailed analysis of the hours worked that provides an idea of the changes in absenteeism figures.

*In the four quarters following the labour reform, workers have lost 36 fewer minutes per month, an improvement of 13.8%.*

- **Trend in reduction of hours lost.**

In the four quarters following the labour reform, minutes lost by days off work taken by workers has fallen by 36 minutes of work per month (0.6 hours) from 4.36 hours per month to 3.76 hours, a very significant fall of 13.8% on the figure for 1Q2012.

*The plan fighting illegal employment and Social Security fraud is supported by legislative and management measures.*

*[6] Strengthen the mechanisms for controlling and preventing fraud, protecting workers' rights and combating unfair competition between companies.*

**Instruments introduced:**

One of the main elements of employment and Social Security policy has been to strengthen the fight against illegal employment and Social Security fraud, which represent a highly significant element for both the defence of workers' rights and prevention of unfair competition.

To foster this process, in April 2012 the Government approved a plan to combat illegal employment and Social Security fraud that is based on legislative and management measures.

**1. Modification of the Criminal Code:**

- Tougher criminal penalties that will involve a 1-5 year prison sentence for people who defraud the Social Security system for more than 50,000 euros (before the figure was 120,000).
- Introduction of a more serious criminal charge when the amount defrauded from the Social Security system is over 120,000 euros or there is a criminal activity through business groups or intermediaries. In these cases the penalty would be 2 to 6 years of prison and the statute of limitations would extend to 10 years.
- Classify as a crime the receipt of Social Security benefits through deceit or concealment of facts, with a penalty of 6 months to 3 years of prison. When the amount defrauded is over 50,000 euros, the penalty is increased to 3 to 6 years of prison.
- Make punishable as a crime against workers' rights the simultaneous employment of a number of workers in an irregular situation. Penalties have been increased from the current maximum of 3 years to 6 years.
- Defrauded Social Security contributions must be paid to ensure for exemption from criminal liability, even in cases where it falls under the statute of limitations.

**2. Legislative measures that do not have the rank of Fundamental Law:**

- The term for claiming joint and several liability from the main employer for Social Security obligations contracted by the subcontractor has been increased from 1 to 3 years.
- Employing workers affected by suspension of the contract or reduction of the working day has been defined as very serious (from 6,251 to 187,515 euros).

- The amount of penalties is increased the illegal economy or when workers are employed who are receiving or have applied for benefits that are incompatible with working, in proportion of the number of workers affected.

### 3. **Provision of more human resources for the Labour and Social Security Inspectorate in the fight against the black economy.**

Following the approval of the plan to combat fraud a total of 121 inspectors and sub-inspectors joined the Labour and Social Security Inspectorate, all of them with the priority of preventing, detecting and fighting against illegal employment.

#### **Main results:**

#### 4. **The fight against illegal employment:**

A total of 334,214 inspections have been carried out on illegal employment and 130,512 jobs have been brought into the open.

#### 5. **The fight against illegal receipt of unemployment benefit:**

In 2012 and until June 2013, a total of €3,161m have been saved as a result of the work of checking and controlling compliance with unemployment regulations.

Until June 2013 unemployment benefit was withdrawn from 60,004 beneficiaries due to non-compliance with the access and maintenance requirements. This represents an increase of 14.8% on the figure for the same period in 2012. The economic impact in 2013 amounts to €915m.

Also in the first half of 2013 there has been an increase of 30.6% in infringements by employers who employed recipients of unemployment benefits or provided access to such benefits without cause; while 5,833 workers were found to combine illegally unemployment benefit with work, or to receive them fraudulently. This figure is an increase of 28.9% on the 4,526 the previous year.

#### 6. **Fight against bogus companies:**

A total of 35,761 inspections were carried out in this area. As a result, 64,379 phantom companies have been closed. They had been created to obtain Social Security benefits illegally, and a total of 3,523 infringements were found in this period.

Until 30 June 2013, 14,842 inspections were carried out in the fight against bogus companies, an increase of 46.88% on the same period the previous year. A total of 1,964 infringements were detected, compared with 809 in the same period in 2012, an increase of 146.26%.

*A total of 334,214 inspections on illegal employment have been carried out, and 130,512 jobs have come to light.*

*In 2012 and to June 2013 there have been savings of €3,161m as a result of the work verifying and controlling compliance with the unemployment regulations.*

**The reform has put a stop to job destruction in the context of an economic recession.**

### *Conclusion*

The report provides information on a wide range of indicators supporting the idea that the reform has implemented changes in the way the labour market operates that respond to its basic objectives. Thus:

- The reform has managed to halt job destruction in a context of economic recession.
- It has promoted permanent employment contracts, with particular emphasis on employment by SMEs and of young people.
- It has established a clear framework that helps to manage labour relations effectively and assists in creating stable and quality jobs when the appropriate growth conditions occur.
- It has established a better balance between internal and external flexibility as an alternative to job destruction and between the regulation of permanent and temporary contracts as an element linked to the reduction of employment dualism.
- It has promoted workers' employability, and come closer to the goal of having a framework of flexicurity, meaning one that guarantees both flexibility of companies in managing human resources and the security of workers in their jobs.

## INTRODUCTION

An important part of the obstacles to growth in the Spanish economy were a result of the limited efficiency of the labour market, which revealed profound structural problems: The crisis has highlighted these weaknesses in dramatic fashion, with an increase in the level of unemployment to levels far higher than those in other developed countries. Among the most important problems are the following:

- Excessive rigidity in regulation of the labour market. Spain had one of the highest levels of the OECD indicator of employment protection legislation (EPL). According to data for 2010, Spain had the highest level of rigidity in the OECD after Turkey, Mexico and Luxembourg. This position was due to the rigidities affecting the possibility of adjusting workforces through individual or collective redundancies. It should also be taken into account that since the collection of comparative data for the indicator, countries similar to Spain, such as Portugal and Italy, as well as other EU countries, have applied or announced ambitious reforms of their labour markets that reduced their rigidity, so the relative position of Spain would have worsened if in-depth reforms had not been undertaken.

The high level of rigidity of the labour market was related to:

- High costs of adjusting the workforce through external flexibility. The minimum legal severance pay was greater than in similar countries. The cost increased due to the residual use of objective reasons for redundancy, and in the case of collective redundancies, the tendency to set higher severance packages to those laid down for justified redundancies due to the requirement of prior administrative authorisation. The conditions justifying reasonable redundancies such as those derived from the lack of adaptation to the technical modifications were excessively rigid.
- Rigidity in the use of internal flexibility measures, the rigid system of occupational categories, limitations on the modification of the working day, limitations on functional or geographical mobility, or on other working conditions, in practice prevented the use of these flexibility mechanisms as an alternative to redundancy.
- An inadequate system of collective bargaining. The system of collective bargaining has restricted the ability of employers to reorganise their productive resources while maintaining jobs, and at the same time allowing them to respond to changes in the environment.
  - The structure of collective bargaining was complex and inadequate. Companies were very often subject to collective bargaining agreements with a scope beyond the company level, and not adapted to their specific circumstances. The prevalence of a provincial sector-based negotiation structure limited the positive impact of the agreements of national scope as a tool for wage moderation.
  - The multiple agreements applicable and doubts about the interpretation of the scope of each agreement generated significant administration costs. The complexity of the system represented a barrier to entry for companies that were not well established, as they had to determine the agreements applicable to their activity before they began, and this task is not always simple.
  - The undefined extension to collective agreements ("ultra-activity") conditioned the positions of the parties to collective bargaining. The result was a large number of blocked agreements, which were not able to adapt job conditions to the needs of either the economy as a whole or of the company. Barely 8% of agreements were modified in 2010 despite the economic situation.

The incapacity of the current collective bargaining system to meet the needs of workers and employers was clear through the inertia of wages during the crisis, despite the major increase in unemployment.

Very pronounced segmentation in the conditions of work between permanent and temporary contracts. The high rate of temporary contracts means that we can classify the Spanish labour market as dual. A significant proportion of workers has access to permanent jobs that are highly protected and stable, with an increasingly small risk of redundancy as the worker accumulates service in the company. These workers do

not face potential changes in working conditions, however justified they may be to maintain the jobs of other workers or to ensure the viability of the company in the long term. The other side of the coin is the existence of a large group of workers numbering around a quarter of the total, who have temporary employment contracts and are subject to excessive turnover; it also means that innovations cannot be introduced in the management of the workforce with permanent contracts. The high level of temporary employment in Spain is hardly justified by an economic structure that is more intensive in sectors such as tourism, construction or agriculture. This situation particularly affects young people (in nearly 80% of cases entry to the labour market is via temporary work), foreigners and women. Temporary recruitment is also more frequent for jobs that require a lower level of qualifications. Temporary workers alternate periods of temporary employment with periods of unemployment. In addition, the transition to permanent employment is very slow, and after ten years of experience, nearly 40% of workers still do not have a permanent contract. This slow transition affects low-income workers to a greater extent.

The high rate of turnover has negative consequences on workers and companies, and has a very negative effect on welfare and long-term growth. Temporary workers are paid less and have more accidents at work. They tend to alternative work with periods of unemployment, and face a high level of precariousness that has a negative effect on their productivity and welfare. In addition, employers have no incentives to invest in their training and they generate few economies of experience and learning. These characteristics have a negative effect on their productivity and thus on company productivity.

- Difficulties with respect to workers' employability. The high rate of early school leaving, particularly during the boom period, has given rise to a high percentage of the labour force with low levels of qualifications. This is the group which job destruction during the crisis has hit particularly hard and it has had a negative effect on their long-term employability.

In addition, training in employment and during periods of unemployment received by Spanish workers is insufficient and inadequate for the needs of the economy. There is a significant shortage of technical professionals and many workers, and above all the unemployed, have little or no training. In addition, the quality of training, the effectiveness of supervision and the design of the subjects to be taught suffer from serious deficiencies that require a complete overhaul of the system. There has been little development of continuing training.

As a result of these deficiencies, instead of being part of the solution, the labour market has been an essential part of the difficulties faced by the Spanish economy to grow: it contributed to limited productivity, put a halt to structural change, reacted with excessive volatility to changes in the cycle, created major pockets of unemployment and presented a wage inertia that eroded competitiveness. In fact, the labour market placed additional difficulties on economic growth.

In particular, during the crisis the labour market has shown clearly that the adjustment to changes in demand has taken place mainly through redundancy. The excessive volatility of employment in the face of cyclical changes shows that the pre-reform labour institutions promoted an inadequate adjustment, from both the economic and social point of view.

The problem of a dual market is particularly relevant due to its effects on social cohesion. In Spain, job destruction is the most common mechanism for adjusting to changes in demand. In addition, given the differences between the cost of redundancy for permanent and temporary workers, it has been temporary workers who are used systematically as a mechanism for flexibility by companies trying to deal with cyclical changes. Given the uncertainty regarding future demand, employers did not risk hiring workers on permanent contracts, as they cannot use mechanisms of internal flexibility and making them redundant was very expensive. That is why the pre-reform institutional mechanism generated significant incentives for hiring workers on temporary contracts, in case the company had to deal with adverse economic conditions in the future, because redundancy was the most usual adjustment mechanism. These incentives were once more greater in small companies that had a reduced capacity to face the potential redundancy of a worker on a permanent contract, and fewer options for adjustment.

The labour reform aims to tackle these weaknesses, together with other advances introduced into activation policies for the unemployed and the fight against fraud. The objectives of the reform are:

1. Favour internal flexibility in companies as an alternative to job destruction.
2. Modernise collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies.
3. Improve the employability of workers through training and effective labour mediation services.
4. Promote the creation of stable and quality jobs and reduce labour-market dualism.
5. Combat unjustified absence from work.
6. Strengthen the mechanisms for controlling and preventing fraud, protecting workers' rights and the fight against unfair competition between companies.

### *Justification*

This report is a response to the Fourteenth Additional Provision of Law 3/2012, dated 6 July, on urgent measures to reform the labour market, which lays down that at the end of the first year in force of the labour reform the Government will present an assessment report on it that analyses the impact of the reform on the main labour market indicators. This report has been published and is available on the website of the Ministry of Employment and Social Security.

### *Structure of the report*

This report assesses the impact of the labour reform. It begins with a brief reference to the elements that have conditioned the analysis, together with considerations regarding the sources of information used. The second section is the core of the analysis. It begins with the study of the impact of the reform on employment and competitiveness in the Spanish economy. The progress made is a result of the new model of labour relations based on flexicurity, which constitutes the driving force for change. This progress is analysed below. It includes the process of wage moderation, analysis of the measures of employment regulation, the non-application of collective agreements, the results of the internal flexibility module of labour reform, and the changes in the structure of collective bargaining. It then comments other incentives and measures designed to favour permanent employment contracts, including an analysis of the evolution of recruitment and of the external flexibility measures. It then studies the impact of measures with a major effect on employability: the training contract and active policies. The section concludes with a study of the measures taken to prevent unjustified absence from work and how this has progressed. The third section focuses on the fight against fraud, one of the priorities in the strategy of the Ministry of Employment and Social Security. Finally, the fourth section refers to the involvement of the social partners as the key to the changing model of labour relations.



## I. CONDITIONING FACTORS FOR THE ANALYSIS AND SOURCES OF INFORMATION

**The analysis has taken into account the incidence of many different factors on the labour market.**

1. The study of the impact of measures adopted with the labour reform is determined by many different elements. This analysis has taken into account in particular the existing economic situation, interaction between the different measures adopted in the reform itself, the limited time that has elapsed between the implementation of the regulations, the steady adaptation of the different economic and social agents to the new framework and the gradual nature by which the measures make their effect on the market; as well as the impact of other measures adopted recently in the area of employment and Social Security policies, the existence of a major reform programme in areas other than employment, and the characteristics and limitations of the available information:
  - The economic situation and recession being experienced by the country has been a major conditioning factor on the labour market.
  - We have taken into account that the reform is structural in nature and has an effect on multiple aspects of labour regulations. This implies that the analysis must be global and systematic, given that the different measures interact and complement each other, and sometimes it may be difficult to distinguish the impact of individual measures on the operation of the labour market.
  - The reform has still not produced its full effects. The time since the implementation of the reform is still short, given that the Royal Decree-Law was later passed as a Law and has been added to with legal implementations that concluded in the autumn of 2012. In addition, the economic and social agents have to adapt gradually to the new rules, and change what were very deep-rooted habits. It will largely be these agents who determine the timelines involved and final result through the decisions they take.
  - The assessment has also paid attention to the effect of other measures adopted almost at the same time in the area of employment and social security, as well as non-labour areas.
  - The analysis has been carried out basically through sources of public and official information prepared by the National Institute of Statistics (INE) (in particular, the Labour Force Survey, LFS) and the Ministry of Employment and Social Security, taking into account the precise methodology and scope associated with each statistic.

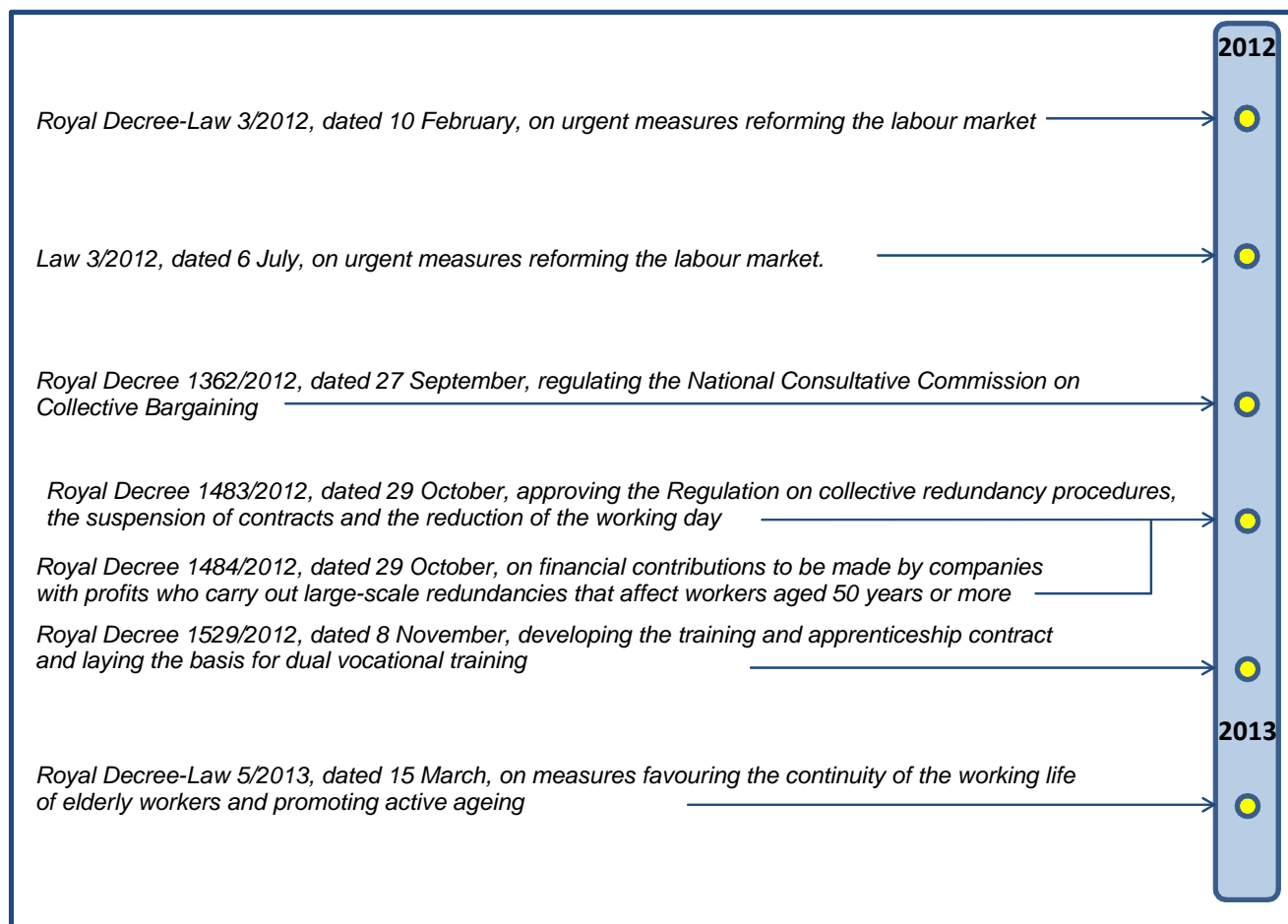
### I.1. Conditioning factors

**The legal implementation of the reform, although given fast-track approval, has been in force for less than a year.**

2. The report is being presented one year after the publication of the Law (7 July 2012) that implemented the Royal Decree which initially approved the reform, but when some of its implementing legislation and measures have been in force for less than a year. The time at which the various laws have been approved that make up the labour reform and its implementation must be taken into account, as well as the gradual way in which its effects are being developed. The Royal Decree-Law had a passage through Parliament as a Law in order to search for consensus and improvements. This should be valued positively, but it has undoubtedly delayed the decision-making process on the part of the agents. In addition, the Parliamentary passage of the Law on the labour reform included some very significant changes, such as a greater limitation on the period of automatic extensions to agreements, which was reduced from two years to one. In addition, as it was a complex reform, some measures have needed complementary legal implementations that have been approved quickly, but these may also have delayed decision-making. All the regulatory implementations had been approved by the autumn of 2012. In September the regulation was approved for the National Consultative Commission on Collective Agreements (CCNCC), which is essential for some of the measures to be effective, such as those relating to the opt-out decisions from collective agreements. One month later another very important law was passed on the procedure for collective measures for regulating employment. And the following week the regulation of the new model of dual vocational training was published. This is a fundamental element for developing the training and apprenticeship contract.

It also has to be taken into account that some measures adopted did not have immediate effect, as is the case with the end of the period of automatic extension to collective agreements, or the re-establishment of the ban on the use of successive temporary employment contracts for more than two years.

The following diagram sums up the sequence of measures adopted, and also refers to the reform of early and partial retirement and other measures designed to boost active ageing, which included significant changes to the collective employment termination measures affecting those aged over 50.



### **Agents have adapted gradually to the new rules.**

3. The full impact of the measures making up the labour reform is not immediate, but rather gradual. In addition, the sequence in which the implementation measures were approved and the necessary development of legal decisions determine the rate at which the system can be transformed. But without a doubt, the element that conditions the rate at which the measures are implemented is the necessary change of habits on the part of the economic and social agents. The lawmakers have introduced profound changes into the regulatory framework. Their aim is to improve the operation of the Spanish labour market. However, it is the economic and social agents, their behaviour and capacity to adapt to the new rules, that will determine the final result and the speed at which the reform produces its effects. In other words, for the agents to lose their deeply rooted habits requires time; it is not enough to publish the law in the *Official State Gazette* (BOE).

As of today, the trade unions and employers' organisations, workers and employers and legal and economic operators in general are immersed in a process of profound change that requires them to come to terms with the new system resulting from the labour reform. The agents are adapting their decisions and strategies to the new regulatory framework and learning to use the tools that before now were either used little or simply did not exist; such as the possibility of not applying the conditions of the collective bargaining agreement (opt-out) or negotiating company-level collective agreements on some questions. The gradual

nature of its implementation is part and parcel of the reform and conditions the acceptability of any proposal for modification.

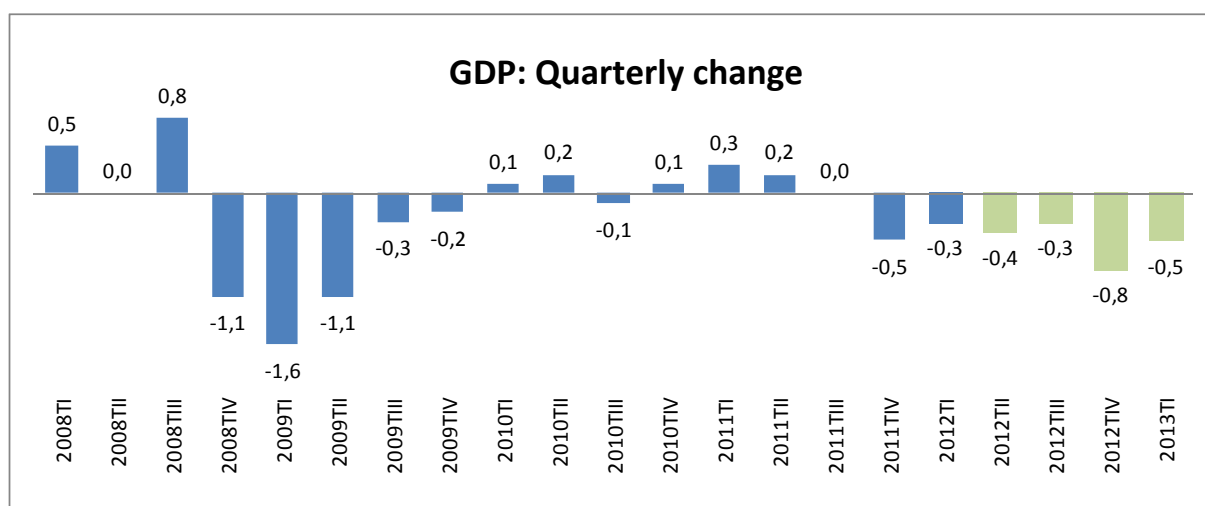
One clear example of this gradual nature are the measures adopted to fight against the level of temporary employment and the excessive segmentation of the labour market. Only when employers realise that internal flexibility is not a chimera and that the cost of redundancy is adapted to the situation of difficulty, will the incentives to use temporary workers on a stable basis as a mechanism to tackle problems be notably reduced.

Another element that determines the gradual nature of the impact of the measures is the necessary development of a consolidated case law that strengthens the legal security of decision-making by the agents. So far, and as we analyse below, the courts have adopted a limited number of decisions that still do not represent a sufficient body of case-law. As more decisions by the Supreme Court are issued so that the law is interpreted correctly by these lower courts, the level of legal security will increase.

#### **The situation of recession strongly conditions the changes in the labour market.**

4. The recession in the Spanish economy and the duration of the crisis have particularly affected decisions taken in the area of human resources management. Profound structural changes are underway in the Spanish economy that are having a major impact on employment and are occurring at the same time as the labour reform produces its effects. The major process of fiscal consolidation, the financial reform, turbulence in the euro area and its implications on the supply of credit, as well as the reform of the public administrations and other reforms adopted last year in other areas are just some of the factors that make it difficult to isolate the effects of the labour reform and each of its individual elements. The uncertainty regarding the future of the economy has reduced in 2013, but represents an element that cannot be left out of the analysis.

The recent changes in the Spanish labour market reflect the recession in the Spanish economy. Following the profound economic contraction in 2008-2009 the Spanish economy appeared to enter a recovery stage in 2010 and the first half of 2011. This recovery did not create employment and was not consolidated, and the economy dipped into recession again, where it has remained since the third quarter of 2011 (quarterly growth of 0.0%). The quarterly GDP growth rates during the crisis, as supplied by the National Institute of Statistics (INE) are given in the chart below:



*Source: Ministry of Economy, National Accounts.*

This recession, together with the correction of the serious cumulative imbalances before the crisis and the effects of the profound structural change (the slump in the construction sector) condition the labour market in the short term, both directly (for example, the streamlining of the size of public-sector workforces) and through their effects on consumption, credit and investment.

Thus the evolution of the labour market has been conditioned by the major internal and external turmoil that has taken place at the same time as the changes introduced by the labour regulations and employment policies. It is therefore difficult to distinguish the effect of the turmoil from the impact of the labour reform.

In addition, the effects of the second phase of recession have been conditioned by the prolonged negative growth. Thus, for example, the decisions on taking on new workers or terminating contracts at the start of the current economic crisis were conditioned by certain expectations regarding the duration of the crisis and the availability of financial resources, which are now not available due to the duration of the economic contraction, the accumulated debt and the fragmentation of the European financial market. A company may initially opt for internal flexibility by suspending contracts or reducing the working day, but not manage to avoid collective redundancy at a later point, if the recession continues and the business project is no longer viable.

**The systematic nature of the reform makes it advisable to carry out an overall analysis of the impact of all the measures adopted as a whole.**

5. When carrying out the analysis it should be taken into account that the labour reform represents a substantial change in the regulation of multiple aspects of labour relations. These changes have to be analysed as a whole, as the reform is systematic and its different elements interact with each other. That is why it is a good idea to analyse each indicator in relation to the others. At times the reform opens up different ways to achieve an objective, so that the indicators that may have appeared negative when analysed individually actually reflect a different reality.

For example, the labour reform includes various ways of bringing the collective regulation of working conditions closer to the reality of companies: of course through company-level agreements, but also through a greater use of opt-out agreements and even through greater flexibility and adaptation of agreements at above company level. Thus the result will depend on the decision adopted by employers, workers, trade unions and employers' organisations. The quicker the higher-level collective agreements are adapted to the needs of business, the smaller will be the effect of company-level agreements and opt-out agreements. If they are not adapted, there will be strong incentives to develop company-level agreements that cover most of the areas of negotiation, and opt-outs will be frequent.

**The reform of employment policies has helped strengthened the impact of the labour reform.**

6. The labour reform began a process of transforming activation policies, i.e. active and passive employment policies, which is an essential complement for improving the operation of the Spanish labour market. So far in this Government's term of office measures have been introduced to improve the efficiency of employment services, the system of passive employment policies has been streamlined by putting the emphasis on the commitment of beneficiaries to finding a job and on the linking of financial assistance to the level of need; and progress has been made to link active and passive employment policies, and to coordinate the active policies of autonomous regions. In fact, after completing the implementation of the labour reform, the strategy for employment is focused on improving the design and instruments of activation policies, a fundamental element in the transformation of a system in which the emphasis has shifted from protecting jobs to protecting workers effectively. This whole process has a significant impact on the labour market.

In any event, the process of transforming activation policies is also structural in nature and its effects are gradual. It is a process that boosts the effectiveness and efficiency of public services in this area, and is developed at the same time as the effects of the reform. The role of the autonomous regions is essential here, given the division of competences. In the shortest term, the measure adopted that most influences the analysis of the impact of the reform is the elimination of many of the reductions in Social Security contributions starting in August 2012, in terms of its effect on the analysis of labour costs.

**Pension reform has had a significant impact on the labour market in recent quarters.**

7. Another element to take into account is the impact of the reform of early and partial retirement in March 2013 on the retirement decisions made in previous months, as well as the measures adopted to reduce the incentives to include older workers in collective redundancies. The announcement that measures would be adopted has conditioned decision-making by agents, and in many cases has sped up the processes planned earlier. This has influenced the data on employment and collective redundancy measures.

**The behaviour of the agents and the evolution of the labour market have also been influenced by the Agreement of the social partners of 25 January 2012 promoting internal flexibility and wage moderation as a way out of the crisis.**

8. Another factor of great importance in the recent changes in the labour market has been the Second Employment and Collective Bargaining Agreement 2012, 2013 and 2014, of 25 January<sup>1</sup>, signed by the social partners, which aims to decentralise collective bargaining and boost the internal flexibility of companies in terms of working hours, duties and wages. It also includes a wage moderation agreement for the period 2012-2014, with important new elements such as an update based on the amount by which Spanish headline CPI in December exceeded the inflation target of the European Central Bank (2%) for 2012-2013, and a wage growth for 2014 linked to the GDP. In addition, it fosters wage updating clauses based on economic indicators associated with the performance of the company (profits, sales, productivity, etc.). The goals of the Agreement has undoubtedly helped in the transformation that is taking place in the labour market and the improvement in the competitiveness of the Spanish economy.

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<sup>1</sup> Resolution of 30 January 2012, of the Directorate General for Employment, registering and publishing the Second Employment and Collective Bargaining Agreement 2012, 2013 and 2014.

## I.2. Sources of information

**The analysis has been carried out using official public statistics, with the LFS and statistics from the Ministry of Employment and Social Security as the main sources of information.**

9. The analysis is based on official statistical information from sources from the Ministry of Economy and Competitiveness and the Ministry of Employment and Social Security. However, the analysis has been supplemented in some cases by cross-referencing available information from the Ministry that does not form part of normal publications, such as the monitoring of continuance in employment in Entrepreneur Support Contracts.

The fundamental reference for the analysis of changes in employment and unemployment is the Labour Force Survey (LFS) prepared by the National Institute of Statistics (INE). The LFS provides the necessary details for analysis derived from a very rigorous source of information, prepared according to a standard methodology in the EU, which has been supplemented where necessary with information from employment registers (employment contracts) and Social Security (registration of the self-employed).

**The statistical system of the Ministry of Employment and Social Security (MEYSS) contributes many data of interest for the analysis of the labour market.**

10. Much of the analysis in this report uses the statistical system of the Ministry of Employment and Social Security (MEYSS). Spain has a very complete statistical system for the labour market, which is the result of the efforts of various governments and of workers in the public sector. It is an excellent source of information. In any event, the monitoring of important legal modifications introduced with the labour reform required new elements of analysis to be introduced. To do so, and to introduce improvements in the statistical system, shortly after the approval of the labour reform the MEYSS set up a working group made up of the main units in the department that prepare relevant statistical information. The efforts made by this group have made possible, for example, new statistics on opt-out agreements, improvements in the statistics of collective bargaining agreements and the analysis of the survival of entrepreneurship contracts. Table 1 below shows some examples of the improvements introduced.

**Care about the methodology used for obtaining data is essential for a correct interpretation of information.**

11. Throughout the report the necessary methodological references are introduced to help a proper interpretation of data. For example, it is very important to take into account the process of collecting statistical data on the economic effects of collective bargaining, which is extended over 30 months and does not precisely reflect the negotiating activity of the social partners, but only its economic effects. That is why specific new information has been published on the process of concluding agreements, so that relevant problems of interpretation are avoided, such as those produced in the public debate of recent months. In general, the report indicates the cases where the provisional nature of the information is most significant.

### **Box 1: Improvements to the Information Systems of the Ministry of Employment and Social Security**

The monitoring of the effects of the Labour reform has been made easier by introducing a series of changes to the information and statistical systems of the Ministry of Employment and Social Security. Among these changes are the following:

- A new organisation of the Statistics for Collective Labour Agreements, which complements the traditional information on the economic effects with new information on negotiating activity (identifying the new negotiating units that appear every year, for example, or the number of agreements signed in each year regardless of the year of starting their economic effects), or on opt-outs from agreements. At present the data on these include their number, workers affected and breakdown by size of company, pending more information such as the subjects that are covered by the opt outs.
- The reworking of the Employment Regulation Statistics to present the information referring to workers affected so that it can be monitored easier.
- The introduction of changes in the classification of people leaving the Social Security system, to differentiate better the reasons related to redundancies and the termination of temporary contracts, as a step towards future integrated statistics on redundancies.
- The monitoring of the continuance in employment of people recruited on entrepreneur support contracts.
- Preparation of a specific module in the Labour Situation Survey 2012 aimed at showing the application by company of internal non-collective flexibility measures. These practices related to internal flexibility were not so far reflected in any statistics.
- Monitoring of the duration of training and apprenticeship contracts.
- Preparation of specific indicators to monitor key aspects of the labour reform based on official Ministry and INE statistics.
- Development of internal capacities related to the preparation of assessment indicators and techniques.

**Despite the progress made, the statistics do not allow us to identify all the changes that are taking place in the Spanish labour market.**

12. It has to be remembered that there are realities which are not reflected in the statistical system. First, there are decisions that leave no trace in statistics. For example, the decisions on a worker's functional mobility are not registered.

Second, the wealth and density of the business decisions or agreements with workers are not fully reflected in the statistics. The collective agreements or employment regulation measures often include complex clauses and conditions that cannot always be included in statistics. For example, wage variations linked to the company's internal information such as sales and profits cannot be computed in the statistics. Equally, the statistics on measures regulating employment do not reflect the qualitative scope of the changes that are beginning to be clear at the negotiating tables, where agreements are increasingly being reached to reduce the number of redundancies in exchange for internal flexibility measures. It can also not be ruled out that some small companies may have difficulties or do not know the reporting requirements.

To address these limitations, sometimes we use qualitative measures and surveys, although these have their own limitations in terms of the administrative effort that they may impose on companies to answer them. This report also includes qualitative information in cases where it is considered ideal for appreciating the effects of the reform.



**The analysis takes into account the high level of seasonal work in the Spanish labour market.**

13. The comparisons of the labour market in different periods are affected greatly by the high level of seasonal work in the Spanish economy. This has a decisive influence on the comparison of data from different periods of the year.

In particular, the quarterly results of the Labour Force Survey should be analysed taking into account the high level of seasonal work in the Spanish economy. For example, the first and last quarter of the year tend to give more negative results than the central two quarters of the year. The report has therefore tried to avoid comparisons between periods that include different quarters.

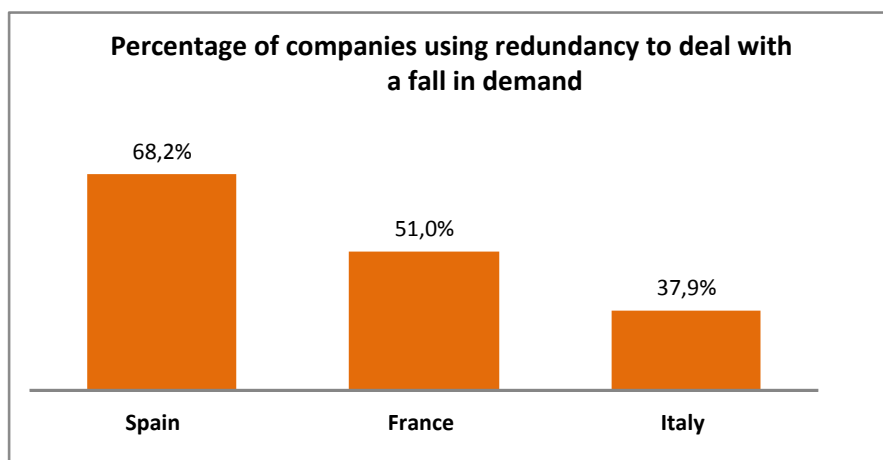
Throughout the report more harmonised and representative reference periods are used, while adhering to the periods and methodological characteristics of statistical information. In particular, the four quarters immediately before and after the labour report constitute a reference in the case of the LFS. The monthly data on recruitment allow us to compare the annual March-February period from different years. These reference periods are supplemented with the analysis of data corresponding to the LFS of the second quarter of 2013, and those of the period since January 2013 to the latest available data as of the closing date of the report.

## II. MONITORING THE IMPACT OF THE LABOUR REFORM

### II.1. Employment and competitiveness.

The economic crisis has made clear the weaknesses in the institutional design of the Spanish labour market. Spain has destroyed more jobs more quickly than the main European economies. At this point in time there are no doubts that the legal organisation of labour institutions is one of the main factors explaining this trend, to the extent that there have not been incentives to adapt the labour conditions the development of the economy; instead, there has been support for maintaining labour factor productivity by job destruction, particularly through temporary employment. The institutional design of the labour market led to a major "insider-outsider" problem, which isolated the insiders from any type of adjustment in their working conditions, and generated incentives to maintain part of the workforce in a stable condition of temporary employment, to carry out adjustments on numbers at a reduced cost.

Internal flexibility in the company is a major guarantee for the maintenance of jobs and acts as a boost to competitiveness and innovation, as shown by the reaction produced in most developed economies during the recent crisis. To the extent that productive structures are capable of resolving changes in the environment with instruments of internal mobility and flexibility, they can leave more dramatic and less socially acceptable adjustment mechanisms to one side, guarantee company viability and boost growth. The employment adjustment to the crisis that has taken place in the main European economies has basically used internal flexibility measures, while in Spain has been carried out by terminating temporary contracts and redundancy. This different behaviour can be illustrated by the high percentage of employers who in Spain used redundancy in the face of a hypothetical shift in demand for their products that obliged them to make adjustments, as shown by the survey carried out by the central banks of the EU and displayed in the following chart<sup>2</sup>: This major loss of human capital during periods of recession conditions the structure of the productive sector and should be reversed.



*Source: Bank of Spain. Wage dynamics Network. Update of the survey during the crisis.<sup>3</sup>*

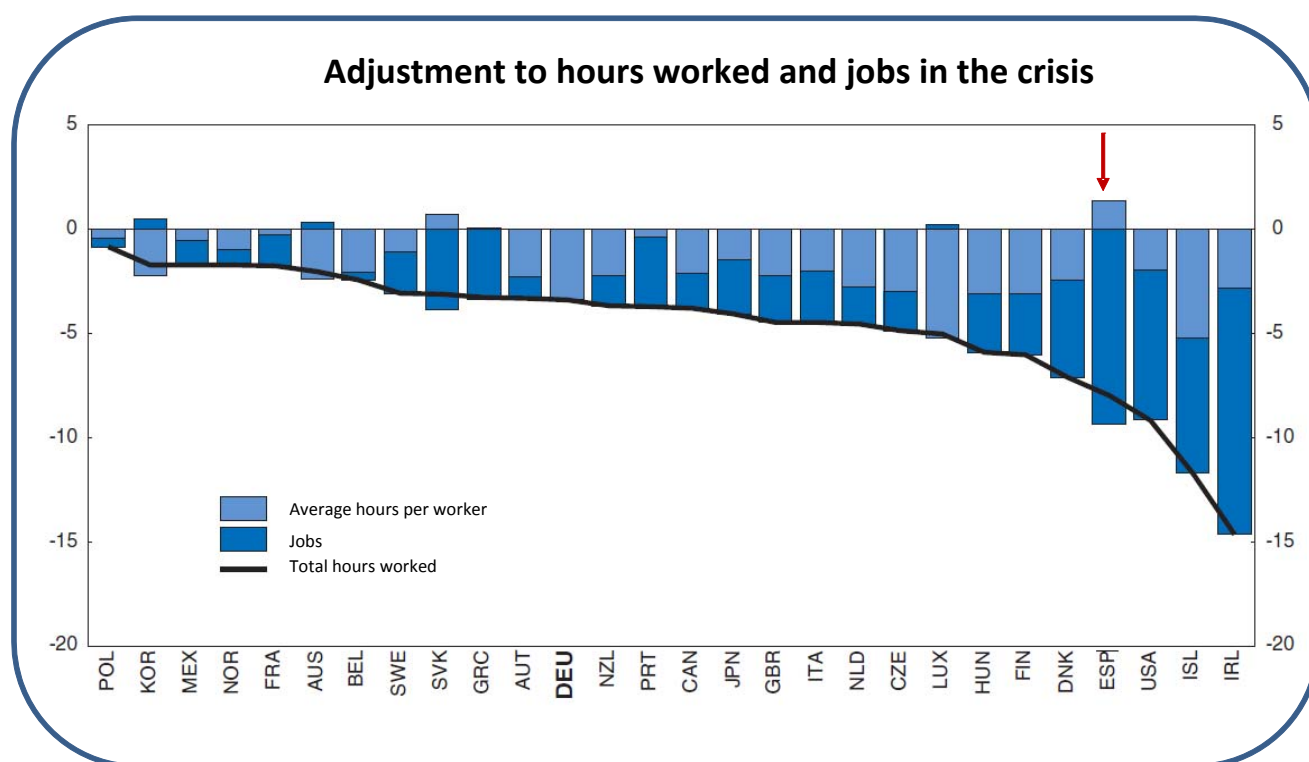
The adjustment made by the Spanish economy, at least in the initial phases of the crisis, was carried out by redundancies and not through internal flexibility measures. This business decision is not frivolous or arbitrary. It can be explained by the rigidities in our legal system of labour relations. Crisis after crisis, the only way out for companies has been to adjust employment, which is must faster, simpler and cheaper than using internal flexibility measures. Companies have for years used temporary employment contracts with the idea that when the time comes it would be the quickest and cheapest adjustment measure. In fact, it has been easier to give up temporary workers than to modify the working day, wages or the duties of the workers in the company as a whole, either directly or through collective bargaining. Redundancy pay for workers with long service has also not been enough to maintain these jobs, and the lack of adaptation has led to many companies to close.

<sup>2</sup> 60% of all those surveyed would make adjustments.

<sup>3</sup> Bank of Spain (2011) "Wage adjustment in the face of turmoil in Spain." Economic Bulletin, February 2011.

The rigidity of working conditions explains the dualism or excessive segmentation of the Spanish labour market, which is another major problem. Spain has had a rate of temporary employment of over 30%, which at times has meant nearly 20 percentage points more than the European average. It is true that since the start of the crisis the rate of temporary employment has fallen, as a result of the adjustment process.

More temporary employment means, as is well known, more precarious jobs, lower wages, less investment in training, more chances of becoming unemployed, lower redundancy pay and less unemployment protection. It also implies less productive workers who are less closely linked to the business project. The division between insiders and outsiders has very negative effects in terms of fairness, and is particularly damaging to young people and less qualified workers who are therefore more easily replaced. It is no coincidence that it is these workers who have the highest rate of temporary employment and who are thus the first that companies get rid of. Young people are not less productive than older workers with greater seniority; they are simply the last to have entered the company and thus have lower redundancy costs. This has a very negative impact in social terms and negatively effects the competitiveness of Spanish companies, favouring a productive structure that is inadequate to guarantee long-term growth.



*Source: OECD<sup>4</sup>; Hours worked: % change on maximum*

Given the above, the 2012 reform aims to make a profound and balanced structural change in the Spanish labour market. There is absolutely no doubt that this labour reform is profound, as it affects all the labour institutions. But it also represents a commitment to balance in the regulation of our labour relations: balance between internal and external flexibility, between stable jobs and temporary employment, between the protection of the employment contract and the protection offered by an efficient labour market, etc.

The labour reform boosts flexicurity as the appropriate way of achieving a "fairer, more responsive labour market"<sup>5</sup>. Flexicurity helps guarantee company competitiveness and this is the best guarantee for preserving and creating jobs.

<sup>4</sup> OECD (2012) The German labour market: preparing for the future. OECD Economic Surveys. February 2012

<sup>5</sup> COM (2006) 708. Green Paper, "Modernising labour law to meet the challenges of the 21st century".

It is a win-win situation, in which there are no winners or losers, but it does need everyone to be involved. The economic and social agents have to adapt to the new rules, abandon deep-rooted habits and adopt new dynamics that are in line with the objectives of the reform. This section analyses the impact of the reform in achieving its final objectives, which are closely related. First, to ensure that the Spanish economy moderates job destruction during phases of recession, and generates more and better quality jobs in phases of expansion. At the moment, given the economic situation and the fact that economies in recession destroy jobs, we can only see a clear moderation in the contraction of employment in the private sector. As well as this, there must be gains in competitiveness, in other words the capacity of the Spanish economy to generate wealth and welfare for its citizens must be expanded. In general, economies accumulate imbalances throughout expansive phases in the cycle, and these must be corrected during phases of contraction. The combination of macroeconomic policies and structural reform policies aim to smooth over the intensity of the cycle and favour greater long-term growth. In phases of contraction gains in competitiveness are fundamental for when the time comes for emerging from recession.

Traditionally, the Spanish economy has used external devaluation to correct its imbalances quickly, at the cost of loss of purchasing power. This is not possible in a monetary union, with the result that the adjustment is more adequate in the long term. Properly coordinated fiscal policies and structural reforms play an essential role. In the first phase of the recession there was an intensive use of fiscal policy, but the structural reforms lacked sufficient force to generate gains in competitiveness that would have allowed an emergence from the recession. Already in the third quarter of 2011 the economy once more dipped and fiscal policy had not only lost its operational force but made it more difficult to emerge from recession. The lack of solution to the problem of financial institutions and financial fragmentation in the euro area have contributed decisively to the current situation of public finances.

The changes in working hours and wages in the first phase of the crisis in Spain show a behaviour different to that of other economies. This has to be related to the labour institutions. The labour reform aims to encourage a healthier adjustment that is similar to other developed economies. It must lead to gains in competitiveness that help us emerge from the crisis. The figures suggest that the objective is being met, thanks to the development of the new model of flexicurity that is analysed in more detail below.

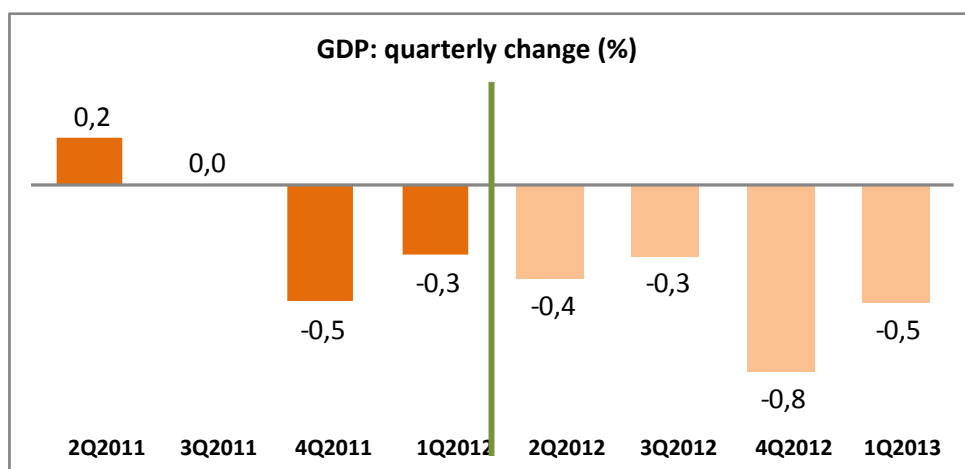
In short, the measures adopted by the labour reform to boost a new model of flexicurity and a greater use of stable employment contracts are giving results that are reflected in a moderation of job destruction in the recessive phase. This will allow the creation of better quality jobs starting with lower rates of growth and boost competitiveness, which will help us emerge from the recession and achieve long-term growth. The new model favours a change in the culture of employment that improves the capacity of individuals and organisations to adapt to change. This is essential for guaranteeing long-term growth in a global knowledge-based economy. A more flexible labour framework that protects workers and not jobs and that is committed to better trained workers with a greater capacity to adapt favours the development of a more competitive economy that is capable of generating more wealth and welfare.

## II.1.1. A more positive future for jobs.

### II.1.1.1. Private-sector salaried employment

**Private-sector salaried employment is the main objective of the labour reform, and thus where the impact analysis should be focused.**

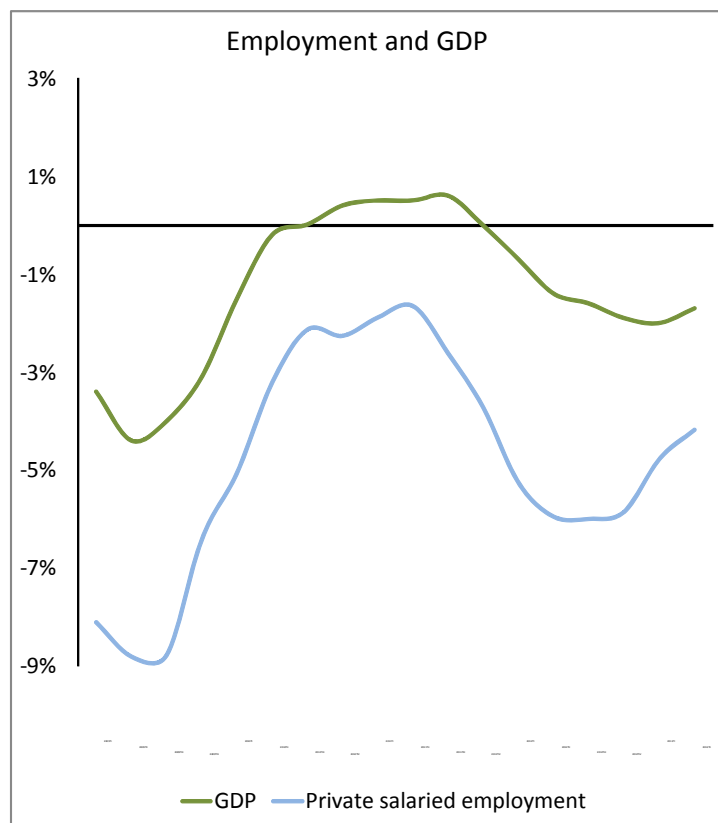
14. Private-sector salaried employment has been most affected by the measures introduced by the labour reform. Over the four quarters following the labour reform its trend has been more positive than in the previous four quarters, despite the fact that economic activity was contracting at a higher rate. The lower rate of destruction of private-sector salaried jobs is in line with other indicators that point to a more intensive use of internal flexibility as an adjustment mechanism. If there had been no reform, job destruction would have been greater, and the data show the Spanish labour market is operating better, which is helping maintain jobs.



*Source: National Accounts, INE.*

**For the first time during the crisis, a deterioration in GDP has not led to a faster pace of job destruction.**

15. The figures for private-sector employed show that for the first time in the crisis, a faster pace of economic contraction has not led to a faster pace of job destruction, which in fact has moderated. The contraction in private-sector salaried employment in the second phase of the recession remained stable in the three quarters following the labour reform at around -5.9%, moderating later to -4.18% in 2Q2013. In these first three quarters, year-on-year GDP growth fell from -1.4% to -1.9%, then stabilised at -2% in 1Q2013 and eased to -1.7% in the last quarter.



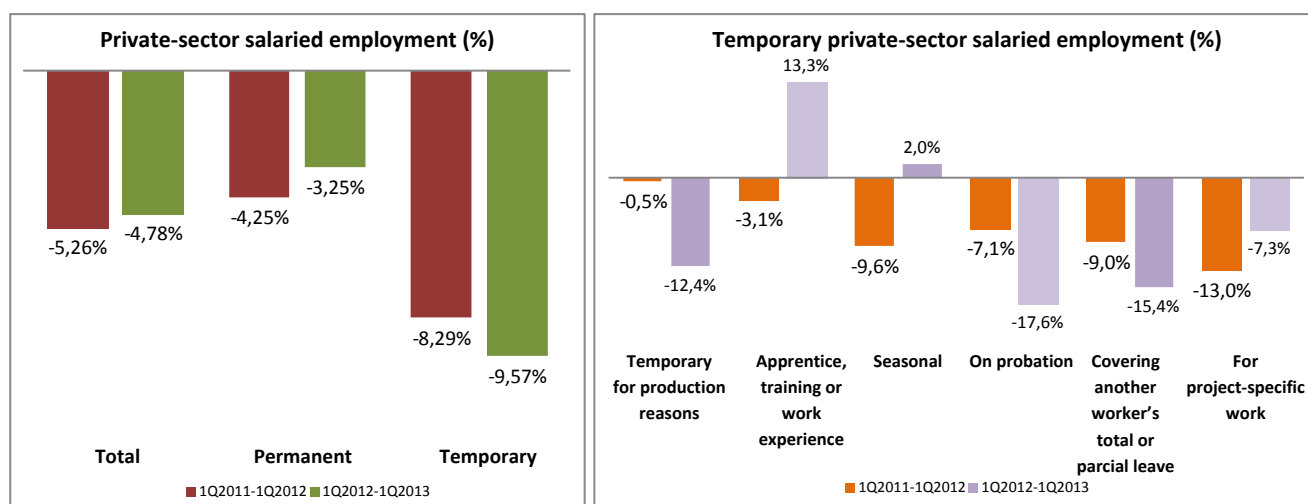
Source: INE, LFS

**The rate of private-sector salaried job destruction has moderated after the labour reform, despite the greater contraction of the economy in recent quarters.**

16. Despite the greater economic contraction in the period 1Q2012-1Q2013 compared with 1Q2011-1Q2012, the rate of private-sector salaried job destruction in the period has fallen from 5.26% of all salaried workers to 4.78% as a result of a more moderate rate of permanent job destruction (which has fallen from 4.25% of jobs in the four quarters before the reform to 3.25% in the four quarters after it). This offsets the greater destruction of temporary jobs, which has increased from 8.29% to 9.57% of their total.

The bigger fall in temporary salaried employment is in line with the cyclical situation and responds to a greater fall in casual jobs, jobs during a probationary period<sup>6</sup> and jobs covering leave. In contrast, there has been an increase in apprenticeship and training jobs (up 13.3% compared with a fall of 3.1% in the previous period) and jobs with project-based employment contracts have moderated their fall significantly. The LFS data for 2Q2013 show that there has also been a moderation in the year-on-year fall in private-sector salaried employment. The fall in total employment has moderated from -5.26% year-on-year in the period immediately before the reform (1Q2012) to -4.18% in 2Q2013, thanks to the moderation in the rate of destruction of temporary salaried jobs (from -10.94% to -5.12%) and permanent jobs (-4.22% to -3.88%).

<sup>6</sup> According to the LFS terminology



Source: INE, LFS

### The reduced level of job destruction has been concentrated in permanent jobs.

17. An analysis of the changes in absolute terms clearly shows the moderation in job destruction, particularly in terms of permanent jobs. In the four quarters following the labour reform 540,200 salaried jobs in the private sector were destroyed, compared with 628,000 in the four quarters before the reform. In other words, 87,800 fewer jobs were destroyed despite the lower rate of growth.

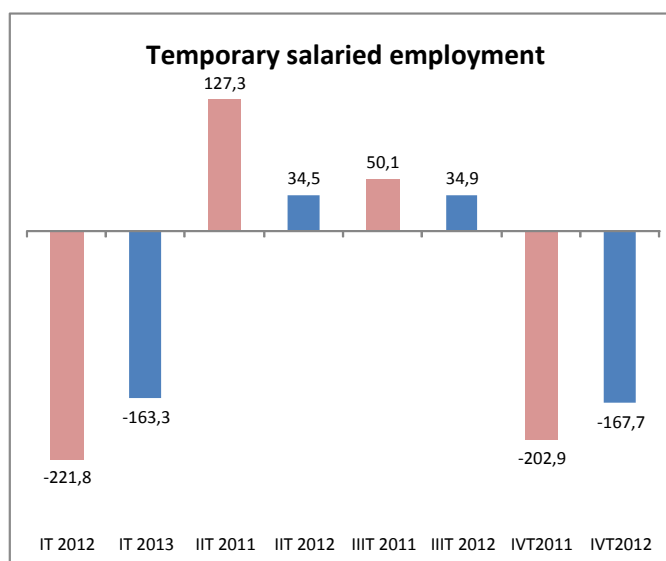
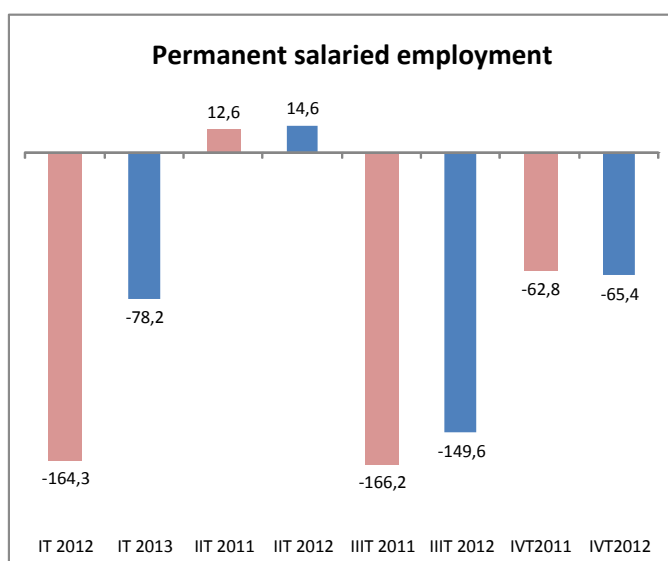
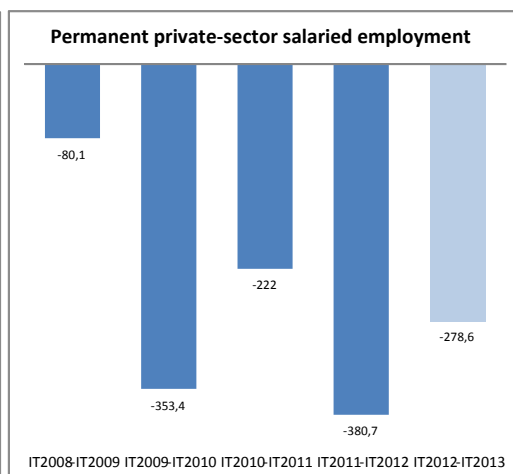
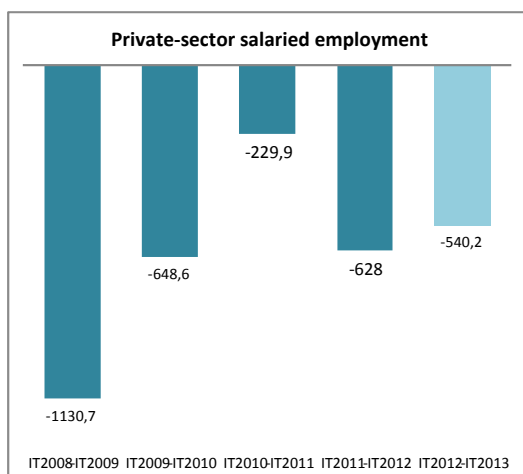
The reduced job destruction is a result of moderation in the destruction of jobs with permanent contracts, which offset the greater destruction of temporary jobs. In the four quarters before the reform 380,700 permanent jobs in the private sector were destroyed, while in the four quarters after the reform the total was 278,600. In other words, 102,100 fewer salaried jobs in the private sector were destroyed after the labour reform.

The analysis by quarters makes clear that the major destruction of temporary employment in the private sector forecast by some analysts did not take place:

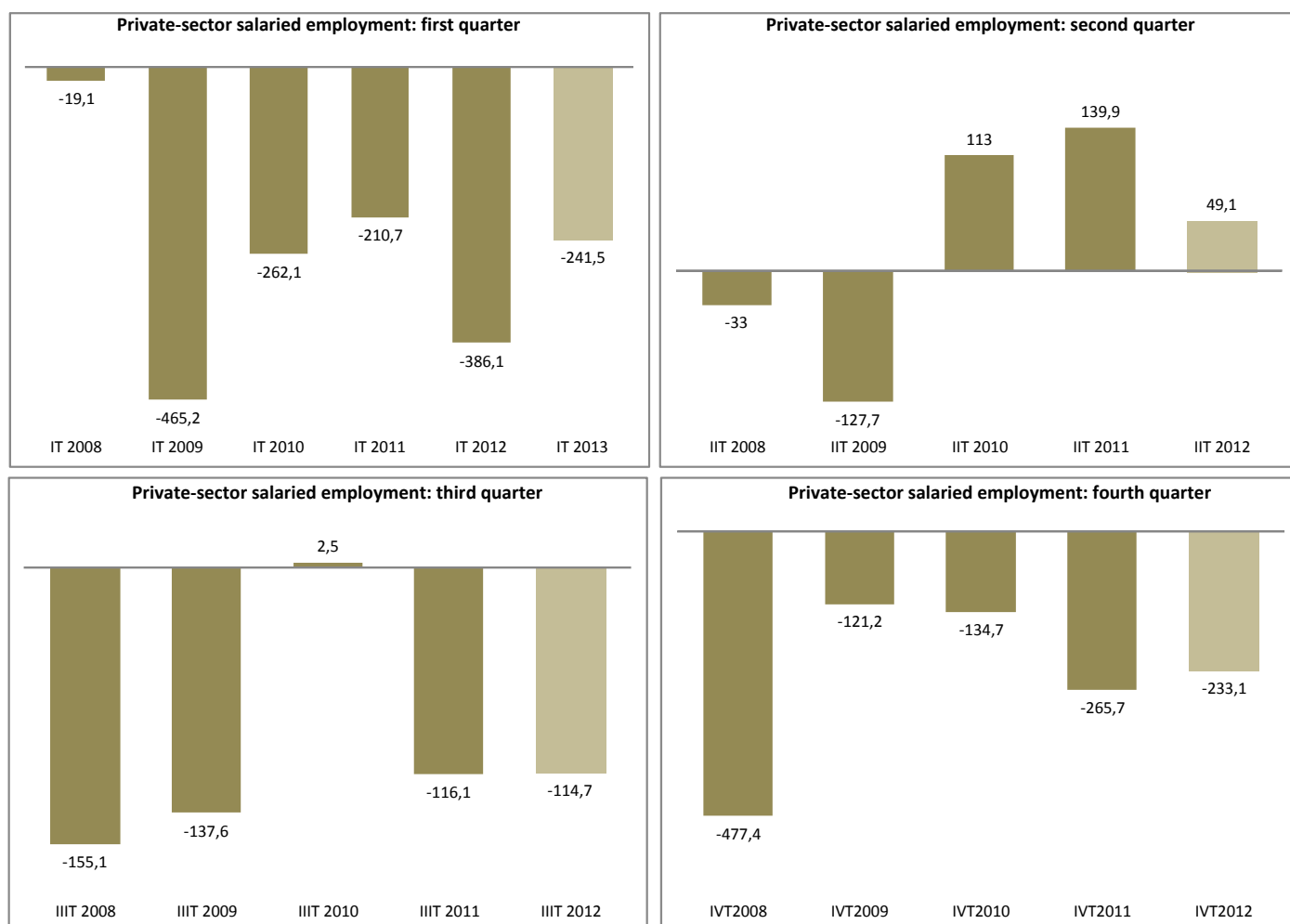
- In the quarter immediately after the reform (1Q2012), despite the steep fall in GDP (-0.4% in the quarter) compared with the same period the previous year (a rise of 0.2% in 2Q2011), there was net temporary job creation in the private sector of a very similar level (12,600 in 2Q2011 and 14,600 in 2Q2012).
- In the third quarter, destruction of permanent jobs was less marked in 2012 (a difference of just over 15,000), when the economy contracted at a rate of -0.3%, compared with a zero growth in the same period in 2011. In the fourth quarter, the destruction of salaried permanent jobs in the private sector was very similar in both years, despite the fact that the fall in GDP was once more greater in 2012.
- Data for the first quarter of 2013 are significantly better than for the first quarter of 2012 (just over 85,000 net jobs of difference), although the quarterly fall in GDP was 0.2 pp greater in 2013.

In terms of temporary employment, in the four quarters after the reform a total of 14,300 jobs more were lost than in the four previous quarters. However, the differences between the two periods (1Q2012-1Q2013 compared with the period 1Q2011-1Q2012) are due more to the lower level of creation of temporary jobs in the second and third quarters. In contrast, the destruction of temporary jobs in first and last quarters was significantly less intense than in those before the reform. The data for the second quarter of 2013 show a strong reduction in the year-on-year rate of contraction of temporary salaried employment in the private sector, from -9.57% to -5.12%, thanks to the creation of 154,400 jobs in the quarter.





Source: INE, LFS



Source: INE, LFS

### The reform would have helped prevent the destruction of 225,800 jobs in the private sector

18. The analysis of the Ministry of Economy and Competitiveness included in Table 2 estimates that the reform would have helped prevent the destruction of 225,800 jobs in its first year in force. The estimate included in Table 2 is coherent with the analysis of changes in employment for the four quarters before and after the labour reform, according to the most recent LFS, and with a less intense use of internal flexibility mechanisms than in the past, particularly wage moderation. Companies would have used various alternative mechanisms to redundancy that would have prevented job terminations, in a more favourable adjustment for both workers and employers.

### The Spanish economy will create jobs with lower rates of GDP growth

19. So far only the impact of the reform on the moderation of job destruction can be analysed, given the economic situation. The size of the recession in Spain and the euro zone has so far prevented job creation, and thus has not allowed us to observe the impact of the reform in a boom phase. However, projections have been carried out that estimate that jobs creation will take place starting with lower rates of growth than in the past. The analysis prepared by the Ministry of Economy and Competitiveness included in Table 3 estimates initially that the Spanish economy will be capable of generating jobs with a growth rate of between 1% and 1.2%, significantly below the figure before the reform.

## Box 2: An initial assessment of the effect of the labour reform on employment

An initial assessment of the possible effects of March 2012 labour reform on employment since its entry into force is conditioned by the limited time since the approval of the reform. The latest available data at the time this analysis was prepared is the Labour Force Survey (LFS) for the first quarter of 2013.

In 2012 and so far in 2013, the Spanish economy and that of the euro area have been in a major recession, so it is clear that we could not expect this reform, or any other, to have created jobs over the last year. The most we could hope for in this situation is that the framework of labour relations under the labour reform would have contributed towards moderating the rate of job destruction that the Spanish economy has experienced for years now. The effects of the labour reform on job creation may be quantified more precisely in the longer term and when the economy really begins to register sustained economic growth.

To evaluate the effects of the reform various functions for employment demand have been estimated. They relate employment (endogenous variable) to GDP change as an explanatory variable. In specifying these functions their dynamics have been taken into account and they have been estimated for total employment and salaried employment.

$$\Delta \log Empleo_t = c + \Delta \log \sum_{i=0}^s PIB_{t-i} + \varepsilon_t$$

The data are quarterly and the sample used in the calculation ranges from the first quarter of 1980 to the first quarter of 2012. At the same time, the data used have been seasonally adjusted either by the technical services of the Ministry of Economy and Competitiveness (Directorate General for Macroeconomic Analysis and International Economy) or by the INE; in both cases the procedure used as been Tramo-Seats.

Appendix 2 includes the estimates of the employment functions used and finally selected and the usual statistics for validating the results. In general, the results of these statistics pass the statistical and econometric tests required to validate these functions.

To evaluate the reform, employment forecasts have been made together with the estimated functions for the period from the second quarter of 2012 to the first quarter of 2013. The result is compared with the employment observed by the INE for this period of prediction and the difference between the observed employment data over these four quarters and that resulting from the forecast made under this model is attributed to the reform. Thus a fall in expected employment greater than that which calculated represents a favourable effect of the reform and is unfavourable in the reverse case. The analysis is limited to the private sector, where the change in labour relations involved in the reform has had a more direct effect, and uses seasonally adjusted figures, as the variable to be explained is the quarterly change in employment.

In accordance with the result of the table below, **the labour reform would have prevented the loss of around 225,000 jobs in the private sector in only its first year in force. With respect to salaried employment in the private sector, the reform would have prevented the loss of 180,000 jobs.**

### FORECAST OF WORKERS EMPLOYED FOR 2013 Q1

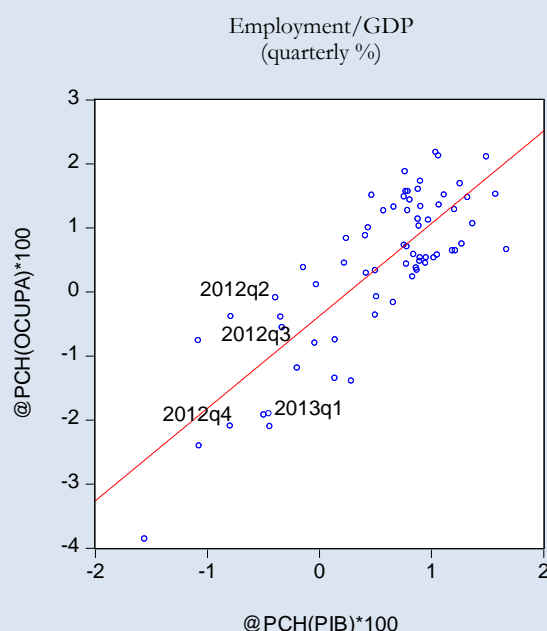
Model	Actual data		Forecast data		Balance (thousands)
	Value 1Q2013	Year-on- year change, thousands	Value 1Q2013	Year-on- year change, thousands	
Seasonally adjusted data					
Private-sector workers	13,902.5	-543.8	13,676.7	-769.6	+225.8
Private-sector salaried workers	10,892.9	-545.9	10,713.1	-725.7	+179.8

Fuente: INE y Ministerio de Economía y Competitividad

**Table 3: An approach to estimating the job-creation threshold**

The estimate of GDP growth required to begin to create employment, known as the job creation threshold (JCT), is extremely interesting at the present time and tends to be a controversial subject, in the light of the wide range of values assigned by different analysts. This analysis represents an initial attempt.

With the data on the quarterly change in GDP and employment since the first quarter of 1995 to the first quarter of 2013, we can see a close relation between the two variables, as is to be expected. This is reflected in the graph below, which shows the quarterly change in employment on the vertical axis and GDP on the horizontal axis:



Since the start of the economic crisis, the Spanish economy has recorded falls in GDP, with the exception of the end of 2010 and the start of 2011, when however the slight increase in GDP was insufficient to maintain employment. More than 3.5 million jobs have been destroyed since the start of the crisis. However, it has to be taken into account that this job destruction with moderately positive GDP growth took place in substantially different market conditions from those created by the labour reform, particularly in terms of wage dynamics and internal flexibility in the use of human resources within the company.

Estimating the employment threshold in line with the labour reform is not without its difficulties. It involves projecting in the medium term the inferences that may be extracted from only four observations. One way of minimising the use of arbitrary assumptions is estimating various simple functions that relate employment and GDP, both with annual data and quarterly data, and various sample periods. The choice of sample period for the calculation has been made by trying to select a reduced set of years, in which the quarters corresponding to the labour reform had greater weight, but at the same time the number of observations was sufficiently broad for the calculation to be robust.

A restriction of employment stability has been imposed on these estimated functions; in other words, zero growth, and with this condition, we have determined what would be the GDP growth required in each case to stabilise employment. The threshold would therefore be the annual GDP growth with which employment is maintained; GDP growth rates above the threshold would generate employment and those below it would destroy it. In an expression of the type:

$$\Delta \log \text{Empleo} = C + a_1 * \Delta \log \text{PIB}_t + a_2 * \log \Delta \text{PIB}_{t-1} + \dots + a_n \Delta \log \text{PIB}_{t-n}$$

The quarterly or annual growth rate according to the nature of the data would be:

$$\text{UCE} = -C / (a_1 + a_2 + \dots + a_n)$$

## An approach to estimating the job-creation threshold (continued)

### Summary of the estimate of the job creation threshold

Dependent variable:  $\Delta \log \text{Empleo}$

Equation	C	GDP <sub>t</sub>	GDP <sub>t-1</sub>	GDP <sub>t-2</sub>	GDP <sub>t-3</sub>	GDP <sub>t-4</sub>	JCT
Seasonally adjusted quarterly data							
Eq1	-0.003306	1.378643					0.96
Eq2	-0.003926	1.009349	0.469217				1.06
Eq3	-0.003932	1.192070		0.284398			1.07
Eq4	-0.004171	1.293463				0.216737	1.11
Eq5	-0.004126	1.022626	0.406567			0.078180	1.10
Annual data							
Eq6	-0.016659	1.539989					1.08
Eq7	-0.018919	1.489530		0.139491			1.16
Eq8	-0.018524	1.514630			0.096952		1.15

Source: Ministry of the Economy and Competitiveness

The above table sums up the results of the estimate of various functional relations between employment and GDP and the corresponding estimate of the job creation threshold (JCT). The estimate has been carried out using quarterly and annual data and **the job creation threshold is at a GDP growth rate that varies within a narrow band of between 1-1.2%**. It has to be taken into account as well that the effects of the reform will probably gather pace. For example, as a growing number of old collective agreements end their period of automatic extension, it can be expected that wage flexibility will increase and the job creation threshold will fall even further. Both this fact and the need to use equations estimated over a prolonged horizon (and that thus reflect different conditions than those in place now) involve:

- i) the estimate made on the job creation thresholds may be conservative;
- ii) this threshold is not a permanent value, but may improve over time, although at present it is not possible to predict in any statistically rigorous way how far it could go in the medium term.

### II.1.1.2 Self-employment

**Self-employment has progressed more favourably in the last nine quarters, particularly in those following the labour reform, compared with its steep fall at the start of the crisis.**

20. Between 1Q2008 and 1Q2012 nearly 560,000 self-employed jobs were destroyed, around 16% of the total. Above all, job destruction affected self-employed with employees (-230,000, -20%), self-employed in cooperatives, where more than half lost their jobs (-38,000, -53%) and self-employed for caring for family members (-90,000, -41%).

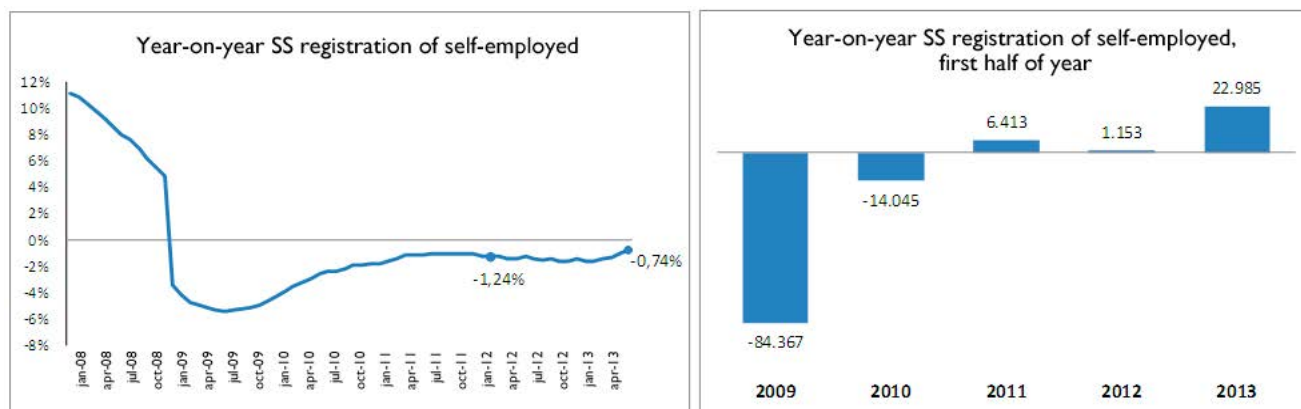
The four quarters following the labour reform have been slightly more positive than the four quarters before it, despite the worse economic situation. As then, self-employment has remained very stable. Barely 3,000 self-employed jobs have been lost between 1Q2012 and 1Q2013, while in the period immediately before that a total of 10,000 were lost. In the four quarters after the labour reform, self-employed with employees have performed slightly better (down 59,000 compared with a fall of 64,500 in the previous period), but still with very high falls as a result of the general economic situation. The self-employed without employees have grown by almost the same number as in the previous period (up 80,600 compared with a rise of 79,300 in the previous period). This recent movement in self-employment has meant that this form of employment has gained weight as a proportion of total employment in the private sector, and has

risen above the level at the start of the crisis. Self-employment now accounts for over 18% of private-sector employment.

It is difficult to attribute the differences in other kinds of employment to the labour reform. Members of cooperatives maintained their jobs after 2009, following a major initial adjustment, but in the four months following the reform have lost 12,200 jobs (down 36%), which is a very steep fall given the small group of self-employed they represent. In addition, self-employment for caring for family members fell significantly (down 9.5%), but much less so than in the previous period (down 16.6%).

The data corresponding to 2Q2013 show an increase of 37,300 self-employed over the period, including an increase in 14,400 employers and 13,900 independent workers or sole traders.

An analysis of the changes in number of people registered in the Social Security system also highlights that there has been a continuous improvement since November 2012. Since the labour reform, the rate of year-on-year growth in average monthly numbers of people registered in the special self-employed scheme has improved from -1.24% to -0.74%. In the first half of 2013 there was an increase in registrations of nearly 23,000 self-employed, a much more positive figure than in the rest of the years of crisis.



Source: MEYSS

**Self-employment may be linked more closely than public-sector employment with the labour reform, but in quantitative terms it has had a limited impact in terms of aggregate employment.**

21. Self-employment is affected more than public-sector employment by the new regulation, but it is important to separate the changes in employment in this area from salaried employment in the private sector. In any event, the data on self-employment barely affect the aggregate data on the changes in employment in the period under analysis. It has to be taken into account that around two thirds of the total of self-employed are businesspeople without employees or independent workers, while barely 30% of the self-employed have employees. Those who are employers are more affected by the new provisions, as the boost to internal flexibility measures favours the self-employed person who is an employer, and the new regulation on internal and external flexibility and collective bargaining helps decisions to recruit workers. The new support contract for entrepreneurs also includes tax advantages and credits for Social Security contributions that micro-enterprises may benefit from. Young entrepreneurs also receive support through other measures adopted in recent months that are linked to the Spanish strategy on entrepreneurship and youth employment. The law on entrepreneurs should also help improve the situation of entrepreneurship, which is a key element for making a swifter change in the structure of production. All this should help the self-employed create businesses and hire workers once growth returns.



Source: INE, LFS





Source: INE, LFS

### II.1.1.3 Public-sector employment

**The fall in public employment has had a major effect on aggregate employment in the Spanish economy in recent quarters.**

22. As a result of the streamlining process in the public sector, in the first four quarters following the labour reform 258,300 public-sector jobs were destroyed, while the fall was 81,800 in the four quarters before the reform. This decrease has a major distortion effect on the analysis of aggregate data for the total working population and unemployment, and should be taken into account when making any analysis of the impact of the labour reform.

**Public-sector employment responds to the process of streamlining the public sector.**

23. The different levels of government are involved in a process of streamlining designed to increase their efficiency and ensure the sustainability of the public accounts in the long term. This process is vital if the Spanish economy is to return to the path of sustainable growth.

From the start of the crisis the growth of public employment partially offset the impact on employment of the destruction of jobs in the private sector. Between 1Q2008 and 3Q2011, the number of salaried public-sector workers increased by 347,000 according to the LFS. Most of the increase was in permanent jobs (291,000 more, 84% of the total). A major adjustment began in 3Q2011, started by the autonomous regions. It has continued until now, and reduced the number of public-sector workers between 3Q 2011 and 1Q 2013 by 374,800. In 2Q2013 public-sector employment remained stable, and fell by only 2,600 jobs as a result the destruction of 10,500 permanent public-sector jobs and the creation of 7,800 temporary jobs.

Most of the jobs lost since the start of the adjustment process (3Q2011) have been temporary, at 66.3%. Data suggest that a significant proportion of them are temporary contracts that were renewed regularly and that have now stopped (contracts for specific works or services). There has also been a significant reduction in temporary work to cover workers on total or partial leave.

## **The adjustment process in public-sector employment began in the second half of 2011 in the autonomous regions**

24. The loss of 84,400 public-sector jobs from 4Q2011 is the biggest to date since the start of the adjustment process, and dates back to before the labour reform and the last change of government. The reduction of 41,400 permanent public-sector workers in the same period is again the biggest fall observed in the series.

The labour reform, following the criteria of existing case law, includes expressly in the applicable labour law the application of redundancy for economic, technical, organisational or production causes in the Public Sector. It states that "redundancy for economic, technical, organisational or production reasons of employees working for entities, bodies or institutions that form part of the public sector shall be carried out under the Workers' Statute Law and its implementing legislation and within the framework of the preventive and corrective mechanisms regulated in the law on budget stability and financial stability of the Public Administrations."

Following the reform the judicial rulings issued in cases collective redundancy in the public administrations have ruled that some are within the law and others not, and in some cases they are void. Thus, some of the rulings that have declared collective redundancies in the public sector to be within the law have affected local councils<sup>7</sup>, foundations<sup>8</sup> and publicly owned companies<sup>9</sup>, and have been based on economic causes due to situations of insufficient budget or serious and continuous financial losses; in some cases they have decided that the drafting of the Royal Decree-Law 3/2012 only requires the accreditation of the alleged cause, but suppresses any reference to business viability, or the capacity to maintain the volume of jobs, as well as any functional connection.

Some of the rulings that have declared the redundancies in the public sector to be against the law have affected a regional television station<sup>10</sup> and a local council<sup>11</sup>. They were grounded on the lack of proportion between the alleged cause and the number of redundancies agreed, together with the lack of good faith during the negotiations of the consultation period, respectively. Finally, some of the statements that declared redundancies in the public sector void have affected a consortium<sup>12</sup> and a publicly-owned company<sup>13</sup>, and were based on formal defects in the consultation period and fraud consisting of deceit with respect to the termination of the employment contract.

Finally, given that the adjustment required is structural in nature, and that the levels of employment have to return to normal in a lasting manner, the reform restricts the possibility of using measures suspending employment or reducing the working day in the public administrations. This is in line with the streamlining of the size of the public-sector workforces, which have grown in recent years to the point of becoming one of the factors endangering the sustainability of the public accounts. The adjustment process underway is therefore reversing the temporary increase in public employment.

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<sup>7</sup> Ruling of the Employment Division of the Supreme Court of Justice of Andalusia, dated 25 October 2012

<sup>8</sup> Ruling of the Employment Division of the Supreme Court of Justice of Madrid, dated 14 February 2013

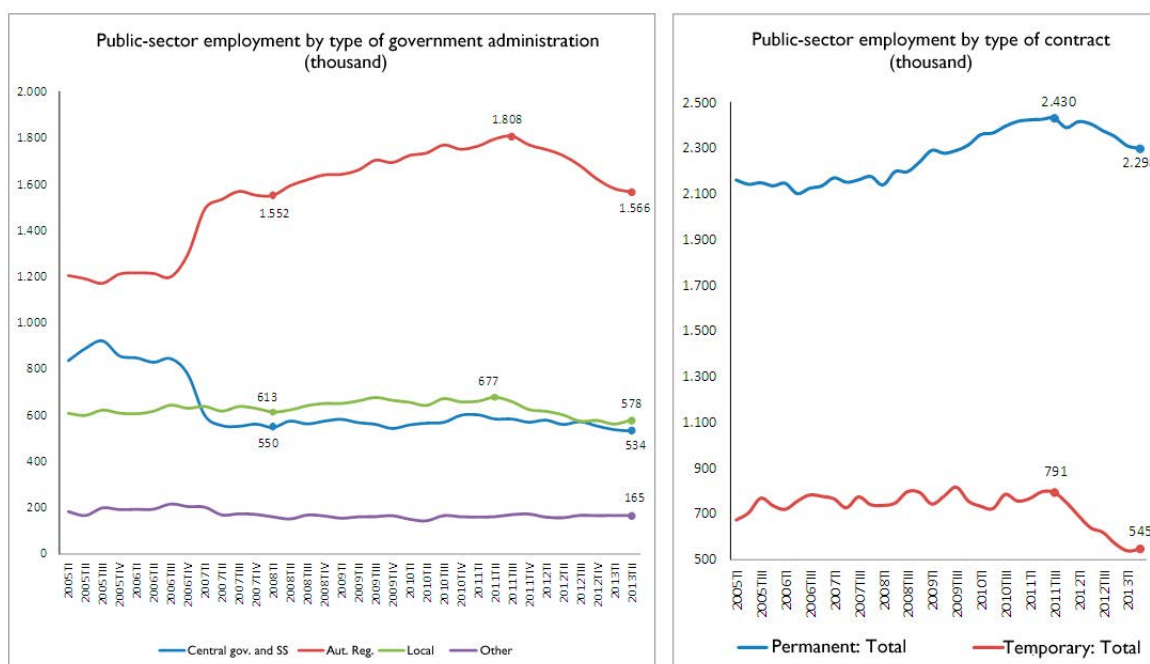
<sup>9</sup> Ruling of the Employment Division of the Supreme Court of Justice of Cantabria, dated 26 September 2012 and the Employment Division of the National Court, dated 26 April 2013.

<sup>10</sup> Ruling of the Employment Division of the Supreme Court of Justice of Madrid, dated 9 April 2013.

<sup>11</sup> Ruling of the Employment Division of the Supreme Court of Justice of Andalusia (Seville), dated 20 March 2013.

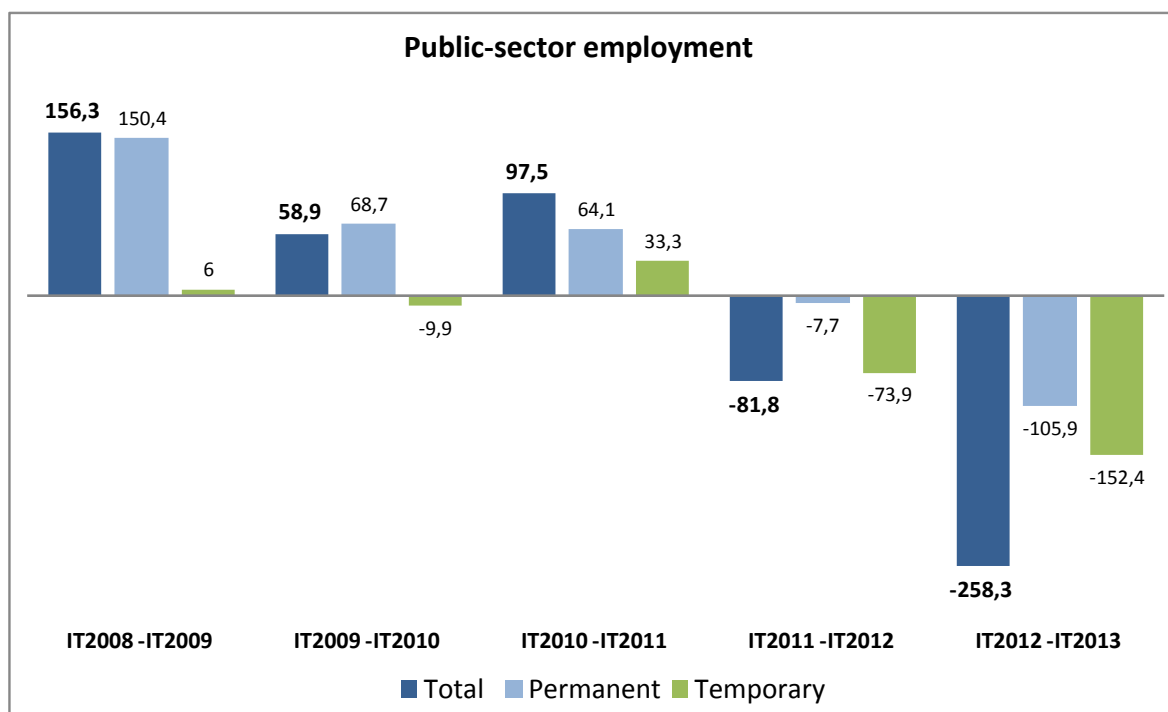
<sup>12</sup> Ruling of the Supreme Court of Justice of Catalonia, dated 13 June 2012.

<sup>13</sup> Ruling of the Employment Division of the Supreme Court of Justice of Castile-La Mancha, dated 16 April 2013.



Source: INE, LFS

In short, unlike what is happening with self-employment, the data referring to public-sector employment distort the analysis of aggregate employment data. Therefore, the analysis of private-sector salaried employment and private-sector employment give similar results, but this is not the case when aggregate data including public-sector employment are used. Public-sector employment has been affected by factors other than the labour reform in recent years.



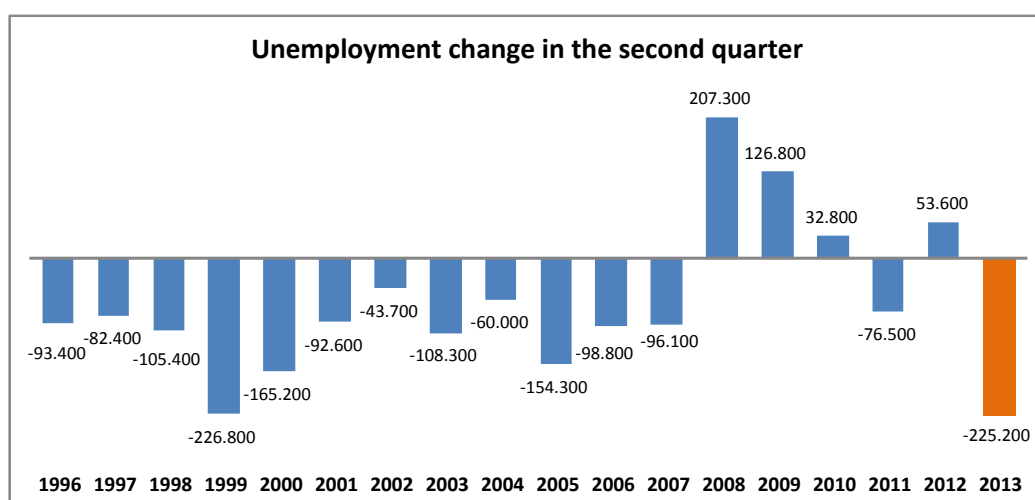
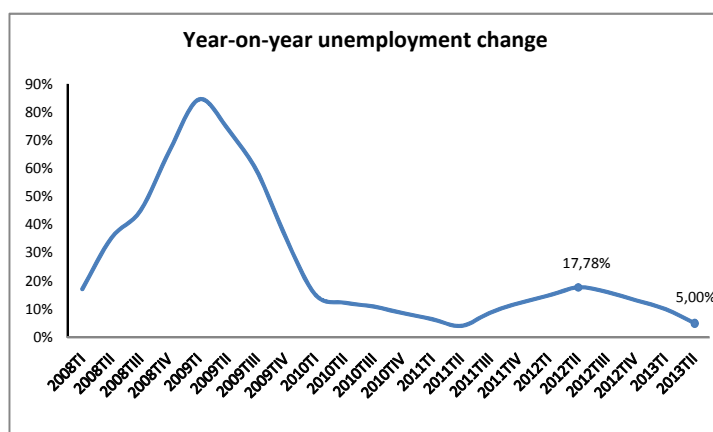
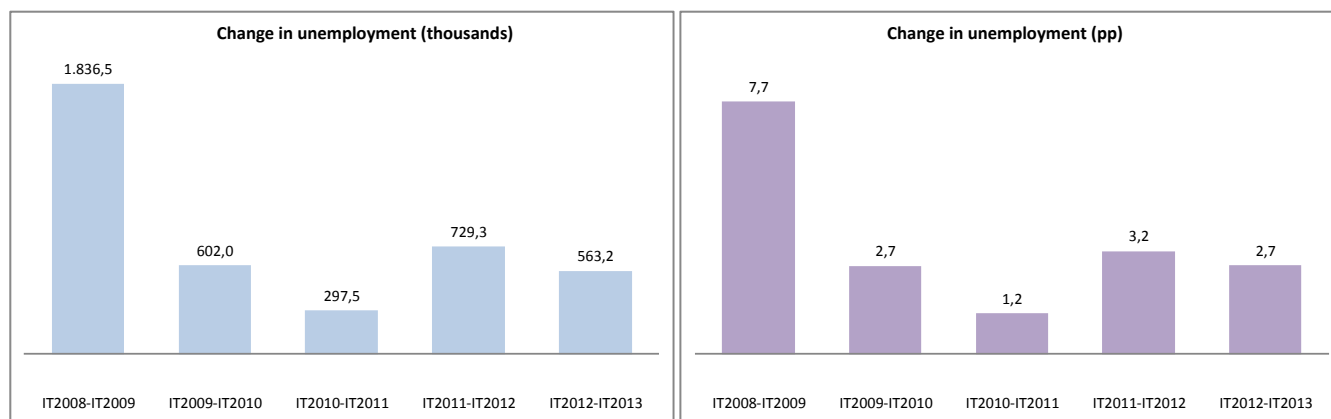
Source: INE, LFS

#### II.1.1.4. Unemployment and the active population

The rise in the unemployment rate has moderated since the labour reform

25. The year-on-year increase in the number of unemployed, which hit 18% in the first period following the labour reform (2Q2012), has moderated and now stands at 5% (2Q2013). The figure for 2Q2013 is particularly positive in this sense, as it includes a fall in the period of 225,200, the biggest in the second quarter since 1999. The unemployment rate fell by 0.9 points in the quarter.

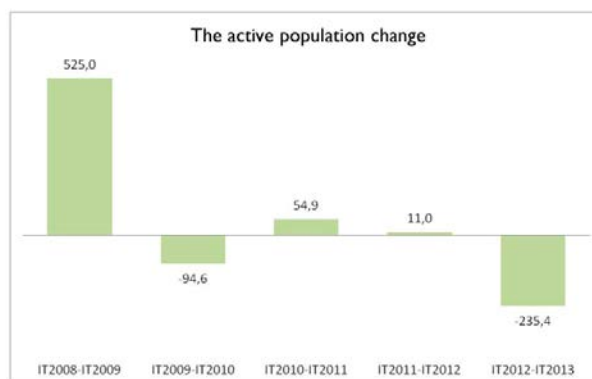
In the 12 months following the labour reform, the number of unemployed increased by 563,200. This figure is far below that in the 12 months before (729,300). The unemployment rate increased by 2.7 percentage points, compared with 3.7 percentage points in the previous period.



Source: LFS, INE.

The recent changes in unemployment depend on the changes in the active population.

26. The fall in employment since the labour reform has led to an increase in unemployment, which has been much smaller than in other periods. This is due not only to the less sharp fall in private-sector employment, but to demographic factors. First, the ageing population has an increasing impact on the Spanish population. more workers are retiring, and fewer young workers are entering the market. In addition, over the last few quarters there have been major migratory flows, basically resulting from the return of immigrants to their countries of origin. As a result of both factors, Spain has lost 235,400 active people in the 12 months following the labour reform, and 76,100 in 2Q2013.



Source: INE, LFS

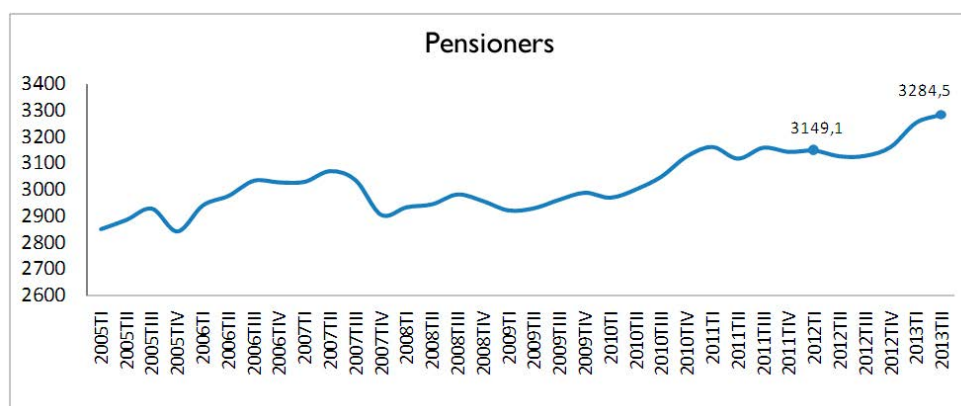
In the last six months of 2012 alone (the latest figures available), the population of an age to work fell by nearly half a point, and the overall population fell by 142,542. The ageing population and the return of immigrants to their country of origin explain this situation. While the young population aged between 16 and 29 fell by 136,308 (nearly 2% in six months), the population over the age of 45 increased by just under 1% (103,887), and the population aged between 55 and 64 very slightly more (1.04%, nearly 55,000). All this has an obvious impact on the active population.

Age group	1 July 2012	1 January 2013	% change	Total change
16-64	31,067,783	30,925,241	-0.46%	-142,542
16-29	7,209,126	7,072,818	-1.89%	-136,308
45-64	12,145,413	12,249,300	0.86%	103,887
55-64	5,243,266	5,297,647	1.04%	54,381

Source: Population figures, provisional results, INE

This ageing process is of great importance when it comes to analysing the changes in the active population and designing employment and social security policies. Important measures are already being adopted to address this challenge. We have to promote active ageing and strengthen the sustainability of the Social Security system to guarantee future growth and an adequate level of pensions.

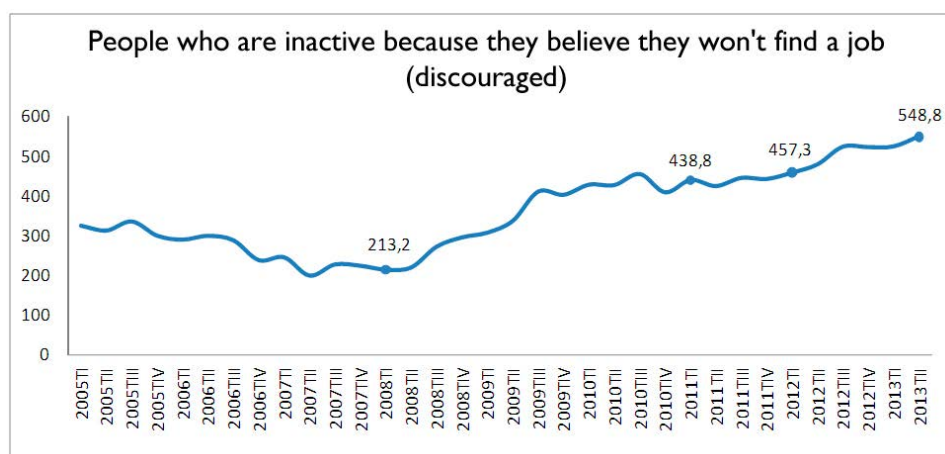
The LFS data show that the measures adopted in the area of early and partial retirement announced at the end of 2012 have also had a significant impact on inactivity and the contraction in employment in 1Q2013. This is the only explanation of the major increase in the inactive population due to retirement over this period, which had remained stable in previous quarters, and once more moderated in 2Q2013. In the twelve months following the labour reform, the number of people leaving the labour force due to retirement increased, according to the LFS, by 105,100. Part of this number has probably been the result of the early adoption of measures as a response to announced changes to the regulations. This could also have affected the data on collective redundancy measures in the first quarter of 2013.



Source: LFS, INE. (thousands of people)

**The discouragement effect is very limited, and migratory flows largely respond to a return of immigrants to their countries of origin.**

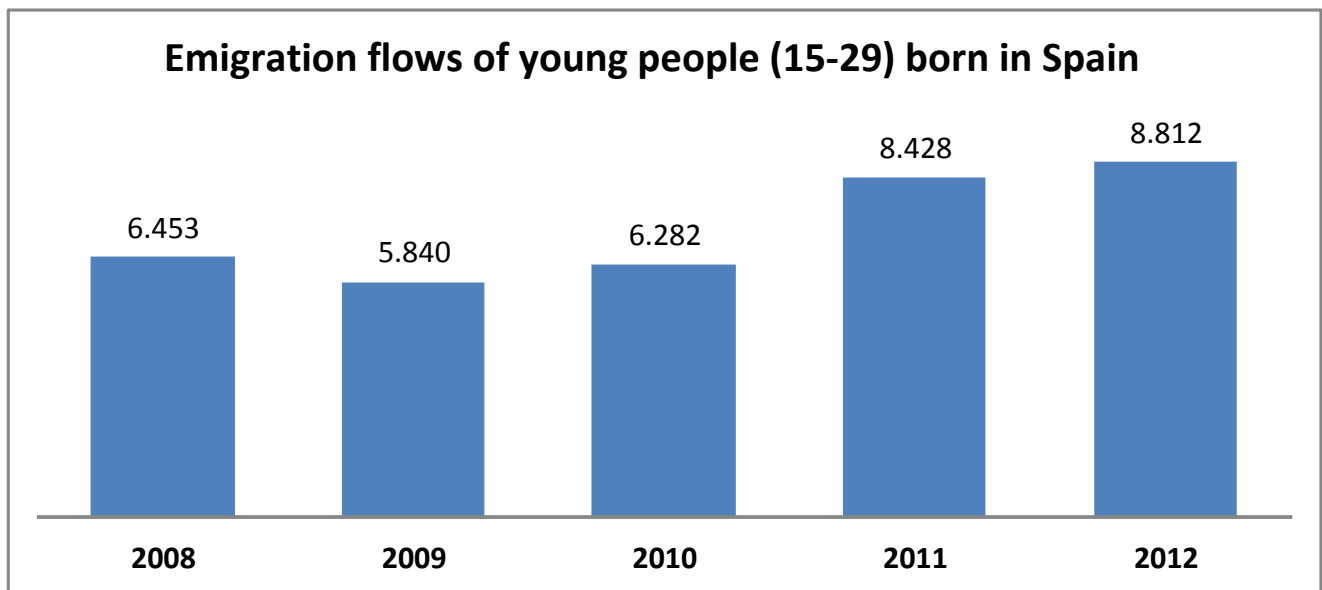
27. Other factors have had a more limited effect. With respect to discouragement, the INE includes in the LFS figures on the number of people not in the labour force who say they are not included because they believe that they will not find a job despite wanting to work. The number of discouraged doubled between 2008 and 2009, and then remained relatively stable in 2010-2011. It should be taken into account that the number of discouraged stabilised in the quarters at the end of 2012 and the start of 2013.



Source: LFS, INE. (thousands of people)

With respect to emigration, there is no significant exit of Spanish nationals as a result of the crisis. In recent months the fall in the active population has been linked to an alleged major exit of Spanish workers to other countries. The data available give the lie to these suggestions. In 2012 according to the INE there was a negative balance of migration of 162,390 people, basically explained by the exit of men not born in Spain. Barely a quarter (24.35%, i.e. 39,554) were net exits of people born in Spain. Most of the net outflow can be explained by the return of immigrants to their country of origin, or the exit of Spanish people born outside Spain, in many cases to their countries of origin.

One question that has generated some social alarm has been that of youth emigration. The data refute suggestions by those who attribute a significant increase in youth emigration to the labour reform. The migratory balance of the population aged between 16 and 29 in Spain in 2012 was -6,435, accounting for only 16.3% of the net balance for the whole of the population. Emigration of young people within these age bands born in Spain amounted to 8,812, 4.6% more than in 2011, while the year-on-year increase in 2011 was 34.2% on 2010. In other words, the outflow of young people born in Spain is limited, and had its biggest increase in 2011. It is now slowing, precisely the reverse of what some have declared in the public debate.



*Source: Migration statistics, INE*

Thus the fall in the active population mitigates the increase in unemployment and is basically the result of demographic factors (ageing population, migration). The effects of demographic variations in unemployment and the unemployment rate make it more advisable to analyse the employment data in order to issue value judgments on the reform.

## II.1.2. Improvements in competitiveness.

### The labour reform has increased the competitiveness of the economy.

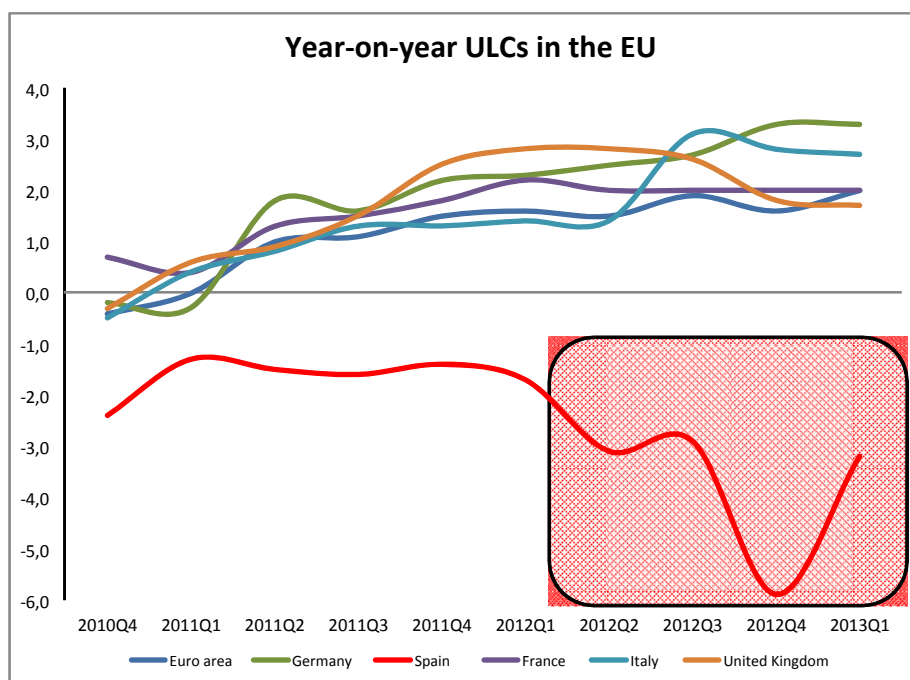
28. With measures that have promoted greater use of internal flexibility mechanisms and given a new boost to collective bargaining, the labour reform has increased economic competitiveness. This reform helps individuals and organisations adapt to a greater extent and more swiftly to changes in the cycles of production, which is essential in sectors such as the automotive, where Spain has managed to attract significant investment in recent months. In addition, improved competitiveness has enabled Spanish exports to continue to demonstrate their great capacity and strength, even in a context of international crisis.

The process of wage moderation has led to a very positive movement in unit labour costs recently. The recession in the Spanish economy and the high levels of wage increases during the boom period and lack of moderation until 2012 have required a major wage adjustment to make progress in relative competitiveness.

In the medium and long term gains in competitiveness should derive to a greater extent from productivity gains thanks to internal flexibility measures. Consensus between social organisations is fundamental for this. These organisations have already stated their willingness in the Agreement of 25 January 2012, and this should result in the general use of internal flexibility agreements that prevent redundancies and favour the development of business projects thanks to better management of human resources. The new regulatory framework supports this change in culture as a permanent element.

### The recent change in unit labour costs (ULC) reflects important gains in relative competitiveness with respect to our Community partners.

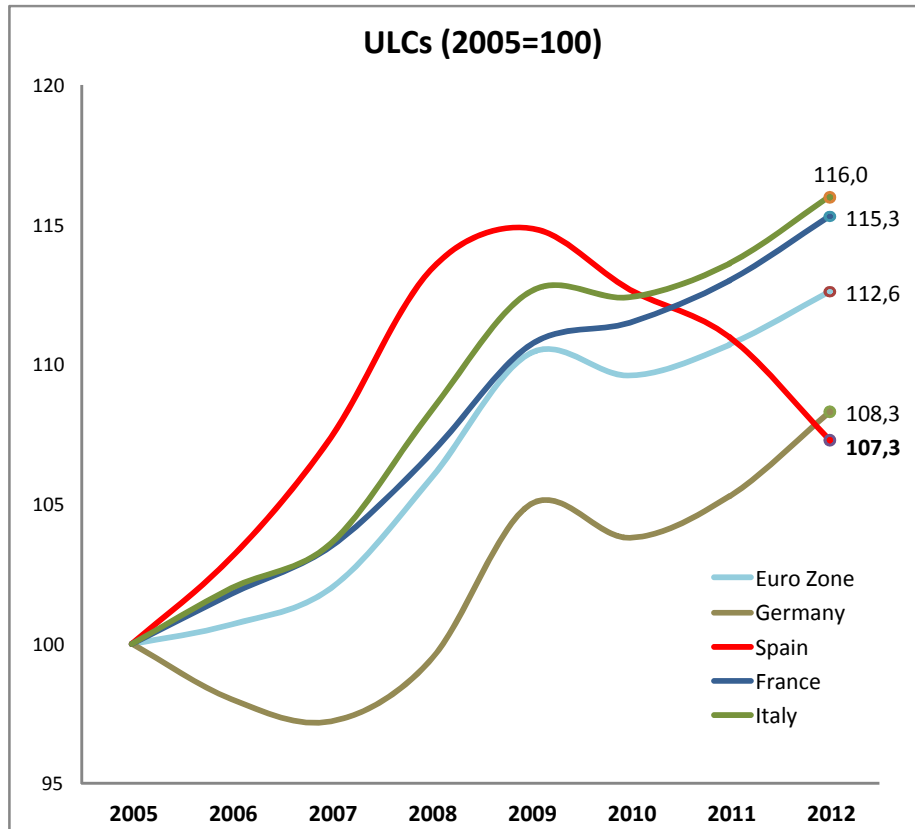
29. There has been an improvement in competitiveness measured as ULCs since 2010 (-2% this year, -1.5% in 2011), with a process of wage moderation being observed at the same time. However, the progress made in 2012 has been more intense than in any of the previous years. Since the labour reform, Spain has seen a major fall in ULCs that have allowed it to gain competitiveness with respect to its main European competitors.



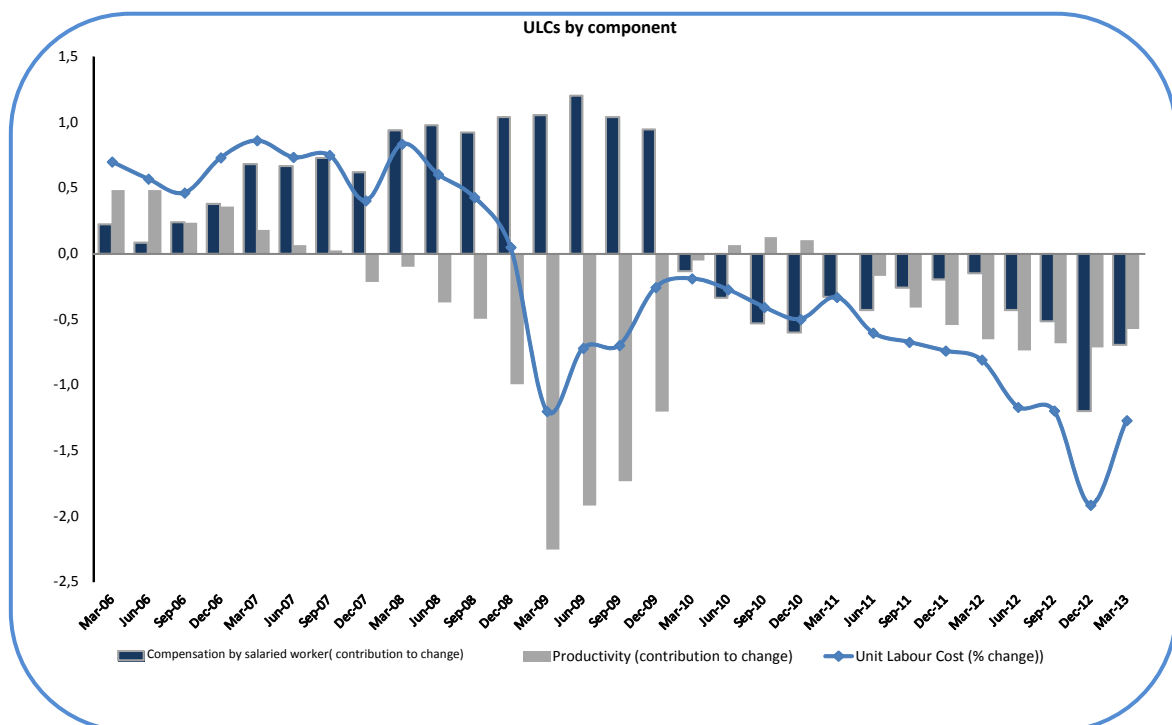
Source: Eurostat



In 2012, ULCs fell in Spain by -3.4%, while they rose by 1.7% in the euro are, and 2.1% in Italy and France. The year-on-year fall in ULCs in Spain in 1Q2013 (latest available figures) was -3.2%, compared with a rise of 2% in the euro zone as a whole, 3.3% in Germany, 2.7% in Italy, 2.0% in France and 1.7% in the United Kingdom. Thanks to this progress, the level of ULCs in Spain is now below the level of 2007, and their movement since 2005 has been more positive than in Germany.



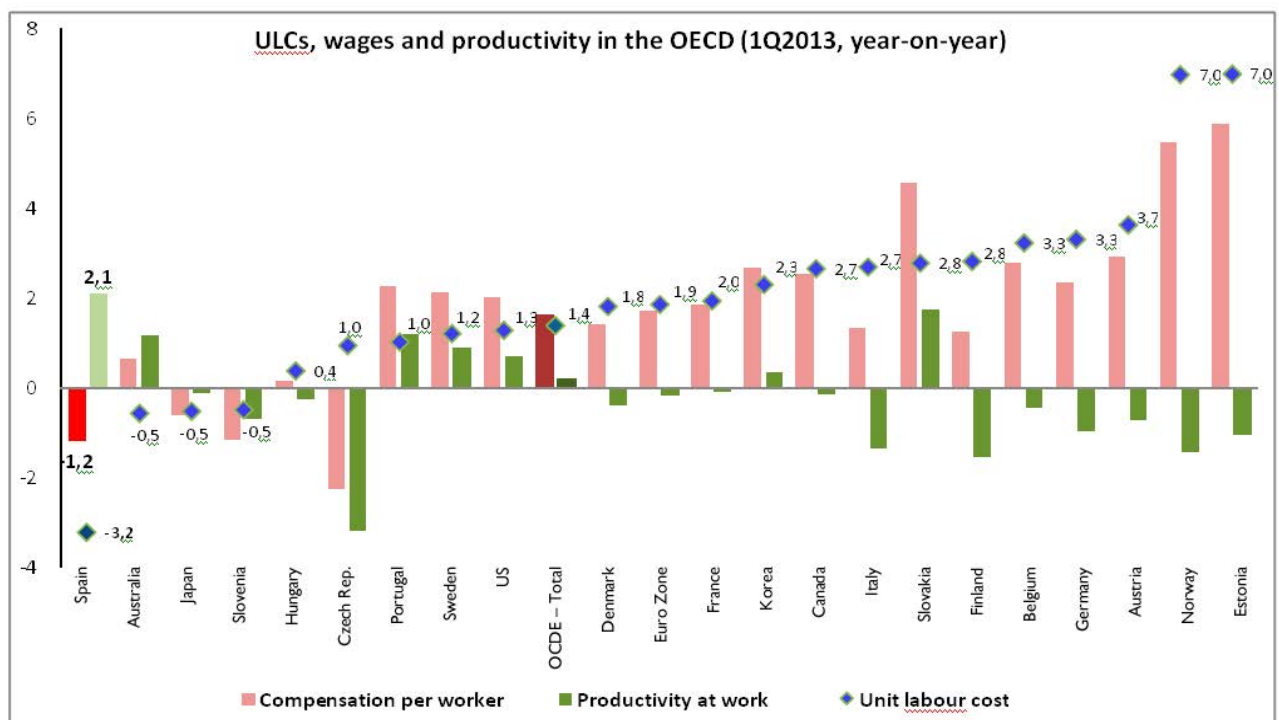
Source: Eurostat



Source: Eurostat

**In the year following the labour reform Spain has led the developed economies in terms of increased competitiveness.**

30. Comparative data from the OECD show that in the four quarters since the labour reform, Spain has been the developed economy where the ULCs have fallen most (-3.2% between 1Q2012 and 1Q2013) and the one where labour productivity has increased most (2.1%). The OECD also reflects a fall of 1.2% in compensation per worker. The result has been an increase in cost competitiveness with respect to Spain's main competitors such as France (ULCs up 1.9% , productivity per worker down 0.1% and a 2% increase in compensation per worker) and Italy (ULCs up 1.3%, productivity down 1.3% and compensation per worker up 2.7% ). These figures for ULCs in Spain coincide with those of Eurostat, which are included in another chart below.



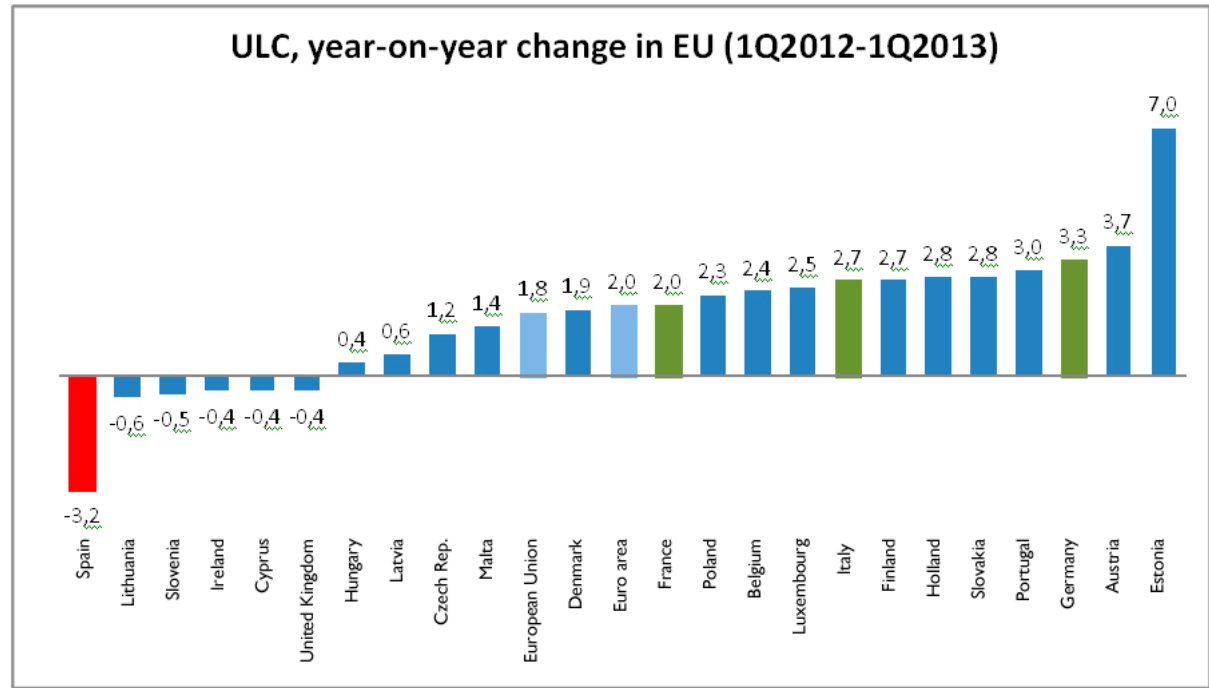
Source: OECD

**The improvement in unit labour costs cannot be the only factor in improving competitiveness.**

31. The relevant progress made in Spanish exports and greater diversification of the destination markets, as well as the attraction of foreign investment in sectors such as the automotive is in line with improvement in relative competitiveness. However, the improvement in unit labour costs cannot be the only factor in the improvement of Spain's relative competitive position. Another necessary ingredient are the reforms that make the operation of the economy more flexible and promote competition in the markets of goods and services, such as those included in the National Reform Programme of 2013 (market unity, liberalisation of professional services, energy reform, etc.). These reforms in the goods and services markets complement and strengthen the labour reform and are essential for the transformation of the structure of production and long-term growth.

The progress made in competitiveness cannot be a result solely of wage moderation, given that Spain is far from competitive in labour costs in traditional goods and services industries compared with emerging economies. The package of structural reforms implemented by the Government aims to boost transformation of the structure of production based on better qualified workers in more competitive markets. In this structure, stable employment of the most valuable workers is key for the success of the business project. The long-term growth capacity of the Spanish economy largely depends on the success of Spanish society in adapting to the profound changes underway in the global economy, derived from the

incorporation of new countries into the developed world and the adaptation of structures of production to a new scenario of global competition, as well as its capacity to adapt to technological changes.



Source: Eurostat

## II.2. Flexicurity as a driving force for change.

### II.2.1 The overall view

**Boosting internal flexibility is the main goal of the labour reform as a means for achieving more stable and better quality employment.**

32. The labour reform boosts internal flexibility, making available to workers and employers measures that allow them to adapt to their environment without having to use redundancies, which must always be the option of last resort. The use of internal flexibility makes adjustment to problems more healthy for workers and company competitiveness than the use of external flexibility, i.e. redundancy or excessive employee turnover. Decisions to terminate employment are very serious for the welfare of workers, generate social costs, increase public expenditure and harm human capital.

In addition, as we have seen, the development of internal flexibility as a mechanism for tackling changes in the environment and as a form of innovation it is fundamental for the competitiveness of the Spanish economy and for a shift towards a more sustainable model of production. The agreements in this area favour a better management of human resources, which boosts the competitiveness of companies thanks to an increase in worker productivity. These increases in productivity are the only way of ensuring sustainable long-term increases in wages. The Spanish growth model should be based on the productivity increases of more highly qualified workers, better organisation of work and internal flexibility measures that contribute towards a better adaptation of the labour force to the challenges of a global economy.

**The legal framework before the reform restricted the use of internal flexibility and made it easier to make adjustments through redundancies.**

33. Before the reform, the difficulty companies had in using internal flexibility, and the lack of adaptation and flexibility in collective bargaining, were factors that had a negative impact on the operation of the Spanish labour market and conditioned the welfare of workers, as well as the viability and competitiveness of business projects. This is a factor that explains the dualism or excessive segmentation of the labour market into temporary and permanent workers and the volatility of employment. The lack of flexibility also makes innovation more difficult and thus conditions the national structure of production. The profound change faced by Spain when the property bubble burst requires a labour framework that is more appropriate to the needs of the new economy.

The difficulty in adopting decisions on internal flexibility, combined with the high cost of redundancies of workers on permanent contracts and the reduced protection offered for temporary workers, has led to the maintenance of part of the workforce on temporary contracts as a stable fixture. This has contributed decisively to the problem of duality and precariousness of a significant part of the labour force. This group bore the brunt of the adjustment cost, as the employment conditions of permanent workers with long service in the company were very difficult to change, even slightly, however justified the measure could be.

The difficulties in adopting these internal flexibility measures and the lack of a culture of collective bargaining to promote them effectively generated a high level of rigidity that prevented the adaptation of the structures of production, eroded competitiveness and checked innovation, created incentives for adjustments via redundancy and thus the successive recruitment of temporary workers. In short, it protected jobs inefficiently while taking away protection from workers as a whole, who are the real targets of the system of protection under the new regulations.

The labour reform systematically addresses this traditional rigidity, which is profoundly unjust and often ends up protecting inefficient jobs, instead of protecting workers, and which avoids sharing the social cost of an adjustment that is often inevitable. The development of internal flexibility explains the process of moderation in job destruction, and makes it easier to take decisions on stable employment.

**Internal flexibility goes far beyond wage moderation and is key for obtaining gains in competitiveness.**

34. Internal flexibility covers a broad range of business decisions that are alternatives to redundancy, which we have already mentioned. The easiest observable form is wage moderation. This moderation is key for obtaining gains in cost competitiveness in the current environment, in which wage increases in the growth phase have been high and contributed to external imbalances and the lack of competitiveness of the domestic export sector. Classification by broad occupational groups (instead of narrower occupational categories), geographical and functional mobility and the irregular distribution of the working day are key to adapting the business project to an increasingly dynamic environment.

Changes in working conditions will be increasingly frequent. In the past it was normal for workers to do a single job throughout their professional career. This is increasingly less common. It is vital for workers to be versatile in order to adapt, and for companies to be able to react to change, thus minimising its social cost. Suspensions of employment, reductions in the working day and geographical mobility constitute alternatives to redundancy that also help preserve human capital.

The forms of internal flexibility other than wages adjustment are more difficult to observe, and direct, regular and complete sources of statistics are not always available for monitoring them. Their importance is, however, key in the new model of production. In any event, the impossibility of measuring the impact of many of these decisions should not lead to an identification of internal flexibility with wage moderation. Wage moderation can be clearly observed in different statistics, but it is not the only source of internal flexibility and its importance should tend to fall as the path of economic growth is resumed, in favour of other less observable measures. In addition, price levels should as soon as possible reflect the progress made in the level of market competition, particularly in regulated industries.

However, as already commented, the growth model of an economy such as the Spanish cannot be based on the competitiveness of its wages, as there is no possible competition in this respect with emerging markets or less developed countries. Competitiveness depends largely on the productivity of workers, and it in turn is profoundly linked to their skills and to the management capacity of employers. That is why policies for education and training for employment are an important part of active policies for boosting internal flexibility.

**The modifications in the regulation of collective bargaining help boost internal flexibility.**

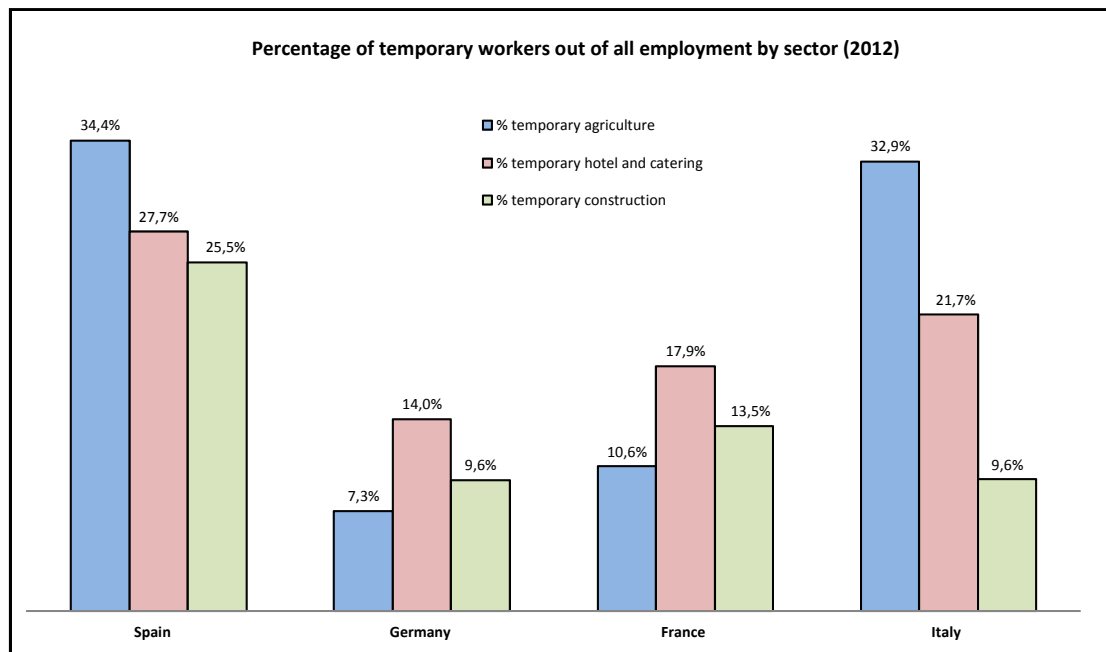
35. The role of collective bargaining in boosting internal flexibility is key. The reform introduces incentives for this by favouring a continuous adaptation of agreements to the needs of workers and employers, as well as a more flexible and dynamic regulatory framework that is closer to the reality of each particular job.

The social partners have already given their backing to it through the agreement reached on 25 January 2012, which defends the need for a greater level of internal flexibility. The implementation of these measures is favoured by consensus in negotiations. Negotiating flexibility is desirable, but properly justified internal flexibility is also preferable to external flexibility.

**The lack of internal flexibility and the cost of decisions terminating employment have been the main factors explaining dualism. Dualism conditions the structure of the domestic economy.**

36. The lack of internal flexibility, the rigidity of collective bargaining and the major difference between the costs of dismissing temporary and permanent workers have led to a labour market structure where employers tend to have a high number of temporary workers in order to deal with variations in economic activity, with the resulting high social cost and loss of competitiveness. In addition, just as the economic structure partly conditions the presence of high rates of temporary employment, the institutional structure has also favoured the development of activities that tend to use temporary employment more. The question goes both ways.
37. The level of temporary employment is a response to both structural factors (such as the significant weight of tourism and construction) and institutional factors derived from the "insider-outsider" problem. Isolating

the problem of temporary employment from institutional factors makes it impossible, for example, to explain why the rate of temporary employment in Spain in sectors such as construction or tourism is significantly higher than in other comparable countries. In addition, the rate of temporary employment in different regions in Spain has not only been affected by the traditional structure in the different sectors; the structure of collective bargaining and the level of rigidity of regional and/or provincial agreements, for example, have also affected the level of temporary employment.



*Source: Eurostat*

**The response to dualism must be systematic, and tackle all the factors that explain it.**

38. In order to tackle this labour market dualism, the reform does not act only in one direction as it did in the past, by intervening only on recruitment; it also acts in a broad range of measures that focus on the origin of the problem: the rigidity of labour conditions and the cost of dismissing workers who have permanent contracts. The labour reform includes a new form of contract that encourages stable jobs: the Entrepreneurship Support Contract. It restores the ban on giving the same worker consecutive temporary contracts for longer than two years. In addition, it boosts internal flexibility, rationalises the use of objective grounds for redundancy and favours a more dynamic collective bargaining that is more closely attuned to the needs of each place of work. In other words, the fight against dualism has been tackled systematically, as acting solely on one of the elements that explain it (such as the cost of redundancy) would not solve the problem. Greater internal flexibility, more rational external flexibility, collective agreements that are more appropriate to the needs of workers and employers, and the fight against fraud, are all ways by which the reform tackles this dualism.
39. Because of this, the reform of the legal system of labour relations in Spain in 2012 includes a comprehensive and coherent set of measures that: (1) promote internal flexibility as an alternative to job destruction; (2) establish new incentives and measures to favour stable employment (3) incorporate changes in active employment policies.

**Dualism can only be reduced gradually.**

40. In any event, recruitment using temporary contracts on a stable or successive basis is deeply rooted in Spain, and no measure will end the problem other than gradually. Overcoming the dualism of our labour market is a medium and long-term objective of the labour reform. First, because changing recruitment

habits among companies means the disappearance of employment practices that have prevented or limited internal flexibility (this has already happened in legislation) and the historically high cost of redundancy has to be moderated in permanent contracts. This cost has without doubt taken away incentives from the demand for permanent employment and created incentives for temporary recruitment. Second, because one of the measures aimed specifically at combating dualism will not deploy all its potential for another two years: specifically, the ban on successive use of temporary contracts.

In addition, the current economic situation, with reduced entry flows into the labour market and a major squeeze on credit to the productive sector (a year-on-year fall of 7.2% of finance for non-financial companies according to the latest available data published by the Bank of Spain in April 2013), does not contribute to the adoption of stable employment decisions. Finally, the progress made in internal and external flexibility should be supported by legal security that will become consolidated with the development of case law. All this has to be taken into account when it comes to evaluating employment dualism from the perspective of labour reform.

**Case law backs reduced demands for reasons given to carry out internal flexibility measures compared with external flexibility measures.**

41. On the question of substantial modification of conditions of work, the courts are interpreting the changes introduced by the reform to the effect that with respect to the grounds given, there is an even greater easing of conditions than in the previous version, which admitted sufficient grounds when the adoption of the measures proposed helped prevent a worsening situation for the company or improve the situation and its outlook through a more adequate organisation of resources, favouring its competitive position in the market or a better response to demand requirements.

The provision limits itself to requiring that there are proven economic, technical, organisational or production reasons, understood as "those related to competitiveness, productivity or technical organisation of the company's work."<sup>14</sup> The legal decision recognises that the substantive reason for different legal treatment of the grounds in decisions to change or terminate labour relations resides in the fact that the interests at play are not the same when the business decision represents a loss of employment - external flexibility - as when it means a mere change in the form or circumstances of execution of work - internal flexibility. In this respect, the ruling states that "the different evaluation or assessment of these interests explains that the capacity to manage the organisation of work with internal flexibility is a manifestation of the freedom of the company and of the defence of productivity recognised in Article 38 of the Constitution. It is attributed to the employer with looser margins than the faculty of external flexibility or restructuring of the workforce, which must find an appropriate point of balance between the freedom of company and the right to work of the workers who are made redundant, as recognised in Article 35 of the Constitution."

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<sup>14</sup> Ruling by the Employment Division of the National Court, dated 28 May 2012.

In other words, in cases of internal flexibility the benchmark or point of reference of the justification of the grounds for the business decision making the change is not business crisis but an improvement in the situation of the company, which means the level of evidential proof of the substantial changes will be substantially less than in cases of employment termination for economic, technical, organisational or production reasons. As the court states, this does not mean that the employer has absolute discretion. He must prove economic, technical, organisational or production grounds and their relation to the competitiveness, productivity or technical organisation of work in the company.<sup>15</sup>

With respect to the less rigorous demands for grounds to carry out the internal flexibility measures compared with other flexibility instruments, some legal decisions have recognised that the grounds justifying a substantial change to working conditions do not require the existence of an economically negative situation, but that they may even be based on a situation when the company is in profit.<sup>16</sup>

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<sup>15</sup> Ruling by the Employment Division of the National Court, dated 28 May 2012.

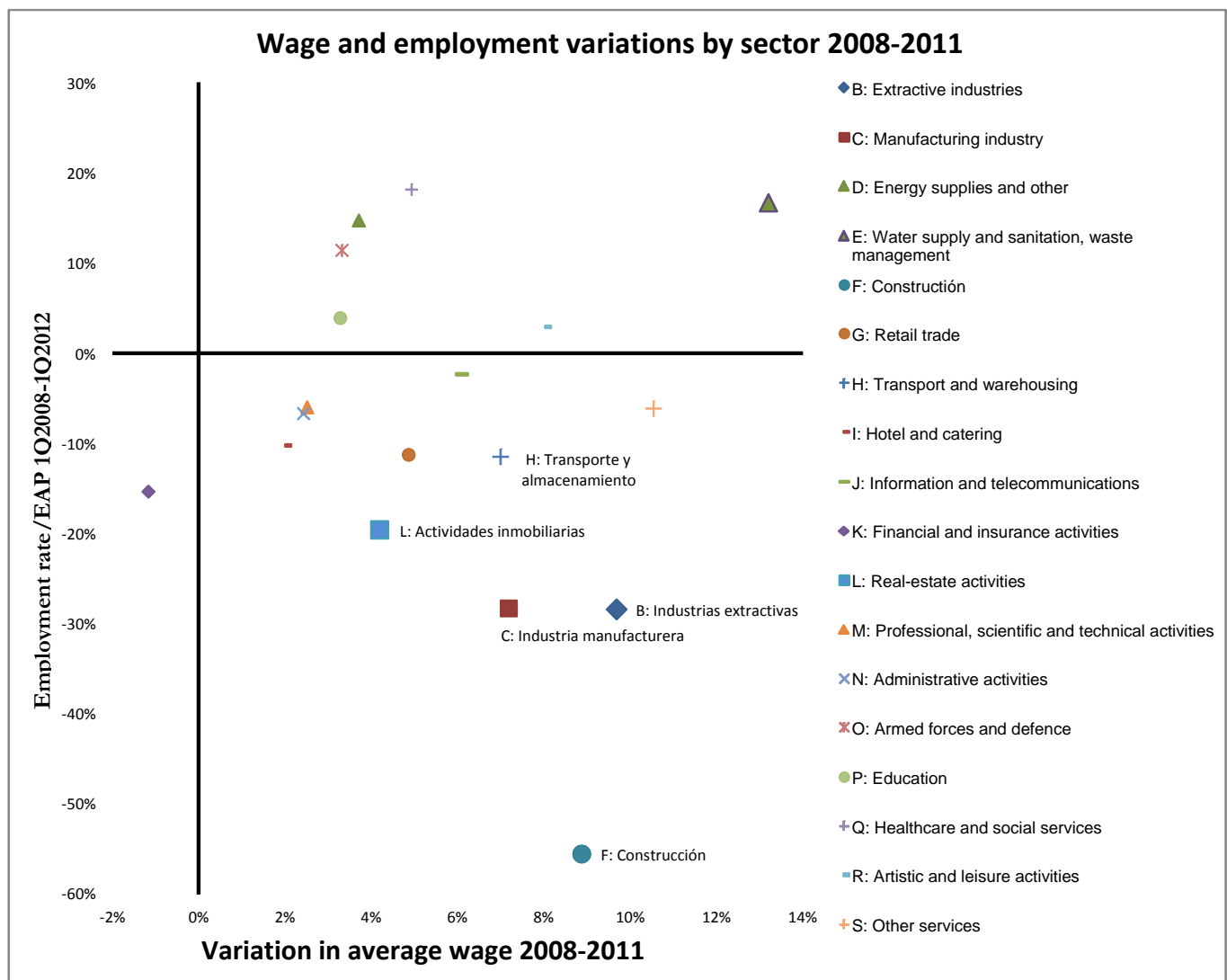
<sup>16</sup> Ruling of the Employment Division of the National Court, dated 22 November 2012.



## II.2.2. Wage moderation

The changes in wages in the first phase of the crisis show the limited use of internal flexibility as an alternative to redundancy

42. An analysis of average wages by sector of activity using data from the INE Wage Structure Survey show incoherence with the correct operation of the labour market in relation to changes in employment levels. Thus it reveals that in construction the increase in average wages per worker in the period 2008-2011 was 8.9%, while the LFS figures for the first quarter of 2008 and 2012 shows a fall of 55.6% in jobs. Although there may be composition effects that have not been corrected by the analysis, a wage increase that is higher than in all other sectors of activity is not coherent with the destruction of nearly half the jobs that existed at the start of the crisis. The same is true in sectors such as extractive industries (28.4% fewer jobs, 9.7% increase in average wages), and transport and warehousing (11.4% fewer jobs, 7.0% higher wages).



Source: LFS and Wage Structure Survey, INE

Overall, the data of the annual survey on wage structure show that wages in Spain in the 2008-2011 period grew in a way that is not compatible with a flexible labour market that adapts appropriately to cyclical changes in the Spanish economy. The reform is helping to correct this anomaly.

**A process of wage moderation and de-indexing is taking place that is very positive with a view to emerging from the crisis.**

43. Since the labour reform, unlike what happened at previous periods during the crisis, the Spanish economy is carrying out a process of major wage moderation as a way of recovering cost-competitiveness and speeding up the exit from the crisis. This process can be seen in all the indicators, including the national accounts, the quarterly labour cost survey and the statistics of collective labour agreements. There is also a process underway that is loosening the links between wages and inflation. The process of wage moderation results in competitiveness gains that can be seen through unit labour costs, and avoids redundancy. The moderation in the rate of job destruction is linked to this process, and to the adoption of other internal flexibility measures.

It may be that the process of wage moderation is not reflected to its full extent in all the statistical sources: there are some peculiarities in the available information that have to be taken into account. First, not all the decisions on wage moderation are reflected in the statistics. Thus, among others, a wage cut in a company that had wages set above the collective agreement and that then lowered them to the level of the agreement is not recorded. In addition, the elimination of many of the reductions in Social Security contributions for new hires in August 2012<sup>17</sup> conditions the data relating to labour costs.

An analysis of real wages is also very relevant, so the process of wage moderation must be seen in relation to inflation. The progress made in real competitiveness in the markets of goods and services, as well as the correct operation of the capital markets, represent very important complements to the labour reform.

#### **Recent court rulings back the process of wage moderation.**

44. A number of judicial rulings following the reform have declared the business measures taken to reduce wages justified, on the grounds that the companies have demonstrated that the alleged reasons were present and that the changes made to the wage structure of their workers would improve competitiveness, productivity and the organisation of work. These rulings include:

- Ruling by the Employment Division of the National Court (Audiencia Nacional), dated 28 May 2012, which declares legal the changes made in the system of compensation of on-call duty, customer service and bonus for being on call as planned, as they would increase competitiveness, productivity and organisation of work;
- Ruling by the Employment Division of the National Court, dated 22 November, 2012, which declares legal the modification of part of the system of remuneration, consisting of linking variable remuneration to store earnings, as the company had completed the legally established procedures and had proved economic grounds and the general problems of competitiveness and productivity, which justify the adoption of the measure taken;
- Ruling of the Employment Division of the Higher Court of Justice of Galicia, dated 27 November, 2012, which declares justified the modification made to the system of compensation consisting in replacing the overall system for the store by individual commissions on sales, on the grounds that the individual commission on sales does not reward the mere presence of the worker in the establishment where he or she provides services, but an active participation in the sales carried out and regardless of the hours worked, thus promoting productivity, as it requires direct and immediate customer service.

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<sup>17</sup> Royal Decree-Law 20/2012, dated 13 July, on measures guaranteeing budget stability and promoting competitiveness.

- Ruling of the Employment Division of the National Court, dated 15 February 2013, which absolved the company of any claims made against it by stating that the wage reduction of 5% for all workers will represent a saving of around 500,000 euros. And that the increase in the working day of 105 hours for workers in the defendant companies would involve an increase in turnover estimated at 1,715,000 euros for 2013, which amounts to an increase of 6.6% on the estimated turnover for 2012 and an increase in gross income of around 600 million euros.

### *National Accounts*

**The wage increases registered at the start of the crisis are a symptom of how the Spanish labour market was operating badly.**

45. In the first phase of the crisis, wages per worker increased steeply while thousands of jobs were being destroyed: a growth of 4.2% in compensation per worker in 2009, when the economy contracted by 3.74% and 630,000 private-sector salaried jobs were destroyed. In other words, there was no adjustment via wages, and the contraction in the GDP was automatically passed on as job destruction. This was one of the traditional anomalies of the Spanish economy, which adapted very differently than the rest of similar economies.

Data from the Wage Structure Survey during the crisis, which are analysed in more detail below, back the wage inertia and the lack of adaptation of employment conditions to circumstances in the environment, however adverse they are. This isolation from the economic circumstances only benefits part of the labour force (the "insiders"), while the rest suffer adjustments via quantities, and the process results in a destruction of the overall welfare.

**The Agreement of the social partners and the labour reform have allowed a much more balanced adjustment from the social and economic point of view.**

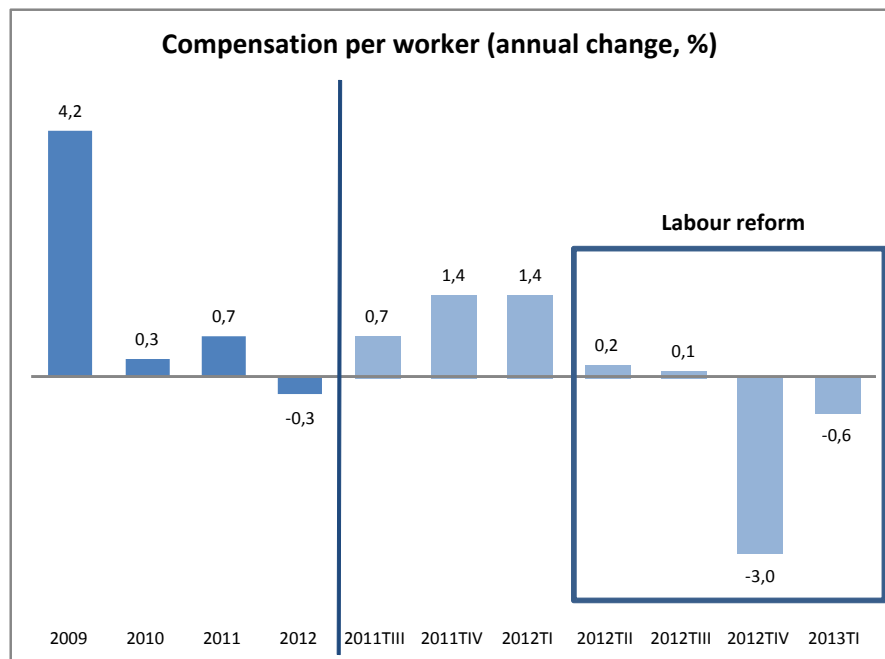
46. The trend in wages per worker has shown a clear turning point since the labour reform. Since the labour reform, the adjustment in wages has been much more coherent with what is happening in other countries, and this is resulting in lower job destruction, a more desirable adjustment from the social point of view and for economic competitiveness. Data show that in 2012 there was no anomalous rise that numerous analyses link closely to the Spanish labour institutions. The trend in 2013 continues along this path of greater wage moderation, in line with the situation of the labour market.

In the second half of 2011, despite the fact that the economic slowdown was beginning to be clear, wages per worker were rising. There was a year-on-year rise of 0.1% in the second quarter and they ended the year with a rise of 1.4%, despite the fact that in this period the quarterly growth of GDP had fallen from 0.2% to -0.5%, and the rate of job destruction rose from -0.9% to -2.9%. The variables showed a similar trend as in the first phase of the crisis.

However, since the Agreement of the social partners and the approval of the labour reform the same variables have been very different. Growth in compensation per worker has moderated strongly from the second quarter of 2012, in line with the greater contraction in GDP. After remaining nearly stable in the third quarter (when GDP fell less than in the second) it fell strongly in the fourth, when GDP slumped. The trend in wage moderation was confirmed in 2013, with a fall of 0.6% in compensation per worker. The result is that instead of speeding up as a result of the recession, job destruction, job destruction remains stable, and has recently moderated.

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<sup>18</sup> There was a major fall in wages per worker in 4Q2012. According to BBVA Research, "these data are at least partly conditioned on the withdrawal of the extra payment for public-sector workers in December 2012."

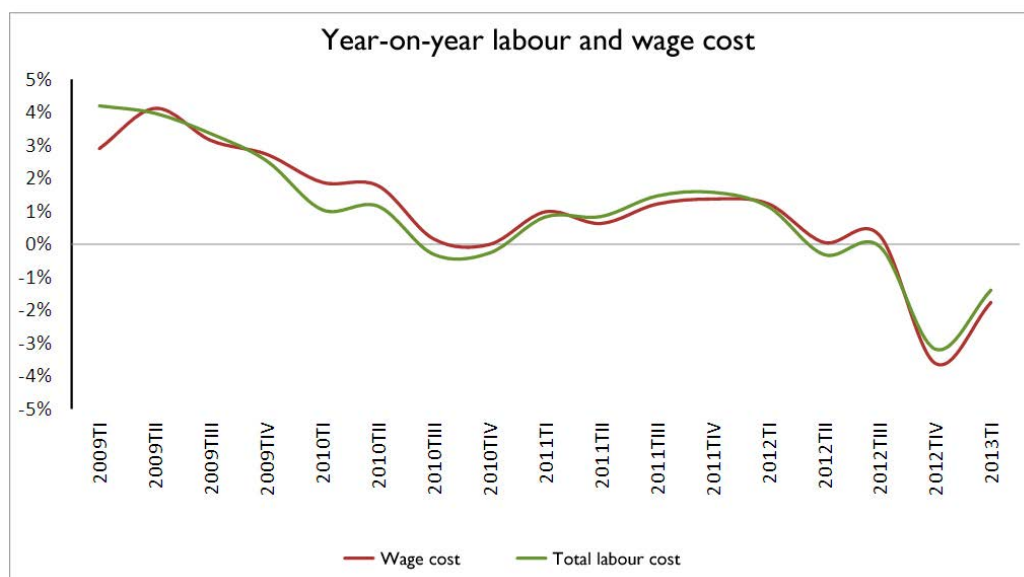


*Source: Quarterly National Accounts, INE.*

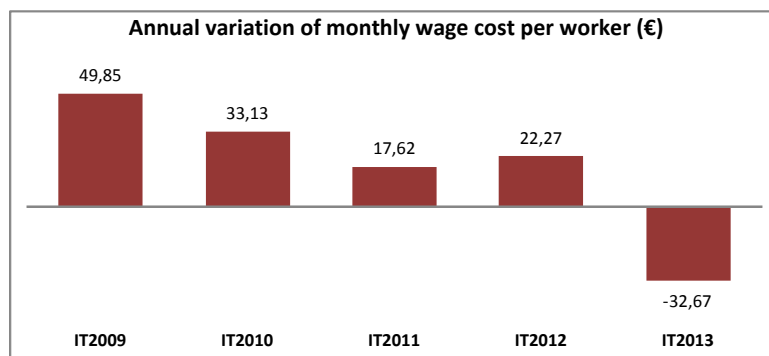
#### *Quarterly Labour Cost Survey (ETCL)*

**The ETCL shows a significant fall in labour costs and wage costs.**

47. After the labour reform there has been a clear change in trend in labour costs and wage costs according to the ETCL, which is coherent with the data of the National Accounts. Growth in labour costs per worker has reversed from an average of 1.3% per year in the four quarters before the reform to an average fall of 1.2%. This fall is the result of wage costs, which have fallen to a maximum of -3.6% per year in the last quarter of 2012, and to non-wage costs, which fell throughout the period, particularly at the end of 2012. There was a notable fall of 0.5% in the ordinary wage cost, the main component of the total cost, in the first quarter of 2013, the biggest fall since the start of the crisis. This change is partly the result of increased non-wage costs resulting from the elimination of reductions in Social Security contributions in July 2012. In the second half of the year, the component of subsidies and reductions fell by a third.



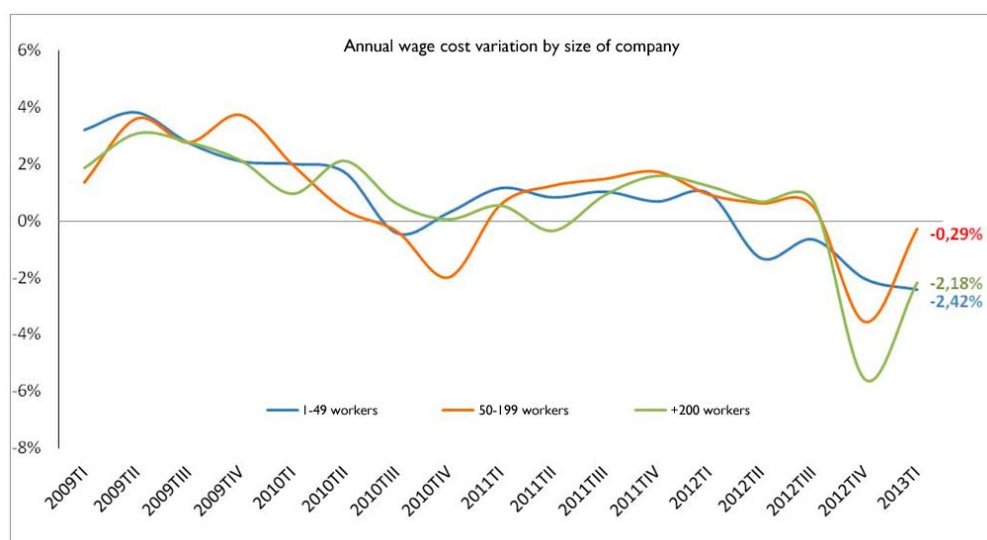
*Source: Quarterly Labour Cost Survey, INE*



Source: Quarterly Labour Cost Survey, INE

### Wage costs have moderated more in small companies.

48. The year-on-year fall in the wage cost per worker has been steeper and swifter in small companies (-2.42% year-on-year in 1Q2013 in those with fewer than 50 employees). Large companies have also adjusted their wage costs, but only in the last two quarters. The fall in medium-sized companies has been much more limited. These companies are the only ones that before the crisis had experienced annual falls in wage costs for three consecutive quarters (second half of 2010).



Source: Quarterly Labour Cost Survey, INE

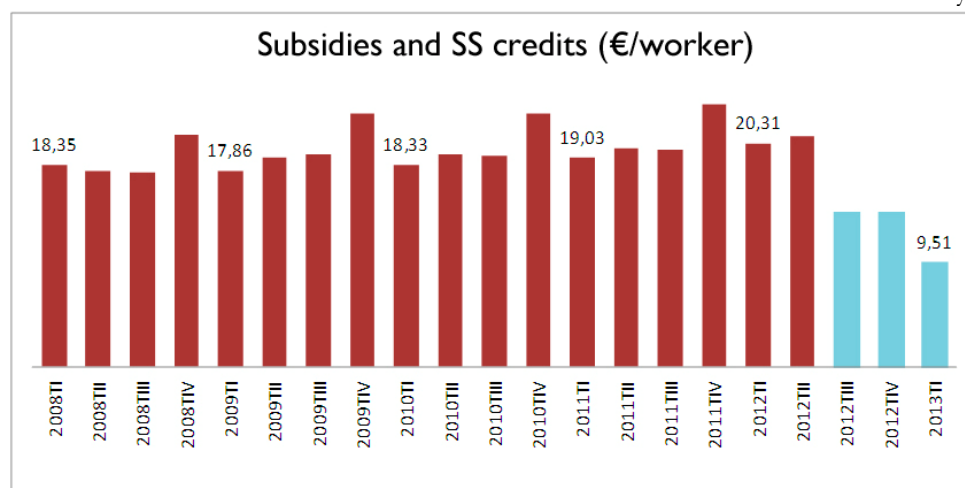
### There are differences in the level of wage flexibility in different autonomous regions.

49. By autonomous region, the adjustments made in wage costs in Extremadura, Navarre, Madrid and Andalusia stand out. In Galicia and the Basque Country there have been increases in wage costs, despite job destruction. If we compare wage costs with changes in private-sector employment, the biggest adjustment is in Extremadura (-5.7% in wage costs, -4.4% in private-sector salaried employment, according to the LFS, from the first quarter of 2012 and 2013), and Madrid (-2.94% in wage costs, with a smaller fall in jobs, at -1.67%). In contrast, in the Basque Country wage costs increased by 1.23% despite the major destruction in private-sector jobs (-6.58%). There was also no adjustment as required by the economic situation in Galicia (wage costs up 1.54%, salaried employment down 3.56%). In some regions the adjustment was limited, despite the major job destruction: Castile-La Mancha (-8.97% in private-sector salaried employment and a reduction in wage costs of 1.89%) and Cantabria (jobs down 8.65% and wage costs down 1.46%). Thus it appears that those autonomous regions with a limited wage adjustment have experienced bigger falls in employment, while in those where the adjustment has been biggest, the loss in jobs has been moderated. In fact, Extremadura created net private-sector jobs between 2Q2012 and 2Q2013, after a major adjustment. In any event, a more in-depth analysis would be required to include a greater time frame in order to obtain

relevant conclusions for these relations, as well as an analysis of the relations between wage adjustment and employment that takes into account the economic structure of each autonomous region, which affects both variables.

**Labour costs have been affected by the elimination of reductions to Social Security contributions for new hires.**

50. One element to take into account when analysing the data on labour costs in recent quarters is the major change in active policies introduced by Royal Decree-Law 20/2012, designed to reorder, systematise and streamline these policies. It substantially reduced the number of contracts that received reductions in employers' Social Security contributions, and cut the subsidies to the labour cost per worker assumed by the employment services by 53.2%. In any event, the measure has at least partially offset the impact of wage moderation on the labour cost and this has to be taken into account when it comes to analysing the process.



Source: Quarterly Labour Cost Survey, INE

*Collective bargaining*

**The statistics on collective agreements in the Ministry of Employment and Social Security also reflect a moderation in wages agreed in collective agreements.**

51. The analysis of the wage agreements reached through collective bargaining:

- It should be focused on analysis of the wage pacts in agreements that begin their economic effects in the year, as the wage increases included as "revised" agreements refer to wage clauses applied in the current year but agreed in previous year. Thus in 2012, the wage clauses in "revised" agreements were largely agreed before labour reform. It should be remembered that the data for 2012 are still provisional, as the Ministry of Employment and Social Security includes data on each year over 30 months. For this reason, the data available as of 31 December each year should be compared to ensure that they correspond to data reflecting the provisional information over 12 months. The alternative of comparing data from different years that include different amounts of information could lead to mistaken conclusions. Thus as of 31 December 2012 the information collected over 12 months for 2012 was available, 24 months for 2011 and 30 months for previous years. Taking data as of 31 December every year, the data are comparable, and include 12 months of information for each year.

Taking the number of workers affected by the previous year's agreement whose statistics are closed (2010) as a reference, it can be seen that as of December 2011 agreements had been registered with effects as of 2011 which amounted to 58.1% of this total. In December 2012 the figure was 64.9%. As of May 2013, agreements had already been registered for 2011 affecting workers who accounted for 93.5% of this total

- With respect to the reference period, unlike other concepts, in this case it is worth taking complete data for 2012, as the average wage increase agreed is published cumulatively, so the months of January

and February before the reform cannot be distinguished. In any event, there is some delay in registering data, and only a limited number of agreements tend to be registered in January and February. In 2012 only 5.6% of new agreements registered in the year were registered to February, including only three of a level other than the company.

In addition, at this point only the analysis of wage agreements for collective bargaining is analysed. Below we carry out a more in-depth analysis of other elements of these agreements, particularly the structure of negotiation. Some of these other elements affect aspects of wages directly. For example, many of the opt-out decisions affect wage clauses.

### **The wage increases agreed in collective bargaining agreements begun in 2012 are the lowest in the available statistical series**

52. As can be seen in the following table, the average wage increase is close to the wage increase agreed under the Agreement of 25 January 2013 (0.5%) and significantly lower than in any previous year in the series. Wage moderation has been particularly strong in agreements at other than company level, although it affects all agreements and all the periods in force of the agreements. Wage moderation is not limited to 2012, and it is in fact more intense in agreements lasting longer than a year in the case of agreements with a scope other than the company. In the company agreements starting in 2012, the wage increase for agreements lasting one year was only 0.34%, less than the figure agreed for agreements lasting longer (0.64%).

There has already been a moderation of wage increases agreed in 2010, but this was not maintained in 2011 (particularly in agreements of a scope other than a single company); it was less intense and affected in particular agreements in force only for that year. The data suggest that the process begun in 2012 starting with the Agreement with the social partners, and the labour reform, has been deeper and longer lasting. In fact, in the first six months of 2013 the agreements begun this year reflected a wage increase of 0.35% and all the agreements as a whole showed a wage increase of 0.65%.

	Wage increase as % in agreements starting in the year (information as of 31 December each year)				
	Total	Company	Other scope	For one year	For more than one year
2007	2.96	2.76	2.97	3.21	2.91
2008	3.80	3.48	3.85	3.37	3.90
2009	2.35	2.57	2.30	2.62	2.17
2010	1.20	1.09	1.22	1.13	1.25
2011	1.58	1.11	1.65	1.58	1.58
2012	0.69	0.57	0.70	0.82	0.64
2013 (*)	0.35	0.59	0.33	0.52	0.34

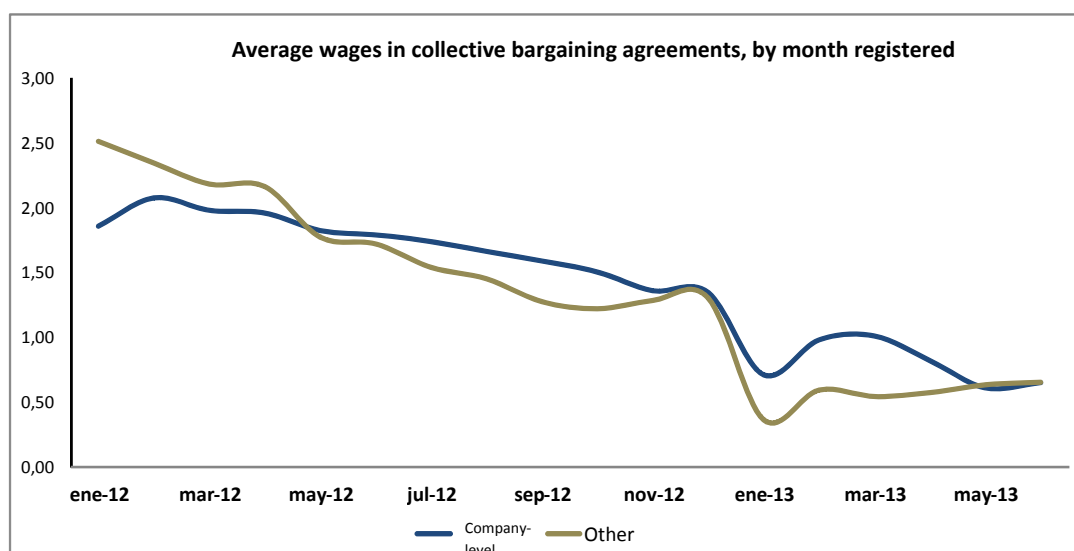
(\*) Data to June 2013; Source: Ministry of Employment and Social Security

### **In 2013 the trend for wage moderation in collective bargaining intensified**

53. Data for collective agreements available to June 2013 point to increasing moderation in wages. The total wage increase agreed was 0.65% and the agreements starting in 2013 show an agreed increase of 0.35%. Wage moderation in these agreements is strongest in those with a scope beyond a single company (0.33%) than in those covering one company (0.59%).

It should be taken into account that the number of agreements registered is still limited (744). The number of agreements registered so far is a result of the changes in the method of collecting information.<sup>19</sup>

<sup>19</sup> Until 2010 information on wage increases for all the years that an agreement is current was included at the start and included by default in the statistics at the start of each year. In 2013 for the first time this information was not available at the start of the year for wage increases starting from



Source: Ministry of Employment and Social Security

The trend to increased wages agreed and revised in agreements with a scope greater than one company has changed.

54. Since 2005 and systematically, agreements with a scope covering more than one company agreed wages and wage revisions above the company-level agreements. However, in 2012 these agreements have adjusted their rises more to the cyclical circumstances, and agreed wages and revisions that were more limited than those in company-level agreements.

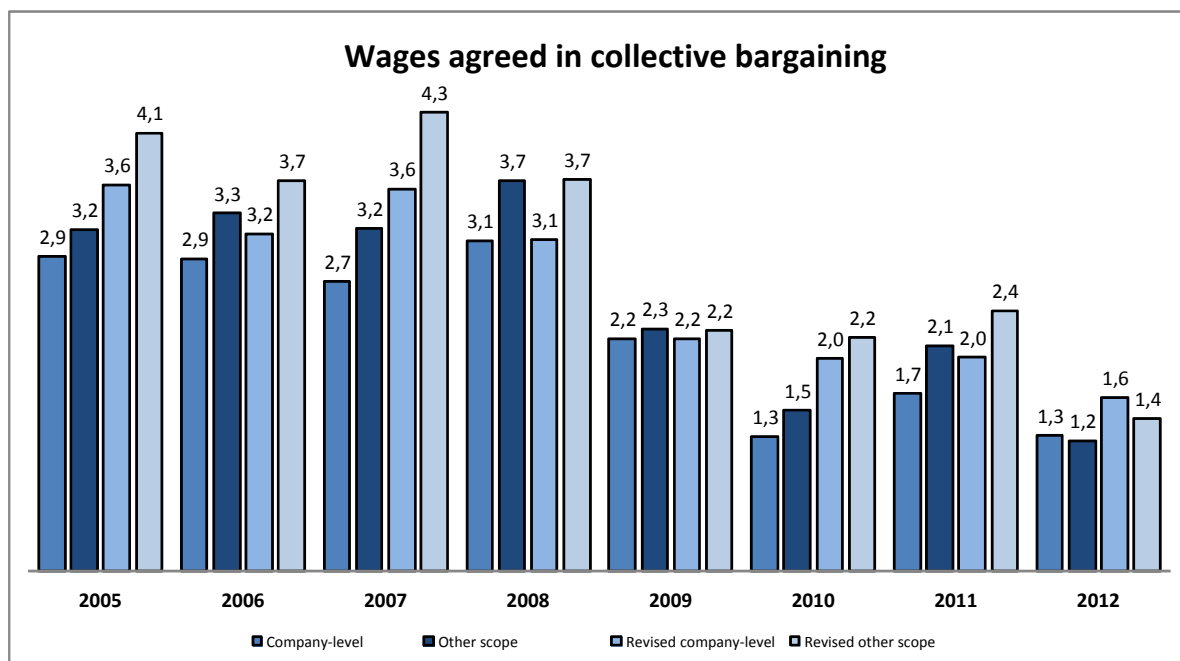
	Inflation	Agreements of other scope			Company-level agreements			Differences between negotiation levels	
		Wages		Inflation differential	Wages		Inflation differential	AgreedRevised	
		Agreed wages	Revisado		Agreed wages	Salario revisado			
2005	3,4	3,19	4,09	0,69	2,94	3,61	0,21	0,25	0,48
2006	3,5	3,34	3,65	0,15	2,92	3,15	-0,35	0,42	0,50
2007	2,8	3,20	4,28	1,48	2,70	3,57	0,77	0,50	0,71
2008	4,1	3,65	3,65	-0,45	3,09	3,09	-1,01	0,56	0,56
2009	-0,3	2,26	2,25	2,55	2,17	2,17	2,47	0,09	0,08
2010	1,8	1,50	2,18	0,38	1,26	1,99	0,19	0,24	0,19
2011	3,2	2,11	2,43	-0,77	1,66	2,00	-1,20	0,45	0,43
2012	2,4	1,22	1,43	-0,97	1,27	1,62	-0,78	-0,05	-0,19

Source: Ministry of Employment and Social Security; provisional data to May 2013 for 2011 and 2012 data. Annual inflation.

The information on the effect of wage guarantee clauses ("revised" wages) is only included after the end of each year, so in this case the information presented is what is available at this time. The following chart shows how these differences in the agreed wages were substantial. They only moderated in 2009-2010, when inflation was low. In 2012, despite the fact that inflation was significant given the cyclical circumstances, the trend was reversed. This development is coherent with the lower level of wage indexing since the labour reform, and with a greater adaptation of collective agreements of greater scope than a single company to the needs of the economy. The labour reform generates powerful incentives for this greater adaptation to the employment conditions agreed in collective agreements of greater scope than that of a single company.

the second year of currency of the agreements. The statistic only reflects what the Negotiating Committees for agreements submit and the rate at which this information is arriving is limited.

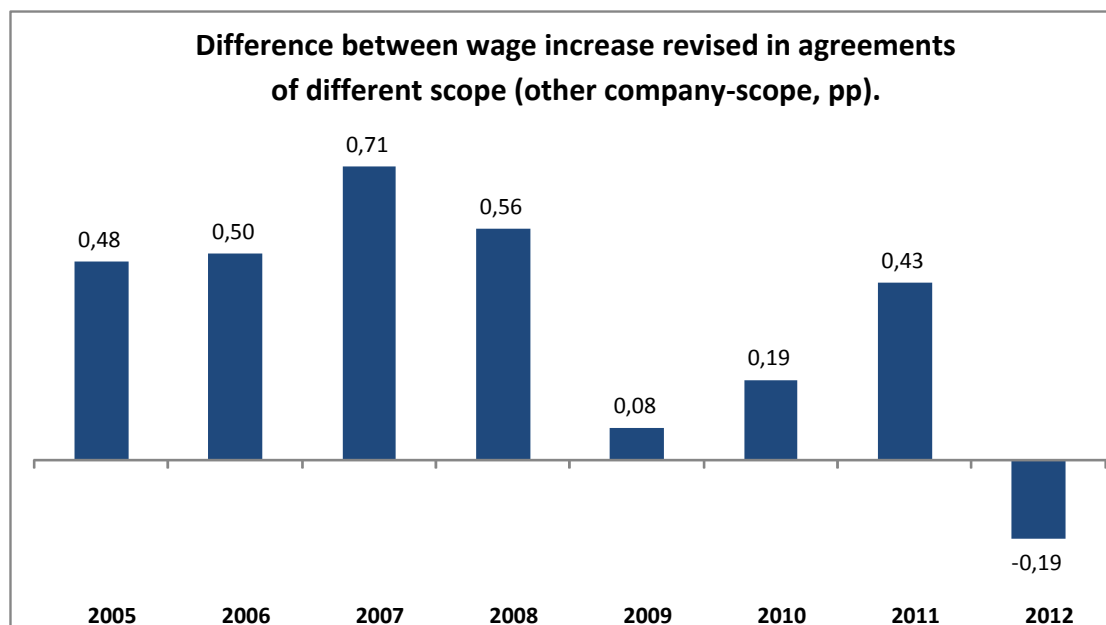




*Source: Ministry of Employment and Social Security, information available as of 31 December each year.*

**In 2012 for the first time the difference between revised wages in agreements with a scope other than a single company and those covering a single company has been negative.**

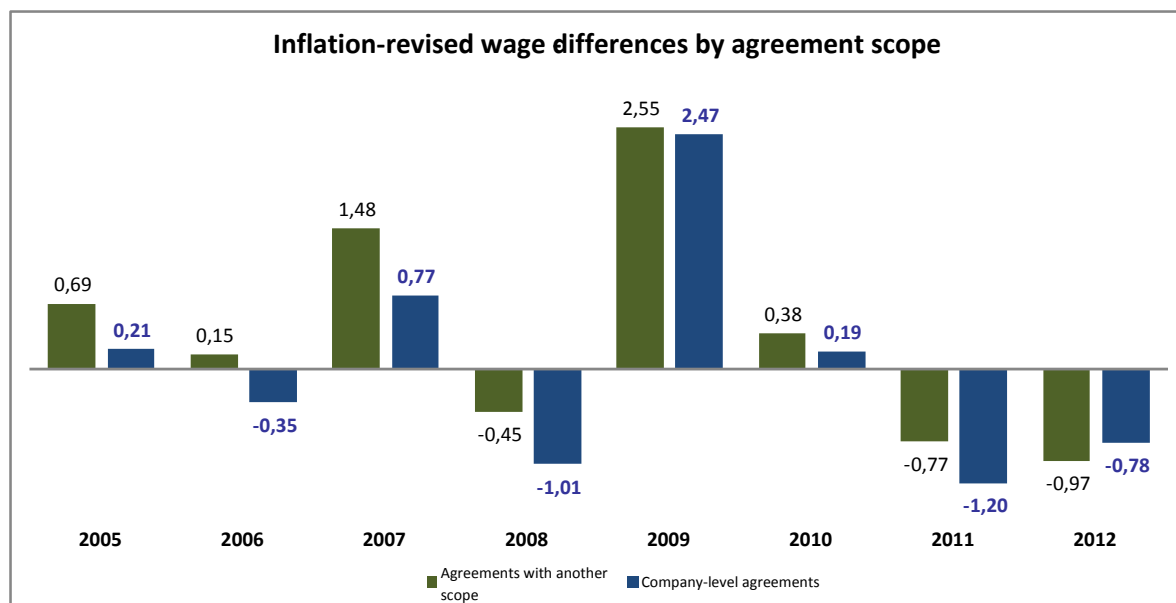
55. The wage revisions in agreements of a scope other than a single company have been systematically higher than those for a single company. The difference has traditionally been significant, and has only reduced (without being reversed) in the years when inflation was lowest, such as 2009 and 2010. However, in 2012, the difference was negative, despite a significant level of inflation.



*Source: MEYSS, information available as of 31 December each year.*

### The differential between inflation and wage revisions is negative.

56. In 2012 the wages revised under collective negotiation increased by less than the mean inflation for the year. This was translated into an agreement on negative real wage increases and contributed to the improvements in cost competitiveness, as well as the conservation of employment. In addition, and unlike all previous financial years, the adjustment is more intense in agreements with a scope other than individual companies. This trend will probably intensify with the application of the one-year limit on automatic extensions, thus enabling the updating of a good number of agreements for other scopes signed in more favourable phases of the cycle. As will be seen later on, the data show a notable increase in negotiation in recent months.

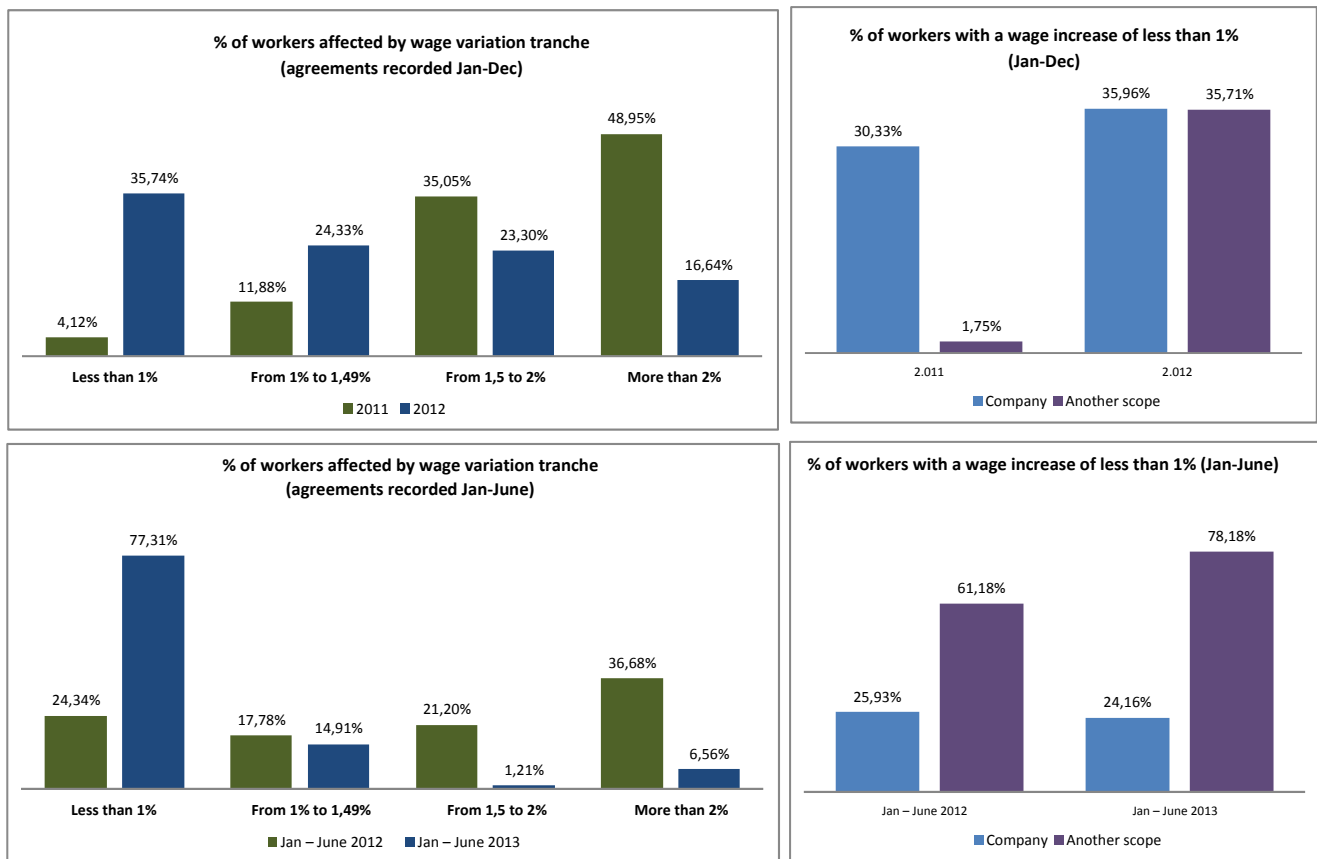


*Source: MEYSS, information available as of 31 December each year.*

### Negotiated wages adapting more and more to the economic context.

57. An analysis of wage increases by tranches of wage variation also highlights the fact that the wage moderation process has become more intense since the labour reform. Thus barely 4.1% of workers were covered by agreements with wage increases of less than 1% in 2011. This percentage has risen to 35.7% in 2012. In the agreements recorded between January and June, 2013, more than three quarters (77.3%) of workers were included under agreements with wage increases of less than 1% (versus 24.3% in January to June, 2012). On the other hand, the agreements with wage increases of more than 2% have fallen from 49.0% of workers in 2011 to 16.6% in 2012 and 6.7% in January to June, 2013.

The differences are even more striking if the percentage of agreements with wage reviews of less than 1% are analysed according to the scope of their negotiation. In 2011, the differences were quite significant, as only 1.75% of workers had agreed wage increases of less than 1% in agreements with a scope other than company level, versus 30.3% in those with company-level scope. This difference highlights how agreements with another scope had drifted away from the economic conditions. In 2012, however, these differences disappear, with such agreements affecting 36.0% of workers covered by company agreements and 35.7% of those with another scope. The data for January to June, 2013, show that this percentage has increased and the differences have reduced. Now 61.2% of workers under company agreements and a little over three quarters (78.2%) of those with a different scope agreed to wage increases of less than 1%. This is consistent with the Agreement signed by the social organisations on 25 January, 2012.

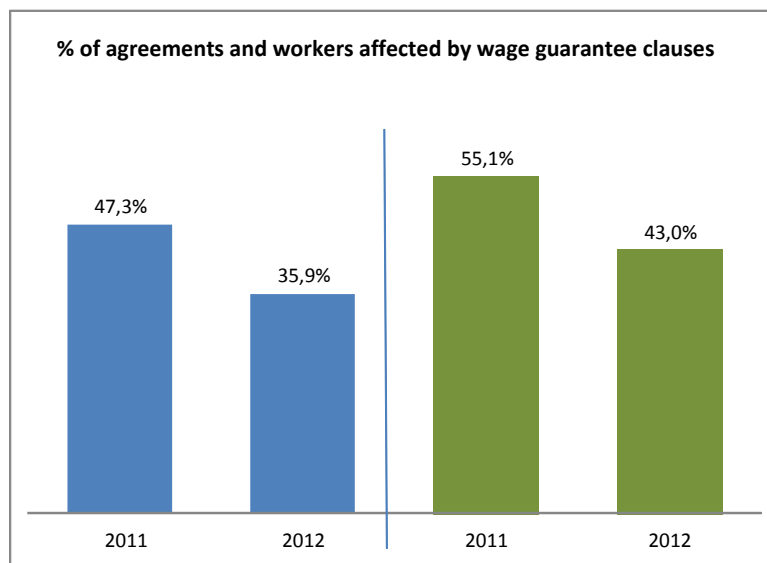


Source: MEYSS

### The incidence of wage guarantee clauses (inflation indexing) has come down.

58. In addition to wage moderation, the comparison of 2012 and 2011 data as of 31 December each year shows that the incidence of wage guarantee clauses in agreements covering more than single companies is considerably lower. Agreements with this scope not subject to indexing clauses have grown from 52.7% of all agreements with effect in 2011 to 64.1% in 2012.

In the case of company-level agreements, the percentage has remained stable at around 70%. For its part, the number of workers not affected by wage clauses in agreements with a scope other than individual companies has gone from 44.9% to 57.0% between 2011 and 2012.



Source: MEYSS, information available as of 31 December each year.

**Wage moderation also stems from a negotiation structure closer to the reality of the setting.**

59. This wage moderation process in collective negotiation must be considered in relation to the changes in the negotiation structure derived from the measures adopted in the labour reform. As noted below, the reform introduces quite significant incentives for a decentralisation of the collective negotiation process and, in parallel, a greater adaptation of the agreements with a scope larger than individual companies to the reality of work centres. In this sense, the freedom to reach company agreements and the effective possibility of resorting to opting out whenever justified has promoted the adaptation of agreements with a greater scope to avoid their potential loss of influence. If this does not happen, then company-level agreements will proliferate to a greater extent. In any case, a positive process has begun and will contribute to moderating the structural unemployment rate. According to the Bank of Spain's Economic Bulletin for February, 2012, *"starting from a sectoral negotiation scenario in which no companies opt out, decentralising collective negotiation might reduce an economy's long-term unemployment rate by about 4 percentage points"*<sup>20</sup>.

### **II.2.3. Temporary employment regulation measures as an alternative to redundancies.**

In search of a balanced framework for labour relations, the labour reform has altered the conditions for adopting temporary employment regulation measures, i.e. temporary suspensions of contract and short-time working.

**The increase in the number of workers affected by collective measures as an alternative to redundancy is consistent with the cyclical situation of the Spanish economy**

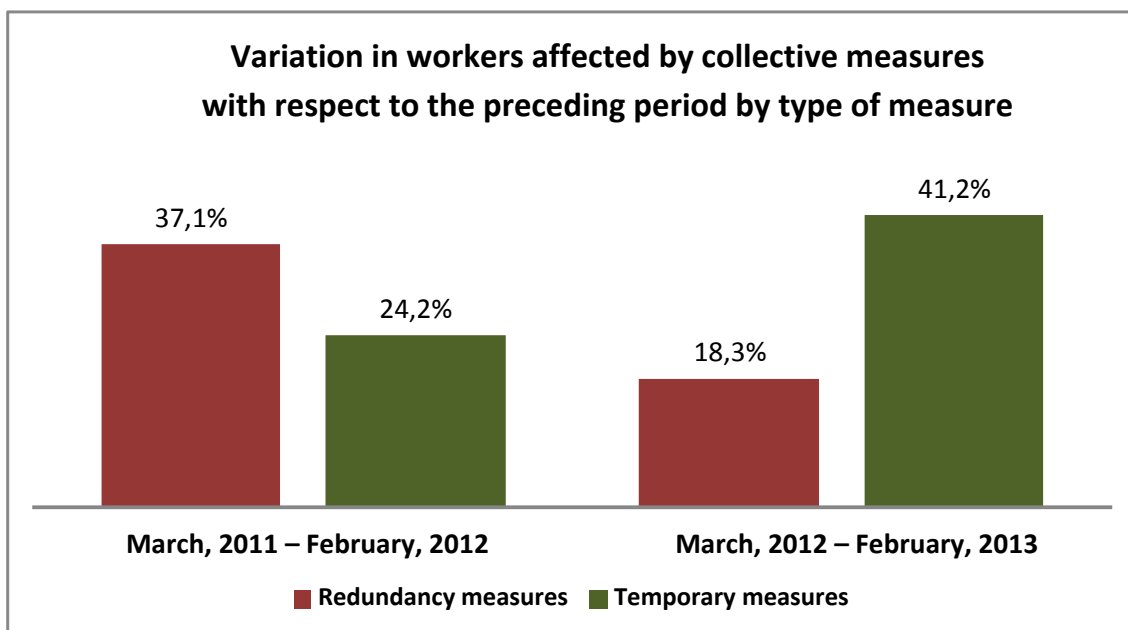
60. The use of these measures is strongly constrained by the cyclical position of the economy and was, in fact, already significant prior to the labour reform. In the twelve months immediately prior to the labour reform (March, 2011, to February, 2012), the workers affected by temporary employment regulation measures had increased by 24.2% with respect to the preceding period. In the twelve months following the reform, the increase has been greater as a consequence of the said economic context, 41.2%. However, the changes in the labour reform have encouraged a greater balance between internal and external flexibility, as discussed below.

**Since the labour reform, companies are resorting more intensely to measures other than collective dismissals.**

61. Between March, 2012, and February, 2013, i.e. in the twelve months following the labour reform, 502,723 workers were affected by collective measures, 36.7% more than in the preceding twelve months. However, the growth in the number of workers affected differed greatly depending on the type of measure. Thus, while collective redundancy measures increased by 37.1% in the twelve months prior to the reform versus 24.2% for temporary employment regulation measures, during the period following the reform, the increase in those affected by redundancy measures was lower than in the preceding period (18.3%) and much lower than the increase in the number of people affected by temporary measures in the period following the reform (41.2%).

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<sup>20</sup> Bank of Spain (2012) "The relationship between the degree of collective negotiation centralisation and the unemployment rate: new results". Economic Bulletin, February, 2012. Article by Mario Izquierdo, Juan F. Jimeno and Carlos Thomas, from the Directorate General for Study Services.



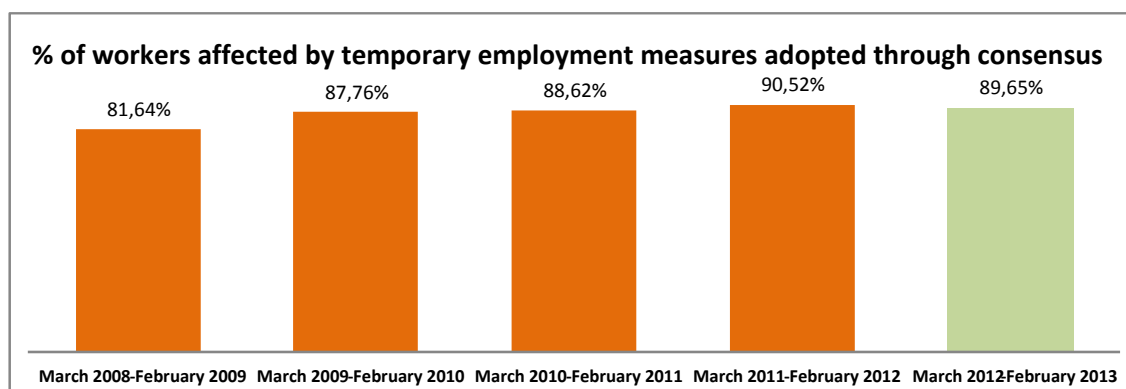
*Source: MEYSS*

Following the labour reform, an increase is seen in the use of measures other than dismissal, especially measures involving reductions in working hours (60.5% more workers affected). The increase in the proportion of workers affected by internal flexibility measures has resulted in a lower relative incidence of redundancy measures, which affected 16.8% of all workers involved in collective measures during the period from March, 2012 to February, 2013, versus 19.4% in the previous period.

The data available after the reference period only cover the three months between March and May, 2013. Bearing in mind the volatility of monthly figures, it is not appropriate to draw conclusions from such a short period, although the data show a fall of 32.6% in the number of workers affected by collective measures in March-May, 2013, with respect to the same period in 2012<sup>21</sup>, something that may be related to the improvement in the economic situation and expectations regarding the future of the economy.

#### **Most of the measures continue to be adopted by consensus.**

62. In addition, in the same period from March, 2012, to February, 2013, 89.7% of workers were affected by temporary measures adopted through consensus. This percentage is lower than that for twelve months previously (90.5%), but higher than the degree of consensus in other periods and, in any case, very high.



*Source: MEYSS*

<sup>21</sup> The data for these months in 2013 are pending inclusion of the figures from Catalonia for March and April.

## II.2.4. Non-applicability of agreements

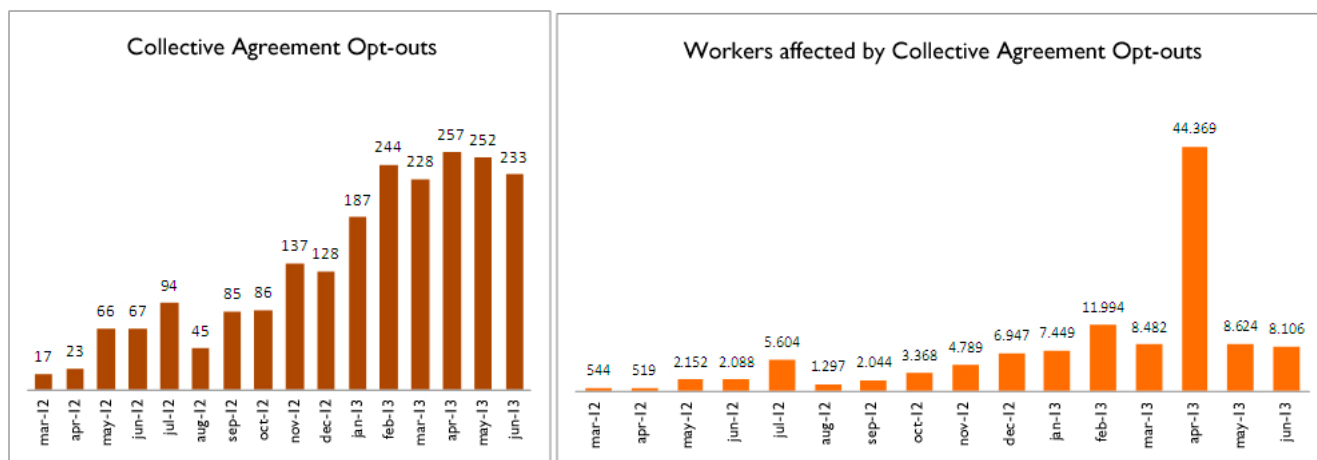
**The new regulations facilitate the adoption of decisions regarding the non-applicability of agreements to companies in difficult situations.**

63. One of the most significant advances in the labour reform within the scope of collective negotiation is the new regulations on non-applicability or “opting out”. This internal flexibility tool extends the range of alternatives to redundancy and should be understood as such. Specifically, it enables companies to opt out of applying a collective agreement when there are economic, technical or organisational or productivity grounds that justify this. Of course, the reform guarantees workers’ rights to effective judicial protection in all such cases.

Opting-out decisions were extremely rare under the previous regulations; there wasn’t even an official statistic for monitoring it. The major limitations and obstacles imposed by the collective agreements themselves and the lack of any mechanisms for drawing a line under situations where the negotiations for opting out grind to a halt have in the past prevented companies from resorting to this escape route. Despite the fact that the possibility of opting out facilitates the adaptation of working conditions to the circumstances faced by the company, thus preventing redundancies.

**The reform has facilitated around 120,000 workers affected by non-applicability to remain in employment and boosted competitiveness.**

64. The trend in these non-applicability agreements goes hand in hand with the gradual deployment of the reform’s effects. In the first few months following the approval of the reform, very few decisions of this type were adopted. From November on, once the regulations from the National Advisory Committee for Collective Agreements was in force, there has been an increase in the number of decisions and in the number of workers affected, and this has picked up during 2013. This year has seen almost twice as many companies opting out as in the whole of 2012: 1,401 (versus 748), affecting 89,024 workers (versus 29,352 last year). Between March and June, 2012, non-applicability decisions affected 5,303 workers, as opposed to 69,581 in the period from March to June, 2013. Since the approval of the labour reform, 2,149 companies have opted out, affecting almost 120 thousand workers (118,376). The high number of workers affected by these opt-out decisions in April, 2013, can be explained by the inclusion on the MEYSS register of a few decisions in the financial and commercial distribution sectors affecting large numbers of workers.



Source: MEYSS

The analysis of the opt-outs in 2013 by sector shows that almost 80% correspond to the services sector (79.8% of the workers affected), whereas industry amounts to 14.0%. By size of company, 14% of the workers affected were in companies with fewer than 50 employees (1,005 firms). Two thirds (66.4%) of the workers affected were in large companies (+250 employees). It is possible that opt-out decisions taken at

small businesses not used to providing information about these decisions may be slipping through the statistical net. In any case, the growth in non-applicability has been very significant in recent months.

### **Most of the opt-outs incorporate amendments to wage conditions**

65. The following tables reflect detailed information on those work-related matters or conditions where opt-outs have taken place. This analysis is still provisional<sup>22</sup>, and the definitive figures, in which no major changes are expected, will be published regularly from September on in the MEYSS's Statistics on Collective Labour Agreements as part of the process for improving statistical information. Most of the opt-outs refer to wage conditions (94.3%), although these are often combined with changes in other working conditions, including non-wage-related internal flexibility measures, such as modifications in working hours, schedules and distribution of working times or functional mobility.

#### **NON-APPLICATION OF COLLECTIVE AGREEMENTS AND WORKERS, BY WORK CONDITIONS AFFECTED**

Working conditions not applied	Agreements not applied	Percentage of opt-outs	Workers
Working hours	185	13.3	8,641
Schedules and distribution of working time	151	10.8	7,478
Compensation system	312	22.4	37,228
Amount of wages	1,312	94.3	77,304
Work system and performance	30	2.2	1,057
Voluntary improvements in the Social Security' protective actions	88	6.3	28,817
Exceeding the limits for functional mobility	14	1.0	281

\*Provisional figures. The information shown is up to 30 June, 2013.

Each decision not to apply an agreement may affect more than one condition; hence the total adds up to more than 1,392 and the percentages come to more than 100%.

*Source: MEYSS*

From the qualitative analysis of the opt-outs recorded to date, it can be concluded that most of them focus on wage-related aspects, some seek to neutralise the increases foreseen in the agreements and others apply more forceful wage cuts. Nonetheless, in some cases they foresee increases in working hours without wage rises and changes in other working conditions without affecting wages. On occasions, the company compensates for these adjustments by increasing the number of free days in the course of the year; these frequently do not apply to part-time workers or those on short time. They are generally implemented as exceptional and transitory measures, sometimes with the possibility of subsequent recovery; and they are normally associated with maintaining employment levels. It is generally agreed that the company will guarantee the jobs of all its employees while the agreement is in force or else directly withdraws an initial redundancy proposal.

By way of example, one company providing services to the community (specifically, refuse collection) managed to avoid the dismissal of up to 125 workers through a 6% wage cut for the staff as a whole, as well as setting aside some compensations and improvements foreseen in the agreement. Without a doubt, this constitutes a less detrimental alternative for social well-being.

### **The country's productive fabric now has a greater facility to adopt internal flexibility measures enabling the termination of contracts to be avoided or reduced.**

66. These initial data indicate that, at last, the argument that changing or ceasing to apply previously agreed working conditions is preferable to resorting to adjustments through redundancy is beginning to take hold.

<sup>22</sup> In the process of cleansing the data, 9 cases of non-application decisions were identified as having been incorrectly included in the statistics in July through a procedural error; these will be eliminated from the data for August, 2013. For this reason there are discrepancies between the number of opt-out published by the MEYSS until June (1,401) and the figures in the analysis subsequently performed on the cleansed data (1,392 non-applications).

In this way, in addition, incentives are generated for a greater adaptation of the agreements with a larger than company scope to the needs of companies and their workers. The lack of adaptation of these agreements would be the driver for the non-application decisions and the signing of company-level agreements, so negotiators would lose their negotiating influence.

This change of trend may be related to the new decision-taking powers of the National Advisory Committee for Collective Agreements – and its equivalents at regional level – and others indirectly to the changes made by the labour reform in matters of large-scale redundancies. Whatever the reason, there can be no doubt that the labour reform has facilitated the adoption of non-application decisions, which do not, by the way, exclude other internal flexibility measures, and with which, in fact, they are combined either simultaneously or subsequently depending on their needs and possibilities. In this way, the collective agreement can be declared non-applicable while at the same time agreeing to the reduction and/or suspension of contracts or amending working conditions, always with the declared goal of saving jobs.

Furthermore, it should be recalled that it was recently approved that the National Advisory Committee for Collective Agreements should also examine<sup>23</sup> discrepancies arising out of a lack of agreement regarding the non-applicability the working conditions foreseen in a collective agreement, whenever such non-application affects work centres located in the territory of one Autonomous Region if that Region had not established, within the term of three months, a tripartite body equivalent to the National Committee, or had not signed a collaboration agreement with the MEYSS. This is meant to forestall the negative consequences deriving from a lack of regulatory development by the Autonomous Regions in this regard. It is an example of the intensive monitoring carried out on the operation of the measures introduced and their improvement.

67. The preventive character is visible in non-applicability decisions, which are reached in some cases *a priori*, as an initial reaction vis-à-vis a situation of perceived difficulty. Nonetheless, the agreement is often reached when the impairment of the business situation is greater, as a means to avoid or reduce redundancies already announced by the company. In fact, Royal Decree 1,483/2012 on employment regulation measures expressly includes, among other measures as alternatives to collective lay-offs, the use of non-application of the conditions stipulated in collective agreement. And although the proposal not to apply the agreement normally stems from the company, more and more often it is the workers themselves or their representatives who bring up or put forward this possibility first of all.

## II.2.5 Other internal flexibility measures.

**Companies employing 30% of the total workforce have adopted internal flexibility measures. There are no material legal or reporting obstacles for the adoption of such measures.**

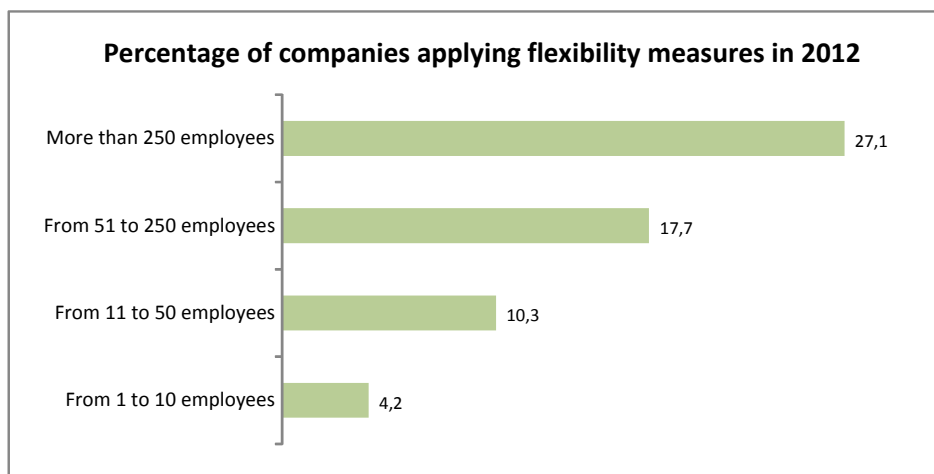
68. The reform has driven the adoption of all kinds of internal flexibility measures by companies. In addition to temporary employment regulation measures (temporary suspensions of contracts and short-time working) and decisions on non-application of collective agreements during 2012, extensive use has also been made of other flexibility measures as shown in the results of the specific module on internal flexibility (please refer to the table) in the Labour Survey (ECL):

- Among companies with over 250 workers, 27% have adopted internal flexibility measures. This percentage is on average 5.2% for all companies. As the internal flexibility measures have been adopted more frequently by companies with a strong weighting in terms of employment, the companies that have adopted these measures employ, overall, 17.7% of the workforce covered by the survey.

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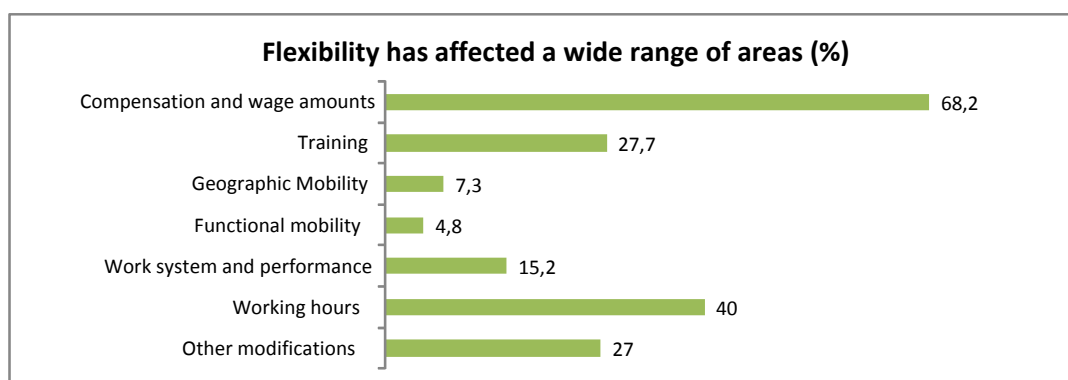
<sup>23</sup> Pursuant to Additional Provision Six in Royal Decree-Law 5/2013 dated 15 March, 2013, on measures to foster the continuity in employment of older workers and to promote active ageing.





*Source: ECL Labour Survey, MEYSS.*

- The internal flexibility measures have been extremely diverse, and many companies have adopted several types of measure in 2012. The most common ones have been those relating to the compensation system and wage amounts, applied by 68.2% of companies, followed by adjustments in the working hours, adopted by 40%, and those related to training<sup>24</sup>, applied by 27.7%.
- Among the measures affecting compensation and wage amounts, the most frequent has been a cut in wages (38.8%). Among those affecting working hours, the most commonly used measures have been changes in the type of working day (split day or compact) and the introduction of an irregular distribution of the working hours or their modification (31.4%). With regard to other modifications to working conditions, the most outstanding are those affecting voluntary improvements in the protective actions of the Social Security or those that have changed measures to favour work/life balance (17.3%).



*Source: ECL Labour Survey, MEYSS.*

- The adoption of internal flexibility measures has not encountered any legal obstacles. Most (90.9%) of the companies that have not adopted any internal flexibility measures have reported that the reason was not having needed them. A staffing adjustment was preferred by 3.9%, and 2.1% indicated that measures are planned to be taken in 2013. Only 1.5% have not adopted these measures through being unaware of the legal possibilities and an extra 0.2% because of difficulties encountered.
- In most cases, flexibility measures have been adopted through an agreement between the company and the workers affected or their legal representatives

<sup>24</sup> Granting of leave to undertake training during working hours, training plans to adapt personnel to the position, etc.

- Among the companies that adopted decisions involving substantial modifications in the working conditions or functional or geographic mobility, 23.9% also adopted collective measures for the temporary suspension of contracts or reductions in working hours. Bearing in mind this overlapping, it can be estimated that internal flexibility measures were adopted by over 71,000 companies giving employment to 30% of the national workforce. This is more than 6% of all companies and, among large enterprises (with over 250 workers), this percentage exceeds 30%.

#### **Box 4. Study of the adoption of other internal flexibility measures by companies through the 2012 ECL Labour Survey.**

At the time the labour reform was approved, information was only available about the first of the four types of internal flexibility measures that companies may adopt:

- Collective flexibility measures as an alternative to redundancy, consisting in the temporary suspension of contracts and reductions in working hours.
- Non-application of collective agreements so as to enable wages to be lowered or working hours to be increased, among other measures.
- Substantial modifications to the working conditions, which may consist in changes to wages, working hours, their distribution or other conditions (training, work/life balance measures, ...). These measures may be individual or collective.
- Functional and geographic mobility measures.

In order to collate information about the non-application of agreements, it was necessary set up a specific procedure on the Electronic Agreements Register (REGCON), which has enabled us to obtain basic data on these non-application decisions and, in future, on their effects on wages or working hours. This information has been published since February, 2013, in the Statistics on Collective Labour Agreements.

In order to have information available on any substantial modifications effected in working conditions and the functional and geographic mobility measures, certain specific questions were included in the annual module of the ECL Labour Survey for the fourth quarter of 2012. The results of this annual module have also been published.

The Survey, conducted on a sample of 12,700 work centres (to a large extent assimilable to companies), sought to obtain data on the following matters:

- How many companies had applied internal flexibility measures
- The reasons why the other companies had not applied any.
- What flexibility measures had been applied, with a high degree of disaggregation.
- Whether the measures had been imposed or reached through consensus.
- Whether they had given rise to any worker leaving the company.

#### **II.2.6. New structure and invigoration for collective negotiation.**

**The regulations prior to the reform led to a structure and pace of negotiation that was unsuitable for long-term growth.**

69. The development of a new employment culture based on flexicurity involves a profound transformation in the negotiation customs that have prevailed in Spain. One of the defects of the Spanish institutional employment model most repeatedly pointed out by experts is the collective negotiation structure and a deficit in the potential for renegotiating and renovating the contents of collective agreements. The excessive influence of provincial-scope agreements, the freezing of negotiation units, and the scant development of company-level agreements have been building up into a series of problems that the alterations introduced attempt to limit.

Specifically, it is necessary to transform the negotiation structure, currently with an intermediate degree of centralisation; according to economic theory, this would have a less unfavourable impact on the level of structural unemployment and wage growth than if the system were totally centralised (as in Scandinavian countries) or decentralised (as in Anglo-Saxon countries)<sup>25</sup>.

<sup>25</sup> Bank of Spain (2009) The operation of the labour market and the increase in unemployment in Spain. Economic Bulletin, July-August, 2009. Article by Ángel Estrada, Mario Izquierdo and Aitor Lacuesta, from the Directorate General for Study Services.

The labour reform generates powerful incentives to transform negotiation habits and facilitates a more suitable negotiation structure for long-term growth, as well as greater dynamism in the negotiation process and an approximation between agreements with a larger than company scope and the needs of the economy's productive fabric. The prevalence company-level agreements and the possibility of resorting to non-application promote an approximation between agreements with a larger than company scope and the reality of the productive fabric. The combination of a system of agreements with direct general efficacy in the absence of those mechanisms generated a rigidity that helped explain such issues as the 3.6% increase in wages in the 2009 construction agreement when thousands of jobs were being destroyed. To this must be added the fact the legal regulations governing the currency of agreements meant that the renegotiation processes were excessively slow and long, constituting an obstacle for their adaptation to the economic cycle, a phenomenon known as the "petrification" of the collective agreement.

Having said that, the reform does not impose a single negotiation unit. There may be any number of sectoral and company-level collective agreements, each with a greater or lesser territorial scope. It will be up to the social agents, i.e. the companies and the workforce, to opt for the model they consider most suitable to foster employment and productivity. What it does do is provide incentives for the agreements to come closer to the specific circumstances of each company, and promote greater dynamism in the negotiations, as well as a stronger link between the wage variations and indicators tied to productivity or business profits, limiting the degree of indexing.

#### **A change is being undertaken in the negotiation structure.**

70. The changes in this structure come about, on the one hand, through the increased weighting given to negotiation at company level, to a large extent the result of the strong increase in new business units engaged in collective negotiation. On the other hand, through the loss of importance in the provincial scope. Both processes constitute the declared goals of the measures adopted within the scope of collective negotiation in the labour reform.

This dual process of centralisation of agreements with a larger than company scope, and the proliferation of company-level agreements must be positively appraised in the light of the theory and the empirical evidence of economic science regarding the optimal structure for collective negotiation.

In this respect, the judgement handed down by the Employment Division of the National Appeals Court dated 10 September, 2012, consistent with the priority application of company-level agreements foreseen in the labour reform, recognises the priority of the company-level agreement over the sectoral one and points out that a clause in a disputed sectoral agreement that favours a preference of sectoral regulation of wage tables and their revision or the annual work calendar runs counter to the priority application of company-level agreements foreseen in the labour reform. Adding that all collective agreements in force are bound by the legal framework foreseen in the reform, not just those signed after Royal Decree-Law 3/2012 dated 12 February, 2012, and that this binding is only operative into the future, that is to say, starting from the existence of the said norm with its full legal rank and its application cannot be construed having any retroactive effects.

#### **Decentralisation leads to an increase in negotiation at company level, particularly through the emergence of new business negotiation units.**

71. The strong increase in new company negotiation units in 2013 constitutes a very clear indicator of the greater dynamism in collective negotiation. The data to June<sup>26</sup> show an increase of 24.1% in the number of company-level agreements or company group agreements signed by new negotiation units (165 agreements, including those in the public sector).

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<sup>26</sup> The agreements counted have been those first recorded on the database used for this statistic in the period 2011-2013 until the month of June each year.

New negotiation units in companies and company groups				
Year signed	Agreements in private companies	Variation (%)	Workers affected in private companies	Variation (%)
2011	92	-	8,170	-
2012	113	22.8%	30,188	269.5%
2013	158	39.8%	33,438	10.8%

*Source: MEYSS, Provisional data as of June 30th each year.*

The increase in new negotiation units has not been accompanied by a similar progression in the number of workers affected by these new units, suggesting an increase in small-sized negotiation units, in other words, the proliferation of company-level agreements with smaller production units. This generates a greater pressure for the adaptation of agreements from a different scope at the same time as it demonstrates the will of many workers and companies to regular their working conditions freely at the company level, a possibility that was not always available before the labour reform.

72. Although the possibility of negotiating collective agreements at company level already existed in the past, the labour reform has promoted this scope of negotiation by giving priority in application to the company-level agreement, without constraints or complications from the sectoral agreement. The sector wage no longer has to prevail over the agreement reach by the company and the regulation of working hours will be as established by a business negotiating unit, quite apart from what is set in the sectoral agreement.

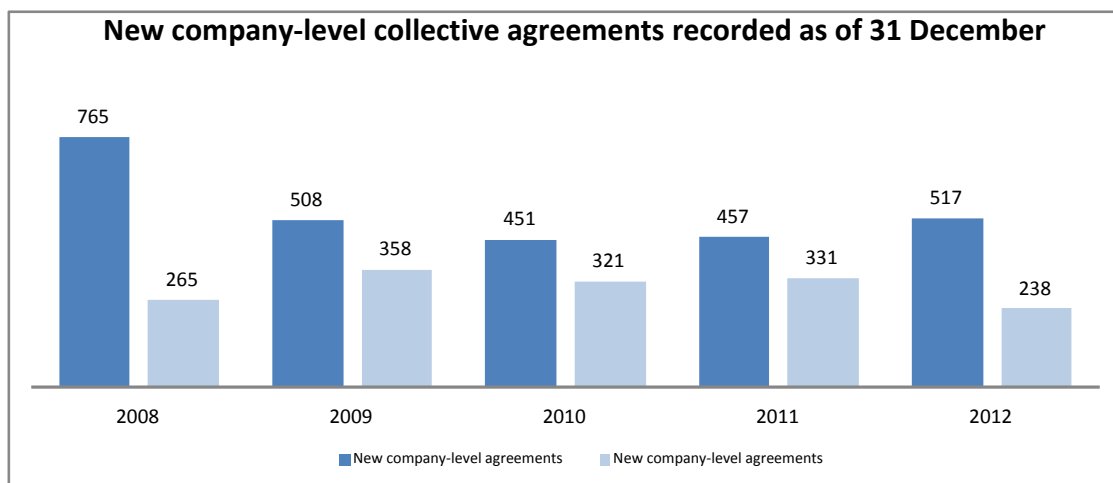
The importance of the change lies in the fact that company agreements are seen as a truly flexible self-organisational tool, as an internal flexibility measure. Not for nothing is it possible to appreciate in company-level negotiation practice, for example, the most exciting advances towards a new wage regulation model, more closely tied to the specific characteristics and situation of each productive organisation and the main economic values of the enterprise, such as productivity and (variable skill-based supplements depending on the EBITDA result).

**The increase in the number of agreements recorded as taking effect in 2013 is quite notable, particularly in the case of company-level agreements.**

73. An analysis of the agreements that begin to have economic effects in the year and recorded as of 31 December in each of the most recent years shows that 2012 already saw changes in the negotiation structure. The constant decline in the number of agreements and in workers affected since 2008 has been reversed, for instance. The data show that almost 9% more agreements have been recorded, affecting 45.1% more workers than in 2011. A total of 644 new<sup>27</sup> agreements, 517 at company level. The increase in the number of agreements at this scope (+13.1%) compensates the slight reduction in the number of agreements with other scopes.

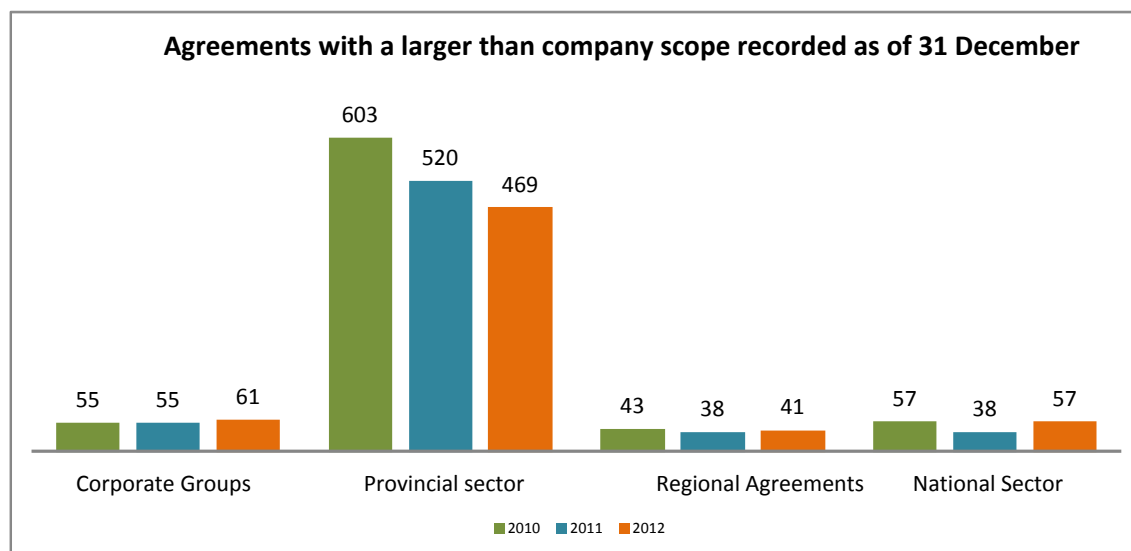
In addition to the greater dynamism in negotiation, the 2012 data reflect a significant fall in the number of workers for each new company-level agreement, hinting at greater use being made of company-level agreements by smaller-sized businesses. On the other hand, there has been a substantial increase in the number of workers affected by each agreement with a larger than company scope, which may reflect the signing of agreements with a larger scope. In 2012, each of the 127 new agreements with a larger than company scope has affected, on average, 12,250 workers, when the average for the 2008-2012 period is 7,025. With the limited data available for 2013 (January-June), the figure is 9,770. The opposite phenomenon happens with company-level agreements, suggesting that company-level agreements are being signed with smaller and smaller companies. The ratio of workers to each new company-level agreement fell from 331 in 2011 to 238 in 2012. In the period from January to June, 2013, the figure is significantly lower, 188 people affected per new agreement.

<sup>27</sup> Strictly speaking, these are collective agreements that come into effect in the current year.



*Source MEYSS.*

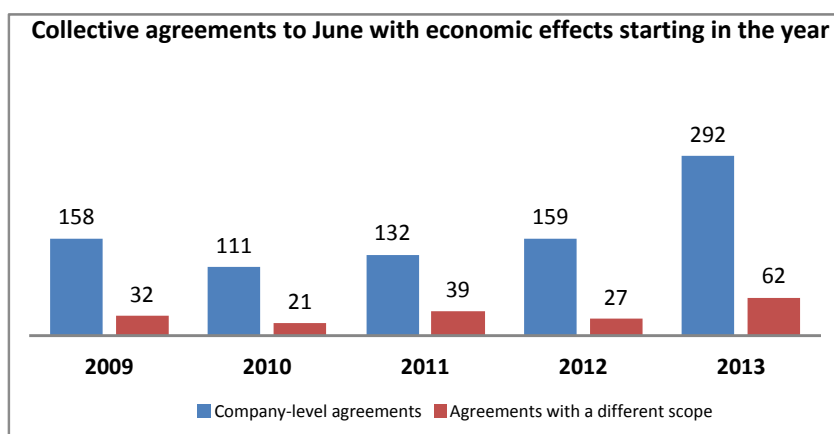
The statistics on collective agreements reflect a greater level of disaggregation in the structure of agreements without distinguishing between newly-signed agreements and agreements that will come into effects over the year. The aggregated data also show an increase in the number of agreements starting to have effects in 2012 (+5.7% in company-level agreements, +5.7% in terms of companies affected, +24.5% of workers affected) and they also provide more information about the changes in the composition of agreements' scope. Thus, an increase is seen in the agreements for corporate groups (classified as agreements with a larger than company scope for statistical purposes. The number of agreements in this scope increases and, very significantly, so does the number of companies affected), the agreements with national scope (substantial), a fall in sector agreements with a local or regional scope, a fall in the number of provincial scope agreements and an increase in the number of inter-provincial agreements. Therefore, the data point to a greater weighting of company-level negotiation and also negotiation at the inter-provincial and national levels.



*Source MEYSS*

74. The analysis of the traditional data on agreements recorded with economic effects starting in the year also points to a faster pace in the negotiation during the first months of 2013. The data available to June, 2013, and their comparison with those recorded to June in previous years highlight that the pace at which new agreements are signed is picking up. Company-level agreements coming into effect in economic terms in 2013 and recorded to June (292) represent 83.7% more agreements than in 2012 (which already showed a significant increase over 2011) and affect almost 25% more workers. In the case of agreements with a larger

than company scope, and despite the fact that the impact of the abolition of indefinite extensions when no new agreement is signed will not be totally reflected in the agreements recorded to June, the statistics on agreements reflect an even greater increase of 19.6% in the number of agreements (62) and 77.2% in the number of workers affected.

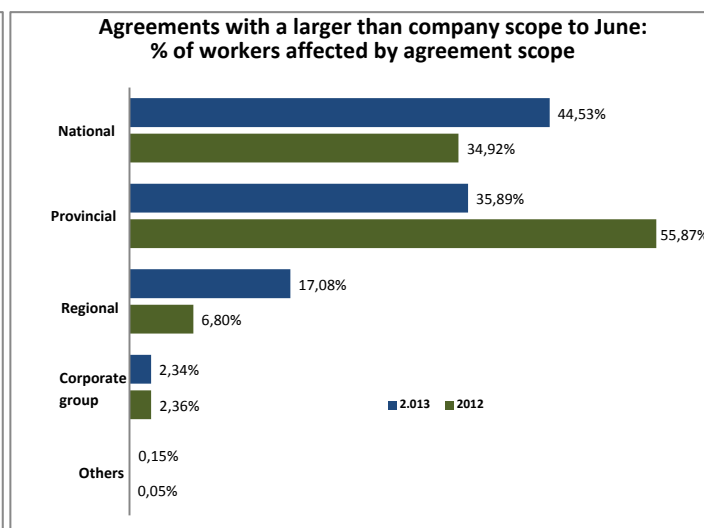
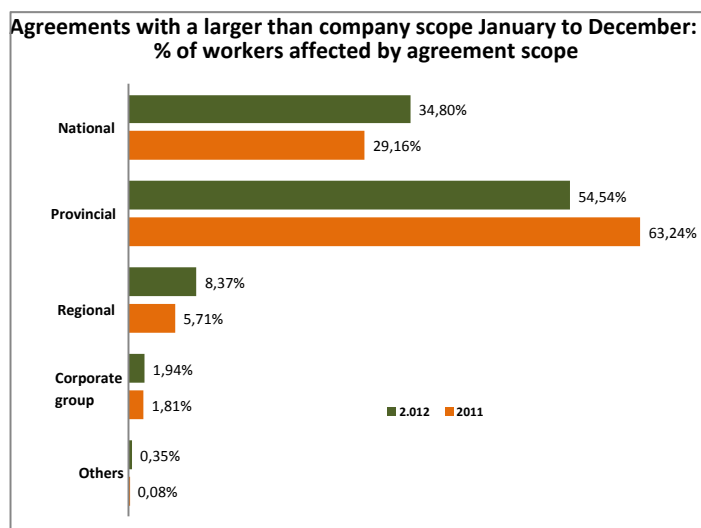


Source MEYSS

### In parallel, a trend is visible in the loss of importance of provincial scope agreements

75. Simultaneously with the greater dynamism of company-level negotiations, it is possible to see a decline in the importance of provincial-level negotiations. There has been a constant fall in the proportion of workers affected by provincial scope sectoral agreements, whereas those affected by agreements of national and regional scope have increased.

Workers covered by provincial sectoral agreements have slipped from almost two thirds of the workforce (63.2%) in 2011 to 54.5% in 2012 and 35.9% in January-June, 2013. This trend has been parallel to the increase in those affected by regional sectoral agreements (from 5.7% in 2011 to 8.4% in 2012 and 17.1% in 2013 to June) and national sectoral agreements (from 29.2% in 2011 to 34.8% in 2012 and 44.5% in 2013 to June). The proportion of workers affected by agreements at corporate group level has also risen slightly.



Source MEYSS

### II.3. Incentives and measures to foster permanent contracts

The labour reform attempts to favour the systematic use of permanent employment contracts. To this end, various measures have been included for when people are hired and when the employment relationship comes to an end. Special attention must be paid, in all cases, to the importance of developing further the possibility of resorting to internal flexibility in order to boost decisions on stable hiring. Similar to other previous reforms, the 2012 labour reform introduces direct incentives for new hires at the same time as it limits temporary contracting. In this case, however, the measures are accompanied by strong encouragement for internal flexibility and the correction of several aspects of the legal regime for termination of employment contracts that had generated habits and dynamics that accentuated labour-market dualism.

From a hiring perspective, the reform creates a special “entrepreneur support contract”: a new kind of permanent contract intended for companies with fewer than 50 workers with the aim of facilitating stable hiring decisions in the current climate of economic contraction, especially for the hiring of individuals from sections of the community with particular employment difficulties. This contract is characterised by having a longer probation period (one year) and by being linked to reductions in Social Security contributions and tax deductions (in the light of the employee’s profile). The duration of the probation period facilitates decisions by SMEs to opt for stable longer-term contracts in a context of uncertainty. The tax advantages and the reductions in Social Security contributions are intended for certain groups and have been designed to make them tightly linked to contract stability with the aim of limiting the potential “deadweight effect”. The goal is to foster permanent contracts right from the start and with long-term stability in mind.

On the other hand, the reform recovers the prohibition on hiring the same person consecutively with temporary contracts totalling more than 24 months. This measure, which had been suspended at the beginning of the crisis, must be considered in connection with the thrust in the fight against fraud implemented during 2012.

From the perspective of the legal regime for terminations, the reform has eliminated the need for administrative authorisation to adopt collective redundancy measures. In addition, the grounds justifying dismissals based on economic circumstances have been defined more clearly. Furthermore, the cost of these objective dismissals when deemed fair has been kept unchanged at 20 days’ compensation per year worked with a 12 month cap and, for new hirings, the compensation for unfair dismissals was extended at the general rate of 33 days with a 24 month cap to contracts for encouraging permanent hiring. This completes the transformation of the system that, albeit with a smaller scope, had already begun with the modifications introduced in 2010 and 2011.

As already indicated, the reform of external flexibility must be analysed jointly with the encouragement of internal flexibility and the changes to the regulations on collective bargaining. Taken together, these measures pose a coordinated attack on dualism.

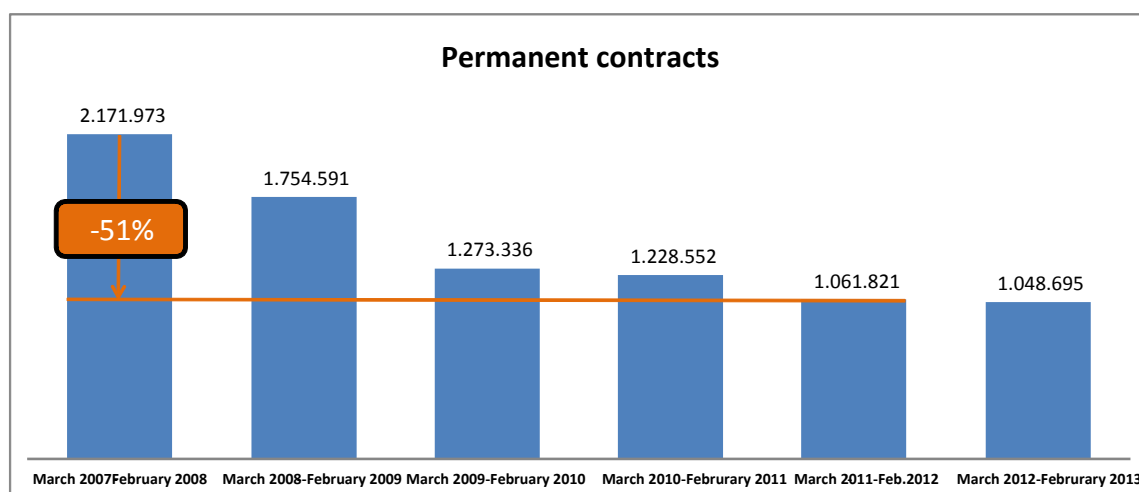
#### II.3.1 Hiring

76. Stable hiring decisions constitute a business decision closely related to investments. In fact, any company’s most valuable investment is in its human capital, as well attuned, highly productive work teams generate long-lasting competitive advantages. All companies, particularly small ones, adopt decisions on stable hiring of personnel whenever they carry out an investment. For this reason, the analysis of the recent hiring trends cannot be made by ignoring the intense credit crunch facing the productive sector and the entire economy of Spain. Already in 2011, credits to non financial companies contracted by 2%. In 2012, with the severe euro crisis and the limited progress made in the institutional reform of the single currency, the contraction came to 6.1%. In May, 2013, it has reached 7.3%, according to the Bank of Spain.

Despite this difficult scenario in which the reform has begun to deploy its effects, the data on employment hiring show a change of tendency in permanent contracts since the reform. The economic contraction and the credit crunch, although causing a slower pace in hiring, have not been translated, as in previous moments in the crisis, into such a significant fall in permanent contracts. The pace of new hires, particularly in the case of permanent contracts, was already very low immediately prior to the reform. The period between March, 2011, and February, 2012, saw the formalisation of fewer than half the permanent



contracts signed in the last period of the boom phase (March, 2007, to February, 2008). The fall was most intense in the pace of full-time permanent hires (-58.7%).



Source MEYSS

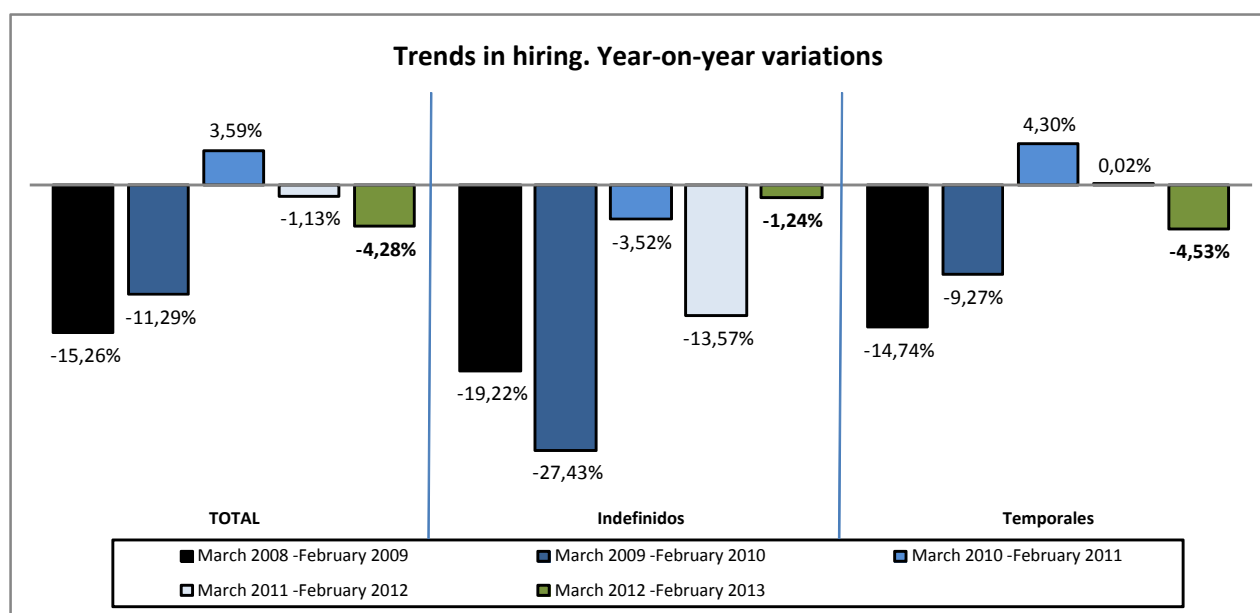
**Permanent contracts have slowed the pace of their fall in the twelve months since the reform in an adverse environment, while temporary hiring has fallen more quickly.**

During the 12 months following the reform, there was a fall of 1.24% in the number of permanent contracts<sup>28</sup> (versus a fall of 13.6% in the preceding twelve months). On the other hand, for the first time since the start of the crisis and despite the economic contraction, permanent contracts have shrunk to a lesser extent than temporary contracts, which fell by 4.5%. In all previous periods, the fall in permanent contracting had been significantly greater than in temporary hiring. Consequently, permanent contracts represented 7.7% of the total contracts signed (versus 7.4% in the preceding period).

This less adverse behaviour in new hires occurs in all forms of permanent contracting, especially for part-time contracts, which have grown by 5.5% versus a fall of 9.6% in the previous period. In the meantime, full-time permanent hiring has contracted by 4.22% instead of the 16.6% seen in the previous period and the discontinuous permanent contracts came down by 2.1%, versus a 4.5% fall in the previous period.

For their part, the conversions of temporary contracts into permanent full-time contracts fall quite sharply, slightly less than in the preceding period, namely -15.4% and -15.9%, respectively. With regard to permanent part-time contracts, these advanced for both initial contracts (+3.3%) and conversions (+8.3%), which had contracted during the previous period (-11.8% and -6.7%, respectively). This trend must be viewed in connection with that of temporary contracts, which shrank by 4.5% in the twelve months following the reform versus +0.0% in the previous period.

<sup>28</sup> The data on permanent contracts recorded in the twelve months following the labour reform reflect a strong increase in permanent hirings, inconsistent with the phase of the economic cycle and explained by the permanent contracts for domestic staff recorded as a consequence of regulatory changes. In order to make the analysis more homogeneous, it has been decided to remove the contracts for domestic staff recorded, as reflected in Appendix 1. In January, 2012, a transition period began for adaptation to the new Social Security regulations on domestic staff (Law 27/2011, dated 1 August, 2011, for the updating, adaptation and modernization of the Social Security System, and Royal Decree 1,620/2011, dated 14 November, 2011, regulating the special labour relation for domestic and family service) obliging all contracts to be recorded in writing, including contracts already in force, even those for only a few hours a week or month. In consequence, the contracts for domestic staff rose from an average of 612 new contracts a month in 2010-2011, to 47,851 a month in 2012. In that year, 574,206 contracts were recorded for domestic staff. These were mostly initial part-time permanent contracts. This legislative change also had a profound effect on the year-on-year variations in affiliations to the Social Security in 2012-2013.



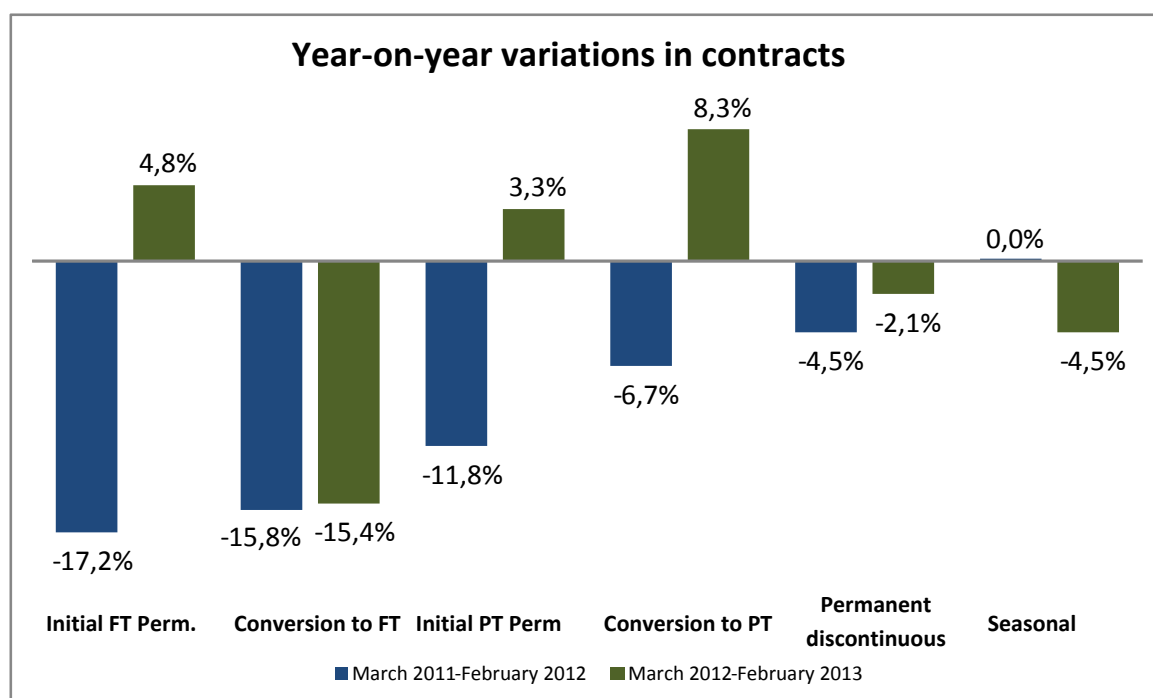
Source MEYSS

Initial full-time permanent contracts increased by 4.8% in the period, a phenomenon that may be related to the new “entrepreneur support contract”.

77. Particularly outstanding is the growth of 4.82% in the number of initial full-time permanent contracts in the period from March, 2012, to February, 2013, with respect to the immediately preceding period, versus a fall of 17.2% seen in these contracts between March, 2011, and February, 2012. This may be related to the new type of permanent hiring using “entrepreneur support contracts”.

	TOTAL	PERMANENT				TEMPORARY	% Permanent
		Total	Full time	Part time	Disc. permanent		
March 2007-February 2008	18.569.293	2.171.973	1.568.457	462.972	140.544	16.397.320	11,70%
March 2008-February 2009	15.735.026	1.754.591	1.218.076	398.478	138.037	13.980.435	11,15%
% variation	-15,26%	-19,22%	-22,34%	-13,93%	-1,78%	-14,74%	
March 2009-February 2010	13.957.841	1.273.336	825.069	326.165	122.102	12.684.505	9,12%
% variation	-11,29%	-27,43%	-32,26%	-18,15%	-11,54%	-9,27%	
March 2010-February 2011	14.458.804	1.228.552	777.195	334.859	116.498	13.230.252	8,50%
% variation	3,59%	-3,52%	-5,80%	2,67%	-4,59%	4,30%	
March 2011-February 2012	14.295.215	1.061.821	647.999	302.588	111.234	13.233.394	7,43%
% variation	-1,13%	-13,57%	-16,62%	-9,64%	-4,52%	0,02%	
March 2012-February 2013	13.683.122	1.048.695	620.625	319.199	108.871	12.634.427	7,66%
% variation	-4,28%	-1,24%	-4,22%	5,49%	-2,12%	-4,53%	

Source MEYSS



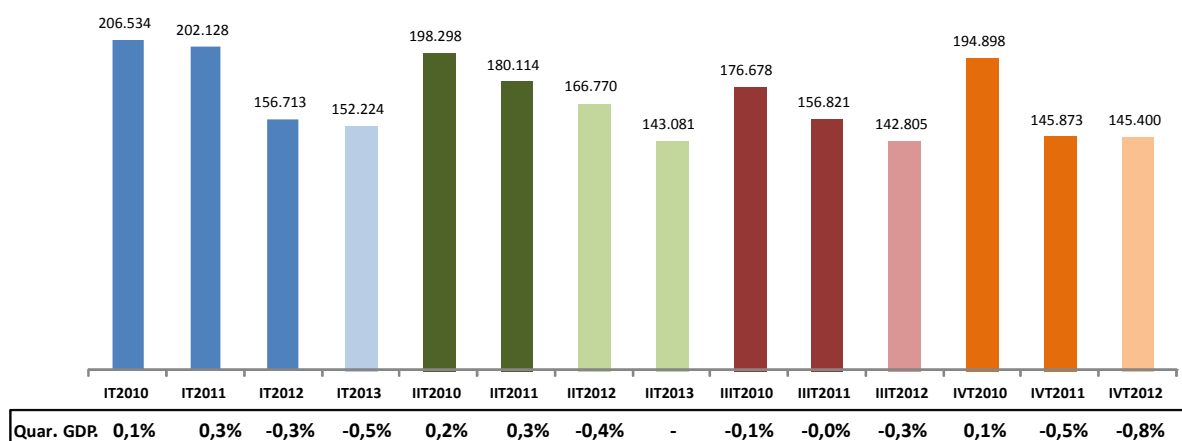
*Source MEYSS; TC/FT: full-time; TP/PT: part-time*

78. The data corresponding to the first half of 2013 continue to show a more favourable progression in year-on-year terms, with a more moderate fall in full-time permanent contracting than in the preceding period (first half of 2012), and relevant growth in part-time and discontinuous permanent contracts. The last-named type has exceeded the level achieved in 2011. However, there has been a slight fall in the weighting of permanent contracting in the total number of contracts signed, explained by the better behaviour of temporary contracting<sup>29</sup>, and is consistent with the existence of uncertainty regarding future economic trends, the strong credit restriction and the high incidence of seasonality in the employment contracts.

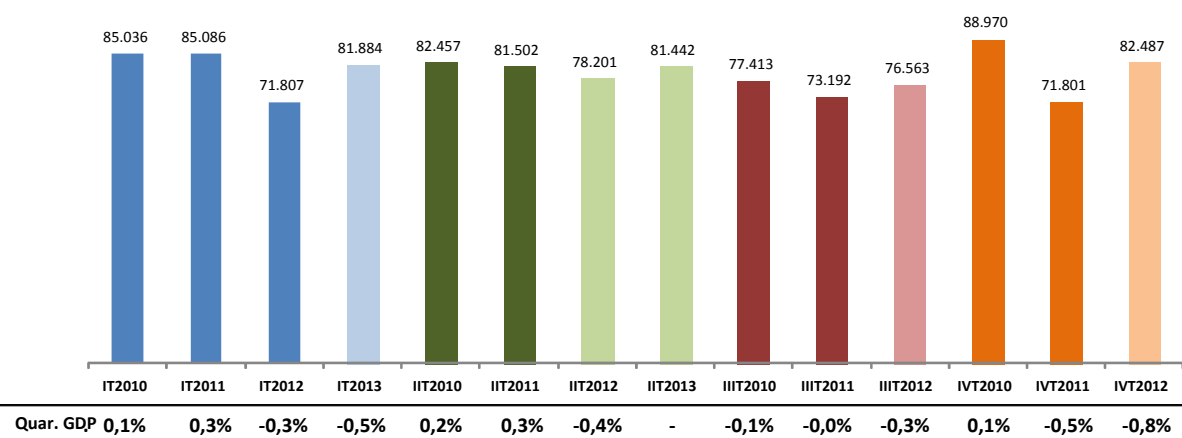
	TOTAL	PERMANENT				TEMPORARY	% Permanent
		Total	Full time	Part time	Disc. permanent		
January-June 2010	6.822.322	623.223	404.832	167.493	50.898	6.199.099	9,14%
January-June 2011	6.946.968	602.045	382.242	166.588	53.215	6.344.923	8,67%
% variation	1,83%	-3,40%	-5,58%	-0,54%	4,55%	2,35%	
January-June 2012	6.506.449	521.582	323.483	150.008	48.091	5.984.867	8,02%
% variation	-6,34%	-13,36%	-15,37%	-9,95%	-9,63%	-5,67%	
January-June 2013	6.625.851	512.984	295.305	163.326	54.353	6.112.867	7,74%
% variation	1,84%	-1,65%	-8,71%	8,88%	13,02%	2,14%	

<sup>29</sup> In this sense, regard must be had for the changes taking place in the duration of temporary hires. According to the MEYSS contract register (without any cleansing), contracts for less than 15 days represented 49.5% of all temporary contracts in the period from March, 2012, to February, 2013, versus 45.7% in the preceding period and 42.5% in the period from March, 2009, to February, 2010. These data are consistent with the trend shown in the EPA labour survey: approximately half the workers interviewed knew the duration of their temporary contract and of these, 9.3% had jobs lasting less than a month in the first quarter of 2013, versus 7.5% for the same period in 2012 and 5.6% in 2009. The EPA also shows that long-running temporary contracts (more than two years) have come down from representing 7.5% of the total number of temporary jobs with known duration to 9.3% in the first quarters of 2012 and 2013. All this affects the number of temporary contracts and, therefore, the percentage indicator for permanent contracts out of the grand total. For example, these data would suggest that short-term temporary contracts are now embodied in several shorter contracts, thus increasing the total number of contracts.

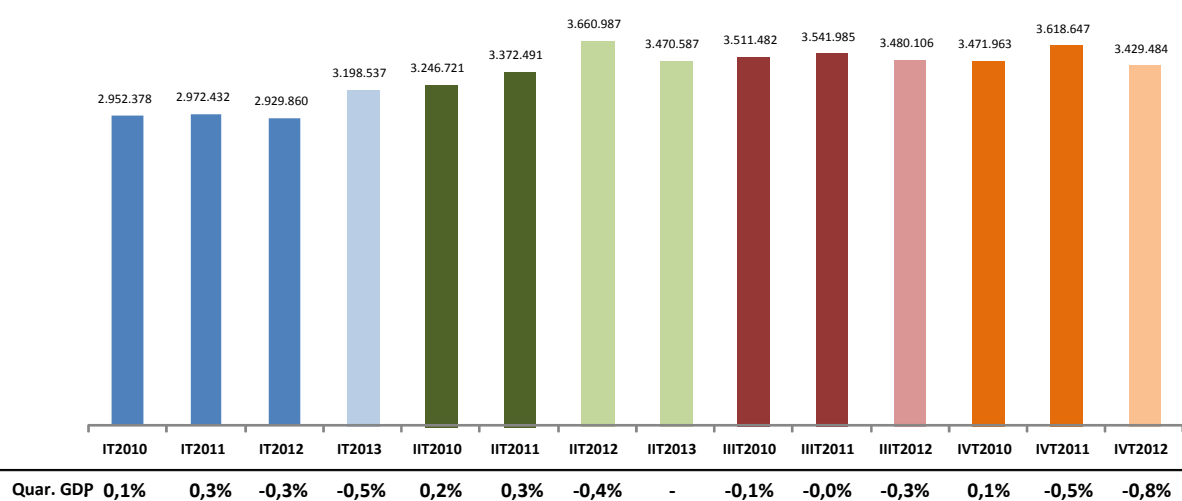
### Full-time permanent contracts



### Part-time permanent contracts



### Temporary contracts



**The “entrepreneurs contract” has contributed to the improvement in permanent contracting.**

79. The new contract type known as entrepreneur support contract has without a doubt contributed to the positive results in the performance of permanent hiring. As analysed below, these contracts have not contributed an additional source of temporality and have had a significant impact on hirings by small companies.

**Any analysis of the impact of “entrepreneur contracts” must take into account the requirements that must be met by companies in order to use them, a factor that limits the universe of potential beneficiaries.**

80. The analysis of the impact of this type of contract since its creation must bear in mind that it was designed to limit the cases in which companies can resort to this specific type, seeking a balance between encouraging its use and the risk of its being used for purposes other than those sought. Specifically, only small companies with fewer than 50 workers are able to use it, since the justification of a longer probation period is reasonable for these companies. In addition, and in order to avoid the replacement of existing workers by new hires, companies are not allowed to sign these contracts when, in the previous six months, they had adopted decisions to terminate employment deemed unfair and the new contracts are for jobs in the same professional category and for the work centre(s). On the other hand, if the worker hired is the subject of an unfair dismissal within three years and the entrepreneur has benefited from tax aid or reductions in Social Security contributions, these must be refunded. Furthermore, entrepreneur contracts can only be signed for full-time working. All these constraints limit the universe of potential beneficiaries and, therefore, affect the extent to which this contract type is used.

**To June, 2013, almost 120,000 contracts of this kind were signed, 40% of them with young people.**

81. Between the labour reform and June, 2013, a total of 118,917 contracts of this type have been formalised (more than 7,400 a month on average since March, 2012), 40.1% with people under 30 years of age, the main group targeted by the incentives, and 39.0% with female workers. Tax deductions or reductions in Social Security contributions were obtained by 42.4% of these contracts.

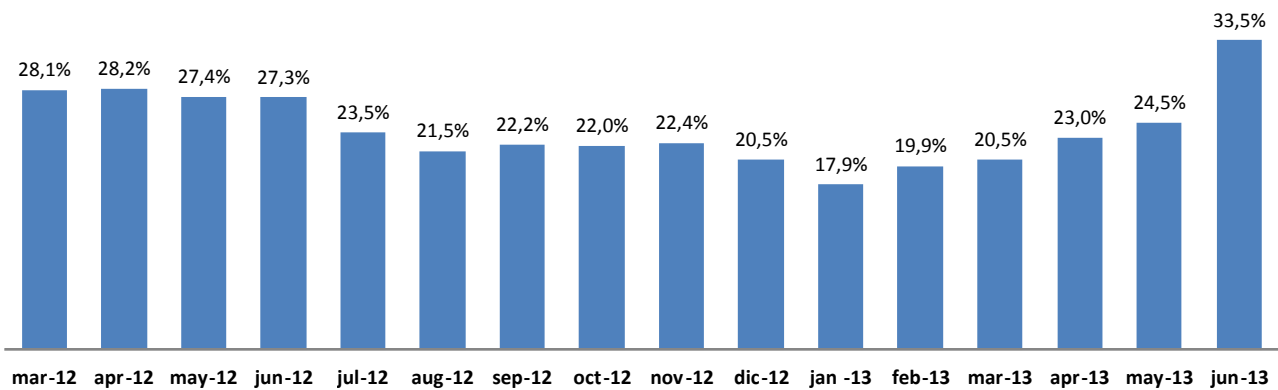
The total number of these contracts recorded represent 24.0% of the initial full-time permanent contracts<sup>30</sup> recorded since March, 2012. This percentage is calculated on the basis of the contracts signed by all kinds of companies, so their ratio in the total of new hirings by SMEs is almost certainly much higher. These contracts, which would often not have been signed or would have been effected through temporary contracts, help explain the change of trend in permanent contracting since the labour reform.

As for the trend in temporary contracts, a lower impact of these contracts can be seen from the end of summer, 2012, to March, 2013, later reversed. In fact, June, 2013, was the month in which “entrepreneur supply contracts” achieved their greatest proportion of all these hirings. This contract type continues to represent around one in four initial full-time permanent hirings, and its weighting has increased in recent months, thus contributing to the more favourable trend in permanent contracting and the battle against dualism.

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<sup>30</sup> The reference value taken is that for initial full-time permanent contracts since March, 2012, after discounting the effect of new hirings derived from the new regulations on domestic staff. No account is taken of discontinuous permanent hirings and it has not been possible to separate the contracts entered into by companies with fewer than 50 workers out of the total contracts.

### Entrepreneur support contracts as a percentage of initial full-time permanent contracts



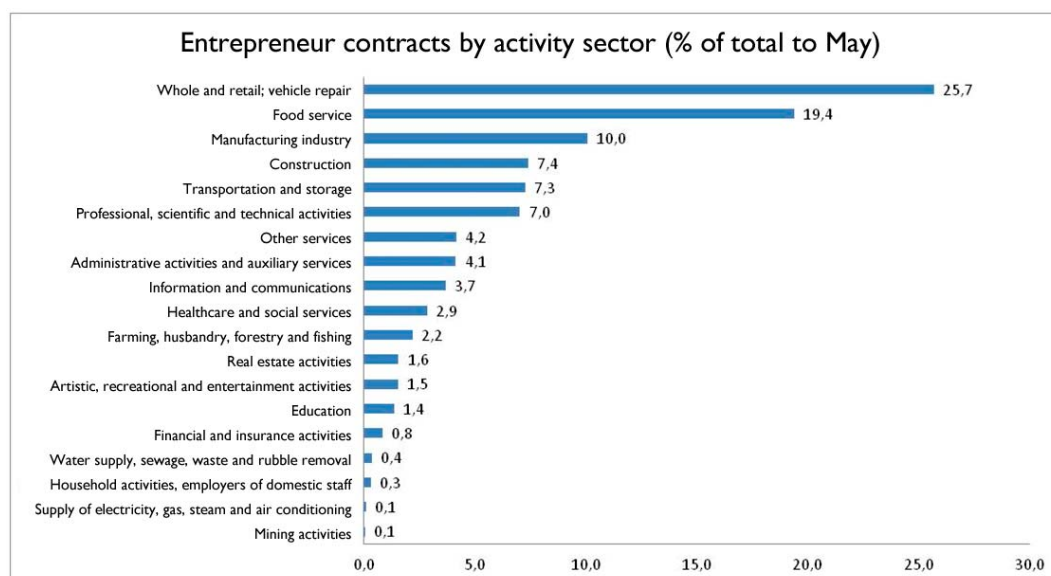
*Source: MEYSS. Calculated on the total number of initial full-time permanent contracts each month after excluding the contracts for domestic staff and without considering discontinuous permanent contracts.*

**A large part of the contracts were signed in sectors where temporality is particularly high. There are material differences in the extent this new contract type is used in the various Autonomous Regions.**

82. More than half of the entrepreneur contracts signed until May, 2013, were signed in activity sectors where there is a high preponderance of temporary contracts: retail, food service and construction. These three activities represent more than half the total hirings. The high incidence of this type of permanent contracting in sectors with a high degree of temporality must be viewed positively, as it is very likely that many of the contracts would have been formalised using temporary contracting if this new permanent contract type had not been introduced.

Sectoral analysis does not explain the low incidence of this new contract type in such Autonomous Regions as Andalusia, although it does seem to be related to its greater use in others such as the Canary Islands, where these sectors play a major role in the regional economy, as well as its lesser use in regions such as Madrid, the Basque Country or Navarre, where other sectors have a very significant preponderance. Some regions use this contract type more intensively in the manufacturing sector, such as Aragon (14.8% of the total number of contracts versus an average of 10%), La Rioja (18.6%) and the Valencian Community (16.8%). Also noteworthy is the use of this contract in farming activities in Castilla La Mancha (a little more than 10%), and the weighting of food service job contracts in the Balearic Islands (almost 35%).

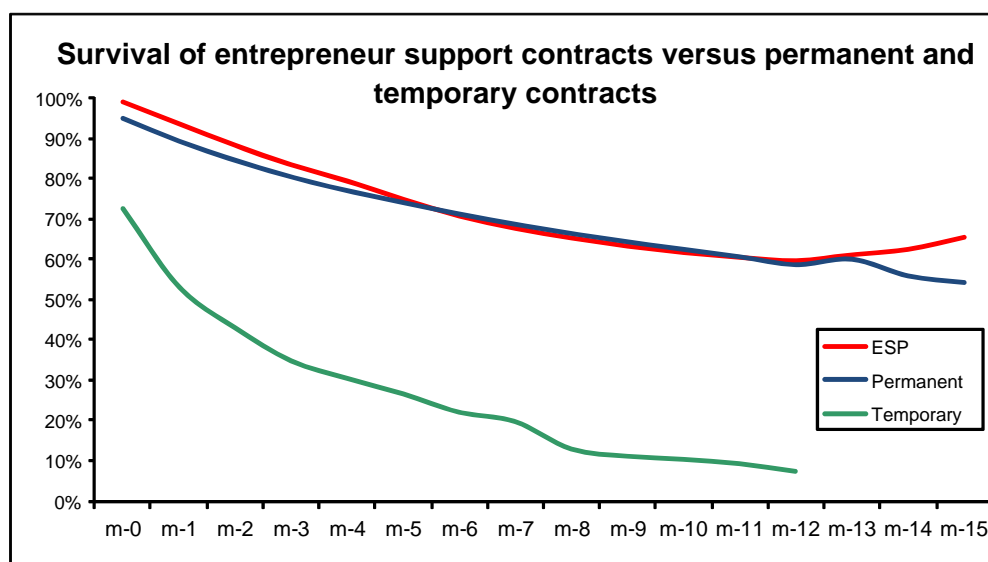
There are appreciable differences in the use of this contract in the various Autonomous Regions. There is greater penetration of the contract in Aragon and particularly the Canary Islands, whereas it is used much less in Andalusia and, less notably, in Madrid. The different levels of use among the Autonomous Regions may suggest differences in the awareness in each of them regarding the advantages of the contract, which may be related to the exercise of information and guidance policies in each Autonomous Region.



*Source: MEYSS, based on internal databases.*

**The survival rate is very close to that for the rest of permanent contracts: they are not systematically terminated once the first year is up.**

83. This new contract type can be viewed as an additional potential source of segmentation, especially as a consequence of the extension of the probation period, particularly if the contracts were terminated at the end of almost a year. The analysis made by the MEYSS (see Box 5) refutes this theory. Entrepreneur contracts have not been used for the intensive churning of workers, nor is there any significant destruction of employment once a year has elapsed from their formalisation. The survival rate is very similar to that of permanent contracts. For the moment, in any case, there is a very small number of contracts that could have reached their first year in force, so it is necessary to be prudent when drawing conclusions.



*Source MEYSS, based on the SEPE contract register and SS affiliations*

This result is compatible with the rational behaviour of entrepreneurs, for whom the assumption of severance costs after the first year represents a lower burden than the uncertainty of looking for a replacement and the expenses associated with training and integrating a new employee into the business project. In other words, entrepreneurs prefer to rely on a worker who is already trained and fully integrated into their staff than to look for somebody else, find the right person for the job and then train him or her,

despite the fact that retaining the current worker implies assuming a potential severance cost. The new labour framework, in which internal flexibility allows them to adapt better to change, encourages these decisions.

#### **Box 5: Monitoring of the continuance in employment of people hired with an Entrepreneur Support Contract (ESC)**

A key aspect in assessing the operation of the new permanent Entrepreneur Support Contract is the maintenance of employment after the extended trial period (a year) that this contract has compared with ordinary permanent contracts.

The monitoring has been carried out by identifying the registrations in the Social Security system resulting from hires communicated to the National Public Employment Service (SEPE). A limited number of contracts communicated as the ESC do not finally give rise to a registration as this type of contract in the same month that it has been communicated. This may happen, for example, because it has been noted that it does not comply with the conditions stipulated for concluding this kind of contract: among other conditions, the law requires that the company has not made any unfair dismissals in the previous six weeks. In addition, the contracts on which the monitoring is carried out have been processed to eliminate inconsistencies and errors such as duplication, incorrect codes or dates that are outside the period under analysis.

Thus the analysis carried out has followed the **method below**:

- The total number of Social Security registrations corresponding to the ESC communicated to the SEPE is identified and the month of communication of the ESC is attributed from February 2013 on.
- Registration with the Social Security at the end of every month is checked with this kind of contract for the same code (Contribution Account Code), to ensure the worker has not deregistered.
- The weighted average of time in employment is calculated for each month after the start of the contract.
- The percentage of people hired in the same month of the same year with permanent contracts and similar characteristics (i.e. initial full-time contracts that are not the result of a transformation) is compared to the above figure. No discrimination can be made due to the size of the company. Contracts for people with disabilities, domestic workers and permanent casual workers are not included, due to their special characteristics.
- They are also compared with the percentage of people hired in a similar month with temporary contracts. The maintenance of employment is calculated as the percentage of people who remain registered at the end of every month compared with the total who were registered at the end of the reference month (March 2012 for the first contracts) with a temporary contract.

In other words, the Entrepreneur Support Contract, one of the novelties in the Labour Reform has taken on the character of a permanent contract and not a temporary one. The analysis made by the MEYSS can only be considered preliminary as only the contracts signed in the first five months of the existence of these contracts have now reached one year of duration, the key moment for their assessment. In any case, the results so far show that:

- Of the entrepreneur support contracts signed more than 12 months ago, 59.4% are still effective.
- This level is similar to that of the rest of the initial full-time permanent contracts signed over the same period of time (58%).
- It is foreseeable that, as and when the contracts signed in the summer months reach 12 months of age, the mean number of contracts continuing to exist will come down slightly, although close to current levels. The survival rate that has been observed varies for contracts signed at different times of the year and, in particular, is lower for those beginning in the spring and summer months, as can be observed in



the following table. This phenomenon also explains that the job continuity curves pick up after month 12. This is a composite effect: the averages are taken only on the contracts formalised in the months of February, March and April, which show a higher rate than that for the subsequent months.

- The pace at which terminations occur is similar to that shown by initial full-time permanent contracts: around 4-5 percentage points in each of the first months, then it stabilises at around 1-2 percentage points for the 12 months of the contract.
- No acceleration is seen in this job loss rate in month 12, but rather the opposite, a stabilisation of the employment continuance rate. These contracts therefore show no “step effect” in the maintenance of employment related to the fulfilment of the probation year. Thus, the change in the employment continuance rate between months 12 and 13 is between -1.2 and -2.1 percentage points, at levels lower than the average monthly fall in the rate, namely -3.2 pp (for permanent contracts, the average is -2.9 pp).

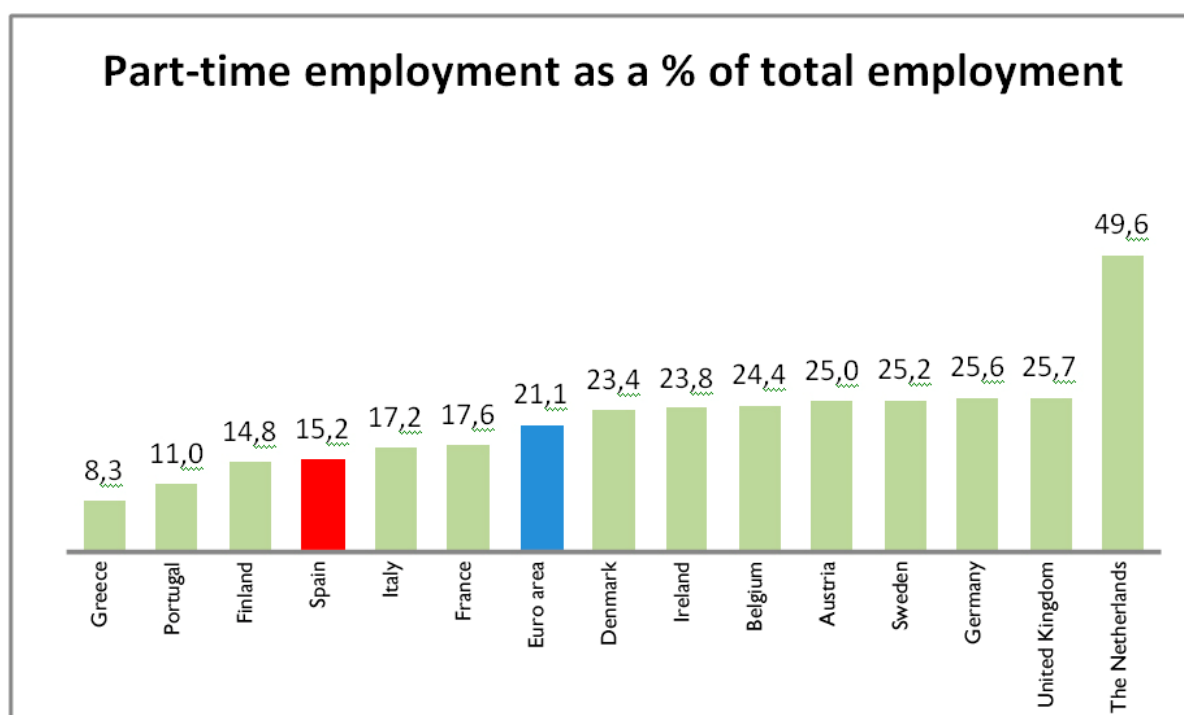
Employment maintenance rate			
	After 12 months	After 13 months	Difference in p.p.
Feb-12	72.0%	69.9%	-2.13
Mar-12	69.9%	67.9%	-1.99
Apr-12	61.5%	60.2%	-1.25

- The steady level of employment is much higher than that of temporary contracts signed on those same dates, standing at around 7.5% a year after the contracts were signed.
- The employment maintenance rate for contracts without tax or social security benefits is 10 percentage points below that of contract with such advantages (53.5% versus 64.5%), but even so it is sufficiently high to consider their behaviour to be typical of a permanent contract. These rates do not present notable differences with contracts signed with young people under 30 years of age.

### **Part-time permanent contracts have become a relevant source of stable employment**

84. Since the labour reform, there has been a strong increase in part-time hirings. This increase must be considered as very positive. On the one hand, the impact of this kind of contract is still small in Spain, despite its importance for work/life balance and the transition between training periods and employment, as well as to allow training simultaneously with employment, a practice still quite limited in Spain. On the other hand, part-time employment may possibly constitute a first step towards a full-time contract when the economic recovery begins.

In addition, a high degree of flexibility in part-time permanent hiring is a source of flexibility for work organisation and, as such, constitutes an alternative to temporary contracts, so its development contributes to the battle against dualism. Finally, in terms of employability, it is always more beneficial to have a part-time job than to be unemployed, even where the worker aspires to full-time employment. It is necessary to recall in this sense the strong deterioration in employability the longer people remain unemployed: the probability of finding a new job becomes lower.

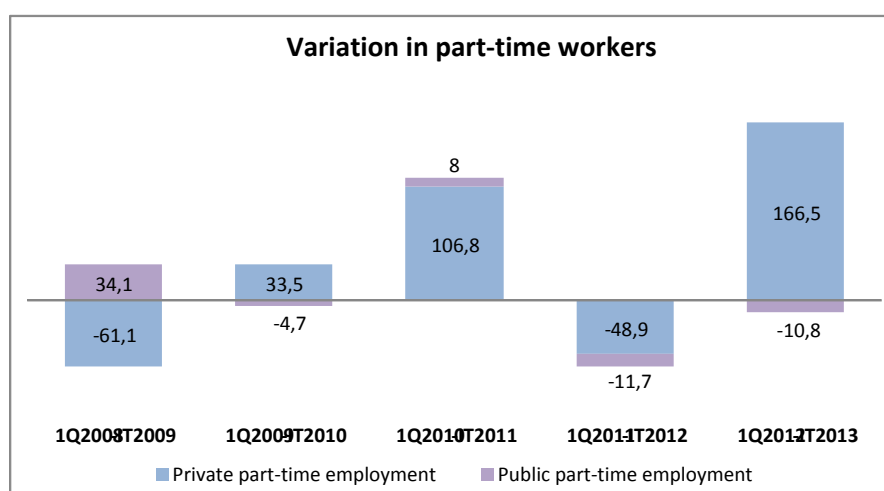


*Source: Eurostat,*

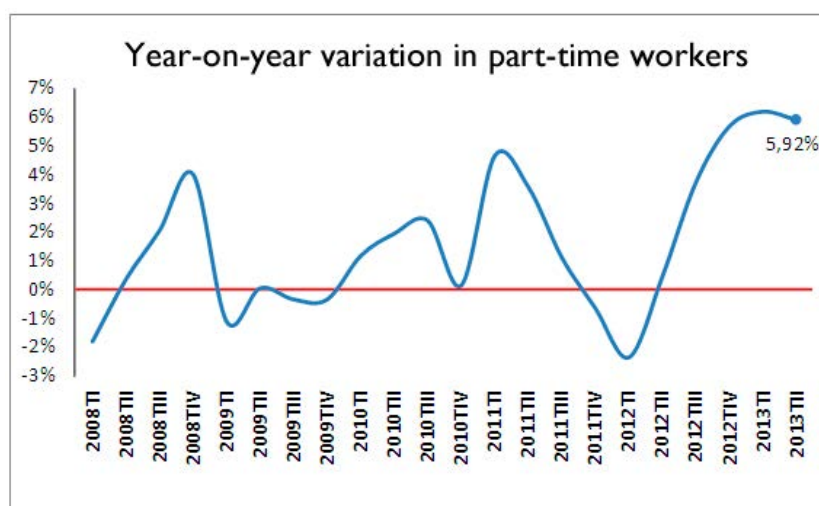
#### Since the labour reform, there has been a 6.2% increase in part-time employment

85. The modifications introduced by the labour reform to encourage part-time contracts, by allowing overtime to be worked, have contributed to a boom in these. In the four quarters following the labour reform, part-time employment increased by 155,700 people, whereas more than 60,000 jobs had been lost in this category in the preceding four quarters. In the private sector, versus a drop of 48,900 people occupied, this has increased by 166,500 after the reform. Thus, the pace at which part-time employment has increased in recent quarters is the highest since the crisis started.

According to contracting data recorded by the National Public Employment Service, part-time permanent contracts in the first half of 2013, excluding contracts for domestic staff, increased by 8.9% with respect to the first half of 2012. The variation in part-time employment in the EPA labour survey for 2Q2013 shows very similar figures to those of 2Q2012 in terms of both magnitude and breakdown: part-time employment increased by 92,500 people, of whom the vast majority, 88.500, corresponded to jobs in the private sector.

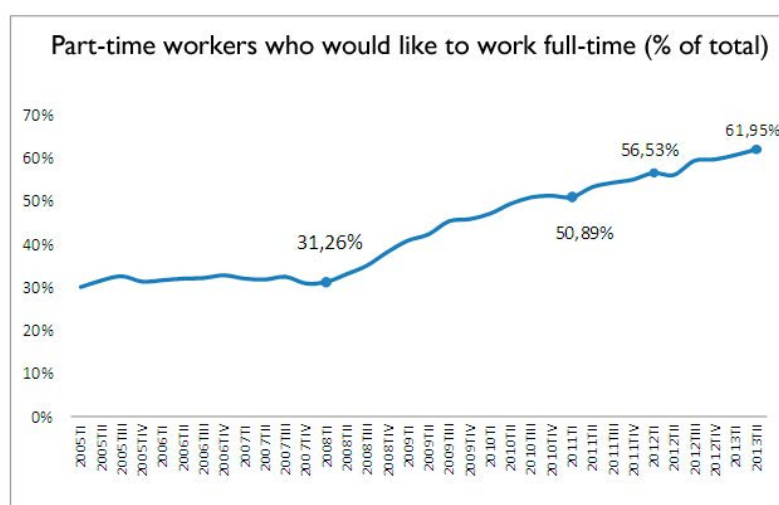


*Source INE, EPA.*



Source INE, EPA.

On the other hand, the percentage of part-time workers who would like to work full-time is at very high levels. However, this is not a variable that has been affected by the labour reform. In fact, the increase observed after the reform has been lower than in the four quarters prior to the labour reform (4.1 percentage points versus 5.6 p.p.). In any case, as has already been mentioned, the likelihood of finding full-time permanent employment after a period of part-time working, whether in the same position or in another, is much higher than after being unemployed.



Source EPA, INE.

### II.3.2. External flexibility

On occasions, it is not possible to resort to internal flexibility measures and lay-offs are inevitable. The protection measures offered by the system are based on the protection of workers' rights through effective judicial tutelage, a deterrent element (compensation for dismissal), a protection network in terms of income transfer (unemployment benefits and subsidies) and high-quality public services to facilitate reinsertion on the job market (active employment policies).

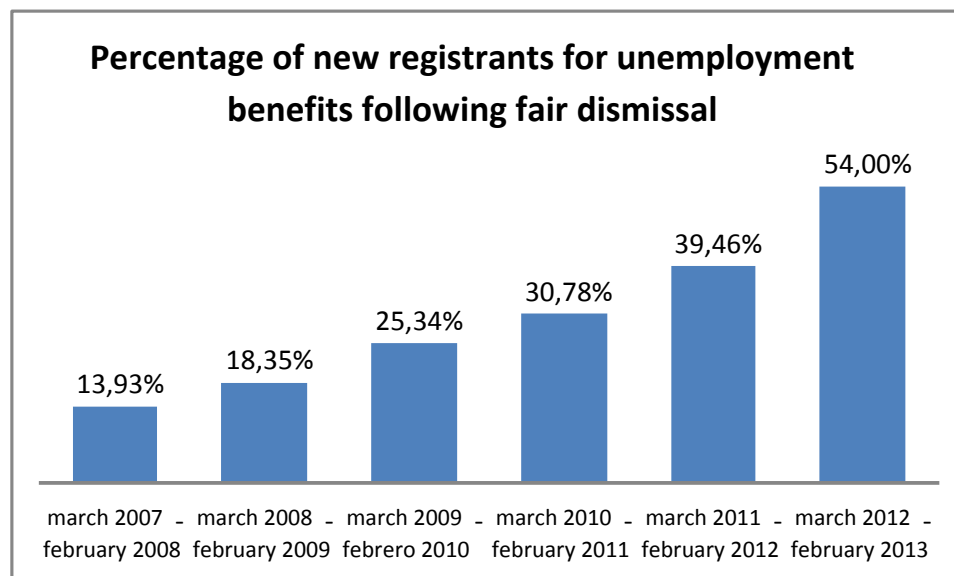
The design of the system based on a high cost for employers deciding to terminate employment contracts has been shown to be ineffectual for retaining people in work, as well as not encouraging permanent contracts. In addition, the protection given by the system to different types of worker (those with temporary and permanent contracts) gave rise to profoundly unjust situations. As has been indicated above, the elimination of administrative authorisation, the generalised application of redundancy compensation in the form of 33 days' wages per year worked with a cap of 24 months in total and the clarification of the grounds accepted for fair dismissal have not represented any more destruction of employment than would be expected in recessive

scenario, quite the contrary in fact. Employers have powerful incentives to retain their human capital as it constitutes a fundamental element for their competitiveness and they tend to prefer internal flexibility over redundancies. The labour reform promotes a balanced transformation of the culture of labour relations to facilitate job stability and, without a doubt, the measures in the area of external flexibility contribute to this process.

**It is more and more frequent for redundancy on economic grounds to be considered fair dismissal.**

86. The progression of fair dismissals in the termination of contracts has been constant throughout the crisis, but it has picked up speed since the labour reform. The best source of data to analyse this trend is the statistic on registrations for unemployment benefits broken down by entitlement<sup>31</sup>. To analyse the weighting of each of the causes, it is necessary to discount from the gross total of registered dismissals<sup>32</sup> those deriving from a court judgement (as these do not distinguish between fair and unfair dismissal), as well as those resulting from reconciliation proceedings and the termination of the probation periods, as these also do not allow this distinction. On the other hand, both individual and collective redundancies are included. The evolution in the preponderance of collective redundancies and dismissals on objective grounds in the total number of new registrations, after deducting the above cases, shows that, in the period from March, 2012, to February, 2013 (the most recent figure available is for April, 2013), dismissals were fair in 54% of cases, versus 39.5% for the same period in the previous year / the twelve months prior to the reform.

The increase in the preponderance of fair dismissals had already begun, attaining more reasonable levels, especially after the 2010 reform. At the beginning of the crisis, more than 85% of dismissals were declared unfair, clearly demonstrating that the situation in Spain was anomalous. This was fundamentally determined by the distortion introduced not so much by the cost of fair dismissal, but by the fact that practically all the dismissals were judged or declared to be unfair.



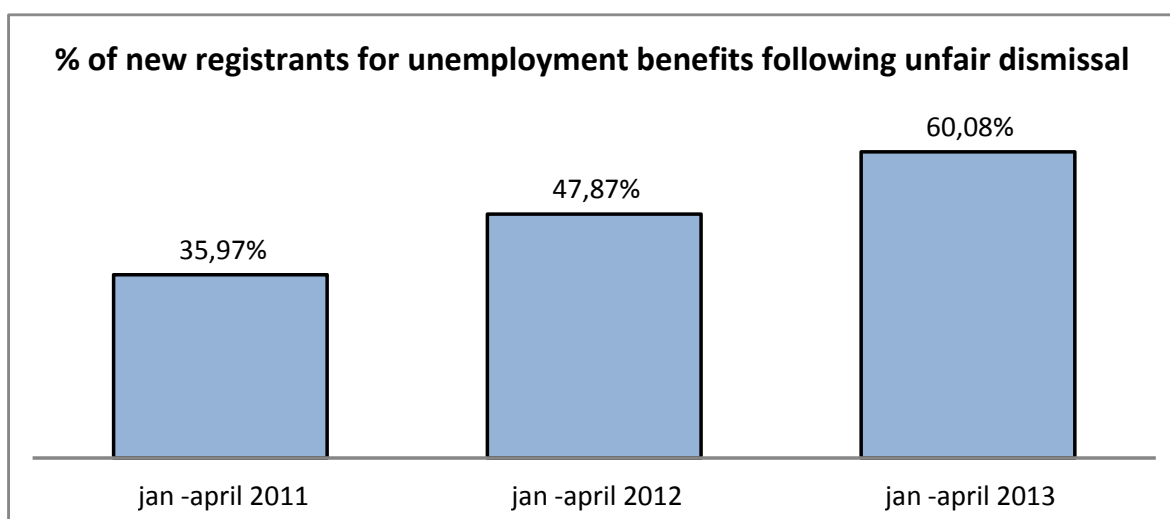
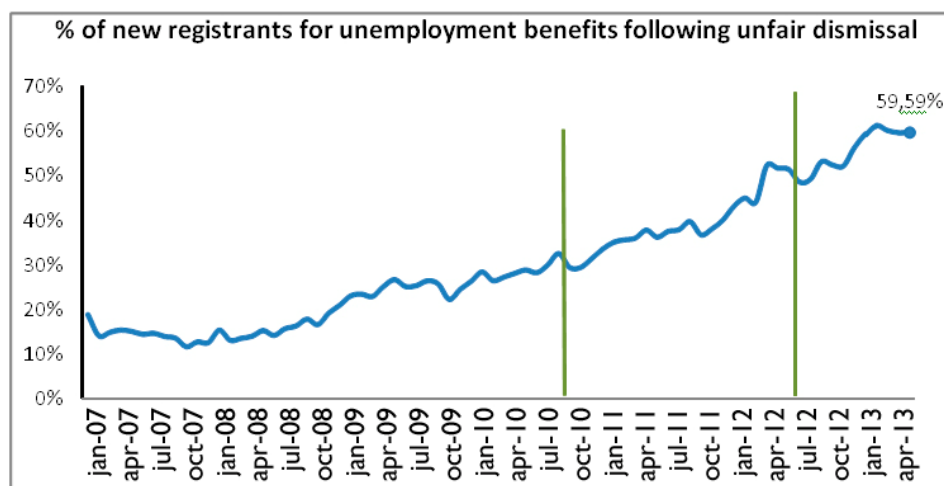
*Source MEYSS*

87. Despite the severity of the recession in 2008-2009, the weighting of fair dismissals hardly advanced, as can be seen in the following chart, although of course many redundancy decisions were perfectly justified by the

<sup>31</sup> The number of new beneficiaries registered is conventionally considered to be a sufficient approximation to the total number of people dismissed. However, it must be remembered that this figure does not reflect dismissals arising out of bankruptcy proceedings. In other words, the analysis is based on a homogeneous indicator that allows us to observe the evolution of the impact of fair dismissals, but it is not possible to identify this indicator with the percentage of dismissals declared fair in Spain. This is a rigorous proxy.

<sup>32</sup> This also excludes registration of new beneficiaries arising out of collective internal flexibility measures and the termination of temporary contracts.

contraction in the economy. The high severance costs did not, however prevent unemployment from increasing greatly in that period. The 2010 reform represented a step forward, albeit much less intense than reflected by the data since the 2012 labour reform. In addition, and consistent with the gradual effect of the reform referred to above, recent months have seen fair dismissal percentages much more consistent with the cyclic situation of the Spanish economy. In January, 2013, over 60% of dismissals were justified.



Source MEYSS

**The growth in the number of workers affected by collective redundancies has slowed down, whereas the use of alternative internal flexibility measures has intensified.**

88. The economic situation has caused a significant increase in the number of workers affected by employment regulation measures, but this growth has been more intensive in temporary employment regulation measures, i.e. internal flexibility, than in collective dismissals, unlike what happened prior to the reform. Companies and workers have preferred to maintain employment through a more intensive use of employment suspensions and, to a greater extent, reductions in working hours. In the second half of 2012, despite the worsening of the context, the increase in the number of workers affected by collective redundancies is significantly lower than in the first half (16% versus 29.7%). In the first five months of 2013 the number affected by collective redundancies was 2.5% less than in the same period of 2012.

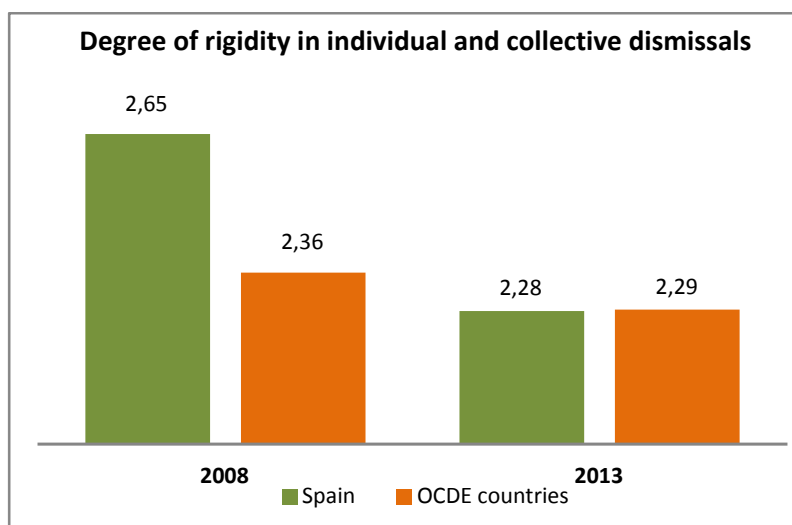
**The reform improves legal certainty in the case of fair dismissals.**

89. One of the effects of the reform is that in difficult situations, such as the one currently facing many companies, legal certainty is improved in the case of fair dismissals.

**Spain is already very close to the OECD mean in terms of the regulation of external flexibility.**

90. The recent OECD report on “Employment Outlook 2013” highlights that, since 2008, Spain has considerably reduced the gap in the level of labour-related protection for workers with permanent and temporary contracts, which must be interpreted positively in terms of the battle against labour market dualism. The trend in Employment Protection Legislation indicators (EPL) places Spain at a very similar level as the rest of the OECD countries.

The OECD analyses different items regarding labour legislation, collective negotiation and judicial enforcement in each country. These items are assessed using a scale from 0 to 6, from the least (0) to the greatest rigidity (6) of labour regulation. The latest indicators, pursuant to legislation in force from 1 January, 2013, incorporate information on Spain’s 2012 labour reform, and it can be seen that, with regard to the dismissal of workers with permanent contracts, unlike 2008, Spain is now on the OECD mean.



Source: OECD

### **The judicialisation of collective dismissals has been very limited**

91. The replacement of a prior administrative control by an *a posteriori* judicial control in collective dismissals is the main novelty introduced by the reform in the judicial arena. Since the reform, any review of a business’s decision to apply a collective redundancy is entrusted to collegiate judicial bodies (the Employment Division of the High Courts of Justice in each Autonomous Region and the National Court) who have to verify both the adequate execution of the consultation period as well as the accreditation of the grounds alleged by the employer.

Nonetheless, the judicialisation of collective dismissals represents a minimal percentage of the total of collective dismissals that have occurred since the entry into force of the labour reform. At present, the MEYSS does not yet have the statistical data available to cite the exact number of collective dismissals that have been taken before a court of law but, taking into account the MEYSS statistical information showing that, from March, 2012, to June, 2013, there have been 6,246 collective dismissals (5,154 by consensus or 82.52%), and the various studies referring to the hundred-odd judgements handed down in collective hearings, it can be concluded that the volume of litigation is very low in proportion to the number of collective dismissals that have taken place since the entry into force of the labour reform.

In addition, in order to give a complete assessment of the reform of collective dismissals, it will be necessary to wait until the case law is ratified by the Supreme Court as only this Court can determine how certain aspects of the reform must be interpreted, insofar as the lower courts have followed on occasions a variety of judicial criteria when deciding on collective dismissals.

**Following the entry into force of the labour reform, most of the judgements declaring the redundancies null and void were due to serious breaches of procedure on the part of the companies.**

92. The first rulings handed down following the reform declared the redundancies null and void due to serious breaches of the collective dismissal procedure by the employers: incomplete documentation, bad faith during the consultation period or the obfuscation of the real employer in corporate groups.

- The first judgement to be handed down under the new court procedure for collective dismissal incorporated by the labour reform, delivered by the Employment Division of the High Court of Justice (TSJ) in Catalonia dated 23 May, 2012, declared the redundancy null and void because of the existence of fraud in the identification of the real employer (a corporate group in which the company issuing the redundancy notice had fraudulently hidden its true dimension) and also the insufficiency of the documentation furnished, which had not allowed the consultation period to be conducted on a sound basis.
- The second judgement, from the Employment Division of the TSJ in Madrid dated 30 May, 2012, declared the redundancy null and void because of defects in the processing of the dismissals as the report justifying the redundancy was notably insufficient both in terms of the grounds alleged and its description of the situation, giving a mere general description and without attaching the obligatory documentation that has to accompany this explanatory report. This court decision has been confirmed in the first appeal judgement handed down by the Employment Division of the Supreme Court on this matter, dated 20 March, 2013, which dismissed the petition for reversal lodged by the company against the judgement of the High Court of Justice in Madrid and confirmed that the collective dismissal was null and void as it felt that there were flaws in the processing of the administrative dossier; the non-existence of a true consultation period, insofar as the company merely set out its unmoveable position, making the decision depend on the acquiescence of the workers; and the existence of a *de facto* corporate group without the case file having included the documentation for the rest of the companies making up the group.

The Supreme Court is of the opinion that the main purpose of the consultation period is for the workers' representatives to receive sufficiently clear information to be able to understand the reasons for the dismissals and to be able to undertake the consultation period adequately. And that the failure to provide the minimum documentation and the misinformation this inevitably produces among the representatives of the workers affects the reality of the existence of a true consultation period.

Subsequent court rulings declaring collective dismissals null and void were based on failures to comply with formalities affecting the consultation period:

- Breaches regarding the establishment of the negotiating committee as it is not possible to parcel out the negotiations by work centres and to hold individual consultations at each centre, with the possibility of agreement with different contents<sup>33</sup>.
- Existence of parallel negotiations with the workers affected rendering the negotiation process of the consultation period devoid of content<sup>34</sup>
- Due to unacceptable pressure brought to bear on the negotiators the consultation period, thus vitiating it<sup>35</sup>.

Or else due to breaches relating to the delivery of documentation to the workers' representatives:

- As the employer's obligation to provide the workers' representatives with pertinent information is met when the remission of the necessary data is effectively completed so that the representatives of

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<sup>33</sup> Judgements of the Employment Division of the National Court dated 25 July, 2012, and 16 November, 2012.

<sup>34</sup> Judgement of the Employment Division of the National Court dated 25 July, 2012.

<sup>35</sup> Judgement of the Employment Division of the National Court dated 26 July, 2012.

the workers have a precise understanding of a particular matter and are able to proceed with its examination, without the workers being able to impose the provision of any documentation, unless they can demonstrate its relevance for the negotiations during the consultation period<sup>36</sup>.

- Due to the lack of the obligatory documentation required when companies form part of a business group<sup>37</sup>.
- Because of the initial lack of precision in the criteria for the selection of the workers affected as legally required<sup>38</sup>.

On other occasions, the declaration of nullity was based on breaches related to good faith during the consultation period:

- By maintaining that this period is the negotiation proper and consists in an exchange of opinions and the establishment of a dialogue between the employer and the workers' representatives regarding the company's proposal and the alternatives that might allow it to be avoided, reduced or its consequences attenuated<sup>39</sup>.
- The Court judgements insist that it is not possible to understand that there has been true negotiation unless there is evidence of proposals and counter-proposals, as negotiating implies being prepared to give way, and that it is not possible to argue that the other party is unyielding when no reasonable and viable alternatives are put forward<sup>40</sup>.
- Fraudulent actions in the course of the negotiations such as the fragmentation of the collective dismissal, artificially divided into three parts, even though the companies involved constitute a business group for employment purposes; breach of the principle of good faith<sup>41</sup>.

Together with the judgements declaring the redundancies null and void because of the existence of formal defects during the consultation period, the Courts have also expressed an opinion in the following cases:

- The Courts held dismissals to be valid in law or dismissed complaints lodged by the workers' representatives and absolved the company by considering that the failure to exhaust the term of 30 days for the consultation period after an agreement was reached, and the individual notification of the dismissals before the said term had elapsed did not entail that nullity of the dismissal<sup>42</sup>.
- They have held that the adoption of internal flexibility measures forms part of the consultation period for a collective dismissal, without the need to convene specific consultation periods<sup>43</sup>.
- They consider that the documentation for the consultation period can be provided on digital media<sup>44</sup>.
- That when the plan accompanying the explanatory report contains only generic proposals related to the future training of the workforce dismissed as well as their future employability, this does not constitute grounds for declaring the redundancy null and void<sup>45</sup>.

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<sup>36</sup> Judgements of the Employment Division of the National Court dated 4 June, 2013, and 1 and 4 April, 2013.

<sup>37</sup> Judgements of the Employment Division of the National Court dated 26 July, 2012 and 30 November, 2012.

<sup>38</sup> Judgement of the Employment Division of the National Court dated 26 July, 2012.

<sup>39</sup> Judgement of the Employment Division of the National Court dated 4 June, 2013.

<sup>40</sup> Judgements of the Employment Division of the National Court dated 15 October, 2012, 21 November, 2012 and 4 June, 2013.

<sup>41</sup> Judgement of the Employment Division of the National Court dated 26 July, 2012.

<sup>42</sup> Judgement of the Employment Division of the National Court dated 14 September, 2012.

<sup>43</sup> Judgement of the Employment Division of the National Court dated 20 May, 2013.

<sup>44</sup> Judgement of the Employment Division of the National Court dated 20 May, 2013.

<sup>45</sup> Judgement of the Employment Division of the National Court dated 13 May, 2013.



- The Courts have held stated that discussing is not equivalent to reaching agreements as, if the situation of the company is so calamitous that its only viable solution is winding-up, then defending this closure and therefore the dismissal of all the employees on the workforce as the only option is not an expression of bad faith<sup>46</sup>.
- They have considered that, where the workers' representatives did not present a single constructive proposal that could be entertained by the company to avoid or reduce the number of people dismissed, and did not criticise the company's plan as submitted or offer any alternative to what was proposed by the defendant, it was therefore not possible to declare the redundancies null and void on the grounds of the absence of any willingness to negotiate on the part of the company, insofar as the limitations in the negotiations held were the fault of both parties<sup>47</sup>.
- The Courts deemed performance to be a valid criterion for the selection of workers to be affected, as they understood that performance is not contemplated in pathological terms such as to constitute grounds for disciplinary dismissal, but rather as a tool for selecting workers whose abilities and productivity are lower than those of the majority; this is a reasonable and objective criterion that is fully compatible with the proposed goal: to improve the company's competitiveness and productivity<sup>48</sup>.
- They upheld the validity of a hybrid negotiating committee comprising the legal representatives of the workers and *ad hoc* representatives from the centres in which there is no single representative<sup>49</sup>.

The formal aspects of the proceedings for collective dismissal are also studied in the second, and so far last judgement from the Supreme Court dated 27 May, 2013, dismissing the petition for the judgement of the lower court to be quashed as requested by the representatives of a trade union and confirming the judgement of the High Court of Justice dated 6 July, 2012, that had cleared the company in the original lawsuit for the declaration of the collective dismissal null and void on economic and production grounds by declaring the decision terminate the contracts valid in law on the basis of sufficient legal cause.

In this case, the Supreme Court felt that none of the breaches alleged by the trade union (defects in the processing of the dossier and a lack of willingness to negotiate in the course of this process) had been substantiated and that it could not ratify the union's petition for the collective dismissal to be declared null and void. In this respect, the highest court in the land maintains that the absence of any agreement means nothing because the law requires the parties to negotiate but not to agree, and adds that not all failures to comply with the documentation furnished necessarily constitute grounds for nullity, but only those breaches that are transcendental for the purposes of carrying out adequately informed negotiations.

#### II.4. Training and apprenticeship contracts and measures within the scope of active policies.

The analysis of the development of the flexicurity model and the other measures to boost permanent contracts must be complemented with the study of the impact of other measures aimed at increasing the workers' employability. These have been supplemented by many other measures after the reform which are also mentioned in the next section.

Reference has already been made to the fact that the new versatility model for workers in order to adapt to changes in a more dynamic context is essential to ensure not only their individual well-being, but also the economy's long-term ability to grow and, therefore, the well-being of society as a whole. The reform introduces two groups of measures to boost employability:

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<sup>46</sup> Judgement of the Employment Division of the National Court dated 20 March, 2013.

<sup>47</sup> Judgement of the Employment Division of the National Court dated 13 May, 2013.

<sup>48</sup> Judgement of the Employment Division of the National Court dated 11 March, 2013.

<sup>49</sup> Judgement of the Employment Division of the National Court dated 22 April, 2013.

- In-depth reform of training and apprenticeship contracts with two aims. On the one hand, to deal with the transition between training periods and employment, boosting technical formation in those skills that to a greater extent guarantee the employability of workers in the Spanish productive fabric. The relative scarcity of qualified technical professionals in Spain, the so-called “skill mismatch”, is well known, as is the lack of any connection between training periods and employment. The labour reform provided the means to overcome these limitations.

On the other hand, some of the measures adopted in this type of contract attempt to deal with the problem derived from the fact many young people dropped out of formal schooling during the boom years and often find themselves now in situations of unemployment; for these people this type of contract constitutes a second chance that can ensure their employability in the longer term.

- In addition, the reform introduced deep-seated changes in certain areas of active policies, subsequently complemented by other reforms in these same areas and others, as well as in passive employment policies. Specifically, the reform introduced alterations to the training for employment system and labour mediation.

#### II.4.1. Training and apprenticeship contract

**The changes made in the labour reform and the strategy for boosting dual training are enabling a strong increase in training and apprenticeship contracts.**

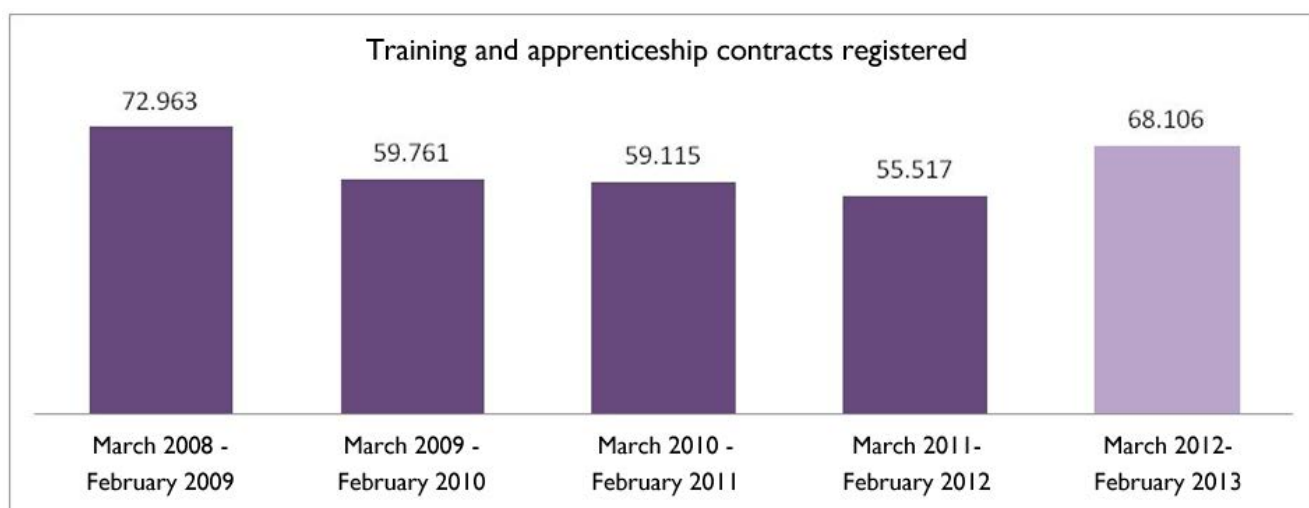
93. The trend in training and apprenticeship contracts since the labour reform has been very positive and implies a clear watershed with respect to the evolution of this type of contract during the crisis. The contract was intensively reformed in the labour reform and has been the subject of regulatory development in the framework of the dual training model. The implementation of the new model is done in coordination with the Autonomous Regions and with the education authorities.

Training and apprenticeship contracts are of great relevance for facilitating the transition between studying and starting work, as well as to facilitate the return to studying for those young people who left school early during the boom years so that they can now acquire new skills to increase their employability.

**The development of the dual training system is of great importance to ensure the employability of many young people with little training.**

94. In the 1Q2013, according to the EPA survey, 52% of all unemployed individuals under 30 years of age had not completed the first part of secondary education, and 15.6% had no secondary studies. Almost 300,000 young people under 30 years of age have not concluded their compulsory studies and are unemployed. The opportunities of this collective in the new productive model are more limited and must be paid special attention. The new design of the training and apprenticeship contract and the boost to the new dual training model are aimed particularly at these young people, who are also supported by the Spanish entrepreneurship and youth employment strategy. Their future well-being depends to a large extent on the ability of the public services to furnish them with suitable tools for job placement. The work prospects in a globalised and technologically advanced setting are extremely limited in the absence of adequate training.

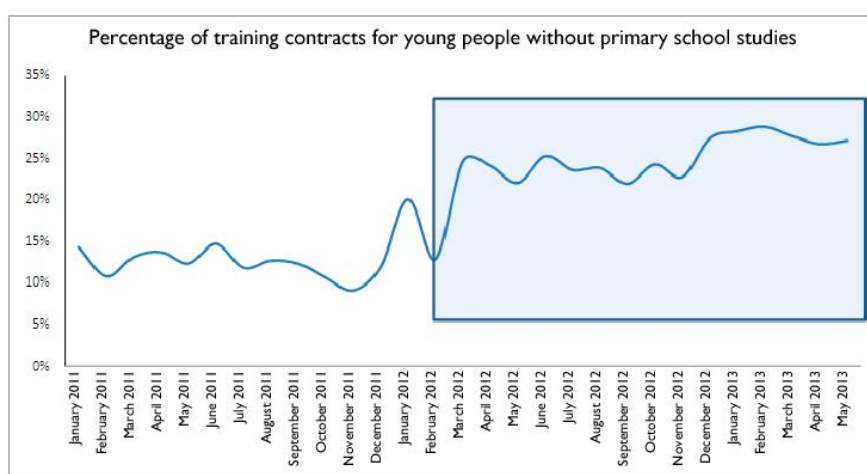
The SEPE registry data show, despite the worse scenario, a 22.7% increase in the number of training and apprenticeship contracts signed in the period from March, 2012, to February, 2013, with respect to the preceding twelve months. At total of 68,106 contracts was reached, versus 55,517 in the previous period, recovering from four consecutive years of falls in the number of such contracts. In addition, the percentage of contracts signed by women came to 48.5%, versus 45.0% in the preceding period and 38.3% in the period from March, 2007, to February, 2008.



*Source MEYSS*

**The increase in training and apprenticeship contracts has been particularly intense in the case of young people with very low levels of training.**

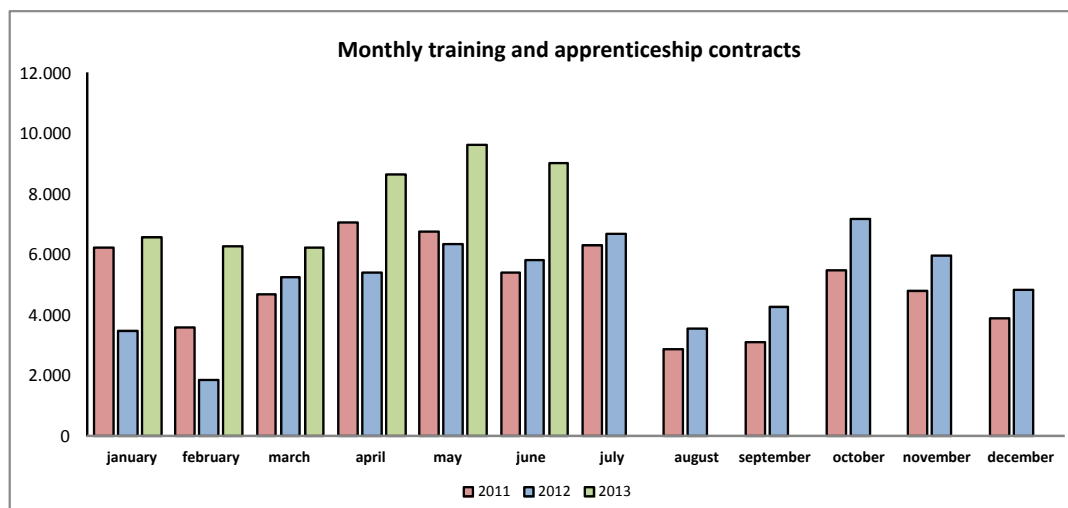
95. The most positive element of the recent trend is the strong increase in the number of contracts signed by workers with no qualifications or with only primary school studies, which has risen by 137.8% between the last two reference periods from March to February, and represents a quarter of all contracts: the mean weighting of this collective in the total number of contracts signed has gone from 14.8% in 2009, 12.7% in 2010 and 12.3% in 2011, to 25.3% since the approval of the reform (March, 2012, to May, 2013). This huge advance in training contracts for workers with a low level of training seems to be directly related to one of the legal changes made in the labour reform, namely the elimination of the obligation to spend the training time obtaining the secondary school leaving certificate (ESO), something that did not generate sufficient incentives for employers when hiring these workers. This limitation also did not favour the employability of workers who had abandoned training a long time previously, for whom it seems more appropriate for the training activity they are going to undertake while working to be technical and more specific.



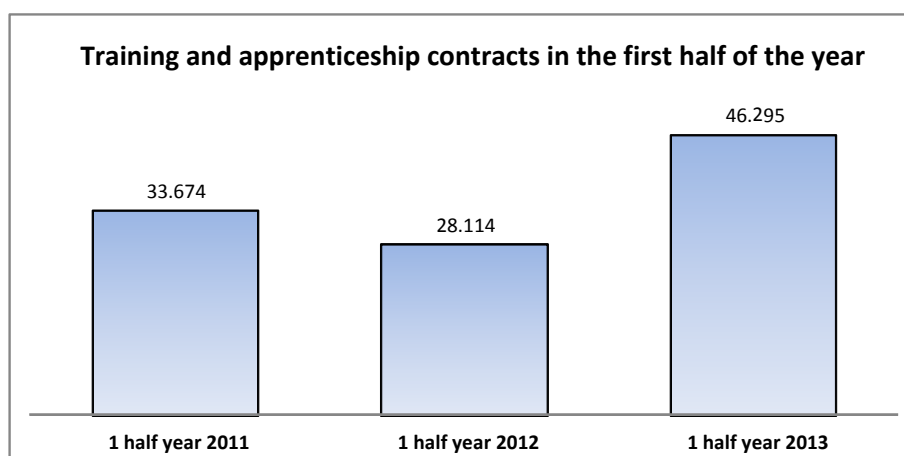
*Source MEYSS*

**The data from the first half of 2013 show that the increase in training contracts is speeding up.**

96. In the first half of 2013, a total of 46,295 training and apprenticeship contracts were signed, 64.7% more than in the same period in 2012 and 37.5% more than in the same period in 2011. The growth of this contract type and its consolidation as a means to facilitate the transition between training periods and work activity constitutes a fundamental element in the strategy for the implementation of the dual training system in Spain.



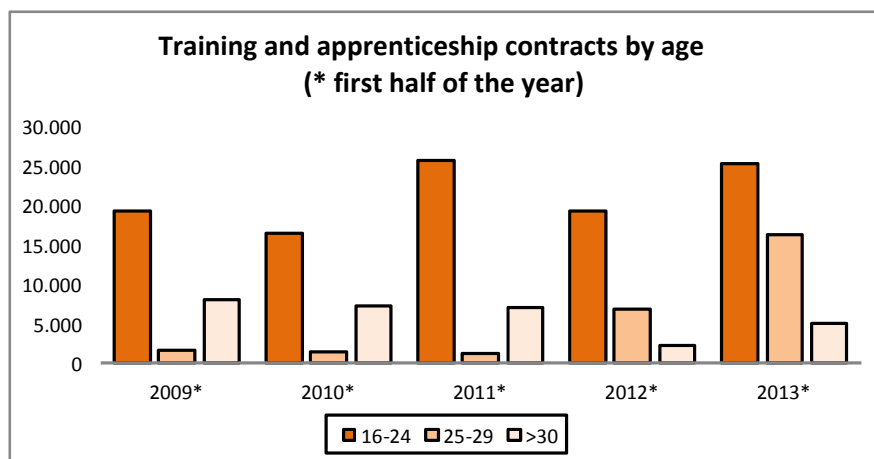
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*Source MEYSS*

**The increase in the number of contracts is derived not only from the increase in the age limit to make use of this contract type.**

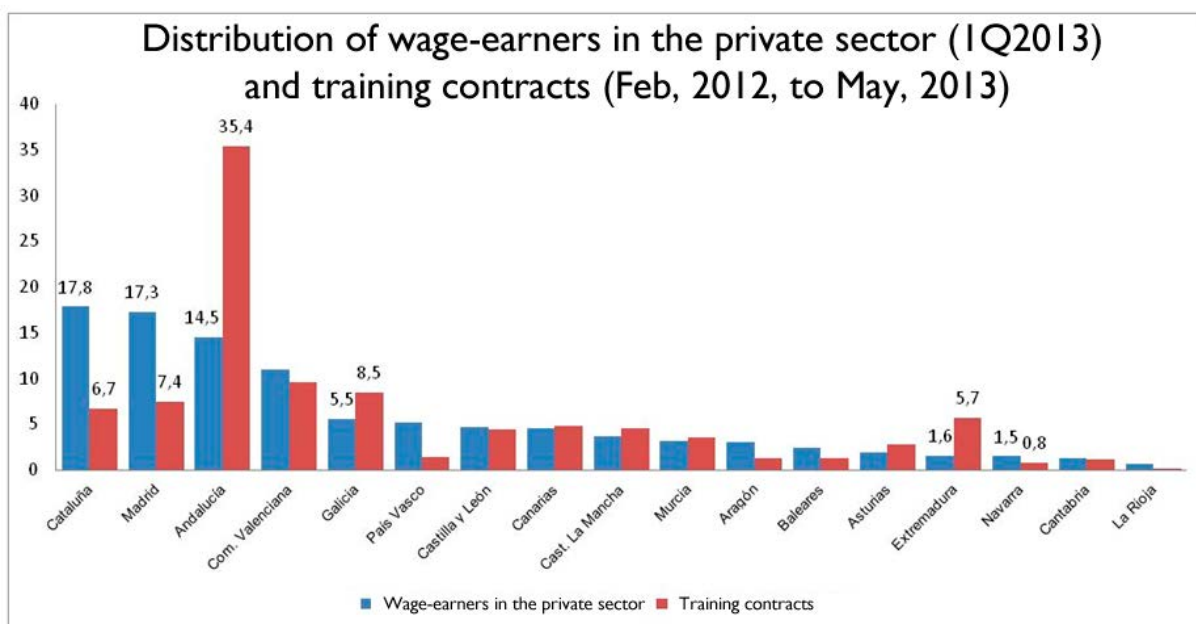
97. The increase in the use of this type of contract has to do with the extension of the age limit up to thirty years of age for workers to be contracted, but it is also possible to see significant growth among those under 25 years of age and, curiously, among those over 30. In the first half of 2013, the contracts signed with workers aged between 25 and 30 grow by 134% with respect to the same period of the previous year, but those for people under 25 also increase considerably, by 32%, so there does not seem to be any shift between these two groups. Furthermore, training and apprenticeship contracts for those over 30 (allowed for workers with a disability or certain collectives in situations of social exclusion) grew by 130%, although in this case the levels remain far below the heights of 2009 and 2010.



*Source MEYSS*

**Andalusia and Extremadura are the Autonomous Regions where the training contract has the greatest incidence.**

98. The incidence of these contracts by Region shows significant differences. If the preponderance of the number of wage-earners in the private sector is compared by Regions, and the preponderance of the training contracts in that Autonomous Region to the national total, it is possible to approximate which places make the most intensive use of the this kind of contract. The weighting for training contracts is much higher in Andalusia (35.4% of training contracts, with only 14.5% of wage-earners), Extremadura (5.7% and 1.6%, respectively) and Galicia (8.5% and 5.5%). On the other hand, Catalonia (6.7% and 17.8%), Madrid (7.4% and 17.3%) and Navarre (0.8% and 1.5%) stand out for the much lower incidence of these contracts. In any case, this analysis is a approximation that should be complemented, among others, by the consideration of demographic factors (young population), the degree of training among the young population and the productive structure in each region. However, the actions of the Autonomous Regions within the framework of their respective competencies in educational and employment policies are the key to for the development of the new dual training model.



#### II.4.2. Measures within the scope of the active policies.

**The reform of the active policies began with the labour reform, and represents a necessary complement to the rest of the measures adopted.**

99. The labour reform kicked off a process for the transformation of the active employment policies which has already gone far and will continue further. The design of more dynamic and efficient active and passive policies is complementary to and consistent with the new framework for labour relations and hiring: they enable the strengthening of the preventive mechanisms, improve workers' employability, alleviate the social impact of unemployment and foster the transition into employment.

**The reform established the bases for a programme of reforms in training for employment, mediation and training contracts.**

100. The novelties introduced by the labour reform in this area are aimed at strengthening the efficacy of the active employment policies. To this end, the reform boosts training as the key element for the employability of workers and the competitiveness of companies in the longer term. This is materialized both in the new training and apprenticeship contract (analysed above) and in the promotion of lifelong learning, and also in the start of a process for the transformation of the vocational training for employment sub-system. In addition, the reform encourages the participation of private players in both training and mediation on the job market, so that their know-how and expertise can be placed at the service of employability and enable the shortening of the time spent unemployed.

These novelties have been used as the basis for boosting an extensive programme of reforms in activation for employment policies (see Box 6).

**The Regions are the main parties responsible for managing the activation policies.**

101. The Autonomous Regions have a fundamental role and responsibility in this transformation process as the authorities with the power to execute the active employment policies. As was stated, among other places, at the 5th Conference of Regional Presidents on 2 October, 2012, and at the Sectoral Employment and Labour Affairs Conference on April 11th, 2013, there is a consensus about the need for a change in the activation policies model to deal with the problem of the high level of long-term unemployment.

### **Box 6: The reform of active employment policies (1)**

The design of more dynamic and efficient active and passive policies is a complement to and part of the new legislative framework introduced by the labour reform. Long-term growth and recovery of pre-crisis levels of employment require a system of activation that can boost preventive mechanisms, improve the employability of workers and favour a transition to employment, as well as mitigating the social impact of unemployment through a balanced and sustainable network of social protection. In other words, the greater budget demands to which the benefit system is subject should not compromise its capacity to comply with its protective function, while prioritising activation to tackle long-term unemployment.

The labour reform already implemented a process of transforming active employment policies, which has gained weight in 2012 and which will continue over the coming years. The new points introduced by the labour reform in this area are geared to improving the efficiency and effectiveness of active employment policies and are the basis for the strategy that the Ministry of Employment and Social Security is developing in this area. Its main lines of action can be summed up as follows:

#### **1. Priority objective: promoting youth employment**

The Youth Entrepreneurship and Employment Strategy 2013-2016 includes the implementation of 100 measures designed to establish a more favourable framework for employment and youth entrepreneurship.

First, there are 15 emergency measures that were implemented in February 2013 (Royal Decree-Law 4/2013, dated 22 February) to provide an immediate response to the situation of young people in the labour market. These measures included both ways of stimulating hiring, and measures to create incentives for entrepreneurship, and to improve youth training and employability. Apart from this, the strategy includes 85 measures with a medium and long-term impact that aim to improve the structural form by which young people can have opportunities to access and remain in employment.

Among the measures are a cut to Social Security contributions, with reductions and credits of up to 100%, for employers who hire young unemployed people. There are also programmes for young people who left school early to obtain a Compulsory Secondary Education certificate and other training programmes with the commitment to a job at the end or the incentive of training contracts for the unemployed. For those who want to start up a business, a flat rate of 50 euros Social Security has been introduced for young entrepreneurs. They can also capitalize their unemployment benefit or in some cases receive unemployment benefit after starting a working activity.

So far, 38% of the 100 measures in the strategy have already been implemented or are the subject of legal projects underway; 73% in the case of emergency or high-impact measures.

The strategy has a budget of 3,485 million euros, as well as funds from other entities, institutions and agents who voluntarily adhere to the strategy, with measures aim to boost youth employment. La Estrategia es un instrumento de colaboración abierto a contribuciones de la iniciativa private y la sociedad civil.

In the five months that the Youth Entrepreneurship and Employment Strategy has been in operation, nearly 70,000 young people under the age of 30 have benefited from one of the measures already implemented. In addition, nearly 50,000 young self-employed people have benefited from the 80% reduction (flat-rate) in Social Security and more than 20,000 have found a salaried job through one of the new incentives for recruitment that have been introduced.

#### **2. Coordination and efficiency of the public employment services: a new framework for active employment**

The Annual Employment Policy Plan 2012 is the main instrument for coordinating all the active policy measures carried out by the different regional public employment services (PES) and the National Public Employment Service (SEPE). It combines flexible execution with the coherence it gets from a series of common objectives established as priority in the PAPE2012.



## The reform of active employment policies (2)

These objectives are: to deal with the youth unemployment rate; improve the employability of other groups affected by unemployment; support entrepreneurs; increase public-private partnerships in the search for employment, look after specific groups that have difficulties in finding a job (the disabled); fight fraud. Another new point is the leading role given to the culture of assessment and monitoring of the measures implemented, on the basis of indicators agreed between the SPE and the SEPE.

The new focus is result-orientated, with funds conditional on performance. It allows a link to be made between the monitoring and assessment of the results to common objectives for the National Employment Service. Compliance with these objectives is supervised systematically based on common monitoring indicators. They allow flexibility in instruments, the existence of common services for the whole country. Public funds are targeted at those measures that are most effective according to tried and tested experience. This favours an efficient allocation of public funds to the most effective measures in terms of finding jobs, improving skills and guaranteeing the collection of unemployment benefit by those most needing protection.

The system is being implemented gradually. Significant steps forward have been taken in 2013: following the Sectoral Conference on Employment and Social Affairs (11 April), the New Framework was approved by common agreement of the autonomous regions, and with it the criteria for distribution for 2013. The strategic or priority objectives that will form the basis for the actions to be executed by the autonomous regions and condition the funds in 2014 have also been set out. These objectives are: improve the employability of young people and support for entrepreneurship; improve the employability of other groups particularly affected by unemployment (particularly the long-term unemployed aged over 55); improve the quality of vocational training for employment; and stronger links between active and passive employment policies.

### 3. Active policies that respond to labour market needs.

Progress has also been made in modernising the active policy instruments so they respond to the real needs of companies and represent real tools for workers' activation and employability.

- The labour reform gives a fundamental role to **training for employment** as a tool to improve the employability of workers and the long-term competitiveness of companies. This results in both the promotion of continuing training and the transformation of the sub-system of vocational training for employment, with suppliers of the training services being selected under a competitive system.

The reform of the training and apprenticeship contract is the basis for the development of dual vocational training for employment. The new contract has a development strategy (2013-2015) based on the updating and revision of the occupational certificates, to ensure they respond without problems to the current skills needs of workers; and the collaboration of all the agents involved in dual vocational training (government and the private sector).

**In the area of labour mediation, a boost has been given to public-private partnership through the Framework Agreement, by which the public employment services will work with job placement agencies. In addition, the development of the Single Employment Portal (included in Royal Decree-Law 3/2013) will favour transparency, mobility and activation of workers, as it becomes the point of reference for job vacancies and training opportunities nationwide.**

- The more rational use of employer reductions to Social Security contributions included in Royal Decree-Law 20/2012 fulfils the double objective of contributing to the efficiency of these incentives and budget sustainability, while allowing resources to be reallocated to other more effective policy measures. The budget is now much more balanced.



### The reform of active employment policies (3)

#### 4. Rationalisation and strengthening the link between active and passive policies

Boosting the activation of the unemployed is key for the system of protection to be able to meet its twin objective of offering temporary cover for situations of need, while ensuring there are incentives to return to work quickly. To do so, various measures have been adopted that favour a framework of incentives that are activity-friendly. They boost the link between benefits and active policy measures and guarantee an income for workers who are actively looking for work and cannot find it.

- Royal Decree-Law 20/2012 modified the system of **unemployment benefits**. It corrected unjustified asymmetries in contributions between workers and the unemployed, as well as favouring the maximum level of activity possible for the unemployed, maintaining a sufficient income while linking the incentive of a search for employment to the length of time unemployed. The law also allowed a more rational use of non-contributory benefits, to make a closer link between the protective purpose of the system and activity. Among the measures adopted is the general tightening of the link between the right to access non-contributory benefits and the personal wealth of the beneficiaries, as well as the income of the family unit.
- With respect to the non-contributory benefits, there has been a reform of the programme of aid to occupational re-training (the **PREPARA** plan). Introduced for the first time in February 2011 as a temporary measure, it is a mechanism for providing an individual and personalised path towards finding a job for people who have used up their unemployment benefit or welfare subsidy. It is accompanied by a complementary income (around €400). This programme was subject for the first time to an in-depth analysis which gave rise to a reform in August 2012. The reform made a more effective link between receiving the benefit and participation in active policy actions. The new programme is aimed at those people who have used up their unemployment benefit or welfare benefit and who are long-term unemployed or have family responsibilities, provided that they can prove they are actively looking for a job and participate in all the actions and active employment policy measures offered by the public employment services.

To bolster compliance with the programme's social objectives, the income of the family unit is tested to check eligibility for the assistance. This is coherent with the increase in the amount that can be received by some beneficiaries in case of need. The programme thus meets its twin objective: to ease a situation of real need and to reincorporate the beneficiaries into the labour market. Relying on continuous monitoring and given the delicate situation of the labour market, in February 2013 the decision was taken to prolong the programme automatically until the level of unemployment fell below 20%.

The reform and extension of the PREPARA programme thus helps comply with the Recommendation of the European Council of July 2012 to strengthen the links between active and passive employment policies, in a way that is compatible with attention and improvement to the employability of vulnerable groups.

In addition to the above there are a series of **improvements in the coordination of the PES and the tools monitoring the degree of compliance with the commitment to activity**, which favour the monitoring of the link between active and passive policies and more effective employment policies (obligation to prove activity, obligation to report, automatic processes and other improvements in administrative management, etc.) These measures also help in the fight against underground employment.

Currently work is continuing along these lines, on the basis of the assessment and identification of improvements in the design of the system of benefits, with new methodologies, computer tools and sources of information. Once this work is complete, the plan is to launch a pilot project, which will allow an identification of the new mechanisms and lines of action that contribute more efficiently to linking active and passive policies and the fight against fraud in unemployment. All this will help ensure that the management system can operate a comprehensive monitoring of those who receive benefits and their participation in the active policy measures, thus contributing to the fight against fraud.

### II.4.3. Training for Employment Sub-system

**The introduction of competitive tenders for the selection of the best providers of training courses allows for a more efficient use of public funds.**

102. The labour reform included profound modifications marking the start of a gradual transformation of the training for employment system, in particular with regard to supply-side initiatives. The goal in this area is to increase the efficiency in the use of public funds through competitive tendering, to foster flexibility and bring the training on offer closer to the real needs of companies (through prospective analysis and a more direct contact with companies and their training needs) and also to promote, in the longer term, the development of competitive entities specialising in the provision of training services.

For this purpose, Law 6/2012 gave a major role to private training centres and entities: on the one hand, their participation in the design and planning of the sub-system is acknowledged; on the other, they are given the ability to participate directly in the calls for proposals to receive public funds previously reserved to the unions and business organizations for the execution of training plans aimed in the first instance to those in employment. The introduction of competition in the selection of training providers is done gradually so as to maintain the necessary consensus and take advantage of the know-how and expertise of the trade union and business organizations who had previously had exclusive control over this training.

**The labour reform measures have been complemented with the development of regulations and public tender processes open to competition.**

103. The new approach has been developed in Ministerial Order ESS/1,726/2012 dated 2 Augustd, 2012, and is complemented by the two calls for applications held at state level (in addition to those corresponding to the Autonomous Regions), one with a general character and the other aimed at young people under 30 years of age<sup>50</sup>. Of these developments, it is worth highlighting the following main novelties:

- The priority training areas established are those relating to the internationalisation of the business, entrepreneurship, innovation and the technological development of manufacturing processes. Adaptation in these areas is also seen as the criterion for accessing finance.
- New elements of transparency and efficiency are introduced into the training programmes. Thus, for instance, the methodology for technical assessment is transformed to encourage training of the greatest quality and the lowest cost.
- A new classification of training plans is established with the aim of obtaining professional qualification certificates.
- A minimum participation of unemployed people is established at between 20% and 40%.
- e-learning is encouraged for the execution of the training actions.

**The first results of the calls for competitive proposals in training for employment are positive.**

104. The results of the 2012 calls for proposals suggest that the introduction of competitive tenders and the elimination of intermediaries (often without any added value) has enabled the efficiency of the training plans to be increased:

- The number of tenders presented shows a strong increase of 99% in the state-level call for proposals regarding supply-side plans, and 456% in the call for proposals aimed at young people under 30.

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<sup>50</sup> Resolution dated 9 August, 2012, by the National Public Employment Service (SEPE) approving the call for applications for the award of subsidies for the execution of state-level training plans, aimed mainly to people in employment through application of Ministerial Order TAS/718/2008 dated 7 March, 2008; Resolution dated 11 October, 2012, by the National Public Employment Service (SEPE) approving the call for applications for the award of public subsidies, charged to the 2012 budget year, for the execution of a specific state-wide programme for the qualification and improved employability of young people under thirty years of age.

- The cost per hour and participant has been brought down by 21% in face-to-face classes and by 18% in remote training courses. In the call for proposals addressed to young people, the mean cost reduction per student and hour comes to 27%.

The efficiency gains in the new design derived from the enlargement of the offer and the limitation of the price have, therefore, enabled the number of beneficiaries to be increased with respect to previous years despite the lower budget available.

### **Training closer to the real needs of the productive sector.**

105. In parallel to the reform of the vocational training system and also with the aim of giving more prominence to the productive fabric in the determination of training for employment, an intense process of reform and modernisation is being carried out on professional qualification certificates and their regulation. This will boost the quality of teaching and the recognition of the training and experience gained by the workers through formal accreditation, thus strengthening their employability and promoting, at the same time, a better training offer that reinforces the competitiveness of the dual vocational training model.

Professional qualification certificates constitute the official instrument for accreditation, within the scope of the labour administration, the professional qualifications included on the National Catalogue of Professional Qualifications acquired through training processes or the process for recognition of work experience and informal training, so as to enable their correspondence with the vocational training diplomas of the educational system. Since 2002, a process is under way for the reform of these certificates, and this has intensified in 2012, in order to adapt them to the novelties of the training and apprenticeship contract, as part of the Dual Vocational Training Implementation Strategy, as well as to the current needs of the productive sector and the tools available for teaching them. Specifically:

- Royal Decree 34/2008 dated 18 January, 2008, regulating professional qualification certificates has been reformed to adapt it to the new model (by means of Royal Decree 1,189/2013 dated 15 March, 2013). Among the novelties included, mention should be made of the insistence on key competencies for permanent learning as the requirements for accessing or developing the teaching for these certificates in the category of e-learning.
- Progress has been made in the process of drawing up, reforming and updating the National Repertory of Professional Qualification Certificates. This process, begun in 2002, has picked up speed to the point where 50% of it has been concentrated into the last year and a half. As a result, the Repertory will have 587 certificates, of which 414 are already published, 82 have been submitted to the Cabinet for approval and the other 91 are pending publication in the near future. This extensive repertory, which will include certificates for all training levels (1, 2 and 3), will make it possible to design the training courses corresponding to the needs of all productive sectors.

The updating process must, in any case, be dynamic and it is planned to continue it systematically.

- It is planned to go more deeply into this reform, in particular by speeding up the procedure for drafting and updating the certificates for a more flexible response to qualification needs and through the preparation of a map of training centres accredited to offer courses for professional qualification certificates.

This new framework for professional qualification certificates will enable a nimbler and more accurate response by the training on offer for the real needs of companies, as well as a reinforcement of the real employability of workers.

#### **II.4.4. Public-private mediation**

**Public-private collaboration for labour mediation favours a speedier placement of the unemployed, a more efficient public service.**

106. The labour reform also opened up the possibility for temp agencies to act as placement agencies. The goal is to favour the participation of private agents in collaboration with the public services in such a way that they can contribute to increasing the speed and quality of the matching between supply and demand in the job market. At the end of the day, the idea is to implement all the mechanisms available to reduce the time spent unemployed and facilitate the transition to employment.

Therefore, it is necessary to take advantage of the know-how and expertise of private players and combine them with the efforts of the public sector for the improvement of these services, as already happens in other European Union countries. The community institutions underline the notable contribution represented by this collaboration for the participation and placement of workers.

**The increase in the number of agencies authorised to provide mediation services favours the acceleration of matching and facilitates the implementation of the public-private collaboration system.**

107. On the other hand, since the entry into force of the reform, the total number of agencies authorised to provide placement services has increased from the 167 that existed in January, 2012, to the 799 registered as of June 30th, 2013. Thus, from an average of 18.56 monthly authorisations prior to the reform (in the 9 months in which agencies began to be authorised), this average rose to 40.77 between February, 2012, and June, 2013. While it is true that the regulations governing these placement agencies were relatively recent (December 30th, 2010), it is evident that the market of the placement agencies has received a notable boost after the labour reform. In fact, it has grown by a factor of almost 4 since the enactment of the labour reform. In addition, 16.25% of the authorised agencies are agencies operating exclusively through electronic means, opening up new possibilities for the development of labour mediation activities.

In this period, 49 Temp Agencies (ETTs in their Spanish acronym) have registered as placement agencies, with 7.75% of them new entrants and 16.6% previously authorised ETTs. In addition, 39 of them have benefited from the possibility allowed under Royal Decree-Law 3/2012, temporarily until the approval of Law 3/2012 dated July 6th, 2012, to begin their activities as agencies through the submission of a sworn declaration that they meet the requirements of the Employment Act for the provision of these services. Of these ETTs, 28 have been authorised as agencies by the State Public Employment Services, implying that the new agencies, in more than 57% of cases, expect to render their placement services in a scope above the regional level. Moreover, the new authorisations include some ETTs that concentrate a large part of the sector's activity.

The favourable evolution in the placement agency market will allow them to strengthen the labour mediation services in collaboration with the Public Employment Services once the Framework Agreement planned for this has been awarded.

**The design of a national framework agreement makes it easier to implement this new instrument.**

108. With the aim of ensuring a coordinated implementation of the new public-private collaboration model, the regulations on public sector contracts has been amended<sup>51</sup> to allow the signing of Framework Agreements within the scope of the National Employment System. This facilitates the development of a common project for public-private collaboration on placement matters throughout national territory, respecting the competencies held by the Autonomous Regions, but on the basis of shared technical and economic conditions. This overcomes possible barriers of a territorial nature limiting competition and fragmenting the labour market, and geographic mobility of workers is enhanced. It takes advantage, in addition, of a greater potential for public private collaboration at the same time as it delves deeper into the coordination between the Regional Public Employment Services and the national service (SEPE).

For this purpose, on the basis of the experience in other countries in Europe and, in particular, the experience of the British model (*The Work Programme*), the framework designed is aimed at efficiency in the

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<sup>51</sup> In Royal Decree-Law 4/2012 dated 23 February, 2012.

selection of service providers, effectiveness in the provision of mediation services, and gives a major role to continuous monitoring and evaluation.

- The Framework Agreement proposes, during a term of 2 years (with the possibility of extension for another two), the pre-selection of a number of agencies with which the different Public Employment Services can enter into contracts in accordance with the common conditions but also according to their specific needs (whether by territorial scope or by collectives).
- In addition, it establishes a flexible scheme for the compensation of private agencies with the premium on results. Thus, it foresees a payment per insertion with a minimum duration of 6 months, establishing differences between collectives in the light of the characteristics determining their employability, such as age and length of time unemployed. In this way, the compensation reflects the differential treatment that must be given to the different collectives in order to achieve their placement more promptly, thus favouring equal opportunities in access to placement.

This approach is compatible with the payment of other amounts as specific incentives to be determined in the contracts, thus allowing a margin of flexibility having regard to the special circumstances of the collectives, sectors or territories in which they are to engage in their placement activities.

- The model is complemented by a commitment to monitoring and assessment to favour the effective provision of placement services and to introduce improvements wherever necessary, as well as to facilitate the fulfilment and accreditation of active searches for employment by recipients of unemployment benefits.

For this purpose, the necessary technical capacity has been developed during 2012 through a specific remote electronic platform that will allow data to be exchanged among the private agencies and the Public Employment Services (SPE). In addition, it is planned to create a Monitoring Committee with the participation of the Regional SPEs and the national SEPE to take charge of performing an assessment of the Agreement before its currency runs out. In addition to boosting the coordinated action of the Public Employment Services, this will facilitate the exchange of information and the identification of best practices.

The Framework Agreement, the preparation of which has considered the main concerns conveyed by the sector, has received extensive support from the Autonomous Regions following its presentation at the Sectoral Conference on Employment and Labour Affairs on April 11th. The Regions have provided their comments and, so far, 14 Regions have already signed up to the Framework Agreement.

Following the mandatory Resolution adopted by the Spanish Cabinet<sup>52</sup> and the corresponding processing, the award of this Agreement is scheduled for the last quarter of 2013. From then on, the new design will be available for public-private collaboration for the provision of placement services.

### *Long-term unemployment and active policies*

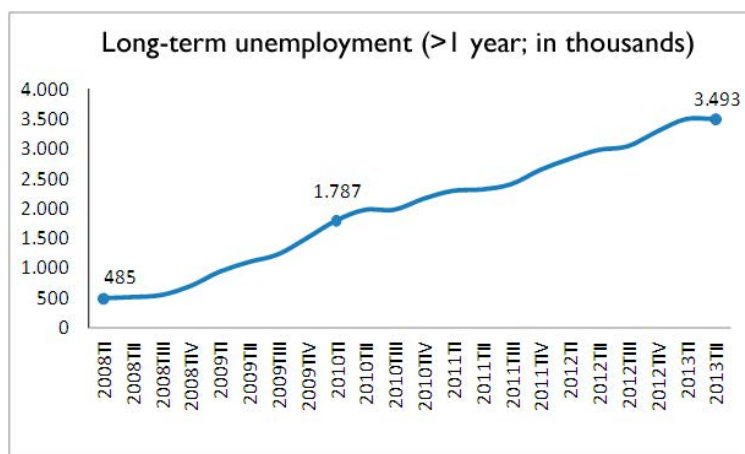
#### **Active employment policies are fundamental to cope with the long duration of unemployment.**

109. The severity of the situation in the labour market stems from the fact that, despite the moderation in the outflows from private occupation to unemployment, the inflows into the job market from unemployment continue to be very meagre as a consequence of the recession. All this has led long-term unemployment to continue to increase. It is well known that the probability of finding employment reduces the longer people spend unemployed, so limited inflows into employment hinder their exit from long-term unemployment. This increases the structural unemployment rate and slows down the return to unemployment levels similar to those of our European partners. Hysteresis or persistent unemployment is the most serious problem facing employment policies, and the boosting and modernisation of high-quality active policies is the solution.

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<sup>52</sup> Pursuant to the new budget regulations, article 137 of the TRLCSP.

The efforts of the Regions in the execution of active policies is the key to overcoming this situation and so avoiding the persistence of unemployment once the economic activity picks up again. The lack of adaptation of workers' skills to the needs of the productive fabric constitutes an element that it is vital to overcome in order to be able to ensure low structural unemployment rates in future and to favour the change in the productive model to generate greater long-term growth. Employment policies, and the training and education policies, now to a large extent the responsibility of the Regions, must focus on overcoming the current training limitations of the active population, especially the long-term unemployed, as well as to boost continuous education to foster the employability of Spanish workers.

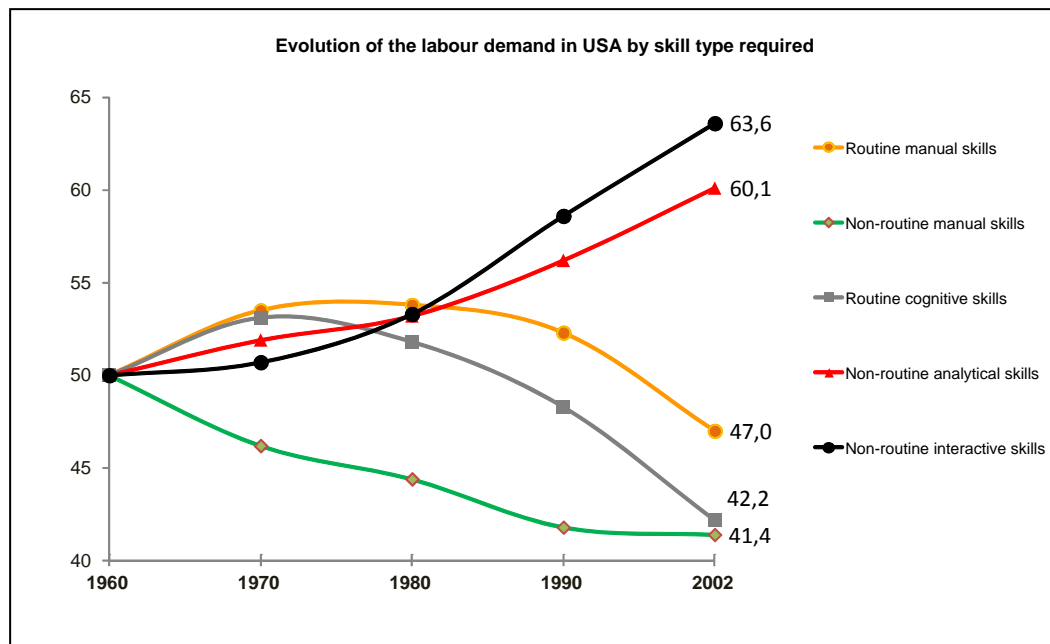


Source EPA, INE.

Technological changes and technological globalisation are intensively transforming the skills in greatest demand by the productive fabric from around the world. In Spain, the importance of intensive activities on less qualified labour during the boom years and the evident limitations of the educational system (reflected, for example, in the PISA report from the OECD) demand that resources and efforts be focused on carrying out a transformation of the training system at all levels, as well as on facilitating a greater adaptation of education to the needs of the productive fabric. Anything else would hinder Spain's capacity to grow for decades to come and would generate increasing social divergence between trained and untrained workers, which would end up threatening social cohesion.

For all these reasons, the encouragement of in-depth reforms such as those undertaken by the Central Government in the scope of training for employment and on the education system, is essential for the future well-being of Spanish society. Once more, the role of the Autonomous Regions in this process, as well as that of the social organizations and teaching personnel, is of the greatest importance. The following graph highlights how the development of computing has transformed immensely over time the skills demanded by the labour market.





Source: OECD<sup>53</sup>

### **A system of high-quality activation policies is the key for the battle against structural unemployment**

110. The Government is driving the transformation of the activation policies system, a necessary complement to the measures adopted with the labour reform and vital to cope with the high structural unemployment rate. Public services should:

- Temporarily supply a sufficient income for those who lose their jobs and wish to rejoin the employment market. The receipt of this income constitutes a right, but there is also an obligation to seek employment actively. The control over the degree of fulfilment of the activity undertaking should be strengthened and this requires the fundamental linking of active and passive policies. Furthermore, the system must provide an incentive for activation, and it should strengthen its focus on unemployed individuals the longer they remain unemployed. Just as the public employment services should pay special attention to the long-term unemployed, the obligations of these must increase the longer they are unemployed.
- Provide personalised treatment for the unemployed contributing to the design of a strategy for reinsertion in employment, adequately planning the provision of public services.
- Offer workers guidance and furnish them with suitable tools for the job-search process: from how to succeed at a job interview to drawing up a good *curriculum vitae*.
- Monitor on a regular basis the degree of fulfilment of this activity commitment, requesting the provision of documents accrediting the active search for employment.
- Supply high-quality mediation services, and guidance on how to use the many tools provided by the private to the unemployed (from web portals and social media, to placement agencies).
- Where workers do not have the necessary skillset to find employment, furnish an extensive catalogue of quality training courses on subjects in demand in the productive fabric, so that unemployed individuals can participate in increasing their own employability.
- Use a system of reductions in Social Security contributions restricted to very specific collectives with serious difficulties to find employment, designed in such a way as to avoid the deadweight effect and

<sup>53</sup> Based on Autor, Levy and Murnane (2003) The skill content of recent technological change: an empirical exploration. The Quarterly Journal of Economics, November 2003.

the substitution effect. The preponderance of reductions in Social Security contributions for contracting in Spain's employment policies was far superior to that of other EU countries; in 2010, for example, Spain was the EU country with the highest absolute expenditure on these policies.

#### **II.4.5. Unjustified absence from work**

##### **The reform favours a lower incidence of absenteeism.**

111. The reform amended the regulations on dismissal for excessive absence from work, introducing greater rationality into the definition of the grounds giving rise to such dismissal and achieving greater consistency with the true motivation and the consequences of such behaviour. For this purpose, it has eliminated the requirement for the worker's absenteeism to be linked to that of the staff, which had previously been demanded to justify objective grounds for individual dismissal. The reference to the collective perspective lacked any justification and is replaced by a reference to the individual log of the worker's absence during the year prior to the reference period (absences must exceed 5% of working days). This thus favours a greater adaptation to the individual of both any possible shortcoming and the consequences deriving from it, which are limited to the individual and not the rest of the staff.

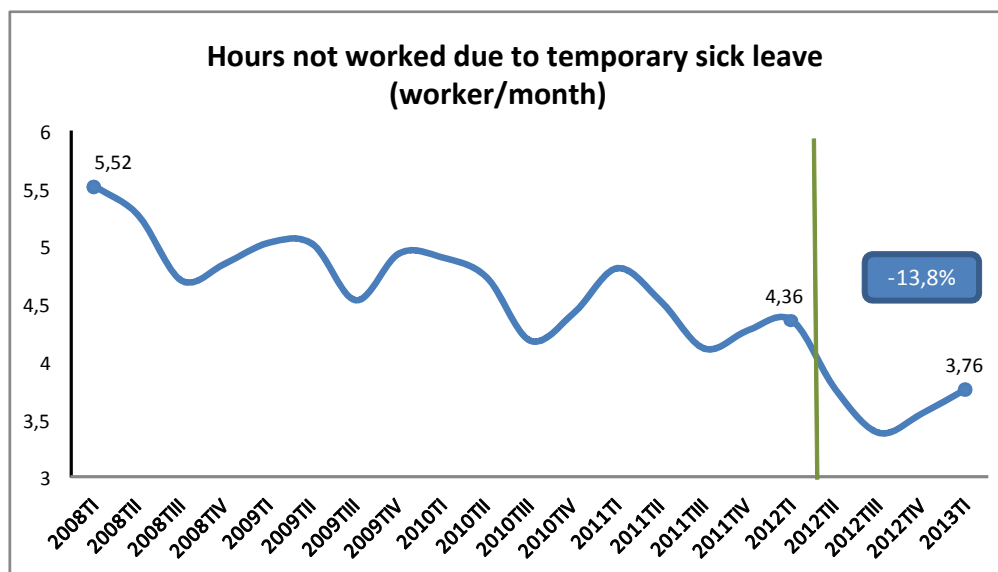
On the other hand, the 2012 reform also changes the circumstances excluded from calculation for the purposes of absenteeism, making the rules more balanced by incorporating such cases as medical treatment for cancer and other serious illnesses.

##### **The data for the quarterly survey of labour costs point to a lower impact of unjustified absenteeism since the reform**

112. The quarterly survey of labour costs performs a detailed analysis of the hours worked so as to give an approximation to the trends in absenteeism. The most suitable indicator is that for "hours not worked due to temporary sick leave". While these include hours not worked due to perfectly justified absences that must not be considered as absenteeism, the hours lost due to well-justified reasons tends towards stability. Therefore, an analysis of the variation in these hours not worked might allow observation, except in extraordinary circumstances (plagues, pandemics, sudden changes in birth rate, etc.), of the trend for absenteeism.

The data show that, in the four periods following the labour reform, workers have lost 36 minutes less per month out of their working hours (0.6 hours), by improving the time lost for sick leave from 4.36 hours per month to only 3.76. This implies a very relevant advance (of -13.8%) with respect to 1Q2012, the last period prior to the reform. This trend towards a reduction of lost hours due to sick leave has been constant since the start of the crisis, highlighting that there is a relevant margin for improvement in this area. In any case, the data reveal a positive impact on absenteeism by the reform, also contributed to by the economic scenario and the regulatory changes on absenteeism in the public administrations.





Source: INE, *Quarterly Labour Cost Survey*.

**The signing of novel coordination agreements with the Regions represent a significant advance in the prevention of irregular absenteeism.**

113. Apart from the regulatory changes introduced by the labour reform, the MEYSS has made considerable progress in the struggle against irregular absenteeism through the Agreements formalised with the Autonomous Regions for the period from 2013 to 2016, with a view to establishing collaboration and coordination agreements with these territorial bodies to study the behaviour in temporary sick leave benefits within the territory of each Region and to establish the appropriate controls over these benefits in a coordinated fashion without disturbing those workers truly suffering from poor health. The agreements are funded in the amount of € 315 M for 2013.

The contents of the Agreements for the period from 2013 to 2016 are identical for all the Regions and contemplates a Programme of Activities for the improvement and modernisation of sick leave benefits and the establishment of cost rationalisation targets:

- Programme of Activities: computerisation and remote electronic transmission of the sick notes authorising leave to the social security offices (INSS), issue of medical reports and application of tables for the duration of the different processes, managing proposals for returning to work and disconformities when the worker exceeds 365 days of sick leave with the same process, training and information for primary health-care physicians, remote electronic access to case histories, complementary medical tests and reports and the involvement and data exchange among the Management Units of the Public Health Service (SPS) and the INSS.
- Greater monitoring of efficiency goals for this expenditure heading.

The agreements introduce major novelties with respect to previous experiences:

- Better coordination with regard to the medical reports signing people off or back on after sick sick: the quality of the data to be completed is intensified on the forms issued by the primary health-care physicians in the public health services in the Regions. The INSS has already managed to obtain immediate knowledge from all physicians signing workers on or off work due to ill health. Previously, the INSS knew about 87% of the processes within the period of five days since the corresponding primary health-care physician issued the sick leave notice.
- Training of primary health-care physicians: all the Medical Units of the INSS are now accredited as national reference teaching resources for the speciality of Family and Community Medicine by the Ministry of Health, Social Services and Equality since July, 2012, meaning that all trainee doctors in residence for the speciality of Family and Community Medicine will spend time in one of the

Medical Units at the Provincial Directorates of the INSS and will thus be aware at first hand of how to deal with work-related sick leave at the National Social Security Institute (INSS).

- Remote electronic access to case histories: remote electronic access is intensified to the case histories of the SPS. Access is currently available in all the Autonomous Regions except the Basque Country and Navarre. Through these agreements, it is intended to have access not only to the case histories for primary health-care but also the case histories of hospitals and complementary medical tests. In addition, for the first time, the quality of the computerisation of the case histories is going to be measured and it is intended that the primary health-care case history will be used as the vehicle for communication among all the doctors supervising the sick leave, so the Medical Inspectors assigned to the INSS will be able not only to consult the case reports but will also have a space in which to set out their reasons as to why a worker should stay off or should return to work.
- Distribution of credit: instead of taking into account the population receiving health-care cover, the system now considers the number of insured individuals entitled to the temporary sick leave benefit under the Social Security system.

#### **The Government will reform the legislation on mutual societies before year-end**

114. Before the end of 2013, new regulations will be approved for the Labour Accident and Professional Illness Mutual Societies. These private entities collaborate with the Social Security for case management, particularly with regard to the benefits deriving from temporary sick leave. Part of the economic surpluses derived from this management by the Mutual Societies contribute to the financial stability of the system, through their inclusion in the Social Security Reserve Fund. The new regulations will be aimed at modernising the operation and management of these entities, ensuring transparency and oversight, so that they achieve greater levels of efficacy and larger surpluses, so contributing in greater measure to the battle against absenteeism and the sustainability of the Social Security system.

### III. OTHER MEASURES SUPPORTING REGULAR EMPLOYMENT AND THE FIGHT AGAINST FRAUD.

#### **The battle against fraud constitutes of the Government's priorities.**

115. One of the main elements in the Government's policy on employment and the Social Security has been the intensification of the battle against irregular employment and defrauding the Social Security, an element of great significance for both the defence of workers' rights and the avoidance of unfair competition. The battle against fraud also contributes to the process for cleaning up the public accounts, especially by avoiding unjustified and often fraudulent expenditure. In order to further this process, the Government approved in April, 2012, the Plan for the fight against irregular employment and defrauding the Social Security with the following main goals:

- Ensuring workers' social and employment rights.
- Driving the exposure of the underground economy, with the aim of bringing working conditions into line with regulations and generating economic resources for the Social Security System through the payment of dues and contributions.
- Correcting the illegal obtention of benefits or their enjoyment through abuse of law, particularly in those cases where ghost companies are created to be able to access benefits; or in those cases where a person in receipt of benefits is irregularly performing work for an employer or as a self-employed individual.
- Avoiding unfair competition derived from the competitive advantage that may arise from economic activity carried out without regard for the regulations.

#### **The development of the Plan for the fight against irregular employment and defrauding the Social Security is supported by legislative and management measures.**

116. For the achievement of these aims, the Plan deploys a novel and ambitious set of actions of differing scope, including:

- The reform of the organization and operation of the Labour and Social Security Inspectorate to adapt it more effectively to the fight against irregular employment. For this purpose, the current Territorial Offices of the Labour and Social Security Inspectorate (in each Region) assume operational functions on matters to do with the fight against irregular employment and defrauding the Social Security. To date, they provincial managers only assumed coordination functions. On the other hand, new teams have been set up specialising in the fight against irregular employment and shifting of liability.
- The provision of greater human resources for the Labour and Social Security Inspectorate in the fight against the irregular economy. Following the approval of the anti-fraud plan, 121 inspectors and sub-inspectors have joined the Inspectorate, all primarily intended to prevent, detect and combat irregular employment.
- The development of further inspection campaigns in areas where possible fraud has been identified. This includes greater control over ghost companies, i.e. companies set up for the sole purpose of facilitating improper access to Social Security benefits, the intensification of the inspection activities on the registration of fictitious self-employed workers not engaging in any activity and, finally, greater supervision of improper receipt of public benefits as a consequence of collective dismissals, among others.

The Plan contains several regulatory modifications with the rank of Law approved at the Cabinet Meeting on 27 July, 2012. The following are the most significant measures amending the Criminal Code:

- Toughening of criminal penalties, which will entail custodial sentences of from 1 to 5 years in prison for those defrauding the Social Security of more than 50,000 euros (previously 120,000), thus significantly increasing the deterrent effect of the penalty.
- The introduction of an aggravated crime when the amount defrauded from the Social Security exceeds 120,000 euros or where the criminal activity is carried out through groups or interconnected companies or by fronts. In these cases, the penalty would be from 2 to 6 years in prison and the time-bar would be extended to 10 years.
- Classification as a crime of the act of obtaining Social Security benefits through simulation or occultation of the true facts where this fraudulent action is detrimental to the Administration (sentence of 6 months to 3 years in prison). When the amount defrauded is greater than 50,000 euros, the sentence will be increased to between 3 and 6 years in prison. This is enabling the phenomenon of ghost companies to be combated more effectively in the criminal courts.
- Classification as a crime against the rights of workers any act involving the simultaneous employment of multiple workers in an irregular situation (the prison sentences are increased to 6 years from the current maximum level of 3 years).
- The requirement of the repayment of any contributions defrauded as a pre-requisite for exoneration from criminal liability, even in those cases where this is time barred.
- Profound modifications in the procedure so that the existence of criminal proceedings for a crime against the Social Security will not paralyse the administrative proceedings for the settlement and collection of the debt.

The Plan also contains legislative measures that do not have the rank of a Fundamental Law and amend the Workers' Statute, the General Social Security Act, the Labour and Social Security Inspectorate (Organization) Act, and the Labour Infringements and Penalties Act, among others. The following changes are the most noteworthy:

- The deadline for demanding joint and several liability from the main employer for Social Security obligations contracted by a sub-contractor has been increased from 1 to 3 years.
- The duty of collaboration between the Public Administrations (for example, Autonomous Regions, the Tax Agency (AEAT), the Police and Security Forces, the Professional Associations of Registrars and Notaries Public) is strengthened.
- The maximum deadline for inspectors' verification actions was extended in cases of special complexity (from a maximum of 9 months at present to 18).
- The classification as very serious behaviour the giving of work to workers affected by a suspension of contract or reduction in their working hours (from 6,251 to 187,515 euros).
- The increase in the amounts of the penalties for situations involving the irregular economy or for giving work to persons in receipt of or applying for benefits that are incompatible with working, in proportion to the number of workers affected.

**The results obtained by the Plan so far highlight the progress made in the battle against irregular employment and defrauding the Social Security.**

117. The results obtained since the implementation of the Plan have enabled thousands of irregular jobs to be brought to light. For their part, the very large fines are generating a very significant deterrent effect:

- Battle against irregular employment: 334,214 inspections have been carried out into matters relating to irregular employment; 130,512 jobs came to light as a result of the actions of the Ministry of Employment and Social Security.

- Battle against the improper receipt of unemployment benefits: as a result of the work on the verification and monitoring of compliance with the regulations on unemployment matters: in 2012 and the first 6 months of 2013, the saving achieved amount to € 3,160.67m.
- Battle against ghost companies: a total of 35,761 inspections have been carried out into these matters. As a consequence of these inspections, 64,379 fictitious company registrations have been cancelled as they had been processed in order to obtain Social Security improperly. This has given rise to the detection of 3,523 violations in this period.

Just for the first half of 2013:

- Unemployment benefit has been cancelled for 60,004 recipients because they were unavailable for work, failure to comply with the requirements for obtaining and continuing to receive unemployment benefit, versus 52,269 in the same period in 2012. This implies an increase of 14.8% with respect to the same period in 2012. The economic impact in 2013 amounted to € 915.22m, as opposed to the € 796.18m collected in 2012, an increase of € 119.04m in collections.
- The number of violations by employers has increased by 30.6% through giving work to the recipients of unemployment benefits or through facilitating their improper access to these benefits, and 5,833 workers were detected to be working improperly while in receipt of benefits, or that they had obtained them through fraud, representing an increase of 28.9% over the 4,526 detected the previous year.
- With regard to the battle against ghost companies, 14,842 inspections have been carried out versus 10,105. i.e. an increase of 46.88%. As 1,964 violations were detected versus 809 in the same period in 2012, the increase represents 146.26%.

In short, the Plan for the fight against irregular employment and defrauding the Social Security constitutes a tool that is increasing the efficacy of the system for preventing and deterring fraud, with very noteworthy results.

## IV. THE INVOLVEMENT OF THE SOCIAL PARTNERS AS KEY TO CHANGING THE MODEL OF LABOUR RELATIONS

### **The role of collective bargaining and collective agreements is fundamental.**

118. The framework for labour relations in Spain has traditionally been characterised by difficulties in adopting internal flexibility measures, generating a high degree of rigidity that has prevented the adaptation of productive structures, impaired competitiveness, hindered innovation and encouraged adjustments by means of dismissals and, therefore, the recurrent hiring of people under temporary contracts. In short, a model that can be described as economically ineffective in terms of labour protection and socially not very fair, due to legal inflexibility and also the absence of a culture among the parties negotiating the collective agreements for the effective promotion of internal flexibility.

This has meant that the role of collective bargaining and consensus in driving internal flexibility is going to be of fundamental importance. In this sense, the most representative social partners at state level, through an Agreement dated 25 January 2012, highlighted the need to introduce a greater degree of internal flexibility through collective negotiation in different areas. For its part, the 2012 reform introduces incentives to foster the ongoing adaptation of agreements to the needs of workers and employers, as well as a more flexible, dynamic regulatory framework that is closer to the reality of companies and workers.

The social and economic agents as a whole, i.e. the negotiators of sectoral agreements, companies and the representatives of their workforces, have to adapt to new rules, abandon deeply-rooted habits and make room for new dynamics. This transformation will necessarily be gradual, insofar as the must alter a *modus operandi* installed more than 30 years ago. However, in the little time that has elapsed since the Agreement signed by the social partners on 25 January 2012, and the approval of the labour reform, it is already possible to appreciate significant progress.

### IV.1. Transformation of collective negotiation

#### **More collective agreements have been signed after the labour reform than in the period immediately prior to it.**

119. As has already been mentioned, the agreements recorded at 31 December in each of the recent years as having begun to have economic effects in the year show that almost 9% more agreements affecting 45.1% more workers have been recorded in 2012 than in 2011. A total of 644 new<sup>54</sup> agreements, 517 of them at company level. The increase in the number of agreements with this scope (+13.1%) compensates the slight reduction in the number of agreements in other scopes. For their part, company-level agreements with economic effects beginning in 2013 and recorded until June (292) represent 83.7% more agreements than in 2012 (which already reflected a significant increase with respect to 2011) and affect almost 25% more workers. In the case of agreements with a larger than company scope, the statistics on collective bargaining reflect even greater increases, namely 19.6% in the number of agreements (62) and 77.2% in the number of workers affected.

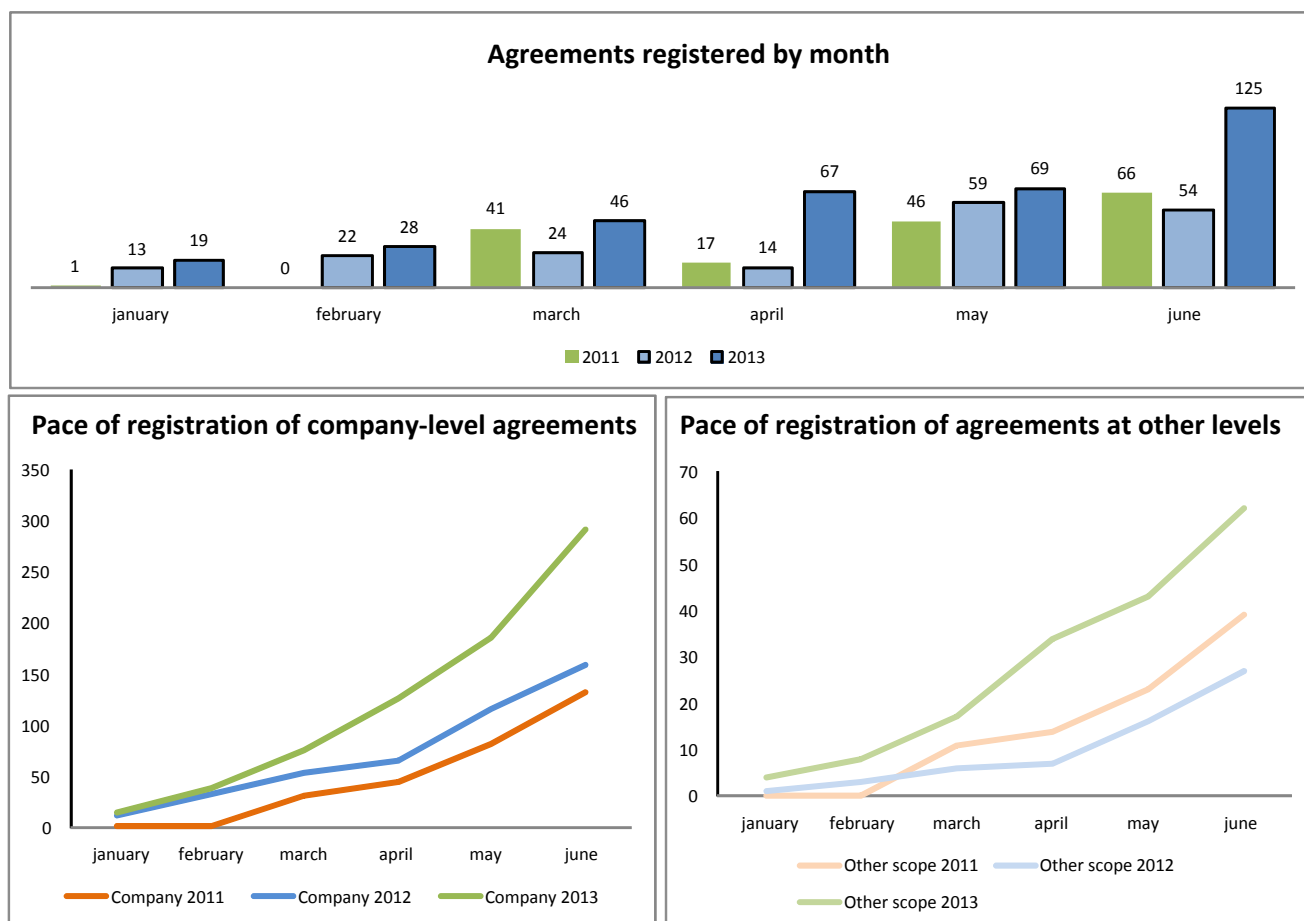
#### **The suppression of indefinite automatic extension on expiry contributes to greater dynamism in the negotiation of agreements.**

120. The data on agreements recorded since the labour reform confirm the achievement of the goal pursued by amending the legal regime for automatic extension: the dynamisation of collective negotiation. The

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<sup>54</sup> Strictly speaking, these are agreements that begin to have effects in the current year.

watershed of 8 July<sup>55</sup> has served as a spur to speed up pending negotiations and agreements were reached around that date on a large number of topics under discussion. Thus, the limitation on automatic extension has been useful to bring to an end many long (and often fruitless) periods of negotiation since the previous agreement expired, sometimes even over a number of years as, for example, in the state-level sectoral collective bargaining agreements for the “Chemical Industry” (29 months); “Food Service” (31 months), “Contact Centres” (34 months), “Auto-taxi” (39 months), “University education and research centres” (57 months), “Night clubs, dance halls and discos” (244 months).



Source: MEYSS

The agreement signed on 23 May 2013, by the CEOE and CEPYME business organisations and the CCOO and UGT trade unions has also helped drive this process. That agreement was aimed precisely at driving the pending collective negotiations to overcome the situations of deadlock. Specifically, it recommends that negotiators of collective agreements should speed up and intensify the negotiation processes under way and urges them to resort to mediation or arbitration in situations of deadlock, at the same time as it highlights the importance of renewing and updating the agreements “for the sake of the competitiveness of companies and the stability of workers’ employment”. For these purposes, stress is placed on the achievement of a significant improvement in the regulation of agreements and, in line with the Agreement signed on 25 January 2012, by the social organisations, it repeated that internal flexibility mechanisms had to be encouraged so that work time, professional classifications, functions and wages, among other conditions, can be adapted to the needs and interests of employers and workers.

<sup>55</sup> When the maximum one-year extension is reached for the automatic extension of agreements that the parties had announced were not to be continued prior to the entry into force of Law 3/2012.

### **The labour reform promotes a transformation in the structure of collective bargaining**

121. One of the deficiencies in the institutional labour model in Spain has been the structure of collective bargaining as the excessive influence of provincial scope agreements and the scant development of company-level agreements have given rise to a conventional regulation that is poorly adapted to the reality of companies. Provincial agreements have often been too rigid a tool to reflect the peculiarities of all the companies included in its scope of application, particularly in those sectors where there are companies with a wide variety of sizes and types. Furthermore, these agreements, unlike business agreements, have not had the necessary ability to adapt to the context of the economic crisis.

Against this, the reform favours a new structure for collective negotiation in which companies and workers' representatives can regulate certain matters without being bound by agreements with a larger than company scope. Negotiation at company level is more suitable for establishing a framework of working conditions capable of adjusting to the fast changes in demand and accepting internal flexibility as an alternative to employment adjustments.

### **An increase in the number of company-level collective agreements has been observed, along with a lower incidence of provincial scope agreements.**

122. As has been indicated above, the preponderance of company-level collective negotiation has increased since the labour reform, to a large extent as a consequence of the emergence of new business negotiation units. Company-level agreements whose economic effects begin in 2013 and recorded until June represent 83.7% more agreements than in 2011 and affect almost 25% more workers. At the same time, a continuous slide can be seen in the ratio of workers affected by provincial scope sectoral agreements, whereas those affected by state and regional agreements are increasing. Workers in provincial sectoral agreements have gone from affecting almost two thirds of workers (63.2%) in 2011 to 54.5% in 2012 and 35.9% in January to June, 2013. This trend has been paralleled by the increase in those affected by regional sectoral agreements (from 5.7% in 2011 to 8.4% in 2012 and 17.1% in 2013 up to June) and national sectoral agreements (from 29.2% in 2011 to 34.8% in 2012 and 44.5% in 2013 to June).

These changes in the collective bargaining structure mentioned above explain in part the greater wage moderation observed since the labour reform.

### **More and more collective bargaining agreements have thrown off the fixation with purchasing power and have eliminated inflation-indexing clauses.**

123. Since the labour reform and the Agreement signed on January 25th, 2012, a gradual implementation of clauses relating wage increases to the year-on-year variation in GDP or the company's results can be seen instead of linking to the CPI. In the Collective Agreement for Department Stores, for example, wage increases are no longer linked to each year's CPI but advocates keeping the wage tables unchanged during the currency of the agreement and associates extraordinary compensations (not subject to consolidation) to the retail sales index at department stores. In addition, the same collective agreement allows the possibility of a temporary wage reduction in line with a fall in sales at a work centre.

Furthermore, it is more and more common to see company-level agreements that replace the former connection between wage increases and the CPI by references to EBITDA, "Service Revenues", economic profits, general absenteeism indices, productivity or sales, to cite just the most recent examples (please refer to the collective agreements for the Arcelor-Mittal Group, Santa Barbara Sistemas S.A., Vodafone, Gas Natural Fenosa, Martinez Loriente S.A., Galletas Siro, S.A., VIPS or CIATESA in the Appendix). On other occasions, it is half-year bonus that is linked to the EBITDA or is conditional on maintaining the improvements derived from the previous agreement on having a positive EBITDA. These changes are in addition to those collective agreements contemplating a double wage scale, with lower compensation for newly hired personnel (for instance, in the collective agreement for Nissan Barcelona).



Appendix 3 includes clauses taken from recent agreements illustrating the modernisation of collective bargaining.

**The number of collective agreements linking the organisation of work time to factors such as competitiveness, quality and productivity are on the rise.**

124. There are agreements that contribute to the increase in productivity by extending the maximum annual working hours (e.g. the collective agreement for the sector of fish and seafood preserves and semi-preserves, smoked, cooked, dried, prepared and salted fish and seafood, fish meal and oils) and others that have opted to increase the percentage of supplementary hours allowed under part-time employment contracts (e.g. the state-level collective agreement for the perfumery and related industries).

In addition, there are more and more collective agreements contemplating for the first time the irregular distribution of work time (e.g. the 2nd state-wide collective agreement for juvenile reform and protection of minors) or extending their scope of application, the number of hours or the time window in which employers can distribute working hours irregularly (e.g. the state-level collective agreements for the perfumery and related industries, for the meat processing industries, for the group covering leather goods, embossed leathers and similar materials, the general state-wide collective agreement for insurance and reinsurance entities and mutual societies for labour accidents, the collective agreement for the footwear industry, the collective agreement for the sector of fish and seafood preserves, semi-preserves, ...), to which are added other novel formulas for cost reductions in periods of low activity, such as the possibility to enjoy additional unpaid vacations (e.g. the collective agreement for Carlson Wagonlit España, S.L.U.).

**All new collective agreements include a system for classifying employees into professional groups.**

125. The collective agreements recorded after the entry into force of the labour reform do away with the rigid notion professional categories and establish a classification based on professional groups. For example, the 5th General Agreement for Construction, which has replaced the agreement's previous reference to the Labour Organisation of the Construction, Glass and Ceramics Industry from 1970 by a classification according to professional groups, thus doing away with an element in the work organisation that had been acting before and during the crisis as an obstacle to functional mobility.

## **IV.2. Preference for negotiated internal flexibility**

**Companies and workers are buying into the importance of internal flexibility.**

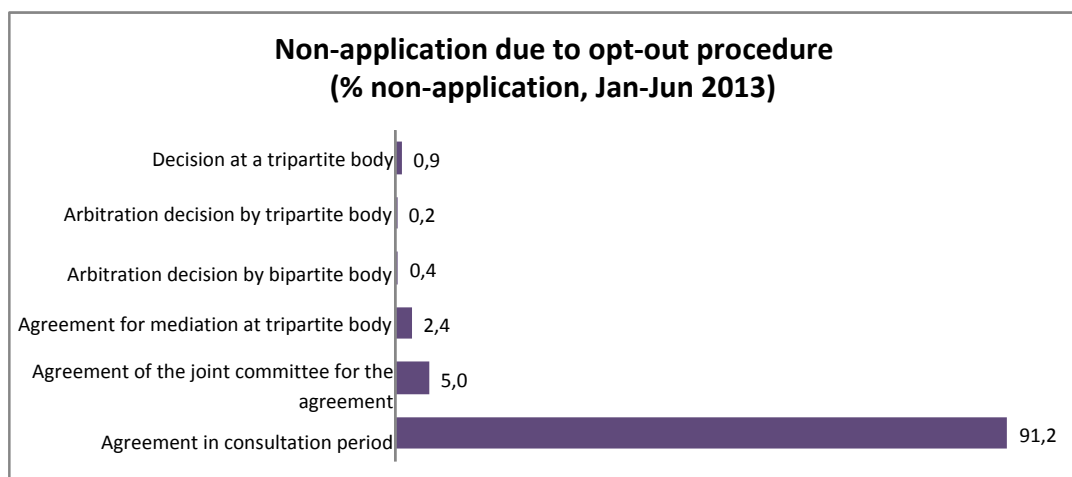
126. As already mentioned, following the labour reform an increase can be seen in the use of measures with collective effects as an alternative to redundancies, particularly measures for the reduction of working hours. Also outstanding is the large number of decisions not to apply certain collective agreements. With respect to these internal flexibility measures, it is extremely significant that a majority have been decisions adopted by consensus with the workers' representatives. This highlights a gradual acceptance of the importance of these measures by both the companies and their workforces for the purposes of achieving employment adjustments that are economically more efficient and socially less of a burden.

**Most of the employment regulation measures continue to be adopted by consensus.**

127. As has already been analysed, in the period from March 2012, to February 2013, 89.7% of workers have been affected by temporary measures implemented by consensus. This percentage is lower than that for twelve months earlier (90.5%) but greater than the degree of consensus in other periods and, in any case, very high.

**Practically all of the non-application decisions were adopted by agreement and often as a clear alternative to employment adjustments.**

128. The analysis of the provisional data<sup>56</sup> on decisions not to apply collective agreements through the non-application procedure shows that the vast majority (98.6%) of these were adopted by consensus in 2013 and 91.2%, representing 86.4% of the workers affected, during the consultation period. Only in 21 cases was it necessary to resort to arbitration (1.5%) and only 13 (0.9%) corresponded to a decision adopted within a tripartite body.



Source: MEYSS

129. In quite a few cases, the consensus was reached “straight off” regarding the need to opt out of the application of an agreement, as a first reaction to a difficult situation. However, the agreement is often reached when the deterioration of the business situation is greater and opting out of the agreement seems to be a means to avoid or reduce dismissals already announced by the company. This is consistent with Royal Decree 1,483/2012 on employment regulation measures, which expressly includes the non-application of the conditions stipulated in the collective agreement among the measures proposed as an alternative to collective dismissal.

In addition, the suggestion to opt out of the agreement normally comes from the company, although it is more and more often the workers themselves or their representatives who are the first to mention this possibility or put it up for consideration.

**The labour reform generates a new dynamic during the consultation period regarding collective dismissal, intensifying the use of alternative internal flexibility measures.**

130. Collective dismissals continue to be implemented, to a large extent, through agreements. Three quarters of the total number of workers affected by redundancies (75.4% in the period from March 2012, to February 2013) were affected by measures adopted by consensus. In addition, as has been said above, in the period following the reform, the number of workers affected by collective dismissals has been tailing off, partly due to the fact that the redundancy negotiations no longer focus time and again, as happened in the past, on the number of workers affected and the amount of their compensation. On the contrary, as a consequence of the reforms introduced, the negotiators more commonly discuss alternative internal flexibility measures instead of dismissal: the suspension of contracts and reduction of working hours, internal relocation, functional and geographic mobility, a substantial alteration in the working conditions or the non-application of the collective bargaining agreement, among others. By way of example, please refer to the measures agreed within the framework of the collective dismissal processes in the companies listed in the following table:

<sup>56</sup> The definitive data for 2013 will be published in September and this information will then be published regularly. This analysis has been possible within the framework of the improvements made in the statistics on agreements.

Activity Sector	Negotiated Measures
INSURANCE Companies between 1,000 and 2,000 workers	*Flexibility of working hours and the possibility of changing part-time into full-time. *Irregular distribution of the working day of 7% per year. *Wage reduction of 2.1% to 15% according to the compensation band.
INSURANCE Company between 500 and 1,000 workers	*Wage cut (reduction of 2012 bonus, reduction of health insurance, elimination of food assistance and seniority pay). *Commitment not to outsource tasks. *Commitment to negotiation of new agreement. *Simplification of wage levels. *Reductions of working day.
BANKING Company of more than 2,000 workers	*Geographical mobility measures. *Stops contributions to pension plans for 2 years. *Wage reduction by removing certain items (assistance for health insurance, etc.).
ENGINEERING Company of between 1,000 y 2,000 workers	*Wage reduction of between 3% and 12% depending on compensation band. *Measures for internal relocation of those initially affected.
PUBLIC WORKS Company of fewer than 250 workers	*Wage reduction: 5% in general, except for groups paying at level 1 and 2, for whom it is 25%. *Overtime always compensated with days off and not paid. *Contract suspensions.
POSTAL AND COURIER SERVICES Company between 250 and 500 workers	*Functional mobility within the same place of work *Wage reduction of between 2% and 16% according to payment band, for 2 years, with guarantee of recovering 100% in the third year.
BANKING Company of more than 2,000 workers	*Measures of geographical mobility with compensation agreed according to the distance. *Removal of variable remuneration in 2013, and modification in 2014 y 2015 (reduction of 1%). *Reduction of the bonus under agreement (withholding of variable amount and reduction of 60% of the fixed amount). *No three-year increments. *Reduction of contributions to retirement plans (2014, 50% and 2015, 70%).
POSTAL AND COURIER SERVICES Company of between 1,000 and 2,000 workers	*Functional mobility measures (re-assignment to other jobs of those initially affected); possibility of relocation with shorter working hours; training courses for this purpose.
CHEMICALS Company of between 1,000 and 2,000 workers	*Functional mobility measures without extra payment for reassignment. *Bonuses for provision of services are now paid for day actually worked and not months. *Permits and leave are now regulated by the General Agreement for the Chemical Industry to reduce absenteeism.
CONSTRUCTION Company of fewer than 250 workers	*Functional modification measures. Commitment to negotiation of functional polyvalency. *Geographical mobility (possibility of moving abroad for 4 months with job reserved). *Commitment to negotiate a change in the wage bands.
TELECOMMUNICATIONS Company with more than 2,000 workers	*Measures are agreed that allow the company to modify shifts.
BANKING Company with more than 2,000 workers	*Geographical mobility measures with compensation agreed according to distance.
BANKING Company of more than 2,000 workers	*Geographical mobility measures of the commercial network with compensation agreed according to distance. *Suspension of contributions to pension funds. *Suppression of the variable remuneration in 2013 and 2014. *Measures for suspending contracts: for 2 years with payment for unemployment benefit, with 25% of gross wages.
CONSTRUCTION Company with fewer than 250 workers	*Wage reduction of between 0% and 20%, according to the compensation band. * Contract suspensions
SUPPLIES Company of between 1,000 and 2,000 workers	*Functional and geographical mobility measures agreed. *Changes to working hours and shift work system.

131. The use of this kind of measure to maintain or even increase the level of employment is becoming more and more common and is promoted within the collective negotiation itself. Collective agreements are specifying ever more often that the companies affected will give priority to internal flexibility measures in their staffing adjustment processes (for example, the state-wide Collective agreement for department stores, the 2nd Collective agreement for the Railway Infrastructure Administrator (ADIF), the 20th Collective agreement for cooperative credit entities) or else an undertaking is given “to use redundancy procedures as a last resort” (for instance, the 17th General collective agreement for the chemical industry).

### IV.3. Regional conflict resolution

#### **Regional conflict resolution as an alternative to litigation.**

132. The labour reforms in the last three years have encourage the use of regional resolution methods for labour conflicts (mediation, arbitration) in company reorganisation processes, as an alternative to resorting to the courts.

The importance of the regional resolution of labour conflicts lies in the fact that the parties involved are the ones participating in the self-regulation of the conflict through the terms agreed by them in the corresponding national or regional agreement. This way of channelling the conflict is also characterised, by its speed. Thus, by way of example, the duration of a mediation process with the Interconfederal Mediation and Arbitration Service (SIMA)<sup>57</sup> regarding substantial modification measures, suspension of contracts or reduction of working hours in only two months for a first resolution bringing the internal flexibility conflict to an end. Thus, if the consultation period begins on 23 April, 2013, and concludes without agreement; the company notifies its business decision on 22 May; the agreement bringing the conflict to an end can be signed on 25 June.

**Recourse to this regional resolution has increased since the approval of the 5th Agreement signed by the social agents for the Regional Resolution of Labour Conflicts (ASAC), particularly in business reorganisation processes.**

133. The 5th Agreement signed by the social agents for the Regional Resolution of Labour Conflicts (ASAC) (in force since 23 February, 2012), by ordering its general and direct application in all sectors, has increased dramatically the recourse to this regional solution through the SIMA. Since the entry into force of the ASAC (practically coinciding with the entry into force of the labour reform) and up to May 31st, 2013, a total of 94 case files have been processed from companies and sectors that had not subscribed the previous Agreement for Extrajudicial Conflict Resolution (ASEC).

Last year was marked by a substantial increase in the number of reorganisation procedures already representing 32% of the total of the procedures handled by the SIMA. It should be noted that each of the 17 Autonomous Regions has its own body for conflict resolution, and the remit of the SIMA deals only with those conflicts exceeding the territorial scope of an Autonomous Region.

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<sup>57</sup> The SIMA is a state-level public-sector foundation under the aegis of the Spanish Ministry of Employment and Social Security (MEYSS), comprising an equal number of representatives from each of the Trade Unions and Employers' Organisations with the greatest degree of representativeness at state level (namely the CEOE, CEPYME, CCOO and UGT).

	2011	2012	Annual change
<b>Restructuring processes</b>	<b>48</b>	<b>110</b>	<b>129%</b>
Trade union rights	12	21	75%
Wages	84	124	48%
Working hours	30	25	-17%
Other	69	68	-1%
Total	243	348	43%

*Source: Fundación SIMA*

In 2013, on the other hand, the SIMA has processed a total of 324 proceedings (322 for mediation and 2 for arbitration) in the first two quarters versus the 146 processed during the first half of 2012. These figures represent an increase of 122% with respect to the same period of the previous year. The 324 procedures affected a total of 2,231,714 workers; of these, 297 corresponded to company conflicts affecting 696,664 workers, and 27 to conflicts of a sectoral level that affected 1,535,050 workers. The resolutions reached in the first half of 2013 resolved conflicts affecting 400,468 workers, a figure that exceeds by seven percentage points the workers affected by resolutions in the first half of 2012 (375,200).

**The contents of the resolutions reached through regional conflict resolution are consistent with the aims of the labour reform**

134.A change consistent with the aims of the 2012 labour reform can be seen in the contents of the resolutions reached through the SIMA. Thus, in the year prior to the reform, the resolutions regarding collective dismissal conflicts included different measures such as early retirements, retirement, and termination with compensation at around 35 days' wages per year worked. At the moment, however, the resolutions reflect compensation mostly between 22 and 35 days' wages per year of service, although the majority are around 30 days with a limitation regarding the maximum number of months.

On the other hand, in conflicts relating to internal flexibility measures, the resolution include the establishment of percentages for the reduction of the ordinary working hours, the elimination of free days for personal business, leave for longer than indicated in the agreement or overtime, or the temporary suspension of contracts. With regard to wages, the resolutions opt to include measures like the elimination of wage supplements, the reduction of the percentage or the elimination of the short-term sick leave supplements or the limitations on wages paid in kind. Finally, in the conflicts relating to the non-application of agreements ("opting out"), the resolutions mainly include wage reductions of between 5% and 30% of the annual compensation depending on the amount of the wage.

# APPENDICES

## Appendix 1: Contracts for domestic workers by contract type.

### TOTAL CONTRACTS REGISTERED FOR DOMESTIC WORKERS SINCE JAN 2010

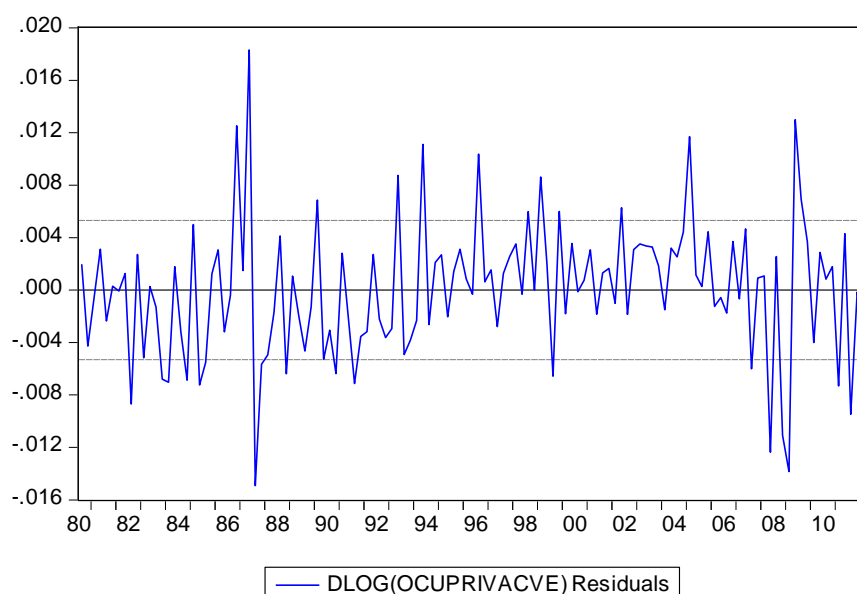
	TOTAL CONTRACTS	TOTAL PERMANENT CONTRACTS									TEMPORARY CONTRACTS		
		TOTAL PERM.	START. PERM.	TOTAL CONV. PERM	PERMANENT CONTRACTS BY WORKING HOURS								
					FULL DAY		PART TIME		PERMANENT OCCASIONAL				
					START. PERM.	TOTAL CONV. PERM	START. PERM.	TOTAL CONV. PERM	START. PERM.	TOTAL CONV. PERM	TOTAL TEMP.	FULL DAY	PART TIME
JANUARY 2010	543	67	60	7	53	7	7	0	0	0	476	467	9
FEBRUARY 2010	663	102	87	15	77	14	10	1	0	0	561	534	27
MARCH 2010	732	105	92	13	89	11	3	2	0	0	627	600	27
APRIL 2010	595	87	76	11	69	11	7	0	0	0	508	486	22
MAY 2010	599	84	68	16	59	15	9	1	0	0	515	499	16
JUNE 2010	548	63	55	8	48	8	7	0	0	0	485	467	18
JULY 2010	632	77	64	13	57	12	7	1	0	0	555	533	22
AUGUST 2010	470	44	39	5	37	5	2	0	0	0	426	411	15
SEPTEMBER 2010	619	77	67	10	60	7	7	3	0	0	542	517	25
OCTOBER 2010	682	93	76	17	71	17	5	0	0	0	589	571	18
NOVEMBER 2010	723	68	57	11	52	10	5	1	0	0	655	633	22
DECEMBER 2010	531	78	72	6	64	5	8	1	0	0	453	437	16
JANUARY 2011	497	68	57	11	52	10	5	1	0	0	429	410	19
FEBRUARY 2011	700	108	93	15	82	14	11	1	0	0	592	564	28
MARCH 2011	764	91	80	11	70	10	9	1	1	0	673	639	34
APRIL 2011	593	74	61	13	52	12	9	1	0	0	519	493	26
MAY 2011	679	81	69	12	66	11	3	1	0	0	596	576	22
JUNE 2011	618	89	72	17	67	17	5	0	0	0	529	512	17
JULY 2011	662	68	61	7	53	7	8	0	0	0	594	568	26
AUGUST 2011	499	54	49	5	45	5	4	0	0	0	445	429	16
SEPTEMBER 2011	627	79	62	17	54	14	8	3	0	0	548	526	22
OCTOBER 2011	720	86	72	14	62	13	10	1	0	0	634	596	38
NOVEMBER 2011	710	80	67	13	62	13	5	0	0	0	630	607	23
DECEMBER 2011	574	88	74	14	61	14	13	0	0	0	486	452	34
JANUARY 2012	4,214	2,709	2,699	10	1,313	10	1,385	0	1	0	1,505	883	622
FEBRUARY 2012	32,102	22,559	22,552	7	11,690	3	10,862	4	0	0	9,543	4,930	4,613
MARCH 2012	29,402	19,818	19,812	6	8,657	5	11,155	1	0	0	9,584	4,426	5,158
APRIL 2012	36,661	25,749	25,739	10	11,517	9	14,222	1	0	0	10,912	4,966	5,946
MAY 2012	44,819	31,465	31,446	19	12,028	17	19,418	2	0	0	13,354	5,474	7,880
JUNE 2012	105,304	78,334	78,317	17	23,348	13	54,969	4	0	0	26,970	7,827	19,143
JULY 2012	178,438	141,616	141,602	14	67,319	12	74,283	2	0	0	36,822	9,985	26,837
AUGUST 2012	23,445	13,319	13,307	12	3,545	7	9,762	5	0	0	10,126	3,463	6,663
SEPTEMBER 2012	34,436	20,410	20,392	18	4,755	13	15,637	5	0	0	14,026	3,840	10,186
OCTOBER 2012	39,257	23,078	23,064	24	5,526	14	17,528	10	0	0	16,179	4,372	11,807
NOVEMBER 2012	26,033	14,870	14,856	14	4,160	10	10,695	4	1	0	11,163	3,489	7,674
DECEMBER 2012	20,737	11,522	11,503	19	3,951	5	7,552	14	0	0	9,215	3,533	5,682
JANUARY 2013	17,906	9,986	9,957	29	3,713	11	6,244	18	0	0	7,920	3,248	4,672
FEBRUARY 2013	20,912	11,495	11,463	32	4,582	11	6,881	21	0	0	9,417	3,984	5,433
MARCH 2013	19,848	10,706	10,683	23	4,652	13	6,031	10	0	0	9,142	4,016	5,126
APRIL 2013	17,384	9,474	9,450	24	4,067	11	5,383	13	0	0	7,910	3,488	4,422
MAY 2013	16,790	8,894	8,876	18	3,879	7	4,997	11	0	0	7,896	3,555	4,341
JUNE 2013	16,255	8,276	8,247	29	3,656	12	4,591	17	0	0	7,979	3,739	4,240

## Appendix 2: Complementary information for Table 2

<i>LIST OF VARIABLES USED</i>	
PIB	Gross Domestic Product (GDP)
OcupaCVE	De-seasonalised occupied workers
OcupaCVEINE	De-seasonalised occupied workers according to the National Statistics Institute (INE)
OcuPriva	Privately occupied workers
OcuPrivaCVE	De-seasonalised privately occupied workers
AsalatCVE	De-seasonalised wage-earners
AsalPriva	Private wage-earners
AsaPrivaCVE	De-seasonalised private wage-earners

### 1. Equation for de-seasonalised private employment

Dependent Variable: DLOG(OCUPRIVACVE)				
Method: Least Squares				
Date: 05/21/13 Time: 14:00				
Sample (adjusted): 1Q1980 1Q2012				
Included observations: 127 after adjustments				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-0.002804	0.000782	-3.585014	0.0005
DLOG(PIB)	0.410218	0.074090	5.536749	0.0000
DLOG(PIB(-1))	0.251676	0.079860	3.151460	0.0020
DLOG(OCUPRIVACVE(-1))	0.544436	0.072407	7.519093	0.0000
R-squared	0.760656	Mean dependent var		0.002638
Adjusted R-squared	0.754818	S.D. dependent var		0.010704
S.E. of regression	0.005300	Akaike info criterion		-7.611247
Sum squared resid	0.003455	Schwarz criterion		-7.521666
Log likelihood	487.3142	Hannan-Quinn criter.		-7.574851
F-statistic	130.3013	Durbin-Watson stat		2.203372
Prob(F-statistic)	0.000000			





## 2. Equation for de-seasonalised private wage-earners

Dependent Variable: DLOG(ASAPRIVACVE)

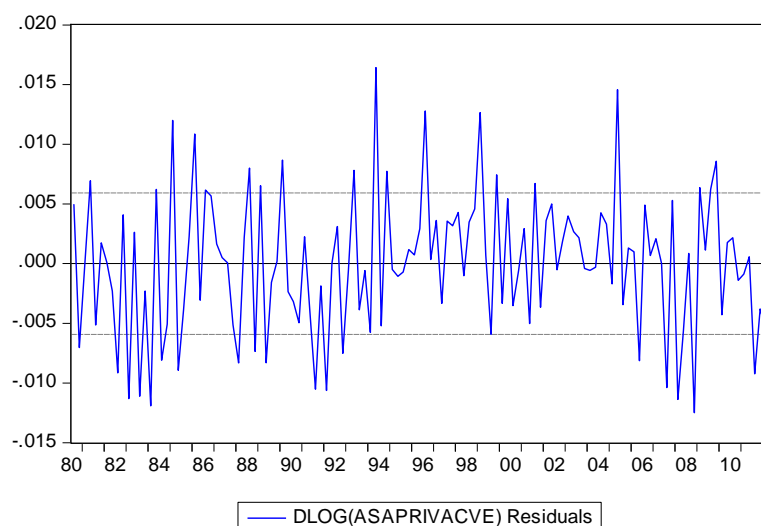
Method: Least Squares

Date: 05/21/13 Time: 14:12

Sample (adjusted): 1980Q3 2012Q1

Included observations: 127 after adjustments

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-0.002132	0.000831	-2.564422	0.0115
DLOG(PIB)	0.409849	0.081615	5.021708	0.0000
DLOG(PIB(-1))	0.186614	0.087754	2.126544	0.0355
DLOG(ASAPRIVACVE(-1))	0.640647	0.067346	9.512828	0.0000
R-squared	0.782026	Mean dependent var		0.004108
Adjusted R-squared	0.776710	S.D. dependent var		0.012550
S.E. of regression	0.005931	Akaike info criterion		-7.386406
Sum squared resid	0.004326	Schwarz criterion		-7.296825
Log likelihood	473.0368	Hannan-Quinn criter.		-7.350010
F-statistic	147.0958	Durbin-Watson stat		2.397573
Prob(F-statistic)	0.000000			





### Appendix 3: Examples of clauses in recently-signed collective agreements

#### **STATE-WIDE COLLECTIVE AGREEMENT FOR DEPARTMENT STORES**

(B.O.E. n° 96 dated 22 April, 2013)

##### **Working hours**

###### Article 24. *Handling of Wages.*

The Wage Tables in article 22 will remain unchanged during the currency of the present agreement, without prejudice to any additional compensation on the basis of the mean consumption data as given by the retail sales index for Department Stores.

Notwithstanding, depending on annual consumption for large department stores measured as the Retail Sales Index at Department Stores, General figure, after deduction of the effect of inflation, reported by the National Statistics Institute (INE) monthly and annually to the Ministry of the Economy, the following amounts will be applied, where appropriate, once the details corresponding to previous year are known.

During the currency of the agreement, if the retail sales index at Department Stores, General figure, at constant prices exceeds the 2010 index by up to 2 points, within the first quarter of the following year those workers who had been registered with the company throughout the previous year and are still registered at the moment of payment will receive an extraordinary payment not subject to consolidation in an amount equal to 0.5%, calculated on their basic wage and depending on the worker's working hours.

If it should be between two and four points, the percentage of the payment shall be 1% and, if it were four points or higher, then the percentage of the payment shall be 1.5%, calculated on the terms indicated above.

The Joint Committee shall ensure the fulfilment of these adaptations each year.

###### III. Resolution of crisis situations through internal flexibility.

Companies with work centres in crisis: The preceding undertaking shall not extend to those companies affected by the grounds justifying the adoption of other measures regarding employment.

The foregoing notwithstanding, in order to avoid measures for the reduction of structural employment, or the non-application of the agreement pursuant to article 82.3 of the ET, at those centres where there have been persistent situations of a decline in sales (continuous annual fall of 9% on average in the three preceding years) or similar falls in results over the same period in the said area, the companies will preferably apply internal flexibility measures consisting in first place in functional or geographic mobility such as a temporary or definitive change of centre in order to cover the needs at other work centres within a perimeter of no more than fifty kilometres from the worker's home when living outside the metropolitan area.

For these sole purposes, a persistent reduction in the level of sales, or of results, will be deemed to be that contemplated at the centre level in the preceding paragraph and calculated for comparable surfaces.

Only in second place will it be possible to apply at such centres a temporary reduction in the basic wages in the agreement of up to 5 per cent, and for one year at the most, with the possibility of extension for the same period following the procedure established herein, provided that the adoption of this measure is used to preserve the greatest amount of employment possible, although previously the internal flexibility options foreseen in this Sectoral Agreement must be exhausted.

The application of this measure, which shall necessarily be temporary in nature and based on the provisions contained at the start of the first paragraph of number 4 in article 41 of the Workers' Statute (ET), will be effected following the procedure foreseen in article 41.4 and 5 of the Workers' Statute and will be justified through the demonstration of the existence of the grounds contemplated.

In order to preserve the necessary homogeneity of the measure at the company level, the competent body shall in all cases be the Inter-Centres Committee.

Also prior to affecting employment in the short term or structurally, additional internal flexibility measures must be adopted, such as the modification of working conditions greater than those contemplated as the minimum in the present collective agreement.

Discrepancies in the application of the measures described so far, since they derive from an extraordinary procedure for application of the Agreement originating in the same, shall necessarily be resolved by means of the procedures foreseen in article 86 and concordant articles of this Agreement.

In any case, companies may resort to interim measures on employment or those contemplated in article 82.3 of the Workers' Statute, when the circumstances described therein exist, following the procedure foreseen and developed, pursuant to the provisions contained in article 83.2 of the same, in Chapter II of Part IV of this Agreement.

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#### **5th FRAMEWORK AGREEMENT FOR THE ARCELORMITTAL GROUP**

(December, 2012)

With respect to the fixed wage increases agreed, 2013 would remain frozen; an increase of 0.5% for 2014 and 2% for 2015 will be applied in addition to 1% depending on results (EBIT) for each of the last two years of the agreement.

With regard to variable bonuses, these will be reduced by 8% in the first year and by 8.5% for the other two years remaining and, if the results were improved, it might be possible to reach and collect 125% of the bonus taking EBITDA as the reference.

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#### **4th COLLECTIVE AGREEMENT FOR SANTA BÁRBARA SISTEMAS, SA.**

(B.O.E. n° 30 dated 4 February, 2013)

Special productivity premium.

It is agreed that, for 2012 and 2013, the wage increase is as follows:

2012 and 2013:

The signatories agree that, during the two years of currency of the present Collective Agreement, there will be no wage review whatsoever, with the values reflected in the definitive wage tables corresponding to 2011 (Appendix I) remaining unchanged.

During the first quarter of 2014, the definitive wage table for 2011 that will be used as the basis for the wage increases in 2014 may be updated in accordance with the following conditions:

- (i) As an essential prior requisite, the Company must have achieved a profit during 2013.
- (ii) The tables for 2011 will be increased by up to 0.5% provided that there is an improvement in the general absenteeism indices applicable to the Company in 2013 compared to 2012.
- (iii) The tables for 2011 will be increased by up to 0.5% provided that there is an improvement in the general productivity indices applicable to the Company in 2013 compared to 2012.

For the application of points (ii) and (iii), the following application table is approved:

Absenteeism		Productivity	
Percentage improvement	Percentage wage increase	Percentage improvement	Percentage wage increase
-1	+0.5	+1	+0.5
-0.8	+0.4	+0.8	+0.4
-0.6	+0.3	+0.6	+0.3
-0.4	+0.2	+0.4	+0.2
-0.2	+0.1	+0.2	+0.1
0	0	0	0

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**COLLECTIVE AGREEMENT FOR VODAFONE SPAIN, SAU**

(B.O.E. n° 123 dated 23 May, 2012)

Article 10. *Minimum review.*

The signatories agree that the company will review the wages of all its employees affected by this agreement with a wage (fixed wage plus variable bonus for 100% achievement of targets) of less than € 43.059.58 by the minimum amount resulting from application according to the criteria defined in the table transcribed in the present article. This wage limit will be updated on a yearly basis with the minimum revision agreed herein.

However, the signatories agree that there will be no wage revision whatsoever in the Company during the first year of currency of the Agreement.

Should the agreement be extended, the Company will revise the wages referred to in the first paragraph of this article, provided that certain conditions relating to the EBITDA obtained during the financial year preceding the corresponding to wage review are complied with.

In this sense, depending on the degree of fulfilment of the targets budgeted, the wage increases will be implemented in accordance with the table below.

EBITDA achieved	% Wage Increase in July, 2013	Recovery of savings measures in FY 12-13		
		10% Recovery Reduction in STIP	4% Recovery Reduction in incentives	Recovery Temporary Suspension Days
100.20%	0.0%	100%	100%	0%
100.30%	0.5%	100%	100%	0%
100.50%	0.5%	100%	100%	50%
100.60%	1.0%	100%	100%	50%

In addition, should the targets set out in the preceding table be achieved, the savings arising out of those measures adopted for the 2012-2013 financial year may be reverted in favour of all employees having regard for the escalation foreseen therein.

## **COLLECTIVE AGREEMENT FOR GAS NATURAL FENOSA**

(B.O.E. n° 124 dated May 24th, 2013)

### Article 52. Updating of compensation.

General increases.

#### **2012.**

a. For 2012, the 2011 Wage Tables in the Collective Agreement for Gas Natural 2010-2011 and the 3rd Collective Agreement for the Unión Fenosa Group are increased by 1%. In consequence, through its application, effects and retroactivity from 1 January, 2012, the table of wage levels for affected personnel are as detailed in appendices XII and XIII to the present Agreement.

Furthermore, this increase will be applied to the Professional Development Supplement regulated in article 41 and the concepts regulated in article 43 of the present Agreement, which are classed as reviewable.

b. In addition, for active personnel, an extra increase will be included this year for Productivity, not to be consolidated or included for pension purposes, consisting in:

· If the EBITDA for 2012 is 100% or more of the amount budgeted in the Company's Budget for this year, the increase will be 0.5% of the Wage Level, Professional Development Supplement, Homologation Supplement, and the concepts indicated in Appendix XIX, applied to their values in 2011. This increase is not subject to consolidation and is not included in calculations for determining the ordinary contribution to the Pension Plan.

The individual amount of the increase resulting from productivity will be paid as a lump sum in the month following the definitive approval of the Company's result for the year.

#### **2013 and 2014.**

a. With effect from 1 January each year, the wage tables for 2013 and 2014 are those regulated in appendices XIV and XV, namely the result of increasing by 0.5% the economic values in the wage table for the previous year, with the adaptations necessary in 2013 as a consequence of the new professional classifications.

b. In addition, for active personnel, a Productivity increase, not to be consolidated or included for pension purposes, will be applied in each of the years indicated, consisting in:

If the EBITDA for each of the years indicated is 100% or more of the amount budgeted in the Company's Budget for each year, the increase for 2013 will be 0.5% of the Wage Level, Professional Development Supplement, Homologation Supplement, and the concepts indicated in Appendix XIX, applied to their values in 2012 and, for 2014, it will be 0.5% of the Wage Level, Professional Development Supplement, Homologation Supplement, and the concepts indicated in Appendix XIX, applied to their values in 2013. This increase is not subject to consolidation and is not included in calculations for determining the ordinary contribution to the Pension Plan.

The individual amount of the increase resulting from productivity will be paid as a lump sum in the month following the definitive approval of the Company's result for the year.

#### **2015.**

a. The wage table for 2015 is that regulated in Appendix XVI, the result of increasing the wage table for 2014 by 0.7%.

b. In addition, for active personnel, a Productivity increase, not to be consolidated or included for pension purposes, will be applied for this year, consisting in:

If the EBITDA for 2015 is 100% or more of the amount budgeted in the Company's Budget for that year, the increase will be 0.6% of the Wage Level, Professional Development Supplement, Homologation Supplement, applied to their values in 2014. This increase is not subject to consolidation and is not included in calculations for determining the ordinary contribution to the Pension Plan.

The individual amount of the increase resulting from productivity will be paid as a lump sum in the month following the definitive approval of the Company's result for the year.

Conditional additional increase: A conditional additional increase is agreed, for application solely and exclusively for 2015; it will acquire legal effectiveness if the EBITDA for each of the 2012, 2013, 2014 and 2015 financial years is equal to or greater than 100% of the EBITDA budgeted for each of the said years.

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## **COLLECTIVE AGREEMENT FOR THE MARTINEZ LORIENTE S.A. COMPANY 2013-2016**

### *Article 72. Wage increases.*

#### Wage review clause for 2013-2014-2015-2016.

Each year, the wage increases indicated in the following table corresponding to the basic wage will be conditional on the increase in kilos sold and the maintenance of the euro/kg rate, as well as annual profits, except for those economic concepts and bonuses that expressly maintain their amount during the currency of the present Agreement.

Year	Increase in kilos over the previous year	Wage increase	€/kg rate (= or less)
2013	5%	0.70%	0.4142
	8%	1%	0.4142
	10%	1.50%	0.4142
2014	5%	1.30%	0.4142
	8%	3%	0.4142
	10%	3.50%	0.4142
2015	5%	2.00%	0.4142
	8%	4%	0.4142
	10%	4.50%	0.4142
2016	5%	2.50%	0.4142
	8%	5%	0.4142
	10%	5.50%	0.4142

Any amounts to be paid will be settled up, if possible, in the payroll for February in the following year and at the latest in the month of April of the following year under the concept of back pay.

## **COLLECTIVE AGREEMENT FOR GALLETAS SIRO, SA**

(B.O.E. n° 25 dated 29 January, 2013)

Article 37. *Annual increases (all personnel).*

2) Variable Increase: link to the percentage of fulfilment of the Ebitda (\*) target set for each year to be applied to the tables for the following year.

Degree of achievement of Ebitda target	% Δ (non-accumulable) Wage Table 2013 and 2014 on Ebitda Target for 2012 and 2013 respectively	% Δ (non-accumulable) Wage Table 2015, on Ebitda Target for 2014
From 80% to 85%	0.30%	0.60%
From 85.01% to 90%	0.35%	0.70%
From 90.1% to 95%	0.43%	0.85%
From 95.1% to 100%	0.50%	1%

(\*) Ebitda is understood to be the Total Ebitda at the close of the consolidated accounting financial year corresponding to Galletas Siro.

## **2nd COLLECTIVE AGREEMENT FOR THE VIPS GROUP OF COMPANIES**

(B.O.E. n° 22 dated 25 January, 2013)

Article 28. *Determination of wages for 2013 and 2014.*

- From 1 January, 2013, the same amounts of RMG currently existing (Base 2012) will be established throughout all the currency of the Agreement, without any revision whatsoever until 1 January, 2015.
- In order to adapt the treatment of wages to the Group's effective economic situation, an undertaking is assumed to pay a lump sum, not to be consolidated, to the collaborators in Professional Groups IV, III, II and I who were registered with the Company on 1 January, 2013, except for management personnel, and remained registered at the moment of the payment, which will take place, if appropriate, in the first quarter of 2014 and 2015 in an amount linear and proportional to the hours worked by each worker, provided that the following circumstances occur:

That the EBITDA and Profits After Tax (PAT) in the respective year 2013 and 2014 achieve the following results: EBITDA 25 million and PAT 3 million. The total amount to be distributed will be 25% of the PAT.

Similarly, and so as not to affect employment, an adaptation of wages is established in view of the evolution of the Group's results in 2013, in such a way that a fall in the same does not automatically imply a loss of employment by adjusting the wages in the Agreement to the Group's results. Thus, in 2014, if the EBITDA for 2013 does not reach 21 million in the year, then from 1 January, 2014, the RMG would suffer a temporary reduction of 2% until 31 December, 2014. Therefore, on 1 January, 2015, the currently existing RMG values will be recovered (Base 2012). Furthermore, if, after application of the temporary reduction, the figure of 21 million in EBITDA were achieved in 2014, the Group will pay the amount discounted in a single payment during the first quarter of the following year.

## **COLLECTIVE AGREEMENT FOR THE CIATESA GROUP**

(B.O.E. n° 209 dated 31 August, 2012)

- Bonus payment based on profits: With respect to 2013 and 2014, a one-off bonus payment based on profits and not to be consolidated will be paid in the form of 0.5% of the total payroll provided that the Company achieves the EBITDA budgeted plus 1%.

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## **COLLECTIVE AGREEMENT FOR THE SECTOR OF FISH AND SEAFOOD PRESERVES AND SEMI-PRESERVES, SMOKED, COOKED, DRIED, PREPARED AND SALTED FISH AND SEAFOOD, FISH MEAL AND OILS**

(B.O.E. n° 244 dated 10 October, 2012)

### **Working hours and rest periods**

#### Article 26. *Working hours*

1. It is agreed to establish the annual number of working hours for the years covered by this agreement as follows:
  - a. 2011: 1,722 hours.
  - b. 2012: 1,722 hours.
  - c. 2013: 1,726 hours.
  - d. 2014: 1,730 hours.

It is guaranteed that both the reductions in working hours agreed previously or any subsequent ones will affect all workers regardless of their contract type.

Furthermore, it is agreed that, should there be any more beneficial modification for workers on this subject during the currency of this agreement, either through legislation or else through a general agreement between business confederations and trade unions, then this modification shall be automatically applied to the present agreement and incorporated herein.

2. As a flexibility measure at each work centre, and as an instrument for improving business competitiveness and better adaptation to economic cycles, the irregular distribution of working hours may reach up to 7% following agreement with the workers' legal representatives.

If there is no legal representation for workers, then they may opt to attribute their representation for the negotiation of the agreement, at their discretion, to a committee of up to a maximum of three members comprising workers from the company itself democratically elected or to a committee with the same number of members designated, in accordance with their degree of representativeness, by the trade unions most representative of the sector to which the company belongs and legally entitled to form part of the collective agreement negotiation committee.

In any case, the irregular distribution of working hours must respect the maximum daily working hours of 9 hours, the rest periods between one work day and the next, as well as the weekly rest periods.

## **STATE-WIDE COLLECTIVE AGREEMENT FOR THE PERFUMERY AND RELATED INDUSTRIES**

(B.O.E. n° 242 dated 8 October, 2012)

### **Working hours**

#### Article 42. Working hours. *Work calendar.*

Due to work-related needs and in order to be able to react more flexibly to market demands, the Company may change the distribution of up to 100 hours per annum, which shall always be freely available to the same, for a work centre or any section of the same or for a particular worker, by giving a minimum of five days' prior notice to the Representatives of the Workers and the persons affected, in accordance with the following regulations:

Use: Flexibility may be used by bringing forward the start or delaying the end of the ordinary working day by a maximum of two hours, or else it may be used, in part, during a maximum of five Saturdays, or free days per year, in those companies or departments working shifts (40 hours per annum). The needs of the service will be covered as far as possible with voluntary personnel (up to the limit of 100 hours) and, for those cases where there are no volunteers, the designation of the employees who must work will be effected by the Company using criteria of rotation and familiarity with the position.

The use of the flexibility hours on Saturdays or free days over and above the five days agreed will require the agreement of the workers' representatives.

Compensation: The compensation for the use of the flexibility hours on Saturdays or free days will be mixed, at a ratio of 1.25 hours for each hour worked with one hour being compensated as remunerated rest time and the 0.25 remaining will be compensated in cash. The moment of enjoyment of the rest time will be established, where possible, in the three months following, by means of an agreement between the worker and the company, in all cases respecting the needs of the service.

Should the company make use of the fifth Saturday or free day and no agreement is reached between both parties regarding the date for enjoyment of the rest period, the worker's option shall prevail.

With a view to achieving the effective fulfilment of the annual working hours and their daily application, in those sections, departments and work areas where, for organisational reasons, certain workers have to extend their working hours at the Company's initiative and with its express authorisation, the Company and the workers affected shall agree to regulate the rules, limits and forms of compensation and its use.

Any modification exceeding the terms agreed herein shall imply the application of the provisions contained in article 41 of the E.T., with application of the provisions contained in Chapter XVI of the present Agreement for mediation and arbitration.

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## **STATE-WIDE COLLECTIVE AGREEMENT FOR THE PERFUMERY SECTOR AND RELATED BUSINESSES**

(B.O.E. n° 30 dated 4 February, 2013)

### **One. Article 12.2. Part-time contract.**

Workers will be deemed to have been hired part-time when the services are rendered during a number of hours per day, week, month or year that is less than that considered normal in the Company for the said periods of time. Workers contracted part-time will have the same rights and identical treatment in terms of labour relations as the other workers on the staff, except for the limitations deriving from the nature and duration of their contracts.

Part-time contracts must necessarily be formalised in writing, duly reflecting the ordinary number of work hours per day, week, month or year, as well as their daily, weekly, monthly or annual distribution, unless the distribution of the working time for workers with a part-time contract has been agreed between the Company and the workers' representatives.

The number of supplementary hours may not exceed 30 per cent of the ordinary work hours referred to in the contract. Through agreement between the Company and the workers' representatives, this percentage may be increased up to 50 per cent of the ordinary hours contracted. For the working of supplementary hours, workers must be given at least five days' prior notice.



Part-time workers may work overtime. The sum of ordinary hours, overtime and supplementary hours may not exceed the legal limit for part-time working.

Part-time workers will enjoy the subsidies for meals, transport, etc., in the same way as the rest of the workforce, and these may be compensated in cash.

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**2nd STATE-WIDE COLLECTIVE AGREEMENT FOR  
JUVENILE REFORM AND PROTECTION OF MINORS**

(B.O.E. n° 285 dated 27 November, 2012)

**Working hours**

*Article 56. Irregular distribution of the working hours.*

This collective agreement sets out the agreement on schedule flexibility and the flexible organisation of work times and their specific application in the company for the better adaptation to the needs of the entity, the users of its services and the workers rendering their services.

The irregular distribution of working hours is regulated in this sector in order to avoid overtime as far as possible, so the Company and the legal representation of the workers will strive to comply with this objective and the reduction of overtime.

The number of hours to be distributed irregularly in the course of the year is set at five per cent of the annual maximum working hours established in the present agreement.

The number of hours of irregularly distributed effective work will be specified at each company or work centre, attending to the organisational needs and their services, and it must be notified to the workers' legal representatives and to the personnel affected at least five days in advance, indicating the day and time of the start of the irregular working hours, in accordance with current legislation in force.

In these cases, the weekly working hours may not exceed forty-five hours.

The irregular distribution of working hours must respect the minimum periods of daily and weekly rest time foreseen in article 34 of the Workers' Statute.

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**STATE-WIDE COLLECTIVE AGREEMENT  
FOR THE MEAT INDUSTRY SECTOR**

(B.O.E. n° 26 dated 30 January, 2013)

**Appendix 2**

*Ordinary working hours.*

3. Furthermore, the companies shall have available up to 120 hours per annum at the most with which to alter the daily working hours of effective work by extending the same by a maximum of 2 hours' work per day or reducing it by a maximum of 3 hours' work per day, unless otherwise agreed within the company. Companies making use of this possibility shall give the workers affected at least 2 days' prior notice.

If there is a positive or negative balance in hours at 31 December, then the following action will be taken:

- If the balance of hours is negative, i.e. the worker owes hours to the company, the company may order these to be worked until 1 March of the following year.
- If the balance of hours is positive, i.e. the company owes hours to the worker, these will be compensated through freely usable days off or at the discount hourly value in accordance with appendix 14 of the present Collective Agreement.

The recovery of work hours through the application of an irregular distribution of the ordinary working hours described above shall be effected within the working days indicated on the work calendar.

Regardless of the above, the joint committee will analyse the implementation of this appendix within the term of 6 months counted from the signing of the agreement.

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**COLLECTIVE AGREEMENT FOR THE GROUP COVERING LEATHER GOODS, EMBOSSED  
LEATHERS AND SIMILAR MATERIALS IN MADRID, CASTILLA LA MANCHA, LA RIOJA,  
CANTABRIA, BURGOS, SORIA, SEGOVIA, ÁVILA, VALLADOLID AND PALENCIA**

(B.O.E. n° 60 dated 11 March, 2013)

**Working hours, vacations, leave**

Article 51. *Working hours.*

Due to market circumstances, accumulation of tasks, and/or a lack or surplus of orders, in order to favour the company's competitive position on the market, or a better response to the requirements of demand and job stability, the Companies may agree on the irregular distribution of 10% of the working hours over the year, in accordance with the current legislation in force, with the company having to respect the daily performance of a maximum of 10 hours, thus complying with the rest times between working days from Monday to Friday.

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**6th COLLECTIVE AGREEMENT FOR CARLSON WAGONLIT SPAIN, S. L. U.**

6. Cost reduction measure for periods of low activity:

As a cost reduction measure in periods of low activity, and always subject to the discretionality of their allocation by the Company's management, the possibility is established for additional vacations to be acquired. For this purpose, the employee may request 5 consecutive working days as additional vacations, of which the Company will pay 2 days out of the 5, with the remaining 3 days being for the account of the worker. When deducting the part contributed by the employee, the following alternatives will be possible:

- a) Deduct it entirely in the month in which the 5 days are enjoyed.
- b) Deduct it proportionally from the month in which the employee enjoyed the 5 days until the month of December of the current year.

