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Managing Restructuring in Spain

Innovation and learning after the financial crisis

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Moliere

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THE IRENE NETWORK

Born during a seminar held in Dublin in 2003, IRENE (Innovative Restructuring- European Network of Experts) is a network bringing together independent experts – academics, practitioners, managers, social partners, consultants – from various countries (Belgium, Bulgaria, Czech Republic, France, Germany, Italy, Poland, Portugal, Romania, Slovenia, Spain, Sweden, The Netherlands, United Kingdom). It is open to new partners. Working on social and economic dimensions of restructuring in Europe with a view to promote responsible and therefore innovative practices, the IRENE network has achieved or contributed to a range of EU projects such as MIRE, AGIRE, HIRES, HIRES PUBLIC, ARENAS etc.) as well as to the Green paper published by the EU on restructuring (2012) or the report issued on the same topic by the European Parliament (2013). The IRENE network publishes policy papers and other relevant information on restructuring the website www.responsible-restructuring.eu.

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Preface

This report is one of 11 national reports in the MOLIERE project, (Monitoring Learning Innovation in European Restructuring), a project funded by the European Commission, DG Employment, Social affairs and Inclusion. The aim of the project is to analyse whether and how the practice of restructuring has changed in a selection of Member States, to assess the impact of the economic crisis on the national level and to monitor how the practice of restructuring changes in the longer term. Each national report assesses the impact of the economic crisis in 2008-2009 on the way restructuring is anticipated and managed. The results are summarised in a synthesis report including a comparison of the developments in Belgium, Bulgaria, Czech Republic, Germany, France, Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom. The aim is to provide updated and harmonized information for social partners and policy makers at national and European level to assist them in policy formation and the design of a European policy framework on anticipating and managing change and restructuring.

1. Introduction

As in other countries and across the EU in general, the restructuring of companies in Spain is closely linked to the pressing need for structural changes in the characteristic economic and productive models of the country, and in the existing approaches to the social function of work and employment – and not just to the *functioning* of the labour market.

The complexity of these subjects far surpasses the scope of this report and, as such, cannot be dealt with here. We will, therefore, limit ourselves to providing an evaluative description of the evolution of those changes, for the most part legal, that have come about in recent years and which affect the restructuring of companies, with the following cautionary notes which should be taken into account and serve to contextualise this report:

1. The impact of the crisis on the economy, on companies, on society, most of all through the loss of employment that has taken place. Between 2007 and 2013, GDP fell 6% (compared to -1.8% in the Euro zone) and unemployment went from 8.9 to 26%. It is still early to measure properly the *fundamental* effects of the anti-crisis policies that have been followed. Likewise, it is still too early to analyse the cultural changes and shifts in economic and social behaviour that the recession have inflicted on society.
2. The deep and far-reaching changes that have taken place in Spanish legislation and which affect, either directly or indirectly, restructuring. These modifications have had a radical impact on the framework of labour relations, the perception of work as a life expectation and the welfare state model.

   These include:

   - Collective or individual redundancies;
   - Collective bargaining and the way in which working conditions are decided, including wages.
   - Aspects of social protection, both current and deferred (the pensions system)
3. Due to space constraints, we will only be referring to the *labour* dimension of restructurings insofar as they affect the way work at companies is organised, leaving to one side further axes of

analysis such as the corporate elements of the company, the *origin* of the restructuring and the influence this has on the way it is carried out, along with any others that may appear relevant.

Context and background

The policy of budget austerity and social cuts that has been applied as a (practically sole) solution to the financial and economic crisis has not only meant putting back certain economic and social macro and micro indicators from Spanish society several years. Budget cuts have also acted as a necessary catalyser to undertake structural changes across many aspects of the organisation of production, the public administrations and the markets, especially the labour market. It is quite another matter whether these changes have been wisely guided or whether a completely different set of changes was called for.

There is a general consensus amongst experts arguing that these reforms were essential and, to a certain degree, that they had been irresponsibly delayed by different governments due to the complacency of more than a decade (1997-2007) of continued economic growth, with a dynamism in the creation of employment that stood well above the European average, absorbing, without any great civil or cultural problems, an enormous level of immigration over a very short period of time, which reveals the society's maturity.

The impact of the crisis turned the artificial growth model that had been followed up to then upside down, a model based on the dynamism of a bloated construction industry and on internal consumption (with low levels of interest and high levels of private debt), and a dual labour market, with its historically high level of temporary employment, at around 30%.

As tends to be the done, we may differentiate two stages in the crisis:

a) An initial stage, marked by the financial crisis, in the banking sector and its effects seen in the brutal and vertiginous drop in demand and economic activity, and the bursting of the huge real estate and construction bubble, highly labour intensive (it is estimated that 1.5 million jobs have been lost in this and associated sectors). The Spanish labour market was hit extremely hard by the economic crisis, with unemployment doubling in a year and reaching 20% of the labour force by early 2010. The loss of employment was concentrated among fixed-term contract workers (falling by around 30% between 2007 and 2010). This is a consequence of the badly conceived flexibility of the Spanish labour market. As the cost of dismissal was much higher for workers on open ended (permanent) contracts compared to workers on temporary contracts, employers took advantage (with governmental complicity) of cheaper and, most importantly, easier to manage (from an HR point of view) temporary labour contracts – it is easier not to renew a contract than to sack an employee.

   During this phase, the recent socialist-led government, which came out of the elections of March 2008, set in motion a (neo)Keynesian response, aimed at stimulating demand and maintaining employment, for example through funds for local authorities to organise programmes of public jobs, as well as other measures to support unemployed people.

   International concern – at a global level, with President Obama calling the then-Prime Minister Zapatero – with regard to the Spanish economic situation and its impact on the Euro zone was evident. Following the bail-outs of Greece, Ireland and Portugal, the Spanish public sector deficit reached over 11% of GDP at the end of 2009, as its ratings agency score plummeted amid rumours of a possible bail-out. Pressure from its European counterparts, especially that of Germany and the ECB – the famous letter from the then-President urgently demanding structural reforms and serious cuts – forced the implementation of serious austerity measures

in 2010, mainly involving public expenditure cuts – pay cuts for public employees – but also tax increases and reforms in the labour market, the collective bargaining system and pensions.

These latter measures, adopted by the socialist government, were relatively in line with the previous labour relations and labour market model, and it is barely possible to calculate their effect, given that in 2011 the Euro zone entered a new stage of the recession, with Spain at the forefront of this "second recession", unprecedented levels of unemployment above 26% and, furthermore, a change of government with the elections of December 2011.

First labour and social reform in June 2010

After the failure of repeated rounds of negotiations between the social partners, the socialist government adopted legislation reforms addressed at improving the functioning of collective bargaining as well as labour market and employment regulation by reducing severance pay entitlements for employees on permanent contracts and increasing them for those on temporary contracts. The reason behind these measures was aimed at shortening the gap, i.e. the severance payment- costs, between fixed-term and open-ended employment contracts. Other example of this willing was the attempt to introduce a system of individually capitalised mobility-funds, drawing heavily on the Austrian system[1].

b) The second stage started in January 2012 with a conservative government, which from that time to the present day, has used its parliamentary absolute majority to pass sets of austerity measures and suggested structural reforms over a wide range of aspects that affect public life. As such, over the past two years the labour market and pension system have been reformed, as has the financial system in its entirety (in June 2012, Euro zone finance ministers agreed a credit line of up to 100 billion euros for Spanish banks hit by a burst housing bubble, even finally around 40 billion euros from the European Stability Mechanism were used to rescue the banks taken over by the state) as demanded by a partial EU bail-out, offering a sort of line of credit amounting to 40,000m Euros), the public administration, justice, healthcare and education, to name just a few.

   With respect to the labour market in its relationship with restructuring, the conservative government's reform has been far-reaching and had a high impact. On a collective level, due to the deep reforms undertaken and the different legislative modifications that have been carried out particularly in the field of collective bargaining, one can identify a before and after in labour relations in Spain: the measures that have been adopted are of the nature of structural reforms and are neither temporary nor the fruit of a specific circumstance.

2. Changes in regulatory frameworks

2.1. The justification for reforms in the labour field

The reforms aimed at overcoming the effects resulting from the "combination of dual Employment Protection Legislation and both nominal and real wage rigidities", which "leads to adjustment to nega-

[1] This proposal was finally abandoned after one-year analysis carried out by a High Level experts committee.

tive shocks mostly taking place via dismissals, rather than through wage moderation like e.g., in the UK, or working time reduction as e.g., in Germany." (Dolado, 12)[2].

This diagnosis of labour market has been repeated over and over like a permanent mantra, constituting the main obstacle to overcome the applied reforms[3]. The "rigidities" that have been found may be summarised as:

a) High costs of adjusting the workforce through dismissals. The minimum legally required severance payment for individual dismissals is higher[4] than in countries with similar regulation framework, although it is true that in other countries it might be more difficult for employers to make dismissals than it is in Spain for reasons other than cost, i.e. due to trade union strength).

b) Rigidity in the use of internal flexibility measures, e.g. through the need to (try to) reach agreement with workers' representatives or, at least, to follow an information and consultation procedure for substantial changes to working conditions, such as the application of functional or geographical mobility, or other working conditions.

c) An inefficient system of collective bargaining, mainly because of the complexity of the structure, and due to the existence of an excessive number of collective agreements in *artificial* negotiation units (at provincial or local level). Historically, this structure responded to the need to ensure workers and companies were covered, as well as to the lack of representatives (especially employers' representatives) in order to be able to negotiate and reach agreements. The result was certain rigidity in the possibility of negotiating wage adjustments both at sector and company level, and an unwelcome complexity in the way agreements were structured.

d) In the case of collective redundancies, the usual practice of offering higher severance packages than required by law, those laid down for justified redundancies, was also considered as an obstacle for companies to adapt and, as such, a rigidity blamed on the requirement for prior administrative authorization.

2.2. The general scope of the reform

According to official information, the main objectives of the reform were:

1. To promote internal flexibility in companies as an alternative to dismissal and job loss.
2. To modernise collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies.
3. To improve the employability of workers through training and effective labour mediation.
4. To promote the creation of stable and quality jobs and reduce labour market dualism (reduce the share of workers on temporary contracts).

[2] The Pros and Cons of the Latest Labour Market Reform in Spain. Juan J. Dolado. Spanish Labour Law and Employment Relations Journal. (April-November 2012).

[3] Although "one" labour reform exists as a reference, adopted by Royal Decree in March 2012 and subsequently ratified by law in August of the same year, after that large-scale package of measures, other substantial reforms have been progressively adopted in specific aspects of dismissals and collective bargaining, the labour market, social protection and so on. In the interests of simplification, we will speak in terms of "the reforms" whenever we mention to varying legislative modifications approved in the past two years.

[4] As for individual dismissals, it ranks from the highest severance pay of 45 days' wages per year of service (and a cap of 720 days' wages) for those workers dismissed under unfair conditions with job tenures starting before February 2012 (last reform date) to 33 days with a cap of 24 months' pay under the new legislation. More explanations are provided in the following chapters.

5. To combat unjustified absence from work.
6. To strengthen the mechanisms for controlling and preventing fraud, protecting workers' rights and the fight against unfair competition between companies.

The general aim, as recognised by the reform, was to adapt companies and workers to the economic situation. The spectrum of measures adopted was extremely broad. The diagram below, even though it is incomplete, is an attempt to summarize some the key features of these reforms:

Collective Bargaining	Internal Flexibility of Firms	External Flexibility of Firms	Contracts
Dynamic bargaining more responsive to the needs of businesses and workers	Avoiding lay-offs: rigidity fostered job cuts as a means of adjusting to economic changes	Reduction of severance pay for unfair dismissals	- Crisis contract: new contract for entrepreneurs aimed at small businesses. It has a one-year trial period. (employment tax breaks and fiscal tax credit)
Move beyond the model of indexing salaries and wages	- Classification of workers based on skills not on professional occupations	Clear and objective regulatory framework of fair dismissals	- Training and skill building: deep regulatory modifications to provide a structural change and develop a dual training system
Balanced regulatory framework in line with economic circumstances	- Streamlining the adoption of significant changes in working conditions	- Severance pay for unfair dismissal down to 33days/Max 24months of salary	- Flexible regulation of telework
-Opting out from higher-level agreements -Priority of company-level agreements -Limiting the statutory extension rule of expired agreements up to one year (unlimited before)	- Time-reductions if legitimate financial, productive or organisational reasons - Distribution of working-time	- Clarification of fair dismissal causes - Elimination of procedural salaries - Removal of administrative authorisation for collective layoffs - Fair dismissals for economic causes of public employees	- Part-time contract: increased flexibility, allowing overtime

Source: Ministry of Economy and Competitiveness, Government of Spain **and own elaboration**

The regulatory changes that affect the restructuring of companies fall into two categories:

a) Specific legislation regarding collective redundancies and measures to promote internal flexibility at companies, and to bring it in line with the requirements of production and services.

b) Legislation affecting measures regarding flexicurity in the labour market, with this being understood as a global framework for how companies, that decide to adjust their staff, production or the way work is organised, should operate. As such, aspects including the ease with which the workforce may move for periods to allow them to get re-qualified and improve their employability, unemployment protection and collective bargaining constitute factors that condition the way restructuring is carried out, and the attitude of stakeholders involved in it.

2.3. Specific changes which affect restructuring processes

Collective redundancies are made easier both in the private sector and, for the first time, in the public sector.

a) Collective redundancies in the private sector

The reform meant a radical change in focus and procedure:

- The new law enlarges and specifies more precisely the objective reasons under which an employer can undertake a collective redundancy. Now, accepted economic causes include "the existence of actual or expected losses, or the persistent decrease in his/her level of income or sales... if this is persistent and occurs for three consecutive quarters". Here we find an example of legislative intervention addressed to clarify the definition of "economic" grounds for redundancy purposes. Before the labour reform, the *economic* justification has always been controversial between employers and employee representatives. As a consequence, now it is accepted as an "economic" reason for redundancy purposes that a business has suffered a reduction in sales for three consecutive quarters compared with the same period in the previous year.

- Legally required severance payments continue to be 20 days per year worked[5].

- Prior administrative authorization is abolished, while maintaining the obligation of good-faith negotiations with unions before serving individual notice, which is in line with the current legislation in most OECD countries. But the employer is still required to communicate the starting of the procedure to the labour authority, so that the Works Inspector can draft a report with a period of no more than two weeks. This report basically deals with the *formal* procedure; that is to say, whether the documentation provided by the employer to the workers' representatives during the mandatory consultation period meets the legal requirements, given that it does not address the fundamental issue; in other words, the rationale and justification for the collective redundancy.

- The procedural process is speeded up: now the consultation period with workers' representatives "many not exceed 30 calendar days" whereas before it was "no less" than 30, or 15 for companies with less than 50 workers".

- In return, the firm has to carry out a special training and relocation plan for those workers who have been made redundant if the collective redundancy affects more than 50 workers.

- Moreover, the reform has enlarged the set of cases in which the employer must pay a tax if the collective redundancy involves companies with more than 100 employees and there is a percentage of workers aged 50 years or more[6]exceeding the average percentage of the total workforce of the company and provided that it has been profitable not only to companies making profits in the period preceding the redundancies, but also those that end up **making profits in at least two of the four years** following them, thereby making this contribution dependent on future performance. This contribution to the Treasury has a two-fold purpose: on the one hand, it intends to act as a disincentive to dismiss mainly aged workers, i.e. to downsize those who usually represent high labour costs and, on the other hand it is aimed at compensating the

[5] This minimum severance payment applies to collective redundancies. Individual dismissals have different treatment (see next chapters)
[6] Royal Decree Act 5/2013 (March 2013)

social costs (basically due to unemployment benefits) incurred by the State as a consequence of the dismissal.

- The new regulation also speeds up the procedures concerning the suspension of employment contracts and the temporary reduction in working hours, these measures facilitating internal flexibility in line with other short-time working schemes existing in Europe (although they already did exist in Spanish legislation).
- Workers may take their case to court, for which a new judicial model is being created for collective redundancies, of an urgent nature, whose judicial processing will be prioritised. Before the reform, it was common for employers to reach an agreement with workers on the terms of redundancies (in more than 90% of cases). One of the reasons was to avoid the risk of authorisation being rejected or alternatively just to save time and avoid workers taking their cases to court.

Further legislative developments

Subsequently, two relevant norms adopted meant a clarification addressed to further facilitation of collective redundancies:

a) In August 2013, further legislative changes were made in order to reduce uncertainty regarding collective redundancy procedures. The Royal Decree law 11/2013 clarifies in great detail:
   - how the negotiating committee should be established: just one committee composed of a maximum of 13 members (by each side taking part in the consultation process),
   - who are the legitimated actors to intervene;
   - the deadline for the naming of its members,
   - the way in which this is communicated,
   - expressly sets out that the company management, once the deadline has been reached, may announce the initiation of the consultation period to the workers' representatives if the deadline for forming the committee has not been met.
   - also details the information that should be provided, both to the administration and to the workers' representatives which, in this case, is less than in the previous regulation, which would support the interpretation that this is a consultation period more on paper than in practice.

Furthermore, a significant exception is made for corporations whose main companies are not registered as domiciled in Spain, by excluding them from the procedures initiated by any of the companies making up the group. They are relieved of the obligation to present group documentation, even in the case of the main company, and the one intending to introduce collective redundancies, having significant debit and credit balances between them; in other words, when the main company is in some way responsible either directly or indirectly for the financial situation of the company carrying out the redundancies.

This can make it very much harder to demonstrate that the causes of the redundancies may even have been created or provoked by the parent company itself, which may be profiting considerably and be channelling, through the investee, insufficiently justified redundancies. This is undoubtedly an important concession made to foreign companies who want to carry out collective redundancies.

Another important change made by this Royal decree is the constraints it imposes on the power of the courts to declare void the collective redundancy procedure. In simplified terms:

- it limits the documents that were deemed essential and without which the procedure would be judged null and void, which is what leads to the declaration of the reinstatement of workers (with pay back) with no possibility for employers to opt for additional compensation in lieu of reinstatement.
- it limits the cases where workers can individually challenge collective dismissal agreements.

In short, these legislative changes in collective redundancies legislation make easier and faster restructuring labour workforce. The State authorization is not requested anymore and its role is reduced to control the suitability of the formal procedure. The core workers' rights to information and consultation remain unchanged, although with some relevant amendments with regard the time span applicable to the proceedings and reinforcing the content and the quality of the documentation to be provided by the employer. Internal flexibility facilitating the suspension of employment contracts and the temporary reduction in working hours are promoted. Alternative and social measures are encouraged and even obliged to be agreed and applied between employers and workers' representatives accompanying the dismissals, although in practice they are not enforced properly.

b) Collective redundancies in the public sector

According to the Royal Decree, when the different bodies making up part of the public sector claim nine months of "current and ongoing budgetary shortfall" it will be possible to undertake a round of collective redundancies based on economic grounds. This means that, for the first time, collective redundancies in the public sector are recognised in Spanish labour law. As in the case of collective redundancies in the private sector, compensation stands at 20 days per year worked[7] and there will be no call for prior authorisation from the public authority.

The measure affects all public employees with labour contracts, at all public authorities (central, regional, local) and all staff at public-sector companies (more than 150,000 according to a poll of the active population). However, it does not affect civil servants. The number of civil servants has fallen due to the non-replacement of natural job losses due to attrition. In other words, when a civil servant retires, his/her job position is taken back or disappears or through the cessation and non-renewal of temporary or substitute contracts.

Interestingly, the labour reform does not allow the Public Administration or its bodies the possibility of using the collective redundancies legislation to suspend employment contracts or reduce working hours, as it happens in the private sector. This limitation clearly shows that the purpose pursued by the government aimed at facilitating to budgetary adjustments through workforce reductions.

The procedure to be applied for the termination of contracts for workers in the public sector must be based on economic, technical or organisational grounds, which occur when, in a period of 90 days, the termination affects at least:

- 10 workers, across departments and bodies at all levels (central, regional, local) of the public administration that employ less than 100 workers.
- 10% of those that employ between 100 and 300 workers.

[7] The employment regulations being effected in this kind of body tended to result in much better conditions than those enjoyed by the rest of workers. In 2006, Spanish public TV and Radio reached an ERE agreement with its unions by which the affected workers lost their jobs in return for receiving around 90% of their net wages until retirement.

- 30 workers in those bodies occupying more than 300 workers.

Grounds for the termination of contracts through collective redundancies in the public sector:

a) Economic grounds: when a situation occurs involving "current and ongoing budgetary short-fall" for the financing of the corresponding public services, when:

- The Public Administration went into budgetary deficit in the preceding tax year, and
- Loans, transfers or other monies received by the body had fallen by 5% in the previous tax year, or by 7% over the previous two years**.**

Budgetary short-fall is considered to be **ongoing if it is present for three consecutive quarters.**

b) Technical grounds: when changes occur including, for instance, in the means or instruments used for providing the public service in question.

c) Organisation grounds: when changes occur including, for instance, in the working systems and methods of the staff assigned to the public service.

It would seem clear that the "budgetary short-fall" may be caused by the Public Administration itself, given that the budgets of many bodies comes totally or in great part from the budgetary allowance assigned to it. As such, it depends on the decision of the relevant politicians regarding whether the right causes do exist to justify undertaking a legal round of collective redundancies.

2.4. Legislative changes that indirectly affect restructuring processes

The legal framework affecting restructuring is not only concentrated into the new legislation on collective redundancies. The successive reforms carried out by the government affect, to a greater or lesser degree, the form in which restructuring processes take place.

The wide scope of these reforms and the topics covered make it impossible to review all the changes introduced, which indirectly affect the subject of this report. We will summarise some of these, but only those with a labour-related content.

a) **The individual lay-off of a worker (numerical external flexibility) has become both cheaper and easier**. This affects the way restructuring is practiced in small companies.

The background to this reform was that employers often signed individual agreements with workers to leave the organization. The deal included that the workers were dismissed, but received compensation for unlawful dismissal and could then receive unemployment benefits. This practice was primarily used for senior workers with long tenure and was seen as a way to offer them early retirement. To put an end to this behaviour, the government removed the concept of "unlawful dismissal". In this way employers can no longer circumvent the legislation by signing individual agreements with workers to receive compensation for unlawful dismissal.

The majority of pre-retired workers in Spain became so individually. On many occasions, what came to pass was an **agreement between the company and the worker** in the final years of his/her professional life by which the latter was dismissed and received compensation for unlawful dismissal (45 days per year worked up to the reform) and then went on to receive unemployment benefits. And the company shed itself of a worker with, normally, a high salary due to his/her seniority.

b) Collective bargaining has been profoundly modified.

The 2012 labour reform addressed the core of the industrial relations system. It allows for a range of ways of undermining the previous balance (of power) in collective bargaining - and, as such, the au-

tonomy of trade union organisations and employers´ organisations within the system of labour relations. Amongst other measures, now the employers are allowed the possibility (on the weakest of justifications) not to apply the terms agreed upon in collective agreements (for instance, wages). According to the main trade unions confederations in Spain, this casts doubt over the very system of negotiation (based on the good faith of negotiators and compliance with agreement terms). The damage caused by the unilateral opting-out of one party to an agreement to the system overall might be considerable, since trust between parties is one of the key assumptions in collective bargaining.

Wage-reduction oriented. The reform of collective bargaining constitutes a direct attempt to reduce wages. Wages had not evolved along a downward trend since the provincial sector-based negotiation structure does not properly meet the mission to adapt wages and therefore limits the impact of the nationwide agreements.

Salaries had already been lowered as a consequence of the recession and as a result of an autonomous agreement reached between main union and employers' organisations[8] in March 2012, a few days before the first conservative reform´s approval.

One of the most significant measures adopted in the labour reform within the scope of collective negotiation is the new provisions on non-applicability and "opting out". According to the reform´s authors, this supposedly should be understood as an internal flexibility tool addressed to extend the range of alternatives to redundancy. 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, for example, a drop in sales and revenues during six consecutive months.

Currently, the vast majority of the opt-outs refer to wage conditions, 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. In this way incentives are generated for a greater adaptation of the agreements 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. Interestingly, the new regulation has increased the number of conflicts with regard both the collective bargaining processes and the interpretation of already existing collective agreements. This situation is related to the his change is related to the new decision-making powers given to the National Advisory Committee for Collective Agreements – and its equivalents at regional level – by the legislative reform. Following the request of one party this consultative tripartite body now can intervene by means of arbitration in order to settle collective agreements disputes once the alternative dispute resolution mechanisms, if any may applied[9], fail to solve the problems. Unions are strongly opposed to this possibility, since this body is an administrative one tripartite body within the Ministry of Employment and they consider that this intervention undermines the autonomy of social partners. Some disputes have already been awarded using this mechanism, which also may influence the way in which restructuring take place at company level.

[8] Signed on the 6th of February 2012 by the Spanish Confederation of Employers' Organisations (CEOE), the Confederation of Small and Medium-Sized Enterprises (CEPYME), the Trade Union Confederation of Workers' Commissions (CCOO) and the General Workers' Confederation (UGT).

[9] An alternative dispute resolution mechanism for the settlement of labour disputes exists based on a bipartite agreement between social partners and financially state-supported. It is managed by a bipartite foundation (SIMA) which handle the disputes by means of mediation, conciliation and arbitration techniques.

Bipartite agreement for employment and collective bargaining 2012-2014

This agreement makes two previous and important assumptions: in order to improve the competitiveness of the Spanish economy, prices should increase in the short term below the European average; and secondly, in the long term, productivity must grow on a quality-oriented basis in order to improve competitiveness. The main purpose of this bipartite agreement intends to adapt collective bargaining to the effects of the recession and crisis. As such, it establishes the following guidelines:

a) Structure of collective bargaining and internal flexibility: sectoral multi-employer collective agreements should give greater priority to company agreements concerning topics such as working time and wages. Furthermore, it recommends that collective agreements may ease an irregular distribution of working time of 10% of the annual working time throughout the year.

b) As a general principle, the agreement promotes establishing open-ended employment contracts in order to reduce high fixed-term and temporary employment contracts.

c) Wages agreed in collective bargaining should not rise by more than 0.5% in 2012 and 0.6% in 2013. With regard 2014, the wage increase should be adapted to the rhythm of the Spanish economy performance following several criteria related to the GDP evolution.

d) Allowing opting-out clauses aiming enterprises at temporarily derogating from collective agreements topics as working time, remuneration system, shift work and working system provided that there are persistent drop of revenues. These clauses were not new both in Spanish legislation and practices as a mechanism to allow undertakings to opt-out of collective agreements when facing temporary economic troubles.

The objectives and effects of this agreement were partially undermined as a consequence of the new regulation approved by the conservative government fostering decentralisation and the legal possibility to do not apply the content of agreements reached as well as the new precedence given to company level bargaining instead of upper level negotiations to facilitate internal flexibility in businesses with regard to working time organisation, working hours, pay, internal mobility or productivity systems, among other things.

Finally, the system of "ultra-activity", i.e. the indefinite extension of collective agreements once they reach the end of their valid time span, conditioned the positions of the parties to make changes in the new collective bargaining period. The ultra-activity principle is conceived to bridge gaps in coverage continuity and protect employees by extending their existing working conditions while the new collective agreement is negotiated. According to the rationale of the reform, this "ultra-activity" principle generated inertia in the negotiation of new terms. Certainly, a very low percentage of agreements were modified during the crisis in order to adapt themselves to the economic situation of companies.

The new legislation establishes the automatic extension of expired collective agreement to one year maximum provided that there is not anything else agreed to this extent in the existing agreement. This has brought a lot of problems and was the reason social partners reached an agreement to encourage affiliates engaged in collective bargaining to speed up negotiations and providing some criteria to interpret the uncertain clauses regarding the term of expiration.

Contracting has also been modified. Other than new contracts modalities established in the Spanish labour reform, the most important change in contracting from the point of view of a company intending to use new elements in restructuring refers to part-time contracts as a mean to deal with external flexibility. One of the big names left out of the 2012 labour reform was part-time employment. Only

later, in 2013[10], the regulations were modified to increase flexibility. According to Eurostat, in Spain in 2012, only 14.6% of workers were on part-time contracts compared to an average of 20.9% across the Euro zone. Following these modifications:

on the one hand, it introduces greater **flexibility in the management of working hours** in part-time employment contracts. On the other hand, it also introduces measures to allow for increased monitoring on the part of the Work Inspectorate and Social Security to avoid fraud.

Overtime is prohibited. Now it is possible to extend the working day through the use of **additional hours** in part-time work contracts with, at least, an average of ten hours a week when calculated over a year, with a distinction made between:

- Agreed, compulsory additional hours for workers having signed an agreement (to a maximum of 30% of the working hours as agreed with the employee, being possible to extend this, by agreement, to 60%), and with the period of prior notice being reduced from 7 to 3 days in order to speed up companies' organisational procedures.
- Voluntary additional hours, which may only be offered by the employer in the case of open-ended contracts, with a percentage not in excess of 15%, being extendable to 30% by collective agreement, with the obligation being established to record working hours, both ordinary and additional, on a daily basis, to enable improved monitoring on the part of the Works Inspectorate and Social Security.

c) **Social protection in the event of restructuring** (see below, in measures managing restructuring)

2.5. Assessment of the reform

Evaluations carried out

More than two years have passed since the appearance of the first legislation in February 2012 that really meant a Copernican shake-up of the labour and social field in Spain. Since then a several new legal acts have been enforced in labour or social security areas, which affect the labour market and, directly or indirectly, the way in which restructuring is carried out.

Two years is not very long to evaluate the effects of such intense reforms and with such complex aspects as the labour market or collective bargaining. However, fairly comprehensive quantitative studies have already been drafted and published by different actors.

Self-evaluation

The government has drafted an exhaustive evaluation report in which:

- It congratulates itself for the results obtained and claims that the labour reform has begun to meet its objectives in a satisfactory manner.
- It recognises that is needs to display its effects even more, so that they become more noticeable and, in particular, bring down unemployment.

EU evaluation

At the time, the EU showed its support for the labour reform of 2012, given that it brought down the cost of dismissals and facilitated wage decrease. It encouraged the government to evaluate its results, a

[10] Royal Decree law 16/2013 for the improvement of stable contracting and worker employability

task it assigned to the OECD. With its well-known liberalising and flexibility-promoting recipes, the OECD (one of the sources of inspiration for the reform) published its report in December 2013, giving a preliminary assessment of the results obtained, although judging it to be still insufficient, and recommending:

- Bringing down the cost of dismissal even further;
- Tackling the excess of temporary contracts;
- Creating "more efficient employment-seeking services".

Along the same lines, in February 2014, within the framework of the European Semester, the European Commission called for more reforms to go further with measures against the "duality" in the Spanish labour market and to optimise active employment policies – guidance and training policies which encourage the reinsertion of unemployed workers into the labour market.

Private institutions

Other institutions, such as the prestigious BBVA research bank service, suggested that the reform has managed to avoid the loss of many more jobs in the "second recession", and a million since the start of the crisis[11].

Trade unions

Trade unions organisations, as well as the political opposition, are radically opposed to the measures that have been adopted. They argue, on the one hand, that the labour reform has neither created employment nor been successful in slowing job losses. On the other hand, trade unions claim that the reform has led to increasing unemployment and worsening working conditions for the majority of employees, reducing job stability and employment quality.

The UGT trade union published a quantitative evaluation of the effects of the reform over the two years it has been in place, based on official employment, unemployment and contracting figures, along with other reliable sources. In accordance with a homogeneous comparison of the figures immediately prior to the reform, with those at the close of 2013 and the beginning of 2014, the results are the following:

- Unemployment numbers recorded with the employment offices have increased by 4.6%.
- Those registered with the Social Security office have fallen by 4.5%.
- The rate of unemployment has risen 3.18 points: from 22.85%, to 26.03%, according to the EPA survey of the active population.
- The unemployment rate has gone up by 3.18 %.
- More than a million jobs have been lost.
- There are 6% less employed workers (currently standing at 16,758,200)
- Numbers of long-term unemployed have risen to 39.2%, from 27.1%. And 61% of unemployed workers have been out of work for more than a year, 10 points up on two years earlier.

[11] The Department of Developed Economies at BBVA Research, Rafael Doménech.

- Contracting has risen 8.1%, due to temporary contracts. 92% of contracts recorded are temporary ones, the same percentage as in February 2012. Permanent contracts have only risen by 2%.

With regard to wages, the Quarterly Survey of Labour Costs and a range of private organisations indicate that in real terms wages have decreased by more than 9%. Wages at large companies have fallen by 10%. The government itself admits that more than half of the drop in labour costs that have been seen in the past year and a half may be attributed to the labour reform.

Independent experts

Several independent experts (primarily economic and labour law academics) have reviewed the reform from their different perspectives. On the one hand, economists and labour economists regard the labour reform as a necessity, something that the Spanish economy and labour market requests to improve competitiveness. For others, the reforms are seen as misguided, breaking the balance of labour relations, giving all power to employers and, most importantly, have failed to serve the purposes set out: those of creating employment and reducing the labour market's duality.

3. Actors involved in restructuring

The crisis and its reforms have not significantly changed either the actors involved in restructuring processes or the role normally played by them. These are the same actors carrying out practically the same functions. As such, the statements made in the ARENAS report regarding Spain in this respect may be considered as still valid.

However, the reforms carried out have introduced important variations both in the role that employment services may play and the behaviour of employers when dealing with restructuring. In accordance with the model agreed on for this project, we will briefly look over the variations that we have been able to identify:

1. The State

The role of the conservative government has been to promote the reforms and defend their results. As discussed above, the previous socialist government (2008-11) introduced the first wave of changes (cuts in public sector wages, budgetary cuts, pension and unemployment protection reforms) and the conservative government has taken these reforms one step further in an intense and radical manner. The policies it has promoted have shown complete respect for European demands -particularly on the part of the German government- for fiscal consolidation and financial restructuring.

In labour and social aspects, including restructuring processes, the reform has followed liberal lines:

- The government has been a relentless promoter of **public sector restructuring**. In other words, its budget cut backs and rationalisation. As a consequence employment in the sector is reduced, working conditions are deteriorating and wages are decreasing.
- In the private sector, as well as approving substantial change to legislation regarding collective redundancies, the State has not directly intervened in specific cases of restructuring. It has, as is the case in other countries, simply intervened in an *unofficial* capacity when strategic interests were at stake. One example would be the case of Iberia, the old standard-bearing public company, which merged with British Airways (BA) in the holding company IAG. Facing serious problems of competitiveness, Iberia announced 3,100 redundancies and an average wage decrease of 11% across its workforce. The government had to mediate in the crisis between the unions and company man-

agement at a moment of heightened tension, given that BA was being accused of having stripped Iberia clean.

As a conclusion, even the conservative government claiming liberalisation of the economy, the role of the state has not shifted from previous behaviour: the successive reforms adopted shows an important level of interventionist approach.

2. Regional and local authorities continue to be a prominent actor when restructuring processes (only) affect workplaces and workers and workers within their areas. They are frequent mediators in company restructuring disputes, as well as facilitators, particularly in the search for investment or in making available public regional employment services as a *resource* to alleviate the negative effects of restructuring. The difference compared to the period prior to the crisis is that austerity and deficit-reducing policies have hugely limited the role of public authorities to provide budgetary resources in these situations, which means we can say their role is less prominent than previously.

3. Employers and employers' associations: although the institutional role of employers' organisations has not changes, we could say that the behaviour of individual employers in restructuring processes has indeed been influenced by the reforms. These latter have allowed for increased levels of unilateral introduction of restructuring measures, basically in two areas:

- Collective redundancies: the abolishment of the requirement to get authorization from the labour administration in cases of collective redundancies. Employers are however still required to follow a consultancy procedure with workers' representatives and justify (in the broadest sense) the need for redundancies. The final decision now lies with the employers, with an ex-post judicial check-up. To this extent, judges have taken a more relevant role than before due to collective redundancies procedures are more and more subject to go to court, as it has happened in certain mediatic cases (Iberian Partners-Coca-Cola, Tenneco).
- Collective bargaining: employers may decide not to apply parts of an agreement (wages, working hours and so on) or choose to opt out of a sector agreement.

These two possibilities may have an impact on employers' attitudes when they come to tackle restructuring; by increasing their discretional authority to impose decisions, their ability to force agreements on workers' reps also increases. On the other hand, there is an increasing risk of labour disputes in large companies, where unions may not necessarily accept the employers' increasing bargaining power.

4. Employment services

The reform of 2012 has called for an important decision with regard to the role of *private agents in the labour market*. So far, profit-based recruitment activities were prohibited and the reform[12] has allowed private agencies to intervene and operate in the labour market in cooperation with mainly regional public employment services.

Marking something of a landmark in recent history, in 2010 the socialist government opened the gates, at least in theory, to so-called private recruitment agencies to collaborate with public employment agencies in the placement of unemployed workers. Since then, more than 850 organisations have officially registered as such, amongst which we can include temporary work agencies, NGOs, human resources consultancies, without the relevant norms having been formulated. In August 2013, the conservative government approved a framework agreement to work with the 17 Autonomous Communi-

[12] This reform was adopted by the socialist government in 2010, although was not fully developed until 2013-2014 wby the conservative government

ties, which are those with competencies to manage the regional public employment services. In June 2014, 80 private agencies and organisations have been certified to operate on a subcontracting basis as placement providers of registered jobseekers.

Among its terms, this framework agreement establishes that:

a) Remuneration to private agencies may range according to the table below and depending on the cases, whether it is full-time or part-time job and the difficulty in reintegration of the jobseeker to labour market. Fees will be paid by the regional public employment services to the private agencies under the conditions stated in the framework agreement. Nevertheless, the central government has allocated a 3-year 200m euro funding plan to this new experience

Table 1.The most that employment agencies can charge by type of unemployed worker and by placed worker employed for at least six months

Age of unemployed worker in years	**Most by time spent unemployed (Euro)**			
	3- 6 months	6 months to 1 year	1- 2 years	More than 2 years
25 and below	300,00	575,00	1.100,00	1.850,00
26-29	300,00	575,00	1.100,00	1.850,00
30-44	300,00	625,00	1.250,00	2.300,00
45-54	350,00	725,00	1.850,00	3.000,00
55 and above	600,00	1.275,00	3.000,00	3.000,00

b) Private agencies can apply for other incentives and payments :

- **By person registering with them,** regardless of the result (cannot exceed 50% of the amount per insertion or 400 Euros);
- By **particular difficulty** of insertion (disability, risk of exclusion), of up to 1,000 Euros;
- By **time spent in employment** (six months and above), of up to 50% of the payment;
- And, most polemical of all, **by resolution of irregularities**, amounting to15%. This latter payment is due when the agency informs the public services of any employment irregularities that result in the unemployed worker receiving a penalty.

Some important autonomous Communities such as Andalusia, Catalonia and the Basque Country has refused to sign the framework agreement. As such, these regional governments are developing its own cooperation framework with private employment services providers, complying with the guidelines set up by the reform.

5. The trade unions have mobilised on various fronts to challenge the reforms. As well as social mobilisations, they have initiated legal battles in the courts (with various regulations awaiting decision from the Constitutional Court) and with the ILO. Their main activities over the past few years have been aimed at minimising the effect of the modifications on collective bargaining. The reform is regarded as cutting close to the marrow of the existence of social dialogue.

According to the European trade Union Institute (ETUI) database on workers participation[13], trade union density in Spain defined as the ratio of wage and salary earners that are trade union members, divided by the total number of wage and salary earners is estimated close to 19% i.e. the percentage of all employees in employment that are union members. Figures vary between the official data from the Ministry of Labour, own unions data and other sources (for example, the ICTWSS database of union membership. Most important unions in Spain are:

- CCOO, reporting 1,139,591 members (December 2011).
- UGT, reporting 1,169,000 affiliates in 2012
- Other trade unions, basically at regional level: 530.000 members

CCOO and UGT confederations have agreed unity of action long time ago and usually act together (not always) at institutional level, negotiation and reaching agreements with employers' organistations and the governments. Nevertheless, there still exist competition between them and different strategies at workplace place due to elections for works councils' representatives and employee delegates are carried out (4 years term). It can be noticed that when restructuring is taking place in both large and medium size companies, main unions not always coincide in their strategies. It should be noticed as well that a "double channel" exists in Spain with regard employees representation: a) a workplace representation structure, normally works councils in large and medium size companies, in which the unions play a dominant role; and b) trade union delegates usually elected by the trade union members in the company.

Given the strong impact of the legislative reform on the balance of power between social partners i.e. weakening the unions' position particularly in the field of collective bargaining, Spanish trade unions have adopted a defensive strategy at workplace level. Basically, a concession bargaining has been installed forcing workers' representatives to give up wage and benefit gains to keep jobs or at least to minimise the downsizing. This is what has been taken place in most of the restructuring processes as a consequence of the crisis, sometimes in order to avoid the closure down and many others just a mean to reduce labour costs.

6. European actors: the European Union, particularly the Council and the Commission, have taken an active role in the reform process. One must remember that Spain was granted a sort of (partial) financial bail-out to restructure its financial sector and particularly some important savings banks, subject to "conditions" which included the carrying out of multiple reforms, aiming at improving the competitiveness of the economy and the labour market.

As in all EU Member States, and particularly in those of the Euro zone, European Economic Governance, through the European Semester and the Europlus pact for budgetary stability, has been fundamental to the execution of austerity measures (clearly reflected in the restructuring of the public sector), and to the reform of collective bargaining in the pursuit of wage decreases.

Interestingly, in 2014, the Commission, as part of its first Country Specific Recommendations adopted in June 2014 has already put forward the need for Spain to: a) promote real wage developments consistent with the objective of creating jobs; b) to accelerate the modernisation of public employment

[13] http://www.worker-participation.eu/National-Industrial-Relations/Countries/Spain/Trade-Unions accesed 20 september 2014

services to ensure the effective application of public-private cooperation in placement services before the end of 2014, and monitor the quality of services provided"[14].

Other international bodies, such as the IMF and OECD have played a pressurising role in the carrying out of structural reforms along liberal guidelines. Specifically, the OECD has played an important role "assessing" the reform, praising the Spanish government for the majority of the flexibilising policies adopted.

With regard to the abolishment of the requirement of administrative authorisation for collective redundancies, in its report OECD warned of the risk of subsequent court decisions distorting or limiting the effect of the reform[15]. Although judicial disputes regarding collective redundancies is low (under 5%), a large part of these have led to court rulings against the employer, with judges ruling that the dismissal procedure was null and void, generally due to procedural errors (in the consultation and negotiation stage) rather than to grounds (for example, the economic reason behind the dismissals). The consequence is that the affected workers return to their jobs, with the retroactive payment of their wages (see below the Tenneco case, among others) and creating more troubles to the employer/company, as well as legal uncertainty with regad these procedures. The OECD ended by recommending measures to be taken here, a pronouncement that was highly criticized by the Spanish unions which interpreted it as interference in the role of independent judiciary.

7. Finally, in recent years ***judges and courts*** have become prominent actors. As a consequence of the avalanche of new legislation, many aspects of the latter have had to be interpreted in the court, for example the grounds for dismissal or when applying collective agreements. On many occasions, the rulings of first instruction labour court judges or regional-level High Court judges have gone against the regulative *spirit* intended by the government, although in other cases, the Supreme Court has ruled in favour.

Policies of unemployment protection/professional transitions

Unemployment protection, understood as the whole system applied to people in receipt of unemployment benefits, has undergone quite a few changes of an official nature as a result of the reforms applied in 2012 and thereafter. The general drift of the modifications has been to make the unemployment benefit situation compatible with the new tools for contracting as designed by the government. In other words, to *activate* the benefit received by unemployed workers (who have a right to do so) and, along the way, reduce the amount of said benefit. However, other measures have also aimed at cutting the scope of certain existing rights such as, for instance, the demand that workers should have been previously employed in order receive Active Insertion Income (RAI in the Spanish acronym) or cutting the amount of unemployment benefit to be received (see below).

Next we will be presenting just a few of the adopted measures aimed at unemployed workers receiving benefits or subsidies:

- While involved in training activities workers may be contracted by any company seeking to replace workers, as long as the work to be carried out is considered an appropriate placement in relation to the worker's skills and/or experience;

[14] The implementation of dual training is underway. In 2013-2014 there will almost 10,000 students (twice as many as in the previous year) and 1,500 collaborating companies (triple). In Germany, the standard-bearer for this initiative, student numbers stand at around half a million, and companies offering work experience one and a half million.

[15] This situation is not new in the EU. For example, in May 2013 France reintroduced the requirement for administrative authorisation in the absence of agreement between social interlocutors, with the purpose of reducing the level of legal uncertainty generated by the possibility of courts invalidating social plans accompanying collective redundancies, calling for the return to their jobs of those affected workers, sometimes months after their dismissal.

- Those recently in receipt of unemployment benefits will have said benefits reduced, as of the sixth month, from 60% to 50% of the regulatory base. Previously, for the first six months unemployment benefits were equivalent to 70% of the last month's wage, while from the sixth month on they dropped to 60%. Furthermore, there are maximum and minimum limits, which are calculated according to family circumstances and income indexes.

The previous socialist government introduced a **plan of professional qualification** (PREPARA in the Spanish acronym)[16] for those persons coming to the end of their unemployment protection, based on active employment policy initiatives and the receipt of an economic support aid. Beneficiaries had to lack any income of any kind beyond the monthly calculation of 75% of the Inter-professional Minimum Wage. This aid package consisted of:

- Undertaking an individualised and personalised labour reintegration programme to include a diagnosis of the worker's employability, as well as active employment policy measures aimed at improving said employability.
- Participating in active employment policy measures geared towards professional requalification and/or reinsertion, particularly those aimed at obtaining the more necessary professional skills to facilitate stable employment.
- Receiving a back-up subsidy of 75% of the monthly Public Multiple Effects Income Index (IPREM in the Spanish acronym), 400 Euros for up to a maximum of six months (450 Euros for those with three dependent family members).

These aids bring with them their corresponding obligations on the part of the beneficiaries:

- To participate in active employment policy activities and employment searches as proposed by the Public Employment Services
- To accept appropriate employment offers unless there are justified grounds for not doing so.

4. Measures for anticipating change

Approaches for anticipating restructuring processes have not been developed in recent years, despite the impact of the crisis in companies of all sizes.

There is no specific legislation addressing anticipation in restructuring processes in Spain. The only exceptions that can be assessed as anticipatory, meaning the time needed to prepare in advance the process in order to well manage and mitigate the negative aspects of restructuring are those measures related to the workers' rights of information and consultation.

As a general rule, restructuring continues to be carried out in an *operative* and time-specific manner, with limited room to apply anticipatory measures. Companies going through restructuring processes announce and execute management decisions, taken at headquarters within or outside the country, without it being possible to identify any significant application of preventive elements to facilitate the process of change and/or alleviate negative consequences. In the case of multinational companies, this regarded as a question of being able to compete on global markets, and what is applied is the ongoing strategy of adapting production, with no margin for preparing for restructuring processes.

[16] Royal Decree law 1/2011, of 11 February, regarding urgent measures to promote the transition to stable employment and the professional requalification of unemployed persons

In companies that are less geared towards international markets, the impact of the crisis has meant that the necessary adaptations (if not the definitive closure of plants) to changes tend to be the consequence of particular problems: a drop in demand, difficulties getting financing, which generally cannot be foreseen.

This vision was already made clear in the ARENAS report (2009) in which the *available resources* described could only be considered *anticipatory* in an indirect way. Rather, these were generic elements from a public/private system, such as observatories, the support for sector-wide reconversion plans, employability programmes and entrepreneurship aids, or specific measures from the labour field. Some of these have, in practice, disappeared, such as the Industrial Observatories, given that it was 100% government-funded, and the latter has withdrawn its support.

The reality has demonstrated that these supposedly anticipatory measures or tools do not serve, and never have served, to improve companies' or regions' preparation for restructuring processes. It is possible that this lack of foresight or *preparatory time* for handling restructuring is the result of the urgency caused by having to manage a tough crisis such as the one Spain has gone through and continues to go through. But an aggravating factor is the fact that still today it is difficult to get owners and managers of companies and corporate groups to consider anticipation, *time prior* to restructuring, as a value which can help to improve the management of the adaptation to change.

On the other hand, other elements such as a flowing social dialogue, experience managing past restructuring processes (recollections), solid and fair labour relations based on trust, but also on instruments such as collective agreements, pacts and so on, *do* contribute to creating a better environment for preparing for, and the advance management of, a restructuring process.

In conclusion, anticipation considered as a period of *time* and *space* available to prepare and plan restructuring better through **conversations** and the creation of **useful tools** continues to be missing in the process of managing change in companies. Normally, it is not taken into account by those responsible for carrying out restructuring, who announce the latter at the same time that they start the process of its implementation.

It is, however, true that this phase tends to get confused with or blurred into the management phase: in many cases it proves difficult to differentiate the two moments, particularly in cases of restructuring where the grounds do not leave any margin for a supposed "anticipatory" phase; the reality and speed with which events at companies and on the markets unfold, as well as due confidentiality in corporate groups that trade on the stock exchange rule out the creation of these spaces for reflection and preparation for action.

In other words, in the Spanish context there is much room for improvement concerning how to well prepare and anticipate, as much as possible, restructuring. Promoting awareness between mangagers might be a good starting point, as well as giving social partners or parties in conflict preventive means to anticipate changes at workplace and company level, proper skills and above all, providing time enough to get a common understanding and comprehensive diagnosis with regard the implications that restructuring involves, beyond what is at stake at that moment. Some few good practices known in Spain and particularly, learning on the bad experiences in the past and still taking place (see below the cases revisited) could help a lot to spread out this anticipation framework. .

5. Measures for managing change

Specific measures to be applied for the management of restructuring processes have not changed substantially in recent years. While the primary measure to manage restructuring in Sweden is dismissal combined with measures to support the dismissed workers to find new jobs, there are also other forms of measures that are used to manage restructuring.

Usual way to manage restructuring in Spain is dismissal and/or wage reduction. In case of collective redundancies, social measures should be proposed to workers' representatives during the consultation period. These measures may consist on redeployments, geographical mobility, retraining, etc. An outplacement plan including measures (guidance, training, employment contracts,…) covering at least a transition period over 6 months must be presented to the social side if the dismissal involves more than 50 employees. However, these measures continue to be somewhat residual in practice and compensation and severance pay are still the most usual tools applied when restructuring takes place. Table 2 summarizes the various measures used during the financial crisis, taken into account both the most recent changes in legislation and usual practices in undertakings.

Table 2: Usual measures to manage restructuring in Spain

Measure	Applied during the crisis	Comments
Wage and labour cost reduction	Yes	Wages have decreased during the crisis period.
Short time work	Yes	Less common than dismissals, although during the crisis period several measures tried to facilitate the adoption of this measure. Large companies and some specific sectors (e.g. car makers) have indeed applied it.
Early retirement	Yes	Widely used due to helps to reduce labour costs on the long run, apart the downsizing effect and because it is likely the « smooth » way to. This measure has been limited by successive governments in order to avoid abuses particularly in large companies enjoying benefits.
Dismissal and severance pay	Yes	Both of them have been the most common measures used in Spain. Collective redundancies legislation was profoundly amended in 2012, eliminating the request for prior administrative authorisation as well as introducing more detailed social measures to be discussed during the consultation period. Individual dismissal has also been largely used to restructure medium and small enterprises.
Dismissal and transition to alternative job	Hardly	Barely used as managing method to manage restructuring consequences. Public employment services are not prepared, trained and enough budgeted for that.
Training for transition and re integration	Hardly	State funding has been allocated to this aim during and before the crisis. The results are rather unsuccessful so far. The current system, mostly agreed between employers and trade unions, proves to be not efficient enough.

Managing internal flexibility through collective agreements

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. 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. Below there are some examples of the measures agreed within the framework of the collective dismissal processes in the companies listed in the following table:

Table 3. Internal flexibility: negotiated measures at company level

POSTAL AND COURIER SERVICES Company 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 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 fewer than 250 workers	*Functional modification measures. Commitment to negotiation of functional polivalency. *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.
SUPPLIES Company between 1,000 and 2,000 workers	*Functional and geographical mobility measures agreed. *Changes to working hours and shift work system.
CONSTRUCTION Company fewer than 250 workers	*Wage reduction of between 0% and 20%, according to the compensation band. * Contract suspensions
BANKING 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.
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%).

Source: Report evaluating the impact of the labour reform. Ministry of Employment and Social Security. Government of Spain

Early retirement

a) Social cost of collective redundancies: workers over 50 years old

The current government has continued to wage the war against early retirement schemes financed by the Social Security that had been started by the previous socialist government[17] along the same battle lines: raising their price.

In March 2013[18] a recent previous regulation was amended and established that, as from 1 January 2013, companies of more than 100 workers would have to *capitalize* (make an economic Social Security contribution) when a collective redundancy involved a *significant* number of workers (previously no limit was established) of workers over 50, i.e. a percentage exceeding that of the percentage of over 50s on the staff force[19].

Another amendment affecting companies:

- Previously companies required to make a contribution were those with more than 100 employees (or which form part of corporate groups with more than 100 workers) recording a profit in the past two exercises.
- Now the requirement is that the two exercises be consecutive, and that they be taken into account comparing the previous year with the four years subsequent to the collective redundancies.

[17] The socialist government put an end to this practice after Telefónica announced the laying off of 6,500 of its workers in Spain, subsequent to publishing profits and announcing a remuneration scheme for its directors. However, it did not do so through procedural regulations as has been done now.

[18] Royal Decree law 5/2013, regarding measures to encourage older workers' continued professional life and promote active aging.

[19] For instance, if 30% of the entire staff is more than 50 years old, the company will have to make a contribution if the percentage of over-50s among those made redundant exceeds this. If, of the entire number of those laid off (ten, for instance), more than 30% (i.e. three workers) are over 50, then the company, will have to capitalize. If not then it will not have to pay.

The amount to be paid by the company is determined annually through the application of a contribution rate corresponding to the percentage of the cost that the newly laid-off worker will incur on the public employment services, as he/she will be unemployed for the final years of his/her professional working life. This cost is calculated according to the following:

- Unemployment benefits;
- Social Security payments, and
- A fixed fee for the subsidy which unemployed workers over the age of 50 may access when he/she runs out of social security benefits.

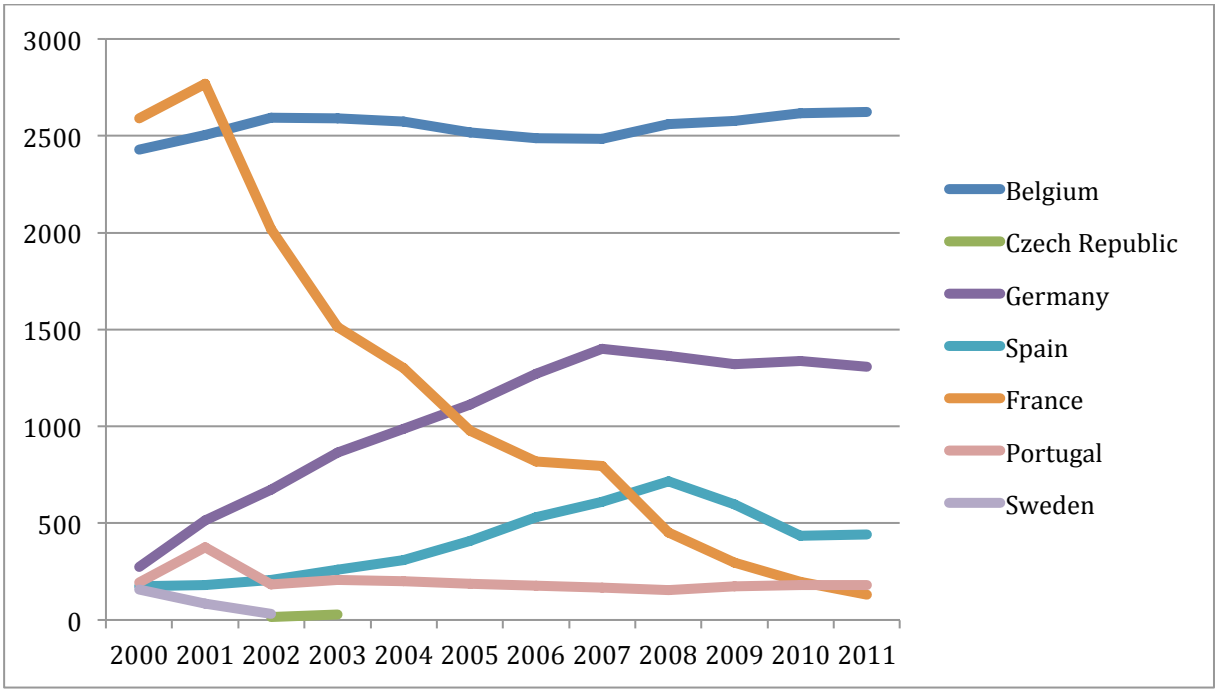
In order to establish the annual applicable rate to calculate the company's economic contribution, **three variables** are taken into account:

- The number of employees at the company;
- The percentage of workers over 50 who are affected by the employment adjustment process;
- The profitability of the company itself.

The maximum percentage rate (100%) is paid by companies with more than 2,000 workers undertaking a round of collective redundancies where 35% of those affected are over 50 and where the companies' profits exceed 10% of revenue.

Figure 6 below shows how public expenditure on early retirement as decreased from the beginning of the crisis in 2008. By contrast, Figure 7 clearly shows that employment rate for old workforce has increased considerably since 1994, not only as result of the performance of labour market, but as a consequence of demographic changes too.

Figure 6: Public expenditure on early retirement in a selection of EU Member States, as percentage of GDP



Source: Eurostat

b) **Measures to encourage continuity of working life for older workers and promote active ageing**

Royal Decree-Law 5/2013, of 15 March makes retirement benefits compatible with either paid employment or self-employment (in which case the benefit is reduced to the 50%). It also tightens up the requirements to qualify for early retirement and partial retirement.

Furthermore, partial *retirement schemes* are applied on condition that another person is employed. As mentioned in the ARENAS Spanish national report (2009), workers' representatives and trade unions usually regarded this measure as "the lesser of two evils", since it provided the possibility to maintain the level of employment. The objective was to exchange older workers on permanent contracts with other cheaper contracts (both in terms wages and labour costs), destined to younger workers. These schemes or mechanisms are still fully available. Some procedural changes took place with regard the terms and conditions to be applied and particularly those related to social security issues (for instance, minimum contributions requested), but it does not affect the substantial purpose: on the one hand, to keep employment level within the company (that's the plausible objective addressed by the Governments) and on the other hand, to exchange old existing contracts (supposedly more costly because of seniority and high level of experience) by new contracts (less expensive because of age of the new employees).

Concerning the partial retirement legislation, the 2012 labour market reform established a new schedule of application according to the age of the employee and the years of contribution to the social security system, along with the reductions that shall apply to the pension received in case of early retirement.

c) **Relief contracts**

In Spain there were also, so called, relief contracts, which implies that a person aged 60 will leave the undertaking whilst another person will enter the company for at least a five-year period, the so-called "relief worker". The legislation on the relief contract has been amended several times during the last years (Decree-law 8/2010, Law 27/2011 and Royal Decree 5/2013) as it is connected to partial and early retirement. First of all, the changes introduced were addressed to reduce the public spending since the State is completing the social security contributions of "old" workers partially retired. Later on, the purpose of the amendments has followed the track of "ageing policies" through the extension of life work.

In this case, the working time of the retiree worker shall take place between 25% and 50% of an equivalent full-time worker; or 75% if the contract relief is full-time and indefinite. Furthermore, the partial retiree worker must have a full-time contract and have contributed to the social security system over 33 years. Additionally, he or she must have a seniority of at least 6 years immediately before to the partial retirement date. On the other hand, the work to be carried out by the "new" worker might be full-time or part-time and lasts the same time that the time reduction agreed between the partially retiree worker and the employer. The duration of the relief contract was recently amended and now it shall be indefinite or at least until the retiree worker reaches the date of the legal retirement plus 2 years more (assuming the time reduction for the retiree worker is 75%). The relief worker shall carry out the same or similar tasks than the retiree worker.

Relief contracts have been widely used and still are in restructuring and collective redundancies procedures as a mean to keep the level of employment (minimize downsizing) within companies whilst allowing entering young people at workforce

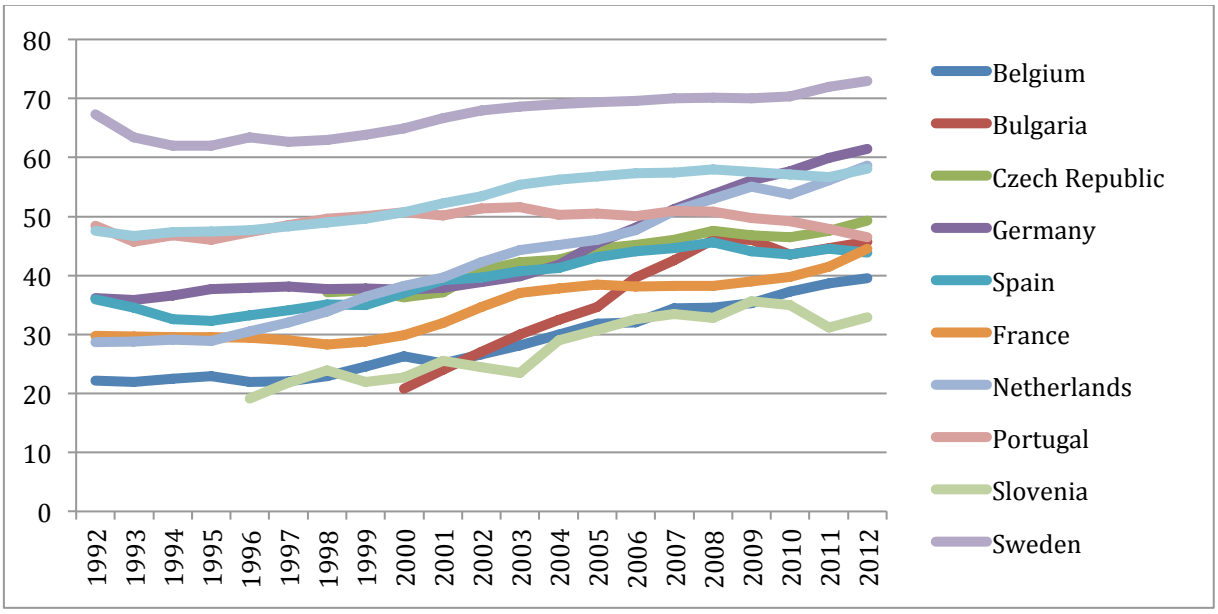
d) **Early retirement rules**

• Early retirement for causes external to the employee's will apply to employees who are at least four years before their retirement age and who have contributed to the social security system over 33 years and request their early retirement in case of, among others, restructuring measures at their employer, such as collective or individual redundancies for ETO reasons.

• Early retirement at the employee's will apply to employees who are at least two years before their retirement age and who have contributed to the social security system over 35 years.

Amendment of the partial retirement rules: it establishes a new schedule of application of the partial retirement rules according to the age of the employee and his or her years of contribution to the Social Security system, along with the reductions that shall apply to the retirement pension in case of partial retirement.

Figure 7: Employment rate for older workers (55-65)



Source: Eurostat

e) Transition period and/or social protection measures: reinstatement of unemployment benefits

As of July 2009 (Law 27/2009) and through annual extensions, when a company decides to tackle economic difficulties by suspending employment contracts or reducing working hours , it receives a reduction of social security liability of 50% for 240 days.

Furthermore, workers affected are entitled to unemployment benefits without this aid being deducted from their subsequent unemployment benefit entitlements if they finally end up losing their jobs. This is what is known as "reinstating": returning to the worker all those days of unemployment benefit that he/she has used up during the suspension of his/her contract or reduction in working hours, up to a maximum of 180 days of unemployment benefits[20]. In other words, the time during the restructuring transition period (work time reduction or the contract suspended) is not running in terms of the consumption of unemployment benefits.

This measure addresses both objectives, primarily to support a restructuring period by facilitating a reduction of social security taxes; and later on, if difficulties can not be overcome, to support employees by not diminishing them the social protection (or providing an extra-time for protection, it depends how you look it at).

This measure is addressed to give time enough to the company to restructure without damaging the employees' rights and has been moderately well accepted and applied by companies.

This right was not renewed for 2014, so in order to benefit from this "reinstatement" for the last time (for now), the cessation of labour relations must take place no later than 31 December 2014.

[20] Reinstatement" (reposicion, in Spanish) is the right of the employees involved in procedures of suspension employment contract or short working time arrangements to be reinstated in the number and amount of unemployment allowances which the employees have had perceived during the arrangement (up to a maximum of 180 days), assuming that at the end they are finally lay-off . It was widely known as to "reset the counter" or to "return the counter to zero" i.e. when restructuring time is over and dismissal arrives, the right to receive unemployment allowance "re-start".

c) **Special rules for the awarding of extraordinary aid to workers affected by company restructuring processes, aimed at addressing urgent situations with social-labour needs.**

Royal Decree 908/2013[21] set up the granting of special subsidies to workers affected by restructuring processes in the following cases:

- If it includes the forming of an Annuity Plan, in those cases in which agreement is reached during the consultancy period of the collective redundancies procedure. This may consist of the payment, by the Ministry of Employment, of a subsidy or a sum aimed at payment, on the part of the worker, of the special agreement with Social Security (to an overall maximum of 40% of the total amount due).
- If it deals with applying the Insolvency Law (total or partial bankruptcy), in the case of collective redundancies, where it is shown that the company has not paid legal compensation for dismissals. Aid may be granted directly to the laid-off workers and may be compatible with other subsidies (benefits from the Wage Guarantee Fund).
- The subsidies are paid directly to workers, as a one-off payment, for an amount equivalent to reinstating the contributory unemployment benefits used up during the periods during which contracts were suspended.

These subsidies are granted to workers laid off as part of the process of a company's restructuring, or due to insolvency law with a minimum amount of time worked at the company or group of companies of two years, and finding themselves unemployed. These subsidies will be compatible with other subsidies of the same nature, unless certain limits are exceeded or where the total amount of public contribution is in excess of 75% of the sum total of the annuity plan.

The subsidies are not compatible if:

- Workers are in receipt of a retirement or disability pension;
- Or, if they are in receipt of a subsidy prior to ordinary retirement from the Social Security system as a consequence of the same process of restructuring.
- If they are in receipt of contributive unemployment benefits.

6. Follow-up of case studies

In this section we follow up the companies whose restructuring cases were analysed in the ARENAS report. We have no knowledge of any external assessment of the restructuring processes monitored. The actors involved have monitored the agreements reached at the time; that is to say, by company management and workers' representatives. The follow-up carried out has produced the following results:

1. Opel-GM at the Figueruelas site

Following the agreement reached in the complex GM-Opel operation in Spain, the situation at this Spanish plant appears to have normalised. There has been no call for further workforce or wage ad-

[21] Royal Decree 908/2013 of 22 November, on granting special subsidies to workers affected by restructuring processes (Official Gazette of 23 November)

justments at this plant, following the closure of Antwerp and other plants within the framework of the group's European restructuring. In fact, there have been assurances of the plant being awarded the manufacture of new models (the Mokka and the mpv Merica, as a global exclusive) within the growing recuperation of the car industry and as a result of the efforts made to improve the plant's competitiveness.

Opel continues to face problems with the infra-utilisation of its industrial installations in Europe, and finds itself immersed in a process of restructuring, including the closure of the plant in Bochum, with the purpose of returning profitability to the European market. Furthermore, the effects of the alliance between Opel-GM and the French group PSA Peugeot Citroën in terms of logistics and purchases are still to be seen.

The follow-up of the Opel-Figueruelas case confirms the assessment of a restructuring process conceived of as a long-term strategy, which appears to be giving positive results.

2. Ercros

Ercros has continued to follow a dynamic of *ongoing restructuring*. Following the plant closures carried out before 2010, and as a consequence of the persistence of the crisis, in February 2013 the company announced a restructuring plan with 198 redundancies (12% of the workforce). The plan aimed at improving its fixed-price structure, especially chlorine-associated business lines, which showed red figures.

With the new legislation on collective redundancies, according to which it is no longer necessary to gain authorisation for the decision to announce redundancies, the company is requested to justify and document the grounds of this decision as well as to propose workers' representatives a range of social measures to be applied to the redundant workers. As a result of the period of consultation and negotiations, in March 2013 the company reached an agreement with the trade unions to carry out an employment regulation plan (ERE, in the Spanish acronym) affecting 97 workers (6% of the current workforce), 101 less than those originally included in the plan. This plan was not unaffected by the pressure of indefinite strikes and a lock-in of workers in one of the factories, nor by public demonstrations, a hunger strike by the mayor and various councillors.

The workforce reduction has been brought about through lay-offs and partial retirements (at least 14). No plants have been closed, which was an objective of the unions as well as the local and regional authorities in Catalonia, which threatened to take the company to court for the ecological crime of toxic contamination if it decided to close down plants and did not sit down at the negotiation table. There had, for years, been outcry from ecological bodies such as Greenpeace about the pollution the factory generated in the region, which it accused of discharging into the water up to 26 times more mercury per ton of chlorine than in other similar factories across Europe. Surprisingly, it would appear that the tacit agreement that existed between the company and the authorities went up in smoke: a blind eye was being turned to environmental violations in return for the maintaining of local jobs.

3. Altadis

Following the takeover bid with which it purchased Altadis, the strategy of the Imperial-Tobacco group has been characterised by a permanent reorganisation of the productive and corporate structure. The last of which, in 2012, meant the modification of its company strategy in Spain to adapt it to the decision-making processes (by division) of head office, through the creation of a new holding company.

In 2009 the number of employees in the historical cigarette plant in Cadiz was cut down from 300 to 76. In 2013 the headquarters decided to close the cigarette plant. The remaining 76 employees left the workplace after a steady stream of pre-retirement redundancies. The restructuring processes at Altadis have so far always been carried out in agreement with the workers' representatives, generally with good labour conditions (transfers, redeployment and geographic mobility) and with high levels of compensation in the case of redundancies and pension supplements.

Reviewing these cases throws up little variety with regard the use of anticipation measures or even the application of innovative tools to manage restructuring. f. The tools used continue to be the same as in the cases of Ercros and Altadis.

Other recent cases would appear more interesting and innovative. Perhaps the most striking has been the Tenneco dispute.

The **Tenneco multinational** (part of the North American Monroe corporation, with headquarters in Illinois) made the surprise announcement, in September 2013, that it was to close its plant in Gijón (north of Spain), with 216 workers. Monroe manufactures tyres and owns others plants in Spain and Europe. The CEO's announcement barely lasted 15 minutes: "Closure is irreversible". The excuse, rather than economically justified reasoning, was that the factory had stopped being profitable in 2007, although the accounts figures did not support this employer' s statement. On the other hand, it was known that the company had plans to concentrate its business in more profitable markets such as Russia.

Five months earlier, Suzuki had also closed its motorbike plant in Gijón and the story started in the same way, with an unexpected and emphatic announcement leaving no margin for negotiation. In six months, the factory was closed.

8 months after the Tenneco announcement, opposition by the workforce, public mobilisation, court rulings filed by the Tenneco local works council and pressure from all of the public administrations, and particularly the intervention of the European Commission have been successful in making the multinational reconsider their decision. Interestingly, the regional High Court of Justice ruled the reinstatement of all 216 dismissed employees dismissed because the decision to close the plant had already been taken irrevocably at the company headquarters in Illinois months before any information and consultation process with the European Works Council. Although negotiations were held with the local works council following the collective redundancies procedure based on the new legislative reform, the court considered that there was not serious willing to make a compromise and consequently, the information and consultation period cannot be assessed as effective: then, without effective consultation no dismissals can take place.

After this ruling, a company proposal was negotiated which appear to ensure the factory would stay open for two years, with reduced activity and cuts to the workforce, with early-retirement packages for the over-55s (the majority, about 80 people) and transfers to other plants in Spain and Germany. This plan assumes that the company has committed to keeping on the property and directing the factory for at least two years.

A synthesis of the sequence of events would be the following:

Announcement of closure. Workers organise themselves, without working, to avoid Tenneco taking away machinery and technological material.	10 Sept
Company management refusal to meet with the regional Minister of economy: the company only wants to negotiate the ERE with the workers (with the new legislation)	24 Sept
The Works Council travels to Brussels to meet with the Commissioner for Industry and ask him to act as interlocutor with the company in Europe and America. The Commissioner declares that the Company's position "does not seem logical" to him. A task force is formed at the Commission to monitor this matter	7 Nov
The company agrees for an independent French consultancy to carry out a report regarding alternative solutions, and which offers several	10 Nov
The company offers compensation to the sum of 50 days per year worked, with a maximum of 45 monthly payments	Dec
The High Court of Justice for the Autonomous Region of Asturias (TSJA) forbids the Company from taking machinery out of the factory	22 Jan
The TSJA declares the ERE null and void due to official procedural errors, ordering the readmission of the workforce. This generates high levels of uncertainly due to the court ruling: the company has been closed for months. The legal battle continues.	17 Feb
The Tenneco global VP's announces to European Commissioner Tajani that the factory was not to close.	15 Apr
70 members of the workforce visit Brussels and, in the presence of the Commission, reach an agreement to start negotiations with representatives of the company	28 Apr
At an assembly the workers agree to initiate negotiations	2 May

Considerations regarding this case

What makes this case different from others? Are there similar experiences in other parts of Europe?

First, a striking feature of the case is the intervention of the Commissioner for Industry and the Vice President of the European Commission. The representatives of the European Commission centred on the doubtful legality of the measure (possible non-compliance with the obligation of consulting the EWC), and the fact that the company received structural funds. Most importantly, for the first time, the case shows an example of *public* action at European level. The fundamental axis of the discourse is the defence of European industry, faced with a potentially unjustified relocation (at a time at which forecasts and sales figures for the car industry were starting to improve). But now this step has been taken, what will be the next one? How will the Commission be able to deny its support for other similar cases?

Second, another feature of the case is the absence of "central" trade union influence. The workers' representatives, the Works Council, were the ones that took up centre-stage in the dispute and struggle. The majority trade unions lent their support from the wings. There are those who argue that they shouldn't have gone so far with this strategy. Similar situations are emerging frequently in other re-

structuring processes where there is a dispute of great public impact (for example garbage collectors in Madrid).

7. Conclusions

The uncertainty regarding the future of the Spanish economy has decreased by the end of 2013 and the first months of 2014. The macro-economic figures are beginning to look positive, and the forecasts by the government and international bodies point to stable growth for the next two years (around 1,5% average). However, at the time of drafting this report, the real economy, consumption and industrial production still fail to consistently reflect that upward trend. In particular, the forecasts regarding the lowering of the unemployment rate continue to be extremely pessimistic.

The intensity of the reforms adopted that affect the way companies manage restructuring means that this report makes deep-rooted modifications to the ARENAS report on Spain despite so few years having passed since then. Only a very few partial aspects of the latter report can be considered as still being valid. The follow up of case studies shows that the way companies manage restructuring have progressed. However, we decided to update our information, in the light of the legislative reforms, selecting other, more recent, case studies, which help to provide an illustration of the new situation that has emerged.

Despite governmental insistence that the reforms are aimed at improving the internal flexibility of the labour market and that of labour relations within companies, an overall evaluation shows that the result obtained is a markedly increased general flexibility, both internal and external.

The discussion about the lack of flexibility in the Spanish labour market is not new. It has been the subject of discussion ever since the emergence of the concept of flexicurity (and perhaps even before that). How to strike the right balance between flexibility and security in each specific social, economic and labour environment? Regardless of their justification the reforms adopted in the majority of European countries have been guided, overall, by the aim of achieving greater flexibility in labour relations and the ability, on the part of employers, to unilaterally impose inferior working conditions.

In the case of Spain, the reforms have shaken up labour relations within companies. The government reform aims at fostering internal flexibility, following the Swedish approach, to bring an end to a situation of "protecting inefficient jobs, instead of protecting workers" and consequently support workers and not inefficient jobs. Even one could discuss and even agree with this approach, first results of the successive reforms adapted have been a (sought after) salary drop and a loss in workers' rights. The first may be recoverable over time, the second consequence has all the look of being less easy to reverse: wages may rise if the economic situation improves, but restoring rights is much more difficult.

In the specific area of restructuring processes, the changes introduced have had great impact:

a) In the collective field, it proves difficult to evaluate the results. The number of collective redundancy procedures has reduced, as has that of workers affected in the past year, but this trend is not consolidated (there has been a marked rise in the past quarter). The main effect of the new legislation regarding collective redundancies has been that employers now have greater unilateral power to act, and they use it as a threat to bring about agreements during the consultation period, which distorts the real figures.

The downsizing in workforce and the management of restructuring are highly dependent on economic activity in general, beyond the specific legislation applied, given that they take place in large and average-sized companies, which are sensitive to the developments in the markets in global economy.

b) On an individual level, the new regulation for dismissals (cheaper and more flexible) has made it possible to make quicker workforce adjustments in SMEs: the possibility of a *silent* restructuring process in this extremely numerous group of companies (employing four million workers) has been seen to be further reinforced.

This growth in external flexibility has been in no way compensated by a better and more efficient running of the labour market to encourage professional transitions (especially in the construction sector and associated industries), and job searches. The public employment services are overwhelmed and lack substantial increases in resources to tackle such high levels of unemployment, which is coupled with their traditional inefficiency and limited abilities to mediate in the labour market. Private services, both authorised and promoted by the reform, are yet to display their own levels of activity.

c) Both at collective and individual levels, the internal flexibility of companies has increased, as a consequence of the legislation which has reformed collective bargaining: working conditions may now be modified almost unilaterally by the employer, without there being increases in investment in training and skills; that is to say, investment in human capital.

Social dialogue

Years after the starting of the crisis and the adoption of extremely hard measures and reforms in labour legislation, it may be argued that social dialogue continues to flow, even with the firm from firmly opposing position between the social partners. The legislative reforms are still too recent to be able to assess their impact with certainty. The unions, in particular, continue to give the impression of having been directly attacked and they share the view that deliberate attempts have been made to weaken them. Furthermore, the government has systematically ignored the social partners when drafting the reforms, arguing that the urgency and seriousness of the situation necessitates substantive changes. However, the social partners continue to keep the channels of dialogue running freely, with meetings dealing with the day-to-day management of institutional labour relations. There is no rupture; rather, one should say that, as of today, the trade unions and employers' organizations are immersed in a process of profound change that requires them to come to terms with the new system resulting from the labour reform. Pragmatism and responsibility are the key words that could be applied by both sides in this situation, both challenged as well by the necessity to manage the post-crisis scenarios.

Influence of EU

The fundamental influence of the EU has been decisive in these years of crisis and reforms in Spain, and this constitutes a new reality within the global framework, which conditions the carrying out of restructuring. The European Economic Governance and particularly the Stability Pact and the European Semester and the Country Specific Recommendations have been new institutional drivers orienting the reforms adopted.

Enlarging the scope of restructuring

As we know and have learnt in the course of the projects carried out with IRENE and in other environments, the restructuring of a company bring multiple implications with it. It does not tend to be an isolated event but, rather, an initiative framed within a national and international context. In the first, the overall legislative framework is important; the functioning of the labour market institutions, employment services, resources for retraining workers, the model for professional transitions, obstacles to mobility (regional differences, housing market, etc.), wage reference points, the influence of trade union organisations, associated social protection, and so on. And, of course, the management of the restructuring process on the part of the company.