



UvA-DARE (Digital Academic Repository)

Decentralised Bargaining in Spain

Muñoz Ruiz, A.B.; Ramos Martin, N.

Publication date

2022

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Muñoz Ruiz, A. B., & Ramos Martin, N. (2022). *Decentralised Bargaining in Spain*. (Country Report; No. 7). AIAS-HSI. <https://aias-hsi.uva.nl/binaries/content/assets/subsites/hugo-sinzheimer-institute/projecten-aias-hsi/codebar-spain-final-website-version.pdf>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

CODEBAR-project

Decentralised Bargaining in Spain¹

Ana Belén Muñoz Ruiz – University Carlos III-Madrid²

Nuria Ramos Martín – University of Amsterdam

Country Report nr.7 in the CODEBAR-project; final version in open access on the project's website:

[CODEBAR - AIAS-HSI - University of Amsterdam \(uva.nl\)](https://codebar.uva.nl/)

‘Comparisons in decentralised bargaining’ (CODEBAR). This project is co-financed by the European Commission, Agreement VS/2020/0111 (Improving expertise in the field of industrial relation). The Commission is not responsible for the authors view in this report, nor for any use that may be made of the information it contains.

² A. B. Muñoz Ruiz conducted the qualitative research related to the case studies in Spain. The data extracted from the interviews was managed according to the rules and protocols applied at the UCIII-Madrid.

Contents

- 1. Introduction**
- 2. Institutional frameworks of collective bargaining and employee representation in Spain**
 - A) General description of the system of collective bargaining in Spain**
 - B) Legislation and institutions on unionised and/or non-unionised employee representation (works councils) within the companies and its relationship with unionised collective bargaining**
 - C) Latest reforms of the collective bargaining system**
 - a. The 2010 Labour Market Reform**
 - b. Royal Decree-Law 7/2011 of June 10, on urgent measures to reform collective bargaining**
 - c. The 2012 Labour Market Reform**
 - d. VI Agreement on Independent Labour Dispute Resolution**
 - e. The 2021 Labour Market Reform**
- 3. Trends and debates in collective bargaining decentralisation and in decentralised bargaining in Spain**
 - A) Imposing the decentralisation of collective bargaining**
 - B) Effects of the decentralisation reforms**
 - C) The role of the social partners in collective bargaining decentralisation reforms**
- 4. Case studies: companies in the manufacturing sector ³**
- 5. Case studies: companies in the retail sector ⁴**
- 6. Conclusions about the regulatory drivers and other factors**

³ A. B. Muñoz Ruiz conducted the qualitative research related to the case studies in Spain. The data extracted from the interviews was managed according to the rules and protocols applied at the UCIII-Madrid.

⁴ A. B. Muñoz Ruiz conducted the qualitative research related to the case studies in Spain. The data extracted from the interviews was managed according to the rules and protocols applied at the UCIII-Madrid.

1. Introduction

This report presents the results of the country study on Spain from the project CODEBAR: *Comparisons in Decentralised Bargaining: towards new relations between trade unions and works councils*, which is co-financed by the European Commission (*Industrial Relations and Social Dialogue Programme; project reference: VS/2020/0111*). In this project, the research team studies the backgrounds, practices and effects of decentralised bargaining in eight EU Member States, namely: France, Germany, Italy, Spain, the Netherlands, Ireland, Poland and Sweden.

In this country report, the topic of decentralised bargaining practices and trends in Spain is analysed from a multidisciplinary and multi-level governance perspective. Using a mix-methods approach, we describe the social partners' responses to downward pressures on the locus of collective bargaining and the subsequent increasing involvement of works councils and other workplace bodies of employee representation. We also address the effects of the pressure for decentralisation in collective bargaining in terms of changing and renewing how institutions and mechanisms regulate wages and working conditions in Spain. Finally, we examine the role of some specific actors as (strategic) drivers and opponents of decentralised bargaining.

Within the CODEBAR project, we address the following three main research questions:

1. What are the relevance and main characteristics of decentralisation towards company-level bargaining in the country? Are there new practices or new strategic actions from employers, trade unions and workplace bodies of employee representation regarding company bargaining with respect to terms and conditions of employment?
2. What is the main institutional framework of the country where decentralisation takes place? And, has it been discussed or changed recently?
3. Are decentralisation practices affecting (new) relationships between trade unions and non-unionised works councils or other bodies of employee representation at decentralised levels? Are these practices weakening labour standards?

In this country report, we describe the main features and the recent reforms affecting the institutional framework of collective bargaining in Spain and pay attention to the reaction and trade union strategies regarding those reforms. Using several sector case studies, we examine which are the converging and diverging trends in trade union positions and actions regarding decentralised bargaining and relations with works councils and other bodies of employee representation at the company level.

One of the main aims of this study is to shed light on the social partners' strategies regarding decentralised (company-level) bargaining and the effects of the ongoing decentralisation in collective bargaining. Firstly, in Chapter 1, we examine the legal framework regulating collective bargaining in Spain, with a particular focus on the legislation on worker representation in collective bargaining and worker participation, as well as the relations/interactions between trade unions and works councils in social dialogues and collective bargaining.

Spain has a complex dual-channel system of employee representation that is regulated in the Workers' Statute, where both unionised and non-unionised bodies are provided with different powers and tasks. Moreover, strategies of collective bargaining parties towards decentralisation also depend on the (changing) power relations between the social partners and the political colour of the different governments and also on the power resources of trade unions and alternative employee representation bodies at the company level. Furthermore, cross-sectoral differences in decentralisation trends, responses and effects are explored in this country report.

2. Institutional frameworks of collective bargaining and employee representation in Spain

This section aims to understand the institutional framework of collective bargaining in Spain and the trends to decentralisation by addressing the institutional framework of the system and the evolution of the regulatory framework in the last decade. This section also details how regulations have so far not managed to change the structures that are traditionally embedded in collective bargaining at several levels and in the dialogue/bargaining in bodies of employee representation at the company level. This

section provides a description and analysis of both the national legal system and collective bargaining structures at several levels in Spain and how these levels relate to each other: national, sectoral (regional/provincial/local) and company levels (in particular for multi-national companies). This also includes a description and analysis of the legal system and the structures on employee representation/employee participation at the company/shop floor level.

2.1 General description of the system of collective bargaining in Spain

The main social partners in Spain are the Spanish Confederation of Employers' Organisations (CEOE), the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME), the Trade Union Confederation of Workers' Commissions (CC.OO.) and the General Workers' Confederation (UGT). They periodically sign national intersectoral collective agreements (interconfederal agreements for collective bargaining, ANCs); the last one of which was signed on 5 July 2018. These agreements lay down guidelines and recommendations for lower-level bargaining and promote independent collective bargaining.

The right to collective bargaining and the binding character of collective agreements are enshrined in the Spanish Constitution (Article 37.1). The collective bargaining structure is thoroughly regulated in Title III of the Workers' Statute (WS). In particular, Article 82.3 establishes the legally binding character of collective agreements negotiated in conformity with the rules of the Workers' Statute. The main provision dealing with the decentralisation of collective bargaining in Spain is currently Article 84.3 WS, which states that company agreements may deviate from several working conditions set by a statutory collective agreement negotiated at a higher level, providing that certain requirements are fulfilled.

Although the most representative trade unions have the legitimacy to negotiate both at the sectoral and company level, it should be noted that there is a duplication of actors in the latter. This is so because both unions and works councils are entitled to negotiate. Should both parties want to start negotiating, the union has the preference. The Workers' Statute establishes that the intervention in negotiations shall

correspond to the union sections when they so agree, providing that they represent the majority of the members from the works council or from the workers' delegates.

Despite the theoretical priority/prevalence of the company agreement established in the current Workers' Statute, collective bargaining traditionally takes place mainly at the sectoral level. Sector-level agreements are concluded at the national level (for example, in the construction, banking and chemical sectors) or at the provincial level (for example, in commerce, the transportation of goods and passengers, and the bakery sector). Company agreements are much less common and involve mainly large companies (in sectors like gas, oil, car manufacturing, air transport, research and development, etc.) and the public sector.⁵

Furthermore, all statutory collective agreements have to appoint a Joint Committee, which is composed of representatives from both signatory parties to the collective agreement and deals with all matters entrusted to them. Collective agreements are binding for all employees under their scope, providing that they are signed by the most representative trade unions at that level. A large proportion of public and private sector employees are covered by collective agreements in Spain.

2.2 Legislation and institutions on unionised and/or non-unionised employee representation (works councils) within the companies and its relationship with unionised collective bargaining

The Spanish model of collective bargaining is complex due to the dual-channel system. This means that both trade unions and works councils are entitled to negotiate collective agreements at the company level. However, at the sectoral level, the right to negotiate is given only to trade unions.

Works councils elections are carried out in those workplaces with at least 10 employees. However, the representation of employees in a company or workplace that has less than 50 and more than 10 employees corresponds to the workers' delegate. Likewise, there may be a workers' delegate in those companies or workplaces that have between six and ten employees, if the majority vote for it

⁵ Pérez Infante, J. I. (2003). La estructura de la negociación colectiva y los salarios en España, *Revista del Ministerio de Trabajo y Asuntos Sociales*, (46), 2003, pp. 41–97.

(Article 62 of the Workers' Statute). The works council is the representative and collegiate body of all the employees in a company or workplace and serves to defend their interests, constituting itself in each workplace with a census of 50 or more workers (Article 63 of the Workers' Statute).

On behalf of the workers, the works council, the staff delegates, if applicable, or the union sections, if any, which make up the majority of committee members, are the ones entitled to negotiate at the company level. The intervention in the negotiation shall correspond to the union sections when they so agree, provided that they represent the majority of the members from the works council or from the personnel delegates (Article 87 of the Workers' Statute).

2.3 Latest reforms of the collective bargaining system

In the last decade, there have been several legal reforms aimed at both decentralising the system of collective bargaining in Spain and making it more flexible. These reforms were a response to the severe economic crisis affecting Spain between 2009 and 2016 and also responded to the trends in some economics circles (advising the subsequent governments in Spain), which supported the higher economic efficiency of the decentralisation of collective bargaining, especially concerning wage negotiation and the swift adjustment of wages to the economic cycle. Most of these legal reforms have been heavily criticised by both trade unions and legal scholars due to the fact that they have clearly weakened collective labour rights.

2.3.1 The 2010 Labour Market Reform

A major reform of the labour market legislation took place in 2010 by means of Law 35/2010 of 17 September. Although this law was not directly aimed at reforming collective bargaining, several of the modifications introduced had an impact on the system of collective bargaining and its traditional postulates (particularly regarding the possibility to opt-out from the sector-level collective agreement provisions on wages by means of a company agreement). This law was aimed at reforming the entire framework of labour market institutions, including several provisions regulating the negotiation of collective agreements. Regarding collective bargaining,

the law expanded the possibilities of internal flexibility for companies, as well as wage flexibility, since substantial modifications were introduced in the clauses agreed upon in the agreements of higher scope.⁶ This was supported by Royal Decree-Law 10/2010 of 16 June, strengthening the instruments of internal flexibility in the development of labour relations.⁷

Royal Decree-Law 10/2010 of 16 June, on urgent measures to reform the labour market, made it easier to use wage opt-out clauses. This Royal Decree-Law amended Article 82.3 of the Workers' Statute, establishing that, following a consultation procedure, a company agreement between the employer and the employees' representatives may deviate from the wages fixed by a collective agreement negotiated at a higher level. This could happen when, as a result of the application of such wages, the economic situation and prospects of the company could be damaged and the level of employment may be affected. This deviation agreement could only remain in force for a maximum of three years, always provided that the duration of the collective agreement at a higher level has not yet expired. Moreover, this company agreement shall clearly determine the new remuneration to be paid to the employees as well as set a schedule of gradual convergence toward the previously applicable higher wages.

This system of wage opt-out was later reformed in 2011 and 2012 since the intended goal of making decentralised bargaining on wages easier for companies was not reached. The strict regulation of the opt-out clause made it complex and difficult to be applied in practice. Most opt-out clauses required a company to prove that it was experiencing serious economic difficulties that were affecting the whole stability and continuity of the business, and, to prove this, companies had to provide detailed account statements. Moreover, in procedural terms, applying the opt-out clause required a significant amount of effort and, as such, some legal scholars argued that

⁶ As explained by Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). *DIADSE: Dialogue for Advancing Social Europe, Country Report on Spain*, pp. 6-14: "two of the most important tools of the so-called 'internal flexibility' are the 'suspension' of employment contract and the 'reduction' of the working day. Both of them have been affected by the 2010 and 2012 Labour Reforms (...). They have tried to promote these forms of internal flexibility as an alternative to lays-off". Available online at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html>

⁷ BOE (*Spanish Official State Gazette*) No. 147 of 17 June 2010.

the stringent requirements of the wage opt-out clauses were contrary to the aim of creating more flexibility at the company level in the case of economic difficulties.⁸

2.3.2 Royal Decree-Law 7/2011 of 10 June, on urgent measures to reform collective bargaining

In 2011, the system of collective bargaining was reformed again by Royal Decree-Law 7/2011 of 10 June, on urgent measures to reform collective bargaining. This reform was adopted without prior consensus with the social partners, due to the impossibility of reaching a tripartite agreement addressing the problems affecting the system of collective bargaining. The main objectives of this reform, as stated by the Collective Bargaining Observatory of the Ministry of Labour and Immigration, were the following:

- To restructure collective bargaining;
- To streamline collective bargaining, eliminating excessive extensions regarding collective agreements;
- To facilitate internal flexibility at the company level as well as the prompt negotiation of wages;
- To adapt the rules regarding the legitimacy to negotiate collective agreements to the new business realities as well as the role of trade unions in the companies;
- To strengthen the public institutions responsible for labour relations and collective bargaining. To achieve this objective a Labour Relations and Collective Bargaining Council was established.

The main rule affecting the collective bargaining priority rules was a provision in the Law that established that company agreements prevailed over what was agreed upon in the collective agreements at the higher levels, increasing the possibilities of decentralising collective bargaining.

2.3.3 The 2012 Labour Market Reform

⁸ Pose Vidal, S. (2009). La cláusula de descuelgue salarial en tiempos de crisis económica. *Actualidad Jurídica Aranzadi*, (784), pp. 1–3.

A major reform of the labour market in Spain – which was the most criticised by the trade unions –, was passed in 2012 through Royal Decree-Law 3/2012 of 10 February, on urgent measures to reform the labour market. This reform was an extension of the previous labour market reform carried out in 2010, as the Spanish economic and labour market situation (unemployment) had worsened. This reform introduced new rules on labour market regulation, including, the reform of dismissal procedures and more flexibility for employers to adjust working time, work shifts, employees' duties and salaries. The reform also introduced a specific contract for SMEs and entrepreneurs, established new incentives for permanent hiring and changed the rules applicable to collective dismissal procedures in public administrations and companies, among other measures.

The new legislation also reformed the rules regarding collective bargaining (see the summary of the main changes in Table 1 below), and the reform introduced the possibility for employers to opt-out from the provisions of the statutory collective agreement if they could allege economic, technological, organisational or productivity causes, to adapt the working conditions to the financial situation of the company. The law modified the rules regarding the prevalence of collective bargaining at a higher level, favouring the decentralisation and the priority of the application of company agreements.⁹

The consequences that this reform had on the Spanish labour market have been analysed by the OECD in a report on the labour market reform.¹⁰ According to this report, the reform had the potential to boost the productivity growth and competitiveness of the labour market in the long term. This report highlighted the economic improvements in productivity and competitiveness as a result of the reform, but did so at the cost of worsening labour conditions and reducing the wages of the employees.

⁹ Del Rey, S. (2012). Los principios de la estructura de la negociación colectiva tras la Ley 3/2012, de medidas urgentes para la reforma de mercado de trabajo. *XXV Jornadas de Estudio sobre Negociación Colectiva. La reforma Laboral 2012*, Madrid, 4 October 2012, pp. 1-14.

¹⁰ OCDE (2013). Estudio de la OCDE sobre la reforma laboral 2012 en España: una evaluación preliminar. December 2013, pp. 1-5. Available online at: <http://www.oecd.org/fr/els/emp/OCDE-EstudioSobreLaReformaLaboral-ResumenEjecutivo.pdf>

These are the main measures adopted within the framework of the labour market reform, which have reduced the labour protection of workers in Spain:

- Promotion of internal flexibility within companies (powers of companies to modify working conditions such as wages or working time), with regard to both working conditions agreed upon in collective agreements and collective dismissal procedures;
- Lower compensation for unfair dismissal;
- Elimination of administrative authorisation requirements in the case of collective redundancies (ERE);
- Reduction of costs linked to the dismissal of permanent workers by reducing the strictness of regulations regarding dismissals;
- Wage moderation.

In Spain, the significant impact of the 2009 economic crisis, the problems affecting the labour market (in particular the high unemployment level, with youth unemployment hitting its highest rates) and the lack of effective mechanisms of wage bargaining and internal flexibility, triggered a debate on the urgent need for a labour market reform in 2012. The severe economic crisis of 2009 represents a relevant factor that helps understand the failure of the tripartite social dialogue between the Government, trade unions and employers' associations.

Table 1: Summary of main measures/aims of the 2012 Labour Market Reform

Issues	Aim of the Reform	New regulation
Duration of collective agreements	To update collective agreements	Limit the period of duration
Collectives agreements at company level	Decentralization	Priority of collective agreement at company level over the sectoral agreement
Opt-out	To increase the internal flexibility	More flexible causes of opt-out and a simple procedure

Source: Prepared by the authors.

The general rule regarding the prohibition of concurrence of collective agreements is not applicable when the initial duration of the collective agreement has already expired. This means that the subsequently negotiated collective agreement may be applicable over the first collective agreement. This rule has been confirmed by the

Spanish Supreme Court in its Judgement of 5 October 2021 (Resolution No. 958/2021).

2.3.4 VI Agreement on Independent Labour Dispute Resolution

The possibilities to enhance the quality of collective bargaining have been increased with the negotiation of the ASAC VI agreement.¹¹ ASAC VI is a collective agreement on the specific matter of independent labour dispute resolution (Article 83.3 Workers' Statute and Article 3 ASAC). In Spain, the first collective agreement regarding this matter was adopted in 1996.

Labour disputes covered by the ASAC VI agreement are managed by the Interconfederal Mediation and Arbitration Service, SIMA (*Servicio Interconfederal de Mediación y Arbitraje*). This is a tripartite organisation consisting of the most representative trade unions, employers' associations and public administrations. It has legal personality and the capacity to act; from a legal and formal viewpoint, it has the attributes of a Foundation of the State Public Sector linked to the Ministry of Employment and Social Economy. It is funded with public resources and its actions/procedures are free of charge for the parties involved in these procedures (Article 5 ASAC).

In the ASAC VI agreement, the role of mediation in labour disputes has been expanded through the incorporation of the function of stimulating bargaining activities and suggesting the development of bargaining content. This is a particularly relevant extension of powers. Previous ASAC agreements were limited to the scope of labour disputes and their resolutions and the powers of SIMA did not reach the functioning of collective bargaining itself. This means that SIMA began to carry out the tasks of promoting and improving the collective bargaining processes (quantitative and qualitative promotion). Indeed, this expansion regarding the tasks of SIMA respected the full autonomy of the bargaining parties at each level. In short, it can be stated that the new ASAC agreement approximates two manifestations of

¹¹ BOE No. 334, of 23 December 2020.

collective autonomy – self-composition and self-regulation – and has a more unitary and dynamic understanding of them both.¹²

2.3.5 The 2021 Labour Market Reform

As an attempt to counteract some of the effects of the reform that took place in 2012, the Spanish left-wing coalition government approved Royal Decree-Law 32/2021 on 28 December 2021. This new legislation is based on an agreement among the Government, trade unions and employers' associations to structurally reform the Spanish labour market.

One of the most relevant changes introduced by the 2021 Labour Law Reform is the reinstatement of the so-called “ultra-activity” of collective bargaining agreements (the automatic continuation of collective agreements upon expiry until a new collective agreement is signed). This is an important legal development, which counteracts the attempt of the 2012 Labour Law Reform to give more power to employers at the bargaining table. In 2014, a controversial decision by the Spanish Supreme Court had already established that employees should continue to remain under the same employment conditions while a new collective agreement was being negotiated.

Another important element is that this reform restored the prevalence of the sectoral collective bargaining agreements over the company collective agreements concerning wages. Two main reasons explain the passing of this reform. Firstly, some artificial bargaining units were created to take advantage of the priority of company collective agreements. For example, cases where a company-level agreement was signed by the company and a single representative of the workers (usually not a member of a trade union). Secondly, some company agreements were negotiated with

¹² Olarte Encabo, S. (2020). El VI Acuerdo sobre Solución Autónoma de Conflictos Laborales: Consolidación y avances, *Temas Laborales*, (154), pp. 55-78. The compensation of expenses derived from COVID remote work can only be claimed before the social jurisdiction in accordance with the provisions of the distance work agreements and with the terms established, where appropriate, in the individual agreement, agreement or collective agreement of application. There is no recognition of the right to compensation for generic costs of remote working. In 2021-2022, there have been several requests for mediation at SIMA regarding the negotiation of remote working costs, especially in the Contact Centre sector. Agreements have sometimes been reached as a result of the said mediation process.

the sole purpose of avoiding the applicability of the sectoral collective agreements, in particular the higher wages established at the sectoral level.¹³

3. Trends and debates in collective bargaining decentralisation and in decentralised bargaining in Spain

3.1 Imposing the decentralisation of collective bargaining

In the last decade, Spain has experienced several legislative attempts to transform the system of collective bargaining and impose a trend toward decentralisation. The unilateral reform of the collective bargaining system carried out in June 2011 by the then socialist government was essentially a compromise between the position of social partners and the “Troika” demands on labour market structural reforms. In November 2011, a change in the political situation urged social partners to reach a social pact, which was, however, ignored by the new conservative government that unilaterally adopted a Decree in 2012 with further changes concerning labour law. This caused a general strike in March 2012 and a collapse of the tripartite social dialogue for some years.¹⁴

One of the strategic responses of the trade unions to the failure of tripartite social dialogue was to strengthen and develop a bipartite social dialogue at the sectoral and company levels. Unions tended to consider the 2012 reform as ideologically rather than economically motivated and opposed it by maintaining the traditional trend to sign sectoral agreements. Nonetheless, in the years following the 2012 reform, at the company level, it was common to sign agreements that reduced working hours and wages to avoid dismissals. However, the unilaterally imposed reforms of the collective bargaining system have only had a few effects on the dynamics of

¹³ Mercader Uguina, J. R. (2021). El fin de la prevalencia del convenio de empresa en materia salarial: ¿punto de llegada o de partida? *Labos, Revista de Derecho del Trabajo y Protección Social*, (3), Special issue “La reforma laboral de 2021”, pp. 111-128. <https://doi.org/10.20318/labos.2022.6643>

¹⁴ See Knegt, R. and Ramos Martín, N. E. (2016). Clustering Labour Market Reforms and Social Dialogue in Nine EU Countries: Comparing Responses to the Economic Crisis. *DIADSE Project Overview Report*, p. 46. Available at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html>; and Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, pp. 26-29.

collective bargaining, as the unions initiated a judicial battle against them and continued bargaining on working conditions and wages in collective agreements mainly at the sector/provincial level.¹⁵

Over the last decade, labour market reforms have been passed without the support of trade unions, due to the reduction of labour rights implemented by the reforms. While in 2010, the reform carried out by the socialist government placed more importance on the social matter, the conservative government in office from 2012 to 2018 gave it little attention. Similarly, both the 2010 and 2011 labour market reforms were preceded by negotiations between the social partners and the socialist government; however, there was no social dialogue at all for the 2012 reform passed by the conservative government. Furthermore, the conservative government in office completely ignored the agreement reached by the social partners weeks before the adoption of the major labour law reform of 2012. Instead, a very aggressive reform was passed, which included profound legal changes in labour law (which faced obvious opposition from the main trade union confederations).¹⁶

In contrast, the bipartite dialogue between unions and employers' associations has been reinforced since the adoption of the 2012 labour market reform. In fact, one of the key strategic responses of the social partners to the breakdown of the tripartite social dialogue has been to promote bipartite social dialogue at all levels: sectoral and company levels. Social partners have signed important agreements on the maximum duration of collective agreements and wage moderation, among other issues. The 2012, 2014, 2016 and 2018 Inter-confederal Agreements on Employment and Collective Bargaining (AENC) clearly reflected these trends. In particular, these agreements appear to have caused some positive effects on collective bargaining coverage since they have encouraged social partners to renegotiate collective agreements. However, at the company level, serious doubts have arisen concerning the freedom of unions or work councils to negotiate working conditions, as agreements (for example, on the reduction of wages) have sometimes been signed merely to avoid more dramatic consequences, such as dismissals.¹⁷

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Knecht, R. and Ramos Martín, N. E. (2016). Clustering Labour Market Reforms and Social Dialogue in Nine EU Countries: Comparing Responses to the Economic Crisis. *DIADSE Project Overview Report*, pp. 13-15. Available at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html>.

The opposition of the unions to the implemented labour law reforms, especially to the legislation adopted in 2012, consisted in increasing the judicialisation of the labour disputes (increasing lawsuits and collective disputes) and organising general strikes. Another strategy of the trade unions to express their disagreement with the labour market reform was to negotiate against the spirit of the 2012 labour market reform.¹⁸ Despite the increase in the number of strikes during the period following the adoption of the 2012 reform, the economic impact was not particularly high in comparison with previous years. In 2012, the number of individuals taking part in collective actions increased (33.8%; the highest number since 2009). However, the economic impact of the actions decreased to 14.8% and strikes had a shorter duration.¹⁹

The 2012 reform (under the conservative government) clearly aimed to reduce judicial control over dismissals and reduce the unfair dismissal severance payments and dismissal costs. Two general strikes took place after the 2012 labour market reform. These measures not only heightened tensions and hindered collective bargaining, but also led to an imbalance in labour relations and the negotiation of working conditions. As it was easier to carry out dismissals, representatives were frequently compelled to accept the internal flexibility measures proposed by the companies to avoid them.²⁰

The 2012 reform attempted to decentralise collective bargaining and grant more power to employers in the bargaining process. From the perspective of the unions, this reform undermined their position. The reform enhanced the role of the company agreements, while the unions' strength had been traditionally located at the sectoral level of collective bargaining.

¹⁸ Ibid.

¹⁹ Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). *DIADSE: Dialogue for Advancing Social Europe, Policy Paper Spain*, p. 2. Available at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/policy-papers/policy-papers.html>.

²⁰ Knecht, R. and Ramos Martín, N. E. (2016). Clustering Labour Market Reforms..., *op. cit.*, pp. 14-15

The decentralisation objective of the 2021 reform has been achieved only to a certain extent.²¹ Decentralisation has proven to be challenging in a country with an extremely high density of small and medium size companies, most of which lack the necessary employee or union representatives to initiate a formal process of collective bargaining. Indeed, increasing flexibility for wage bargaining at the company level is considered undesirable in the Spanish context, where 82.8% of companies have two employees or fewer (see Table 2 on the size of companies). Due to the large number of small and medium-sized companies operating in Spain, this could undermine the whole stability of the labour relations and the collective bargaining system.²²

²¹ Ibid.

²² Ramos Martín, N. E. (2012). Sector-level bargaining and possibilities for deviations at company level: Spain, EUROFOUND, pp. 1-8. Available at: http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EUROFOUND/20110325-013630_Eurofound_Sector_level-barg_SPAIN_Feb11pdf.pdf.

Table 2: Total numbers of employees by company size

Company size	Total number of employees x 1000
	2020
Total	3,404,428
No employees	1,912,010
1-2 employees	907,192
3-5 employees	305,986
6-9 employees	125,472
10-19 employees	81,298
20-49 employees	46,101
50-99 employees	13,275
100-199 employees	6,906
200-499 employees	3,976
500-999 employees	1,160
1000-4999 employees	880
5000 or more employees	172

Source: Data from the Spanish Statistics Institute – INE (2020).

3.2 Effects of the decentralisation reforms

After the 2010-2012 reforms, wages decreased for the majority of the workforce, especially for the lower ranks of the labour market. Wages began to decrease as early as 2008 and continued to do so for several years. Nonetheless, as pointed out by Knecht and Ramos Martín and Mercader et al., “internal devaluation is not a direct result of the 2012 Labour Reform. A more likely explanation relates to the high level of low-skilled workers and those in low-paid occupations. At the company level, it

has been very common to negotiate agreements in which workers agreed to work fewer hours with a corresponding reduction in pay in an effort to minimize labour shedding and preserve human capital”. In exchange, companies agreed to resort to dismissals only as an extreme measure, once all the other possibilities of internal flexibility had been exhausted.²³ When it comes to opt-out agreements at the company level (deviating from the sectoral agreed wages), statistics show a reduced impact on the structure of collective bargaining.²⁴ Wage adjustments have taken place instead in sectors of the economy that are not covered by collective bargaining, or through the elimination or reduction of some wage components unilaterally granted by companies and not established by collective agreements.²⁵

A relevant factor in the Spanish context is the high degree of informality of the Spanish labour market, which entails that a disproportionate number of employees are either underclassified (working in a position that is actually higher than the one formally recognized by the company), or work longer hours than those formally agreed upon in the individual contract of employment.²⁶ One of the main aims of the 2012 Labour Law Reform was to discourage dismissals by forcing workers’ representatives to accept inferior working conditions in collective bargaining processes. As dismissals constituted a plausible threat in an economic crisis context, the alternative (e.g. lower salaries, longer working hours), could have been easily perceived as the best option by the employees’ representatives negotiating a company agreement.²⁷

The effects on the social dialogue are also clear, as the changes in collective bargaining rules provide further power resources to the “strong side” of the bargaining table: the employer.

The labour law reforms until 2012 strongly affected the working models in Spain. During the economic and financial crisis, involuntary part-time work grew

²³ See Knecht, R. and Ramos Martín, N. E., (2016). Clustering Labour Market Reforms..., *op. cit.*, p. 15; and Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D., (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, p. 2.

²⁴ Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, pp. 38-40.

²⁵ *Ibid.*

²⁶ Knecht, R. and Ramos Martín, N. E. (2016). Clustering Labour Market Reforms..., *op. cit.*, p.16.

²⁷ *Ibid.*

exponentially, especially temporary part-time jobs, which led to a growing phenomenon that could be called the “accumulation of precariousness”.²⁸

Some judicial interpretations of the 2012 labour market legislation have also watered down the effects of the reform. For instance, the case law on the rule setting forth the end of the automatic continuation of collective agreements upon their expiring date while they are being renegotiated. The controversial Spanish Supreme Court decision of December 2012 guaranteed that employees remained under the same employment conditions (including wages, working hours, etc.) while a new collective agreement was being concluded (as they were automatically incorporated in the employment contracts). Thus, the Spanish Supreme Court guaranteed the basic working conditions, allowing unions to request improved conditions when negotiating the renewal of the agreements.²⁹

The most serious problem of the 2012 reform (apart from some technical issues) was probably the lack of any consensus among the social partners. The reform was clearly externally imposed (inspired by the ECB, the European Commission, the IMF, etc.), and was not internally generated. The lack of social and political support explains the opposition to the Labour Law Reform by the “progressive” association of judges immediately following its approval. This judicial opposition to the renewed labour law served to deploy its effects in different aspects of the reform, including the provisions on decentralisation of collective bargaining.³⁰

The goal of the 2012 Labour Law Reform was clearly to decentralise collective bargaining. However, it did not lead to a high increase in the number of employees covered by company-level agreements. In 2011, while 929,000 employees were covered by company-level collective agreements, 9,733,800 were covered by sectoral collective agreements. In 2014, the number of employees covered by company-level agreements was 932,700, while the number of those covered by

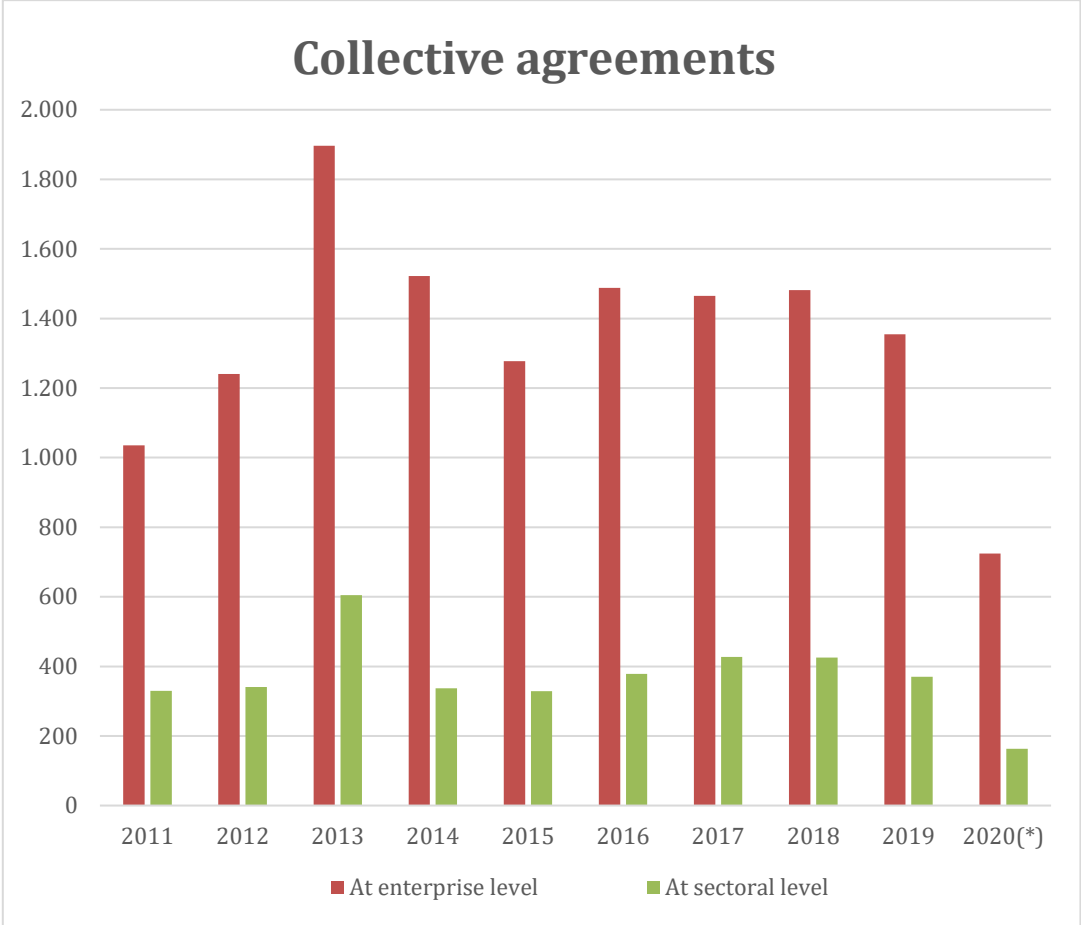
²⁸ Ibid.

²⁹ Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, p. 15.

³⁰ Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D., (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, p. 14.

sectoral agreements was 9,332,700. Labour costs, in general, did not decrease dramatically either, as shown by the Harmonised Labour Cost Index (ICLA).³¹

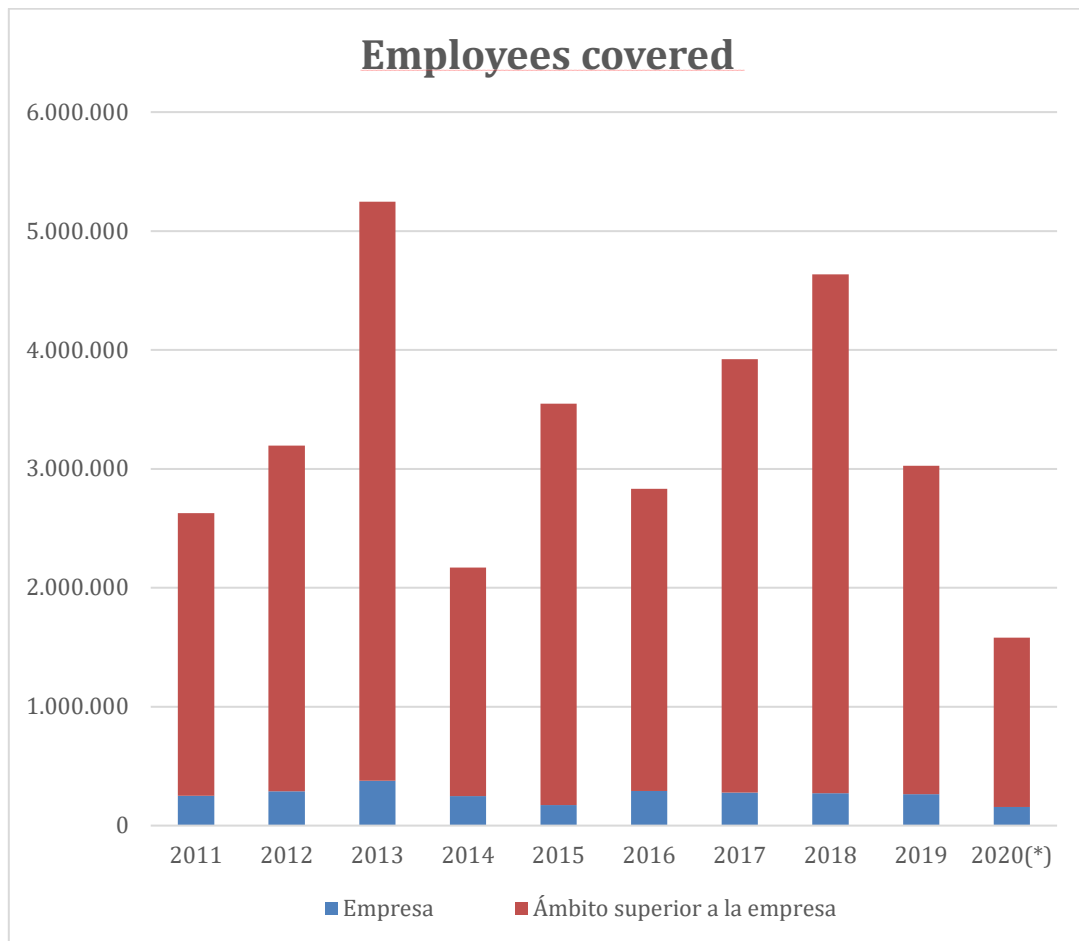
Graph 1: Collective agreements at the company and sectoral level



Source: CC.OO., Collective Bargaining Review, September 2021

³¹ Mercader Uguina, J. R. Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, p. 16.

Graph 2: % of employees covered by collective agreements



Source: CC.OO., Collective Bargaining Review, September 2021

Average salaries have decreased in the last decade. In 2008, the average salary for a full-time employee on the lowest decile was 655.07 €; in 2014, that salary was 575.37 €. The average wage of the lowest decile has been reduced by more than 12%. The same downtrend trend can be observed for the second and third lowest deciles: for the second, the reduction observed is more than 6%, and for the third, the reduction is only around 1%. For all the other deciles, average wages have risen over the period 2008-2014. Wages began to decrease in 2008 (for the lowest decile) and in 2010 (for the second and third lowest deciles). Internal devaluation is not a result of the 2012 Labour Law Reform, and a better explanation has likely to do with the appalling condition of the Spanish labour market over the last decade, especially for the low-skilled employees and for those employed in the lowest-paid jobs.³²

³² Ibid. p. 14.

When it comes to opt-out agreements at the company level, the statistics also show that they have not had a large impact on the structure of collective bargaining. In 2013 –the year presenting the highest number of opt-out agreements–, 2,512 company-level agreements opted out of some sort of working conditions (mostly wages) established by sectoral agreements. These company-level agreements covered only 159,550 employees.³³

3.3 The role of the social partners in collective bargaining decentralisation reforms

During the eighties and nineties, the actors leading the design of the institutional setting governing the collective bargaining process were the unions. This situation is explained by the national political context in which the constitutional right to collective bargaining was established. This involved an emerging democratisation context, in which collective rights and freedoms were novel and trade unions could play a major role. Moreover, in the so-called “transition” period to democracy, trade union organisations had an important social and political influence. However, over the years, the unions power/influence in the political decision-making process began to decline in Spain.

From the mid-1990s, the labour market required reforms and more flexibility in the collective bargaining system to be adapted to the economic context and the demands of the EU for more ambitious labour market reforms. All these factors influenced the changes in collective bargaining regulations in Spain, which were implemented by successive reforms throughout the 2000s and culminated in the 2012 reform.

The 2012 reform responded to decentralisation trends and discourses raised due to the global financial crisis. The justification was that the dramatic situation of the Spanish economy required a modernisation of the collective bargaining institutional framework in favour of decentralisation at the company level. This reform clearly benefited the interests of the employers and its main criticism was that the shift in collective bargaining power resulting from this most recent reform had a detrimental

³³ Ibid. p. 15.

effect on working conditions and increased employment precariousness. For many people, this reform was an involution of workers' rights, especially at the collective level,³⁴ as it limited the prerogative of the social partners to deviate from prioritising the application of company-level agreements over collective agreements at a higher level (in particular, by an interprofessional agreement).³⁵

The 2012 reform of collective bargaining rules, imposing a clear decentralisation, managed to increase productivity and competitiveness but it also clearly undermined collective social rights. The reform, which was unilaterally adopted by the then conservative government, had very few effects. As an externally imposed reform, it received no support from the worker's representatives.³⁶ Some years later, the number of employees covered by company-level agreements hardly grew and the number covered by sectoral agreements hardly decreased. The possibility to opt-out was used in several company-level agreements, but these covered only 1.5% of workers. However, the percentage of workers not covered by a collective agreement rose by 3 points to 12%. The decentralisation of collective bargaining has been difficult since in Spain there are many small companies without worker representation at the shop level. The 2012 reform was imposed by the government and had no social support, which clearly explains the opposition from the trade unions.³⁷

Besides the reluctance of trade unions to negotiate wages and working conditions at the company level, according to Casas Baamonde, there were other reasons explaining why companies and employees' representatives do not usually negotiate a specific company agreement: the lack of knowledge/experience in negotiating; the lack of employees' representatives in the company; and the refusal of companies to

³⁴ Valero Otero, I. (2019). La Negociación Colectiva en España, Una Evolución Imperfecta. *Lurralde: inves. espac.* 42, pp. 151-163. ISSN 0211-5891 ISSN 1697-3070 (e); Gorelli Hernández, J. (2013). *La negociación colectiva de empresa. Descuelgue y prioridad aplicativa del convenio de empresa.* Granada: Comares, p. 167.

³⁵ Fernández Villazón, L. A. (2018). La prioridad aplicativa del convenio colectivo de empresa: límites e incidencia sobre los fenómenos de descentralización productiva. *Revista General de Derecho del Trabajo y de la Seguridad Social*, (51), pp. 166-197. ISSN-e 1696-9626.

³⁶ Moll Noguera, R. (2018). La descentralización de la negociación colectiva en Portugal y España. Un breve estudio de derecho comparado. *Derecho de las relaciones laborales*, (10), pp. 1151-1162. ISSN 2387-1113.

³⁷ Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Aauri, P., Muñoz Ruiz, A. B., and Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social..., *op. cit.*, pp. 34-37.

bargain at lower levels, mainly due to the fact that sectoral collective agreements adjust to the needs of the companies.³⁸

One of the strategies adopted by both employers and employees' representatives when bargaining agreements at the company level has been to include all the company workplaces in their scopes, whether they have workers' representatives or not.³⁹

One of the most controversial issues regarding the practical application of the priority rule for company-level agreements is whether this type of agreement, in fact, covers all kinds of collective agreements signed at the company level, including the collective agreements for one or several workplaces but not for the whole company.⁴⁰

Regarding those companies with no employees' representatives (trade unions or works councils), the workers may directly bargain with the employer and be bound collectively, but, in this case, the agreement can only be qualified as an extra-statutory collective agreement, without erga omnes effect. This sort of agreement has limited effectiveness since it only affects the signatories or those who are formally represented by them. Accordingly, this type of company agreement, which is signed by five or fewer workers, would only apply to them, but not to other future workers of the company, since they do not represent them. Therefore, it cannot be classified as a statutory collective agreement (negotiated in conformity with the Workers' Statutes rules and legally binding for all workers falling under its scope.)⁴¹

Finally, the 2021 labour reform has been praised by legal experts for being sensible, reasonable, and balanced. The fact that it has been the result of a long and complex tripartite negotiation process in which the social partners have reached the necessary

³⁸ Casas Baamonde, M. E. (2018). Los equívocos de la representatividad para negociar convenios colectivos sectoriales estatales ante la descentralización de la negociación colectiva. *Derecho de las relaciones laborales*, (5), pp. 469-486. ISSN 2387-1113.

³⁹ See case law: Judgement of the Spanish National Audience, of 16 September 2013, Procedure No. 314/2013, explained by Muñoz Ruiz, A. B. (2014), *Problemas Prácticos del Convenio Colectivo de Empresa*, Lex Nova, pp. 29-31.

⁴⁰ Fernández Villazón, L. A. (2018). La prioridad aplicativa del convenio colectivo de empresa: límites e incidencia sobre los fenómenos de descentralización productiva. *Revista General de Derecho del Trabajo y de la Seguridad Social*, No. 51, pp. 166-197. ISSN-e 1696-9626.

⁴¹ See case law: Judgement of the High Court of Justice of Andalusia, Sevilla, of 7 December 1999 (R. 3719/1999) and of 23 May 2000 (R. 2999/1999), explained by Muñoz Ruiz, A. B. (2014), *Problemas Prácticos del Convenio Colectivo de Empresa*, Lex Nova, p. 32.

agreements with the Government in the sinuous field of labour market reforms, is particularly relevant.⁴² The Government, the most representative trade unions (UGT and CC.OO.) and the main employers' associations (CEOE and CEPYME) have achieved a consensual balance when addressing controversial issues regarding the system of collective bargaining where they have traditionally had opposing points of view.

4. Case studies: companies in the manufacturing sector

A) FERTIBERIA

COMPANY CHARACTERISTICS

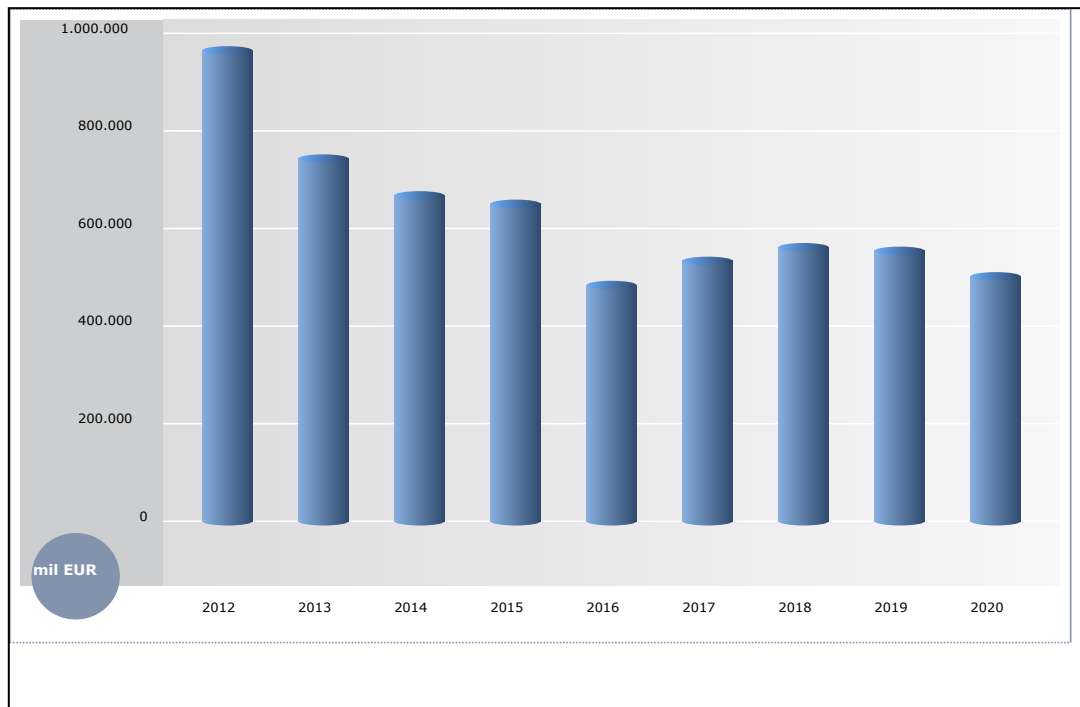
Fertiberia is a Spanish company belonging to the chemical industry and is dedicated to the production of fertilizers. It is the parent company in a corporate group composed of several subsidiaries located in Algeria, Portugal and France. The workforce of Fertiberia in Spain consists of 782 employees (2020).⁴³

Despite the COVID-19 pandemic, the activity of Fertiberia achieved positive results in the 2019-2020 period with a production of 5.3 million tonnes. The following graph shows the evolution of operating income.

Graph 3: Evolution of operating income (2012-2020)

⁴² Mercader Uguina, J. R. and de la Puebla Pinilla, A. (2021). La Reforma Laboral de 2021: elogio de la sensatez. El Foro de Labos. Available at: <https://www.elforodelabos.es/2021/12/la-reforma-laboral-de-2021-elogio-de-la-sensatez>.

⁴³ Source: SABI (Iberian Balance Sheet Analysis System).



Source: SABI (Iberian Balance Sheet Analysis System)

The distribution between trade union representatives and other representatives is as follows: CC.OO. (31.25%), UGT (50.00%) and other representatives (18.75%).⁴⁴

EVOLUTION OF COLLECTIVE BARGAINING

In the manufacturing sector, one of the most relevant subsectors is the chemical industry, which includes around 3,000 companies and employees.

The XX general collective agreement for the chemical industry (*XX Convenio colectivo general de la industria química*) was approved on 19 July 2021 (BOE No. 171). Most of the companies covered by this sectoral agreement are small and medium size companies (90%).

The Fertiberia company agreement was published in 2018.⁴⁵ There is no association between the decentralisation trend of the 2012 labour market reform and the renewal of the Fertiberia company agreement. It has been a consolidated bargaining unit since 7 November 1991, when the first company agreement for Fertiberia was negotiated and signed at the national level.

⁴⁴ Trade union representatives and non-trade union representatives.

⁴⁵ BOE No. 189 of 6 August 2018.

UNIONS AND EMPLOYER STRATEGIES

Judicial disputes regarding the legitimacy of employers' associations have arisen within the chemical industry. One of the most relevant of these disputes was resolved by judgement of the Spanish Supreme Court of 30 December 2015.⁴⁶ The Spanish Association of Plastic Converters (ANAIP) filed a lawsuit before the Spanish National Audience against the chemical collective agreement, alleging that the plastic processing industry should be excluded from the scope of the said collective agreement.

It seems that the weakness of the sectoral collective agreement, for a short period of time, led to some judicial disputes. The XVI general collective agreement for the chemical industry was signed by both FEIQUE (Business Federation of the Spanish Chemical Industry) and the trade union confederation CC.OO. on 18 October 2011 but not by the trade union UGT. Therefore, the collective agreement was not made generally binding for all chemical companies and employees. In fact, collective agreements are to be applied only to the employees represented by the signatory parties.⁴⁷

In the legal dispute mentioned above, ANAIP argued that the representativeness of FEIQUE was not valid because FEIQUE should have been representative in all the subsectors including the subsector of plastic processing (which was not the case). In addition, ANAIP alleged that the plastic processing industry was not a part of the chemical industry.

The Spanish Supreme Court concluded that the chemical collective agreement was lawful on two grounds. Firstly, the collective agreement complied with the principle of equality and non-discrimination established in Article 14 of the Spanish Constitution. Secondly, the functional scope of the collective agreement was justifiable and reasonable.

In this judgement, the Spanish Supreme Court considered that there have not been many collective bargaining agreements negotiated at the company level in the

⁴⁶ Appeal No. 255/2014.

⁴⁷ Judgement of the Spanish National Audience No. 73/2012, of 20 June. Procedure No. 98/2012.

chemical industry. In addition, the few company agreements signed tended to improve the working conditions set at the sector level. The functional/material scope has been the same for more than 30 years and had previously been accepted by ANAIP. As a result, the judgement concluded that the signing parties had agreed correctly on the functional scope and that the bargaining unit was appropriate.

Some labour disputes have also been observed in American companies located in Spain. For example, the labour dispute that took place at DuPont Corporation.⁴⁸ In this case, it seems that there was a disagreement between the employment model based on the liberal approach of DuPont and the traditional role of trade unions in Spain.

ARTICULATION BETWEEN THE COMPANY AND SECTORAL BARGAINING STRUCTURES

There are two main levels of negotiation in the chemical industry: the sectoral level and the company level. At the sectoral level, employees are protected by the collective agreement for the chemical industry. This has been negotiated by the Business Federation of the Spanish Chemical Industry (FEIQUE) and the main trade unions (UGT-FICA and CC.OO.). It is also important to emphasise that this collective agreement has a national scope. In addition, Article 1.3 of the XX general collective agreement on the chemical industry does not advocate for bargaining at the regional or provincial level.

COORDINATION BETWEEN SECTORAL AND COMPANY ACTORS

The level of coordination of collective bargaining in this industry is high. Nonetheless, the rules on wages set in sectoral collective agreements are flexible even for small and medium size companies. In this regard, the chemical collective agreement uses the criterion of gross salaries (*masa salarial bruta*) to increase wages instead of rates of pay which is more common in the practice. The criterion of gross salaries is the sum of all salaries of all employees paid by the company. The mentioned criterion is explained in the Article 33 of the general collective agreement for the chemical industry.

⁴⁸ <https://www.lne.es/aviles/2021/02/19/condenan-du-pont-impedir-labor-35098453.html>

In Spain, there have not been many collective bargaining agreements negotiated at the company level in the chemical industry. In addition, the few company agreements signed tended to improve the working conditions set at the sector level.

QUALITY OF THE COLLECTIVE BARGAINING PROCESSES

The Fertiberia collective agreement was negotiated by the company representatives and three trade unions: UGT, CC.OO. and CSIF. The participation of the main (most representative) trade unions (UGT and CC.OO.) with trade union delegates with thorough experience in bargaining and sufficient manpower resources is usually a guarantee for the quality of the outcome of the negotiation process.

The collective agreement was in force from 7 June 2018 until 31 December 2021.

QUALITY OF BARGAINING CONTENT

The influence of the sectoral collective agreement on lower bargaining units is remarkable. On the one hand, it seems that there are strong similarities regarding wages at both levels. On the other hand, the purpose of the collective agreement at the company level was to improve the working conditions established at the sectoral level. For example, regarding the issue of working time, Fertiberia's collective agreement included a progressive reduction of the maximum working time (on an annual basis). The initial maximum working time was 1,728 hours/annually. However, since 1st January 2021, it is now 1,720 hours/annually and there will be a progressive reduction until reaching a maximum of 1,712 hours/annually in the latest period (2022-2024).

Table 3: Comparison between negotiation levels

Collective agreement	Signatory parties	Wage (lower-higher)	Maximum working time (hours/ annual basis)	Date of publication
XX general collective agreement for the chemical industry	Business Federation of the Spanish Chemical Industry (FEIQUE) and UGT-FICA-CC.OO	16,197.71 € - 42,923.92 €	1,752	BOE No. 171 of 19 July 2021
Fertiberia, SA collective agreement	Company and UGT, CC.OO.-CSIF	17,908.59 € - 42,980.62 €	1,728	BOE No. 189 of 6 August 2018

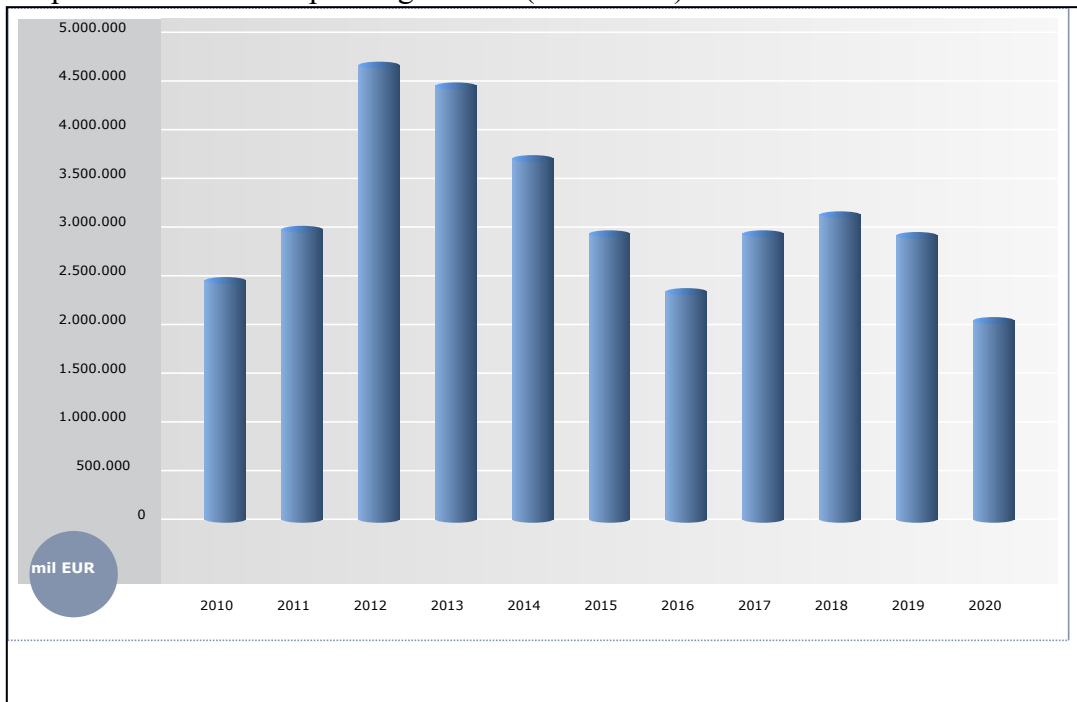
B) CEPSA QUÍMICA

COMPANY CHARACTERISTICS

Compañía Española de Petróleos, S.A.U., commonly known as Cepsa, is a Spanish multinational oil and gas company. Cepsa Química is a subsidiary of the CEPSA corporate group. The main activity of Cepsa Química is the manufacturing of chemical products. Cepsa has a workforce of 433 employees (2020).⁴⁹

Despite the Coronavirus crisis, the company has shown a strong market position and has seen added value. The evolution of the company's operating income is described in the following graph:

Graph 4: Evolution of operating income (2010-2020)



Source: SABI (Iberian Balance Sheet Analysis System)

The distribution between trade union representatives and non-trade union representatives is as follows: CC.OO. (52.85%), UGT (28.77%) and other representatives (18.38%).⁵⁰ The data includes both refineries and petrol stations.

⁴⁹ Source: SABI (Iberian Balance Sheet Analysis System).

⁵⁰ Trade union representatives and non-trade union representatives.

EVOLUTION OF COLLECTIVE BARGAINING

The Cepsa partial Group Collective agreement (*Convenio colectivo del Grupo Parcial Cepsa*, BOE No. 52 of 28 February 2018) involves not only Cepsa Química, but also several companies from the same corporate group.⁵¹ It should be noted that this is a new bargaining unit without previous bargaining experience.

UNIONS AND EMPLOYER STRATEGIES

The company collective agreement was negotiated by CC.OO. The trade union CC.OO. is also one of the signing parties of the sectoral collective agreement. The bargaining strategy, in this case, was to follow the guidelines of the sectoral collective agreement and not allow the entrance of a new bargaining unit that could contradict the agreements reached at the sectoral level.

ARTICULATION BETWEEN THE COMPANY AND SECTORAL BARGAINING STRUCTURE

There are two levels of negotiation: the sectoral level and the company level. At the sectoral level, the employees are protected by the collective agreement for the chemical industry. This agreement was negotiated by the Business Federation of the Spanish Chemical Industry (FEIQUE) and the main trade unions (UGT-FICA and CC.OO.). As mentioned above, it is also important to emphasise that this collective agreement has a national scope. In addition, Article 1.3 of the XX general collective agreement for the chemical industry does not advocate for bargaining at the regional or provincial level.

COORDINATION BETWEEN SECTORAL AND COMPANY ACTORS

The level of coordination between bargaining levels is high. The policy established by the sectoral agreement is followed in the company agreement, which is signed at the company level.

QUALITY OF THE COLLECTIVE BARGAINING PROCESSES

The company agreement was negotiated by the company representatives and the trade union (CC.OO). The mentioned trade union is one of the most representative

⁵¹ Compañía Española de Petróleos, SAU, – CEPSA Comercial Petróleo, SAU., – CEPSA Química, SA., CEPSA Business Services, SA, CEPSA Trading, SAU., CEPSA E.P., SAU., CEPSA Gas y Electricidad, SAU., Fundación CEPSA.

unions in Spain. This means that the bargaining process complied with the rules established in the Workers' Statute regarding the legitimacy to negotiate this kind of agreement.

The collective agreement was in force from 22 December 2017 until 31 December 2020. During the duration of the collective agreements, new negotiations were allowed to update their content in the event of significant economic, social or technological changes.

QUALITY OF BARGAINING CONTENT

The Cepsa company agreement follows the indications established at the sectoral level regarding maximum working time. In terms of improved working conditions, it should be stressed that the maximum wage was increased by means of the company agreement.

Table 4: Comparison between levels of negotiation

Collective agreement	Signatory parties	Wage (lower-higher)	Maximum working time (hours/ annual basis)	Date of publication
XX general collective agreement for the chemical industry	Business Federation of the Spanish Chemical Industry (FEIQUE) and UGT-FICA-CC.OO.	16,197.71 € - 42,923.92 €	1,752	BOE No. 171 of 19 July 2021
Cepsa Partial Group collective agreement.	Company and CC.OO.	15,448.56 € - 54,911.52 €	1,752	BOE No. 52 of 28 February 2018

C) REPSOL QUÍMICA

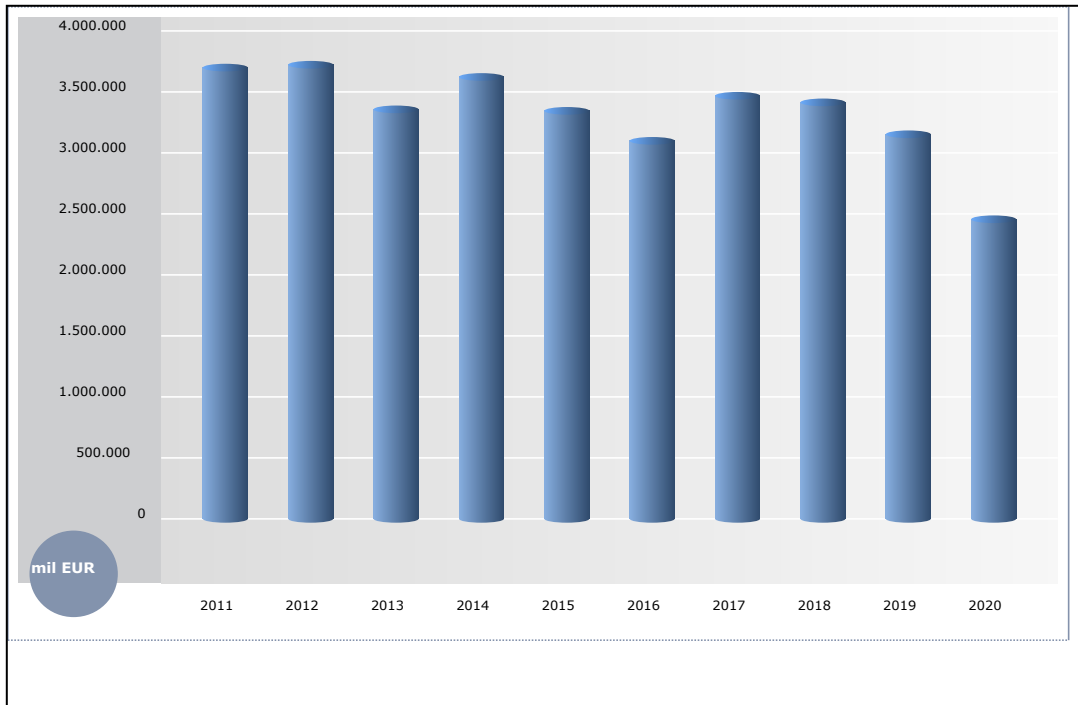
COMPANY CHARACTERISTICS

Repsol is a Spanish energy and petrochemical company based in Madrid. Repsol Química is a subsidiary of the Repsol corporate group. The main activity of Repsol Química is the manufacturing of chemical products. Repsol has a workforce of 1,304 employees (2020).⁵²

Between 2014 and 2020, collective dismissals took place at the company. These dismissals were negotiated and approved by the company and the trade unions represented in the company. In 2020, the operating income reached 44,834,000 euros. In 2019, the incomes were 148,585,000 euros. The main factors explaining this income decline were the Coronavirus crisis and an incident affecting the company in 2020. On 14 January 2020, there was a major explosion at the Chemical Industries of Ethylene Oxide (IQOXE) site, belonging to the Repsol corporate group in Tarragona, Catalonia, Spain. Three people –two employees and one individual external to the company– died and seven other people were injured due to the explosion. The evolution of the company’s operating income (2011-2020) is described in the following graph:

⁵² Source: SABI (Iberian Balance Sheet Analysis System).

Graph 5: Evolution of operating income (2011-2020)



Source: SABI (Iberian Balance Sheet Analysis System)

The distribution between trade union representatives and other representatives is as follows: CC.OO. (34.70%), UGT (34.69%) and other representatives (30.61%)⁵³.

EVOLUTION OF COLLECTIVE BARGAINING

The XIV Repsol Química company agreement (*Convenio colectivo de Repsol Química, SA*, BOE No. 158 of 30 June 2018) is a consolidated collective agreement in the chemical industry. The first company agreement was negotiated in October 1995.⁵⁴ The many renewals of this company agreement show that the signing of the XIV Repsol Química company agreement was completely unrelated to the decentralisation trend that was promoted by the 2012 labour market reform.

UNIONS AND EMPLOYER STRATEGIES

This company collective agreement was negotiated by the trade unions CC.OO. and UGT. Both trade unions are also signing parties of the sector-level collective agreement. The bargaining strategy, in this case, was to follow the guidelines of the

⁵³ Trade union representatives and non-trade union representatives.

⁵⁴ BOE No. 267 of 20 October 1995.

sectoral collective agreement and not to allow the entrance of a new bargaining unit that could contradict the agreements reached at the sectoral level.

COORDINATION BETWEEN SECTORAL AND COMPANY ACTORS

The coordination is very high between bargaining levels in this case. The policy set by the sector-level agreement is followed by the company-level agreement.

QUALITY OF THE COLLECTIVE BARGAINING PROCESSES

The Repsol Química company agreement was negotiated by the company representatives and the main trade unions in the industry (CC.OO. and UGT). This means that the bargaining process complied with the rules established in the Workers' Statute.

QUALITY OF BARGAINING CONTENT

The quality of the bargaining content is remarkable if we consider the most relevant working conditions agreed upon: the maximum working time and the wages. On the one hand, the Repsol Química company agreement introduced a reduction in the maximum working time, that is, from 1,752 hours/annually to a maximum of 1,704 hours/annually. On the other hand, the wages increased at both levels (the minimum and the maximum), that is, from 16,197.71 € to 18,951.24 € for the lowest wage categories and from 42,923.92 € to 58,642.86 € for the highest wage categories.

Table 5: Comparison between negotiation levels

Collective agreement	Signatory parties	Wage (lower-higher)	Maximum working time (hours/ annual basis)	Date of publication
XX general collective agreement for the chemical industry	Business Federation of the Spanish Chemical Industry (FEIQUE) and UGT-FICA-CC.OO.	16,197.71 € - 42,923.92 €	1,752	BOE No. 171 of 19 July 2021
Repsol Química, SA. XIV collective agreement	Company and CC.OO./UGT	18,951.24 € - 58,642.86 €	1,704	BOE No. 138 of 30 June 2018

Source: Prepared by the author.

The data from the three case studies are described in the following table:

Table 6: Comparison between negotiation levels

Collective agreement	Signatory parties	Wage (lower-higher)	Maximum working time (hours/ annual basis)	Date of publication
XX general collective agreement for the chemical industry	Business Federation of the Spanish Chemical Industry (FEIQUE) and UGT-FICA-CC.OO.	16,197.71 € - 42,923.92 €	1,752	BOE No. 171 of 19 July 2021
Fertiberia, SA collective agreement	Company and UGT, CC.OO.-CSIF	17,908.59 € - 42,980.62 €	1,728	BOE No. 189 of 6 August 2018
Cepsa partial group collective agreement.	Company and CC.OO.	15,448.56 € - 54,911.52 €	1,752	BOE No. 52 of 28 February 2018
Repsol Química, SA. XIV collective agreement	Company and CC.OO./UGT	18,951.24 € - 58,642.86 €	1,704	BOE No. 138 of 30 June 2018

Source: Prepared by the author.

5. Case studies: companies in the retail sector

A) MERCADONA

COMPANY CHARACTERISTICS

Created in 1977 by the Cárnicas Roig Group, currently, this company has 1,633 stores across Spain, and 98,161 employees (2020).⁵⁵ The main activity of the company is the retail sale of food, groceries, and personal products.

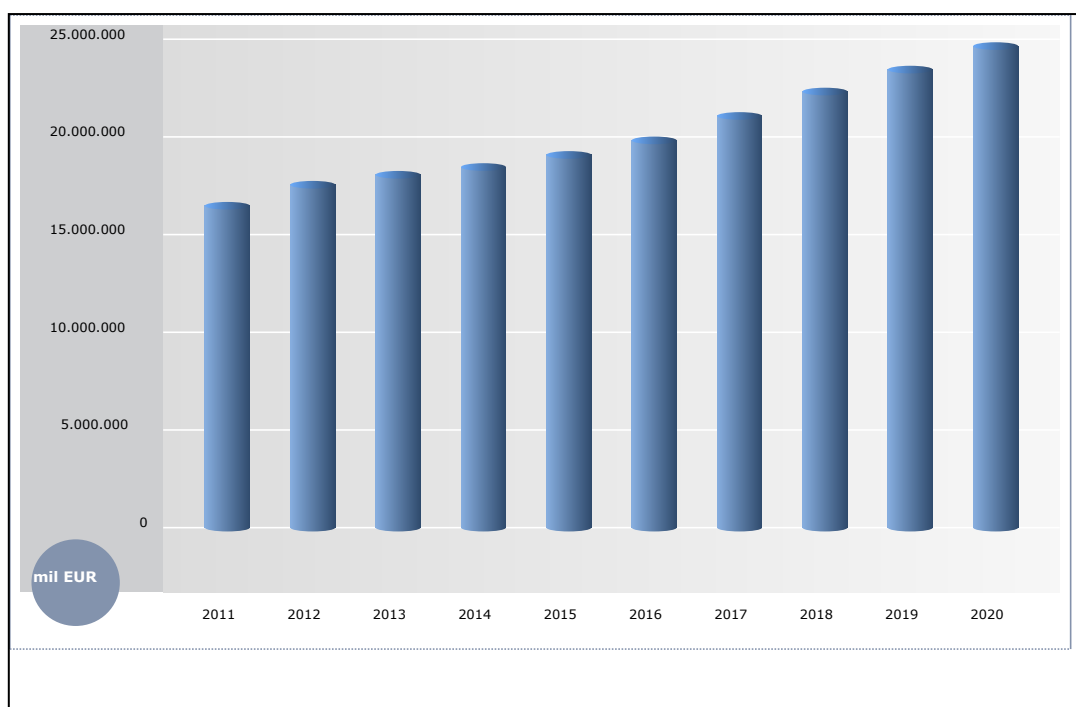
The Management Committee of Mercadona, a company with onsite supermarkets and online sales, has agreed, in line with the company's Total Quality Model, to raise the salary of its entire workforce by 6.5% to guarantee the purchasing power of its employees. This measure has been adopted during the complex situation of the COVID-19 pandemic, during which all Mercadona staff were playing an essential role in the supply of essential products and goods. With this salary increase, the company wanted to reward the flexibility and adaptability of the staff to the needs of

⁵⁵ Source: SABI (Iberian Balance Sheet Analysis System).

the customers and the challenges of the sanitary crisis affecting the population in recent years.

Starting in January 2022, the minimum starting wage at Mercadona during the first year of work has been 1,425 € gross per month, which is 87 € more per month than in 2021. The evolution of the company's operating income (2011 - 2020) is shown in the following graph:

Graph 6: Evolution of operating income (2011 - 2020)



Source: SABI (Iberian Balance Sheet Analysis System)

The distribution of the representatives from the main trade unions in Mercadona is as follows: UGT (53%) and CC.OO. (39%). At Mercadona, it can be noted that there is a strong position of trade union delegates, as well as the absence of works councils.

EVOLUTION OF COLLECTIVE BARGAINING

The bargaining unit is consolidated and the trend to decentralisation is unrelated to the 2012 labour market reform. Mercadona's first collective agreement was negotiated in September 1996.⁵⁶

⁵⁶ BOE No. 219 of 10 September 1996.

UNIONS AND EMPLOYER STRATEGIES

The main strategy followed by the bargaining parties was to achieve only one company agreement for all Mercadona employees. This solution was reached through the existing collective agreement at the company level.

COORDINATION BETWEEN SECTORAL AND COMPANY ACTORS

In the retail sector, a strong fragmentation of the bargaining units at both the national and provincial levels can be observed. The fragmentation of bargaining units is explained by the difficulties to negotiate a sectoral collective agreement at the national level. The weakness of employers' associations at the national level was pointed out by the interviewees as the main concern in the retail sector. This weakness has led to such fragmentation and it is possible to find a sectoral collective agreement which regulates the working conditions of only 50 employees.

Firstly, at the national level the so-called Collective Bargaining Agreement for Department Stores (*Convenio Colectivo de Grandes Almacenes*) was signed by the Spanish National Association of Large Distribution Companies (ANGED) employers' association, which represents companies in the sector, and also by the following trade union organisations: FETICO, FASGA, CC.OO. and UGT.⁵⁷ Article 1 of this collective agreement shows the complexity of the functional scope:

Table 7: Activities included in the Collective Bargaining Agreement for Department Stores

<p>Article 1. Functional Scope</p> <p>This collective bargaining agreement establishes the basic working rules for those companies governed by the Collective Bargaining Agreement for Department Stores.</p> <p>The following shall also be governed by this Agreement:</p> <p>A) Companies or Corporate groups:</p> <p>1.A) Companies: Those companies belonging to the Spanish National Association of Large Distribution Companies (ANGED) that do not have their own concurrent Collective Bargaining Agreement.</p> <p>1.B) Corporate Groups: To guarantee the principle of homogeneity of employment conditions, the agreement shall also affect: those companies that belong to the same corporate group as the Large Distribution companies within ANGED, irrespective of the activity they carry out; those companies that provide their services mainly in the physical space in which the parent company carries out its activity; those companies whose activity contributes to or complements that of the parent company; and those companies that carry out retail activities or any other</p>

⁵⁷ BOE No. 139 of 11 June 2021.

complementary or subsidiary activities related to the corporate purpose of the parent company, provided that these companies apply or voluntarily and expressly refer to this agreement.

2. Those companies operating as franchisees of the companies referred to in this Article, irrespective of their store dimension (square metres) of sales area.

3. Companies engaged in retail activities mainly dedicated to mixed retail trade in medium and large stores, having one or more workplaces organised by departments, provided that, as a company or corporate group, they reach a sales area of at least 30,000 square meters at the national level, in some of the following modalities:

3.1 Department stores: Department stores are defined as those companies which have one or more retail stores offering a wide and relatively extensive assortment/ranges of products (mainly household equipment, clothing, footwear, perfumery, food, etc.), which are organised into multiple departments, which usually provide the assistance of sales staff and which also provide a variety of services to customers.

3.2 Superstores: Superstores are defined as those companies which have one or more retail stores offering a wide assortment of food and non-food mass-market products mainly through self-service, usually having parking facilities, and which also provide a variety of services to customers.

3.3 Specialised Department Stores: Specialised department stores are defined as those companies which have one or more retail stores offering a wide assortment of a given product or range of products, where at least 80% of the sales area is devoted to retail activity, either through self-service or with the assistance of sales staff, and which also provide a variety of services to customers. These companies shall apply this agreement unless they have been applying another concurrent agreement, and, in any case, provided that the application of this agreement is agreed upon with the legal representatives of the employees.

4. The agreement shall not apply to companies engaged in the activity of Supermarkets unless there is express reference, in accordance with the provisions of paragraph 1.B) of this Article and the Tenth Transitional Provision.

Source: Collective Bargaining Agreement for Department Stores

Secondly, the II National Collective Agreement for the retail trade of products in Pharmacy, Perfumery and Herbalist's stores (*Convenio colectivo estatal del comercio minorista de droguerías, herboristerías y perfumerías*), which was negotiated by the following employers' associations: the Spanish Business Federation of Perfumeries and Drugstores (FENPYDE) and the Spanish Federation of Herbalist's Associations (FENADIHER), representing the companies in the sector, and also by the following trade union organisations: FESMC-UGT, CC.OO. Services and US.⁵⁸ The structure of collective bargaining within the sector is described in the following table:

⁵⁸ BOE No. 192 of 12 August 2017.

Table 8: Activities included in the II National Collective Agreement for the retail trade of products in Pharmacy, Perfumery and Herbalist's stores

<p>Article 6. Structure of collective negotiation within the sector</p> <p>1. This collective bargaining agreement has been negotiated under Article 83.2 of the Workers' Statute and governs collective negotiation in relation to the retail trade of products in Pharmacy, Perfumery and Herbalist's stores, in such a way that, without prejudice to the provisions of Article 84 of the Workers' Statute, the negotiation structure shall be as follows:</p> <p>a) National Collective Bargaining Agreement: The current retail trade agreement for pharmacy, perfumery and herbalist's stores in its current version is directly applicable to companies within its functional scope, except for those applying their own Company Collective Bargaining Agreement.</p> <p>b) Sectoral Collective Bargaining Agreements at the regional, provincial or Autonomous Community (regional) level prior to the signing of this agreement.</p> <p>c) Company/Workplace Collective Bargaining Agreements. The parties to the agreement declare that the National Collective Bargaining Agreement shall be the exclusive and effective reference for regulating all matters not expressly covered in these Company Collective Bargaining Agreements.</p> <p>2. Notwithstanding the priority of application of the Company Collective Bargaining Agreements established in Article 84 of the Workers' Statute, the following are considered to be specific and exclusive matters at the national sector level and, consequently, are reserved for this negotiation unit:</p> <p>Employment: contract modalities.</p> <p>Probationary periods.</p> <p>Professional classification.</p> <p>Wage structure.</p> <p>Sectoral minimum wages and their increase.</p> <p>Maximum duration of daily working time.</p> <p>Occupational training.</p> <p>Disciplinary regime.</p> <p>Collective representation system⁵⁹.</p>
--

One of the main problems is that the bargaining trend in the retail industry is strongly focused on the provincial level. In fact, collective agreements at the provincial level have been negotiated without clear guidelines being set at higher bargaining levels (regional and national levels). The following table shows the type of collective agreements that have been negotiated in the retail sector in recent years:

Table 9: Description of sectoral collective agreements at the national level

Collective agreement	Activities covered	Territorial extent	Signatory parties	Date
Collective agreement for the wholesale and	This collective	Madrid	COPYME, Association of	BOCM (Madrid)

⁵⁹ Article 6 of the II National Collective Agreement for the retail trade of products in Pharmacy, Perfumery and Herbalist's stores.

<p>retail trade of toys, ceramics, glass, lighting, gifts and sporting equipment. (<i>Convenio colectivo del Sector del Comercio Mayorista y Minorista de Jugete, Cerámica, Vidrio, Iluminación, Regalo y Material Deportivo</i>)</p>	<p>agreement establishes and regulates the rules governing the working conditions in those companies whose main activity is retail trade of one or more of the following products: ceramics, glass, lighting, gifts, toys, sporting equipment and sporting weapons.</p>		<p>Employers in the sale of sporting goods for the Region of Madrid, FESMC, UGT Madrid and CC.OO. Services Federation in Madrid</p>	<p>No. 267 of 9 November 2019</p>
<p>Collective agreement for the retail trade of butchery and charcuterie. (<i>Convenio colectivo del sector de comercio minorista de carnicería-charcutería</i>)</p>	<p>This agreement regulates the labour relations of all companies and their employees involved in the retail trade of meat.</p>	<p>Castellón-Valencia</p>	<p>Representatives of the Guild of Butchers-Butchers of Valencia Province and the Guild of Castellón UGT-FeSMC and CC.OO. Services Federation.</p>	<p>DOGV (Generalitat Valenciana) No. 8065 of 19 June 2017</p>
<p>Provincial collective agreement for the export, wholesale and retail trade of footwear, leather goods and travel items (<i>Convenio colectivo provincial de comercio minoristas, mayoristas y exportadores de calzado y artículos de piel y viaje</i>)</p>	<p>This agreement shall apply to the labour relations of all companies that act as retailers, wholesalers and exporters of footwear, leather goods and travel items.</p>	<p>Alicante</p>	<p>AVECAL, FACPYME, UGT and CC.OO.</p>	<p>BOPA (Alicante) No. 52 of 3 March 2022</p>
<p>Collective agreement for the wholesale and retail trade of toys (<i>Convenio Colectivo para el sector de</i></p>	<p>This collective bargaining agreement is applicable at the provincial</p>	<p>Gipuzkoa</p>	<p>Gipuzkoa Mercantile Federation and the trade union ELA</p>	<p>BOG (Gipuzkoa) No. 56 of 22 March 2006</p>

<i>Juguetería, Mayoristas y Minoristas</i>)	level and shall affect all companies with workplaces in Gipuzkoa and whose activities are related to the wholesale or retail trade of toys.			
Collective agreement for the retail trade of food products and supplies (<i>Convenio colectivo del sector del comercio minorista de productos de alimentación, de ultramarinos y víveres</i>)	The provisions of this agreement shall apply to all employees and companies in the retail trade of food products in traditional food stores known as grocery stores and other similar establishments.	Tarragona	Business Confederation of Tarragona Province (CEPTA), Federation of Services for Mobility and Consumption (FeSMC) of UGT in Catalonia and CC.OO. Services Federation in Catalonia.	BOPT (Tarragona) No. 96 of 19 May 2017
Collective agreement for the metal trade sector (<i>Convenio Colectivo del sector del Comercio del Metal</i>)	See Article 1 and Annex II	Cantabria	Pymetal Cantabria, Federation of Services, Mobility and Consumer Affairs (FeSMC) of UGT in Cantabria, CC.OO. Services Federation in Cantabria	BOC (Cantabria) No. 252 of 28 December 2018

Source: Prepared by the author

The description of the functional scope of the collective agreement for the metal trade sector (*Convenio Colectivo del sector del Comercio del Metal*), for the period 2013-2019 in the region of Cantabria may contribute to understanding the complexity of the retail sector:

Table 10: Activities included in the collective agreement for the metal trade sector – Cantabria.

ANNEX II Functional scope of the collective bargaining agreement for the metal trade sector according to the Spanish National Classification of Economic Activities (CNAE)

- 4511 Sale of cars and light motor vehicles
- 4519 Sale of other motor vehicles
- 4531 Wholesale trade of motor vehicle parts and accessories
- 4532 Retail trade of motor vehicle parts and accessories
- 4540 Sale, maintenance and repair of motorcycles and related parts and accessories
- 4612 Agents involved in the sale of fuels, ores, metals and industrial chemicals
- 4614 Agents involved in the sale of machinery, industrial equipment, ships and aircraft
- 4615 Agents involved in the sale of furniture, household goods, hardware and ironmongery
- 4618 Agents specialised in the sale of other particular products
- 4619 Agents involved in the sale of a variety of goods
- 4643 Wholesale of electrical household appliances
- 4647 Wholesale of furniture, carpets and lighting equipment
- 4648 Wholesale of watches and jewellery
- 4649 Wholesale of other household goods
- 4651 Wholesale of computers, computer peripheral equipment and software
- 4652 Wholesale of electronic and telecommunications equipment and parts
- 4661 Wholesale of agricultural machinery, equipment and supplies
- 4662 Wholesale of machine tools
- 4663 Wholesale of mining, construction and civil engineering machinery
- 4664 Wholesale of machinery for the textile industry and of sewing and knitting machines
- 4665 Wholesale of office furniture
- 4666 Wholesale of other office machinery and equipment
- 4669 Wholesale of other machinery and equipment
- 4672 Wholesale of metals and metal ores
- 4673 Wholesale of wood, construction materials and sanitary equipment
- 4674 Wholesale of hardware, plumbing and heating equipment and supplies
- 4677 Wholesale of waste and scrap
- 4690 Non-specialised wholesale trade
- 4719 Other retail sale in non-specialised stores
- 4741 Retail sale of computers, peripheral units and software in specialised stores
- 4742 Retail sale of telecommunications equipment in specialised stores
- 4743 Retail sale of audio and video equipment in specialised stores
- 4752 Retail sale of hardware, paints and glass in specialised stores
- 4754 Retail sale of electrical household appliances in specialised stores
- 4759 Retail sale of furniture, lighting equipment and other household articles in specialised stores
- 4763 Retail sale of music and video recordings in specialised stores
- 4764 Retail sale of sporting equipment in specialised stores
- 4765 Retail sale of games and toys in specialised stores
- 4774 Retail sale of medical and orthopaedic goods in specialised stores
- 4777 Retail sale of watches and jewellery in specialised stores
- 4778 Other retail sale of new goods in specialised stores
- 4779 Retail sale of second-hand goods in specialised stores
- 4789 Retail sale via stalls and markets of other goods

4791 Retail sale via mail order houses or via Internet
4799 Other retail sale not in stores, stalls or markets
6201 Computer programming activities
6202 Computer consultancy activities
6203 Computer facilities management activities
6209 Other information technology and computer service activities
6311 Data processing, hosting and related activities
6312 Web portals
7420 Photographic activities
7711 Rental and leasing of cars and light motor vehicles
7712 Rental and leasing of trucks
7721 Rental and leasing of recreational and sports goods
7722 Rental of video tapes and disks
7729 Rental and leasing of other personal and household goods
7731 Rental and leasing of agricultural machinery and equipment
7732 Rental and leasing of construction and civil engineering machinery and equipment
7733 Rental and leasing of office machinery and equipment (including computers)
7734 Rental and leasing of water transport equipment
7735 Rental and leasing of air transport equipment
7739 Rental and leasing of other machinery, equipment and tangible goods n.e.c.
8219 Photocopying, document preparation and other specialised office support activities

This shall also include those companies and employees whose activity is associated with metal trade.

Source: Collective agreement for the metal trade sector in Cantabria, period 2013-2019

The lack of regulation at the sectoral level is addressed by some large companies that have negotiated their collective agreements at the national level. However, in most cases, SMEs are only covered by provincial collective agreements.

The decentralisation of the retail sector is addressed by some relevant companies. Mercadona is a relevant example. The applicable company agreement is the Collective agreement for the Group Mercadona, SA, and Forns Valencians Forva, SA, Unipersonal (*Convenio colectivo del Grupo de empresas Mercadona, SA, y Forns Valencians Forva, SA, Unipersonal*), which was signed by both the company representatives and the trade unions UGT and CC.OO.⁶⁰

Mercadona is not included in the Spanish National Association of Large Distribution Companies (ANGED). ANGED is a professional organisation at the national level

⁶⁰ BOE No. 42 of 18 February 2019.

and includes the most relevant companies in the retail sector, including the subsectors of food, fashion, books, toys, furniture, gifts, IT and electronics, among others.

Mercadona's company agreement scarcely mentions the sectoral level, including only a few references to it. For example, Article 11.2, when regulating some types of fixed-term employment contracts, establishes that the company may use those types of employment contracts whose duration is fixed by sectoral collective agreements.

QUALITY OF THE COLLECTIVE BARGAINING PROCESSES

Mercadona's collective agreement was negotiated by the company representatives and the main trade unions in Spain: CC.OO. and UGT. The strong position of both trade unions at the national level is an indicator of the quality of the bargaining process.

The duration of Mercadona's company agreement is five years, that is, until 31 December 2023. It should be noted that the duration is longer than other collective agreements in this sector. The working conditions negotiated in this company agreement constitute a significant improvement in comparison with the default provisions established in the Workers' Statute.

QUALITY OF BARGAINING CONTENT

One of the demands of the employees' representatives in the retail sector is to have a rest day on Sundays. The Mercadona case shows the balance between the competitive needs of the company and the labour rights of the employees. As a general rule, Mercadona does not open on Sundays. The following table shows the agreements reached regarding wages and maximum working time at the company:

Table 11: Description of working conditions – Mercadona company agreement

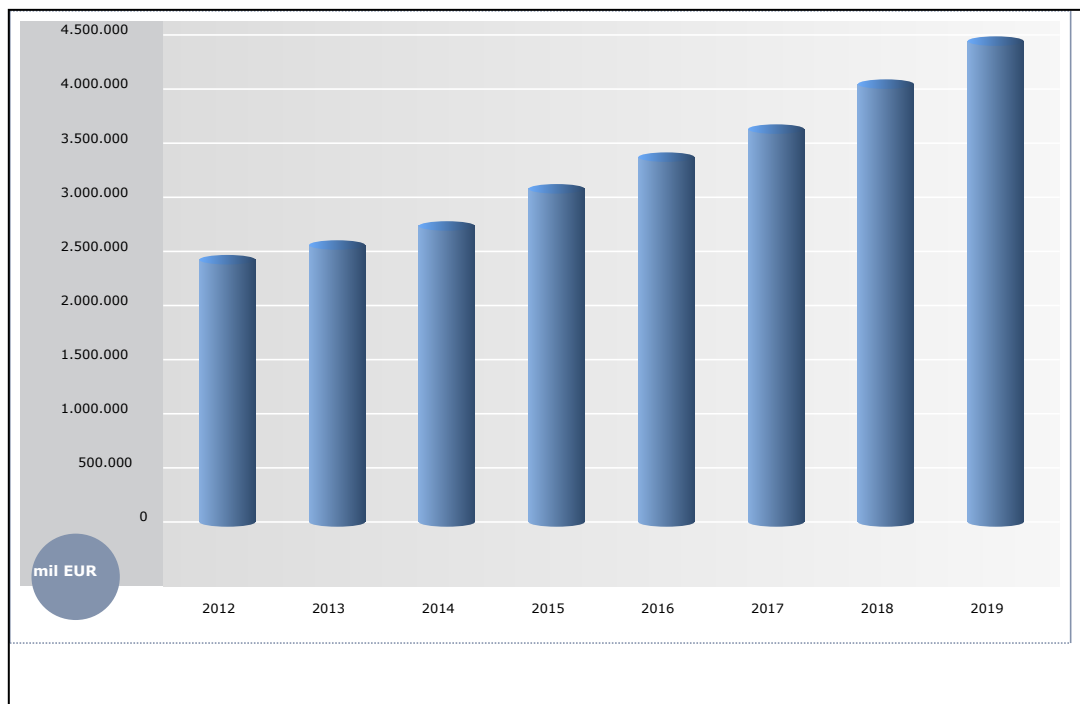
Company Agreement	Wage (lower-higher)	Maximum working time (annual basis)	Paid annual leave (daily basis)	Date of publication
Mercadona	15,745.05 € - 24,650.25 €	1,826 hours	30	BOE No. 42 of 18 February 2019

Source: Prepared by the author

B) LIDL

In 1994, Lidl opened its first supermarket in Spain, in Lleida (Catalonia). The activity of Lidl is the sale of food products in supermarkets in 630 establishments. The number of employees in Spain is higher than 17,000. The evolution of the company's operating income (2012 - 2019) is explained in the following graph:

Graph 7: Evolution of operating income (2012 - 2019)



Source: SABI (Iberian Balance Sheet Analysis System)

The distribution of the representatives from the main trade unions in Lidl is as follows: CC.OO. (53%) and UGT (27%). At Lidl, it can be noted that there is a strong position of trade union delegates, as well as the absence of works councils.

EVOLUTION OF COLLECTIVE BARGAINING

In the case of Lidl, a similar situation to that of Mercadona can be observed. There is a lack of connection between the provisions at the sector level and the company agreement, the II Collective Agreement for the company Lidl Supermercados, S.A.U (*II Convenio colectivo de la empresa Lidl Supermercados, S.A.U.*). The company

agreement was negotiated by both the company representatives and the trade unions, CC.OO. and UGT.⁶¹

In this case, the 2021 Lidl company agreement was the second company agreement to be signed. The first one was published in 2016.⁶²

UNIONS AND EMPLOYER STRATEGIES

From the qualitative research, we have not found significant information regarding the explicit strategies of the trade unions in this negotiation process. The main strategy that can be inferred from the outcomes of the bargaining process is that the parties aimed to reach a single company agreement for all employees working for LIDL.

ARTICULATION BETWEEN THE COMPANY AND SECTORAL BARGAINING STRUCTURES

COORDINATION BETWEEN SECTORAL AND COMPANY ACTORS

Lidl is not included in the Spanish National Association of Large Distribution Companies (ANGED), which means that employees of Lidl do not fall under the scope of the sectoral collective agreement. Their working conditions are, therefore, set exclusively by the company agreement.

QUALITY OF THE COLLECTIVE BARGAINING PROCESSES

Lidl's company agreement was in force from 11 June 2021 until 28 February 2022. The duration of the mentioned agreement was shorter than the previous company agreement signed. The first collective agreement at the national level established a duration from 8 June 2016 until 28 February 2020.⁶³

In this case, an important factor contributing to the quality of the collective bargaining process was that this company agreement was negotiated by the main trade unions in Spain.

QUALITY OF BARGAINING CONTENT

⁶¹ BOE No. 139 of 11 June 2021.

⁶² BOE No. 138 of 8 June 2016.

⁶³ BOE No. 138 of 8 June 2016.

As mentioned before, a traditional demand of the employees in the retail sector is to have a rest day on Sundays. The Lidl case shows a balance between the competitive needs of the company and the labour rights of the employees. As a general rule, Lidl does not open on Sundays. The main working conditions agreed upon in this company agreement (wages and working time) are explained in the table below:

Table 12: Description of working conditions set by Lidl's company agreement

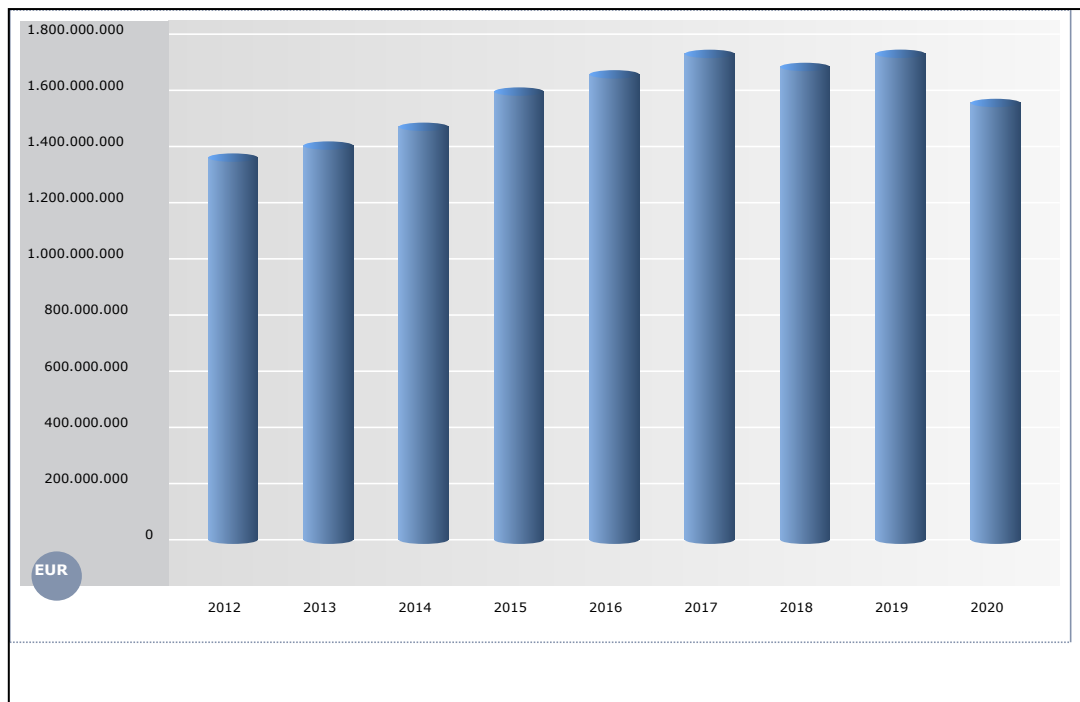
Collective Agreement	Wage (lower-higher)	Maximum working time (annual basis)	Paid annual leave (daily basis)	Date of publication
Lidl	15.886 € - 25.500 €	1.795 hours	30	BOE No. 139 of 11 June 2021

Source: Prepared by the author

C) DECATHLON

In 1976, Michel Leclercq founded the company Decathlon. It was the first hypermarket dedicated to the sale of sporting goods to be opened in Englos (France). In 2020, the number of employees in this company in Spain totalled 11,652 and its main activity is the retail sale of sporting goods.⁶⁴ The evolution of the company's operating income (2012 - 2020) is explained in the following graph:

Graph 8: Evolution of operating income (2012 - 2020)



Source: SABI (Iberian Balance Sheet Analysis System)

The high percentage of non-union representatives in Decathlon is a significant factor in this case study. The distribution between trade union representatives and non-trade union representatives, in this case, is as follows: non-trade union representatives (76%), CC.OO. (16%) and UGT (6%).

UNIONS AND EMPLOYER STRATEGIES

In this case study, the presence of an instrumental trade union in the bargaining process stands out. According to the interviews, the intention of the instrumental union may have been to reduce the level of working conditions for workers in the

⁶⁴ Source: SABI (Iberian Balance Sheet Analysis System).

company. It should be noted that the VIII Collective agreement for Decathlon España, S.A. (*Convenio colectivo de Decathlon España, S.A.*) has been negotiated only by the company representatives and the trade union called “Sindicato Grupo Independiente de Colaboradores de Decathlon (SGICD)” (Independent Union of Decathlon Collaborators).⁶⁵

COORDINATION BETWEEN SECTORAL AND COMPANY ACTORS

Decathlon is not a member of the Spanish National Association of Large Distribution Companies (ANGED). That means that Decathlon employees are not covered by the sectoral collective agreement for the retail sector. The company has tried to avoid the risk of further fragmentation of working conditions by avoiding the applicability of sector-level provincial collective agreements.

QUALITY OF THE COLLECTIVE BARGAINING PROCESS

The comparison of the main working conditions regulated by the collective agreements that are applicable to the three examined companies from the retail sector (Decathlon, Lidl and Mercadona) allows us to reach some conclusions. Firstly, there are significant differences concerning wages. The highest wage category of Decathlon employees is lower than the wage category established in the company agreements for the employees hired by Lidl and Mercadona. Secondly, only in the case of Decathlon the flexibility policy regarding working hours includes the possibility of working on Sundays.

Table 13: Comparison of working conditions between collective agreements at the company level

Collective Agreement	Wage (lower-higher)	Maximum working time (annual basis)	Paid annual leave (daily basis)	Date of publication
Decathlon	15,875.43 € - 19,182.00 €	1,770 hours	30	BOE No. 209 of 1 September 2021
Lidl	15,886 € - 25,500 €	1,795 hours	30	BOE No. 139 of 11 June 2021
Mercadona	15,745.05 € - 24,650.25 €	1,826 hours	30	BOE No. 42 of 18 February 2019

⁶⁵ BOE No. 209 of 1 September 2021. The trade union “Sindicato Grupo Independiente de Colaboradores de Decathlon” was created in 2017 (BOE No. 191 of 11 August 2017).

Source: Prepared by the author

6. Conclusions about the regulatory drivers and other factors

Despite several decentralising reforms of the collective bargaining system in the last two decades, collective agreements at the provincial level are still prevailing in Spain. Employers' associations and trade unions continue to negotiate collective agreements mainly at the provincial level because the power resources of both these organisations are mainly focused on that bargaining level.

The decentralisation of collective agreements usually benefits the workers' interests and leads to better working conditions for employees when the collective agreements have been negotiated by the most representative trade unions. The participation of the most representative trade unions in the bargaining process gives more guarantees of a positive outcome for employees in terms of labour protection and respect for decent working conditions negotiated at the collective level.

When examining the evolution of labour market reforms in Spain, several regulatory drivers have been identified. The main regulatory driver of the reforms passed by the different governments in the last two decades has been the reorganisation and improvement of the structure of the collective bargaining system. However, these reforms have had only limited success in achieving their goal and have faced a strong opposition from the trade unions.

In general, the reaction of trade unions has been to reject these reforms and continue with the traditional models of collective bargaining. The strategy of the main trade unions to express their disagreement with the 2012 labour market reform was to actively bargain against the spirit of the reform. As such, the 2012 reform did not change the cultural pattern of the social partners of negotiating mainly at the provincial sector level.

The Spanish system is characterised by a strong trade union power at the sectoral level (national, regional and provincial). In some sectors, for example, the retail sector, the number of provincial collective agreements is still predominant. In that

sector, as explained in the case studies, some large companies (for example, Mercadona, Lidl and Decathlon) have negotiated their own company agreements at the national level, but they represent only a small minority of cases. Other companies in the fashion retail sector, for instance, the multinational company INDITEX, apply sectoral collective agreements but have signed, by means of unitary representation (employees' representatives at the company level), several company-level pacts (*pactos articulados al convenio*) in each production logistic centre. These pacts/agreements negotiated at the company level improve the working conditions established in the sector-level agreement (mainly by applying higher wages, flexible working time arrangements, vocational training and health and safety, etc.). The coordination of unitary representation of each workplace with higher bargaining levels is ensured through the inter-company union section where the trade union organise the transversal union action (i.e. in issues such as occupational health and safety and equality) and the coordination between bargaining topics which affects the different production centres.⁶⁶

Firstly, and partly as a consequence of the regulatory failure of the 2012 reform, the latest 2021 labour market reform has sought to correct some negative abusive bargaining practices. However, the reform has not only focused on prioritising the collective agreements at the sectoral level. The reform shall also help to reduce the fragmentation of the bargaining units and the need for incentives to bargain at the sectoral level. For example, the provision of public funding for training depends on the condition that the bargaining parties have already tried to negotiate.

Secondly, there is a pending reform regarding the rules of legitimacy to negotiate collective agreements. In the Workers' Statute of 1980, the legitimacy of employers' associations to negotiate collective agreements was focussed on small and medium size companies. The regulation required a threshold for entering the bargaining process of at least 10% representation of the companies and not the majority of employees at the level. The following reforms of the Workers' Statute (1984, 1994 and 2011) introduced a representation criterion that was based on a minimum employment rate, which favoured large companies.

⁶⁶ Interview with trade union representative of CC.OO., 19 October 2021.

Some normative changes addressing the legitimacy to negotiate could be adopted to improve the quality and reliability of collective bargaining outcomes: i) To establish a reliable assessment system concerning the representativeness of employers' associations and to implement a public certification; ii) To improve the regulation of the legitimacy of employer associations to negotiate collective agreements at the sectoral level by fixing the threshold at 20% of the companies in the sector, representing at least 5% of the employees; iii) To introduce a requirement regarding the composition of the collective agreement committee, which must meet the threshold of representing at least 40% of the employers' associations in the sector, representing also at least 20% of employees; iv) To recognise the legitimacy to negotiate collective agreements of employers representing 20% of all employers in the sector, as well as 20% of employees, for those sectors without officially established employers' associations.⁶⁷

Finally, the creation of instrumental trade unions should be prevented. The purpose of trade unions is to defend employees' interests and bargain for the improvement of their working conditions, not to be established to comply with the needs of a particular company in a bargaining process.

⁶⁷ Lahera Forteza, J. (2019). La representatividad empresarial en la negociación colectiva: problemas y alternativas. *Derecho de las relaciones laborales*, (10), pp. 964-977.

Bibliography

- Casas Baamonde, M. E. (2018). Los equívocos de la representatividad para negociar convenios colectivos sectoriales estatales ante la descentralización de la negociación colectiva. *Derecho de las relaciones laborales*, (5), pp. 469-486. Cruz Villalón, J. (2019). La representatividad empresarial: diagnóstico y propuestas de reforma. *Derecho de las relaciones laborales*, (2), pp. 147-166.
- Del Rey, S. (2012). Los principios de la estructura de la negociación colectiva tras la Ley 3/2012, de medidas urgentes para la reforma de mercado de trabajo. *XXV Jornadas de Estudio sobre Negociación Colectiva. La reforma Laboral 2012*, Madrid, 4 October 2012, pp. 1-14.
- Fernández Villazón, L. A. (2018). La prioridad aplicativa del convenio colectivo de empresa: límites e incidencia sobre los fenómenos de descentralización productiva. *Revista General de Derecho del Trabajo y de la Seguridad Social*, (51), pp. 166-197.
- Knecht, R., & Ramos Martín, N. E. (2016). Clustering Labour Market Reforms and Social Dialogue in Nine EU Countries: Comparing Responses to the Economic Crisis, *DIADSE Project Overview Report*, pp. 1-63. Available at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html>
- Lahera Forteza, J. (2021). *Manual de negociación colectiva*, Tecnos.
- Lahera Forteza, J. (2019). La representatividad empresarial en la negociación colectiva: problemas y alternativas. *Derecho de las relaciones laborales*, (10), pp. 964-977.
- Mercader Uguina, J. R. (2021). El fin de la prevalencia del convenio de empresa en materia salarial: ¿punto de llegada o de partida? *Labos: Revista de Derecho del Trabajo y Protección Social*, 3, pp. 111-128. Special issue: La reforma laboral de 2021. DOI: <https://doi.org/10.20318/labos.2022.6643>
- Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., & Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social Europe, *Country Report: Spain*, 1-42, Available at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html>

- Mercader Uguina, J. R., Gómez Abelleira, F. J., Gimeno Díaz de Atauri, P., Muñoz Ruiz, A. B., & Pérez del Prado, D. (2016). DIADSE: Dialogue for Advancing Social Europe, *Policy Paper: Spain*, pp. 1-5. Available at: <https://aias-hsi.uva.nl/en/projects-a-z/diadse/policy-papers/policy-papers.html>
- Mercader Uguina, J. R., & de la Puebla Pinilla, A. (2021). La Reforma Laboral de 2021: elogio de la sensatez. *El Foro de Labos*. Available at: <https://www.elforodelabos.es/2021/12/la-reforma-laboral-de-2021-elogio-de-la-sensatez/>
- Muñoz Ruiz, A. B. (2014). Problemas Prácticos del Convenio Colectivo de Empresa, *Lex Nova*, Valladolid, pp. 29-31.
- Muñoz Ruiz, A. B. (2015). La prioridad aplicativa del convenio colectivo de ámbito inferior a la empresa respecto al convenio de sector. Dificultades y propuestas de solución. *Trabajo y derecho: nueva revista de actualidad y relaciones laborales*, (9), pp. 116-126.
- Moll Noguera, R. (2018). La descentralización de la negociación colectiva en Portugal y España. Un breve estudio de derecho comparado. *Derecho de las relaciones laborales*, (10), pp. 1151-1162.
- Pérez Infante, J. I. (2003). La estructura de la negociación colectiva y los salarios en España. *Revista del Ministerio de Trabajo y Asuntos Sociales: Revista del Ministerio de Trabajo e Inmigración*, (46), pp. 41-97.
- Pose Vidal, S. (2009). La cláusula de descuelgue salarial en tiempos de crisis económica, *Actualidad Jurídica Aranzadi*, (784), pp. 1-5.
- OCDE (2013). *Estudio de la OCDE sobre la reforma laboral 2012 en España: una evaluación preliminar. Resumen ejecutivo*. December 2013, pp. 1-5. Available at: <https://www.oecd.org/fr/els/emp/OCDE-EstudioSobreLaReformaLaboral-ResumenEjecutivo.pdf>
- Olarte Encabo, S. (2020). El VI Acuerdo sobre Solución Autónoma de Conflictos Laborales: Consolidación y avances, *Temas laborales: Revista andaluza de trabajo y bienestar social*, (154), pp. 55-78.

- Ramos Martín, N. E. (2012). Sector-level bargaining and possibilities for deviations at company level: Spain. EUROFOUND, pp. 1-8, Available at: <https://www.eurofound.europa.eu/publications/report/2011/spain/industrial-relations/sector-level-bargaining-and-possibilities-for-deviations-at-company-level-spain>