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Guidelines for a comprehensive reform of the collective bargaining system in Spain

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Introduction

During this recession, the Spanish labor market has experienced huge job losses on the one hand, and little restraint in costs and prices with minimal reductions in working hours, on the other. This is very different from the pattern of adjustment found in other European countries, where the rise in unemployment has been much lower.

A successful exit strategy involves a massive sectoral reallocation of employment and a substantial increase in the internal flexibility of firms. Both changes are unfeasible with the current system of collective bargaining, which imposes strong limits on the flexibility of wages and often impedes the internal reorganization of firms. The consequences of this system are a high degree of inflation persistence, a persistent loss of competitiveness, low productivity growth, and excess volatility of employment.

Wages and other working conditions directly affect individual welfare, but they also perform other crucial functions. They can help to mitigate the impact of shocks on employment, reward worker productivity, and encourage human capital formation and worker self-selection into the most productive occupations. Yet, Spain's current collective bargaining system does not facilitate these goals.

In part this situation is due to the regulation of collective bargaining laid down in the Workers' Statute Law of 1980. This law allowed the rapid introduction of an autonomous system of collective bargaining with high levels of coverage and a low incidence of disputes. But over time it has created sizeable distortions that have become especially harmful in the current environment of progressive international economic integration and major technological change. Although there have been attempts to broaden the scope of the system of collective bargaining (in the revision of 1994), to streamline its structure (in the Inter-confederal Agreement on Collective Bargaining of 1997), and to change its regulation (in the failed reform proposal of 2002), its core features have hardly changed in the last 30 years. This past experience shows that the main features of the system of collective bargaining will not change significantly without a reform of its regulation.

The labor market reform of September 2010 has taken a first step in the right direction by allowing firms in distress to opt out of labor conditions laid down in sectoral collective agreements if they can reach an agreement with their workers.

But additional steps are needed to complete the reform. This need for additional measures was acknowledged in the Social and Economic Agreement of 2 February 2011. In this agreement the social partners committed to presenting an agreement for the reform of the system of collective bargaining before the deadline of March 19, 2011. While we share the diagnosis of the problems provided in that Agreement, we think that there is a need for a comprehensive and ambitious reform that pursues the following five goals.

Encouraging decentralization and internal flexibility

The coverage of firm-level agreements has steadily declined in Spain over the last few decades and it is low by international standards. Contrary to what is often argued, this feature is not due to the prevalence of small and medium-sized firms (SMEs) in the Spanish economy. The lower coverage of firm-level agreements is also observed if one limits the comparison to large firms. The true explanation is that firm-level agreements are not allowed to contradict unfavorably the working conditions established by sectoral agreements. Moreover, despite the above-mentioned reform of the opt-out clauses, it still remains very difficult for employers and workers to negotiate mutually beneficial changes in working conditions within firms. Lastly, the mandatory use of arbitration as a mechanism for the resolution of disputes in the application of collective agreements is desirable.

Proposal 1. Rules regarding conflicts among agreements.

Endow firm-level collective bargaining with the same potential relevance that sectoral bargaining currently has, by allowing firm-level agreements to set working conditions that are in conflict with those established by sectoral agreements.

Proposal 2. Wage rate opt-out.

Suppress the current limit on the duration of firm-level pacts for opting out of wage rates set by sectoral collective agreements, explicitly allowing their indefinite renewal by mutual consent of the employer and employee representatives if the causes originating the opt-out still apply.

Proposal 3. Opt-out and arbitration.

Extend the provisions of Law 35/2010 regarding wage rate opt-outs and significant changes in working conditions for inter-professional agreements at the national or regional level, stipulating that all collective agreements include an ex-ante commitment to resolve disputes by binding arbitration.

Reducing geographic fragmentation

Working conditions for more than half of all workers covered by collective bargaining agreements are set at the sectoral and provincial level. Two factors that explain this predominance of agreements at intermediate levels of centralization are the so-called irradiation of the legitimacy to negotiate and the automatic legal extension of collective agreements. These two principles are very unusual in the European Union. In addition, their interaction with the dual structure of labor contracts and the predominance of SMEs –especially micro enterprises– in Spain makes it difficult for the interests of all workers and all employers to be taken sufficiently into account in the bargaining. Lastly, the transaction costs of signing a firm-level agreement or reaching an opt-out pact mostly represent an insurmountable barrier for SMEs. Therefore, Proposals 1 to 3 do not grant sufficient mechanisms for SMEs to adjust working conditions, and they should therefore be supplemented with the following Proposal.

Proposal 4. Legal extension of agreements.

Replace the current system of automatic extension by a system of opt-in with administrative extension at all levels. In this system legal extension is granted if the firms represented at the bargaining table attain a threshold share of employment and of the number of employers in the relevant industry. Likewise, the negotiating labor unions should attain the same threshold share of elected worker representatives in the industry. Lastly, the thresholds should be reinforced for provincial, district, and local agreements. If the parties fail to meet these requirements, the agreement should not be legally extended, so that it would only be applicable to the firms represented in the bargain.

Reducing inertia

The so-called “ultra-activity” principle of collective agreements generates a high degree of inertia in working conditions because it reduces incentives for renegotiation. As a result, firms are not able to respond quickly to the external shocks that continuously alter their demand and supply conditions. Furthermore, firms systematically respond to these shocks by laying off workers rather than adopting measures of internal flexibility.

Proposal 5. Ultra-activity.

Establish that the normative clauses of a collective agreement will expire one year after the date of expiration of the collective agreement if the parties have not signed a new agreement or reached an agreement on binding arbitration by that time.

Improving coordination and recovering competitiveness

The Spanish economy suffers from a severe lack of competitiveness. In ten years time, its unit labor costs have increased by 13% with respect to the average in the euro area, and in manufacturing the accumulated difference is as much as 18%. These developments place Spanish firms in a disadvantaged position vis-à-vis their foreign competitors, and partly explain the large external deficit. Other countries that have suffered similar problems in the past have introduced mechanisms for wage moderation that are activated when wage increases are higher than those of their main competitors. This was the case in the Netherlands, with the Wassenaar Agreement of 1982, and also in Sweden and Belgium, two small open economies whose employment levels heavily depend on their export potential.

Proposal 6. Wage moderation and competitiveness.

Spain should state an ambitious target for the recovery of external competitiveness, forcing unit labor costs to grow less than in the most competitive countries in the euro area, until the cumulated loss in competitiveness gap is suppressed.

Proposal 7. Annual tripartite negotiations.

Create an annual forum for tripartite negotiations between the Government and the main employer and worker organizations, with the aim of signing an agreement to establish guidelines for wage growth that are consistent with the competitiveness target, including a commitment by these organizations to ensure their application by their sectoral and regional structures.

Proposal 8. Independent forecasting agency.

Create an independent agency in charge of collecting and disseminating data at the sectoral level, for Spain and for the euro area, on variables such as inflation, productivity and wage growth, or foreign trade flows, and of producing independent and accurate forecasts on the future evolution of these variables in the short- and medium-run. This agency should regularly present public reports containing forecasts of these variables to the annual competitiveness forum.

Promoting best practice

In recent years, approximately 65% of workers in Spain have benefitted from wage indexation mechanisms through so-called safeguarding clauses designed to protect workers against loss of purchasing power from unanticipated increases in the inflation rate. Such a high degree of wage indexation is unusual in the European Union, with the exception of Belgium, Luxembourg, and Finland, whereas in France wage indexation to aggregate price indexes is even forbidden by law. In addition, indexation clauses in Spain are mostly asymmetric, as they are not applied when actual inflation is lower than expected.

Secondly, besides the widespread use of indexation clauses, the Spanish system of collective bargaining generates a rigid structure for the relative wages of different occupational groups. This last feature hampers its ability to respond to asymmetric shocks that affect certain sectors or occupations in a different way than others.

Proposal 9. Wage indexation and wage growth targets.

Wage indexation clauses should not be included in collective agreements. If included, they should use a core inflation consumer price index (the price index of non-energy industrial goods and services) and be symmetric, i.e. automatic revisions should also affect wages when inflation is lower than expected at the time of bargaining. Moreover, at the national and regional level, bargaining should take place regarding wage-bill growth, leaving ample scope for distribution among different categories of remuneration and among different groups of workers.

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