Social Europe

politics, economy and employment & labour

Spain’s labour reform: less transience, more balance

ANE ARANGUIZ 6th January 2022

While still subject to political negotiations, the labour-market reform agreed by Spain’s social partners should bring more security.

Rising star: Yolanda Díaz, minister of labour and the social economy, who brokered the deal (*Gobierno de Espagna*)

To end the year on the right footing with the European Commission, on December 29th Spain advanced a labour-market reform agreed among government, the trade unions and employers.

The new legislative framework will alter some of the most controversial aspects of its 2012 precedent, introduced by the then-ruling conservative *Partido Popular*, without completely repealing it. It aims principally to end the temporary character of much employment (26 per cent) in Spain but also to correct imbalances in collective bargaining and provide greater flexibility for companies in difficulty.

Fixed-term contracts

Highly problematic fixed-term contracts for works and services, used most in construction, will be abolished. (Contracts shortly to conclude will be accepted until the end of March.) Once an assigned task has been completed, the company will have to relocate the worker to another site. Where this is not possible or is rejected by the company, the contract will be terminated. The worker will receive compensation amounting to 7 per cent of the income which would have accrued across the contract, according to a company or (if more favourable) sectoral collective agreement.

Only two types of fixed-term contract will be permitted—to meet structural production or replacement needs and for training. The former will include demand surges: temporary hiring will be allowed when extra support is needed, though with some limitations, for a (non-continuous) maximum of 90 days in a year. In the last quarter of the preceding year, trade union representatives must be informed of the company forecast anticipating these hirings.

The aim is to combat abuse and encourage permanent, if discontinuous, contracts for seasonal tasks, giving workers more stability. Workers would then be guaranteed work during specific times of the year and have their seniority based on the entirety of their employment relationship—not just when they have been working.

Two types of fixed-term training contracts are envisaged: alternating (between work and study) and professional-practice contracts. The latter will only apply to students up to 30 years and be limited to two years. Working time may not exceed 65 per cent in the first year and 85 per cent in the second. Participants will be remunerated according to the applicable agreement, at a rate of not less than 60 per cent in the first year and 75 per cent in the second.

Combating abuse

To combat the abuse of successive temporary contracts, the framework installs a presumption of permanency for those who, within 24 months, have spent 18 in the same job or in different jobs with the same company or group, by means of two or more contracts due to circumstances of production, directly or through their provision by employment agencies. Where companies terminate a fixed-term worker who has worked for fewer than 30 days, they will pay an additional social-security charge. Fines for fraudulent fixed-term contracts will also be raised.

Multi-service companies, which have enjoyed the power to set employment conditions, will now have to comply with sectoral agreements. This is to deter subcontracting—of cleaning or maintenance or information technology—so as to obviate agreements otherwise covering directly employed staff.

A crucial aspect of this reform is the undoing of a 2012 provision limiting the validity of a collective agreement, on expiry, to one further year. This incentivised employers to stall talks on renewal of an agreement, in effect rendering it null and void and allowing the company unilaterally to change working conditions. The reform extends the validity of an expired agreement until its renewal is agreed or a new one is signed.

The prior prevalence of sectoral over company agreements on wages and (number of) working hours will also be restored, to avoid company undercutting. Distribution of working time, annual planning of holidays, the choice between payment and compensating time off for overtime, adaptation of professional classifications and work-life-balance measures will however remain within the company-agreement purview.

Bargaining chips

As bargaining chips some flexibility will be given to companies. In addition to those *expedientes de regulación temporal de empleo* (ERTEs), supporting temporary layoffs, occasioned by *force majeure*, those due to limitation or impediment—used massively during the pandemic—will be incorporated into ordinary legislation. Companies will thus be able to assign and remove workers depending on activity and workload. The processing of ERTEs is to be made more flexible, especially for small companies, and there will be specific exemptions from social-security contributions.

Companies in crisis will also be able to resort as a lifeline to the RED Mechanism for Employment Flexibility and Stabilisation—essentially a new form of ERTE, so that they reduce working hours and suspend contracts when they face organisational, production or economic problems, rather than resort to more drastic measures. There

are two schemes: where the business cycle impels adoption of stabilisation instruments, support may last for up to one year; where permanent sectoral changes require retraining and professional transitions for workers, there may in addition be two six-month extensions.

Activation of the RED mechanism will depend in each case on government agreement, following consultation with trade union and employers' organisations. In its sectoral application, a retraining plan for those affected will be required.

Social partners

The reform is the first major one to receive the blessing of all the social partners in more than 30 years. This the commission will greatly welcome, considering that it had demanded that Spain tackle problematic areas, including temporary contracts—particularly in the public sector—with the backing of employers and unions.

These demands emerged in the context of the revised European Semester, as a condition of access to the Recovery and Resilience Facility. This labour reform is thus a clear example of the role Europe can play in influencing national policies via funding conditionality.

The negotiations were nothing short of difficult. The executive committee of the Spanish Confederation of Business Organisations (CEOE) was the first to endorse the latest proposal presented by the government—among its constituents ASAJA, *Foment*, CEIM and ANFAC abstained during an initial vote but not at the full board. The the two main trade union confederations, the UGT and CCOO, consequently approved the text unanimously.

The reform is thus the latest manifestation of intensive tripartite co-operation in Spain in recent years. The agreement, however, ignited heavy resistance from the political opposition—even before the text had seen the light of day.

It is far from 'completely repealing the 2012' reform, as the governing coalition of the socialist PSOE and *Unidas Podemos* had promised. Fundamental aspects of that—such as administrative authorisation for collective dismissals and the reduction of compensation amounts—did not even get on to the negotiating table. And yet it repeals some of the most harmful effects of the 2012 instrument in rendering the labour market too flexible and weakening collective bargaining.

If nothing else, this shows how consensus can be found between parties and negotiations can be fruitful—in any instance something to be warmly welcomed. Whether the reform will be successful will only be manifest if the duality of the Spanish labour market is eroded and fixed-term work reduced.

ANE ARANGUIZ

Ane Aranguiz is a post-doctoral researcher at Tilburg Law School and at the Faculty of Law of the University of Antwerp. She is a lecturer in European labour law at TLS and is currently working on two Horizon 2020 projects: WorkingYP and EuSocialCit.