

SPAIN RRP: Labour market reforms in the context of the upcoming second payment request

Background

- The Spanish Government approved **Royal Decree Law 32/2021** ('RDL') on 28 December 2021, after reaching agreement within social dialogue. The RDL was validated without amendments by the Parliament on 3 February, and no further parliamentary discussion is expected.
- **The RDL changes certain aspects of the major labour reform adopted by the Rajoy government in 2012, but preserves some others, taking account of the experience over the past decade.** The 2012 reform is acknowledged to have supported the job-rich economic recovery between 2014 and 2019 by allowing greater firm ability for adjustment and reducing dismissal costs. It seems to have also supported the rapid recovery of the labour market after the COVID shock. However, the 2012 reform did not succeed in addressing other long-standing challenges such as the widespread use of temporary contracts. Moreover, critics of that reform allege that it shifted the balance of bargaining power excessively towards employers and led to a deterioration of working conditions.
- **The main elements of the 2012 reform** are listed below, indicating with ✓ those that still prevail after the new reform, with ✗ those that disappear, and with ± those that partly change:
 - ± Priority of firm-level agreements over sectoral and regional agreements in a large number of areas, including salary (with the new reform, salary is excluded).
 - ✓ Firms' ability to opt-out the application of a collective agreements in force, under certain circumstances.
 - ✓ Possibility for firms to unilaterally change working conditions set in the job contract that exceeded the floor levels established in a collective agreement.
 - ✓ Change in the dismissal regulation, including the reduction of severance pay in case of unfair dismissal (33 days per year worked instead of 45) and streamlined procedures for collective dismissals.
 - ✗ One-year limit to the automatic extension of expired collective agreements in the absence of a new agreement (ultra-activity).
- The new reform, along with the commitments of the Council Implementing Decision, has the **objectives** of reducing the use of temporary contracts, improving working conditions (including in sub-hired activities), rebalancing collective bargaining between firms and workers and creating a new internal flexibility mechanism to boost employment stability and reduce the probability of entering unemployment.
- **The RDL 32/2021 is the outcome of a long negotiation and approval process, which led to a rather different outcome than agreed by the coalition when formed in 2019:**
 - The coalition agreement of December 2019 between PSOE (S&D) and Podemos (The Left) committed the government to reverse the main elements of the 2012 reform.
 - The Government opened the tripartite social dialogue with employers and unions in February 2020, but the outbreak of the pandemic halted the discussions.
 - They were reopened in March 2021, when the Government was preparing the Recovery and Resilience Plan (RRP) in close interaction with the Commission. In the tripartite social dialogue, the Government committed to deliver some core reforms envisaged in Component 23 by the end of Q4-2021, in the areas of simplification of contracts (C23.R4); permanent mechanism for internal flexibility, job stability and reskilling of workers in transition (C23.R6); collective bargaining (C23.R8), and sub-contracting activities (C23.R9).
 - Negotiations with social partners accelerated after the summer, to be consistent with the deadline set in the CID for the end of the year. To reach an agreement with employers, the Ministry of Labour had to temper some of its initial proposals. Finally,

the agreement with two main unions in the country, CCOO and UGT, and the main employers' association, CEOE, was signed on 23 December. The agreement crystallised in the RDL 32/2021 adopted by the government on 28 December.

- The Parliament ratified the RDL on 3 February in a very close vote (175 vs 174). Regional left-wing parties that usually support the coalition voted against this time in protest for the prevalence of many elements of the 2012 reform.

Key elements of the adopted reform:

- **Simplification of the menu of contracts (C23.R4):** i) Streamlining of training contracts to facilitate the transition to employment; ii) Delimitation of exceptional reasons to use temporary contracts, solely allowed under an occasional increase of production or the replacement of workers on leave; iii) Reinforcement of the open-ended contract for discontinuous activities, either seasonal or executed in certain periods, including sub-contracting activities and employment agencies; iv) Contracts for construction works to be open-ended, requiring a reallocation offer by the same firm when ongoing work is finished.
- **Additional measures to reduce the share of temporary contracts (C23.R4):** i) the recognition of the open-ended contract as the default type for labour relations; ii) the reduction of the maximum period that a worker can be on temporary contracts; iii) the reinforcement of the sanctioning system and higher penalization for the recurrent use of short-time contracts.
- **Reinforcement of short-time work arrangements (C23.R6):** i) The procedure has been simplified for the existing ordinary scheme and Covid-like *force majeure* reasons added; ii) A new employment flexibility and stabilization mechanism (*RED*) is created for cyclical macroeconomic shocks and sectoral transformation requiring reskilling and job reallocation; the mechanism will be activated by the Council of Ministers and a fund will be created to finance associated costs; iii) Training conditionality is generalized for firms to be entitled to financial benefits (Social Security exemptions and additional credits) and income support for workers is reinforced; iv) workers subject to short-time work schemes have priority access to training actions organised by public employment services.
- **Review of the collective bargaining framework, reversing limited aspects of the regulation approved in the 2012 labour market reform (C23.R8):** i) Sectoral agreements regain priority on remuneration over firm-level agreements; the latter keep priority in areas such as compensation of overtime, shift work pay, organisation of working time and holidays, and adaptation of professional classifications. ii) As prior to 2012, conditions of the collective agreement are set again to persist in the absence of a new agreement (ultra-activity); iii) no changes have been introduced to opt-out clauses away from sectoral collective agreements and the substantial modification of working conditions within the limits of collective agreements.
- **Better delimitation of working conditions for employees in subcontracted activities (C23.R9),** for which the collective agreement of the sector of the activity carried out will be applied, or, if existing, the own firm collective agreement of the contractor, addressing a loophole in the previous reform.

Evaluation under the Council Implementing Decision (CID)

- At the time of the preparation of the CID, the main labour market reforms in the RRP were subject to the outcome of the process of social dialogue, so their final design was not spelled out. The CID underlines that these reforms should be conducted respecting social dialogue and as part of a comprehensive approach balancing the need for flexibility and security in the labour market. **Overall, both conditions appear to have been respected although certain elements of the milestones in the CID are still being reviewed: what is especially**

noteworthy is that RDL 32/2021 builds on a wide social agreement.

- The RDL 32/2021 concerns **four milestones of the CID** included in the upcoming **second payment request**, namely MT 332 (simplification of contracts), MT 336 (RED mechanism), MT 338 (collective bargaining) and sub-contracting (MT 339). The Commission services are currently focused on clarifying with the Spanish authorities the alignment of some specific aspects of the RDL with the requirements of the CID.
- **Based on a preliminary evaluation of the RDL, the delivery of MT 332, MT 338 and MT 339 appears promising. Concerning MT 336, we have requested further clarifications** from the Spanish authorities in order to be able to assess the fiscal sustainability of the RED mechanism in the medium to long term and how RED facilitates the effective reskilling and voluntary mobility of workers within and across firms, as required by the CID.