

The labour reform: a balancing act with a focus on temporary employment

The Spanish labour market has traditionally been known to function rather poorly, as reflected in high rates of unemployment and temporary employment well in excess of European standards.¹ These characteristics fuel job insecurity and social inequalities and prevent the economy from fully realising its growth potential. In an attempt to correct these market dysfunctions, there have been several reforms in recent decades, the most recent of which was approved by the government cabinet on 28 December.² This reform is one of the milestones committed to with the EU as part of the Recovery, Transformation and Resilience Plan (RTRP),³ and its implementation is a requirement in order to access the European NGEU funds.

Unlike the previous reforms, this one has had the agreement of business leaders and trade unions, which is very positive in that it helps to fend off the spectre of social and labour-related conflicts; moreover, it maintains positive aspects of the previous reform of 2012. It has also focused on reducing the high rate of temporary employment, although it also introduces changes in the way collective bargaining works as well as in working conditions, through subcontracting, and it strengthens the mechanisms aimed at boosting economic stabilisation and the internal flexibility of companies:

- In order to reduce the incidence of temporary employment, more attention is paid to the route cause and limitations are imposed on the use of such contracts. The range of temporary contracts available is also simplified and new forms of contract are established for the replacement of workers and for production circumstances, which in turn may be due to either unforeseen causes of increased production or foreseeable causes in the case of seasonal jobs. In the case of types of training contracts, they are reduced from three to two: in alternation (for those combining their work with their studies) and for obtaining professional experience. In permanent hiring, more

importance is placed on permanent discontinued contracts for seasonal jobs. In addition, the Royal Decree-Law establishes stricter penalties to help prevent fraudulent use of such contracts. However, it does not attempt to favour the hiring of workers on permanent contracts through, for example, offering benefits in social security contributions or reducing the gap in redundancy costs between different forms of employment.

- In the sphere of collective bargaining, the so-called «ultra-activity» of agreements (the validity of a collective labour agreement while its renewal is being renegotiated) is recovered, having been eliminated in the 2012 reform, although the ability to «unplug» specific clauses under certain circumstances is maintained. In addition, the primacy of sector-level agreements in relation to wages and working hours is restored, leaving company-level agreements to regulate timetables and to adapt the standard professional categories to their workforce. This prevalence of sectoral agreements over company agreements in the sphere of wages could restrict companies' flexibility in adjusting wage growth to advances in their productivity, with the resulting impact on their competitive capacity.
- The reform introduces some changes in the regulation of subcontracting, aimed at avoiding its use as a tool for reducing wage costs, moving towards equal conditions for subcontracted workers and placing more responsibility on the companies hiring those workers. In this regard, such workers will now fall under the collective labour agreement that applies to the activities they are actually performing, regardless of what field the company hiring them operates in.
- Following the success of the ERTE furlough schemes in preserving employment levels in the recent crisis triggered by the COVID-19 pandemic, this mechanism, first introduced in the 2012 reform, is reinforced. The so-called RED Mechanism for the Flexibility and Stabilisation of Employment is created, with two versions: (i) a cyclical version, to be applied when the macroeconomic situation dictates the adoption of stabilisation tools, and (ii) a sectoral version, which companies can resort to when a particular sector undergoes changes that generate the need for professional retraining and transition. The RED Mechanism offers significant exemptions in social security contributions (of between 20% and 90%) linked to companies undertaking certain training activities. It is important that when it comes to

1. As of Q3 2021, the unemployment rate in Spain stands at 14.6% (vs. 7.4% in the euro area) and the temporary employment rate is 26.0% (vs. 15.7%).

2. Royal Decree-Law 32/2021 on urgent measures for labour reform, the guarantee of stability in employment and the transformation of the labour market; it must be approved by Congress within one month.

3. Section 23 of the Plan (New public policies for a dynamic, resilient and inclusive labour market) includes a package of structural reforms aimed at modernising the labour market and boosting its efficiency. The Royal Decree-Law introduces measures intended to implement four of these reforms: simplifying contracts (reform 4), modernising collective bargaining (reform 8), modernising the hiring and subcontracting of business activities (reform 9) and establishing a permanent mechanism to promote the flexibility and stabilisation of employment (reform 6).

implementing these internal flexibility measures, the bureaucracy is minimal and does not hinder their use, especially by smaller companies.

One aspect which we consider crucial for improving Spain's meagre productivity gains and for rising to the challenge of adapting the training of the workforce to the new needs arising from digitalisation is this reform's emphasis on boosting training, through creating incentives for companies to invest in training their workers. Thus, training contracts are promoted, and providing staff training is a requirement in order for companies to benefit from the social security exemptions applicable under furlough schemes. By improving the qualifications of the workforce, not only will workers have access to greater professional opportunities but it will also help to match workers' profiles with the needs of businesses.

This reform takes steps in the right direction to reduce the serious structural problems of Spain's labour market, although they are probably insufficient to significantly reduce the high rates of structural unemployment, and more will need to be done in the field of flexicurity, in making workers more employable and in reducing the duality of the Spanish labour market. It should be borne in mind that consensus agreements, insofar as they are a balance of concessions and demands between different parties, tend to take small but solid steps. In any case, we will have to wait and see how the reform is implemented in practice to assess its scope and effectiveness.

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