
A primer on the 2022 Spanish Labour Reform

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Una introducción a la reforma laboral española de 2022

Resumen. En febrero de 2022 el Parlamento español aprobó una reforma importante de la regulación laboral que pretende desmontar algunas partes de la reforma liberal de 2012 promovida por el gobierno conservador y, simultáneamente, hacer frente a la alta tasa de empleo temporal que desde hace décadas ha sido una de las características del mercado de trabajo español, comparado con la UE. Este artículo tiene dos objetivos. El primero es describir cuáles son los principales cambios promovidos por la reforma y los problemas que pretende resolver con ellos. El segundo, discutir cómo la reforma complementa otras decisiones adoptadas por el gobierno en relación con el mercado de trabajo, en lo que podría considerarse un programa de modernización y mejora del mercado de trabajo español. Aunque es muy pronto para hacer una evaluación completa de la reforma, el artículo comenta cuáles han sido algunos de sus efectos a corto plazo al tiempo que discute algunas de sus posibles insuficiencias.

Palabras clave: Desempleo, Reforma laboral, Mercado de trabajo, Empleo temporal.

Clasificación JEL: J08, J58, J68.

A primer on the 2022 Spanish Labour Reform

Abstract. In February 2022, the Spanish Parliament approved a major reform of the labour market regulation that aimed at rolling back parts of the liberal reform of 2012 promoted by the conservatives and, simultaneously, confront the high rate of temporary employment that for decades has been one of the characteristics of the Spanish labour market vis a vis the EU. This paper has two aims. The first one is to describe the major changes sponsored by the reform and the problems it pretends to address with them. The second, to discuss how the reform combines with other decisions taken by the government regarding the labour market, in what could be considered a program of modernization and upgrading of the Spanish labour market. Although is too early to make a full evaluation of the reform, the paper presents some of its short-term effects and discusses its potential shortcomings.

Keywords: Unemployment, Labour reform, Labour market, Temporary employment.

JEL codes: J08, J58, J68.

1. Introduction

In 1980, the Spanish Parliament approved the *Estatuto de los Trabajadores* (Code of Labour), setting the framework of Spanish labour relations of the new democratic Spain. Since then, there have been more than 50 reforms of the *Estatuto*, of different depth and intention. The last of these reforms, approved by the Spanish Parliament in a chaotic session in February 2022, was the reaction of the progressive coalition government of Socialist Party (PSOE) and the coalition of left parties (Unidas Podemos) to the enactment of a comprehensive labour reform approved by the conservatives (Partido Popular, PP) in 2012, in the middle of the Great Recession, and with the PP having absolute majority in both chambers (*Congreso* and *Senado*). This reform was considered by the at the time Minister of Economy, and now Vice President of the ECB, Mr. Guindos, as “extremely aggressive”, in a conversation off-mic held in a meeting of the Eurogroup². The present reform aimed at rolling back some of the changes of previous reform, and, at the same time, to confront some of the shortcomings of the Spanish labour market; some, because the reform was not conceived as a full derogation of the 2012 conservative labour reform, something for which the current reform has been criticized from the left³.

The present paper has two aims. The first one is to describe the major changes sponsored by the reform and the problems it pretends to address with them. The second, to discuss how the reform combines with other decisions taken by the government regarding the labour market in what could be considered a program of modernization and upgrading of the Spanish labour market. With that purpose, the following section presents what we could consider the stylized facts of the Spanish labour market. This is important as, at least formally, the 2022 and previous reforms, in some cases going as far as 1984, were justified in terms of addressing the gargantuan problems of the Spanish labour market. With this framework of reference, section 3 will present the major changes introduced by the 2022 labour reform, their rationale and potential risks attached. Last, section 4, as customary, will summarize the major points of the paper and comment on how the reform complements other measures of labour policy carried out by the coalition government.

2. Stylized facts of the Spanish labour market

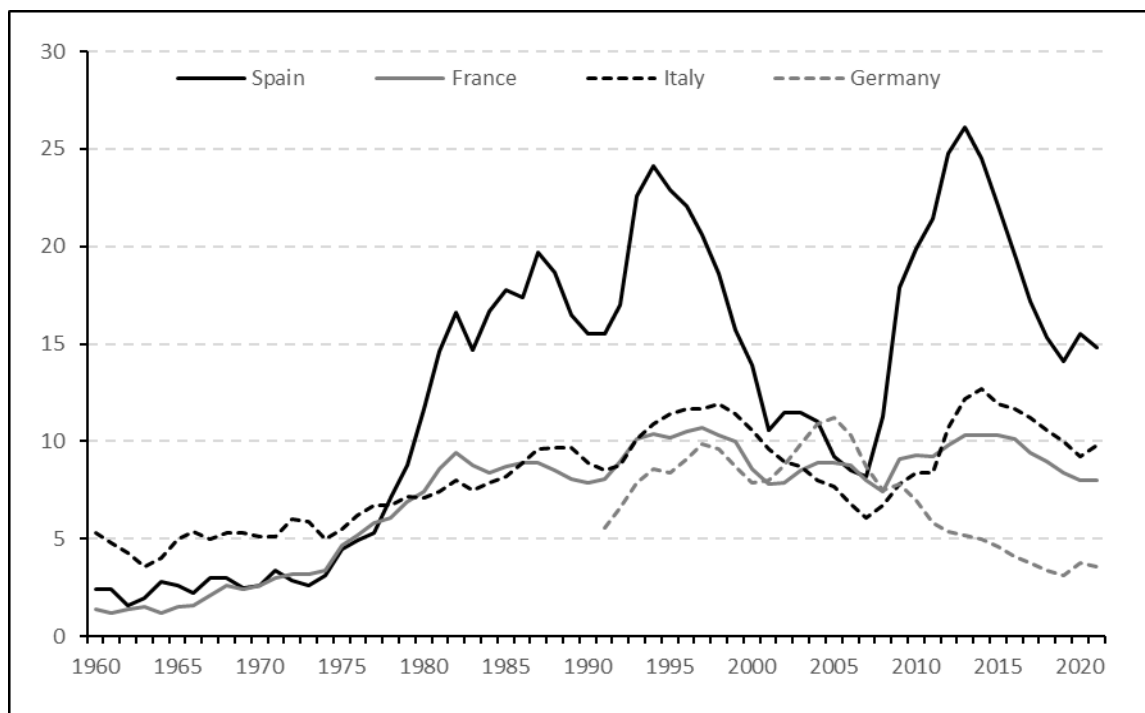
The first and most idiosyncratic element of the Spanish labour market is undoubtedly the high and persistent level of unemployment that has characterized the Spanish labour landscape since the late 1970's, coinciding with the democratic transition of the country.

² Transcribed conversation held between Luis de Guindos (Spanish Minister of Economics and Competitiveness) and Olli Rehn (European Union Commissioner for Economic and Monetary Affairs), captured by an open microphone at a meeting of the Eurogroup in Brussels on April 9, 2012: “Tomorrow, we approve the reform of the labour market. You will see that it’s going to be extremely, extremely aggressive, you know, with large flexibility in the collective settlement of agreements and we reduce severance payments. Well, you will see, you will see [...]”.

³ In 2010, before losing power, the PSOE government introduced an important change in labor regulation - although less far-reaching than those of the 2012 reform- that has not been amended by the 2022 reform. Specifically, it created the so-called commissions of ad hoc workers with whom the employer could negotiate changes in working conditions in those companies or work centers without elected representatives in the standard election processes, skirting the role of the “comisiones paritarias” (joint commissions) in the sectoral agreements, which are the ones that cover more workers in the Spanish collective bargaining.

Figure 1, where the Spanish unemployment rate is compared with the unemployment rates of the other three larger continental countries: France Italy and German, in the period 1960-2020 (since the reunification in 1991 in the German case) is clear in this respect. Although all countries suffered from an increase in unemployment as result of the first energy crisis, and Germany later, as a result of the reunification, in all the three cases unemployment rates levelled around 10%, before decreasing until the start of the Great Recession. In contrast, in Spain unemployment rose until the late 1980's, following afterward an intense cyclical pattern, subject to much higher ups and downs than other countries. Only right before the Great Recession, after the Spanish labour market benefited from a long period of intense economic growth, did the unemployment rate converged with the countries of the sample, and just until the Great Recession sent the Spanish unemployment rate back to maximum levels, 26%, in 2013.

Figure 1. Unemployment rate in Spain, Germany, Italy, and France: 1960-2021



Note: For Germany 1991-2021.

Source: Author's analysis from Ameco database.

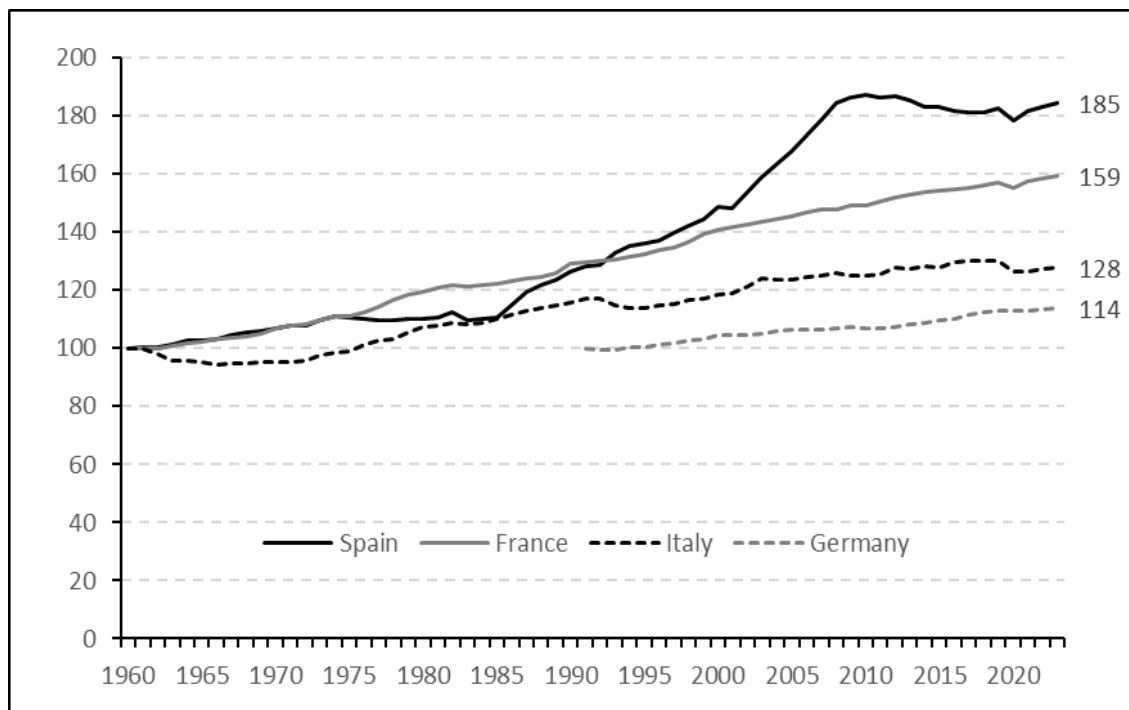
It is out of the scope of this section to discuss the reasons behind the dismal performance of the Spanish labour market, but, paradoxically, it really does not matter, as the important thing is not so much what are the roots of the Spanish unemployment malaise, but what is the mainstream interpretation of its causes, as such interpretation has been behind the decisions taken regarding labour regulation. Here, once again, the well-known quote of Keynes regarding the impact of economists comes handy⁴.

A second, and less publicized stylized fact, is the relative late increase in the size of the Spanish labour force in comparison with other major EU countries, among them those included in Figure 1. This relatively large increase of the labour force coincided in time with

⁴ "The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else", J. M. Keynes (1936), *The General Theory of Employment, Interest and Money* (1936), pp. 383-384.

the increase in unemployment. As we can see in Figure 2, the Spanish labour force almost doubled since 1960 (exactly, 1.85) compared to 1.60 in the case of France, and under 1.3 in the case of Italy. This odd timing of the increase of the labour force in Spain *vis à vis* other countries is explained by two successive dynamics. The first one is the belated increase of female labour participation rate, related to the role given to women (a local version of the German *Kinder, Küche, und Kirche*) in the national-catholic Spain during Franco’s dictatorship⁵. The second one is the transformation of Spain from a sending to a host country regarding immigration, as total immigrant population rose from less than 1% in 1991 to 13% in 2008 (Muñoz de Bustillo and Antón, 2010).

Figure 2. Growth in labour force in France, Germany, Italy and Spain: 1960-2021 (1960 =100)



Note: For Germany 1991-2023 (1991=100).

Source: Ameco.

This belated increase in the labour force is important because, as we can see in equation 1, given a certain increase in productivity, in order to maintain the employment (and unemployment) rate, the growth of GDP will have to be higher the higher the rate of growth of the labour force.

$$\dot{e} = \dot{GDP} - \dot{\pi} - \dot{LF} \tag{1}$$

Where e is the employment rate, π the productivity rate, LF the labour force, and the dot represents rate of change.

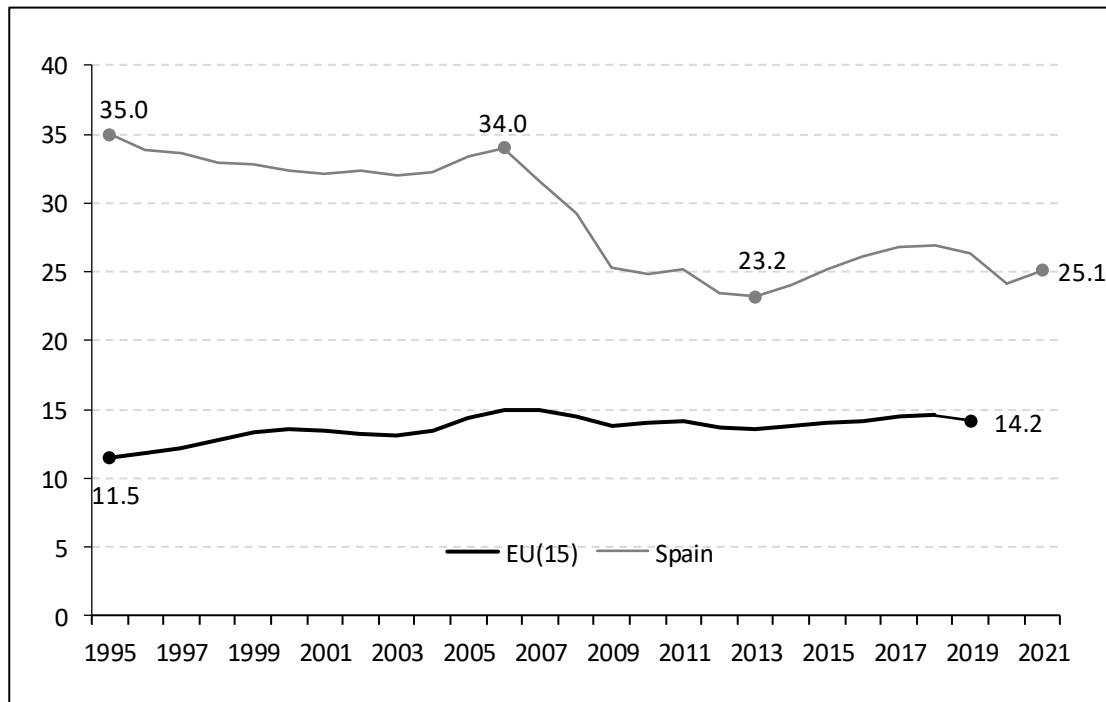
Even if we allow for interactions between the increase in labour force and GDP growth (through a kind of Say’s Law), is clear that reducing unemployment rates will be more demanding in a context of intense growth of the labour force that in context of more

⁵ In 1976 the female labour force participation rate of women over 15 years old was 29%, quite low in international comparison, and roughly the same than it was a decade later. In 2021 it was almost 54%.

modest growth, unless the restriction to growth lay, precisely, on the supply side, and specifically in the lack of labour.

The third stylized fact worth mentioning is the high level of instability of labour contracts, and specifically, the high rate of temporary, precarious employment. Since the liberalization of the use of temporary contract in 1984, the share of employees with fix-term contract increased sharply until reaching more than a third of all employees at the turn of the century. From 2006 on, the temporary employment rate decreased, first due to the approval of different policies to incentivise the conversion of fix-term contracts into open ended contracts,⁶ and later as result of the Great Recession, and the destruction of nearly 3 million jobs (employees) from 2008 to 2013, most of them, 72%, temporary jobs.

Figure 3. Temporary employment rate in Spain and the EU15



Source: Eurostat, ELFS.

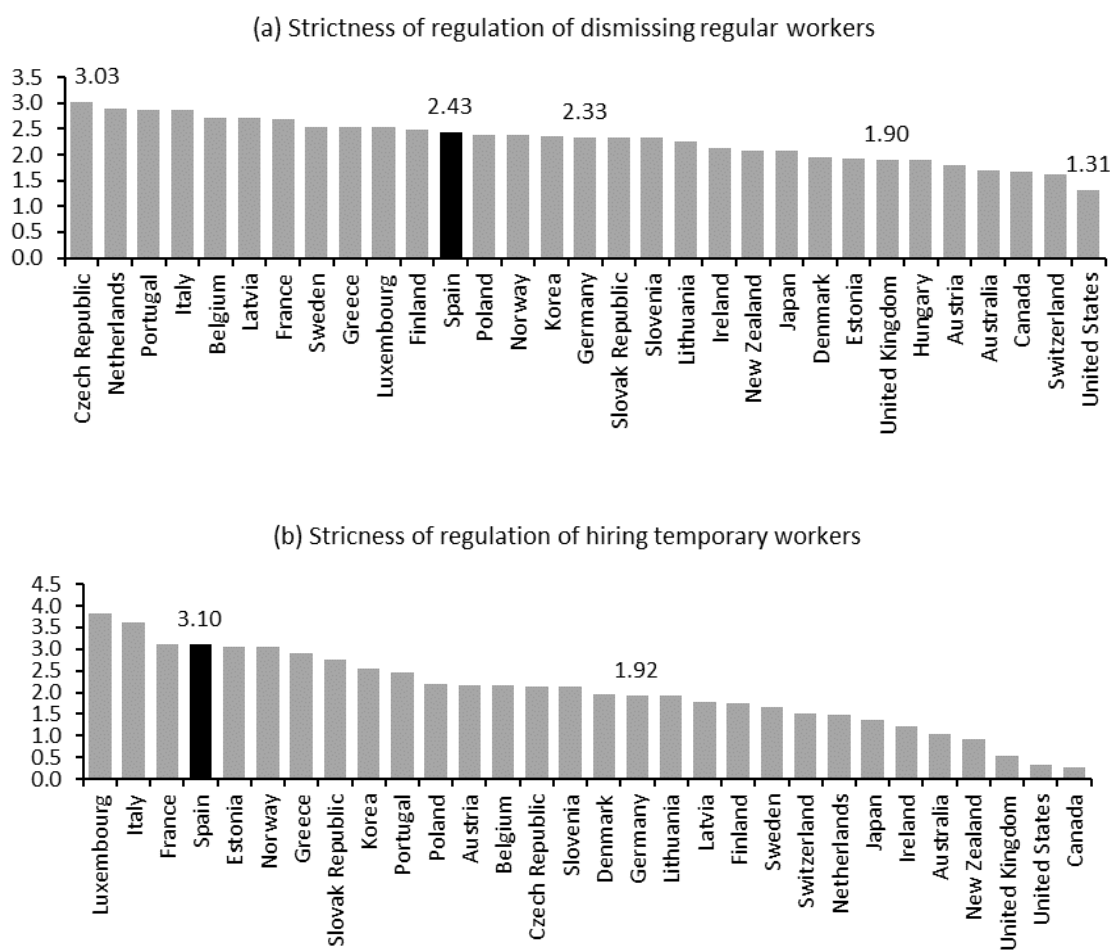
This high rate of temporary employment, in itself the result of a labour policy aiming at increasing labour market flexibility, has been for long time a major concern of public policy for different reasons. First, and I would say, foremost, because employment stability is the characteristic more appreciated of what is a good job, with high rates of temporary employment leading to the deterioration of job quality, especially for the younger cohorts more affected by the use of fixed term contract. Second, because the extensive use of temporary employment increases the intensity of the respond of labour demand to the cycle. For example, during the Great Recession, the average elasticity of employment to GDP in Spain was four times higher, than for the EU. Third, because although temporary employment increases the capacity of firms to adjust quickly to changes in demand, reducing costs, it has also negative implications in terms of productivity (Lisi and Malo, 2017, Choi and Lee, 2021), training (Albert et al., 2005), investment in functional flexibility (Zhou et al., 2011), innovation (Kleinknecht, 1998) and even suicide rates (Grèbol and Valls, 2021), among

⁶ Real Decreto-ley 5/2006, de 9 de junio, para la mejora del crecimiento y del empleo.

other areas. Furthermore, according to the analysis Bellani and Bosio (2021), the negative impact of temporary employment trespass temp workers themselves, as “Overall, permanent employees are more likely to experience a wage penalty in occupations characterized by a growing incidence of temps” (p. 872)⁷.

The existence of such high rate of temporary employment is, to say the least, paradoxical, as according to the Index of Employment Protection Legislation developed by the OECD, Spain has a level of employment protection of regular workers (those with open ended contracts) similar to most EU countries, standing out in terms of a comparatively high index of protection to temp workers (Figure 4), precisely a type of employment contract idiosyncratically used in Spain *vis a vis* the rest of the EU.

Figure 4. OECD Indicators of employment protection (2019)



Source: OECD (2020), p. 191, 194.

The negative implications of fixed-term contracts are compounded when we take into consideration the very short duration of most temporary contract. Just to give an

⁷ This result contrasts with the hypothesis of insiders-outsiders (Lindbeck and Snower, 1988), according to which the so-called *insiders* (employees with open ended contract) can enjoy better working conditions due to the existence of temporary workers (*outsiders*) that take upon themselves all the cost of employment adjustment, open-ended employees.

example, from the 1 million of temporary contract with known duration signed in October 2021, 45% were for seven or less days, and 64% for one month or less. Only 0.6 % had an expected duration of more than a year⁸.

Moreover, both the existence of high and persistent unemployment rates and the high rate of temporary employment have implications in terms of gender and age. Regarding the former, temporary employment is higher among women (27.8% versus 23.1% in the fourth quarter of 2021). Likewise female unemployment rate for the same quarter was 15% compared to 11.8% among men.

In relation to age, temporary rates are also higher among young cohorts, with temporary employment rates reaching 67% of those employed between 20 and 24 years old, or 47% among those 25-29. Regarding unemployment, the unemployment rate of younger cohorts is much higher than average. For example, in 2019, unemployment rate among workers 20-29 years old was 62% higher. In any case, this is a characteristic shared by the vast majority of countries, and, in this occasion, Spain doesn't stand out as having an overwhelming higher unemployment rate among youth, as, in fact, the difference between youth unemployment rate and the average is almost identical to the EU15 average. Summing up, unemployment and temporality, while being a characteristic of the Spanish labour market as a whole, is especially relevant for women and young cohorts.

High levels of unemployment across the cycle, in a context of belated increase of the labour force and high used of fixed-term employment among Spanish firms and public administration⁹ stand out as important elements of the Spanish labour market.

3. The 2022 Labour Reform

As mentioned above, in November 2011 the conservative party, Partido Popular, PP, won the Spanish General elections with 44% of the votes, obtaining a majority of the seats of the Spanish Parliament (186 out of 350). The elections were held in a context of growing unemployment (25%), after 3 years of decreasing GDP,¹⁰ in a situation of debt crisis (debt as percentage of GDP jumped from 40% in 2008, at the start of the crisis, to 70% in 2011), with the country risk premium reaching more than 600 points the following year. The new government continued the policy of fiscal austerity activated by the previous socialist government by mid-2010, in the middle of the debt crisis, thus ending the previous countercyclical policy followed in the first two years of the crisis¹¹.

An important element in this strategy was to activate a process of wage deflation, or domestic devaluation, to alleviate the financial burden of highly indebted companies and to increase foreign competitiveness, in a context of a single currency that precluded the devaluation of the national currency in order to increase foreign competitiveness. Once abandoned, whether by need or choice, the application of countercyclical demand policy, having handed over monetary policy to the ECB after joining the EMU, and not having the possibility of resorting to currency devaluation to increase foreign demand, income policy, and specially wage deflation, was adopted as the main economic policy along with fiscal

⁸ SEPE, *Estadísticas de contratos*, October 2021.

⁹ In fact, in 2019 the temporality rate of the public sector was almost 28%, compared to 26% of the private sector. The difference being more striking among women, with a public sector temporality rate of 32% compared to 26 in the private sector.

¹⁰ A drop of 5.7% from the second quarter of 2008 to the fourth quarter of 2011 (seasonally adjusted).

¹¹ Following the "advice" of the European Commission, at the time an ardent defendant of the hypothesis of expansionary austerity (Muñoz de Bustillo, 2014).

consolidation. Central piece of this policy was the labour reform approved by the conservative government, few months after winning the elections¹².

The labour reform acted at many different levels, aiming at changing the equilibrium of power between firms/employers and workers/trade unions in favour of the former, in order to decrease wages and redistribute income towards profits to alleviate companies' financial costs in a first stage and to reduce their debt in a second one, and to increase foreign competitiveness, increase foreign demand and restart economic growth. Among other things, the decree: 1) Reduced employment protection of new open-ended contracts by reducing severance payments¹³, 2) Facilitated opting-out by firms of agreed working conditions included in collective agreements, 3) Gave priority to enterprise-level collective agreements, CA, over provincial, regional, sectorial, or national agreements, 4) Reduced of the period of applicability of CA after its formal expiring date to two years (before the reform CA were valid until the signature a new one) 5) Removed the requisite of administrative authorization for collective dismissals (*Expedientes de Regulacion de Empleo, ERE*) 6) Opened the possibility of cutting wages without the agreement of the workers if it was justified by economic, technical, organizational or productions reasons (article 41 of *Estatuto de los Trabajadores*).

In contrast, the reform was much less ambitious in relation to measures aiming at increasing employment and specifically open-ended employment, focusing in creating new subsidies for open ended contracts and incentives to increase part time employment. Although the preamble of law introducing the 2012 reform stated that stabilizing employment was one its main aims.

The 2022 labour reform was not a full derogation of the previous conservative reform. It focused in re-equilibrating the balance of power between labour and capital, while at the same time addressing the issue of temporary employment, absent from the 2012 reform. The intention of the government of negotiating the reform with the social agents precluded a radical approach to the reform, such as full derogation, as such approach would have excluded the employers' organization from the accord. In this regard, the emphasis on dealing with this issue through social dialogue was the result of the understanding of social dialogue, by the Ministry of Employment and Social Economy, as the "most important mechanism for successful labour policies, and for them to be fair socially speaking"¹⁴.

In this regard, one of the criticisms to the 2012 reform levered from the left is that the reform was short of fully derogating the 2012 labour reform. Especially for nor rolling back the reduction in redundancy payments¹⁵ and for the changes introduced in article 41, the main way used by employers to produce the subsequence and significant wage

¹² *Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral.*

¹³ In the case of the so-called unfair dismissal severance payments were reduced from 45 days/year with a maximum of 42 months, to 33 days/year with a maximum of 24 months.

¹⁴ Speech of the State Secretary of Employment and Social economy, Joaquín Pérez Rey, at the OECD/ILO workshop Global Deal for Decent Work and Inclusive Growth (11/10/2021) (<https://prensa.mites.gob.es/WebPrensa/noticias/laboral/detalle/4036>)

¹⁵ Contrary to what was explicitly written in the coalition government agreement: "*Derogaremos la reforma laboral. Recuperaremos los derechos laborales arrebatados por la reforma laboral de 2012*" We will derogate the labour reform. We will get back the labour rights taken away by the 2012 labour reform)". Although the agreement, after previous statement, focused in six issues as the most pressing ones to be dealt with, and among them was not the question of redundancy payments (*PSOE/Unidas Podemos: Coalición Progresista. Un Nuevo Acuerdo para España (12/30/2019)*).

devaluation. In 2019, according the Labour Price Index of INE, the hourly real wage was 6.2% below that paid in 2008 for doing the same job.

As stated in the preamble of the law, the aim of the reform was to recover labour rights lost in the past, while creating at the same time measures and incentives to improve flexibility within the firm as alternative to dismissals in times of crisis. These aims are dealt with by two different strategies. The first one relies on two different elements: making open ended contract the type of contract by default and offering to firms an improved mechanism to numerical flexibility (i.e., firing) to face changes in demand through the transitory reduction of working time or transitory suspension of employment. The second one aims at strengthening the role of collective agreements and correcting some of the power imbalances between employers and trade unions generated by the 2012 reform. Table 1 summarise the main elements of the reform.

Table 1. Main measures included in the 2022 Labour Reform

| Area of interest | Before | After |
|--|--|--|
| Reduction of share of temporary employment | Existence of several types fixed-term contracts, 91% of them are <i>Contrato por obra o servicio</i> , or <i>Contrato eventual por circunstancias de la producción</i> | Open ended contract as default option Recuperation of the correspondence of temporal contracts with temporal productive activities. Extinction of the <i>Contrato por obra o servicio</i> . In the construction sector -where it was most widely used- it is transform into <i>contrato indefinido adscrito a obra</i> with a lower severance payment that the ordinary open ended contract All fixed-term contracts must specify why the contract is temporal: (a) unexpected increase in production (maximum duration of 6 months, 1 year if considered in the relevant CA), (b) substitution of a worker temporarily non available or with reduction of working time, (c) expected temporal increase of short duration (utilization of a maximum of 90 days per year). |
| | Temporary employment is decoupled from the temporary or permanent nature of the economic activity performed by the worker. Fixed-term contract becomes, in practice, the contract by default. | Temp and permanent (with open-ended contracts) workers are, aside from the duration of the contract, identical in any other respect. Increase of social security contributions of contracts with duration under 30 days. Changes to facilitate the use of the <i>Contrato fijo-discontinuo</i> (Fixed-discontinuous labour contract) widening it used not only for seasonal economic activities, improving also the transparency and certainty of such contracts. For the first time, Temporary Employment Agencies are allowed to sign them. Workers hired with fixed-term contracts not meeting the above-mentioned requirements will be compulsorily transformed into open-ended contracts. |
| <i>Contratos formativos</i> (Training Contracts) | Fusion of the two previous existing training contracts | <i>En Alternancia Trabajo-Formación</i> (Alternate Training-Working contract): Related to Vocational Education, giving priority to training vs work 35% of time the 1 st year and 15 the second. Remunerated according to CA (at least 60% the 1 st year and 75% the 2 nd , always ≥ Minimum Wage). The maximum time is reduced from 3 |

| | | |
|---|--|--|
| | | to 2 years and the age limit is erased except for certain qualifications. |
| | | <i>Para la Obtención de Práctica Profesional</i> (To get professional experience): Maximum duration 1 year (previously 2) in the 5 years after graduating (previously 3). Wage as set for equivalent worker in CA (previously it could be lower). |
| Outsourcing | Outsource of activities once carried out by the firm in order to reduce labour cost by putting outsourced workers under different, less advantageous, CA | Working conditions of outsourced activities (cleaning, security...) will follow the relevant sectorial collective agreement in order to avoid using outsourcing as a mean to reduce cost by reducing the wage of outsourced workers. |
| Increase of internal flexibility vis a vis external numerical flexibility (hire & fire) | <i>Expedientes de Regulación Temporal de Empleo, ERTE</i> to reduce working time or temporarily suspend employment under given circumstances. | New cause of <i>force majeure</i> to apply for reduction of suspensions of employment, ERTE. New mechanism RED of flexibility and Stabilization of Employment to be activated by the Council of Ministers in case of cyclical or structural sectorial economic problems |
| Collective Agreements | Firms' CA have pre-eminence over higher level CA. The duration of CA after denounced by one of the signatories is limited to 1 year | Application priority is given to higher level CA over firm level CA (except in specific areas such as overtime payment, distribution of working time, conciliation, ...) Recovery of the ultra-activity of CA, by which, once approved, CA are enforceable until a new one is signed. |

Source: Author's analysis from Real Decreto-ley 32/2021, de 28 de diciembre, de medidas urgentes para la reforma laboral, la garantía de la estabilidad en el empleo y la transformación del mercado de trabajo (BOE 313, de 30 de diciembre de 2021).

3.1. Changes in regulation of temporal contracts

The changes regarding the regulation of temporal contracts aim at making open-ended contract the type of contract by defaults: "*El contrato de trabajo se presume concertado por tiempo indefinido* (the labour contract is assumed to be agreed for indefinite time)" (art. 15). It is important to stress that the reform leaves open the possibility of hiring for a limited time when justified by a temporal expected or unexpected increase in activity, or to temporarily substitute workers on leave or short time schedules. Although these contracts are subject to time limits and a penalty in terms of social security contributions in the case of contracts of less than 30 days of duration.

The reform also intends to readdress some of the employment implications of the existence of highly seasonal economic activities, giving a bigger role to the already existing fixed-discontinuous labour contract. Before the Covid-19 crisis, 2.2% of employees had fixed-discontinuous contracts (2.9% in case of women, who had 62% of all fixed-discontinuous contracts). Therefore, only a small percentage of workers working in highly seasonal activities profited from this kind of contract, although their share has grown steadily from 1.3% in 2006.

Comparing the data of the type of contracts signed in the months previous to the reform and the few months after its enactment, so far it seems that the reform has been

successful in changing the pattern of temporary hiring. Taking as reference the year previous to the Covid-19 crisis, 2019, when roughly only 10% of the 20.3 million of contract signed were open-ended contract,¹⁶ after the reform, even during the period of transition, we can see a sizable increase in the share of open-ended contract signed: 15% in January, 22% in February, 31% in March, and 48% in April 2022. These shares of open-ended contracts are unique in the historical series and points in the direction of a change in the pattern of hiring in favour of open-ended contracts aimed by the reform. Other complementary data, such as the sum of registrations and cancelations in Social Security in relation to the total number of employees, a variable often used as indicator of labour market turnover, points in the same direction, if with less impressive numbers: in the General Regime of the Social Security, the first quarter of 2019 the sum of new registrations and cancelations in relation to the total number of employees in the system reached 25,5%, while in the equivalent quarter of 2022 the value was 22.6%¹⁷.

In any case, is still too early to see whether the tendency suggested by the above-mentioned data persists in the future, or whether firms, after the few first months of confusion will find ways to go back to the still existing temporary contracts or open-ended contract reduce their length. In fact, the data shows an increase in the share of new part-time open-ended contracts (38% of all new open-ended contracts signed in April 2022) and an abnormally high number of new fixed-discontinuous contracts (34% of all new open-ended contracts signed in April 2022)¹⁸.

It is also to be seen whether the limitations imposed to the use of fix-term contracts, and the corresponding increase in redundancy payments for those fixed-term workers whose contracts will be converted to open-ended contracts, will have an impact on the dynamics of employment (lower employment growth). In this regard, a robust finding of the cross-country empirical literature on the impact of EPL on hirings and separations (Boeri and Van Ours, 2008) is that EPL negatively affects unemployment inflows and outflows, although the results are ambiguous in terms of its impact on the stock of employment. A recent meta-analysis of 75 studies of the impact of EPL on unemployment (with nearly nine hundred observations) concludes that “we cannot reject the hypothesis that the average effect on unemployment is zero” (Heimberger, 2021: 23).

Another unknown is if the restriction to use temporary contract (not to confuse with hiring on temporary bases, as open-ended contracts also can be, and often are, temporary) will translate into lower employment growth (lower elasticity of employment to GDP), incentivising the use of more intensive capital/labour technologies. But, as it was pointed before, what is certainly a fact is that hyperflexible regulation of temporary contracts available since the mid-1980s has been unable to lead Spanish labour market even close to full employment and has been even less capable of creating enough quality jobs. As it was been shown, the Spanish economy has kept one of the highest unemployment rates in Europe (currently is 13.5%) and over 1/3 of workers have a job for which they are overqualified (Muñoz de Bustillo et al., 2018). We could say that overqualification has been

¹⁶ The pattern is similar in the months before the approval of the reform, with an average share of open-ended contracts of all contracts signed the last quarter of 2021 (5.6 million) of 11,7% (SEPE, *Datos Estadísticos de Contratos*).

¹⁷ *Estadística de la Seguridad Social, Altas y Bajas de Afiliación*.

¹⁸ In fact, the Minister of Labour and Social Economy announced in May 2022 a new campaign of the labour inspectorate to investigate the possible fraudulent use of this type of contract (“Díaz anuncia una campaña de la Inspección para investigar posibles fraudes en contratos fijos-discontinuos”, Europapress, 18/05/2022).

used by Spanish workers as an insurance against the incapability of the economy to deliver enough jobs.

Labour regulation of temporary contracts has also undermined productivity growth allowing and even incentivising business to specialise in low value added activities where profits are made out of poor working conditions. It has also encouraged the outsourcing of activities where turn-over workers and tightening of labour conditions were possible and has broken the natural organic training processes inside companies, making more difficult for workers improve their individual productivity (CCOO, 2022a).

All in all, the main challenge faced now by the Spanish labour market is to root out the culture of contingent employment entrenched in Spain since the late 1980's. In fact, it would be naïve to think that the elimination of the possibility of using temporary contracts *a la carte* would, by itself, lead to a new labour landscape of stable employment. As we know by different studies (Toharia et al., 2004; Pinto 2019) having an open-ended contract falls short of having a “permanent” job. In fact, according to the analysis of Social Security data of Pinto (2019), the duration of open-ended contract for half of the employees with this type of contract is lower than the maximum, in 85% of the cases for causes external to the worker, with as many as 40% of open-ending contracts during less than one year.

Nevertheless, we should not underplay the importance of this accomplishment in the light of the role given to employment stability in what is a good job in Spain. According to the ISSP (2015), 76% of people considered job security as a very important element of a job (“Personally, what is important in a job?”), 98% when we add important and very important, well over the value given to wage (85%). Furthermore, we could speculate that the change from temp to open ended contracts might reduce another of the problems of the Spanish labour market, its high instability, by making less easy to adjust workers to demand, incentivising other tools of adjustment to demand, if only because now it is not sufficient to let the contract end to adjust the number of employees, now the adjustment will require an explicit action of dismissal related to higher redundancy cost (from 12 to 20 days per year)¹⁹ and probably personal (emotional/social) costs for the employer, especially in small firms.

3.2. Changes regarding outsourcing

One of the changes experienced worldwide in last decades has been the increase in domestic outsourcing, *i.e.*, the increase in the number of workers that are employed by one company but perform their duties in another. This increase, already present across all labour markets, has received a further boost by the new digital technologies and the creation of multiple platforms that reduce the costs of resorting to this strategy. Although in some case, the rationale behind outsourcing is to profit from economies of scale and specialization, as in high value services, often the reason is the reduction of labour cost. This managerial strategy has implication for job quality. A recent report by the OECD (2021) concludes that “there is evidence that domestic outsourcing often leads to worse job quality for the workers concerned” (p. 213). Taking cleaners and security services as case study, the authors conclude that outsourced workers earn less than those who work in-house and suggest that this outsourcing dynamic might be one of the drivers behind the increase in inequality in the labour market.

¹⁹ The existence of dismissal cost for temporary workers, a *rara avis* in the international labor panorama, was introduced in the Spanish labour regulation, without much success, precisely to make this time of contract less attractive to firms.

In the Spanish case, taking as reference Industry classification ISIC Rev 4- Administrative and Support Activities [N] as proxy of outsourced activities (due to the lack of specific data on the issue)²⁰ the contribution of the sector to total employment grew from 2.3% in 1995 to 7.3% in 2018, placing the country among the seven top European countries in terms of the relative size of the sector (OECD, 2001).

The combination of increasing domestic outsourcing and lower wages of outsourced workers, especially for low pay occupations, that are further push down the pay distribution, has been addressed by the reform trying to guarantee that outsourcing is not used a “mechanism to reduce labour standards of outsourced workers “(p.8). Along with measures taken to make the outsourcing firm jointly liable of the social security contributions of the firm granted the outsourced services, and other dispositions related to transparency and information to workers representatives at the firm and to outsourced workers, the main element of the reform is the requirement of application of the collective agreement of the activity carried out. Although during the discussions previous to the signing of social agreement behind the reform there were talks about the possibility of limiting the number of chain outsourcing (as it was successfully done in 2006 in construction)²¹, this possibility was finally ruled out. Other alternatives, such as equating labour rights of outsourced and in-house workers were also dropped from the agreement. Overall, according to some analysts (Pérez Guerrero, 2022), the reform in this area has not been as deep as expected, considering it a *reforma de mínimos*, although, in any case, it constitutes a change of paradigm, both due to the priority given to the sectorial collective agreement in setting working conditions of outsourced workers and, also, due to the impossibility of resorting to temporary contracts in this area²².

3.3. Changes regarding Collective Agreements

It has been argued that one of the major changes of the 2012 conservative labour reform was the watering down or weakening of collective agreement by: (a) giving pre-eminence to firm level CA over higher level CA, (b) facilitating opting out by firms of existing CA (under certain circumstances) and (c) eliminating the automatic extension of CA after their expiring date until a new CA was signed (since then limited to one year). All these changes were approved unilaterally by the government (sidestepping social dialogue), even when according to the survey data of the *Encuesta Anual Laboral* of the Ministry of Labour, most firms, 79.5% in 2013 (76% in 2020) considered that the existing CA adapts quite a lot or very much to the necessities of the firm.

Although the reform did not have much impact in the number of workers covered by firm level collective agreements (around 1,3 million) or the share of firms with firm level CA (14.9% in 2013 and 17.4% in 2020), and the number of firms opting out of CA has never been specially high (around eight hundred in 2019, affecting 22,280 workers)²³, it is considered than by reducing the existing checks and balances in collective bargaining and increasing the power the employers’ side, the reform led to an emptying of CA (Cruces Aguilera et al, 2016) with trade unions adopting a strategy of defensive bargaining aiming at keeping alive the existing CA.

²⁰ We are fully aware of the problems of using this industry as proxy of outsourcing. In any case, the analysis carried out by the OECD (2001) shows that a large share of cleaners, 50%, and security guards, two jobs highly outsourced, are employed in this sector.

²¹ *Ley 32/2006, de 18 de octubre, reguladora de la subcontratación en el Sector de la Construcción.*

²² Firms working in the outsourcing business were known for making a massive use of fix-term contracts.

²³ Boletín CCNCC N° 82, abril 2022.

The derogation of the pre-eminence of firm level CA regarding wages and working time implies, from the moment of the approval of the reform, the impossibility of setting wages and working time by firms below the wages set by the relevant sectorial CA. This change should improve the capacity of trade unions to develop income policies while, at the same time, promotes the use of other mechanisms to adapt to falling demand beside wage deflation (e.g., ERTE). The reestablishment of the ultra-activity is also an important item of the reform, even though a significant share of existing CA, 63% in 2018, included the maintenance of the CA once expired until a new CA was signed (CCNCC, 2018).

As remarked by Cruz Villalón (2022), although the reform keeps for the legislator (and the legislation) important topics such as the new specific labour contract for construction, the limitation to the chaining of contracts in the same job by different workers, or the new regulation regarding compulsory retirement, the new labour regulation refers to CA, and therefore to bargaining between social agents, more than 12 different items such as the approval of criteria to equilibrate the presence of men and women in training contracts, plans of reduction of temporal employment, access to training programs of fixed-term employees, etc. In this regard, the reform might contribute to boosting the role of collective bargaining and social dialogue.

3.4. Development of new mechanisms of internal flexibility

Along with the existing mechanism of temporary reduction or suspension of employment, ERTE, which proved so successful in minimizing the fall in employment related with the Covid-19 economic crisis, the labour reform includes a new mechanism, *mecanismo RED de flexibilidad y estabilización en el empleo*, as well as a new cause: *force majeure*, added to the existing causes to apply for pre-existing ERTE. It is important to keep in mind that, thanks to the massive use of ERTE, the huge drop in GDP (close to 11%) product of the policy of confinement and social distance carried out to face the Covid-19 pandemic, led to a relative minor drop in employment, around ¼ of the drop of GDP. In the peak of the crisis, the third quarter of 2019, unemployment rate increased by only 2.3 percentage points. This result is explained by the facilitation to firms to restore to ERTE instead of layoffs. In April 2020 there were almost 3.6 million of employees in ERTE, almost as many as unemployed people. This new mechanism of offsetting crisis implies a significant transfer of resources to the employers from the taxpayer (close to 30 billion of euros between 2020 and 2021) and the employees (around 9 billion of euros). Nevertheless, it has clear advantages over past increases in unemployment expenditure of similar amount. In previous crisis the unemployment rate rose higher and a significant hysteresis effect was generated as a consequence of the broke down of relations between employers and employees.

The *mecanismo RED* (art. 47 bis), designed as a new instrument of flexibility, after its activation by the government²⁴, will allow firms to reduce working time or temporarily suspend employment contracts under certain economic situations. This mechanism has two different modalities: cyclical, when the cause of activation is the convenience to activate macroeconomic stabilization measures, and sectorial, when the cause of activation is the existence of permanent changes in the sector that require recycling of employees. In both

²⁴ Approved by the Council of Ministers, by joint initiative of the Ministers of Labour and Social Economy, Economic Affairs and Digital Transformation and Social Security and Immigration. In the sectorial type, trade unions and employer's organizations can ask the above-mentioned Ministers to convene a tripartite commission to debate the existence of cause for the activation of sectorial RED. In any case social partners must be informed prior to the approval of a sectorial RED.

cases the maximum duration is one year, although in the latter case there can be up to six months extensions²⁵.

4. Summary and conclusions

The 2022 reform can be considered as another piece in a series of interventions in the labour market carried out by the coalition government. Probably the most notorious of these interventions was the increase of the Minimum Wage, SMI, of 2019 and following years. Other initiatives include the so called “riders’ law” dealing with the nature of work of platform riders, that opts for their consideration as dependent workers and not own account workers as considered by the platforms and giving access for the first time to the workers’ representatives to the algorithms used by employers to manage workforce. Also, a mandatory working hours’ register was introduced in order to reduce illegal working time extensions, seeking for a better reconciliation between working and personal life; dismissals during sick leave were forbidden and a new teleworking regulation was introduced along the pandemic.

Looking at these interventions, and their contrast with the 2012 reform, we could say that both approaches to labour market regulation represents two different interpretations of the working of the labour market.

The 2012 reform is heir of a liberal (or neoclassical) interpretation of the labour market in which unemployment is fought by reducing at the minimum the regulations related to labour and improving thus the flexibility of labour and its adaptation to the needs of the firms²⁶. From this perspective minimum wages will reduce employment level by driving out of the market those workers less productive and with lower education and training. Regulations regarding dismissal, by increasing the cost of layoffs will delay the required adaptation of firms to the changes in the labour market and disincentive new hirings, other regulations will end up empowering workers, altering income distribution at the firm level in favour to labour and, probably, reduce effort levels and productivity (both directly and indirectly through the reduction of investment level). From this perspective, the reform of 2012, and other interventions such as the freeze of minimum wage, make sense as steps in the process towards a freer labour market.

The reform of 2022, and related measures, follow a different approach to labour markets. From this perspective, labour markets are, paraphrasing Solow (1992), social institutions, different from other markets such as eggplants or cars. These differences start from the moment that human beings are not produced for the market, in contrast with most other goods and services. As such they are, using Polanyi terminology “fictitious goods”. These considerations make labour markets intrinsically different from other markets. From this perspective, the result of the market is not the product of anonymous forces of demand and supply, but the result of a power struggle between labour and capital and a set of social rules regarding what is fair and what is not, with implications in terms of productivity, etc. In this context, the interventions in the labour market, if properly guided, can improve the results in terms of employment and job quality. In a country such as Spain,

²⁵ The 29th of March the Government activated the first sectorial RED Mechanism, for the sector of travel agencies, who has been very slow in recuperating its pre-Covid-19 level of activity (Orden PCM/250/2022, de 31 de marzo. BOE 1/04/2022 p. 43663).

²⁶ For details of the labour policy related to this perspective see, for example, the influential *OECD Jobs Study. Facts, Analysis and Policy*, published in 1994.

with a high structural level of unemployment, the corresponding weakness of labour will require of interventions aimed at re-equilibrating both sides of the market by empowering workers and collective agreements. We could say that, generally speaking, that is the aim of the reform, and more directly the aim of objective of setting the minimum wage at 60% of median net wage announced by the coalition government. Together with the above-mentioned arguments, this approach to labour market also highlights the importance of wages as source of effective demand, and the possibility of activating a virtuous circle going from higher wages to higher demand and economic activity and higher productivity. There is a strand of literature (Marglin and Bhaduri, 1990; Bhaduri and Marglin, 1990; Stockhammer, 2015), known as the wage-led – profit-led debate, which tries to empirically test the role played by profits (via investment) and wage (via consumption demand) in explaining economic growth in different countries. In this literature Spain usually is considered a wage-led country (Álvarez, Uxó and Febrero, 2019).

Obviously, the proof of the pudding is the eating, and it is too early to see if the approach followed by the coalition government will work. What we do know is that the flexibilization of employment and working conditions associated with the reform of 1984 failed in producing convergence in unemployment levels in Spain with the EU, and neither did the deterioration of the minimum wage *vis à vis* average wages, or the wage deflation produced after the Great Recession. We also know, at least for the time being, that the increase of 20% of minimum wage of 2019 had a very minor, almost insignificant, negative impact on employment growth (Banco de España, 2021), while its increase to one thousand euros of 2021 improved the earnings of 1.8 million of employees (CCOO, 2022b). The new context of inflation and the economic impact of Russian invasion of Ukraine, and the difficulties it creates in the bargaining of working conditions adding a new variable of dispute, is not the perfect environment to see what the final result of the reform will be. So far, there seems to be major change in hiring patterns towards open ended contracts, as it was to be expected after wiping out one of the most used temporary employment contracts. But there are also symptoms of the diverting of fixed-term contracts towards part-time open-ended contracts and fixed-discontinuous contracts, which can be seen as a second-best solution towards job stabilization (but with the risk that part time contracts and fixed-discontinuous contracts might end up being used as on-call contracts) or as an intermediate step in the process of healing the addiction to temporary contracts of Spanish firms. It is also still to be seen whether the new open-ended contracts last in time, or whether the old temporal employment converts into open ended employment only formally and not in practice.

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