UCLM UNIVERSITY

Changes in the organization of collective bargaining

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Spanish Report

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Abbreviations:

- **ET**: Workers' Statute
- **LOLS**: Freedom of Association Law
- **ILO**: International Labour Organization
- **CE**: Spanish Constitution
- **STC**: Judgment of the Spanish Constitutional Court
- **CCOO:** Trade Union Confederation of Workers' Commissions
- **UGT:** General Workers Confederation

1. INTRODUCTION

It is necessary, before studying the Spanish collective bargaining, to take into consideration some preliminary issues that are essential to have a proper understanding of this system.

- **Double Channel of Representation**

The Spanish legal system on enterprise level is dual. This means that there are two organs that represent the worker's interests: 1) Unitary Representation (Personnel Delegates and Works Councils) and 2) Union Representation (Trade Unions and Trade-Union Sections). Both institutions contribute to the defence and promotion of the economic and social interests of the workers. At the same time, they are allowed to negotiate generally-applicable collective bargaining agreements with *erga omnes* effect on enterprise level. In the case of a scope superior to those above –even for a group of enterprises– the organizations which are legitimized to negotiate are exclusively the trade unions.

- **The Greater Union Representativity As a Particular Criteria of the Spanish System**

In the Spanish system, the representativity of a union is determined by an electoral criteria, and more specifically, it is determined by the results collected in the elections to renew the works committees and workers' delegates in every different work centre.
Also, there is what we call 'the greater union representativity', which is a particular situation acknowledge by the law to certain unions, that grants them a singular position for purposes of both institutional participation and union action.

- **The Normative Preference to the 'Statutory' Collective Agreement Rather than the 'Extra-statutory' Collective Agreement**

According to the Spanish legal system, there is a duty to negotiate jointly the worker's conditions –working conditions in general– in accordance with the Worker's Statute (ET). This means that there is a principle of preference towards the statutory agreement, which is agreed under the rules of the Worker's Statute. As a consequence, the extra-statutory agreement –concluded without paying attention to the ET–, has a subsidiary nature. Normally it is used to face a failure in the collective bargaining negotiations or as a way to regulate the working conditions when the legitimacy requirements are not fulfilled in a specific functional or territorial scope.

Due to this legal principle, it can be said that the extra-statutory agreement in our legal system plays a second role in the collective bargaining.

2. INITIONAL OVERVIEW OF THE SPANISH COLLECTIVE BARGAINING

2.1 Definition and Normative Basis

In the Spanish legal system there is not a legal specific definition of collective bargaining agreement, but it exists the notion of collective bargaining agreement doctrine over the base of the recognition that makes the Constitution to freedom of

association and collective autonomy (art. 7, 28, 37 CE). Collective autonomy, as a result of constitution definition and jurisprudence definition, can be defined as 'the power of share groups or collective subjects of interest representation in the relations of production and work for self-regulation of the interests of workers and employers.'

This collective autonomy in their own concept integrates three key facets: institucional autonomy (or the power of internal self-organization group), which is completed with representative autonomy (the power of representing the interests of the group), regulatory autonomy (or the power of self-determination of working conditions, primarily through negotiation and collective agreement) and finally, collective self-help (or the power to defend the interests of the group by means of direct action, including strike).

In this wide definition of collective autonomy it is possible, in turn, to reconstruct the definition of collective agreement understood as 'an agreement freely entered between representatives of workers and employers by which regulate the working conditions of the employment contract compliance and other operating rules for the system of labor relations'.

The collective agreement is the product of a contract that appears in the strict sphere of private law, however, its constitutional basis – especially through the provisions of Art. 37 EC – ensures an enhanced legal treatment. First, the Constitution recognized 'binding' attributing to the collective agreement the character of normative source (this way, the rule determines its imperative regard of individual labor contract agreed, handing the ban on disposal rights worker).

In addition, through policy development in Title III of ET, the collective agreement negociated in accordance with the formal and substantial requirements of the ET enjoy overall effectiveness, which implies that bind all workers and employers included in its scope, regardless of whether they are affiliated or associated signatory unions and business organizations. The III Title of ET regulates the development of collective bargaining so that collective agreements negotiated and signed in accordance with the same will be binding and enjoy overall effectiveness. However, the possibility of negotiating collective agreements which, for various reasons, do not meet the strict

requirements demanded by law in these cases arise which are called 'extra-statutory collective agreements', which have previously been briefly mentioned.

These agreements, which are lawful as atypical contracts, also have their basis in the art. 37.1 CE (interpretation of the Constitutional Court in the judgment of the Constitutional Court n. 73/1984, of 27 June) although not treated under Title III ET do not enjoy overall effectiveness. They are therefore collective agreements with limited effectiveness applied to workers and employers who are affiliated and associated to signatory trade and business organizations.

After a long doctrinal discussion, it is recognized that these agreements can expand their limited effectiveness through an individualized procedure accession to the text of the agreement by employees and employers unaffiliated (Constitutional Court judgment n. 108/1989 of June 8).

2.2. Collective Bargaining in Spain: an Empiric Analysis

2.2.1. The Main Structure In the Spanish System of Collective Bargaining: the Sectorial Level

Although the negotiation of collective agreements on enterprise level has been growing for the last few years, as a consequence of the last reforms in this issue, the most important ones in our country are still those concluded at sectorial level, as they affect the majority of workers.

According to some statistical figures published by the Ministry of Labour and Social Security, in 2014 a total of 1,382 collective agreements were concluded. 1,115 of them were agreed on enterprise level (80.68% of the total) and 267 on a superior scope. However, it is necessary to take into account that the first type of agreements only covered a total of 186,349 workers, while the sectorial agreements covered a total of 1,728,958.

FUNCTIONAL SECTOR AND SECTOR OF PRODUCTIVE ACTIVITY	COLLECTIVE AGREEMENTS	WORKERS
TOTAL	**1,382**	**1,915,307**
Agriculture	20	178,442
Industry	543	531,888
Construction	28	3.782
Services	791	1,201,195
COMPANY AGREEMENTS	**1,115**	186,349
Agriculture	9	515
Industry	443	75,039
Construction	27	1.282
Services	636	109,513
COLLECTIVE AGREEMENTS OF A SUPERIOR LEVEL	**267**	1,728,958
Agriculture	11	177,927
Industry	100	456,849
Construction	1	2,500
Services	155	1,091,682

2.2.2. Unionization Rate and Coverage Rate

It is necessary to emphasize, before addressing the issue of the unionization and coverage rates, that the density or the affiliation to any specific trade union is not relevant in the collective bargaining speech. More importantly, it is irrelevant in terms of the coverage of collective agreements with *erga omnes* effect.

However, we normally attend public demonstrations where, with the purpose of overrule the importance of Spanish trade unions, it is pointed out, strategically, that the unionization rate in our country is one of the lowest in Europe. In this regard, there are several studies – the last one being published in 2011 – that underscore some important aspects:

- The unionization rate has continued to grow in the last ten years. In fact, it grew in 2011 – despite the effects of the crisis – .

- A very serious study is available that compares European unions with more than one million members, measuring the time period between 2003 and 2008, which shows that the highest rate of growth corresponds to the Spanish unions. More specifically, the unionization rate was around 19%.

That said, it is time to deal with the unionization and coverage rates in Spain. In the following table – limited to 2010 – we can observe them, as well as the position occupied by the most representative unions at the national level in our country, which are the Trade Union Confederation of Workers' Commissions [Confederación Sindical de Comisiones Obreras (CCOO)] and the General Workers' Confederation [Unión General de Trabajadores (UGT)]. This is a way of representing the implementation and the influence of association between workers, as in the case of others studies made in Europe.

UNIONIZATION RATE	COVERAGE RATE
2.8 millions workers	11 millions workers
19.7% working population	74% working population
CCOO 1.2 millions UGT 0.9 millions (14% working population)	Negotiating table composition: CCOO 39.45% UGT 38.12% Others 16.93%

There are two conclusions to be drawn from the table above:

- **Unionization rate**. 2.8 million workers (19.7% of the working population) were affiliated to a trade union. 1.2 million of them were in CCOO and 0.9 in UGT, which is the 14% of the working population. At the same time, it can be seen how these two confederations had the 75% of the unionization rate. It is essential to take into consideration that, although the figures above were taken in 2010, the unionization rate has not significantly changed ever since.
- **Coverage rate**. 11 million employees were covered by the statutory collective agreements concluded at that time. This amount is clearly higher, as

we can see, than the unionization rate, so this undoubtedly indicates that the unionization rate in our legal system has no or little significance.

Notwithstanding this, we need to take into account that the currently coverage rate in Spain is so much lower than the one represented above, and that is due to the latter reforms implemented on the ground. In 2013 it was around 47% (6.6 millions employees more or less). As a result, there has been a decrease of 27%.

Coverage rate in 2010	Coverage rate in 2013
74%	47%

2.2.3. Union Representativity as a Singular Criteria

Spanish labour law is characterised by its trade union plurality, where each trade union has a specific representation. This representation must not be confused with its representativity.

In order to know how the representativity of an union is determined, it is needed to consult the Freedom of Association Law (LOLS). More specifically, we need to consult the articles 6 and 7. The criteria selected by the Spanish legislator to acknowledge this representativity is purely electoral. In fact, we need to observe the results obtained by each trade union in the elections to works councils and personnel delegates, which are periodically celebrated in each establishment. After this point, which is taken into account is the number of elected candidates as a result of these elections.

There are, in this regard, four levels of representativity:

- **The most representative trade unions on State level**. Those accrediting a special following, expressed in terms of obtaining 10 percent of more of the total of workers' representatives in the above mentioned area from among the members of works committees and the corresponding bodies of Public Administration (art. 6.2.a LOLS). Also, those unions or unionised entities affiliated, federated or

confederated to a national labour organization considered as most representative. Nowadays, the most representative trade unions on the State level are CCOO and UGT.

- **The most representative trade unions on regional level** (in Regional Autonomies). The unions in the above mentioned area that accredit in it a special following expressed in terms of obtaining at least 15 percent of personnel delegates and workers' representatives in the works committees and in the corresponding bodies of Public Administration, provided that they have a minimum of 1,500 representatives and that are neither federated nor confederated to national labour organizations. Likewise, this representativity it is acknowledged to those unions or unionised entities affiliated, federated or confederated to a labour organization of regional scope that is considered the most representative. At the moment, the ones with this representativity are three: ELA-STV and LAB in the Basque Country, and CIG in Galicia.
- **Representative trade unions within the specific area**. Those labour organizations which – even though they are not considered most representative – may have obtained 10 percent or more of the personnel delegates and members of works committees, and of the equivalent bodies of Public Administration within a specific territorial and functional area.
- **Minority unions**. Those which may have not met the above requirements.

All in all, the greater union representativity, designed according to the requirements explained above, grants certain unions a singular legal position, for purposes of both institutional participation and union action.

According to information published on January 1, 2014, the total number of workers' representatives who were elected by all the workers and public employees on national level – counting both enterprises and publics administrations – was 297,252 people. It is important to note that just 6,594 of them were not affiliated to any trade union (2.21% of the total figure). This clearly means that the 97.78% of all the elected representatives are part of any trade union. So as a whole, we can categorically state that there is a generalised unionization with regard to representatives of both workers and public employees in our country.

In the next table it is presented all the information explained above.

CCOO	111,013	37.3%
UGT	103,908	35.0%
USO	11,061	3.7%
CSI-CSIF	10,221	3.4%
CGT	4,883	1.6%
FETICO	4,160	1.4%
FSIE	3,976	1.3%
FSES	2,312	0.8%
Non-union members	6,594	2.2%

2.2.4. The Peculiarity of the Spanish System of Collective Bargaining at the Enterprise Stage: the Twin Channels of Representation

It is important to note that the workers' representation in our country takes a dual-channel form, combining both trade unions and works council representation. In fact, that is the term used by the Spanish Constitutional Court judgment (134/1994), dated May 9, 1994, according to which there is a double channel system in which, union action – that is understood to be the activity addressed to represent and defend the interests of the employees – can be exercised by both the trade union and the work council. This affirmation, however – according to the Constitutional Court – does not mean that neither is a constitutional uncertainty nor an identity between all the bodies that are entrusted to perform union functions. While the free creation of unions and its constitutional background are recognised in the Spanish Constitution (art. 7 and 28.1), the work council has been created by the law, and it just can find an indirect connection with the art. 129.2 CE.

Thus, both union representation and unitary representation involved the double channel of representation that takes places in our institutional system of working relations. So, together with the representation exercised by unions that *stricto sensu* can be formed in establishments –union sections and union delegates, arts. 8 and 10 LOLS– we have a second channel of representation, which is exercised by unitary representation –work council and personnel delegates, art. 61 to 76 ET–. Finally, both of them are networked among each other, since both contribute to the defence and promotion of the economic and social interests which they represent.

- **The Impact of the Twin representation Channel in the Rules to Negotiate: the Statutory Collective Bargaining of the Trade Union Sections with a Presence in the Unitary Representation Within the Undertaking**

According to the art. 8.1 LOLS, workers who are members of a union may, within the scope of the company or work centre, form union sections in compliance with union bylaws. The union sections will have different rights depending on their representativity and their presence on the work council. To this regard, the right to collective bargaining, in the terms established by specific legislation, which means the one that produces agreements with *erga omnes* effect, it is recognised to union sections that: a) have representation in the works committes (at least one member) or b) in the case of the union sections of the most representative unions（on the national level or the regional level）. At the same time, it shall be necessary for such union representatives altogether to form the majority of the committee members (with particular rules when negotiating collective agreements of lesser scope).

2.3 Prohibition of Employer Interference

Collective bargaining, as an expression of the collective autonomy, is protected by the law towards any enterprise interference. However, it is important to note that this protection operates before the negotiation, according to the art. 13 LOLS. It shall be considered attacks upon the freedom of association any specific enterprise act targeted to impede or to block the exercise of the right of organization or trade union activity within the company. To this regard, and in conformity with the art. 13.2 LOLS, any act

of intervention consisting of encouraging the formation of unions dominated or controlled by an employer or by an employers' association, or of economically or otherwise supporting unions for the same purposes of control, shall be considered attacks upon the freedom of association.

3. THE COLLECTIVE AGREEMENT BEYOND THE COMPANY'S SCOPE

The legitimacy alludes to the capacity to negotiate a collective agreement for a determinate unit of negotiation. The Workers Statute establishes 3 levels of legitimacy that the subjects with capacity have to carry necessarily of consecutive form:

- Initial legitimacy (art. 87 ET): it refers to the right that recognises the Workers' Statute to the representatives of workers and employers to participate in a concrete collective bargaining.
- Full legitimacy (art. 88 ET): it refers to the capacity, by part of subjects already titled of the initial legitimacy, to gain the negotiating status.
- Decision-making legitimacy (art. 89.3 ET): it refers to the need to ensure in the breast of the negotiation commission an agreement backed by the majority of each one of the two representations. It refers therefore to the necessary legitimacy to conclude and sign a collective agreement and finalise the negotiation.

The norms in term of legitimacy appear configured as norms of necessary right, unmodifiable by the parts (STC 73/1984).

The Workers Statute articulates rules of initial, full and decision-making legitimacy distinguishing between collective agreements of high scope to the company and collective agreements of company or inferior scope.

3.1. The Collective Agreement of High Scope to the Company

The negotiating parties of the supra-company collective agreements define in function of the rules established in the Workers Statute. In this regard it is important, on one hand, to differentiate the collective agreement of groups of companies to the sectorial

collective agreement and, on the other hand, the distinct rules (and jurisprudential nuances) that determine the initial, full and decision-making legitimacy in this specific scope of negotiation.

3.1.1 The Initial Legitimacy

In the first supposition, the one of the COLLECTIVE AGREEMENT OF GROUP OF COMPANY or of a plurality of companies associated by organisational or productive reasons and identified in his scope of application, the rights to conduct negociations in representation of the workers will be the established for the sectorial agreements (art. 87.1 ET). On the companies' side, it shall be mandated to negotiate the representation of these companies. In the case of the SECTORIAL COLLECTIVE AGREEMENTS the rules of legitimacy are a bit more complex. According to legal criterion will be parties legitimated to negotiate:

- On the the workers' side: the most representative unions to state level that will be legitimated to negotiate in some scope (state, autonomic, provincial, interprovincial, etc.); the most representative unions to level of CC.AA; the unions that in the geographic and functional scope of application of the agreement have obtained at least a 10% of members of work council and personnel delegates at the last union elections.

- On the employers' side: the associations that have at least a 10% of the employers at the geographic and functional scope of the agreement, whenever they give occupation to equal percentage of the workers affected, as well as those employers' associations that in that scope of occupation the 15% of the workers affected (art. 87.3 c) ET). In the sectors in which they do not exist employers' associations with the sufficient representativeness will be able to apply specific legitimacy rules.

3.1.2. The Full Legitimacy

The full legitimacy, regulated by the art. 88.2 ET and defined in the previously mentioned terms, is fundamental for the constitution of the commission negotiator. In this case, it is not necessary to differentiate a sectorial collective agreement of one of group of undertakings in what they apply them the same rules.

The trade unions and employers associations mandated to negotiate (endowed with initial legitimacy) must represent, at least, the absolute majority of the members of the committees of company and delegates of personnel and the employers that occupy to the majority of the work councils by the agreement, regardively (art. 88.2 ET).

The Works Statute establishes that all trade unions and all employers association with initial legitimacy has right to form part of the special negotiating body (art. 87.5 ET). This means that the trade unions that gather the requirements of initial legitimacy of the art. 87.2 ET will have right to, at least, a place in the special negotiating body of the collective agreement; of form such that any attempt of exclusion of the same will consider behaviour antiunion and the agreement negotiated would finish being a radically null and void agreement.

They will apply specific rules for the valid constitution of the special negotiating body in those sectors in which there are not workers representation or employers' associations that have the sufficient representativeness.

3.1.3 The Decision-making Legitimacy

Once the special negotiating body is constituted and initiated the negotiations of the agreement, the art. 89.3 ET establishes the quorum for a valid voting for the validity of the agreements: the special negotiating body's agreements will require, in any case, the favourable vote of the majority of each one of the two representations.

The question that poses concerning the assessment of the quorum demanded is whether the favourable vote has to be of the majority of the integral members each part of the special negotiating body or if rather it has to be in function of a proportionality (regarding like this the representativeness of each member of the special negotiating body).

The case law chooses to the second interpretation. Whether to obtain or not the favourable vote of the special negotiating is very important since, if finally, the agreement is not approved by this majority, his personal efficiency will be limited (will apply only to the companies associated and to the workers affiliated to the associations or trade unions signatories).

3.2. Collective Agreement of Equivalent or Inferior Scope to the Company

The negotiating parties of the collective agreements of this scope of negotiation are defined by the rules established in the ET. In this regard, it is important, on one hand, to differentiate between collective agreement of company and the collective fringe agreement and, on the other hand, the different rules (and common law nuances) that determine the initial, full and decision-make legitimacy in this specific scope of negotiation.

3.2.1. The Initial Legitimacy

The negotiating parties at the **COLLECTIVE AGREEMENTS OF COMPANY** are as follows:

- **On the worker's side**, alternatively and no cumulatively, the elected representative (the works councils or personnel delegates, in his case), or the trade-unions sections if it was necessary them, in his group, acquire the majority of the members of the works councils (art. 87.1 ET as modified by the RD-Law 7/2011).

Therefore, the law recognises a TWIN LEGITIMACY – elected representative bodies and trade union representation- that does not allow the conjoint negotiation of both representations. In front of the problematic that could arise when it came to choose between the two forms of representation the RD-Law 7/2011 it offers, for the first time, a legal criterion incorporating at the art. 87.2 ET the preference in the negotiation of the trade unions, when these like this agree it (and whenever they add the majority of the members of the works councils or personnel delegates). Nevertheless, this will have to be adjusted.

In the case that the trade-union sections are legitimated to negotiate, it is necessary to say that this new formulation does not prevent that the trade-unions can be the subjects that negotiate directly, by reasons of opportunity or internal system, as it has come it sustaining the case law.

Besides, not all trade-union sections have legitimacy to negotiate, but exclusively the ones of the most representative trade unions and of the unions with presence in the

bodies of elected representatives' bodies (art. 87 ET and art. 8 The Freedom of Association Law).

With regard to elected representative bodies, personnel delegates or workers council, those that carry out the negotiation it is necessary to take into account the following: if the agreement that needs to be negotiated is a company agreement and this company has several establishments, it will be necessary to constitute the special negotiating body integrated by a proportional representation of the distinct works councils and delegates chosen in the establishments, subjecting later the eventual agreement to the ratification of the whole of the representatives.

However, the standard situation is that in these cases, the negotiation was assumed, to exist, by the 'inter-establishment committees', whenever the collective agreement that regulates his constitution and operation attribute him such legitimacy.

b) Of the business' side, will be legitimated the employer or his representatives (art. 88.1 ET as it results modified by the RD-Law 7/2011). Employer's organizations will not be able to negotiate to this level, except representing voluntarily to an employer.

The negotiating parties at **THE COLLECTIVE AGREEMENTS 'OF BAND'** or of a group of workers 'with specific professional profile' (characterised by belonging to a same group or professional category or function, by possessing a same professional degree or by belonging to a same section or department of the company), are as follows:

a) On the workers' side: 'the trade-union sections designated mostly by those they represent through personal vote, free, direct and secret' (art. 87.1, paragraph 4º ET). This figure appears in agreements of company scope; in Spain there has not been any case study of agreement band in the supracompany scope.

b) On the employers' side: those legitimated to negotiate a collective agreement of company scope.

3.2.2. The Full Legitimacy

The constitution of the special negotiating body must me realised as established by the art. 87.1 ET, by the employers and by the elected representative body or trade-union representation, according to the case.

In the concrete case that the special negotiating body is constituted by the elected representative body, the full legitimacy of the works council or that of the personnel delegates must be equal to the initial legitimacy (does not require any another requirement of additional representativeness). The designation of the components of the special negotiating body will be made through a selection of the members of the works council taking into account that the maximum number of members of the special negotiating is of 13 members (art. 88.4 ET).

By contrast, in the case that the special negotiating body was integrated by the trade-union sections, the norm requires that 'they add in his group the majority of the members of the works council or personnel delegates' (Art. 87.1 ET). However the trade-union sections that for themselves gather the majority of the members of the elected representative cannot constitute the special negotiating body excluding of others trade-union sections. Again, the distribution of members of the special negotiating body will have to be realised proportionality principle (the bargaining table will regard in his composition the representativeness that each trade-union have obtained in the elections to works council or delegates of personnel delegates).

3.2.3. The Decision-making Legitimacy

There is not a distinction against of the subject negotiators: identical rules so much for the case that elected representative body, as for the case that the initiative was assumed by the trade-union sections. In both cases, it is necessary that the agreements are agreed on by the majority of the members, that is to say, so that the collective agreement has general personal efficiency is necessary that his approval was supported by the favourable vote of the majority of the members of the workers part and by the favourable vote of the majority of the members of the employers part.

3.3. The Company Scope as a Specific Space of Negotiation: Aspects to Take Into Account

The right recognized in the art. 37.1 CE to collective bargaining is expressed, on enterprise level, in the two demonstrations of collective agreements recognised under ET: collective bargaining agreements and company agreements. It is important to note that company agreements are limited to a particular aspect of the industrial relations. In

fact, some part of Spanish legal opinion considers that these have *erga omnes* effect. We can see an example of these when some agreements are concluded after a period of consults recognised to workers' representation[1].

4 PROCEEDINGS OF STATUTORY COLLECTIVE BARGAINING

4.1. The Constitution of the Bargaining Committee and its Operation

The bargaining committee shall be constituted within a period of one month from the communication initiation of negotiations (Article 89.2 of the ET).

The members of the negotiating committee shall be appointed by the negotiating parties with a single limit, as the number of components will be: in business conventions or smaller field of 13 for each of the parties; and in supra-level agreements of 15 (art. 88.4 ET).

There is no legal way to appoint members who will be part of the negotiating committee; by the syndicates, there is no limit to the designated civil capacity, without having to hold the position of member of the council or staff representative. In appointing members of the SNB, we must regard the principle of proportionality in view of the representation held by the unions and the unions or intervening business associations, although eventually it may result in an adjustment of the representative share to comply the requirement 'ex art. 87.5 ET' that a trade union and business partnership with initial standing part of the negotiating committee.

Once established the negociating comission, no influence on her subsequent election results.

The commission will have a president appointed by mutual agreement by the parties, to direct and moderated sessions with voice but no vote (art.88.3 ET). If the negociating commission opted for the non-election of a president, the parties shall be recorded the constituent meeting of the committee procedures to be used to moderate the sessions

[1] These agreements are concluded between the company and the workers´ representation, and its direct purpose is to regulate, in the absence of a collective agreement, specific subjects on a concrete company. In fact, they are subordinated to the collective bargaining agreement. We can see several examples of those in the ET (arts. 22.1; 24; 29; 34; 31; etc).

and sign it correspond to the same one representative from each of these, along with the secretary (art. 88.5 ET).

The parties freely may appoint advisors (with voice but no vote), law doesn't requires the agreement of the other party (art. 88.3 ET).

The necessary appointment of a secretary is established in the art. 88.5 ET. The secretary shall prepare the record of all meetings and sign them together with a representative of each of the parties. Nothing remains that the secretary of the negociating comitte is alien or member thereof, existing in this full point freedom to the parties in order of appointment. These records have no 'binding relevance' and are only 'legally binding instrument' when incorporated into the agreement by agreement of the parties.

4.2. Formal Requirements and Administrative Procedures

We must also take into account the requirements set out in Article 90 ET for holding and publication of collective agreements:

Collective agreements referred to in this article must be in writing, under penalty of nullity.

The agreements must be filed with the labour department, for the unique purpose of registration, within fifteen days from the time the negotiating parties to sign. Once registered it will be forwarded to the public agency mediation, arbitration and conciliation competent for deposit.

No later than twenty days from the filing of the agreement in the registry will be available by the labour authorities its publication in the 'Official Gazette' or, depending on the territorial scope thereof in the 'Official Gazette of the Autonomous Community' or the 'Official Gazette' of the relevant province.

The agreement shall enter into force on the date agreed by the parties.

If the labour authority has established that any agreement violates the law in force, or seriously injure the interests of third parties, will be directed automatically to the competent jurisdiction, which shall take appropriate measures in order to remedy alleged anomalies, after hearing the parties.

The labour authority shall ensure regard for the principle of equality in collective agreements that may contain discrimination, direct or indirect, by reason of gender.

5. COLLECTIVE AGREEMENT CONTENT. STATUTORY

The collective agreement is determined by the set of clauses and stipulations agreed upon by the negotiating parties governing individual and collective labour relations in a given area. Traditionally we distinguish between an 'obligational or contractual content' (rights and obligations for the negotiating parties) of the agreement and a 'normative content'.

By law mandatory minimum content (which somewhat limits the general principle of freedom of the parties) is established.

Normative clauses have the character of source of law under Article 3.1 b of the Statute, in relation with Article 37.1 of the Constitution, and its binding to create rights that can be exercised directly.

Minimum Content

Article 85.1 of the Statute recognizes freedom of the negotiating parties to determine the content of the negotiations. The article also recognizes what the 'typical content' of collective agreements referring to both collective relations as individual relations, the labour syndicate matters economic nature and in general all those affecting employment conditions and relations of workers and their representative organizations with the employer and business associations, including procedures for resolving any discrepancies that may arise during the consultation periods.

Furthermore, Article 85.1 in its second paragraph provides that, without prejudice to the freedom of the parties to determine the content of the collective agreement exists a legal obligation of negotiating measures to promote equal treatment and opportunities for women and men in the workplace and where appropriate, equality plans.

It established legal limits and a 'minimum' (Article 85.3 ET) consisting noted: a) the negotiating parties; b) personal, functional, territorial and temporal scope of the agreement; c) procedures for effectively resolve of discrepancies that may arise in

procedures non-application from convention; d) the conditions of termination of the agreement; e) the appointment of a joint committee of the representatives of the negotiating parties to the agreement.

6. ENFORCEABILITY OF THE COLLECTIVE AGREEMENTS

6.1 Legal Requirements of General Enforceability (*Erga Omnes*): the Case of the Statutory Collective Agreements

The Spanish Constitution and the ordinary legislation grant to the statutory collective agreements general enforceability (or *erga omnes*). The entailments of the statutory agreement extend to all the workers and employers included in his scope of application.

It does not make any difference whether such workers are affiliated or not to the trade union that has negotiated the collective agreement, of the same way that gives the same that the company find associated or no to the employers organizations that have signed the agreement, applies to all.

The *erga omnes* effectiveness is conditioned to the compliance of the formal and material requirements that the Law impose him.

These formal requirements refer so much to the subject negotiators (rules of legitimación of which has spoken previously), as to the negotiation proceedings and adoption but also and fundamentally in the contribution, by part of the legal regulations, of a limitation at the beginning of freedom of the parts that governs the matter in question. Specifically, the article 83.1 of the Workers' Statute establishes a freedom principle in the delimitation of the scope of application of the collective agreements. But the negotiating parties of a collective agreement do not enjoy of absolute freedom in the determination of the scope of application of the agreement. His performance finds subjected to some limits between which stands out, relatively to the possibility to decide the personal scope of the agreement, the prohibition of discrimination and the obligation to regard the equality principle.

The principle of equality does not force to define the unit of negotiation with all the workers of a company or geographic or functional scope determined. Now well, this

cannot assimilate to the exclusion of some groups of workers that, by be unstable worker or by the modality of his labour contract, lack to the negotiating power and, at the same time, they are separated of the scope of application of the corresponding collective agreement.

Like this, the exclusions of agreement of the workers in reason to the modality of his labour contract are discriminatory (Sentence of the Constitutional Court 136/1987, of 22 June), since still when they could be justified for determinate appearances of the labour relation, do not have reason to be concerning the ordinary working conditions (Sentence of the Constitutional Court 52/1987, of 7 May).

The establishment of a distinct remuneration treatment between permanent employee and temporary employee also is discriminatory, in the measure in that the simple condition of temporary does not comport a different role, neither this material difference prevents that both roles are equally important.

The remuneration differences by reason of sex in jobs of equal value are discriminatory too (STC 145/1991, of 1 of Julio) and the scales wage scale based in the beginning date to the worker at the company (STC 119/2002, of 20 May), except that establish company commitments headed to compensate to workers affected or forecasts that ensure the progressive disappearance of the treatment differentiated and set, at the same time, guidelines of compensation (STC 27/2004, of 4 March).

6.2. Limited Enforceability of Extra-statutory Agreements

The definition given by the High Court of the concept of extra-statutory agreement is the following: they are the pacts, called also atypical or of efficiency limited, celebrated to the outside to the requirements and formalities of the Workers Statute.

The High Court defends that since there are not specific norms that regulate these pacts, it will be necessary to be to the established at the Civil Code about the agreements.

Nevertheless, the High Court has determined that these pacts have to describe like 'labour' and no 'civil', since the parties have 'labour' negotiating freedom and is what regulates the relations between negotiating parties.

In spite of this, the regulation of these agreements is based in 'the General Contract theory' to the Civil Code, where sets his nature/character and effectively.

Therefore, the results of the extra-statutory bargaining have to be agreements and this conditions no just his obligatory nature, but his efficiency limited that it cannot be different to which has the agreement of work like source of obligations.

In the hierarchical order of sources of the labour relation that contains the art. 3 of the Workers Statute , the place that corresponds to the extra-statutory agreements is the third, that is to say, after the legal and statutory norms and of the collective agreements of general efficiency, situating to the same level that the labour contracts, although his scope of application exceeds of the individual scope.

The extra-statutory agreements have, therefore, contractual and personal limited enforceability to the workers and employers represented by the parties to the contract.

7. ADHESION CONTRACT

7.1 Adhesion Contract

The adhesion is an agreement, by means of which the parts legitimated to negotiate in a concrete unit negocial decide to substitute the process of preparation of a collective agreement, by the acceptance of another collective agreement, already elaborated in his whole for another scope and that will apply inside his own scope.

The parts that can celebrate the adhesion contract are the same parts legitimated to negotiate an own collective agreement.

The requirements so that it can carry out the adhesion contract are, by a part, that the unit negocial was not affected by any collective agreement and, by another, the application of the rules on concurrence of agreements.

The adhesion has to effect of global way to the whole of the agreement in question, but the parts can decide that contents of the pact remain included and which remain excluded.

It demands the formal agreement of adhesion between the parts, his communication to the Labour Authority to effects of register and his publication in the corresponding Official Bulletin.

7.2 Acts of Extension

Sometimes it is impossible until the parts realize an adhesion contract.

Nevertheless, it exists the possibility that by means of agreement of the Labour Authority, on request of part, extend the content of a collective agreement in force further of his field of application. This is an exceptional case.

As the only requirement, in the field in which the extension is going to be applied it must not exist any applicable collective agreement. The extension can be of territorial character or of functional character.

They are always extensions to sectors and it is not possible to extend an agreement to an only company.

The extension always has provisional character, so that this ceases from the moment in that it approve an own agreement.

During the force of the extension of an agreement, any one of the parts affected will be able to promote the negotiation of an own collective agreement.

To continuation indicate some of the pacts of extension that have given in Spain in the last years:

Extension	Plenary decision	Nº of Plenary	Administrative decision	Date
Renewal of the Extension of the Sectorial Collective Agreement of Offices and Dispatches of the province of Boroughs to the Sector of Offices and Dispatches from Cantabria.	Favourable by majority	14	Unfavorable	2014-10-16

Renewal of the Extension to the Autonomous City of Melilla of the Provincial Collective Agreement from Almería for Technical Studies and Offices of Architecture and Offices and Dispatches in general.	Unfavorable by majority	146	Unfavourable	2012-07-04
Renewal of the Extension of the Collective Agreement of the Sector of self-propelled mobile Cranes from Asturias, to the same Sector of the Region of Murcia.	Favourable by unanimity			2011-07-28
Renewal of the Extension of the Collective Agreement of the Sector of Clinics and Queries of Odontology and Estomatología of Valladolid, to Ávila, Segovia, Soria and Zamora.	Unfavorable by majority	143	Unfavorable	2011-08-25

As shown in the previous table, the extension of collective agreements exerts a paper each day more marginal inside our legislation, so much if it takes into account the number of extensions as from the point of view of his territorial and functional scope.

In the last years the number of extensions has been reduced drastically, to the point that in the year 2013 there is no evidence of any extension of collective agreement being approved.

It is also important to point out that a good part of the extensions that have produced lately are just renewals of other previous, so that their importance is actually even more limited.

8. THE FAILURE TO APPLY THE COLLECTIVE AGREEMENT

It is the procedure which allows a company by justified reasons to involve the working conditions established in the collective agreement of its application, modifying of substantial way the conditions agreed collectively.

It is an exception by binding effect of collective agreements.

Its purpose is to facilitate a business restructuration with a view to surpass a situation of economic difficulty in the company or the need to adapt the company to changes of technical character, organizational or productive. It is a temporary measure.

For the extra-statutory agreement or another type of pacts applies the procedure of collective substantial modifications, that comports a period of queries with the representatives of the workers, to whose conclusion decides unilaterally the employer, without need in accordance with the worker's representatives.

For the statutory agreements, the modification procedure is different and more complex. Inside the statutory agreements, the modification can affect so much to the sectorial collective agreements as to the ones of the company.

The procedure of modification can affect to an enclosed relation of subjects that come enumerated in the art.82.3 of the Workers Statute and that they are the following:

a) Working hours

b) Work timetable and arrangements of working time

c) System of shift work

d) Remuneration system and the amount of salary

e) Work system and efficiency

f) Roles, when they exceed of the limits that for the functional mobility foresee

g) Voluntary improvements of the protective action of the Social Security.

The modification procedure proceeds when there are economic, technical, organizational or productive causes.

Regarding the requirements of procedure, the norm foresees four successive phases through which can be appropriate the no application of the working conditions.

9. CONCURRENCE OF COLLECTIVE AGREEMENTS

It does not exist any hierarchy between the different levels of collective bargaining in our legal system. The relation between the distinct collective agreements is not based in a hierarchical relation, but prevail other principles.

The possibility of negotiating different levels of a collective agreement gives rise to have more than one collective agreement that, at the same time, is applicable to the same group of workers; therefore one would have two collective agreements affecting same type of workers.

In the first place, the article 86.4 of the Workers' Statute establishes the principle of succession of collective agreements, whereby the agreement that follows to one previous derogates in his integrity to this last. In this case, they are collective agreements of the same field that do not superimpose, but can be replaced when exhausting the first of them.

In the second place, it gives concurrence of collective agreements when it exists more than a collective agreement of different scope, but that they can be applied to a same community of workers at the same time.

It is a temporary, territorial, functional and personnel concurrence between agreements.

So that there is a situation of concurrence is necessary that the agreements affected are of different scope.

This concurrence of collective agreements can be a conflictive concurrence or a non-conflictive concurrence.

The non-conflictive concurrence allows the simultaneous application of the concurrent agreements, because the regulations of both agreements are not contradictory, meaning, is compatible.

The conflictive concurrence does not allow the simultaneous application of the distinct collective agreements to a same group of workers, since the regulations that contain each one of them are contradictory, distinct and incompatible.

Thus, there is a need to specify which criteria shall be used in each agreement.

The law answers this question while establishes one key rule: the principle of prohibition of agreements concurrences (in which the collective agreement cannot be affected by another one of different scope).

Our Legal system has imposed what is the interpretation principle, which establishes a general priority rule in the application of agreements that are under non-concurrence or non-competition principles. Has preference the first collective agreement in the time.

This principle of prohibition of concurrence only applies in the supposition of collision of statutory agreements.

9.1 The Conflict Between Statutory Collective Agreement and Extra-statutory Agreement (And other Company Agreements) and its Resolution

The principle of prohibition of concurrence does not operate when there is a collision between statutory agreement and extra-statutory agreement.

This conflict resolves by means of the application of the principle of normative hierarchy, since the statutory agreement is considered source of right, whereas the efficiency of the extra-statutory agreement is only contractual. Therefore the statutory agreement prevails over the extra-statutory agreement.

Nevertheless, the statutory agreement may coincide with one extra-statutory if the regulation of this agreement improves (is more favourable) the foreseen in the statutory.

This rule also is applicable when the concurrence gives between a statutory agreement and an agreement of company.

When two extra-statutory agreements coincide, because both have contractual efficiency, the parts will be able to decide apply the agreement extra-statutory back in the time.

9.2 Exceptions (Normative) to the Rules of Concurrence

However, there are exceptions that such law has established to the application of its principles of non-concurrence or restraint on competition.

The first exception allows that through an inter-trade agreement, agreement or sectorial agreement of state or autonomic scope can establish rules to solve the conflicts of concurrence that can appear between agreements of distinct scope.

These rules can be, for example, the application of the principle of norm more favourable, principle of specialty or the principle of modernity.

The second exception is based in that the working conditions fixed in an agreement of company will have priority concerning the state sectorial agreement, autonomic or of inferior scope with regard to determinate subjects, collected in the article 84.2 of The Workers Statute.

As a result, when two statutory agreements coincide, a sectorial and another of company will have preference the previous agreement in the time, except for the subjects collected in the art 84.2 of the Workers' Statute.

9.3. Specially, On the Concurrence Between Agreements Concluded by Unitary Representation and others Concluded by Trade-union Representation

According to the standards described above, and taking into account that unitary representatives are entitled to negotiate company agreements or agreements of lesser scope (art. 87.1 ET), it could occur, indeed, that an specific agreement negotiated by this organ of representation deviates from another one conclude by trade-union representation. In other words, could work councils' agreements (company agreements

or agreements of lesser scope) deviate from collective agreements concluded by trade-union representation?

- If both are company agreements, there will not be any problem, as the new one replaces and repeals the earlier.
- In conclusion, the only conflict that might arise is between a concluded agreement of superior scope (by unitary representation) and another one agreed at a company level (by trade-union representation). In this case, it would be applied the company agreement (art. 84.2 ET). This article establishes a priority in favour of company agreements, which operates in any case and at any time, although attention should be paid to the subjects referred in the previous precept. So the problem may occur when attending different subjects, but this would undoubtedly be solved by following the rules of concurrence explained before under the appropriate section.

9.4 The Principle of Norm More Favourable and Its Application

According to the art. 3.3 of the Workers Statute, 'The conflicts originated between the precepts of two or more labour norms, so much state like agreed, that will have to regard anyway the minimum of necessary right, will resolve by means of the application of the most favourable for the worker appreciated in his group, and in annual computation, concerning the quantifiable concepts.'

The principle of norm more favourable collides with the principle of prohibition of concurrence, by what can not apply them jointly. We have to choose apply one of them.

Presently, it is refused the application of the principle of norm more favourable, applying the principle of prohibition of concurrence, since this last principle contributes with greater degree of certainty.

Nevertheless, it is possible for its application to be made through inter-trade agreement.

Finally, it has been accepted the possibility to apply the more favourable principle of norm facing a marginal situation, but never with general character.

9.5. The Possible Conflict Between 'Individual Autonomy' and 'Collective Autonomy'

It is not uncommon to find, in practice, conflicts between what has been concluded in a specific collective agreement (collective autonomy) and the aspects regulated by the volition of the parties made manifest in the work contract (individual autonomy). In order to protect workers´ rights, these different figures need to complement one another. So it is important to keep in mind that collective autonomy, as well as individual autonomy, is entitled to regulate working conditions. To this regard, four case-law rules can be identified:

- Collective autonomy cannot be ignored by individual autonomy. The aspects agreed in the work contract must regard what is concluded by collective agreements.
- Individual autonomy can effectively regulate issues that have not been regulated by collective agreements.
- In several cases, the law allows the work contract, in the absence of collective bargaining, to regulate some subjects (the wage structure, for instance, according to art. 26.3 ET).
- In no case may individual autonomy regulate working conditions in a way that circumvents the negotiating role of workers' representation.

10. CHALLENGING COLLECTIVE AGREEMENTS

Art. 90.5 ET provides a control procedure which aims to avoid the application of illegal collective agreements and others harming the interests of third parties. This procedure operates once collective agreements (statutory) have been approved, signed and entered into force (following the formalities established in arts. 89 and 90 ET).

Through this system, it can be challenged any kind of collective agreement – even company agreements –. The competent jurisdiction is the social jurisdiction and the legitimated individuals depend on the reason of the challenge (illegality or adverse effects).

- **If based on illegality**. The legitimated individuals are unitary representation, union representation, trade unions and employers' associations. Under no circumstances are legitimated workers and employers individually.
- **If based on adverse effects**. The legitimated individuals are, undoubtedly, the third parties who have been injured. As in the previous case, workers and employers are not legitimated.

So all in all, workers are not entitled to challenge – through this procedure – collective agreements concluded by unitary representation. At most, they could request the non-application of a particular clause – through an ordinary procedure. Having said this, and in the measure in which workers are represented on the enterprise by the bodies of representation whose most important purpose is to defend workers' interests, it is obvious that those (employees) cannot challenge the conclusion of their pacts.

11. VALIDITY, COLLECTIVE BARGAINING AND EXTENSION OF THE COLLECTIVE AGREEMENT

To the arrival of the initial term of the agreement or next to the same, is obligatory to report the agreement, being indispensable content of the own agreement the fixation of the form and conditions to effect it, as well as the term of prior notice for that report.

The collective bargaining causes the obligatory clauses to decline.

However, the normative content of the agreement, unless otherwise agreed, keeps its validity.

This effect of maintenance of the validity of the agreement is what designates the continuing effect of the agreement, and only can give in the statutory agreements.

According to the article 86.1 of the Workers' Statute, it is up to the negotiating parties to establish the duration of the agreements and once the duration agreed on has elapsed, the regulatory content of the agreement shall be valid in the terms established in the agreement itself.

This means that the parties of the agreement determine the circumstances under which the validity of the agreement that has already been reported is kept.

In this case, it operates the principle of collective autonomy, based on the right of Freedom of association of the articles 7 and 28, and in the right of Collective Bargaining of the article 37 of the Spanish Constitution, that relates directly to the conventional capacity and the power of negotiation with the temporary validity of the collective agreement.

After the Royal Decree-law 3/2012 the article 86.3 of the Workers' Statute has been reformed, establishing a determinate term for the continuing effect that will not exceed a year.

Therefore, passed a year from the collective bargaining without that having reached a new agreement or dictated an arbitration award it will lose, barring pacts to the contrary, its validity and will apply, if there was it, the collective agreement of high field that was applicable.

Nevertheless, the loss of extended validity of the collective agreement does not necessarily need to happen.

If the agreement incorporates an ultra-activity clause, this clause cannot be affected by the modification of the article 86.3 of the Workers' Statute, which limits the ultra-activity to a year. These clauses are valid in his own terms.

The reform of the article 86.3 of the Workers' Statute aims to prevent the legal extention of the content of the agreement, without that it can affect to the conventional system that have established the own agreement.

Moreover, if extinguished a collective agreement, it always opens a process of negotiation during which in its validity a duty to negotiate that it involves the opening, the maintenance and the development of a period of exchange of positions and proposals with the end to arrive to an agreement and under the duty to negotiate in good faith.

Regarding the determination of the agreement of applicable high field, arises the trouble to identify which agreement results applicable.

There are sectors of activity that apply simultaneously more than an agreement, so that the loss of validity of the agreement of inferior scope disturbs the structure of the group and, the agreement of high scope does not replace properly to the agreement extinguished.

In other cases, the agreement of high scope only regulates of imprecise way the labour relations of a specific sector.

The actual problem appears when there is not any applicable high agreement, that is to say, the problem to determine what happens with these working conditions regulated by the agreement that has lost his validity and that does not find an applicable high agreement.

To give answer to the 'legal vacuum' related to the absence of applicable agreement, the doctrine considered that the working conditions included in the collective agreement transform in content of the individual labour contract.

However, if the working conditions established at the collective agreement forms part of the individual labour contract, these conditions could be modified unilaterally by part of the employer based on the article 41 of the Workers' Statute, whenever they gave the economic, technical, productive and organizational causes that legitimate that modification.

That is to say, this aims to achieve that the working conditions negotiated and established collectively can be modified unilaterally.

Recently, the High Court handen down a judgement on December 22, 2014 recognizing the existence of this 'legal vacuum' generated by the reform of the article 86.3 of Workers' Statute.

The High Court only gives judgements with regard to the maintenance of the remuneration established in the collective agreement. Otherwise, it would be applied the remuneration established by the general norm (that is to say, the minimum wage), and this would cause an imbalance and some labour disputes.

Regarding the other working conditions established by the collective agreement (for example, working hours), its regulation and possible modification, the sentence does not clarify anything in this regard.

Another problem that poses the application of the article 86.3 of the Workers' Statute, resides on determining which working conditions will be applicable to the new workers of the company after the ending of the period of ultra-activity.

Firstly, the employer would not be forced to apply to the new workers the conditions of the collective agreement, since east has lost his validity. However, if the employer hired applying different or less favourable conditions that the ones established in the collective agreement, a discriminatory situation could arise concerning the workers affected.

Besides, based on the article 17.1 of the Workers' Statute, these discriminatory decisions will be invalid and without enforceability.

12. CONCLUSIONS: RECENT CHANGES IN THE SPANISH SYSTEM OF COLLECTIVE BARGAINING AND HIS EVALUATION

The Spanish system of collective bargaining has been subject of a deep reform in the last years, especially by the Royal Decree-law 10/2010, Royal Decree-law 7/2011, and by the Royal Decree-law 3/2012.

On the one hand, the Reforms of 2010 and 2011 are oriented to modify, among others appearances, the article 87 about legitimacy to negotiate collective agreements by the companies.

It produces the reform of the articles 87 (legitimacy to negotiate collective agreements) and 88 (the negotiating commission) of the Workers' Statute because the need to adapt the system of collective bargaining arises to what it is known as new or renewed business realities.

On the other hand, the reform of the collective bargaining, contained in the art. 14 of the RDL 3/2012, of 10 February, of urgent measures for the reform of the labor market groups diverse modifications oriented to favour the internal flexibility in the companies as an alternative to the destruction of employment and have by objective, according to his account of reasons, strengthen the mechanisms of adaptation of the working conditions to the concrete circumstances that cross the company.

The main measures taken by this reform, which affect directly to the collective bargaining, are as follows:

- The system of concurrence of collective agreements is modified, so that it prioritises, in the first place, the agreement of company with regard to any another in the majority of the essential subjects of the collective bargaining.

  As a result, the capacity for the taking of decisions concentrates in the company, where the idea to link the remunerations to the productivity and subject the rest of the working conditions to processes of enterprise restructuring appears, backed up by mechanisms that facilitate the individual modification of the working conditions.

  The following table shows how the number of company agreements has been increasing, while the agreements of high scope have been drastically reduced:

	2011	2012	2013	2014
WHOLE OF AGREEMENTS	4,585	4,006	2,408	1,135
COMPANY	3,422	2,893	1,702	774
HIGH FIELD TO THE COMPANY	1,163	1,113	706	361

SOURCE: National Consultative Commission of Collective Agreements.

- It makes possible the non application of the valid collective agreement, for what establishes, in the first place, the review of the agreement by the subjects legitimated during his validity and expand the proper reasons of the failure to apply.

  Previously, the proper reasons were exclusively economic causes that could affect to the possibilities of maintenance of the employment. However, now they have included other causes of technical, organizational or productive character.

  In the following data table we can appreciate how has increased the number of collective agreements no applied since it went in in force the Reform of 2012, as well as the number of workers affected.

NON APPLICATIONS OF COLLECTIVE AGREEMENTS

	2012	2013	2014
Number	748	2,512	1,627
Companies affected	687	2,179	1,474
Workers affected	29,352	159,550	53,137

SOURCE: National Consultative commission of Collective Agreements.

Regarding the content of the non applications of carried out in 2014, the remunerations suffer changes in 62% of the cases , although also they modify other working conditions.

WORKING CONDITIONS NOT APPLIED IN 2014

	NO APPLIED	**WORKERS AFFECTED**
TOTAL NUMBER	1,627	53,137
Salary	1,015	30,560
Salary and remuneration system	253	4,396
Salary and working hours	61	2,659
Salary, labour day and distribution of working hours	27	6,627

- The scheme of the continuing effect of the collective agreements is reformed, by means of the establishment of a maximum limit of a year from the complaint of the agreement, in whose case the labour relations will govern by the collective agreement of high scope applicable.

  The loss the continuing effect of the collective agreement can accelerate the new negotiations, of equal way that also can cause labour disputes. Without continuing effect, the parties of the collective bargaining find unbalanced, weakening the trade union and confering the company advantage over the another part.

- Also, it reforms the minimum content of the collective agreements. The minimum content of the collective agreement will be the form and conditions for repudiation of the agreement, as well as minimum period for his repudiation before finish his validity.

  The functions that had been entrusted to the joint committees disappear too, and will go back their basic functions: the interpretation and administration of the agreement.

  Finally, it disappears distribution of day of the minimum content of the collective agreement disappear, as a measure of internal flexibility, with which which the company will be able to distribute of irregular way along the year the 5 percent of the working time.

  The data contributed recently by the Ministry of Employment and Social Security show a progressive decrease of the number of collective agreements negotiated, which translates into a decadence of the collective bargaining in our country, that affects as much to workers as to companies.

  Moreover, according to the OECD, Spain is the country in which the labour costs have gone down the most, and a third of the companies has reviewed the drop the remuneration of his workers since the reform was approved.

  The economic and financial crisis, together with the recent reforms, have brought the blocking of the collective bargaining, the closing down of companies, the massive destruction of employment, the increase of the technicians of decentralization, precarious employment and the rise of the black economy. This, along with the constant research by part of the companies of instruments that reinforce their competitive advantage in the market, has made possible emergence of the so-called social dumping, that is just the export of products to very low prices by the expense of having underpaid workers workers with precarious working conditions.

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