**The Paradox between the European Pillar of Social Rights and the EU Economic Governance: Spanish Reforms on Wage-Setting Institutions and Working Poor**

SERGIO CANALDA CRIADO

**Abstract**

The European Commission has announced the European Pillar of Social Rights (EPSR) as a new stage to advance into the social dimension of the European Union. Among the principles and rights enshrined in the EPSR the Commission includes, on one hand, workers’ right to fair wages providing for a decent standard of living and, on the other hand, adequate minimum wages in order to prevent in-work poverty. However, in the context of EU Economic Governance, the so-called ‘EU country-specific recommendations’ steer national wage-setting institutions in the opposite direction. Therefore the outcomes sought by the EU Economic Governance and the EPSR produce a paradox.

This article takes the Spanish case as an example of this paradox. More specifically, it assesses the reforms taken by the Spanish Government during the crisis with respect to the minimum wage and the collective bargaining system. It also studies the effects of the EU country-specific recommendations addressed to Spain and the Memorandum of Understanding on those reforms. Regarding the minimum wage, it can be said that, whereas the Spanish Government has slightly increased or frozen the national minimum wage, the amount of collective agreements including sector minimum wages has grown. Moreover, the reforms of the system of collective bargaining have provoked a decentralization of the bargaining units and the weakening of the collective bargaining structure. At the end, all those reforms have led to a moderation and devaluation of wages, bringing on an increasing number of working poor.

Keywords: European Pillar of Social Rights, Labour Law reforms, Collective bargaining, Minimum wages.

**Resumen**

La Comisión Europea presentó el Pilar Europeo de Derechos Sociales (EPSR) como una nueva etapa para avanzar en la dimensión social de la Unión Europea. Entre los principios y derechos consagrados en la EPSR, la Comisión incluye, por un lado, el derecho de los trabajadores a un salario justo que garantice un nivel de vida digno y, por otro, un salario mínimo adecuado para prevenir la pobreza en el trabajo. Sin embargo, en el contexto de la gobernanza económica de la UE, las llamadas "recomendaciones específicas de los países de la UE" llevan a las instituciones nacionales de fijación de salarios en la dirección contraria. Por lo tanto, los resultados buscados por la nueva gobernanza de la Unión Europea y el EPSR producen una paradoja.

Este artículo toma el caso español como ejemplo de esta paradoja. Más concretamente, evalúa las reformas adoptadas por el Gobierno español durante la crisis con respecto al salario mínimo y al sistema de negociación colectiva. También estudia los efectos de las recomendaciones específicas dirigidas a España y del Memorando de Entendimiento sobre esas reformas. En cuanto al salario mínimo, puede decirse que, mientras que el Gobierno español ha aumentado o congelado ligeramente el salario mínimo nacional, ha aumentado la cantidad de convenios colectivos que incluyen salarios mínimos sectoriales. Por otro lado, las reformas del sistema de negociación colectiva han provocado una descentralización de las unidades de negociación y el debilitamiento de la estructura de la negociación colectiva. Al final, todas esas reformas han llevado a una moderación o una devaluación de los salarios, con lo que favorece el aumento de trabajadores pobres.

Palabras clave: Pilar Europeo de Derechos Sociales, reformas laborales, negociación colectiva, salarios mínimos.

# I. The EU Paradox: the European Pillar of Social Rights and the EU Economic Governance

The proposal to build a 'European pillar of Social Rights' (EPSR) is a new stage to advance into the social dimension of the European Union. As it was proclaimed, the rationale behind the European Pillar of Social Rights «responds to a double need: overcoming the crisis and looking beyond, and moving towards a deeper and fairer EMU *[Economic Monetary Union]*»(European Commission, 2016a, p.3) . It reminds the first Social Action Programme adopted 1974 with the view that the «economic expansion is not an end in itself but should result in an improvement of the quality of life as well as of the standard of living» (Presidency of the European Council, 1974). However, the Social Dimension of EMU in the EU economic governance (EUEG) is a way of mitigating the effects of fiscal reform rather than an integral part of macroeconomic planning (Adams and Deakin, 2015, p.119). Indeed, since the financial crisis of 2008, economic adjustment programmes have led to «wage cuts, decentralisation of collective bargaining, and greater selectivity in employment protection and social security» (Adams and Deakin, 2015, p.111). As a consequence of these opposing policies it can be concluded that the outcomes caused by the EUEG and the principles sought by the EPSR produces a paradox which is also detected in the IMF policies (Ebert, 2015, p.124).

On one hand, in the first preliminary outline of the EPSR, the Commission states «*[m]*aintaining an evolution of wages in line with productivity has proven crucial for competitiveness, particularly within the euro zone» (European Commission, 2016b, p.10). However, it seems that no specific initiative is seriously foreseen since the final content of the EPSR states that «Member States and the social partners are responsible for the definition of wage and minimum wage developments in accordance with their national practices» whereas at Union level, social partners are to be consulted (European Commission, 2017, p. 7). Despite of that, the EPSR contains two principles: on one hand, the workers’ right to fair wages providing for a decent standard of living and, on the other hand, adequate minimum wages in order to provide «for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work». Moreover, in-work poverty shall be prevented. At the end, the EPSR also includes that all wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.

On the other hand, the crisis of 2008 and the public debt crisis of 2010 triggered EU institutions and national governments of Member States to adopt and implement a myriad of measures which at the end constituted the new EUEG. It aimed at «reinforcing the stability of the Eurozone by putting in place new mechanisms for monitoring, sanctions and coordination, as well as – perhaps in future – solidarity» (Degryse, 2012, p.6). Within the framework implemented by the EUEG, the European Commission analyses the national reform programmes proposed by EU member States and suggests structural reforms in Country-Specific recommendations to them which, in many cases, are focused on labour reforms. Moreover, those countries which have received economic aid had to perform more strict labour reforms according to the Memorandums of Understanding. The argument to include all those labour reforms was that making labour markets more flexible was one of the best responses to the crisis (Clauwaert and Schömann, 2012, p.6).

Both instruments, the EUEG and the EPSR, are far from having the same status since the binding nature of EUEG instruments have been partially strengthened (Degryse, Jepsen and Pochet, 2013), meanwhile the EPSR constitutes a recommendation from the Commission, together with a proposal for an interinstitutional proclamation (European Commission, 2017, p. 6). Moreover, the European Commission recognises that Member States and the social partners have primary or even exclusive competences in areas included in the EPSR such as minimum wage (European Commission, 2017, p. 6). In spite of that, the outcomes of the EPSR are to be monitored within the European Semester for economic policy coordination (European Commission, 2017, p. 9).

The paradox is based on the consequence of the EUEG: the increasing number of low salaries and working poor. Effectively, the EUEG’s recommendations and the Memorandums have focused on the wage-setting mechanisms (Eurofound, 2014) provoking strong changes on them. As an example, the shifts have been strongly focused on «undermining the governance capacity of sectoral (and cross-sectoral) agreements in favour of those concluded at company level» (Marginson, 2014, p. 97-98). Concerning that, the EC has stated that «the years after 2007 witnessed a reduction in real collective wage outcomes» (European Commission, 2015, p. 50).

Focusing on Spain, during the period 2008-2014 wage incomes would also have lost purchasing power. If we compare the evolution between 2008 and 2014 of the Labor Price Index and the Consumer Price Index (annual average, general index) we see that the former would have varied by -0.7 points while the latter would have increased by 8.3 percentage points. Moreover, the International Labor Organization (ILO) has stated (ILO, 2014, p. 49) that wages have been tightened considerably since the beginning of the recession, with the result that living conditions have deteriorated. Indeed, the poverty rate for employed persons has increased from 2008 (11.7%) to 2015 (14.8%) (INE, 2016). In this sense, the ILO Report pointed out three elements as having a direct influence on wages and the distribution of wages: the minimum wage, the bargaining system and the creation of employment (obviously, quality employment). For this reason, we will study the legislative policies of recent years that have reformed these mechanisms of distribution, and specifically: the evolution of freezing or minimum increase of the minimum wage interprofessional and the weakening of collective autonomy through the reform of the system of collective bargaining.

# II. The constitutional right to wage sufficiency: sectoral minimum wages facing the weak national minimum wage

The Spanish Constitution of 1978 (EC) obliges the public authorities "to promote the conditions so that the freedom and equality of the individual and of the groups in which it is integrated are real and effective". Consistent with this, the EC recognizes in Article 35 (1) that all Spaniards are entitled "to sufficient remuneration to meet their needs and those of their family, without any discrimination on the basis of sex", where 'sufficient' emanates from both the social function with which the wage is conceived in the Spanish system and in other legal systems of our environment (Castro Conte, 2007, pp. 32-33).

Article 27 of the Workers' Statute provides that "the Government shall, after consultation with the most representative trade union organizations and business associations, determine the minimum inter-professional wage". According to Del Valle, the interprofessional minimum wage (IMG) "is a special means to achieve the sufficiency of remuneration", while unlike the wages contained in collective agreements, the interprofessional minimum wage "rises to a large extent on work in its "supracontractual" dimension (Del Valle Villar, 2002).

In this sense, its interprofessional nature ensures its projection on the whole of the salaried population (Llompart Bennaàssar, 2007, p.140). In the terms used by the Constitutional Court, the Minimum Wage Interprofessional plays a sort of "minimum wage ceilings" that come to complement the normal system of fixing the minimum wage that corresponds to the autonomy of workers and entrepreneurs, through the exercise of the right to collective bargaining (Article 37.1 EC). Thus, the Court states that the institution of the minimum wage constitutes a coercive intervention in labour relations, which finds its justification in the protection of an interest, deemed worthy and in need of State attention, according to the constitutional principles of justice and equality (Article 1.1 of the EC).

Article 27 of the ET establishes a series of indicators that must be taken into account by the government in order to determine wages, namely the consumer price index, productivity national average achieved, the increase of labor participation in national income, and the general economic situation. As Castro Conte has pointed out (Castro Conte, 2007, p.120-122), other factors have been taken into account by the executive as the commitments on macroeconomic policy in relation to European economic integration, whose support would be found in Article 97 EC, which recognizes the power of the government on policy economic. Among those other criteria, it is necessary to bring here the requirements imposed on the countries that have received financial support from the European Central Bank, the International Monetary Fund and the European Commission, whose memoranda required the reduction of the minimum interprofessional wage, as in the case of Ireland, Portugal, Cyprus and Greece (Eurofound, 2014).

Moreover, minimum wage must be established after consultation with the most representativetrade union organizations and business associations. It places the Spanish model of fixing the Minimum Wage in a situation similar to that of most European countries that choose to establish the wage legally and not through collective bargaining or social agreement. Similar models known as "universal" to be established interprofessional are those of France, Luxembourg, Holland, Ireland, United Kingdom, Greece (since 2012), Malta, Portugal, Croatia (since 2008), Lithuania, Latvia, Romania ), Slovenia, the Czech Republic and Hungary. Although in Cyprus it is also fixed by law, on the other hand, it has a sectoral character (Schulten, 2014).

In the case of Spain, the ‘Memorandum of Understanding on financial-sector policy conditionality’ includes the fulfillment of the commitments adopted under the Excessive Deficit Procedure and the structural reforms specifically recommended to Spain within the framework of the European Semester. In the 2012 recommendations (European Council, 2012), the Council of the European Union drew attention to the devaluation of wages as a result of the approval of the labor reform through the Law 3/2012. Prior to the recommendations, the Spanish National Reform Program included among the expenditure reduction measures the freezing for the first time of the interprofessional minimum wage for 2012. In 2014, the IMG was frozen again. However in 2017 it increased by 8% over the amount set for 2015.

However, the configuration of the IMG in Spain must respect the commitments acquired internationally within the ILO and in the Council of Europe. Even, the Euro parliament has condemned «the cut in minimum wages and the freezing of nominal minimum wage» (European Parliament, 2014, p. 11). In relation to the ILO, it has adopted several international labor standards relating to minimum wage guarantees, the most current of which is Convention 131 supplemented by Recommendation 135. The Convention was ratified and officially published by Spain, so its content is part of domestic law under art. 96 EC. Convention 131 has become particularly relevant due to economic crises and has therefore been the subject of special treatment at the 103rd session of the General Conference of the ILO, convened in 2014, which included the discussion of the General Survey on systems of minimum wages (Committee of Experts on the Application of Conventions and Recommendations, 2014). Although the approach adopted has to do with social protection, minimum wage policies are also linked to the strategic objective of employment, insofar as minimum wages should be included within the salary policies to be promoted by ILO member States in a broader framework of employment policies (International Labour Conference, 2014). In this case, Article 3 of the Convention establishes among the elements to be taken into account in determining the level of minimum wages not only economic factors but also "the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups". In this regard, when the IMF was frozen by the Government in 2012, alleging the difficult economic situation, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) made a remark regarding the application of Spain to the Convention 131. The CEAR affirmed on that clause that the minimum wages that allow the workers to meet their needs and those of their families, in agreement with the social partners, is an essential element of decent work, reason why the CEACR stuck to the Government to take full account of the needs of workers and their families and not only the economic policy objectives, avoiding the depreciations of the purchasing power of the minimum wage. Indeed, the CEACR made a direct request for Spain in 2013 to respond to the Commission's observation in 2012.

For its part, Spain has also ratified the European Social Charter, adopted within the Council of Europe. According to article 4, the version adopted in 1961 of that Charter, which is the version ratified by Spain, recognizes the right to equitable remuneration and, in particular, the right of workers to sufficient remuneration to provide them with to them and their families a decent standard of living. According to the European Committee of Social Rights, in order to comply with the Charter's precept, the salary must not be lower than the poverty line of the country, which places it at 50% of the average national salary (European Committee of Social Rights, 2014). Regarding compliance by Spain, the Committee has assessed that Spain does not comply with the Charter's mandate, since the minimum wage does not ensure the right level of living for workers. In fact, the European Committee on Social Rights in 2010 had already said that the interprofessional minimum wage was manifestly unjust (European Committee on Social Rights, 2010).

As can be deduced from all of the above, the relevance of the national minimum wage as wage floor lies in the sufficiency of the wage. In quantitative terms, the impact of the minimum wage as a support to curb the aforementioned trends in wage reductions and, as a consequence, the impoverishment of workers, can be seen in the increase in the percentage of workers who receive lower or equal wage income than the Minimum Interprofessional Salary: in 2008 8.9% of workers had an income at that threshold, while in 2013 they increased to 13.2% of workers. Moreover, because of the insufficiency of the established level, the percentage of collective agreements of a higher scope than the company that include clauses establishing such wages has increased since the beginning of the crisis.

Graph 1: Percentage of collective agreements concluded at sectoral level including sectoral minimum wage (1996-2015)

Source: Own elaboration from data of MEYSS. *Estadística de convenios colectivos.* (Accessed 24 September 2017)

Moreover, as the ILO points out in the metioned report, the link between the minimum wage and the collective bargaining system is complementary (International Labour Office, 2014, p. 68). Thus, we will see below the institutes proper to collective bargaining in relation to the level of wage income.

# III. The dismantling of the collective bargaining system as a hub of wealth distribution

Collective bargaining is the main institution on which wage incomes are formed in Spain. According to López López (2009, p. 57) the role of collective bargaining has meant, for the wage system, a clear instrument of guaranteeing social rights for workers, but also the most marked flexibility in wage structures. The Constitution recognizes in article 37.1 the right to collective labour bargaining between workers 'and employers' representatives. Adjectives as "labour" act as outer limit of the exercise of the right, not protecting "the eventual political negotiations of trade unions and employers' associations with the Government (Valdés Dal-Ré, 1980, p. 251). Thus, the salary is one of the subjects included in the labor dimension of the negotiation, since it is the economic compensation that the workers receive for their work for others.

Consistent with this, the ET in its article 26.3 establishes that it corresponds to collective bargaining or, failing that, the individual contract, the determination of the salary structure. In the same sense, the regulation of some special labor relations also includes references to the collective bargaining to fix the remuneration. The fact that the law gives prevalence to what is established in collective bargaining with respect to that composition of the wage that could be agreed in an individual labour contract has a logical consequence on the role that collective bargaining has in establishing wage income in Spain. However, the question arises whether collective bargaining should be understood not only in collective bargaining agreements but also in other negotiation products such as company agreements, which is affirmatively reinforced by the opposition to individual contractualisation (Pérez Agulla, 2015, p. 211).

Collective bargaining has jurisdiction over the wage structure as of the great reform of Law 11/1994, since before the State regulated the wage through the Labor Ordinances, so that moment has been defined by Lopez as a normative withdrawal of the State (López López, 2009, p. 66). In addition to the wage structure, collective bargaining may also agree on other matters, for instance the consolable nature of wage supplements, the date and place of payment of the salary, the receipt of wages and, in relation to the extraordinary payments, the date of liquidation and payment of one of the two legal extraordinary payments and the amount of it.

The evolution since then has always been the increase of collective agreements that include clauses on the salary structure, producing especially from 1997 and in 2012, with the labor reform of that year. Thus, more than 90% of both company and super-enterprise agreements include the definition of the wage structure (the base salary and wage supplements). In addition, collective agreements not only regulate the wage structure but also include so-called safeguard clauses or wage revision. According to Cebrian López and Pérez Infante (2013, p. 40), these clauses would complete the salary model and play an important role when the effective inflation exceeds the expected used to establish the agreed wage increase.

Graph 2: Percentage of collective agreements including structure of salary (1996-2014)

Source: Own elaboration from MEYSS. *Estadísticas de convenios colectivos de trabajo* (Accessed 24 September 2017)

Collective bargaining thus becomes an essential forum for regulation and, therefore, for wage fixing in Spain. However, the reform of collective bargaining by Law 3/2012 has affected the main axes of the statutory collective agreements: firstly, the regime of non-application of collective agreements applicable to the enterprise, regardless the collective agreement was concluded at company or sector level; second, the limitation of the period of validity of collective agreements when they are denounced; and third, the application priority of the agreement concluded at company level over the sector agreements. All these reforms aimed at "to convert the products of collective contractual activity into simple tools to serve the interests of companies (Valdés Dal-Ré, 2012, p. 225).

## The non-application procedure of collective agreements: Derogation of wage standards in favour of wage cuts

The inclusion of opt out clauses in national collective bargaining systems has been triggered by the economic programs imposed on the countries bailed out by the Troika. As Colàs Neila (2016) has affirmed, it is directly connected with the legal enforceability of collective agreements recognised in the Spanish Constitution. From a comparative perspective, the European Parliament has also declared that this measure, together with the possibility to review sectorial wage agreements, «has direct consequences for the structure and values of collective bargaining arrangements set out in the respective national constitutions» (European Parliament, 2014, p. 10).

The ET allows in Article 82 that certain conditions of work (for instance, the system of remuneration and wage amount) foreseen in the applicable collective agreement concluded at either enterprise level or sectoral level can be derogated in case of economic, technical, organizational or production reasons. The possibility of non-application of the collective agreement has as main consequence the weakening of its normative value (López López, 2009, p. 99). However, as the Supreme Court has pointed out, the wage structure can also be fixed by a company agreement so its 'non-application' can occur through the substantial modification of the conditions of work envisaged by the art. 41 ET. This article also includes the remuneration system within the modifiable subjects and, after the labor reform of 2012, the salary amount (article 41.1.d ET).

On one hand, the modification of the salary amount via art. 41 ET is very relevant for two reasons: firstly, because individual or plural wage changes do not require a consultation period, so that with the 2012 reform the employer is allowed to impose a wage reduction unilaterally (Sáez Lara, 2012, p. 235); secondly, secondly, because the procedure for collective wage modifications does not require an agreement at the end of the consultation period, so that the unilateral power of the employer will continue to prevail.

On the other hand, the procedures for non-application of collective wage agreements represent the majority of procedures initiated above any other matter. As can be seen in the chart below, most non-application procedures which have occurred in recent years have to do with the salary matter. In particular, the non-application procedures of the amount of salary has exceeded 60% in relation to the total of procedures, followed by those in which the salary level was not applied together with the remuneration system.

Graph 3: Subject matter of non-application procedures (%) (2013-2015).

Source: Own elaboration from MEYSS. *Estadísticas de convenios colectivos de trabajo* (Accessed 24 September 2017)

The economic impact of the non-application of the agreements can be verified in the data of the Annual Labor Cost Survey. The following graph shows the percentage of wages and salaries of gross total cost. Specifically, wages and salaries are classified taking into account whether (1) the rule governing wages is a collective agreement that has not undergone an alteration during its validity (except the signing of a new agreement) or if it is regulated in another instrument which is not an agreement, (2) if it is regulated in a collective agreement whose working conditions have been altered and (3) if the collective agreement regulating the employment relationship has been altered solely in the salary system. According to the data we can say that the percentage of wage costs fixed in collective agreement (only affected in wage regime) was reduced in 2012, 2013 and 2014, thus representing a lower cost of total labor costs of companies. The percentage of wage costs over total labor costs for firms is also reduced when the rule that regulates wages is an agreement that is altered not only in the wage system or in other different matters.

Graph 4: Wage costs over total labor costs (%) by type of collective agreement (2013-2015).

Source: Own elaboration from INE. *Encuesta anual de coste laboral 2016*. (Accessed 24 September 2017)

## Priority of company collective agreements: decentralisation and low salaries

Another aspect of the collective bargaining system that was affected is the priority of application of collective agreements concluded at company, corporate group and networked company level at the expense of agreements concluded at higher level. As it has been pointed out, the preferential application of the company collective agreements cannot be altered by the rules of articulation of the collective bargaining established in the sectoral level (See Chacartegui Jávega, 2016).

Although the preference of application of company collective agreements is not directly related to the loss of salary, the new collective agreements signed have served to lose purchasing power. There is a reduction in the amount of wages in new collective agreements, facilitated by the 2012 reform, which is carried out in practice in all possible ways, namely basic salary, paid extras, salary supplements of all kinds - extra hours and shift work included -, and salary revision and updating of salary revision in case of diversion over what was originally planned (Vivero Serrano, 2016, p. 14).

Indeed, the emergence of new bargaining units may be related to the evolution of wages in different economic sectors. As can be seen in the following graph, the value of the gross wages of workers in the service sector is 2016 (€ 25,255.40) lower than the value of 2012 (€ 26,035.08). In contrast, the value of gross wages of workers in the industrial sector (including the construction sector) is in 2016 (32,577.98 €) is higher than the value of 2012 (31.178.90 €) The appearance of new units of bargaining in the services sector (up to 50% in 2014) can explain the reason why wages have not recovered the pre-crisis value.

Graph 5: New bargaining units (%) and gross wage (number) by sector (2012-2016)

Source: Own elaboration with data from MEYSS. *Estadísticas de convenios colectivos de trabajo* andINE, *Encuesta Anual Coste Laboral,* 2016 (Accessed 24 September 2017)

*\** 2016 data is provisional.

In this respect, the service sector has been most vulnerable to the emergence of so-called 'multi-service companies' in the context of outsourcing. These companies are characterized by the development of functions as genuine temporary employment agencies, bypassing the ban on the transfer of workers (Chacartegui Jávega, 2011). They produce, among other things, a reduction in costs insofar as they circumvent the principle of equal pay (Rivero Lamas, 2006, p. 92), offering lower labor costs through company collective agreements and avoiding the sectoral collective agreement (Rivero Lamas, 2006, p. 93). In this connection, recent case law has declared invalid collective agreements signed by workers' representatives in the headquarters of the multi-service company for failing to comply with the principle of correspondence (representativeness) (see López López, 2016). As a consequence, the precariousness of the workers has increased (Vicente Palacio, 2016).

## The effects of 12-month time limit of expired collective agreements: lower wages in upper collective agreements (if any)

Another of the reforms that have contributed to the impoverishment of workers has been the one year time limit during which collective agreements maintain their legal effects beyond the date of expiry. The reform of 2012 introduced that when negotiators do not reach a new agreement after one year from the data of expiration, the collective agreement loses its validity, unless otherwise agreed, and shall apply the higher level collective agreement only if any.

Although there are no data on how many agreements have expired due to the end of the time of ‘ultractiveness’, the fact is that general estimations can be made based on the data existing in the registry of collective agreements. As can be seen in the following chart, the number of collective agreements that were repealed by another subsequent agreement was always higher than the number of collective agreements denounced between the period 2011 and 2013. In 2013, social partners signed the ‘ultraactividad’ agreement (‘Acuerdo de la Comisión de Seguimiento del II Acuerdo para el empleo y la negociación colectiva sobre ultraactividad de los convenios colectivos’) in order to give solutions to the loss of validity of the agreements expiring one year after the entry into force of the 2012 labour reform. This agreement could produce the increase in 2014 of the collective agreements denounced during the previous year. A similar behavior can be seen in the number of extensions of agreements that occurred during the same month of the previous year, since they reach the highest value also in 2013 and then decrease. The most important fact is that the number of collective bargaining agreements denounced a year earlier is always higher than the agreements that repeal a previous one as of 2014. In this sense, the difference between both data could represent the total of agreements whose effectiveness would have ended by the end of ultraactivity.

Graph 6: Total amount of collective agreements expired one year before, collective agreements followed by another and expired collective agreements extended (2012-2016)

Source: Own elaboration from MEYSS *Registro Convenios y Acuerdos Colectivos* (data until 24 November 2016). (Accessed 24 September 2017).

As already mentioned, the consequence of the loss of ultraactivity of the agreements would be the application if any of the collective agreement of higher level (see De le Court, 2016). As the following chart, a decrease in wages may occur since the value of wages in collective agreements exceeding the company level is less than the collective agreements concluded at the enterprise level or at the workplace. Specifically, in the industrial and construction sector, the wages of workers regulated in a company-wide collective agreement have been during the crisis above 29,000 euros, while if they were regulated in sectoral collective agreements of state level or lower wages have not exceeded 25,000 and 23,000 euros respectively. On the other hand, in the services sector, wages regulated under sectoral collective agreements, at the state level or below, have not exceeded 23,000 and 18,000 euros respectively, while wages regulated in collective bargaining agreements have risen during the crisis from 23,000 euros in 2011 to more than 25,000 in 2015.

Graph 7: Total amount of gross wage in collective agreements by sector (2010-2015)

Source: Own elaboration with data from INE, *Encuesta Anual Coste Laboral,* 2016 (accessed on 24 September 2017)

# Conclusion: the need of reducing working poor through strong collective bargaining

Working poor is increasing both in Spain and within EU (Eurostat, 2017). As it has been showed above, Spanish legal reforms on collective bargaining may have contributed to increase , Indeed, countries with centralized collective bargaining systems are correlated with lower levels of in-work poverty (Eurofound, 2017, p. 12). Moreover, structural reforms affecting national collective bargaining systems has been a common pattern during the crisis alongside the Southern countries, where the participation of the tripartite social dialogue rarely existed (Malo, 2016, p. 117). Indeed, the implementation of decentralization occurred in both continental and southern countries, but it was implemented in a more abrupt and disorganized way in the latter and imposed unilaterally by governments (Directorate General for Internal Policies, 2016, p. 6).

As it has been pointed out, EU austerity will continue to lower standards of living if EMU is not reoriented (Adams and Deakin, 2016, p. 123). Regarding the wage cuts, the European Parliament has said that it «runs counter to the EU’s general objectives and the policies of the Europe 2020 strategy» (European Parliament, 2014, p. 11). The EPSR should represent a new opportunity to reconquer the collective autonomy at both the national and the European level. Furthermore, although the EPSR is primarily a political instrument, we must remember that it proclaims rights that are recognized in legally binding instruments such as the Treaties and the Charter of Fundamental Rights of the European Union.

The legal reforms adopted in Spain during the Great Recession years inevitably have consequences for workers' rights, namely, the adequacy of wages and the exercise of collective bargaining. Without forgetting that the States and the European Union are responsible for implementing solutions to the economic crisis, they are also responsible for ensuring the protection of labor rights. For this reason, they are obliged to correct the measures that have negatively impacted on social rights.

BIBLIOGRAPHY

Adams, Z., and Deakin, S, 2015. Structural adjustment, economic governance and social policy in a regional context: The case of the Euro crisis. *In*: A. Blackett, and A. Trebilcock, ed. *Research Handbook on Transnational Labour Law*, Cheltenham, UK: Edward Elgar Publishing, 111-123.

Castro Conte, M., 2007. *El sistema normativo del salario: ley, convenio colectivo, contrato de trabajo y poder del empresario*. Madrid: Dykinson.

Cebrian López, I. and Pérez Infante, J. I., 2013, Evolución de las cláusulas de revisión y salvaguardia en el modelo salarial Español. Enfoque económico. In: López Ahumada, coord. *Revisión e inaplicación de los salarios en la negociación colectiva: Efectos derivados de la crisis económica*, Madrid: CCOO, Ediciones Cinca. 17-42

Chacartegui Jávega, C., 2011, Reformas de la intermediación laboral y de las Empresas de Trabajo Temporal. *Actum Social*, 47.

Chacartegui, C, 2016. Estructura y articulación de la negociación colectiva: una lectura a la luz del principio de norma más favorable. *In:* C. Chacartegui, ed. *Negociación colectiva y gobernanza de las relaciones laborales: una lectura de la jurisprudencia tras la reforma laboral*. Albacete: Editorial Bomarzo, 61-86.

Clauwaert, S. and Schömann, I., 2012. *The crisis and national labour law reforms: a mapping exercise*. Working paper 2012.4. Brussels: ETUI.

Colàs Neila, E, 2016. Descuelgue e inaplicación del contenido normativo del convenio colectivo. In: C. Chacartegui, ed., *Negociación colectiva y gobernanza de las relaciones laborales: una lectura de la jurisprudencia tras la reforma laboral*. Albacete: Editorial Bomarzo, 87-112.

Committee of Experts on the Application of Conventions and Recommendations, 2014. *General Survey on Minimum Wage Systems. General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135)*. International Labour Conference, 103rd Session, 2014. Geneva: International Labour Office.

Council of Europe, 2008. *Digest of the Case Law of the European Committee of Social Rights*. Available in: http://www.coe.int/en/web/turin-european-social-charter/case-law.

De le Court, A, 2016. Ultra-actividad y contractualización de la protección de las condiciones de trabajo: una perspectiva comparada. In: C. Chacartegui, ed., *Negociación colectiva y gobernanza de las relaciones laborales: una lectura de la jurisprudencia tras la reforma laboral*. Albacete: Editorial Bomarzo, 113-143.

Del Valle Villar, J.M., 2002. *La Protección legal de la suficiencia del salario*. Madrid: Dykinson.

Degryse, C., 2012. *The new European economic governance*. Working Paper 2012.14 ETUI, Brussels.

Degryse, C., Jepsen, M., and Pochet, P., 2013. *The Euro crisis and its impact on national and European social policies*. Working paper 2013.05. Brussels: ETUI.

Directorate General for Internal Policies, 2016, *Evolution of collective bargaining in Troika programme and post-programme Member States*. Brussels: European Union.

Ebert, F C, 2015. Structural adjustment, economic governance and social policy in a regional context: The case of the Euro crisis. *In*: A. Blackett, and A. Trebilcock, ed. *Research Handbook on Transnational Labour Law*. Cheltenham, UK: Edward Elgar Publishing, 124-137.

Eurofound, 2014. *Changes to wage-setting mechanisms in the context of the crisis and the EU’s new economic governance regime*. Dublin: European Foundation for the Improvement of Living and Working Conditions.

Eurofound, 2017. *In-work poverty in the EU*. Luxembourg: Publications Office of the European Union.

European Commission, 2015. *Industrial Relations in Europe 2014*. Luxembourg: Publications Office of the European Union,

European Commission, 2016a, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions launching a consultation on a European Pillar of Social Rights*. COM (2016) 127 final.

European Commission, 2016b, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions launching a consultation on a European Pillar of Social Rights*. COM (2016) 127 final. Annex 1.

European Commission, 2017, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions launching a consultation on a European Pillar of Social Rights establishing a European Pillar of Social Rights*. COM(2017) 250 final.

European Committee on Social Rights, 2010. *Conclusions XX-1 (2010)* [online]. Available from: https://rm.coe.int/1680488710 [Accessed 8 October 2017]

European Committee of Social Rights, 2014. *Conclusions XX-3 (2014)* [online]. Available from: http://s01.s3c.es/imag/doc/2015-01-22/XX-Conclusiones\_ComiteEuropeoDerechosSociales.pdf [Accessed 8 October 2017]

European Parliament, 2014. European Parliament resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries’. (2014/2007(INI)).

Eurostat, ‘In-work at-risk-of-poverty’ Last update of data: 25/09/2017. Available: http://ec.europa.eu/eurostat/web/income-and-living-conditions/data/main-tables (Accessed 01 October 2017)

International Labour Office, 2014. *Spain: Growth with jobs*. Geneva: International Labour Officce.

International Labour Conference, 2014. *Resolution concerning the second recurrent discussion on employment*. 103rd Session, 2013. Geneva: International Labour Office.

Llompart Bennàssar, M., 2007. *El salario: concepto, estructura y cuantía*. Las Rozas: La Ley.

López López, J., 2009. *Un lado oculto de la flexibilidad salarial: el incremento de la judicialización*. Albacete, Bomarzo.

López López, J, 2016. Modalidad procesal de impugnación y convenios colectivos de empresa: notas sobre los debates en la jurisprudencia reciente (2016). In: C. Chacartegui, ed. *Negociación colectiva y gobernanza de las relaciones laborales: una lectura de la jurisprudencia tras la reforma laboral*. Albacete: Editorial Bomarzo, 13-31.

Malo, M. Á., 2016. Collective bargaining reforms in Southern Europe during the crisis: impact in the light of international standards. In: V. Pulignano, H.-D. Köhler, and P. Stewart, eds. *Employment relations in an era of change*. 117-135.

Marginson, P., 2014. Coordinated bargaining in Europe: From incremental corrosion to frontal assault?. *European Journal of Industrial Relations*, 21 (2), 97-114.

Pérez Agulla, S, 2015. Los acuerdos de empresa tras las últimas reformas. *Nueva Revista Española de Derecho del Trabajo*, 177, 211-235.

Presidency of European Council, 1974, *Preamble Council Resolution* *21st January 1974.*

Rivero Lamas, J. dir., 2006, *La negociación colectiva en el sector de empresas multiservicios*. Madrid: MTAS.

Sáez Lara, C., 2012, Medidas de flexibilidad interna: movilidad funcional, geográfica y modificaciones sustanciales de condiciones de trabajo Medidas de flexibilidad interna. *Temas Laborales*, 115, 221-248.

Schulten, T., 2014. *Minimum Wage Regimes in Europe*, Berlin: Friedrich-Ebert-Stiftung (FES).

Vicente Palacio, A., 2016. *Empresas multiservicios y precarización del empleo: El trabajador subcedido*. Barcelona: Atelier.

Vivero Serrano, J. 2016, La prioridad aplicativa del convenio de empresa en materia salarial. In: *Los convenios de empresa de nueva creación tras la reforma laboral de 2012*. Observatorio de la Negociación Colectiva. Madrid : Lefebvre-El Derecho. 97-237.

Valdes Dal-Ré, F., 1980. La regulación constitucional de la negociación colectiva. *In*: M. Rodríguez Piñero, ed. *La Constitución y los trabajadores*. Madrid: Sociedad de Estudios Laborales, 239-253.

Valdés Dal-Ré, F., 2012. La reforma de la negociación colectiva de 2012. *Relaciones Laborales*, núm. 23-24.

**LEGAL REFERENCES**

Constitutional Court Case Law, nº 31/1984, 7 march 1984 (ECLI:ES:TC:1984:31). [Accessed 8 October 2017). Available in: http://hj.tribunalconstitucional.es/es/Resolucion/Show/284

Convention (No. 131) concerning Minimum Wage Fixing, with Special Reference to Developing Countries. [Accessed 8 October 2017]. Available in: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0

European Social Charter, 1961 (ETS No.035). [Accessed 8 October 2017). Available in: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035

Ley 11/1994, de 19 de mayo, por la que se modifican determinados artículos del Estatuto de los Trabajadores, y del texto articulado de la Ley de Procedimiento Laboral y de la Ley sobre Infracciones y Sanciones en el Orden Social. [Accessed 8 October 2017]. Available in: https://www.boe.es/buscar/doc.php?id=BOE-A-1994-11610.

Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral. [Accessed 8 October 2017]. Available in: https://www.boe.es/buscar/act.php?id=BOE-A-2012-9110

Memorando de Entendimiento sobre condiciones de Política Sectorial Financiera, hecho en Bruselas y Madrid el 23 de julio de 2012, y Acuerdo Marco de Asistencia Financiera, hecho en Madrid y Luxemburgo el 24 de julio de 2012. [Accessed 8 October 2017]. Available in: https://www.boe.es/diario\_boe/txt.php?id=BOE-A-2012-14946.

Recommendation (No. 135) concerning Minimum Wage Fixing, with Special Reference to Developing Countries. [Accessed 8 October 2017]. Available in: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0.

Resolución de 30 de mayo de 2013, de la Dirección General de Empleo, por la que se registra y publica el Acuerdo de la Comisión de Seguimiento del II Acuerdo para el empleo y la negociación colectiva sobre ultraactividad de los convenios colectivos. [Accessed 8 October 2017]. Available in: https://www.boe.es/buscar/doc.php?id=BOE-A-2013-6449.

Supreme Court Case law, 15 July 2015 (ROJ 5814/2015). [Accessed 8 October 2017]. Available in: http://www.poderjudicial.es/search/