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Decentralising social dialogue: panacea or illusion?

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Abstract

Decentralisation of collective bargaining has been one of the key trends concerning labour market regulation of the last decades. Most of European countries have developed – with different breath and scope – procedures and reforms to strengthen the company level of bargaining. The Great Recession has stressed this orientation, particularly in those countries which were under financial pressure. One of the motives is that European institutions (both the Commission and the Council), through the European Semester, have been systematically promoting decentralisation of collective bargaining as one of the main measures to modernise European labour.

The reasons have their roots in very different aspects. Countries with an intermediate degree of centralisation can achieve better employment and inflation results by pursuing greater decentralisation of wage setting (through collective bargaining). Additionally, in the presence of productivity differentials across industries and regions, decentralisation can make wages responsive to these differences. This is due to the fact that company level bargaining better accommodates incentives to achieve higher levels of efficiency, for example, by productivity-related pay. Summing up, decentralisation would better serve the needs of both companies and job seekers, while improving overall labour market efficiency and job creation.

This paper focuses on the cases of four Mediterranean countries – France, Italy, Spain, and Portugal – in order to assess how decentralisation has been carried out and, most importantly, what kind of practical results have been achieved.

Keywords: collective bargaining, social dialogue, decentralisation.



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1. Introduction. Social Dialogue Decentralisation in Four Mediterranean Countries.

Decentralisation of collective bargaining has been one of the key trends concerning labour market regulation these last decades. Most European countries have developed – with different breath and scope – procedures and reforms to strengthen the company level of bargaining (Leonardi, S. & Pedersini, R. 2018)(Müller, T., Vandaele, K., y Waddington, J. 2019). The Great Recession has reinforced this trend, particularly in those which were under financial pressure. One of the motives is that European institutions (both the Commission and the Council), through the European Semester, have been systematically promoting decentralisation of collective bargaining as one of the main measures to modernise European labour markets (Bongelli, K. 2018)(Pérez del Prado, D. 2020).

The reasons have their roots in very different aspects. Economic theory clearly describes connections between collective bargaining, salaries, and prices. On the one hand, if trade union bargaining power is exercised in an attempt to set aggregate wages at a level that is too high relative to overall productivity, collective bargaining can increase unemployment (Nickell, Nunziata, & Ochel 2005). On the other hand, a policy of propelling wage increases without considering productivity can produce an outbreak of inflationary pressures (Flanagan 1999) which ends up deteriorating the overall country's competitiveness.

From this approach, countries with an intermediate degree of centralisation can achieve better employment and inflation results by pursuing greater decentralisation of salary setting (through collective bargaining) which serves wage moderation. Additionally, in presence of productivity differentials across industries and regions, decentralisation can make wages responsive to these differences. This is due to the fact that company level bargaining better accommodates incentives to achieve higher levels of efficiency, for example, by productivity-related pay. «Hence, by decentralising collective bargaining, it is possible to achieve more efficient outcomes, potentially involving higher employment and wages» (Boeri, T. & van Ours, J. 2008, 85). In other words, decentralisation would better serve the needs of companies, job seekers, and labour markets alike.

On the other hand, centralisation could also show quite relevant results, especially from a macroeconomic point of view. In particular, centralised wage agreements can take into account the effects on inflation associated with excessive wage claims (Calmfors, L.; Driffil, J. 1988 & Calmfors, L. 1993) and internalise aggregate demand externalities associated with consumer price inflation (Alesina, A. & Perotti, R. 1997; Soskice, D. & Iversen, T. 2000). Moreover, in imperfectly competitive labour markets, higher bargaining power and higher wage floors can increase employment. This would be the case in the presence of monopsony power, which enables firms to offer wages below the market wage, for example because workers have limited opportunities to change their employer or would incur high costs if they did so (OECD 2019).

Table 1 summarises all these characteristics of these two extreme options as alternative features, that is, the strengths of centralised collective bargaining are the weakness of decentralised option and vice versa.



Table 1. (De)Centralisation Pros and Cons

	Centralisation Pros		Decentralisation Pros
Decentralisation Cons	Takes into account inflation	Centralisation Cons	Makes wages responsive to differences
	Internalises externalities		Incentives efficiency

Source: own elaboration.

In conclusion, whereas decentralised collective bargaining could better fit companies' needs, centralised bargaining could respond more effectively to the necessities of the whole economy. From this perspective, answering the question about what the most efficient structure is would not only depend on choosing which option is the most appropriate for a specific labour market but also if there exists a perfect combination of both.

To answer these questions, this paper focuses on four Mediterranean countries – France, Italy, Spain and Portugal – in order to assess how decentralisation has been carried out and, most importantly, what results have been achieved. The interest in these cases is based on the idea that, even though they are all EU Member States whose labour market regulations share enough similarities to be englobed under the same group (Esping-Andersen 1990), they also include relevant differences, as well as developing collective bargaining decentralisation from diverse perspectives, intensities and aims.

Additionally, one must keep in mind that these countries represent about one third of the EU's GDP. Even in the case of Portugal, the smallest economy in our analysis, it is now under the scrutiny of experts from all around the world after achieving an extraordinary recovery from the terrible context of its financial bailout and austerity programs which followed (Reis, R. 2015).

Within this framework and with these targets, this paper is structured as follows. Firstly, it briefly analyses their industrial relations systems, highlighting both their points in common and their differences. Secondly, it pays attention to the way in which decentralisation has been carried out. Thirdly, it summarises the main results of that changed so far. Finally, it highlights the main results and how the current debate on collective bargaining decentralisation is progressing.

2. Collective bargaining systems: main features.

Despite differences, the four analysed systems of industrial relations can be characterised as regulatory frameworks which provide a high coverage, low unionisation and a predominantly centralised but weakly coordinated bargaining structure.

Concerning the first two features, on the one hand, the following graph shows the collective bargaining coverage for the four countries and for the whole OECD. This is usually computed as the number of employees whose working conditions are regulated by collective agreements, divided by the total number of wage and salary-earners.

As can be seen, more than 70% of employees are covered by collective bargaining agreements in these countries, which is notably higher the OECD mean and, additionally, it is in line or slight above the European average – and Belgium. According to Eurofound, about 60% of employees are covered by collective bargaining in the EU, but this ranges from 80% or more in some countries to less than 10% in others (Eurofound 2015). Therefore, all analysed countries provide high or very high coverage compared to the rest of the Member States. Actually, some studies have classified them within the same group, the one with the highest coverage rates (Cruz Villalón, J. 2019).

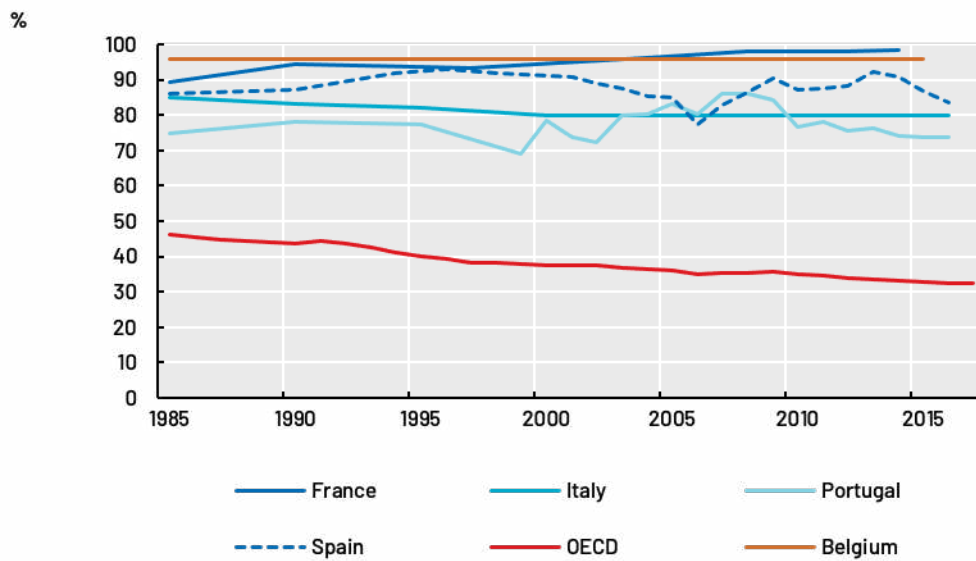
Additionally, the trend of the coverage rates is quite stable, except for Spain and, especially, Portugal. In the first case, the line shows the blockage of partners' negotiation and the beginning of the financial crisis, which it seems to be overcome after that. In the second, the explanation is a little more complicated. Despite the economic context, which is without a doubt one of the factors explaining this situation, it is neither the main one nor the only one.

In particular, three main reasons can be observed: a political decision taken in 2004 of blocking extensions as a form of pressure on social partners; the economic crisis and the financial bailout which blocked negotiations; and the introduction of stricter criteria for the extension of collective agreements (which were eliminated by two reforms in 2014 and 2017) (ILO 2018) (Campos Lima, M. P. 2019).

The last one seems to be the most relevant taking into account that their real impact on employees' coverage is still under debate (OECD 2019) and that its effects have not been compensated yet (ILO 2018). All in all, this also stresses the importance of extension mechanisms to achieve collective bargaining agreements covering most of employees.



Graph 1. Coverage rate



Source: OECD, 2019.

Concretely, the following table shows the mechanism of extension for each country and the frequency of use. Taking this into consideration, countries can be classified in two groups. On the one hand, those in which the extension depends on administrative or legal procedures based on the idea of fulfilling certain requirements. Whereas in the case of France and Portugal – as in Belgium – (with the difficulties explained above and overcome nowadays) this control is developed under an administrative procedure which finishes with an authority's resolution; in the case of Spain, they are set by law and no explicit extension resolution is required. Therefore, if the agreement fulfils the criteria, it will be published in the official gazette becoming binding *erga omnes*¹ –henceforth or from the date set by the agreement.

On the other hand, Italy is theoretically the most different system, despite few distinctions in practice. In theory, collective bargaining depends on mutual recognition by the social partners. As a consequence, collective agreements are not legally binding, so their contents are formally enforceable only by the signatories' parties. As no formal extension mechanisms are provided, a problem might arise in terms of equal treatment among workers employed in the same branch, territory or even company.

The problem has found an indirect solution – a sort of functional equivalent – based on judicial resort to equal treatment and, particularly, equal payment. As interpreted by the labour courts, the collectively agreed base wage is inserted automatically into individual employment contracts and represents the minimum, not liable to eventual derogations. In this way, the system achieves the double objective of having a 'constitutional' minimum wage and preserves trade union sovereignty over wage bargaining (Leonardi, S., Concetta, M., & Clarini, A. 2018). Additionally, employers can apply a collective agreement, even though they are not a member of the employers' association that signed it and employers' associations and trade unions can join a collective agreement even though they have not agreed upon it. All these elements explain the high Italian coverage rate.

¹ Erga omnes: literally in Latin, "towards everybody". In Labour Law it refers to the extension of agreements for all workers and employers, not only for members of signatories unions and business associations.



Table 2. Extension mechanisms.

Country	Mechanism for extension	Frequency of use
Belgium	The obligatory nature of a collective agreement can be extended by royal decree.	Often used
France	The extension mechanisms involve the services of the Ministry of Labour that controls the legitimacy of the agreement to be extended (in reference to laws, decrees, etc.). Then the National Commission for Collective Bargaining (CNNC) involving social partners, provides validation of the extension, before the Ministry of Labour takes the extension decree.	Very frequently used.
Italy	No extension mechanism is regulated but it is applied <i>de facto</i> .	
Spain	The process of extending of a collective agreement Very frequently used is automatic – principle <i>erga omnes</i> . Collective agreements are extended by law to all the workers affected, regardless of whether they are unionised or not.	Very frequently used
Portugal	By decree from Ministry of the Economy and Employment on request of one of the signing parties.	Very frequently used, at least until 2004.

Source: (Eurofound 2011)



One of the main consequences of this relatively high coverage is a low level of unionisation except for Italy. Whereas union density is below 20% in the other three countries, in Italy it increases up to around 40%. The historical trend, as in the majority of the countries, is a continuous reduction. In any case, one must keep in mind that this type of regulatory frameworks – in which the coverage is high, and employees do not obtain any special service or benefit by being member – may have weakened the incentives to join a union, as non-union members enjoy the same rights as union members. Accordingly, unionisation wastes value as indicator of the features and robustness of the system. Actually, in cases such as the Italian one, affiliation to employer associations may have greater effects than unionisation in explaining the high coverage, at least in SMEs (Pedersini, R. 2019).

Finally, the last characteristic which shape the model of these three countries is referred to the structure of their collective bargaining systems. In all cases and despite the governmental support to companies' bargaining level, sectoral agreements are still the keystone of the whole system. As a result of these two contradictory factors, the strength of sectoral bargaining and decentralisation, all negotiation systems are becoming less coordinated, as the following table shows.

Surprisingly though, labour market reforms introduced in the last years seem to have no effects on collective bargaining taxonomy. In the case of Spain, the only country which shows changes from "predominantly coordinated" to "weakly coordinated" and vice versa, these alterations are more connected to the achievement of an inter-confederal agreements by social partners – setting the whole structure and indications for the rest of levels for the following years – than the labour market reforms in 2010, 2011 and 2012.

Table 3. Taxonomy of collective bargaining

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Belgium	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC
France	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW
Italy	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW
Portugal	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW	PCW
Spain	PCW	PCW	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCC	PCW	PCW	PCW	PCW	PCW	PCW

Source: OCDE, 2019. Note: Acronyms in the Table refer to the following country groupings: PCW. Predominantly Centralised and Weakly co-ordinated; PCC. Predominantly Centralised and Co-ordinated.

Despite the similarities, structures of collective bargaining also show clear differences. Whereas France, Portugal and Italy mainly focus on economic activity, determining two main areas of bargaining – the sectoral and company levels – the way in which they articulate them differ notably. In the case of Spain, its preference for sectoral bargaining is inclined to intermediate levels of negotiation and, particularly, the provincial one. This feature points out a clear particularity of the Spanish regulation compared to the previous ones.

Starting with France, although French collective bargaining can legally take place at three levels – the multi-industry level, sectoral level (which can involve national, regional, or local bargaining) and company level –, industry-wide bargaining is the most common level at which collective agreements are negotiated; even considering the large efforts to decentralise to the company level (Rehfeldt, L. & Vicent, C. 2018). Actually, 75% of all collective agreements (*accords and conventions*) are negotiated at national level (Ministère du Travail 2019).



In Italy, there is a strong connection between the two main levels of negotiation². In spite of that the pivotal role in regulating the employment relationship is traditionally played by sectoral agreements, secondary-level agreements, notably at company level, complement it by different ways: through an integrative role, represented mainly by negotiations on performance-related pay and, lately, by deals on the financial health of the company, company welfare, and a normative one, for implementing industrial provisions and adapting them to local circumstance (notably regarding the various dimensions of work flexibility, such as working hours and schedules, tasks and job classifications, as well as the use of non-standard work)(Pedersini, R. 2019).

For its part, Portuguese legislation provides for industry level agreements (*contrato coletivo de trabalho*) which can be signed at national, regional, or local level; company agreements (*acordo de empresa*) for a single company; and agreements covering several companies (*acordo coletivo de trabalho*). Traditionally industry level agreements have been more important, covering large numbers of workers and explaining the country's relatively high level of collective bargaining coverage. Particularly, there is a clear predominance of national agreements (71% in 2019) over regional and local agreements (Centro de Relações Laborais 2020).

Finally, Spain also mixes the productive and geographical approaches, but resulting a structure significantly different³. Despite, traditionally, provincial sectoral collective bargaining have been the most relevant one, in 1994, it received a boost which stopped its decline and maintained its influence (Mercader Uguina, J. R. 2011). This situation has remained stable, even considering later reforms to strengthen company level bargaining and the fact that the purpose at that time was not improving provincial negotiation. Indeed, the labour market reform in 1994 aimed at the development of two main levels, the sectoral and company ones. Nevertheless, an amendment introduced by the Basque nationalist group in the Senate with the objective of promoting agreements at regional level (or Autonomous Communities level, more technically) had an unforeseen result, the reinforcement of another intermediate level, the provincial one. So, nowadays, Spanish collective bargaining can be described as a trilevel system, in which the intermediate one is the most relevant from the perspective of number of employees covered.

Table 4. Levels of negotiation

Country	Levels of Negotiation
Belgium	Sectoral/National Company
France	Multi-Sectoral/National or Regional Sectoral/ National, Regional or Local bargaining Company

² The Italian interconfederal level (*livello interconfederale*) does not address individual employment relationship but defines the rules governing collective bargaining and some general issues, such as apprenticeships. It provides the rules on the coordination between the sectoral and the decentralised bargaining levels, and it establishes the general reference criteria for wage bargaining, including for the protection of the purchasing power of wages.

³ Spanish regulation includes the possibility of interprofessional agreements which carry out a role quite similar to the Italian ones.



Italy	Intersectoral/National Sectoral/National , Decentralised level: Regional or Provincial/Company
Portugal	Sectoral/National , Regional or Local Company/Group of companies
Spain	Intersectoral/National Sectoral/ National/Regional/Interprovincial/Provincial Company/Group of companies

Source: own elaboration

3. Types of decentralisation strategy

As was mentioned before, the four countries analysed here have been under decentralisation procedures. Although the strategy, the intensity, and the techniques have been different, it is nevertheless possible to see some common patterns which point to the main instruments from which can strengthen company level collective negotiation.

Firstly, decentralisation is usually connected to the derogation of the so-called favourability principle. This is based on the idea of a hierarchical relation among rules, so it is possible to improve conditions, not only among collective agreements, but among any other labour standard, such as the law. Hence, it means departing from the regulations laid down in higher-ranking sources by improving on them in the employee's favour. This rule has been criticised because it is an obstacle for the adaptation of labour costs to companies' circumstances, reducing the room for manoeuvre (Visser, J. 2013). Derogating it permits companies to reduce costs when needed, breaking free of its restrictions.

Secondly, decentralisation has also been developed by setting lists of issues or topics which are distributed between sectoral and company's bargaining. The Law, as superior rule, is used to decide which areas remain on sectoral bargaining's hands and what are transferred to the firm level negotiation. Additionally, it is also frequent to use it in combination with the previous one. As a result, those topics which are regulated by lower levels (company bargaining) may be *in peius*, that is, restricting working conditions. This technique is possible in countries such these⁴, whose legal systems are characterised by an intense intervention of the State on social partner's issues. Within this strategy, however, the particular way in which it has been applied differs from country to country.

Overall, decentralisation introduces the possibility of setting less favourable standards for the workers involved than those guaranteed at superior levels as a way to adapt costs to companies' needs. Particularly, it is possible to distinguish two main options. On the one hand, the derogation of the favourability principle as rule, including some

⁴ The main exception would be Italy, where industrial relations have been traditionally governed by social partners. Nevertheless, even this basic principle has been contradicted recently.



possible exceptions. On the other hand, the maintenance of the principle, but including some exclusion, for which it is not applied and, consequently, the derogation is possible.

The first option is represented by France, which combines both techniques. In this regard, the most recent legislative keystones are the 2004 and 2017 reforms. Whereas the first one meant a partial but profound derogation of the favourability principle, the second replaced it with a compulsory division of topics among levels.

The 2004 Law on lifelong vocational training and social dialogue (*Loi relative à la formation professionnelle tout au long de la vie et au dialogue social*) stated that company level agreements could derogate from higher-level bargaining agreements, even with regard to less favourable provisions for workers, except for four areas: agreed minimum wages, job classifications, multi-employer vocational training funds and supplementary social protection. At the same time, three provisions made it possible to limit resorting to such derogations. Firstly, industry level negotiators could preserve other topics, excluding them from company level derogations. This has been called the “lock up” faculty (Vincent, C. 2019). Secondly, an industry level joint committee could, in some instances, cancel derogations. Finally, the law granted majority union federations the right to challenge the validity of derogating agreements signed in their enterprise.

In practice, the use of derogations at company level have remained limited. Neither unions nor companies have shown an active interest in pursuing negotiated derogations to higher level bargaining. Three reasons have been given to explain the lack of success of derogations at company level (Vincent, C. 2019). First, since otherwise union federations would have refused to sign them, almost all industry-level agreements blocked derogations. Second, the standards imposed at industry level are already the result of minimal compromises and leave little room for less favourable agreements. Last but not least, derogation agreements are not relevant tools for management. In large companies, as long as economic survival is not at stake, opening negotiations on derogation clauses sends a very negative message both for unions and employees. SMEs are less likely to sign their own agreements, whether or not they include derogations, because maintaining the reference to industry-level agreements seems less time-consuming and risky.

The new collective bargaining architecture provided in the 2017 Ordinances⁵ meant a further step in this trend. As a consequence, these competencies are divided as follows: (i) the primacy of company agreements concerns everything that does not fall into the exceptions, keeping the rule that company level agreements could derogate from higher-level bargaining agreements; (ii) issues where the law states that sectoral level agreements take precedence – in other words, company agreements cannot set terms which are less favourable to employees – are extended to 13 topics, most of them previously regulated by law. This list includes minimum salaries, job classifications, equal opportunities, the minimum length of part-time work, overtime rates, rules on renewing probation periods, health insurance, rules on temporary contracts and the number of hours required to be worked to be defined as a night-worker; (iii) the industry level ‘lock up’ faculty, unlimited under the 2004 Law, has now been reduced to four areas, concerning the prevention of occupational risks, the employment of disabled workers, the arrangements for trade union representation – including their number – and supplements for dangerous or hazardous work. Summing up, the 2017 Ordinances meant a clear further step towards decentralisation, eliminating the restriction observed in the previous reform.

⁵ In order to avoid long parliamentary debates and possible protests, a framework law (*loi d'habilitation*) was passed in the parliament authorising the government to execute its reform through governmental decrees (*ordonnances*)



On the other hand, Spain uses the same techniques but from the opposite perspective: principle of favourability is kept but derogations are admitted. This means that company level bargaining can set less favourable working conditions in the areas assigned by law, but the rest remains at sectoral level and, consequently, protected by the favourability principle. Particularly, this new model was set in two stages formalised by two different labour market reforms (Rocha, F. 2018)(Fernández Rodríguez, C. J., Ibáñez Rojo, R., & Martínez Lucio, M. 2019).

The 2011 reform was the first one in promoting company level bargaining, but keeping some safeguards. As mentioned before, the law kept the general rule based on the favourability principle, but setting two important exceptions. On the one hand, it created a derogation list which comprehends for which company agreements regulation is prioritised over sectoral regulation, without considering whether it improves or restricts working conditions. This list includes the following matters: the amount of the basic wage and wage supplements, including those linked to the company's situation and results; payment or compensation for overtime and specific remuneration of shift work; the schedule and distribution of working time, work regime shifts and annual holiday planning; adaptation of the job classification system to company level; adaptation of contracts listed in this law to company-level agreements; and measures to promote reconciliation of working life and family and personal life. On the other hand, it permits sectoral collective bargaining to both enlarge the list of derogations (or competences attributed to companies) and limit it. As a consequence, this priority was enforced unless an agreement or collective agreement at state or regional level establishes different rules on the structure of collective bargaining. In other words, social partners at sectoral level had the last word, deciding whether they want to keep, increase, or even eliminate the issues for which company's level were prioritised.

The next reform, introduced in 2012, was aimed at strengthening the decentralisation of the collective bargaining system by establishing the absolute priority of company-level collective agreements over sectoral ones with regard to the matters mentioned above, by suppressing the exceptions included in the previous reform of 2011. As a consequence, the current regulation keeps the favourability principle except for the list of issues for which company negotiation has priority.

Italy can be included in this second group, as it keeps the principle of favourability but some issues are decentralised to lower levels. Nevertheless, it must be highlighted that a sort of confrontation between social partners and State's intervention had taken place. As explained above, traditionally, the rules for collective bargaining were largely determined by the unions and employers themselves and the role of government was limited. However, important interventions took place in the last years, leading to a kind of parallel regulations.

Hence, in 2011, the parliament introduced a new law on "support for proximity collective bargaining" (*sostegno alla contrattazione collettiva di prossimità*), which allowed the possibility for "specific agreements" signed at company or territorial level to deviate from the law and from national sectoral collective agreements. Such derogating agreements must be formally justified in terms of the following causes: increasing employment; managing industrial and economic crisis; improving the quality of employment contracts; increasing productivity, competitiveness and pay; encouraging new investments and starting new activities; enhancing workers' participation; or limiting illegal labour. Fulfilling this requirement, as in previous cases, the law permits derogation in some specific issues including working time, the introduction of new technologies, changes in work organisation, job classification and tasks, fixed-term and part-time contracts, temporary work agency, transformation and conversion of employment contracts, hiring and firing procedures, and the consequences of the termination of the employment relationship.



The legislator's intervention was not welcomed by the social partners⁶. The very same year, Confindustria and the three main union confederations signed an inter-confederal agreement in order to compensate its effects and strengthen coordination among levels. Among other things, they aimed to enhance collective bargaining decentralisation, with the possibility of opening clauses at company level (see below), but in the framework established by the sectoral national level. Concretely, the primacy of sectoral bargaining is explicitly confirmed (as reaction to legislative intervention), although there is a possibility to negotiate "modifying agreements" at company level. However, these are subjected to coordination and have to be in accordance with parameters and procedural limits laid down in the national agreement. Collective bargaining at company level may take place with regard to matters delegated, and in the manner defined by, the national collective agreement in the sector or by law. Except for those cases admitted by law, derogations from statutory norms are not permitted.

Finally, in the case of Portugal, the two above mentioned measures were also applied but, without a doubt, with less intensity than in previous cases. Concerning the favourability principle, it was derogated in the 2003 reform, but partially re-introduced by the 2009 one. It allowed collective agreements to deviate *in peius* from statutory regulation, so it can be considered more a flexibility than a decentralisation clause.

Regarding the distribution of competences among levels, while the possibility of containing clauses of articulation between levels had already been legally possible, the 2012 reform specified that sectoral agreements could contain clauses enabling such matters as functional and geographical mobility, the organisation of working time and compensation to be regulated by agreements at lower level. Nevertheless, the law neither configures it as an obligation nor determines the level which must regulate these issues.

Thirdly, another way of decentralising is through opening clauses, which are of special interest as they permit the setting of less favourable wages and working conditions at the company level than were fixed under higher-level agreements – typically at the sectoral level. These include not only hardship agreements which are exceptional, temporary, and designed to avert impending insolvency or major job loss; but also opening clauses or opt-out arrangements that, while also seeking to apply contracts in ways less favourable than what has been agreed to at a higher level, are more general in the sense that they are no longer tied to exceptional circumstances and not necessarily reversible in the next contract period⁷. Such opt-out clauses have in practice been both conditional on approval by the collective bargaining parties or applied without such a condition (Addison, J. T. 2016). From both perspectives, there is no doubt that they are a form of decentralisation. But how have they been applied in the four analysed countries?

In the case of France, these clauses were part of the tripartite negotiations of the Social Conference 2012 and the "National Inter-sectoral Agreement" (ANI) on competitiveness and job security of 2013. As promised, the government transposed the ANI into a 'Law on securing employment' (*loi relative à la sécurisation de l'emploi*) the same year. The content of the agreement was very complex and comprised a large number of subjects. However, the main element was the possibility of bargaining workplace agreements in order to secure employment which may temporarily (for a maximum of two years) derogate from sectoral agreements on wages and working time. To be valid, these workplace agreements must be signed by trade unions representing more than 50 per cent of the employees in the workplace elections.

⁶ The same reaction took place in 2015 with Jobs Act, which entrusts all bargaining levels with the same prerogatives to complement or specify legislative provisions.

⁷ Note that here there is not an attribution of competences to levels, but simply the possibility of not applying the sectoral agreement as the most beneficial level.



From a practical perspective, very few companies took advantage of this opportunity for derogation; only ten agreements of this new type were signed by the end of 2016. (Rehfeldt, L. & Vicent, C. 2018)

In Italy, the tripartite agreement of 2009 adopted changes implying the unprecedented possibility to introduce opening clauses, allowing deviations from national agreements. This was probably the most controversial aspect of the new system and the reason why one of the most important unions, CGIL, refused to sign. Until then, derogations in peius were allowed only exceptionally in territorial pacts in order to cope with economic underdevelopment and/or a high level of undeclared work. In any case, they were hardly ever put into practice (Leonardi, S. & Pedersini, R. 2018). In 2011, the next inter-confederal agreements permitted external unions to be involved in managing situations of crisis and restructuring, where some deviations from the higher level of bargaining might be required temporarily.

The Spanish regulation also adopted this instrument. Particularly, the labour market reform of 2012 promotes a widening of companies' options with regard to the temporary suspension of sectoral or company-level collective bargaining agreements (*descuelgues*). The main innovations are: (i) easing the derogation of company collective agreements; (ii) a significant relaxation of conditions and widening the range of issues subject to derogation; and (iii) imposing binding arbitration when the parties are unable to reach an agreement within a particular period of time. (Rocha, F. 2018). Despite this wide flexibilization, the use of opt-out classes did not change comparatively. According to Government's data, before the reform, when this tool was applied only to salaries and the requirements were stricter, around 600 agreements were signed per year. After the reform, it increases up to around 1,000⁸. Nevertheless, in terms of employees affected, this means only 1% of total (César Rodríguez Gutiérrez, C. & Canal Domínguez, J. F. 2016). CCOO, one of the most important Spanish trade unions, complains that 70% of these agreements are signed by non-unionised or elected representation (Sordo, U. 2019)(see below).

Fourthly, the last type of decentralisation is allowing to bargain without union representatives. This aims to extend company negotiation to SMEs, avoiding the recourse to sectoral agreements and overcoming the limits derived from the lack of employees' representation, so typical in this type of companies. Again, this tool has been widely used. Except for Italy, the rest of countries have implemented measures concerning it.

In the case of France, this is not a new issue. In 1995, an ANI signed by the employers' organisations and CFTD, CGC and CFTC (but not CGT and FO)⁹ allowed company agreements to be signed in the absence of union delegates by employees specifically mandated by unions, or by elected employee representatives, such as works council members or employee delegates. Since the early 2000s, successive legislation has extended the possibilities for non-union representatives to negotiate in non-unionised workplaces. Nevertheless, the 2017 ordinances have drastically extended its scope. Three different regimes have been introduced, depending on the size of the non-unionised workplace. Firstly, where there are 20 or fewer employees and no employee representatives: the employer can propose an 'agreement' drafted unilaterally that must be approved by at least two-thirds of the workforce. Secondly, between 20 and 49 employees: two possibilities are open without priority. Elected representatives can sign the agreement if they represent the majority of votes or it can be signed by employees mandated by a union. Finally, workplaces with 50 or more employees: the agreement can be signed by elected representatives, otherwise by mandated employees. (Vincent, C. 2019)

⁸ Except for 2013, in which around 2,000 agreements were signed.

⁹ The five confederations recognized by the state as negotiating partners.



In Portugal, the 2009 reform introduced the possibility of non-union structures of workers' representation negotiating collective agreements in companies with at least 500 workers, a threshold that was later reduced to 150 by the 2012 reform. However, the bargaining competence of these structures was still dependent of trade union authorisation. (ILO 2018).

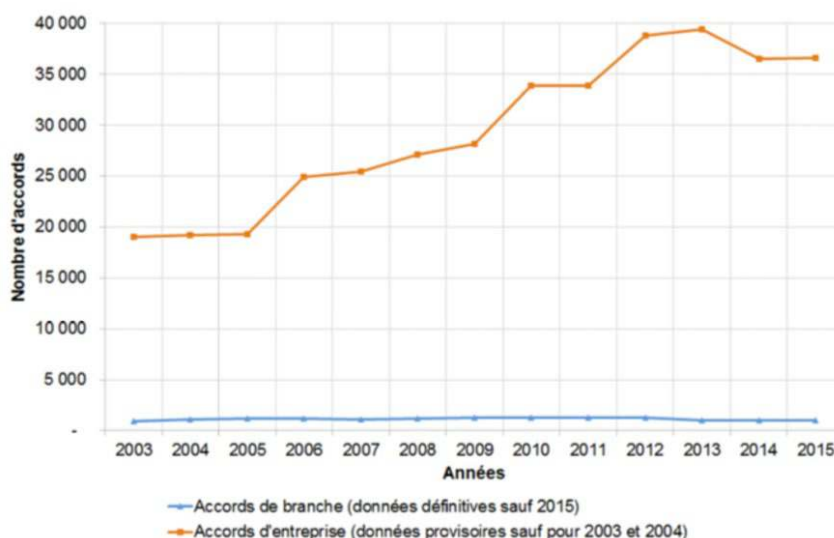
Finally, in the case of Spain, this form of employees' representation was introduced by the 2010 reform, but as a form of internal flexibility, then extended to collective dismissal. In other words, when there is no elected or union representation (something common in small companies) the law allows employees to elect the so-called "ad hoc committee" (*comisiones ad hoc*) in order to deal with the negotiation on reduction of working time, suspension of the contract, modification of working conditions or collective dismissal. As a consequence, so far, this form of representation does not have competences on collective bargaining.

4. Main results: not enough advances after all

Despite these long and profound efforts to develop a real and robust company bargaining level, none of these countries have experienced significative advances. As mentioned above (see Table 2), their OECD's classification has not changed over the years, remaining as four cases of the centralised weakly-coordinated model. Additionally, available data seems to point in the same direction.

Hence, despite the increase in the number of company level agreements (which is constant and permanent in the case of France and Portugal and punctual – after the 2012 reform – for Spain), as Graph 2, Graph 4 and Graph 7 show, the percentage of employees covered by each kind of agreement does not change significantly in most cases (see below). This is considered one of the most appropriate indicator to assess the application of collective bargaining structure (OECD 2019).

Graph 2. France: Evolution of the number of company and sectoral collective agreements

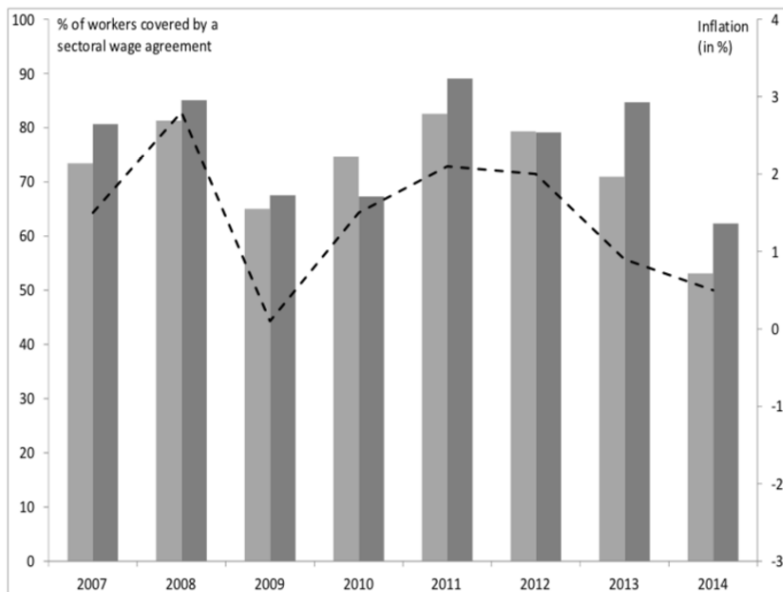


Source: (Rambert, L. 2017)



In the case of France, the following graphs shows that the percentage of employees covered by sectoral wage agreements¹⁰ remains stable along the period. Nevertheless, it does not show the effect of the 2017 Ordinances. According to the latest evaluation of this reform, it seems that it could be producing an increase in the number of company agreements, from around 25,000 in the period 2015-2017 up to 66,000 in 2019 (France Stratégie 2020). Unfortunately, this study does not offer the number of employees affected by these new texts.

Graph 3. France: Percentage of workers covered by a new industry-level wage agreement in a given year



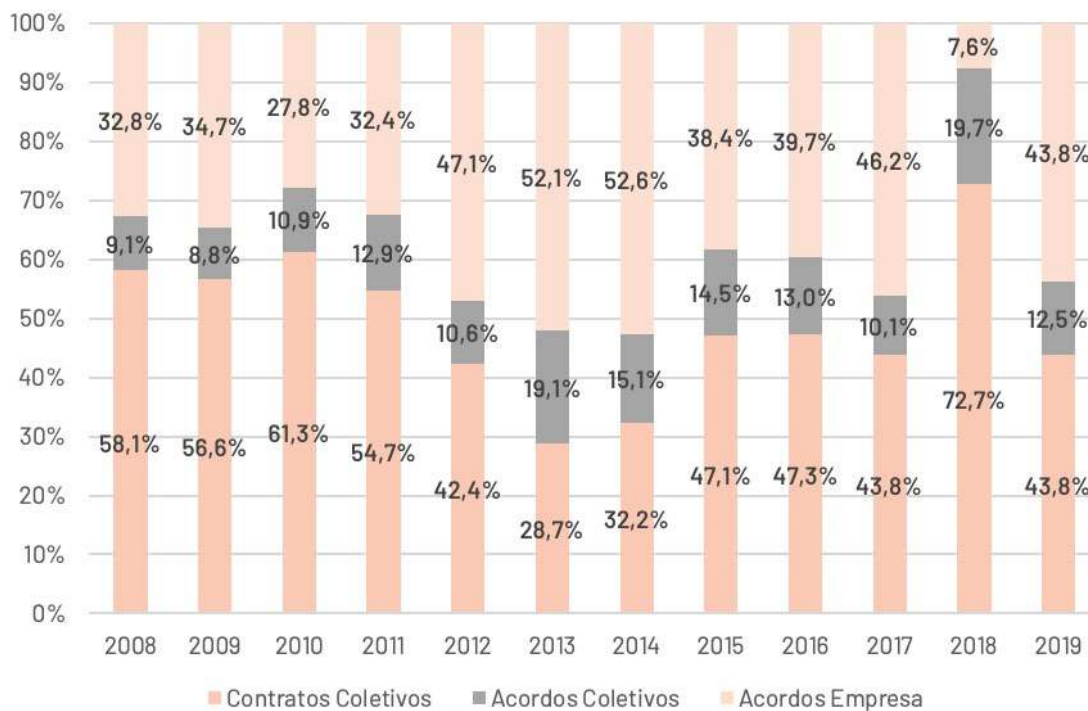
Source: (Fougere, D., Gautier, E., y Roux, S. 2016). Notes: The light grey histogram is the percentage of industries (weighted by the number of employees) which sign a wage agreement in a given year. The dark grey histogram is the percentage of industries (weighted by the number of employees) in which wage agreements are implemented in the given year. The dotted line is the annual average inflation rate in France.

Concerning the Portuguese labour market, the advance in the number of collective agreements signed at firm level is crystal clear as well. As the following graph shows, now it means around 30% of all new agreements – with a peak during the crisis, moving from 40% to 50% –, whereas it was around 20% before 2010.

Nevertheless, if one focuses on the percentage of workers covered by each type of agreement (Graph 5), the position of company bargaining scarcely changes, being stable or increasing slightly up to around 4%.

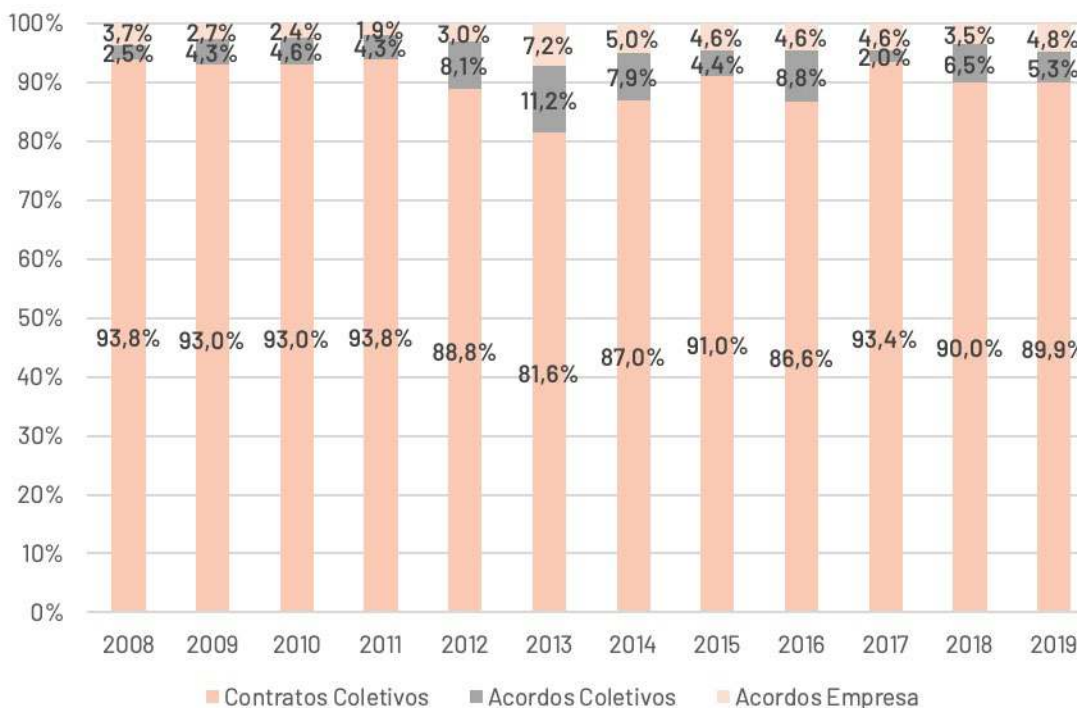
¹⁰ Note that it is referred only to this kind of agreement.

Graph 4. Portugal: Agreements signed per year (%)



Source: DGERT

Graph 5. Portugal: Employees covered by type of agreement (%)

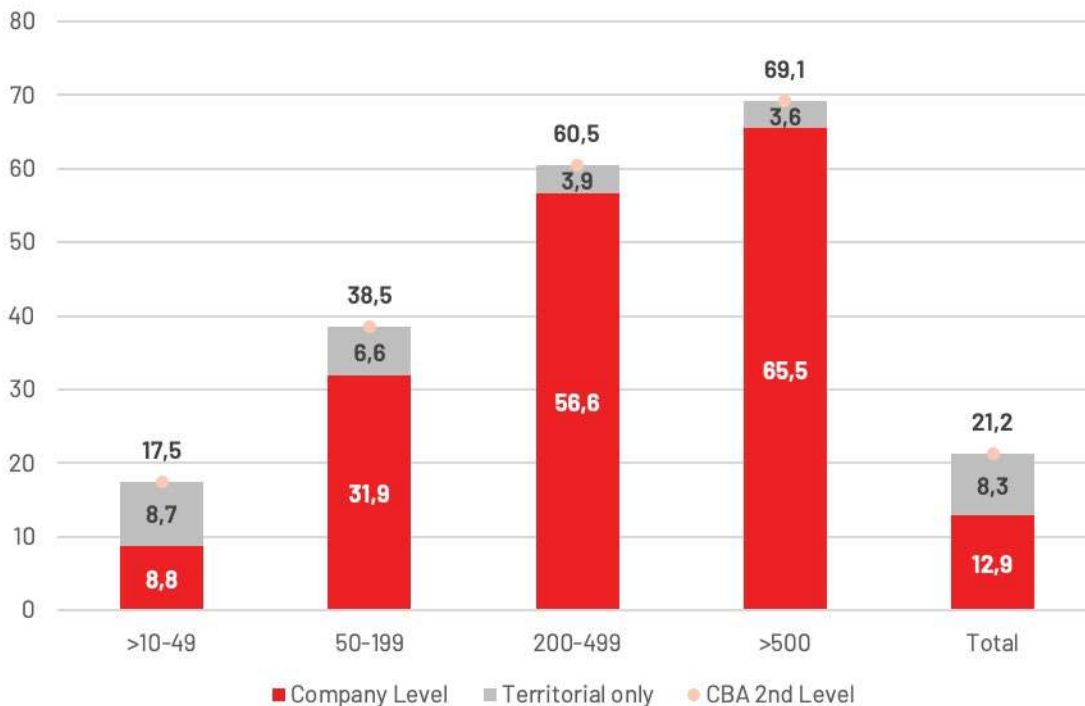


Source: DGERT



Italy is, without a doubt, the country which shows the greatest difficulties to be evaluated due to the shortage of data. Nevertheless, several research studies conclude that sectoral bargaining remains the most relevant level (European Commission 2017). Moreover, the importance of company level, measured as the percentage of companies covered by it, would be 10-15%, going up to 20% if the whole secondary level of bargaining is considered (Birindelli, L. 2016).

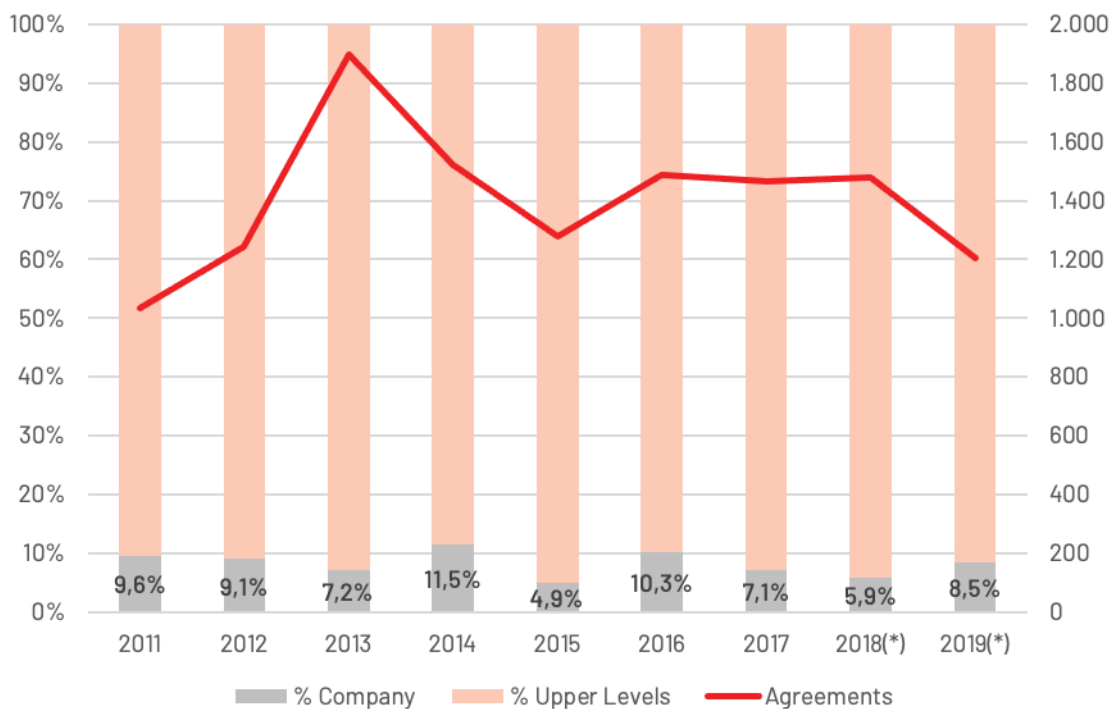
Graph 6. Italy: Companies covered by secondary level of collective bargaining



Source: (Birindelli, L. 2016). Data for period 2011-2012.

Finally, the following graph shows the evolution for Spain. Despite the clear effect of the 2011 and 2012 reforms, increasing the number of company agreements, it seems they ended up to failing in changing the structure of collective negotiation (Pérez del Prado, D. & Muñoz Ruíz, A. B. 2014). Hence, around 90% of employees are covered by sectoral collective agreements (particularly, the provincial ones¹¹), while company agreements scarcely cover 10%.

¹¹ They mean around 64% of sectoral agreements and cover 34% of employees, the same level as national sector agreements. Source: Ministerio de Trabajo y Economía Social. Data: July 2020.

Graph 7. Spain: Number of companies' agreement and percentage of employees covered over total.

Source: own elaboration based on Ministry of Labour Database. * provisional data.

5. Some possible reasons

Whereas decentralisation of collective bargaining has been one of the most important and common objectives concerning labour market regulation among Western economies (OECD, 2006), the results have been very poor, as the cases of these four Mediterranean countries show. What are the reasons of these contradictory outcomes?

The first one is connected to the productive economic structure. Despite the differences of productive structure, all countries share economies that are mainly formed by small and medium-sized companies. This is a clear obstacle to the development of a decentralised negotiation owed to both legal and practical reasons. On the one hand, most legal systems do not include employee representation for all types of companies. For example, in the case of Spain, no representation is required for companies employing less than ten employees (between six and ten is merely voluntary). On the other hand, even when there are representatives, it is possible that the company does not have a culture of negotiation at all beyond minor issues. Additionally, in this case, even when negotiation is possible, it may affect the coordination of the whole system when multi-employer connections are not strong enough (ILO 2006).

Secondly, the political and economic contexts also have a clear influence. As analysed before, most of the reforms adopted during the financial crisis were imposed by governments unilaterally (and, in some cases, by the European institutions to governments previously). This can affect the effectiveness of the reforms themselves, taking into consideration that those who are mainly called to implement them were not involved in their adoption. Moreover, even though a crisis can work as a lever for change, putting pressure to adopt measures which have not been considered before.



However, it is also true that it produces difficulties to make arrangements or, simply to introduce changes in a context of shifting sands.

The final reason is the strategic behaviour of social partners. Resistance to decentralise collective bargaining has often been attributed to trade unions because it means a clear reduction of their bargaining or political power. However, employers can also be reluctant to this type of changes owed to a number of reasons: decentralising collective bargaining reduces the influence of employer associations and affects the incentives to be associated; thus weakening its position before the Government and trade unions; and affecting competitiveness within the same market by eliminating a common regulatory framework for a specific sector or activity. As a consequence, social partners can develop a strategic behaviour in order to prevent the practical implementation of decentralisation, reducing or, even impeding its effectiveness.

6. Conclusions. Last trends on collective bargaining decentralisation: black and white or greyscale?

As shown above, despite the huge efforts in decentralising collective bargaining, few advances have been achieved. This can be explained by several factors. Firstly, most of the new collective agreements were signed by small companies, with a very low coverage. If the new measures are not largely applied by them, the structure can hardly change in terms of employment. Secondly, some of the bargaining reforms have been adopted in a context of profound crisis or in tandem with other labour market reforms. This could have counteracted its effects. Moreover, employers could have opted to take advantage of other measures, such as the reinforcement of the unilateral power to modify working conditions at company level. Finally, social partners have frequently adopted a strategic behaviour, opposing measures promoted by governments, especially when they were conceived as an invasion of their competences or adopted without their consent.

This paper has highlighted the main advantages of decentralisation. Nevertheless, as mentioned above, centralisation could also show quite relevant results, especially from a macroeconomic point of view. In particular, centralised wage agreements can take into account the effects on inflation associated with excessive wage claims (Calmfors, L.; Driffil, J. 1988 & Calmfors, L. 1993) and internalise aggregate demand externalities associated with consumer price inflation (Alesina, A. & Perotti, R. 1997; Soskice, D. & Iversen, T. 2000). Moreover, in imperfectly competitive labour markets, higher bargaining power and higher wage floors can increase employment. This would be the case in the presence of monopsony power, which enables firms to offer wages below the market wage, for example because workers have limited opportunities to change their employer or would incur high costs if they did so (OECD 2019).

In conclusion, whereas decentralised collective bargaining could better fit companies' needs, centralised bargaining could respond more effectively to the necessities of the economy as a whole. From this perspective, answering the question about which the most efficient structure is would not only depend on choosing which option is the most appropriate for a specific labour market, but also if there exists a perfect combination of both.

According to the literature, it seems there is no single answer. Some studies have reinvigorated the debate by suggesting that "two-tier" bargaining systems (i.e., where firm-level bargaining can only top up sectoral bargaining) are worse than fully centralised and fully decentralised systems, as they are not able to respond appropriately



either to a microeconomic shock or a macroeconomic one (Boeri, T. 2015). However, others have suggested that an intermediate position would be possible if a high level of coordination is achieved.

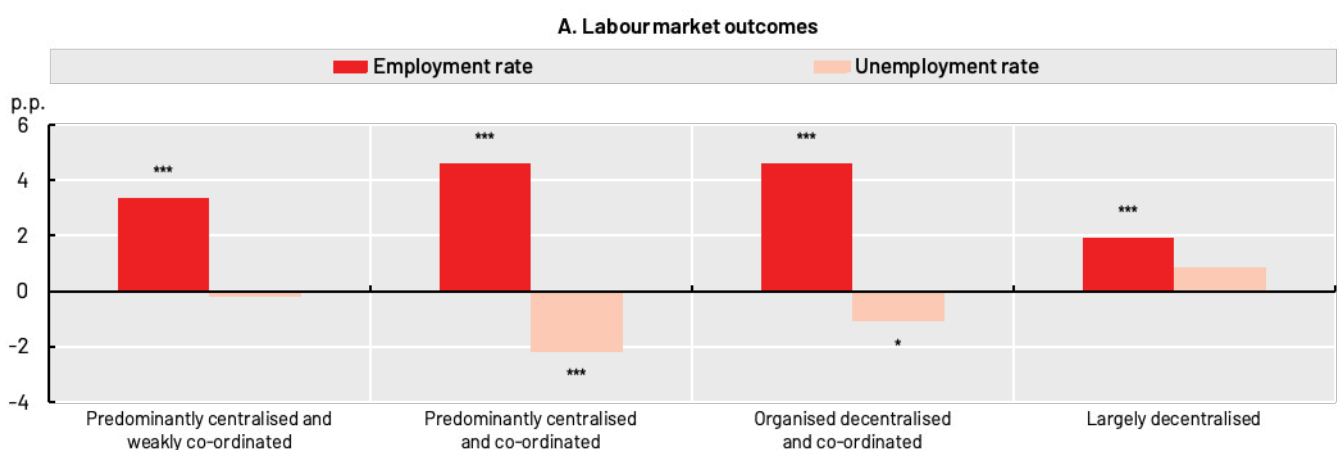
Particularly, recent OECD's research studies show that, on the one hand, co-ordinated systems may be associated with higher employment, lower unemployment, a better integration of vulnerable groups, and less wage inequality than fully decentralised systems. On the other hand, weakly co-ordinated, centralised systems and largely decentralised systems hold an intermediate position – see graphs below –, performing similarly in terms of unemployment to fully decentralised systems, but sharing many of the positive effects on other outcomes with co-ordinated systems (OECD 2019).

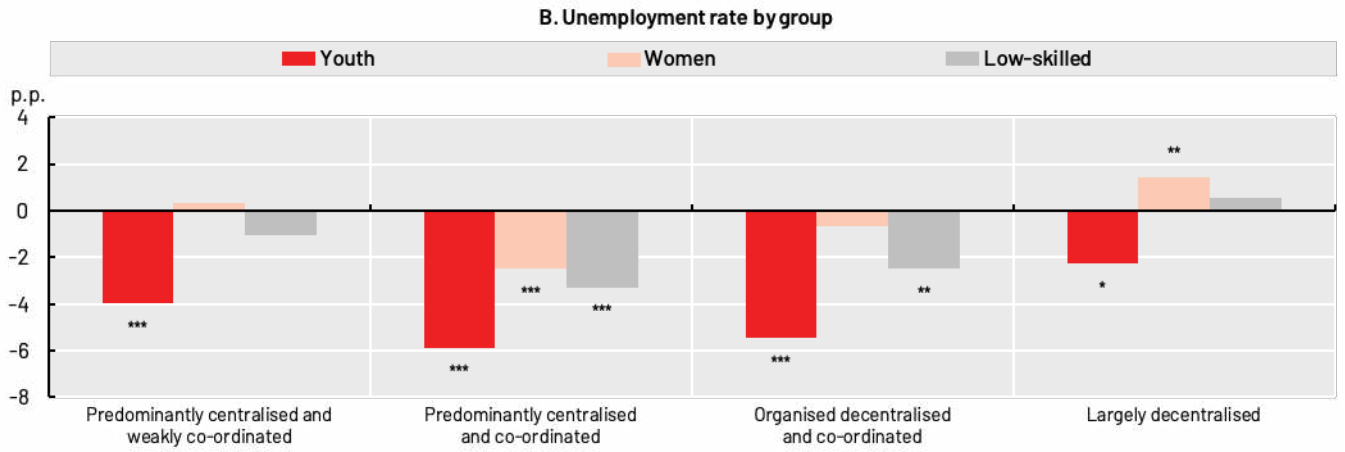
From this perspective, it would be possible to benefit, in the case of the countries analysed here, from any form of decentralisation (Pérez del Prado, D. 2015). The key aspect is keeping or strengthening coordination. For the same reason, a decentralised model would improve the efficiency of its collective bargaining system by reinforcing the coordination (ILO, 2006). In other words, recent developments show that the structure of collective bargaining seems to be a “greyscale” debate rather than a “black or white” opposed alternatives.

If this is true, a strategy of decentralisation should be focused on guaranteeing an efficient coordination, answering four main questions (Traxler & Mermet 2003). Firstly, what functions and tasks should coordinated collective bargaining perform? Clarifying this question helps to specify the meaning of coordination with regard to the problem in question. Secondly, what are the structural preconditions for bargaining coordination? This refers to the question of what characteristics a bargaining system must meet, when it comes to co-ordinating collective bargaining. Thirdly, what guidelines for the coordination activities should be adopted? These must be referred to both substantial and procedural issues and only focused on the fields which were previously considered to be coordinated. Finally, what coordination mechanisms are needed to implement these guidelines? In other words, it is necessary to include automatic mechanisms of evaluation, control and correction depending on the evolution of the variables to be coordinated.

Graph 8. Collective bargaining systems and employment outcomes

Difference in percentage points with respect to fully decentralised systems

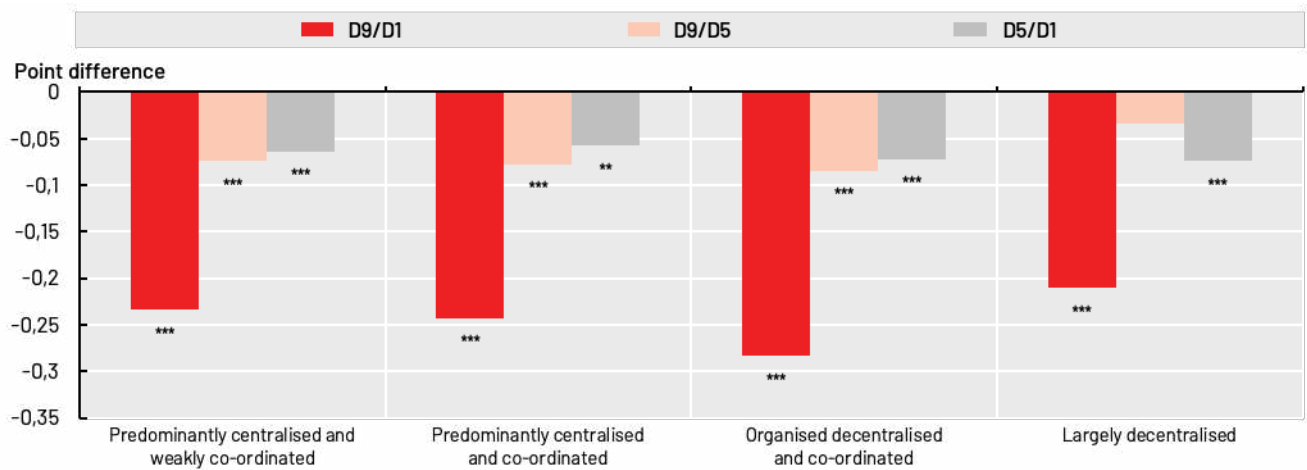




Source: OCDE, 2019. Note: ***, **, *: statistically significant at the 1, 5 and 10% levels, respectively.

Graph 9. Collective bargaining and wage dispersion

Point difference with respect to fully decentralised systems



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