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OLDER WORKERS AND EMPLOYMENT POLICIES: WHICH ROLE DO THE SOCIAL PARTNERS PLAY?¹

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Abstract

Insofar extension of working lives is in the agenda of the EU institutions and of most European countries, concrete measures need to be taken so that older workers are given the opportunity to continue working and to do it in conditions corresponding to their health and physical shape. Consequently, these measures comprise working conditions – especially working time arrangements–, health and safety measures, training, anti-discrimination measures, as well as raising consciousness of the older workers' contribution to companies. In promoting changes in regulations or participating in discussions on the adequacy of proposed policies the social partners should have a major role. In Spain the Government outlined in 2011 –at the initiative of the social partners– a global strategy (Strategy 55+) to tackle with older workers' low employment rates. This document included quite innovative proposals –such as shorter working hours with a compensatory benefit–, but they have not been implemented. The social partners, who should have actively participated in the Strategy's development, have not sufficiently claimed for its application.

En la medida en que la extensión de la vida laboral se ha instalado en la agenda de las instituciones de la UE y de la mayoría de los países europeos, resulta ineludible tomar medidas concretas para que los trabajadores de más edad tengan la oportunidad de seguir trabajando y hacerlo en condiciones adecuadas a su estado de salud y capacidad física. En consecuencia, estas medidas comprenden las condiciones de trabajo – especialmente en materia de tiempo de trabajo–, las medidas de seguridad y salud, la formación, las medidas contra la discriminación por razón de edad, así como la concienciación de los empresarios respecto a la contribución que los trabajadores de edad avanzada aportan a las empresas. En este sentido, debe plantearse la importancia de la participación de los interlocutores sociales en la promoción de cambios normativos y en promover el debate sobre la idoneidad y la suficiencia de las políticas propuestas por los poderes públicos. En España, el Gobierno aprobó en 2011 –a iniciativa de los interlocutores sociales– una estrategia global (Estrategia 55 +) para hacer frente a las bajas tasas de empleo de los trabajadores de más edad. Este documento incluye

¹ This paper follows the work submitted at the Labour Law Research Network Conference, Amsterdam, June 2015.

propuestas muy innovadoras –como la reducción de jornada acompañada de una prestación de Seguridad Social– que, sin embargo, no se han implementado. Por otro lado, los interlocutores sociales, que deberían haber participado activamente en el desarrollo de la Estrategia, no reivindicado de forma suficientemente contundente su aplicación.

Título: Trabajadores de edad y políticas de empleo: el papel de los interlocutores sociales

Keywords: older workers, social partners, working conditions

Palabras clave: trabajadores de edad, interlocutores sociales, condiciones de trabajo

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1. Older workers in Spain in the European context

Europe's population is ageing fast: this has been verified by different sources and is repeated in many documents². At the same time, older people employment rates are low: at the EU 27 only 52% of the population from 55 to 64 years are in employment (2012), while the EU has committed itself to an increase of the general employment rate up to 75% by 2020. However, the rise in this age group's employment rate has been very pronounced during the last decade, as it was 42,3% in 2005. Additionally older workers are the only group whose employment rate rose during these 10 years. But the rise in the employment rate does not result in a rise in older people in employment, as unemployment among this group has also increased³. In Spain more than 600.000 people older than 55 years entered the labour market between 2007 and 2013, most of them women, but unemployment also rose for that age sector, reaching almost 20%⁴. Even though their unemployment rate is lower than the unemployment rate corresponding to the entire working population, long-term unemployment is more prevalent. Consequently, this is a group with lower risk of suffering unemployment but with increased risk of prolonged stay outside the labour market in case of losing their job. This is still true, as the Spanish Employment Strategy 2014-2016 confirms that unemployment has grown among older workers, and the group is still hit hardly by long-term unemployment⁵.

Even though older employees are generally perceived to be more experienced and reliable, age discrimination persists⁶. As a result older workers are frequently chosen to leave the company in adverse circumstances and they find great difficulties in re-entering the labour market. Health conditions and inadequate working conditions can also push many older workers to abandon the labour too early.

² The European Statistical Office projects that by 2060 there will be only two people of working age (15-64) in the EU for every person aged over 65, compared to a ratio of four to one in 2011. Special Eurobarometer 378. Active Ageing. January 2012.

³ EUROFOUND (2014): *Work preferences after 50*, Publications Office of the European Union. Luxembourg.

⁴ Data extracted from the Spanish Strategy in favour of Employment Activation 2014-2016. It targets workers of 55+ as a priority group in employment policies.

⁵ While the active population older than 55 years has grown in 600.500 people between 2007 and 2013, only 154.300 have found a job. Consequently there are + 446.300 unemployed. Additionally, 75,4% of the unemployed have not worked in the last year and 58,1% have not worked in the last 2 years. Source: Spanish Government. Employment Strategy 2014-2016. Another important figure is the number of new contracts: in the region of Catalonia only in 17,80% of new contracts the worker recruited is older than 44 years (UGT 2015).

⁶ According to the Eurobarometer 2012, workplace age discrimination is the most widespread form of age discrimination with one in five citizens having personally experienced or witnessed it.

Additionally, there is a clear divergence between national governments and European institutions, who constantly repeat that effective retirement age needs to be postponed, and the European citizens' opinion, who expect to work up to 61,7 years on average, an age reduced to 59,9 years in the case of manual workers (Eurobarometer 2012). Most citizens do not feel they will be capable to maintain their working activity until the legal retirement age. In fact, only 42% expect that they could go on working to 65 years and beyond and only 10% think they will be able to reach 70 in their current job. In this context, general deferring of statutory retirement age does not seem to be realistic, both at European level and in Spain, where the average age until which workers think they will be capable of continuing working is slightly higher (62,6 years) but still far from the 67 years that should be reached in 2027 after a pension reform that in 2011 deferred statutory retirement age from the previous 65 years⁷.

According to the Eurobarometer 2012, lack of opportunities to retire gradually, exclusion from training and negative perceptions of older people among employers are perceived to be the main obstacles stopping people aged 55 years and over from working (7 out of 10 citizens find these obstacles to be important). This is also true for Spain with slight variations⁸. But there are other reasons felt significantly important for older workers to leave the labour market: the lack of skills for the modern workplace (62% find it important), the belief that pension and tax systems do not make it beneficial for older people to continue working (59%), and workplaces unadapted to the needs of people aged 55 and more (57%) (Eurobarometer 2012). Many citizens find the idea of combining part-time work and a partial pension instead of full retirement appealing (65%), but legal provisions that permit this option are unusual. These features show clearly that a large number of workers would choose to keep working on a part-time basis should this be possible. This has also been confirmed by Eurofound⁹. Findings from Eurofound's European Quality of Life Survey (EQLS) reveal that, at the same time, in all Member States people aged 50 or more in employment would on average prefer to work fewer hours, even after taking into account their financial needs. The conclusion is clear: to make work sustainable and attractive for older workers measures to slow down working lives earlier should be put into place. This would probably give as a result that a significant proportion of workers who leave the labour market early would stay longer, at least until statutory retirement age, while making it possible to combine part-time work and pension would increase the number of employees who stay even after that moment.

⁷ Law 27/2011, of 1 August, on updating, adaptation and modernisation of the Social Security system.

⁸ 66%, 75% and 71% respectively of Spaniards consulted find these obstacles to be important.

⁹ According to the document *Work preferences after 50* about half of all retirees who are not in employment say they would like to work, often part-time. *Op. cit.*

The general European trend is also verified in Spain, where workers aged 50 or more work on average 41 hours, while they would like to work 35 hours. In all, 50% in this age group would like to work less (3rd EQLS).

2. EU policies on older workers and the role of the social partners

Active ageing in employment has been included as an objective in many programmatic documents at EU level: most recently, the Europe 2020 Strategy includes it as an issue in European policy by fixing the objective of increasing employment rates, including through a greater involvement of older workers, who are pointed at as one of the groups with a particularly low employment rate. In fact, older workers are targeted in EU employment policy agenda since 2000 and these policies have been filtered through to some extent into most national policies (ETUI 2012).

2.1. Active ageing, a European objective

The concept of active ageing recognises that if people are to work longer they will need to be in good physical and mental health and may need to have access to flexible work arrangements (Eurofound, 2013). This objective should call, according to Eurofound, for the development of healthier working environments, lifelong learning and working time flexibility. Also research (ergonomic, occupational health, social psychology, and sociology of work research, among other social science research) have pointed at qualitative factors as key factors to keep older workers in the labour market¹⁰.

However, historically national policies have in practice concentrated in younger workers' employability compared to concern shown about older employees' employability. This disproportion has been greater since the beginning of the financial crisis, as young workers were especially affected by the lack of employment opportunities. In accordance, older workers have not been seen as a priority group¹¹.

While older workers were not an attention focus in employment policies, alternatives for them have been progressively narrowed. Eurofound¹² found that in the last decade policy has moved away from encouraging early retirement, as it happened in the pre-recession period. Easing early retirement has no doubt many negative effects, but it is a way out for workers who do not have reasonable prospects of finding a job as a consequence of the

¹⁰ ETUI (2012): *Occupations and ageing at work. An analysis of the findings of the fifth European Working Conditions Survey*. Working paper 2012/09. Brussels.

¹¹ EUROFOUND (2011): *Employment trends and policies for older workers in the recession*. Publications Office of the European Union. Luxembourg.

¹² *Ibid.*

lack of opportunities offered by the labour market and sometimes their low employability. By forcing the extension of working lives through the increase of the statutory retirement age and the narrowing of anticipated retirement possibilities without taking into consideration the diversity in working lives and health conditions, the most vulnerable groups of workers are being relegated and their life conditions clearly worsened. This again calls for public policies and management practices to improve working and employment conditions, as the root causes of the problems faced by older workers (ill health, work organisation or expectations of work) often arise some years before they effectively compromise the continuity of these workers in employment¹³.

Policy instruments which have appeared to be in use among Member States (at least before the crisis) “to support” employment of older workers include precisely pension system reform (changes in benefits and contributions), raising the statutory pension age, reducing incentives for early retirement and sickness/disability pension reform in a restrictive direction¹⁴. Also reforming unemployment benefit systems to limit the extent to which they can be used to support early exit from the labour market has been to a certain point common. All of them are measures which, despite being described as supportive for older persons, they don’t really promote employment for them and, on the contrary, they aggravate the difficult situation of those who are involuntarily out of work¹⁵. At the same time, anti-discrimination policies, incentives to promote lifelong learning and skills development in the workplace, financial incentives to employers to keep older-aged workers in employment¹⁶, financial incentives to employers to assist the re-entry of older workers into the workforce, financial incentives to employees to stay in work longer, options for flexible working for older workers, as well as awareness and information campaigns to promote a change of attitude towards older workers have also been to some extent put in place. However, the use of these instruments varies across the Member States and reflects differences in national priorities. Also the differences in starting points, both in terms of the employment rate and pension and social security systems must be considered. Tendencies in the use of national schemes encouraging part-

¹³ ETUI: *op. cit.*

¹⁴ Otherwise an extension of the eligibility for disability pensions might lead to a shift from early retirement to disability pensions to exit early, as Eurofound points that may happen in the Danish case. EUROFOUND (2013): *Role of governments and social partners in keeping older workers in the labour market*. Publications Office of the European Union. Luxembourg.

¹⁵ Trade unions have strongly criticized automatic increases of statutory retirement ages, without taking into account individual or sectoral specificities such as long careers in occupations with heavy physical or psychological demands.

¹⁶ In Spain financial incentives, an extensively used instrument, are strongly questioned and they have been evaluated as inadequate to promote that older workers stay longer in the labour market. FERNÁNDEZ FERNÁNDEZ, M. *et. al.* (2011): *Salarios y jubilación anticipada. ¿Son los trabajadores mayores “caros”?*. Report. www.mtas.es

time working for retired workers or partial retirement schemes for older workers are not clear. While Eurofound¹⁷ observes a tendency to emphasise various forms of “downshifting”, both through reduced working time and through gradual or phased retirement, in 2013 Eurofound itself¹⁸ describes such reduction of the working time schemes as less frequently used than in the past. In any case, the hypothetical expansive European tendency of these instruments is unfortunately nowhere to be seen in Spain.

2.2. *The key factors to extend working lives: overview*

By stating that the objective consisting in increasing the employment rate of older workers cannot be reached without a significant improvement in working conditions, Eurofound raises a key point¹⁹. Inquiries reveal for example that there is little difference among age groups in terms of exposure to physical strain at work (including painful positions, that in some cases –operators and assembly workers- even increases with age²⁰, and a stressful work environment). This should not be the case, as the effects of such working conditions in maintaining older workers in the labour market are undoubtedly negative. On the contrary, night work and shift work decrease slightly with age, as well as the proportion of workers working at very high speed.

Also training and career opportunities are critical to maintain older workers in the labour market. According to Eurofound²¹, workers over the age of 50 report fewer opportunities for learning and to have access to training as well as less support from colleagues and managers and a decline in career prospects, especially for men. Additionally, feelings of job insecurity increase after 40. All these factors influence psychological well being, which is identified as a predictor of workers’ attitude towards the possibility of working longer. These ascertainments do not anticipate an easy path to extend working lives if this should not be achieved at the expense of workers’ rights and health.

Longer careers are an especially difficult objective for certain groups of older workers, including medium or unskilled manual occupations, who are particularly exposed to painful positions, work at high speeds, lack of discretion in work, lack of social support and lack of career prospects; service workers, who are less exposed to poor working conditions but have a higher frequency of work-life balance problems; and some other

¹⁷ EUROFOUND (2011): *op. cit.*

¹⁸ EUROFOUND (2013): *op. cit.*

¹⁹ EUROFOUND (2012): *Sustainable work and the ageing workforce. A report based on the 5th European Working Conditions Survey*. Publications Office of the European Union, Luxembourg.

²⁰ The authors of the study done for Eurofound (2012, *op. cit.*) maintain that the organizational forms of industrial mass production are not suited for allowing for age-related adaptations and this may lead older workers to perceive their working conditions as increasingly painful (ETUI: *op. cit.*).

²¹ EUROFOUND (2012): *op. cit.*

occupations such as teachers and health professionals, who face a number of specific problems²².

Policy agendas should undoubtedly take into consideration older workers' working conditions and policymakers should in the first place ask themselves whether working conditions experienced by workers make their work "sustainable" or if specific working conditions can be created so that older workers are encouraged to remain active in the labour market.

Some steps forward are being taken, but they are clearly insufficient. A good example is the pilot project promoted by the European Parliament on health and safety of older workers. This project (*Safer and healthier work at any age – occupational safety and health in the context of an ageing workforce, 2013-2015*) is being developed through an agreement between the European Commission and the EU-OSHA, who will carry out the project. It aims to assess the prerequisites for occupational safety and health strategies and systems to take account of an ageing workforce and ensure better prevention for all throughout working life. According to EU-OSHA, the results will assist policy development and provide examples of successful and innovative practices, it will identify action to be taken or prioritised and it will identify the main drivers and obstacles to effective implementation of policy initiatives in this area²³.

One major difficulty in putting to practice improvements of working conditions that would result in higher employment rates for older workers is the rapid expansion in recent years of precarious contracts among these workers. If precariousness was until now concentrated in the youngest segment of the working population, flexibilising reforms and the steps back produced in social protection is having as a result an increasing number of old workers who inevitably end up in the circle of temporary and/or short hours employment. Policies on older workers must consider these new realities.

²² ETUI: *op. cit.*

²³ According to EU-OSHA, the project is investigating:

- OSH policies, strategies, programmes and actions in relation to older workers in EU member states and beyond
- policies, strategies and actions regarding employability and return-to-work in member states and beyond
- case studies of support programmes and initiatives at the workplace
- views of occupational safety and health stakeholders, employers, workers and worker representatives exploring their experiences, motivations, needs and challenges
- tools and guidance to assist workplaces in managing occupational safety and health in relation to an ageing workforce
- gender-related issues

2.3. *Social partners facing active ageing*

When facing the challenge of improving working conditions so that working longer becomes feasible for many employees and of training them to be in a better position to adapt to market changes and eventually re-enter the labour market²⁴, the social partners should not be forgotten. On the contrary, they should have a key role.

National strategies and programmes that include the creation of a framework and conditions to facilitate longer careers “by tackling the challenges of ageing societies and workforces by encouraging active ageing across a number of policy fields”²⁵ should have been developed in consultation with the social partners. But, in fact, these declarations of intent don’t seem to be significantly being put into practice in several countries, including Spain. This is not only the Spanish case: Eurofound²⁶ confirms that only very few of the more recent initiatives have so far led to the introduction of concrete measures to support active ageing²⁷. Additionally, most of the programmes have not been evaluated. Spain is part of the group of countries that, despite having adopted a national strategy, have not introduced concrete measures nor evaluated their results.

Both trade unions and employers’ associations generally agree that working conditions are very relevant in achieving the objective of extending working careers, but their priorities do not always coincide: to trade unions quality of work is essential, but employer organisations put greater emphasis on training and employment opportunities²⁸. They both argue that action needs to be taken. Government action is evidently needed, but the social partners themselves can also conduct a number of wide-ranging initiatives. In spite of some intervention schemes, it can be maintained that the social partners could play a more decisive role to promote an improvement of working conditions, including measures in working hours, lifelong learning and reconciliation between work and family life.

²⁴ This has been described as “work ability”, that is, the combination of the concept of being able to continue working as a result of improved health and working conditions, while at the same time enhancing employability through ongoing skills development (Eurofound, 2013).

²⁵ EUROFOUND (2013): *op. cit.*

²⁶ *Ibid.*

²⁷ According to Eurostat it is the case for Bulgaria, the Czech Republic, Finland, Latvia and Poland. Especially in Finland, a national framework agreement signed in 2011 and qualified as promising by Eurofound (2013) implied that the social partners should put in place a model for the initiation of programs such as individualized career plans and flexible working time arrangements.

²⁸ EUROFOUND (2013b): *Social partners’ involvement in pension reform in the EU*. Publications Office of the European Union. Luxembourg.

That intervention might take place at two different levels: on the one hand, consultation schemes might be used to introduce measures at statutory level; on the other hand, collective bargaining can intervene, at the national, sectoral or company level.

Tripartite consultation and participation schemes include active labour market policies in some countries, such as Germany, Austria or Sweden, all of them with strong tripartite industrial relations systems and, in this case, with the involvement of the social partners in the management of public employment services.

Following Eurofound's conclusions, it can be stated that national-level agreements promoting comprehensive age management practices in companies are not very widespread (they can only be found in Belgium, Denmark, Germany, Finland, France, Ireland and Norway) and, where existing, they have not been hugely successful. Evaluation evidence is scarce, but the existing one suggests that in Norway age management practices are more widespread, while in Finland some improvements in the quality of working life, workplace development and training opportunities have been identified. In the French case individual support for career development has extended, but wide-ranging changes in working environment are not remarkable, despite the fact that a comprehensive approach of age management has been introduced through national legislation based on a social partners' agreement (also in Belgium). In the case of the Netherlands, quite a widespread measure consists in the allocation of extra holiday entitlements as a way to support extra flexibility and to ease workload for older workers. Another interesting experience can be found in Austria, where a part-time retirement compensation scheme is based on an initiative of the social partners and is in place since 2000. It must be underlined that in all these countries demographic ageing occurred early, employment rates among older workers tend to be low and solid tripartite structures at national level can be found. But in all these cases clear or binding requirements for companies are missing, despite plans including healthy work environments, flexible working arrangements and the provision of advice and guidance on active age management.

In the specific field of health and safety, Eurofound²⁹ insists that collective bargaining, both at sectoral and at company level, should play a major role, but experiences that can be found thereon are quite isolated³⁰. Also the European Agency for Safety and Health at Work considers social dialogue as a key to the success of risk prevention actions³¹.

²⁹ EUROFOUND (2013): *op. cit.*

³⁰ Some of them can be found on Eurofound's report (2013).

³¹ EU-OSHA (2009): *Workforce diversity and risk assessment: ensuring everyone is covered.*

Finally, the social partners are sometimes involved in activities aimed at raising awareness and changing attitudes towards older workers and their work performance (e.g. in Austria and in Poland). However, such activities, along with government initiatives in this field are considered underdeveloped across the EU³².

In conclusion, both government action and social partners' involvement are clearly insufficient to manage ageing in labour. As for public policies, declarations of intent and plans often do not have a translation in concrete action. For example, in relation to training, which is along with an improvement of health status one of the most consensual issues between trade unions and employer associations, only a limited number of countries do offer publicly funded education and training programmes specifically aimed at providing in-work support for the updating of skills of older workers. Also agreements on non-discrimination, flexible working or improvements in ergonomics do not have a translation in taking concrete measures.

Moreover, until recently in many countries the social partners' attitudes favoured measures in the opposite direction to extended working lives³³. In Spain, they have clearly supported measures in favour of early retirement, particularly in contexts of company restructuring. Now the discourse has mainly shifted and they maintain that the improvement of working conditions is a key factor to achieve the extension of working lives –trade unions show concern especially in the context of pension reform implying rises in statutory retirement ages-, but clear action is still not being taken, especially since employer organisations are much less active in defending the need of such improvement as crucial to obtain longer working careers.

But in practice, Spanish trade unions often prioritize social protection schemes in front of active ageing measures. This is logical considering the dramatic situation that is being suffered by many people who have lost their jobs as a consequence of the financial crisis and who cannot get out of long-term unemployment³⁴.

³² EUROFOUND (2013): *op. cit.*

³³ With exceptions such as Norway, Finland and the Netherlands, where long-term consensus has existed (*Ibid.*).

³⁴ For example, the trade union UGT-Catalonia presented in march 2015 a plan under the name of Guarantee +55, essentially consisting in the following measures:

- a subsidy equivalent to the minimum wage (today 648 €per month) for people aged 55 or more who have lost their jobs and have finished contributive unemployment benefits if they have contributed to the pension system for at least 15 years .

- a rise in retirement pensions for workers who are today unemployed and whose pension will be decreased as a consequence of the contribution gap in the last years of their working lives.

Another field where the social partners play an important role is social protection schemes. According to Eurofound³⁵, that role has not significantly evolved in recent years, but it frequently depends on the political orientation of the government: in most countries they participate as advisors in the design and administration of public pensions, whether their role is formal in the governance and administration of public pension schemes through tripartite bodies or they are involved in consultations on pension reforms, either through permanent or ad hoc tripartite or bipartite consultative bodies, or simply in processes of informal consultation.

It needs to be underlined that in that field the influence of social partners, and especially of trade unions, has clearly decreased during the crisis and recession years. Eurofound³⁶ identifies as causes of this loss of influence the pressure for immediate reform, the fast pace of consultation, weakened ties between trade unions and political parties, more diffused paths towards influence in (coalition) governments, and to a certain extent the radicalisation of trade union positions in a difficult economic and social context. In many countries the most recent pension reforms, essentially consistent in delaying retirement age or containing public spending on pensions, have been adopted with no or limited involvement of the social partners or social partners' involvement in the negotiations did not influence the final shape of the reforms. This is not precisely the case of Spain, where the pension reform adopted in 2011 was influenced by the social partners' involvement in negotiations and in fact it is the result of a broader tripartite agreement, reached after an attempt conducted by the Government to reform unilaterally pensions and the succeeding protest including a general strike. However, it cannot be ignored that the agreement was strongly influenced by the moment's critical financial situation and external pressures. Keeping in mind this context is necessary to understand how the Spanish agreement is as exception to the general opposition shown by trade unions in Europe to increase the statutory retirement age and/or requiring longer contributions, especially when no particular protection for vulnerable groups of workers is introduced and when no accompanying measures to support the extension of working lives and to combat discrimination in the workplace related to age are put in place. In Spain some measures to compensate the disadvantages in terms of future pensions derived from situations such as leaves of absence to take care of young children, internships, early retirement due to disability, or being affected by a collective dismissal were included in the agreement. Trade unions' resistance is based on the difficulties faced by employees in remaining in work longer due to unsatisfactory health conditions, poor working conditions, age discrimination and lower employability³⁷.

³⁵ EUROFOUND (2013b): *op. cit.*

³⁶ *Ibid.*

³⁷ *Ibid.*

In this field and especially concerning early retirement, there is more divergence between trade unions and employment organisations compared to other issues as working conditions or training, at least from a theoretical point of view. While unions insist on preserving existing early retirement schemes –especially for employees engaged in strenuous work or as the better solution for older workers who have lost their jobs and have no real prospects of re-entering the labour market-, employer organizations tend to advocate for limiting access to early retirement, even though in many countries including Spain they use quite intensively in practice early retirement schemes to let go workers in restructuring contexts.

2.4. The case of the European Year for Active Ageing and the social partners' role

The Council Declaration on the European Year for Active Ageing and Solidarity between Generations: The Way Forward Active Ageing calls the social partners to participate in achieving the objective of extending working life by considering them main stakeholders³⁸ who have to take concrete measures.

2012 was declared the European Year for Active Ageing and Solidarity between Generations. It intended to raise awareness of the contribution that older people make to society and to encourage policymakers and the before mentioned relevant stakeholders to take action with the aim of creating better opportunities for active ageing, including to stay active in the labour market. In fact, active ageing in the labour market was one of the Years' programme three pillars³⁹. It contributed to the consensus on the need of

³⁸ Also public authorities at different levels, business, civil society organisations, service providers and the media.

³⁹ In the area of employment, the Guiding Principles for Active Ageing and Solidarity Between Generations (2012) includes:

- Continuing vocational education and training: offer women and men of all ages access to, and participation in, education, training and skills development allowing them (re-)entry into and to fully participate in the labour market in quality jobs.
- Healthy working conditions: promote working conditions and work environments that maintain workers' health and well-being, thereby ensuring workers' life-long employability.
- Age management strategies: adapt careers and working conditions to the changing needs of workers as they age, thereby avoiding early retirement.
- Employment services for older workers: provide counselling, placement, reintegration support to older workers who wish to remain on the labour market.
- Prevent age discrimination: ensure equal rights for older workers in the labour market, refraining from using age as a decisive criterion for assessing whether a worker is fit for a certain job or not; prevent negative age-related stereotypes and discriminatory attitudes towards older workers at the work place; highlight the contribution older workers make.
- Employment-friendly tax / benefit systems: review tax and benefit systems to ensure that work pays for older workers, while ensuring an adequate level of benefits.

improving older workers' working conditions by affirming that "Encouraging older workers to stay in employment requires notably the improvement of working conditions and their adaptation to the health status and needs of older workers, updating their skills by providing better access to lifelong learning and the review of tax and benefit systems to ensure that there are effective incentives for working longer".

It has been stated that the most important impact of the European Year was, as planned, the mobilisation of actors⁴⁰. According to the Evaluation of the European Year for Active Ageing and Solidarity between Generations, even though many initiatives were taken at different levels, results were not completely satisfactory. In this sense, EU level NGOs maintained that controversial issues such as staying longer in employment could have been more thoroughly discussed in terms of comparing different options. One of the results that were identified was offering policymakers and stakeholders a framework to make public commitments and to take concrete action. This commitment occurred through the Guiding Principles on Active Ageing, endorsed by the EU's Social Affairs Ministers on 6 December 2012. Good intentions deserve being recognised but these results are undoubtedly far from effectively transform older workers' situation, as the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation, results and overall assessment of the 2012 European Year for Active Ageing and Solidarity between Generations recognises. It is however surprising that the Evaluation of the European Year for Active Ageing⁴¹ does not include any reference to employment matters in its recommendations.

As for social partners' participation in the European Year, it was stated that their involvement was variable, even though they participated in the organisation of activities in most countries, including Spain. Spanish social partners were, according to the national European Year coordinator, reached to a large extent. However, private business's involvement was not only in Spain but in general particularly weak.

- Transfer of experience: capitalise on older workers' knowledge and skills through mentoring and age-diverse teams.

- Reconciliation of work and care: adapt working conditions and offer leave arrangements suitable for women and men, allowing them as informal carers to remain in employment or return to the labour market.

⁴⁰ ECORYS (2014): *Evaluation of the European Year for Active Ageing and Solidarity between Generations*. Rotterdam.

⁴¹ *Ibid.*

To conclude this section, it can be affirmed that the role of social partners should increase significantly through involvement in public policies, collective bargaining and by contributing to age management in companies⁴².

3. The role of the social partners in Spain

Like in many other European countries, in Spain authorities have devoted little attention to the needs of older workers so that they find the right conditions for them to stay active. Thus, beyond repeated mentions in miscellaneous documents on the inevitable extension of working life⁴³, an overall perspective on the issue has never been adopted. Similarly, the adoption of global measures that effectively promote that older workers remain in the labour market had never before the adoption of the Strategy 55+ been considered. Only forced measures such as delaying statutory retirement age had been taken.

3.1. *The social partners in the Strategy +55's background*

The Law 27/2011, of August 1, on updating, adaptation and modernization of Social Security, in its Preamble mentions the low labour participation of people over 50 years, whose activity rate is described as insufficient. The Preamble plans the adoption of a comprehensive employment strategy for older workers. This Strategy should include the most adequate measures to encourage retention of older workers in the labour market and to promote reintegration for those who have lost their jobs when they were already in the last years of their working life.

But what should be particularly stressed is that the Preamble to Law 27/2011 fixes that such a strategy will be adopted because the social partners had previously agreed that addressing older workers' employment is a pressing need. The social partners' will to

⁴²According to the age management definition "age related factors should be taken into consideration in daily management, including work arrangements and individual work tasks, so that everybody, regardless of age, feels empowered in reaching own and corporate goals" through better awareness about ageing, fair attitudes toward ageing, age management as a core task and duty of managers and supervisors, age management included in human resources policy, promotion of work ability and productivity, lifelong learning, age-friendly work arrangements and safe and dignified transition to retirement. ILMARINEN, J. (2012): *Promoting active ageing in the workplace*. EU-OSHA.

⁴³ Vid. eg Assessment Report and Reform of the Toledo Agreement, issued by the Standing Committee on Monitoring and Evaluation of the Toledo Agreement of December 29, 2010, which states that "The Commission considers the extension of working life as a necessary and desirable objective ". The Toledo Agreement was reached in 1995 by the Government and the majority of the Spanish Parliament with the objective of analyzing the social security system's main structural problems and the necessary reforms that should be taken. Vid. also the Preamble to the Law 40/2007, of 4 December, on measures concerning social security or law 27/2011 of 1 August, on updating, adaptation and modernization of the social security system.

deal with this issue was phrased in the Agreement on Active Employment Policies, which is part of the Social and Economic Agreement for Growth, Employment and Pension Security, signed on 2 February 2011 by the CCOO and UGT unions and business organizations CEOE and CEPYME⁴⁴. The text of the Agreement states that “*To improve the employment situation of older workers a more holistic view of public policy is necessary. This general view, along with economic incentives hitherto used, would integrate the positive values of maintaining these workers in the company*”. The signatories ask the Government to prepare, by September 30, 2011 and prior consultation and negotiation with the social partners, a comprehensive employment strategy for older workers. This strategy should include, in the opinion of the social partners, measures in active employment policies and training and working conditions, with the objective of promoting the maintenance of older workers in the labour market as well as promoting the reintegration of those who have lost their jobs in the last years of their working lives. Subsequently, the Government committed to the adoption of the Strategy by Royal Decree-Law 1/2011 of 11 February, to promote urgent measures for stable employment and retraining of unemployed persons.

While exceeding the deadlines set by the social partners, the Government adopted a Resolution of 14 November 2011, incorporating the Agreement of the Council of Ministers of October 28, 2011 through which the Global Strategy for Employment of Older Workers 2012-2014 (Strategy 55+) was published. The Strategy was presented as the roadmap that should guide government action aimed at workforce aged more than 55. The document stresses that it includes measures of great social and economic relevance, with the purpose of raising the employment rate and reducing unemployment of workers over 55 years. It also aims at favouring the maintenance of older workers’ employment as a way to contribute to the extension of working lives and it promotes their reintegration into the labour market, in any case not to the detriment of adequate social protection for the unemployed. Finally, it underlines the need to improve working conditions, especially in the field of safety and health at work.

3.2. Overview of the Strategy 55+ in the EU policy framework

The Strategy defines itself as the means to establish the general framework of policies that are directed at promoting employment of people over 55 years, as well as the general framework of action of the public administration on this issue. The duration of the Strategy (2012-2014) is matched with the Spanish Employment Strategy. In this sense, the Spanish Employment Strategy 2012-2014 describes people over 55 years, along with

⁴⁴ Standing for Comisiones Obreras, Unión General de Trabajadores, Confederación Española de Organizaciones Empresariales and Confederación Española de la Pequeña y Mediana Empresa.

others, as a priority group in terms of offering employment opportunities and encouraging recruitment.

In the years prior to the Strategy's approval, Spain had not driven reforms directed at effectively promoting older workers' employment and training. Policies have traditionally been articulated primarily around two axes: first, subsidizing companies for hiring or maintaining in employment workers of older age, both before and after retirement age, through the reduction of social contributions and, secondly, the adoption of measures to ensure sufficient income to those who are forced to prematurely leave the labour market.

The Strategy sets out four main objectives for 2012-2014: in the first place, to raise the employment rate and reduce unemployment of workers over 55 years; secondly, to promote the maintenance of employment of workers over 55 years in order to contribute to the extension of working life and longer Social Security contribution careers; in the third place, to improve the working conditions of workers over 55 years, with particular attention to improving their health and safety at work; and finally, promoting the return to the labour market of older workers who lose their jobs, ensuring at the same time adequate social protection for the unemployed.

As noted, the focus line that presents the Strategy's most innovative elements is the one referred to the working conditions for employees over 55 years, especially in the fields of working hours and of health and safety at work. At European level illness and disability are the second more frequent reason for early exit from the labour market in the population between 55 and 64 years, being early retirement the first, towards which also situations of illness or disability can be derived⁴⁵. Communication from the Commission "Increasing the employment of older workers and delaying the exit from the labour market", COM (2004) 146 Final attributed to the hygiene and safety conditions a crucial role for the welfare of workers especially as they get old, and therefore a central role in their ability to remain in the labour market. But the Strategy also emphasizes flexible forms of work organization as a component of working conditions that may favour the retention of older workers; therefore the Commission believes that part-time retirement is an option that deserves more attention than the currently paid.

In the opinion of the European Commission, workers should have, as they grow old, the opportunity to occupy positions compatible with their intellectual and physical abilities

⁴⁵ Eurostat Labour Force Survey, also cited by the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions "Increasing the employment of older workers and delaying the exit from the labour market" COM (2004) 146 Final.

and must be given the option to choose to work part time or at least to choose a reduction in working hours. In this framework Member States are urged to promote working conditions that encourage job retention, recognizing the importance of hygiene and safety at work and innovative and flexible forms of work organization throughout the working life, including the provision of part-time and career breaks. Clearly, factors such as longer hours derived from their irregular distribution, night work or shift work have a greater impact on health and work performance of older workers in contrast to younger. None of these matters have been addressed by the Spanish legislation in regard of this particular group of workers; it does however respect to minors⁴⁶.

In this respect, the European Commission endorsed in 2005 the conclusions of the Employment Taskforce⁴⁷ and proposed, on the one hand, increased efforts to offer adapted part-time contracts and, on the other hand, adapting workload, improving working conditions and adapting health and safety measures to the needs of older workers, facilitating the transition to other activities inside and outside the company.

Evidently, more flexible working arrangements for older workers (which can occur through part-time work, reduction of working hours, telecommuting, etc.), along with training, are absolutely essential elements to preserve their health and to adapt the work activity to their intellectual and physical conditions, which in turn should help increase their stay in the labour market.

So far these measures have not been present in the legislation or collective bargaining in Spain⁴⁸, as measures have not been specific to preserve the safety and occupational health of older workers⁴⁹. In this sense, the Law on Prevention of Occupational Risks does not regulate the ageing factor, although older workers "are a group more sensitive to the risks when faced with their service delivery", being this sensitiveness to risk due not so much to their jobs but to their physical and psychological situation⁵⁰.

⁴⁶ Vid. CARRERO DOMÍNGUEZ, C. and MORENO MÁRQUEZ, A. (2009): "Prevención de riesgos laborales y trabajadores maduros" in MERCADER UGUINA, J.R., *Trabajadores maduros. Un análisis multidisciplinar de la repercusión de la edad en el ámbito social*, Lex Nova, Valladolid.

⁴⁷ EMPLOYMENT TASKFORCE (2003) "*Jobs, jobs, jobs, Creating more employment in Europe*", report.

⁴⁸ LÓPEZ CUMBRE, L. (2004), "Aumentar el empleo de los trabajadores de más edad y retrasar su salida del mercado de trabajo. Comentario a la Comunicación de la Comisión de 3 de marzo de 2004", *Revista del MTAS*, nº 52.

⁴⁹ CARRERO DOMÍNGUEZ, C. and MORENO MÁRQUEZ, A. (2009): *op. cit.*.

⁵⁰ *Ibid.*, pg. 219.

3.3. *The Strategy's (lack of) implementation*

The Strategy 55+ was considered at the moment of its approval as highly innovative in the Spanish context of previous absence of both a global approach and particular measures -apart from some incentives- to extend working lives. But the development of the Strategy has not been up to the expectations. The situation is especially disappointing, as it must be underlined that the measures proposed by the Strategy have not been developed at all.

It must be considered that few weeks after the Strategy's approval elections to the Spanish Parliament concluded in a political shift. The new conservative government, supported by a parliamentary absolute majority, showed, from the beginning of its term in office, absolutely no interest in the development and implementation of the initiatives proposed by the Strategy.

Even evaluation of the Strategy's results has no sense, as there has been no attempt at implementing any of the measures proposed in it. Consequently, more than 4 years later no changes or novelties can be reported regarding policies to favour that older workers find the adequate conditions to stay longer in the labour market. The only measures taken have intensified the highly vulnerable situation of those who lose their job and cannot find a new one in a context of rocketed unemployment figures⁵¹.

Now the Strategy should be given a second chance and the Spanish public authorities should assume its objectives and design specific policies to address seriously the problems found by older workers to stay in the labour market and provide where necessary innovative solutions.

Also the social partners, who were at the origin of the Strategy, have since its approval not demanded strongly enough its application. They have not demonstrated that employment of older workers is a priority for them. This is beginning to change, with some initiatives, but their involvement still needs to intensify.

3.4. *Social partners' other involvement mechanisms*

The plurality of areas where the social partners have a role to play implies the need to take into account other channels within their reach to influence in policies and practices affecting older workers' employment.

⁵¹ For example, the minimum age to have access to a subsidy for unemployed workers who have consumed contributive unemployment benefits was risen from 52 to 55 years and the requirements to have access to it were hardened. Royal Decree-law 5/2013, 15 March.

A special mention to collective bargaining is needed: clauses in Spanish collective agreements directed at the maintenance of older workers' employment are hard to find, including clauses to protect older employees in collective dismissals⁵². The general tendency consists in the inclusion of clauses favorising workers' retirement (with economic incentives in many cases) and promoting partial retirement and bridging contracts as instruments to maintain the older workers' employment while rejuvenating companies' workforce⁵³. Moreover, until their recent banning (2012), forced retirement clauses were not unusual.

Collective bargaining should undoubtedly have a major role in promoting an improvement of working conditions for older workers and in particular their adaptation to these workers' needs and health condition. Collective agreements are the most adequate instrument to adjust general provisions to each sector and each company reality. They could and should precise working time adaptations, work post adaptations, functional mobility and specific health and safety actions, among other actions. Additionally, collective agreements could establish protections for older workers against dismissal and fix employment objectives for companies depending on their size and activity⁵⁴.

In this sense, the French experience is particularly interesting. In 2008 an obligation was placed on social partners to conclude company agreements on the employment of older workers, and particularly on anticipation career development and training⁵⁵. On the positive side, this obligation has forced the social partners to include the issue of older workers' employment in their bargaining agendas. But this experience also shows that putting obligations on the social partners might have limited effects if they are not sufficiently convinced of the need of prioritising the subject. Many agreements have not

⁵² An extensive study in GUTIÉRREZ COLOMINAS, D., "Las medidas de mantenimiento del empleo de los trabajadores/as de edad en la negociación colectiva (2012-2014)", Paper presented to the XXV Congreso Nacional de Derecho del Trabajo y de la Seguridad Social. AA.VV.: *Perspectivas de evolución de la negociación colectiva en el marco comparado europeo*. Madrid, Cinca Editorial, 2015.

In other European countries some interesting examples can be found. This is the case of the German steel industry, where a collective agreement signed in 2006 include a wide range of measures that cover the following areas: occupational health and safety; further training; reduction of peak workloads; changing workloads with job rotation; establishment of mixed-age teams; adjustment of working time schedules; work assignment based on health and age, promotion of healthy behaviour among employees; use of long-term working time accounts for earlier retirement and lowering of the average age of the workforce by increasing the number of apprentices. This case is analyzed by Eurofound (2013) in the document *Role of governments and social partners in keeping older workers in the labour market*.

⁵³ *Ibid.*

⁵⁴ See some proposals of clauses in *Ibid.*

⁵⁵ *Vid.* AMAUGER-LATTES, M.C. and DESBARATS, I. (2011) : *Droit de l'emploi des seniors*. Lamy, Paris.

delivered significant results, as they might have been concluded in terms intended only to comply with the law in absence of a real concern about older workers' employment.

4. Conclusion

Achieving the goal of rising the number of older workers who remain in the labour market is certainly not an easy task, as leaving the labour market early can be the consequence of multiple reasons. It is no doubt very difficult to fight against the legitimate aspiration of those who are tired and want more free time after many years dedicated to their professional activity or the feeling that they need and deserve more time to reconcile professional and private obligations such as taking care of grandchildren or older relatives. Survey data indicate that almost 1 in 3 workers with ages comprised between 50 and 59 would like to work less⁵⁶, but this does not mean that they want to abandon the labour market.

The flexibility of working time, along with the adaptation of health and security measures, as well as functional mobility linked to the worker's requirements in terms of health and skills are necessary steps to prevent early exit of older workers from the labour market. However, the success of this objective also requires a change in corporate attitudes to value the contribution of these workers and not to only see in them increased wage costs or less productive outcome. Also, to prevent excluding older workers of the training which should allow them to adapt to changes.

According to ILMARINEN⁵⁷, the reforms necessary to enhance active ageing through longer and better careers for older workers are: an attitudinal reform to create fair and appropriate attitudes towards older workers, a management reform to identify and utilise the strengths of older workers, a work life reform to create an age-friendly working life for all generations, a pension reform which takes into consideration the large individual differences between older workers by providing a flexible range of retirement dates and a financial bonus for working longer, an organisational reform to improve the collaboration of different stakeholders and actors influencing better and longer work lives and a health service reform to strengthen the proactive and preventive occupational health services.

Some of these proposed reforms are at least partially recognizable in the Spanish Strategy 55+. The measures targeted by the Strategy 55+ on working conditions, which result both in proposals to adapt working time and safety and health issues, are in line with the conceptual shift operated in recent years in some other European countries such as

⁵⁶ EUROFOUND (2012): *op. cit.*

⁵⁷ ILMARINEN (2012): *op. cit.*

France⁵⁸, incorporating age as a central element of safety and health at work, with specific analysis of physical or psychological arduousness in older workers due to elements such as working environment (work outdoors, extreme temperatures), atypical working hours, or the content of the work performed⁵⁹. Also the proposed measures on flexible working time would contribute, if adopted, to a substantial improvement of working conditions in older workers. Measures in terms of part-time work opportunities for older workers before the statutory retirement age and partial retirement provisions are not enough in terms of promoting flexible work organisation.

In short, the set of measures contained in the Strategy's focus 2 are essential so that in the future older workers are not too often forced to abandon the labour market by being subjected to the same requirements and work paces than younger workers. Thus an effective extension of working life would also be largely satisfactory to those who approach but have not yet reached retirement age, since they could continue being occupationally active while their needs derived from the ageing process are taken into consideration.

As for the social partners, generally their involvement in taking a wide range of measures to make older workers' presence in the labour market sustainable is recognized as crucial. Although their real role is not so prominent in many countries, including Spain, this is beginning to change. The Spanish social partners were in the origin of the Strategy 55+ and, even though they have not claimed strongly enough for its implementation when the Strategy has been ignored, older workers are progressively more present in their agendas. Until now this has not had a significant translation in collective bargaining, and this should change, as collective bargaining is a necessary instrument next to public policies in favour of creating the conditions to make work more sustainable for older workers.

In conclusion, there are a significant number of general programmes both at EU and at national level which underline the need to take measures to facilitate longer working careers, but specific measures are lacking. The Spanish Strategy 55+ is a good example of promising proposals with no real repercussion and of the –still insufficient- raising awareness among social partners.

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⁵⁸ Vid. QUINTERO LIMA, M.G. (2009): "Discriminación por edad y protección de los seniors (trabajadores maduros) en Derecho social francés" in MERCADER UGUINA, J.R.: *Trabajadores maduros. Un análisis multidisciplinar de la repercusión de la edad en el ámbito social*. Lex Nova. Valladolid.

⁵⁹ *Ibid.*