



# Bargaining for Social Rights at Sector Level

## BARSORIS Country Report on Spain

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Bargaining for Social Rights at Sector Level

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## **BARSORIS**

*Bargaining for Social Rights at Sectoral Level*

## **COUNTY REPORT: SPAIN**

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## Summary of Key Findings

- *There is no widespread consensus on what constitutes a precarious form of employment. The dividing line between atypical (flexible) and precarious employment is blurred and the analysis shows important differences across sectors in their use, extension, employer perceptions and trade union acceptance.*
- *The most important form of precarious employment is temporary, which is the predominant form also in the TAW and construction sectors, but is also important in private hospitals, industrial cleaning and care. The precariousness linked to instability has been reinforced by the extension of long-term unemployment and cuts in unemployment benefits. Part-time employment is strongly linked to low pay, as the industrial cleaning sector shows very clearly. Even though this atypical form of employment is also important in the public hospital sector, it doesn't translate into precariousness. Part-time is also present in the care sector and private hospitals. Finally, self-employment is characteristic of the private hospital sector, but it is not associated with precariousness.*
- *Peak bipartite social dialogue has made a significant contribution to enhance the regulatory role of collective bargaining, and more specifically, to introduce clauses improving employment security and reducing precariousness. This can be observed in all sectors analyzed, where clauses have been introduced in national-sector collective agreements in line with recommendations laid down in peak inter-confederal agreements for collective bargaining signed since 1997.*
- *In all sectors, the crisis and in particular the 2012 labour market reform has introduced new elements that have increased tensions between social partners, and in some cases, led to a paralysis of collective bargaining, as TAW sector clearly shows. Particularly important in this regard have been the extension of temporary opting out by the employer as well as the limits imposed on the temporary extension of collective agreements (Ultractividad). The reform has certainly eroded the regulatory and protective capacity of collective bargaining, and has introduced elements dampening workers' voice. This is a key dimension of precariousness in order to understand future developments.*
- *But there are also examples of continued cooperation, even during the crisis and after the 2012 reform. This would be the case of the construction sector, to a large extent explained by a) a shared blaming of the state as both the cause and solution for overcoming the crisis (similarly to what was also observed in the cleaning sector) and b) the institutionalization of social dialogue around a number of bi-partite bodies at sectoral level that do not restrict negotiations and dialogue to the periodical renewal of the collective agreement.*

- *The extension of atypical forms of employment, deriving in some cases in precariousness, has been reinforced by the high unemployment rate, but the analysis also shows very different logics across the sectors analyzed. In the case of the cleaning and care sectors, a) an easily replaceable workforce and b) increasing competition between private companies for being awarded public tenders, has led to a downward pressure on labour costs. At the same time, this has triggered a reduction in working time and an extension of low pay. In the case of public hospitals, atypical forms of employment have been introduced as a consequence of public spending cuts, but precariousness remains very limited in scope. In private hospitals, atypical forms of employment are more widespread than in the public sector and derive very often from the need to make compatible a job in the public and the private sectors. In the case of construction, there has not been an extension of atypical forms of employment; both unions and employers acknowledge the intrinsically temporary character of their activity. In this vein, precariousness does not derive directly from temporary employment, but from high unemployment and declining unemployment protection coverage.*
- *In some of the sectors analysed, trade unions have prioritized maintaining employment levels over wage increases or maintaining working time. Even though this has contributed in some cases to extend forms of precariousness like low pay, it is a strategy supported by workers provided the high (long-term) unemployment rate. It is also important to remark how in some sectors like construction, trade unions have paid particular attention in their relationship with employers to the unemployed, which goes against the essence of the so-called insider-outsider divide.*
- *Few joint initiatives have been developed at sectoral level in recent years in order to improve the position of precarious workers. First, because the emphasis has been placed on maintaining employment levels rather than on improving the conditions of those already employed. Secondly, because another concern, particularly for trade unions, has been to restore social dialogue with employers and manage to re-negotiate sectoral collective agreements. However, there are positive experiences like now the cleaning and care sectors where employers and trade unions have established mechanisms in order for workers to certify the skills acquired and obtain professional certificates.*

## **Introduction; General Overview of Developments Regarding Precarious Work and Strategies of Trade Unions and Employers in four Sectors**

Even though there is a widespread consensus among social partners in Spain that flexible employment does not necessarily mean precarious employment, the reality is that most forms of flexible contracts are characterized by lower levels of security (including income, voice etc.) than standard full time open-ended contracts. It is precisely this consensus that has allowed social dialogue and collective bargaining to play an increasingly important role in providing additional security to workers with this type of contracts. This has had a reflection first, on an increase in the number of collective agreements including specific clauses aimed at improving the conditions of precarious workers. Secondly, social dialogue at both peak and sectoral level has been increasingly centered on improving the conditions of precarious workers, including temporary, marginal part-timers and more recently self-employees.

In spite of the increasingly important role played by collective bargaining and social dialogue as regulatory instruments in the hands of social partners, they nonetheless exhibit some limitations when it comes to providing additional security to atypical and precarious forms of employment. First, the extensive legal regulation of working conditions in Spain has limited the possibilities for social partners to autonomously negotiate around innovative mechanisms of protection for precarious workers. Collective bargaining in Spain has been characterized by the limited number of issues regulated by collective agreements. As a matter of fact, only since the late 1990s an increase in the number of collective agreements containing clauses related to precarious work can be appreciated. Moreover, recent developments in the context of the crisis have further weakened multi-employer collective, this being one of common aspects highlighted by trade union representatives from all sectors in the interviews.

Related to the previous point, the role of social dialogue as a mechanism to improve the conditions of precarious workers has been subordinated to legal developments, a characteristic of Continental and Southern European industrial relations. None of the three labour market reforms that have had a stronger impact regarding working conditions, especially when it comes to the extension of atypical forms of employment (i.e., 1984, 1994 and 2012) have resulted from social dialogue. In all three cases, the government passed unilaterally the law without the consensus of social partners. Thus social dialogue has been more reactive than proactive as a mechanism to provide protection for precarious workers. Peak inter-confederal social dialogue started to deliver some important outcomes in the mid 1990s, after the 1994 unilateral reform. Only then, social partners realized of the need to curb down the increase in the number of workers with temporary contracts, in most cases of very short duration, and foster employment stability. However, when one looks at the effective impact of some of the agreements resulting from social dialogue (including for instance the 1997 and 2006 peak-level agreements), particularly when it comes to reducing temporary employment, the conclusion is that very little has been reached in this regard.

The impact of the economic crisis on precarious employment has been multifarious. Regarding dynamics in atypical forms of employment, the crisis has triggered a cyclical decrease in temporary employment, together with a significant increase in part-time and a slight increase in self-employment. However, these changes have been accompanied by a generalized worsening of working conditions, including pay and working hours, hence leading to a remarkable increase in low pay and working poor. Secondly, and perhaps more importantly, legislative changes during the crisis have weakened multi-employer collective bargaining. In particular, the 2012 reform has opened greater spaces for company level bargaining as well as the employer unilateral regulation of working conditions. Moreover, it has abolished the automatic temporal extension of collective agreements. The most immediate consequence of

these developments is the decrease in the number of workers covered by sectoral collective agreements and what is more worrying, by any collective agreement. Overall, this implies that collective bargaining may lose part of its role as provider of additional guarantees to workers with atypical contracts or in precarious conditions. The problems found in order to sign a new sector-level collective agreement in the TAW sector are a case in point. Finally, it is also important to stress how the internal devaluation process has also led to lower social spending in public services including, health care, and education as well as employment policies (both active and passive). In this context, a worker with an atypical contract will have lower protection.

The analysis of developments in the four sectors shows very different profiles of precarious employment. The construction sector is characterized by high temporary employment and a predominantly male workforce. By definition, the temporary agency work sector (TAW) is also characterized by temporary employment, but the gender distribution of its workforce is different, with a predominance of women. Industrial cleaning has a majority of women employed with a part-time contract, though self-employment is also increasing with the crisis. Finally, the health sector has a very uneven distribution depending on the sub-sector we focus on. When it comes to private hospitals, the main form of atypical employment is self-employment and to a lesser extent, temporary and part-time. However, in the care sector, the main problem is part-time and low pay, as contracts tend to be open-ended.

**Table 1: Overview of Developments in Precarious Work**

	Dominant form of Atypical Employment	Changes as a result of the economic crisis	Industrial Relations - Voice	Social Protection
Total Economy	-Temporary -Self-Employment -Part-time	-Decrease in temporary -Increase in part-time	-Weaker multi-employer bargaining -Employer capacity to unilaterally set working conditions increases	-Lower coverage of unemployment benefits
Industrial Cleaning	-Part-time (Low pay)	-Increase in part-time and self-employment	-Self-employment and decreasing average firm size mean less voice	-Lower coverage of unemployment benefits
Construction	-Temporary; fixed-term and contract by work	-Instability, in the context of high unemployment, becomes more precarious	-Self-employment and decreasing average firm size means less voice	- Lower coverage of unemployment benefits; contract by work employees; reduction in active employment policies
TAW	-Temporary	-Increase in part-time and shorter duration of contracts	-Since 2012, the sectoral collective agreement has not been renewed	- Lower coverage of unemployment benefits
Hospitals and Care				
- Public Hospitals	-Part-time and to a lesser extent temporary	-Increase in temporary and interim positions; increase in workload	Imposition of austerity measures and cuts in health; dialogue between national and regional governments broke down	
- Private Hospitals	-Self-Employment, part-time employment and	-No significant changes reported	-Attempts to build a sectoral collective bargaining	

	temporary employment		framework	
- Care	-Informal employment, Temporary employment, part-time and low pay	-Increase in part-time and low pay	-Difficulties to provide effective protection to a large number of workers working either informally or in small companies	-Lower coverage of unemployment benefits

Collective bargaining in the four sectors compared has a similar structure, with a national sector agreement providing a minimum floor and common guidelines for the development of lower level agreements. The only exception would be private hospitals, where there is no national level collective agreement. Moreover, in the public hospital sector there is no collective bargaining strictly speaking, but negotiations between most representative trade unions and (regional) governments provide agreements around working conditions. In this vein, trade unions are attempting to develop a common framework for public hospital employees in order to reduce the disparities that have arisen as a consequence of the decentralized management of health systems.

The analysis in the four sectors shows increasing tensions among social partners as a consequence of the crisis. In this vein, the 2012 unilateral labour market reform comes out in all sectors as a source of discontinuities in social dialogue in collective bargaining. There are two aspects that make this reform episode different from previous ones, and potentially more disruptive. First, preceding unilateral reforms of industrial relations and the labour market had been preceded by negotiations among social partners that failed to reach an agreement, whilst in this occasion the government approved the reform without any previous consultation and not considering the peak bi-partite agreement signed by trade unions and employer confederations just one week before. This shows the little consideration for social dialogue as a governance instrument. Secondly, the reform goes well beyond the employers' historical claim of further collective bargaining decentralization and enhances the capacity of employers to unilaterally modify employees' working conditions by opting out of the clauses contained in collective agreements. In other words, the reform erodes the protective capacity of collective bargaining in Spain (Molina 2014). The way in which the reform was passed, together with its content has led some authors to talk of a de-constitutionalization of work (Baylos 2013).

Finally, when it comes to the positions of trade unions and employers around precarious work in each of the sectors mentioned, some convergence can be appreciated as a result of the economic crisis in most sectors, except in the TAW one where sector-level negotiations are in stalemate since 2012. In all sectors trade unions have prioritized maintaining employment levels, leaving the improvement of working conditions for precarious workers in a secondary position. The '*better a bad job than no job*' motto that has informed the PP's government employment policy in recent years can be observed in the negotiation of recent collective agreements, including industrial cleaning, TAW and construction. This means that trade unions campaign for improving the conditions of precarious workers hasn't been as aggressive as it was before the crisis. This situation has been aggravated with the changes in collective bargaining brought by the 2012 reform that provided employers with additional instruments in order to put pressure on trade unions and workers. In the cleaning and construction sectors, there seems to be a wide consensus among unions and employers on the common problems workers and companies face, i.e., downward pressure on labour costs due among other things to the budgetary constraints in the public administration.



**Table 2: Summary of Collective Bargaining and Social Dialogue Developments**

	Structure of Collective Bargaining	Collective Bargaining and Social Dialogue	Positions of Unions and Employers
Industrial Cleaning	-V National Sector Agreement (2013) -Provincial Sector Agreements -Company level agreements	-Consensus on the main problems affecting workers and/or companies; downward pressure on cost	-Unions fight for maintaining jobs -Recently there seems to be new initiatives to improve the conditions of workers, mostly aimed at hiring new employees
Construction	-V National Sector Agreement (2012) -Provincial Sector Agreements -Company level agreements	-Strong social dialogue; bi-partite institutions -Consensus; main problem is the weak activity; care about unemployed	-Unions and employers agree on the need to moderate wages
TAW	-V National Sector Agreement (2007) -Provincial Sector Agreements -Company level agreements	-Social dialogue weak and blocked by employer organizations	-Traditionally, consensus on leveling up the conditions of TA workers with employees in user companies. -Trade unions aim at maintaining the protection for TA workers -Employers want to adapt working conditions to the new scenario opened up by the 2012 reform for TAW companies
Hospitals and Care			
-Public Hospitals	-Regional level agreements with regional governments for civil servants -Regional level collective agreements for non civil servants public sector employees	The imposition of austerity measures and cuts in health care have left to a 'de facto' abandonment of social dialogue	-Regional governments bound by budgetary constraints and fiscal consolidation rules -Trade unions argue that greater flexibility and a higher workload are not justified
-Private Hospitals	-Some provincial level agreements -Company level agreements	Attempts by trade unions in order to sign a national sector collective agreement	-The priority for trade unions is to strengthen collective bargaining in this growing sector -Employers somewhat reluctant to negotiate national sector level agreements
-Care	-VI National sector agreement (2012) -Provincial level agreements -Company level agreements	-	-Trade unions are campaigning for promoting skill acquisition and fight against informal employment -Employers share an interest to fight against informal economy and promote skill accumulation

The differences observed across sectors in social dialogue and collective bargaining, as well as in the dynamics between unions and employers are certainly related to the underlying factors

explaining the extension of precarious employment. Generally speaking we can argue that the extension of flexible forms of employment and precarious work has several causes: a) changes in labour laws opening greater spaces for the use of these forms of employment; b) a production structure based on small and medium sized companies in labour intensive sectors and with a strong seasonal component; c) the development of production strategies based on cost-competition; d) forms of work organization based on easily replaceable workers with general skills.

However, the analysis at sector level shows the importance of sector level logics and dynamics driving the extension of precarious employment. In the case of cleaning, construction and care, there is a strong downward pressure on labour costs and working conditions due to the strong competition and the effect of public sector spending cuts. The lack of effective rules granting socially responsible behavior of private companies sub-contracted helps to explain these pressures. As a matter of fact, trade unions and employers roughly agree on the importance of these factors and maintain similar positions regarding employment protection. Moreover, these three sectors are characterized by a large number of migrant workers and a large pool of low-skilled unemployed that add further pressure on labour costs. In the case of public hospitals, the extension of atypical forms of employment and precariousness has been a direct consequence of spending cuts. The ban on new structural positions imposed by the central government in 2010 has led to the extension of interim jobs and part-time employment.

This report is structured in two parts. The first part provides an overview on the evolution of precarious forms of employment in Spain. Particular attention is paid in this section to recent regulatory changes and their implications on the evolution of precarious forms of employment. However, the main focus of this section will be on the analysis of social dialogue dynamics at peak inter-confederal level around precarious forms of employment. This includes an overview of the main agreements reached in this regard, and the main problems / disagreements encountered by social partners in order to improve the conditions and situation of workers with precarious employment. The second part of the report then moves into the four sectors analysed in the project. The adoption of a sectoral approach allows first of all understanding the asymmetric incidence of precarious work across sectors, thus identifying the most vulnerable groups in each sector. Moreover, it will also provide evidence on the way in which collective bargaining provides additional and/or complementary security to workers under precarious forms of employment. Finally, an analysis of the recent campaigns in this sector will be carried out.

### *Methodology*

The methods used to elaborate this report have been in first place semi-structured interviews with representatives of trade union federations as well as employer organizations in the four sectors. These interviews have been complemented with an analysis of internal documentation from trade unions (congress documents, statutes, campaigns etc.) as well as employer organizations. Moreover, several quantitative sources have been used for the analysis of developments in precariousness in the four sectors under scrutiny and the economy as a whole. First, the Encuesta de Población Activa – EPA (Spanish Labour Force Survey) as well as the Muestra Continua de Vidas Laborales (Continuous Working Lives Survey). These two sources provide very detailed information about developments in terms of precariousness, including atypical forms of employment. However, they do not allow us to understand the incidence of other dimensions of precariousness related to collective bargaining. For this reason we have also used the Encuesta de Calidad y Vida en el Trabajo – ECVT (Quality of Life

at Work Survey). Finally, an analysis of existing academic works on collective bargaining and social dialogue around precariousness has also been carried out. The following table contains the data about the interviews made:

Table 3: Interview List

Name, surname	Organisation	Position	Date	Place	Interview Type (face to face or telephone)	Validated (yes/no)*
Teodoro Escorial	MCA - UGT	Secretaría de Negociación Colectiva y Salud Laboral	10 April 2014	Madrid	Face to Face	No
Alvaro Vicioso	FES - UGT	Secretaría de Seguros y Oficinas	9 April 2014	Madrid	Face to Face	No
Pilar Navarro	FSP - UGT	Secretaría de Salud, Sociosanitario y Dependencia	10 April 2014	Madrid	Face to Face	
M <sup>a</sup> José Leguina	CNC	Departamento de Relaciones Laborales	8 May 2014	Madrid	Telephone	No
Marta Lucas	ASEMPLEO	Departamento de Relaciones Laborales	8 May 2014	Madrid	Face to Face	No
Alberto Villa	FNCP	Departamento Jurídico	4 June 2014	Madrid	Telephone	No
Manuel Lago	ASPEL	Director de Relaciones Laborales	4 June 2014	Madrid	Face to Face	
Adriana Castillo	CatSalut – Servei Català de la Salut	Directora de la Divisió de RRHH y Servicios Generales	25 September 2014	Barcelona	Face to Face	No
Marina Tarrio	FSP - CCOO	Secretaría de Empleo y Política Sectorial	9 April 2014	Madrid	Face to Face	No

## **PART 1 - The Evolution and Dynamics of Precariousness**

### ***Labour Market Regulation and Precariousness in Spain; Historical Context and General Developments***

Over the years since the transition to democracy, the Spanish labour market has developed two main characteristics. The first is a structurally high unemployment rate which exhibits strong resilience even in periods of high growth and employment creation. The delayed effect of the oil shocks together with a large-scale process of industrial restructuring taking place in the first half of the 1980s triggered a sharp increase in unemployment and long-term unemployment. Job destruction increased dramatically when the Socialist Party came to power in 1982, coinciding with an extreme weakness of the Spanish manufacturing sector in comparison with European competitors. In 1984 the unemployment rate had reached 20%, the highest rate since the end of the Franco regime. Neither small nor large companies were prepared nor had the resources to engage into innovative investments. Major restructuring and closures were carried out in the mining, iron and steel and shipbuilding sectors, dragging down with them thousands of small companies. High rates of unemployment together with companies' financial difficulties to access credit, and thus investment, reduced the relative cost of labour in production technologies.

It is in this context that we must understand the second characteristic of the Spanish labour market, i.e., a strong dualisation. Employers put strong pressure on the Socialist government to return to the flexible availability of labour that they had enjoyed during the Franco regime. Therefore, the extraordinarily protective 1980 Workers' Statute, which was the triumph of the trade unions in the transition to democracy, was reformed unilaterally by the government in 1984. Faced with mass unemployment, the government authorised temporary employment without limits on the duration of contracts or the maximum time during which workers could be employed on such contracts. External flexibility was therefore imposed, and temporary employment rose sharply. Nonetheless, the unemployment rate remained very high by EU standards.

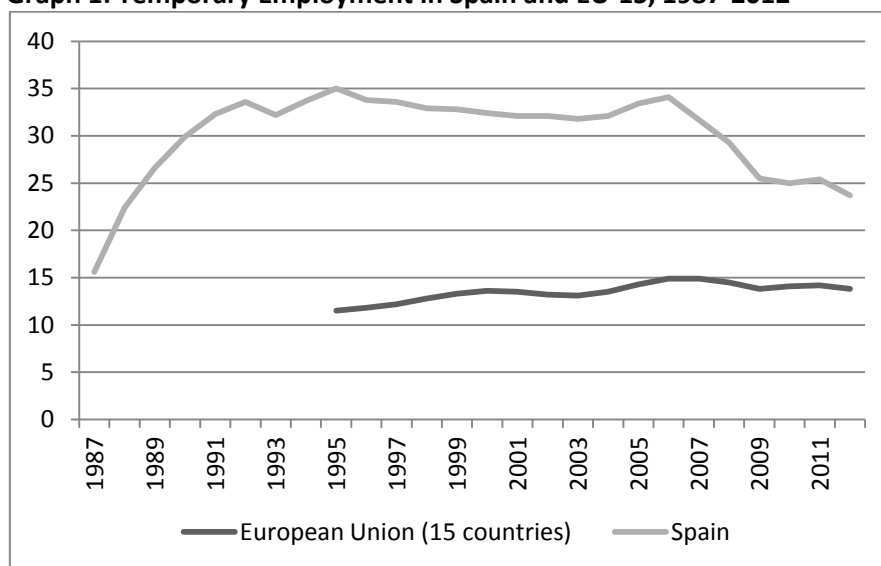
There were two factors that the government had not foreseen when opening the door to the use of atypical forms of employment. First, companies and jobs continued to be destroyed by the entry of the Spanish economy into the more competitive international economy at the end of the Franco regime (Fina 2001). Second, this reform provided incentives for companies to adopt a short-sighted competitive approach: as they could rely on a large and flexible labour force, they focused on low labour costs that therefore hindered the development of strategies based on technological and organisational innovation. In short, external quantitative adjustment was favoured over internal functional flexibility as a mechanism for companies to adapt to changes in the economic environment (Martin Artiles 1995). In this way, the Spanish economy developed a comparative advantage (with respect to the EU) in labour-intensive production, with sectors requiring longer-term investment being taken up by foreign capital. The 1994 reform completed the process initiated in 1984 by introducing temporary employment agencies (later to be reformed), increasing the potential grounds for justified dismissal, and making working hours more flexible.

Temporary employment has accordingly become one of the critical divides of a strongly segmented labour market (López-Roldán et al. 1998). Other mechanisms of external flexibility, i.e., part-time employment, have had a much more limited development in Spain, in line with other Southern European countries. On the one hand, in an economy with generally low wages, part-time employment implies very low income and is not a viable solution for many



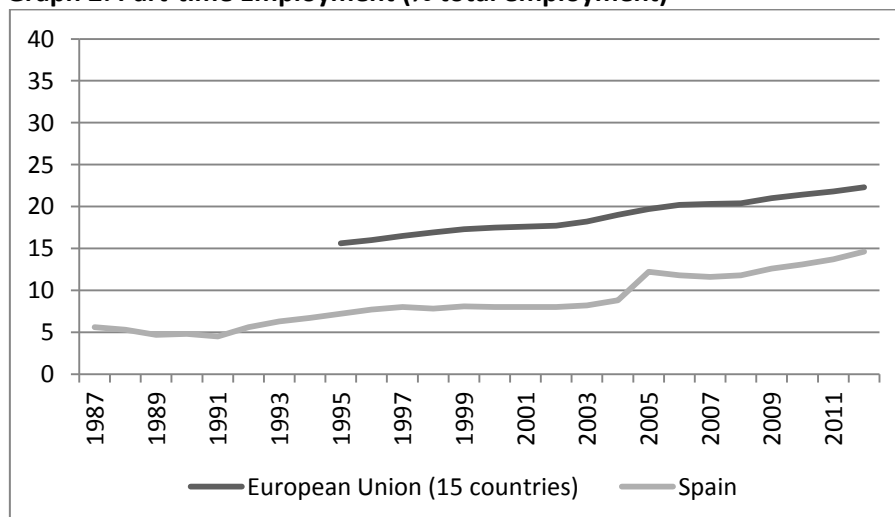
workers. Moreover, the resilience of the male bread-winner model has limited this flexibilisation mechanism to women and youth. It is nonetheless important to note the asymmetric behaviour of these two forms of atypical employment. Hence, whilst the percentage of temporary employees has decreased almost ten percentage points, part-time employment has maintained a steady growth in the crisis years (see graphs 1 and 2). The downward trend in temporary employment can be considered to have a strong cyclical component; therefore, one would expect it to grow again once the economy recovers. However, in the case of part-time employment, the crisis does not seem to have any significant effect as the evolution is similar to the one observed in the pre-crisis years.

**Graph 1: Temporary Employment in Spain and EU-15, 1987-2012**



Source: EPA, INE

**Graph 2: Part-time Employment (% total employment)**



Source: EPA, INE

In addition to legal regulations, including a statutory minimum wage, collective bargaining institutions provide the basic framework for wage-setting in Spain. Collective bargaining is characterised by its intermediate degree of centralisation and high coverage (Molina 2005). The predominant level where wages are negotiated is the sector, both at the national and sub-national (province) level. Reforms since the early 1990s have significantly opened the possibilities for lower level agreements (mostly company agreements) to opt out from the conditions negotiated at higher levels. This means that, in spite of a moderately centralised bargaining system and mandatory extension, companies have enhanced their capacity to unilaterally set wages and other working conditions.

In addition to wage-setting institutions, low pay in Spain is closely related to the extension of non-standard employment. Several studies have showed how part-time but also fixed-term contracts are generally associated with lower hourly wage levels compared to regular contracts. This holds true even when we control for other individual or structural characteristics like sex or economic sector. Thus precarious jobs are insecure not only because of the type of contract but also because of the working conditions and in particular pay (Recio 2001). According to data from the Continuous Survey of Working Lives for 2007 the average gross annual wage of a worker on an open-ended contract in Spain was €22,341 in late 2005. That of temporary workers was €13,499. If the temporary employee is younger than 29 (an age group that represents 60% of temporary workers, though older workers also have high rates of temporary employment), the average gross annual wage is €11,314. For women the figure falls to €10,022. It is clear that these jobs are precarious and undesirable, as is illustrated by the low percentage of temporary workers who voluntarily choose this form of employment compared with the EU average. A more recent comparison, in the Continuous Survey of Working Lives for 2007 drawn up by the Spanish Ministry of Immigration and Social Security, places workers on temporary contracts 42 percentage points below workers on open-ended contracts. This gives an idea of the difference in individual wages and in wage costs for companies brought about by external flexibility.

**Table 4: Differences in hourly wages by type of employment contract**

		Differences from the index = 100
1 open-ended	112%	+12%
2 temporary	70%	-30%
Average wage	100	100

Source: Continuous Survey of Working Lives for 2007

### *The Impact of the Economic Crisis*

The economic and sovereign debt crises are having a particularly strong impact on Spain and its economy and labour market in comparison with other EU countries. This asymmetrical situation is the result of the structural weaknesses and imbalances of the Spanish economy and the construction-based growth pattern it has followed in the years preceding the economic crisis (Godino and Molina 2013; Recio 2011). In an effort to cope with the economic and labour market crisis, Spain has undergone an unprecedented period of reforms, particularly from early 2010 onwards. Not only have there been many changes in labour market regulation, employment policy and industrial relations (six in a two-year period), but in many aspects these have implied an overhaul of the existing institutional edifice. The sovereign debt crisis has been a real turning point in the reform process as it has put the

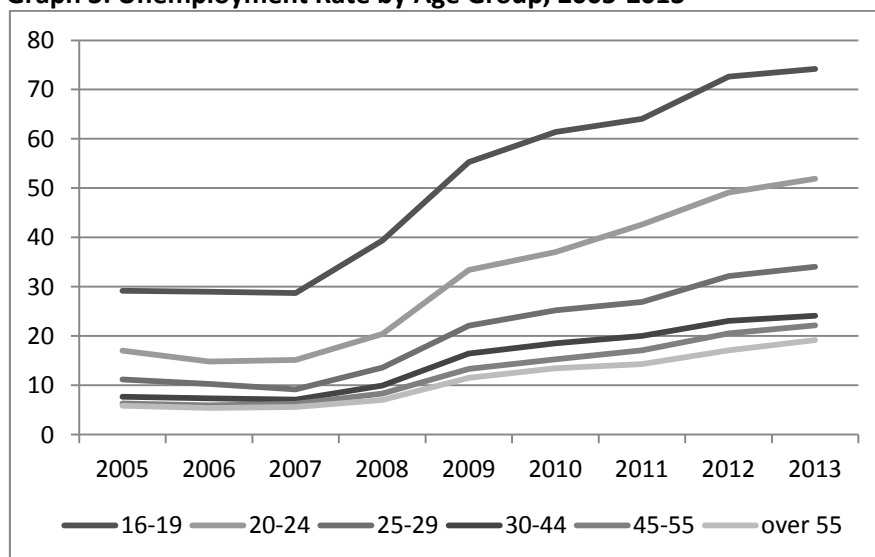
executive and social partners under strong pressure to introduce reforms in a short period and under a rapidly worsening socio-economic context.

The Spanish labour market has been more volatile than any other EU market. Unemployment has risen faster, confirming a pattern similar to the one exhibited in the crises of the early 1990s. Even though there was a consensus among the relevant actors that labour market developments haven't been responsive to changes in regulations, the emphasis of most labour market reforms has been placed on changing legal aspects. An analysis of the discourse and perception of relevant actors shows that all of them considered it impossible to create employment under the current context but they proposed different remedies and mechanisms to halt the rapid process of job destruction.

One of the principles orienting these reforms has been the reduction of the duality between temporary/fixed-term and open-ended contracts. However, the approach and content of the reforms varied significantly in the period under consideration. In the first stage, reforms aimed at enhancing active labour market policies, improving internal and functional flexibility while introducing minor changes in dismissal regulation. This was the approach followed in the 2010 and 2011 reforms, whose objective was to maintain the underlying equilibrium in labour market regulation. However, the 2012 reform made a Copernican shift in the orientation of labour market reforms as it focused on firing and dismissal costs.

Particularly worrying in this regard is the increasingly vulnerable position of some groups (ILO 2012). This would certainly be the case of youth as shown in Graph 3. The concern for this group is also caused by the existence of a large number of early school leavers in the growth years. Many of these young workers now face long-term unemployment and little prospects of finding a job because of their low level of education. Women and immigrant workers also suffer from above-average unemployment levels.

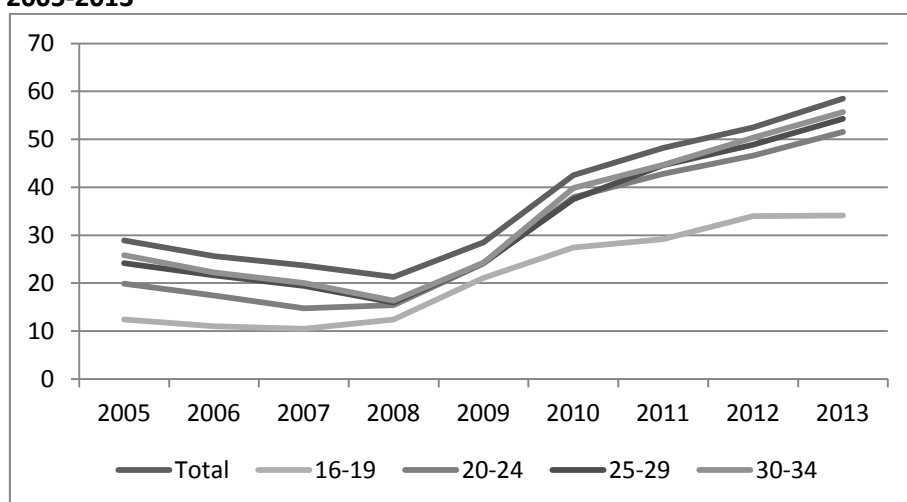
**Graph 3: Unemployment Rate by Age Group, 2005-2013**



Source: EPA, INE

The increase in unemployment for all age groups, but particularly for younger generations has also been accompanied by an increase in long-term unemployment (Graph 4). The lowest increases registered for those aged 16-19 can be explained by the return to education or training to all those who spent some time searching for a job.

**Graph 4: Long-Term Unemployment by Age Groups (% of total unemployed by age group), 2005-2013**



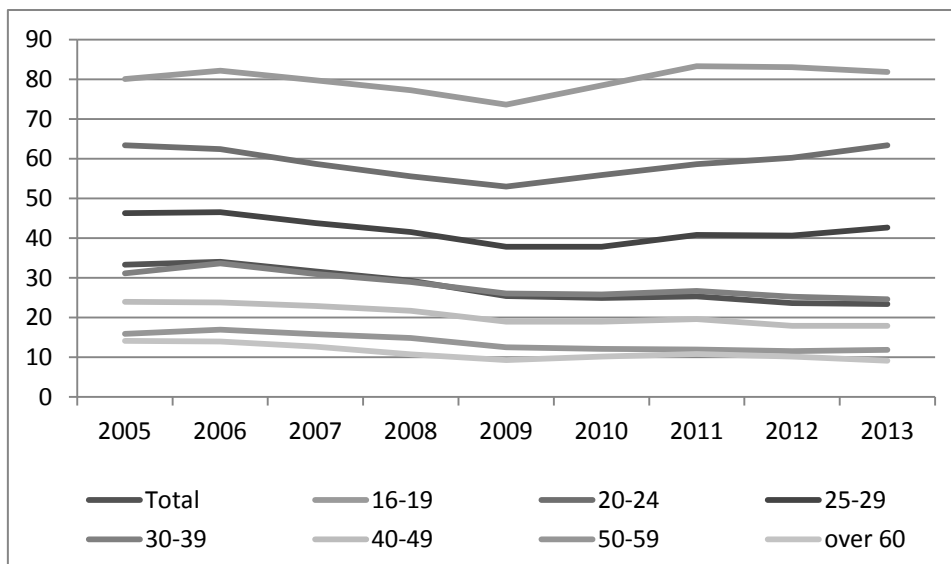
Source: INE, EPA

Higher unemployment has been accompanied by a deterioration in working conditions of those employed. The main source of precariousness in the Spanish labour market, and particularly young people, is the high incidence of temporary employment. As can be observed in Graph 5, the temporary employment in Spain has remained stable between 30-35% of total employees in the economy since the early 1990s. However, the temporary employment rate for young workers is significantly above the 35%. Thus in the case of the 25-29 age group, it fluctuates around 40-45%.

The economic crisis was accompanied by a decrease in temporary employment rate for all age groups. This was due to the fact that precisely those with a temporary contract will be the first ones in leaving the labour market in case of economic downturn. This is confirmed by the fact that by 2010, in spite of increasing unemployment, the temporary employment rate started to grow again for the younger age groups, though it has maintained a slow but decreasing trend for the economy as a whole.

**Graph 5: Temporary Employment Rate by Age group, 2005-2013**

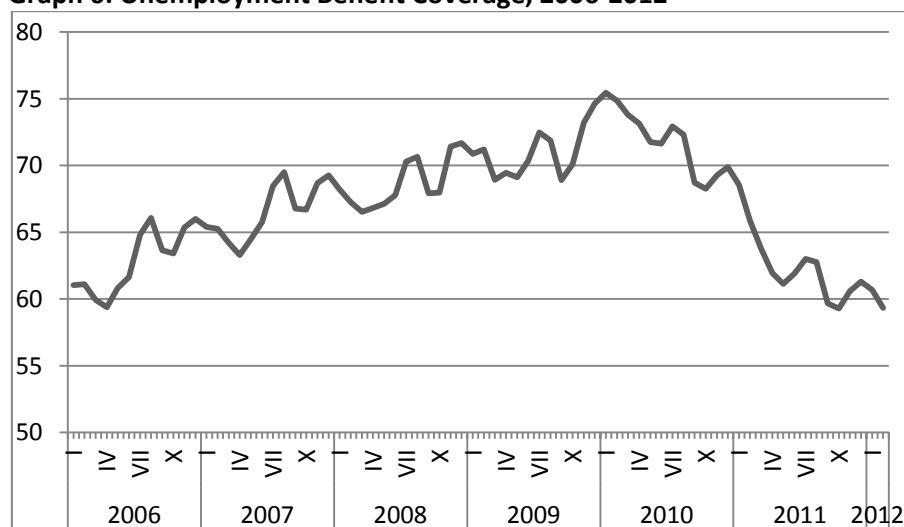




Source: EPA, INE

The high and rapidly growing unemployment rate has been accompanied by a decrease in the coverage provided by unemployment benefits until 2010 (Graph 6). This has been due on the one hand to the temporal accumulation of unemployed perceiving contributory benefits together with the 2009 extension approved by the Socialist government under the PRODI programme. The Socialist executive was well aware of the need to concentrate resources on passive employment policies in a moment of high uncertainty, increasing unemployment and uncertain efficacy of active labour market policies. However, coverage has started to drop since early 2010 whilst unemployment has kept increasing. This has led to an increasingly large number of unemployed persons receiving no benefit. We also need to take into account that approximately 50% of those receiving benefits are entitled to non-contributory unemployment assistance (with significantly lower generosity compared to contributory benefits). This means that an increasingly large number of persons receive no or little benefits.

**Graph 6: Unemployment Benefit Coverage, 2006-2012**



Source: Own Elaboration using Social Security Data

### ***Social Dialogue; General Dynamics and Positions of Unions and Employers around Precarious Employment***

One of the most important roles of social dialogue in Spain has been the search for mechanisms to counteract the effects of successive waves of labour market flexibilisation. In this vein, it has become a soft regulatory tool in the hands of trade unions and employers in their attempt to improve the working conditions of precarious workers. However, the role of social dialogue as well as the issues dealt with has varied significantly over the last three decades.

The series of social pacts in the early 1980s which contributed to economic adjustment in a moment of deep industrial restructuring and economic crisis were followed by increasing conflict between the Socialist executive and trade unions, leading to the 1987 general strike. The early 1990s economic crisis was also characterised by the lack of consensus and conflict between the executive and social partners, leading to the unilateral regulation of the labour market and collective bargaining and two general strikes in 1992 and 1994. Bi-partite and tripartite social dialogue was resumed from 1995 and gained momentum with the right wing executive elected in 1996. Several agreements were signed these years in a context of growth.

It is particularly important to note the consolidation of permanent bi-partite social dialogue between unions and employers that provided an anchor before the instability of tripartite social dialogue. a new process of social dialogue started soon after the unilateral reform and delivered the 1997 agreements on collective bargaining and the labour market: the AIEE (Agreement on Employment Stability), AICV (Agreement on the Extension of Collective Bargaining) and AINC (Agreement on Collective Bargaining). The AICV helped to speed up and give greater coherence to the substitution of the Labour Ordinances by collective agreements. The AINC focused exclusively on the reform of collective bargaining processes and structure.

These agreements marked a turning point regarding both collective bargaining structure as well as the regulation of industrial relations. First, they emphasise the idea of enhancing the regulatory role of national sector agreements in two different ways. First, agreements at this level have competence over a series of issues which cannot be (re-) negotiated at lower levels. This is because trade unions wanted to retain control over a series of issues in order to guarantee higher uniformity and minimum employment standards. Secondly, the national sector would establish guidelines and recommendations for lower level negotiations. Accordingly, the 1997 agreement promoted a top-down, organised form of de-centralisation through the recovery of bargaining power of national federations whilst preserving firms' capacity to adapt the conditions set at higher levels to their specific needs (Sanguinetti 1999). This contrasts with the bottom-up disorganised de-centralisation model imposed by the government in 1994.

When it comes to industrial relations regulation, the 1997 agreement opened up a new period of strengthened social dialogue in Spain and provided the basis for creating and consolidating bi-partite institutions at sectoral level, including employment observatories, conflict resolution mechanisms and lifelong learning strategies. In this way, trade unions and employer organisations promoted the shift away from the old statist government of industrial relations. Even though the effective impact of the reform on collective bargaining was less significant than initially envisaged by social partners, it nonetheless made clear their determination to autonomously govern industrial relations. Finally, the reform had a very important symbolic

value as the Spanish economy was those years in the final stages in the run-up to the Euro. With this agreement, social partners made clear their commitment to contribute to the low inflation target and prepare collective bargaining institutions to the new framework (Perez 2000).

The 1997 agreement as well as the other inter-confederal agreements that have been signed afterwards have been particularly important as an instrument to introduce employment-related clauses in collective bargaining (Ramos 2012). In particular these agreements have provided general orientations and guidelines for lower level collective agreements to transform temporary into stable employment, fight against precariousness, promote equal treatment, etc.

### *Industrial Relations and Collective Bargaining during the crisis*

One of the institutional domains where the reforms undertaken during the great recession have been more radical and/or profound has been industrial relations. This is paradoxical given first of all that the crisis' triggers had very little to do with employment relations. Moreover, collective bargaining in Spain was characterized since the late 1990s by an increasing governability and articulation between the sector and company levels, in line with the recommendations of the EC (Nonell et al 2006). In this vein, the reform of industrial relations in 2012 has meant another turning point, similar to the one in 1994. In both cases, strong exogenous pressures in the context of economic recession led governments (left-wing in 1994 and right-wing in 2012) to pass the law without the consensus of social partners. However, two characteristics of the most recent episode make it qualitatively different from previous ones. First, it goes well beyond the goal of collective bargaining decentralization contained in the 1994 reform. Thus it not only brings back mechanisms of disorganized bottom-up decentralization, but it also empowers employers to unilaterally modify working conditions. Secondly, for the first time, a government passed a law with significant implications for industrial relations without any previous dialogue with social partners.

In January 2012, employers and trade unions signed the second inter-confederal agreement on Employment and Collective bargaining 2012-2014 (AENC-II)<sup>1</sup>. The objective of this bi-partite agreement was to bring back changes in collective bargaining and the labour market into the autonomous sphere of negotiations of trade unions and employer organisations. Failed attempts at reaching an agreement and the executive's unilateral regulations in 2010 and 2011 forced social partners to agree on the direction collective bargaining had to move and impede further attempts at unilateral intervention. The most innovative aspect contained in the AENC-II compared to AENC-I consists in an explicit demand for the decentralization of collective bargaining within the framework provided by sector-level agreements. In this regard, social partners agreed on developing a process of organised top-down decentralisation where sector-level agreements must provide the rules for articulation whilst enhancing the role played by company-level agreements. Moreover, it also contains the obligation by collective agreements to include plans to develop internal flexibility by clearly distinguishing between its

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<sup>1</sup> See full text at:

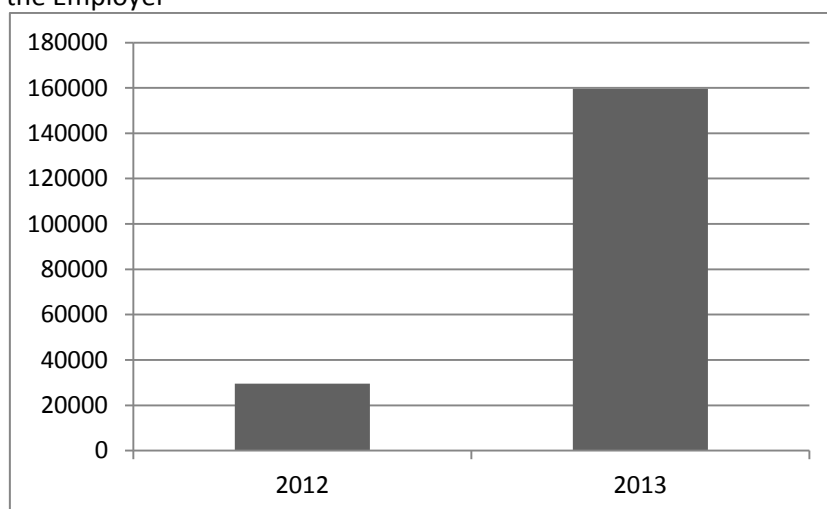
[http://www.ccoo.es/comunes/recursos/1/doc96566\\_Boletin\\_Oficial\\_del\\_Estado,\\_II\\_Acuerdo\\_para\\_el\\_Empleo\\_y\\_la\\_Negociacion\\_Colectiva\\_2012,\\_2013\\_Y\\_2014..pdf](http://www.ccoo.es/comunes/recursos/1/doc96566_Boletin_Oficial_del_Estado,_II_Acuerdo_para_el_Empleo_y_la_Negociacion_Colectiva_2012,_2013_Y_2014..pdf)

three elements: wages, working time and functions. It accordingly constitutes another step in the attempt to enhance internal flexibility with a view to safeguard jobs in the short term, but with a longer-term objective of changing the mechanisms to adjust the labour market and move from external (numerical) to internal (functional) flexibility.

Notwithstanding the successful attempt of trade unions and employers to bring back the reform of collective bargaining to the field of autonomous negotiations through the AENC-II, the executive regulated again unilaterally and without any previous contact with social partners just some days later. As a matter of fact, most of the innovations and specific guidelines for developing internal flexibility in collective bargaining that were included in the bi-partite peak agreement were overlooked by the government in the 2012 labour market reform. This fact caused perplexity not only in trade unions but also amongst the employers that couldn't understand why the government did not take into consideration the AENC-II.

The reform approved by the centre-right PP government in February 2012 contained several modifications of regulations concerning industrial relations and collective bargaining. Probably the most important one has to do with the enhanced unilateral capacity of the employer to change working conditions. Even though the law already established this possibility in the case of wages, the 2012 reform extended it to other issues such as working time. Moreover, the law also reduced the notice period of this decision to the employee. Thus it goes beyond the decentralization through opting-out clauses and introduces a qualitatively new element. Similarly, the employer is given more capacity to decide unilaterally on issues related to collective redundancies. Another aspect where the law enhances the role given to the employer in regulating working conditions refers to the temporary non application of the collective agreement on a number of issues and significantly relaxes the conditions under which this can happen. Graph 8 shows how the reform has triggered a significant increase in the number of non-applications, even though the economic context was more favourable in 2013 compared to 2012. Around 90% non-applications by company level agreements related to wage issues (CCNC 2013). In this vein, the employer can decide to temporarily not applying the terms of the collective agreement whenever the company registers falling benefits during six consecutive months.

Graph 8: Workers Affected by the Temporary Non-Application of the Collective Agreement by the Employer



Source: Boletín de Estadísticas Laborales

One of the most contested characteristics of collective bargaining in Spain, the so-called 'ultraactividad' of collective agreements (the extension of the terms of a collective agreement



even after its expiration whenever trade unions and employers failed to sign a new agreement) has been reformed by establishing a two year limit to negotiate a new agreement. In case no agreement is finally signed, workers in those companies will be covered by a higher-level agreement and in case no agreement exists, by the terms established by law. As the law establishes only minimum conditions that are then improved by collective agreement, with the abolition of ultraactividad the reform exposed many workers to a sudden deterioration in working conditions (Olarte 2013).

Finally, a very important issue regulated in the 2012 reform is the structure of collective bargaining. The reform not only confirms the priority attached to company-level agreements, but it also establishes the impossibility for higher-level agreements to contain clauses establishing the prevalence over lower level agreements. In other words, the reform reduces the regulatory and governance capacity of sector level agreements in the collective bargaining system.

Trade unions condemned most of the contents of the reform as it departed from what had been agreed with employers in the AENC-II only some days before. Moreover, they also criticized the absence of any attempt at engaging in a process of social dialogue in the drafting of the proposal. Some employers also complained about the introduction of pure decentralization. In this regard, there is coincidence amongst trade unions and employers on the need to maintain sector-level agreements, though they differ in the degree of flexibility company level agreements must have as well as the most adequate mechanism to achieve this goal.

The impact of the crisis on tripartite social dialogue has been very important. In particular, it has taken a long time to recover from the February 2012 reform. Only in July 2014, social partners and the government signed a memorandum of understanding for tripartite social dialogue (*Acuerdo de Propuestas para la Negociación Tripartita para Fortalecer el Crecimiento Económico y el empleo*)<sup>2</sup>. It is still to be seen whether the general orientations provided in this document will set the foundations for developing a fruitful process of tripartite social dialogue. The general impression is that the repeated unilateral regulations by governments during the crisis have very negatively impinged upon social dialogue among unions and employers. They again face the task of rebuilding social dialogue and collective self-regulation, particularly at sectoral level, but in a regulatory context that makes more difficult this task.

### ***Impact of the Adjustment on Industrial Relations and Social Dialogue***

Even though it is probably too early to properly assess the institutional and long-term effects brought by the changes outlined in section II, there are some indications that nonetheless confirm their significance. The most important one refers to the capacity of collective bargaining to provide additional protection to workers. The 2012 reform introduced two main elements that limited this role. First, the capacity of the employer to unilaterally modify working conditions of employees as laid out in the collective agreement, as seen in the remarkable increase in the unilateral non-applications of collective agreements. Secondly, the non-extension of collective agreements upon expiry also implies that many workers may be

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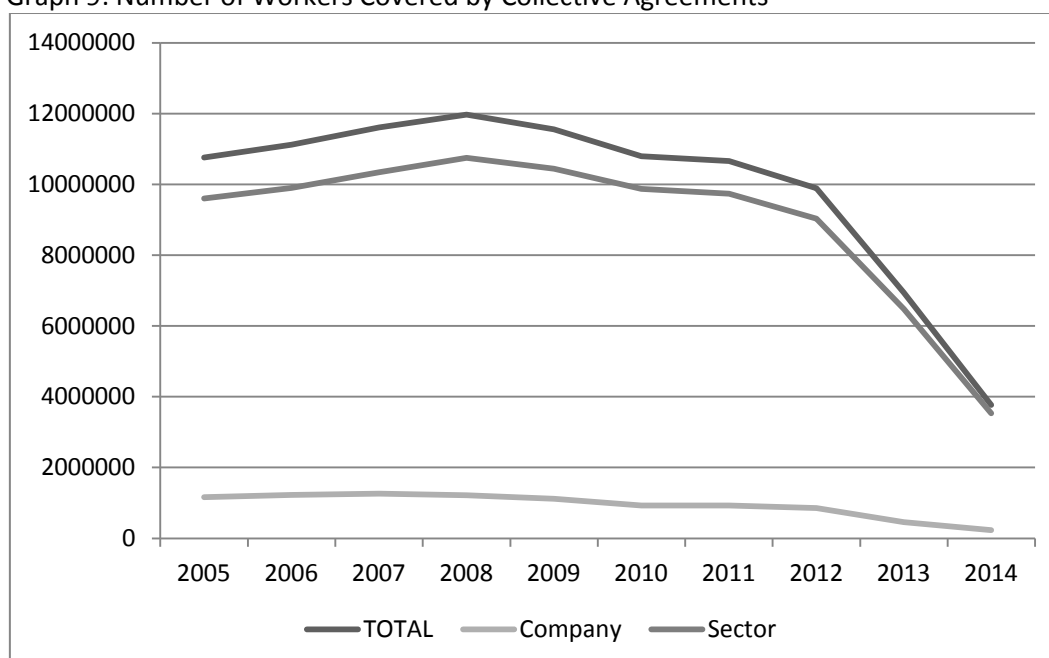
<sup>2</sup> See the agreement at

[http://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/Documents/Documento%20Acuerdo%2029%20de%20julio\\_DEFINITIVO.pdf](http://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/Documents/Documento%20Acuerdo%2029%20de%20julio_DEFINITIVO.pdf)

left without the additional protection provided by collective agreements, and their working conditions will then be regulated by the legal minima established in the Workers' Statute. There is some evidence pointing out to the use of delaying tactics by employers in order to let the collective agreements expire and blocking the development of negotiations with workers around a new collective agreement. However, a recent report by the tripartite National Advisory Board on Collective Bargaining (CCNC 2014) showed how there is a diversity of mechanisms used by employers and workers' representatives to negotiate the temporary extension of the collective agreement upon expiry whilst engaging into the negotiation of a new one. Thus there is a commitment by employers and trade unions, especially at sectoral level, to use collective bargaining in order to alleviate some of the most disrupting effects (either for workers or companies) of the non extension of collective agreements.

When we look at the evolution in the number of agreements signed and workers covered, we observe a decline as a consequence of the crisis. In the case of workers covered, the decline is almost entirely due to the increase in unemployment. In the case of collective agreements signed, it is not possible to argue with the data available that there has been a reduction in the number of collective agreements, as some agreements have not been registered yet and the data is still provisory. However, several cases have been reported of difficulties to renew many collective agreements. One of the reasons given is the expectation by employers of changes in the regulation of collective agreements that could be more favourable to their interests hence leading them to block negotiations. As graph 9 shows, there has been a sudden fall since 2012 in the number of agreements signed or renewed. The crisis certainly has an effect on negotiating dynamics as showed by the decrease in the early 1990s in a context of another economic crisis. However, the size of the fall is remarkably higher in the new economic crisis. This probably reflects the existence of a number of collective agreements that have expired but haven't been renewed.

Graph 9: Number of Workers Covered by Collective Agreements



Source: Boletín de Estadísticas Laborales. Data for 2013 and 2014 is not consolidated yet

However, what we can certainly confirm is that the main impact of labour market reforms during the crisis has been the erosion of the regulatory and protective capacity of collective agreements. Thus it is not so much about how many collective agreements have been signed,

or even how many workers are formally covered by them, but to what extent those collective agreements provide additional effective protection to employees. Even though the predominance of SMEs in Spain had already been pointed out by some authors as a hindrance for the efficacy of collective agreements (due to the lack of workers' representation structures in most of them), the changes introduced in 2012 opened up a new scenario where the unilateral decision to temporarily not apply the terms of collective agreements has now legal support.

## **Part 2 - Sectoral Analysis**

### **Industrial Cleaning**

#### ***Introduction and context***

Industrial cleaning in Spain covers several activities such as office cleaning, residential complex cleaning, public equipment cleaning (hospitals, schools, etc), industrial buildings cleaning and transport infrastructures cleaning.

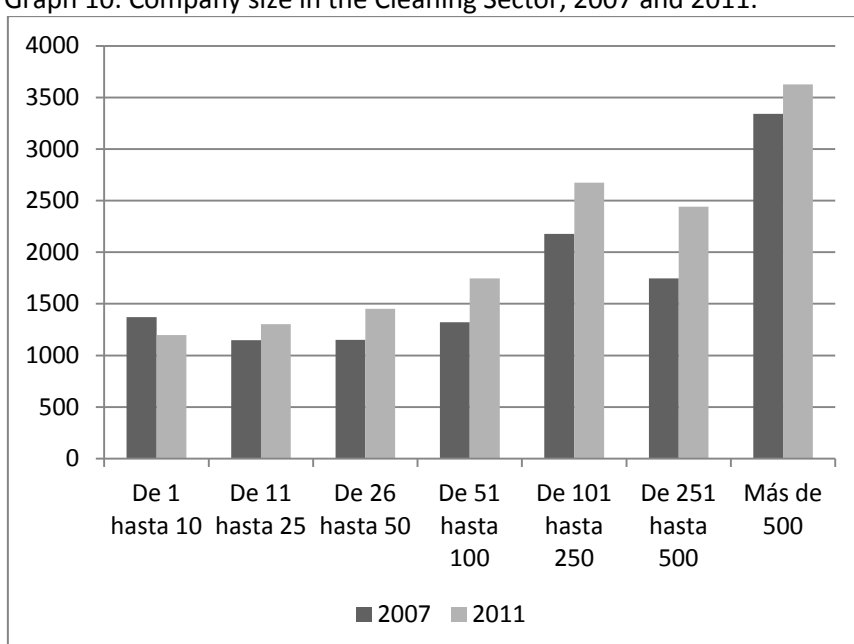
This activity has been an outsourced service in public administration since the early 1990s and has also gradually become outsourced in the private sector. In that sense, it's considered a good example of this kind of reorganization due to the implementation of costs reductions, downsizing and transfer of responsibilities (García 2012). As a mostly outsourced activity, industrial relations in the sector are systematized as a triangle, where clients (contracter companies), suppliers (employers) and the employees are the angles (Havard et al. 2009). Business relations (between clients and suppliers) prevail over employment or service relations. However, the prices imposition in call tenders reveals the privileged positions of clients in this triangulation (Recio et al. 2013). In this regard, main trends in current contracts signed between clients and suppliers are related to a focus on results (not quality), the lowering of prices and the calls for tenders where suppliers provide several services (cleaning, security, cattering etc.) (García 2012).

During the 2000's industrial cleaning has increased prominently due in part to the general expansion of the Spanish economy. It is accordingly an activity that exhibits a strong pro-cyclical pattern (Recio & Godino 2011). The economic crisis and its impact over employment started in 2007-2008, but the effect on employment in the industrial cleaning sector was delayed until 2009-2010 as happened with most of service activities. As pointed out the industrial relations manager of the employer organization ASPEL, *"We were one of the last sectors getting into the crisis. Also we will be one of those which delay more to get out of it"*.

The structure of the sector in terms of company size is very heterogeneous. According to the Annual Survey on the Service Sector of the national statistics institute - INE, in 2011 there were 23431 companies in this sector, 386 less than in 2009, with very different size. Only 525 companies in the sector have more than 99 employees. By contrast, 13980 have less than 5 employees, many of them being self-employees. This means that for most companies and

employees in the sector, it is the collective agreement above the company that provides additional protection to the legal minima. In that sense, attending to the official database of the “Continuous Sample of Working Lives”, from 2007 to 2011 there are more employees in the sector. Only those companies that have 10 employees or less have reduced the number of workers (Graph 10).

Graph 10: Company size in the Cleaning Sector, 2007 and 2011.



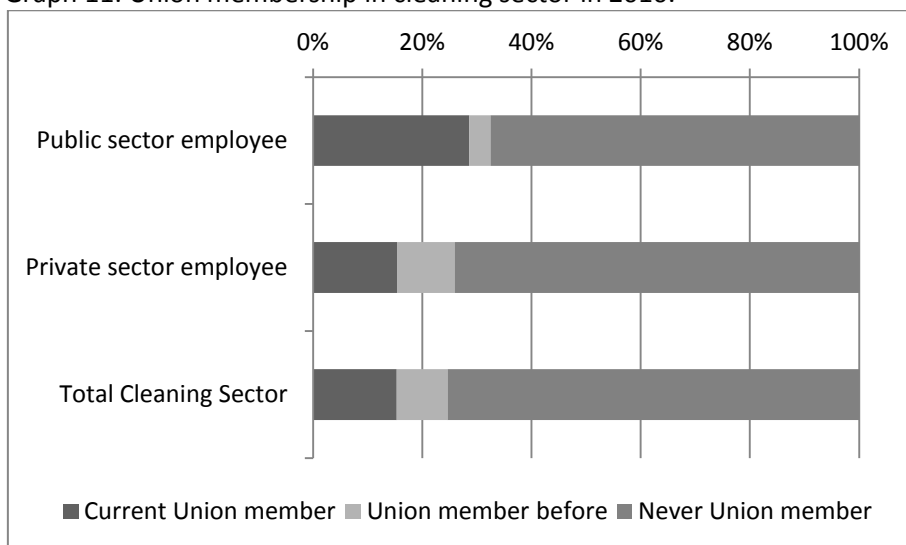
Source: MCVL (2013)

The heterogeneity observed in the company structure of the sector is mirrored into the employer organizations. The large companies in this sector are members of ASPEL (Asociación Profesional de Empresas de Limpieza), whilst the smaller companies are members of local and/or regional federations within AFELIN (Asociación Federada de Empresas de Limpieza). ASPEL has a representativeness level of around 42% of companies in the sector, the remaining 58% corresponding to AFELIN.

On the union side, the two most representative organizations are CCOO (Comisiones Obreras), with a representativeness of around 55% and UGT with a 45% representativeness level. Within CCOO, industrial cleaning is part of the Private Services Federation, whilst in the case of UGT it belongs to the Service Sector Federation (FES). There is a main consensus about the low rate of union affiliation in the sector. Data from Work-Life Quality Questionnaire (ECVT) reveals that 75% of cleaning workers never were union members in 2010 (Graph 11). Data from 2004, 2006 and 2008 shows very similar rates. According to trade union representatives, the dispersion of workers in different work centers explains this low level of affiliation. Even belonging to the same supplier company, cleaners do not have opportunities to interact with each other,

reducing the opportunities of collective organization. This may clarify the higher union affiliation rate in public sector.

Graph 11: Union membership in cleaning sector in 2010.



Source: ECVT (2013)

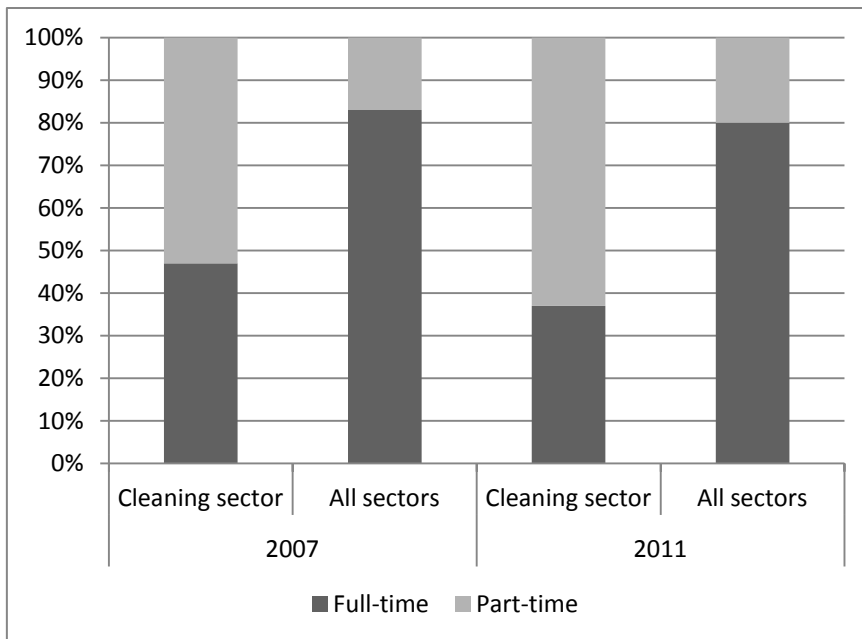
The industrial cleaning sector is a strongly feminized sector, where more of 80% employees are women. Employment in this sector accounts to 4% of total women employment in the economy. The education level of employees in this sector is generally low. Around 30% has primary studies or lower; 62% has completed secondary education and only 7-8% has upper secondary education. Finally, with respect to origin, the percentage of immigrant workers is lower than average.

### ***Developments in terms of precariousness***

The majority of workers in cleaning sector are part-timers, and the incidence of part-time exhibits an increasing trend since the late 1990s. More recently, the percentage of part-time increased by 10% over the 2007 to 2011 period (Graph 12), while the average for the economy maintained slightly decreasing trend.

Graph 12: Full-time vs Part-time in the Industrial Cleaning Sector 2007-2011



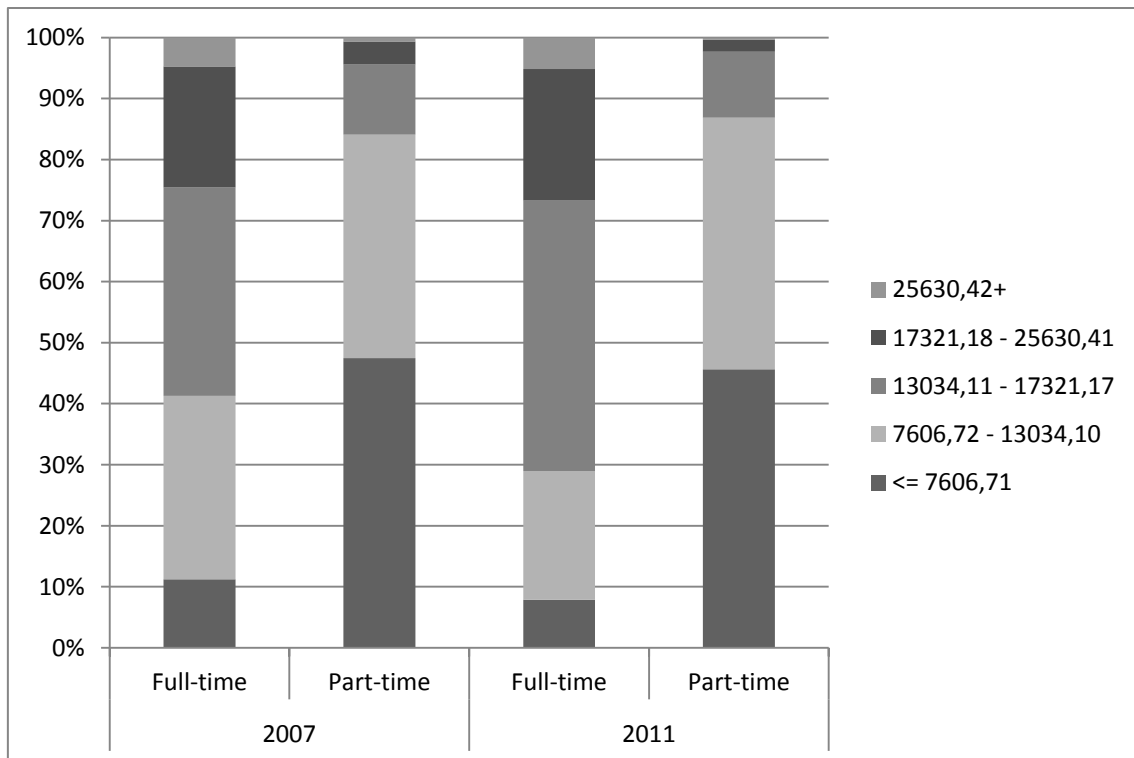


Source: MCVL (2013)

However this increase has been accompanied by a proportional reduction of salary. This is because the increasing reliance upon part-time by companies during the crisis in Spain is explained as an attempt to reduce labour costs. In this regard, the proportion of cleaning workers with salaries below 13,034€ per year has increased. Taking into account that some of the workers with lowest salaries in 2007 (and lowest amount of hours) are not in the sector in 2011, the composition effect may reveal even worse salary data.

This may constitute another factor explaining the increasing feminization of the sector because under the logic of the male breadwinner model, women's salary has a secondary role in the family's total income. In that sense, it is not surprising that 77,3% of cleaning workers are women. Moreover, 92% of women cleaners are part-timers opposite 8% of men cleaners in 2011.

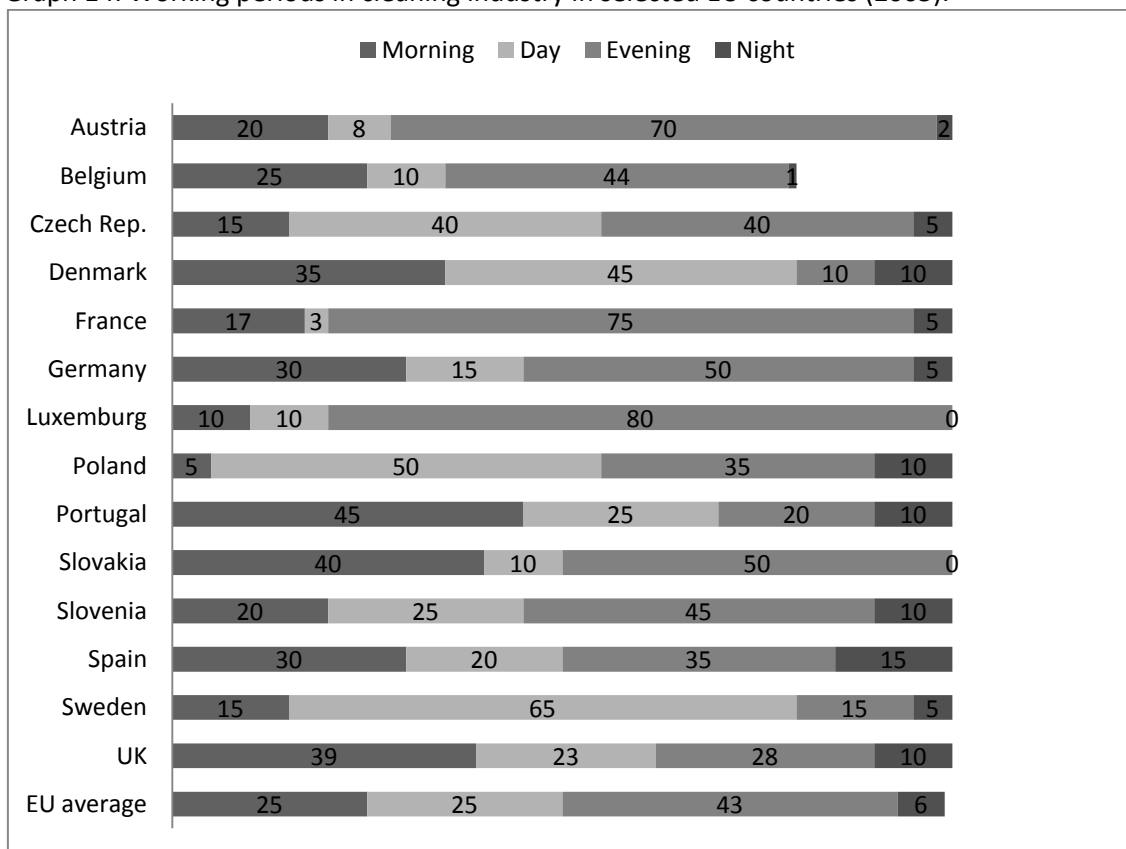
Graph 13: Industrial Cleaning sector salaries by working time (2007 and 2011).



Source: MCVL (2013)

The increase in the number of part-time workers has several implications apart from the most immediate impact it has on wages. Cleaning service is considered an ancillary activity in each work centre (company) where it operates. The need to adapt cleaning times to the working times of these companies leads to a proliferation of atypical working hours / times. Thus cleaners work at times when the normal services of the company are not operative, so working time tends to move outside the central hours towards the early morning or late evening. This makes it difficult to achieve an adequate work-life balance. Instead, Spain seems to be one of the European countries in which these polarized working hours at either end of the day are most common (Graph 14).

Graph 14: Working periods in cleaning industry in selected EU countries (2005).



Source: Eurostat (2005).

Together with the increase in part-time, another implication of the crisis has been an increase in the number of self-employees. As pointed out by one of the interviewees, *“the crisis has led to a dramatic process of employment destruction. Even though the crisis started in 2007, in 2008 the cleaning sector was still growing. The downturn started in 2009, when many companies disappeared. By 2012, the number of companies started to grow again simply because many of the people who were unemployed became self-employed and created their own company”* (Industrial Relations Manager of ASPEL).

To sum up, part-time appears as the main corner stone of precariousness and the sector employment attribute that characterizes the cleaning activity. Part-time is linked to un-social working schedules, low pay and a feminized workforce.

### ***Positions and strategies of unions and employers concerning precariousness***

In order to analyze social dialogue in the cleaning sector, it may be relevant to highlight the role of one of the keystones in the sectoral collective agreement: the subrogation clause settled in the Chapter IV of the current cleaning sector collective agreement:

*“In all cases of termination, loss, recession, transfer or recovery of a contract as well as on any other figure or form that involves the change in the supplier company to carry out the activity, workers from previous company will be assigned to the new holder supplier company of the contract to be servicing, maintaining their rights and obligations hold in the previous company.”* (Cleaning sector collective agreement, Chapter IV, Article VII (May 23 of 2013))

As has been already mentioned, public and private organizations using cleaning services for a given centre must periodically organize calls for tenders. The interested companies present their tenders and the contract for cleaning the premises is awarded. The right to subrogation or assignation of staff guarantees that, if the contracted company changes, the workers of the cleaning services will remain in their jobs. This principle is compulsory, and minimizes the impact of changes in contract on the stability of workers.

Taking into consideration that labour costs represent around 80% of total costs in the cleaning sector, the first measure to moderate costs would be reducing workforce. But subrogation removes this possibility. In that sense, employers use other strategies to reduce costs, including the replacement of full-time by part-time jobs.

Both trade unions and employers agree on the fact that subrogation has been a very positive mechanism in order to reduce precariousness in this sector as it has allowed to increase employment stability. However, particularly in periods of adjustment and economic downturn, it introduces some rigidity that is counterbalanced by changes in other dimensions. In particular, trade unions have given priority to maintaining jobs even when this implied a worsening in working conditions like the transformation of full-time into part-time jobs. Thus as pointed out by the trade unions and employer representatives interviewed, *"the suppliers seek other mechanisms due to the pressure linked to the lowering of prices. The unique mechanism that we got is to exchange working conditions in employment."* (Sectoral Trade Union representatives - CCOO); *"during the crisis, the problem is more about budget dedicated to cleaning activity than work reduction. If there is a hospital with a 20% budgetary cut in cleaning and the 80% of the costs are workforce, this will inevitably affect the employment. Negotiating with trade unions, we try to resolve this scenario reducing hours of work and firing the least as possible."* (Industrial Relations Manager in ASPEL)

In that sense, it doesn't come as a surprise the lack of consensus about part-time. Employers perceive part-time as structural pattern of cleaning activity: *"It is not possible to clean an office during eight hours. Thus, the employment (in cleaning activity) is defined by its stability and necessary part-time"*. By contrast, trade union representatives believe that there is no structural determination to use part-time contracts. According to unions, the increase responds to the cost pressure imposed by competition in the call for tenders: *"We depend on clients, mainly Public Administration. The matter now is that a service was contracted by 100 million euros before and now it is contracted by 40. That certainly has an impact on employment. [...] The cost of cleaning services is eminently labor costs, so the cuts are concentrated there."*

### ***Dynamics between unions and employers (cooperation, conflict, avoidance etc.)***

Both Trade Unions and Employers' Associations in the industrial cleaning sector agree on the need to maintain a cooperative relation. One of the main causes is the view of clients, usually public administration, as a common enemy. Union representatives even consider that employers have acted as intermediaries in many cases of delay in payment by the public sector, hence allowing their employees receiving their salaries. Thus defaulting by the public sector has impacted upon both employers and employees' interests. As the industrial relations manager of the employer organization put it, *"during the crisis, the defaulting problem is enormous. When the client doesn't pay you but you have to pay salaries month by month, you are forced to close the company. Medium-sized companies of 50-200 workers have suffered more this problem. The sector reached once 300 days of delay of payment by Local Public Administrations. That's intolerable. The defaulting from Public Administration, and also from private clients, and the lack of funding is the main cause of destruction of companies"*.

However, social agents disagree in many elements such as salary and days off. The main union demands are:

- An increase in the base salary;
- Maintenance of seniority salary pluses;
- Establishment of a supplement to ensure full pay in case of time off sick;
- Reducing gender discrimination;
- Maintenance of days off, and the adoption of some kind of internal promotion to motivate employees.

On the other side, employer positions in collective bargaining are to a large extent opposite to those of trade unions. In particular, they ask for wage moderation, a removal of many of the pluses in the salary, especially those linked to seniority; a reduction in the number of days-off; mechanisms to reduce absenteeism; and an increase in productivity (Garcia 2012).

About the dynamics in collective bargaining, CCOO representatives recognize it is hard to achieve the abovementioned goals if there is no mobilization or when membership is low in the sector. In that sense, sometimes trade unions give up in some of the employers' demands regarding working conditions, but, as they stress, with the final aim of guaranteeing the existing jobs and the stability of workers. One of the last cases of concessions occurred during the negotiation of the last national-sector collective agreement and had to do with the inclusion of a clause limiting the automatic temporary extension of the collective agreement beyond the agreed term.

### ***Initiatives (campaigns, strikes, collective bargaining, common policies, etc.) and results***

One of the most interesting and innovative initiatives developed in this sector in order to enhance the working conditions of precarious workers occurred in Catalonia. In this region, a sectoral bargaining table was formed where employer organizations participate with a clear objective: the development and creation of a professional cleaner accreditation. This would be a mechanism to effectively recognize the skills of workers, hence linking them to processes of re-qualification and training in the sector (one of the main problems trade unions have been denouncing for a long time). Moreover, it would also allow some workers to learn and become specialists in some cleaning techniques and in the use of specific methods like now environmentally sustainable cleaning etc.

In terms of collective bargaining, in 2012 employers' association refused to negotiate and, facing that scenario, Trade Unions organized demonstrations in many cities at state level calling to take back the road to renew the collective agreement.

On the other hand, the employers' organization ASPEL together with the European federation of cleaning companies launched the "Selecting best value — A guide for organisations awarding contracts for cleaning services" campaign. This guide is directed towards the contracting organizations (clients) who wish to ensure that a supplier combines quality with a reasonable price rather than just the lowest price. It represents an attempt by suppliers to block the dynamics lowering of prices in public call for tenders, expecting a significant indirect impact on working conditions in the sector.

Also, ASPEL has joined in European campaigns to support the daywork in the sector, aimed to improve work-life balance, which is of key importance given the feminization of industrial cleaning.

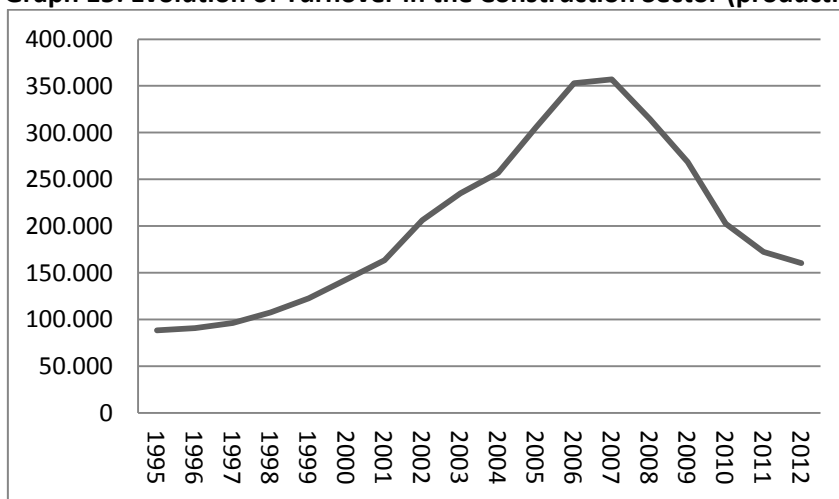
## **Construction**

*"There is no alternative other than creating jobs" (Trade Union representative)*

### ***Introduction and context***

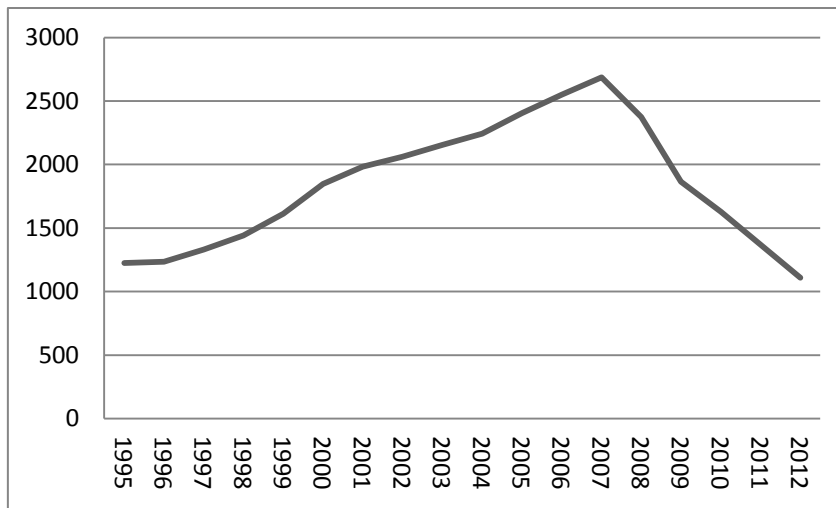
The housing bubble experienced by the Spanish economy led the share of employment in the construction sector grow from 9,2% in 1994 up to 13,3% in 2007 just before the crisis (García Serrano 2012). This year, Spain was the EU economy with the highest share of employment in construction, together with Ireland. By 2011, the employment share of construction had decreased down to 7,8%, with the number of unemployed persons increasing from 290,000 by the end of 2007 to a peak of almost 700,000 by June 2009. The burst of the bubble and the following collapse of employment in this sector had a remarkable impact on the economy and job quality. First, together with agriculture and manufacturing, the construction sector is characterized by high levels of physical demand. Moreover, it is also characterized by low requirements of cognitive demands and job discretion. This is confirmed by the low levels of educational attainment of workers in this sector, including the large number of early school leavers that went to construction between 2004-2007. The relationship with the economic crisis characterizes the evolution of employment in the construction sector. Another aspect to be considered is the high rate of temporary employment in this sector. This type of contract, and especially those of shorter duration, is characterized by having lower levels of job quality in dimensions such as environmental risks, job discretion and cognitive demands (Prieto et al. 2009).

**Graph 15: Evolution of Turnover in the Construction Sector (production, eur millions)**



Source: INE. Unit: Million Euros

**Graph 16: Evolution of employment in construction sector (000s)**



Source: EPA, INE

Finally, the construction sector is also characterized by high environmental risks. Thus by 2007 the number of accidents and injuries in the construction sector accounted for almost 26% of total injuries and accidents reported in the economy. By 2012, only 11% of total injuries and accidents at work took place in the construction sector. Meanwhile, the prevention and training actions have increased over the last ten years.

### ***Developments in terms of precariousness***

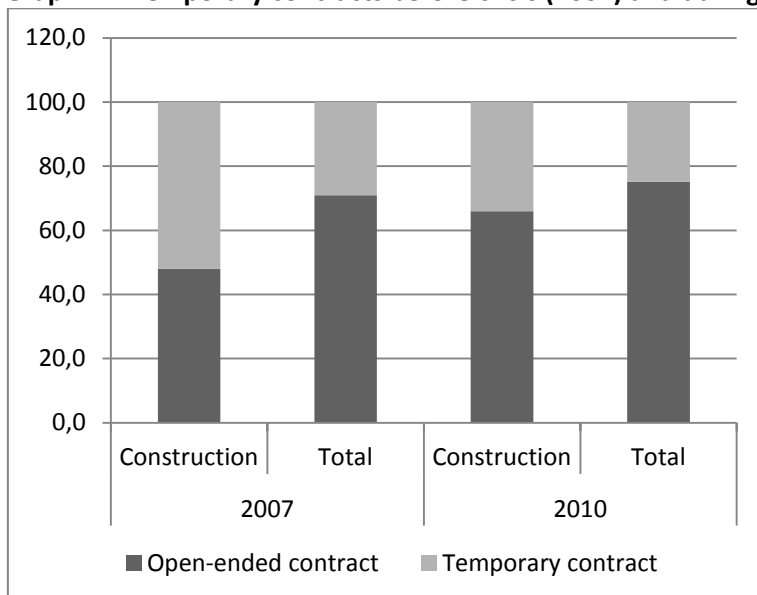
Before the 2007 crisis, the construction sector in Spain was characterized by high levels of temporary employment as well as a large number of employees under the work by contract model, thus having a high rotation between employment and unemployment. According to the ECVT (Work Life Quality Survey), 52,1% of workers in the construction sector had temporary contract. Moreover, in 2004 in 31% of all workers in construction sector have a work by contract. Another characteristic of the construction sector regarding precariousness are the long working days explained by the interviewees by the deadlines imposed in order to finish the work, especially in public works. Trade unions and employer organizations argue that the political cycle undertakes to perform work off increases in short periods of time.

It is important to note how the work by contract (i.e., the most common temporary form of employment within the construction sector) is not considered a precarious form of employment by trade unions and employers organizations due to several reasons<sup>3</sup>. First, the work by contract (*contrato fijo de obra*) in construction sector is an especial form of work contract only present in this sector. This contract allows keeping the worker employed by the same company, although the worker may changes workplace. Thus this type of contract manages to strike a balance between the instability inherent to the temporary contract and stability. On the one hand, this allows the worker to continue with the same company, with the possibility of engaging in different works. On the other hand, this allows the company to continue with the same group of workers. This situation can last for a maximum period of 3 years. Second, this situation implies a high rotation between the employment and unemployment status. When the contract finishes, the workers can make use of the right to unemployment benefit. However, as pointed out in the general section, the downturn in

<sup>3</sup> As a matter of fact, according to the ECVT 2004, more than half of the workers in construction sector defined their situation as stable.

economic activity during the crisis has had a first reflection in temporary employment, that has also decreased significantly in the construction sector (see Graph 17).

**Graph 17: Temporary contracts before crisis (2007) and during crisis (2010) (percentage)**



Source: ECVT

The last national sector collective agreement regulates the minimum pay for several forms of contract including standard open-ended contracts, work by contract, fixed-term contracts as well as training contracts. There is no specific regulation for part-time contracts. It is not a frequent contract in this sector. Long working days require companies to pay overtime, though there is some controversy around this issue. According to article 64 of the National Sector Agreement, overtime work is limited to 80 hours per year. On the other side, article 33 of the National Sector Agreement, overtime work will be paid as such (thus overtime pay per hour is higher than standard pay per hour) but it does not account as overtime, hence opening the door to long working days.

One of the most important threats for improving working conditions in this sector comes from uncontrolled subcontracting, that puts a strong downward pressure upon firms and workers in order to lower pay and other working conditions. In order to limit the impact of this phenomenon, the subcontracting Law 32/2006 regulated some aspects of this business practice. More importantly, the last national sector agreement contained a specific article (article 26) that regulated this practice and limited it to specific operations and conditions.

Regarding pay, it is important to highlight the role of art. 53, that establishes a wage guarantee obliging employers to update pay every year according to price increases in the economy. Based on this clause, an increase of 0,6% was negotiated for 2013 when the inflation rate was only 3%. There is accordingly a policy of wage moderation agreed by social partners that consider it is important not to set high wages under the current circumstances in order to allow the sector to recover a growth path.

The recent labour market reforms have deteriorated social protection of unemployed workers. In particular, the maximum duration of unemployment benefits has been set up at two years. This means that construction workers alternating between employment and unemployment or

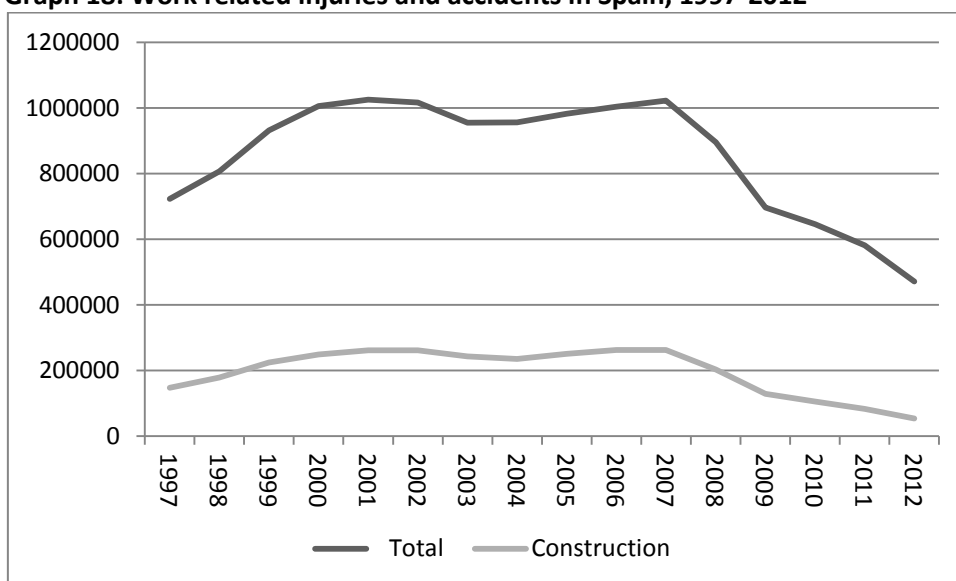


being unemployed for long spells (as has been the case in Spain) are more insecure now than used to be.

As has been pointed out already, long working days and excessive working intensity due to the tight schedule agreed in order to finish works (especially when it comes to public works) constitute one of the main sources of workers' complaints in this sector. Articles 31 and 33 in the national sector agreement allow the existence of these long working days and higher intensity of work in some periods of time (especially the end of political cycles). However, according to the employer organization interviewed, the number of annual hours is low in comparison with other European countries: *"It is a terrible situation in the sector. Works according to electoral interests, electoral calendars, rather than in terms of the technical and rational possibilities of how you have to make a plan work"* (Interview with trade union representative). Similarly, the employer organization representative manifested that *"the problem is that we have our election cycles. Now it starts some increase because there are local elections. You know you have very strong ups and downs, regardless of the crisis. We asked politicians that the forecasts are made in six years instead of four years of election cycles"*

As has been pointed out, one of the characteristics of the construction sector are the high levels of work-related injuries and accidents. This is one of the aspects where most efforts are being made by trade unions and employers, which have created some specific bipartite institutions in the national sector collective agreement. However, the deficiencies of the labour inspectorate due to very limited resources, hinders the efficacy of efforts made at tackling this problem.

**Graph 18: Work related injuries and accidents in Spain, 1997-2012**



Source: INE

The main changes in working conditions and precariousness in the construction sector are related to legal changes, the current economic crisis and the dynamics of cooperation / conflict between social partners.

Regarding changes in the legal context that have an effect on the working conditions and precariousness in the construction sector, two aspects are particularly important:

- Subcontracting law, that regulates subcontracting and poses limits to the entry of TA workers, especially the figure of the intermediaries.

- Changes in health and safety regulations: have improved the regulation in the sector, including the creation of bi-partite institutions (FLC, OPPC, etc.). Moreover, increasing attention has been paid to training around health and safety regulations.

The most recent labour market reforms have had important effects on three aspects related to precarious work. First, they have put additional limits on the duration of unemployment benefits, hence leaving long-term unemployed workers, as well as those with short-term contracts less protected. Moreover, recent reforms have also reduced firing costs for companies. Finally, the 2012 reform has weakened significantly multi-employer collective bargaining.

The main impact of the economic crisis has been, in the words of the trade union representative interviewed, more instability within an already unstable environment. There has been on the one side a massive job destruction process. Moreover, there has been an increase in the number of work by contract employees that have more difficulties to access unemployment protection. Moreover, trade unions have also detected an increase in informal work. From the point of view of employers, there is no alternative to this situation than increasing investment in public works and facilitating access to credit for companies and individuals as a mechanism to expand private investment in housing. The internationalization of the sector is not considered an alternative by the employers interviewed. Only large companies can follow this strategy. In fact, these companies were already doing this even before crisis.

### ***Positions and strategies of unions and employers concerning precariousness***

The main actors in the construction sector are on the union side the construction federations of CCOO and UGT: FECOMA-CCOO and MCA-UGT. On the employer side, the most representative organization is CNC (Confederación Nacional de la Construcción, National Construction Confederation). So far, five national sector collective agreements have been signed with a duration of four years each one.

The national sector agreement covers most issues, though in a general way and very often it just provides a minimum floor for further regulation at lower level. Moreover, it also sets the structure of collective bargaining in the sector, hence including those issues that can be re-negotiated at lower level, or those that are an exclusive matter of company level agreements. There are three main levels in this sector: the National sector, the provincial/regional sector as well as the company level. Collective agreements at provincial level replicate the functional coverage of the national sector agreement, but at a lower level. In case there is no agreement at provincial level, the conditions of the national sector agreement apply.

According to the opinions of trade unions and employer organizations, the national collective agreement regulates most of the important issues regarding working conditions in this sector. This includes issues such as subcontracting, training, pay, working hours, health and safety regulations etc. It is important to highlight that this agreement was signed in 2012, in a very difficult moment for the Spanish economy in general and the construction in particular. Notwithstanding this difficult context, social partners managed to find common positions in important issue like pay etc. The interviews show there is an agreement on most issues and no visible conflicts are observed, though both sides would like to see some of their demands more reflected in collective agreements. The fact that many of the demands from trade unions and employers have as a common target the government makes it easier to find common

positions. Trade unions, and to a lesser extent employer organizations blame the government for the precarious position of some workers in the construction sector. They argue that the fifth national sector agreement contains the most important claims from trade unions and employers in the sector. It is accordingly argued that the problems affecting the sector, and in particular, the precariousness, is due to problems exogenous to sectoral social dialogue. In particular, they argue these factors are:

- Lack of public investment and credit for companies and individuals.
- The recent labour market reforms, which have had a negative effect on working conditions. In particular, trade unions pointed out to two aspects. First, the reduction in firing compensation for work by contract jobs. Moreover, firing compensation will be subject to personal income taxation. Secondly, the deterioration in unemployment protection coverage, that is now limited to two years. This means many long-term unemployed in the construction sector do no longer have unemployment protection.

As a consequence, trade unions ask for some changes in order to reverse this situation. First of all, they want the government to increase public investment in order to allow the sector to create new jobs. In particular, trade unions think that around 800.000 workers unemployed or in a very precarious employment situation would benefit from public investment plans. Secondly, they also think there is a need to give greater spaces for autonomous regulation of working conditions. They consider collective agreements a more adequate tool in order to regulate the sector, compared to statutory regulation which is very rigid, especially in moments of change. By contrast, employers think that in order to make collective agreements a really effective tool, it would be necessary to differentiate the contents more from what is already regulated by law. But they agree with trade unions in the need of promoting investment (either public or private).

### ***Dynamics between unions and employers (cooperation, conflict, avoidance etc.)***

Nowadays, there seems to prevail a cooperative relationship between trade unions and employers. Between 1980 and 2000, conflict levels in the construction sector were high and there were several strikes organized by trade unions in order to achieve better working conditions of construction workers. The last important conflict took place between 2002 and 2004, and was triggered by trade union demands for improved health and safety regulations. According to trade unions, this cooperative relationship has several causes:

- First, the improvements in the working conditions of construction workers over the last two decades (including issues like subcontracting, health and safety regulations, training, pay conditions, working hours etc.)
- Second, the existence of bipartite bodies (FLC and OPPC) that allows a permanent contact and dialogue among social partners is also pointed out as an important factor explaining the gradual consolidation of a more cooperative stance in the construction sector.

The main clauses contained in national-sector collective agreements that have moved in the direction of improving the conditions of precarious workers in the sector are:

- Subcontracting: consists in regulating subcontracting in the construction sector in order to avoid a gradual deterioration in the working conditions of subcontracted workers. This clause was introduced after the subcontracting law was passed in 2006. It has also managed to limit entrance of TAWs, except for very specific tasks.
- Construction Labour Foundation (FLC): it is a bipartite organization in charge of providing and promoting training, particularly regarding health and safety conditions. Its regulation and functioning has been regulated successively in all national sector collective agreements. It is also considered to be an important instance for strengthening social dialogue among social partners.
- Bipartite Commission for Prevention in the construction sector (OPPC): it is an institution that provides legal support and training to companies in order to incorporate prevention mechanisms.

However, it is also admitted how the recent labour market reform has introduced some elements that put under threat the vitality exhibited by social dialogue in this sector. In particular, they point out how there are some collective agreement at provincial level that are blocked and this is explained by the incentives provided by the 2012 reform on employers. In 2012, in the construction sector half of the territorial agreements had not been signed (Sanguinetti, 2013). The employers interviewed also recognize that there are conflicts between social partners at the provincial level, especially by the existence of wage dumping between regions. Wage differences between regions (national collective agreement sets the minimum wages and the rate of increases) implies unfair competition between companies from different regions offering lower costs because incorporate lower wages. As pointed out by the representative of the employer organization, “at the provincial level there is more conflict between social partners. At the national level, the level of cooperation is higher”.

Both trade unions and employers considered very positive the strategy adopted since 2000 and consisting in working more closely and developing common spaces for dialogue among them. This has allowed not only the consolidation of social dialogue in the sector as the default strategy in order to solve conflicts, but it has also contributed to the appearance of new group of managers and trade union representatives with a different (more cooperative) conception of industrial relations

The shared diagnosis of the problems going through the construction sector does not mean trade unions and employer organizations have the same view on all aspects related to labour relations in this sector. In particular, they are aware of some disagreements, but the important thing is that both sides acknowledge that social dialogue is the best mechanism to solve those differences and set the conditions for the sector to recover a growth path.

An example of this shared diagnosis and responsible behaviour is the wage update of the fifth national sector agreement, signed in 2013. This consisted in a revision of some of the contents, and in particular, of the pay increases initially established. Trade unions have accepted a higher degree of wage moderation (art. 53) in exchange for a commitment from employers to create employment as well as the reduction in the number of contract by work contracts. Moreover, this revision also included the possibility to not apply (opt out) the conditions of the fifth agreement in some companies. In exchange for this, trade unions managed to obtain a commitment to apply all the conditions contained in the national sector agreement into provincial level agreements.

### ***Initiatives (campaigns, strikes, collective bargaining, common policies, etc.) and results***

In line with what has been said above, the main campaigns organised by trade unions in order to improve the conditions of precarious workers include demands to the government in order to increase public investment as well as to extend unemployment benefit coverage. In the words of one of the trade union representatives interviewed, “the important question at this stage is not so much to improve the conditions laid down in the collective agreement, but to allow those unemployed to find a job”.

From the employers’ point of view, the main campaigns developed also include demands in order to increase public investment (especially in public works) as well as to facilitate credit to companies and individuals.

Regarding the initiatives against precariousness in the construction sector, two types can be distinguished. First, those developed during the last 10 years and that have been collected in the fifth national sector agreement. These initiatives aim at improving working conditions in the sector. By contrast, the most recent initiatives have as their main goal to restore employment creation in order to help those unemployed to find a job.

During the growth period preceding the crisis, most joint initiatives were aimed at improving working conditions, in a context of rapid growth, particularly for the construction sector. Some of these initiatives were:

- The fixed work by contract in construction sector (*contrato fijo de obra*), that implies stability within the temporary relation with the companies.
- Law 32/2006, that implies the regulation of entry of TAW and intermediaries.
- Bipartite bodies, like FLC and OPPC that allow to improve health and safety regulations, training etc.

More recently, the most important joint demands by trade unions and employers consist in a) asking governments to revitalize the construction sector; b) improving conditions of unemployed. Regarding the first, information campaigns have been carried out and demands of increase of public and private investment by trade unions and employers.

The following table summarizes some of these initiatives.

**Table 5: Details on main initiatives to improving conditions**

Initiative	Objectives	Actions	Participants
Subcontracting Law (32/2006)	Regulate subcontracting in construction sector	Initiative promoted by social partners and supported by political parties It becomes art. 26 'Subcontracting' of the NCA	Unions, Employers and Government
Construction Labour Foundation (FLC)	Bipartite body that ensures training and prevention services on labour risks	Definition and progressive adjustment in subsequent agreements Training offer, particularly in occupational health and safety	Unions and Employers signed of NCA
Bipartite commission for Prevention in the construction sector (OPPC)	Bipartite body that supports sector companies on occupational health and safety	Monitoring of workplace accidents Organization and control of visits to sites Proposed solutions Mobile training on site "Common Space": monthly meeting between social partners in Executive Committee	Unions and Employers signed of NCA
Retirement at 60 years in the construction sector	Retirement without loss of rights for workers on site with more than 60 years	Public awareness campaigns	MCA-UGT (Union)
CEOE proposals to housing reform, rehabilitation of buildings and urban regeneration (2013)	Promote the rehabilitation, maintenance and energy efficiency of the built park	Public awareness campaigns	Mains Unions and Employers (FECOMA-CCOO, MCA-UGT and CNC)
Construmat, Manifesto for the building sector and civil works in Spain (2011)	Promote the rehabilitation, maintenance and energy efficiency of the built park Promote a pact on investment in public works Encourage new housing policies	Information and awareness campaigns Development of measures and proposals for the revitalization of the sector	Sectoral Employers Organizations (national level)*
Platform by consolidation of the construction sector and its contribution to growth	Boosting public investment Promote public-private partnerships Solving the problem of late payment by public administrations Policy of comprehensive and coordinated infrastructure Internationalization of companies Implement a coordinated housing policy, tailored to the needs of the sector Promote policies to rehabilitate buildings	Information and awareness campaigns Development of measures and proposals for the revitalization of the sector	Mains Unions and Employers (FECOMA-CCOO, MCA-UGT and CNC)

\* Confederación Española de Asociaciones de Fabricantes de Productos de Construcción (CEPCO), Asociación de Promotores Constructores de España (APCE), Asociación de Empresas Constructoras de Ámbito Nacional (SEOPAN) and Consejo Superior de los Colegios de Arquitectos de España (CSCAE)

## **Temporary Agency Work**

### ***Introduction and Context***

Temporary Agency Work in Spain was made legal by law 14/1994. Since then, it has grown significantly, amounting to around 15% of new contracts signed over the year (García del Barrio 2014). Moreover, it has suffered from some legal reforms. Initially, the main objective of these reforms was to equalize working conditions of TA Workers and those of recipient companies. However, more recently changes have widened the scope of economic sectors and activities where TA workers could operate. This was the case of the 2010 reform (Law 35/2010) whereby the scope of TAW was extended to activities that were prohibited until that moment (Calvo y Rodríguez-Piñero 2011). Moreover, that reform also contributed to improve the position of TAW companies vis-à-vis multi-service companies, that since the late 1990s had experienced a significant expansion and that competed with TAW companies in providing workers to user companies, including some sectors (like now construction) where TAW were banned (Calderón 2010). The negotiation of the VIth National Sectoral Agreement was accordingly marked by the expectation of a quantitative extension of TAW as well as an increase in profitability by TAW companies thanks to the new regulation included in Law 35/2010. In addition to extending the sectoral scope of TAW, Law 35/2010 has also transposed Directive 2008/104/CE on TAW (González 2011). This has led to an increase in those working conditions contemplated in the collective agreement covering employees in the use company, that will be equalized for TA worker.

More recently, Royal Decree Law 3/2012 of Urgent Measures for Labour Market Reform has also opened new opportunities for TAW companies as labour market intermediaries. In particular, private companies will work in coordination with public employment intermediation systems in order to place workers (Jávega 2012). In particular, TAW companies will help the public employment system with the placement of long-term unemployed, and in particular, those aged over 55.

The main actors in the TAW sector are:

- Employers' associations: National Association of Temporary Employment Agencies ('Asociación Estatal de ETTs': AETT); Spanish Federation of Temporary Employment Agencies (FEDETT); and Association of Big Agencies of Temporary Work ('Asociación de Grandes Empresas de Trabajo Temporal'; AGETT). This one comprises the six largest enterprises in the sector, as well as their subsidiary companies, and was created as a split from AETT. AETT groups 72 small and medium enterprises, and FEDETT around 70, in general smaller. All are members of great confederation of enterprises, CEOE
- Trade Unions: Comfia-CCOO and Fes-UGT are the two federations in charge of negotiating the national collective agreement on TAW

### ***Developments in terms of Precariousness***

TAW plays an increasingly important role in the Spanish labour market as showed by the share of contracts made through TAW companies. However, the number of TA workers has exhibited a decreasing trend in recent years due to the effect of the crisis, that has also limited the demands for TA workers. This means that on average, the duration of contracts is decreasing.

This is a first factor to be considered when assessing the precariousness of TAW workers, as shorter contracts increases income uncertainty.

Table 6: Number of Contracts, Number of Temporary Agency Workers and Employees of TAW

	Number of contracts in the economy	Contracts TAW	% sobre contratación total país	Temporary Agency Workers	Employees of TAW companies
2010	14.420.138	1.932.448	13,40%	114.781	5.323
2011	14.433.232	2.031.712	14,08%	117.786	5.394
2012	13.768.993	1.952.778	14,18%	104.137	5.018
2013	14.792.614	2.120.117	14,33%		4.986

Source: Ministry of Labour

Trade unions and employers organizations in the TAW sector agree on highlighting the gradual process of convergence between working conditions and rights of TAW workers and those of user companies. Taking into account that TAW is by definition unstable and thus a potential form of precarious work, several regulations since the mid 1990s, including EU directives, have contributed to limit the negative impact of this form of employment. Moreover social partners also agree on the very positive role of collective bargaining in the TAW sector, that has introduced further guarantees for workers in this sector. As a matter of fact, trade unions interviewed manifested that working conditions of TA workers are nowadays the same of any worker in user companies, except for the temporary character of their relationship with this company.

They nonetheless point out how the crisis has triggered an erosion of working conditions of all workers, including TA workers, but they do not think this group has been hit harder because of the abovementioned guarantees introduced by law and collective bargaining.

Even though trade unions agree on the remarkable improvements in the position of TA workers, they nonetheless are critical with the prospects of extending the role of TAW companies to placement services and / or with the generalized reliance by companies on temporary contracts. In this regard, they think that recent legislation promoting open-ended contracts by reducing social contributions paid by employers will only help large companies, which account for a small size of total employment in Spain. By contrast, employers have welcomed this policy measure.

The average profile a TA worker is very heterogenous, but roughly speaking, it corresponds to a person aged between 20-30. In particular, a recent report by Asempleo shows how 57% of TA workers are below 30. This means that young people consider it an instrument to overcome the high unemployment that characterizes youth in Spain and have their first experience in the labour market. Moreover, it is also argued how TAW tend to have part-time contracts of around 50% of the daily working time for a full-time open ended employee. As pointed out above, the duration of contracts for TA workers is shorter compared to other TA workers in the EU countries. Thus 63% of contracts have a duration below one month in the case of Spain (Asempleo 2012). Moreover, most TA workers do it in the service sector, and there is a predominance of women. Regarding skills and qualifications, it is pointed out how the crisis has led to an increase in the number of TA workers with a university degree or occupational training. However, the typical skill profile corresponds to a person with primary or secondary education.



### ***Positions of Trade Unions and Employers***

The position of trade unions regarding TAW in Spain has passed from open rejection in the early 1990s when the Socialist government expressed its intention to change article 43 of the Worker's Statute. Law 14/1994 opened the door to this form of employment, though it contained several limits to the extension of this form of employment to certain sectors and / or occupations. Gradually, those limits have been relaxed and at the same time, further guarantees have been introduced leading to the leveling up of working conditions with respect to workers in user companies. According to trade unions, TAW is no longer a necessarily precarious form of work.

On the employer side, they consider that TAW has a very positive impact on the labour market as it enhances its flexibility, but without necessarily undermining workers' rights. In this regard, the employers interviewed make a very positive assessment of the 2012 reform that opens the door for TAW companies to performing new roles in the labour market, including labour market intermediation services as well as provision of training. In other words, it means the inclusion of TAW companies into the implementation of active labour market policies in Spain. Moreover, they also argue that there is evidence pointing out to a positive relationship between incidence of TAW and transformation of temporary into open-ended contracts (Asempleo 2012). That is, TAW would be a stepping stone for young workers in their endeavor to find a stable open-ended contract.

Some of the most problematic aspects usually associated to TAW like now pay, representation structures etc., have been regulated extensively by laws and collective agreements. In the years following the legalization of TAW in Spain, most companies regulated the working conditions of their workers through company level agreements of TAW companies. This implied in many cases that TAW workers enjoyed from inferior working conditions to those of non-TAW workers in those sectors. After some conflict between unions and employers, a consensus was reached on the need to regulate working conditions through sectoral collective agreements. Five national sector collective agreements have been signed so far, starting in 1995. The experience of social dialogue and peak-level collective bargaining in the Spanish TAW sector was considered as a best practice by UNI as well as EUROCIETT.

Collective bargaining in the TAW sector is characterised by the existence of a national – sector agreement, then complemented by lower level agreements at provincial as well as company level. One of the points coming out from the interviews is that due to the extensive legal regulation of TAW, there is very little scope for collective bargaining to substantially affect developments regarding precariousness in this sector. Both trade unions and employers agree that in spite of the narrow spaces left by legal regulations, social dialogue in this sector has contributed to provide additional protection to TA workers and has always developed fluently, though some disagreements have come out as a consequence of the crisis, and in particular following the 2012 labour market reform.

### ***Dynamics between unions and employers***

Since the legalization of TAW in 1994, collective bargaining in this sector has played a key role. Thus according to Rodríguez Piñeiro (.....), collective agreements in the years after Law 14/1994 was passed, have made a remarkable contribution to neutralize some of the

potentially negative impact of the 1994 labour market reform and the model of TAW it sanctioned.

Social Dialogue in the TAW sector reached a peak in the 2006 peak inter-confederal agreement for the Improvement of Growth and Employment ('Acuerdo para la Mejora del Crecimiento y el Empleo', AMCE) of 9 May 2006. The contents of the agreement were then passed into Law 43/2006. The main innovations of the agreement were related to the stimulation of permanent employment as well as the introduction of limits to the number of consecutive temporary contracts an employee could have.

The concern of social partners in the TAW sector has been to foster employment security, and this has been the main subject in social dialogue over the last decade, mainly through tripartite national agreements and their reflection in sector-level and company-level agreements in the TAW sector. The social partners agree that employment security must be a priority objective in collective bargaining, though companies require a framework of temporary recruitment that allows them to adapt to the market situation. They share that the most effective way to achieve a balance between these competing claims is to use internal mechanisms of qualitative flexibility rather than external adjustments of employment. For this reason, they welcomed the attempts by tripartite agreements in the years previous to the crisis to develop functional flexibility mechanisms that would also allow TA workers to play a more important role.

In October 2009, an agreement between trade unions and employer organizations was reached in order to implement gender equality plans in TAW companies. This agreement was highlighted by social partners as an example of the positive contribution made by social dialogue in this sector in order to enhance working conditions. But the interviews with social partners revealed a number of issues where collective agreements had included clauses that were well beyond the legal minima. One of them, deriving directly from recommendations made by social partners in the peak level tripartite agreements for collective bargaining signed since the late 1990s, consisted in establishing a minimum percentage of workers with open-ended contracts in TAW companies. This percentage was set at 65% of structural employees (i.e., workers in TAW companies, not in user companies). According to the employers interviewed but also trade unions, this percentage has been maintained in most companies. Finally, another example of the positive dynamics that characterize social dialogue between unions and employers in the TAW sector is the inclusion of a clause improving legal minima about investment in training activities. According to employers, it is very likely that this clause will be maintained and even increased in future collective agreements due to the new scenario opened by the 2012 labour market reform, which opens up new scenarios for TAW where training will play a key role.

Notwithstanding the positive legacy of social dialogue and collective bargaining in the TAW sector in Spain, recent developments have made it come to a sudden stop. Negotiations to sign a new sector-level agreement (the sixth) for TAW in Spain started in April 2011. These negotiations were marked by the expectation of an expansion of TAW in Spain due to the possibility opened by the 2010 law to operate in risky sectors and occupations. In their agenda for negotiating this agreement, trade unions focused on four main issues:

- Employment stability in order to avoid the high level of job rotation observed
- Avoid mismatch between occupational categories and education level (overqualification)

- Reducing the pay gap with respect to other sectors where there are similar educational requirements
- Trade union monitoring of terms of agreements, especially regarding training and lifelong learning.

Moreover, the initial contacts between unions and employers were also marked by the uncertainty surrounding the possibility of a new labour market reform that was finally passed unilaterally by the government in February 2012. The first meeting after the 2012 reform showed very clearly how the position of employer organizations had changed remarkably with respect to previous negotiations. According to trade unions, the reason is that this new labour market reform empowered TAW companies and they accordingly have also translated this new position into collective bargaining. As a consequence of this, it became clear how the positions of trade unions and employer organizations were very opposite. As a matter of fact, their positions had never been so far from each other since the mid 1990s, when social dialogue started to deliver some agreements in this sector. Trade unions argue that this is attributable to the labour market reform that gave incentives to employers to use delaying tactics in the negotiations, including extreme proposals that would have been unthinkable under other circumstances.

One of the aspects where the impact of the reform was clearer was in the structure of collective bargaining in the TAW sector. Until the 2012 reform, there was consensus among trade unions and employer about a two-tier bargaining structure, with a state-level sector agreement establishing common guidelines and minima for company level agreements. In recent meetings, the position of employer has shifted towards a strong defense of company level bargaining. The abolition of the automatic temporal extension of collective agreements (*ultraactividad*) gave employers incentives to delay the negotiation of the sectoral collective agreement in order to leave it expire so that employees would then be covered exclusively by the legal conditions established in the Workers' Statute. There have been several court rulings obliging employers to negotiate the extension of the collective agreement until a new one is signed.

The difficulties encountered for moving forward with the negotiations led social partners to rely upon the mediation of the SIMA (State Intermediation and Mediation Services). Even though there was some advance in the negotiations thanks to the mediation of this institution, in July 2013 the negotiations again broke down and some months afterward, an agreement through mediation was reached establishing the extension of the fifth sectoral agreement until 31 december 2014.

In spite of the attempts made by trade unions in order to restore social dialogue and renew the agreement, including the acceptance of strong wage moderation, very little progress has been made in this regard so far. In September 2014, trade unions and employers met in the national mediation service body (SIMA) in order to try unblock negotiations. However, trade unions manifested that employers are delaying the negotiation of a new collective agreement until a court ruling by the Supreme Court (*Tribunal Supremo*) will come out. This ruling will be around a demand posed by employers about the application of the 2012 regarding the temporary extension of collective agreements after expiry.

On the employer side, they argue that the 2012 opens up a new scenario for TAW companies, but that in order to take advantage of the opportunities opened, it is necessary to move beyond previous collective agreements. This means first of all adopting a collective bargaining

structure more decentralized in order to allow a better fit between companies' requirements and conventional regulation. Moreover, it is also necessary to introduce more flexibility in some dimensions of working conditions, including working time and wages.

### ***Campaigns, Initiatives***

The paralysis of social dialogue and collective bargaining in the TAW sector explains the lack of common initiatives and campaigns aimed at improving the position of TA workers. Some of the most interesting common initiatives developed in previous years have already been mentioned already. One of them was the inclusion of additional resources for training activities of TAW in the third sectoral agreement and the maintenance in the fourth and fifth collective agreements. This is an important aspect to improve the conditions of TAW and has also important implications for health and safety issues. According to trade unions, but also employer organizations, training not only enhances the employability of the individual worker, but it also contributes to reduce accidents and work related injuries.

Other previous common initiatives consisted in plans in order to guarantee equal treatment among men and women.

On the union side, some campaigns have been developed unilaterally in order to improve the position and conditions of TA workers:

- **¿SOMOS PROFESIONALES?: NO PROLONGUES TU JORNADA** (Aren't we professionals? Do not work overtime). One of the most recent campaigns by trade unions (in this case COMFIA-CCOO) has been aimed at defending the right of TAW to not extend their working time beyond what is established in their contract. The increase in non-paid hours during the crisis has been a generalized phenomenon. In some service sectors like now banking, insurance or also TAW, this has been an abusive practice which has de facto meant a decrease in real hourly wages of employees.

On the union side, their priority at the moment is to guarantee that a new national sector collective agreement is signed, in order to guarantee maintenance of working standards of TA workers.

## **Hospitals and Care**

### ***Introduction and Context***

The health care and hospital sector in Spain is a very heterogenous sector, both from the point of view of the employers or providers (public vs private), the subsectors within it (public hospitals, private hospitals, health care etc.) as well as from the characteristics of workers employed (Hernández 2005).

Even though the hospital sector is predominantly public, since the late mid 1990s there has been a rapid increase in private hospitals and private provision. Moreover, many private centres have signed collaboration agreements with the public health system whereby they will

also provide some services to patients from the public service. In other words, there has been an increase in externalization of some medical services, particularly in the context of the economic crisis and the declining resources devoted to the public hospital system.

According to data from the Ministry of Health and Social Security, there are 452 hospitals in the public national health system that employs 77.279 doctors and 20.489 doctors in training programs. Moreover, hospitals in the national health system employ 136.574 workers (MSSI 2013). Finally, we should also count workers in the administration and other services.

The public health system in Spain has been decentralized at regional level where it is managed. In 2002 the process of decentralization culminated with the transfer of powers to those regions where the health system was still managed at state level. This would explain the existence of significant (and increasing) disparities across regions in number of hospitals, doctors and beds per inhabitant.

There is no collective bargaining in the public hospital sector. Workers in the public sector are covered by specific regulations for public employees. However, there are negotiations between trade unions and public health authorities that have delivered several agreements and that perform a similar function to collective bargaining. It is nonetheless important to note that collective bargaining is different depending on the contractual position of the workers. Thus in the case of civil servants (*funcionarios*), their working conditions are laid down in the laws regulating the public sector employees and the public health sector<sup>4</sup>. By contrast, those with an employment relationship regulated according to the Workers' Charter (personal laboral), collective bargaining will develop according to the general regulations.

Taking this into account, all employees in the public sector working in the profession of nursing and care work, recruited as non-civil servant staff, are covered by the Collective Agreement for non-civil servant staff of the Public Administration and the agreements negotiated at regional level. The working conditions of civil servant staff, on the other hand, are regulated according to the regional agreements concluded in each autonomous community by the most representative social partners and members of these administrations.

In the private hospital sector, collective bargaining is very fragmented and lacks articulation. There is no national level agreement and only in some provinces there are sectoral collective agreements covering private hospitals in that province. Many private hospitals lack their own collective agreement and there is a predominance of individual negotiations between management and employees. The number of private hospitals has increased rapidly in recent years, though there is no available data on the number and employees. Moreover, many of these hospitals have signed collaboration or association agreements with other public hospitals whereby they provide certain services that cannot be provided in the public sector.

In the case of the care sector, public provision is marginal. The turning point in developments in this sector occurred in 2006, when the law on the promotion of autonomy was signed. The law established both economic and service benefits. Service benefits are made through the public offer of each Autonomous Community's Social Service System by means of public or state-subsidised centres and services. In this sense, it must be emphasized that the number of public residences (service benefits) has remained quite constant over the last six years. Therefore, the number of public residences for dependent people accounted for 13% of the

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<sup>4</sup> Law 55/2003 of Framework Charter for Civil Servants in the Health Sector, and Law 7/2007 of Charter for Public Employees

total number in 2002, while in 2008 (two years after the law was enacted) this figure was 20%. Moreover, austerity measures have had a very negative impact on the expansion of publicly funded care residences and services.

The most representative unions have actively supported the 2006 law, acknowledging its importance for professionalizing the sector. However, the implementation of the law, mainly focused on financial subsidies rather than services provision, has made the unions to adopt a critical position, claiming for a development of direct public provision. Trade unions believe that the way in which the 2006 has been implemented has contributed to further precariousness in the sector, rather than to tackle it, as envisaged initially.

Collective bargaining in the care subsector (particularly, the elderly care subsector) develops autonomously from the hospital sector. In particular, collective bargaining in the care sector is more centralized than the hospital sector. The health care subsector has developed a more centralized collective bargaining system where sectoral agreements at a national level provide a general regulatory framework for health care workers. As a matter of fact, the national sector agreement<sup>5</sup> opted to include the health care sector within social services rather than within the health sector. Thus in the collective agreement of private centres for elderly care, social partners explicitly excluded those companies delivering health care services as their main activity.

The two national agreements in the care sector are of great importance as regards the organisation and hierarchical structuring of collective bargaining. In particular, these agreements contain very detailed regulations regarding the articulation with lower level agreements. It can accordingly be concluded that social partners are seeking to establish a national sectoral regulatory framework.

### ***Developments in terms of precariousness***

Employment in the public hospitals sector was traditionally characterized by a dominance of stable contracts. Even though this is still the case, there has been an increase in atypical forms of employment over the last ten years that has intensified particularly since 2010. The most important form of atypical employment in the public hospital sector is part-time. The trade union representative argued that part-time was seldom used in the public hospital sector, but its use has increased significantly in recent years in line with more general developments in the Spanish labour market. Even though part-time in the public hospitals sector is mostly involuntary, as is the case with most part-time contracts in Spain, trade unions acknowledged that it does not necessarily implies low pay, as is the case with an increasing percentage of part-time contracts in Spain, particularly during the great recession.

Another important form of atypical employment in the public hospital sector is related to temporary contracts, and in particular, contracts to cover night hours (guardias). Finally, it was also mentioned how there has been an increasing number of temporary contracts signed only for weekends. This last form of contract was regarded particularly precarious and worrying for trade unions as it implies working only two days per week and signing on-call contracts. According to trade unions, this type of contract introduces a distortion into the teamwork logic that characterizes work in hospitals. The teams are integrated by groups of people with

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<sup>5</sup> Fourth national framework agreement of care services for dependent persons and promotion of individual autonomy (BOE, August 4th 2006)

different skills that develop joint tasks and know each other very well. Introducing frequent rotations into these teams may result in poorer service quality provision.

These atypical contracts are mostly held by employees in lower level categories. But precariousness is also increasing among the most skilled employees in public hospitals (doctors) due to the ban on new jobs imposed by the governments since 2010. This implies that many doctors occupy an interim position until their definitive job will be opened. Being on an interim contract implies lower protection and a higher probability of being fired, as has happened in the last three years according to the trade union representative.

As pointed out by Hernández (2005), even before the crisis, there had been an increase in the number of non-civil servants in the public hospital sector. The working conditions of these employees were regulated in their collective agreements, but they don't enjoy the benefits and opportunities (in terms of promotion, geographical mobility, functional mobility etc.) enjoyed by civil servants. In other words, in the same public centre and/or health system there are workers developing similar tasks and having similar responsibilities, but with very different rights within it (Hernández 2005).

Notwithstanding the above, employment stability and the predominance of civil servants characterised employment relations in the public hospital sector, with the only exception of Catalonia, that had developed a model not based on civil service. However, the crisis has led to an increase in the number of workers with temporary contracts, which has been particularly intense in the case of Andalucía and Madrid (El País 14-10-2014). It is estimated that by 2014 around 17-20% of workers in the health system had a fixed-term contract (Gaceta Sanitaria 2014). Some recent news appeared in national newspapers have alerted about the abnormal levels of temporary contracts signed in the public hospitals, and in particular in the Catalan system (El País 2014a).

Table 7: Structural and Temporary Employees in the Public Hospital Sector by Region

Andalucía	9300	7000	1 - 4 months
Aragón	4250	762	1, 3 and 12 months
Asturias	3162	--	3 months
Baleares	2323	289	
Canarias	4021	483	1 and 3 months
Cantabria	1200	235	1 and 9 months
Castilla y León	7436	293	6-12 months
Castilla la Mancha	5700	--	1 and 3 months
Cataluña	3126	392	1 and 3 months
Comunidad de Madrid	12000	4000	Until December 2014
Comunidad Valenciana	7852	829	1 and 3 months
Extremadura	3058	440	1, 3 and 6 months
Galicia	7431	--	1 month
La Rioja	680	84	6 months
Murcia	3120	780	6 months
Navarra	1527	882	1 and 3 months
País Vasco	5500	800	1, 3 and 6 months

Source: Gaceta Sanitaria

In the case of the public sector, the human resource manager of the Catalan health system (CATSALUT) argued that the only forms of atypical employment used are two: the bridging or substitution agreements (*contratos de relevo*) and contracts for temporary disability or illness. The former are used in order to cover the hours left uncovered by the early retirement of another worker. The later is used in order to allow the incorporation of new employees when older workers retire. In any case, she argued that the use of these contracts is limited by budgetary constraints, which have become much more stringent under the crisis. Even though she argued that these limits are a bit more flexible in the health system due to its important social role, they have nonetheless translated into a decreasing number of atypical contracts.

The profile of persons hired under these contracts, according to the HHRR manager of CATSALUT is similar to the average for the whole system; women around 30-35 years and Spanish nationality.

In the case of private hospitals, reliance upon atypical contracts, including part-time, fixed-term contracts and self-employment is much more widespread. In private and privatised hospitals, most services are externalised, and this means that working conditions are worst than their peers in public hospitals. This includes atypical contracts, earnings as well as working time. In addition to higher levels of temporary employment, there is more rotation from one position to others. But there are important differences in the distribution of these forms of employment across skill levels. In particular, most doctors are bogus self-employed and the private hospital contracts their services. Moreover, there is also an increasing number of doctors with part-time contracts in the public system, that are also hired part-time in a private hospital. By contrast, employment conditions of nurses and administrative staff in private hospitals is characterized by the growing importance of temporary contracts as well as lower salaries compared to workers with similar skills and developing similar tasks in the public sector.

The diverse typology of hospitals and health centres (public, private and associated or semi-private centres) has accordingly reflection in the diversity of contractual situations of their employees. Thus even though it is very clear in the case of public centres the existence of a dependent relationship, it is not so clear in the case of private and semi-private hospitals, where professionals may hire spaces and work as self-employees (Montoya Melgar 2009).

Levels of precariousness are much higher in the care sector. In particular, there is a predominance of temporary workers and high levels of job turnover. This is combined by low salaries. Women by far exceed men in this sector of the economy and there is a predominance of migrant workers.

In spite of the enactment of Law 39/2006, on the Promotion of Personal Autonomy and Care for Dependent Persons, that aimed at introducing positive elements favouring better working conditions and job quality, the situation eight years afterwards exhibits some, though limited improvement. Migrant women amount to around 75-80% of total employment in the care sector. Their working conditions are still characterised by high levels of temporary employment and low salaries. As pointed out by Aragón et al. (2007) employment in this sector is characterised by precariousness, notably in two dimensions: income and stability. As regards income, the national multi-employer agreements of the sector set up a minimum wage below 1000 euros for the professional categories which do not require university degree, while the wage average in Spain in 2010 was 1,802 according to the Wage Structure Survey. As regards stability, the estimations points out 40% of temporary employees, whilst the overall temporary rate is about 30%.



The development of professionalization in the care sector, one of the objectives pursued by the 2006 law, has run short of expectations. It was expected that professionalization would contribute to a generalized improvement in working conditions. As a matter of fact, several authors have showed (Recio 2013) how the law has triggered a significant increase in financial transfers to families. Families will then either provide the service by one of their members or will use the money to hire a person. Thus care falls still mainly on the family and public and state-subsidised professional social services have scarcely developed.

### ***Positions and strategies of unions and employers concerning precariousness***

Trade unions are stronger in the public sector and representation of workers is easier for them. In the private sector, membership is lower and faces an additional challenge: poorer working conditions, especially job insecurity.

The two most representative trade unions at national level are present in the hospital sector: the Trade Union Confederation of Workers' Commissions (Confederación Sindical de Comisiones Obreras, CCOO) and the General Workers' Confederation (Unión General de Trabajadores, UGT). Also present are two professional organisations which represent the interests of doctors and nurses respectively: the National Confederation of Doctors' Trade Unions (Confederación Estatal de Sindicatos Médicos, CESM) and the Nursing Union (Sindicato de Enfermería, SATSE). On the employer side, there is no national organisation in this sector.

The interview with the HHRR manager of CATSALUT showed the difficulties to engage in fruitful dialogue with workers' representatives and trade unions in order to improve the situation of precarious workers. In recent months there has been a number of newspapers denouncing the situation in public hospitals in Catalonia. In particular, these news highlight the abuse of temporary contracts to occupy structural positions in public hospitals. Even though there is certainly a need to rely upon fixed-term contracts to cover temporary shortages, trade unions criticise that the number of temporary contracts signed in recent years by far exceeds those needs.

As a matter of fact, the manager argued that they have no official position regarding the fight against precarious employment in the public hospital sector as they consider the use of these contracts marginal. This nonetheless contrasts with recent news and the positions of trade unions.

Paradoxically, the increase in temporary employment in the public sector is also explained by the lack of a ceiling on the percentage of workers with this type of contract over the total number of workers. Thus most collective agreements in the private sector contain a maximum percentage of workers with temporary contracts (Montoya Melgar et al. 2008). This percentage varies across regions, but is on average 20%. Moreover, private hospitals are obliged to make stable workers that have been on temporary contracts for two years within a 30 month period, as laid down in the law. None of these limits apply to public hospitals. Thus, as pointed out by a representative of the Catalan Public Health Department, the use of temporary contracts in public hospitals is not under these clauses.

Similarly to what was observed in the case of public hospitals, precarious employment is not considered an important problem by employer organizations in the private hospitals sector. As a matter of fact, they argue that in terms of contracts, their role as employer organizations

consists mostly in providing legal support and advice to private hospitals when contracting professionals as many of them have already a position in the public sector.

In the private hospital sector, there is no national sector agreement, and not all regions have their own agreement. Most agreements are signed at company / centre level. UGT and CCOO are trying to develop social dialogue with private hospitals at national level in order to guarantee a minimum floor of rights, but employers in this sector are reluctant

### ***Dynamics between unions and employers – Collective Bargaining and Social Dialogue***

At the moment, the relationship between trade unions and the Ministry of Health and Social Security is very tense as the ministry considers that there is no obligation on their side to negotiate conditions with trade unions. The Ministry of Health and Social Security considers that the interlocutor has to be found at regional level because the health system is decentralized. However, the most representative trade unions at national level consider that there is a need to provide a minimum floor for working conditions and coordinate certain areas at national level in order to avoid the excessive disparities that characterize the public health system in Spain nowadays.

The dynamics between unions and employers are different in the public and private hospital sectors. The reason is the existence of different actors. In the case of public hospitals, the employer are regional governments and to a much lesser extent the state. On the trade union side, there is a variety of interlocutors, including general or class trade unions (CCOO and UGT), public sector trade unions (CSI-F) as well as occupational or corporativist trade unions (SATSE and CEMS). This creates some difficulties and tensions, especially on the union side. In particular, the general trade unions criticize the formation of occupational forums (foros profesionales) between the occupational trade unions and the ministry of health and social security after negotiations with the rest of unions broke down in 2010. The government argues that these forums play a purely advisory role on technical matters. However, the trade union representative interviewed argued that these forums deal with issues that have to be negotiated under a collective agreement, not through narrow professional negotiations.

Several clauses are included in regional level agreements for non civil servants of the public hospital sector in order to promote stable contracts:

- Clauses establishing limits to temporary contracts; even though there are important differences across collective agreements, most of them establish a maximum 20% of workers with temporary contracts in the centre. Some collective agreements contain a minimum percentage of stable contracts (meaning open-ended contracts).
- All collective agreements in the public hospital sector contain very detailed regulations of the maximum duration of temporary contracts, a particularly sensitive issue given the increasing number of workers (either doctors or nurses) without stable contracts.
- The other mechanism used in order to promote stable contracts is the transformation of temporary into open-ended contracts, including training contracts.
- Finally it is interesting to note how in many agreements, social partners have agreed to pay a compensation to the worker when the temporary contract finalizes. The Spanish law does not contain any right for the worker to receive compensation upon finalization of a fixed-term contract.

Training contracts are very important in the hospital and health care sector. Most collective agreements also contain detailed regulations of the content and requirements of training during the period of the contract. Moreover, some collective agreements also contain regulations on the maximum duration and the conditions under which the contract might become open-ended after expiry. Moreover, there are also regulations concerning the pay for training contracts. Most collective agreements establish that pay should be the same for a person with training contract and other person with the same qualifications.

Negotiations between the government and most representative trade unions in the public health sector broke down in 2010 and there haven't been further negotiations since. Only in May 2013 there were some contacts between trade unions and the Ministry of Health in order to create national-level bargaining in the public health sector. The document<sup>6</sup> sent by trade unions to the National Health System authorities claimed the need to establish a minimum floor of common conditions across regions. Negotiations have been carried out since then in order to guarantee this common floor.

In the care sector, the most important clauses aimed at tackling employment precariousness are similar to the ones discussed for the hospital sector as they derive from the recommendations included in the peak interconfederal agreements signed between social partners since the late 1990s. The first consists in promoting stability by either establishing a limit on the percentage of temporary employees in the companies affected by the collective agreement or determining the minimum percentage of workers with open-ended contracts. The national collective agreements on the care sector have usually preferred to use this second strategy and establish that 80% of workers in the company must have an open-ended contract. Moreover, this collective agreement specifies that recently set up companies have a two-year adaptation period in order to reach the 80% floor. The minima laid down in the national collective agreement have been translated differently into regional level, where some collective agreements have adopted the same percentage whilst others have increased the minimum percentage of stable employees.

As pointed out earlier, one of the key challenges of the health care sector in order to improve working conditions consists in the development of professionalization. Collective bargaining in this sector has accordingly included clauses aimed at promoting professional training and the acquisition of professional certificates among workers. Thus the national sector agreement establishes as a general principle that any employee affected by the agreement has the right to access any further studies in order to obtain academic titles and carry out courses that will improve their professional skills. The priorities of such training will be determined by the Sectoral Training Commission, made up in equal parts by members of the organisations which endorse the agreement. The lower level regional agreements have adopted similar criteria when it comes to the promotion of professional training and the acquisition of

### ***Campaigns, Initiatives***

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<sup>6</sup> See text at: [http://www.sanidad.ccoo.es/comunes/recursos/30/1653497-130527\\_Propuesta\\_sindical\\_Ambito\\_de\\_Negociacion.pdf](http://www.sanidad.ccoo.es/comunes/recursos/30/1653497-130527_Propuesta_sindical_Ambito_de_Negociacion.pdf)

In the public hospital sector, trade unions and the government have reached some agreements in the context of the economic crisis in order to alleviate its impact. Some of these agreements consisted in temporarily not applying criteria regarding the maximum number of part-time workers or temporary workers until better times would come. In this way, trade unions avoided the need to fire people, whilst allowing new entries, though with atypical contracts.

Precisely because of the above, the most important campaign by trade unions in the public hospital sector is related to the limits on new positions due to the budgetary constraints. Since 2010, the substitution rate in the public health sector was set at 50%, meaning that a new position would only come out after two retirements. According to trade unions, this is one of the reasons for the increase in temporary employment in the public hospitals sector.

In the context of the private hospitals sector, trade unions and the main employer federation FNCP (National Federation of Private Hospitals) signed in 2012 an agreement to foster lifelong learning and health<sup>7</sup>. The ultimate goal of this agreement was to facilitate internal promotion of employees and their stabilization.

Finally, in the context of the care sector, the most important joint initiatives deal with actions aimed at allowing skill acquisition by employees as well as to fight against informal employment. These initiatives are not new, but it is important to remark the existence of consensus among social partners on the need to develop joint initiatives in this regard.

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<sup>7</sup> BOE nº 311 de 27/12/2012

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