

Bargaining for Social Rights at the Sectoral Level (BARSORIS)

Policy Brief for the Kingdom of Spain

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Summary

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Research Aims

The study uncovers the challenges associated with the growth of precarious employment. It analyzes the actions that trade unions and employers have developed in addressing precarious employment in Spain. The analysis focuses on four economic sectors, including healthcare, construction, temporary agency work and industrial cleaning.

Scientific approach and methodology

The report uses a qualitative and comparative approach to study various dimensions of institutionalized forms of precarious employment and the responses of social partners thereto. In particular, the study presents evidence along a two-

dimensional approach to precarious and non-standard forms of employment. The report is based on a series of interviews with employers' representatives and trade unions in the four selected sectors and the analysis of earlier studies, policy documents, collective agreements and statistics. 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.

Objectives of the research

The objective of the research was to map the most recent developments in precarious employment and social partner responses thereto in four selected sectors Spain. The research focuses on sectors, where the use of flexible employment relations is a priori high: construction, industrial cleaning, hospitals and temporary work agencies. The study also addresses the drivers of precariousness and analyzes the effects that initiatives of sector-level social partners produced. The findings and arguments are framed around the following questions:

- What comparative conclusions can be drawn from the sectoral case studies?
- What can be learned in general about precariousness and industrial relations?
- What positive and negative experiences emerge from dealing with precariousness through industrial relations?
- What solutions, ideas and principles to deal with and reduce precariousness emerge from the analysis?

New knowledge and added value

In this report we discuss the problems and challenges social partners face concerning flexibilisation, labour market dualisation, the quality of employment and precariousness in four sectors of the economy: construction, hospitals, industrial

cleaning and the temporary agency work sector. We examine also the types of precarious work that exist in the four sectors, the origins of these types of work and their effects, as well as the respective opinions and strategies of employers and trade unions in the sector. Moreover, we show to what extent there is cooperation or conflict over precarious work and what types of solutions the two sides propose and implement.

General Overview on industrial relations, labour market trends, and precarious work

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 bargaining, 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 looking 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. 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 less job security and lower employment protection.

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. 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 different governments 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 dismissal law and reduction of severance payments.

Particularly worrying in this regard is the increasingly vulnerable position of some groups. This would certainly be the case of the youth. Many of Spanish 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. The increase in unemployment for all age groups, but particularly for younger generations has also been accompanied by an increase in long-term unemployment. Higher unemployment has also been accompanied by a deterioration in working conditions of those employed. Therefore, it can be concluded that the main source of precariousness in the Spanish labour market, and particularly for young people, is the high incidence of temporary employment.

Developments at sector level and Policy Lessons

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.

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 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 behaviour of sub-contracting companies 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.

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 ignoring 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 and disrupts the balanced of bargaining power between employers' and employees' representatives that the previous labour law legal order provided for.

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 conservative'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 factors, to the budgetary constraints in the public administration.

Key Findings and Policy Implications

- 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 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.

- 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 in 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.