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REDUCING PRECARIOUS WORK IN EUROPE THROUGH SOCIAL DIALOGUE: THE CASE OF SPAIN

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PREFACE

This research is part of a project financed by the European Commission's DG for Employment, Social Affairs & Inclusion (VS/2014/0544), with the title *Reducing precarious work through social dialogue*, carried out by research teams in six EU Member States: Denmark, France, Germany, Slovenia, Spain and the UK. The purpose of the project was to explore to what extent innovative forms of social dialogue in different country contexts can reduce the precariousness of employment and promote more inclusive labour markets. The country studies were constructed using a double, interconnected, perspective. The first part of the report addresses, from a general perspective, the different types of precarious work existing in the country studied, in our case Spain, as well as their intensity, evolution and characteristics en terms of regulatory, social protection, representation and enforcement gaps vis a vis the standard employment relation, SER. The second part of the report presents in detail three case studies of specific precarious forms of employment that have benefited from improvements in working conditions through different types of social dialogue. In the Spanish case, the cases studied are the regulation of economically dependent self-employment, the limitation of successive subcontracting in construction and the increase in minimum working hours in catering services.

PART ONE

1. INTRODUCTION

The comparative high levels of unemployment in Spain, almost regardless of the moment of the cycle, have made this country the perfect laboratory for a never-ending labour market reform. Since the approval in 1980 of the Code of Labour (*Estatuto de los Trabajadores*) of the democratic era, the declared goal of improving the capacity of employment creation of the economy has materialized in more than 50 labour market reforms with different degrees of ambition (CC.OO, 2012 and 2014). The combination of this long series of mostly liberalizing reforms and the change in employment practices of Spanish firms and the Spanish Public Administration has led to an unprecedented increase in different forms of precarious employment and the establishment of a culture of temporary employment among firms. In this respect, we can say that Spain was the *avant garde* of the European derive towards a more precarious labour market and one of its major actors.

The objective of this paper is to study in detail the characteristics and drivers of precarious employment and degradation of “new” forms of employment relations in comparison with the once standard stable employment relationship. In order to do so we will review both the types and size of workers affected by the different forms of precarious employment and the associated consequences of having such kind of jobs in terms of different types of gaps (regulatory, representation, enforcement and social protection and integration gaps) in comparison with the standard employment relationship.

Our review of non-standard precarious form of employment will cover the following: (a) temporary employment, (b) part time employment, (c) bogus employment and subcontracted employment, (d) Internships and traineeships. Together with a thorough analysis of the different forms of precarious employment listed above, the

paper will also analyze to what extent different waves of deregulation of the labour market, globalization, technical change and the abandonment of full employment as a national goal has affected the standard labour contract, with evidence of a deterioration of particular characteristics.

This list of precarious employment forms leaves out one important type of employment relationship, namely employment without a written formal contract (or verbal contract that can be used in court as proof of an existing employment relationship). Undeclared work is probably the most precarious and least protected form of employment. Unfortunately, its invisible nature makes it very difficult to study from a systematic statistical perspective, although not from alternative qualitative approaches¹.

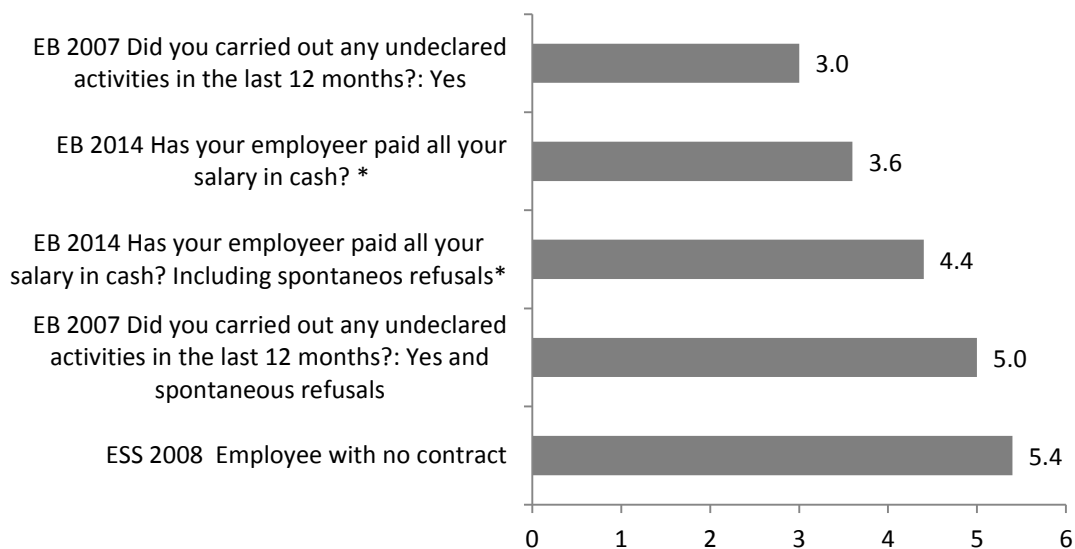
If we were to accept at face value the estimates of the shadow economy most often used in the literature, such as those obtained using indirect methods of measurement (Schneider and Enste, 2013)², and then proceed to link the shadow economy with underground work, then underground employment would be something quotidian and overarching in modern European economies. For example, according to the last estimates of Scheider (2013), the size of the shadow economy (unweighted average) in the EU (28) in 2013 would be almost 19% of official GDP. In Spain the estimate is 18.6%, with higher values for the Baltic States, Romania and Bulgaria (from 25% to 31%) and lower for Austria, The Netherlands, France or the UK (from 7.5% to 10%). If we consider that all the production of goods and services for the shadow economy is made with undeclared work, then, under the reasonable assumption that underground labour productivity is lower than “official labour productivity” (due to the composition of the shadow production and the lower capital/labour relation and human capital endowments of shadow workers), we would be talking about a EU shadow labour force equivalent at least to one quarter of the labour force estimated by the standard LFS, and probably more.

¹See, for example, Sanchez Moreno *et al.* (2007)

² The most modern approach used to estimate the shadow economy is the so called MIMIC model, which stands for “multiple indicator multiple cause”. This approach represents the output of the underground economy as a latent variable against which causes and effects are observable but cannot be directly measured. For a critical review of the method see Breusch (2005)

By contrast, the estimates obtained by direct surveys addressing the question of undeclared work produce much lower estimates. Figure 1 reproduces estimates for underground employment in Spain obtained from three different sources that address the issue by looking at three different questions: work without contract (European Social Survey), workers paid in cash -from 75% to 100% of their total wage- and people reporting undeclared activities that were not fully reported to the tax or social security authorities (Eurobarometer). From this perspective, the percentage of undeclared work obtained would be much lower, around five per cent.

Figure 1. Estimates of undeclared work using three different surveys. Spain, different years (% of total – declared and undeclared- employment).



(*) Undeclared workers defined as those paid from 75 to 100% of their wage in cash.
 Source: Eurobarometer 402 (2014) QE 10 and QE 12, Eurobarometer 284 (2007), QB19. European Social Survey (2008)

We can compromise and consider that the former estimates are the upper bound and the last survey based estimates the lower bound of underground work, in which case we would be talking about 12% of shadow labour in the case of Spain (or the EU average). A large proportion of this shadow workforce participates in the underground production of goods and services as a secondary activity (to complement his or her main “official” job). Another important part is composed of people carrying out petty activities, often independent. The remaining would be workers doing standard work

(either voluntarily or involuntarily) from all perspectives, but lacking a labour contract or self-employment official status, and therefore lacking the associated protections.

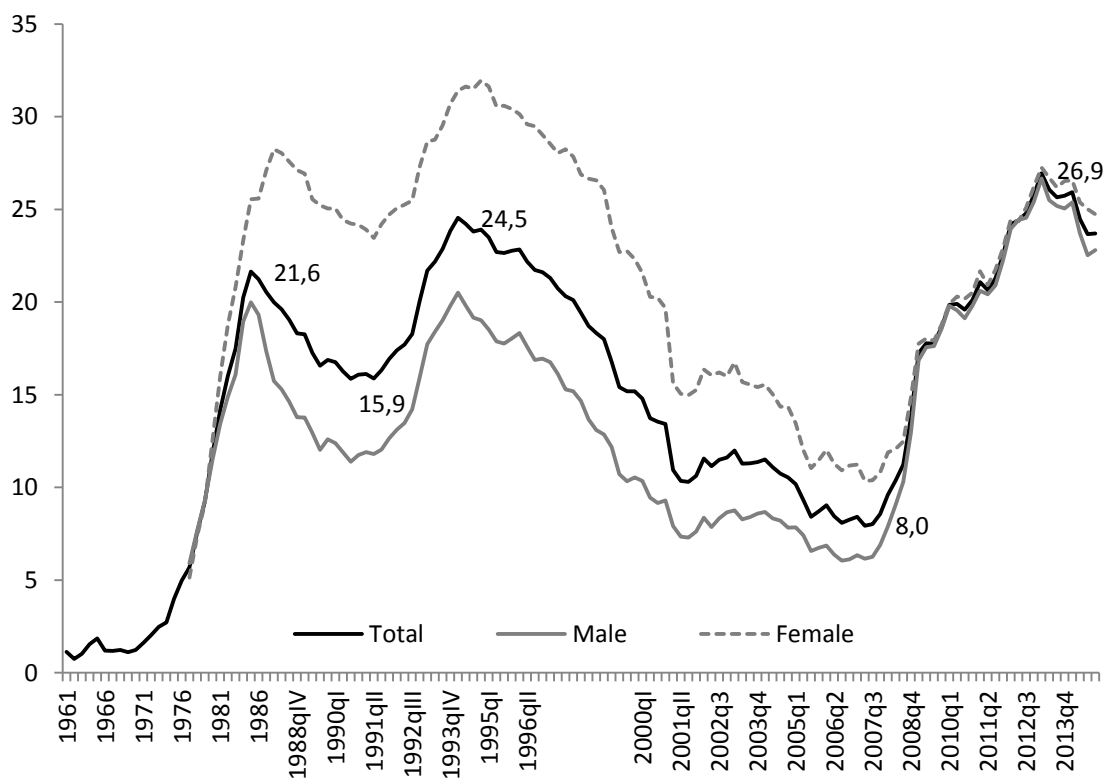
From the perspective of this study, part of the “shadow workforce” - those performing standard work but involuntarily without an employment contract - would be at the top of the precariousness scale. Unfortunately, the lack of sufficient statistical information precludes a quantitative analysis of this type of worker.

The study is organized in six chapters including this introduction. Chapter 2 will present a general overview of the regulation of standard employment, SER, in Spain, explaining the respective roles of statutory interventions and collective bargaining in setting norms and values of the SER. Chapters three to five review the characteristics and implications of the forms of precarious employment, organized according to their quantitative importance: temporary employment (chapter 2), part time employment (chapter 3) new employments forms related to subcontracting: bogus self-employment and subcontracted workers (chapter 4), and internships (chapter 5). After reviewing the major forms of precarious employment, chapter six briefly reviews to what extent the changes produced in the labour market and its regulation in Spain have affected the quality of the standard employment relationship. Finally, chapter seven presents the major conclusions reached by the analysis and debate to what extend we can talk about a general deterioration of employment conditions and the generalization of a precarious labor force in Spain.

Before proceeding with an account of the forms and implications of precarious forms of work in Spain, is important to introduce the reader to the big picture of the Spanish labour market during the decades when these forms of precarious employment were introduced and consolidated as options for Spanish firms. Of the different long-term changes in the Spanish labour market developed in the last decades (Muñoz de Bustillo and Antón, 2016), without any doubt the change that had most impact on labour market policy (and at the same time affected its development) is the high and persistent unemployment rate suffered by the country since the late 1970s. Although the high rate of unemployment experienced in Spain since the beginning of the economic crisis (second only to Greece) is well known, what is not so well known is that, unlike in most EU countries, were abnormally high unemployment is usually a

one-off episode related to the economic cycle, in Spain it has been a persistent characteristic of its labour market landscape. As we can see in Figure 2, Spain: (a) experienced massive unemployment in the two previous recessions of 1993 and early 1980s, with rates over twenty per cent in both cases, and (b) the unemployment rate was never under 8% in the last three decades. This context shaped the evolution of precarious employment in two different ways: by encouraging changes in labour market regulation favoring more flexible forms of employment (successive government administrations considered employment regulation a major culprit of high unemployment), but weakening the bargaining power of employees and trade unions vis a vis firms' and employers' organizations.

Figure 2. Unemployment rate (%) in Spain: 1960-2014.

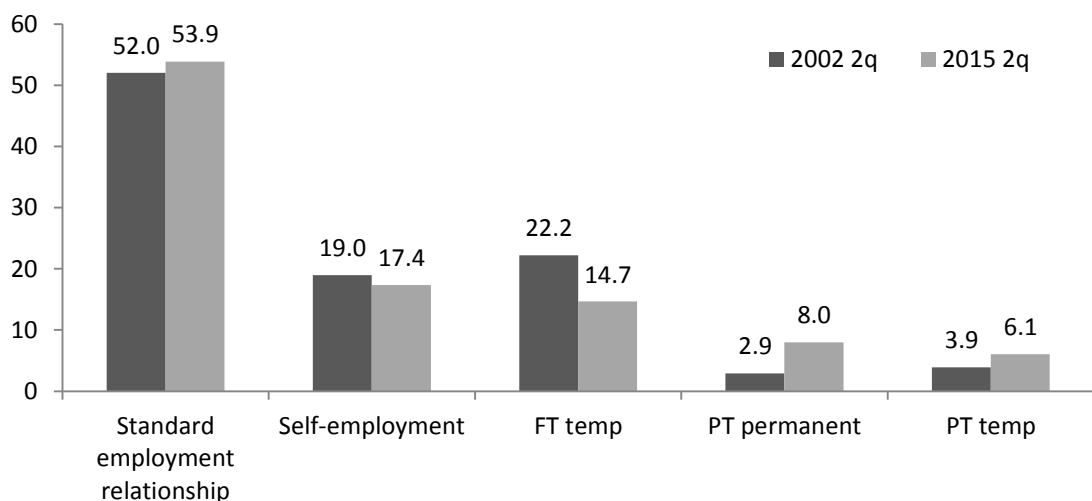


Source: Author's analysis from LFS and INE historical statistics

2. OVERVIEW OF THE STANDARD EMPLOYMENT RELATIONSHIP IN SPAIN

In spite of the changes produced in the last decades in the Spanish labour market, and the growth of new employment relations such as temporary contracts and part time employment, still to this day a majority of the Spanish workers, although a very small majority, enjoy of the once standard labour relation, based in open ended contract and full time employment. Figure 3 reproduces the percentage of workers in different categories of employment relationship, namely: standard employment (permanent and full time dependent employment), self-employment, full time temporary, part time permanent and part time temporary. As we can see, in 2015 53.9 % of Spanish workers can be considering as having a standard employment relation, after this group the most numerous are self-employed, with 17.4% of total employment, followed by full time employees with temporary contracts, 14.7 % of workers, part time employee with permanent contras, 8 %, and part time employees with temporary contracts, 6.1 %.

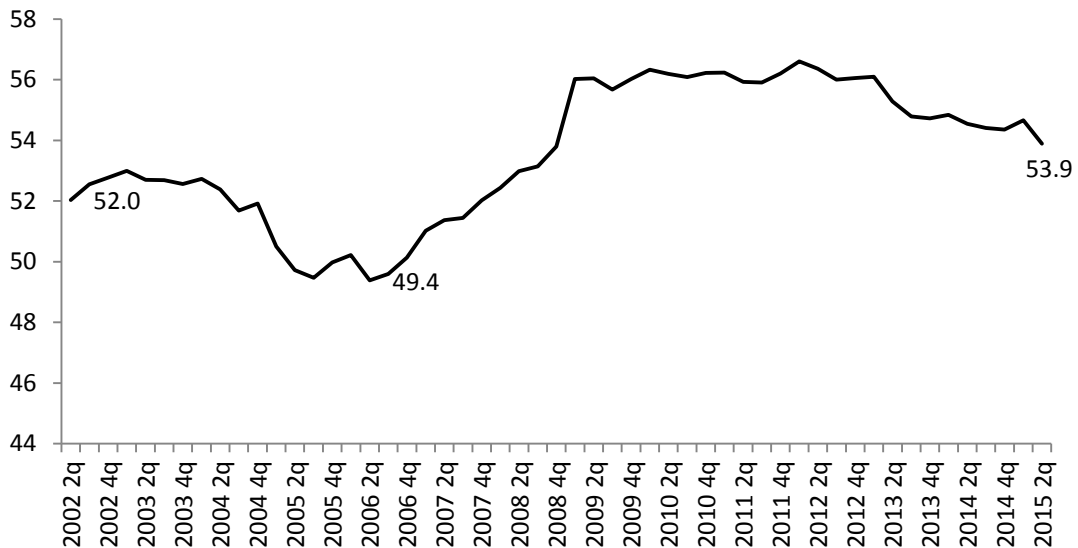
Figure 3. Standard and non-Standard employment 2002, 2008 and 2015 (% of total employment)



Source: Author's analysis from LFS data.

In any case, as we can see in Figure 4, the proportion of standard employment of 2015 is somehow “abnormally high” and product (see next section) of the intense destruction of temporary employment during the crisis. In fact, in the years before the crisis the proportion of standard employment felt below the threshold of 50%.

Figure 4. Standard employment as proportion of total employment, 2002-2015.



Source: Author’s analysis from LFS data.

In Spain, the standard employment relationship can be characterized by:

- (1) Open-ended employment contract. Dismissal is possible, but when considered unjustified by the judiciary is subject to redundancy payments (see table 2 in page XX).
- (2) Full time. Until recently, part time employment was marginal in the Spanish labour market, and nowadays is largely involuntary.
- (3) Existence of a National Minimum wage and high level of Collective Agreement coverage³. As argued by Fernández, Ibañez and Martínez (2014), the Spanish model of industrial relations situates collective agreements at the core of its employment relations

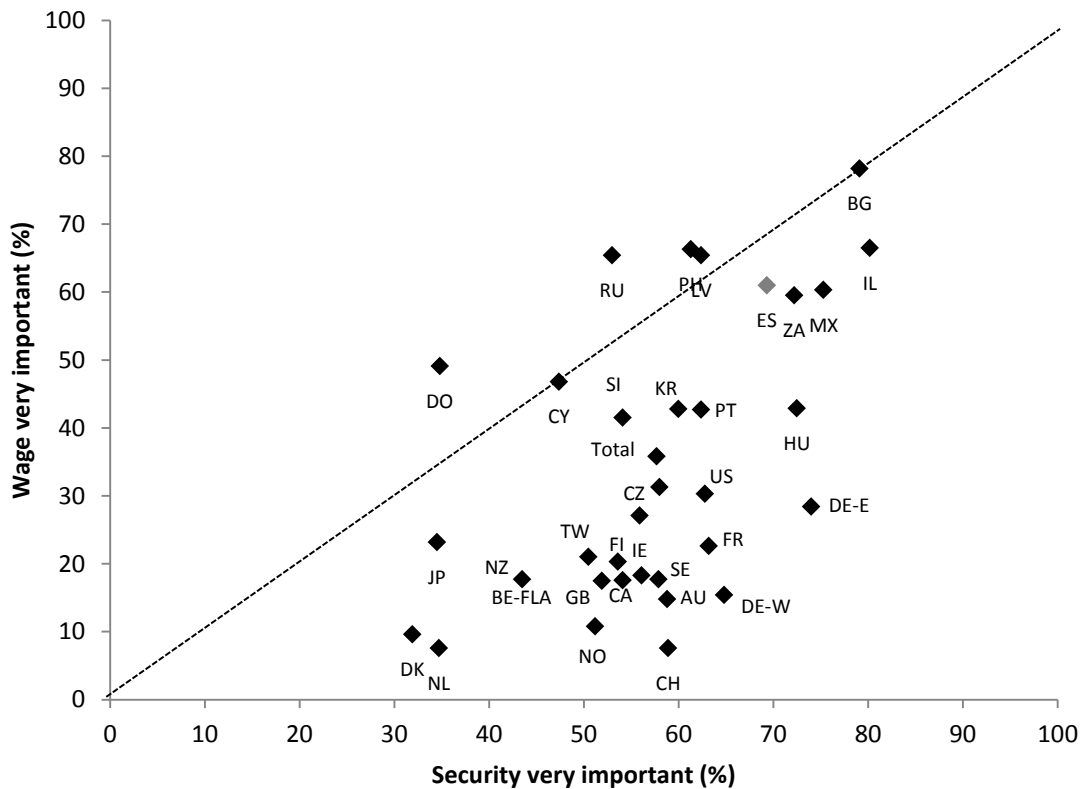
³ The high level of coverage is the result of the application of the principle of “statutory extension”. This principle states that any CA above the company level applies to all firms and workers belonging to the sector of activity and geographical area covered by the CA.

(3) In terms of social rights and collective bargaining there are no major formal differences between the standard employment and non-standard employment relationships. The existing differences are related to the difficulties encountered by workers in non standard working relations to meet the requirements of the different social protection programs –due to the short duration of the employment relation- and not by the different treatment of the different employment relationships in this regard.

3. TEMPORARY EMPLOYMENT.

Temporary employment is probably the epitome of a precarious employment relationship. People have continuous physical and social needs that demand daily attention and require, in a market economy, a stable level of disposable income to adequately cover them. For the majority of the population who lack other sources of income, labour income (mostly obtained by means of dependent employment) is the major source of the income needed to cover such needs. Having a temporary employment means either having a final end date to the employment relationship, or having less certainty as to when the job will end (as it can be easily terminated in any moment), and a higher risk of discontinuity of the income stream needed to face daily expenditures. As such, it should not come as a surprise that, when asked about the attributes that characterize good jobs, most people, regardless of cultures and geographic locations, select *job security*, as one of the most desired attributes (if not the most desired), above other things such as pay (Figure 5). Of the 33 countries reported in the ISSP survey (2005 data), people in 27 countries considered security more important than pay in defining what makes a good job.

Figure 5. Importance of stability and wage in defining a good job. 2005.



Source: Authors' analysis from ISSP 2005 data (Q3b)

But the desire for stable employment and the negative impact of the lack of it on workers' wellbeing is not the only negative attribute of temporary employment. As we will have the chance of reviewing in the following sections, temporary employment has many negative implications both in terms of the individual worker (including lower pay, higher risk of unemployment, lower probability of training, higher risk of accidents), and for society (lower productivity growth, higher rate of employment destruction during recessions, lower fertility rate).

3.1. The Spanish “invention” of modern temporary employment.

In the democratic compendium of labour regulation, the Labour Code (*Estatuto de los Trabajadores*) of 1980, temporary employment contracts were only possible in those cases where the temporary nature of the economic activity justified it. The standard open ended contract was the default contract. Nevertheless, the idea of facilitating

temporary contracts as a component of employment policy was already present. In fact, the legislator considered that in special circumstances temporary employment could be used to benefit specific groups of workers facing special difficulties finding employment (older workers, disabled, etc.). In fact, in the presentation of the project of the Labour Code the Minister of Labour, Mr. Calvo Ortega defended that “in this moment, the dialectic between open-ended employment –and temporary employment is false and unreal, and the authentic dialectic, in a moment of crisis, is temporary employment, part-time employment or unemployment”(Valdés Dal-Ré, 2005, p. 38.)

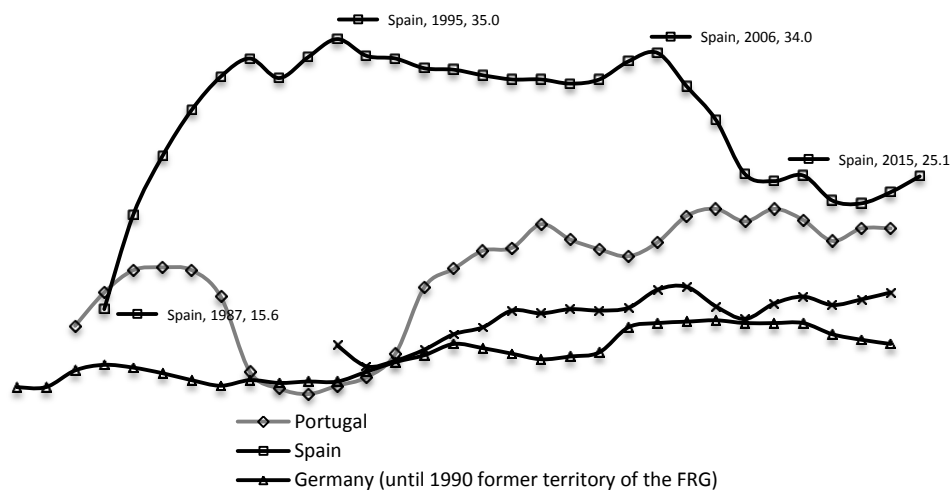
From the very beginning, the extraordinary path to temporary employment as an employment promotion tool was facilitated by different reforms that enlarged the number of workers that could “benefit” from this type of contract, leading in 1982 to a situation in which it was open to all unemployed workers.

Four years after the enactment of the Labor Code, during the first mandate of the Social Democratic Party (PSOE), in a context of jobless growth and further employment destruction due to industrial restructuring, the law was amended (Law 32/1984) in order to fully allow, without limits, the use of temporary contracts “as long as the present circumstances persist”. The legislators, in the introduction of motives to the law justified the changes as a way to increase labour market flexibility and improve the intensity of employment creation of economic growth. In their own terms: “the different types of temporary contracts aim at increasing employment, allowing firms to work in each moment with the higher level of employment possible, without waiting for the consolidation of the new activities or the confirmation of the recovery of market demand”. This law implies the full “normalization” of temporary contracts in the sense that the use of one or another type of contract (temporary versus open-ended) is left to the will of the employer (Valdés Dal-Ré, 2005)⁴. It is important to keep in mind that Temporary Employments Agencies were not legalized in Spain until 1993 (Real Decreto-ley 18/1993, of December 3rd).

⁴ Only two limitations were retained by the law: the prohibition to substitute workers with open ended contract by temporary workers no more than two consecutive promotion employment contracts with the same worker or with different workers for the same job.

As a result of the deregulation of temporary employment with the creation of a new type of temporary contract for unemployed (*Contrato temporal de fomento del empleo –Temporary contract for employment promotion*) there was a sharp increase in temporary employment⁵. Within a few years, temporary contracts became the de facto contract by default, reaching one third of dependent employment from roughly 10% at the time of the 1984 reform. The data represented in Figure 6 show clearly the impact of the 1984 reform in the Spanish labour market landscape. The series starts in 1987 as before that date temporary employment was not considered an issue in the country and there was no question addressing the matter in the LFS. The Spanish data are shown together with the German, Portuguese and Swedish data for comparison.

Figure 6. Temporary employment as % of total dependent employment in Spain, Portugal, Germany and Sweden: 1983-2013.



Source: Authors' analysis from European LFS data.

During the second half of the 1990s, with the recognition of the abnormally high percentage of temporary employment and its negative impact on different aspects of

⁵ Among other changes, the new contract eliminated the limits to the use of temp contract according to the total number of employees of the firm.

the labour market and the economy, there was a change in policy⁶. The new policy approach sought to increase the use of open-ended contracts by both increasing the cost of temporary contracts and creating a new open-ended contract with lower redundancy payments for specific groups of workers overrepresented among the unemployed. The enactment of successive laws and decrees reproduced in table 1 were designed to: (a) limit the duration of temporary contracts and the number of successive contracts that a worker could have in a given firm, (b) restrict the groups of workers that could “profit” from this type of contract through employment promotion programs (c) subsidize the transformation of temporary contract into open-ended contracts, and (d) increase the termination payment due at the end of the temporary contract. Tables 1a and 1b reproduce examples of the measures taken aimed at reducing the rate of temporary employment.

⁶ In 1990 the Ministry of Labour and Social Security commissioned a high level report (Segura *et al.*, 1991) aiming at reviewing the effects, successes and shortcomings of the labour reforms enacted during the 1980s, especially those regarding the promotion of temporary contracts.

Table 1a. Selected measures enacted aiming at reducing the use of temporary employment.

Duration of fix-term contracts and limits to successive temp contracts with the same worker.				
Action		Original regulation	Reform	
Limits to the duration of temporary contracts	<i>Contrato de obra y servicio</i>	No maximum time	2010:	Maximum of 3 years (+1 if included in the CA). If exceeded the worker is considered by all effects to permanent workers.
Limits to the number of successive temp contracts per worker (<i>encadenamiento de contratos</i>)		No limits	2006*:	Those workers employed with 2 or more temp contracts during more than 24 months for the same job in the last 30 years will be considered as permanent workers
			2010*	The limitation remains but its regulation is changed to make more difficult noncompliance by firms: (1) the limitation applies regardless the job or jobs performed by the worker (2) Applies to all related firms
Changes in the Temporary contract for employment promotion				
Workers eligible for Temporary contract for employment promotion	<i>Contrato temporal de fomento del empleo</i>	All unemployed workers (1984)	1994	Restricted to some specific groups of workers (over 45, long term unemployed and handicapped workers)
			1997	Restricted only to handicapped workers
duration			1992	Increase of minimum duration from 6 to 12 month
Compensation at the end of temporary contracts				
Right to compensation at the end of temporary contract		Only in the case of Temporary contracts for employment promotion	2001	Compensation of 8 days per year at the end of temporary contracts
			2010	Increase of compensation up to 12 days per year

(*) These limits were suspended from 08/2010 to 01/2012 due to the economic crisis.

Table 1b. Selected measures enacted aiming at increasing the use open ended employment contracts.

1997 Reform: Creation of a new type of contract: “contract to promote open ended employment” (*Contrato de fomento de la contratación indefinida*) with lower dismissal cost. The main goal is to improve the situation of groups with employability problems:

- Unemployed youth workers from 18-29 years old and workers over 45 years old are considered target groups for this type of contract.
- Unemployed women hired in sector with low female employment rate.
- Long-term unemployed workers (registered as unemployed for 1 year minimum).
- Temp workers at the moment of approval of the law.
- Workers with disabilities.

These contracts benefit from deductions in the social security contributions of the firm.

2001 Reform: Extension of the groups that can profit from the 1997 contract to promote open ended employment with deductions in social security contributions:.

2006 Reform: Further extension of the groups covered by the contract to promote open ended employment and development of new social security deductions.

2010 Reform: The contract to promote open ended employment is generalized to all workers with the sole condition of being unemployed for 3 months and for workers with temp contracts for the 2 previous years before being unemployed. New set of subsidies, for example firms hiring workers unemployed for more than a year and over 45 profit from a deduction in SS contribution of 1200 € for 3 years (1400 in case of women).

2012 Reform: Promotion of indefinite hiring by means of measures for both firms and employees:

- Firms with less than 50 employees can use a new type of contract called as “contract for entrepreneurs supporting”. The main features of this new typology are the same that for open-ended contract by with an the extension of the trial period to one year (instead of 3 months).
 - Firms will have a deduction of 3000 € if they hire workers under 30 years old. In addition if the employee was unemployed before the contract, the firm will receive a deduction for the 50% of the unemployment benefits that was not used by the worker.
 - At the same time, the employee can apply for the 25% of his unemployment benefit pending to be received at the moment to be hired.
-

However, attending at the evolution of temp employment reproduced in figure 4 it seems that the reforms had a relatively weak impact on the rate of temporary employment in the country. In fact, the sharp drop in temporary employment since 2007 shown in Figure 4 is the product of the strong destruction of temporary employment during the crisis: from the third quarter of 2007, when the destruction of employment started, to the first quarter of 2013, when it ended, 76.5 % of the 3.1 million of jobs destroyed were held by workers with temporary contracts, and not of a change in hiring behavior by firms.

Although the destruction of temporary employment during the crisis has moved Spain from the top of the league of temporary employment - his place taken now by Poland, the star pupil of the EU in this field - the second position held by Spain in 2013 means that temporality is a still a major problem in Spain. In fact, neither the crisis nor the deregulation of SER contracts (see section 6), have affected the dominance of temporary employment in the area of new contracts signed. To give an example, in October 2014 out of the 1.7 million labour contracts signed only 9% were open-ended.

Obviously, the incidence of temp employment is different in terms of age, sector of activity, gender, etc. In the following section we explore the who, where and how of temporary employment in Spain

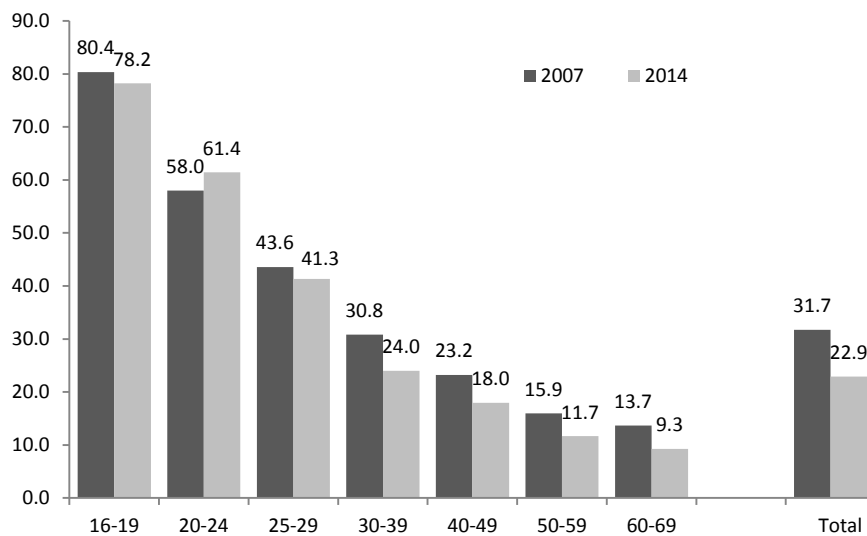
3.1.1. Temporary employment and age: more than just young men's burden.

The massive utilization of temporary contracts in Spain, means that a very large proportion of newcomers to the labour market have temporary contracts in their first jobs. With the passing of time, many temporary contracts are transformed (often benefiting from incentives such as lower social contributions) and other temporary workers move to jobs with an open-ended contract, leading to a decrease in the temporary employment rate with age. This process is evident in Figure 7 that reproduces the rate of temporary employment by age cohort: from 78% in the case of youngest workers to 9% in the group of older workers. Unfortunately, that doesn't imply that temporary employment, like acne, disappears with age. As labour force participation and employment rates are very low among young workers, their higher

temporary employment rates do not lead to high absolute number of temporary workers - the contrary of what happens with workers in prime working age. As a result, in absolute terms over half of the employees with temporary contracts (56%) belong to the age category from 30 to 49 years old. In contrast, younger workers (16 to 29) account for slightly less than a third of all temporary employees (Figure 8). The persistence of temporary employment among workers well past their twenties implies that the uncertainty intrinsically related to this type of contract is present also in workers with family responsibilities.

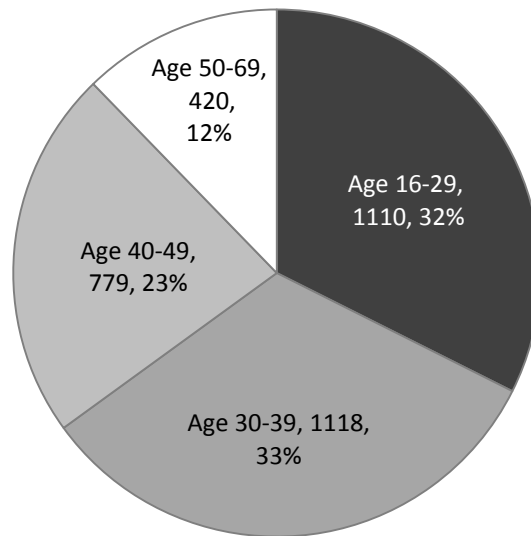
The incidence of temporary employment is quite similar between sexes (23.5% among males and 24.5% among females in 2014) not being in this area a significant gender gap.

Figure 7. Temporality rate by age cohort in Spain before and after the crisis



Source: Authors' analysis from Spanish LFS data

Figure 8. Temporality employees by age cohort in Spain (2014) (thousands and percentage)

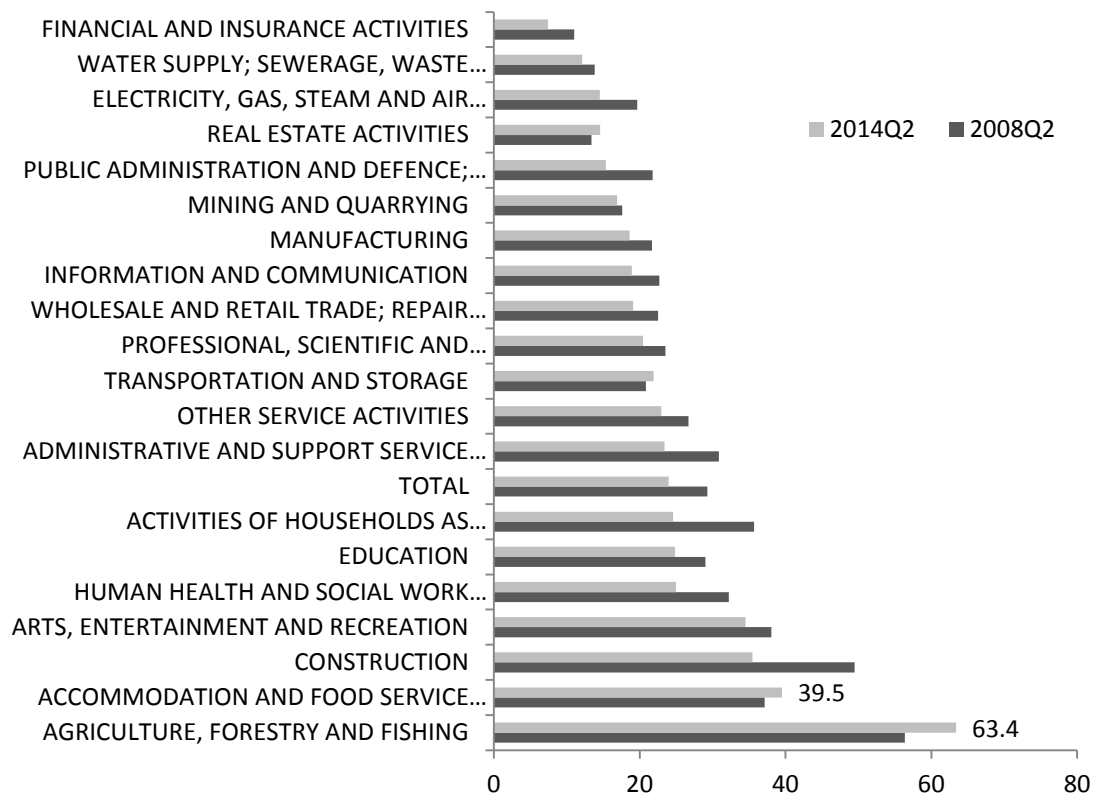


Source: Authors' analysis from Spanish LFS data

3.1.2 Incidence by sector.

As we can see in Figure 9, the incidence of temporary employment, although comparatively high in all sectors of activity from an international perspective, is nevertheless quite different among them. Some activities are inherently more prone to temporary employment due to their temporary or seasonal nature, such as agriculture, accommodation and food service or construction. In other sectors, such as manufacturing or real estate, the more stable demand and the higher specificity of firm training involved in the production process is evidenced by lower rates of temporary employment. Moreover, collective agreements might set limits to the use of temporary contracts. In this respect, changes in the composition of production are likely to alter the aggregate rate of temporary employment, as we had the opportunity to witness with the financial and economic crisis of 2009.

Figure 9. Rate of temporary employment by sector in Spain before and after the crisis.

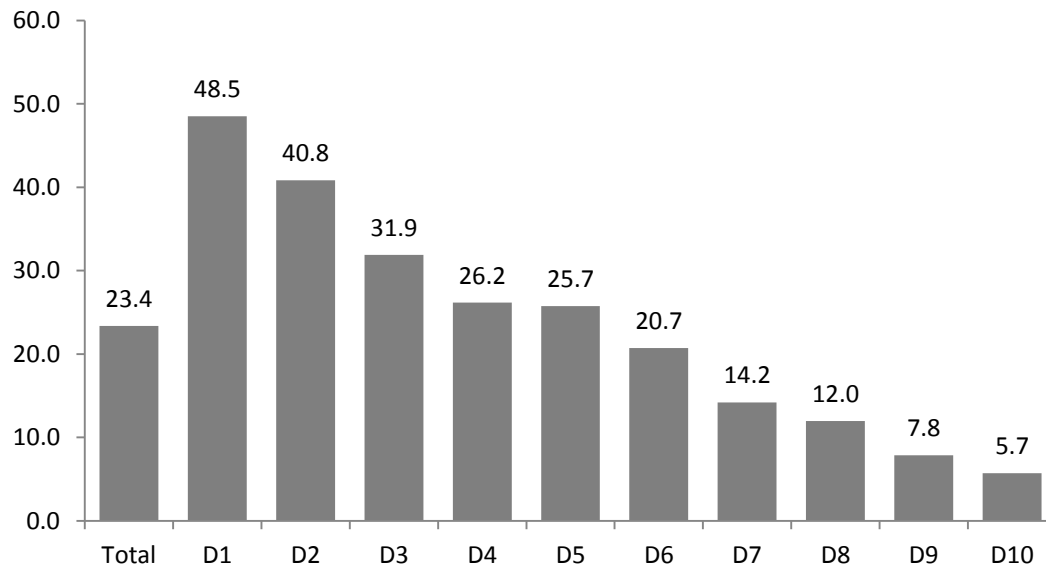


Source: Source: Authors' analysis from Spanish LFS data.

3.1.3 Temporary employment along the wage distribution.

Although in section 2.2 we discuss the impact of temporary contracts on pay, at this stage of the analysis it is relevant to ask ourselves the position of temporary workers in the wage distribution, *i. e.* whether temporary employment locates in the lower segment of the wage distribution or whether there are workers on temporary employment contracts also in the middle and average segment on the wage distribution. Figure 10 reproduces the percentage of temporary employment in terms of their position in the distribution by wage deciles. Once again the figure shows that although the intensity of temp employment is higher in the first two deciles, where 48% and 40% of workers have temp employment contracts, the temporary employment rate is also relevant in the mid deciles as far as the 6th and 7th deciles.

Figure 10. Temporary employment rate by wage decile. Spain, 2013.

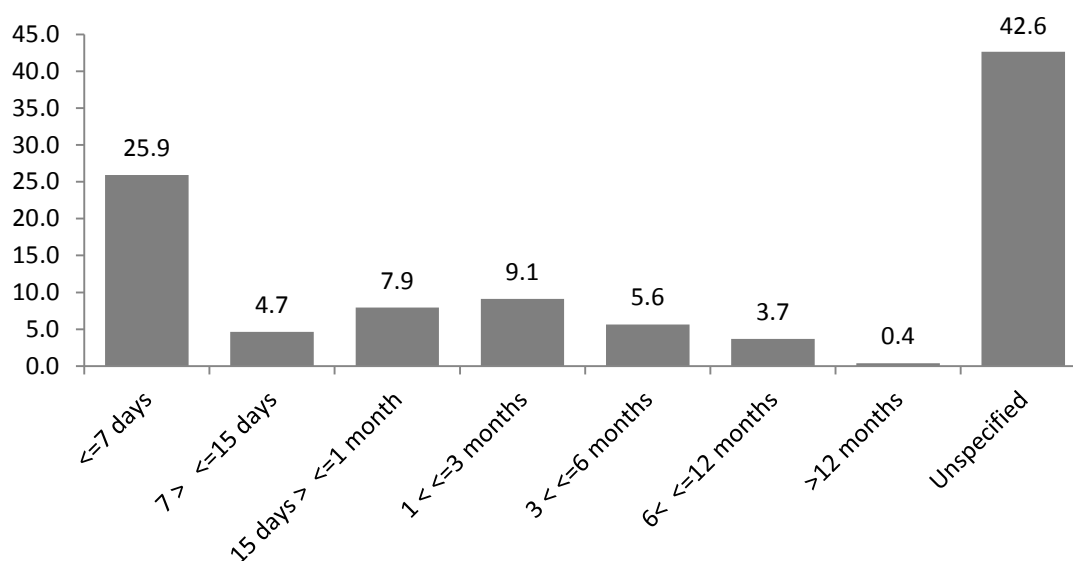


Source: Author's analysis from LFS data.

3.1.4. How short/long is temporary employment?

A last question to address in this review of the characteristics of temporary employment is the duration of the temporary contracts. Obviously, the impacts on workers' wellbeing of temporary contracts depend on their duration. Very short duration contracts of one or two days have different implications compared with temporary contracts of longer duration, one or two years say. Figure 11 reproduces the distribution of temporary contracts signed in October 2014 according to their intended duration. Unfortunately, the most important type of temp contract (*Contrato por obra o servicio*) often do not specify the duration of the contract, as the duration is linked to the duration of the temporal activity for which the worker is hired. In any case we are not talking of a long duration as in October 2014 the average duration of the contract signed was 77 days. For the other contracts with a fixed duration, a majority (26%) are of a very short duration -less than seven days, while those of more than one year of duration are of marginal importance.

Figure 11. Duration of temporary contracts (October, 2014)



Source: Authors' analysis from *Estadística de Contratos*, SEPES.

Summing up, after the labour reform of 1984 temporary employment quickly became the default contract for a large share of employees, accounting for one third of total dependent employment during 1991-2006. Despite 1990s reforms aimed at reducing use of temporary contracts by different means, the temporary employment rate remained stubbornly high. Change only occurred with the crisis, due to the concentration of employment destruction among temporary jobs. However, the problem of a high share of temporary employment is far from being solved as even after the adjustment of the recession almost one out of four workers are still in temporary employment. Furthermore, there is no sign of a change in behavior of employers in relation to their option in favor of this type of contract.

In terms of the characteristics of temporary workers, we have seen how the incidence of temp contracts is higher among young workers, regardless of gender. In any case, that doesn't make temporary employment only a problem of workers who are starting out on their careers, as temporary employment is also present at latter ages, affecting, for example one in three workers aged 30 to 39 years old. The incidence of temporary employment is also quite different by sector of activity and is concentrated in the lower part of the wage distribution. Lastly, a large proportion of temporary contracts are of relative low duration – one in four last less than one week.

3.2. Implications of temporary employment: regulatory, representation and social protection gaps.

This section reviews the implications from the workers' perspective of having a temporary job in terms of working conditions, regulatory, representation and enforcements gaps, as well as social protection and other areas. Before doing that, it is important to comment on one crucial element of temporary employment with implications in terms of the effects of temporary employment on workers wellbeing. The impact of temporary employment is very much related to whether temp employment is just a short term situation in the worker's career or whether it last many years. In this respect, much of the international debate about the implications of temporary employment has centered on its dynamic nature, in terms of whether temporary employment is a stepping stone to better quality employment with open-ended contracts or, alternatively, a dead-end marked by persistent insecurity over time. The very low level of permanent contracts signed every year in Spain seems to support the interpretation of temporary contracts as a dead-end for many workers during long periods of their working life. Güell and Petrongolo (2007) illustrate clearly the low level of conversion of temporary into permanent contracts: the transformation from temp to permanent is highest for workers employed for 9–12 quarters (2–3 years) - that is, for workers about to reach the maximum time allowed by law for a temporary contract (see table 1a), and still only a fifth of workers get a permanent job. Furthermore, according to these authors' estimates, the rate of conversion of fixed-term contracts into permanent contracts decreased monotonically from around 18% in 1987 to 6% in 1997, increasing slightly since then.⁷ These results are coherent with the very low conversion rates obtained by Amuedo-Dorantes (2000).⁸ Summing up, while temporary employment is the main entry into a permanent job, this conclusion is

⁷ This result is coherent with that obtained by Alba (1998) for the period 1987–96, according to which the probability of transition from a temporary to a permanent job decreased markedly from 1987 to 1995.

⁸ The relation between workers' characteristics and conversion rates is explored in Casquel and Cunyalt (2004) from a different perspective, using data from the demand side. See Amuedo-Dorantes (2001) and Hernanz (2003), Chapter 3.

trivial: due to the dominance of temporary hiring by firms only 1.18% of permanent contracts were signed by workers not employed in the previous year⁹.

3.2.1. Regulatory Gaps

According to Palomeque (2000) with the exception of the temporality nature of the contract, temporary contracts are, from a general perspective, similar to open ended contracts in all respect. The main, and formally only, difference in terms of regulation of fixed-term and open ended contracts is the level of employment protection of the two types of contracts. As we have seen in the introductory section on the standard employment contract, employees with open ended contracts have to be compensated in case of unlawful termination of the contract. According to the nature of such dismissal (see table 2): disciplinary, null, unjustified (*improcedente*) or justified by economic, technical, organizational or other reasons (*procedente*) the employee has the right of compensation by means of redundancy payments of different quantities depending on the reason for dismissal and the seniority of the worker in the firm.

In contrast, upon termination of the fix term contracts, the temporary employee has a right to a different and lower compensation, according to the formula reproduced in Figure 12. In fact, the existence of termination compensation is a characteristic quite specific of the Spanish regulation of temporary employment, absent in other countries. This element explains the higher level of employment protection granted to Spanish temp workers shown in the Index of EPL of temp employment produced by the OCDE. The rationale of this compensation is to reduce the existing protective gap between open ended and fix term workers in order to reduce the temporary employment rate.

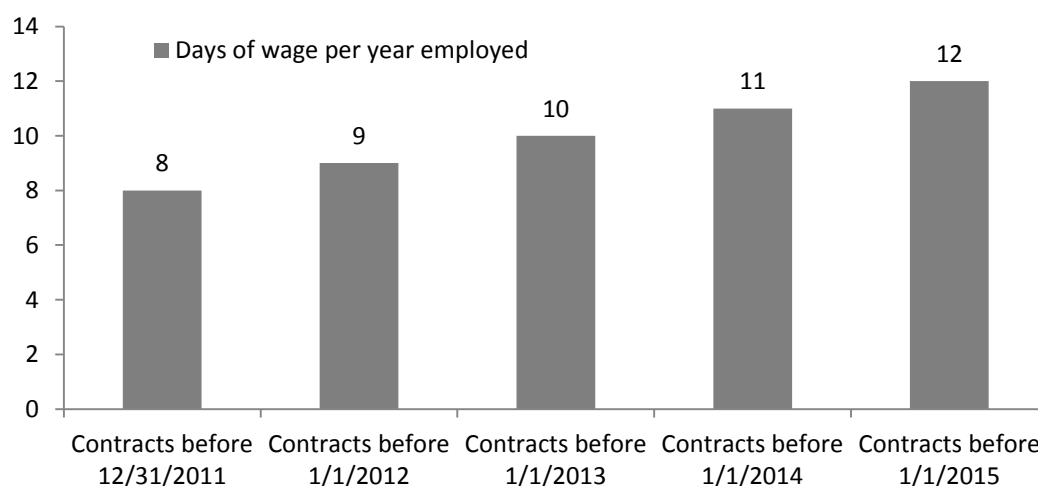
⁹ Period 1987–2002, percentage of workers with permanent contract in year $t+1$ not employed in year t – Güell and Petrongolo (2005), p. 26.

Table 2. Redundancy payment for employees with open ended contracts

Type of dismissal	Standard open ended contract	
Null	Re-employment	
Disciplinary	none	
Unjustified*	45 days per year employed before February 12, 2012 and 33 days per year employed since then.	Maximum of 720 days (or 42 days per year for workers employed before Feb., 12th, 2012)
Justified	20 days per year	Maximum of 12 months.

* 33 days for contracts for the incentive of open-ended employment (Contrato para el fomento de la contratación indefinida) regulated by the Ley 12/2001. No redundancy payments in the new *Contrato indefinido para emprendedores* (Open ended contract for entrepreneurs) during the first year of employment relation.

Figure 12. Compensation upon termination of fix term contracts

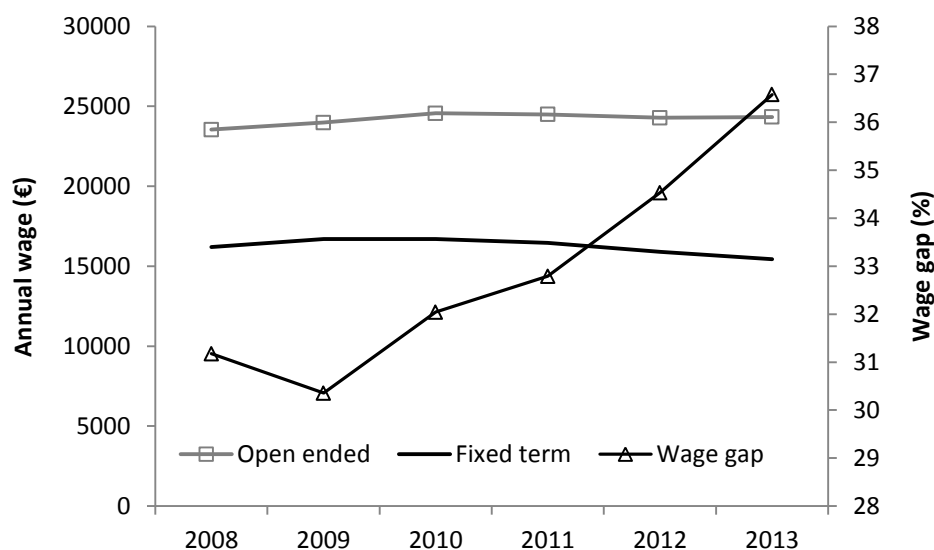


3.2.2. Temporary employment and wages.

Having a fixed term contract has important implication in term of wages. In 2013 temporary employees received, on average, 63,4% of average wages of permanent employees. Furthermore, the temporary employment raw gap (measured against average wage of workers with open ended contracts) has grown with the crisis, from

31.2 % in 2008 to 36.5 % in 2012 (Figure 13). For women the temp wage gap is lower, 29,4%, but shows the same dynamic during the crisis, increasing almost by 5 percentag

Figure 13. Annual nominal wage of open ended and fixed term employees and wage gap. Spain 2008-2013.



(*) Wage gap defined as: $100 - [(Open\ ended\ wage / Temp\ wage) \times 100]$

Source: Authors' analysis from *Encuesta anual de estructura salarial. Serie 2008-2013*.

In order to check to what extent the wage gap is explained by different characteristics of workers with fixed-term and open-ended contracts we have used the methodology proposed by Oaxaca and Blinder to allocate the difference in wage into differences explained by the different characteristics of workers and those not accounted for by such differences. The characteristics considered are: gender, age, activity, occupation, region, level of education, firm size and tenure. According to our results with wage data corresponding to 2010 (Structure of Earning Survey), only around one fifth (19.8%) of the existing raw hourly wage difference is explained by differences in the characteristics of permanent and temporary employees.

3.2.3 The training gap.

Another dimension of potential discrimination suffered by temporary employees is their lower access to training in the firm. From the perspective of the firm it may be

rational to allocate training to those workers expected to remain in the firm long enough to allow for the recovery of training costs. This is also a standard criticism of high temporary employment rates: their negative impact of productivity growth due to lower training provision. The results of our analysis of the ECVT (2010) microdata confirms such hypothesis, although the difference is small: the training rate (% of employees receiving training financed by the firm in the last 12 months) among employees with open ended contracts in 2010 was 83.5 %, compared to 78.5 among employees with temporary employment contracts. In any case, econometric analysis performed by the OCDE (2013) concludes that, controlling for the “usual suspects” (literacy and numeracy scores and dummies for gender, being native, nine age classes, nine occupations, nine job tenure classes and five firm size classes), being on a temporary contract reduces the probability of receiving employer sponsored training by an average of 14% for 20 OECD countries, and 18 % in the Spanish case.

3.2.4 Representation gaps.

Temporary workers have lower affiliation rates vis a vis standard workers. According to the *Encuesta de Condiciones de Vida en el Trabajo*, ECVT, (Survey on Condition of Working Life) in 2010 13% of temporary workers were affiliated to a union, compared to 23% of workers with open-ended contracts. According to Fernandez-Macias (2002) these lower affiliation rates cannot be interpreted in terms of higher alienation of temp workers from union activity, nor to the idea that TU only defend permanent workers. In this respect, the ECVT of 2000-2001 included a specific question of the reasons behind the decision of not being affiliated to a TU. According to such survey only 3.9 % of non affiliated workers considered that TU defended only the interest of permanent workers¹⁰. A more detail analysis of the differences of affiliation rates between permanent and temporary workers (Cilleros, 2011) shows that more than the nature of the contract itself the crucial variables is the seniority in the firm. In fact, the affiliation rates of workers with less than two years of seniority are similar, with the difference growing with the passing of time. Thus, the important point in this respect is that having a temporary contract makes it more difficult to acquire seniority, reducing the affiliation rates of this type of workers. The lower affiliation rate of temporary

¹⁰ 3.9% fully agreed with: “TU only defend permanent workers”, while 49% completely disagreed.

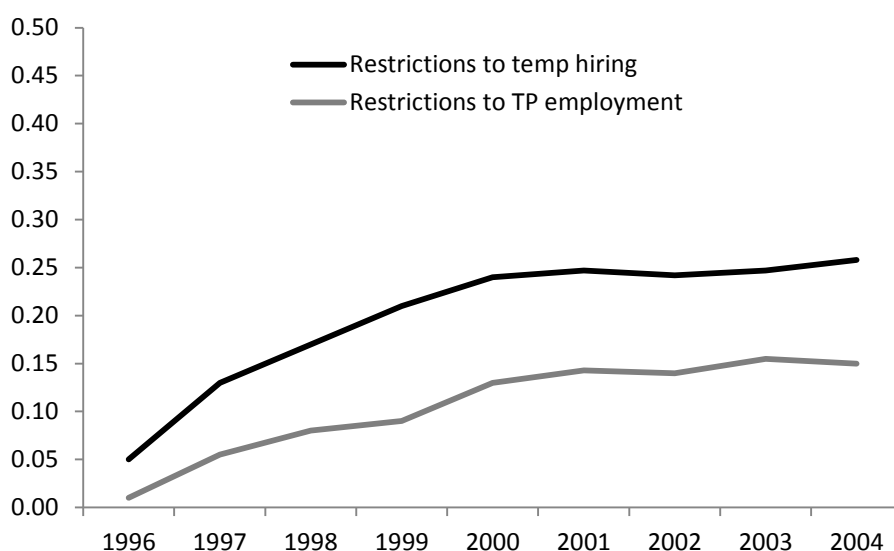
employees can also be explained by the universal nature of Collective Agreements in Spain, that allow workers to benefit from the TU activity without being affiliated to a TU¹¹ and by the peculiar way of addressing the issue of TU representation in the country: by TU elections where all employees in establishments over 5 employees vote regardless of being affiliated or not. These two elements explain in a nutshell how TU in Spain have a more important institutional role than what they would have in terms of affiliation rates.

To what extent is union activity also guided by the interests of temporary workers? The Spanish labour market is often interpreted from the perspective of the insider-outsider paradigm according to which unions would mostly represent the interests of insiders (permanent workers). Although these types of hypothesis are quite difficult to operationalize, the careful analysis of collective agreements signed in the years 1996-2004 conducted by Ruesga *et al.* (2007) contradicts such an interpretation. As part of an economic analysis of Collective Bargaining in Spain, Santos *et al.* (2007) review all collective agreements (CAs) signed during the period identifying, among other things, to what extent CAs limit the power of employers to hire temp workers at will. Based on the authors' analysis we can construct an index of temp hiring by the firms defined as the average of the following binary (Yes = 0, No = 1) items: (a) Existence of a clause related to temp hiring, (b) Existence of a clause dealing with maximum duration of temp contracts, (c) Existence of a clause related to maximum number of temp contracts, (d) Existence of a clause related to use of temporary agency work, (e) Existence of a clause related to non-renewal payments to temp workers. In Figure 14 we can see how at the turn of the century there was growing concern among unions about the use of temp contracts by firms that translated into an increase in the number of CAs with clauses limiting their use. In any case, according to the data, such concerns were far from universal as most CA does not include clauses limiting temp employment by the firm. Regarding this issue, Luis Enrique de la Villa Gil one of the more prestigious labour law professor, with a deep knowledge of the evolution of industrial relations in Spain considers that "Trade Unions have not really throw

¹¹ In fact, in the above mentioned survey the fact that workers can profit from TU activity without being affiliated to any TU is an important reason behind the low affiliation rate

themselves into the issue of temporary contracts”.¹² Figure 14 includes also for comparison a similarly constructed index of restrictions regarding part-time work. In this respect, it is interesting to note how, during the period of analysis, trade unions were more concern about the use of temp employment by firms than about their use of part time.

Figure 14. Inverse index of restriction to temp hiring and part-time employment in collective agreements (1996-2004)*



(*) 1 = max restrictions, 0 = no restriction

Source: Authors' analysis from Ruesga et al. (2007).

The stubbornly high level of temp employment in the Spanish economy until the start of the crisis proves that such concerns, along with the introduction of limiting clauses in the CA, were not enough to change the hiring practices of Spanish firms.

3.2.5. Social protection gaps

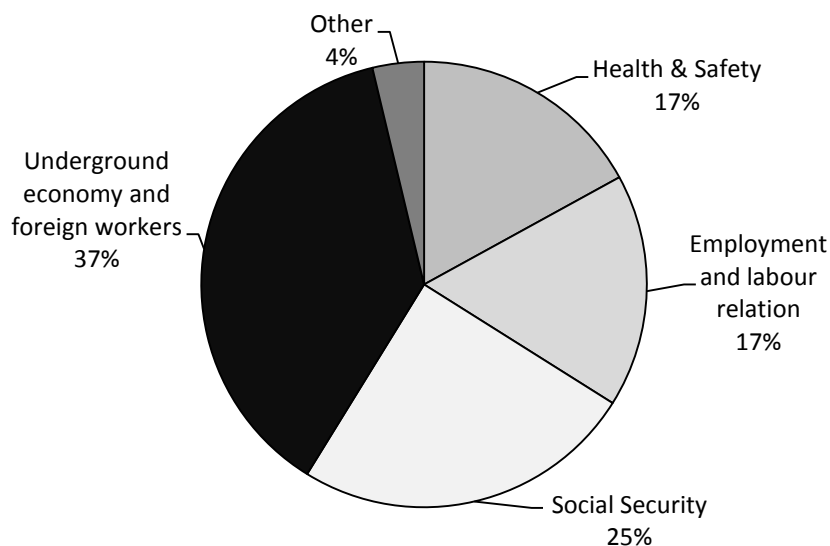
Temporary workers are subject to the same requirements in terms of social protection as workers on open-ended contracts. The only protective gap of this group of workers, results from the higher potential difficulty encountered by temp workers to meet the requirements to qualify for different social protection programs such as minimum employment criteria to be eligible for unemployment compensation.

¹² Luis Enrique de la Villa Gil, personal communication with the authors, Salamanca, October 15th, 2015.

3.2.6 Enforcement gaps.

In 2009 Spain had 1798 civil servant (inspectors and sub-inspectors) in charge of controlling the fulfillment of labour, social security and health and safety regulations. That is 10567 workers per labour inspector¹³. This ratio is similar to the ratio of France but above the ratio of Italy (around 6000)¹⁴. As important that the resources, in terms of manpower, of the labour inspectorate are the priorities set the administration regarding the different areas of inspection. In 2013, out of 583,436 inspections only 11,171, *i.e.* a sheer 1.9 % were related with temporary contracts. In figure 15 we can see how the priorities for 2013 were set in fighting the underground economy and irregular employment of immigrants and social security.

Figure 15. Actuations of labour inspectorate by type of area.



Source: Authors' analysis from *Memoria de la Inspección de Trabajo y Seguridad en España*.

3.2.7 Other implications.

Having a temporary job has also implications of second order in many different aspects of life. For example, employment career and type of employment contract is one of the element considered by financial institution when evaluating demand for credit.

¹³ Authors' calculation based on LFS and *Memoria de la Inspección de Trabajo y Seguridad en España* 2014.

¹⁴ SYNDEX (2012). Comparison with other major countries such as Germany or the UK is difficult as the competencies of the labour inspectorates are different between countries.

According to a mayor Spanish Internet real estate firm: “generally speaking public employees and employees with open ended contracts and several years working in the same firm get better credit rating, while temporary employees and self-employed get worse rating”¹⁵. This precautionary behavior of financial institution puts temp workers at risk of financial exclusion. Temporary employment has also implications in terms of postponement of emancipation. Although according to the information available Spanish youth have similar preferences in terms of the appropriate age to leave home when compared to other European countries (21.7 years compared to an average of 21.1 for a group of 13 EU countries), the real emancipation age in Spain comes several years later, at 28.8 years. This makes Spain (with Portugal) the countries with a larger gap between the preferred and factual emancipation age, 7.1 years, compared to 3.1 years in Germany or 2.8 years in France¹⁶. The high youth unemployment rate and the high temporal employment rate among those lucky enough to be employed are two major factors behind the emancipation gap. In this respect among those 16-34 the emancipation rate of those working with temporary contract in 2011 was 53.9 % versus 67.4 % of those with open ended contracts (Moreno, López and Segado, 2012). In the same line of argument, short-term contracts are also associated with delays in fertility (Adsera, 2005; Ahn and Mira, 2001).

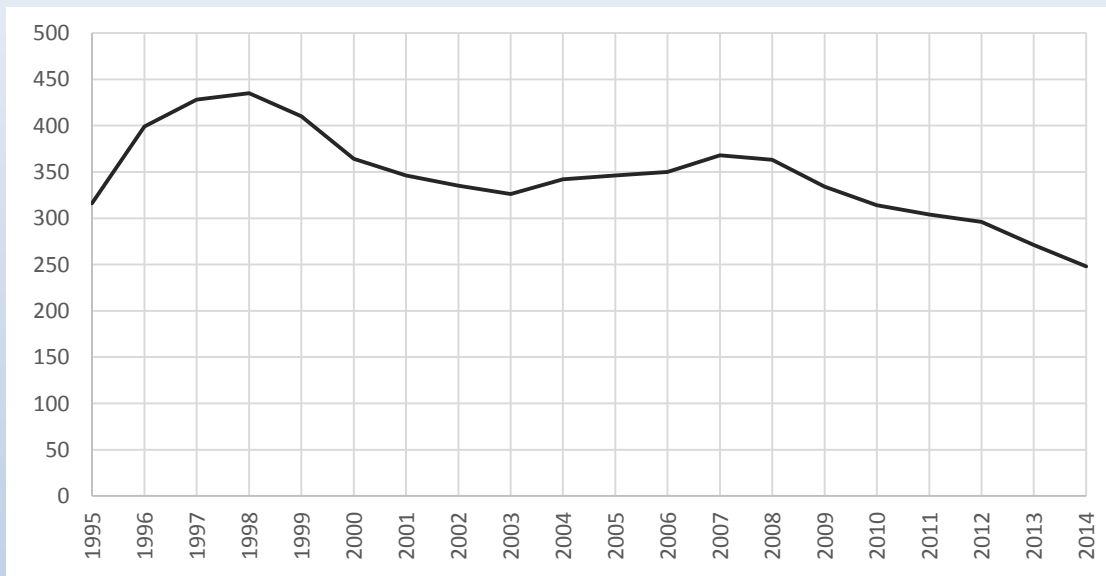
¹⁵ J. Villen (2011): “Las 6 condiciones que tienes que cumplir para que te den actualmente una hipoteca”, www.idealista.com.

¹⁶ Countries with an average real age of emancipation of 24,5 in Germany and 23.6 in France (Moreno, López and Segado, 2012).

Box 1. Temporary Agency Work secondary role in the Spanish labour market

In contrast with other EU countries, such as the UK, temporary employment agencies (TA) do not play a major role in Spanish labour market. TAs in Spain were legalized in 1994 (Ley 14/1994), quite late from a comparative perspective (for example, in the UK the Employment Agency Act dates from 1973). Figure 1a reproduces the evolution of the number of TA from the moment of their legalization to 2014. The evolution of TA follows two different trends. The first one, from 1994 to 1999, is characterized by a stable growth in terms of both number of firms and contracts carried out. In any case, we are talking about a very small number of TA compared to, for example, the UK with an estimate of over 17000 firms. However, after the regulation reform carried out in 1999 [Ley 29/1999] we observe a reduction in the number of enterprises as well as contracts. This decrease was due to the introduction of new rules to equalize employees in terms of social protection to those existing in the hosting firm.

Figure 1a. Evolution of the number of TA in Spain from 1995 to 2014



Source: Authors' analysis from TAW Statistics 2015

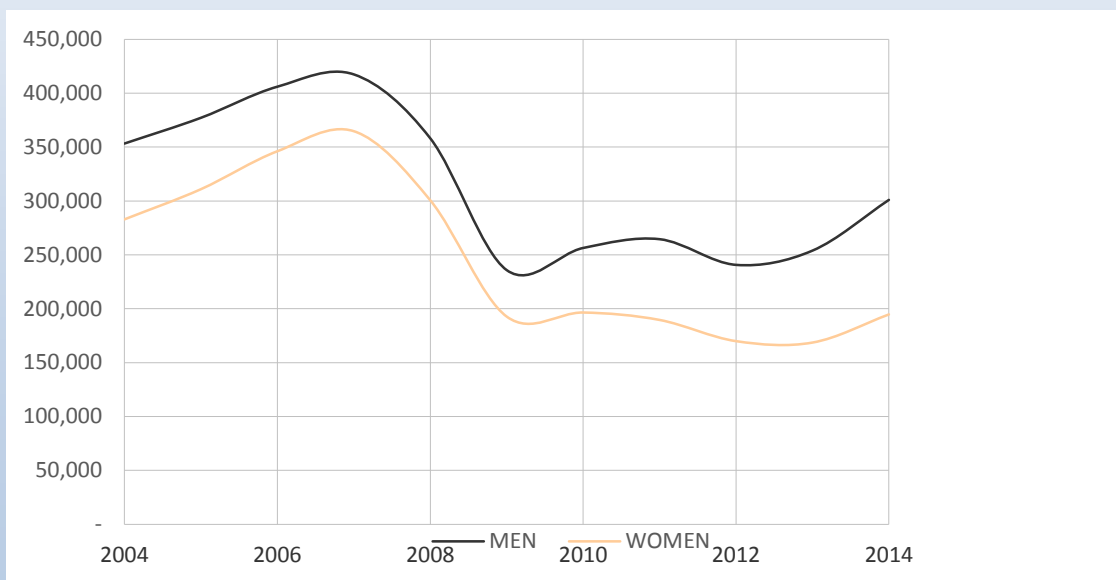
In 2010, a new set of emergency measures related to the labour market were approved amidst the great recession. These measures included changes of the TA regulation in order to adapt it to the European TAW directive [2008/104/EC]. In addition, these measures

include a liberalization of the some constraints previously applied to the TA in terms of the activities where they could operate.

Finally, in a subsequent labour reform in 2012 [Ley 3/2012], TA were allowed to act as employment firms in collaboration with the Spanish public employment services. This collaboration is justified by the government in order to create synergies to increase job placement success.

As we can see in Figure 1b, the crisis affected the number of TAW managed by TA, cutting its number in half. It is worth noticing how the recuperation of TAW contracts antedates the general recuperation of the economy, as well as the growing divergence in terms of gender. In terms of age, TA contracts concentrate in the age intervals 25 to 39 years old.

Figure 1b. Number of contracts from TA by sex

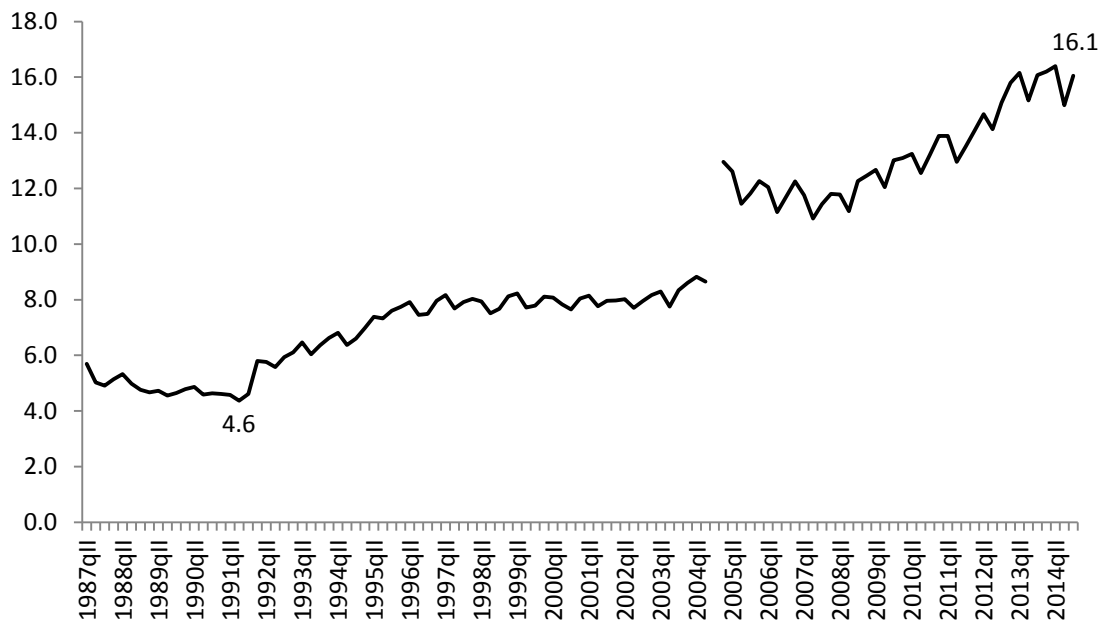


Source: Authors' analysis from TAW Statistics 2015.

4. PART-TIME EMPLOYMENT

Until quite recently part time employment was never a major element of the Spanish labour market. As we can see in Figure 16, in the 1980s and 1990s part-time work was a marginal feature in Spain. Although the figure shows the positive trend in the relative use of this type of contract, the percentage of part-time employment at the end of last century was still very low, just 8%, compared to 17% for the EU-15. With the change of century we can see an important change in the use of this type of contract, partly driven by changes in the regulation that made part time employment more attractive to firms (see table 3) with the part-time employment rate reaching 16% of total employment by the end of 2014 (still below but closer to the EU-15 part time rate average of 23%).

Figure 16. Evolution of part time employment rate. Spain 1987-2014*



(*) 2005: break in series

Source: Authors' analysis from LFS data

Table 3. Changes in part-time regulation

→ 1980

Part-time job contract preliminary criteria and definition // It is defined as contracts that consider a determinate number of days per year, month or week over two-thirds regarding the regular activity time.

→ 1998

Reform: The main goals of this modification are essentially two. Firstly it adapts the current legislation to the European (97/81/CE). Secondly, it tries to maximize the number of this type of contract.

Action:

- Maximum working time of 77% of the full-time workday or the maximum legal workday.
- The reform allows the possibility to work overtime in some especial cases.
- More information is requested to the firm about the number of hours and their distribution regarding the provided services.
- Part-time jobs are matched with full-time jobs in terms of social security contributions and coverage.
- The legislation is completed by means of the introduction of the “complementary hours” on top of normal contractual hours.

→ 2001

Reform: Concept modification of part-time job regarding the determination TP regime.

Action:

- This reform removes the threshold of 77% indicated above.
- It also eliminates the information requirements in relation to time distribution of the job hours.

→ 2012

Reform: With this reform eliminates the impossibility to work overtime, keeping only a limit in relation to the agreed workday. Reduction in the notice time for changes in working schedule to 3 days.

→ 2013

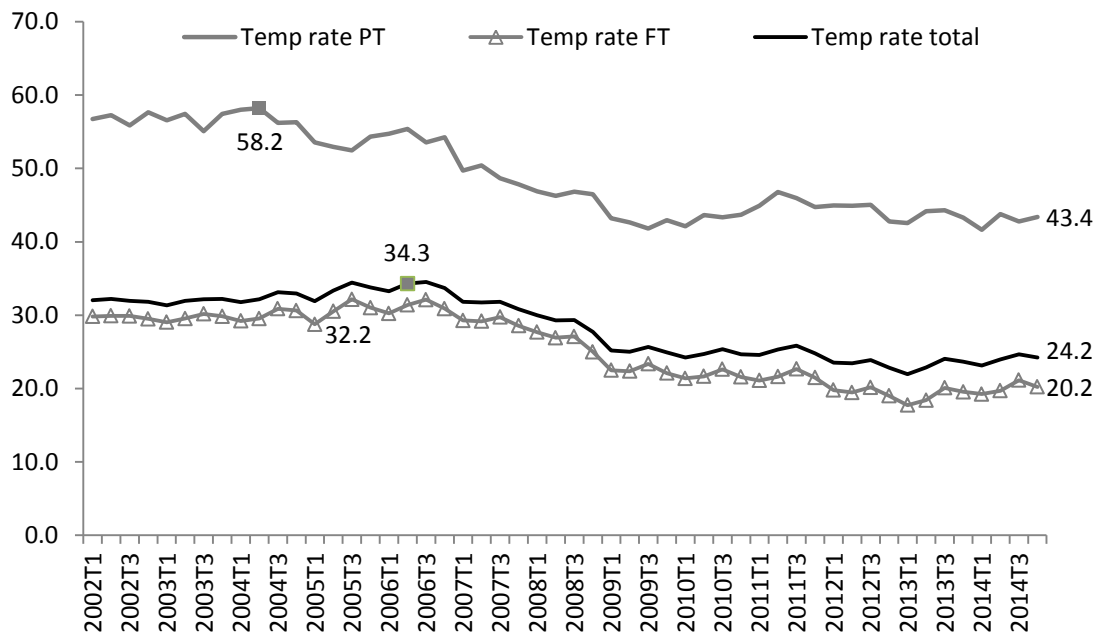
Reform: It introduces measures related to “complementary hours” for TP contract with more than 10 hours/week.

Source: Authors´ analysis.

Although the once low incidence of part-time employment in Spain was often explained by the high use of temporary contracts, as if temp employment and part-time employment were substitutes from the perspective of the firm, the data shows that far from being substitute forms of employment, PT employment is also largely

temporary, with a higher incidence of temporary employment among part timers than among full timers. In fact, as we can see in Figure 17, before the crisis as much as 58% of PT employment was temporary. In 2015 temporality rates among part timers were twice as high as among full timers.

Figure 17. Incidence of temporary employment among full time, FT, and part time, PT, work. Spain, 2002-2014.



Source: Authors' analysis from LFS data.

According to Muñoz de Bustillo et al. (2008), after the changes introduced in the regulation of PT at turn of the 21st century, the “Spanish difference” in terms of its low part-time employment rate could be partially explained by the high incidence of split shifts among full-time workers, with around 70% of firms using this type of working-time arrangement. It can be argued that one FT worker on split shift is equivalent, in terms of organization of working time to two PT workers, making this last arrangement less attractive to firms.

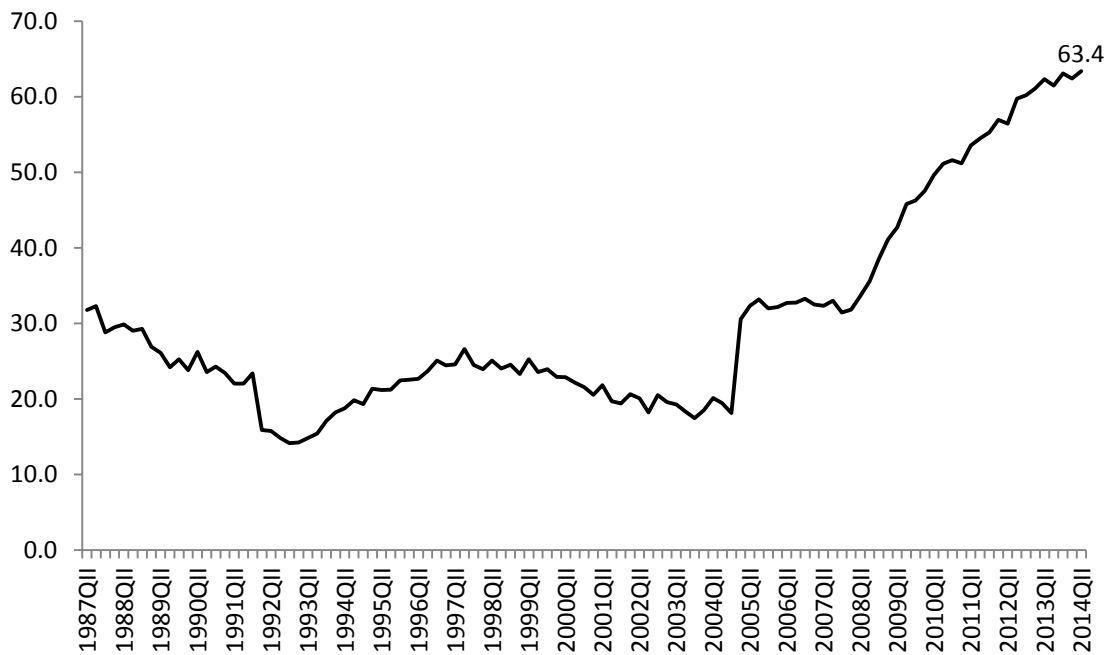
4.1 Characteristics of part time employment: feminine and involuntary.

As in most countries, part time employment in Spain is largely performed by women who in 2014 made up 74% of total PT employment. Although women are still the

majority of PT workers, the crisis triggered a change in the gender composition of PT employment. Compared to full time employment, PT has been largely immune to the crisis, with an increase in total PT employment from 2008 to 2014 by 15%. This increase has been especially high among men (48%), leading to a decrease in the rate of feminization of PT employment from 80% to the above mentioned 74%. It is still to be seen whether such change is contingent to the crisis or mark the beginning of a change in the trend of male PT participation rate.

In any case, the specificity of part-time employment in Spain is the very high percentage of involuntary PT workers. Spanish part-time employment was always highly involuntary compared to other countries, but as we can see in Figure 18 the involuntary part time rate has skyrocketed with the intensification of its use by firms.

Figure 18. Involuntary part time. Spain 1987-2014



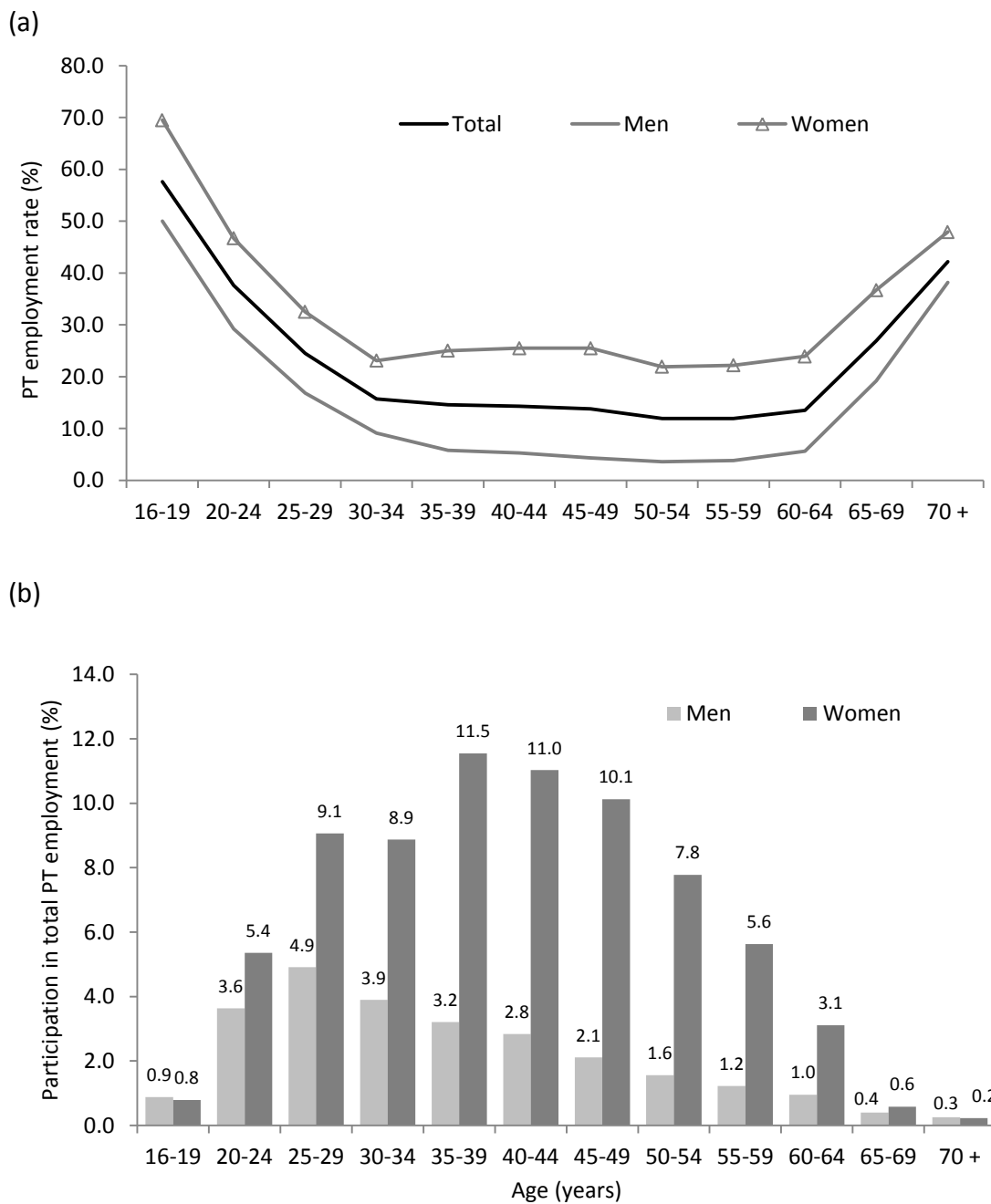
(*) 2005: break in series

Source: Authors' analysis from LFS data.

From a demographic perspective, as we can see in Figure 19a, part time employment is higher among workers in the early or late stage of their working life. In any case, due to the very low labour force participation rates at these ages, the above

mentioned figure can give a misleading view of the demographic groups affected by this type of contract. In order to avoid this risk, Figure 19b reproduces the participation of each age cohort in total PT employment in 2014. This figure clarifies how, regardless of the PT employment rate by cohort, the bulk of PT employment is concentrated in the central age cohorts of the female labour force.

Figure 19. Part time employment rate and participation in total PT employment by gender and age

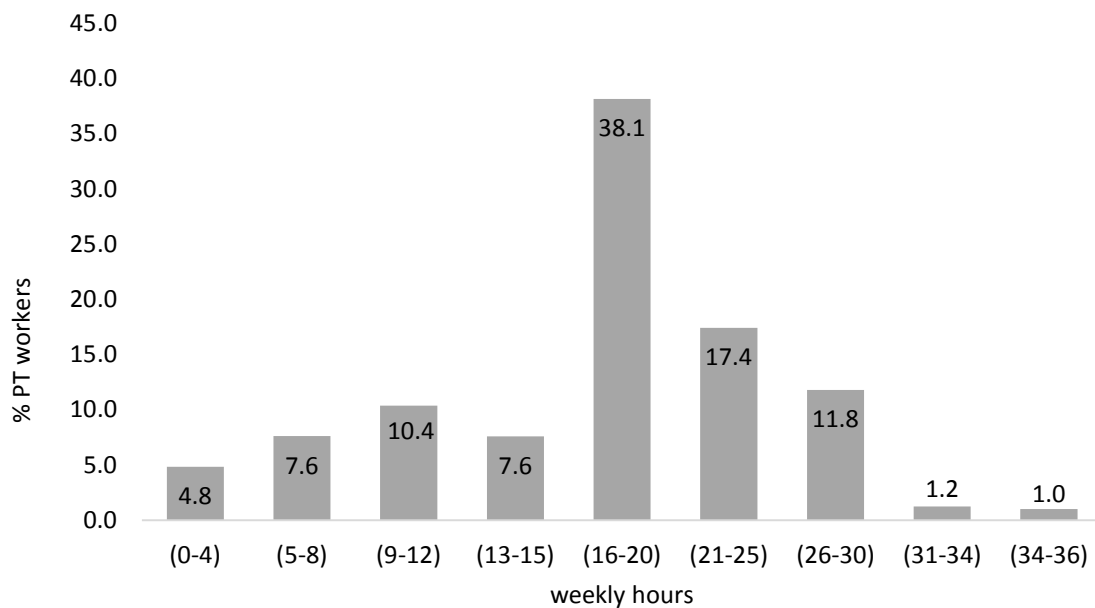


Source: Authors' analysis from LFS data.

Considering the highly involuntary nature of PT employment in Spain, it is interesting to explore the distribution of PT workers in terms of average weekly working hours in order to know the size of the problem: the gap between the full time desired working week and the actual weekly hours worked.

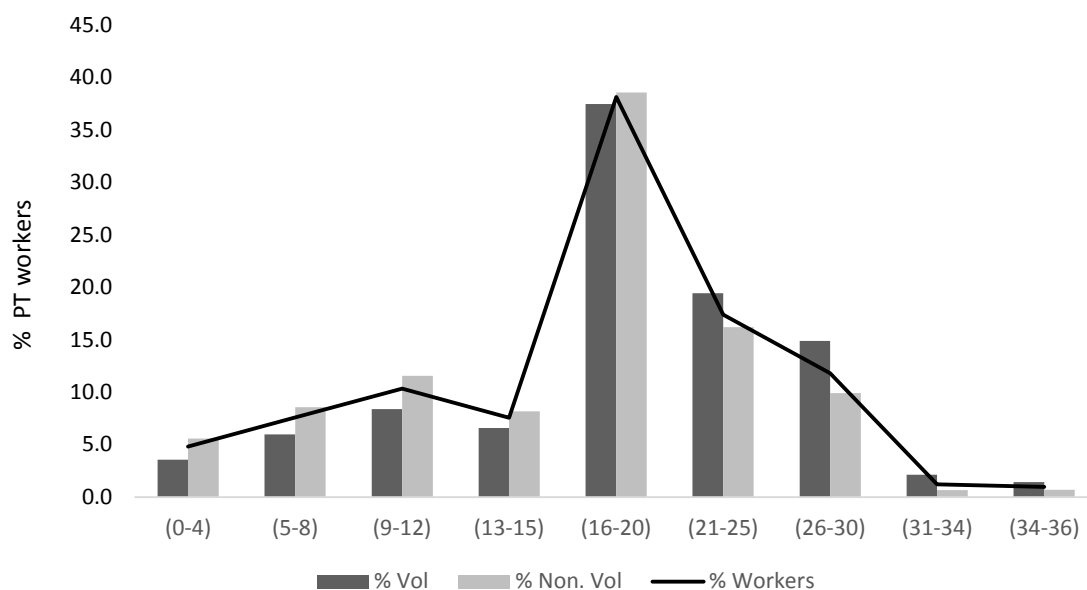
Figure 20 reproduces the distribution of PT weekly working hours of PT workers including information in terms of the voluntary or involuntary nature of part time. From an aggregate perspective, although the larger group of PT workers, 38 %) has a weekly working week around half full time work, there is a significant proportion of PT (30%) workers below 15 weekly working hours. Figure 21 shows how involuntary PT workers are overrepresented among PT workers with lower weekly hours.

Figure 20. Distribution of weekly working hours of PT workers: all PT workers, voluntary PT and involuntary PT. 2015 (2nd quarter). (a)



Source: Author's analysis from LFS microdata.

Figure 21. Weekly working hours of voluntary and involuntary PT workers



Source: Author’s analysis from LFS microdata.

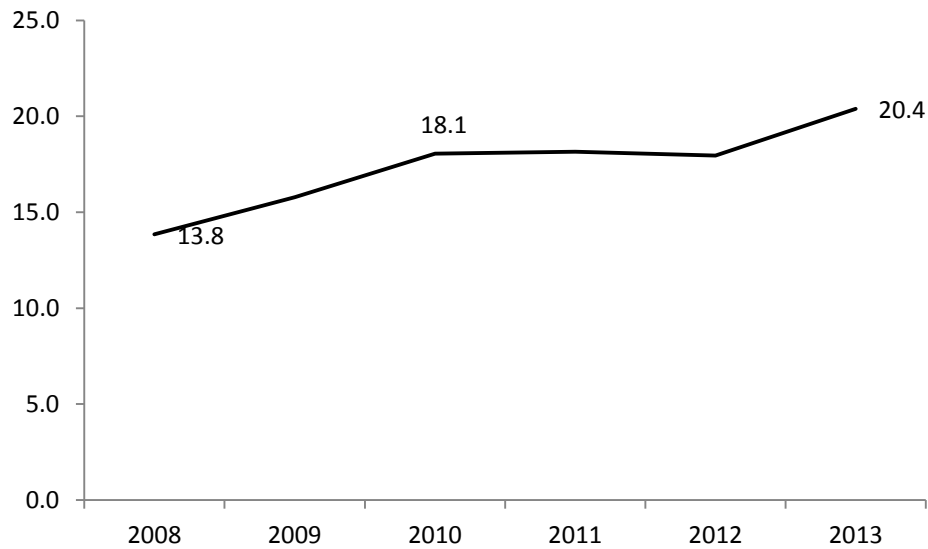
4.2. Implications of part time employment

4.2.1 Part time employment and wages.

The main gap faced by PT workers is the earnings gap. It could be argued that the “earning gap” is the other side of the “time bonus”. Obviously, although this argument is valid for voluntary PT workers, it ceases to be so for involuntary TP workers, the majority of PT in Spain. Furthermore, PT workers face another earning gap on top of the lower income related to the lower number of working hours, as hourly wage of PT workers is lower than hourly wage of FT workers. Figure 22 shows the evolution of the part time wage gap from 2008 to 2013. The wage gap is defined as $[100 - (WPT/WFT)] \%$ ¹⁷. The results point to the existence of a sizeable and growing raw wage gap between PT and FT workers.

¹⁷ FT and PT hourly wages have been constructed dividing FT and PT yearly wages according to the Annual Survey of Wage Structure (*Encuesta anual de estructura salarial*) by the total number of FT and PT annual hours. Annual working time has been constructed using the estimated weekly hours of the

Figure 22. Wage gap of PT employees (as % of FT employees). 2008-2013



Source: Author's analysis of *Encuesta anual de estructura salarial*. Serie 2008-2013

As mentioned when dealing with the wage gap between employees with open-ended versus fixed-term contracts, the wage between FT and PT workers can be partially or fully explained by the different stock of characteristics with labor market value of FT and PT workers. According to the results obtained from the Oaxaca-Blinder decomposition, in 2010 and with hourly wage data obtained from the Structure of Earnings Survey, around one quarter of the hourly wage gap is explained by the characteristic of PT workers compared to FT workers. This result is higher than the one obtained for temp versus permanent workers but still leaves $\frac{3}{4}$ of the difference unaccounted for.

4.2.2 Training, representation and eligibility gaps.

Regarding training, according to the ECVT (2010) the level of training for FT and PT workers is quite similar, with a small non-significant difference in favor of FT workers (82,6 % of FT workers receive training versus 80% of PT workers). In relation to the representation of PT workers, as it happened with temporary employees, part time

Annual Survey of Wage Structure assuming FT and PT workers work the same number of weeks per year (48 weeks).

employees have lower affiliation rates. According to the ECVT (2010) the affiliation rate of PT employment in 2010 was 13.7% compared to 18.5% of FT employees.

4.2.3 Social protection gaps.

Part time workers have the same rights that full time workers regarding social protection (unemployment, retirement pension, maternity leave, etc.). The main problem in this regard is that PT workers might find more difficult to meet the eligibility requirements of those social programs that ask for a given time of contributions to be eligible, receiving also lower benefits. In order to solve this problem, since 2013, as result of social dialogue, the rules governing access to retirement pensions of PT workers where changed in order to facilitate part timers to met the required minimum years of contribution to social security to qualify for retirement and other types of pensions. Before the reform, PT workers had to meet the same criteria that FT workers. In the case of retirement pensions that meant a minimum of 15 years of contributions, but each year of PT work was considered as less than a full year, depending on the number of weekly hours (*i.e.*, the requirement was a full time working year). With such regulation, for example, a PT work working 50% full time weekly hours needed 30 years in order to meet the 15 years criteria. After the reform the required number of years is calculated multiplying 15 by the proportion of PT/FT hours. In the former case the required period would be 7.5 years. As result of the reform it is estimated that 30-40% of PT workers that with the previous system would not have reached the required minimum contribution period will have access to retirement pensions¹⁸. PT worker will also profit from the so called “complement of minimum” (a State means tested program of complements of pensions under a given threshold).

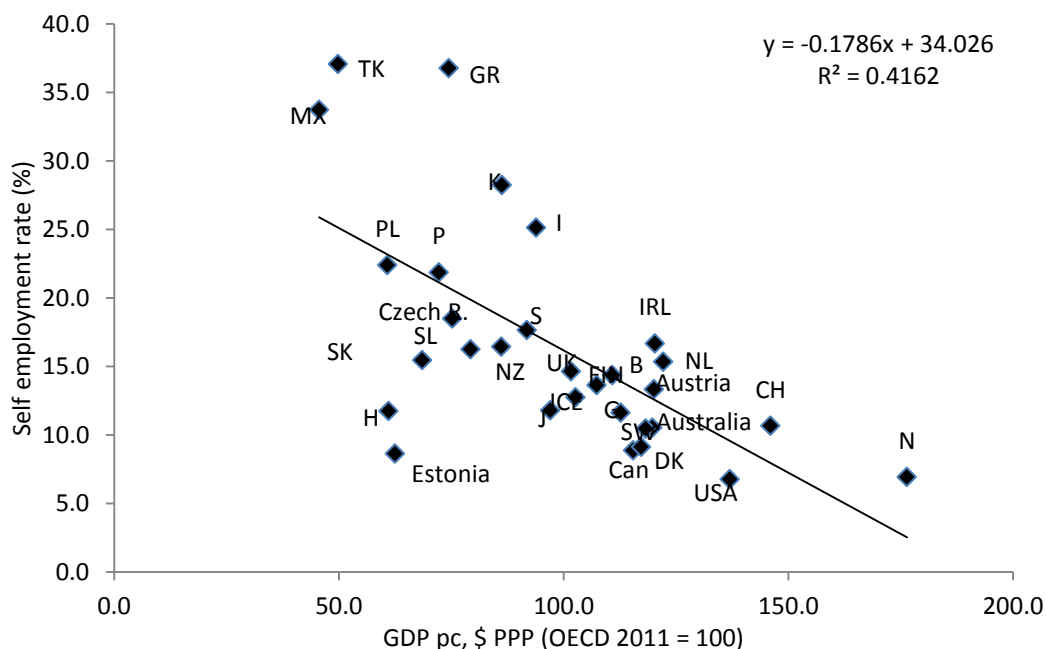
¹⁸ The reform also change the way of calculation of the amount of pension, favoring also PT workers by multiplying the number of days worked by 1.5.

5. COST DRIVEN SUBCONTRACTING WORK

5.1 Self employment

The reduction of self-employment and its substitution by dependent employment is one of the stylized facts of the process of economic development of nations. As argued by Adam Smith (1776), the key element behind the increase in productivity associated with the rise of the “Wealth of Nations” is the division of labor. Although theoretically the division of labour could also be performed among a myriad of self-employed workers using the market to exchange their products at different stages of production, it is known that the existence of transaction costs (Coase, 1932) reduces the viability of such type of organization of production. In this context, the growth in size of the firm, and with it, the rise in dependent employment, becomes a precondition for economic growth. This thesis is confirmed by the inverse relation between national income level and the rate of self-employment (Figure 23), with the richest countries having lower rates of self-employment.

Figure 23. GDP per capita and self-employment rate. OECD, 2011



Source: Authors' analysis from OECD Labour Statistics Database

From this long run perspective, we should expect lower self-employment rates as countries develop¹⁹. In contrast with this expected long run trend of self-employment, countries such as The Netherlands or UK have recently experienced an increase in self-employment rate. There are many possible elements that can explain this “abnormal” increase in self-employment, from tax reasons to the rise of new sectors or activities more appropriate for this type of organization of production. Among them, one of the hypothesis raised by the literature is the possibility that this type of employment is being used by firms to reduce their labour costs and commitments to the workers (see chapter 1) and increase its flexibility. To what extent is this strategy being used by Spanish firms?

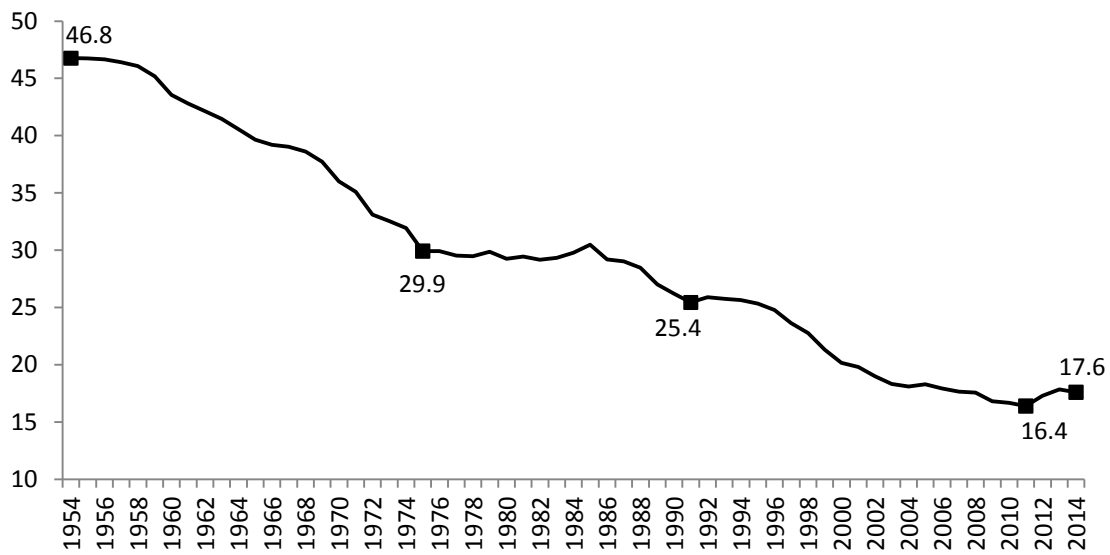
Before addressing this question, it is important to review briefly the evolution of self-employment in Spain in the long run, as well as its distribution in terms of sectors of activity.

The evolution of self employment in Spain reproduced in Figure 24 confirms the above mentioned reduction of self-employment rate that is to be expected in a country going through an intense process of economic growth. This reduction of self-employment rate is largely, but not only, fueled by the decrease in agriculture employment. The second conclusion worth mentioning (Figure 24b) is the countercyclical behaviour of self-employment rate, increasing in periods of crisis and decreasing during boom. In this respect self-employment can be considered as a second best option for some dependent workers in case of unemployment during the crisis. The countercyclical behaviour of self-employment rate makes it especially difficult to know whether the increase in self-employment rate observed in Spain in 2013-14 is the product of the strategy of firms, observed in other countries, to transform dependent employment into activities contracted out to self-employed workers, or the product of the protracted economic crisis.

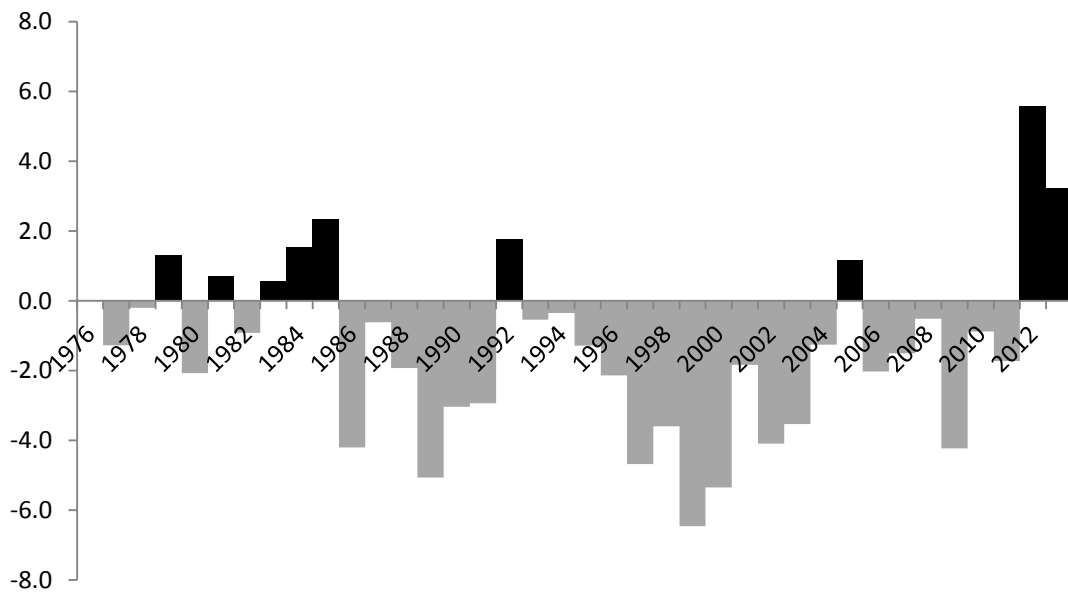
¹⁹ At least “solo” self-employment (self-employed workers without employees). In Spain, around 2/3 of self-employment belong to this category. Nevertheless, it could be argued that the process of development, with the corresponding increase in the size of firms, would also lead to a decrease in the number of self-employed with employees.

Figure 24. Evolution self-employment rate in Spain.

(a) Self-employment rate (%)



(b) Rate of change of self-employment rate



Source: Authors' analysis from LFS data

Turning now to the different incidence of self-employment by activity, Figure 24, reproduces the sectors of activity with higher than average incidence of self-employment rate in the fourth quarter of 2014. As can be seen, the taxonomy of activities with a higher than average incidence of self-employment rate is quite diverse

and points to the existence of different motivations behind its use. In this respect we find the traditional expected sector such as agriculture (44%), construction (39%) and retail (29%), but also new sectors such as computer repairs (57%) and ancillary activities in the financial services (31%). The analysis of the evolution of self-employment rates by sector of activity from 1987 has detected only few sectors with major increases in self employment rates. In some cases, such as the above mentioned computer repairs, the increase is related with the development of a new activity, while in other, such as real state, the increase is explained by the cycle (the construction boom). If we focus on the period of the crisis: 2008-2014, we find significant increases only in very few sectors (travel agencies, construction, activities related to artistic creation and shows, information services and computers repairing).

Summing up, so far in Spain there has not been a major increase in self-employment, but a process of reorganization of self-employment in a context of long-run decline of self-employment.

5.1.1. Self-employment versus bogus self-employment

The difficulty in statistically discriminating those “old time” self-employed from what has been called “economically dependent self-employment”, “bogus self-employment” or “false self-employment”, should not lead us to think that its existence is marginal or non important. The mere fact that in many countries regulations have been approved to protect this type of self-employment could be taken as an example of its (although statistically opaque) importance.

According to the literature, the main characteristics of bogus self-employment are: (1) workers are not tied to an employee by a labour contract; (2) a large part of their revenue (75% in the Spanish regulation) comes from the same “customer”; (3) they keep a continued relation to the “customer-employer”; and (4) they usually have no employees.

Figure 25. Self-employment rate by activity: 2014 4th quarter



Source: Authors' analysis from LFS data

The Spanish *Statute of Self-employment* of 2007 recognizes the existence of this type of “employment” relationship. In the words of the introduction to the law: “Its regulations convert the necessity of providing legal cover to a social reality: the existence of a group of autonomous workers who, notwithstanding their functional autonomy, carry out their activity with a strong and almost exclusive economic dependence on the businessman or client who contracts them (...) the weakest link in the contractual process”. According to the Statute, to be considered economically

dependent self-employed -TAED (*trabajador autónomo económicamente dependiente*)²⁰ in the Spanish acronyms-, the following, rather restrictive, requirements have to be met²¹:

(1) Economically dependent autonomous workers are those who carry out their economic or professional activities for financial gain and in an habitual, personal, direct manner and predominantly for one natural or legal person, called the client, on whom he or she depends economically, receiving from that client at least 75 % of his or her income for the performance of work and economic or professional activities.

(2) For the performance of economic or professional activities as an economically dependent autonomous worker, the following conditions must be simultaneously satisfied:

a) The worker must not have in his or her charge, third-party account workers, nor contract or subcontract part or all of the activity to third-parties, both in respect of the contracted activity with the client on whom he or she depends economically, and the activities which he or she may contract with other clients.

b) The worker must not execute his or her activity in a manner that is not different to those workers who provide services under any type of labour contract for the account of the client.

c) To possess productive and material infrastructure necessary for the carrying out of the activity independent of those of his or her client, when in said activity these are economically relevant.

d) To implement his or her activity with his or her own organizational criteria, without prejudice to the technical instructions which he or she may receive from the client.

e) To receive an economic compensation as a result of his or her activity, in accordance with that agreed with the client, assuming the risk and fortune of this.

TAED workers are entitled to some rights such as: (1) the right to an interruption of their annual activity of a minimum of 18 working days²² (art. 14); (2) The realization of

²⁰ The more catchy acronym TRADE is also found in the Spanish literature on the issue.

²¹ *The self-employed statute*, 20/2007 law of 11th of July. Chapter III on Professional regimen of the economically dependent autonomous worker, Article 11: Concept and subjective ambit.

²² This period is intended to allow the dependent self-employed to enjoy annual holidays. In any case, its duration, a minimum of 18 working days, is lower than the minimum legal holidays of dependent employees (30 natural days equivalent to 26 working days)

activity for a time greater than that agreed contractually shall be voluntary in all cases, and may not exceed the maximum increase established by means of a 'professional interest agreement' (see below). In the absence of a professional interest agreement, the increase may not exceed 30 percent of the ordinary time of activity individually agreed (art. 14); (3) When the termination of a contract is a result of the will of the client without just cause, the economically dependent autonomous worker shall have the right to receive compensation for the damages and prejudices caused (art. 15)²³; (4) The right of justified interruptions of professional activity (art. 16).

Since its recognition as a special type of labour relation, there are self-employment organizations that channel the representation of TAED workers.²⁴ Trade unions were also involved in the debate prior to the enactment of the self-employment statute.²⁵ In fact, CCOO recently signed an agreement of association with one of the most representative associations for the self-employed - the Unión de Asociaciones de Trabajadores Autónomos, UATA - and has a specific website (www.autonomosdeccoo.es) addressed to this group of workers, while UGT has a similar agreement with Union de Profesionales y Trabajadores Autonomos.

In this respect, it is interesting to note that the law recognizes the possibility of developing the so called *Acuerdos de Interés Profesional*, AIP (*Professional Interest Agreements*) in order for TAEDS workers and the firms contracting their services to collectively agree terms and conditions. The first AIP was signed in 2009 with a duration of 3 years, by PANRICO an industrial bakery and the TAEDS workers performing the delivery service states the type of TAEDS workers of the firm, the

²³ For example, the *Acuerdo de Interés Profesional* (Professional Interest Agreement) of BIMBO, a bakery firm, stipulates a compensation of 20 days per year of activity, with a maximum of 270 days, when there is judiciary sentence in that sense (unjustified termination of contract).

²⁴ In 2011 the UPTA (Union de Profesionales y Trabajadores Autonomos, (<http://upta.es/>) was considered by the government as representative association of self-employed workers. Other four associations: Federación Nacional de Asociaciones de Empresarios y Trabajadores Autónomos (ATA), Federación de Organizaciones de Profesionales, Autónomos y Emprendedores (FOPAE), Unión de Asociaciones de Trabajadores Autónomos y Emprendedores (UATAE) and Federación Española de Autónomos (CEAT), have the same recognition. CC.OO, the major Spanish Trade Union also has a special section dealing with TAEDS: La Federación Sindical de Trabajadores Autónomos Dependientes, FS TRADE-CCOO.

²⁵ In fact at least one of the major unions, CC.OO was quite critical of the limited rights of TRADE workers, and to some aspects of its regulation as it could increase the risk of converting standard employment relations into TRADE. that they interpreted as an incentive to use this kind of modality of work (CCOO, 2010)

system of allocating different delivery itineraries, as well as many other working conditions including leaves, payments, etc. Although in general terms the AIPs could be considered as a “reinvention” of collective agreements (CAs) for those workers excluded from them due to the non-employment nature of their relation with the firm, there are important differences between CAs and AIPs worth mentioning. Among them, the AIPs only affect the TAED affiliated to the association or TU signing the agreement and only after giving his or her consent. In relation to the content of the AIPs, there are two important limitations: (1) the need to observe EU competition law and (2) the need to observe the conditions that define dependent self-employment (Val de Tena, 2014).

In Spain there is a national register of TAED workers run by the State National Employment Service, although the information gathered in such register has not been made public so far. According to Ribo (2015), in December 2014 the number of registered TAED was 9,045. In contrast, in 2004, a special module of the Spanish Labour Force Survey estimated that slightly less than 300,000 self-employed persons worked for a single firm or client. Therefore, a decade ago 16% of self-employment could be considered as dependent self-employment. For 2014 the figure was slightly lower, 13 %²⁶.

Although we don't have more updated specific statistics of bogus self-employment, it is reasonable to expect that its use has gone up with the crisis, as the recession has increased the pressure of firms to cut costs, reducing at the same time the employment alternatives of workers due to the massive increase in unemployment. The following examples are interesting cases of the type of dynamics accelerated by the crisis.

The first one is supplied by the first Spanish industrial bakery to produce sliced bread. With origins in Mexico, Bimbo was created in Barcelona in 1964. In 2011 as part of the

²⁶ The discrepancies between both numbers can be explained by the different sources: administrative data in the first case and survey data in the second. Such difference implies that a large majority of TAED workers are not register as such. Estimates based on INE data. UPTA: *Los autónomos dependientes crecen un 14,5% desde marzo de 2013* (Miércoles, 07 de Mayo de 2014).

http://upta.es/index.php?option=com_content&view=article&id=523:2014-05-07-10-41-08&catid=1:latest-news&Itemid=18

process of restructuring in order to avoid bankruptcy (in 2010 the company lost €12.5 million) the company signed an agreement with trade unions according to which 360 workers in charge of delivering the product to grocery stores and supermarkets ceased to be employees of the company becoming dependent self-employees. The agreement warranted an income on €22,900 for the first year plus a redundancy payment of 45 days per year in the company capped at 32 months, the legal maximum for non justified dismissals (see section 6.1). The main competitor of the company in the sector, Panrico, had also used that strategy -TAED workers- to take care of deliveries.

The second case is taken from a completely different sector. With the end of the construction bubble and the halt of residential construction first and public infrastructure construction later (with the beginning of the debt crisis and fiscal adjustment programs), the labour market for architects changed completely. As a result of these changes, there has been a significant increase in unemployment among the profession as well as in bogus self-employment. According to a survey conducted by the Architects' Trade Union in 2013, 60% of the interviewed architects were or had been bogus self-employed in the past. In most cases the reason behind it was the lack of alternative employment (87% of cases) or threat of dismissal (10%) while only the remaining 3% were bogus self-employed for fiscal reasons²⁷.

The third example is supplied by the sector of road transport. This activity is interesting as an example, among other things, for the high incidence of both self-employment and accidents rates. In the US, for example, truck drivers have mortality rates seven times higher than average. In Spain, in 2013 the incidence rate of accidents with sick leave in the sector of land transport was 43% higher than the average (rising from 24% higher in 2006), while the rate of fatal accidents for the whole sector of transport and storage is 3.2 times higher than average²⁸. For employers, self-employed workers have the advantage of being allowed to consider waiting time (or the time spent fixing a flat tire, for example) as resting time, increasing their potentially effective driving time in comparison to employees. Moreover, when the value added of the merchandise transported allows it, there is an incentive to transform standard truck fleets to fleets

²⁷ Sindicato de Arquitectos (2013): *III Encuesta situación laboral de arquitectos*.

²⁸ Estadística de Accidentes de Trabajo, 2013.

with vehicles under 3,500 kg in order to circumvent controls such as tachographs, resting and driving time, etc. (Izquierdo and López, 2011)²⁹.

5.1.2. Protective gaps facing workers in bogus self-employment.

Most implication of bogus self-employment in terms of regulatory, and social protection gaps derive from the fact that the responsibility for working conditions and access to social protection is translated from the firm/employer to the self-employed worker. At the same time the legislation is more lax in terms of the compulsory nature of such protection. Both elements, especially in a context of high competition and cost pressures lead to the deterioration of working conditions and social protection.

In the area of social protection gaps, according to the Spanish regulation, self-employed workers can choose the level of social contribution at their own discretion. As a result, most self-employed (80% in 2011) choose the lowest possible level of contribution. The result is much lower level of benefits compared to employees. For example, the average monthly pension of self-employed men retiring in February 2015 at 65 years or older amounted to €963, compared to €1605 for employees, *i.e.*, 61% of the average employee pension.³⁰ To the extent that this lower level of protection is the result of a choice, it is difficult to interpret the result obtained. In some cases self-employed workers with very low earnings might be forced to choose the lowest contribution level in order to make ends meet, but in others the low contribution level might be simply the result of the preferences of self-employed workers for higher earnings in the short run even if at the price of lower (pensions) earnings in the long run.

In the past, self-employed workers were excluded from any type of unemployment benefit (UB). Among the reasons behind the different treatment of self-employed workers and employees stands out the difficulty in controlling the involuntary nature of the cease of activity in the former group of workers. In 2010, and following a mandate of the Statute of Self-Employment of 2007, the Law 32/2010 of 5th of August

²⁹ The potential increase in the number of bogus self-employed transport workers associated to this changes is one of the factors that might be behind the increase in the number of fatal road accidents that occurred in 2014 involving this kind of vehicle: from 47 in 2013 to 92 in 2014.

³⁰ Pensión media mensual de las altas iniciales de jubilación según régimen y sexo, por edades. Febrero 2015. Seguridad Social.

was approved in order to eliminate such gap by creating a special system of unemployment protection for self-employed workers: the so called Compensation for End of Activity, PCA, (*Prestación por Cese de Actividad*).

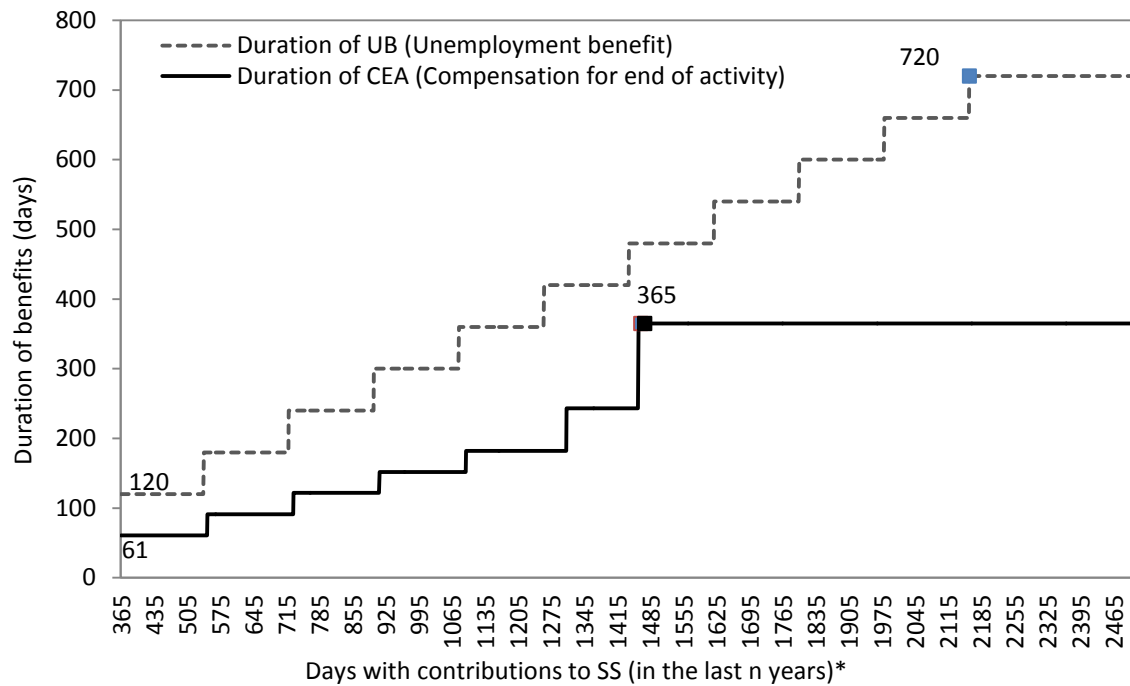
In any case, the new system of “unemployment “protection for self-employed is different from the unemployment benefit in two major aspects:

(1) Although the group of experts in charge of writing the report: *The development of a specific system of compensation for cease of activity for self-employed workers* in 2008, was in favor of establishing a compulsory system,³¹ the legislator opted for a system of voluntary social security (for workers under 30 years old and for all workers until 2014), benefiting only those self-employed workers that opted for it. As result, in 2012 only around one fifth of of self-employed were included in the system.

(2) The duration of the benefits is lower for self-employed workers compared to employees. Figure 26, that reproduces the duration of both benefits in relation to the period of contribution in both protection systems, shows clearly the lower (in terms of duration) protection of the Compensation for end of activity of self-employment in comparison to Unemployment benefits.

³¹ Both for sustainability and solidarity reasons.

Figure 26. Duration of Unemployment benefits (employees) and Compensation for cease of activity (self-employed).



(*) n = 4 years for self-employed and 6 for employees.

Source: Author's analysis from SS data.

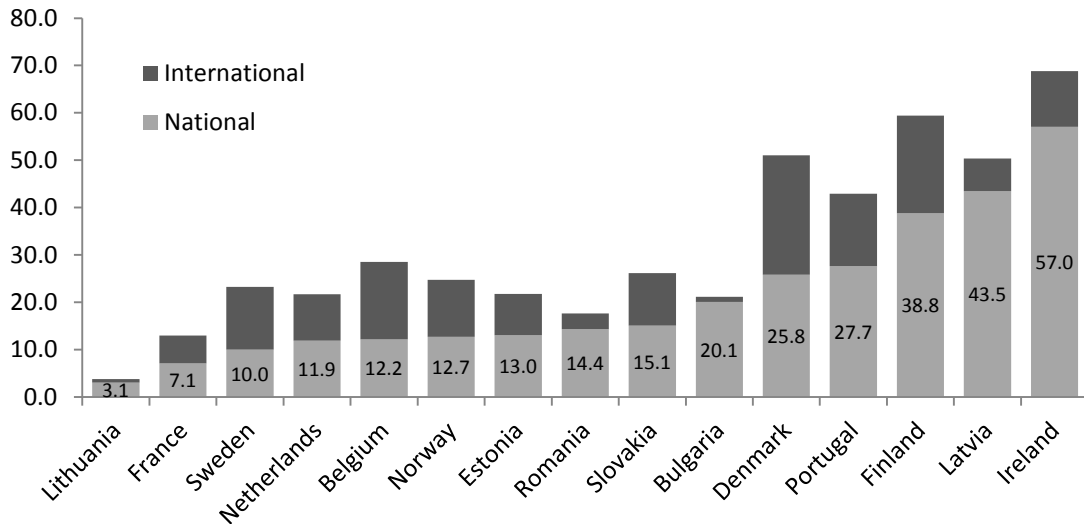
Moreover, a large majority (around 80%) of applications of self-employed for the Compensation for end of activity are rejected due to lack of convincing proof of end of activity. In this respect, the requirements in terms of proof of cease of activity for those self-employed economically dependent are somehow easier to meet (termination of contract with the client among others).

5.2 Subcontracted workers.

Nowadays, subcontracting of production activities once performed within the firm is a common characteristic of firms across all the range of economic activities (Knabe and Koebel, 2006). Although the information is patchy and far from perfect, available data from Eurostat for 2011 (Figure, 27), shows that in countries such as Denmark, Finland or Ireland more than half of firms rely on outsourcing for either core or support functions, although in other countries, Sweden for example, the percentage is much

lower (23%). Differences are even higher when we focus on national outsourcing, the strategy with higher implication in terms of working conditions.

Figure 27. Percentage of firms outsourcing core or support functions in 15 European countries (2011).



Source: Authors' analysis from "Sourcing status by business function and economic activity (2009-2011)", Eurostat

Unfortunately there is no official information about the use of outsourcing among Spanish firms, or what would be more interesting for our study, about the number of employees working in outsourced activities. In any case, according to a recent report by EY (2013), in the area of services, Spanish firms, along with British and Finnish firms are among those making higher use of outsourcing (17%, 17% and 19% respectively). This percentage is in line with the estimates of Zimmermann and Pinilla (2009), of the Spanish Institute of Health and Safety at Work (*Instituto de Seguridad e Higiene en el Trabajo*), according to which in 2009 18.9% of Spanish firms outsourced part of their activity.

The relation between subcontracting and the working conditions of subcontracted workers is not straight forward. There are two different but compatible perspectives with different outcomes in terms of the implication of subcontracting for workers. The first perspective draws from the importance of the division of labour as a source of productivity gains, and the restriction played by the size of the market in allowing firms to increase their level of specialization. According to this perspective, if those activities

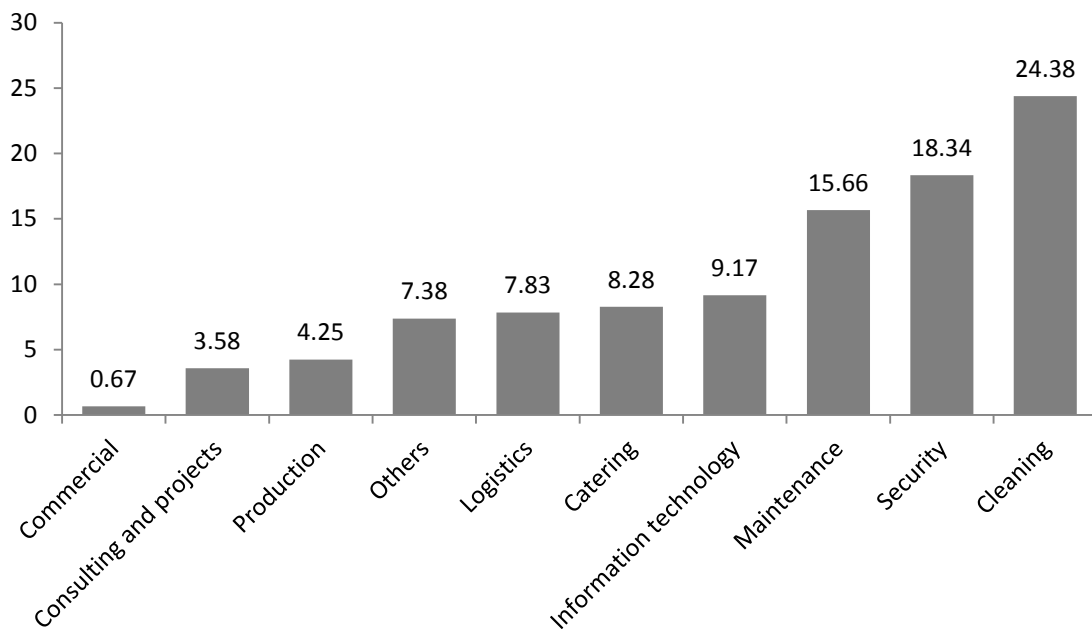
enjoying economies of scale but carried out by the firm at a scale too small to reach the minimum scale required to obtain sizeable cost reductions are contracted out, then, the subcontracted company, by adding different contracts from different firms, might reach the minimum scale of production needed to profit from such economies of scale. If that is the case, and if the economies of scale are big enough, the productivity gains derived from contracting out certain processes could lead to lower costs for the contracting company while maintaining or even increasing the wages of the subcontracted workers in comparison with the wages received by the workers of the contracting firm. From this perspective, those, mostly ancillary activities, carried out at a small scale by the firm, but with potential economies of scale are perfect candidates for outsourcing. Furthermore, by subcontracting such activities managers will increase their time available to focus on the core business of the firm.

The second perspective is associated with the existence of internal labour markets in the firm that might introduce limits to the ability of managers to change staffing levels or set different wages to different categories of workers at will. In relation to the former element, the existence of employment protection legislation might also affect both the cost and the speed of adjustment of labour to changes in demand (Autor, 2003). In this respects, as long as there are not long-term contracts with the subcontracted firm, outsourcing can be used as a system to increase the flexibility of the firm. In relation to wages, if there are constraints, related to the existence of collective agreements covering the whole workforce of the firm regardless of the occupation of the individual workers, or to the existence of a conception of a fair wage *à la* Akerloff and Yellen (1990) and a fair wage maximum disparity within the firm, then, the firm might be compelled to pay specific occupations/workers wages above the market wage in order meet the existing internal equity constraints (Abraham and Taylor, 1996). If that is the case, then subcontracting the tasks performed by such groups of workers might be a way to circumvent the fair wage norm and reduce the wage bill of the firm (as long as the collective agreement of the subcontracting firm and/or the conception of a fair wage within the subcontracting firm are different). Other elements to be considered are the possibility of using outsourcing to reduce trade union power, as small subcontracted firms are usually less unionized, or as a way

to not fully comply with labour legislation (Hossiaux, 1957). From this perspective, subcontracting can be interpreted as a way of mobilizing a cheaper workforce (Grimshaw and Rubery, 2005).

One indirect way of approaching the role played by the above motives in outsourcing is by looking at the type of productive activities subcontracted. It can be argued that the outsourcing of simple non skilled activities would be related to the second driver: reduction of labour cost; while the outsourcing of more sophisticated high skilled activities would be related with the first of the above mentioned drivers. Figure 28 presents the distribution of outsourcing by type of activity made by large firms (> 250 workers) in Catalonia, one of the richest regions of Spain. The data show both the diversity of activities outsourced and the dominance of low skilled activities.

Figure 28. Subcontracted activities. Catalonia, large firms, 2013



Source: Consejo de Relaciones Laborales de Cataluña (2013): Encuesta subcontratación laboral, 2013.

5.2.1. Subcontracted workers' regulatory gaps.

Spanish jurisprudence doesn't consider the succession of subcontracting as covered by the protective umbrella of the art. 44 of the Estatuto *de los Trabajadores* (Code of

Labour), nor the European Directive 11/187/ of February, 14th, 1977. As result, the protection of workers in case of change in subcontracted firm is delegated to whatever the CA (see following section) or the subcontracting tender stipulates. In relation to other elements of working conditions, the only major source of gaps in terms of working conditions is related, usually, to the difference between the Collective Agreement enforced in the firm subcontracting and subcontracted firm.

5.2.2. Outsourcing and collective agreements.

According to Menéndez (2009), generally speaking the references to subcontracted activities in Collective Agreements in Spain are quite limited and often only reproduce the existing regulation on the matter. Nevertheless there are some interesting points, mostly related to the maintenance of employment in outsourced activities through the use of so called subrogation clauses. Another area of concern is the establishment of procedures of control in health and safety covering the subcontracted activities. In what follows we will present some examples of CA and other ad-hoc agreements with specific clauses dealing with rights and working conditions of employees of the subcontracted firms.

(A) Agreements that limit the type of activities exposed to subcontracting: The Subcontracting Agreement of Sony or Michelin are good examples of agreements limiting the type of activities that employers are able to subcontract. The Michelin agreement defines nine requisites that have to be met in order to be able to subcontract a given activity.

(B) Some CAs at the provincial level in construction prohibits subcontracting under specific circumstances as a way to control "*intrusismo*" (unqualified practice) and prevent employment fraud. For example, regarding the last item, the contracting firm is compelled to control the actual payment of Social Security contribution by the subcontracted firm.

(C) Some CAs extend the same level of health and safety protection to in-house and subcontracted workers. Moreover, in some CAs health and safety delegates, faced with a situation of danger or risk to the workers, have the power to stop production even if the activities are carried out by subcontracted workers under the supervision of

the subcontracted firm when production is performed in the firm site or with equipment or material supplied by it.

(D) Probably the most important item in CA dealing with subcontracted activity by the firms is the inclusion of subrogation clauses by which new subcontracted firms are required to hire all employees who worked for the previous subcontracted firm, reflecting the TUPE regulation of the EU³². There are numerous examples of this type of clause in different sectors from cleaning, senior citizens residences and day care centers, delivery, construction or security services among others.

An important milestone in this area was the approval of the Law 32/2006 regulating subcontracted activity in construction and, especially, limiting vertical subcontracting to 3 levels (except when justified by the special skills needed to perform the activity subcontracted). This law was the result of a long process of trade union activity that started in 1998 with the launching by the Construction Federation of CCOO of a Popular Legislative Initiative to regulate subcontracting in the construction sector, followed by a unitary TU campaign in 2004 under the slogan “Es tu vida, son tus derechos” (“It’s your life, they are your rights”).

³² Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

6. OTHER FORMS OF PRECARIOUS EMPLOYMENT: INTERNSHIPS

Although the lack of suitable statistics does not facilitate a full account of this relatively new form of pseudo-employment, there is growing concern among trade unions and young workers about the overuse of internships for young workers as substitute for standard employment. An example of such concern is the recently published guide for internships prepared by CCOO (2015) addressed to union representatives in firms.

As with other non-standard labour relations, no one questions the need to increase the connections between the world of education and the world of work, or the relevance of internships to reduce the existing gaps between them. The problem is when internships or traineeships (for non students) are used as substitutes for standard employment, as pseudo-employment.

One of the few statistical sources on the use of internships by firms from a comparative perspective is the Flash Eurobarometer 378, conducted in 2013. This survey investigates the use of traineeships, as they are called in the Survey, in the EU (27) at different moments of the life of workers. In what follows, we will focus on traineeships conducted after the end of the studies, considering that traineeships carried out during the formal study period are of a different nature as they often form part of the study curriculum itself.

According to the survey in Spain 67 % of people 18-35 had a traineeship after finishing their studies, compared to 36% in the EU (27). internships among young workers in Spain are not only more common, they are also of longer duration, had less access to mentors who helped with the job and received insufficient compensation to cover basic living costs (table 4).

Table 4. Characteristics of internships in Spain and EU (27)

	EU (27)	Spain
% had a traineeship after the end of studies* (Q.7)	36	67 %
Duration (Q.8)	Less than 1 month	5
	From 1 to 3 months	55
	+ 3 to 6 months	24
	+ 6 months	15
Financial compensation was sufficient (Q11.9)	46	29
Possibility to turn for help to a mentor** (Q.10.4)	91	79

* Excluding don't know.

** Totally agree + Tend to agree

Source: Eurobarometer 378.

According to the analysis of Red2Red (2006), the use of internships by Spanish firms and Public Administration (in this case mostly in the area of universities and R&D), based on non labour private contracts between the intern and the firm, is being favored by firms instead of other formal labour contracts such as trainee contracts (*Contratos de Formación*). The lack of any regulatory framework for the former type of relation (one again, excluding student's internships, which benefit from signed agreements between the educational institution and the firms) allows the firm to decide important elements of working conditions such as remuneration, working time, tasks, supervision, etc. It is even up to the firm to decide whether there is a training plan related to the internship, something vital to the whole idea of traineeships. According to Red2Red (2006) none of the Collective Agreements of sectors where this type of pseudo labour relation is more common (Mass media, Telecommunications, Banking and Law and Consulting firms) make reference to internships (*becarios*). According to the authors: "Interns conform to a hidden reality", subject only to what the internship announcement stated, without external control of verification of any kind" (p. 148).

Among other things, internships are used as a much cheaper screening device than standard training contracts. According to the estimates produced by Red2Red (2006),

the average difference in hourly labour cost between training contracts and internships is as much as 50%. On the supply side, the high unemployment rate, also among people with university degree, and the prestige associated with some internships (typically obtained after a rigorous process of selection) explains why there never seems to be a lack of workers applying for these pseudo employment contracts. According to a monograph produced by el *Objovem*, the Observatory of Young Employment in Spain of the Spanish Youth Council based on interviews with young trainees (Sánchez et al., 2007) internships are considered more and more as the standard way of entering in the world of work. According to a recent survey made by a employment web, *Infojobs* (2015)³³, since it was made possible by EU regulation, internships are also used by older workers with experience. In 2015 16% of the candidates registered in their web looking for an internship were older than 30 and had more than 6 years of experience. There are different reasons behind the availability of older workers for internship positions. For some of them, around a third, is a way to keep themselves in the labour market, even without a salary, in order to avoid the scare effects of unemployment, for others (21%), those without employment experience due to the crisis, is a way to obtain the required working experience, last, the larger group (43 %) the internship as part of their strategy to change their career. In total half of interns over 30 years old don't receive any compensation. Near 60% of unemployed over that age are thinking in enrolling in courses in order to have access to internships.

³³ The survey was made in 2014 among 221.716 candidates register in the employment web with a internship profile. 6.2% of these were over 30 years old with a university degree and more than 6 years of experience.

7. THE DETERIORATION OF THE STANDARD EMPLOYMENT

CONTRACT

Together with the development and “normalization” of new forms of non-standard employment with lower labour rights and social protection, the standard employment relationship itself has been subject to pressures from different forces, ranging from changes in labour regulations to growing global competition and rising unemployment rates, leading to its deterioration. In this section we will review these changes and their impact on the work and employment conditions of workers in “standard employment”, defined as having a full-time, open-ended contract.

7.1. Changes in employment protection legislation.

As we have seen in chapter 2, from mid 1980s the unemployment problem in Spain was interpreted in terms of a rigid system of employment with high employment protection that "scared" firms when they needed new hiring delaying the increase in employment. The answer to such problem was to facilitate the creation of a new segment of the labour market based on temporary contracts without the employment protection of standard workers with open-ended contracts. With the passing of time and the growth of temporary employment, it was considered that the problem now was not so much the difficulties in hiring (the scare effect of a "generous" employment protection legislation) but the creation of a dual labour market with workers with very different employment protection levels (redundancy payments): low in the case of workers with temporary contracts and high in the case standard workers with open-ended contracts.

In order to reduce this segmentation, redundancy payments were increased for temporary workers (in order to make this type of contract less desirable for firms) and redundancy payments were reduced for workers with open-ended contracts. This was done first by creating a new type of open ended contract with lower redundancy payments in 1997 and 2001, subsequently generalized in 2012 that reduced redundancy payments for all standard open contracts. Table 4 summarizes the reforms

for open ended contracts. In relation to collective dismissals (10 workers or more in firms with less than 100 workers, 10 % in firms from 100-300 workers and 30 workers in firms with more than 300 workers), the reform of 2012 eliminated the prerequisite of administrative authorization. In practice this meant that all collective dismissal were negotiated (and softened) between the firm and the trade union in order to obtain the required administrative authorization. In any case, the majority of collective dismissals are still negotiated between the firms and TU³⁴.

Table 5. Changes in employment protection legislation.

Type of contract	Dismissal cost	
	Unjustified dismissal (<i>despido improcedente</i>)	Justified dismissal (<i>despido procedente</i>)
Ordinary open ended labour contract	45 days per year with a maximum 42 months.	20 days per year with a maximum of 12 months (8 days per year paid by the FOGASA)
Labour contract to incentivise open ended employment (<i>Contrato de trabajo para el fomento de la contratación indefinida</i>)* (1997, 2001).	33 days per year with a maximum of 24 months	The reform of 2012 facilitates the use of this form of dismissal for economic, technical or organizational reasons
New open ended contract that substitutes the ordinary open ended contract (2010)	33 days per year with a maximum of 24 months	

FOGASA: Fondo de Garantía Salarial (*Wage Warrantee Fund*)

(*) Limited to some groups of workers, but in practice covering almost all workers.

Source: Author's analysis.

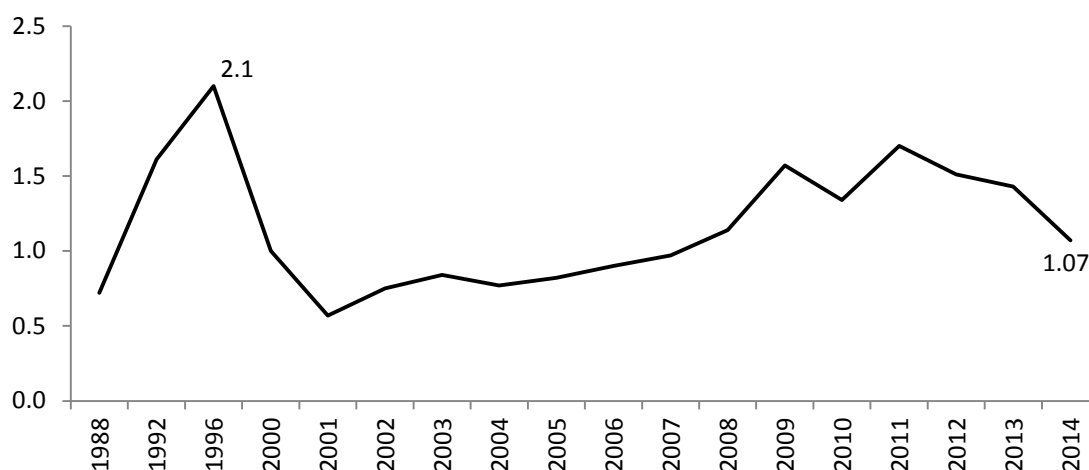
The result of these changes is a reduction in the protection of open-ended contracts, and correspondingly a deterioration of the standard employment contract.

Three things are important to underline in relation to the trend of reducing employment protection. First, as can be seen from figure 29, dismissals costs in Spain amounted, at most, to just 2% of total labour cost. At least from the perspective of the

³⁴ According to the ministry of Employment and Social Security, during the first quarter of 2015 only 7 % of collective dismissals were not negotiated by the firm and trade union representatives.

average cost of dealing with redundancies it seems that it is far from unbearable for firms.

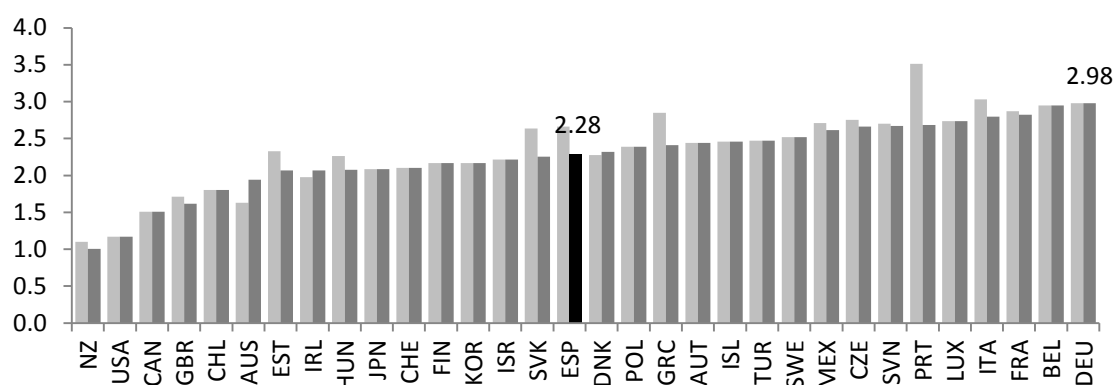
Figure 29. Redundancy payments as % of Total Labour Cost: 1988-2013



Source: Encuesta de Costes de Vida, different years.

Second, contrary to what is often believed and argued (even in supposedly well documented reports such as the recent IMF report on Spain), compared with the rest of the OECD countries Spain does not stand out in terms of its employment protection for open-ended employment contracts. As measured by the EP index for standard employment contracts developed by the OECD (version 3, which takes into consideration elements related to individual and collective dismissals of regular workers), Spain, with a value of 2.28 ranks in the middle of the distribution (the unweighted average for the sample is 2.26) immediately after Denmark and with a lower value than Sweden or Germany (Figure 29). Complementing this information, Figure 30 reproduces the value of the employment protection index for a sample of OECD countries for regular and temporary contracts. This shows that, in fact, Spain stands out for its comparatively high level of protection of temporary contracts, not of open ended contracts. This result poses an interesting paradox: Spain leads the OECD in its high use of temporary employment and yet registers a comparatively high level of employment protection for temporary contracts. Moreover, it is one of a handful of countries for which employment protection for standard workers is actually lower than that for temporary contracts (in terms of their own scale from 0-6).

Figure 30. Index of employment protection of open ended Contracts and collective dismissals, 2008 and 2013.

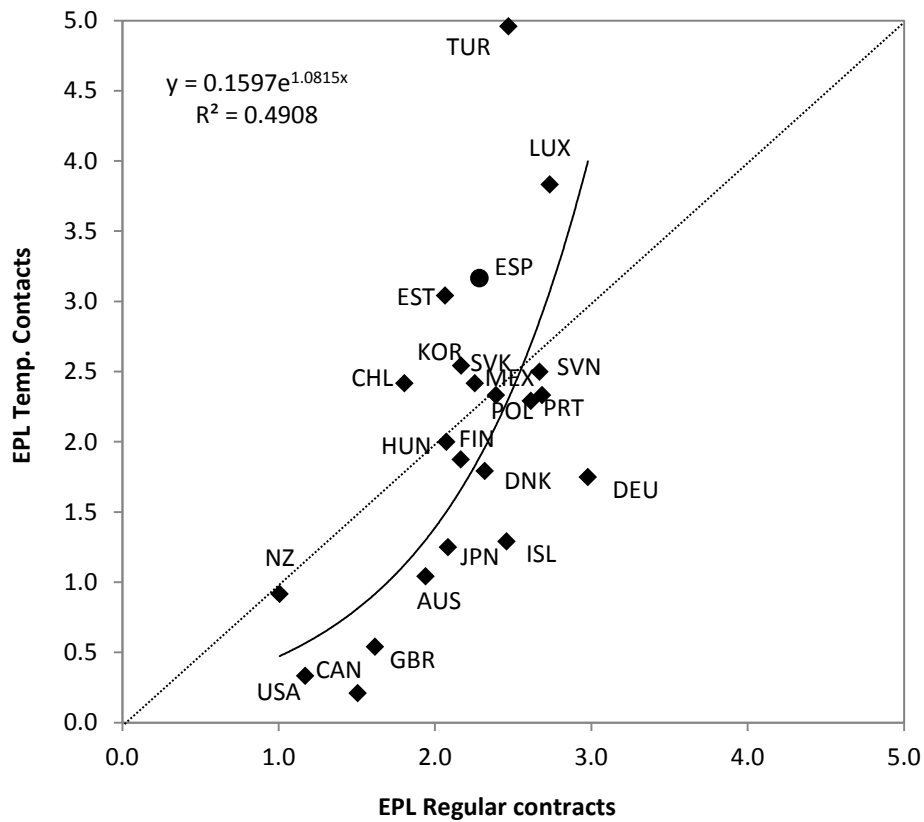


Source: authors' analysis from OECD Employment protection summary indicators EPRC_V3 (weighted sum of sub-indicators concerning the regulations for individual dismissals (weight of 5/7) and additional provisions for collective dismissals (2/7). It incorporates 13 detailed data items).

Third, open-ended contracts are far from contributing full protection against dismissals. The number of jobs destroyed during the crisis according to their temporary or open-ended nature is clear in this respect (Figure 30). The fact that in relative terms the destruction of employment affected disproportionately temporary employment (from the 4th quarter of 2007 to the 1st quarter of 2014 65% of total temporary employment was destroyed) does not mean that open-ended contracts were not affected by the crisis: in the same period 42% of total employment destroyed affected workers with this type of contract, 1.3 million. From a different but complementary perspective, according to our analysis of longitudinal data, in 2007, at the height of the economic boom, around 40% of unemployed workers with previous work experience had had an open-ended contract in the past.³⁵ In the words of Cebrian, Moreno and Toharia (2005): “Open ended contracts are by no means permanent. In Spain, since 1997, they are less permanent than before, especially in the case of initial contracts signed under the application of the new 1997 law”.

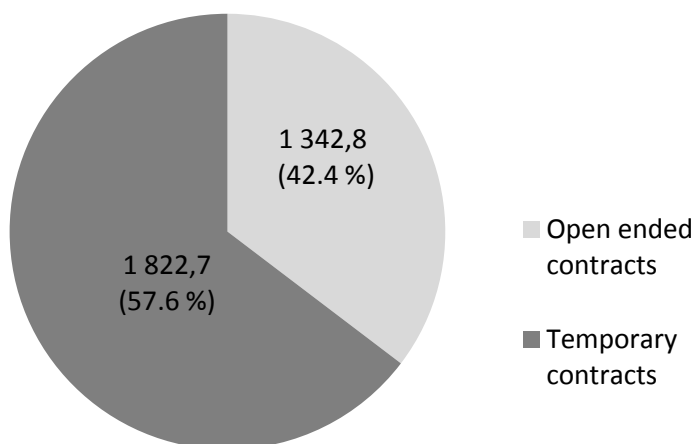
³⁵ The estimates comes from the *Muestra Continua de Vidas Laborales*, MCVL, (Continuous Sample of Working Life), an administrative sample of the Social Security registers, according to which 42.3% of unemployed workers receiving unemployment benefits, UB, and 42% of those without UB had a full time permanent contract in the past (17 % had a part-time permanent contract).

Figure 31. Employment protection indices for temporary and regular contracts. 2013



Source: Author's analysis of OECD EPL data base.

Figure 32. Distribution of total employment lost from 2007(4q) to 2014 (1q) according type of contract.



Source: Author's analysis from Spanish LFS data.

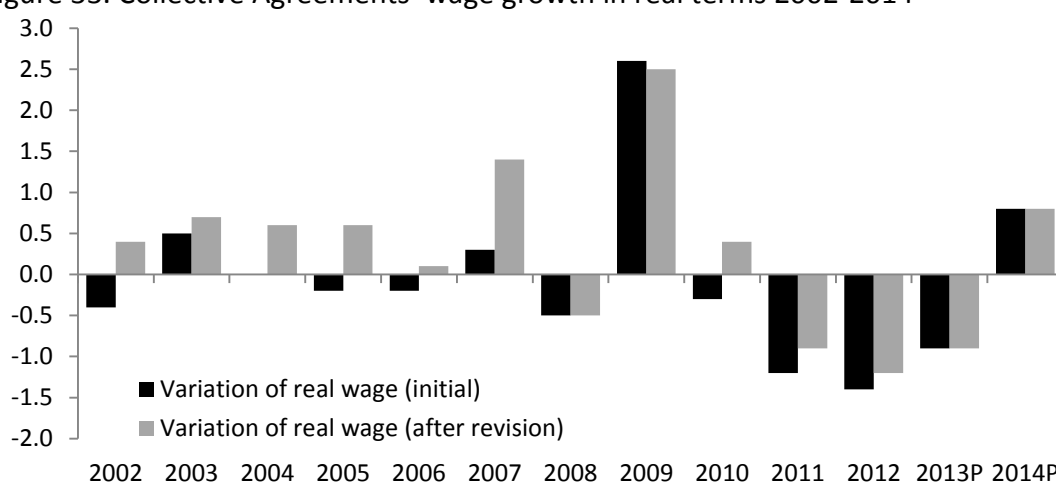
7.2 Changes in the regulation of collective agreements.

Among other issues, one of the major aims of the labour reforms of 2012 and 2010 (mostly the former), was to redirect the level of collective bargaining from the existing intermediate level of centralization (although with strong central guidelines) towards the level of the firm. Along with the former change, the 2012 reform introduced two important changes: (1) elimination of the so called "ultra-activity", by which a CA was considered valid after its expiration until a new Collective Agreement was signed. This gave trade union a strong hand when negotiating deterioration of working conditions demanded by the employees, (2) increase in the facilities given to firms to opt out of collective agreements. The number of firms who formally opted out of CA jumped from 687 in 2012 to 1831 en 2014

7.3 From wage moderation to wage deflation

Trade Unions subscribed a moderate approach to wage bargaining, conscious of the importance of making compatible the increase of wages with the reduction of unemployment. This approach led to moderate wage growth before the crisis. With the crisis, and excluding the unexpected increase in real wages resulting from an also unexpected fall in process in 2009, wage moderation turned into wage deflation (Figure 33).

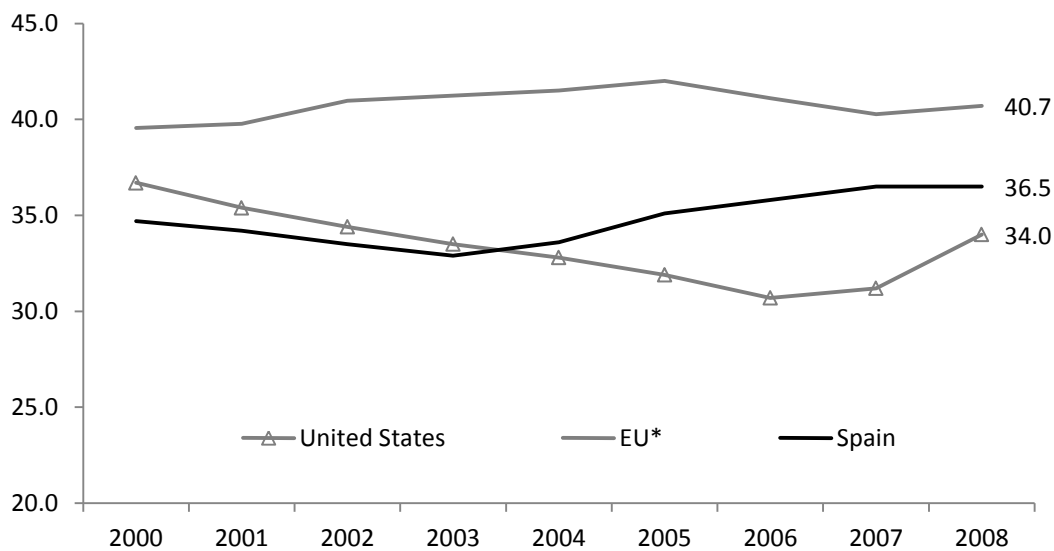
Figure 33. Collective Agreements' wage growth in real terms 2002-2014



Source: Author's analysis from Actualización del Boletín del Observatorio de la Negociación Colectiva 47 and INE.

The crisis also affected Minimum Wage policy, frustrating a project of the social-democratic party, PSOE, in power at the start of the crisis, to increase the minimum wage up to 800 Euros by the end of 2012. Instead, in 2015 the Spanish MW is 648.6 € (14 months per year) only 48 € higher than in 2008. Figure 34, that reproduce the evolution of MW as percentage of average earnings in Spain, the EU (average of 12 countries) and the US, shows the comparatively low level of the Spanish MW³⁶ as well as the abrupt halt produced with the crisis in the process of improvement that started in 2004.

Figure 34. Minimum Wage in Spain, EU* and the US 200-2004 as percentage of average wage.



(*) Average of Belgium, Bulgaria, Czech Republic, Greece, Spain, Latvia, Lithuania, Malta, Portugal, Romania, Slovenia and United Kingdom.

Source: Authors' analysis from Eurostat data.

The crisis also led to a major change in the number of CA with wage revision clauses in case of higher than expected inflation. Before the crisis around 70% of workers covered by CA were protected by this type of clauses, after the crisis, in the last year with definitive data, 2014, the percentage was 25,8%. Regardless of its merits in other areas of economic policy, this development can also be interpreted in terms of a reduction in the quality of the standard employment contract, that in the future will not be protected against inflation.

³⁶ Compared to the major OECD countries Spain ranks low in terms of MW level in relation to median earnings, only above Japan and the US (Low Pay Commission, 2012, p. 175)

7.4 Changes in social benefits.

7.4.1 Unemployment protection.

In contrast to previous recession, where the UB requirements were tightened in order to reduce the UB bill, in this occasion the crisis has led to only one change in UB: the reduction of the percentage paid after 6 months, from 60 to 50%. Although there has been some aggressive remarks by well known politicians of the governing conservative party considering UB as equivalent to having a sabbatical³⁷, no other changes have been approved. In fact, in the first years of the crisis the social-democratic government approved a temporary extension of unemployment compensation (the welfare part of it) for long term unemployed, that has been extended several times, also by the conservative government (now under the denomination of *Prepara*)³⁸.

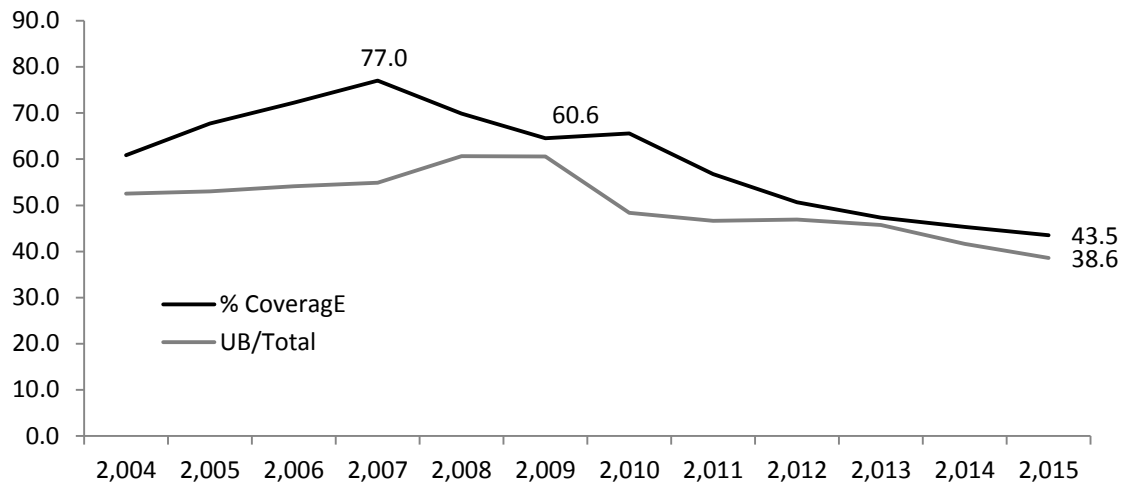
In any case, the duration of the crisis has affected the percentage of unemployed workers covered by the system of unemployment compensation as unemployed workers exhaust their right to unemployment compensation and assistance. This has led to a de facto, if not de jure, deterioration of the unemployment compensation system. In Figure 35 we can see the intensity of the decrease in workers protected by the system as well as the increase in the percentage of those covered by the less generous social assistance scheme³⁹.

³⁷ Aguirre compares unemployment benefits with “a grant to enjoy a sabbatical year”, *Expansión*, 22/05/2015

³⁸ Flat monthly rate of 400€ under certain conditions for the long-term unemployed (Programa de Recualificación Profesional Rroyal-decree 1/2011, february 11th.)

³⁹ In 2014 the average unemployment subsidy was 462 €, compared to 809€ of average unemployment benefits (calculated as total expenditure divided by total beneficiaries, *Estadística de prestaciones por desempleo*, Ministerio de Empleo y Seguridad Social)

Figure 35. Percentage of unemployed receiving unemployment compensation (all types) and of unemployed receiving all unemployment benefits as % of total workers with unemployment contributory + social assistance. 2004-2015(1st q)



Source: Author's analysis from *Estadística de prestaciones por desempleo*, Ministerio de Empleo y Seguridad Social) and INE.

7.4.2. Change in the regulation of dismissal due to absenteeism.

Another element of deterioration of the standard employment contract has been the introduction of new legislation in 2012 to fight absenteeism, even when justified by sickness. The new regulation eliminated a previous existing requirement according to which the employer could only apply individual measures against absent workers when the global index of absenteeism in the firm surpassed a certain level.

This change in regulation, although demanded by employers and some political parties such as both Basque and Catalanian nationalistic parties, does not seem to have responded to the existence of an actual problem of absenteeism in Spanish firms. According to the work of Malo (2012), based on the analysis of employee data (ECL), lost hours due to absenteeism in 2007 were around 3%, most of them justified due to sickness. Unjustified absenteeism was much lower, around 0.2%.

7.4.3 Changes in pension entitlements.

In two consecutive reforms, the first negotiated (if in extreme) with the two major Trade Unions (CCOO and UGT) and made during the last year of the mandate of the

Socialist Government in 2011 (La Ley 27/2011, de Reforma de la Seguridad Social), and the second made by the Conservative Government in 2013 (*Real Decreto-ley 5/2013, de 15 de marzo, de medidas para favorecer la continuidad de la vida laboral de los trabajadores de mayor edad y promover el envejecimiento activo*) had important implications for workers. The major implications are the following (table 6).

Table 6. Implication of pension's reforms for workers.

Measure	Implications
Increased of retirement age from 65 to 67.	Higher risk of unemployment at old age and lower pensions if the last years of working life are affected by unemployment. Potential problems for specific non desk jobs.
Increase in the number of years considered to calculate the pension (from 15 to 25).	Due to the lower wages received by workers in the first part of their working life, the impact on pensions is estimated to be an average reduction around by 10%
New sustainability factor to compensate for the increase in life expectance of the new retired cohorts	Lower pension regardless of individual life expectance.
Freeze of pensions (minimum increase of 0.25%) in case of deficit in the pensions system	Pensions will be no longer protected against the erosion of real purchasing power produced by inflation. The risk of inflation is shifted to the retiree. Since 2014 the cap has been effective.

8. CONCLUSIONS

The growth of precarious employment in Spain in the past has been driven by two different forces. The first one is the deregulatory policy followed, intermittently, since 1984, informed by idea that lower regulation would be translated into higher employment rates and lower unemployment. The second force has been the unusually high level of unemployment of Spain, even in times of high GDP and employment growth (as it was in the decade prior to the crisis). The high, often massive, unemployment has reduced the capacity of employees and trade union to fight the deterioration of SER and the development of new forms of vulnerable employment. To put it bluntly, for decades the Spanish labour market has been a buyers' market, where firms could set their hiring conditions with little or no opposition. One good example of these was the reaction of the leaders of the employees' confederation CEOE to the announcement of the last major labour reform of 2012⁴⁰.

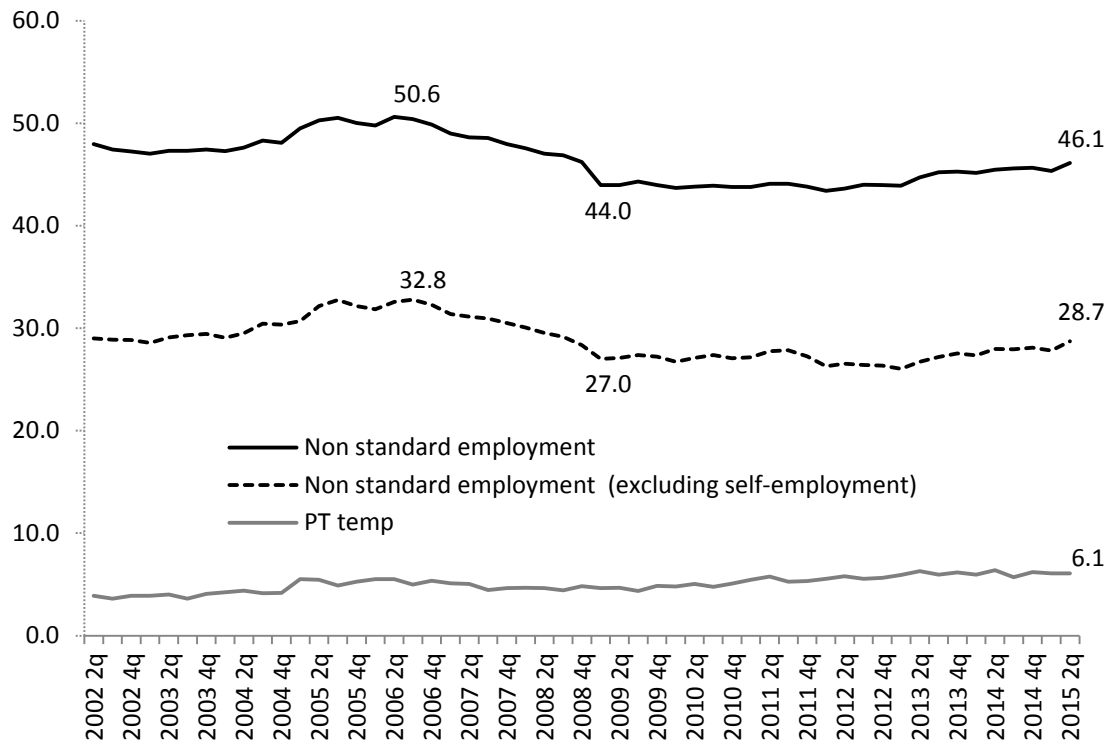
The process of deregulation facilitated the creation of very flexible labour contracts allowed for the development of a culture of "use and discard" among Spanish firms have proven very difficult to change, even after the government start considering that the high level of precarious employment was a major problem of the Spanish labour market.

Figure 35 reproduces the size of non standard employment in Spain since 2002. Due to data constrain we have limited our analysis to temporary and part time employment and self-employment. The figure offers two different forms of measuring the intensity of the non standard employment relationship, NSER. The first one, figure 36a, measures NSER in relation to total employment. In this case two different indicators are constructed: with and without self-employment. The second figure, 36b measures NSER against dependent employment and uses a definition of NSER that coherently excludes self-employment from the calculus.

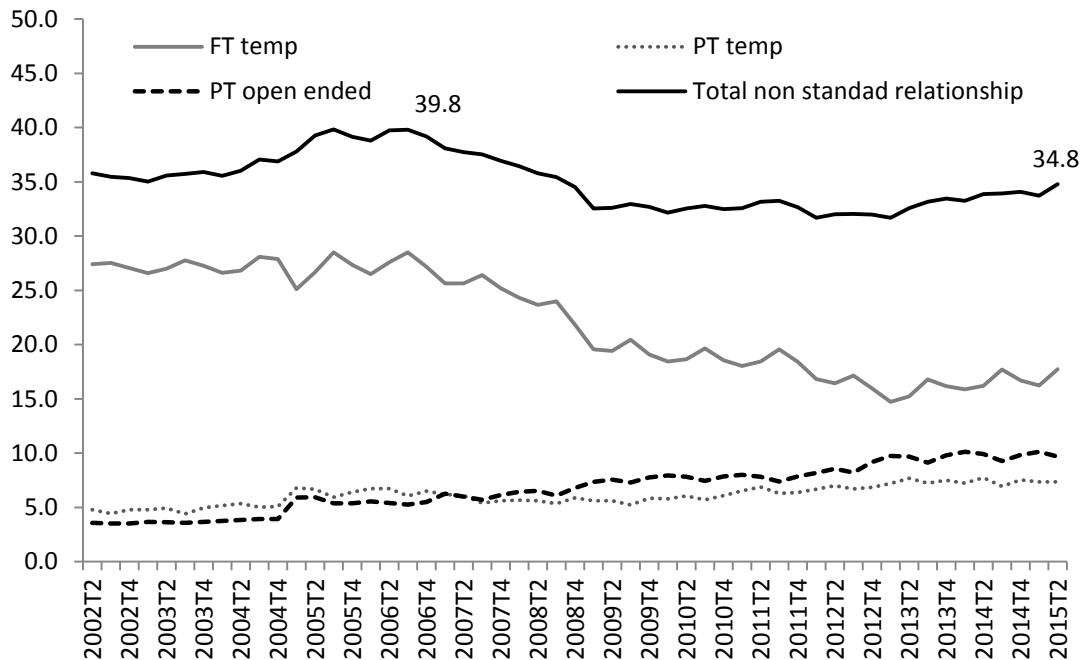
⁴⁰ In their own words: "the labour reform includes almost everything we've asked for", <http://www.eitb.eus/es/noticias/economia/detalle/828637/reforma-laboral-ceoe--la-ceoe-aplaude-reforma-laboral/>

Figure 36. Index Nonstandard employment relationships 2002-2014

(a) NSER in relation to total employment (%)



(b) NSER in relation to dependent employment (%)



Source: Authors' analysis from LFS data

Focusing first on dependent employment the figure shows that NSER made up to 40% of total dependent employment before the crisis. The crisis, with the above mentioned concentration of employment destruction in the categories of temporary employment led to a reduction in the index of NSER, leading to a reduction of the index to 35%. It is important to notice that even after the harsh adjustment produced, more than 1/3 of dependent employment belongs to this category. It is also important to notice the increase of part time NSE during the whole period.

When we include self-employment in the category of NSER (figure 33b), we observe that as much of half of total employment before the crisis and 46% after the crisis belongs to this category.

In the meantime, the characteristics of the SER have deteriorated along the same line.

To name just a few of the changes approved in different labour reforms: the size of redundancy payments of workers with open ended contracts have been reduced, the use of opt-out clauses by firms in relation to CA have been facilitated and pensions rights have been reduced through a combination of longer working life requirements to qualify for a given pension and less than full compensation for inflation for pensioners.

As we have documented in previous chapters, the different forms of NSER face different gaps in terms of employment conditions, social protection, representation, enforcement, etc. Table 7 summarizes the main gaps faced by the different forms of NSER.

Table 7. Overview of regulatory, social protection and representation gaps of non-standard employment relations.

In-work regulatory gaps				
	Eligibility gaps	Minimum standards gaps	Upgrading gaps	Integration
<i>i.</i> <i>Part time</i>	Lower access to training	Potential instability of working time. Short time notice (3 days)		
<i>ii.</i> <i>Temporary work</i>	Lower redundancy payment at the end of the contract (from 8 –before 2011- to 12 from 2015 on) Lower access to training	No difference (national regulation or CA). In some CA seniority might not apply to temp. workers	In specific sector such as public R&D and university researchers on temp. employees are not eligible for research grants as PI, and certain wage bonuses Lower chance of accumulating seniority (=> lower wages)	statutory equal pay no statutory rights to transition to hiring company (but subsidies to transition to open ended)
<i>iii.</i> <i>Cost-driven subcontracted work</i>	Subcontracted workers: usually included in worse CA Bogus self-employed: no sick + holiday pay; opt-in options in social security, but difficult to use in case of low income, Different criteria of eligibility Special protection (although quite low) for TRADE self-employed (RD 197/2009)	Subcontracted workers: low pay widespread bogus self-employed: important share with low income + resulting risk for old age		Subcontracting + bogus self-employment used to avoid collective agreements and better regulation of standard employment
<i>iv.</i> <i>Standard employment</i>	Reduction of dismissal protection from 42 to 30 days. Facilitation of dismissal due to objective conditions with lower redundancy payments (20 days).	Facilitation of dismissals in case of absence even if is justified by sickness	Deterioration of wage share. Reduction in real wages Reduction in the number of CA with clause of wage revision according to CPI from 72% in 2005 to 29% in 2014 (provisional data)	

Representation gaps				
<i>Type of precarious work</i>	Institutional gaps	Eligibility gaps	Involvement gaps	
<i>i. Part time</i>			Lower affiliation rates among voluntary PT not so much among involuntary PT	
<i>ii. Temporary work</i>	Higher % of temp workers in small firms (without work councils).		Lower affiliation rates: in 2010 temp rate was 25% while the % of TU affiliates with temp rate 15%.	
<i>iii. Cost-driven subcontracted work</i>	Bogus self-employed: Only indirect representation by self-employees associations	Bogus self-employed Depends of the usually low bargaining power of the “self-employee”		
<i>iv. Standard employment</i>	Reduction in the number of workers protected by CA (with provisional data) Increase in the number of firms opting out of CA		Organizing efforts of unions concentrated on certain industries	
Enforcement gaps				
<i>Type of regulation or standard</i>	Mechanism gaps	Awareness gaps	Power gaps	Coverage gaps
All employment rights		limited knowledge about rights	Reduction of Trade Union affiliation rates and bargaining power	
<i>i. Part time</i>	Priority given to SS fraud and fight against underground economy. The activity of the Labour			
<i>ii. Temporary work</i>	Inspection in dealing with employment issues per se was in 2013 15% of total inspections		Lower individual bargaining power (fear of no renewal)	
<i>iii. Cost-driven subcontracted work</i>			Lower individual bargaining power	

Social protection and integration gaps			
	Eligibility/entitlement gaps	Contribution gaps	Integration gaps
<i>i. Part time</i>		Lower pensions. (RDL 11/2013- through social agreement) reform has eliminated one important source of discrimination base on the way days of work were counted	
<i>ii. Temporary work</i>	As UB protection requires a minimum number of days of contributions to SS (360), temp. workers find more difficult to qualify for UB protection	Larger numbers of “holes” (due to more frequent unemployment spells) in their contribution records leading to lower retirement pensions	Access to mortgage/credit is harder and/or more expensive for employees without a stable contract + bogus self-employed
<i>iii. Cost-driven subcontracted work</i>	Bogus self-employed: important share with low income + resulting risk in case of sickness (not entitled to sick pay) and for old age	Bogus self-employed: Usually lower contributions (to reduce expenditures) and lower retirement pensions. (1.149 € vs 679€ for total self-employed)	
<i>iv. Standard employment / all employees</i>	Reduction of UB from day 180 to 50% (instead 60%)		

As conclusion, we could say considering the different drivers of precarious working conditions: legislation, enforcement, representation and the existence of a “buyers” market situation, the last element is of vital importance when it comes of determining the *de facto* working conditions of precarious workers. In terms of legislation and CA coverage, all forms of depending employment have similar working conditions (generally speaking) except regarding employment protection. This means that the observed differences between SER and the rest are more due to: (1) enforcement problems, (2) the higher risk of unemployment (by just non-renewal of contracts) faced by temporary employees and (3) the existence of a huge “reserve army” lining up to take over the existing vacancies (almost) regardless of the employment conditions. This excess of supply also explains the enforcement gap, as the priority of the labour inspectorate is to fight underground employment in areas where the no observation of labour regulations comes also at a cost to the Public Treasure.

PART TWO

9. INTRODUCTION

The second part of the report on precarious forms of employment in Spain aims to study the potential role of social dialogue, under different forms, in attenuating some of the most pernicious forms of precariousness reviewed in Part I of the study. With that aim, we have selected 3 different cases of reasonably successful social dialogue, covering three different areas of precarious work and three different types of social dialogue. In this case the methodology used is of a qualitative nature, based on in-depth analysis of the documents related with the cases discussed and interviews with some leading actors involved in the process of social dialogue as well as workers affected.⁴¹

The first case study selected deals with an important and, as seen in section 5.1, growing source of precariousness: bogus self-employment. After a long period of consultation with social agents, in 2007 the Socialist Government approved a much awaited piece of legislation regulating self-employment. Among the novelties of the Royal Decree was the development of a new type of self-employment, the so called "economically dependent self-employment" aimed at increasing the protection of those workers, *de jure* own account workers, but working mainly for a single customer. Section 10 reviews to what extent such change in regulation has improved working condition for that type of self-employees. In order to do so we analyze in depth the outcome of one of the first cases where this new type of "employment" relation was used: the Bimbo/Panrico case.

The second case study focuses on what probably is the most important of working conditions: health and safety at work. Specifically, it focuses in the quest for reducing the risk of fatal accidents at work. In this occasion we focus in a different and quite unusual type of social dialogue: the pioneering use of the constitutionally available mechanism of popular legislative initiative by a major Trade Union, CC.OO., as a way to take to the Spanish Parliament the debate about the rise of fatal accidents in construction and the

⁴¹ See appendix 1 for details of the interviews conducted.

possibility of introducing legislation limiting successive subcontracting as a means to fight them. Section 11 explores the rationale behind such proposal and the long road followed until it was finally approved, evaluating the results obtained ten years after its approval.

The last case study in section 12 focuses on what probably is the newest form of employment precariousness that has disembarked in Spain at the heat of the crisis: the increase in involuntary part time employment, and especially the increase in the use of very in short hours contracts. In this occasion we focus in a recently signed Collective Agreement at the sectoral level increasing the minimum working week in order to address this issue and allow for higher take home pay for this type of, mostly female, employees.

10. CASE STUDY 1. BRINGING BOGUS SELF-EMPLOYMENT TO LIGHT: THE REGULATION OF ECONOMICALLY DEPENDENT SELF-EMPLOYEES IN SPAIN

One of the features of the Spanish labour market is the above EU average presence of self-employment. Although own account workers have their logic and place in a modern labour market, from the years of the approval of the Labour Code in 1980, the trade unions as well as the legislator were aware that in specific sectors of activity, *e.g.* transport, own account workers often played exactly the same role as standard employees, depending almost one hundred per cent from a single client and with full surrender of their formal independence in issues such as working time and organization of work. In this case, the use of self-employment can be considered as a fraud in law, as a mechanism to disguise a labour relation as a commercial relation, freeing the employer from the obligations (in terms of working condition and social benefits) related to it. With the process of deregulation of the labour market, and the growing recourse by firms to different and new forms of flexibilisation of employment, there was concern that this type of fraudulent employment relationship could gain importance in the economy. In order to address this risk, and after consultation with social agents (*e.g.* unions, employers' organization and self-employment associations) in 2007 new legislation was enacted creating and regulating the Economically Dependent Self-employed, TAED in the Spanish acronyms, to regulate and better protect this type of bogus self-employment, by recognizing some statutory rights for TAEDs. In these pages, we use the case of two industrial bakeries -Bimbo and Panrico (now merged), pioneers in use of this new form of TAED workers to study in detail to what extent the new (agreed) legislation has contributed to the improvement of working conditions of this type of workers. Among other things, the case is interesting as it offers an example of two different ways of arriving at the condition of TAED: in the case of Bimbo, employees with SER were converted into TAEDs, in the case of Panrico, a standard commercial relation between the company and self-employed workers, was transformed into a TAED relationship.

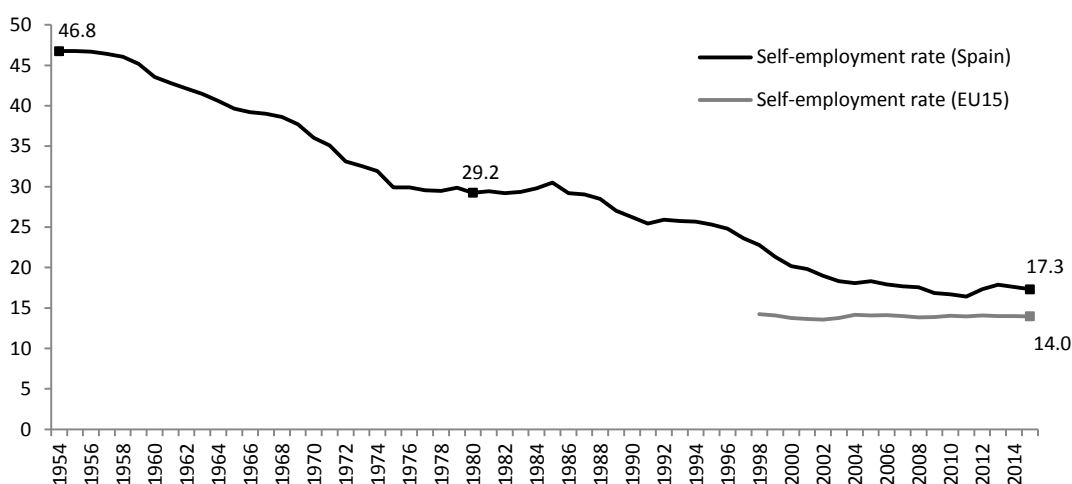
10.1. Legal and labour market context

Following the mandate of the Spanish Constitution of 1978, in 1980 the *Estatuto de los Trabajadores* (Labour Code) was approved with bipartisan backing⁴². The *Estatuto* regulated all aspects of the employee – employer relation. Among the debates and negotiations prior to its approval was the question of those self-employed workers, mainly in the transport sector, who although formally

⁴² The Code was voted by the conservatives and social democratic parties and backed by UGT, one of the major Trade Unions related at the time with the Socialist Party (PSOE). The other major union, CCOO, was against the code.

independent, obtained most (or all) of their income from a single customer. At the end, and bending to the pressures of the industry lobby, it was decided to consider such types of workers as independent workers, leaving them out of reach of the protective instruments of the Labour Code. Twenty seven years later, the issue of the “economically dependent” self-employed person re-emerged in the process of writing the equivalent of the Labour Code for the self-employed workers: the *Estatuto de los Trabajadores Autonomos* (Self- Employment Workers’ Code), approved in 2007⁴³. It is important to acknowledge that, at the time of writing the Labour Code, as many as 29% of persons employed were self-employed. Since then, the self-employment rate in Spain has decreased to 17% in 2015, much lower than in the 1980s but still higher than the EU(15) average of 14 % (Figure 1).

Figure 1. Self employment in Spain (1950-2015) and the EU15 (1998-2015).



Source: Author’s analysis from INE and Eurostat data.

The new Self-employed Workers’ Code confronted the old forgotten issue of the dependent self-employed, now present in many other sectors of the economy, as we will see in the following pages, by the creation of a new type of employment status, half way between the employee and the independent self-employed worker. With this status, present also in a handful of European countries such as Italy or Poland, but absent in the majority of them, the legislator intended to extend some of the protections enjoyed by employees to a specific group of self-employed, who regardless of their formally independent status, in practice depend largely on a single customer. The introduction of this new type of commercial-quasi labour relation in the Self-employed Workers’ Code was not smooth due to the opposition of business associations. It culminated with a confrontation on the issue with the then Social-Democratic Minister of Labour, Antonio Caldera.

⁴³ Ley 20/2007, de 11 de julio, del *Estatuto del Trabajador Autónomo*.

The “economically dependent self-employed” (Trabajador autónomo económicamente dependiente), also known alternatively with the acronyms TRADE or TAED, is defined as a self-employed worker who receives 75% or more of their working income from the same customer and:

- a) doesn't have employees or outsource part or all their activity to third parties;
- b) performs activities in an undifferentiated way when compared to directly employed employees of the firm hiring their services;
- c) owns the infrastructure and inputs necessary for the performance of the job;
- d) is in charge of the organization of their work; and
- e) receives the agreed payment in accordance with the result of his or her activity, assuming the risk associated to changing supply or demand circumstances.

As analyzed in the first part I of the report, although there is an Administrative Register for this kind of worker organised by the State Public Employment Service, the number of registered workers, around 9,000 in 2014, is much lower than the estimated number of TAEDs, around 13% of total self-employment (around 2% of total employment)⁴⁴. This gap is explained by both the lack of incentives for workers to register and the non-formalization of many de facto TAED relations (Box 1).

Thanks to a relatively recent survey conducted by different European self-employed worker associations, as part of a research project financed by the European Commission⁴⁵, we have some information about the characteristics of TAED in Spain. The survey was conducted in four European countries: Bulgaria, France, Italy and Spain⁴⁶. According to the results, TAEDs in Spain are largely in their prime working age (66% were from 30 to 49 years old) and have a relatively high level of education. The gender distribution is roughly in line with the overall gender distribution of the employed population (58% in the case of TAEDs vs. 54% in overall employment). Regarding their distribution by sector of activity, as reproduced in Figure 2, the sector of information and communication technologies, ICT, together with other specialized services and education show the largest percentage of TAEDs⁴⁷.

⁴⁴ According to the scant statistical information available on the issue, such percentage is roughly in line with other estimates for the US: 3% in Germany, 2.5% in Italy or 1.1% in Austria. Eichhorst, W. (2013): *Social Protection Rights of Economically Dependent Self-employed Workers*, IZA Research Report No. 54.

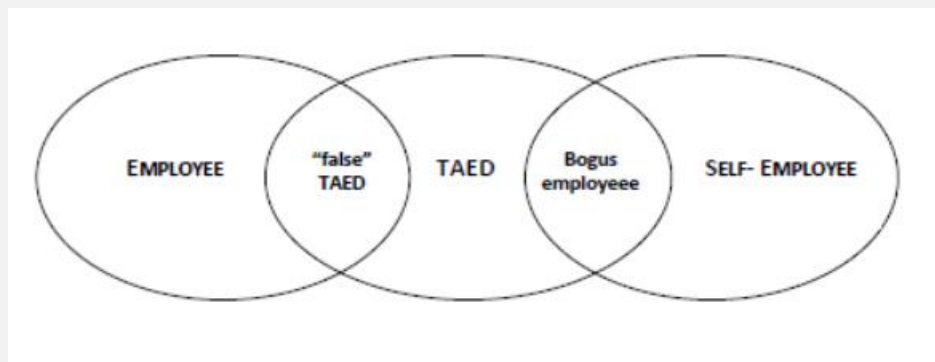
⁴⁵ Final report of the Project TRADE – European Network for the Support of Self-Employment and Economically Dependent Work. Ref. nº VS/2012/0434

⁴⁶ In the Spanish case the questionnaire was answered by 641 self-employees, of which nearly 28% were considered TAED.

⁴⁷ These percentages should be considered with caution due to potential problems of bias in the responses.

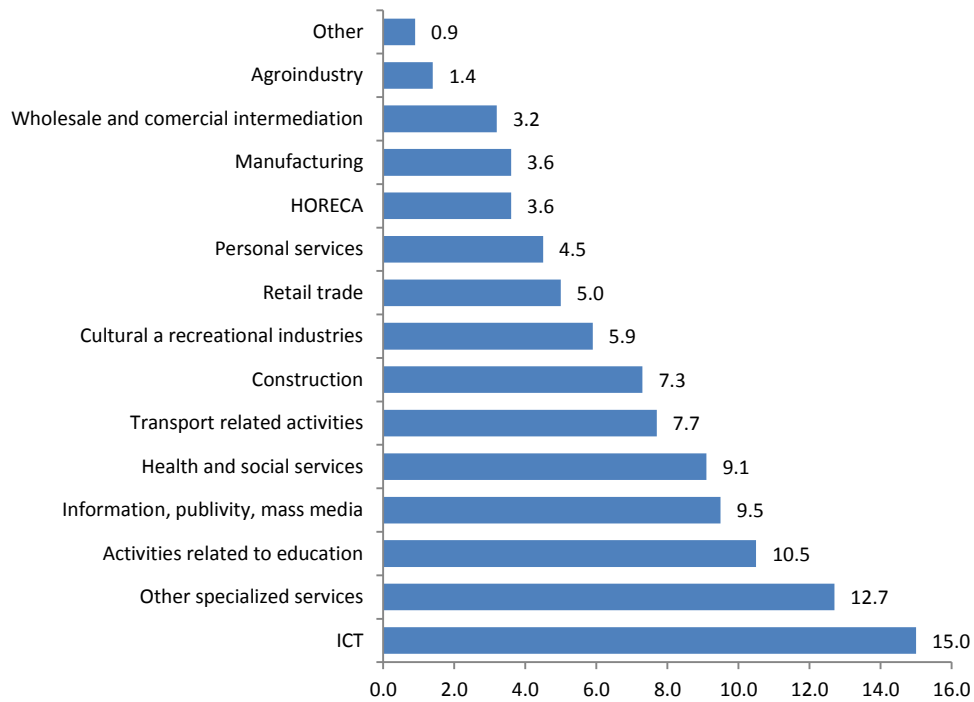
Box 1. The grey zones between dependent employment and self-employment.

As we can see in the following figure, although the concepts of employee, economically dependent self-employed person and self-employed, are clearly defined by law. In real life there are some grey areas between the three types of workers. Starting from left to right, some TAEDS workers, might be doing exactly the same work as standard employees, without meeting the requirements set by law in order to be a TAED worker (in terms of independence, for example). In this case we could talk of “false” TAEDS. In this case, firms would be making a fraudulent use of the TAEDS legal status (in order to save costs and gain flexibility). Moving towards the right, there might be workers with self-employee status that are economically dependent from a single customer/firm, in which case we could talk of bogus or false self-employed as such workers would *de facto* be TAEDs, if not *de jure*.



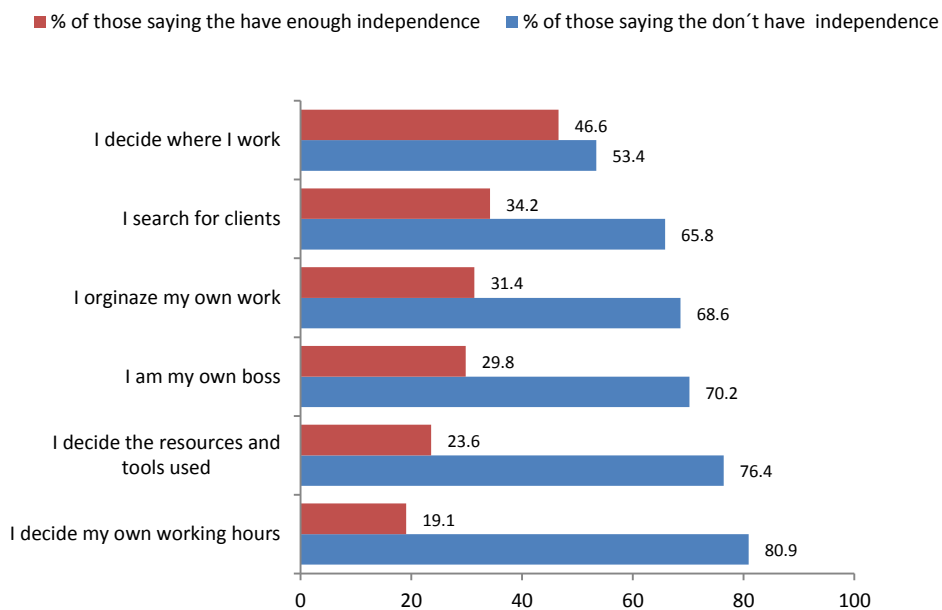
Regarding the reasons behind the decision of the workers to become TAEDS, nearly half (46%) said it was the result of a personal decision to develop their professional life, while more than a third (37%) became TAEDs more as a second choice, whether due to the crisis (8%), losing their previous job (13%) or due to a proposal made by the firm where they were working to transform their labour contract into a TAED relation (16%). For the remaining workers, becoming TAED was a way to better balance work and life duties. Another interesting issue explored in the survey is the degree of independence enjoyed by the TAED. In this respect, one of the elements defining self-employment is precisely the greater independence compared to the traditional employee. According to the results obtained (Figure 3) TAEDs enjoy large levels of independence in the areas of working time and some areas of decision making but not in others (e.g. autonomy over work organization) or in the areas related with customers and place of work. In any case, as many as one fifth to one third of TAEDs declare they have no independence at all in the different items considered.

Figure 2. Distribution of TAEDs by activity



Source: Final report of the Project *TRADE*, p. 36

Figure 3. Level of subjective independence of TAEDS according to different employment conditions



Source: Final report of the Project *TRADE*, p. 40

Summing up, with the regulation of TAED workers, the Spanish government (under a social-democratic government at the time), intended to increase the protection of a type of workers occupying a “grey zone⁴⁸” of the labour market, in the sense that they are independent workers, and therefore outside of the traditional employment relationship, but still largely dependent (in many cases as much as regular employees) on a single customer.

From the small number of TAEDs registered and from dispersed information about the unregulated use of bogus self-employment (see Box 2), one could conclude that this alternative hybrid status of labour/commercial relations among Spanish firms is not yet well established, with many *de facto* TAEDs not enjoying the rights of TAEDs as regulated by the 2007 Code of Self-Employed Workers.

Box 2. False self-employees working for a major Gas Company in Valencia (Spain).

The Provincial Labour Inspectorate of Valencia has investigated several irregularities in the working conditions of a group of direct marketing workers whose job was to undertake door to door visits in different neighborhoods of the city in order to convince residents to change gas and electricity provider in favor of Gas Natural. The company has been forced to retroactively enroll to Social Security 146 (from May 2013 to April 2015) all those workers considered by the Inspectorate to be false self-employees. According to the Inspection Act: “neither the workers had registered in the Special Social Security Regime for Self-employees nor the company has registered them”.

In the words of the lawyer representing the workers: the marketing/sales company subcontracted by Gas Natural “offered jobs addressed to young workers without labour experience and with low level education but desperate to find a job”, forcing them to sign a mercantile contract and “hiding the true labour relation: without autonomy to decide the work, with working hours, vacations and functions fixed by the employer, etc.” The 11-hour working day was the same for all workers and scheduled as follows: 9.00-10.00 training; 10.00-15.00 visits; 15.00-16.00 lunch (together with the boss); 16.00-20.00 visits.

Source: A.M. Vélez (2016): ‘Gas natural, obligada a dar de alta a 146 comerciales que trabajaban como falsos autónomos’, *eldiario.es* (25/02/2016).

According to Sebastian Reyna, Secretary General of UPTA (*Unión de Profesionales y Trabajadores Autónomos de España*), one possible reason behind the lack of popularity of the TAED relation among potential users is the still high degree of uncertainty that up to this day surrounds the legal status of the TAEDs. In particular, the Labour Inspectorate can consider that a given TAED relationship has been used fraudulently by the firm in order to hide a standard employment relationship (with the corresponding rights of the worker and obligations by the firm). Another possible reason is the coincidence of the passing of the TAED regulation with the deepest

⁴⁸ The term “grey zone” or “grey area” was used by Adalberto Perulli (2002) in the study *Economically dependent / quasi-subordinate (parasubordinate) employment: legal, social and economic aspects*, commissioned by the European Commission (DG EMPL D/3).

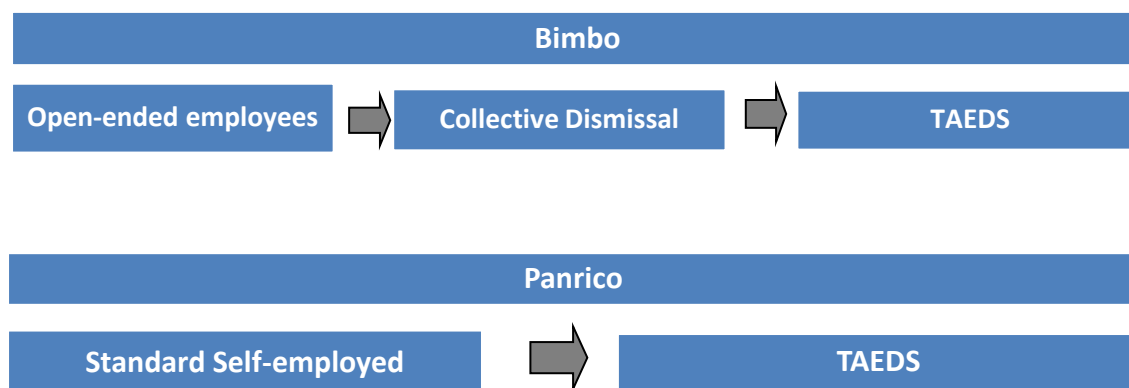
employment crisis in the modern history of Spain. The crisis had two different and opposite effects on TAEDS. On the one hand, the increase in unemployment has undoubtedly reduced the leverage of dependent self-employees to negotiate with their clients the conversion of their commercial relationship into a TAED relation. On the other hand, firms have used the new TAED form to transform former employment relations into commercial TAED relations (see above). Altogether, acknowledging the low number of cases recorded, it seems that the former impact has been more intense than the latter.

In order to explore in greater detail the reality of TAEDs workers, and the success and shortcomings of the 2007 regulation aimed at improving their working conditions, in what follows we present a detailed analysis of one of the first firms that made use of the TAED regulation. This information is complemented by the study of one of the new activities using this system of regulating self-employment: direct marketing. This sector, which recently signed an AIP (*Acuerdos de Interés Profesional*) to fix the working conditions of the self-employed working in the sector, has been selected for the special vulnerable characteristics of this type of workers, who are typically very young, in his or her first employment relationship and paid by the piece.

10.2. The making and working of a TAED relationship in practice: the case of Bimbo/Panrico.

Bimbo/Panrico is a paradigmatic example of the use of TAEDs for undertaking work that was previously done through a standard employment relationship. Both companies belong to the same sector of industrial bakery and are now part of the same business group. In both cases, TAED are used for the same type of job: delivery and restocking of products. Although TAEDS are today used in many different sectors (see figure 2 above), in the past, transport was the major activity of TAEDS. In that sense these two companies make a very traditional use of TAEDs. Although TAEDs are used with the same purpose by both companies, this case is especially interesting because the two companies arrived at the use of TAED from two completely different situations. In the case of Panrico (Figure 4), the AIP of 2009 setting the coordinates of the TAED relationship (signed between the firm, trade union and Self-employees' Associations) transformed the standard existing commercial relation between the firm and individual self-employees into a TAED relationship. In the case of Bimbo, the conversion was from employees with open-ended contracts into TAEDs. The situation was that in a context of heavy losses, managers collectively dismissed all employees with a standard employment relationship and then "hired" them using the status of TAED.

Figure 4. The different paths to TAEDS: Bimbo versus Panrico



The different paths followed in establishing the TAED relation in both companies explains also the different working conditions bargained in the AIP (*Acuerdo de interés profesional, Agreement of professional interest*) for TAEDS in both companies. As section 2.2 shows, working conditions of TAED workers at Bimbo were much better than at Panrico. The workers of the former company had to be convinced to change their relatively protected status of employee to the inferior status of TAED⁴⁹. At Panrico by contrast, the transformation of the standard commercial relation between self-employed and the company into a TAED relationship was an improvement as it recognized an existing *de facto* situation of dependent self-employment associated with new (if meagre) rights.

The company

BIMBO is a major industrial bakery whose activity started 1945 in Mexico. Twenty years later the firm established a subsidiary in Spain. In 1965 BIMBO was the pioneer in Spain in the production of industrial sliced bread (*pan de molde*) from a factory in Granollers, Barcelona (Figure 5). In 1978, the founders of the company sold the Spanish business, and BIMBO Spain continued in the Spanish market on its own. After extending their activity throughout Latin-American countries, BIMBO acquired a new brand in China, opening their operational market in Asia. In 2011, BIMBO Mexico bought SARA LEE CORPORATION (originating from US) in Spain (owners at the time of the old Spanish BIMBO), renaming it as BIMBO IBERIA and increasing their market share in Spain, Portugal and UK. Finally in 2015, they acquired PANRICO-ESPAÑA (a well-known competitor).

Although sliced bread is no more a novelty in the Spanish market, BIMBO-IBERIA is to this day a producer in the market, with 10 industrial bakery factories in Spain and one in Portugal. BIMBO is the largest producer in Spain in terms of market share. Furthermore, they have more than 1200

⁴⁹ At the time of the collective dismissals, before the 2012 labour market reform, collective dismissals required administrative approval, and agreement between firms and trade union was almost a prerequisite for obtaining such approval. In this respect trade union had leverage to improve the results of the, always traumatic, processes of collective dismissal. In the case of Bimbo, TU had leverage to improve the condition of transition to TAEDs of dismissed workers and their working conditions as TAEDs.

sales' routes complemented by 73 direct points of sale along the Iberian Peninsula, Balearic Islands, and Canary Islands. BIMBO-IBERIA has approximately 3,600 employees distributed over its business departments.

Figure 5. Commercial of BIMBO announcing production and delivery of sliced bread in Barcelona and vicinity.



Source: La Vanguardia (1965)

From employees to TAEDS

The process of converting employees with open-ended contracts responsible for the delivery of products into TAEDs (economically dependent self-employees) as a way to reduce costs and improve its financial results started in 2010 when BIMBO closed its financial balance having losses of €12.5 million. This negative balance led to an immediate response, by means of an urgent restructuring process, beginning in 2011. BIMBO justified the new financial plan for economic reasons. However it was not only a financial issue since it also involved labor restructuring involving large numbers of dismissals (*Expediente de Regulación de Empleo*). The core justification of the process of dismissals by BIMBO was to improve competitiveness in order to decrease financial losses.

In the process of bargaining with creditors, key measures agreed by the stakeholders were:

- to reduce the number of employees via voluntary early retirement. More than 100 employees were affected by this measure.
- To transform more than 360 employees into TAEDs (through their dismissal and conversion into dependent self-employees).

The new structure of BIMBO after the restructuring relied heavily on TAEDS, with more than 800 such workers. In 2016 the number has increased to 2,000 (without taking into account the workers at Panrico).

According to one of the trade unions in charge of the negotiations (interviewed in Madrid, in February 2016) BIMBO took as its reference the case of PANRICO-ESPAÑA, at the time an independent company, which two years previously, in 2009, transformed the commercial relation they had with own account workers into a TAED relationship. Although negotiations with the TU were complex, nonetheless due to the novelty of the figure of the TAED, at the end an agreement was reached signed by all parties involved. The agreement was signed by all BIMBO employees turned into TAEDS, whose union membership rate is also 100%.

Despite the takeover of PANRICO-ESPAÑA by BIMBO (2015), both groups of workers have maintained their specific working conditions (and AIPs).

As mentioned before the transformation process developed by PANRICO-ESPAÑA, according to the Agreement of Professional Interest (AIP – Acuerdos de Interés Profesional) was not a conversion of employees to TAEDs but a regulatory change from self-employed to TAEDs.

However in the case of BIMBO, the transformation took place once the AIP was signed as an equivalent of a collective agreement for TAEDs, changing from the standard status of employee to the new TAEDs.

The analysis of PANRICO and BIMBO AIPs (see Table 1) allows us to see whether there are significant differences between the AIPs. In this regard it is important to keep in mind that the workers come from different situations. In one case they came from a Standard Employment Relation, SER, with certain rights, while in the other case they came from what we could denominate as a Standard Self-employment Relationship, SSR, with many fewer rights. For example, regarding rights to paid holidays BIMBO (2011) established the legal minimum of 18 days required by the 'Self-Employment Workers' Code' but ensured these were remunerated (not required by law) and also included seven additional days. In contrast, in the PANRICO (2009) agreement, a total of 30 days holiday are provided but not remunerated. In the same way, TAEDs from both firms are paid following similar mechanisms, but with a higher fixed payment for BIMBO TAEDs (by some 20% or so). Finally, the clauses for a unilateral break of the contract are less demanding in the case of BIMBO.

Table 1. Comparison of main clauses of BIMBO and PANRICO AIP.

PANRICO	BIMBO
Duration: 4 years.	Duration: 5 years.
Scope: Self-employed working on delivering tasks. Now TAEDs.	Scope: ex -employees working on delivering tasks now with a TAED relation with the firm
Sales routes: The routes are established by the firm. In this point the document includes concrete requirements for the routes assignment and professional promotion of workers.	Sales routes: The routes are established by the firm. There are no specifications about the requirements for routes assignment.
Vehicle features: The vehicle should have license to transport more than 2000 kilograms and it will be marked with the firm trademark following the instructions regarding the design, format, size and contents.	Vehicle features: It includes the same instructions in terms of kilograms and trademark but including the possibility to carry ads of specific products, in which case the commercials will be paid for by the firm.
Working time: TAEDs have to fulfill the planned route independently of the time. All the clients have to be correctly served. Regarding the vacation days, TAEDs have thirty natural days. In the same way the AIP recognizes the possibility to enjoy 15 days in case of marriage, 2 days for births and 1 day because of house move.	Working time: The workday is distributed from Monday to Saturday. In this case the vacation period will be determined by the sales, transport, and delivering needs of the market. The TAEDs have right to 18 days of paid vacations plus 7 unpaid. In the same way the AIP recognizes the possibility to enjoy a 15 days leave in the case marriage, 2 days for children births and 1 day because of house move.
Payment: TAEDs get a fixed monthly premium of €700.84 to cover daily costs. Subject to meeting the targets they also get different payments depending on the route. Trades have also a shipping fee rate and bonus for providing special services. The AIP specifies all the requirements to earn the payments mentioned. Finally, depending on the price of oil they have rights to special complement. TAEDs can apply for aid in the case of disability.	Payment: TAEDs get a fixed annual premium of €10.500 that is complemented with a variable amount depending on sales achieved by the worker. This variable payment becomes effective once the TAED passes the threshold of 76% of the fixed premium mentioned. The AIP specifies the requirements and methodology followed to quantify the variable part of the payment.
Reasons for terminating the contract: Among the main causes for the company to end the contract is if the TAED worker fails to show up at the establishment to collect products over two consecutive days (or five alternate days) in a month.	Reasons for terminating the contract: Among the main causes for the company to end the contract is if the TAED worker fails to show up at the establishment to collect products over three consecutive days (or five alternate days) in a month. In addition, there is a long list of causes for terminating the contract such as those related to alcohol and substances abuse.

Source: Author's analysis from BIMBO and PANRICO AIPs.

In any case, as we can see in Box 2, that compares the AIP of Bimbo's TAEDS with the collective agreement of Bimbo employees, the better position enjoyed by Bimbo TAEDs should not be interpreted in terms of an improvement of TAEDs working conditions when compared with the working conditions enjoyed Bimbo employees.

Box 3. Comparing Bimbo's Collective Agreement and AIP

In order to get a better idea of the change in working conditions undergone by the employees transformed into TAEDs it is interesting to compare the existing collective agreement in force from 2011 to 2013 to the agreement of professional interest, AIP, signed by the company and the now TAEDs. The first major difference is found in terms of the scope of the regulation itself, since in the collective agreement is much more limited in the number of items covered; other observed differences are:

- An increase in weekly working time from 38 to 40 hours, plus the possibility to work some alternating Saturdays for TAEDS workers.
- SER workers have a wider choice of paid and unpaid leaves compared to TAEDs.
- In terms of paid vacations, 18 natural days in the case of TAEDs in comparison with the 30 natural days included in the collective agreement.
- Regarding income, while the collective agreement for delivering workers stipulated a salary of 1252 Euros, the fixed monthly income established in the AIP was 913 Euros.
- Likewise, workers covered by the collective bargaining agreement enjoyed the possibility to claim an allowance in the case of eating out while in the AIP is not regulated.

SER workers enjoy more stringent safe and health measures.

The interviews conducted with several stakeholders (see annex I) point to different problems regarding this relatively new form of hybrid commercial and employment relationship. The working conditions of TAEDs are fixed by the AIP, which effectively means a commercial agreement is playing the role of a collective agreement. As such, many issues for concern regarding the TAED employment relationship are related to AIPs:

- due to the novelty of AIPs, there is no jurisprudence on this phenomenon;
- trade Union lawyers often lack the expertise to deal with this types of issues that are overseen by commercial judges in commercial courts and not by the standard social courts that oversee labour issues;
- the representation of workers in the negotiation process has not increased proportionally to the number of TAEDs that have been incorporated. The number at BIMBO has increased from 800 to 2000 but the number of representatives in bargaining has remained the same;
- the person representing the employer at the bargaining table usually belongs to the Commercial Department and not the Human Resources Department. TAEDs are considered as just another supplier of the firm despite the fact that the issues negotiated in the AIP typically concern working conditions. This contradiction (the lack of expertise and comprehension of these issues by experts from the commercial department) makes it very difficult to reach agreement. In fact, according to one of the informants, when the employer

side is represented by a law firm with expertise in labour issues the agreement is usually reached quicker and more to the interests of the TAEDs; and

- a final issue is that each AIP involves a specific number of commercial targets that should be achieved by TAEDs. If these targets are not reached, it means TAED workers have failed to honor the agreement and the whole AIP could lose validity.

Together with these issues, there are two more of a more general nature that, according to one of the interviewees, are affecting now, and are likely to limit in the near future, the popularity of TAEDs among employers. According to Sebastian Reyna from the Union of Professionals and self-employees) the issue concerns the lack of full legal security of TAED status. As we have seen in Part one of this report, TAEDS require the fulfillment of certain characteristics that, if unmet, could lead the Labour Inspectorate to consider the relationship as fraudulent, with the corresponding requirement on the employer to hire TAEDs workers as employees or to compensate them. To the extent that the nature of the relation can be a matter of uncertain legal opinion, employers may be reluctant to use the worker status of TAEDs.

The second issue, that has so far not been raised, but could be an issue in the future, is the fact that, no matter how it is named, AIP can be considered as an institutional constraint on competition, because suppliers (TAEDs) agree collectively - and with the client - to sell their services on the same terms. There is a potential risk that this type of agreement might be considered in the future as restrictive of the competence by the National Commission for Competence and Markets.

10.3. New activities

Increasing use of TAEDs is in keeping with the mantra of flexibilization since it potentially extends the capacity of firms both to adapt in real time their labour requirements to product demand and to enjoy cost savings compared to the bundle of social security and other fixed costs that accompany use of the standard employment relationship. The outcome, as shown in figure 2, is an increase in the number of sectors using TAEDs. One of the 'new' activities is the sector of direct marketing, and specifically people working for NGOs seeking to increase their numbers of supporters by affiliation campaigns in the streets of shopping malls. Very recently, an AIP for this type of workers has been signed. This sector is important because, in contrast with the BIMBO case where TAED workers must contribute a minimum capital (namely, the light truck used for delivery) -the activity of direct marketing requires no capital at all (a pen), is usually performed by very young workers with little if any previous working experience, and low educational levels. Although NGOs with a broader base, such as the Red Cross, usually have volunteers for their affiliation campaigns, others, such as UNHCR, relies on TAED workers organized by intermediates.

Considering the working conditions faced by this kind of worker: payment by piece, extended hours to meet the daily minimum, forced affiliation to the NGO (so the worker can present his or herself as a volunteer)⁵⁰, incomplete or misleading information about working conditions, etc., the mere existence of an AIP (involving 25 firms) that sets out in a transparent fashion the working conditions of the sector can be considered an improvement, even if most of the rights included are statutory. A key question is whether, in the absence of TAEDs, this type of work would be performed underground with even fewer rights.

10.4. Conclusions

It is possible to interpret the value of TAED status in the Spanish labour market context from both a positive and negative perspective. From a positive, optimistic perspective, the regulation of TAEDs can be interpreted in terms of an improvement in working conditions of 'bogus self-employment', as it recognizes several rights for self-employed workers defined as TAED which previously did not exist. In this respect, the important issue is how to encourage the transformation of all bogus self-employment into TAEDs in order to diffuse the protection of rights as stipulated in the 2011 Self-employee Code. Furthermore, collective associations for the self-employed should promote the use of AIP to improve working conditions of TAEDs. As indicated by the small numbers of registered TAEDs, however, regulation of this alternative self employed status has a long way to go in the Spanish labour market.

From an alternative, pessimistic view, it could be argued that TAEDs are just another example of the deterioration of working conditions. Bluntly speaking, it could be argued that TAEDs are an example of the formal, legalization of such deterioration, by the creation of a new status of 'employment', which is perfectly legal, but with fewer rights. The key point is that TAEDs usually perform the same activities as employees, but enjoy lower protection, lower level income, and worse working conditions. In this respect, TAEDs are nothing other than an oxymoron (dependent self-employed?) and another means available to employers to reduce labour costs and transfer uncertainty to workers.

⁵⁰ Another good example of bad working condition is the prohibition direct marketing TAEDs have of giving information about their working conditions.

11. CASE STUDY 2. THE LIMITATIONS OF CHAIN OUTSOURCING IN CONSTRUCTION: AN EXAMPLE OF SOCIAL DIALOGUE DRIVEN LEGISLATION

The second case study deals with a major issue affecting working conditions in modern labour markets: the risk of deterioration of working conditions faced by those employees working in productive activities subcontracted or outsourced by firms. With that aim we have selected an especially sensitive sector, construction, where working conditions are often a matter of life and death. Moreover, construction is also a sector prone to subcontracting, where often large firms still retain a capacity to undertake technically and logistically complex construction projects, but not (anymore) for having a large workforce, relying heavily instead on the subcontracting of other, usually smaller firms, for the actual realization of the construction projects. Often, this process of subcontracting a given productive activity can go on and on, in successive waves of subcontracting. In what follows we will denominate *chain subcontracting* the act of subcontracting the same productive activity by successive firms.

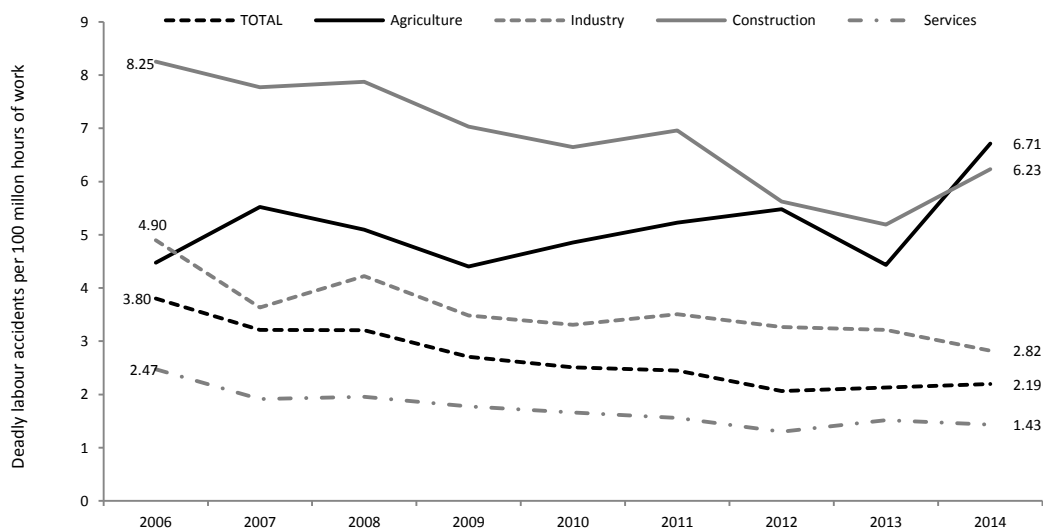
In a context of a construction boom in Spain in the late 1990s and extended use of subcontracting by construction firms, and after documenting the close relation existing between subcontracting and accidents risk on construction sites, one of the major Spanish unions, CCOO, started a campaign to address this issue by proposing the limitation in the number of successive times that a given constructive activity could be subcontracted (chain subcontracting) as a mean to improve safety. This case is interesting as an example of social dialogue for the following reasons:

- a) it marks the development of new ways of social dialogue, involving new alliances, in this case a TU driven campaign to collectivize the voice of thousands of citizens and the parliament;
- b) it shows the importance of adapting the strategies followed to the changing economic social and political situation; and
- c) it discloses the necessary dynamic nature of social dialogue, and the need to adapt social agreement to the changes in production processes.

11.1. The context of workplace accidents and subcontracting

Labour accidents are a major source of injuries and fatalities in Spain. In 2014 there were over 400,000 work accidents in Spain, 14% of a serious nature and 467 of them fatal. Figure 6 reproduces the incidence of fatal accidents in Spain defined as deaths per million of hours of work. It shows significant variation between sectors of activity, with construction (and recently agriculture) displaying a higher incidence (6.2) of deaths at work compared to industry (2.8) or services (1.4).

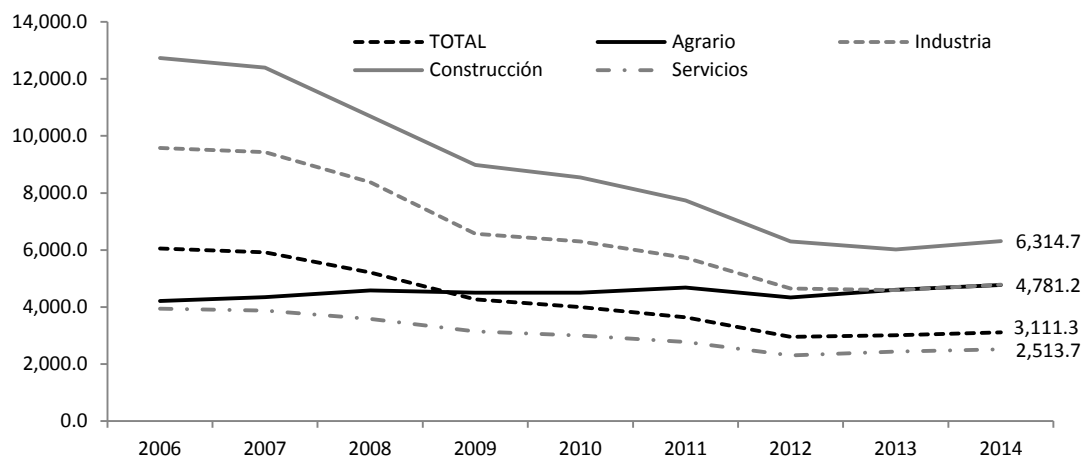
Figure 6: Incidence of fatal labour accidents in Spain 2006-2014



Source: Authors' analysis from *Accidentes de Trabajo*, Ministry of Labour and Social Security.

The ranking of incidence among sectors of activity is similar when we look at all accidents that are sufficiently severe to require sickness leave. In this respect, as Figure 7 shows, the accident rate in the construction sector is almost twice the average accident rate, and well above the accident rate in agriculture.

Figure 7: Accident rate with sick leave (per 100,000 workers) in Spain 2006-2014



Source: Authors' analysis from *Accidentes de Trabajo*, Ministry of Labour and Social Security.

Many different factors contribute to the higher rate of labour accidents found in construction. Obviously, some are directly related to the type of tasks characteristic of construction workers vis a vis other sectors. In this respect, construction workers are exposed in their daily activities to more risks (and more intensively) than workers of other sectors of the economy (table 2).

Table 2. Relative detected risk of accidents by economic activity, Spain, 2011 (Average = 100)

	Agriculture	Industry	Construction	Services	Total
Cuts, punctures	145	143	156	84	100
Strikes	158	142	194	79	100
Falls at the same level	161	94	181	89	100
Falls from higher level	103	110	380	69	100
Traffic accidents	72	92	106	103	100
Fall of objects, tools, etc.	67	156	339	67	100
Overstrain in manipulation of weight	145	141	195	80	100
Burns	35	174	107	90	100
Physical assault	20	27	21	126	100
Trappings	179	260	297	46	100
Electrical contacts	31	171	253	74	100
Risk of being run over	148	189	180	72	100
Projection of material	73	244	420	42	100

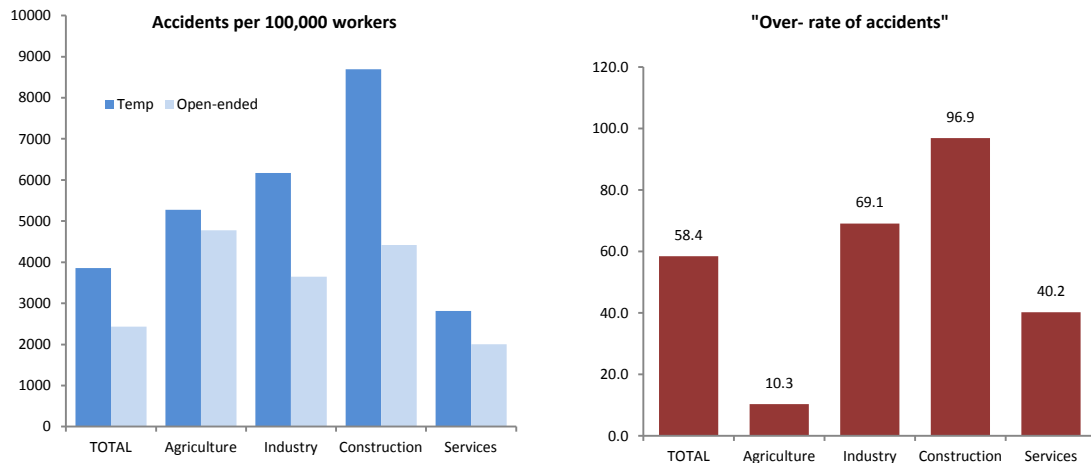
Intoxication by manipulation	89	193	155	80	100
Collapses	49	121	644	41	100
Fire	56	150	108	92	100
Excessive exposition to sun	511	82	457	43	100
Explosions	8	204	160	80	100
Injuries produced by animals	861	44	83	72	100

Source: Authors' analysis from *VII Encuesta Nacional de Condiciones de Trabajo*, p. 19

Other factors underpinning the higher accident rates are related to the type of contracts used (temporary versus open-ended) and the organization of production. Regarding the former, temporary employees are more prone to labour accidents due to a whole array of reasons. First, they usually have shorter experience in the firm, and accidents usually happen in the first weeks of work. Second, they have lower accumulated training and experience. Third, temporary workers have lower leverage with supervisors and probably more to lose (in terms of renewal of their contracts) if they demand higher safety measures. Finally, use of temporary workers is usually higher in small firms, which also tend to be the type of firms less prepared to deal with safety issues and with a lower probability of having trade union representation. As Figure 8 demonstrates, workers with temporary contracts have a higher incidence of work accidents than workers with open-ended contracts across all sectors of activity, but especially in construction where the risk is double. According to the estimate reproduced in figure 3b, the “over-rate of accidents” of temporary workers in construction⁵¹ is almost 100%, compared to an average over-rate of accidents for the whole economy of 40%. This result, combined with a much higher use of temporary employees in construction (figure 9) explains part of the higher risk of accidents of the sector.

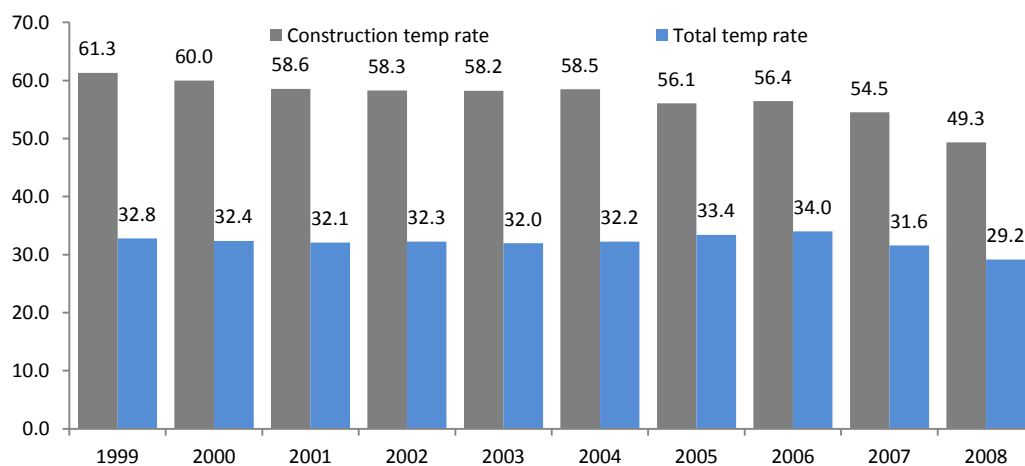
Figure 8. Incidence of accidents by sector and type of contracts, Spain 2012

⁵¹ Defined as the number of accidents per 100,000 temporary workers minus accidents per 100,000 workers with open-ended contracts, divided by accidents per 100,000 workers with open ended contracts



Source: Authors analysis from *Informe anual de accidentes de trabajo en España*. Año 2014, p.66

Figure 9: Temporary employment rate: before the crisis: total and construction.



Source: Authors' analysis from Eurostat

Related to use of temporary workers is a second factor, the organization of production, in particular the extensive use of subcontracting in construction. Construction is one of the sectors that make highest use of subcontracting for specific and general construction tasks. According to the *Encuesta Nacional de Gestión Preventiva en las Empresas*, conducted in 2009 by the Spanish National Institute of Health and Safety at Work (INSHT), more than a third (39%) of construction firms subcontract or outsource part of their activity, compared to around one fifth (19%) on average. The existence of multiple employers sharing a single construction site is another element that can contribute to the increase in accident rates, as it is likely to blur the responsibility for safety issues and the clarity of command chain, and reduce the coordination between different tasks.

Table 3. Differential risk of main contractor employees and subcontractor employees, 2009.

	Main contractor employees	Subcontracted employees	Index
% of workers exposed to chemicals	48.4	54.1	111.8
% of workers exposed to loud noise	21.8	28.2	129.4
% of workers identifying the following risks in their jobs:			
Falls from higher level	58.9	69.4	117.8
Falls at the same level	31	41.2	132.9
Fall of objects, tools, etc.	39.5	32.9	83.3
Collapses	26.6	23.3	87.6
Cuts, ...	41.3	55.3	133.9
Being hit by something	48.4	57.6	119.0
Risk of being run over by machinery	9.2	10.5	114.1
Risk of being run over by vehicles	14.6	21.2	145.2
Projection of material	17.8	17.6	98.9
Burns	7.6	7.1	93.4
Excessive exposure to sun	9.4	14.1	150.0
Fire	2.5	2.1	84.0
Explosions	1.1	1.2	109.1
Electrical contacts	12.6	17.6	139.7
Overstrain in handling weight	14.2	29.4	207.0
Intoxication by manipulation	4.2	1.2	28.6
Traffic accidents	6.1	14.1	231.1
Physical assault	0.7	0	0.0

Source: Authors' analysis from *Estudio de los sectores económicos en los que se recurre habitualmente a la contratación y subcontratación de obras y servicios* (2009), p. 19.

Compared to employees working for the main contractor at a site (that is, the firm outsourcing part of the production process), employees working for subcontracting firms declare higher risks in most of the items reproduced in the table 3. Looking at the data we can say that working for a subcontracted firm is a source of risk.

As the next section shows, trade unions have for many years been conscious of the risks related to subcontracting and chain subcontracting in the sector and have organized actions in an effort to address the issue at least since the late 1990s. At the same time, a series of major labour accidents in construction involving subcontracted workers had a great deal of media attention, including for example the tragic accident in 2005 when six workers died in the construction of a viaduct in Almuñecar, Granada. This and other fatalities acted as a catharsis for the approval of new regulation aimed at improving security in construction by limiting chain subcontracting. The employees who died at the Almuñecar viaduct were employed by a Portuguese-owned subcontractor firm, Douro Montemuro, which had been hired by the Spanish subcontractor Estructura y Montajes de Prefabricados, which was in turn hired by a Temporary Union of Firms acting as the main contractor (Azvi, Proder and Obras Subterráneas) with the concession of the motorway⁵².

11.2. The long process culminating with the approval of *Law 32/2006, Regulating Subcontracting in Construction (LRSC)*

The example of new legislation to restrict subcontracting in construction with the aim of improving health and safety is of further interest because it was the first time that a Popular Legislative Initiative (ILP) dealing with labour issues was presented to the Spanish Parliament –although it took eight years for it to be approved. The Spanish Constitution of 1978 allows for the possibility of citizens to present legislative initiatives to the Parliament (art. 87.3). An ILP requires a minimum backing of 500,000 signatures. In 1998, under the slogan “Nos va la vida”, that could be translated as “we risk our life”, the Construction Federation of the Spanish Trade Union Comisiones Obreras, FECOMA, launched a campaign to regulate subcontracting in construction aimed at reducing the number of accidents and improving working conditions in the sector. It is not a case then of traditional bipartite social dialogue, or even tripartite dialogue, but a new combination formed by one trade union, a campaign to collectivise the voice of thousands of citizens and the parliament.

The huge increase in activity in construction at the turn of the 1980s was related to two major events in 1992 -the Barcelona Olympics and the World Expo in Seville –as well as other important infrastructure projects such as the High Speed Train (AVE) and the recuperation of the housing market after many years of crisis. This produced a change in the *modus operandi* of the large Spanish construction firm which progressively increased their use of vertical subcontracting. The

⁵² El País, (November, 8th, 2005): “*Accidente mortal en las obras del viaducto. Seis trabajadores mueren al desplomarse un tramo de puente en la autovía del Mediterráneo*” (Deadly accident in the construction of a viaduct. Six workers died after falling from high altitude in a bridge under construction on the Mediterranean motorway)

1993 economic crisis led to a major downsizing of the large construction firms, but as the economy recovered the model of relying on subcontracting was maintained as large firms preferred not to rebuild their workforce. This model of high reliance on subcontracted was considered to be one of the main factors behind the high accidents rate of the sector. But FECOMA's concern over subcontracting was not shared by the other social partners. By the early 2000s, no social partners expressed an interest in restricting use of subcontracting in the sector. In this context, with the realization that it would be impossible to succeed in limiting subcontracting using the traditional mechanism of social dialogue, the FECOMA decided to put together an ILP.

In 1998 FECOMA presented an ILP with 600,000 signatures to Parliament. However, progress of the initiative was frustrated by the opposition of the Popular Party (conservative) then in power and with a parliamentary majority. The resistance of conservatives was justified by a market ideology - namely, priority to freedom of enterprise, and freewill of workers and firms to negotiate in the market without limitations.

In 2001, the text was again presented to Parliament, this time backed by the parliamentary group United Left (IU-IC), but the proposition was turned down again. In March 2001, a General Strike was called by major unions to protest against conservatives' refusal to proceed with the project of regulating chain subcontracting. The campaign was re-launched in 2004, this time with the backing of the other major trade union, UGT, and with demonstrations across the whole of Spain. The change in government in 2004 and election of the socialist party with a new majority of the Congress finally facilitated the proposal's approval. The following year a meeting of trade union delegates in the House of Congress demanded the speeding up of the process of elaboration of the law. Finally, in September 2006 the Congress approved the Law for Regulating Subcontracting in Construction (LRSC), made effective from April 2007. The resulting text, in the words of the then Secretary General of FECOMA '*while not the text that the trade union would have approved, has very positive elements to start rationalizing the construction sector*' (Fernando Serrano).⁵³

The LRSC law has four pillars dealing with:

- (1)** Establishment of limitations to chain subcontracting. The law tries to reduce the risks associated with outsourcing without limiting at the same time the capacity of construction firms to decide how they want to organize production, *i.e.*, without limiting free enterprise. The major restriction is the limitation of vertical subcontracting to 3 levels (three consecutive firm subcontracting parts of the production). While horizontal subcontracting by the promoter is unlimited, the subcontractor firm can only subcontract all or part of the

⁵³ Cited in the newspaper article by Vilela N. (2006) 'Aprobada la ley que regula la subcontratación tras ocho años de lucha sindical', *Madrid Sindical*, 102, May 2006

production three times. In those cases of very specific activities requiring specific knowledge or equipment the law considers exceptions to this binding limit of 3 firms.

(2) Establishment of criteria for subcontractor firms to operate in construction: a Register of firms meeting the requirement (*Registro de Empresas Acreditadas*), and a *Subcontracting Book* on the construction site that registers all activities related with the subcontracted companies. Among the conditions that have to be met by subcontracted firms is a minimum share of employees with open-ended contracts of 30%.⁵⁴

(3) Information rights to employees' delegates about the subcontracting firms.

(4) Establishment of solidarity responsibility of contractor and subcontracting firm in case of non fulfillment of the above mentioned requirements. Such liability responsibility is extended to all labour and social security obligations (art. 6.2), for example, the contractor can be held liable in case of nonpayment of the social security contributions of the employees of the subcontracted firm.

The following section discusses the actual impact of the reform.

11.3. Evaluating the LRSC after ten years

According to the promoters of the reform⁵⁵, ten years after the approval of the law the results are bitter sweet.

In order to properly evaluate the impact of the reform it is important to keep in mind that the sector has gone through a gargantuan process of restructuring as a result of the biggest economic crisis of construction in modern times. From 2008 to 2014 employment in construction fell massively from 2.68 million to 0.94 million, a drop of 65%, compared to a drop in total employment of slightly less than 18% (Figure 10).

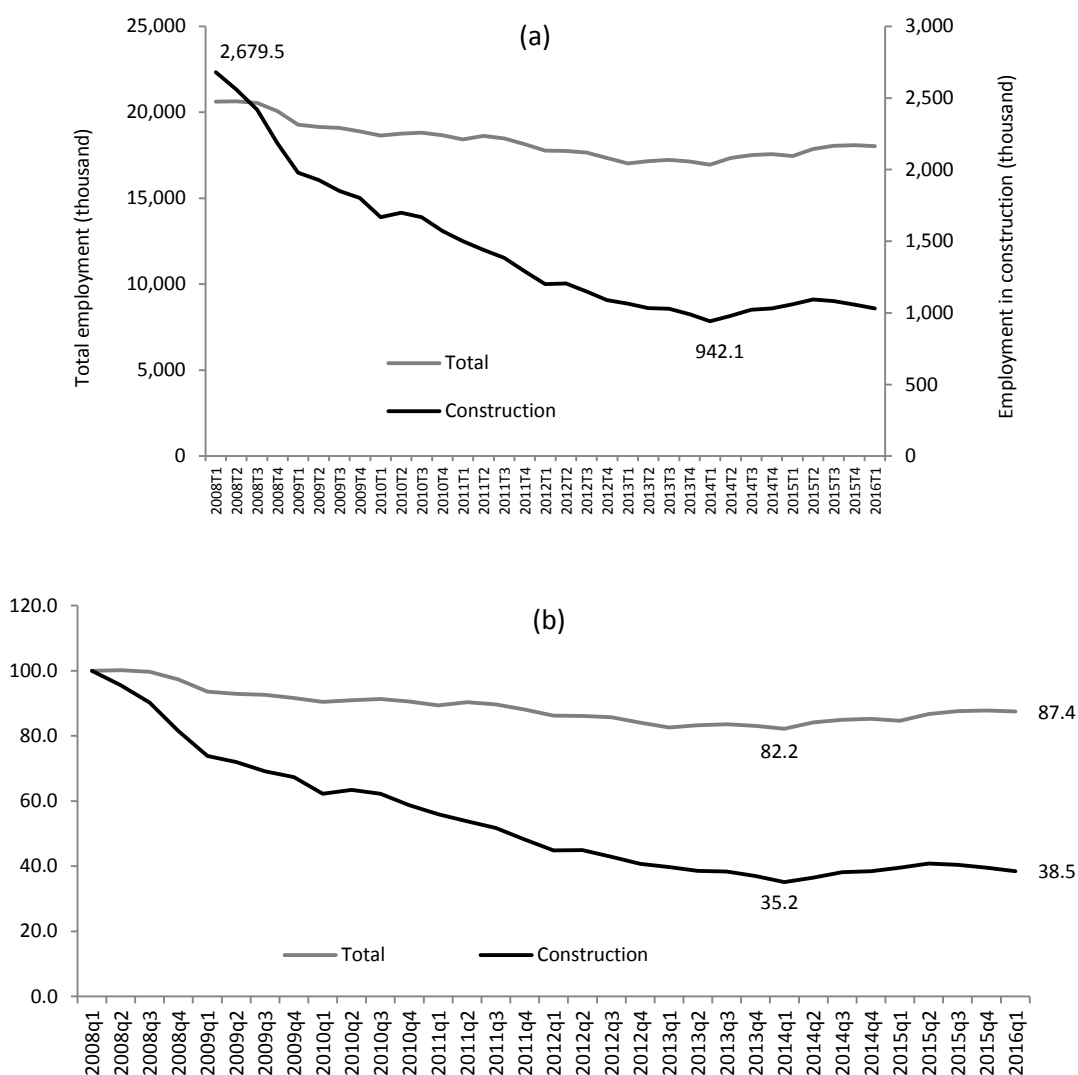
Such destruction of employment was related with a corresponding destruction of firms: in 2008 there were over 600,000 construction firms in Spain, but by 2015 35% of them had disappeared. But the mortality rate differed by firm size with higher terminations among larger firms (with the exception of very large firms in infrastructure and specialized construction activities) (figure 11a). The comparison between total average reduction in the number of firms and the equivalent for firms with no employees (figure 11b) is revealing in this respect: excluding the subsector of

⁵⁴ In relation to total number of dependent employees with labour contract (i.e. excluding TAEDS or other self-employees working at the site)

⁵⁵ Vicente Sánchez, Secretary General of the Federación de Construcción y Servicios.

infrastructure, the reduction in total firms is twice as high as in those firms with no employees, *i.e.*, own account workers (including TAEDs).

Figure 10. Destruction of employment in Spain, 2008-2016: total employment and construction

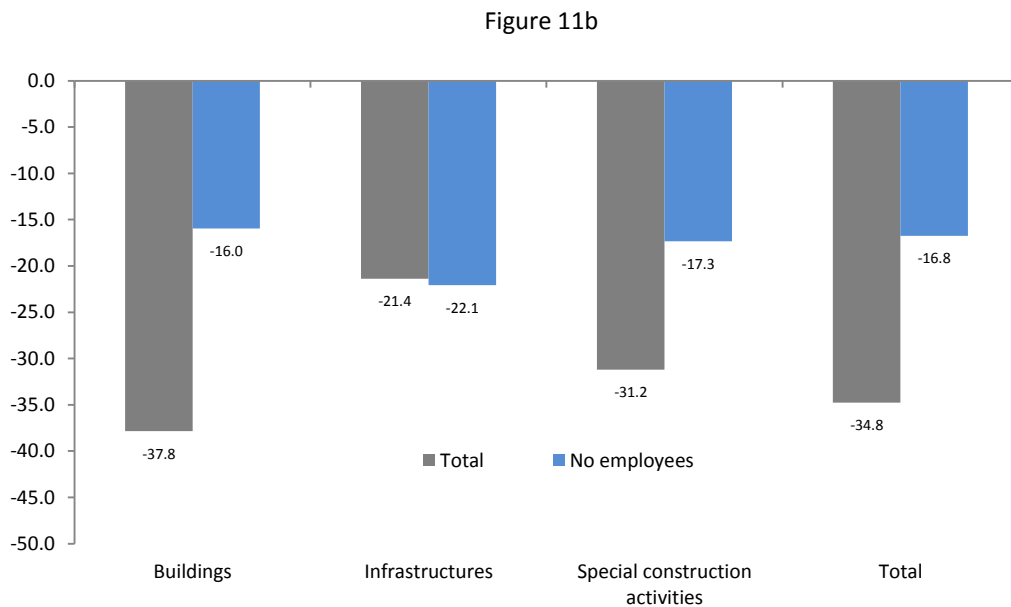
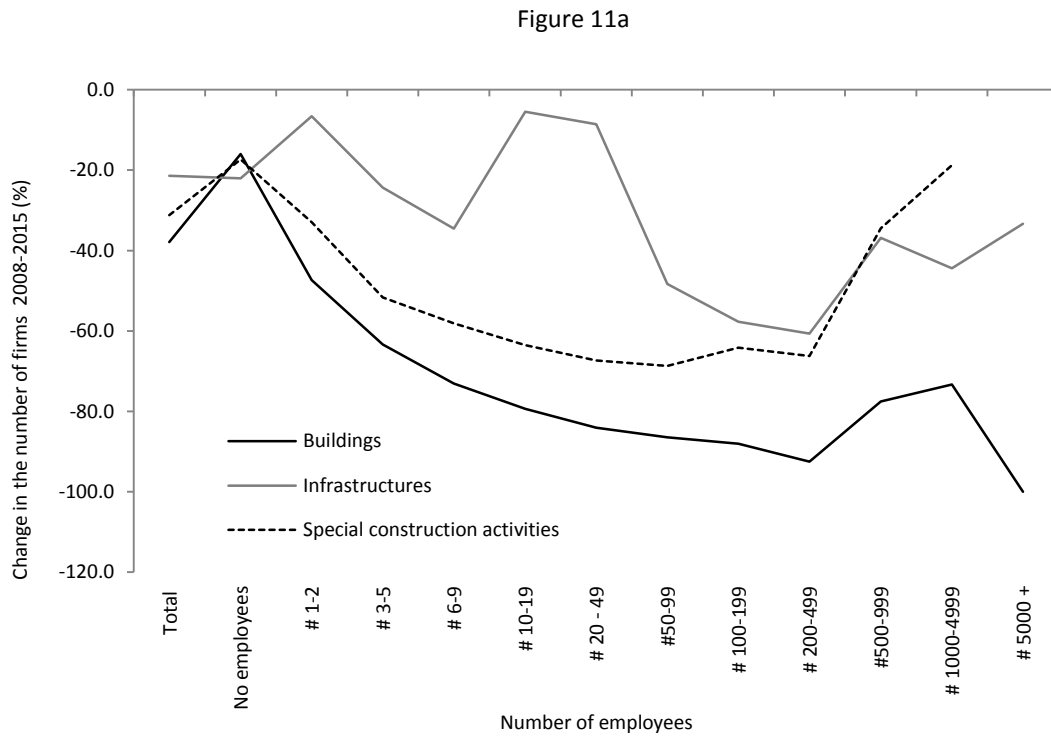


Source: Authors' analysis from LFS data.

In terms of total employment, these figures mean that in the first quarter of 2016 self-employment in the sector accounted for 22% of total employment, compared to 11% in 2008. In contrast, dependent employment dropped from almost 80% of total employment in the sector to 68%. Figure 12, which reproduces the evolution of the number of employed, self-employed (own account

workers with no employees) and employees reveals the profound change that has occurred in the sector in this regard.

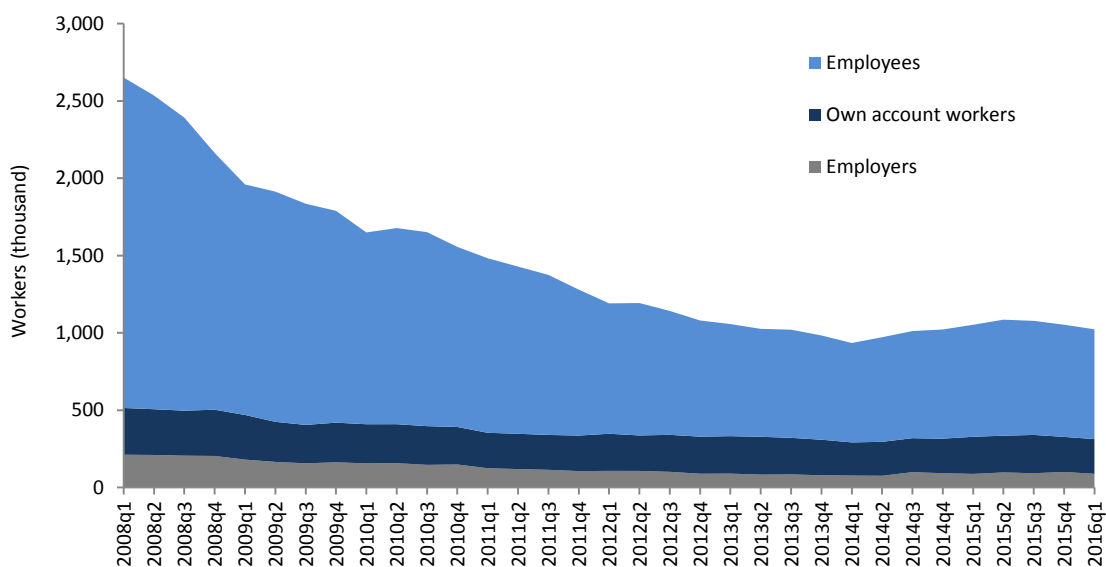
Figure 11. Destruction of firms in the construction sector in Spain: 2008-15



Source: Authors' analysis from DIRCE, INE

This major change in the structure of the sector has important implication in terms of compliance with the LRSC because compliance is higher in medium and large-sized firms: “while in big investment project (big firms) the level of compliance with the law is reasonable, in the deregulated sector of micro-firms (and underground employment) the level of compliance is very poor”⁵⁶. This is partly due to the greater likelihood of trade union presence and better health and safety departments in the former firms, and the lack of resources of the labour inspectorate: “those areas out of reach of the TU and the labour inspectorate are like the jungle, and now a much more dangerous jungle as such construction projects often rely on contracting own account workers (...) we think the law is good, but the problem is the lack of resources to guarantee a high level of compliance”⁵⁷. In this regard, the proliferation with the crisis of firms with no employees is likely to undermine the level of compliance with the law.

Figure 12. Evolution of employers, employees and own account workers in construction 2008-2016.



Source: Authors' analysis from EPA, INE

Summing up, we can say that the law limiting chain subcontracting is likely to be most effective in those firms worst hit by the crisis. During the recent recovery from the crisis, the construction sector has witnessed a proliferation of small firms, often with no employees, and comprising little more than a person with a van and a cell phone (known in the sector as *pistoleros* or gunmen). In this new industrial context the risk of non-compliance with the law is far higher than in the past.

⁵⁶ Interview with the Secretary General of the Federation of Construction and Services, CCOO.

⁵⁷ Interview with the Secretary General of the Federation of Construction and Services, CCOO.

11.4. Conclusions

This case study is a very interesting example of the multiple and creative ways that social dialogue can be operationalized to reduce precarious employment. In this case, a trade union, acknowledging the lack of enabling conditions that might allow it to confront the very serious problem of high accident rates using the standard tools of social dialogue, explored an innovative approach that required a mass citizenship campaign and use of union resources in order to collect the signatures needed to develop a Popular Legislative Initiative (ILP). It took three rounds of actions over a period of eight years to win the new legislation. The trade union did not succeed in having the Initiative approved by parliament in the first round. In a second round some years later the union tried a different channel, this time with the collaboration of a political party in the form of a traditional legislative initiative. Again it failed but the union maintained its objective and in a third round sought the backing of the other major unions and implemented standard union actions including two general strikes. These actions, combined with a change of government in 2004, led to the passing of new legislation that included several measures included in the original Initiative and shared the same overall goal of reducing labour accidents in construction through better control over subcontracting.

While further investigation is required to evaluate the merits of the legislation, our initial exploration indicates that success in practice has been shaped to a great extent by forces beyond the control of trade unions and the Labour Inspectorate. The massive crisis of construction, the restructuring of the sector and the proliferation of very small firms out of reach of the traditional mechanisms for enforcing compliance mean that the new legislation has had a much reduced scope of coverage.

12. CASE STUDY 3. IMPROVING WORKING CONDITIONS THROUGH COLLECTIVE BARGAINING IN A GROWING LOW WAGE SECTOR: OUTSOURCED CATERING SERVICES

The third case study illustrates the potential of social dialogue to improve working conditions by focusing on a growing sector: catering, and in particular the outsourced catering services. This is a major industry in the Spanish productive structure (HORECA –hotels, restaurants and catering) and relies on a traditional tool of social dialogue –namely, collective bargaining.

This sector is important as it exemplifies the important drive towards outsourcing of ancillary activities by firms, and especially by the public sector. The high growth of its root sector of activity, HORECA, is related to the important role played by tourism in the Spanish growth model, and the above mentioned growing recourse to outsourcing of catering services by public and private sector client organisations (including schools, hospitals, etc.). Such growth has often relied on high use of very short part time contracts, with the corresponding impact in terms of low take home pay of the (largely female)⁵⁸ labour force. The case study shows how the signing of a recent (2016) collective agreement has resulted in an important increase in minimum working hours to the advantage of the more vulnerable employees of the sector. This sector also shows the diversity of working conditions existing in a given productive activity depending on the size of the firms. In this regard we can find large firms with relatively good working conditions (a large multinational catering firm working worldwide for the airline Iberia), catering firms operating in the outsourced market with worse working conditions albeit with some improvements through sectoral collective bargaining, and small firms (typically catering for weddings and other kinds of celebrations and events) often resorting to non-declared labour.

12.1. Characteristics of the sector of activity HORECA (Hotels, restaurants and catering).

In Spain, there is an important relationship between the tourist industry and economic growth. According to the estimates of the National Statistical Office (INE)⁵⁹, in 2012 tourism contributed to 11% of GDP. Other sources, such as the National World Travel and Tourism Council, estimate even

⁵⁸ 50.5% of the workers in the whole HORECA sector were women, compared to 7.6 % in construction, or 25.3% in manufacturing. (INE, first quarter, 2016)

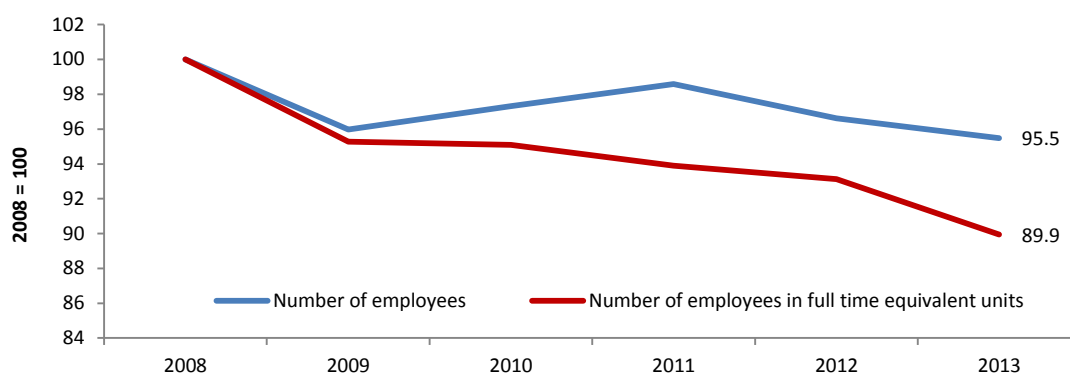
⁵⁹ INE. Cuenta satélite del turismo de España. Base 2008. Serie contable 2008-2012.

larger impacts (both direct and indirect), around 15% of GDP⁶⁰. This phenomenon is directly connected with the development of the HORECA sector, and specifically with the restaurants and catering part of it.

In order to set the Food and beverage service activities sector in the context of the Spanish economy, Table 1 presents some basic data regarding production (value added at factor cost), employment (both total person employed as well as employees and unpaid -own account workers- and full time equivalent employees) together with some indicators related to the evolution of employment and production right before and during the crisis.

As we can see from the production data reproduced in Table 1, Food and beverage service activities, like the rest of the economy, were hit by the crisis, with a reduction of valued added in nominal terms of -4.7% in 2009, although its impact was of lower intensity compared to the overall business economy. In fact, with the crisis the share of Food and beverage service activities of the overall business economy increased from 3.1% to 3.6%.

Figure 13. Evolution of employees in food and beverages service activities and full time equivalent employees. 2008-2013



Source: Authors' analysis from Eurostat: Annual detailed enterprise statistics for services.

Two other items are worth mentioning from Table 4. The first is the high labour intensity of the sector, with a share of personnel costs in production of 30%, around 25% higher than the average of business economy. The second item is related to the structure and evolution of employment in the sector. In terms of structure, the sector has a high level of self-employment, with self-employment rates around 29% (compared to 19% average of business economy). In terms of evolution, the sector has increase its share of total employment during the crisis, but the more relevant element is the increase in the use of part time employment with low hours. This use is shown by the increase

⁶⁰ World Travel and Tourism Council (2015): *Travel & Tourism in Spain. Economic impact 2015. Spain*. London

Table 4. Food and beverage service activities

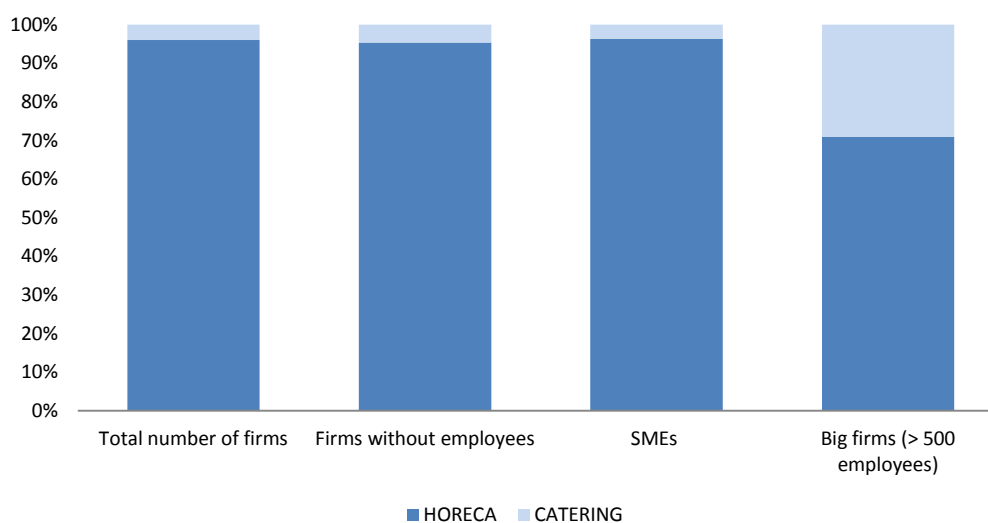
	2005	2006	2007	2008	2009	2010	2011	2012	2013
Value added at factor cost	15095,6	16399,2	17158,9	17637,6	16802,8	16790	16541,2	15891,7	15196
Idem as % total business economy				3,1	3,4	3,5	4,0	3,7	3,6
Growth of Value added at factor cost		8,6	4,6	2,8	-4,7	-0,1	-1,5	-3,9	-4,4
Number of persons employed	933375	986120	1000163	1002110	969196	978407	982124	969626	953923
Idem a % total business economy				7,14	7,70	8,16	9,72	8,88	9,02
Growth rate of employment (%)	:	5,7	1,4	0,2	-3,3	1,0	0,4	-1,3	-1,6
Number of employees	658 575	713 026	717 752	713 907	685 195	694 761	703 854	689 829	681 673
Number of unpaid persons employed	274 800	273 094	282 411	288 203	284 001	283 646	278 270	279 797	272 250
Unpaid as % of total employment	29,4	27,7	28,2	28,8	29,3	29,0	28,3	28,9	28,5
Number of employees in full time equivalent units	:	:	:	605 697	577 075	575 935	568 709	564 051	544 785
Share of personnel costs in production (%)	:	:	:	28,2	28,6	29,7	30,1	30,4	30,0
Idem a % total business economy				127,0	113,9	118,8	121,4	124,1	124,5

Source: Authors' analysis from Eurostat: Annual detailed enterprise statistics for services (NACE Rev. 2 H-N and S95)

in the gap between the evolution in the number of employees and the evolution of employees in full time equivalent units. As figure 13 shows, from 2008 to 2013 the drop in employees is lower (4.5 percentage points) than the drop in FTE employees (10.1 points).

The sub-sector of outsourced catering services has increased its share of the HORECA industry in recent years. During the last three years the number of establishments that subcontract to client organisations has increased considerably growing 2.36 % between 2013 and 2014 (FEHR, 2014).⁶¹ Taking a longer-term perspective, according to the data provided by the Spanish Statistical Institute (INE), the number of firms in the catering sector increased a hefty 54% (from 7,616 in 1999 to 11,719 in 2009). In terms of the distribution of the firms by size, catering stands out for having a significant number of big firms (with more than 500 employees) when compared with the overall HORECA sector (figure 14). This phenomenon has implications in terms of employment, as large and small firms use, as mentioned in the introduction, different employment strategies and have different working conditions.

Figure 14. Number of catering firms over the total number of HORECA firms (2014).



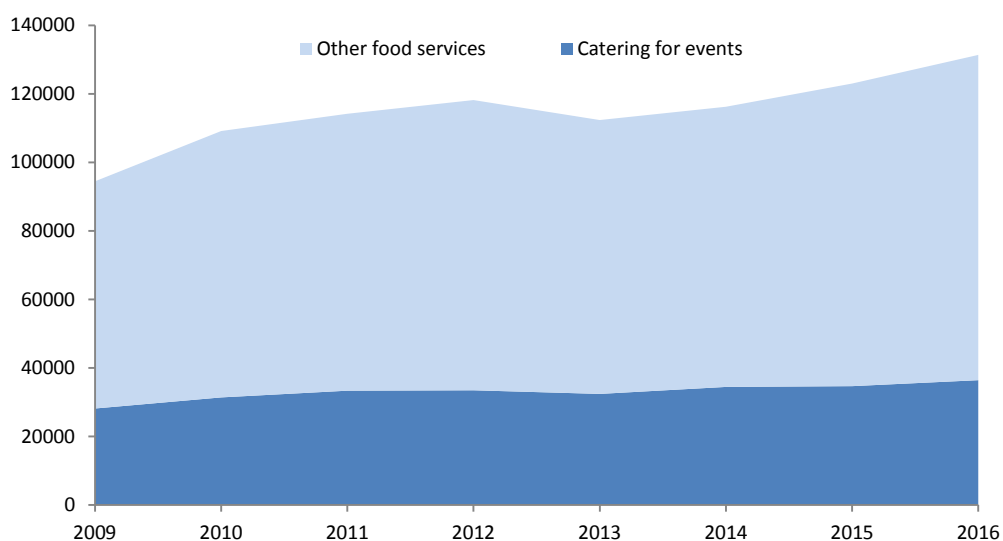
Source: Authors' analysis from FEHR Report 2014.

Using Social security data it is possible to know how the sector of catering and other food services (as it is called in SS terminology) has fared during the second part of the crisis. As we can see in Figure 15, the sector has done very well with a total increase in total employment from September 2009 to March 2016 of 39%. Looking now at the types of employment

⁶¹ Federación Española de Hostelería, FEDH (2014): *Los sectores de la hostelería*, Serie Estudios, Madrid.

relation used in the sector, as expected due to the high seasonality of many of the activities included in HORECA, the sector relies more intensively on temporary employment, with rates of 30% in 2014, compared to 30% in the whole economy

Figure 15. Evolution of employment in catering and collectivities (catering for events and other food services)*.



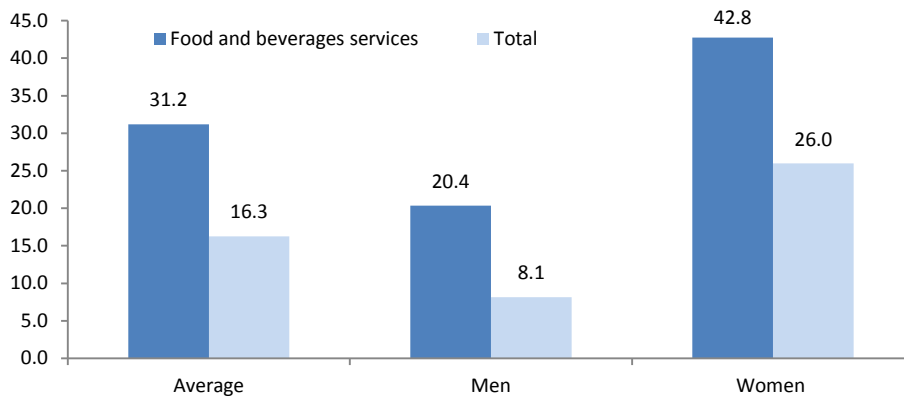
*2009: September; rest March

Source: Author's analysis from *Dinámicas sectoriales del Sistema Productivo*, different years.

In conclusion, the HORECA sector has been affected by the world economic crisis. In any case, despite of the crisis, this sector, and specially catering, has been a magnet for employment creation with more than 100,000 new jobs created in 2015, almost 1/5 of all jobs created (34% of all jobs created in 2014, the first year of employment recovery). On the down side, we are talking about a:

- (a) Low wage sector, with a median wage in Food and beverage services in 2010 of 58% of the national average (*Structure of Earning Survey*, 2010), the second lowest wage of all sectors of activity at two digits NACE.
- (b) A sector with a high rate of part time employment (mostly involuntary). As we can see in Figure 16, part time rate in the sector of Food and beverage services is almost twice average part time, almost reaching 43% among women.

Figure 16. Part time work in Food and beverage services and Total economy by gender, 2014



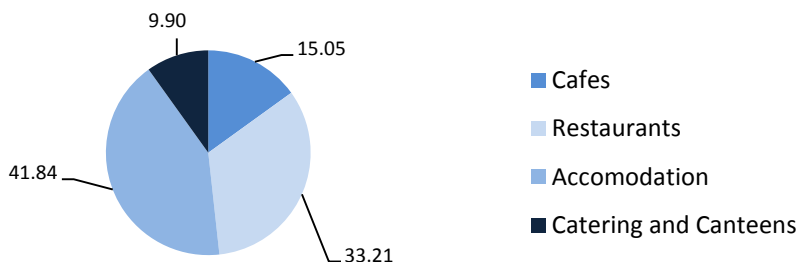
Source: Authors analysis from LFS microdata

12.2. Case study evidence: Catering and outsourced catering

As we have seen in the first part of the report, the last decade has witnessed an important deterioration of labor rights due to the deepest economic crisis in recent Spanish history and the effects of two major labour reforms approved in 2011 and 2012. Although all the economic sectors have been affected by the crisis, especially during the second phase of it starting in 2011, including the tertiary sector and HORECA industry, as we have seen in previous section, the sector has been greatly spared in terms of numbers, if not in terms of working conditions, being one of the sectors which is contributing more to the recovery of employment.

Catering and outsourced catering is one of the sub-sectors of the HORECA industry (Figure 17). Although the line between catering and outsourced catering does not exist in terms of statutory labor rights, working conditions are quite different depending of the specific area of activity within the sector and the size of the firms.

Figure 17. HORECA sector structure by type of activity (2014)



Source: Authors' analysis from FEHR Report 2014.

In this regard, within the catering sector it is crucial to acknowledge major diversity in terms of firms (and markets attended). Such differences produce wide variations in terms of working conditions and job stability. In order to address such differences our case study covered three different types of catering business:

- 1) A large service firm, CLECE, with catering to collectivities (services to schools, residencies, etc.) among many other activities;
- 2) A large multinational company, GATE GOURMET, supplying catering to a large multinational airline, Iberia; and
- 3) A small restaurant that caters for special events.

In the three cases, we are not interested in the companies *per se*, but as an illustration of the role played by social dialogue, or its absence, in shaping the working conditions of their employees.

Outsourced catering: Improving working conditions through collective bargaining

Our interest in outsourced catering as a case study started with the analysis of the recently signed first National Collective Agreement of the sector.⁶² The culmination of the negotiations conducive to the first collective agreement of the sector at national level is important in itself, as an example of the role given by social partners to collective bargaining at the highest level, even in a general context of deterioration of social dialogue and restructuring of the system of collective agreement related to the liberalization of the labour market of the 2011 and 2012 labour market reforms (see Part 1). In this regard, art. 9 of the collective agreement is very clear:

"...the necessity of strengthening and giving value to the Sectoral Collective Agreement as a source of stability, standardisation and as a competitive tool that allows for the establishment of harmonised working conditions in accordance with the economic and social needs of each moment".

The direct defense of the collective agreement at the highest level by social partners is very relevant in these moments of denigration of such type of collective agreements as sources of rigidity. Moreover, further in the same article, the signatories argue that "the negotiation of collective agreement at the firm level should not have a destabilization role nor should such level of bargaining be used as a means or formula to worsen working conditions".

⁶² *Resolución de 24 de febrero de 2016, de la Dirección General de Empleo, por la que se registra y publica el Convenio colectivo estatal del sector laboral de restauración colectiva (BOE, 22/March/2016)*

According to Angeles Rodríguez Bonillo, Secretary of Collective Bargaining of the Executive Commission of the trade union CCOO, one of the signatories of the collective agreement, the collective agreement was important as it guaranteed a minimum weekly working time of 10 hours. This was a major improvement considering that some workers in the sector (nine out of ten of whom are women), mostly 'monitors' who are tasked with organizing and supervising the distribution of lunches in schools, had contracts with very short hours, as few as 45 minutes per day. Obviously, paid hours were lower than actually worked hours as workers needed more time to do their jobs properly, or just to do their jobs. In this respect, one of the items of the collective agreement most appreciated by workers is the compromise of the firms to provide mechanisms to properly account for actual hours worked. This newly agreed system of control includes a monthly balance of hours that will be compensated by free time in the following quarter (and trade union delegates will receive periodical information of the balance of hours) aimed at reducing unpaid working hours. In our opinion this is a paradigmatic example of the deterioration of working conditions in the Spanish labour market: the same mechanism of time control (through the use of time-clocks or other devices) that was developed in the past to control workers is now demanded by workers themselves in order to have proof of the time worked.⁶³

Still within the realm of working time, the collective agreement developed an interesting compromise that ought to reduce overtime in order to contribute to the growth of employment in the sector.

The newly signed collective agreement also included a wage increase of 1.5% for 2015 which, although low, is well above the average of collective agreements that year. This is of value given the sector is one of the low wage sectors *par excellence*. Furthermore, the collective agreement recognizes the automatic compensation of wages in case the inflation rates for 2015 and 2016 are higher than agreed wage increases.

Summing up, the new collective agreement is a good example of the role that social partners can play in the fight against extreme cases of low wages and low and variable hours. To illustrate the wage improvement achieved by the introduction of minimum working hours, an

⁶³ In order to penalize the excess of working time relating to the activities of closing of operation, in this case, the excess of time will be considered as overtime and remunerated as such

employee with the job title 'monitor' (the lowest paid worker of the sector) would increase her monthly wage from 115€ to a minimum of 255€. ⁶⁴

After interviewing a union representative and a worker in a major service firm providing outsourced catering⁶⁵, our impression is that the workers were satisfied with the working conditions of the firm. The firm has a largely female workforce, who are in many cases overqualified, and this is especially true among 'monitors' in school canteens, many of whom have a degree in grades related to teaching. The union representative was reasonably satisfied with the results of the collective agreement, although complained that the difference in strategy of the two major unions –one operating with more confrontational actions than the other, had delayed, in her opinion, the process of bargaining. Another valued aspect was the introduction of a system of job rotation (between monitors, cleaners and care providers), which was felt to have contributed to a more positive sense of companionship. Training is provided by the firm in order to be able to complete the job rotations effectively. The interviewed worker also considered that the work environment was good. On this occasion, we are talking about a *rara avis* in the Spanish labour landscape, as it was a voluntary part-time university student worker.

A final issue regarding this collective agreement is the issue of compliance. Although compliance should never be taken for granted, we can assume that compliance is high in large firms with trade union representation. Obviously, as we go down in scale, the risk of non-compliance increases, as we consider in the final part of this case study.

A separate reality: Working conditions in a large multinational catering firm specialized in airline catering

Although sharing the same sector, the area of catering for airlines is a different world, so different that the collective agreement for outsourced catering excludes such activities from the agreement. We are talking now of large multinational catering firms that operate in many client sectors and provide varied service activities typically with long-term contracts with

⁶⁴ Calculated using 2015 wage and annual working time under the following assumptions: 4.5 hour/week (45 minutes/day x 5 days a week) *versus* 10 weekly hours (minimum weekly time included in the collective agreement).

⁶⁵ The firm CLECE, created in 1992 by a major Spanish construction firm to provide cleaning to public establishments, has transformed into a major player in the multiservices area, with an annual growth rate in the last 12 years of 10%. With 70,000 employees, Catering is a small part of workload of the firm, with slightly less than 2% of the labour force in the area of catering to collectivities. In the region analyzed, Clece is in charge of cleaning and catering services in 64 establishments. The production of food is centralized in a single establishment and delivered to all the establishments of the region.

similarly large client firms. Such is the case of GATE GOURMET, which provides outsourced catering for the airline Iberia. At the same time the social partners were negotiating the outsourced catering collective agreement, the trade union for GATE GOURMET workers was negotiating a firm level collective agreement, long delayed as a result of the elimination of 'ultra activity' (see Part 1). In this context, reaching an agreement was in itself a success, as under the new regulation in the absence of a new collective agreement, working conditions of the firm's employees are fixed by whatever other collective agreement at a higher level exists (or, in the absence of any, by the statutory labour code), usually with much lower working conditions and rights.

Among the more demanded elements (and indeed obtained) by the firm in the long process of negotiation (with the Damocles sword of losing all previously gained improvements in working conditions in case of failing in reaching an agreement) was the annual computation of working time, in order to give managers more freedom and flexibility in allocating working time during periods with more intensive work demands. This outcome resulted in a deterioration in working conditions in terms of the freedom of employees to choose their paid vacation leave. Overall, while the employer was mostly interested in setting new rules for greater irregularity in working time managed over annual periods, the trade union was interested in consolidating in the new context of labour relations the improvements obtained in the past collective agreement.

Welcome to the jungle: Catering for events in small firms.

The third type of firm that we would like to present in this brief tour of the catering sector is completely different from the two firms reviewed above, but much more common in terms of number. We refer to the small, often family-owned and run firms, as well as own-account workers, who tend to cater for special occasions such as weddings, communions or baptisms as well as more mundane occasions such as graduations. This is a major industry in Spain; just recently the Spanish Bishop Conference boasted that these types of social-religious ceremonies generated 5,000 million Euros yearly.⁶⁶ Although it is a well established line of regular business –and associated with a sideline business of standard restaurants and bars- the undertaking of these types of events almost always demands last-minute, additional help. Where this is the case the usual procedure is to resort to 'off the book' hiring at a fixed daily rate. From our data, it appears the standard fixed rate was 50€ per day (tips excluded) to cover

⁶⁶ " Bodas, bautizos y comuniones reportan 5.000 millones de euros a la sociedad" *Vida Nueva*, 17.06.2016

a 5-hour shift from 9pm to around 2am, obviously with no rights and no social security. Moreover, the worker has to provide his/her own uniform. The labour force for these kind of events is often 'permanent', in the sense that the worker is usually known very well by the employer, and only compliant workers are recalled. Quite often, this type of job is a side job used to complement a worker's main source of earnings.

12.3. Conclusions

This case shows the potential of social dialogue at the sectoral and firm level to improve working conditions while improving competitiveness. This was the case of the firm collective agreement of GATEGOURMET, where the improvements negotiated in previous collective agreements were successfully maintained against an alternative of reverting to whatever (lower) working conditions were established in higher level collective agreements. The trade-off was that the employer negotiated an increase in flexibility to irregularly allocate working time throughout the year. Working conditions among firms providing outsourced catering have also improved with the brand new collective agreement, especially for workers with few regular hours. In contrast, the sector of catering for small events dominated by small firms is largely unregulated and reveals the worst working conditions.

13. DISCUSSION AND CONCLUSION

Part Two of this report aimed at discussing to what extent social dialogue, broadly defined, could be an effective tool to improve the deterioration of working conditions associated with the growth of precarious employment, in a context of massive unemployment as the Spanish case. In order to do so we have focused in three different experiences that can be qualified as reasonably successful examples of social dialogue. In this regard it is important to stress, from the very beginning of this last section, that the selection of the cases has not been random. The cases have been selected, among other things, because they are good examples of how different types of social dialogue can be used to improve working conditions. Obviously these are not the only positive examples of the role of social dialogue in improving working conditions, but there are many other cases where social dialogue failed in reaching a positive result and fade away. The pro-success bias of our selection is explained by our interest in showing the potentiality of social dialogue, even in a context not auspicious at all for these kind of practices as the Great Recession, characterized by the lost of bargaining power by workers and TU due to the increase in unemployment, the change in regulations favoring the individualization of employment relation and weaker TU.

From the 3 case studies presented above, as well as other examples of social dialogue included in Part I of the report, we would like to highlight the following conclusions (and recommendations).

- 1)** The interest of governments (and economic institutions such as the OECD) in deregulating labour markets and reducing the role of social dialogue by favoring the individualization of employment relations often goes beyond the interest of business organizations themselves. Social dialogue is related with bargaining and negotiating working conditions, so it is only natural that firms would back up measures aimed at readdressing the power relation between business and TU in their favor. But that is different from backing the elimination of social dialogue

per se. A labour market without any form of social dialogue whatsoever would be a much more conflictual and complicated labor market. Social dialogue, when successful, brings order into the chaos of free market, reducing conflict levels, as open conflict is substituted by regulated conflict across a bargaining table. The recent experience of social agents in Spain approving a bilateral agreement not to use the possibility allowed by the 2012 reform to eliminate CA ultra-activity is an example of the organizing and pro-competitive role CA. The last case study, of successful bargaining of minimum working hours in a context weak TU organizations is another example of the interest of firms and employees in finding common ground to organize the market.

2) Social dialogue can follow very different paths and mechanism. The three case studies presented above exemplify the diversity of potential venues for social dialogue, from traditional Collective Agreements, to active participation of social partners in the writing of bills (such as the Self-Employment Code of 2007) or the use of popular legislative initiatives. In this regard, the Spanish case is a good example of the diversity of social dialogue with examples of bipartite, tripartite, formal and informal agreements in the four decades since the coming of democracy. In this respect, we can say that there is no single most effective way of social dialogue. It all depend on the circumstances and power relation between TU, firms and government.

3) The cases revised show the importance of perseverance and maintaining open channels of communication even in the less propitious contexts. Case study II is a paradigmatic example of this. It took a decade to reach the necessary consensus to restrict chain subcontracting in construction.

4) In order to have a meaningful social dialogue is important to consider it more as a way of living, of doing things, that as a tool to be used in a specific moment to reach an agreement on a specific issue. The mere existence of a permanent channel of discussion and debate between social partners contributes to the generation of mutual trust and confidence that facilitates future agreements. It is in this respect that the deterioration of social dialogue in a given moment due

to external circumstances, or changes in the regulation downplaying the role of social dialogue, can have disastrous consequences for the future of social dialogue itself.

5) In this respect, it could be argued that often Spanish governments have paid lip service to social dialogue, stressing its importance while boycotting, through regulation and downplaying the role of Trade unions, the chances of a meaningful social dialogue. The reforms conducted by the two governments in charge of labour and economic policy during the Great Recession are a good example of such behavior.

6) To the extent that in the past precarious forms of employment were limited to some areas of economic activity or cohorts of workers, it can be argued that the fight against precariousness has not been as high in the agenda of social partners, compared with other issues such as wages for example, as it should have been. In this regard it is important to redirect the efforts of social agents towards this growing area of concern.

APPENDIX. LIST OF INTERVIEWS CONDUCTED FOR PART TWO

	DATE	PLACE	CONTACT	POSITION	AFFILIATION
CASE I	28/01/2016	Hall 88 Hotel	Juan Manuel Ramos	Secretario General de FEAGRA - CCOO en Castilla y León.	Federación Agroalimentaria - Comisiones Obreras Castilla y León
	09/02/2016	Madrid-Atocha	Jorge Tomé	Federación Estatal de CCOO - TRADES	Comisiones Obreras
	09/02/2016	Madrid - Atocha	Mariano Fuentes Flores	Secretario General Sección Sindical BIMBO - Colectivo TRADES	Comisiones Obreras
	02/03/2016	UPTA Headquarters, Madrid	Sebastián Reyna	Presidente UPTA	Unión de Profesionales y Trabajadores autónomos.
	09/02/2016	Madrid - Atocha	Francisco Flores Galavís	Representante Nacional - Secretario General de Salud Laboral - TRADES	Comisiones Obreras
CASE II	20/04/2016	CCOO - Calle Ramírez de Arellano 19, Madrid	Vicente Sánchez	Secretario General de Contrucción y Servicios CCOO	Comisiones Obreras
CASE III	03/02/2016	CCOO - Calle Ramírez de Arellano 19, Madrid	Ángeles Rodríguez Bonillo	Secretaria General de Negociación Colectiva - CCOO	Comisiones Obreras
	03/02/2016	CCOO - Calle Ramírez de Arellano 19, Madrid	Reyes Bonilla	TU delegate	GATE - GOURMET
	03/02/2016	CCOO - Calle Ramírez de Arellano 19, Madrid	José Millán	TU delegate	GATE - GOURMET
	05/2016	Undisclosed location	Anonymous	Two monitors at the catering sector, one TU delegate and one underground waiter (catering for special events).	

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