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Policy Brief: Bargaining for social rights of precarious workers in Spain

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Summary of the project

One of the key concerns related to the post-industrial labour markets of EU countries is the tendency towards increased levels of precarious work, accompanied by processes of segmentation and exclusion. Growing proportions of the active population do not correspond to the traditional industrial type of employment with full-time open-ended contracts, access to social security arrangements and represented by trade unions. Increasingly the labour market is fragmented, with employment statuses like fixed term contracts, part-time contracts, temporary agency workers, dependent self-employment and informal work becoming increasingly important. Depending on the specific national situation, the individuals in such non-standard jobs are often in disadvantage where employment and social rights are concerned, both from a legal point of view (labour and social security legislation) and from the perspective of other forms of labour market regulation (collective agreements, company policies, employment policy). Moreover, the disadvantages that derive from these non-standard employment forms often accumulate among specific social groups like the young, migrants or women. It is these groups that are over-represented among the precariously employed.

Reducing precariousness and segmentation and improving the social rights of precarious workers has become a priority for governments, trade unions and employers’ organizations across Europe. At EU level this is manifested most clearly by the prominent role of the EU Charter of Fundamental Rights, including a series of social rights. Also, a number of Directives (e.g. those on part-time and fixed-term employment) aim to increase the social rights of the employed, while the European Employment Strategy urges member states to complement the increasing flexibility in the labour market with decent social security and stable employment relationships. At the same time, it is the economic character of the European integration process and its emphasis on marketization, privatization and internationalization that to an important extent drives the growth of precarious employment. Also at national level a drive towards flexible employment relationships has been ongoing for decades while this has not to a similar extent been compensated for by providing flexible workers with new securities. Indeed, as indicated above, the concerns over precarious work

have not yet translated in a general decline of such employment. Most previous research on precarious work has focused on the analysis of the labour market structures, vulnerable groups, different dimensions of precariousness and state policies that increase or decrease levels of precariousness. The main focus of the present project is on the contribution that trade unions can make to the reduction of precarious employment through collective bargaining and social dialogue. The project will study experiences in seven EU countries: Denmark, Germany, Italy, the Netherlands, Slovakia, Spain and the UK. Unions are important co-regulators of the labour market through the collective and other agreements that they conclude as well as through the influence they exert on state policy through social dialogue. As a result they potentially have the possibility to reduce precariousness and segmentation in the labour market. The capacity they have to do so and the effective use they make of this capacity differs between countries and is expected to depend on a number of factors. One concerns the general characteristics of the industrial relations system, in particular the coverage rate of collective agreements, the levels of membership of and power relations between employers and unions, and the importance and impact of social dialogue. The second concerns the standards set by (national and European) labour law and social security legislation and the bargaining space legislation allows for. The third concerns the extent and type of precariousness in the labour market. And the fourth concerns the interests and ideas of the bargaining partners, the extent to which they try to represent the various types of precarious employment, and the experience they have had with bargaining about precarious work, including the availability of successful examples and good practices.

The project intends first to take stock of these four categories of variables in the six countries mentioned. Secondly, it will investigate to what extent and how different forms of precarious employment are indeed addressed in collective agreements (at sector and/or company level depending on the national situation) and agreements stemming from social dialogue. Thirdly, the effect of these agreements on precariousness will be discussed. And finally, a comparison of the country studies will be made, based on which lessons for future bargaining will be drawn.

Activities:

- Kick-off meeting with research partners to outline the project
- Extensive case studies based on legal documents, statistics, collective agreements, interviews etc.
- Research meeting to discuss and compare outcomes
- Dissemination conference

Project output:

- 7 case study reports
- 7 policy papers including lessons learned and an inventory with good and bad examples (See below the case study for Spain)
- Overview report
- Book containing the case studies and overview report

Leader:

[Amsterdam Institute for Advanced Labour Studies](#) (AIAS) of the University of Amsterdam, the Netherlands (project leader: prof. Maarten Keune)

Partners:

[Amsterdam Institute for Advanced Labour Studies](#) (AIAS) of the University of Amsterdam, the Netherlands

[Hans Bockler Stiftung](#), WSI, Duesseldorf, Germany

[Industrial Relations Research Unit](#) (IRRU) of the Warwick Business School (WBS), University of Warwick, Coventry, United Kingdom

[The Central European Labour Studies Institute \(CELSI\)](#), Bratislava, Slovakia

[The Employment Relations Research Centre](#) (FAOS) of the University of Copenhagen, Denmark

[The University of Teramo](#), Italy

Objectives of the research

The general objective of this research has been to describe and explore the incidence of precarious work through a selection of institutionalized and frequently used forms of precarious (atypical and non-standard) employment in Spain; and present strategies and examine the activities of the main Spanish trade unions at various levels and sectors (services at home and public employment) in addressing precarious employment. The objectives of this research project, covering several EU countries, have been to:

- analyze the current situation of the Spanish labour market and the incidence of precarious forms of labour;
- offer an overview of the existing legislation dealing with atypical and non-standards types of employment to identify possible vulnerable groups of workers affected by employment precariousness;
- analyze the general trade unions approach to the growing phenomenon of employment precariousness within the Spanish context and delimitate the challenges that trade unions face in improving the social rights of precarious workers through collective bargaining and social dialogue;
- provide insight in experiences of trade unions with improving the social rights of precarious workers and describe in detail several instructive examples of such activities (case studies).

Scientific approach and methodology

For the elaboration of the BARSORI report on the Spanish case, several sources have been used (available literature, legislation, case law, information provided by the Ministry of Employment and Immigration on labour market legislation, evolution of collective bargaining and of the labour market, i.e. the Labour Forced Survey and the periodical bulletins on collective bargaining). A major source of information has been the studies, guides and documents, as well as the policy briefs, provided by the trade unions at national level (CC.OO, UGT and CSIF (*inter alia*) and of the employers' association CEOE, as well as reports elaborated by the ETUC and the ILO on the evolution of precarious employment in Spain). Besides, exchange of information has taken place with researchers involved in the inter-confederation observatory for collective bargaining (CC.OO) and the 1st of May Foundation, where major trade union confederations are represented.

New knowledge and/or added value

Evolution of the Spanish Labour market

The last developments on precarious employment in Spain and the adoption of several legal reforms on the regulation of temporary employment contracts, training contracts, objective dismissal, social security legislation and the rules on collective bargaining can only be explained within the content of the serious economic downturn that the Spanish economy is undergoing since the summer 2008. This economic crisis has led to a dramatic increase in the unemployment rate (above 20% of the labour force) that has watered down nearly all attempts from the government and the social partners to fight precarious employment and has recently led to a trend of diminished protection against abusive use of fixed-term employment contracts.

Vulnerable groups

In this report we have observed that vulnerable workers as young workers, women and immigrants have higher possibilities of being excluded from the labour market. In particular, immigrants are clearly being more adversely affected by the economic downturn than the native population. High youth unemployment rates (above 45%) do reflect the difficulties faced by young people in finding jobs. In the whole of the EU, youth unemployment rates are generally much higher than unemployment rates for all ages. According to EUROSTAT data, this difference is particularly broad in the Spanish case. Spain is also the EU country with the higher percentage of overqualified workers, i.e., those who are employed below their skill level. According to data of the Ministry of Labour and Social Affairs (2009) there are great differences on the average salary of vulnerable type of workers. The gender gap between men and women stays at 22% on average. As regards immigrants, according to estimations of the unions, foreign male workers earn on average 40.63% less than the average annual salary (as of 2009). For foreign women this difference amounts to 51.35% less than that wage.

Recent Reforms of Social legislation - Trend to more employment flexibility and less employment protection (lower compensation in case of dismissal)

In response to a shrinking labour market, the economic downturn, and the growing unemployment, the Spanish government has adopted several legislative changes on labour market reform in 2010 and 2011. Some of these changes were aimed to eliminate the precariousness in employment and reduce the number of temporary contracts of employment and the dual character of the Spanish labour market. However, these reforms were not successful.

The following legislation regulating employment contracts and collective bargaining has been adopted in the recent years:

Royal Decree Law 10/2010 & Law 35/2010 on Labour market reform (These two acts have reformed the regulation applicable to temporary contracts, special open-ended contracts, collective bargaining rules, training contracts, unemployment services and temporary employment agencies)

Royal Decree Law 7/2011, reform of the collective bargaining system (hierarchy of collective agreements, content and validity of the collective agreements, entitlement to negotiate collective agreements, application and interpretation of collective agreements and negotiated internal flexibility);

Royal Decree Law 10/2011 has reformed the rules on temporary employment, training contracts for young people, special open-ended contracts and long-term unemployment;

Law 27/2011 on the modernization of the social security system. (This Act has modified old-age pensions);

Royal Decree Law 1620/2011, dealing with the special employment relationship of the providers of services at home (domestic workers);

In order to counteract the growing number of temporary employment arrangements, a new type of open-ended employment relationship has been adopted since 1997 and promoted by several legal acts (Law 12/2001, Law 35/2010, and RD Law 10/2011). This special type of open-ended contract of employment is called “contract for promotion of permanent employment” and can be signed between the employer and a limited range of workers (several groups of women, disabled people, unemployed and temporary employees, under certain circumstances). The main difference between this contract for the promotion of permanent employment and the regular permanent contract is that, when the contract is terminated due to objective reasons and that termination is declared unfair by a Court, the amount of compensation (severance payment) is lower, (thirty-three days of salary per year of service, prorated for the periods shorter than one year and up to twenty-four monthly payments), than the regular one previewed by the Workers’ Statute (45 days with a maximum of 42 monthly payments).

Flexible employment in Spain

In Spain, there is a growing trend in the already high rate of temporary employment. The last labour market figures published by the Ministry of Labour and Immigration show that in the third quarter of 2011, the rate of temporary employment amounts to 26.03%.

In Spain there are three main types of temporary contracts regulated in the Workers’ Statute and in other legislation: Fixed-term contracts (Article 15 WS); Training/apprenticeship contracts (Article 11 WS) and Temporary agency work (Law 14/1994)

In Spain, most temporary and atypical workers (part-time workers) enjoy the same legal rights and are subjects to the same obligations than ordinary workers. According to Article 15.6 WS flexible workers should be treated equally in relationship with workers with a permanent employment contract or/and a full-time position (save for some issues in the case of training/apprenticeship contracts). This equality rule applies also to entitlement to social security benefits and conditions of access to social security rights. This equality principle is applied on a pro rata basis, which is especially relevant in the case of part-time jobs. The exception to this equal treatment principle which applies to nearly all forms of temporary employment is the rules on termination of the employment relationship. Here, there are different rules and compensation entitlements than the one granted to workers with an open-ended contract of employment. Besides, temporary employees encounter more difficulties to get access to social benefits (unemployment benefits and maternity leave) and to build pension rights due to continuous career breaks.

Temporary employment agencies

The regulation of temporary employment agencies is set up in Law 14/1994. Recently, Law 35/2010 has made more flexible the use of this type of employment relationship, opening also the possibility that these agencies provide workers to perform dangerous or hazardous types of work (mining, drilling, offshore platforms, activities involving handling high voltage or explosive, etcetera) and for positions in the public administration. This reform has been criticized by the main trade unions in Spain.

In principle the temp-agency worker shall be entitled during the period for provision of services to the same basic working and employment conditions than a regular worker of the user company. This means the same conditions concerning remuneration, duration of working time, overtime, rest periods, night work, and holiday entitlements.

Trade Union strategies against precarious employment

The general trade unions’ strategy regarding the growing trend to precarious employment contracts is the effort to reduce/eliminate them. Trade unions have been actively intervening

to try to inform legislative measures and they have adopted collective action (a general strike) to oppose to the labour legislation adopted by the government in 2010. Besides, they have promoted a citizens legislative initiative (“Stable Employment and Rights“) in favour of improving the quality of employment and against the labour market reforms adopted by the government in 2010-2011.

In addition, the main trade unions confederations have actively been involved in collective bargaining and social dialogue and there have been some important outcomes on this terrain as the “Pact for employment and social cohesion”.

The trade union have been actively involved in assessing the impact of the range of labour law reforms on their activities and in particular, for the role and functioning of the system of collective bargaining (organisation of seminars, discussion meetings, study groups, issuing reports and policy papers). Especially interesting is the guide that CC.OO. has elaborated for trade union action including trade union strategies on the applicability of the new labour market regulation and the creation of a research group on the impact of the legal reform of collective bargaining that will issue their results in spring 2012.

The trade union have not only acted against legal measures that might, on their view, undermined labour law protection, they have also being actively involved in tripartite social dialogue and therefore, they have collaborated with the government on reforming social protection legislation. A good example is the “Social and Economic Agreement” of 2/2/2011 (signed by UGT, CC.OO., CEOE, CEPYME and the government) which includes a reform of the statutory pension system and employment activation policies.

Despite long-term negotiations between the social partners on the reform of the system of collective bargaining finally, there was no agreement and the reform took place by Royal Decree Law 7/2011. This reform tends to decentralize collective bargaining in Spain by giving more relevance to company agreements. Those will have priority on: wages, overtime compensation, several aspects of working time, holidays, professional classification and certain issues related to type of contracts. In addition, the reform diminishes the importance of provincial sectoral agreement and reinforces the role of the joint board of the collective agreement in case of discrepancies on the interpretation of the clauses of the agreements; finally, the reform sets up new rules on the extension of applicability of expired collective agreement and reinforces the importance of arbitration.

On the sectoral level, the trade unions have been more successful in defending the interests of precarious workers and improve their working conditions and social protection. This is the case of domestic workers and employees in the public sector. Even when in this last case some disputes between the unions in the sector are blurring the improvements.

This new regulation on domestic workers has been much welcomed by the main trade union confederations in Spain who have been campaigning for these improvements for decades. The unions consider that the new legal framework dignifies the work of domestic workers by improving their working conditions and they have noted that this implies an improvement also from the gender perspective, taking into account that there are mainly women working in this sector of activity. For UGT, campaigning for them to also be protected against the social risk of unemployment is still a priority for the union. In addition, UGT has developed an awareness and information campaign on this new legal regime, in collaboration with the Social Security General Treasury of the Ministry of Labour and Immigration, in the last two months of 2011.

Key arguments/messages for policy makers and trade unions

There is widespread abuse of fixed-term contracts in the Spanish labour market, where nearly one third of work contracts are temporary. This phenomenon is especially common among young workers entering the labour market. Yet, in Spain insecure working conditions is eroding workers' motivation and involvement in the workplace, and blocking the growth of productivity. Improving workforce security by fighting excessive flexibility makes good social and economic sense. Unfortunately, the unions and governments' attempts to take action against precarious work of a temporary nature have been undermined by the current economic crisis that is hitting Spain strongly. The downturn of the economy and the serious problems with unemployment has led the Spanish government to introduce a legal measure allowing employers to hire workers on a temporary basis for an unlimited duration or number of assignments until September 2013. This measure has been broadly criticized by the main trade union confederations. This is obviously a "crisis" temporary measure but the key problem of the dual composition of the Spanish labour market needs strong efforts on policy makers. They need to adopt a more ambitious and effective employment activation policy and the involvement of the social partners in the application of that policy should be central for its success.

The large range of temporary contracts existing in Spain has been criticized by both employers and employees representatives. However, the social partners have not been able to reach an agreement on how to simplify the legislation regarding types of employment contracts in the recent years. Thus, the government is currently considering how to legislate in this field. The need for further and more dynamic social dialogue in this field will help to avoid and impose a legal reform that most probably will go on the direction of diminishing employment protection legislation for all employees (reduction of the severance payment to 33 days of salary per year of service).

At the time of finishing this policy paper, the social partners have just reached an agreement on employment and the reform of the system of collective bargaining for 2012, 2013 and 2014 (signed on 25/01/2012) which will help to unblock the current situation, created by an imposed legislation in this field (RD Law 7/2011) which did not satisfied the interests of any of the social partners that have to apply it.

The trade unions are conscious that the unionization and organization of precarious workers (i.e., temporary workers, agency workers, and workers domestic employment) is still a challenge for them and a necessary step if they want to represent the interest of young generations and canalize in a peaceful way the growing social uprising in Spain.