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EUROPEAN SOCIAL CHARTER

26th National Report on the implementation of the 1961 European Social Charter

submitted by

THE GOVERNMENT OF SPAIN

(Articles 2, 4, 5, 6 of the 1961 European Social
Article 2 and 3 of the 1988 Additional Protocol)

for the period
01/01/2009 – 31/12/2012)

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CYCLE XX-3 (2014)

EUROPEAN SOCIAL CHARTER

26th SPANISH REPORT ON THE APPLICATION OF THE PROVISIONS OF THE THEMATIC GROUP ON HEALTH, SOCIAL SECURITY AND SOCIAL PROTECTION

Articles 2, 4, 5, 6 of the European Social Charter 1961
Articles 2 and 3 of the Additional Protocol of 1988

(Period covered: from 1 January 2009 to 31 December 2012)

Report by the Government of Spain applying Article 21 of the European Social Charter on measures adopted to implement the provisions of the Charter ratified by Spain on 6 May 1980.

Copies of this report have been submitted to the most representative trade unions and employers' organisations, in compliance with Article 23 of the European Social Charter.

2 July 2013

For the purposes of preparing the 26th report on compliance with the European Social Charter, information is requested on any changes in our legislation during the period between 1 January 2009 and 31 December 2012, with relation to Articles 2, 4, 5 and 6 of the European Social Charter and Articles 2 and 3 of the Additional Protocol.

I. EUROPEAN SOCIAL CHARTER

I.A. ARTICLE 2 OF THE CHARTER

Basic labour regulation with respect to working hours is to be found in Articles 34, 35, 36, 37 and 38 of the Workers' Statute. This provision is complemented by the provisions regulating special working hours according to the particularly difficult or unhealthy nature of the work (such as Royal Decree 1561/1995, of 21 September, on special working hours) and the specific regulations on this matter that may be established by collective bargaining agreements, which will at all times have to guarantee the necessary minimum rights. Since the last report was submitted, there have been some legal changes to the Workers' Statute through Law 39/2010, of 22 December, on the state budget for 2011, and Law 3/2012, of 6 July, on urgent measures to reform the labour market.

The changes affect questions such as the irregular distribution of working hours over the year; leave for breastfeeding; reduction of working hours in cases of legal guardianship of minors aged under eight or with disabilities, or of family members of up to the second degree of kinship who may not take care of themselves; and the reduction of working hours or reorganisation of working hours for workers who are classed as victims of gender violence or victims of terrorism.

Among these changes we would like to highlight that to Article 38 of the Workers' Statute, which regulates annual holidays. Specifically, its section 3 has been amended.

The new regulations governing holidays, introduced by Law 3/2012, establish that where annual leave coincides with a temporary incapacity for reasons of pregnancy, childbirth or nursing, making the worker unable to take the holidays in full or partially during the calendar year to which they correspond, he or she may do so after the end of the period of incapacity, provided that not more than 18 months have elapsed since the end of the year for which the right to the holidays originated.

This new drafting is considered to comply with the interpretation made by the European Committee of Social Rights with respect to the content of the third paragraph of Article 2 of the Charter, stipulating that the days lost due to illness or accident taking place during annual leave must be taken at another time.[1]

Specific regulation on particular dangerous or unhealthy occupations is found basically in Royal Decree 1561/1995, of 21 September, on special working hours, which is a law referred to in previous reports. This Royal Decree 1561/1995 has been amended within the reference period of this report. Specifically, an amendment was introduced by Royal Decree 1635/2011, of 14 November, related to the calculation of driving time in

[1] It also answers the Conclusions XIX-3 of Year 2010 of the ECSR, with respect to non-compliance by Spain of section 3 of Article 2 of the Charter (page 6 of the document).

road transport.

We would also like to indicate that the restrictions on working time for workers aged under 18 are still applicable, as are the prohibitions on overtime or night work.

As a result of the reforms introduced by Royal Decree-Law 7/2011, of 10 June, on urgent measures to reform collective bargaining, and Law 3/2012, of 6 July, on urgent measures to reform the labour market, company-level collective bargaining agreements are given priority application over collective bargaining agreements of a broader scope in some matters. Among such matters are those referring to the timetable and the distribution of the working hours, the system of shift work and the annual holiday schedule.[2]

For the purpose of clarity, changes to the law are set out below in chronological order:

a) **Pursuant to Article 37.2 of the Workers' Statute**, every year the "*Boletín Oficial del Estado*" ("Official State Gazette", *BOE*) publishes a list of public holidays, which are paid and cannot be accrued, by a Resolution of what is now the Directorate General for Employment. The following laws have been enacted in the period referred to by this report, or entered into force during the period:

- **Resolution of 5 November, 2008, publishing the list of public holidays for 2009** (*BOE*, 15/11/2008).
- **Resolution of 12 November, 2009, publishing the list of public holidays for 2010** (*BOE*, 20/11/2009).
- **Resolution of 7 October, 2010, publishing the list of public holidays for 2011** (*BOE*, 15/10/2010).
- **Resolution of 6 October, 2011, publishing the list of public holidays for 2012** (*BOE*, 14/10/2011).
- **Resolution of 30 October, 2012, publishing the list of public holidays for 2013** (*BOE*, 04/11/2012).

b) **Royal Decree 1635/2011, of 14 November, amending Royal Decree 1561/1995, of 21/09/1995, on special working hours, with respect to driving time in road transport.**

Under the authorisations provided for by Article 34.7 of the Workers' Statute, as well as Articles 36.1 and 37.1, special working hours were regulated by Royal Decree 1561/1995, of 21 September.

In the period 2009 to 2012, the above Royal Decree 1635/2011 modified Royal Decree 1561/1995 in terms of working hours in road transport, and specifically in terms of driving time in road transport. The amendment is a result of the difficulties in applying the rules for calculating driving time, as revealed clearly in the dialogue between the social partners in the sector. It involves the possibility of extending the formulas for calculating it, provided that it is agreed in the collective bargaining agreement at state level. This amendment has been requested and is broadly backed by the employers' associations and trade unions in the sector.

c) **Law 3/2012, of 6 July, on urgent measures to reform the labour market** and the prior **Royal Decree-Law 3/2012, of 10 February, on urgent measures to reform the labour market**, repealed by **Law 3/2012**.

[2] See Article 84.2 of the Law on the Workers' Statute, approved by Royal Legislative Decree 1/1995, of 24 March.

- Article 34.21 of the Law on the Workers' Statute, in the consolidated text approved by Royal Legislative Decree 1/1995, of 24 March, has been amended in the reference period of this report, first by Royal Decree-Law 3/2012, of 10 February, on urgent measures to reform the labour market, and then by Law 3/2012, of 6 July, also on urgent measures to reform the labour market, which it replaces, and is a result of the decision by Parliament to validate the Royal Decree-Law and process the text as law by an urgent procedure.

  The amendment is justified by the need to improve productivity and make better use of working time, without increasing costs involved in overtime and with the possibility of a speedy reaction to changes in demand. This can be done within the scope of the autonomy of the social partners, but if it were not possible to reach an agreement on the question - and this is the new point - the company would have a margin of working hours, which increases from 5% of total working hours under the Royal Decree-Law to 10% in the Law, for possible irregular distribution, while respecting the minimum daily and weekly rest periods. The distribution of working hours, within the limits that mean the maximum number of working hours has not been changed, is currently regulated by Article 34.2 of the Workers' Statute, as follows:

  > *2. An irregular distribution of working hours over the year may be established by collective bargaining agreement, or where there is none, by agreement between the company and workers' representatives. If there is no agreement, the company may distribute 10% of the working day flexibly over the year.*
  >
  > *This distribution must at all times respect minimum legal daily and weekly rest periods and workers must have at least 5 days' notice of the date and time when they must work under this system.*

- Annual paid holidays, which have been regulated in general, and almost unchanged, since 1995, by Article 38 of the Workers' Statute, were also modified in 2012. This modification affects that previously introduced by Organic Law 3/2007, of 22 March, on effective equality between men and women. This time section 3 has been amended again by adding a new paragraph through Law 3/2012. The amendment aims to address the conflicts that have arisen in practice between the European Union and Spain in terms of entitlement to holidays of workers who have been off work for long periods (not only due to pregnancy, childbirth or breastfeeding, but also for other reasons or needs), with the result that they have not been able to take annual holidays in the year that corresponded if the time off work in question had not occurred. Article 38.3 of the current Workers' Statute provides as follows:

  > *3. Each company shall establish a leave schedule. Employees shall be made aware of the days to which they are entitled at least two months in advance of the start of their leave.*
  >
  > *When the period of leave set out in the company's leave schedule to which the previous paragraph refers coincides with a period of temporary incapacity resulting from pregnancy, childbirth or breastfeeding or with the period of suspension of the employment contract laid down in Article 48.4 and 48.bis of this Law, employees shall be entitled to take their leave at a time other than during the period of temporary incapacity or leave to which they are entitled by the*

application of the provision cited above, following the period of suspension, even if the calendar year to which the leave relates has ended.

If the period of leave coincides with a period of temporary incapacity for reasons other than those stipulated in the above paragraph, making it impossible for employees to take a period of leave, either wholly or in part, during the corresponding calendar year, the employees may do so once their incapacity ends and provided that not more than 18 months have elapsed since the end of the year for which they are entitled to leave."

MEASURES AND DATA ON ACTION TAKEN BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE RELATED TO LABOUR RIGHTS INCLUDED IN ARTICLE 2 OF THE EUROPEAN SOCIAL CHARTER

The Labour and Social Security Inspectorate carries out supervision on an ordinary basis with respect to working hours, rest periods and overtime. This supervision is normally carried out through inspections of workplaces, usually without warning. Subsequently, if required, the employer may be given notice given to appear at the Inspectorate's offices to check and analyse documents more systematically or to clear up a particular point. These actions tend to involve interviews with the workers affected and the workers' legal representatives, as well as checks of a variety of documentation including accounts, wage receipts, records of Social Security contributions, work schedules, work calendars, etc.

Since the submission of the last report, no legal changes have been implemented to the competences of the Labour and Social Security Inspectorate with respect to the matters referred to by the articles of the European Social Charter covered by this report.

The following provisions remain in force:

- Law 42/1997, of 14 November, regulating the Labour and Social Security Inspectorate.
- Royal Decree 138/2000, of 4 February, approving the Regulation on the Organisation and Operation of the Labour and Social Security Inspectorate.
- Royal Decree 929/1998, of 14 May, approving the Regulation on procedures for imposing penalties for infringements of labour regulations and settlement procedures for Social Security contributions due.
- Royal Legislative Decree 5/2000, of 4 August, approving the consolidated Law on Labour Law Infringements and Penalties.

However, there have been some amendments to these provisions since the submission of the last report:

- Law 42/1997, regulating the Labour and Social Security Inspectorate, has been amended by Law 25/2009[3], of 22 December, which amends various laws to

[3] The law can be accessed online via the following link: http://www.boe.es/boe/dias/2009/12/23/pdfs/BOE-A-2009-20725.pdf. The law, which entered into force on 27/12/2009, partially transposes into Spanish law Directive 2006/123/EC of the European Parliament and of the Council, of 12 December 2006, on services in the internal market.

adapt them to the Law governing free access to and engagement in service activities; and by Law 13/2012[4], of 26 December, on the fight against illegal employment and Social Security fraud (*BOE*, 27 December). These provisions, as well as other changes, have addressed the issue of international cooperation with other labour inspectorates in the European Union. International cooperation of this kind also lies behind the modification of the regulation on maximum duration of inspection procedures, as well as the use of information and/or documentation provided by other European Union authorities with competence equivalent to the Labour and Social Security Inspectorate when carrying out inspections. The Spanish Inspectorate may also provide support and collaboration to these authorities. On the question of the fight against Social Security fraud and illegal employment, amendments have been introduced to Law 42/1997 aimed at making it easier to implement by allowing access to instruments and databases such as the Notary Registry, while at the same time allowing an increase in the period during which the evidence can be examined prior to the infringement or settlement procedure when there are special circumstances such a particularly difficult or complex inspection.

- The amendments to Law 42/1997 have been reflected at the level of regulations. Thus a number of changes have been made to the Regulation governing the organisation and operation of the Labour and Social Security Inspectorate, approved by Royal Decree 138/2000[5], and in the articles referring to the duration of actions or the possibility of using documentation or information provided by other labour inspectorates or public authorities in the European Union for the investigation process.

- Royal Decree 928/1998 mentioned above has also been reformed as a result of the enactment of Royal Decree 772/2011[6], of 3 June, modifying the General Regulation on procedures for the imposition of penalties for infringements of labour law and for settlement procedures for Social Security contributions. The various changes in introduced by Royal Decree 772/2011 to the General Regulation are related to the changes in the sanctioning powers relating to labour law introduced by Law 26/2009[7], of 23 December, on the national budget for 2010, and the new regulation established by Law 3/2012, of 26 December, on the fight against illegal employment and Social Security fraud.

Finally, various changes have been introduced by Royal Legislative Decree 5/2000. For example, under Law 35/2010, of 17 September, on urgent measures to reform the labour market (*BOE* of 18 September), the legal persons that may be responsible for infringements include charitable foundations and associations that benefit from donations and sponsorship to carry out job placement and job creation activities for people with disabilities, as an alternative way of complying with the obligation to reserve jobs for people with disabilities. There have also been changes with respect to the types of infringements. First by Law 35/2010[8], and then Law 3/2012, of 6 July, on urgent measures to reform the labour market (*BOE*, 7 July) and Law 13/2012, of 26

[4] Available online at: http://www.boe.es/boe/dias/2012/12/27/pdfs/BOE-A-2012-15596.pdf

[5] See Royal Decree 107/2010, of 5 February, modifying the Regulation governing the organisation and operation of the Labour and Social Security Inspectorate, approved by Royal Decree 138/2000, of 4 February (*BOE*, 16 February).

[6] The law can be accessed via the following link: http://www.empleo.gob.es/es/guia/pdfs/pdfsnuev/RD77211.pdf

[7] The law is available online on: http://www.boe.es/boe/dias/2009/12/24/pdfs/BOE-A-2009-20765.pdf

[8] Available on: http://www.boe.es/boe/dias/2010/09/18/pdfs/BOE-A-2010-14301.pdf

December, on the fight against illegal employment and Social Security fraud. In any event, the changes do not affect the scope of responsibility of the Labour and Social Security Inspectorate, as set forth in Article 3 of the its governing law (Law 42/1997).[9][10]

With reference to Article 2 of the Charter, the breaches of the regulation with respect to working time represent an infringement against labour law defined as serious in Article 7.5 of Royal Legislative Decree 5/2000, approving the consolidated text of the Law on Labour Law Infringements and Penalties. This Article classifies the following as an infringement:

> *"Breach of the rules and legal or agreed limits relating to working hours, night work, overtime, extra hours, rest periods, holidays, leave and, in general, the working time referred to in Articles 12, 23 and 34 to 38 of the Workers' Statute.*[11]

The infringements classified as such are penalised with a fine, which at the minimum level ranges from 626 to 1,250 euros; at the medium level from 1,251 to 3,125 euros; and at the highest level 3,126 to 6,250 euros[12]. The acting inspector will propose within these limits the amount of penalty to impose to the person responsible for these infringements, according to whether or not there are circumstances in the inspected case that can be used as criteria for graduating the amount of the penalty, such as intentionality, the company's turnover, or the number of workers affected by the infringement.

The actions carried out by the Labour and Social Security Inspectorate relating to working time are included statistically in the information system *Integra* in two action codes: a) code 11T, for "Working Time"; and b) code 12T, for "Overtime". This means that on the question of supervision of legislation with respect to working hours and rest periods, the actions by the Labour and Social Security Inspectorate system are only disaggregated with respect to overtime, and all the rest of the controls covering this question are included in a single code (11T).

Given this statistical limitation, and taking into account the request for additional information made by the European Committee of Social Rights within the document of Conclusions XIX-3 of 2010 on the infringements detected by the Labour Inspectorate

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[9] However, Law 13/2012 provides for a new type of Social Security infringement that is related to control of working hours in cases of suspension or reduction of working hours on economic, technical, organisational or production-related grounds. The Infringement consists of a breach of the obligation to communicate to the body managing unemployment benefits the changes to the work schedule initially provided before they take place, with respect to the specific details by employee of the days of suspension or reduced working hours; and in the case of reduced working hours, the work schedule affected by the reduction. (Article 22.13 of Royal Legislative Decree 5/2000).

[10] Also worth noting, although it has entered into force starting in January 2013, and thus lies outside the reference period of this report, is the publication of Organic Law 7/2012, of 27 December, modifying Organic Law 10/1995, of 23 November, the Penal Code with respect to transparency and the fight against tax and Social Security fraud (*BOE* 27/12/2012). This provision includes various modifications, including a reduction in minimum amount above which the fraud against the Social Security system is considered a crime (the amount has been reduced from 120,000 euros to 50,000 euros). The Organic Law can be accessed at *http://www.boe.es/boe/dias/2012/12/28/pdfs/BOE-A-2012-15647.pdf*

[11] Articles 12 and 23 of the Workers' Statute regulate part-time and replacement contracts (Article 12) and promotion and occupational training at work (Article 23).

[12] See Article 40.1 of Royal Legislative Decree 5/2000. Amounts updated by Royal Decree 306/2007, of 2 March (*BOE* 19 March, 2007).

and the penalties applied, below are the most important data on action by the Labour and Social Security Inspectorate with respect to supervision of working hours, timetables, rest periods, leave and holidays during the 2009-2012 period.[13]

SUPERVISORY ACTIONS RELATING TO WORKING TIME (not including overtime) (2009-2012)

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	10,926	1,842	2,305,214.16	204	2,683
2010	11,662	1,478	1,892,020.00	154	2,972
2011	12,312	1,572	2,014,302.52	88	3,253
2012	12,305	1,380	1,757,393.00	40	3,238

SUPERVISORY ACTIONS ON OVERTIME (2009-2012)

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	2,491	434	1,045,563.58	37	547
2010	2,946	482	1,077,818.56	27	660
2011	3,005	416	768,622.52	11	735
2012	2,857	410	727,326.00	6	669

Despite the summary of the inspections specified and their results in the 11T and 12T action codes, we should point out that breaches related to working hours, both with respect to the maximum permitted hours per day and the daily and weekly rest periods may give rise to infringements with respect to occupational health and safety, as such breaches can result in harm to the health and safety of workers due to longer working hours and the increased burden of work. In these cases the inspectors involved may consider that the inspections correspond to an occupational health and safety action code and as a result they are not included in codes 11T and 12T.

I.B. ARTICLE 4 OF THE CHARTER

The regulations with respect to the right to receive remuneration and non-discrimination are contained in the following articles and provisions:

- **Organic Law 3/2007, of 22 March, on effective equality between women and men.**

[13] Source: Annual reports by the Labour and Social Security Inspectorate corresponding to the years 2009, 2010 and 2011. The data corresponding to 2012 are provisional and their source is the general summary of service orders. Directorate General for the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

- Article 4.2. f) of the Workers' Statute, indicating that the employment relationship of workers gives them the right to receive the agreed or legally established remuneration on time. Letter c) of this section and article provides for the right of workers:

  > *Not be discriminated against directly or indirectly for employment, or once employed, for reasons of gender, marital status, age within the limits set by this law, racial or ethnic origin, social connection, religion or convictions, political ideas, sexual orientation, membership or non-membership of a trade union, or for reasons of language, within the Spanish state.*
  >
  > *They may also not be discriminated against for reasons of disability, provided that they are fit to carry out the work or job involved.*

- Article 17 of the Workers' Statute, establishing that any regulatory provisions, clauses in collective bargaining agreements, individual pacts or unilateral decisions by the employer shall be deemed null and void if they give rise to situations of direct or indirect unfavourable discrimination for reasons of gender with respect to remuneration.

- Article 28 of the Workers' Statute, referring to equal remuneration for reasons of gender, lays down that:

  > *The employer is obliged to pay the same remuneration for the provision of work of equal value, whether paid directly or indirectly, and whatever the nature of such remuneration, in the form of wages or otherwise; there may be no discrimination for reasons of gender in any of the elements or conditions of such remuneration.*

During the reference period of this report various legal changes have been implemented in the matter of wage regulation. They are analysed below.

a) Law 35/2010, of 17 September, on urgent measures to reform the labour market.

The legal definition of wages in the first number of Article 26 of the Workers' Statute has been modified by Law 35/2010, of 17 September, on urgent measures to reform the labour market (*BOE*, 18 September). Article 26.1 now reads:

> *1. A wage is considered all economic remuneration of workers, in cash or kind, in return for the provision of work services as employees, whether in return for actual work, whatever the form of remuneration, or for rest periods that are included as working time.*
>
> *"In no case, including the special employment relations referred to by Article 2 of this Law, may the wages in kind exceed 30% of the worker's wages, nor may they give rise to the total amount paid in money being below the minimum wage.*

The new drafting introduces two important new points: a) it extends the limit on payment of wages in kind (which in no case may account for more than 30% of the wages paid to the worker) to employment relations of a special nature; and b) it also provides that payment in kind may not lead to the total amount of money being below the minimum wage. [14]

[14] Previous draft: "Wages are considered to be the total economic remuneration of workers in money or in kind, paid for the provision of labour services as employees, whether for effective work, whatever the form of remuneration, or for the rest periods calculated as working time. In no case may the wages in kind account for over 30% of the wages received by the worker."

In line with this regulation of employment relations of a special nature, the section relating to remuneration (Article 8.3) of Royal Decree 1620/2011, regulating the employment relations of a special nature of services for the family home, expressly indicates the following (our underlining):

> *Wages shall be paid by the employer in the form of money, either in legal tender or through a cheque or other form of similar payment made through credit institutions, and agreed in advance with the worker. However, in cases of the provision of domestic services with a right to payment in kind, such as accommodation or board, a percentage agreed between the two parties may be deducted for these items, provided that the payment in cash is guaranteed to be at least the minimum wage as a monthly amount and without the sum of the various items leading to a percentage of discount greater than 30% of total wages.*

This situation is new with respect to the previous regulation of this special employment relation included in Royal Decree 1424/1985, which indicated that if the parties agree to remuneration in kind, its amount may not be greater than 45%.

The wording of various sections of Article 33 of the Workers' Statute governing the Wage Guarantee Fund has also been amended.

The question of overtime and its remuneration is covered by Article 35 of the Workers' Statute. The first section of this article stipulates that a choice must be made, either by collective agreement, or failing one, by individual contract, between paying overtime at the amount set, which in no case may be below the amount paid for an ordinary working hour, or compensate it by and equivalent period of paid leave. It also indicates that in the absence of an agreement in this respect, the overtime worked must be compensated by leave within the four months following the overtime worked.

b) With respect to Article 4§1 of the Charter, as reported on previous occasions, in 2004 (Royal Decree-Law 3/2004) saw the start of a process of increasing the **minimum interprofessional wage** and making its application more appropriate. In the reference period of this report, the following provisions are particularly important in this respect:

- **Royal Decree 2128/2008, of 26 December, setting the minimum interprofessional wage (SMI) for** 2009 at 624 euros/month, an increase of 4% on the figure for the previous year. This increase continues the strategy begun in 2004 to make the minimum wage more decent, with the aim raising it to 60% of the average wage, as recommended by the European Committee of Social Rights in its interpretation of the European Social Charter.
- **Royal Decree 2030/2009, of 30 December, setting the SMI for** 2010 at 633.30 euros per month. This represents an increase of 1.55 in the minimum wage for 2009, reflecting the adverse economic situation.
- **Royal Decree 1795/2010, of 30 December, setting the SMI for** 2011 at 641.40 euros/month, an increase of 1.3% on the figure for 2010.
- **Royal Decree 1888/2011, of 30 December, setting the SMI for** 2012 at 641.40 euros per month, maintaining the 2011 level.
- **Royal Decree 1717/2012, of 28 December, setting the SMI for** 2013 at 645.30 euros/month, an increase of 0.6% on the figure for 2012.

c) In relation to the whole of Article 4 of the Charter, Article 33 of the Workers' Statute, which regulates the Wage Guarantee Fund, and is directly related to wage guarantees, was modified in 2011 by **Law 38/2011, of 10 October, reforming Law 22/2003, governing insolvency, Law 3/2012, of 6 July, and Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budget stability and promote competitiveness**. The aim was to adapt the limits on the amounts the Fund must cover, and other parameters relating its use, to the modifications made with respect to the termination of employment contracts.

MEASURES AND DATA ON ACTION BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE RELATED TO LABOUR LAW AND INCLUDED UNDER ARTICLE 4 OF THE EUROPEAN SOCIAL CHARTER

The basic regulations governing the system of the Labour and Social Security Inspectorate and the legal modifications since the submission of the latest report are set out in the above section of this report corresponding to Article 2 of the European Social Charter.

In accordance with these regulations, the Labour and Social Security Inspectorate is responsible for the supervision and control of compliance with the regulations on labour relations, and specifically the regulation on payment of wages, under Article 3.1.1. of its implementation law (Law 42/1997, of 14 November).

With respect to the supervision and control of compliance with the wage regulations, the infringements related to the payment of workers' wages, at the correct amount, on time and in proper form, are included in Royal Legislative Decree 5/2000 mentioned above. Specifically, this regulation provides for the following infringements:

1. The following constitutes a minor infringement, under Article 6.2 of this Law: "Not paying wages to the worker on time, or not using the applicable, official or agreed wage slip."
2. The following is classified as a serious infringement in labour matters (Article 7.3): "Not specifying in the wage slip the amounts actually paid to the worker."
3. Finally, the following constitutes a very serious infringement (Article 8.1.): Non-payment, or repeated delays in the payment, of wages due."

Under Article 40 of Royal Legislative Decree 5/2000[15], the infringements shall be penalised with the corresponding penalties:

a) Minor infringements at the lowest range, with fines of 60 to 125 euros; at the middle range, from 126 to 310 euros; and at the highest range, from 311 to 625 euros.

b) Serious infringements with a fine, at the lowest range, of 626 to 1,250 euros; at the middle range, from 1,251 to 3,125 euros; and at the highest range, from 3,126 to 6,250 euros.

c) Very serious infringements with a fine, at the lowest range, of 6,251 to 25,000 euros; at the middle range, from 25,001 to 100,005 euros; and at the highest range, from 100,006 to 187,515 euros.

[15] Article 40 of Royal Legislative Decree 5/2000 has been subject to a number of amendments since 1/1/2009. Specifically, by Law 2/2008, of 23 December, on the state budget for 2009; Royal Decree-Law, of 29 April, on measures for the regulation and control of underground employment and promoting the refurbishment of homes; Law 3/2012, of 6 July, on urgent measures to reform the labour market; and finally, Law 13/2012, of 26 December, on the fight against illegal employment and Social Security fraud. Despite these amendments, the amounts of the penalties for infringements of labour law have not been changed, including those derived from non-compliance affecting wages.

But as well as these infringements, Royal Legislative Decree 5/2000 provides for the infringement consisting of wage discrimination for reasons of gender; such conduct is contrary to Article 28 of the Workers' Statute ("equal remuneration for reasons of gender") and thus contrary to the right of workers of both genders to receive equal remuneration for work of equal value, as established Article 4§3 of the European Social Charter.

Thus article 8.12 of Law 5/2000 classifies the following as a very serious infringement of labour law:

> *Unilateral decisions by the company that involve direct or indirect discrimination for reasons of age or disability, or that are favourable or unfavourable in terms of remuneration, working time, training, promotion and other working conditions, for reasons of gender, origin, including racial and ethnic origin, marital status, social condition, religion or convictions, political ideas, sexual orientation, membership or non-membership of trade unions and acceptance of their agreements, family links with other workers in the company, or language within Spain; as well as decisions by the employer that may represent unfavourable treatment of workers as a reaction to a claim made in the company or administrative or legal action designed to enforce compliance with the principle of equal treatment and non-discrimination.*

In this case, as well as the main penalties that may be imposed by the labour authorities at the proposal of the Labour and Social Security Inspectorate, according to the amounts set out above for very serious infringements, those responsible may be subject to additional sanctions. These additional penalties are as follows:[16]

a) They shall automatically, and proportionally to the number of workers affected by the infringement, lose any aid, credits and, in general, benefits derived from the application of employment programmes, starting from the date on which the infringement was committed.
The loss of this aid, credits and benefits derived from the application of employment programmes shall affect those of the largest amount, rather than those that were of a smaller amount at the time the infringement was committed. This criterion must be justified and appear in the infringement procedure.

b) They may be excluded from access to these benefits for a period of from six months to two years in the cases included in the above section, as of the date of the decision imposing the penalty.

However, this Law states that if the infringement stipulated in Article 8.12 of Royal Legislative Decree 5/2000 takes place, referring to the cases of direct or indirect discrimination for reasons of gender, these additional penalties may be replaced by the preparation and application of an equality plan in the company (provided that the company is not already obliged to prepare such a plan by law, regulation or agreement, or by administrative decision), if the competent labour authority so determines on application by the company and with a positive prior report from the Labour and Social Security Inspectorate. In this case the statute of limitations on these additional penalties is suspended.

It also states that if the equality plan is not prepared or applied, or if it manifestly does not comply with the terms established by the resolution of the labour authority, the latter shall, at the proposal of the Labour and Social Security Inspectorate, and without

[16] Additional penalties drawn up under the amendment introduced by Law 3/2012, of 26 December, on the fight against illegal employment and Social Security fraud (*BOE*, 27/12/2013).

prejudice to the imposition of the penalty corresponding to the commission of the infringement defined in section 17 of Article 8[17], overturn the replacement of the additional sanctions, which shall be applied as follows:

a) Automatic loss, proportional to the number of workers affected by the infringement, of any aid, credits or benefits referred to in letter a) of the above section, starting from the date on which the infringement was committed.

The loss of this aid, credits and benefits derived from the application of employment programmes shall affect those of the largest amount, rather than those that were of a smaller amount at the time the infringement was committed. This criterion must be justified and appear in the infringement procedure.

b) Exclusion from access to these benefits shall be for a period of six months to two years, starting from the date of the decision by the labour authority rendering null and void the suspension and applying the additional sanctions.[18]

The action carried out by the Labour and Social Security Inspectorate with respect to the obligations relating to wages are included in the statistics in the *Integra* information system under the 8T labour activity code called "Wages, wage payments and final settlements". The following table offers a summary of the actions carried out in the period 2009-2012.

SUPERVISORY ACTIONS ON WAGES, WAGE PAYMENTS AND FINAL SETTLEMENTS (2009-2012)[19]

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	18.363	971	6,636,759.98	214	3,101
2010	19.586	1,018	7,377,182.95	103	3,520
2011	19.194	1,089	7,953,065.10	69	3,472
2012	21.416	1,107	7,641,101.00	32	4,366

The action carried out by the Labour and Social Security Inspectorate in the area of discrimination in labour relations for reasons of gender is included in the information system *Integra* under the action code 4T, "Discrimination for reasons of gender". Some of the actions included under this heading are those carried out in cases of wage discrimination for reasons of gender.

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[17]. This infringement, classified as very serious, consists of: "Not preparing or applying an equality plan, or doing so while manifestly not complying with the terms set out, when the obligation to implement such a plan is pursuant to Section 2 of Article 46 bis of this Law."

[18] These additional penalties are included under Article 46 bis of Royal Legislative Decree 5/2000, as amended by section 10 of Article 4 of Law 13/2012, of 26 December, on the fight against illegal employment and Security Fraud (*BOE*, 27 December). In force: 28 December 2012.

[19] Source: Annual reports from the Labour and Social Security Inspectorate corresponding to the years 2009, 2010, 2011. The data corresponding to 2012 are provisional and their source is the general summary of the orders of service. Directorate General of the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

On this question, the inspections focus on companies that have been reported, or selected for inclusion in the programmed or planned action with the aim of checking that there is no discrimination for reasons of gender in the selection processes of these companies, discrimination in wages (whether direct or indirect), discrimination in internal promotion, or of any other kind.

SUPERVISORY ACTION ON DISCRIMINATION FOR REASONS OF GENDER (2009-2012)[20]

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	1,504	45	518,657.50	42	224
2010	1,603	38	548,037.00	28	214
2011	1,640	34	351,402.00	5	199
2012	1,368	15	118,387.00	1	113

Since the publication of Organic Law 3/2007, of 22 March, on real equality between women and men, the Directorate General for the Labour and Social Security Inspectorate considered it necessary to carry out a permanent plan for action with the aim of supervising compliance by companies with their obligations under this Law, as well as in other laws that cover the rights of workers and obligations of employers in relation to the principles of non-discrimination for reasons of gender and effective equality between women and men. The result was approval of the "Action Plan for the Labour and Social Security Inspectorate 2008-2010 on supervision of effective equality between men and women in companies".

Within the framework of this Plan, and within the reference period of this report, two specific campaigns were run in 2009 and 2010 on wage discrimination for reasons of gender in companies within the following branches of activity: financial institutions; hotel and catering; cleaning of buildings and premises; retail trade; the textile industry; and the metal and steel industry.

In 2009 the campaign affected 241 companies. The combined workforce of these companies was 46,239. The campaign revealed that in 12 of the companies inspected there was a situation of wage discrimination (usually through unjustified payment to men of per diem or expenses payments that were not paid to women). This gave rise to the filing of 5 infringement proceedings and 7 injunctions to put right the deficiencies that had been brought to light.

[20] All the figures correspond to the action code "4T" for action in labour matters. Source: Annual reports from the Labour and Social Security Inspectorate corresponding to the years 2009, 2010 and 2011. The data corresponding to 2012 are provisional and their source is the general summary of the orders of service. Directorate General of the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

In 2010, 362 companies were inspected with a combined workforce of 57,221. As a result, 7 companies were detected with a situation of wage discrimination between men and women. A total of 6 injunctions were issued to put right the situation and one infringement proceeding was filed with a proposed penalty of 10,000 euros.

In 2011, once the Plan was complete, new criteria had to be established based on the experience acquired. In this context, the Directorate General of the Labour and Social Security Inspectorate, as the central authority, issued Instruction 3/2011 to supervise effective equality between women and men in companies. The Instruction determines that the activity of the Labour and Social Security Inspectorate with respect to equality and non-discrimination for reasons of gender will be a permanent area of action, forming part of the annual programming of labour inspections in all the autonomous regions. This instruction establishes that together with the legal activity initiated by other parties (repudiations, requests for reports from other authorities or the courts) a programmed activity will be in place on a permanent basis focused, among other matters, on wage discrimination.

In 2011 a new campaign was launched against direct or indirect wage discrimination, in the sectors of hotel and catering, financial institutions, retail trade, textile industry, metal and steel and cleaning. The aim was to comply with the mandate of the Additional Provision 16 of law 35/2010, of 17 September, on urgent measures to reform the labour market, to include as objectives of general scope within the integrated Action Plan of the Labour and Social Security Inspectorate a specific plan on the question of wage discrimination between women and men. A total of 445 companies were investigated during this campaign, and 65,276 workers and 3 infringements were discovered.[21]

With respect to the activity carried out in the area of equality in 2012, the results broken down by object of inspection are given below (Labour, Occupational Risk Prevention and Employment).

ACTION BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE IN THE AREA OF EQUALITY (2012) [22]

SUBJECT AREA	No. of INSPECTIONS	No. of INFRINGEMENTS	PROPOSED PENALTIES	WORKERS AFFECTED BY INFRINGEMENTS	NO. OF INJUNCTION
Discrimination for reasons of gender	**1,368**	**15**	**118,387.00**	**24**	**113**
Sexual harassment	**628**	**7**	**28,631.00**	**29**	**138**
Equality plans and other obligations	**1,344**	**35**	**103,263.00**	**13,043**	**456**
Discriminatory harassment for reasons of gender	**240**	**3**	**13,128.00**	**3**	**29**

[21] More information on this campaign may be found in the Annual Report of the Labour and Social Security Inspectorate for 2011, accessible online at: http://www.empleo.gob.es/ITSS/web/Que_hacemos/Estadisticas/doc/Memoria_2011/Memoria_2011.pdf

[22] All the data for 2012 are provisional. Source: General summary of service orders as of 20/05/2013. Directorate General for the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

Rights with respect to reconciling work and family life	**687**	**3**	**41,876.00**	**24**	**59**
Discrimination in collective bargaining	**449**	**0**	**0.00**	**0**	**6**
OCCUPATIONAL RISK MANAGEMENT	**No. of INSPECTIONS**	**No. of INFRINGEMENTS**	**AMOUNT OF PENALTIES**	**WORKERS AFFECTED**	**No. of INJUNCTION**
Protection of maternity and breastfeeding	**1,046**	**15**	**233,041.00**	**51**	**437**
EMPLOYMENT	**No. of INSPECTIONS**	**No. of INFRINGEMENTS**	**AMOUNT OF PENALTIES**	**WORKERS AFFECTED**	**No. of INJUNCTION**
Discrimination in access to employment for reasons of gender	**335**	**4**	**25,004.00**	**4**	**127**
TOTAL	**No. of INSPECTIONS**	**No. of INFRINGEMENTS**	**AMOUNT OF PENALTIES**	**WORKERS INVOLVED**	**No. of INJUNCTION**
	6,097	**82**	**563,330.00**	**13,178**	**1,365**

I.C. ARTICLE 5 OF THE CHARTER

The legal framework regulating trade union rights, to which Article 5 of the Social Charter refers, has not been modified at all in the period 2009-2012. There are therefore no new points with respect to Article 5.

One of the fundamental legal principles on which the current system of labour relations in Spain is based is Article 28.1 of the Spanish Constitution of 1978, which recognises the right to organise in trade unions as a fundamental right. Specifically, section 1 of Article 28 states:

> *Everyone has the right to join a trade union freely. The law may limit or deny the armed forces or armed institutions, or other forces subject to military discipline, the exercise of this right, and it shall regulate the special way in which it may be exercised by public-sector workers. Trade union freedom includes the right to set up trade unions and join the union of choice, as well as the right of trade unions to form confederations or international trade union organisation, or to join them. No one may be obliged to join a trade union.*

Articles 103.3, 104 and 127 of the Spanish Constitution should also be mentioned with respect to this fundamental right:

Article 103.3

> *The law shall regulate the statute governing civil servants, access to employment in the civil service by the principles of merit and capacity, the special nature of the exercise of the right to join trade unions, the system of incompatibility and the guarantees of impartiality in the exercise of its functions.*

Article 104

> *1. The armed forces, answering to the government, shall have the mission of protecting the free exercise of the rights and freedoms and guaranteeing the security of citizens.*

2. An organic law shall determine the functions, basic principles of action and statutes of the security forces.

Article 127

1. Judges and magistrates, as well as prosecutors, may not while active engage in other public duties, or belong to political parties or trade unions. The law shall establish the system and forms of professional association for judges, magistrates and prosecutors.

2. The law shall establish the rules of incompatibility for members of the judiciary, which must ensure their total independence.

The right to trade union freedom has its effects both in terms of its positive aspect of the right to join trade unions freely or to belong to one or other trade union, and in its negative ones, such as the right not to join.

As trade union freedom is a fundamental right under Title I of the Spanish Constitution, its implementation must be through an Organic Law (Article 81.1 of the Spanish Constitution), which requires a special level of parliamentary consensus, given that its approval, modification or repeal require an absolute majority in Congress (Article 81.2 of the Spanish Constitution).

In addition, this fundamental right is given special protection: any citizen may petition the ordinary courts for a safeguard of the right to free membership of trade unions under Article 28 of the Spanish Constitution through a procedure based on preferential and summary procedures (Article 53.2 of the Spanish Constitution).

The protection given by the Labour Jurisdiction (11th and Final Chapters of Law 36/2011, of 10 October, regulating Labour Jurisdiction) complements the possibility that anti-trade-union conduct may be tried by criminal courts, as Article 315 of the Penal Code classifies impeding or limiting the exercise of trade union freedom as a crime. Specifically, Article 315 of the Penal Code states:

1. Anyone who by deceit or abuse of a situation of need, prevents or limits the exercise of trade union freedom or the right to strike, shall be penalised with prison terms of six months to three years and a fine of six to twelve months.

2. If the conduct specified in the above section is carried out with force, violence or threats, a higher level of penalties shall be imposed.

3. The penalties specified in section 2 above shall also be imposed on those who, acting as a group or individually, but in agreement with others, force other people to start or continue a strike.

In addition, after completing the requirements and procedures established for the purpose, any citizen has access to the appeal for support before the Constitutional Court for the protection of this trade union right (Article 53.2 and Article 161.1.b of the Spanish Constitution). Within this special protection of the right to trade union freedom, it should also be pointed out that the Ombudsman (Defensor del Pueblo) is designated under Article 54 of the Spanish Constitution as a high commissioner to Parliament in the defence of the rights included under Title I of the Constitution; and Article 28 of the Constitution is within this Title I.

Trade union activity is regulated by law by Organic Law 11/1985, on trade union freedom. This provision has not been amended since the submission of the previous report.

Under this law, all workers have the right to join trade unions in order to promote and defend their economic and social interests. In this case, "workers" means both those in an employment relationship and those who are in an administrative or statutory relationship at the service of the public administration services. It should also be pointed out that members of the armed forces and armed institutions of a military nature are exempt from this right.[23]

The table below lists the trade unions and the number of their representatives in the Ministry of Defence.

1. Trade unions and their representatives in the Ministry of Defence, 2012.

TRADE UNION	REPRESENTATIVES
UNION GENERAL DE TRABAJADORES (UGT)	162
COMISIONES OBRERAS (CCOO)	132
UNION SINDICAL OBRERA (USO)	59
CONFEDERACION SINDICAL INDEPENDIENTE Y DE FUNCIONARIOS (CSI-F)	59
ASOCIACION GRUPO OPERATIVO (AGO)	34
CONFEDERACION INTERSINDICAL GALLEGA (CIG)	5
SINDICATO DE ENFERMERÍA (SATSE)	10
CONFEDERACION GENERAL DE TRABAJADORES (CGT)	5
COMISIONES DE BASE (COBA)	4
SOLIDARIDAD DE LOS TRABADORES VASCOS (ELA)	4
ORGANIZACIÓN SINDICAL DE TRABAJADORES DE ARAGON (OSTA)	3
UNION SINDICAL DE TRABAJADORES DE ENFERMERIA (USAE)	5
SINDICATO DE LA ADMNISTRACIÓN PUBLICA (SAP)	2
COALICIÓN SINDICAL INDEPENDIENTE DE TRABAJADORES UNION PROFESIONAL (CESIT-UP)	2

MEASURES AND DATA ON ACTION BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE RELATED TO LABOUR RIGHTS INCLUDED IN ARTICLE 5 OF THE EUROPEAN SOCIAL CHARTER

As well as the special protection of the right to trade union freedom explained in the previous section, we should also refer to the administrative protection, as determined by the competence of the Labour and Social Security Inspectorate and by the establishment of an adequate system governing infringements and penalties.

Thus the Labour and Social Security Inspectorate is responsible for the supervision and enforcement of compliance with the laws, regulations and rules of the collective bargaining agreements in the area of organising work and trade union relations (Article 1.1.1 of Law 42/1997).

[23] With respect to the right to trade union freedom of the armed forces or institutions, or of other forces subject to military discipline, there is a special regulation existing with respect to the Civil Guard (*Guardia Civil*) contained in Article 9 of Organic Law 11/2007, of 22 October, on the rights and duties of members of the Civil Guard, which recognises the right to professional association of members of this armed institution. The law can be accessed via the following link: http://www.boe.es/boe/dias/2007/10/23/pdfs/A42914-42922.pdf

With respect to these competences of the Labour Inspectorate, Royal Legislative Decree 5/2000 provides for the following administrative infringements:

The following are classified as serious infringements:

- "Violation of the rights of the workers' representatives and trade union delegates to be informed, heard and consulted, as established by law or agreement." (Article 7.7).
- "Infringement of the rights of workers' representatives and the trade union chapters to be credited the hours devoted to trade union activities and to be offered spaces suitable for such activities, including message boards, under the terms established by law or collective agreement." (Article 7.8).
- "Violation of the rights of trade union chapters to collect dues and distribute and receive trade union information, under the terms established by law or in collective agreement." (Article 7.9).
- "The implementation of conditions of work which are inferior to those established by law or by collective agreement, or acts or omissions against the rights of workers recognised by Article 4 of the Workers' Statute Law, except where such behaviour may be classified as very serious, under the terms of the following article." (Article 7.10). [24]

Under Article 40 of Royal Legislative Decree 5/2000, this conduct shall be penalised with a monetary fine: at its highest level, ranging from 626 to 1,250 euros; at its middle level, from 1,251 to 3,125 euros; and at its highest level, from 3,126 to 6,250 euros.

The following are classified as very serious infringements:

- "Actions or omissions which prevent the workers, their representatives or trade union chapters from exercising their right of assembly, as established by law or collective agreement." (Article 8.5)"Violation of the right of people holding elected positions at a provincial, regional or national level in the main trade unions to attend meetings and access places of work, as established by Article 9.1, c) of Organic Law 11/1985 of 2 August, on trade union freedoms." (Article 8.6.)
- "Infringement of the material duties of collaboration imposed on employers by the regulations on the electoral process of workers' representatives." (Article 8.7.)
- "Infringement of the regulations relating to trade unions in collective agreements." (Article 8.8.)
- "Unilateral decisions by the company that involve direct or indirect discrimination for reasons of age or disability, or that are favourable or unfavourable in terms of remuneration, working time, training, promotion and other conditions of work, for reasons of sex, origin, including racial and ethnic origin, marital status, social condition, religion or convictions, political ideas, sexual orientation, membership or non-membership of trade unions and acceptance of their agreements, family links with other workers in the company, or language within Spain; as well as decisions by employers that may represent unfavourable treatment of workers as a reaction to a claim made in the company or administrative or legal action designed to demand compliance with the principle of equal treatment and non-discrimination." (Article 8.12.)

[24] It should be recalled here that under Article 4.1.b of the Workers' Statute workers have the basic right to join trade unions freely.

These infringements shall be penalised with a fine, at the lowest range, of 626 to 25,000 euros; at the middle range, from 1,251 to 100,005 euros; and at the highest range, from 3,126 to 187,515 euros.

The actions carried out by the Labour and Social Security Inspectorate Service with respect to trade union freedom are included statistically in the Integra information system under three codes: Code 28T "Rights to representation for workers and trade unions" and code 31T "Election processes". A disaggregated code for cases of favourable or adverse discrimination for reasons of membership or non-membership of a trade union is not available. These cases are calculated together with other cases of discrimination, except for cases of gender discrimination, which have a different or disaggregated treatment, as explained above.

The tables below indicate the results of these actions in this area during the reference period of this report:

SUPERVISORY ACTION RELATING TO THE RIGHT OF REPRESENTATION OF WORKERS AND TRADE UNIONS[25]

(2009-2012)

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	4,913	391	954,861.70	158	1,920
2010	4,861	345	818,252.00	88	1,806
2011	4,388	335	905,785.00	57	1,474
2012	4,303	353	664,878.00	40	1,434

SUPERVISORY ACTION RELATING TO THE RIGHT TO MEET (2009-2012)

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	37	2	12,502.00	2	8
2010	36	5	41,255.00	0	9
2011	35	0	0	0	6
2012	33	3	62,502.00	2	5

SUPERVISORY ACTION RELATING TO ELECTION PROCESSES(2009-2012)

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	205	17	237,521.00	13	48
2010	257	14	103,885.00	7	50
2011	322	23	262,527.00	6	46
2012	205	16	136,010.00	0	24

[25] Source for this and the following tables: Annual reports of the Labour and Social Security Inspectorate for 2009, 2010 and 2011. The data for 2012 are provisional (source: general summary of service orders). Directorate General for the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

ARTICLE 6 OF THE CHARTER

a) Royal Decree 713/2010, of 28 May, on the registration and deposit of collective bargaining agreements and pacts.

This Royal Decree entered into force on 1 October 2010. It expressly refers to the regulation of the result of collective bargaining, and replaces Royal Decree 1040/1981, of 22 May, on the registration and deposit of collective bargaining agreements, with a new development to Articles 89 and 90 of the Workers' Statute with respect to the processing and validity of collective agreements by their registration and deposit. Soon after this, Royal Decree-Law 7/2011, of 10 June, revised the models of statistical sheets for collective bargaining agreements, established under Royal Decree 713/2010, with the aim of simplifying their contents, which include information that is relevant and of public use for the purposes of preparing statistics on collective agreements.

Of greater importance is that Royal Decree 713/2010 incorporates aspects of e-government, so that the reference period of this report includes the creation of the Register of Collective Agreements and Pacts on employment at a national or supra-regional level. It is located at the Electronic Headquarters of the Ministry of Employment and Social Security and allows access to the processing of electronic procedures and services offered by the Ministry to interested parties.

Today all the administration of registration and deposits of collective agreements is carried out in this way, known in abbreviated form as REGCON. This registration other processes regulated by this law are not electronic registers in the legal sense of the word; rather, they represent specific registers of collective agreements and pacts that operate through the electronic media. In this way, the representatives of the workers and employers affected, the committees negotiating the agreements, must request registration of the agreements and other documents that can be registered by electronic means, making the administration more streamlined and efficient.

It is notable that there is a clear requirement that the following documents, among others, must be entered in the registers of collective employment agreements and pacts:

- ✓ The agreements of the joint committees interpreting certain clauses of the collective agreement.
- ✓ Mediation agreements in case of collective conflict as well as those ending a strike. Sector-level agreements that establish the terms and conditions to be followed by company equality plans, agreements approving equality plans in companies affected by sector-level collective bargaining, as well as agreements that approve equality plans resulting from the company's collective agreement.
- ✓ The agreements established in EU or global Spanish companies when stipulated by applicable law.
- ✓ Any other agreement or arbitration decision that is legally recognised for collective agreements or that derives from what is established in a collective agreement.

The collaboration between the Ministry of Employment and Social Security and the autonomous regions is organised through an agreement between the local authorities responsible for registering collective bargaining agreements or agreements between

the social partners; this means the autonomous regions may use their own software applications or use the application set up in the Ministry.

A procedure is also regulated for the deposit of agreements and pacts of limited scope and company-level agreements, including the deposit of agreements that approve company equality plans but do not have a corresponding collective bargaining agreement and do not derive from what has been established by a sector-level agreement.

b) Royal Decree-Law 7/2011, of 10 June, on urgent measures to reform collective bargaining.

This Decree-Law, validated under Article 86.2 of the Constitution by the Congress of Deputies on 22 June 2011, was not passed as a bill due to the calling of general elections and the consequent dissolution of Parliament. It introduces a series of modifications with the aim of reforming the collective bargaining process, in other words Title III of the Workers' Statute, which since 1995 had only been subject to a few small and specific modifications. With respect to the content of Article 6 of the Charter, the following changes should be noted:

- With respect to the structure of collective bargaining, Article 83.2 of the Workers' Statute has been modified to specify that this structure and the rules for resolving conflicts of compatibility shall be established by inter-occupational agreements; although they may also be agreed in collective sector-based, national or regional agreements by those trade unions and employers' organisations that have the necessary legitimacy, under the terms of the Workers' Statute.

- With respect to conflict between agreements, it modifies Article 84 of the Workers' Statute, introducing a new qualification. Unless there is agreement to the contrary, the regulation of conditions established in a company-level or group-level collective agreement, or a collective agreement for a number of companies linked for organisational or production reasons and identified by name, pursuant to Article 87.1, shall have priority in application with respect to a national sector-level, regional or lower-level agreement in matters such as: the amount of basic wages and extras; remuneration of overtime and shift work; working hours and distribution of working time; planning of shifts and holidays; adaptation of the system of occupational classification of workers; adaptation of the aspects of hiring that are attributed by the Workers' Statute to company-level agreements; reconciliation between working, personal and family life. This list of work conditions will be extended by the collective bargaining agreements or other agreements referred to by Article 83.2 of the Workers' Statute.

  Article 84 also provides that, unless there is an agreement otherwise, as provided for by Article 83.2, agreements may be negotiated within an autonomous region affecting the provisions of national agreements, provided that such a decision receives the backing of the majority required to set up a negotiating committee in the corresponding unit of negotiation., However, the following are maintained as non-negotiable matters in this respect in the area of an autonomous region: the probation period, the types of contract, occupational classification, maximum annual working hours, the disciplinary regime, minimum rules on occupational risk prevention and geographical mobility.

- Under Article 85.3.c of the Workers' Statute, the collective agreement includes an express mention of the procedures for effectively resolving any disputes that may arise in negotiating a substantial modification of the working conditions established under collective agreements, in accordance with Article 41.6 of the Workers' Statute, and the non-application of the wage regime, under Article 82.3 of the Workers' Statute; if necessary the procedures established in this respect in

the inter-occupational agreements at national or regional level can be adapted in accordance with the provisions of these articles.

Equally, and as an addition to what the parties agree, the period for repudiating the collective agreements is set at as at least three months before the end of their period in force. A maximum period is also established for the start of negotiations of a new agreement after the repudiation (one month); a maximum period for negotiating a new agreement (8 months if the previous agreement was in force for less than 2 years or 14 months for other agreements, starting from the expiry date). In all events, these provisions hold unless there is an agreement to the contrary between the parties. Also covered is adherence and submission to the procedures established in inter-occupational agreements at national or regional level to resolve effectively any discrepancies that may exist if no agreement has been reached after a maximum period of negotiation, provided that these are not directly applicable.

In addition, and unless there is agreement to the contrary between the parties, the functions of the joint committees for interpreting and applying what has been agreed are set out in detail within the scope of each agreement.

Finally, all agreements should include measures to contribute towards internal flexibility in companies, to favour their competitive position in the market or provide a better response to demand requirements and job stability within the company in question. Specifically, a maximum and minimum percentage of the working day may be distributed by the employer flexibly over the year (in the absence of agreement, by default the figure is 5%), and there are temporary and benchmark procedures and periods for functional mobility within the company.

- Also important is the modification of Article 86.3 of the Workers' Statute, referring to how long the collective agreement is in force once it has been repudiated and its official duration has expired. In any case, it will also be subject to the terms of the agreement itself, without prejudice to it being maintained during the negotiations for renewing the agreement, according to the traditional system. The possibility has also been introduced of adopting partial agreements valid for periods to be determined by the parties. To be used during the negotiation period if necessary, the law also refers to the generally and directly applicable procedures for resolving disagreements effectively. They were created by inter-occupational agreements at national or regional level (under Article 83 of the Workers' Statute) and include the commitment to subject any disagreements in the negotiation process to arbitration. In this case, the arbiter's decision has the same legal force as collective agreements, and thus can be appealed in the same way. These agreements would have to specify arbitration criteria and procedures, and in particular the obligatory or voluntary nature of submission to the arbitration procedure by the parties; failing a specific pact on this procedure, arbitration shall be understood to be mandatory. Article 86.3 of the Workers' Statute concluded with the provision that "Failing agreement, after the maximum period of negotiation has been completed without reaching agreement, and if the parties to the agreement have not submitted to the procedures referred to in the previous paragraph, or these procedures have not resolved the disagreement, the collective agreement shall remain in force."

- Another important group of changes were those referring to the legitimacy to negotiate and form part of the negotiating committee in a particular area. To this end, changes were introduced to Articles 87 and 88 of the Workers' Statute. We have attempted to summarise them here.

First, at company level, intervention in the negotiation will correspond to the trade union chapters when they agree to it, provided that they represent the majority of works' committee members or workers' delegates.

Also in this area it explicitly includes the group of companies, as well as companies linked for organisational or production reasons and identified by name within the scope of application of the agreement; but in these cases, the legitimacy for negotiation representing workers shall be as established for the negotiation of the sectoral agreements. For the first time, the law cites agreements targeted at a group of workers with a specific occupational profile, known in practice as "band" agreements. The authority to negotiate them lies with trade union chapters appointed mainly by their representatives through personal, free, direct and secret voting. It is a special form of determining representation. There are no new rules in terms of representing workers in agreements of a scope greater than the above, i.e. sectoral.

However, there is a new point in terms of representation of employers: In new agreements covering groups of companies and those affecting a number of different companies linked for organisational or productive reasons and identified by name within their scope of application, the representation corresponds to these companies.

Currently, the law specifies that in sectoral collective agreements, the employers' associations which represent 10% of the employers within a geographical and functional area for the agreement are legitimised. The new regulation adds that this is providing that they employ an equal proportion of affected workers, and that employers' associations in the area provide jobs for 15% of the affected workers. As well as this, in sectors where there are no employers' associations with a sufficient level of representation, under the above requirements, employers' associations at national level will be legitimised with 10% or more of companies or workers at national level, as well as employers' associations in the autonomous region that represent at least 15% of the companies or workers in that region.

With respect to the second part announced, the modification of Article 88 of the Workers' Statute, affecting the negotiating committee, expressly states that the negotiating committee shall be integrated with respect to the right of all those legitimised and in proportion to their representation and their members with a vote and voice. In addition, to give greater scope to the negotiation, it is stated that in those sectors where there are no bodies for representing workers, the negotiating committee shall be deemed to be validly constituted when it is integrated by the trade union organisations that are most representative at national or regional level. A similar rule is established for employers' representation. In both cases, the proportion of members in the negotiating committee shall depend on the level of representation of trade unions or employers' organisations within the territorial area of the negotiation.

- Other new points refer to the handling of collective bargaining agreements (Article 89 of the Workers' Statute) and their application (Article 91).

With respect to the start of the negotiation, the main new point is that if the promotion of collective bargaining is the result of the repudiation of the current collective bargaining agreement, the communication of the start must be made at the same time as the act of repudiation.

Another new point is that provided there is no agreement in this respect between the parties, after establishing the negotiation schedule or plan between the

parties, the negotiation itself must begin within a maximum period of 15 days starting from the creation of the negotiating committee. Most importantly, a maximum term is set for negotiating a collective agreement, as already mentioned.

With respect to the application, priority is given to the interpretation of collective agreements made by the joint committee dealing with them, without prejudice to the intervention of the competent jurisdiction.

c) Royal Decree-Law 3/2012 and Law 3/2012, already mentioned, have made new changes to the regulation of collective bargaining. From these we should highlight the following, indicating any differences between the two:

- Royal Decree-Law 3/2012, of 10 February, on urgent measures to reform the labour market, and then Law 3/2012, have regulated some aspects of collective bargaining. The changes are included under the heading "measures to promote internal flexibility in companies as an alternative to job destruction" and include modifications in terms of the efficiency of collective agreements (they regulate opt-outs for wages and also for other working conditions previously agreed in the collective agreement), compatibility between agreements, priority of the company-level collective agreement, minimum content, currency of the agreement, and finally, its processing. These changes are designed to ensure that collective bargaining is an instrument, and not an obstacle, for adapting working conditions to the company's specific circumstances.
- Thus the law regulates the possibility of opting out of the collective bargaining agreement in force, as well as the system of maintaining the agreement in force beyond its planned duration after it has been repudiated, known as the "ultra-activity" system of collective agreements.
- The previous reform had an effect on the structure of collective bargaining. It recognised the priority for applying company-level agreements over other agreements for a series of issues that are key to flexible management of working conditions. However, the effective decentralisation of collective bargaining remained in the hands of national or regional collective agreements, which could prevent this priority application. Now the new measures aim precisely to guarantee decentralisation of the collective agreement process with the aim of negotiating working conditions at the level that is closest and most appropriate to the reality of companies and workers. And although previous reforms aimed to make the chance of an opt-out more viable, there has not been significant progress in this area, as the state law did not guarantee resolution of the problem given the lack of agreement with the workers' representatives to stop applying the conditions of the collective agreement. For this reason, and to make it easier to adapt wages and other conditions of employment to business productivity and competitiveness, Royal Decree-Law 3/2012, and also Law 3/2012, include an opt-out system. If there is no agreement and no solution to the conflict through other independent means, as a last resort the parties submit themselves to arbitration channelled through the National Consultative Committee for Collective Agreements or other similar bodies in the autonomous regions; these are always tripartite bodies, with representatives of the trade unions and employers' organisations together with the government. The solution may be adopted by the Consultative Commission itself or by an arbiter appointed by it.
- In addition, with the aim of also adapting the content of collective bargaining to changing economic and organisational situations, modifications have been made with respect to the application of the collective agreement over time. The aim is to encourage a renegotiation of the agreement before the end of its period in force,

without the need to repudiate the agreement as a whole, as this situation at times causes conflict and does not help to provide a calm and balanced renegotiation process. When this is not possible, the aim is to avoid "petrification" of the working conditions established under the agreement and prevent excess delay in negotiation of new conditions by introducing a time limit of two years for the extension of the validity of the agreement beyond its expiry.

d) Royal Decree 1362/2012, of 27 September, regulates the National Consultative Commission on Collective Agreements.

This law has expressly repealed Royal Decree 2976/1983, of 9 November, which regulated the National Consultative Commission on Collective Agreements, and Ministerial Order of 28 May, 1984, which approved its operating regulations. It is issued on the basis of the Second Final Provision, section 2, of the Statute of Workers, in its drafting contained in Law 3/2012, and regulates the composition, organisation and functions of the National Consultative Commission on Collective Agreements.

The National Consultative Commission on Collective Agreements is a tripartite collegiate body created by the original Workers' Statute in 1980, with the aim of advising and consulting the parties in collective bargaining with respect to the planning and determination of the functional scope of the agreements. With time it has assumed other functions, such as acting as an observatory of the collective bargaining process. Last year, first Royal Decree-Law 3/2012 and then Law 3/2012 modified Article 82.3 of the Workers' Statute with respect to the system of non-application of employment conditions included in the collective agreement in question when the parties do not agree, through intervention by the National Consultative Commission on Collective Agreements to resolve the discrepancy when procedures for conflict resolution of preferential application included in collective bargaining are not applicable or have not finally resolved the disagreement.

This gives the Commission additional decision-making functions of particular importance in relation to the use of internal flexibility mechanisms consisting of the non-application of the working conditions included in the collective agreement on economic, technical, organisational or production-based grounds, with the aim of preventing an adjustment in the workforce from taking place by resorting to redundancy.

Developing these new functions for resolving disagreements due to lack of agreement in the procedures for an opt-out from the working conditions included in the collective agreement, constitutes the main, although not sole, objective, of this Royal Decree, which includes a reorganisation and adaptation of the Commission's operations to this end. It also regulates consultative functions relating to determining the functional scope of collective agreements and the consultation required in the procedure for extending collective agreements; as well as the activity of the Commission as an observatory of collective bargaining which collects information, studies and documents the process and promotes its use.

We should note that the National Consultative Commission on Collective Agreements is a tripartite collegiate body that answers to the Directorate General for Employment of the Ministry of Employment and Social Security. It is made up of a

Chairman, 18 members (6 representing central government, 6 representing the main employers' organisations and 6 the main trade unions) and a Secretary.

There are a number of regulations to be included under Article 6 of the Social Charter that affect **collective bargaining within the scope of the public administration services**.

- **Article 6§1**

 Chapter IV, Title II of **Law 7/2007, of 12 April, on the Basic Statute for Public-Sector Employees (EBEP)** regulates "the right to collective bargaining, representation and institutional participation. Right to meet."

Specifically, Article 31, which lays down the "general principles" in these areas, stipulates in its section four that "for the purposes of this law, institutional participation is understood to be the right to participate through trade unions in the supervisory and monitoring bodies of such entities or such bodies as may legally be determined." Section 5 of the Article states that "The exercise of the rights established under this article is guaranteed and carried out through the specific bodies and systems regulated by this Chapter, without prejudice to other forms of collaboration between the public administration services and their public-sector employees or their representatives."

In addition, by establishing in Article 40 the functions of the representative bodies, it determines that, with respect to employees with the status of civil servants, the functions of the Staff Councils and Staff Delegates include the following: "b) Issue reports at the request of the corresponding public administration service on the total or partial transfer of the facilities and the implementation or review of its systems of organisation and working methods" and "d) Be informed and be consulted on the establishment of working hours and the work schedule, as well as the system of holidays and leave."

 With respect to employees who do not have civil-servant status, the **III Single Agreement for non-civil servant employees in the General Administration of the State** regulates in its third article the Commission for the Interpretation, Supervision, Study and Application (CIVEA) as a joint commission whose functions include to "c) Study, propose and, where appropriate, decide on matters that derive from the application of this Agreement and are proposed by the government, trade union signatories or other joint bodies recognised under this Agreement; g) Issue reports and proposals to the parties during negotiations of a larger scope that affect the staff included within the scope of this Agreement; l) Serve as a channel for information on the development of programmes and projects that the government plans to carry out and that may modify employment conditions; n) Issue a report on proposals to make substantial changes to the list of jobs that mean an increase in expenditure, and receive half-yearly information on the changes proposed by the respective Delegate Sub-committees when such changes do not involve a change in expenditure."

Article 6 of this Single Agreement gives the Delegate Committees of the CIVEA functions that include the following: "b. on training: be informed and consulted on the general criteria for training, planning, the schedule and requirements of applicants; c. on the question of the work calendar: receive communications and be consulted on the annual distribution of working hours and the daily and weekly schedules and shift work."

- Finally, **Royal Legislative Decree 1/1995, of 24 March, approving the consolidated text of the Law on the Workers' Statute**, regulates in Article 64 the right to information and consultation of the representative bodies, setting forth that:

> *1. The works committee shall have the right to be informed and consulted by the employer on those questions that may affect the workers, as well as on the situation of the company and the employment situation within it, under the terms of this Article.*
>
> *2. The works committee shall have the right to be informed on a quarterly basis: a) on the general situation of the economic sector to which the company belongs b) on the economic situation of the company and its recent and probable future evolution of its activities, including environmental actions that have a direct impact on jobs, as well as production and sales, including the production schedule; c) on the employers' forecasts of new jobs, with an indication of the number and the types and forms of contracts that will be used, including part-time contracts, overtime by workers with part-time contracts, and subcontracting; and d) of the statistics on the rate of absenteeism and its causes, occupational accidents and industrial diseases and their consequences, the accident rates, regular or special studies on the working environment and the prevention mechanisms used.*
>
> *3. It shall also have the right to receive information at least annually on the application in the company of the right to equal treatment and opportunities between women and men, including data on the proportion of women and men at the different occupational levels; and where appropriate, on the measures that may have been taken to promote equality between women and men in the company; and if there is an equality plan, on its application.*
>
> *4. With the frequency applicable in each case, the works committee, will have a right to: a) know the balance sheet, profit and loss statement, annual report and, if the company has share capital, the other documents that are disclosed to the shareholders, and in the same conditions as they receive it; b) be aware of the models of written employment contract used in the company, as well as the documents relating to the termination of the employment relationship; and c) be informed of all the penalties imposed for very serious infringements.*
>
> *5. The works committee shall have the right to be informed and consulted on the situation and structure of employment in the company or at the place of work, as well as being informed on a quarterly basis on the probable future job levels, including consultation where changes are expected in this respect. At the same time, it will have the right to be informed and consulted on all the company decisions that may lead to relevant changes in the organisation of work and employment contracts in the company. Equally, it will have the right to be informed and consulted on the adoption of possible preventive measures, particularly in the case of risk for jobs.*

With respect to **measures adopted in terms of joint agreements in the area of the public administration services**, it should be recalled that labour agreements in general, as well as joint agreements between workers and employers, have proved themselves to be basic instruments for progress and economic stability. This has also occurred in the area of the public administrations, where this agreement process is the

basis for developing reforms that are being developed in them to increase their efficiency.

Also worth highlighting in this framework is the **Government-Trade Union Agreement for the Civil Service in the Framework for Social Dialogue for 2010-2012**, of 25 September 2009. This agreement contains measures of a basic nature that are applicable to all pubic administration services, as well as measures that are applied specifically to the General Administration of the State.

Various of the measures contained in this agreement have already been implemented, and another is in the development stage. The following can be highlighted as measures already adopted within the framework of developing and bolstering joint agreement between workers and employers:

- **Agreement on Training for Employment in the public administration services,** of 22 March, 2010.

Article 16 of the Agreement regulates the General Commission for Training for Employment in the Public Administration Services as a "body with joint representation, set up as a deliberative, decision-making, coordinating and cooperative institution for the different public administration services and for joint participation by the public-sector employees working for the public administration services in training for employment."

Together with this General Commission, the Agreement also includes in Article 18 Training Commissions for Employment in the Public Administration Services, among them the Commission for the General Administration of the State. These Commissions, to which the Agreement gives joint representational status, shall be made up of representatives of the corresponding administration and the trade unions signatory to the Agreement.

- **Royal Decree 868/2012, of 2 July, creating the Public-Sector Employment Observatory**

The Government-Trade Union Agreement on the Civil Service in the framework of social dialogue 2010-2012, of 25 September 2009, planned the creation of an Public-Sector Employment Observatory, whose organisation, composition and functions were to be determined by regulation. The preamble to Royal Decree 868/2012, of 2 July, which regulates the Observatory, defines it as a forum for exchange and communication of information on public-sector employment with bodies of a similar nature in other public administrations in Spain and abroad, and with society in general.

Article 2 of the Royal Decree attributes to this Observatory the nature of a "collegiate body, part of the Ministry of the Prime Minister's Office, through the State Secretariat for the Civil Service, which is responsible for analysing human resources and the situation of public-sector employment and formulating proposals and recommendations for action." Article 4 establishes the composition of the Board of the Observatory, and determines that it shall be made up of members including five "representing the trade unions present in the General Negotiation Board for the public administration services, as proposed by the unions themselves."

- **Royal Decree 67/2010, of 29 January, adapting the legislation on occupational risk prevention to the General Administration of the State.**

Article 6 of this law regulates the Health and Safety Committee as a "joint and collegiate participative body, designed for regular and periodic consultation on the actions of the General Administration of the State and the public-sector bodies included within the scope of application of this Royal Decree, on questions of occupational risk prevention. The Committee is made up of Prevention Delegates appointed under Article 5 of this Royal Decree and by representatives of government in a number not greater than that of the delegates."

- **Article 6§2**

With respect to the right of public-sector employees to bargain collectively, the general legal framework was referred to in the previous report on the application of the European Social Charter. It mentioned the entry into force of Law 7/2007, of 12 April, on the Basic Statute for Public-Sector Employees, as well as the adoption of the II Single Convention for non-civil service employees of the General Administration of the State.

1. With respect to **Law 7/2007 (EBEP)**, it should be noted that the right to collective bargaining of public-sector employees is included in Article 15 of the law as one of the individual rights of public-sector employees exercised collectively. It is implemented through Chapter IV, Title III of this law, which defines it as "the right to negotiate the working conditions of employees in the public administration service."

This right is subject to the principles of legality, budget cover, obligation, good faith in negotiation, openness and transparency, and is implemented through the exercise of the representative capacity recognised for the trade unions under Articles 6.3.c), 7.1 and 7.2 of Organic Law 11/1985, of 2 August, on Trade Union Freedom and the provisions of Chapter IV already mentioned. This model of collective bargaining is organised around the following General Negotiation Boards:

- For the purposes of collective bargaining of workers with the status of civil servants, a General Negotiation Board has been set up within the scope of the General Administration of the State, and one for each of the autonomous regions, cities of Ceuta and Melilla and local entities (Article 34.1 of EBEP).

    - Sectoral negotiation boards may be set up, answering to these General Negotiation Boards by agreement of the latter, in accordance with the specific working conditions of the administrative organisations affected, or the special nature of certain sectors of civil servants and their number (Article 34.4 of EBEP). In the General Administration of the State, no such Negotiation Board has been set up so far.

- A General Negotiation Board for the public administration services has been set up. (Article 36.1 of EBEP).

    - The public administration services are represented at this General Board as a unit. It is chaired by the General Administration of the State, with representatives of the autonomous regions, the cities of Ceuta and Melilla and the Spanish Federation of Municipalities and Provinces, depending on the issues to be negotiated.
    - The representation of the trade unions authorised to be present under Articles 6 and 7 of the Organic Law 11/1985, of 2 August, on Trade Union

Freedom, is proportional to the results obtained at the elections to the bodies representing the employees, staff delegates, staff boards and works committees, in all the public administration services as a whole.

- This General Board negotiates matters listed under Article 37 of the EBEP which are liable to state regulation with the character of a basic law, without prejudice to any agreements that may be reached by the autonomous regions in their corresponding territorial area in virtue of the exclusive and shared competence they have in Civil Service matters.

  One of the specific objects of negotiation at this General Board is the overall increase in the remuneration of staff working for the public services, which should be included in the bill for the national budget every year.

- For the negotiation of all those questions and conditions of work that are common to the staff with civil service, statutory and ordinary employment status in each public administration service, a General Negotiation Board for the General Administration of the State is planned for each of the autonomous regions, cities of Ceuta and Melilla and the local entities (Article 36.3 of EBEP).

2. With respect to the **non-civil service employees**, and in relation to the mention made in the previous report on the application of the European Social Charter to their regulation in the General Administration of the State through the Single Agreement on non-civil service staff in the General Administration of the State, it should be noted that as of 31 July 2009, and as published in the BOE of 12 November 2009, the **III Single Collective Agreement for non-civil service staff in the General Administration of the State** with employment contracts was signed. This maintains the same rights to negotiation, representation and participation of the staff included in its scope of application as the previous agreement.

With respect to the **measures adopted on collective bargaining** within the public administration services, in the exercise of the right of collective bargaining that is recognised for public-sector employees, and within the legal framework mentioned, some negotiating processes have been developed that have led to the adoption of agreements within the scope of the General Administration of the State. These are mentioned below:

- Creation of the **Commission for Equality between Women and Men in the public administration services**, of 27 January 2010, which complies with what was established by the Government-Trade Union Agreement for the Civil Service within the framework of Social Dialogue, 2010-2012, signed on 25 September 2009. Among other matters, it is given the competence to negotiate all those questions referring to equality that may in general affect public-sector employees in all the public administration services.
- **Manifesto of 25 October 2012, of the Secretariat of State for Public Administrations and the trade unions CC.OO., UGT, CSI-F, USO and CIG**, undertaking to make progress on the following issues:

  a) Opening of different Negotiating Board and technical committees within the scope of the General Administration of the State in order to give another

boost to areas such as training, prevention of occupational risks, social responsibility and equal opportunities.

b) Development of the Basic Statue for Public-Sector Employees and the mechanisms and instruments included in it.
c) Progress on the structure of collective bargaining and the different areas included with relation to bargaining in EBEP. Rationalisation of trade union resources and of the negotiation and participation structures.
d) Boost to a new organisational culture based on the use of knowledge and human potential and the improvement of communication with public-sector employees and citizens in general.
e) Maintenance of quality in the provision of public services.

- Creation on 6 September 2012 of the **General Negotiation Board for the General Administration of the State**, regulated by Article 34.1 of the EBEP. It channels the right to negotiation of public-sector workers with civil servant status in relation to matters that are included in Article 37 of the EBEP and affect them exclusively. This Board had still not been set up in the General Administration of the State.
- **Agreement of the General Negotiation Board for the General Administration of the State** of 29 October 2012, on the allocation of resources and streamlining of negotiation and participation structures.

This Agreement contains a regulation of the different Negotiation Boards and joint committees for the main collective agreements in the General Administration of the State. It includes a definition for the purposes of the Organic Law on Trade Union Freedom (LOLS) of what should be understood by "workplace", as well as certain criteria on the subject of prevention of occupational risks; finally, it provides the trade unions with a series of resources and timelines for them to carry out their negotiation, representation and institutional participation functions.

Below is a table with statistical data on the collective agreements in the public and private sector at national, regional and sector level.

ANNEX 6.2. Data on collective agreements in the public and private sector at national, regional and se

AGREEMENTS AND COMPANIES, BY FUNCTIONAL SCOPE AND AUTONOMOUS REGION (2009)

AUTONOMOUS REGION	TOTAL AGREEMENTS		COMPANY AGREEMENTS		AGREEMENTS SC
	AGREEMENTS	WORKERS	AGREEMENTS	WORKERS	AGREEMENTS
T O T A L	5,689	11,557,823	4,323	1,114,593	1,366
INTER-REGIONAL	512	3,854,019	362	496,783	150
ANDALUSIA	894	1,323,916	714	96,388	180
ARAGON	240	246,924	182	33,243	58
ASTURIAS (PRINCIPALITY OF)	142	160,315	108	22,504	34
BALEARIC ISLANDS	87	245,416	70	8,110	17
CANARY ISLANDS	238	402,336	204	23,421	34
CANTABRIA	152	95,246	119	14,925	33
CASTILE-LA MANCHA	274	317,651	199	23,639	75
CASTILE- LEON	450	338,458	287	27,292	163
CATALONIA	765	1,648,698	622	128,922	143

VALENCIA	402	858,436	269	42,704	133
EXTREMADURA	95	191,852	63	8,093	32
GALICIA	371	381,773	275	40,044	96
MADRID	332	889,024	277	65,069	55
MURCIA)	97	196,475	59	5,236	38
NAVARRE	136	119,662	103	18,093	33
BASQUE COUNTRY	397	240,059	334	53,734	63
RIOJA (LA)	75	40,397	57	5,398	18
CEUTA AND MELILLA	30	7,166	19	995	11

Source: Statistics on Collective Agreements, MEYSS (Ministry of Employment and Social Security)

- **Article 6§3**

1. Article 45 of **Law 7/2007 (EBEP)** regulates the extra-judicial resolution of collective conflicts by determining that regardless of the powers given by the parties to the joint committees that are set up for monitoring pacts and agreements, the public administration services and the trade union organisations may agree the creation of extra-judicial collective conflict resolution systems that derive from the negotiation, application and interpretation of these pacts and agreements.

   The systems included in the law are conciliation and arbitration. Conciliation will be obligatory when requested by one of the parties. The proposals for solution offered by the mediator or mediators may be freely accepted or rejected by the parties. Through the arbitration procedure the parties may voluntarily agree to ask a third party to resolve the conflict, undertaking beforehand to accept any decision made in the case.

   In addition, the agreement reached through conciliation or an arbitration decision shall have the same legal effect and on the pacts and agreements, provided that those who adopted the conciliation agreement or signed the commitment to arbitration were authorised to agree a pact or agreement under the EBEP within the scope of the conflict.

2. With respect to the **staff with non-civil-servant status in the General Administration of the State, the III Single Collective Agreement** for these employees regulates the "resolution of collective conflicts" by determining that the parties should recognise the CIVEA as an institution of first instance where the resolution of collective conflicts arising within its scope should be attempted first.

   If this joint commission does not resolve the conflict, the parties may name one or more mediators, who will issue the corresponding decisions.

Among the **most important measures adopted on the question of voluntary conciliation and arbitration for conflict resolution is Resolution of 10 February, 2012, issued by the Directorate General for Employment. It registers and**

publishes the V Agreement on autonomous resolution of labour conflicts (extra-judicial system).

The Third Additional Provision of this Agreement includes the possibility that the Monitoring Committee should analyse and agree to incorporate into the Agreement any collective conflicts between public employees and the General Administration of the State and the public bodies, agencies and other entities in public law that depend on or are linked to it, and for which they provide their services, provided that this is established by an express agreement of adhesion, adopted under Article 45 of Law 7/2007, the Basic Statute for Public-Sector Employment and its implementing legislation. At the same time, and with the same requirements, collective conflicts of staff with non-civil-servant status in the General Administration of the State are subject to labour regulations.

It should also be pointed out that **Royal Decree-Law 3/2012 amended Article 82.3 of the Workers' Statute** deals with the subject of non-application of employment conditions included in the collective agreement in question when there is no agreement between the parties. It allows for intervention by the National Consultative Commission on Collective Agreements to resolve the discrepancy when procedures for conflict resolution of preferential application included in collective bargaining are not applicable or have not finally resolved the disagreement. Thus it attributes decision-making functions to this Commission that it did not have before.

The **Consultative Commission was regulated by Royal Decree 1362/2012, of 27 September**. In its Third Additional Provision it sets forth that:

"The exercise of the decision-making functions attributed in Chapter V to the National Consultative Commission on Collective Agreements shall not extend to collective agreements that regulate the conditions of work of the staff with ordinary contracts in the public services, who will be subject to specific regulation on the extra-judicial resolution of collective conflicts under Law 7/2007, of 12 April, the Basic Statute for Public-Sector Employees.

"The provisions of the above paragraph shall be understood without prejudice to the application of the provisions of Chapter V to public-sector business entities, public-sector companies, consortia, foundations in the state public sector and entities of a similar nature. In this case, the Ministry of Employment and Social Security, the Ministry of Finance and the Ministry of Public Administrations are authorised to issue any provisions that may be necessary with respect to the application of the decision-making functions of the Commission to these entities."

Paragraph 4: “The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, without prejudice to any obligations that might arise out of collective agreements previously entered into.”

The table below presents the available statistical data on conciliation and collective arbitration measures.

Annex 6.3. Statistical data on conciliation and collective arbitration measures

Collective conciliation and individual conciliation ending with agreement, broken down by reason.

Annual data

	2009(1)	2010(1)	2011	2012

COLLECTIVE CONCILIATION		**1,097**	**1,275**	**1,448**	**80**
With agreement		**63**	**103**	**87**	**11**
INDIVIDUAL RECONCILIATION					
	Total	**536.194**	**458,479**	**463,300**	**503,53**
	Redundancies	**192.492**	**147,501**	**153,205**	**207,60**
	Claims for compensation	**260.289**	**237,089**	**240,351**	**228,34**
	Penalties	**14,754**	**13,808**	**14,167**	**12,79**
	Other causes	**68,659**	**60,081**	**55,577**	**54,79**
With agreement					
	Total	**71,719**	**56,044**	**57,028**	**94,21**
	Redundancies	**48,375**	**35,381**	**34,387**	**72,22**
	Claims for compensation	**18,910**	**17,150**	**19,324**	**18,01**
	Penalties	**1,044**	**970**	**995**	**97**
	Other causes	**3,390**	**2,543**	**2,322**	**2,99**

(1) Does not include information relating to the Balearic and Canary Islands.
SOURCE: Mediation, arbitration and conciliation statistics. Ministry of Employment and Social Security

- **Article 6§4**

Article 10 of Royal Decree-Law 17/1977, of 4 March, on labour relations, which regulates the exercise of the right to strike, establishes the possibility that the government, at the proposal of the Ministry of Labour, and taking into account the duration or consequences of the strike, the positions of the parties and the serious damage to the national economy, may agree to impose obligatory arbitration on the parties.

The **Conclusions of the European Committee of Social Rights** in 2010 maintained the possibility that the government should impose obligatory arbitration, but always under certain circumstances and respecting the limits established by Article 31 of the European Social Charter. In other words, that the law could stipulate this, which is necessary in a democratic society to protect the rights and freedoms of others, or to protect the public interest, national security or public health.

In its Conclusions, the Committee understood that Royal Decree-Law 17/1997 allowed the use of obligatory arbitration in circumstances that exceeded the limits established by Article 31 of the European Social Charter mentioned above, so this law did not conform to Article 6§4 of the Social Charter.

Given that Royal Decree-Law maintains the possibility of imposing obligatory arbitration in the same circumstances as before, there has been no change with respect to the observations made on this aspect by the European Committee of Social Rights.

Below is a table with available statistical data on strikes and lock-outs.

ANNEX 6.4. Statistical data on strikes and lock-outs

Strikes, workers taking part and days not worked by sector, institution, geographical area and reason

Annual data

	2009			2010(1)			2011			2012(2)	
	STRIKES	WORKERS TAKING PART	DAYS NOT WORKED	STRIKES	WORKERS TAKING PART	DAYS NOT WORKED	STRIKES	WORKERS TAKING PART	DAYS NOT WORKED	STRIKES	WORKERS TAKING PART
STRIKES	**1,001**	**653,483**	**1,290,852**	**984**	**340,776**	**671,498**	**777**	**221,974**	**485,054**	**878**	**323,871**
SECTORAL SCOPE											
Company	927	259,787	495,373	913	173,073		746	151,904	352,109	855	166,213
Sector	73	385,196	786,979	70	158,703	306,309	29	34,590	97,465	21	97,438
General	1	8,500	8,500	1	9,000	9,000	2	35,480	35,480	2	60,220
INSTITUTIONAL SCOPE											
Private sector	901	546,272	1,170,522	835	206,521	542,390	688	113,145	303,033	739	105,995
Public sector	96	89,673	102,678	136	122,691	117,331	82	73,026	144,891	120	133,318
Private and public sector jointly	4	17,538	17,652	13	11,564	11,777	7	35,803	37,130	19	84,558
TERRITORIAL SCOPE											
Municipal	513	68,884	180,851	485	59,894	184,229	384	44,444	125,369	446	116,546
County	61	193,759	325,812	54	9,950	13,692	31	5,398	15,056	44	49,913
Provincial	388	290,809	682,050	382	169,447	382,993	314	62,748	165,668	330	100,331
Autonomous region	19	89,862	82,385	28	55,496	45,909	18	59,481	134,052	24	19,560
National	20	10,169	19,754	35	45,989	44,675	30	49,903	44,909	34	37,521
REASON											
Strictly labour	956	637,353	1,273,123	954	322,151	651,526	761	177,529	440,884	825	169,129
Resulting from collective bargaining	239	400,930	860,888	196	141,021	323,867	167	63,467	162,457	141	45,408

process											
Not derived from collective bargaining process	717	236,423	412,235	758	181,130	327,659	594	114,062	278,427	684	123,721
Not strictly labour	45	16,130	17,729	30	18,625	19,972	16	44,445	44,170	53	154,742

(1) Does not include the strikes in the "Public Administration Services Sector" and the "Sector of interim teachers in non-university education" on 8 June, or the general strike of 29 September.

(2) Does not include the general strikes of 29 March and 14 November, or the strike in public and private education on 22 May, given that information on all the autonomous regions is not available.

SOURCE: Statistics for Strikes and Lock-Outs. Ministry of Employment and Social Security.

I.D. AGREEMENTS FOR COLLECTIVE BARGAINING AND FOR THE RESOLUTION OF LABOUR CONFLICTS APPROVED BETWEEN 1 JANUARY 2009 AND 31 DECEMBER 2012 RELATING TO ARTICLE 6 OF THE CHARTER

a) Since the submission of the last report there have been important changes in the legal framework on collective bargaining. First, there are the changes introduced by **Royal Decree-Law 10/2010, of 16 June, on urgent measures for labour market reform** (*BOE,* 17 June).

b) However, the most significant changes are those introduced by Royal Decree-Law 7/2011, of 10 June, on urgent measures to reform collective bargaining.

Particularly notable in the reform introduced by Royal Decree-Law /2011 is the priority given to applying company-level agreements over sectoral agreements in some issues. These issues are identified as those closest to the reality of the company and where individual regulation is most justified.

c) This priority of application becomes more extensive in the later modifications introduced by **Law 3/2012, of 6 July, on urgent measures to reform the labour market**. As explained in the Preamble of the latter law, the modifications introduced aim to favour internal flexibility in companies as an alternative to job destruction. The set of measures included in Chapter III of Law 3/2012 have the specific aim of strengthening the mechanisms for adapting working conditions to the real situation of the company at any time. As pointed out in the law, these measures are designed to ensure that collective bargaining is an instrument, and not an obstacle, for adapting working conditions to the company's specific circumstances.

Law 3/2012 includes important modifications to make it easier for a company to opt out of the collective agreement that would be applicable under the previous legislation. It does so by introducing procedural mechanisms when there is no agreement with the workers' representatives with the aim of favouring an effective decentralisation of collective bargaining.

Law 3/2012 reinforces the priority application of the company-level agreement with respect to the sectoral agreement at state, regional or lower level in a number of matters, such as those referring to the amount of base salary and pay supplements, including those linked to the company's situation and earnings, payment or compensation for overtime and the specific remuneration for shift work, or the work schedule and distribution of working time, the system of shift work and the annual planning of holidays.

Finally, it is pointed out that priority in application will also be given to collective agreements for a group of companies or number of companies linked for organisational and production-based reasons and listed by name, as referred to by Article 87.1 of the Workers' Statute.

d) We also should refer to the changes introduced for public-sector employees by **Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budget stability and boost competitiveness.**

Among the measures adopted in Royal Decree Law 20/2012 related to this article of the European Social Charter, important modifications have been introduced in Law 7/2007, of 12 April, the Basic Statute for Public-Sector Employees, with the aim of achieving a greater uniformity between public-sector employees, whether they have the status of civil servants or not, with respect to the suspension or modification of collective agreements adopted on the grounds of serious public interest, while adopting

a number of measures in the work calendar, work schedules, working hours, holidays and leave for public-sector employees.[26]

e) Resolution of 24 February 2009, issued by the Directorate General for Labour, registering and publishing the IV Agreement on Extra-Judicial Resolution of Labour Conflicts (AEC IV) (*BOE*, 14-3).

With respect to the use of voluntary conciliation and arbitration procedures to resolve labour conflicts (Article 6§3 of the Charter), it is worth indicating that the ASEC IV, signed on 10 February 2009, which replaced ASEC III of 12 January 2005, regulates procedures for resolving by extra-judicial means collective conflicts that may result from the interpretation and application of a state-level law, collective agreement, company decision or practice, conflicts arising during the negotiation of a collective agreement or other pact, conflicts that give rise to a strike being called, conflicts derived from disputes arising during the consultation period in the collective redundancy process or processes of geographical mobility and substantial modification of working conditions.

f) Resolution of 11 February 2010, issued by the Directorate General for Labour, publishing the Agreement for employment and collective bargaining 2010, 2011 and 2012 (*BOE,* 22/02).

In this Agreement, applicable throughout the period included in the current report, the social partners (CEOE, CEPYME, CCOO and UGT), considering social dialogue and collective bargaining to be the most appropriate working methods for the proper operation of the system of labour relations and to tackle reforms, changes and adaptations in the productive sectors and in companies, with the aim of boosting the Spanish economy, signed this Agreement aimed at guiding the negotiation of collective agreements during their period in force, and establishing criteria and recommendations to tackle during the collective bargaining process. In addition, they assumed the commitment for a period of six months (which was in the end longer) to maintain a bipartite negotiation on reform of collective bargaining and other matters such as internal and external flexibility in companies, redundancy plans and the reduction of the working day, hiring, part-time work, subcontracting, absenteeism, temporary incapacity, mutual societies, etc. Unfortunately, the negotiations were not successful.

g) Resolution of 30 January 2012, issued by the Directorate General for Employment, registering and publishing the II Agreement for Employment and Collective Bargaining 2012, 2013 and 2014 (BOE, 6/02).

The social partners (CEOE, CEPYME, CCOO and UGT) again reached an agreement on 25 January 2012 for collective bargaining, signed under the provisions of Article 83.2 of the Law of the Workers' Statute: the II Agreement for Employment and Collective Bargaining 2012, 2013 and 2014, with an extended period in force from 1 January 2012 to 31 December 2014.

[26] With respect to this provision that adopts a series of measures on public-sector employees, the Constitutional Court has agreed to admit the following appeals of unconstitutionality for hearing: a) 5376/2012, against Article 2 of Royal Decree-Law 20/2012, of 13 July, on measures guaranteeing budget stability and boosting competitiveness (Ref: BOE-A-2012-13831), which refers to the "extra payment in December 2012 for staff in the public sector", as remuneration; b) 5741/2012, against Articles 8, 27 and 28 of Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budget stability and boost competitiveness (Ref: BOE-A-2012-13832). Article 8 aims to modify Articles 48 and 50 of Law 7/2007, of 12 April, the Basic Statute for Public-Sector Workers, with respect to leave and holidays for public-sector workers.

They based their decisions on the very difficult situation of the Spanish economy and the requirement that this involves to act with specific measures that can achieve a growth in economic activity capable of creating jobs in the shortest possible time. They state that in the short term the Spanish economy needs prices to grow under the EU average, and in the long term that total factor productivity has to increase to achieve a competitiveness based on quality. To do so, the moderate growth of income and prices are considered key. They end by stating that all forms of income should contribute to this effort. Both wages and distributed profits should increase moderately, to allow more of the profits generated from business to be allocated to investment in replacement and expansion. Both aspects aim to strengthen the competitive capacity of the Spanish productive economy.

Aspects to highlight in this II Agreement is the structure of collective bargaining and internal flexibility. It is committed to decentralisation, which implies that the sectoral agreements must boost negotiation within the company, at the initiative of the parties involved, on working hours, functions and wages, as this is the area that is most appropriate for determining these issues. In addition, the higher level of negotiation must respect the contractual balance of the parties at company level until the expiry of the collective agreement in question. At the same time they understand it necessary to preserve the provincial level of negotiation and try to ensure that these collective agreements boost the flexibility needed by the company, taking into account the relative closeness of the provincial level to the company and broad range of issues covered by these agreements.

With respect to flexibility, the signatory parties consider that the agreements must include internal flexibility within the basic content of negotiation, as it operates in limited time frames to tackle specific situations, so that it is easier for companies to adapt competitively, promote more stable jobs, and avoid the need to use redundancy. They estimate that collective agreements are the appropriate space for regulating the flexible use of elements such as working time and functional mobility in addition to the legal provisions, so that their regulation by agreement removes incentives for using termination of employment relations as an instrument for adapting productive capacity to the cycle.

The II Agreement includes guidelines on moderate growth for wages for the years 2012, 2013 and 2014. In 2014 a variable component is included by applying wage rises in accordance with the IPC.

Finally, it is important to note that the II Agreement regulates the creation of a Monitoring Committee, which is responsible for agreeing criteria and guidelines for collective bargaining on a number of matters during its period in force.

h) Resolution of 10 February 2012, issued by the Directorate General for Labour, registering and publishing the V Agreement on autonomous resolution of labour conflicts (extra-judicial system) (BOE, 23/02).

The V AS(A)C entered into force on 1 January 2012, and will remain in force until 31 December 2016. It was introduced before the expiry of the IV ASEC, planned for 31 December 2012, to give a greater role and new and stronger boost to the system of conflict resolution at state level; and also to comply with the legal previsions introduced by the labour reform under Law 35/2010, on urgent measures to reform the labour market, and Royal Decree-Law 7/2011, on collective bargaining.

This Agreement aims to maintain and develop an autonomous system for resolving collective labour conflicts that may arise between employers or workers and their respective representatives. The aim is to create a "better management and permanent administration of collective agreements during their period in force, boosting the instruments for consultation, interpretation, resolution of disputes, proposals for

improving the agreement, among others, and ensuring that the means of extra-judicial solution of conflicts provide active assistance." This is also a core issue in the Social and Economic Agreement (ASE) for growth, employment and guaranteed pensions, signed on 2 February 2011, by the government and the same organisations that signed the V Agreement and the successive State Agreements for Conflict Resolution. The aim is for greater variety of the means for resolving disputes and a swifter and more effective solution to controversies; the systems for resolving conflicts at state level have been reinforced, as has the framework of reference for the systems at regional level. The following points are of particular importance in this Agreement:

- Voluntary use of extra-judicial means, except when they are imposed by obligation through agreement with the corresponding parties at the company or higher level (particularly in arbitration).
- Guarantee of swift and effective operation in order not to damage the right to effective judicial support or extend the resolution of controversies through other possible ways.
- Role of the joint committees of the collective agreements in the conflicts originated by their application and interpretation, and also their essential role with respect to the conflicts relating to the disagreement during the consultation period in the case of a substantial modification of working conditions in the collective agreement and in the cases of a wage opt-out.
- Incorporates a greater number of collective conflicts: interpretation and application of pacts and collective agreements; controversies in the joint committees on collective agreements; renewal of the collective agreements and pacts at their expiry and after a specific period of negotiation without agreement; the conflicts produced in the consultation periods of Articles 40, 41, 44.9, 47 and 51 and 82.3 of the Workers' Statute; repudiation of collective agreements; replacement of the consultation period in redundancy plans during insolvency proceedings; conflicts derived from disputes in the negotiation in the company of agreements to opt out of collective agreements, when such agreements include the negotiated non-application of part of their content; conflicts in the case of disagreement in cases of extraordinary temporary flexibility provided for in collective agreements; and strike calls and the provision of safety and maintenance services during such strikes.

i) **Resolution of 30 May 2013, issued by the Directorate General for Employment, registering and publishing the Agreement of the Monitoring Committee of the II Agreement for Employment and Collective Negotiation on the extension beyond expiry date of collective agreements** (*BOE*, 14 June). Although it falls outside the period under analysis, it is worth noting the pre-agreement of 23 May 2013, and the subsequent agreement reached by the social partners in the area of the monitoring committee of the II Agreement for Employment and Collective Negotiation 2012-2014. This tries to prevent the effects of the expiry of the negotiated collective agreements that have expired and been repudiated before the entry into force of Law 3/2012 (provisions of the Fourth Temporary Provision of Law 3/2012); and to ensure that the negotiating parties of future agreements expressly agree on the validity of agreements after the duration stipulated in them has ended. This agreement has the same nature as the II AENC and thus is a proposal or recommendation for negotiators of collective agreements. It has been deposited at the Directorate General for Employment on 24 May, and is expected to be published officially very soon.

MEASURES AND DATA ON ACTION BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE RELATED TO LABOUR RIGHTS INCLUDED IN ARTICLE 6 OF THE EUROPEAN SOCIAL CHARTER

The supervision and demands of compliance with the legal, regulatory and statutory content of collective agreements with respect to the regulation of work and trade union relations is one of the competences of the Labour and Social Security Inspectorate (Article 3 of Law 42/1997 regulating the Labour and Social Security Inspectorate). This area includes the right to collective bargaining between employers and workers. The Labour and Social Security Inspectorate acts with respect to this right by dealing basically with three subjects: strikes[27], lock-outs and collective conflict.

With respect to the right to strike, without prejudice to the protection regulated under Article 315 of the Penal Code, in the administrative area of action by the Labour and Social Security Inspectorate a generic infringement referring to rights is included under Article 4 of the Workers' Statute; and more specifically, the action classified as serious in Article 7.10 of Royal Legislative Decree 5/2000 (this infringement being already specified in the section corresponding to Article 5 of the Charter), whose content is as follows:

> *Establish conditions of work which are inferior to those established by law or by collective agreement; or acts or omissions against the rights of workers recognised by Article 4 of the Workers' Statute Law, except where such behaviour may be classified as very serious, under the terms of the following article.*

The exercise of the right to strike is the object of specific protection regulated in Article 8, paragraph 10 of this provision, which is classified as a very serious infringement, penalised with a fine of up to 187,515 euros:

> *Acts by an employer that harm workers' right to strike, consisting in the substitution of workers on strike by others not linked to the place of work at the time, except in cases justified by the regulations.*

The table below includes the results of the actions carried out by the Labour and Social Security Inspectorate in relation to workers' right to strike. The data correspond to activity code 32T in the Integra information system, the "Right to strike":

Results of action by the Labour and Social Affairs Inspectorate regarding workers' right to strike.

(2009-2012)[28]

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	**366**	17	156,713.00	9	35
2010	468	42	293,899.00	9	31

[27] **It is worth recalling here the content of Article 4.1.e) of the Workers' Statute, which establishes the right to strike as a basic right for workers. The support for this right in criminal law is included in Article 315 of the Penal Code, which lays down the following:**

"1. Anyone who through deceit or abuse of a situation of need prevents or limits the exercise of trade union freedom or the right to strike shall be penalised with a prison term of six months to three years and a fine of six to twelve months.
"2. If the conduct mentioned in the above section is carried out with force, violence or intimidation higher level penalties will be imposed.
"3. The same penalties stipulated in the second section will be imposed on those who, acting in a group or individually, but in accord with others, force other people to start or continue with a strike."

[28] Source: Annual reports of the Labour and Social Security Inspectorate for 2009, 2010 and 2011. The data for 2012 are provisional. Directorate General for the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

2011	373	43	398,124.00	8	32
2012	420	53	468,160.00	0	47

With respect to lock-outs, it is worth noting the change in the drafting of paragraph 3, Article 8 of the Royal Legislative Decree 5/2000, through Law 3/2012, of 6 July, on urgent measures to reform the labour market. The type of infringement in the previous drafting, which classified as a very serious infringement "The closure of the company or the temporary or final termination of activities made without authorisation from the labour authority when such authorisation is necessary," is now drafted as follows:

"Implement a collective redundancy of workers or apply measures suspending contracts or reducing the working day for economic, technical, organisational or production-based reasons, or reasons due to force majeure, without carrying out the procedures established in Articles 51 and 47 of the Workers' Statute."

The drafting of the infringement contained in paragraph 9 of this Article remains, as referred to in previous reports. This establishes the following as a very serious infringement:

"Refusal by the employer in the case of a lock-out to reopen the place of work within the time stipulated, when so required by the competent labour authority."

With relation to these two infringements, the table below shows the results of actions corresponding to the statistical code 27T, "Closure or termination of activity without reopening the place of work."

Results of action by the Labour and Social Security Inspectorate in the case of closure or termination of activity without reopening the place of work.(2009-2012)

YEAR	No. of actions	No. of infringements	Proposed penalties (euros)	Mediations and consultations	No. of injunctions
2009	692	133	2,410,134.32	14	19
2010	651	111	2,184,541.00	14	19
2011	488	72	1,719,405.00	5	11
2012	384	55	843,782.00	1	5

To complete this section, the following table shows the results of the participation of the Labour and Social Security Inspectorate as mediator in strikes and collective conflicts.

Results of the activity of the Labour and Social Security Inspectorate in strikes and collective conflicts

(2009-2012)[29]

YEAR	No. of actions	Mediations and consultations	No. of injunctions
2009	305	73	4
2010	273	63	15
2011	263	55	5
2012	238	44	3

II. ADDITIONAL PROTOCOL OF THE EUROPEAN SOCIAL CHARTER

II.A ARTICLES 2 AND 23 OF THE ADDITIONAL PROTOCOL

Article 2. Right to be informed and consulted

o With respect to the right of workers to be informed and consulted within the company, as well as the right to take part in the determination and improvement of working conditions, it should be pointed out that there has been no change in the legislative framework regulating these questions after Law 38/2007, of 16 November, which amended Articles 4.1 g), 64 and 65 of the Workers' Statute to bring our legal system into line with Directive 2002/14/EC, establishing a general framework for informing and consulting employees in the European Community, which is prior to the period under consideration here.

This means that the workers have the basic rights that include to be informed consulted and to take part in the company, without prejudice to other forms of participation through workers' representative bodies regulated under the Workers' Statute.

Law 3/2012 and Royal Decree-Law 3/2012 have been mentioned above and the changes they have given rise to in different aspects of labour regulations, have not modified the precepts of the Workers' Statute referring to the right to collective representation and participation by workers in the company. Also still in place are the calls that the legislation has made for workers to be informed and consulted on a variety of matters in different situations, as reflected in general in Article 64 of the Workers' Statute.

The right to be informed, consulted and to take part in the company constitutes a basic labour right under Article 4, paragraph g, of the Law on the Workers' Statute. This right is regulated in Title II of this law. Specifically, Article 61 indicates that "In accordance with Article 4 of this Law and without prejudice to other forms of participation, the workers have the right to take part in the company through the representative bodies regulated under this Title." These representative bodies are the workers' delegates and works committees.

[29] Results under the area code 34T. Source: Annual reports of the Labour and Social Security Inspectorate for 2009, 2010, 2011 and 2012. The data for 2012 are provisional. Directorate General for the Labour and Social Security Inspectorate. Ministry of Employment and Social Security.

The competence of these representative bodies is included in Article 64 of the Law on the Workers' Statute. Among these are those to receive information on the current and future economic situation of the sector to which the company belongs, as well as the situation of the company and its probable development in questions of employment, new hires and subcontracting. Also the right to issue a report before the adoption by the employer of certain decisions in matters such as restructuring the workforce, the review or implementation of work organisation and control systems or the company's occupational training plans. They also have the right to be informed about any penalties imposed on workers for very serious infringements and to receive statistics on matters such as occupational accidents and diseases, accident rates, and health and safety prevention plans.

As has already been pointed out, the articles referring to the regulation of the works committee and workers' delegates have not been modified since the issue of the last report, but it is worth pointing out that there have been legal changes in some of the cases in which these workers' representative bodies intervene before the adoption by the employer of certain measures. This is the case with substantial modifications to working conditions, termination of employment contracts or redundancies, when collective in nature.

These right to be informed and consulted is also reflected in health and safety; thus Law 31/1995 includes these rights in Chapter V, Articles 33-40. They can also be considered in terms of the right to take part in the determination and improvement of working conditions and the working environment, a right referred to in Article 3 of the Additional Protocol to the Charter.

MEASURES AND DATA ON ACTION BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE RELATED TO LABOUR RIGHTS INCLUDED IN ARTICLE 2 OF THE ADDITIONAL PROTOCOL OF THE EUROPEAN SOCIAL CHARTER

With respect to the actions by the Labour and Social Security Inspectorate in the supervision and control of the normal exercise of competences attributed to such representative bodies, we should refer to two types of infringements included in Royal Legislative Decree 5/2000 that classify the following as serious infringements, which may be penalised with a fine of between 626 and 6,250 euros:

> "Violating the rights of the workers' representatives and trade union delegates to be informed, heard and consulted, as established by law or collective agreement." (Article 7.7.)
>
> "Infringement of the rights of workers' representatives and the trade union chapters to be credited the hours devoted to trade union activities and to be offered spaces suitable for such activities, including message boards, under the terms established by law or collective agreement." (Article 7.8)

Respect for the right to be informed and consulted on occupational risk prevention is dealt with in Article 12.11 of Royal Legislative Decree 5/2000:

> "Non-compliance with employees' right to information, consultation and participation, as recognised in the regulations on occupational risk prevention."

These infringements include conduct of the company that is contrary to the rights of workers and their representatives to be informed, related to the content of Article 2 of the Additional Protocol; but conduct contrary to the right of trade union representatives to be informed is included in Article 10.3 of Organic Law 11/1985, of 2 August, on Trade Union Freedom.

The actions carried out by the Labour and Social Security Inspectorate in this matter are included in action code 28T of the *Integra* information system, "Rights of the

representatives of workers and trade unions." In the section corresponding to Article 5 of the European Social Charter included in this report there is a table summing up the inspections carried out and the results corresponding to action code 28T for the period 1/01/2009 to 31/12/2012.

Article 3. Right of workers to take part in the determination and improvement of working conditions and working environment

Workers participate in determining and improving their working conditions basically through collective bargaining, by which workers and employers regulate working and productivity conditions.

With respect to the right of workers to take part specifically in health and safety protection within the company, Article 14.1 of Law 31/1995 of 8 November, on the Prevention of Occupational Risks, indicates that the right of workers to be informed, consulted and participate, to be trained in prevention, for activity to be stopped in case of a serious and imminent risk, and for their state of health to be monitored, all form part of the right of workers to an effective protection against occupational risks. In this context, Article 18.2 of the same law establishes that the employer must consult workers and allow their participation in questions affecting health and safety at work, and that workers shall have the right to make proposals to the employer, as well as to the participative and representative bodies under the Law, aimed at improving the levels of health and safety protection in the company. Article 18.1 of Law 31/1995 establishes that the employer shall adopt all the measures required so that workers, or their representatives if there are any, and in any event workers directly affected by the specific risks, receive all the information needed in relation to:

a) risks involving the occupational health and safety of workers, including both those affecting the company as a whole and for each job or function;
b) the protection measures and activities applicable to the risks stipulated in the above section;
c) emergency measures, first aid, fire fighting and evacuation.

The regulation of the consultation and participation of workers in the prevention of occupational risks is dealt with in Chapter V of Law 31/1995, mentioned above. Article 33 stipulates that the employer must consult the workers (if there are workers' representatives in the company, the consultation must be channelled through these representatives) with due notice, on matters including the adoption of decisions relating to the organisation and development of activities for health and safety protection in the company, appointment of workers responsible for emergency measures, or the consequences of the introduction of new technologies or equipment may have for the health and safety of workers.

With respect to the right to take part and be represented on questions of health and safety, Article 34 of Law 31/1995 states that workers have the right to take part in the company in questions related to the prevention of risks at work. This participation is channelled through their representatives, if the company has six or more workers, or through the Prevention Delegates.

The Prevention Delegates are the representatives of the workers with specific functions in the area of risk prevention at work. Their number varies according to the number of workers in the company, and is calculated according to the law or the system of appointment that has been adopted by collective agreement. Article 36 of Law 31/1995 establishes that the competence of prevention delegates includes exercising supervision over compliance with the law on occupational risk prevention and working with the company's management to improve preventive action. The faculties of the Prevention Delegates include accompanying the Labour and Social Security Inspectors on their inspections and examinations at workplaces to check compliance with the law on occupational risk prevention. They may

make any observations to the Inspectors they consider appropriate. Other faculties of the prevention delegates are to make visits to workplaces to exercise supervision and control over the state of working conditions. If they see a serious and imminent risk for workers, they may propose that the workers' representative body adopts an agreement to stop activity.

With respect to workers' participation in their working conditions, the companies or places of work with 50 or more employees have to set up a Health and Safety Committee.

The Health and Safety Committee is legally defined as a joint collegiate body for participation aimed at regular and periodical consultancy of the company's actions in the area of prevention of occupational risks. The Committee is formed by the Prevention Delegates and the employer and/or his or her representatives in equal number to the Prevention Delegates. Among the competences of the Health and Safety Committee is participation in the preparation, implementation and evaluation of the occupational risk prevention plans and programmes, as well as promotion of initiatives for effective methods and procedures to prevent risks, by proposing to the company an improvement in conditions or correction of existing deficiencies.

It should be pointed out that these rights to be informed and take part are also legally guaranteed with respect to workers in temporary employment agencies. Article 16.1 of Law 14/1994, of 1 June, regulating temporary employment agencies, establishes that users of such agencies must supply information to workers on risks derived from their job and the measures for protection and prevention against such risks. This provision also includes the right of workers in temporary employment agencies who are subcontracted to claim with respect to the working conditions through workers' representatives in the user company.

It should also be recalled that health and safety protection within the company, the right to safe and healthy working conditions, is the subject of Article 3 of the Charter, and was included in Spain's 25th report. That report provided a detailed review of the laws referring to this matter until 31 December 2011, and we refer to that report up to that date. In the period between 1 January and 31 December 2012, no new legal or regulatory provisions were implemented on this matter. They maintain the limitations on the time of exposure or working time as a form of prevention against labour risks already set out in previous reports, but there are no new provisions that deal with this aspect of occupational risk prevention. That is why only adjustments or occasional provisions can be noted, such as the following:

To systematise the Spanish legislation regulating the right of workers to be informed, consulted and to take part in questions of health and safety at work, the following distinguishes between legislation that is general in nature and specific legislation.

A) General legislation:

- **[30]LAW 31/1995, of 8 November, on occupational risk prevention**
  (Articles 18, 20 , 21.1, 22.1,
  22.3 , 27.1, 28.2,28.5, 33 , 34 , 35 , 36 , 37 , 38 , 39 , 40, 41 ,43 , 44; 4th and 8th Additional Provision; 1st Transitional Provision)

[30] All the laws and articles indicated in this report appear with hyperlinks.

These articles regulate, to a greater or lesser extent, aspects related to workers' right to be informed, consulted and to participate. However, out of all of them the following should be highlighted:

- **Article 18 LAW ON OCCUPATIONAL RISK PREVENTION:**

> *In order to comply with the duty for protection under this Law, the employer shall adopt appropriate measures so that workers receive all the information they need in relation to:*
>
> o *risks for the health and safety of workers at work, including both those affecting the company as a whole and for each job or function;*
>
> o *the protection measures and activities applicable to the risks stipulated in the above section;*
>
> o *the measures adopted under Article 20 of this Law.*
>
> *In companies with workers' representatives, the information referred to in this section shall be made available by the employer to the workers through these representatives; however, each worker must be informed directly of the specific risks affecting his or her job or function and the protection and prevention measures applicable to such risks.*
> *The employer shall consult the workers, and allow their participation, within the framework of all the questions affecting the health and safety at work, in accordance with the provisions of Chapter V of this Law. Workers shall have the right to make proposals to the employer, and to the participation and presentation bodies under Chapter V of this Law, aimed at improving the levels of health and safety protection in the company.*

- **Chapter V of the LAW ON OCCUPATIONAL RISK PREVENTION** (Articles 33-39), which regulates in detail the rights of workers to be consulted and to participate in relation to the questions affecting health and safety at work. Starting with the system of collective representation current in our country, the law attributes to the **Prevention Delegates**, chosen by and from the staff representatives in their respective representative bodies, the exercise of specialised functions in occupational risk prevention, granting them the competences, faculties and guarantees necessary for this. Together with this, the **Health and Safety Committee** functions as a liaison body between these representatives and the employer to develop a balanced form of participation in occupational risk prevention.

- **ROYAL DECREE 39/1997, of 17 January, approving the Regulation on Prevention Services**. (Articles 1.2, 2.1, 3.2, 5.1, 6.2, 9.2, 15.5, 16.2, 21.2; 7th Additional Provision).

- **ROYAL DECREE 171/2004, of 30 January, developing Article 24 of Law 31/1995, of 8 November, on Occupational Risk Prevention, in the matter of coordinating business activities.** (Article 4.5,9.3,10.2, 11.c, 11.d, 12.3, 15, 16; 2nd Additional Provision.

B) <u>Specific laws:</u>

Covers technical legislation implementing the general laws.

- **ROYAL DECREE 486/1997**, of 14 April, establishing minimum health and safety provisions in **workplaces** (Articles 11 , 12).
- **ROYAL DECREE 488/1997,** of 14 April, on minimum health and safety provisions for work with equipment that includes **display screens** (Articles 5 , 6).
- **ROYAL DECREE 487/1997,** of 14 April, on minimum health and safety provisions for **manual handling of loads** that involves risks, in particular to the lower back, for workers (Articles 4, 5).
- **ROYAL DECREE 485/1997,** of 14 April, on minimum provisions for health and safety **signs** at work (Articles 5 , 6).
- **ROYAL DECREE 664/1997,** of 12 May, on protection for workers against risks related to exposure to **biological agents** at work (Articles 12, 13; Annex VI.2).
- **ROYAL DECREE 665/1997,** of 12 May, on protection for workers against risks related to exposure to **carcinogenic agents** at work (Articles 8.5, 11, 12).
- **ROYAL DECREE 773/1997,** of 30 May, on minimum health and safety provisions related to the use by workers of **personal protective equipment** (Articles 8, 9).
- **ROYAL DECREE 1216/1997,** of 18 July, establishing minimum health and safety provisions in work on **fishing vessels** (Articles 6 , 8).
- **ROYAL DECREE 1215/1997, of 18 July,** establishing minimum health and safety provisions for the use of **work equipment** by workers (Articles 3.5, 5,6).
- **ROYAL DECREE 1389/1997,** of 5 September, approving the minimum provisions aimed at protecting the health and safety of workers **in mining activity** (Articles 7, 9; Annex Parte A (1.5; 10.1).
- **ROYAL DECREE 1627/1997**, of 24 October, establishing minimum health and safety provisions in **construction work** (Articles 11.1.d, 15, 16).
- **ROYAL DECREE 216/1999**, of 5 February, on minimum health and safety provisions for workers in **temporary employment** agencies (Articles 2.2, 3, 4, 6.3).
- **ROYAL DECREE 374/2001,** of 6 April, on the health and safety protection of workers against risks related to **chemical agents at work** (Articles 6.4, 6.7.b, 7.3, 9, 10).
- **ROYAL DECREE 614/2001,** of 8 June, on minimum health and safety provisions for workers to protect against **electrical risk** (Articles 5, 6; Annex V.A.3.b,)
- **ROYAL DECREE 783/2001,** of 6 July, passing the Regulation on health protection against **ionising radiation** (Articles 12.2. c and d, 21, 33, 64.c, 69.2.b.5).
- **ROYAL DECREE 681/2003,** of 12 June, on health and safety protection of workers exposed to risks derived from **explosive atmospheres** at work (Annex A.II.A. (1.1, 1.2).
- **ROYAL DECREE 1311/2005,** of 4 November, on health and safety protection of workers against risks that result, or that may result, from exposure to **mechanical vibrations** (Articles 5.2.f, 5.4, 6, 7, 8.3.a and b).
- **ROYAL DECREE 286/2006,** of 10 March, on health and safety protection of workers against risks related to **exposure to noise** (Articles 4.1.d , 8.2.d, 9, 10, 12.2).
- **ROYAL DECREE 396/2006,** of 31 March, establishing minimum health and safety provisions applicable to workers with a risk of **exposure to asbestos** (Articles, 11.6, 13, 14, 15).

- **ROYAL DECREE 486/2010,** of 23 April, on health and safety protection for workers against risks related to exposure to **artificial optical radiation** (Articles 8 , 9).

With respect to the regime governing infringements, **ROYAL LEGISLATIVE DECREE 5/2000, of 4 August, passing the Consolidated Text of the Law on Labour Law Infringements and Penalties** (Articles 12(8, 11, 18 and 19) and 13.8), which classifies as serious and very serious infringements breaches of obligations in matters of the information, consultation and participation of workers.

Finally, it is worth highlighting the laws that regulate these rights **in the public administration services**:

- **ROYAL DECREE 1932/1998,** of 11 September, adapting chapters III and V of Law 31/1995, of 8 November, on occupational risk prevention, to **military centres and establishments** (Articles 3, 4, 5, 6, 7, 8, 9).
- **ROYAL DECREE 179/2005, of** 18 February, on occupational risk prevention in the **Civil Guard** (Articles 7, 8, 11).
- **ROYAL DECREE 2/2006,** of 16 January, establishing rules on occupational risk prevention in the work of employees with civil servant status in the **National Police Force** (Articles 3.1, 7, 13, 14, 15, 16, 17).
- **ROYAL DECREE 1755/2007,** of 28 December, on the prevention of occupational risks among military personnel in the armed forces and on organisation of prevention services in the **Ministry of Defence** (Articles 4, 7, 8, 18).
- **ROYAL DECREE 67/2010,** of 29 January, adapting the legislation on occupational risk prevention to the **General Administration of the State** (Article 4, 5, 6).

I. Since the last report presented, in the period **2009-2013,** the following laws have been published in Spain:

- **LAW 25/2009,** of 22 December, modifying a number of laws to adapt them to the law on free access to service activities and their exercise (on the question of consultation and participation the modification of **Article 39.1 of the LAW ON OCCUPATIONAL RISK PREVENTION** is particularly relevant here**).**
- **ROYAL DECREE 337/2010,** of 19 March, amending Royal Decree 39/1997, of 17 January, approving the Regulation on prevention services; Royal Decree 1109/2007, of 24 August, implementing Law 32/2006, of 18 October, regulating subcontracting in the construction sector; and Royal Decree 1627/1997, of 24 October, establishing minimum health and safety provisions in construction work (relevant here terms of consultation and participation is the amendment of **Articles 15.5, 20.2 and 21** of the Regulation on Service Provision**).**
- **ROYAL DECREE 486/2010,** of 23 April, on health and safety protection for workers against risks related to exposure to **artificial optical radiation** (Articles 8 and 9).
- **LAW 10/2011**, of 19 May, amending Law 10/1997, of 24 April, on the rights of workers to be **informed and consulted in companies and groups of companies with Community-wide scope**.
- **ROYAL DECREE 843/2011**, of 17 June, establishing the **basic criteria for organising health resources in the prevention services** (Articles 8.1.a, 9.3).

The following resolutions have been approved within the framework of **collective bargaining**. Their articles regulate various aspects relating to workers' right to be consulted and participate in matters relating to health and safety at work. They include the following:

- RESOLUTION of 3 March 2009, issued by the Directorate General for Labour, registering and publishing the state agreement on the **metal sector**, which includes new items on training and the promotion of health and safety at work, and which modifies and extends it. (Articles 11, 28-43; ANNEX III. Training content for Prevention Delegates).
- RESOLUTION of 12 April 2011, issued by the Directorate General for Labour, registering and publishing the **document of the agreements modifying the IV General Agreement of the Construction Sector** (Article 130).
- RESOLUTION of 28 February 2012, issued by the Directorate General for Employment, registering and publishing the **V Collective Agreement on the Construction Sector** (Articles 135-137).
- RESOLUTION of 17 July 2009, issued by the Directorate General for Labour, registering and publishing the **IV Collective Agreement on steel frameworks** (Articles 65-71, 90).
- RESOLUTION of 4 September 2009, issued by the Directorate General for Labour, registering and publishing the Agreement on the Promotion of Health and Safety at Work in the **agricultural sector** (Articles 5-18).
- RESOLUTION of 27 May 2011, issued by the Directorate General for Labour, registering and publishing the Collective Agreement of national scope for the **extractive industries, glass industries, ceramics industries and industries trading exclusively in these materials** (Articles 129, 130).
- RESOLUTION of 23 July **2012**, issued by the Directorate General for Employment and Social Security, registering and publishing the Collective Agreement of national scope for the **extractive industries, glass industries, ceramics industries and industries trading exclusively in these materials** (Articles 129, 130).
- RESOLUTION of 10 September 2012, issued by the Directorate General for Employment, registering and publishing the **V Collective Agreement of national scope on cork** (Articles 74, 76-78, 80, 82, 83).
- RESOLUTION of 8 September 2009, issued by the Directorate General for Labour, registering and publishing the Agreement on the Promotion of Health and Safety at Work in the **food and drink industry** (Articles 5-16).
- RESOLUTION of 20 September 2010, issued by the Directorate General for Labour, registering and publishing the IV Labour Agreement of national scope for the **hotel and catering sector** (Articles 51-55).
- RESOLUTION of 2 November 2012, issued by the Directorate General for Employment, registering and publishing the V Collective Agreement on the **wood sector** (Articles 94, 96-103).
- RESOLUTION of 26 March 2013, issued by the Directorate General for Employment, registering and publishing the V Collective Agreement on the **cement derivatives sector** (Articles 70-73).
- RESOLUTION of 26 March 2013, issued by the Directorate General for Employment, registering and publishing the XVII Collective Agreement on the **chemical industry** (Chapter IX).

- RESOLUTION of 9 June 2010, issued by the Directorate General for Labour, registering and publishing the Agreement on the Creation of the Sectoral Body governing occupational risk prevention in companies in the **road passenger transport sector**, with the aim of complying with the objectives contained in the EESST (2007-2012).
- RESOLUTION of 10 June 2010, issued by the Directorate General of Labour, registering and publishing the Agreement on the creation of a joint body for the promotion of health and safety in the work of the collective agreement of national scope on the **transport of the sick and injured in ambulances**.
- RESOLUTION of 10 June 2010, issued by the Directorate General for Labour, registering and publishing the Agreement of 10 February 2010, on setting up the Occupational Health Committee, pursuant to the II Collective Agreement of national scope on **sports and gymnastics facilities**.

Finally, in the area of **public administration services:**

- **ROYAL DECREE 67/2010**, of 29 January, adapting the legislation on occupational risk prevention to the **General Administration of the State** (Articles 4, 5, 6).
- RESOLUTION of 3 November 2009, issued by the Directorate General for Labour, registering and publishing the **III Single Collective Agreement for staff with non-civil-service status in the General Administration of the State** (Article 61).
- RESOLUTION of 5 May 2011, issued by the Secretariat of State for the Civil Service, approving and publishing the Agreement of 6 April 2011 of the General Negotiating Board of the General Administration of the State on a **protocol for action against harassment at work** in the General Administration of the State.
- RESOLUTION of 28 July 2011, issued by the Secretariat of State for the Civil Service, approving and publishing the Agreement of 27 July 2011 of the General Negotiating Board of the General Administration of the State on a **protocol for action against sexual harassment and harassment for reasons of gender** in the General Administration of the State and the public bodies linked to it.

- **Royal Decree 343/2012 of 10 February, developing the basic organic structure of the Ministry of Employment and Social Security.**

Although the name of some bodies has changed, including the Ministry itself, the National Institute for Health and Safety at Work remains part of the department through the Secretariat of State for Employment. At the same time, the Directorate General for Employment continues to have the function of regulating and developing individual and collective labour relations, working conditions, health and safety at work, as well as regulating employment, the preparation and interpretation of employment regulations, unemployment protection and administrative actions in temporary employment agencies.

- **Law 2/2012, of 29 June, the State Budget for 2012.**

This includes a reduction in Social Security contributions in a number of cases when the job changes, such as risk during pregnancy or during breastfeeding, as well as cases of occupational illness; in cases of risk during pregnancy or breastfeeding, when the worker is moved to a different job or function that is compatible with her state, under Article 26 of Law 31/1995, of 8 November, on occupational risk prevention, a reduction will be applied on the Social Security contributions accrued during the period she remains in the new job or function, of 50% of the employer's contribution for non-occupational illness or accident, payable from the budget of the social security system. This reduction shall be

applicable under the terms and conditions to be specified by regulation in cases where for reasons of occupational illness, there is a change in the job in the same company, or a job is taken in another company compatible with the state of the worker.

MEASURES AND DATA ON ACTION BY THE LABOUR AND SOCIAL SECURITY INSPECTORATE RELATED TO LABOUR RIGHTS INCLUDED IN ARTICLE 3 OF THE ADDITIONAL PROTOCOL OF THE EUROPEAN SOCIAL CHARTER

With respect to the rights of workers to be informed and consulted and to take part in determining their working conditions, we refer once more to the actions included under the action code 28T of the *Integra* information system, referring to the rights of workers' representatives and trade unions. The table summing up the inspections corresponding to this key is included in the corresponding section relating to Article 5 of the European Social Charter in this report.

With respect to the rights to training, and to be informed and consulted on health and safety, Royal Legislative Decree 5/2000 classifies the following infringements as very serious and subject to a fine ranging from 2,046 to 40,985 euros:

"Non-compliance with obligations relating to the provision of training and sufficient and adequate information to workers regarding risks at the place of work that may lead to harm to safety and health; and with the preventive measures applicable, except in the case of a very serious infringement in accordance with the following article." (Article 12.8)

"Non-compliance with employees' right to be informed and consulted and to participate, as recognised in the regulations on occupational risk prevention." (Article 12.11)

In addition, the following is classified as a very serious infringement (Article 13.9 of Royal Decree Law 5/2000) and subject to a fine ranging from 40,986 to 819,780 euros:

"Actions or omissions that prevent the exercise of the right of workers to halt activity in the case of serious and imminent danger, as stipulated under Article 21 of the Law on Occupational Risk Prevention."

Within the scope of temporary employment agencies, the following area also classified as serious infringements by the companies using the services of the workers, and subject to a fine of between 626 and 6,250 euros.

" Actions or omissions that prevent the exercise of rights by assigned workers as established in Article 17 of the Law on temporary employment agencies." (Article 19.2.c)[31]

The following is also classified as a serious infringement by user companies (Article 19.2.d):

"Lack of information given to the temporary workers under the terms stipulated in Article 16.1 of the Law regulating temporary employment agencies, and in the regulations on occupational risk prevention."[32]

[31] Article 17.1 of Law 14/1994, regulating temporary employment agencies, includes the right of workers who are made available to the user company to present claims relating to the conditions of their labour activity through the workers' representatives in the user company.

[32] Article 16 of Law 14/1994, regulating temporary employment agencies, states that before the provision of services begins, the user company must inform workers on the risks derived from their job position, as well as the measures for preventing and protecting against them. In addition, it states that the user company is responsible for occupational health and safety protection, as well as the cost of provisions referred to by the General Law on Social Security.

The action by the Labour and Social Security Inspectorate with respect to supervision and control of the regulations on the participation of workers and their representatives in the area of health and safety is summed up in the following tables:

Results of the inspections by the Labour and Social Security Inspectorate in supervising compliance with the rights of workers to be informed and trained in occupational risk prevention

(2009 to 2012)[33]

YEAR	No. of inspections	No. of infringements	Proposed penalties (en euros)	No. of injunctions
2009	34,995	2,182	5,617,070.12	10,571
2010	37,428	2,457	5,664,529.62	10,829
2011	34,780	1,989	4,599,011.91	9,171
2012	33,309	1,524	3,944,102.00	8,888

Results of the action by the Labour and Social Security Inspectorate in supervising compliance with the rights of workers to be represented in occupational risk prevention

(2009 and 2012)[34]

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	No. of injunctions
2009	1,860	142	400,279.00	965
2010	1,605	434	247,276.00	795
2011	1,519	134	250,012.00	681
2012	1.35	45	202,832.00	684

With respect to non-compliance by user companies against the workers from temporary employment agencies, no aggregate data are available for the types of infringements explained above. All the inspections related to infringements classified in Article 19 of Royal Legislative Decree 5/2000 referring to user companies are included under a single statistical code within the *Integra* information system as code 17T.

Inspections carried out on health and safety obligations covering workers in temporary employment agencies are included statistically under action code 27H of the Integra information system, "Obligations to workers in temporary employment agencies". Within the

[33] Source: Annual Reports by the Labour and Social Security Inspectorate 2009, 2010 and 2011. They correspond to action code 21H of the *Integra* information system, "Worker training and information". The data corresponding to 2012 are provisional (source: general summary of service orders). The column corresponding to the number of infringements detected includes the sum of the infringements detected in companies and injunctions issued in the public administration services.

[34] Source: Annual Reports by the Labour and Social Security Inspectorate 2009, 2010 and 2011. They correspond to action code 24H, "Employee representation rights". The data corresponding to 2012 are provisional (source: General summary of service orders).

limitations explained, the following are the results of the inspections corresponding to the action codes 17T and 27H.

Results of action by the Labour and Social Security Inspectorate in supervising compliance with the labour law obligations of temporary employment companies and their user companies

(2009-2012)[35]

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	No. of injunctions
2009	409	246	234,040.66	66
2010	367	94	169,150.00	42
2011	482	134	248,244.00	85
2012	441	58	108,012.00	69

Results of the activity of the Labour and Social Security Inspectorate in supervising compliance with health and safety obligations for workers in temporary employment agencies

(2009-2012)[36]

YEAR	No. of inspections	No. of infringements	Proposed penalties (euros)	No. of injunctions
2009	116	12	33,017.00	33
2010	69	3	4,092.00	11
2011	65	2	14,046.00	8
2012	85	2	2,672.00	17

III. INFORMATION WITH RESPECT TO THE CONCLUSIONS XIX-3 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

The ECSR is the body responsible for evaluating the national reports to determine whether national laws and their implementation conform to the provisions of the European Social Charter. The 2010 document, which has now been submitted, includes the conclusions of the ECSR relating to report No. 22, which dealt with the same articles as this one, for the period ending 31 December 2008.

The ECSR continues to state its non-conformity with respect to the statements made by Spain in relation to the following articles:

[35] Source: Annual Reports by the Labour and Social Security Inspectorate for 2009, 2010 and 2011. They correspond to action code 17T, "User companies". The data corresponding to 2012 are provisional (source: The data corresponding to 2012 are provisional (source:

[36] Source: Annual Reports by the Labour and Social Security Inspectorate for 2009, 2010 and 2011. They correspond to action code 27H, "Obligations to workers in temporary employment agencies". The data corresponding to 2012 are provisional (source: General Summary of the service orders). The column corresponding to the number of infringements detected includes the sum of the infringements detected in companies and the number of injunctions issued in the public administration services.

Article 2§1. To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.

First, the **reasonable working hours**. This question is handled in Spain's previous reports, to which no legislative changes have to be added specifically referring to the duration of working hours, beyond what has been explained in previous points about the possible flexible distribution of working hours over the year. Article 34.2 of the Workers' Statute now reads as follows:

> *"2. A flexible distribution of working time over the year may be established by collective agreement, or where not applicable, by agreement between the company and workers' representatives. If there is no agreement, the company may distribute 10% of the working hours flexibly over the year.*
>
> *This distribution must at all times respect minimum daily and weekly rest periods under law and the worker must have at least 5 days' notice of the day and time when he or she must work in accordance with this distribution."*

In addition, information has been provided on the **supervision** of working hours by the Labour and Social Security Inspectorate, infringements, etc.

The general working hours in the **public sector** are governed by **Law 7/2007**, of 12 April, on the Basic Statute for Public-Sector Employees (EBEP). Article 47, Chapter V, Title II of EBEP states specifically that "the public administration services shall establish the general and special working hours of their workers with the status of civil servants. *The working hours may be full-time or part-time."*

With respect to the employees who do not have the status of civil servants in the General Administration of the State, the important legal provisions include Royal Legislative Decree 1/1995, of 24 March, approving the consolidated text of the Law on the Workers' Statute (TRLET) as well as the III Single Collective Agreement for non-civil-service employees in the General Administration of the State.

Article 34 of the TRLET reads:

> *1. The duration of working hours shall be agreed in the collective bargaining agreements or employment contracts. The maximum duration of ordinary working hours shall be forty hours per week of actual work on average calculated over the year.*
>
> *2. A flexible distribution of working time over the year may be established by collective agreement, or where not applicable, by agreement between the company and workers' representatives. If there is no agreement, the company may distribute 10% of the working day flexibly over the year.*
>
> *This distribution must at all times respect minimum daily and weekly rest periods under law and workers must have at least 5 days' notice of the day and time when they must work under this system.*
>
> *3. There must be a minimum of 12 hours between the end of one working day and the start of the next.*
>
> *The number of ordinary hours of actual work may not be higher than nine per day, unless the collective agreement or an agreement between the company and the workers' representatives establishes another distribution of working hours every day, in all cases respecting the rest period between working days.*

Workers under the age of 18 may not do more than eight hours of actual work per day, including hours allotted to training, if applicable, and if they work for various employers, including the hours worked for each of them.

4. When the duration of the continuous working day exceeds six hours, a rest period of at least 15 minutes must be established during the day. This rest period shall be considered actual time worked if established as such by collective agreement or employment contract.

In the case of workers under 18 years of age, the rest period is a minimum of 30 minutes and there must always be one when the duration of the continuous working day exceeds four and a half hours.

5. Working time shall be calculated in such a way that at the start and the end of the day the worker is at his or her place of work.

6. The company must prepare a work calendar every year, and a copy must be located in a where it can be easily seen at each place of work.

7. At the proposal of the Ministry of Labour and Social Security and following consultation with the most representative trade unions and employers organisations, the government may establish extensions or limitations to the organisation and duration of working hours and rest periods, for those sectors and jobs where this is required due to their special nature.

8. Workers have the right to adapt the duration and distribution of working hours in line with their right to reconcile their personal, family and working life under the terms established in collective bargaining or an agreement that may be reached with the employer, in all cases respecting the provisions of collective bargaining.

To this end, there will be an emphasis on using a continuous working day, flexible hours or other forms of organising working hours and rest periods to allow greater compatibility between the right of workers to reconcile personal, family and working life and the improvement of company productivity.

Article 39 of the Single Agreement for non-civil-service employees in the General Administration of the State reads as follows:

1. The duration of ordinary working hours shall be one thousand seven hundred and eleven (1,711) hours actually worked as an annual total. The weekly working hours shall in general be 37.5 hours, distributed from Monday to Friday, unless the work organisation of each workplace does not allow this.

2. For all purposes actual work shall be taken to mean work within the working schedule established by the competent body, together with that corresponding to paid leave, as well as credits for paid hours when on trade union business.

3. In certain cases longer working hours than the ordinary may be established with a limit of one thousand eight hundred and twenty-six (1,826) as an annual total, equivalent to forty hours per week. In these cases workers will have the right to receive the corresponding wage supplements.

In addition, **Royal Decree-Law 20/2011**, of 30 December, on urgent measures relating to the budget, taxation and finance to correct the public deficit, introduces a change with respect to working hours for the whole of the state public sector by determining that from 1 January 2012 the hours will be a weekly average of not less than 37 hours and 30 minutes, not including special working hours, or those that may be modified as required to adapt to general changes in working hours, where applicable.

It also establishes that in order to apply this measure effectively and uniformly in the General Administration of the State the Ministry of Finance and Public Administrations is authorised to give the necessary instructions to adjust the current work calendars, including the systems of monitoring hourly compliance, following negotiation in the General Negotiation Board.

Article 9 of Law **3/2012, of 6 July**, on urgent measures to reform the labour market, introduces a modification in the second section of Article 34 of TRLET, establishing that a flexible distribution of working time over the year may be established through collective agreement or agreement between the company and the workers' representatives. Failing such an agreement, the company may distribute 5% of the working hours flexibly over the year, though this distribution must respect the minimum daily and weekly rest periods established by the Law.

This Law also amends Article 34.8, establishing the right of workers to adapt the duration and distribution of working hours in order to reconcile their personal, family and working life under the terms established in collective bargaining or an agreement that may be reached with the employer, which must in any event respect the provisions of collective bargaining.

To this end, there will be an emphasis on using continuous working hours, flexible hours or other forms of organising working hours and rest periods to allow greater compatibility between the right of workers to reconcile personal, family and working life and improved company productivity.

Law 2/2012, of 29 June, implementing the state budget for 2012, establishes in its Seventy-First Additional Provision that the general working hours of employees in the public sector may not be below thirty-seven and a half hours of actual work on average calculated on an annual basis.

To replace Article 47 of the EPEB, and with the aim of adapting the regulation in these matters to new legislation, **Resolution of 28 December 2012** was issued by the Secretariat of State for Public Administrations, **laying down instructions on working hours of employees of the General Administration of the State and its public bodies**, which replaces that of 20 December 2005 of the Secretariat General for the Public Administration (*BOE*, 27 December 2005).

This Resolution determines that the duration of general working hours shall be 37 and a half hours per week of actual work calculated as an annual average, equivalent to one thousand six hundred and seventy-four annual hours.

Work calendars may establish other maximum and minimum limits to the working hours in order when additional hours are needed to reach the total duration of working hours. Taking into account the opening hours to the public of some of the offices and public services, other hourly limits may also be established for employees to offer personal service.

The Deputy Secretaries of ministerial departments and those responsible for other competent bodies in the entities highlighted in point 1 of this Resolution, may establish other opening and closing hours for public buildings, which must be duly advertised to the general public.

Under the Resolution workers may request reduced working hours for personal reasons, or a scheme of flexible hours within the framework of measures to help the work/life balance.

Article 2§2. To provide for public holidays with pay

The basic regulation on rest periods on public holidays is included in Article 37.2 of the Workers' Statute, which establishes that public holidays, which are paid and not accruable,

may not exceed fourteen per year, of which two shall be local. This regulation is completed by Royal Decree 2001/1983, of 28 July, regulating working hours, special hours and rest periods[37]. With reference to remuneration corresponding to public holidays worked, Article 47 of this Royal Decree 2001/1983 states:

> *When, exceptionally or for technical or organisational reasons, the corresponding public holiday or weekly rest period, where applicable, cannot be taken, the company shall be obliged to pay the worker, in addition to the wages corresponding for the week, the amount of hours worked on the public holiday or during the weekly rest period, at a rate at least 75% higher, unless it grants time off in compensation.*

Although this basic labour legislation is in place, remuneration or compensation for rest periods corresponding to the public holidays worked tends to be regulated by collective agreement, which must respect the right to the necessary minimum regulated by the legal provisions specified above.

With respect to the compensatory rest period and wage increase applicable in these cases, it should be pointed out that the Supreme Court has understood that it is legal not to pay workers the wage 75% increased rate if the company's annual work calendar already implicitly includes compensation for the public holidays worked through days off work (STS, 20 April 2010).[38]

With respect to the **public administration services**, Article 23 of Law **30/1984**, of 2 August, on measures to reform the civil service, with the scope and currency established in Final Provision 4, by the Single Repealing Provision b) of Law 7/2007, regulates the remuneration of public-sector workers with the status of civil servants, including extra pay for productivity and for extraordinary services, defined as:

> *c) Additional productivity-based pay to remunerate special performance, overtime and interest or initiative with which the civil servant carries out his or her job.*
>
> *The total amount may not exceed a percentage over the total personnel costs of each programme and each body, as determined by the Law on the state budget.. The person responsible for managing each expenditure programme, within the corresponding budget provisions, shall determine the individual amount for each civil servant according to the rules established by the Law on the state budget.*
>
> *In any event, the amounts received by each civil servant for this item shall be of public knowledge to the other civil servants in the department or body in question, as well as the trade union representatives.*
>
> *d) Payment for overtime outside normal working hours, which in no case may be fixed in amount and regular in payment.*

With respect to the non-civil-service employees of the General Administration of the State, the TRLET regulates overtime as follows in Article 35:

[37] See in this respect Articles 45, 46, 47 of this Royal Decree 2001/1983, expressly declared in force by the Sole Repealing Provision of Royal Decree 1561/1995, of 21 September, on special working hours.

[38] See Article 1.6 of the Civil Code.

1. Overtime shall be considered to be all working hours that are carried out above the maximum ordinary working hours, as set according to the above Article. Through collective agreement or, if there is none, individual contract, overtime can either be paid to the amount set, which in no case may be below the value of the ordinary working hour, or compensated by an equivalent paid rest period. If there is no agreement on this matter, overtime is understood to be compensated by a rest period within the four months of when it was worked.

2. The number of hours overtime may not be over 80 per year, except for the case set out in section 3 of this article. For employees who have working hours that in annual terms are lower than the general working hours of the company due to the type or duration of their contracts, the maximum annual number of hours of overtime is reduced by the proportion between the two totals.

The overtime hours that have been compensated by rest periods within four months are not counted for the purpose of the above paragraph.

The government may suppress or reduce the maximum number of overtime hours for a determined period, either in general or for certain branches of activity or geographical areas, to increase job opportunities for employees who have been made unemployed.

3. Extra hours worked to prevent or repair accidents and other extraordinary and urgent damage shall not be taken into account in terms of the maximum duration of ordinary working hours, or for the calculation of the maximum number of authorised overtime hours, without prejudice to their compensation as overtime.

4. Overtime shall be voluntary, unless it has been agreed in a collective agreement or individual employment contract, within the limits under section 2 of this article.

5. For the purpose of calculating overtime, the working hours of each employee shall be recorded every day and totalled for the remuneration period. A copy of the summary is provided for the employee in the corresponding wage slip.

Article 44 of the Single Collective Agreement for non-civil-service employees in the General Administration of the State regulates overtime as follows:

1. Overtime is considered work exceeding 37.5 hours per week, or where appropriate the figure for working hours included in Article 37.3 of this Agreement.

2. Overtime shall be compensated preferentially with rest periods that are accruable at two hours per hour worked, except in cases of night work or work on public holidays, when the compensation shall be two and a half hours. If so agreed, overtime shall be remunerated in cash pursuant to Article 73 of the Agreement.

Rest periods must in all cases be compensated within the four months following the overtime worked, in accordance with Article 35 of the Workers' Statute.

3. In no case may this overtime exceed seventy hours per year, except for the justified reasons under Article 35.3 of the Workers' Statute.

4. Within the overall job creation policy, the aim is to reduce overtime. The initiative corresponds to the department or body, depending on the needs of the administrative units.

5. On a quarterly basis the Delegate Sub-Committees and the CIVEA shall be informed of the overtime worked.

This Agreement also includes in Article 73 a wage supplement for working on Sundays and public holidays under which, "Occupations that are subject to the conditions regulated in sections 5.2.1, 5.2.2, 5.2.3, and that on occasions may require more extensive provision of public services on some Sundays and public holidays than that provided for under these sections, or while not subject to the conditions regulated in these sections and in 5.2.4, exceptionally require the provision of public services on Sundays or public holidays, these provisions of services shall be compensated preferentially by rest periods amounting to an hour and a half for each hour worked; or preferably they may be remunerated by the amount and in the way determined in the CIVEA.

Finally, Article 26 of **Law 17/2012**, of 27 December, the state budget for 2013, includes the following regulation:

E) The productivity bonus, which will remunerate special performance, extraordinary activity and dedication and the interest or initiative with which the jobs are carried out.

Each ministerial department shall determine, within the total available credit, which will not increase at all in annual terms with respect to the figure established on 31 December 2012, the partial amounts assigned to the different organic territorial, functional or occupational areas. At the same time, it will determine the criteria for distributing and setting the individual amounts of the productivity bonus, in accordance with the following rules:

1. Productivity shall be evaluated according to the objective circumstances related to the type of occupation and its performance; and, where applicable, the level of participation in the achievement of results or targets assigned to the corresponding programme.

2. In no case may the amounts assigned as a productivity bonus for a period of time originate individual rights with respect to the evaluations or estimates corresponding to successive periods.

F) The remuneration for extraordinary services, which will be granted by the ministerial departments or public bodies within the credits assigned for this purpose and which shall not increase with respect to those assigned as of 31 December 2012.

These remunerations shall be exceptional in nature and may only be recognised for extraordinary services outside normal working hours; in no case may they be fixed in their amount or regular in their performance, nor originate individual rights in successive periods.

The Ministry of Defence provides an example of the application of this regulation for the civil service. The employees with non-civil-service status in the Ministry of Defence are subject to the provisions of Article 24 of the **Collective Agreement for Employees with non-civil-service status in the Ministry of Defence** (*BOE*, 1 July 1992). It remains in force through the Fifteenth Transitional Provision of the **III Single Agreement for Employees on non-civil-service contracts in the General Administration of the State;**

and establishes that the work that has to be done on public holidays that are not Sundays will give the right to either two days off for each public holiday worked, or one day off and 50% extra pay per day, as decided by the employee. The same system is applied with respect to third Sundays, if for reasons of work organisation, the workers are obliged to provide their services, exceptionally for three consecutive Sundays.

Under Article 73.5.2.3 of the III Single Agreement, at the request of the Departmental Sub-Committee of the Ministry of Defence, and the CIVEA agreement of 28/03/2006, it was agreed that the jobs in the Ministry of Defence that require the provision of services on Sundays or public holidays shall be remunerated on a provisional and temporary basis with an amount per Sunday or public holiday worked; and it was also agreed which centres and jobs should be subject to a fixed remuneration for Sundays and public holidays worked. Currently this only affects certain jobs in Zaragoza Hospital, San Fernando Hospital, Residencia Virgen del Carmen rest home, Residencia Guadarrama rest home and Gomez Ulla Hospital.

The amount per day on Sundays and public holidays for non-civil-servant employees during the period 2009-2012 was:

AMOUNT	2009	2010	2011	2012
GROUP 1	43.96	43.96	43.96	43.96
GROUP 2	39.48	39.48	39.48	39.48
GROUP 3	35.11	35.11	35.11	35.11
GROUP 4	31.15	31.15	31.15	31.15
GROUP 5	29.01	29.01	29.01	29.01

Article 2§3 To provide for a minimum of four weeks' annual holiday with pay.

Here the question, if we have not misunderstood it, relates to the remuneration of public holidays worked, i.e. not taken as a rest period.

In this respect the ECSR should recall that **Royal Decree 2001/1983,** of 28 July, on the regulation of working hours, special hours and rest periods, has been repealed in the most part, but it remains in force precisely in the provisions regulating public holidays: Articles 45, 46 and 47. Article 47 regulates the question asked here, in the following terms:

> *When, exceptionally or for technical or organisational reasons, the corresponding public holiday cannot be taken... the company shall be obliged to pay the worker, as well as the wages corresponding to the week, the amount of hours worked on the public holiday... at least 75% extra, unless it grants time off in compensation.*

This is the same system applicable to the weekly rest period, and as in the latter, the company must either allow a rest period in compensation, or pay, in addition to the wages corresponding to the week, the amount of hours worked on the public holiday, at a rate of at least 75% extra.

However, this rule is applied taking into account whether work on a public holiday is one-off or exceptional, or whether it is inherent in the activity carried out. This is the opinion, for example, of the judgment of the Higher Court of Justice of Catalonia, of 24 April 2009 (AS\2009\2112), which states as the first of its grounds:

> *...1) that overlapping public holidays are not paid at 6 hours 20 minutes, but for the working hours actually worked by each employee on public holidays, which shall never be below the rate for ordinary working hours; 2) the remuneration of the 14 public holidays will have to include an increment of 75%, pursuant to*

Royal Decree 2001/1983; and public holidays counted as ordinary working days according to Article 24 of the Collective Agreement 2005/2008 are not exempt from this increment on the grounds of paying a wage supplement equivalent to that of the overlapping public holiday of each occupational group; and 3) when any time corresponding to work on a public holiday is calculated, it must include the corresponding 75% increment; all this referring to the workers of the company Transports de Barcelona, S.A., who have to work on public holidays. This appeal has been contested by the company that is the defendant, requesting that the original decision is confirmed.

Later on, in the third section on the grounds, it states:

In addition to the company-level collective agreement, Article 37.2 of the Workers' Statute on public holidays is applicable, as are in regulatory terms the provisions of Article 47 of Royal Decree 2001/1983... this regulation continues in force under the application of the Fifth Transitional Provision of the Workers' Statute, following the modification made by Law 11/1994, and by the provision made in Royal Decree 1561/1995, of 21 September, on special working hours.

As reasoned by the judge of first instance in the legal grounds of the appealed decision, and this is how this Division understands it, the 75% increment on wages for working on public holidays, which is what the workers in this collective conflict have asked for, is a minimum mandatory provision that cannot be repealed by agreement when the company carries out an activity in which normally there is no work on public holidays, and where exceptionally, for technical or organisational reasons, work has to be done on one or more public holidays; but not in the case of a company such as the defendant Transportes Barcelona, where it is obvious for employees entering its service that they will have of necessity to work a great many public holidays during their working lives. In fact, the collective agreement notes the existence of workers who will voluntarily work all of them, giving workers as far as possible the choice of public holidays they want to work (although in this case the increment is not as much as 75%), and setting an annual maximum of 1,690 hours, when the legal maximum is 1,827 hours. The Collective Agreement itself establishes more favourable rules for workers in terms of leave, rest periods, and public holidays; its Article 6, as is normally the case in all Collective Agreements, includes an inseverability clause, making the agreement an indivisible unit, so that if it is declared totally or partially void (which would happen if the appeal was accepted) it would become ineffective as a whole and would have to be renegotiated by the parties.

In short, the aim is to apply a regulation of mandatory minimums designed for special cases, which must be understood valid for these cases, but not for a metropolitan public transport company where work has of necessity to be done on public holidays. There is detailed regulation of this question in the company's Collective Agreement, which has in fact been dealt with in two successive earlier Agreements, those of 1998-2001 and 2002-2004. Its content has changed over time, and it does not only deal with remuneration, but is also linked to other multiple questions such as the maximum annual working hours, remunerations, bonuses, etc. as a result of the willingness of the parties to act under the statutory character given by Article 37.1 of the Constitution.

Other judgments related to this situation are:

Supreme Court (Labour Division, Section 1). Judgment of 17 December 2012 (JUR\2013\13550), relating to the non-Sunday public holiday of San José on 19 March in the region of Valencia, and whether this gives right to a day off, as established by the Collective Agreement for public holidays that are national in nature, among which this is

included. It does lose its status because of the fact that it is also considered a traditional holiday in the region of Valencia; the benefit of a free day would also be applied to the two possible public holidays with a regional tradition that replace two national holidays in other regions.

Supreme Court (Labour Division, Section 1). Judgment of 20 April 2010 (RJ\2010\4666), on compensatory rest periods on public holidays during the working week: they may be set on the company's compensated work calendars, provided that they do not exceed the working hours established by collective agreement.

With respect to the public administration services, Article 50 of the EBEP regulates the holidays of civil servants and determines that they have the right to twenty-two working days of paid holiday in the whole calendar year, or the days corresponding proportionally if they have worked for less than a year.

It also states that the system of working hours, leave and holidays for non-civil-service employees will be subject to the EBEP and the corresponding labour legislation. Article 38 of the TRLET regulates the system of annual holidays, establishing that:

> *1. The period of annual paid holidays may not be replaced by financial compensation, and is that agreed by collective agreement or individual contract. In no case may be less than thirty calendar days.*
>
> *2. The period or periods of these holidays shall be set by joint agreement between the employer and worker, under the provisions covering annual planning of holidays in any collective agreements applicable.*
>
> *In the case of disagreement between the parties, the competent jurisdiction shall determine the date for the corresponding holidays and its decision may not be appealed. The proceedings shall be summary and dealt with as a matter of priority.*
>
> *3. The holiday schedule shall be established by each company. Employees shall be made aware of the dates to which they are entitled at least two months before the start.*
>
> *When the holiday period set out in the company's holiday calendar referred to in the previous paragraph coincides with a temporary incapacity resulting from pregnancy, childbirth or breastfeeding, or with a period of suspension of the employment contract under Article 48.4 and 48.bis of this Law, employees shall be entitled to take their holidays at a time other than the period of temporary incapacity or leave to which they are entitled under this provision, following the period of suspension, even if the calendar year to which that leave relates has ended.*
>
> *If the holiday period coincides with a temporary incapacity for reasons other than those stipulated in the above paragraph that makes it impossible for the worker to take a holiday, either wholly or partially, during the calendar year corresponding, the workers may do so once their incapacity ends and provided that not more than 18 months have elapsed since the end of the year in which the holidays were due.*

With respect to holidays for employees within the scope of application of the Single Collective Agreement for non-civil-service employees of the General Administration of the State, Article 45 of the Agreement states:

> ***1.** Annual paid holidays shall be of one calendar month or twenty-two working days per complete year of service, or proportional to the time of actual service.*

They must be taken by employees within the calendar year and up to 15 January of the following year, in accordance with the schedule set up by the management of each department or body, following consultation with the workers' representatives. The employees whose contract terminates during the year shall have the right to take the proportional part of the corresponding holidays, or to receive payment for the holidays if they cannot take them. For these purposes, Saturdays are not considered working days, except for cases of special working hours.

If the years of service indicated below are completed, employees have the right to receive the corresponding annual holidays:

- Fifteen years of service: Twenty-three working days
- Twenty years of service: Twenty-four working days
- Twenty-five years of service: Twenty-five working days
- Thirty or more years of service: Twenty-six working days

This right shall be effective starting in the calendar year following completion of the years of service indicated.

***2.** At the request of the employee, annual holidays may be taken throughout the whole year in minimum periods of five consecutive working days. Any public holidays that fall within the period of the five days in question are not included in the calculation or interrupt them, provided that the corresponding holiday periods are compatible with service requirements, and have been established in the annual schedule drawn up by each ministry or body. When service requirements are alleged as grounds for preventing employees from taking holidays in a particular period, these needs must be communicated to the interested party and to the workers' representatives with the grounds specified in writing. In cases where due to service requirements a period of under 5 days remains to be taken within the specified term, and with the aim of guaranteeing that workers have the working days holidays they are entitled to, such days may be taken provided they do not affect service requirements.*

In case of any disagreement between workers at a place of work with respect to the assignment of holiday periods, rotating holiday periods shall be implemented.

***3.** It establishes the right of parents to accumulate a holiday period in addition to maternity leave, nursing leave or paternity leave, even though the calendar year to which such a period corresponds may have expired. It also recognises this right in the case of adoption and fostering.*

When maternity leave coincides with the holiday period, the calculation of the holiday period shall be interrupted and the holidays may taken once the period of maternity leave has ended, in accordance with the terms indicated in the above paragraph.

***4.** Temporary employees with a contract of less than a year and with the right to 5 or more days of holidays under their contract shall be subject to this regime in the same way as employees with permanent contracts, while those who are entitled to a period of holidays of fewer than 5 days shall take them in consecutive working days; in both cases, in accordance with the conditions established in point 2.*

When holidays have not been requested by the employee, the administration may choose either to grant them at the end of the contractual period, or by the payment of the days corresponding to the employee.

5. *The administration shall regulate the procedure for requesting holidays, after taking into account the views of the workers' representatives on the CIVEA.*

In accordance with the corresponding Delegate Sub-Committees, certain preferences may be established for choosing the time of holidays, although they may be limited in the number of times they can be exercised, for workers with family responsibilities, as well as other types of circumstances.

6. *In the case of temporary incapacity, annual holidays shall be interrupted and may be taken after such incapacity has ended, within the calendar year and up to 15 January of the following year.*

7. *All cases not included in this chapter on holidays, leave and permits, are subject to the general regulations on this matter in Ministerial Order of 15 December 2005, which orders the publication of the Agreement of the General Negotiation Board establishing remuneration and improving working conditions and the professional level of public employees, as well as the resolution of the secretary-general for public services, which stipulates instructions on the working day and working hours of civil employees in the service of the General Administration of the State.*

Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budget stability and boost competitiveness, amends Articles 48 and 50 of Law 7/2007, of 12 April, the Basic Statute for Public-Sector Employees, referring to the leave (Art. 48) and holidays (Art. 50) of public-sector employees with civil-servant status. It reduces the days freely available and withdraws additional days for years of service from both holidays and days of leave taken for private reasons.

It also limits the number of days available for personal matters and additional days to those freely available that may have been established by the public administration services, as well as adopting measures to the same end with respect to employees who do not have the status of civil servants, and with respect to holidays. All this aims to bring the current regulations in labour matters in the public sector closer to those applicable in general in the private sector.

Resolution dated 28 December 2012, issued by the Secretariat of State for Public Administrations, ordering instructions on working hours and the timetable of employees working for the General Administration of the State and its public bodies, lays down that each calendar year the paid holidays shall have a duration of 22 working days per each complete year of service, or the days corresponding proportionally if the period of service is less than a year. These holidays must be taken, on application and provided they are compatible with the service requirements, within the calendar year and up to 15 January of the following year, in minimum periods of 5 consecutive working days. Without prejudice to the above, and provided that the service requirements allow it, employees may request to take individual days of holiday, up to a total of 5 working days per calendar year.

At least half of the holidays must be taken between the days of 15 June and 15 September, unless the work calendar determines other periods in accordance with the particular service requirements in each area.

When holidays coincide with a situation of temporary incapacity, risk during breastfeeding, risk during pregnancy, maternity or paternity leave or accumulated nursing leave, the holiday period may be taken at another time.

If the above situations prevent the holidays from being taken within the calendar year corresponding, they may be taken in another calendar year. In the case of temporary

incapacity, the holiday period may be taken once this incapacity has ended, and provided that not more than 18 months have expired since the end of the year in which the entitlement to holidays was generated.

If maternity or paternity leave, or a situation of temporary incapacity should arise while the employee is taking the authorised holiday, the holiday period shall be interrupted and the period remaining may be taken at another time. If the duration of the leave indicated above, or the situation itself, prevents holidays being taken with the calendar year corresponding, they may be taken in the next calendar year.

Article 2§4 Reduced working hours or additional paid holidays for workers engaged in dangerous or unhealthy occupations

In this case the ECSR does not consider that there is a lack of conformity, but it again asks in what sectors or activities reduced working hours have been established by collective agreement or by decision of the labour authority.

The regulations limiting working time or time of exposure to a particular agent or in a particular activity have been referred to in previous reports on the European Social Charter, and they continue to be applied according to the following terms:

With respect to collective agreements, the accumulated data on agreements relating to different aspects of working hours are attached. They come from statistical information relating to working conditions and labour relations held by the Ministry of Employment and Social Security, containing the statistics on collective bargaining agreements, referring to those registered from 1 January 2009 to December 2012 (716LB-INFORMATION ON CLAUSES RELATING TO WORKING HOURS).

With respect to the action of the labour authority, the imposition on a company or sector of a limitation to working hours as a way of preventing occupational risks or protecting against them is a result of the principles for preventive action included under Article 15, in relation to Articles 7 and 9 of Law 31/1995, of 8 November, on occupational risk prevention. The Labour and Social Security Inspectorate can provide any information necessary on the actions in this respect during this period. Law on occupational risk prevention.

Article 34 of the law on occupational risk prevention stipulates that all workers have the right to take part in the company with respect to questions related to occupational risk prevention. In companies or workplaces with **six or more workers**, their participation is channelled through their representatives.

Article 35 of this law regulates the role of Prevention Delegates, who are the workers' representatives with specific functions in occupational risk prevention. The law lays down that they must be appointed by and from the employee representatives in accordance with the following scale:

Employees:	Prevention Delegates
50 to 100	2
101 to 500	3
501 to 1,000	4
1,001 to 2,000	5

2,001 to 3,000	6
3,001 to 4,000	7
4,001 or more	8

In companies of up to **thirty employees** the Prevention Delegate shall be the Staff Delegate and in companies of **thirty-one to forty-nine employees** the Prevention Delegate shall be chosen from among the Staff Delegates.

Article 38 regulates the role of the **Health and Safety Committee**, which shall be created in all companies or workplaces with **50 or more employees.**

With respect to the **way of calculating the number of employees**, Article 35 of the Law on occupational risk prevention lays down that for the purpose of determining the number of Prevention Delegates, the workforce **is calculated** as follows:

"...**Those contracted for a period of up to a year** shall be calculated according to the number of days worked during the year before the appointment. **Each two hundred days worked or fraction thereof** shall be calculated as another worker."

In addition, **Article 72 of the Workers' Statute** lays down that with respect to the representation of workers who provide services in **on a permanent but non-continuous basis and non-permanent workers**, the number of representatives will be determined by the following:

- Those who provide services in permanent but non-continuous work and workers linked by a fixed-term contract of more than a year shall be counted as permanent workers in the workforce.
- Those contracted for a period of up to a year shall be calculated according to the number of days worked during the year before the call for elections. Each two hundred days worked or fraction thereof shall be calculated as another worker.

It is important to note that the reduction of working hours is one of the possible measures that may be adopted with the aim of addressing the risks affecting fertility, pregnancy or breastfeeding. This measure has to be understood within the procedure for managing occupational risk prevention. Such management first involves determining the risks associated with the performance of particular jobs.

Although the risks for fertility, the pregnant mother, foetus or breastfeeding mother are more common in certain activities or sectors, it will in any event be the assessment of risks of particular occupations that detects the presence of such specific risks and the need to adopt appropriate measures to annul or reduce such risks as far as possible. Once the risk assessment has been carried out, and the presence of risks for fertility, pregnancy or breastfeeding have been detected, bearing in mind other factors such as the clinical state of the worker in question or the existence of occupations without risk, the decision may be taken to reduce exposure times to the hazardous agent involved, reduce working hours or change the occupation (among other possible measures).

Thus the adoption of this kind of measure consisting of a reduction in working hours has to be understood in the context of management of risk situations for fertility, pregnancy or breastfeeding. This management is based on the following considerations:

a) The regulations on occupational risk prevention are inspired by the **principle of adapting work to the person and of each person to the occupation**. Thus among the principles for preventive action, Article 15 1 d) of Law 31/1995, of 8 November, on occupational risk prevention, provides the following: "Adapt work

to the **person**, in particular with respect to occupations, as well as the choice of equipment and methods of work and production; with the particular aim of reducing monotonous and repetitive work and reducing the effects of such work on health."

b) This principle is reflected in Articles 25 and 26 of Law 31/1995, of 8 November, on occupational risk prevention, in relation to fertility, protection of pregnancy and breastfeeding. The assessment of labour risks must take note of all possible interactions and the effects of work on fertility, pregnancy and breastfeeding.
c) The protection provided for fertility, pregnancy and breastfeeding and regulated by Articles 25 and 26 of Law 31/1995, of 8 November, on occupational risk prevention, is implemented with respect to protection for pregnancy and breastfeeding in Royal Decree 295/2009, of 6 March. This Royal Decree regulates the financial benefits available under the Social Security system for maternity, paternity, risk during pregnancy and risk during breastfeeding and regulates the procedure for recognising benefits in these cases.

In accordance with the regulations mentioned above, the management of this kind of risk for pregnancy and breastfeeding would involve:

1. Initial assessment of risks, including identifying and assessing the risks for maternity in all occupations, whether they are taken by a woman or not.
2. If in the initial assessment of risks, some risk is identified in the company or workplace that affects fertility, as soon as the pregnancy, recent birth or breastfeeding is notified, an additional risk assessment has to be carried out on the occupation identified as at risk in the initial risk assessment in order to analyse the nature, level and duration of exposure, as well as the worker's needs.
3. If this additional assessment identifies or detects the existence of any risk for the worker, the following steps must be taken:

    a) First, an attempt must be made to eliminate the risk.
    b) Second, if it is impossible to eliminate the risk, an attempt must be made to adapt the working conditions and time, including a restriction on tasks involving risk.
    c) Third, if the adaptation of the occupation is not possible, a change of occupation must be attempted to one that does not involve risk. In this cases the provisions relating to functional mobility shall be applied.
    d) Fourth, and as a last resort, if it is not possible to change the occupation, the contract must be suspended on the grounds of risk during pregnancy, with an application for payment of Social Security benefits under Royal Decree 295/2009, of 6 March, regulating financial benefits in the Social Security system for maternity, paternity, risk during pregnancy and risk during breastfeeding.

Thus a reduction of working hours is, according the current legislation in the Kingdom of Spain, one of the possible measures that can be adopted for conditions under which work is provided, under the principle explained of adapting work to the person and each person to the occupation. This measure could be considered if it is were possible to eliminate the risk for maternity or breastfeeding and such adaptation of the occupation were possible. Otherwise an attempt must be made to move the worker to an occupation that does not involve risk; and if this is not possible, to suspend the contract and apply for Social Security benefits as explained.

The reduction of working hours is thus a measure that may be adopted according to whether a number of circumstances occur, so that this type of measure may not be

applicable in all cases mechanically or automatically, as a number of factors have to be taken into account, such as the risks associated with the occupation, the duration of the pregnancy, and the clinical situation of the employee in question.

More specifically, Royal Decree 39/1997, of 17 January, approving the Regulation of prevention services[39], specifies that an employee who is pregnant or breastfeeding may not carry out activities that represent a risk of exposure to the agents or working conditions included on the non-exhaustive list of part A of its Annexes VII and VIII when, in accordance with the conclusions resulting from the risk assessment, this may endanger the health or safety of the foetus. It also specifies that while breastfeeding the employee may not carry out activities that represent risk of exposure to the agents or working conditions on the non-exhaustive list in Annexes VII and VIII, part B, when the risk assessment suggests that this could endanger her health or safety, or that of the child, during breastfeeding.

In addition to the above, our legal system includes a number of laws that refer explicitly to protection against risks for fertility and maternity. Among them are the following:

- Royal Decree 664/1997, of 12 May, on the protection of workers against risks related to exposure to biological agents.
- Royal Decree 1311/2005, of 4 November, on the protection of health and safety of workers against risks deriving from, or that may derive from, exposure to mechanical vibration.
- Royal Decree 363/1995, of 10 March, approving the Regulation on the notification of new substances and classification, packaging and labelling, as well as Royal Decree 255/2003, and the CLP Regulation (EC) 1272/2008 on classification, labelling and packaging, which adapts the Globally Harmonised System promoted by the United Nations and promoted by the ILO to European Union law. It establishes the hazard statements **H** (replacing **R** for Risk) and the precautionary statements **P** (replacing **S** for Safety).
- Regulation 1907/2006 of the European Parliament and of the Council, of 18 December 2008, concerning the Regulation, Evaluation, Authorisation and Restriction of chemicals (REACH).
- Royal Decree 783/2001, of 6 July, approving the Regulation on health protection against ionising radiation.
- Royal Decree 1085/2009, of 3 July, approving the Regulation on the installation and use of X-ray equipment for medical diagnostic purposes.
- Royal Decree 815/2001, of 13 July, on the justification of the use of ionising radiation for radiological protection of people liable to medical exposure.

Specific legal limitations in certain sectors related to pregnancy are in place in the maritime and air navigation sectors as follows:

- Article 6 of Royal Decree 1696/2007, of 14 December, regulating medical examinations on marine vessels, relating to "fitness", explains in point six: “6. When a medical examination on a seagoing vessel detects a worker is pregnant, the doctor discovering this shall determine her fitness taking into account her biological condition and the limitations imposed by the occupation to be carried out on board. If the party in question receives the classification "not fit" or "fit with restrictions", and provided that she is an active member of the crew, the doctor recognising the fact

[39] This provision can be accessed online at http://www.boe.es/boe/dias/1997/01/31/pdfs/A03031-03045.pdf

shall pass this information on to the doctor responsible for initiating proceedings under Article 26 of Law 31/1995, of 8 November."

The Royal Decree itself goes into more detail in its "Annex II. Criteria for evaluating fitness to embark", which establishes the following as a process for special consideration: "2.15 Pregnancy. Workers with a favourable report from the specialist may be fit with restrictions, provided an adequate monitoring of the pregnancy can be made, there is no exposure to physical, chemical or biological risks, and when it is not incompatible with the performance of normal tasks. In any event, the accreditation of fitness is only valid up to 14 weeks before the probable date of the birth." Otherwise, it impossible to join the crew on the vessel, as the accreditation of being "fit to sail" derived from a prior medical examination carried out by health personnel designated by the Social Institute for the Marine, is an essential requirement for dispatching the vessel under Order of 18 January 2000, issued by the Ministry of Public Works.

- With respect to flight crew, ORDER/FOM/1267/2008, of 28 April, amending Order of 21 March 2000, and order FOM/2157/2003, of 18 July, regulate various requirements for licences for the flight crew of civil aircraft and helicopters, relating to medical and aeronautical organisation and the authorisation of medical and aeronautical centres and examining doctors. Its sets forth the specific means of obtaining and maintaining licences established by Royal Decree 270/2000, of 25 February, determining the conditions for working as flight crew in civil aircraft, and establishes that flight crew must be subject to certain medical tests before obtaining the aeronautical medical certificate of fitness pursuant to Article 4 of the Royal Decree.

  ORDER/FOM/1267/2008, of 28 April, amending Order of 21 March 2000, and Order FOM/2157/2003, of 18 July, regulating various licence requirements for the flight crew of civil aircraft and helicopters, with respect to the aeronautical and medical organisation and authorisation of aeronautical medical centres and medical examiners, provides medical requirements that are related to the situation of pregnancy in its Annex on "Joint aviation requirements (JAR) JAR-FCL3 for obtaining and renewing the licence of flight crew". JAR-FCL 3.040 sets out the obligation to inform in writing in case of pregnancy. The medical certificate may be suspended or the suspension lifted in accordance with the protocol under this rule. Among the questions dealt with by JAR-FCL 3.195 and JAR-FCL 3.315 are the following: *"If obstetric evaluation indicates a completely normal pregnancy, the applicant may be assessed as fit until the end of the 26th week of gestation, in accordance with paragraph 1 Appendix 8 to Subpart B by AMS, AMC or AME."*

Thus, in conclusion: the decision that an occupation is compatible or not with the state of pregnancy of a worker may not be made mechanically or automatically, based exclusively on the number of weeks of gestation. It must be done in relation to the pregnancy, its duration and other circumstances related to it, as well as the clinical situation of the worker in question, the characteristics of the activity carried out, the conditions of the occupation that the worker must carry out, and the risks that this may involve for her situation (identified through the risk assessment). As a result of this process, the worker may be granted benefits although she has not reached the week of pregnancy that the SEGO[40] report "recommends" for interrupting working activity. This is the same conclusion reached in the document published by the National Institute for Health and Safety at Work

[40] SEGO: The Spanish Society of Gynaecology and Obstetrics.

(I.N.S.H.T.) on its website (www.insht.es), "Guidelines for assessing risks and protection for maternity at work."

The only exceptions in this respect are what is set forth in Royal Decree 1696/2007, of 14 December, regulating medical examinations before marine embarkation in the case of the applicant's pregnancy, and ORDER/FOM/1267/2008, of 28 April, amending Order of 21 March 2000 and Order FOM/2157/2003, of 18 July, regulating various requirements for licences for flight crew on civil aircraft and helicopters, relating to the aeronautical medical organisation and authorisation of aeronautical medical centres and medical examiners.

With respect to the public services, for employees who do not have civil servant status in the General Administration of the State, Article 36 of the Law on the Statute of Public-Sector Workers (TRLET) is applicable, regulating the system of night work, shift work and the pattern of work. For night workers it states: "Working hours for night workers may not exceed eight hours per day on average, within a reference period of 15 days. These workers may not do overtime." In addition, the government "may establish additional limits and guarantees to those included in this Article for night work in certain activities or for certain categories of workers, according to the risks involved for their health and safety."

With respect to shift work, the Article states that "In companies where the production process is continuous for 24 hours per day, work organisation of the shifts shall take into account rotation and no worker shall be more than two consecutive weeks on the night shift, unless he or she expressly requests this." It adds that:

> *Employers must guarantee that the night workers employed have free health examinations before taking on night work and after it, at regular intervals, under the terms established in the specific regulations on this matter. Night workers who have recognised health problems linked to night work shall have the right to work in a daytime occupation in the company for which they are professionally fit. The change in the occupation shall be carried out in accordance with Articles 39 and 41 of this Law, as appropriate.*
>
> *5. The employer who organises work in the company according to a certain pattern of work must take into account the general principle of a worker's adaptation to work, particular in the case of reducing monotonous and repetitive work according to the type of activity and the health and safety requirements of workers. These requirements must be taken into account particularly when determining rest periods during the working day.*

In addition, Royal Decree 1561/1995, of 21 September, on special working hours, remains in force in terms of its application to occupations in the General Administration of the State. It has to be recalled in this respect that the Single Collective Agreement for non-civil-service employees who in the General Administration of the State establishes in its Sixth Transitional Provision that "All the systems of working hours and special hours currently in force remain in force."Article 6 of Resolution of 28 December 2012, issued by the Secretariat of State for Public Administrations, giving instructions on working hours and work schedules for employees of the General Administration of the State and its public bodies, establishes working hours and special hours as follows:

> *6.1 In offices providing information and services to the public, as well as registries, as determined by the corresponding work calendar, the opening hours shall be continuous from 09.00 to 17.30, Monday to Friday, and from 09.00 to 14.00 on Saturdays, unless the work calendar determines other hours according to the special nature of the services provided in each area. Staff providing services in these offices must comply with the timetable established in*

section 3.2, with the essential adaptations for service cover on Friday evenings and Saturday mornings.

6.2 Other working hours and special hours that may be worked exceptionally for the purposes of providing the service, must be done in certain functions or places of work, following negotiations with the trade unions in the corresponding area, and subject to the authorisation of this Secretariat of State.

6.3 The working hours and special hours currently in force and authorised, shall be respected under the same conditions in all aspects that do not contradict this Resolution.

Article 2§5. To ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

Article 47 of the EBEP attributes to the corresponding public administration services the responsibility for establishing the general and special working hours for its employees with civil-service status, whether full-time or part-time.

Article 37 of TRLET regulates weekly rest periods, public holidays and leave for employees of the General Administration of the State without civil service status:

1. *Workers shall have the right to a minimum weekly rest period, accruable for periods of up to fourteen days, of an uninterrupted one day and a half, which, as a general rule, shall include Saturday afternoon, or Monday morning and the whole day Sunday. The duration of the weekly rest period for minors under the age of 18 shall be at least two full and consecutive days.*

The weekly rest period provided for by Article 34.7 is applicable in terms of extensions and reductions, as well as to set the alternative systems of rest periods for specific activities.

2. *Public holidays, which shall be paid and not accruable, may not exceed fourteen per year, of which two shall be local. In any event, the following shall be national public holidays: Christmas Day, New Year's Day, 1 May (Labour Day) and 12 October (Spain's National Holiday).*

Respecting the stipulations of the above paragraph, the government may transfer national holidays falling on Monday to Friday to Monday; and the rest period corresponding to public holidays falling on a Sunday is all times moved to the Monday immediately following.

Within the annual limit of fourteen public holidays, the autonomous regions may decide on holidays they recognise by tradition, and replace those national holidays that are determined by law, and in any event, those that are transferred to Monday. They may also make use of the power to transfer holidays to Mondays as stipulated in the above paragraph.

If any autonomous region cannot establish one of its traditional holidays as not enough national holidays fall on a Sunday, it may on the year this occurs add one more public holiday, which will be accruable, up to a maximum of fourteen.

Article 38 of the **Single Collective Agreement** for non-civil-service employees in the General Administration of the State, provides that "The annual distribution of working hours

and the daily and weekly determination of timetables and shifts for employees shall depend on the nature of the occupation and the functions of the workplace. This distribution shall be determined through the work calendar that is approved every year following negotiations with the trade unions by the departments and bodies affected, pursuant to Article 34 of the consolidated text of the Law on the Workers' Statute and the Regulation corresponding to the Secretariat General for the Public Administration. The aim must be for the work calendar to be approved before 15 February of each year.

Resolution of 28 December 2012, issued by the Secretariat of State for Public Administrations, which gives instructions on working hours and timetables of employees working for the General Administration of the State and their public bodies, establishes that the work calendar is the technical instrument through which the working hours are distributed and timetables are set, in accordance with the provisions of this Resolution and following negotiation with the workers' representatives within the framework of the negotiation derived from the Basic Statute for Public-Sector Employees, the Single Collective Agreement for non-civil-service employees in the General Administration of the State and the other agreements included within the scope of this instruction.

In any event, the work calendar must respect a series of minimum conditions such as the duration of general working hours, established at 37 and a half hours per week, the set timetable for attendance from 09.00 to 14.30 hours; and the number of public holidays that are paid and not accruable, and which may not exceed those established by the law. It lays down the following distribution of working hours:

> *a) Morning hours. The fixed timetable for attendance for the job shall be from 09.00 to 14.30 hours from Monday to Friday. The remaining time up to the weekly working hours shall be flexible, between 07.30 and 09.00 Mondays to Fridays and between 14.30 and 18.00 Mondays to Thursdays, as well as between 14.30 and 15.30 hours on Fridays.*
>
> *b) Morning and afternoon working hours. The fixed timetable for presence for the job shall be from 09.00 to 17.00 hours on Monday to Friday, with a break for lunch that shall not be counted as actual work and that shall be a minimum of half an hour; and from 09.00 to 14.30 on Fridays, without prejudice to the timetable applicable to staff working in offices that are continuously open to the public and that are subject to a special regulation. The rest of the working hours, up to the total of thirty-seven and a half or forty, according to the system, shall be flexible, and between 07.30 and 09.00 and between 17.00 and 18.00 hours from Mondays to Thursdays, and between 07.30 and 09.00 and 14.30 and 15.30 hours on Fridays.*

It also regulates special working hours and timetables as follows:

> *"In offices providing information and service to the public and registries, as determined by the corresponding work calendar, the opening hours shall be continuous from 09.00 to 17.30, Monday to Friday, and from 09.00 to 14.00 on Saturdays, unless the work calendar determines other hours according to the special nature of the services provided in each area. Staff providing services in these offices must comply with the timetable established in section 3.2, with the essential adaptations for service cover on Friday evenings and Saturday mornings.*

Finally, it stipulates that:

On 24 and 31 December the public offices shall be closed, except for the information services, the general registry and all those services included in section 1.2 of this Resolution.

The work calendars shall include two days of leave when the days 24 and 31 December fall on a public holiday, Saturday or non-working day.

At the same time, the work calendars shall each calendar year include, at most, one day of leave when one or more public holidays that are national in nature and paid but not accruable and not replaceable by the autonomous regions, fall on a Saturday that year.

Article 4§1. Right to decent remuneration

With respect to this section referring to fair or decent remuneration, the ECSR observes that the information requested on the net value of the minimum and average wages has not been supplied. It also says that the minimum wage continues to be very low, so in its opinion it is not fair.

This document and the previous documents report on the minimum interprofessional wage current each year. The description of the minimum level of wages as unfair must be based on an analysis of the general conditions of the Spanish economy, and at the same time, must contribute data related to this minimum remuneration in other similar countries to ours and other significant countries elsewhere. In this way we can assess the scope of the ECSR's "non-conformity" and to try to find a way of achieving the "conformity" of the ECSR.

With respect to remuneration **of non-civil-servant employees** in the public administration services, Law 7/2007 of the EBEP specifies that it shall be determined according to labour legislation, the collective agreement applicable and the employment contract. Article 27 of the TRLET establishes that the government shall set the minimum wage every year following consultation with the most representative trade unions and employers' associations, taking into account the following: a) the consumer price index; b) the level of average national productivity; c) the increased participation of labour in the national income; and d) the general economic situation. It also stipulates that this wage is not seizable in its entirety.

In compliance with this mandate, Royal Decree 1717/2012, of 28 December, set the minimum interprofessional wage for 2013. As established by the Royal Decree, the amounts which represents an increase of 0.6% on the figure current between 1 January and 31 December 2012, is the result of taking into consideration all the factors included in Article 27.1 of the Workers' Statute mentioned above.

The increase provided for by the Royal Decree is a response to the difficult economic situation, which obliges the adoption of wage policies for 2013 that can contribute to the priority objective of economic recovery and job creation; but at the same time, to the recognition of a need for improvement, following the freeze on the amount in 2012. The increase is also in line with the guideline for wage increases in 2013 included in the II Agreement for Employment and Collective Bargaining signed by the social partners for 2012, 2013 and 2014.

Another point is that the III Single Agreement for non-civil-servant employees in the General Administration of the State considers wages to be the total economic benefits received by workers, in cash or in kind, for the professional provision of labour services to an employer; whether paid for actual work, whatever the form of payment, or for rest periods that are calculated as working time.

At the same time it determines that the base salary, extra payments, seniority, personal seniority allowance, personal allowance for change in wage scheme, the value of overtime

and the location compensation allowance, shall be updated every year, with effect from 1 January, by the percentage of general increase in wages set for all public employees working for the General Administration of the State.

The amounts of basic remuneration and increase in overall amounts of supplementary allowances for civil servants, as well as the increase in the wage bill of employees who do not have civil servant status, should be reflected for each budget year in the corresponding budget law. In the period of reference these changes are reflected in the following laws:

- Law 2/2008 of 23 December, the state budget for 2009
- Law 26/2009 of 23 December, the state budget for 2010
- Law 39/2010 of 22 December, the state budget for 2011
- Law 2/2012 of 29 June, the state budget for 2012

The table below shows as an example remuneration in the Ministry of Defence.

GROSS REMUNERATION RECEIVED BY CIVIL EMPLOYEES OF THE MINISTRY OF DEFENCE, 2009-2012

MAXIMUM AMOUNTS	**2009**	**2010**	**2011**	**2012**
CIVIL SERVANTS	82,627.99	80,209.91	76,106.96	71,821.41
EMPLOYEES GOVERNED BY STAFF REGULATIONS	----------	74,208.39	75,649.07	76,362.54
OTHER EMPLOYEES	65,535.83	67,261.69	61,157.74	43,721.39

MINIMUM AMOUNTS	**2009**	**2010**	**2011**	**2012**
CIVIL SERVANTS	16,698.62	17,085.72	17,046.88	16,451.96
EMPLOYEES GOVERNED BY STAFF REGULATIONS	----------	13,725.69	14,040.65	13,414.52
OTHER EMPLOYEES	14,374.44	14,433.60	13,698.02	12,719.59

The rise in the general domestic CPI calculated according to the 2011 base from January 2009 to December 2012 was 10.7%.

Article 4§2. To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

The ECSR asks with respect to the remuneration for overtime, what proportion of workers is covered by collective agreements that provide for an increased rate of remuneration or a longer rest period.

The attached table of data from the source already mentioned provides this information (716B-INFORMATION ON CLAUSES RELATING TO OVERTIME).

Within the scope of the **public administration services**, overtime is not regulated as a remuneration item for employees with the status of civil servants. However, it is regulated as "payment for extraordinary services". Article 23.3 d) of **Law 30/1984, of 2 August**, regulates such payments as a supplementary wage allowance for "extraordinary services carried out outside normal working hours", adding that "in no case may the amount be fixed or their payment regular."

In addition, with respect to non-civil-servant employees in the General Administration of the State, it should be taken into account that Article 35 of the TRLET regulates overtime in the following terms:

1. Overtime shall be considered to be all working hours that are worked above the maximum ordinary working hours, as determined according under the above Article. Through collective agreement or, if there is none, individual contract, overtime can either be paid to the amount set, which in no case may be below the value of the ordinary working hour, or compensated by an equivalent paid rest period. If there is no agreement on this matter, overtime is understood to be compensated by a rest period within the four months of when it was worked.
2. The number of hours overtime may not be over 80 per year, except for the case set out in section 3 of this article. For employees who have working hours that in annual terms are lower than the general working hours of the company due to the type or duration of their contracts, the maximum annual number of hours of overtime is reduced by the proportion between the two totals.

The overtime hours that have been compensated by rest periods within four months are not counted for the purpose of the above paragraph. The government may suppress or reduce the maximum number of overtime hours for a determined period, either in general or for certain branches of activity or geographical areas, to increase job opportunities for employees who have been made unemployed.

3. Extra hours worked to prevent or repair accidents and other extraordinary and urgent damage shall not be taken into account in terms of the maximum duration of ordinary working hours, or for the calculation of the maximum number of authorised overtime hours, without prejudice to their compensation as overtime.

4. Overtime shall be voluntary, unless it has been agreed in a collective agreement or individual employment contract, within the limits of section 2 of this article.
5. For the purpose of calculating overtime, the working hours of each employee shall be recorded every day and totalled for the remuneration period. A copy of the summary is provided for the worker in the corresponding wage slip.

The **Single Collective Agreement for non-civil-service employees in the General Administration of the State** implements the provisions of TRLET and establishes the system of overtime in Article 44. It provides that overtime shall be compensated preferentially with rest periods that are accruable at two hours per each hour worked, except in cases of night work or work on public holidays, when the compensation shall be two and a half hours. It may be paid in cash, under Article 73 of the Agreement itself.

If the overtime is paid for by rest periods, such periods must in all cases be within the four months following the overtime worked, in accordance with Article 35 of the Workers' Statute.

Finally, Article 26 of **Law 17/2012**, of 27 December, the state budget for 2013, includes the following regulation with respect to the supplementary productivity bonus for civil servants:

E) The productivity bonus, which will remunerate special performance, extraordinary activity and dedication and the interest or initiative with which the jobs are carried out.

Each ministerial department shall determine, within the total available credit, which will not increase at all in annual terms with respect to the figure established on 31 December 2012, the partial amounts assigned to the different organic territorial, functional or occupational areas. At the same time, it will

determine the criteria for distributing and setting the individual amounts of the productivity supplement, in accordance with the following rules:

1. Productivity shall be evaluated according to the objective circumstances related to the type of occupation and its performance; and, where applicable, the level of participation in the achievement of results or targets assigned to the corresponding programme.

2. In no case may the amounts assigned as a productivity bonus for a period of time originate individual rights with respect to the evaluations or estimates corresponding to successive periods.

F) The remuneration for extraordinary services, which will be granted by the ministerial departments or public bodies within the credits assigned for this purpose and which shall not increase with respect to those assigned as of 31 December 2012.

These remunerations shall be exceptional in nature and may only be recognised for extraordinary services outside normal working hours; in no case may they be fixed in their amount or regular in their performance, nor originate individual rights in successive periods.

It has to be taken into account that Article 2 of **Royal Decree-Law 20/2012**, of 13 July, on measures to guarantee budget stability and boost competitiveness, provides for a guaranteed remuneration deemed sufficient for these employees, as it determines that the reduction under Article shall not be applicable to those public employees whose remuneration for total working hours, excluding incentives for performance, do not reach 1.5 times the minimum wage established by Royal Decree 1888/2011, of 30 December.

With reference to non-civil-servant employees in the General Administration of the State, according to the **III Collective Agreement on non-civil-servant employees in the General Administration of the State**, any hours that exceed 37.5 hours per week shall be considered overtime.

Overtime shall be compensated preferentially with rest periods that are accruable at two hours per each hour worked, except in cases of night work or work on public holidays, when the compensation shall be two and a half hours. Compensation in the form of rest periods shall in all cases be given within the four months following the overtime worked. Overtime may be paid in cash with a single value per occupational group if this form is determined by agreement.

The amount of overtime hours of non-civil-service employees in the period under consideration was:

AMOUNT	***2009***	***2010***	***2011***	***2012***
GROUP 1	*24.69*	*24.77*	*23.54*	*23.54*
GROUP 2	*20.47*	*20.54*	*19.52*	*19.52*
GROUP 3	*17.15*	*17.21*	*16.35*	*16.35*
GROUP 4	*14.47*	*14.52*	*13.80*	*13.80*
GROUP 5	*12.92*	*12.96*	*12.32*	*12.32*

Article 4§3. To recognise the right of men and women workers to equal pay for work of equal value.

Organic Law 3/2007 on real equality between men and women (LOIEMH) is a framework law in the fight against gender discrimination and for real and effective equality between women and men in all aspects of social life, with particular effect on employment, which is deal with in Title IV.

Of particular interest is Article 43 of the Organic Law, which gives collective bargaining the power to establish positive action measures that favour access by women to jobs and the effective application of the principle of equal treatment and opportunities between women and men. Article 45 of the law provides that: "Companies are obliged to respect equal treatment and opportunities in the area of employment; to this end, they must adopt measures designed to avoid any type of labour discrimination between women and men. These measures should be negotiated, and agreed where appropriate, with the legal representatives of the workers in the form determined by labour law."

Article 46 of this Law regulates the concept and content of the equality plans in companies and defines them as "the ordered set of measures adopted after analysing the situation, designed to achieve equal treatment and opportunities between men and women within the company and eliminate discrimination for reasons of gender." These plans fix the specific objectives of equality to be achieved. To do so, the plans must include questions of "remuneration", among others.

Royal Legislative Decree 5/2000, of 4 August, approving the amended text of the Law on Labour Law Infringements and Penalties, classifies the following as a very serious infringement in Article 8.12: direct or indirect adverse discrimination on matters of "remuneration, working hours, training, promotion and other working conditions, due to circumstances of gender, origin (...)"

Article 17 of the TRLET on "non-discrimination in labour relations" states that "The following shall be deemed null and void: regulations, clauses in collective agreements, individual agreements and unilateral decisions made by the employer that give rise in employment and in the area of remuneration, the working day and other working conditions, to situations of direct or indirect unfavourable discrimination for reasons of age or disability; or to situations of direct or indirect discrimination for reasons of gender, origin, including racial or ethnic origin, marital status, social condition, religion or convictions, political ideas, sexual orientation or condition, membership or non-membership of trade unions and their agreements, family links to people belonging to or related to the company, or language within Spain.

The EBEP also recognises the principle of equality of public-sector employees, and provides in Article 14.i) for an individual right of such employees to "non-discrimination for reasons of birth, racial or ethnic origin, **gender, sex**, or sexual orientation, religion or convictions, opinion, disability, age or any other personal or social condition or circumstance."

Article 63 of **Law 37/2007 on equality** refers to evaluation of equality in public-sector employment. It determines that all the ministerial departments and public bodies must submit information at least on a monthly basis to the Ministry of Labour and Social Affairs and the Ministry of Public Administrations, on the question of the effective application in each of them of the principles of equality between men and women, with by a breakdown by gender of the data and the distribution of their workforce, qualification level, level of location compensation allowance and average remuneration of its staff.

Article 64 regulates the Equality Plan in the General Administration of the State and the public bodies linked to or dependent on it. It determines that the government shall at the start of each term of office, approve a plan for equality between women and men in the General Administration of the State and in the public bodies linked to or dependent on it. The Equality Plan must establish the objectives to be achieved in the area of promoting

equal treatment and opportunities in public employment, as well as the strategies or measures to be adopted for their achievement. Compliance with this plan shall be assessed every year by the Cabinet.

Pursuant to these laws, on 1 June 2011 the BOE published **Resolution of 20 May 2011**, issued by the Secretariat of State for the Civil Service, publishing the Cabinet Resolution of 28 January 2011, approving the I Plan for Equality between Women and Men in the General Administration of the State and in its Public Bodies.

The analysis included in this Plan allows the conclusion to be reached in this matter that basic remuneration of men and women working in the public sector are included in the Law on the state budget, so that there are no differences in the amounts paid. However, in terms of the possible differences in supplementary allowances, it is considered necessary to assess whether the receipt these kinds of allowances is producing differences between women and men. The number of men and women who receive them, as well as the amounts involved, has therefore to be determined for all levels of the public administration services, and approach must be established as one of the key lines of action derived from this Equality Plan.

The monitoring of the level of compliance of this Plan is carried out by the Technical Committee on Equal Treatment between Women and Men of the General Negotiation Board of the General Administration of the State, regulated by Article 36.3 of the EBEP.

In addition, the Secretariat of State for the Civil Service shall prepare an annual report on the application of this Plan with the collaboration of the Secretariat of State for Equality in the Ministry of Health, Social Policy and Equality. The report will then be submitted to the Cabinet.

Article 4§4. To recognise the right of all workers to a reasonable period of notice for termination of employment

With respect to notice of termination of the employment contract, we refer to what is explained in DGT-SGON-696PC, in particular to the fact that we still do not understand the reason why the ECSR considers that the notice must be for a period of more than 15 days and why it should also be applied to the termination of fixed-term contracts of under a year, given that only "reasonable" is specified in the provision.

In the **public administration services**, for non-civil-service employees in the General Administration of the State the expiry of the period agreed for the temporary contract is, as in the private sector, the cause of the termination of the contract, and conditions for extension are specified in Article 49.1.c of the TRLET. This provision determines that the contract will terminate:

> *c) By expiry of the period agreed or the termination of the work or service that is the object of the contract. At the end of the contract, except in cases of probation contracts and training contracts, employees shall have the right to receive a compensation for an amount equivalent to the proportional part of the amount that would result from paying 12 days of wages for each year of service, or that established in the specific law where applicable.*
>
> *Fixed-term contracts that have a maximum established duration, including work experience contracts and training contracts, agreed for under the maximum legal period, shall be understood to be extended automatically until this period is reached, provided there is no repudiation or express extension and the employee continues to provide his or her services.*
>
> *After this maximum duration has expired, or the work or service that is the object of the contract has been carried out, if there is no repudiation and the*

provision of work continues, the contract shall be considered to be tacitly extended for an indefinite period, unless there is proof to the contrary that shows the temporary nature of the service provision.

If the fixed-term employment contract has a duration of more than a year, the party to the contract that repudiates it is obliged to notify the other party of the termination of the contract with minimum notice of fifteen days.

Thus under the regulation the party that repudiates the contract is obliged to give at least 15 days' notice in cases of employment contracts of a fixed term of more than one year.

There have therefore been no changes in this matter, in terms of an obligation to give notice in cases of terminating a fixed-term contract under a year.

Article 5. The right to organise

The ECSR asks about the "collective bargaining fees", whose specific weight may be relatively low among us due to the general effectiveness of collective agreements. The payment always requires acceptance in writing by the worker to pay the fees.

We attach as information related to trade union freedom the document referring to trade-union elections (716LB-ELECCIONES SINDICALES_RESULTADOS_2012).

The ECSR also asks about access by workers' representatives to workplaces. With respect to the situation in practice of the exercise of this right, which is recognised not only to trade unions by Organic Law 11/1985 on Trade Union freedom, but also in the Workers' Statute and the Law on occupational risk prevention to workers' representatives in the exercise of their representative function, the Labour and Social Security Inspectorate should report on this.

In any event, it should be pointed out that, first, in accordance with the provisions of Article 2.1.d) of the Law on Trade Union Freedom, the core of the exercise of trade union activity, whether inside or outside the company, always includes the right to collective bargaining, the exercise of the right to strike, the discussion of individual and collective conflicts and the presentation of candidates for the election of works committees and Staff Delegates, and of the corresponding bodies in the public administration services, under the terms of the corresponding legal provisions. Access to workplaces is an instrumental right arising from the above.

In addition, Article 10 of the same Organic Law refers to the trade union chapters that may be set up by workers who are members of unions with a presence on the works committees or in any representative bodies that may be established in the public administration services. It does not refer exclusively to the "most representative trade unions", which does not mean the same as "representative trade union": the latter term is applicable to all trade unions, as it is in the nature of trade unions to represent the interests of their members.

All trade union delegates, if they do not form part of the works committee, have the same guarantees, which are those legally established for the members of works committees or representative bodies established in the public administration services. In addition, they:

1. Have access to the same information and documentation that the company makes available to the works committee. The trade union delegates are obliged to maintain confidentiality with respect to matters where legally applicable.

2. Attend meetings of the works committees and the company's internal bodies on questions of health and safety, or such representative bodies as may be set up in the public administration services, with voice but no vote.

3. Be heard by the company before it adopts measures of a collective nature that affect workers in general and the members of their trade union in particular, and particularly referring to redundancies and penalties applied to their members.

In addition, it should be pointed out that although access to companies or workplaces is reserved to those who hold elected positions at provincial, regional or state level, in the most representative trade unions (Article 9 of the LOLS), there is nothing preventing workers in the company or workplaces who are members of a trade union that is not classified as most representative from setting up a trade union chapter, under Article 8.1 of the LOLS. In practice this means the presence in the workplace of any trade union organisation, regardless of its level of representation.

Thus, with respect to those trade unions that are not classified as most representative, the provision of Article 77 of the Workers' Statute relating to workers' meetings indicates the following (our underlining):

> *1. In accordance with the provisions of Article 4 of this Law, workers in one company or workplace have the right to come together in a meeting.*
>
> *The meeting may be called by the staff delegates, the works committee for the company or workplace, or by a number of workers representing no less than 33% of the workforce. The meeting shall in any event be chaired by the works committee or the staff delegates jointly, and they will be responsible for it running normally, as well as for the presence at the meeting of people who do not belong to the company. The meeting may only deal with issues that have been included on the agenda beforehand. The chair will communicate notice of the meeting to the employer, together with the names <u>of the people who do not belong to the company</u> and are going to attend the meeting, and it will agree with the employer the best measures to prevent the normal activity of the company from being affected.*
>
> *2. If the whole workforce cannot meet at the same time without harming or affecting normal production, due to shift work, lack of room on the premises, or for any other circumstance, the different partial meetings that are held shall be deemed to be a single meeting and dated on the date of the first."*
>
> This freedom to access workplaces it the object of special protection under Article 8.5 of Royal Legislative Decree 5/2000, approving the amended text of the Law on Labour Law Infringements and Penalties, which classifies the following as a very serious infringement:*"Actions or omissions which prevent the workers, their representatives or trade union chapters from exercising their right of assembly, as established by law or collective agreement.*

Going further into this question, according to Constitutional Court judgment 173/1992, of 29 October[41], relating to the constitutionality of Article 10.1 of the LOLS:

> *(...) Article 10.1 of the LOLS, neither by itself nor in connection with other articles, such as for example 8.1 a), prevents in any way the formation of trade union chapters in any production units, regardless of the form in which the unit is organised and the characteristics of its workforce. In fact, as it does not make the setting up of trade union chapters dependent on any requirement of trade union representativeness, or size of company or workplace, it allows the presence of any trade union in any workplace.*

[41] It can be accessed at: http://www.boe.es/boe/dias/1992/12/01/pdfs/T00037-00040.pdf

As the setting up of chapters is a manifestation of the freedom of trade unions to organise, nothing prevents the chapters from organising themselves, in accordance with the trade union statutes, and choosing their own representatives. In this way, the trade union can be present anywhere where work is carried out and carry out its representative functions (SSTC 61/1989 and 84/1989).

Thus in relation to the question raised by the Committee, we should point out that nothing prevents a trade union that is not the most representative from accessing a workplace, though access will be through the trade union chapter set up by the workers who are members of that trade union and belong to the company or workplace, or through the legal mechanism provided for with respect to workers' meetings.

With respect to the **public administration services**, the conclusions of the European Committee of Social Rights regarding the application of Article 5 of the European Social Charter refer to Article 9.1 of the Organic Law on Trade Union Freedom, which provides for the right of elected representatives at provincial, regional or state level in the most representative trade unions, to attend and access workplaces and participate their trade union's activities or those of the employees as a whole, after notifying the employer, and without the exercise of this right being able to interrupt normal production.

The Committee concludes that the Spanish regulation is not in conformity with Article 5 of the European Social Charter on the grounds that it has not been established that representatives of trade unions other than the most representative have access to the workplace to take part in the activities of their trade union.

In answer to these observations, we have to make clear that the right to trade union freedom recognised under Article 28.1 of the Spanish Constitution, and implemented by the Organic Law on Trade Union Freedom, involves attributing certain guarantees to the workers' representatives that are part of the exercise of trade union activity and the development of their representative functions.

With respect to the content and scope of this right to trade union freedom, we should point to the terms in which the Constitutional Court refers to it. STC 168/1996, of 29 October establishes that:

(...) although a literal reading of Article 28.1 of the Spanish Constitution appears to restrict the content of trade union freedom to an exclusively organisational or associative aspect, a systematic interpretation together with Article 7 of the Spanish Constitution and of the interpretative criterion established by Article 10.2 of the Spanish Constitution, demonstrates its list of rights is not exhaustive; the content of this provision also integrates the functional aspect, the right to trade union activity; in other words, the right of trade unions to exercise activities aimed at the defence, protection and promotion of the interests of workers, in short to use the means of action necessary to comply with the functions that correspond to them under the Constitution. It guarantees them the necessary scope for freedom to organise through instruments of action that they consider most appropriate and effective, within, of course, respect for the Constitution and the Law. Article 28.1 of the Spanish Constitution therefore integrates the right to carry out free trade union activity, including all legal means and without the undue interference of third parties.

The same judgement notes "(...) the twin aspect of trade union chapters, and also of trade union delegates, as internal organisational bodies within the trade union and external representations to which the Law confers certain advantages and prerogatives, which represent corresponding burdens and costs for the company." With respect to the first point, setting up chapters, electing or appointing representatives, spokespersons or

delegates and that these should act in representation of the members, is an exercise of the trade union's internal freedom and self-organisation; and as such the LOLS does not prohibit any trade union or any trade union chapter and may not prevent or restrict it (SSTC 61/1989, 84/1989, 173/1992 [RTC 1992\173] and 292/1993). It forms part of the essential content of trade union freedom and thus the trade union may be present in workplaces and carry out its representative functions there (STC 173/1992) and exercise such activities as may allow the defence and protection of the workers themselves (STC 292/1993). The fact that certain trade union chapters may not by legal imperative have a delegate as provided for in Article 10 of the LOLS does not in any way prevent the exercise of the rights under Article 8.1 of the LOLS through their respective representatives (STC 173/1992).

The right to trade union freedom, in its aspect of trade union action, is recognised for all trade unions regardless of their level of representation, and not only those trade unions that can show the highest level of representation. As a result, the company must allow the activity of trade unions that, in this specific area, would be manifested in freedom of access to workplaces with the aim of exercising trade union business and representation, as regulated by Article 64 of the TRLET, and Article 10 of the LOLS, in relation to the latter, as well as Article 40 of the EBET, and to enjoy the guarantees recognised in Articles 68 of the TRLET and 41 of the EBEP.

Thus this right to access workplaces is not limited only to the most representative trade unions, without prejudice to the fact that the right contained in Article 9.1 of the LOLS represents an additional faculty in favour of people from outside the company.

Article 6.3. Conciliation and arbitration

With respect to paragraph 3: "To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes", with respect to the responsibilities of the Labour and Social Security Inspectorate on this question, there have been no legal changes in relation to its competence in this area. Thus Article 3.1 of the Law Regulating the Labour and Social Security Inspectorate, referring to the inspection function, establishes as one of its responsibilities arbitration, conciliation and mediation in the following terms (Article 3.3 of Law 42/1997):

> *3.1 Conciliation and mediation in conflicts and strikes when accepted by the parties, without prejudice to the stipulations of the Law on Labour Proceedings.*
>
> *3.2 Arbitration in labour conflicts and strikes, or others expressly requested by the parties.*
>
> *3.3 The Inspectorate's arbitration function, without prejudice to the technical functions of information and advice, if requested by any of the parties, cannot be exercised at the same time as the inspection function by the same person who is responsible for this function in the companies subject to its control and supervision.*

The data on the inspection activity in relation to mediation in cases of strikes and collective conflict has been set out in the previous section of this report.

Article 6§4. Collective action

The ECSR asks about Article 10.1 of Royal Decree-Law 17/1977, of 4 March, on labour relations, and whether it restricts the right to strike, citing a court judgement.

It should be pointed out that this first paragraph (not section 1) of Article 10, which regulated the decision by the government to resume labour activity and impose measures to ensure the operation of the public services during a strike, was declared unconstitutional

and void with respect to the attribution of the faculty to the government of imposing the resumption of work, but not in terms of the faculty to begin a mandatory arbitration, provided that such arbitration respects the requirement of impartiality of the arbiters, under point 2 d) of the Supreme Court judgment (Full Session), judgment No. 11/1981, of 8 April (RTC\1981\11).

In other words, this first paragraph is void, and for all purposes has to be taken as non-existent. We repeat that in accordance with the interpretation of the Constitutional Court (originally in 1981), the reasons set out in the first paragraph of Article 10 cited by the ECSR are not sufficient grounds for restricting the right to strike so drastically. However, the Constitution Court does consider the capacity of the government to set up a mandatory arbitration as a way of ending strikes in exceptional cases to be appropriate.

In terms of Article 2 of the Additional Protocol relating to the right of workers to be informed and consulted, suffice to say that Directive 2002/14/EC, of the European Parliament and of the Council, which is referred to, was transposed to the internal legislation by Law 37/2007, of 16 November (referred to above), and this was reported to the ECSR at the time.