



ALLEGATIONS BY THE TRADE UNION CONFEDERATION OF WORKERS' COMMISSIONS (CCOO) AND THE GENERAL UNION OF WORKERS (UGT) REGARDING THE 32nd NATIONAL REPORT SUBMITTED BY THE SPANISH GOVERNMENT TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS, IN RELATION TO COMPLIANCE WITH THE EUROPEAN SOCIAL CHARTER (ESC)

FOCUS GROUP ON EMPLOYMENT, TRAINING AND EQUAL OPPORTUNITIES

- **Articles 1, 9, 10, 15 and 18 of the European Social Charter of 1961, and Article 1 of its Additional Protocol**

(Period from January 1, 2015, to December 31, 2018)

ADDITIONAL INFORMATION REQUIRED IN CONCLUSION XX-1 (2016) OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR)

June 2020

Spain has submitted the 32nd Report, corresponding to the control procedure regarding the application of the European Social Charter of 1961 and the Additional Protocol of May 5, 1988.

Specifically, this is the period for analysing the **Focus group dealing with the application of regulations on EMPLOYMENT, TRAINING and EQUAL OPPORTUNITIES**, which consists of the following articles in the European Social Charter of 1961:

- **Art. 1 RIGHT TO WORK.**
- **Art. 9. RIGHT TO VOCATIONAL GUIDANCE.**
- **Art. 10. RIGHT TO VOCATIONAL TRAINING.**
- **Art. 15. RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT.**
- **Art. 18. RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER CONTRACTING PARTIES.**
- **It also comprises Article 1 of its Additional Protocol of 1988 (RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX).**

The Report likewise includes allegations regarding the **ADDITIONAL INFORMATION REQUIRED FROM THE SPANISH GOVERNMENT, IN OTHER CONCLUSIONS OF THE COMMITTEE OF SOCIAL RIGHTS, IN RELATION TO:**

- **Compensations for discrimination on the grounds of sex and wage transparency measures.**
- **Youth remuneration.**
- **Compensatory measures for workers exposed to hazardous or unhealthy occupations, such as reduced worktime or additional days of paid holidays.**
- **Protection against asbestos, ionising radiation and other dangerous or unhealthy activities such as carcinogenic agents.**

The corresponding reference period is from **January 1, 2015, to December 31, 2018.**

UGT and CCOO are the trade union organisations with the largest representation in national trade union elections that, consequently, enjoy constitutional recognition for the promotion and defence of workers in Spain and abroad, being members of international organisations enjoying participatory status with the Council of Europe. We therefore have sufficient legal capacity for submitting these allegations to the European Committee of Social Rights:

ALLEGATIONS

I. WITH REGARD TO INFRINGEMENTS OF ART. 1. (RIGHT TO WORK).

1. IN RELATION TO ART. 1.1 ESC and the INFORMATION REQUIRED FROM THE SPANISH GOVERNMENT included in p. 2 of the 32nd Report:

A) CONCLUSION OF NON-CONFORMITY ARTICLE 1.1.

- *It is necessary to highlight that previous conclusions of the CSR concluded that*
- *The situation in Spain did not comply with Article 1§1 of the Charter of 1961, since the efforts made in employment policies were not sufficient in order to tackle unemployment and promote job creation.*

We believe that in the period under examination, from 2015 to 2018, the situation has worsened. Job promotion has therefore been insufficient and inefficient with regard to the Spanish Government's legislative and political actions for the following reasons:

First of all, the Spanish Government's Report tries to justify the fulfilment of Art. 1 of the ESC, based on constitutional and legislative recognition regarding the regulation of the right to work, both individually and collectively. Although this is important, it is not sufficient. The legislative framework of the work relationship does not end with individual regulation, but rather the regulation of its collective aspect has an enormous impact on the effective exercising of the said right to work; and even more so in the case of the legislative framework and political instruments that exist with a view to its implementation.

In this regard, the labour reform carried out in 2012, referenced in previous Allegations to previous Spanish Government Reports, in relation to the European Social Charter and certain focus groups, in previous periods, is still having an important impact on the job market, due to its continued existence and to ignoring CCOO and UGT as regards its revocation or, where applicable, the reversion of its most harmful aspects.

Starting from the third year of the labour reform and, therefore, from 2015 and 2016, the real effect of the crisis in the job market went beyond unemployment, affecting the quality of employment and working conditions of those that still have a job and those that are being hired in the recovery phase. A matter that results in greater job insecurity, with more temporary employment, worse working hours, less-qualified jobs and lower wages.

The table below shows the trend in employment figures in Spain from 2011 to 2016:

Número de ocupados en España por sexo, edad, nacionalidad, situación profesional, tipo de contrato y jornada y sector, 2011 – 2016

OCUPADOS (miles)	Media	Media	Media	Media	Media	Media	Dif.
	2011	2012	2013	2014	2015	2016	2011-2016
Ocupados	18.421	17.633	17.139	17.344	17.866	18.342	-79
Hombres	10.152	9.608	9.316	9.443	9.760	10.001	-151
Mujeres	8.269	8.025	7.823	7.902	8.106	8.341	72
Menores de 25 años	1.042	853	763	749	803	820	-222
Mayores de 55 años	2.425	2.445	2.432	2.529	2.743	2.950	525
Españoles	15.830	15.231	14.920	15.155	15.958	15.850	20
Extranjeros	2.300	2.107	1.926	1.845	1.909	1.981	-319
Cuenta propia	3.020	3.051	3.061	3.051	3.087	3.107	87
Asalariados	15.394	14.573	14.069	14.286	14.773	15.228	-166
Sector público	3.277	3.112	2.937	2.926	2.975	3.001	-276
Sector privado	12.117	11.461	11.132	11.360	11.798	12.227	110
Asal. Indefinidos	11.525	11.162	10.814	10.857	11.059	11.260	-265
Asal. Temporales	3.869	3.411	3.256	3.429	3.714	3.968	99
Ocup. tiempo completo	15.923	15.078	14.432	14.586	15.054	15.551	-372
Ocup. tiempo parcial	2.498	2.555	2.707	2.759	2.812	2.791	293
Ocup. agricultura	755	743	736	736	737	775	20
Ocup. industria	2.605	2.484	2.356	2.380	2.482	2.522	-83
Ocup. construcción	1.404	1.161	1.029	993	1.074	1.074	-330
Ocup. servicios	13.658	13.244	13.017	13.235	13.573	13.971	313

Fuente: Gabinete Técnico CEC – UGT a partir de EPA, INE.

At times when there was a certain recovery in employment, in 2015 and 2016, the above table clearly shows that it was temporary employment, as seen in new increases in the temporary employment rate.

The increases in the temporary employment rate, in the two aforementioned years, were the highest in the entire recession process. This shows that the labour reform did not reduce the rate of temporary contracts but even increased it to 26%. It reached 26.8% in 2018.

On the other hand, this has influenced part-time work. In 2017, the “involuntary nature” of part-time work exceeded 60% of this type of work and employment. From 2011 to 2016, the part-time employment rate even increased by 15.3%, with involuntary part-time work rising to 60.5% in 2016.

Furthermore, despite a certain improvement in the economy, the unequal quality of employment has resulted, during the years covered in the Report, in low-quality jobs for those who are “overqualified” and an increase in workers engaged in fake self-employment.

The weight of the group of freelancers in the total number of self-employed amounted to 67.1%, which highlights the need for a solution to job losses; after risking the corresponding compensations for dismissal, they have seen their businesses disappear due to the lack of an adequate economic foundation, with residual income and worse working conditions.

In view of the characteristics of the created jobs, we cannot conclude that the certain improvement in the economy has led to a transformation in the production model or a change in the tendency, enabling sustainable growth and quality jobs in the following years.

In relation to the type of workday, the part-time employment rate in Spain continued to be lower than in the rest of our European partners, far below the part-time employment rates in the United Kingdom, Germany, Austria or Denmark (apart from the Netherlands). The importance

of this data lies, above all, in the involuntary nature of such part-time work. In Spain, Greece and Italy, among other countries, more than half of part-time workers do so involuntarily; a tendency that doubled in Spain during the crisis and now exceeds 60% of part-time work. Thereafter, from 2015 to 2018, there was no increase in the voluntary nature of such employment, with insecurity being the most characteristic feature of part-time work.

LABOUR REFORM: APPLICATIVE PRIORITY OF THE COMPANY AGREEMENT

However, the legislative framework, which was reformed in 2012, as regards both individual and collective rights, has had a deep impact on employment and workers' wages, which worsened from 2015 to 2018; above all, giving applicative priority to the company agreement instead of the state sectorial collective agreement, the one preferred by the legislator in order to unify and better regulate work relations in the different activity sectors.

The applicative priority of the company agreement has promoted the phenomenon of so-called "multiservice companies," companies that, in reality, intervene in labour intermediation, hiring workers at low cost without taking into account working conditions regulated by the corresponding activity's state sectorial agreement.

The externalisation of activities has resulted in an important decrease in costs for companies, while the insecure labour conditions caused by multiservice companies has turned their workers into "poor" employees. A multiservice company does not specialise in any activity segment but merely provides a comprehensive employment service, which covers all types of services. The client company signs a global contract with a multiservice company for it to provide cleaners, gardeners, hotel maids, porters, teleoperators. This situation has been promoted by the applicative priority of the company agreement resulting from the 2012 labour reform; the job insecurity caused by multiservice companies during the years of the report has led to a recession in the sector of temporary employment agencies. The main explanation can be found in the regulation of this latter sector compared to the deregulation of multiservice companies.

Hiring by means of temporary employment agencies was no longer profitable after client companies were obliged to pay temporary workers the same wages as their own employees, as a result of the regulation of temporary employment agencies that made equal wages compulsory. However, subcontracting by means of multiservice companies lets a company pay much lower wages than its own wages, for the same job.

On numerous occasions, UGT and CCOO have asked the Government to revoke the most harmful aspects of the labour reform, due to their adverse impact on employment and effective work; in this regard, Art. 84.2 and Arts. 43 to 45 of the Workers' Statute (WS), and the legal and/or administrative regulation of multiservice companies for their control and monitoring.

In December 2016, the Socialist Parliamentary Group presented, in a plenary session of Parliament, a draft bill dealing specifically with subcontracting that included the modification of Article 42.1 WS, in order to guarantee equal labour conditions for subcontracted workers. It was passed by all of Parliament, with the exception of the Citizens party, which abstained, and the Popular Party, which voted against it.

In March 2017, UGT and CCOO submitted to the parliamentary groups a series of proposals in the form of amendments in relation to the Socialist Parliamentary Group's draft bill. These proposals were aimed at guaranteeing the rights of contracted and uncontracted workers, as well as workers that provide services by carrying out contracted and subcontracted activities (Art. 42.1); guaranteeing subrogation (Art. 44); impeding that the fulfilment of a contract or subcontract can be used to justify the signing of a works contract (Art. 15.1) and facilitating the functions of workers' representatives (Art. 81).

These are only a few examples of the huge task of eliminating the applicative priority of the company agreement, and the consequences of such, since it devalues the employment, working and salary conditions of the workers hired by companies, avoiding the state sectorial collective agreement, and leads to such job insecurity that workers cannot subsist and enjoy decent and effective working conditions.

At the same time, we would like to point out the following: the legislative framework of the work relationship is different from that of the employment relationship. In this regard, we would to highlight:

During the period of economic recovery after the financial crisis, both job insecurity and inequality have continued to increase, above all due to:

THE LACK OF A REAL EMPLOYMENT POLICY

Since the right to work is not effectively exercised without employment, despite the fact that the right to work is part of our "**Labour Constitution**," it is structured as a right that consists of:
-its formal recognition,
-the public authorities' duty to promote its effective fulfilment. (**Constitutional Court Sentence 22/1981**, of June 2: "the right to work does not end with the **freedom to work**; it also involves **the right to a job** and, as such, it has two aspects: **individual** and **collective**, both of which are recognised in **Articles 35.1 and 40.1 of our Constitution**, respectively).

CCS 227/1998, of November 26, literally stated that the "law shall regulate a Workers' Statute" that is not limited to establishing non-delegable legislation but that obliges the legislator to **establish a specific legal scheme** for workers, mandating it at the same time.

We also have to add the circumstance that the concept or category of the worker is determinant in establishing the subjective sphere of certain rights, of a different nature, recognised by our Constitution (Arts. 7, 28.1 and 2, 37.1 and 42).

In its individual aspect, it specifies the equal right of everyone to a certain job if they satisfy the necessary **qualifications**, the right to job **continuity** and **stability**, i.e. to not being dismissed "**without justification**" (CCS 109/2003, of June 5, and CCS 192/2003, of October 27).

At the same level as the right to work, we have:

- the free choice of profession and trade,
- promotion by means of work and
- sufficient remuneration.

According to the Constitutional Court's jurisprudence, the non-delegable legislation imposed by Article 53.1 of the Constitution in relation to the **rights and freedoms of Article 35 SC** involves the existence of a **special content** of such that guarantees them constitutionally (CCS 83/1984, of July 24).

Spain's labour legislation has a **heterogenous content with several regulatory groups**.

However, in addition, our constitutional legislator wants the Constitution to be endowed with a certain constitutional and legal structure, and, therefore, with certain rights:

- recognition of the trade unions' role (Article 7),
- recognition of the right to strike (Article 28),
- recognition of collective bargaining and collective conflicts (Article 37),
- distribution of income,
- vocational training and health and safety in the workplace (Article 40).

In relation to determining a specific structure of labour relations, from a constitutional point of view, if it does involve the participation of social representations, there will be distortions that will also impact employment. That is why the labour reform has been a departure from this principle with devastating consequences.

The right to employment is an underlying factor in the right to work, with its own categories and specific institutions. In our law, the right to work is basically regulated in the Workers' Statute, and the right to employment (currently Royal Legislative Decree 3/2015, of October 23, which approves the revised text) in the Employment Law.

Naturally, employment, the job market, has characteristics that make it **different** from other markets such as that of **capital** or **goods and services**, because it involves social relationships connected with the production of work.

The regulatory content does not end at a legal level with these regulations nor at a national level, since there are legal and political instruments –at the national, European or other territorial levels– that are coordinated or uncoordinated political actions; it also supplements state regulation, creating its own employment networks at the regional level.

Social representatives, by means of social dialogue and collective bargaining, also participate in employment matters, attaining employment agreements that that can result, or not, in legal regulations or in obligational commitments or, naturally, in collective pacts and agreements, and by means of institutional participation and that of several bodies and organisms.

In the **context of economic crisis**, something that is always latent in Spain but a lot more so in the last decade, with the financial crisis of 2008, whose serious effects are still being felt in the job market, the subject of employment policy and rights is one of **great importance**.

It is true that our Employment Law's objectives include:

-Guaranteeing effective **equal opportunities** and non-discrimination, taking into account what is contemplated in Article 9.2 of the Spanish Constitution, in access to employment and actions orientated at such, as well as the free choice of profession or trade, without any kind of discrimination, in the terms established in Article 17 of the revised text of the Workers' Statute Law.

-The said principles shall apply to the citizens of the Member States of the European Economic Area and, in the terms determined by the legislation regulating their rights and freedoms, to other foreigners.

-Maintaining an efficient system of **protection against situations of unemployment**, which encompasses active employment policies and unemployment benefits, ensuring coordination between such and collaboration among the different bodies involved in implementing the employment policy and its management, and the interrelationship among the different labour intermediation actions.

-Adopting a preventative approach to unemployment, especially long-term unemployment, facilitating individualised attention for the unemployed, by means of integrated actions of active employment policies that improve their employability.

-The employment policy will tend to adopt a **preventative approach to unemployment and one that anticipates change by means of training actions** that facilitate the maintenance and

improvement of professional qualifications, employability and, where applicable, retraining and adaptation as regards their professional skills.

-Ensuring suitable labour integration policies aimed at those groups with the greatest difficulties for entering the job market, especially women, youth, disabled persons and the long-term unemployed, over-45s.

-Maintaining a unified job market throughout the country, taking into account the different and specific characteristics of the different regions and promoting the correction of territorial and social imbalances.

-Ensuring the free circulation of workers and facilitating the geographic mobility, both in Spain and throughout Europe, of those who want to move for employment reasons.

-Coordinating their structuring with the aspect of the phenomenon of internal and external migration, in accordance with what is established in paragraphs a) and d) in collaboration with the autonomous regions, in the framework of their respective powers.

-Providing individualised services for the working population to help them enter, remain and progress in the job market, and for companies in order to contribute to improving their competitiveness.

-Promoting the entrepreneurial culture and business spirit, as well as improving services and support for entrepreneurs in setting up their business enterprise.

More specifically in relation to the aspect of ACTIVE EMPLOYMENT POLICIES, UGT and CCOO believe that our conclusions with regard to the Spanish Government's policies would be NON-COMPLIANCE with the ESC, for the following reasons:

-The legal regulation and policies approved or in force during the period under review, in relation to the Spanish Government's Report, do not guarantee:

-That all groups of workers, especially those affected the most by unemployment, have been expressly and specifically benefitted by measures enabling them to find a job.

-The said regulations and policies have, in many cases, been revoked or eliminated by the Government replacing the one that approved them.

-However, in addition, they were not duly evaluated, which means that their incorporation into the Government's Report offers no proof whatsoever that the unemployed benefitted from such measures.

-In fact, the Government that wrote the Report does not offer any specific data or figures regarding the beneficiaries of the actions, nor if and how they benefitted.

-In the absence of official data and a due evaluation, the information collected by the trade unions with regard to the reality of the unemployed in general, particularly those belonging to the most disadvantaged groups in particulars, shows the following:

1.-that the regulations and measures did not produce any perceptible effects in changing the situation and opportunities as regards employment,

2.-that the unemployed barely benefitted quantitatively from the approved and implemented actions,

3.-and that, qualitatively speaking, these actions were inadequate as regards their stated objectives, without any clear connection between the actions carried out and the placement of beneficiaries, whenever the latter took place,

4.-although, as we said, many of these regulations and measures are no longer in force, their presence determined what took place during the period under review in accordance with the ECSR and, therefore, they would deserve a conclusion of non-compliance for the analysed period.

The figures and data presented on pages 11 to 13 of the Government's Report only refer to unemployment data (whose evolution is mainly determined by the recovery of economic growth throughout the entire period under consideration), completely overlooking the ECSR's request for data regarding Employment Policies, which is precisely the main purpose of the analysis.

Therefore, although the information exists because it involves the Administration's management, no information is provided about "public expenditure in passive and active measures in the job market as a percentage of GDP, the number of participants in active (training) measures, activation rate (relationship between participants/unemployed" as expressly requested in the Conclusions of the previous control process regarding compliance with the Charter.

Naturally, no information is provided about (in an aggregate sense) the relationship, during the period under consideration, between actions of Employment Policies and their impact on the different unemployed groups, and the evolution of unemployment, in general and in each of the groups. And even less so as regards the results of specific actions.

Consequently, the lack of specific data and information that is provided, with regard to what is analysed in this ESC control period, also supports the conclusion that the actions were not directed appropriately; in some cases they were cosmetic and inefficient and, in others, inefficient and insufficient in order to satisfy the objectives of the ESC's first article.

Furthermore, the situation of Employment Policies in Spain has been analysed in depth in numerous studies that provide common proof and a high degree of consensus in their conclusions.

In relation to all of them, the OECD's report *Reforms for more and better-quality jobs in Spain* (OECD, Economics Department Working Papers No. 1386, 29-May-2017) provides a good summary of the problems:

- Spain spends a lot less on active labour market policies (ALMP) per unemployed person than other OECD countries.
- The effort measured as ALMP expenditure per unemployed person in relation to GDP per capita is among the lowest of the OECD (3.9% for Spain compared to an average of 14.5% in the OECD in 2013).

Evolution of employment policies budget 2010 – 2019

	Total Benefits (x €1,000)	Active Policies (x €1,000)	TOTAL EXPENDITURE (x €1,000)
2010	30,974,836	7,742,842	38,717,678
2011	30,474,060	7,316,265	37,790,325
2012	28,805,053	5,759,558	34,564,611
2013	26,993,696	3,765,342	30,759,038
2014	29,727,534	4,041,564	33,769,098
2015	25,300,040	4,712,114	30,012,155
2016	19,820,939	5,178,876	24,999,815
2017	18,318,312	5,487,883	23.806,196
2018	17,702,180	5,718,161	23,420,341
2019	18,401,716	5,986,627	24,388,343

Source: CEC-UGT Technical Office based on Treasury information.

It includes the following programmes: 241A Promotion of labour insertion and stability; 241B Vocational Training for Employment; 241N Development of self-employment, social economy and corporate social responsibility; and 251M Unemployment benefits.

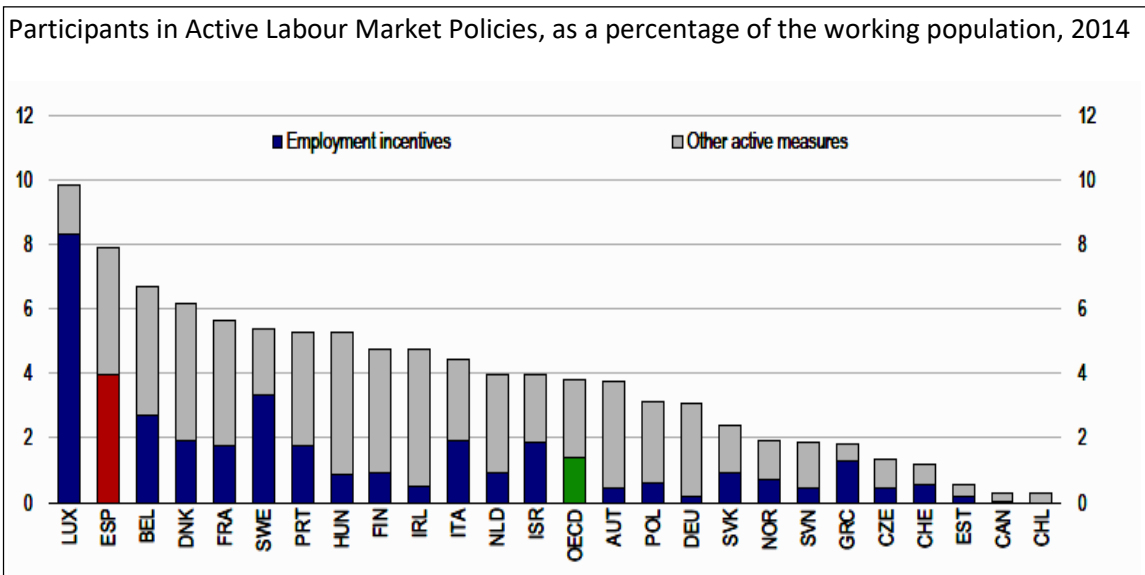
	Total Benefits (x €1,000)	Active Policies (x €1,000)	Total Expend. (x €1,000)	Reg. Unemploy. (x 1,000)	Ratio (%) Employ. Expend./ Unemployed Person	Coverage Rate (%)	Long-Term Unemploy. (x 1,000 Survey of Working Pop.)
2010	30,974,836	7,742,842	38,717,678	4,061	9,534	78.4	1,975
2011	30,474,060	7,316,265	37,790,325	4,257	8,877	70.7	2,415
2012	28,805,053	5,759,558	34,564,611	4,720	7,323	65.8	3,043
2013	26,993,696	3,765,342	30,759,038	4,845	6,349	62.3	3,534
2014	29,727,534	4,041,564	33,769,098	4,576	7,380	58.9	3,466
2015	25,300,040	4,712,114	30,012,155	4,232	7,092	55.8	3,076
2016	19,820,939	5,178,876	24,999,815	3,869	6,462	55.1	2,566
2017	18,318,312	5,487,883	23,806,196	3,507	6,788	56.2	2,060
2018	17,702,180	5,716,141	23,418,321	3,456*	6,776	58.7**	unavailable

*Data January to March. **Data January-February.

Source: CEC-UGT Technical Office based on Treasury, SEPE and INE information.

Perhaps more importantly: expenditure in job market programmes has been mainly focussed on employment incentives, above all by establishing subsidies for companies that hire unemployed persons.

Active Job Market Policies are centred on employment incentives



Source: OECD (2016), "Labour market programmes: expenditure and participants," *OECD Employment and Labour Market Statistics* (database), December.

2018 and 2019 budgets for employment programmes

<i>MILLION EUROS</i>	2018	2019	<i>Annual Var. %</i>	<i>Absolute Var.</i>
TOTAL EXP. SEPE BUDGET	23,606	24,597	4.20	991
SEPE exp. in total benefits	17,411	18,102	3.97	691
Contributory	7,850	8,371	6.63	521
Subsidy	3,468	3,952	13.95	484
SEASS Subsidy	488	491	0.65	3
RAI	979	829	-15.34	-150
PAE benefit	295	3	-98.99	-292
PGJ youth benefit	500	74	-85.10	-426
Active policies	5,793	6,088	5.09	295
Guidance	480	478	-0.49	-2
Equal opportunities	0.96	20	1,988.43	19
Job opportunities	2,611	2,645	1.29	34
Discounts on SS contributions for hiring new workers	1,934	1,855	-4.08	-79
Job opportunities and training	289	385	33.42	96
Training for unemployed	956	983	2.87	27
Training for workers	1,170	1,300	11.15	130
Other plans	178	165	-7.03%	-13
“PREPARA”	75	5	-93.33	-70
Modernisation Public Employment Services	80	80	0	0
Improved employment offices	20	20	0	0
SEPE staff expenditure	291	295	1.51	4

Source: CEC-UGT technical office based on State Public Employment Service (SEPE) info.

According to some authors (de Serres and Murtin, 2013), establishing hiring subsidies can help to prevent workers from losing contact with the job market during a recession. However, now that the recovery has been consolidated, the generalised use of subsidies paid to companies for hiring unemployed persons is inefficient.

Past experience shows that these measures generate important losses due to their high dead weight and undesirable replacement effects, resulting in small increases in employment at the most (Dolado et al., 2013; Crépon et al., 2013).

Subsidies should be gradually eliminated or aimed solely at the most underprivileged workers that find it difficult to enter the job market, such as older workers that have been employed for more than a year.

- Moreover, greater effort is required to improve the efficiency of expenditure in job market programmes. It is therefore essential to establish evaluation mechanisms, which are very rare in Spain, not only in the case of job market programmes but also in other areas of public policies, in order to evaluate what works and what does not, and to reassign resources towards effective schemes

and shut off those that prove to be inefficient.

- Implementation of the new activation strategy is also impeded by the **public employment services' limited capacity for providing effective, individualised advice.**

The number of job seekers supervised by each social worker in the public employment service (PSA) is high, with **one public employment service employee in charge of more than 250 unemployed people.**

Moreover, the evidence shows that social workers spend of large part of their time doing administrative work instead of giving advice.

Public employment services need qualified personnel and a greater proportion of people that locate job opportunities, in order to suitably implement the new activation strategy.

Appropriate training is required in order to help social workers to use the new tools for preparing profiles **and, in particular, for offering individualised advice to job seekers that find it hard to enter the job market, such as the long-term unemployed, the underqualified and youth.**

- There is a need for greater support for the most underprivileged groups.
In 2014, a single employment portal was established for all of Spain, with the objective of improving coordination between job offers and job seekers, and reducing the high unemployment rate. Although the number of vacancies uploaded to this employment portal has been constantly increasing, it is still low and the quality of the job offers is unequal, since some provide little information about the job requirements and the majority only provide a link to the website where the vacancy was originally published.
- The experience of other OECD countries suggests that digitalisation and new technologies can help to improve job-seeking assistance and reduce operational costs. Electronic services are often useful for helping more-qualified and better-trained job seekers to find a job, as well as improving worker mobility, which is low in Spain, by reducing information barriers and facilitating the coordination of unemployment services among all regions.
However, it is not so helpful in the case of persons that find it hard to enter the job market, such as the long-term unemployed or those looking for their first job. These persons often need personalised and specialised labour advice, which is best provided face to face, as demonstrated by rigorous evaluations carried out recently in Denmark, Germany and Switzerland.

- a. **Exclusion from employment** is a phenomenon with a high social impact, which is exacerbated since this exclusion is normally associated with other aspects of social exclusion. The worst cases are those in which exclusion from employment is accompanied by exclusion from employment policies.

Evolution of indicators of exclusion from employment. % homes and persons. 2007-2018

	Hogares				Personas			
	2007	2009	2013	2018	2007	2009	2013	2018
IND 1 Hogares cuya persona sustentadora principal está en paro desde hace un año o más	1.0	5.1	7.5	2.9	1.1	6.0	9.2	3.6
IND 2 Hogares cuya persona sustentadora principal tiene un empleo de exclusión (venta a domicilio, venta ambulante de apoyo, venta ambulante marginal, empleadas del hogar no cualificadas, peones agrícolas eventuales temporeros, recogedores de cartón y otros residuos, reparto de propaganda, mendicidad)	2.9	2.4	3.2	1.1	3.1	2.7	3.7	1.2
IND 3 Hogares cuya persona sustentadora principal tiene un empleo irregular: sin contrato y sin cobertura en la Seguridad Social	4.1	1.9	2.9	1.3	3.5	2.5	3.2	1.1
IND 4 Hogares sin personas ocupadas, ni pensionistas contributivos, ni con prestaciones contributivas por desempleo	4.9		7.8	7.2	4.7		7.6	5.8
IND 5 Hogares con al menos una persona desempleada sin formación ocupacional en el último año	6.9	21.0	27.6	15.3	8.7	27.1	36.0	20.0
IND 6 Hogares con todas las personas activas desempleadas	2.2	10.6	10.9	6.6	2.3	11.6	12.3	7.0

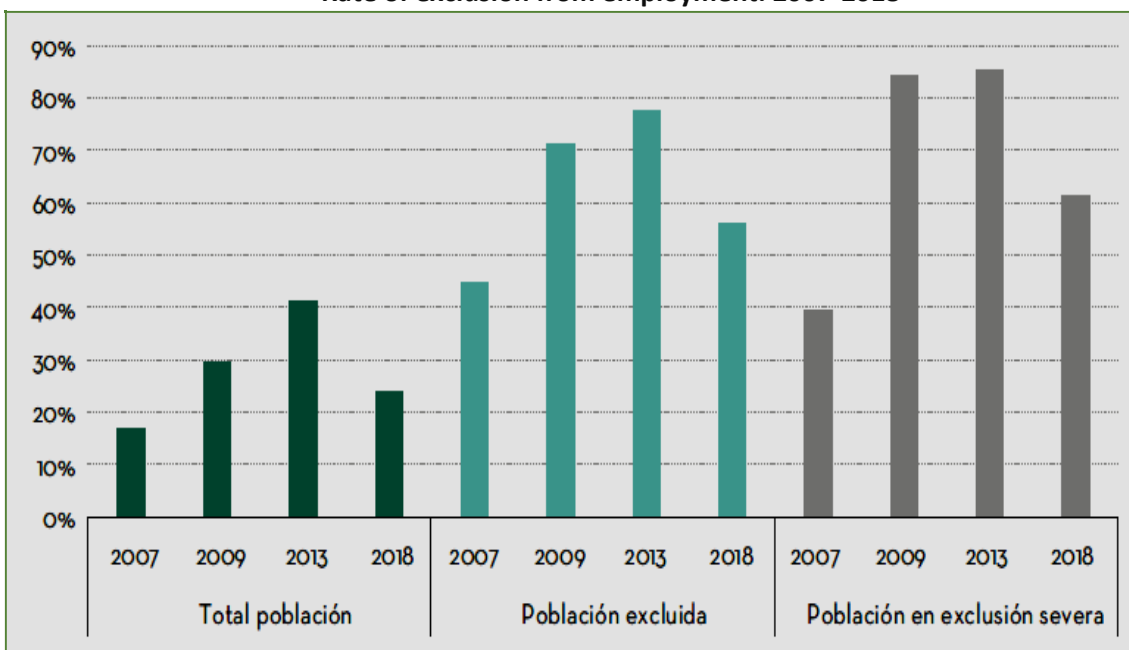
Source: Prepared by EINSFOESSA 2007, 2009, 2013, 2018.

There is a general improvement in the indicators as a whole, which attained their highest level in 2013. However, many of them are still a lot higher than at the beginning of the crisis. This is the case of homes with all of their working-age members unemployed, which is still the case of 6.6% of homes, and homes without any income from work or benefits, which affects 7.8% of the total.

In general terms, as the graph shows, exclusion from employment has decreased by 42% since 2013, amounting to 23.9% in 2018. However, the indicators are still higher than in 2007 (16.9%). Moreover, this improvement has not reached to the same extent the population with the greatest social difficulties. Six out of every ten socially excluded persons also experience exclusion from employment.

Although the problems leading to exclusion are complex and different, which also depend on the type of home, the lack of employment usually triggers a series of processes that lead many homes into situations of vulnerability or social exclusion.

Rate of exclusion from employment. 2007-2018



Source: Prepared by Zugasti (2019) from EINSFOESSA 2007, 2009, 2013, 2018.

The social impact of the last crisis in Spain had, at least at its onset, a strong labour component. Homes excluded from employment experience greater exclusion in practically all other areas defining such.

Relationship between exclusion from employment and other areas of exclusion. 2018. (%)

		Excluidos del empleo
Consumo	Excluidos del consumo	62,8
	No excluidos del consumo	18,3
Política	Excluidos de la política	37,6
	No excluidos de la política	18,7
Educación	Excluidos de la educación	37,4
	No excluidos de la educación	19,7
Vivienda	Excluidos de la vivienda	36,6
	No excluidos de la vivienda	16,4
Salud	Excluidos de la salud	38,6
	No excluidos de la salud	17,7
Conflicto Social	Hay conflicto social	32,2
	No hay conflicto social	20,2
Aislamiento Social	Hay aislamiento social	18,6
	No hay aislamiento social	20,9

Source: Prepared by Zugasti (2019) from EINSFOESSA 2018.

The persistence of these high indicators of exclusion from employment clearly shows how public employment policies have not been aimed (or at least not sufficiently) in the direction established by the European Social Charter.

Youth employment in Spain is very worrying. Specifically, from 2011 to 2018, the hours worked by young people have decreased by 0.9%. This is due in part to both the boom in part-time contracts and the increase in staff turnover due to temporary hiring, derived from greater discretionary power on the part of employers since the implementation of the 2012 labour reform, whose revocation has repeatedly been demanded by COO and UGT.

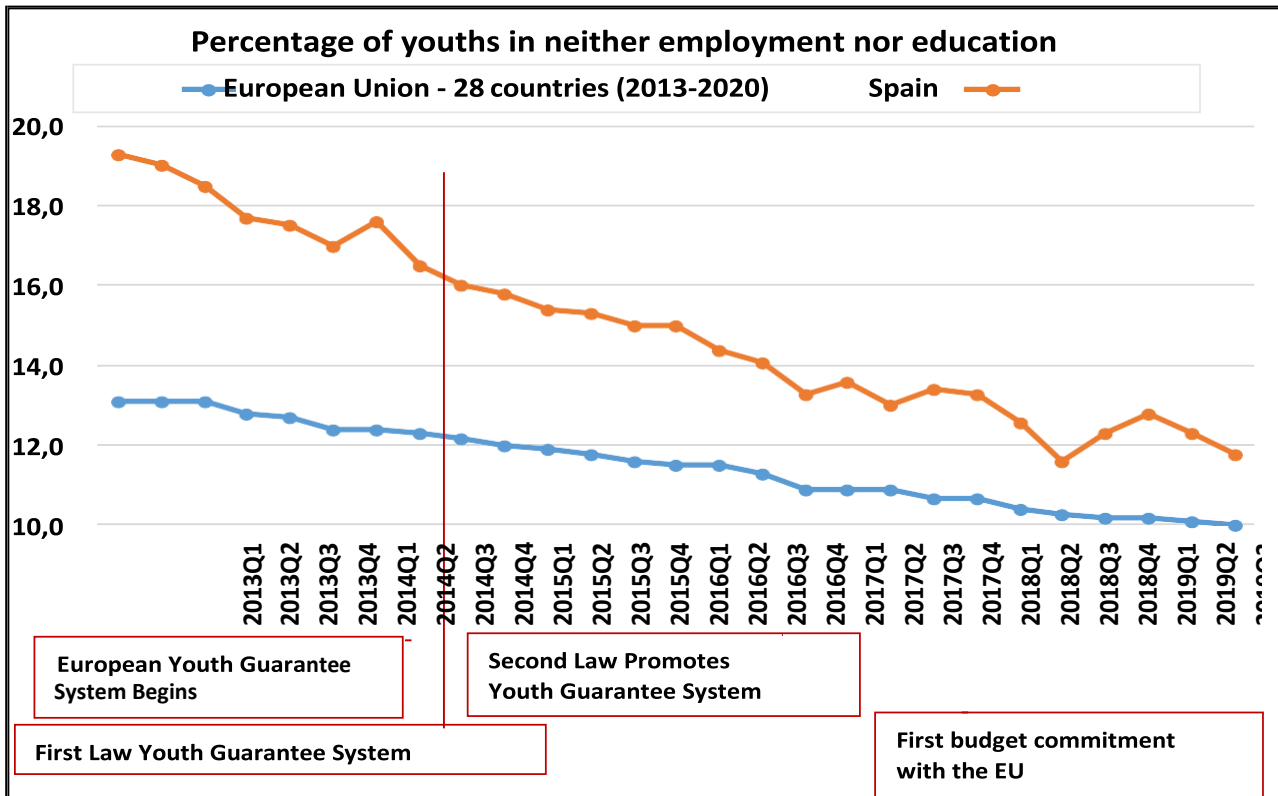
The **Programmes of the National Youth Guarantee System** are creating precarious, limited, very unstable and poorly paid unemployment. The European Council Recommendation, of April 22, 2013, on establishing the Youth Guarantee, which was backed by all of the EU's Member States in order to tackle youth unemployment and guarantee that all under-25s, regardless of whether they are registered with national employment services or not, receive a specific, quality job offer within 4 months of finishing their training or beginning their period of unemployment), has not worked at all despite the large amounts of European funds that have largely remained untouched. Moreover, "a specific, quality job offer" is a very vague concept that can consist of a job, a period of work experience, training in a company or a course in an education centre, as long as it suits an individual's needs and situation.

Spain has had, and still has (although it has decreased), along with Greece, the highest youth unemployment rate in the EU.

- Spain was one of the first Member States to implement the Youth Guarantee with the approval, in **December 2013**, of the National Plan to Introduce the Youth Guarantee, in harmony with the Youth Enterprise and Employment Strategy 2013-2016 and the regulations of European Funds.
- **October 2014** saw the approval of the first law featuring urgent measures aimed at growth, competitiveness and efficiency, which laid the foundation for the National Youth Guarantee System. Later on, in **July 2015**, the system's benefits were extended by law to young people over twenty-five and under thirty while their unemployment rate exceeds 20 per cent.
- In **December 2016**, by means of a royal decree law, the Government approved urgent measures (3 years had gone by since the approval of the Plan to Introduce the Youth Guarantee) to **promote the National Youth Guarantee System**, with significant modifications aimed at favouring youth access and registration therein. The most important ones were aimed at streamlining access to the System, making the requirements more flexible; automating registration for all young people registered as job seekers in the Public Employment Services; and enabling retroactive registration (which disconnects the *presence* of each young person in the Youth Guarantee System from the moment when they can really benefit from some of its measures).
- Since the royal decree law of December 2013 came into force, the number of daily registrations (but not the initiatives enjoyed by young people) has increased by 105 per cent. Therefore, more than half of the registrations (602,948) have taken place since the law came into force.
- Spain did not fulfil its first budget commitment with the European Union until the **end of 2017**, after submitting to the European Commission certifications of expenditure on the part of intermediate organisms amounting to 671.72 billion euros, exceeding by 55.97 million the minimum established by the Commission for the period. This means that before then (from 2013 to 2016 to 2017), little was done to develop initiatives aimed at helping young people find **a job, a period of work experience, training in a company or a course in an education centre, suited to their individual needs and situations.**
- The initial budget of the Youth Employment Initiative (2014-2015) for the entire EU amounted to 6.4 billion euros, of which 943.5 million were for Spain.

However, in September 2016, due to the persistence of high youth unemployment figures, the Council and European Parliament approved a budget increase of 2.4 billion euros for the period 2017-2020 (making a total of 8.8 billion euros), of which 418 million were assigned to Spain in October 2017.

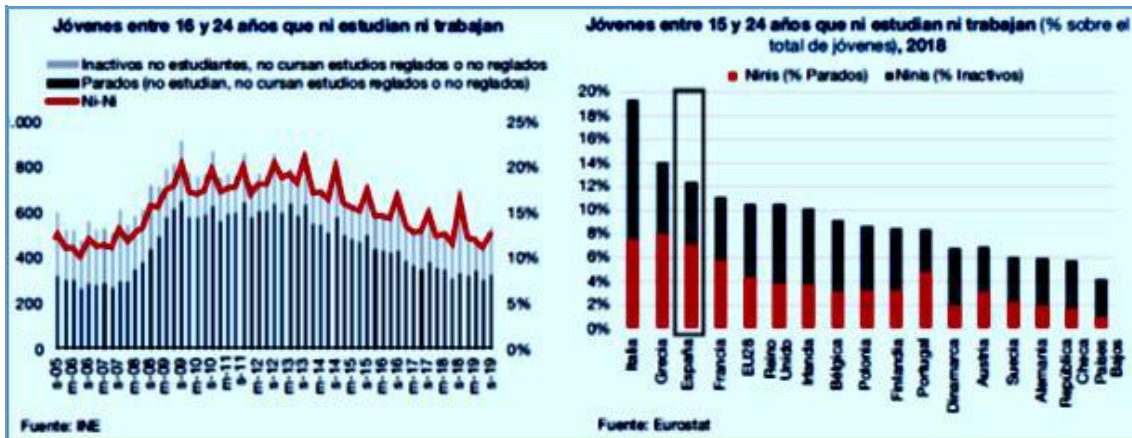
- Consequently, the number of young people in need of the Youth Guarantee Programme has been gradually decreasing due to the recovery in the economy and employment, while they were waiting for measures to be taken to make the system work and receive the promised measures (see the following graph).



(Source: “Monográfico del Mercado Laboral,” AFI-Aempleo, January 2020).

This is the current situation: During the 3rd quarter of 2019, Spain had 4.2 people between the ages of 16 and 24; of these, 27% (1.1 million) had a job, 12.5% (0.5 million) were unemployed and 60.4% (2.5 million) were inactive.

The NEET Generation is made up of those young people that are unemployed or inactive and that are not in education. In the 3rd quarter of 2019, the number of unemployed youths not in education amounted to 329,500, 63% of total unemployed youths. In relation to inactive youths not in education, these amounted to 205,000, just 8% of total inactive youths. **The NEET Generation therefore comprised 12.8% (534,600 people) of under-25s in the 3rd quarter of 2019.**



Furthermore, by analysing the rate of temporary employment according to age group, we can see that this is highest in the youngest (ages 16-24) compared to the other age groups. In addition, our country's rate of temporary employment among young people (71.2%) is 64% higher than that of the EU (43.3%). Even so, there are still territorial inequalities to be taken into account. Specifically, the highest rates of temporary employment in this age group (more than 75%) are to be found in Cantabria (where they exceed 84%), Murcia, Andalusia, Extremadura or Asturias. On the other hand, the lowest rates are in Madrid and Catalonia.

However, we would like to highlight something that is ever more worrying for UGT and CCOO; at the bottom of the job insecurity scale for young people is the enormous amount of fraud in non-labour work-experience programmes: lack of real training, inadequate content, no tutoring and even the use of such to replace work contracts, which distorts the objective of such and, in many cases, has a strong economic impact on young people and on the finances of the Social Security's General Treasury.

CCOO and UGT have detected the existence of a high number of people involved in non-labour work-experience programmes, around 866,079 in 2018. Weighting this figure for the number of months during which such programmes are carried out results in 296,310 jobs per year.

YOUTH GUARANTEE SYSTEM AND YOUNG MIGRANTS

The group of Unaccompanied Foreign Minors, as the trade unions have repeatedly pointed out, is excluded from the System and from the possibilities it offers in relation to intermediation, employability, hiring assistance and support for entrepreneurs.

Organic Law 4/2000 on rights and freedoms of foreigners in Spain and their social integration: Article 35.7. The residency of minors shall be considered legal in Spain, for all purposes and by any other entity, if they are in the charge of a Public Administration or by virtue of a court sentence. At the request of the responsible organism and after certifying the impossibility of returning to their family or country of origin, **the minor shall be granted residency**, the effects of which shall be backdated to the moment when the minor was placed under the minor protection services. The lack of authorised residency shall not prevent the recognition and enjoyment of all the rights to which minors are entitled.

Royal Decree 557/2011 approving the Regulations that Implement OL 4/2000: Article 196. *Residency of unaccompanied foreign minors.*

1. After certifying the impossibility of repatriating the minor and, in any case, nine months after the minor was placed under the corresponding minor protection services, **he/she will be granted the residency referred to in Article 35.7 of Organic Law 4/2000, of January 11.**

Minors are documented with a residency authorisation that does not entitle them to work. They therefore do not satisfy the requirement indicated in Article 97 of Law 18/2014. This reduces their possibilities of training and access to employment; taking into account the fact that, once they reach the age of 18, they can only retain their legal status if they certify monthly income equivalent to 100% of the public income indicator called IPREM (537.84 euros) or a work contract. In the UGT's opinion, it is necessary to modify the rules so as to include this group that currently amounts to 12,300 boys and girls.

MORE ABOUT EMPLOYMENT POLICIES AND THE LACK OF EFFECTIVE WORK

The Annual Employment Policy Plan 2015 (PAPE) did not involve the participation of CCOO and UGT, when it came to evaluating and improving the employment policies, while the criteria of the Employment Activation Programme 2015 were so limited that they only reached 100,000 workers out of 400,000 potential beneficiaries.

We trade union organisations call for the flexibilization of access criteria, specifically for accessing a job: eliminating the restriction of being registered at a certain moment in Public Employment Offices, eliminating or reducing the waiting periods between receipt of the last welfare benefit and access to the plan (currently established as 6 months), making this plan compatible with receiving other social welfare benefits and studying the possibility of each beneficiary being able to reactive the programme for another 6 months, if he/she has not been able to enter the job market.

However, these demands were not accepted. Neither were we allowed to participate in the preparation of the Employment Plan in both 2015 and 2016: the Spanish Employment Activation Strategy, Range of Services, etc.

The PAPE plan for 2016 starts from a distorted photo of the Spanish labour market, with a diagnosis praising the success of the Government's policies in reducing unemployment and in job creation, while hiding the real problems affecting the job market. CCOO and UGT believe that it should start from a real analysis of the Spanish job market, reflecting: the high unemployment rate, especially in the case of over-55s and young people; the precariousness of temporary and permanent contracts, the rate of temporary employment and the boom of involuntary part-time work; the extent of long-term unemployment, which, along with a reduction in the coverage rate, poses a threat regarding the extending of inequalities and poverty in the country.

The Spanish Government, in relation to our institutional participation, does not enable us to ascertain what the real results of the programmes and plans are in the job market, due to an impossible statistics system; their attitude was the same in previous years.

For example, we are surprised that, to this day, we cannot evaluate the result of the Youth Guarantee Plan, one of the pillars of active policies in Spain and mentioned above as regards its importance as a strategic objective and in relation to income received from Europe. After much insistence about obtaining data regarding the insertion of youths registered in the National Youth Guarantee System, the Directorate General for Self-Employed Work, Social Economy and Corporate Social Responsibility (by means of the State Public Employment Service) provided us with the figure of 31%. This is merely the result of cross-referencing the employment record with the General Treasury of Social Security, but it gives no indication regarding how the placement was made, what jobs are being carried out, how long they last for and what training has been received.

In short, we cannot evaluate the National Plan to Introduce the Youth Guarantee with the indicators of the PAPE plan. We still conclude that the indicators are not designed to evaluate active policies but to distribute funds among territories, in accordance with certain criteria.

In this regard, we call on the Government to fulfil the commitment it acquired in the last meeting of the National Employment System, in relation to the social representatives' active participation in the Monitoring Commission of the Youth Guarantee Plan, which amounts to an infringement of the European Social Charter.

UNEMPLOYED PERSONS. LONG-TERM UNEMPLOYMENT

Long-term unemployment increased as the crisis advanced. In 2008, just over 20% of the unemployed had been looking for a job for more than a year; this percentage continued to rise to 59.5% in the last quarter of 2015, with a large amount of people that had been looking for a job for more than two years (more than 43.6% of the unemployed). In addition, the coverage figures have been decreasing. In 2008, 73.6% of the registered unemployed received unemployment benefits. In 2015, the coverage had decreased below 55%. In the opinion of UGT and CCOO, social protection should be guaranteed by combining economic benefits and active policy initiatives. We have to improve coverage by reinforcing unemployment benefits, in order to increase the degree of coverage as regards both contributory and welfare benefits.

There is a need for carrying out actions aimed at attracting unemployed persons towards public services. The effect of discouragement, especially among youths and over-55s, should be mitigated by integrating these groups into programmes for the long-term unemployed. The European Commission (EC) indicates that we have to promote the registration of the long-term unemployed in Public Employment Services, by distributing information through collaborating agents that clarifies the individualisation of the provided services. In this regard, we would like to point out that the Commission's objective is not contemplated.

In a context in which the prospects of finding a job, being trained or receiving a benefit are scarce, the limits between activity and inactivity are diffuse. It is essential to provide extra resources, and to define placement and intermediation agents that can help to reactivate persons that, in the past, formed an active part of the job market but became discouraged.

In relation to job placement and intermediation, there is no continuous work on the part of career guidance services. With regard to this point, the European Commission has already indicated that countries such as Spain should reinforce their efforts, since they still have a long way to go.

UGT and CCOO called for increased attention in this regard by increasing guidance resources. We believe that in the calculation we estimated, in order to monitor each unemployed person on a monthly basis, each tutor would cater to more than 5 persons per day, spending 1.5 hours with them. This only takes into account one visit per month. This time is clearly insufficient in order to attain the goal of carrying out personalised itineraries and monitoring until insertion is achieved.

EMPLOYMENT FOR MIGRANTS

In its Report, the Government highlights measures that consist almost entirely of subsidies. From the point of view of CCOO and UGT, subsidies do not constitute an employment policy or structural measures that favour entry into and permanence in the job market, in conditions of equal treatment and opportunities. It is worth highlighting the measures included for youth and

women, which include legislative modifications and measures favouring employment. In this regard, it should be noted that one of the best ways of tackling discrimination in the field of employment, in the case of both national and foreign citizens, is obliging companies to analyse the composition of their workforce, taking nationality into account, and including in collective bargaining measures that favour equal treatment and opportunities, for both foreign workers and those with other personal and social circumstances and/or conditions.

FEMALE EMPLOYMENT GAP

AN APPENDIX IS ATTACHED with the deficiencies, irregularities, statistics and systematic infringement of the Charter in relation to female employment in Spain.

EMPLOYMENT OF DISABLED WOMEN

WE LIKEWISE ATTACH AN APPENDIX THAT SETS OUT, the same as in the previous paragraph, in detail the irregularities that enable us to conclude that Spain does not comply with Art. 1 of the ESC.

B) REQUEST FOR ADDITIONAL INFORMATION ON THESE MATTERS.

*Article 1§1 **

- *Provide details about job market policy measures that are specifically designed to support specific groups or communities, such as: young people that have not yet entered the job market, people in geographic areas and communities with different levels of subemployment (quality) or unemployment (quantity) or that are experiencing severe or chronic unemployment, as well as migrants and refugees;*
- *Include statistical information on the employment policy's general impact during the reference period: economic growth indicators, unemployment rates broken down according to gender, age and duration, public expenditure in passive and active job market measures as a percentage of GDP, number of participants in active measures (training), activation rate (relationship between participants / unemployed persons).*

The decentralised nature of Spain's National Employment System makes it difficult for the State itself to precisely calculate how much all the Administrations spend on financing active employment policies. Furthermore, they do not usually include certain items, such as employment bonuses, reductions in social contributions or even European funds themselves, among other matters.

This gap undoubtedly affects the effective rationalisation of the system's resources. And not only due to the inaccuracy of the overall amount of resources aimed at employment policies, but also because it does not provide us with data regarding the number of beneficiaries in each type of expense.

In its Report, the Government responds to what is requested in the additional information by highlighting the evolution of the unemployment rate according to gender and age. However, we believe that it is likewise necessary to include the unemployment rate of foreigners; although it must present all the information requested by the CSR, this other aspect should not be left aside. As we can see in the attached table showing the evolution of unemployment according to nationality between 2015 and 2018, the unemployment rate of foreigners in particular is about 10 per cent higher than that of Spaniards.

And it is interesting to note that the gender gap is surpassed by the nationality gap. There are

more similarities between the unemployment rates of foreign women and men than between the unemployment rates of foreign and Spanish women.

We fully agree with the CSR that the efforts aimed at employment policies are not sufficient to tackle unemployment and promote job creation.

With the presented data, we cannot verify a strong and decisive commitment in the employment figures and especially in inclusive employment aimed at groups with the greatest difficulties for entering the job market, such as disabled persons, especially women.

	National Total	National Total	National Total
2018			
Total	15.25	13.72	17.02
Spaniards	14.32	12.8	16.08
Foreigners: Total	21.89	20.38	23.55
Foreigners: European Union	17.63	15.57	19.9
Foreigners: Non-European Union	24.38	23.19	25.7
2017			
Total	17.22	15.66	19.03
Spaniards	16.32	14.76	18.13
Foreigners: Total	23.84	22.38	25.43
Foreigners: European Union	19.69	18.1	21.41
Foreigners: Non-European Union	26.31	24.91	27.85
2016			
Total	19.63	18.12	21.38
Spaniards	18.69	17.19	20.44
Foreigners: Total	26.64	25.2	28.23
Foreigners: European Union	22.46	20.57	24.43
Foreigners: Non-European Union	29.12	27.83	30.6
2015			
Total	22.06	20.77	23.55
Spaniards	20.91	19.51	22.56
Foreigners: Total	30.46	30.4	30.54
Foreigners: European Union	25.01	23.2	26.86
Foreigners: Non-European Union	33.54	34.28	32.71

Source: Survey of the Working Population. National Statistics Institute

C) COMMENTS ON THE GOVERNMENT'S REPORT:

2. IN RELATION TO ART.1.2 ESC:

A) CONCLUSIONS OF NON-COMPLIANCE ARTICLE 1.2. About the prohibition against discrimination in employment

- *Information about compensations paid to victims of discrimination in employment and whether there is a limit to the amount of compensation in cases of discrimination*
- *In relation to the request that the next report include information about the effective and specific impact that the measures, programmes and strategies adopted as part of the Strategic Plan on Citizenship and Integration (SPCI 2011-2014) have had on discrimination based on race, colour, religion and national origin in employment and occupation*
- *About updated information on the Comprehensive Bill for Equal Treatment and Non-Discrimination*
- *About the request that the next report include information on the legal regulations*

adopted in order to tackle forced labour in the family circle, as well as the measures adopted to implement and supervise their application.

- *In relation to information concerning working conditions and social protection (in terms of occupational risk, unemployment, illness and retirement) in the case of inmates:*
- *In relation to domestic work*
- *About freely chosen work. Work and private life; the Committee repeats its request to include in the next report significant information about the measures adopted to guarantee that any interference in workers' private life is forbidden and, where necessary, sanctioned. The Committee emphasises that, if the requested information is not included in the next report, it will not be possible to demonstrate that the situation complies with Article 1§2 of the Charter of 1961, in relation to the right to respect for private life in the workplace:*
- *With regard to the obligation of accepting a job or training offer, the Committee points out that each time the responsible authorities decide to permanently eliminate or temporarily suspend the unemployment benefits of someone that has rejected a job offer, the decision must be able to be examined by the courts in accordance with the regulations and procedures contemplated in the laws of the corresponding State. It requests that the next report indicate whether, in such a case, Spanish legislation contemplates a legal appeal (Interpretative observation of Article 1§2 Conclusions XX-1/2012). It also requests that the next report provide information about the results of the pilot system for a new unemployment benefits management system, implemented in 2013.*
- *Provide information about any measures adopted to protect workers in the "work economy" or "platform economy whose job is very precarious, against exploitation."*

B) REQUEST FOR ADDITIONAL INFORMATION ON THESE MATTERS.

- *Article 1§2 **
- *Please provide updated information about legislation forbidding all kinds of discrimination in employment, particularly for reasons of gender (Article 1 Additional Protocol), race, ethnic origin, sexual orientation, religion, age, political opinion, disability, including information on resources.*
- *Indicate the specific measures adopted to counteract discrimination in employment, in the case of migrants and refugees.*
- *Indicate what measures have been taken to evaluate the prevalence of the problem of exploitation of vulnerability, forced labour and modern slavery.*
- *Is there any legislation that tackles the phenomenon of the exploitation of vulnerability, forced labour, modern slavery and contemplates the identification and protection of victims, enables exploiters to be prosecuted or otherwise provides information requirements so that companies detail the measures adopted to investigate supply chains for the presence of forced labour, due diligence in public hiring to guarantee that the funds do not inadvertently support modern slavery?*
- *Are there regular inspections in sectors such as agriculture, construction, hospitality, manufacturing and domestic work, which are particularly affected by labour exploitation?*

We believe that it is essential to emphasise equal treatment and opportunities and the hiring of disabled persons:

- *Favouring by means of public policies the entry of disabled workers into the job market, taking into account factors such as the characteristics of the sectors and companies, the capabilities and skills of workers and the possible adaptation of jobs.*
- *Favouring the effective hiring of disabled persons and fulfilling the requirement to reserve 2% of jobs in companies with more than 50 employees.*

We believe that it is likewise essential to promote policies of non-discrimination in employment with regard to sexual orientation and identity. Spain has been supporting multilateral initiatives to fight against discrimination for reasons of sexual orientation and gender identification, and it continues to promote the human rights of LGBTI persons. Furthermore, it participates actively in the Coalition for Equal Rights, in the UN LGBT Core Group in the European LGBTI Focal Points Network.

However, in relation to the period of the 32nd Report, there are not many sentences in the field of labour legislation regarding discrimination due to sexual orientation or gender identify. Out of fear, LGBTI persons often do not report abuses and hide their orientation and identity. The figure of “hate crimes” (which includes attacks on LGBTI persons) recorded by Spanish Security Forces, throughout 2018, amounted to 1,598 incidents, which represents a 12.6% increase compared to 2017, all of which have an impact on employment. (Hate crime figures in 2017: 271 cases reported. Incidents reported in 2018: 259. REPORT ON THE EVOLUTION OF HATE CRIMES IN SPAIN. 2018. State Security Secretariat. Coordination and Studies Office <file:///C:/Users/sbravo/Documents/DESDE%2021%20DE%20OCTUBRE%20DE%202019/LGTBI/MANUAL%20LGTBI/Informe%20Ministerio%20del%20interior%20sobre%20la%20evolución%20de%20los%20delitos%20de%20odio%20en%20España%202018.pdf>)

The three areas with the greatest number of incidents are those of “ideology,” “racism/xenophobia” and “sexual orientation and gender identity,” which account for 37.3%, 33.2% and 16.2%, respectively, of all hate crimes. In 2018, there was a slight decrease in the number of hate crimes due to sexual orientation and gender identity compared to 2017, 70% of which were cleared up.

At the State level, there is no real law to protect and promote the employment of LGBTI persons. There are some regional laws, which are more nominal than effective, without real proposals and budgets to promote the employment of LGBTI persons, and the lack of discrimination therein.

In relation to campaigns related to victims of “false self-employment,” and “false work cooperatives,” the work inspectorate plays a key role, which it has been implementing.

During 2018, there was a considerable increase in the control (18,851 victims of false self-employment compared to 1,845 in 2017) of workers wrongfully registered in the Special Scheme for Self-Employed Workers. The case of workers that provide services in different activity sectors, as well as those involved in new types of social organisation, has also been verified.

So-called “Riders” and platform workers have been obliged to register in the Special Scheme for Self-Employed Workers even though they work for someone else, with very precarious employment and working conditions, very low wages, without any prevention of occupational hazards, experiencing work-related accidents, without any prevention or protection, and even having to expose themselves to danger while doing their job, which are grounds for sanctions due to the lack of an appropriate data protection policy on the part of platform companies.

C) COMMENTS ON THE GOVERNMENT'S REPORT:

3. IN RELATION TO ART. 1.3 ESC:

A) CONCLUSIONS OF NON-COMPLIANCE ARTICLE 1.3

- *Free placement services*
- *The Committee believes that the measures adopted during the reference period do not enable the public employment services to function in an effective way.*
- The infringement continues to exist and is not counteracted by the allegations presented by the Government since:
 - The lack of resources, both human and economic ones, continue to hinder the Public Employment Services' effectiveness. This circumstance is confirmed by the European Commission itself in its Country Report 2018, which indicates that although the human and economic resources of regional PESs increased in 2017 and measures were established to improve their effectiveness, the PESs' workforce was 3% smaller than in 2015 and expenditure was 33% lower than in 2012.
 - According to data from the programme to evaluate the performance of public employment services (EVADES), in October 2017 there were 211 job seekers for every National Employment employee. According to the European Commission's PES Capacity Survey (Assessment Report on PES Capacity 2016), the average ratio for the European Union, as regards countries with a scheme comparable to our National Employment System and excluding Spain from the calculation, was 105. Therefore, the ratio of Spain's National Employment System duplicates the average of the other comparable European countries.
 - There is insufficient coordination between the Public Employment Service (SEPE) and Regional Public Employment Services (PESs), which continues to hinder their effectiveness and even produces macroeconomic imbalances.
 - It is likewise necessary to improve the coordination between Social and Employment Services.

B) REQUEST FOR ADDITIONAL INFORMATION

- *In order to be able to verify the actual effectiveness of free employment services, the Committee asks that the next report provide the following information, for each year of the reference period:*
 - a) the total number of registered job seeker and unemployed persons in the Public Employment Service (SEPE);*
 - b) the number of vacant posts notified to SEPE;*
 - c) the number of persons placed by SEPE;*
 - d) the placement rate (i.e. the percentage of placements in relation to the number of*

notified vacancies).

e) the average time required by SEPE to provide an offer;

f) the number of persons placed by SEPE in relation to the percentage of the total number of new contracts in the job market;

g) the respective market quotas of public and private services. The market quota is defined as the number of placements in relation to the total number of new contracts in the job market.

- The information provided by the Government in its indicators and statistics is insufficient in order to verify this specific data. Different statistical bases are used and, sometimes, even cross-referencing such data does not enable us to do so. For example:

- The statistics provided by the Public Employment Service include information about job offers (pending applications, new applications, cancelled applications, jobs on offer, placements, at State, regional and provincial levels) but not in relation to new contracts in the job market as a whole. Consulting such data does not therefore tell us anything about its market quotas.
- SEPE's range of services, which includes all of its services and commitments, updated to 2019/2022, does not include any type of commitment with regard to the average time required by SEPE to provide an offer.

C) COMMENTS ON THE GOVERNMENT'S REPORT:

4. IN RELATION TO ART. 1.4 ESC

A) ECSR REQUEST FOR ADDITIONAL INFORMATION ART. 1.4

- The Committee considered that the situation complied with Charter of 1961, with regard to measures related to vocational guidance (Article 9) and training for the disabled (Article 15§1).

However, it put off its conclusion in relation to measures regarding vocational guidance and professional rehabilitation for workers (Article 10, Section 3). For the same reasons, the Committee deferred its conclusion on Article 15§4.

B) COMMENTS ON THE GOVERNMENT'S REPORT:

The situation in Spain does not comply with several sections of Art. 1 of the Charter since, in the European Committee of Social Rights' opinion, based on the documents, regulations and actions or lack such, or as highlighted by this party,

-the infringements referred to in the previous period persist and continue, or have even increased

-the highlighted legal framework is insufficient, as in the case of the employment of LGBTI persons, women, youth, disabled women, and over-55s and the long-term unemployed.

As well as any other cases that, in the Committee's opinion and after receiving these allegations, are believed to vulnerate the European Social Charter or, where applicable,

require requesting more information from the Spanish Government.

II. ABOUT THE INFRINGEMENTS OF ART. 9 ESC: RIGHT TO VOCATIONAL GUIDANCE.

A) CONCLUSIONS OF NON-COMPLIANCE:

- The infringement continues to exist and is not counteracted by the allegations presented by the Government since:

- The recommendations from the Employment Committee of the Council of Employment Ministers of the European Union have not been implemented; these called for reinforcing the Public Employment Services' capacity for action by guaranteeing a ratio of 1 adviser for every 100 unemployed persons.
- The recommendation received from the Council of the European Union in 2018 regarding the integration of the long-term unemployed into the job market has not been implemented; it indicated that all job seekers registered in public employment services that have been unemployed for 12 months or more should receive, before they have been unemployed for 18 months, an individual assessment of their needs and potential, with a view to receiving a labour-integration proposal providing them with a specific and personalised plan to obtain a job and enter the job market.
- According to a report by the Organisation for Economic Co-operation and Development (OECD), "Economic Survey Spain 2018," published in November that year, the section dealing with regional differences in the job market indicates that the total resources of Spain's PESs are far below those of other OECD countries, and that the number of job seekers per PES adviser/employee is too high. Improving this ratio and the advisers' specialisation is a necessary measure, in order to increase the effectiveness of active employment policies and ensure a more efficient distribution of funds among Autonomous Regions.

B) REQUEST FOR ADDITIONAL INFORMATION ART. 9:

- The information provided by the Government is insufficient and does not enable us to ascertain data regarding investment and resources aimed at guidance, in its different fields (educational, academic and professional).

C) COMMENTS ON THE GOVERNMENT'S REPORT:

III. ABOUT THE INFRINGEMENTS OF ART. 10 ESC: RIGHT TO VOCATIONAL TRAINING.

A) CONCLUSIONS OF NON-COMPLIANCE

- The infringement continues to exist and is not counteracted by the Government's allegation since:

- The current situation of VT in Spain is one of infringement that is resulting in constant deterioration in the facilities of public centres, and in increase in the ratio of students

per teacher.

- Availability does not correspond to demand, which makes it impossible for all potential students to access it. In many cases, it does not enable students to continue with the studies towards which they were guided and planned for, as required by the current education system, and in other cases, it is difficult to resume studies later on.
- All of these matters have been confirmed by the latest State School Council Report (2019), in relation to the state of the education system in the “2017/2018 course,” in which it proposes (Chapter F) the following improvements:
 - Increasing investment in education, otherwise it will not be possible to attain the objectives put forward in the European Union’s 2020 Strategy.
 - Increasing public assistance for families, since average expenditure in Education has increased by 11.2%.
 - Analysing the advisability of promoting a law to finance our education system that guarantees sufficient investment in order to fulfil the educational objectives, which should be an absolute social priority.
 - The need for increasing expenditure in Vocational Training, specifically Dual Vocational Training, since our country is one of those with the smallest range of training options in Europe.
 - Noticeably increasing the capacity of Vocational Training in public centres, so that they can meet existing demand and avoid an enormous increase in private education, in both Medium- and, above all, Upper-Level Training Cycles.
 - The need for enabling Vocational Training to respond immediately to the production system’s needs, by creating the specialised cycles that the need for professionals requires, as well as equipping them with appropriate technical resources.

Also attached as an APPENDIX is a dossier analysing the situation of Vocational Training, which was prepared as part of the campaign calling for “More and Better VT for a Decent Future.”

B) REQUEST FOR MORE INFORMATION ON THESE MATTERS:

Article 10§1

- *Indicate what strategies and measures have been adopted to harmonise the skills acquired by means of education and vocational training with the job market’s demands, especially demands resulting from globalisation and technological developments, and thereby close the gap between education and work.*
- The information provided by the Government does not enable the monitoring and evaluation of the level of student access to the job market and the training received.
- The Ministry of Labour should be involved in the reply to this section, since it is responsible for vocational training in the case of workers and the unemployed. Furthermore, there are other ministries that promote training associated with different government strategies (Digitalisation Strategy, promotion of the ecological transition...)

- Research into the evolution of professional profiles and new qualification needs is underdeveloped in Spain. There are several national entities that share responsibilities in this area; trade union and employers' organisations participate in some of them but without a shared action protocol. It is necessary to increase investment in order to improve research and coordinate the work carried out by such entities.
- In any case, in accordance with employment data, production activities have changed a lot in recent years. Hospitality and commerce are still the sectors that create the most jobs with the largest working population.
- On the other hand, Spain's results regarding the human capital indicators established by the EU (*DESI Report*) show that it is approaching and even, in some cases, exceeding European levels, e.g. in the percentage of ICT professionals and graduates.
- In fact, the number of persons with advanced VT qualifications, in activities related to medium-and high-technology sectors, is greater than the number of available jobs. In other words, the training system is producing more qualified people than the production system is capable of absorbing.
- The Business Confidence Index¹ (INE) appears to corroborate the fact that the '*gap between education and work*' is not significant, since only 10% of companies indicate that the lack of '*appropriate human*' has had a negative impact on their business.
- In order to improve the demand for qualifications, as well as training systems, investments are required in order to change production activities, especially in those linked to the ecological transition and social welfare, in which digital technology should act as a driving force.

Please provide information about the measures adopted to integrate migrants and refugees into education and vocational training.

- **In relation to the establishment of processes to recognise professional skills acquired through work experience (Royal Decree 12224/2009), to which the Government's information refers, it is necessary to qualify the statement 'process open to the entire population.'**
- **According to the requirements for accessing this procedure, it is aimed at over-18s that are Spanish nationals or legal residents, among others. This means that it excludes all those whose situation has not been legalised.**

Article 10§3:

- *Describe the strategies and measures (legal, regulatory and administrative frameworks, funding and practical agreements) that have been implemented in order to guarantee training and the acquiring of new skills in all areas (particularly digital literacy, new technologies, man-machine interaction and new work environments, the use and operation of new tools and machines), which workers require in order to be competitive in emerging job markets.*

¹ INE. Business Confidence Index (BCI), Business Environment Opinion Module, 2018

- A significant number of companies (54%) believe that training in general or professional ICT skills is important for their development, which highlights the importance of improving research and updating syllabuses in the different training options.
- In relation to regulated training, the Government's reply seems to be very poor in view of what has been done in the field of education. More information should be provided regarding the introduction of vocational training qualifications related to 'emerging sectors' and graduates' entry into the job market.
- In relation to unregulated training, in the employment training system, which is the responsibility of the labour administration, a lot of training has been carried out with regard to digitalisation, but with basically mainstream content, while it would appear that greater specialisation is required in this field.
- In this field, the number of companies that carry out ICT training is very low. Only 12% of workers (20% in companies with more than 499 employees) are trained in '*general information technology skills,*' and 6% in '*specialised information technology skills.*'

IV. ABOUT INFRINGEMENTS OF ART. 15 ESC (RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT)

A) REQUESTS FOR INFORMATION IN RELATION TO ART. 15.

Article 15§1

- *Indicate the progress in ensuring disabled children's access to and inclusion in the main facilities. Indicate the tendencies in this area, including the number of disabled children included in conventional facilities, the number attending special schools, the number attending school on a part-time basis, etc. Moreover, indicate the legislative basis for inclusion and the existing resources implemented in case of exclusion from education due to disability.*
- *Provide information about the progress made in guaranteeing disabled persons' access to employment in the open job market, including recent measures of non-discrimination and measures for promoting employment. Include figures on the number of disabled persons in employment and the number of unemployed.*
- *Provide updated information about the employer's obligation to adopt measures in accordance with the requirement of reasonable adjustments, in order to guarantee the effective access to employment of disabled persons.*

Article 15§3

- *Describe the measures taken (and the progress made) to guarantee that disabled persons are entitled to live independently in the community, such as the existence of available independent living plans, protected housing for disabled persons, home support services, residential services and other community services, including personal assistance.*
- Promoting *specific training actions* duly adapted to the different disabilities that may affect workers, so that they can participate in the same conditions as the rest of the

- workforce.
- Ensuring, by means of legislation, *transition to ordinary employment* in the case of workers in Special Employment Centres.
 - *Guaranteeing that collaborating companies with a labour enclave adjust their facilities and jobs* to the needs of Special Employment Centre workers, in the terms indicated in occupational risk prevention legislation.

IMPLEMENTED MEASURES

1. Action plan of the Spanish Strategy on Disability 2014-2020

UGT believes that, despite the proposals contemplated in the plan, which is really just a continuation of past action plans, this new Plan, and Strategy, ignore the participation of social representatives.

This Plan, which is also designed to be implemented biannually, established the carrying out of a comprehensive evaluation of the measures implemented therein, which would enable us to see to what extent the actions had been carried out. We ignore whether this evaluation was carried out as it was not mentioned in Spain's 32nd Report on the European Social Charter that we are analysing.

This Plan establishes well-defined strategic objectives, but the success or failure of this type of plan is determined by the actions that are carried out and whether they are aimed specifically at tackling and eradicating the causes of discrimination.

In relation to employment, one of the objectives is promoting the disabled persons' right to work, in conditions guaranteeing the application of principles of equal treatment and non-discrimination. An analysis of the employment statistics shows that the activity and employment rates are very low. In UGT's opinion, what is most alarming about all of this is not only the low activity rates but also the other side of the coin –which is not being taken into account as regards establishing policies to tackle it– namely, the extremely high inactivity rate, which is something that the Plan should tackle.

In recent years we have been dealing with the same objectives to be implemented in the field of employment and it seems that they are never fulfilled. The current Plan repeats them once again, establishing actions aimed at promoting access to employment; it emphasises the need for incorporating active policies whose effectiveness we ignore and establishes the need for coordination between public employment services and disability assessment entities, but this coordination has not been realised.

At no time does the Plan quantify its objectives, which makes it difficult to evaluate the degree of fulfilment attained. On the other hand, we ignore the available budget for implementing this Action Plan; in short, despite the literature contained therein, we cannot evaluate the implementation of the initiatives. This is a situation that is highlighted latently in this Report, which does not include a single improvement regarding a comparative analysis, the results of the actions carried out or new regulations established.

V. ABOUT THE INFRINGEMENTS OF ART. 18 ESC (RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER PARTIES).

One of the main difficulties facing entrepreneurs that want to work within the sphere of the Council of Europe has to do with the coverage systems. Even within the EU, the European legislation that coordinates its Member States' Social Security systems involves complex criteria

and principles that are not easy to understand, coordinating the different national legislations. In the case of non-EU countries, this is only possible by means of international agreements.

Mobility within the EU and within non-EU Europe, regardless of whether it forms part of the Schengen Area or not, still involves obstacles when it comes to engaging in a gainful occupation.

In Spain, the idea of gainful occupation should create jobs and be of economic interest; it cannot be “rejected” either in Spain or in any other country with which it has negotiated an agreement or charter or international instrument for the entry of foreign migrants. Such ones must have health insurance in our country and certify that they have sufficient resources and the required investment to begin their enterprise.

In the case of non-EU nationals from the European Economic Area or Switzerland, Iceland and Norway that are going to work or start an enterprise for more than three months, they must be registered in the Immigration Office’s Central Foreigner Register or in a Police Station.

Non-EU foreigners have to apply for an entrepreneur visa, in addition to residency for entrepreneurs, submitting the corresponding documentation (duly translated) to the consular office, open a bank account, into which money cannot be deposited until the company has been set up, and present a business plan.

They must have a business plan, liability statement and proof of payment of the corresponding taxes, which, along with language problems, often makes it very difficult for such entrepreneurs, without there being any plan to support such ones.

VI. ABOUT THE INFRINGEMENTS OF ART. 1 OF THE ADDITIONAL PROTOCOL OF 1988 (RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX).

A) INFORMATION REQUIRED REGARDING THESE MATTERS:

Article 1 of the Additional Protocol of 1988

- *Provide updated information about the legal framework guaranteeing equal remuneration for equal work or work of equal value, with special emphasis on the following aspects:*
 - *regulations on the transfer of the burden of proof in cases in which wage discrimination for reasons of gender is alleged*
 - *regulations on compensation in the case of discrimination for reasons of gender (do the maximum limits apply?)*
 - *Does national legislation and practice establish wage comparisons outside the directly involved company?*
- *Describe the systems established for job classification and promotion, as well as the strategies and measures adopted to guarantee wage transparency in the job market (in particular, the possibility of workers being informed about other workers’ wage levels), including the establishment of specific deadlines and criteria for measuring the progress made.*
- *Provide statistical data on the gender wage gap (adjusted and non-adjusted) for all*

years included in the reference period.

In its Conclusions XXI-1 (2016), in relation to Article 1 of the European Social Charter's Additional Protocol and with regard to equal remuneration for equal work or work of equal value, the European Committee of Social Rights requests information about the following aspects:

- Regulations regarding compensation in cases of discrimination for reasons of gender (do the maximum limits apply?)
- Describe the systems established for job classification and promotion, as well as the strategies and measures adopted to guarantee wage transparency in the job market (in particular, the possibility of workers being informed about other workers' wage levels), including the establishment of specific deadlines and criteria for measuring the progress made.

The table below shows the tendency regarding INEQUALITY IN EMPLOYMENT:

	Media 2011	Media 2012	Media 2013	Media 2014	Media 2015	Media 2016	Dif 2011-2016
Parados (miles)	5.013	5.811	6.051	5.611	5.056	4.481	-532
Tasa de paro %	21,39	24,79	26,09	24,44	22,06	19,64	-1,7
Hombres (miles)	2.706	3.131	3.206	2.917	2.559	2.213	-493
Tasa paro masculina (%)	21,04	24,58	25,60	23,60	20,77	18,12	-3
Mujeres (miles)	2.307	2.680	2.846	2.694	2.497	2.268	-39
Tasa paro femenina (%)	21,81	25,03	26,67	25,43	23,55	21,38	-0,4
Menores de 25 años (miles)	894	956	951	851	751	656	-238
Tasa de paro menores 25 (%)	46,19	52,86	55,48	53,20	48,35	50,84	4,6
Mayores de 55 años (miles)	408	510	584	605	599	573	165
Tasa de paro mayores 55 (%)	14,39	17,25	19,36	19,32	17,93	16,80	2,4
Desempleados más de 1 año (%)	48,14	52,33	58,44	61,78	59,53	57,26	9,1
Desempleados más de 2 años (%)	24,64	29,89	36,08	42,52	43,6	42,39	17,8

Fuente: Gabinete Técnico CEC – UGT a partir de EPA, INE.

As we can see, the unemployment rate in the fourth quarter of 2016 ranged from 18.2% for men and 21.38% for women, which highlights that the gender gap is widening again, perpetuating the structural inequalities that underlie the Spanish job market and that are still rising today.

B) COMMENTS ON THE GOVERNMENT'S REPORT:

There have been important changes in the Interprofessional Minimum Wage: In 2018, it was set at €730.90, which was a 4% increase compared to 2017 (€707.60). In 2019, it was established as €950, which was a 22% increase in relation to the previous year. This is the largest recorded increase. With this rise, the Government claimed that its objective was bringing the IMW up to 60% of the workers' mean average wage, as established by the European Social Charter.

In January this year, an agreement was subscribed by the Labour Minister, Yolanda Díaz; the chairmen of the employers' organisations CEOE (Antonio Garamendi) and CEPYME (Gerardo

Cuerva) and the general secretaries of CCOO (Unai Sordo) and UGT (Pepe Álvarez) to increase the IMW from €900 to €950 for 2020, which is a 5% increase, as a first step towards bringing the IMW up to 60% of Spain's mean salary by the end of the parliamentary term, in fulfilment of the European Social Charter.

This measure favours workers in general but especially part-timers (74% of whom are women). It is a measure with a highly favourable gender impact, since it is especially beneficial for young people, women, domestic workers, workers with temporary contracts and those that suffer the most from staff turnover.

According to initial estimates, this increase in the IMW to 950 euros will directly benefit two million workers. Of these, 1.5 million work full time, of whom 6 out of 10 are women (57.6%) and 7 out of 10 work in the services sector (8 out of 10 women work in this sector).

An analysis on the basis of gender shows that women receive the lowest wages. According to the annual Wage Structure Survey (WSS) of 2017 –the latest one published– 18.8% of women were paid less than or the same as the Interprofessional Minimum Wage (IMW) in 2017, compared to 7.8% of men (a third of the female rate). In other words, 3 out of 4 people with income equal to or less than the IMW are women.

On the other hand, in relation to the proportion of workers with low income (wage-earners whose wage per hour is less than 2/3 of the average rate), which amounted to 16.2% in 2017, 63.9% were women: 7 out of 10.

With regard to the wage gap, in 2017 men earned an average of 26,391.84 euros compared to 20,607.85 for women (5,783.99 less). According to the National Statistics Institute, the average annual female salary was 78.1% that of men. In CCOO and UGT's opinion, the average annual income of female workers should rise by 28% to be on a par with that of male workers.

The 4th Employment and Collective Bargaining Agreement (2018-2020) states in the Equality section:

The signatories call for the implementation of comprehensive measures to favour labour and salary equality between men and women, contemplating at least the following:

...

A qualitative study of the system of bonuses and extra pay, which measures its gender impact and suitably informs the negotiating committees of collective agreements, in order to adapt them to criteria that do not involve a negative gender impact.

The only legislation that contemplates equal pay is the Workers' Statute, Art. 28 *Equal remuneration for reasons of gender*, which establishes the obligation of equal pay for work of equal value without gender discrimination. This article was modified by Royal Decree 6/2019, which obliges companies to keep a wage register. In the case of companies with at least 50 workers, when the average remuneration of one gender is more than 25% larger than the other, the employer should include a justification in the wage register indicating that this difference is not due to the workers' gender.

The article does not establish a way of correcting this difference and enables it to continue to exist.

In the month of March-April, the implementation of this article was submitted to public consultation. The basic document that was provided referred to the professional classification and evaluation of jobs. At UGT and CCOO, we believe that negotiation and agreement with the workers' legal representatives throughout the process is essential.

In relation to professional classification, it is regulated by Art. 22 of the Workers' Statute, which

establishes that this system is the result of an agreement between the company and the workers' legal representatives.

The 4th Employment and Collective Bargaining Agreement (2018-2020) does not include any guidelines related to this matter.

In relation to ILO Conventions: Convention 189 – Domestic Workers Convention and Convention 190 – Violence and Harassment Convention, we would like to highlight CCOO and UGT's stance, with a view to their ratification.

In relation to C189, which was approved in 2011, *Royal Decree 1620/2011, of November 14, which regulates the special work relationship of the domestic service*, came into force on January 1, 2012. *Royal Decree Law 29/2012, of December 28, on improving the management and social protection of Domestic Workers in the Special Scheme and other economic and social measures*, introduced the following modification: *Workers included in the Special Scheme for Domestic Workers, established in the General Social Security Scheme, should directly submit their affiliation, registration, cancelation and data modification when so agreed with their employers.* This measure had a negative effect on hiring. After RD 1620/2011 came into force, 500,000 domestic workers became affiliated to the General Scheme. Starting in 2012, the figure has gradually declined to the current total of 390,000.

In relation to statistics, it is also worth noting that although the Survey of the Working Population includes information on domestic personnel, the Wage Structure Survey does not contemplate this occupation, which is one that is highly feminised.

At present, domestic workers are not entitled to unemployment benefits while the employer still has the right to terminate their contract.

CCOO and UGT have carried out different campaigns to demand the Government's ratification of C189, which enables domestic employment to be equated to other occupations.

In relation to ILO's Convention 190, approved in 2019, on March 2 this year the Government announced, in the presence of the ILO's director-general Guy Ryder, that it would begin the process of ratifying the said agreement. In view of the country's exceptional situation derived from the state of emergency declared due to coronavirus, UGT and CCOO hope that once the situation goes back to normal, the Government will fulfil this ratification and also begin the ratification of C189, which is essential in the construction of specific legislation regulating the working conditions and social protection of domestic employment.

Wage gap in Spain

In order to calculate the gap, at UGT and CCOO we use the men/women approach since it is more realistic. This approach is being used by Treasury inspectors for their reports.

We prepared the tables ourselves with data from the National Statistics Institute's Wage Structure Survey (WSS) and the Survey of the Working Population.

Data from the WSS

Year	Gap according to type of workday		
	Total gap	Full-time gap	Part-time gap
2017	28%	13%	08%
2016	29%	14%	07%
2015	30%	14%	07%
2014	30%	13%	03%

2013	32%	17%	09%
2012	31%	18%	10%

Year	Gap according to type of contract		
	Total gap	Permanent contract gap	Temporary contract gap
2017	28%	31%	13%
2016	29%	31%	14%
2015	30%	32%	11%
2014	30%	32%	14%
2013	32%	35%	12%
2012	31%	34%	13%

Gap according to main occupation groups						
	2017	2016	2015	2014	2013	2012
All occupations	28%	29%	30%	30%	32%	31%
A Directors and managers	29%	24%	23%	24%	22%	19%
B Intellectual and scientific technicians and professionals in the health and education sectors	15%	18%	14%	15%	17%	18%
C Other intellectual and scientific technicians and professionals	20%	20%	21%	23%	25%	25%
D Technicians; support professionals	24%	24%	24%	26%	24%	24%
E Office employees that do not deal with the public	22%	26%	25%	28%	24%	24%
F Office employees that deal with the public	29%	26%	25%	26%	27%	26%
G Workers in hospitality and commercial services	19%	19%	25%	26%	25%	26%
H Workers in health and care services	24%	30%	31%	33%	27%	27%
I Workers in protection and security services	18%	17%	32%	22%	26%	19%
J Qualified workers in the agricultural, stockbreeding, forestry and fishing sector	0%	0%	0%	0%	0%	0%
K Qualified construction workers, except machine operators	-36%	-26%	-08%	-07%	-05%	-05%

L Qualified workers in manufacturing industries, except installation and machine operators	40%	41%	39%	41%	45%	44%
M Fixed installation and machinery operators, and fitters	38%	40%	44%	43%	40%	39%
N Mobile machinery drivers and operators	10%	19%	12%	-16%	20%	14%
O Non-qualified service workers (except transport)	40%	39%	46%	45%	43%	44%
P Labourers in agriculture, fishing, construction, manufacturing industries and transport	21%	24%	28%	28%	27%	24%
Q Military occupations	0%	0%	0%	0%	0%	0%

In this table, data preceded by a negative (-) sign indicates that the sample is between 100 and 500, which means that the figure is subject to a high degree of variability.

This mainly affects, in this table, the occupation of Qualified construction workers, except machine operators.

In occupations with 0%, it is because the obtained reply is less than 100.

Year	Gap according to working hours		
	Total gap	Gap in permanent contract hours	Gap in temporary contract hours
2017	16%	18%	03%
2016	17%	19%	04%
2015	16%	18%	01%
2014	17%	19%	01%
2013	20%	23%	03%
2012	21%	23%	05%

Percentage of workers according to remuneration compared to the Interprofessional Minimum Wage (IMW) (in relation to total workers), according to type of workday and gender

	2017			
	Total		Full time	
	Women	Men	Women	Men
Total workers	100	100	100	100
From 0 to 1 IMW	19	8	2	1
From 1 to 2 IMW	40	34	41	33
From 2 to 3 IMW	22	28	29	32
From 3 to 4 IMW	11	14	15	16
From 4 to 5 IMW	5	8	7	9
From 5 to 6 IMW	2	3	3	4
From 6 to 7 IMW	1	2	2	2
From 7 to 8 IMW	1	1	1	1
More than 8 IMW	0	1	1	1

Notes:

IMW in 2017: 9,907.80 euros

Table based on the Study of the Working Population

Mean salary according to type of workday, gender and decile, figures in euros									
Total decile	2017								
	Total			Full time			Part time		
	Total	Men	Women	Total	Men	Women	Total	Men	Women
	1,888.95	2,090.65	1,668.68	2,120.76	2,215.37	1,993.83	731.44	758.25	721.64
1	464.34	493.12	453.34	642.01	636.68	647.12	450.34	471.80	442.81
2	863.90	873.09	858.26	882.86	885.35	880.81	837.00	844.69	834.05
3	1,121.90	1,124.32	1,120.18	1,123.98	1,125.60	1,122.69	1,109.94	1,111.74	1,109.31
4	1,323.00	1,324.82	1,321.12	1,323.06	1,325.00	1,320.89	1,322.29	1,320.95	1,322.83
5	1,497.73	1,499.00	1,495.82	1,498.09	1,499.08	1,496.51	1,489.14	1,495.03	1,486.40
6	1,698.01	1,698.53	1,697.18	1,698.47	1,698.77	1,697.97	1,675.89	1,675.34	1,676.14
7	1,970.29	1,966.88	1,975.52	1,969.94	1,966.78	1,974.95	1,990.36	1,986.02	1,991.37
8	2,363.15	2,357.83	2,370.71	2,363.26	2,357.76	2,371.16	2,352.92	2,369.05	2,345.05
9	2,955.46	2,956.60	2,953.90	2,956.05	2,957.17	2,954.52	2,904.29	2,866.51	2,921.40
10	4,631.17	4,722.45	4,460.61	4,631.17	4,722.45	4,460.61

Note: Mean salaries are the average of gross monthly salaries.

This table shows gross monthly salaries according to gender and type of workday, with the population arranged from the lowest-income decile (decile 1) to the highest-income one (decile 10).

In its Conclusions XXI-1 (2016), in relation to the European Social Charter's Additional Protocol and with regard to the guarantee of equal remuneration for equal work and work of equal value, the European Committee of Social Rights requests information about the following aspects:

- *Regulations regarding compensation in the case of discrimination for reasons of gender (do the maximum limits apply?)*

The discrimination for reasons of gender that affects women is precisely incorporation into and permanence in the job market. This discrimination is perceived, first of all, in the activity rate; in 2019, there was a 12 per cent gap between women's and men's activity rates, a difference that is maintained in the case of the employment rate (46% for women in 2019).

This employment rate hides the reality of the conditions in which women enter the job market and the occupations in which they do so.

Twenty-seven per cent of female workers have a temporary contract. Part-time work is still highly feminised, as shown by the fact that 75% of part-time workers are women. In women, the ratio of part-time to full-time employment is 25%; in the case of men, it decreased from 8% in 2016-2017 to 7% in 2018, i.e. part-time employment is still dominated by women, triplicating the male rate. This ratio of part-time work has a large impact on women, in both the public (9%) and private (30%) sectors.

Not being able to find full-time work is the main reason for doing part-time work in the case of working women (52%), followed by looking after children or adults that are ill, disabled or old (14%) –the main reason provided is not being able to afford suitable services to take care of sick adults, disabled persons or senior citizens.

The relationship between part-time employment and balancing work and family life, as well as joint responsibility, is a key factor in the main trade unions' demands. Part-time work is a structural barrier that makes it difficult for women to enjoy suitable working conditions that guarantee their personal autonomy.

Part-time work is often combined with a temporary contract, which results in greater vulnerability for those in this situation: 10% of wage-earning women with a temporary contract work part time.

Three of every four men have a permanent, full-time contract compared to one of every two women, whose presence in part-time work is greater in the case of both permanent and temporary contracts.

Sixty-nine per cent of women that work part time do so in the services sector, specifically in wholesale and retail commerce, hospitality, domestic employment, administrative and health activities.

Women are continuing to consolidate their presence within the services sector in certain activity branches, which has an impact on their wages. In accordance with the European Commission, *"when women make up the majority of those that work in a certain occupation, they receive lower wages. In the case of men, the complete opposite is true... Women's capabilities are often undervalued because they are viewed as a reflection of "female" characteristics, instead of acquired capacities and skills."*

Maternity has an effect on women's presence in the job market as well as their wages: women tend to reduce their workday, which affects not only their salary but also the future benefits to which they might be entitled, resulting in greater vulnerability and possibilities of falling into situations of poverty.

In relation to persons that have had to stop working to look after their own or their partner's child, 87% of men did so for six months at the most. In the case of women, such periods are more unequal: 50% stopped working for six months, 21% from six months to a year and 10% for more than 5 years.

All these situations have an adverse effect on the social benefits that women receive, as regards both unemployment benefits and old-age pensions. As a result of the direct exclusion from the job market that women have suffered for generations, most female pensioners receive a pension as beneficiaries of a third party, traditionally their husband.

The gap remains in the case of old-age pensions. Women's average pension amounts to 794.46 euros/month, which is 36% less than that of men. This inequality is undoubtedly due to women's smaller salaries and shorter periods of contributions.

Also included are the need for investment in public care systems, as well as the need for real joint responsibility and equality in leaves of absence for both men and women.

In this section, it is necessary to mention the 4th Collective Bargaining Agreement (CBA), which is the result of an agreement between trade union and employers' organisations. This agreement is a corrective measure designed to tackle inequality and labour discrimination by establishing the parameters for approaching collective bargaining. On the other hand, it is a mechanism that has a direct impact on correcting the harmful effects of inequality and discrimination in women's socio-labour situation. The 4th CBA includes the need for investing in public care systems, in addition to generating measures of real joint responsibility as well as equality in leaves of absence for both men and women.

The labour discrimination experienced by women prolongs its harmful effects beyond their active working life.

VII. REITERATION OF REQUEST FOR INFORMATION ON CONCLUSIONS XX-4 (2015) - ARTICLE 7.5 (RIGHT OF CHILDREN AND YOUNG PEOPLE TO PROTECTION – FAIR PAY)

A) CONCLUSIONS OF NON-COMPLIANCE.

In its Conclusions XX-4 (2015), the Committee concluded that Spain does not comply with Article 7§5 of the Charter of 1961 for the following reasons:

- *The remuneration of young workers is not fair;*
- *The remuneration paid to apprentices has not been established as appropriate.*

B) INFORMATION REQUIRED REGARDING SUCH MATTERS:

The Committee highlighted the following: "The Committee would like the next report to indicate minimum and average net wages, for the reference period in question. It underlines that it requests the net value, i.e. after deducting taxes and Social Security contributions, and this in the case of a single worker. (...) The report explains that the amount of remuneration paid to apprentices is established by collective agreements and can, in no case, be inferior to the minimum wage. The Committee has repeatedly requested

information about the average and minimum net sums, at the national level, that are received by apprentices at the beginning and end of their apprenticeship. The report does not contain the requested information. In view of the absence of information, the Committee believes that the appropriateness of the remuneration paid to apprentices has not been established.”

C) COMMENTS ON THE GOVERNMENT’S REPORT:

There has not been any change in legislation that enables us to conclude that the situation has improved, which means that the conclusion of non-compliance with the Charter remains from our point of view.

VIII. DEFERRED CONCLUSION – ARTICLE 2.4 (RIGHT TO JUST CONDITIONS OF WORK).

A) INFORMATION REQUIRED REGARDING SUCH MATTERS:

- *States must grant workers engaged in certain hazardous or unhealthy conditions a reduction in their hours of work or extra paid leave).*

A question from the Committee:

- *First of all, most of the mentioned regulations (royal decrees) establish the principle of limitation of exposure to risk and/or reduction of working hours in general terms and do not prescribe specific limitations or reductions. Therefore, the Committee requests information about the regulations of collective agreements that specifically implement the decrees in question and/or about how the decrees are applied in practice by employers throughout the Spanish job market.(...)*
- *Secondly, no mention is made of regulations in relation to working with asbestos or ionising radiation, for example. Therefore, the Committee requests information about whether these and other hazardous and unhealthy activities are regulated and in what way.*
- *Thirdly, the Committee believes that the examples of collective agreements provided are too fragmented and limited, in both occupational and geographical terms. Therefore, it requests additional and more extensive information about collective agreements that establish compensatory measures in the sense of Article 2§4. In this regard, it would like to highlight that the increase in remuneration contemplated in the Collective Agreement for Construction cannot be considered an appropriate measure in the terms of Article 2, Section 4. The Committee also asks whether any regulations or collective agreements contemplate additional paid leaves/holidays.*

B) COMMENTS ON THE GOVERNMENT’S REPORT:

The regulations that apply in the case of asbestos are included in Royal Decree 665/1997, of May 12, on the protection of workers against risks related to exposure to carcinogenic agents in the workplace, as well as those included in Royal Decree 396/2006, of March 31, which establishes the minimum health and safety regulations applicable to work involving the risk of exposure to

asbestos.

Asbestos causes work-related cancer, which is clearly overlooked in our country. Appendix I of Royal Decree 1299/2006, of November 10, which approves the list of professional illnesses in the Social Security System, establishing criteria for their notification and registration, includes in Group 6 professional illnesses caused by carcinogenic agents, which include asbestos. During 2019, only 35 cases of asbestos-related cancer were recognised out of 27,343 professional illnesses.

With regard to the creation of a Compensation Fund for Asbestos Victims, it should be noted that, to this day, it has not implemented due to constant delays in its processing. It was not established in the previous parliamentary term due to the calling of early elections. In the current parliamentary term, the Basque Parliament submitted a bill to the Spanish Parliament, in mid-2019, in order to create the said fund.

With such a fund, our country's workers would have access to compensatory benefits similar to those that already exist in countries such as France, Holland or Belgium, and which arose as a result of the States' liability for not having acted, during a long term, in harmony with the precautionary principle in relation to the use of and contact with asbestos.

The creation of this fund means that asbestos victims and their families would not have to go to court to claim their rights, with the high economic and personal costs that this involves and the risk of obtaining sentences with different results.

In relation to legislation regulating ionising radiation, it should be pointed out that Directive 2013/59/EURATOM for protection against dangers derived from exposure to ionising radiation has not been transposed into our legal system (the deadline was February 6, 2018). The Directive mandates the preparation of a National Radon Plan that establishes, among other matters, the measuring of this gas in the workplace, in order to evaluate its exposure and adopt the necessary preventative measures.

There has not been any change in legislation that enables us to conclude that the situation has improved, which means that the conclusion of non-compliance with the Charter remains from our point of view.

AND, BASED ON THE FOREGOING, THE TRADE UNION CONFEDERATION OF WORKERS' COMMISSIONS AND THE GENERAL UNION OF WORKERS submits to the European Committee of Social Rights the above observations and allegations to the Report presented by the Spanish Government, highlighting:

- **The reiteration of infringements by the Spanish Government.**
- **The insufficient information provided by the Spanish Government, in relation to the indicated aspects, in all the sections giving rise to this report.**
- **Non-compliance with the European Social Charter in the aspects mentioned in each of the above sections and in all the articles to which these allegations refer.**

And requesting the adoption of the necessary measures, in order to ensure the labour and social rights guaranteed by the said instruments.