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EUROPEAN SOCIAL CHARTER

Comments by the Confederation syndical de Comisiones Obreras (CCOO) and

Unión general de trabajadores de España (UGT)

on the 33rd National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF SPAIN

Articles 3,11,12,13,14 and

Article 4 of the Additional Protocol: Right to social protection of the elderly of the European Social Charter

for the period 01/01/2016 – 31/12/2019

Report registered by the Secretariat

on 09 July 2021

CYCLE 2021

ALLEGATIONS OF THE CONFEDERACION SINDICAL DE COMISIONES OBRERAS (CCOO-SPAIN) Y DE LA UNIÓN GENERAL DE TRABAJADORES Y TRABAJADORAS DE ESPAÑA (UGT-SPAIN) IN RESPONSE TO THE 33rd NATIONAL REPORT PRESENTED BY THE GOVERNMENT OF SPAIN, TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR), ON THE COMPLIANCE THE EUROPEAN SOCIAL CHARTER (ESC)

- **THEMATIC GROUP ON HEALTH, SOCIAL SECURITY AND SOCIAL PROTECTION,**
- **ADDITIONAL PROTOCOL OF 1988**
- **ADDITIONAL INFORMATION REQUIRED IN CONCLUSIONS XXI-2 (2017) OF THE ECSR**

30 JUNE 2021

Spain has presented 33rd Report, corresponding to the monitoring procedure for the application of the 1961 European Social Charter and the Additional Protocol, dated 5 May 1988.

Specifically, in this period, it is necessary to analyse the **Thematic Group on the application of provisions on HEALTH, SOCIAL SECURITY AND SOCIAL PROTECTION, which includes the following articles of the European Social Charter of 1961**:

- **Articles 3: Right to safety and hygiene at work.**
- **Article 11: Right to health protection.**
- **Article 12: The right to social security.**
- **Article 13: Right to social and medical assistance.**
- **Article 14: Right to social services benefits.**
- **Article 4 of the Additional Protocol: Right to social protection of the elderly.**

Likewise, the Report incorporates ALLEGATIONS about the ADDITIONAL INFORMATION REQUIRED OF THE GOVERNMENT OF SPAIN, IN OTHER CONCLUSIONS, XXI-2 (2017) OF THE COMMITTEE ON SOCIAL RIGHTS (ECSR).

The reference period to take into account is between **1 January 2016 and 31 December 2019**.

The period also includes the special situation of THE COVID-19 PANDEMIC.

UGT and CCOO are trade union organisations with the highest level of representativeness from union elections at the state level, and consequently we hold constitutional recognition for the promotion and defence of workers and employees, in Spain and outside Spain, being integrated into international organisations with Statute of participation before the Council of Europe, so we have sufficient legal capacity to make these ALLEGATIONS that we present to the European Committee of Social Rights:

ALLEGATIONS

I) ON COMPLIANCE WITH ARTICLE 3: RIGHT TO SAFETY AND HYGIENE AT WORK.

1) In relation to the regulations that have been configuring a system of INCENTIVES IN MATTERS OF CONTRIBUTIONS IN LIGHT OF LOW ACCIDENT RATES:

The Government report cites certain rules that have been configuring an incentive system consisting of reducing contributions to companies with low rates of work-related accidents:

- Royal Decree 231/2017, dated 10 March, which regulates the establishment of a system of reduction of contributions for professional contingencies to companies that have considerably reduced the rate of work-related accidents (page 7).
- Order ESS/256/2018, dated 12 March, which implements Royal Decree 231/2017, dated 10 March, which regulates the establishment of a system of reduction of contributions for professional contingencies to companies that

have considerably reduced the rate of work-related accidents (page 8).

- Royal Decree-Law 18/2019, dated 27 December, which adopts certain measures in tax, land registry and Social Security matters (page 14).

This incentive system is detrimental to workers, for the following reasons:

- It is an incentive system that rewards the mere fulfilment of legal obligations. This is not suitable.
- In the field of occupational risk prevention, the employer, according to article 14 of Law 31/1995, dated 8 November, must carry out effective protection in terms of health and safety. Which translates into formal and results-based obligations. Therefore, not having accidents or illnesses is part of the safety responsibility that the employer has with workers, and employees.
- Royal Decree 404/2010 included the participation of the legal representation of the workers that not only carried out an evaluation of regulatory compliance, but also allowed to achieve the incentive determined by the standard, and the improvements in occupational risk prevention were assessed that went beyond the fulfilment of legal obligations.
- The following Royal Decree 231/2017, which repeals the previous one, eliminates the participation of the legal representation of workers and places the emphasis on the "objective" compliance by companies with reference accident rates. This RD 231/2017 exclusively focuses on companies meeting the objective of having reference accident rates, without assessing the improvements in risk prevention that companies carry out. The requirements demanded of the beneficiary companies are reduced, therefore, the company does not have to prove compliance with the basic requirements in terms of occupational risk prevention, by means of a certification or document that accompanies the presentation of the request of the Delegates of Prevention or accompanied by its ALLEGATIONS (art. 2.4 and 3.2 of RD 404/2010). The prevention delegate is relegated to receiving information on the submission of applications.
- This system makes it easier for companies to incur in a "sub-registration of damages", especially since the management to obtain the incentive is carried out between the mutual, which initiates the recognition of the damage and the company itself, with the aggravating circumstance that the mutual can receive up to 10% of the incentive obtained if it is agreed with the beneficiary company. And this happens in practice. That is, a system of judge and party, where the mutual and the company can promote an under-declaration in order to both benefit from the corresponding incentive.

2) In relation to the prevention of occupational hazards in the field of self-employment.

The Government report mentions (page 9) the reform of Law 20/2007 through the eighth final provision of Law 6/2017, which modifies the twelfth additional provision of Law 20/2007, of the Statute of Self-Employed Work, which has the following wording:

"Twelfth additional provision Participation of self-employed workers in training and information programs for the prevention of occupational hazards

In order to reduce the accident rate and avoid the appearance of occupational illnesses in the respective sectors, the representative associations of intersectoral self-employed workers and the most representative trade union and business organisations may carry out permanent information and training programs corresponding to said group, promoted by the competent Public Administrations in matters of prevention of occupational risks and reparation of the consequences of accidents at work and occupational illnesses.

Respecting the criteria of proportionality and ensuring the presence of the different representation groups of the National Commission for Safety and Health at Work, the intersectoral associations of self-employed workers, both at the state and regional level, may participate, with voice and without vote, in the corresponding groups created within said Commission when the working conditions of self-employed workers are addressed, in the cases of planning, programming, organisation and control of management related to the improvement of working conditions and the protection of the health and safety of the self-employed".

A serious problem that continues to exist in the area of prevention of occupational risks in self-employed workers is the scarce training on risk prevention in the tasks they perform, which is only linked to their experience.

But the majority, have not received it at the beginning of their profession, nor later in an updated and continuous way, since they do not always carry out tasks or services for which they have been trained. All of this makes self-employed workers especially vulnerable to occupational hazards, since there is no design, training and updating in the prevention of occupational hazards, they only protect themselves in learning their own trade.

3) **In relation to the lack of use of the tool to learn preventive practice with own resources:**

The Government's report refers to the management tool called Prevencion10.es (Page 13): the resolution dated 22 July 2019, of the Secretary of State for Social Security, entrusting the National Institute for Occupational Health and Safety, public ministry autonomous body, during 2019, the management of the Social Security service called "Prevention10.es".

However, this tool does not allow us to obtain useful data, is not well-known and is difficult to access:

- Prevention10, is a public tool that facilitates the performance of preventive activity with own resources. It is managed by the National Institute of Occupational Safety and Health, allows queries or registration and has support for risk assessment and coordination of preventive activity.
- Of approximately 3,000,000 (three million) self-employed workers, the use of the tool has only been 10%.

4) **In relation to the lack of adaptation of the regulations against ionizing radiation:**

The Government report refers to the reform of the Technical Building Code (page 14) 14) by Royal Decree 732/2019, dated 20 December, which modifies the Technical

Building Code, approved by Royal Decree 314/2006, dated 17 March.

- However, this does not allow us to consider whether international standards for protection against ionizing radiation are met:
    - There has only been a partial transposition of Directive 2013/59/EURATOM regarding the modification of the Technical Building Code. The complete transposition of this Directive would also require the modification of Royal Decree 783/2001, dated 6 July, which approves the Regulation on health protection against ionizing radiation, which has not been carried out, especially in relation to sources of radiation of natural origin and radon, the second-highest cause of lung cancer in Spain.
    - According to the World Health Organization (WHO), between 3 and 14% of lung cancer deaths are related to radon. It is estimated that in Spain each year around 1,500 deaths are attributable to exposure to this gas, according to the EU project: RADPAR.
    - The radon concentration limit value currently in force in Spain from which companies are forced to adopt control and alleviation measures is 1,000 Bq/m3 while in Directive 2013/59/EURATOM it is set at 300 Bq/m3, less than a third.
    - But the most serious issue is that the deadline for the transposition of the 2013 Directive ended on 6 February 2018, more than three years ago.
    - In November 2019, the European Commission opened a file with Spain for non-compliance with deadlines in the transposition of this Directive.
    - Although later Royal Decree 586/2020, dated 23 June, regarding mandatory information in the event of a nuclear or radiological emergency, transposed a part of the Directive, in its objective of establishing the standards and information procedures on preventive measures and protection applicable to the population that may be affected, or is effectively affected in the event of a nuclear or radiological emergency, the intervention personnel of the Nuclear Emergency Plans of external response level and of the Special Civil Protection Plans in the face of radiological risk, as well as the European Union, its Member States, third-party countries, and other international organisations is not enough because it has not been carried out in its entirety.

In relation to the regulatory reform **for the protection against risks derived from exposure to carcinogens at work**, the Government report cites the Draft Royal Decree amending Royal Decree 665/1997, dated 12 May, on the protection of workers against the risks related to exposure to carcinogens at work (p. 54). This standard is intended to transpose Directive (EU) 2017/2398.

- The deadline for the transposition of Directive (EU) 2017/2398 ended on 17 January 2020. However, the rule that transposes this Directive, Royal Decree 1154/2020, dated 22 December, which modifies Royal Decree 665/1997, dated 12 May, on the protection of workers against risks related to Exposure to carcinogens while at work was not published until 23 December 2020.
- This delay motivated the European Commission to open a file with Spain.

5) **Regarding the request for additional information on the risk of exposure to asbestos.**

In relation to the revision provisions of Royal Decree no. 396/2007, dated 31 March 2006, which establishes the minimum health and safety provisions applicable to workers at risk of exposure to asbestos in light of the experience acquired and the current level of knowledge, including the results of the elaboration of the aforementioned program.

The Government's Report recognizes that *"Currently, there is no evidence that a regulatory modification of Royal Decree 396/2006 will take place in the short term" (page 32).*

6) **The normative update on the prevention of sexual and gender-based harassment.**

Although it is after the reference period, the legal framework with which the protection against sexual harassment and gender-based harassment was updated in October 2020, with the approval of Royal Decree 901/2020, dated 13 October, which regulates equality plans and their registration and modifies Royal Decree 713/2010, dated 28 May, on the registration and filing of workers' collective bargaining agreements.

This rule came into force on 14 January. In its article 7: "Diagnosis" refers to a minimum of areas on which companies must provide information in order to be able to carry out the diagnosis of the equality plan. One such area is the *Prevention of sexual and gender-based harassment*.

The final appendix of this Royal Decree contains the applicable provisions for the elaboration of the diagnosis.

In relation to the prevention of sexual and gender-based harassment, it establishes:

In the diagnosis, a description of the procedures and/or measures of awareness, prevention, detection and action against sexual and gender-based harassment, as well as their accessibility, must be made.

The procedure for action against sexual and gender-based harassment will be part of the negotiation of the equality plan in accordance with article 46.2 of Organic Law 3/2007, dated 22 March.

The action procedures will take into account in any case:

a) Declarations of principles, definition of sexual and gender-based harassment and identification of behaviours that could constitute harassment.

b) Procedures for action against harassment to channel complaints or reports that may occur, and applicable preventative and/or corrective measures.

c) Identification of reactive measures against harassment and, where appropriate, the disciplinary regime.

In addition, the action procedures will comply with the following principles:

a) Prevention and awareness of sexual and gender-based harassment. Information

and accessibility of procedures and measures.

b) *In the diagnosis, a description of the procedures and/or measures of awareness, prevention, detection and action against sexual and gender-based harassment, as well as their accessibility, must be made.*
c) *The procedure for action against sexual and gender-based harassment will be part of the negotiation of the equality plan in accordance with article 46.2 of Organic Law 3/2007, dated 22 March.*

In addition, article 4 of Law 3/2007 on Equality recognised the need to establish preventive measures against these actions in the workplace; for this, it establishes a collaborative relationship between companies and the legal representation of Workers.

Article 12 of Royal Decree 901/2020, mentioned above, establishes that *specific measures to prevent sexual and gender-based harassment at work* will be subject to filing.

But the criteria of the Labour and Social Security Inspectorate have not been updated, and despite the fact that the monitoring instruments have increased to understand the reality of the situation in the workplaces and have the means to address the situations that occur, and an adequate protection of victims, there is no equal consideration of women with respect to men in the workplace in many sectors and companies.

Additionally, male chauvinism that is still immersed in Spanish culture and in labour relations makes it difficult to advance in a real way in the eradication of this type of behaviour, especially by prioritising pyramidal and hierarchical work organisation relationships where men continue to be in the centres of power and not women, instead of developing more empathetic, reflective and teamwork systems, with a more feminist connotation of work relationships that eliminates the gender gap, which is still very large.

7) In relation to section 2. Providing for the application of said regulations through supervisory measures. ON THE CONCLUSION OF NON-CONFORMITY OF ARTICLE 3.2 DUE TO THE FAILURE TO ADOPT MEASURES TO REDUCE THE NUMBER OF WORK ACCIDENTS.

The Committee concludes that the situation in Spain does not comply with Article 3 § 2 of the 1961 Charter because the measures adopted to reduce the number of accidents at work are insufficient.

The Government report justifies that the situation in Spain is in accordance with compliance with the Charter (art. 3.2).

However, we do not agree with such a statement, and we must make these observations:

- It should be noted that the regulatory changes that have been made in this period are not achieving positive effects to achieve towards the objective of reducing the work-related accident rate. If we compare the incidence rate of accidents at work between 2012, the year in which the lowest accident rate was achieved during the 21st century, and 2018, there is a cumulative increase of 15.6%.
- In 2019, there was a decrease in the accident rate, but it was only an "optical

illusion", it was not real, it was not due to the improvement in working conditions but rather a statistical effect due to the inclusion of self-employed workers, in the data to be taken into account, which meant the inclusion of 2.5 million working people and the breakdown of the historical collection in statistical terms.

- Occupational accidents have increased since the 2012 labour reform, which led to an increase in job insecurity, a devaluation of employment and working conditions. Labour reform that the CCOO and UGT unions continue to demand be repealed.
- In relation to occupational illnesses, the Government published a "*guide for the investigation of occupational illnesses and for the preparation of reports, in collaboration with the National Institute of Health and Safety and Autonomous Communities*. *The implementation of this guide will be progressive, having already begun to be applied in four provinces through the corresponding pilot project, which will end in the first months of 2020*". The report says that numerous training actions related specifically to these campaigns were carried out in the first half of 2019. However, it is not true, we are not aware of these campaigns.
- Regarding the request for updated information on the organisation of the Labour Inspectorate and on the trends in the resources allocated to the Labour Inspectorate services, including human resources, the Government report states that "*Two scales within the Labour Sub-Inspectors Department have been created*: *A scale of Sub-inspectors of Employment and Social Security, made up of the current Sub-inspectors Department and a new one, of Sub-inspectors of Occupational Health and Safety with specific functions in the area of occupational risk prevention" (p. 41).*

  However, although the Scale of Occupational Health and Safety Sub-inspectors has been created, in the same regulation (Law 23/2015, dated 21 July, article 14.3.a) they are only empowered to verify compliance and monitoring of the application of the regulations for the prevention of occupational hazards in aspects that directly affect **material working conditions**. Therefore, everything that has to do with Psychosocial Risks is outside the scope of action, that is, everything that requires complex methodologies for its evaluation and monitoring.

  Because psychosocial risks are often left out of risk assessment, because workplace climate surveys are not considered valid, since they do not have the entity to protect the worker.

II) ON THE BREACHES OF ARTICLE 11: RIGHT TO HEALTH PROTECTION.

1) Regarding the request for additional information on blood-borne infectious diseases, including HIV.

INFORMATION REQUIRED FROM THE GOVERNMENT OF SPAIN

a) Provide general and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; homeless or long-term unemployed; etc., identifying anomalous situations (e.g. example, particular areas of the community; specific professions or jobs; proximity to active or decommissioned industrial or highly polluted sites or mines; etc.) and on the prevalence of particular diseases among relevant groups (e.g. cancer) or infectious diseases transmitted by blood (e.g. new cases of HIV or hepatitis C among

people with substance use disorders or in prison, etc.).

Throughout these years, there has been a shift in the treatment of HIV by the government and in its intention to include this disease again, among the priorities of its political agenda.

First, with regard to statistical information on HIV cases, highlighting some data on this disease related to the workplace, since we consider that employment is essential for social integration influences quality of life and the state of health and well-being of people.

Thanks to advances in the treatment of the disease, people diagnosed with HIV can lead healthier lives and a longer life expectancy.

However, how these improvements had influenced the employment status of people with HIV infection had not been quantified.

For this reason, in 2016, the Survey on the employment situation of people with HIV was carried out, with us participating in its distribution and channelling, and the results of which were used by the National AIDS Plan. The survey data collection period was carried out specifically from 22 June to 22 December 2016, and the "target" population was people over 16 years of age, diagnosed with HIV and resident in Spain

People with HIV are especially vulnerable because they have more difficulties accessing the labour market and keeping a job. This survey constitutes a source of real and more approximate data than was available up to that time about the employment situation of people with HIV. And its results make it possible to address more correctly specific actions for training and labour reintegration and guarantee equal access to employment for people with HIV and its implementation. The following results stand out:

- Number of valid surveys: 542
- Gender at birth: 82.8% men and 17.2% women.
- Sexual identity: 80.6% men, 17.2% women and 2.2% trans.
- Sexual orientation: 51.5% homosexual, 42.8% heterosexual, 3.3% bisexual and 2.4% unsure.
- Average age of respondents: 43.7 years (47.4 years for women and 43 years for men).
- By age group, most of the people who took the survey were between 45-49 and 50-54 years old, with 102 and 105 respondents respectively.
- Educational level: the majority had university-level education, 42.1%, although if we look at gender, 38.7% of women had primary education and men with university-level education the most numerous with 46.4%.
- Employment situation: more than 50% of the people with HIV who have carried out the survey, specifically 52.2%, are working; 29.5% are unemployed and 15.2% are pensioners.
- Type of contract: permanent contracts (72%) and full-time (80.90%) are most

predominant. In the case of working women with HIV, the bias is twice that of men, with 34.10% versus 15.5% respectively.

- Unemployment: of the 29.5% of unemployed with HIV, the majority have been unemployed for more than 2 years (53.8%); and 26.2% of the total unemployed do not seek employment (in the case of women, 30%).
- Activity: 52.2% are active, while 26.1% are inactive.
- Permanent disability: of the 68 respondents with a permanent disability, 58.8% of them have an absolute permanent disability (40 people) compared to 41.2% with a total permanent disability.

With this data, the fact that women with HIV have the greatest risk of exclusion from work is evident, since they tend to have a lower level of education, a greater incapacity for work, longer unemployment term and a higher percentage of part-time jobs.

The socio-demographic variables of age, educational level and employment situation at the time of diagnosis are key to the future working life of workers with HIV. Early diagnosis and having a higher education increase the employability of people with HIV.

In addition, the fact that more than half of the people with HIV surveyed are working, pleasingly indicates that the quality of life of the affected people has improved, and that the treatments are allowing them to access and/or incorporate into working life, and continue working.

On 27 November 2018, the Social Pact for non-discrimination and Equal treatment associated with HIV was approved, a pact that had been paralysed for more than 7 years, since 2011 and in whose drafting, we participated, and that has a broad consensus of social organisations, Autonomous Communities, Universities and Unions.

However, we have demanded that the Government implement it, since, although our legislation guarantees the protection of the rights of people with HIV, this pact has not yet been implemented and discrimination still exists.

Said pact responds to a previous claim from the UGT and CCOO: "To address HIV and AIDS in the workplace as a health issue, free of discrimination and stigma". In addition, it incorporates the implementation in our country of the 2010 ILO Recommendation No. 200 on HIV and AIDS, which establishes, in an exhaustive way, that the HIV status should never be a reason for discrimination in the workplace. This recommendation recognises, for the first time, the inequalities suffered worldwide by those affected, the lack of information, awareness, confidentiality and insufficient access to treatment.

And most importantly, it promotes equal access to employment and the participation of business organisations and unions, within the framework of social dialogue and collective bargaining.

The social pact, which has been approved, includes our demands that:

- Public Administrations are an example in the fight against employment discrimination against people with HIV.
- Social Partners are fully involved in addressing, treating and recognizing HIV and AIDS as a workplace issue.
- The protection of privacy and confidentiality to which all workers are entitled,

preventing them from having to undergo an HIV test or having their HIV status revealed.

- People with HIV-related illnesses are not denied work. To do this, if necessary, reasonable adjustments must be implemented.

Returning to the data, the Government report offers HIV prevalence data for 2018. (p. 58).

The latest data available on the website of the Ministry of Health, from 30 June 2020, shows an increase in transmission among heterosexual people (32.3% in 2020 compared to 26.7% in 2019) and 45.9% late diagnosis. These figures point to delays in the early detection of the disease and the convenience of awareness campaigns aimed at specific groups.

Main results:
2019: 2,698 new HIV diagnoses were reported, representing a rate of 5.94/100,000 inhabitants without correcting due to delay in notification. After correcting for this delay, the rate for 2019 is estimated to be 7.46 per 100,000 inhabitants when the notification of all diagnoses made that year has been completed.
85.8% were men and the median age was 36 years (interquartile range: 28-45). Transmission in men who have sex with men (MSM) was the most frequent, 56.6%, followed by heterosexual, 32.3%, and that occurs in people who inject drugs (PID), 2.6%. 36.1% of new diagnoses of infection by the HIV was in people originating from other countries. 45.9% of the new diagnoses presented a late diagnosis.
2010-2019 trend: the trend in total rates in the period is downward in men as well as women.
Depending on the mode of transmission, a decrease is observed in the rates in PID and in overall heterosexual transmission and for both sexes. The rates of new diagnoses in MSM show a stabilisation between 2010 and 2017 and as of that year a downward trend is observed; disaggregating by place of origin, this trend it is only significant in Spanish MSM.
The percentage of people diagnosed whose country of origin was not Spain ranged between 42.8% and 39.4% in the period, without present a clear trend. No significant changes are observed by region of origin.
Late diagnosis remains unchanged both overall and depending on the main modes of transmission.

Source: HIV and AIDS epidemiological survey in Spain 2019. November 2020 (data as of 30 June 2020). Ministry of Health.

2) **Regarding the request for additional information on sexual and reproductive health services for women and girls (including access to abortion services)**

The Government report contains references to web pages that allude to the problem on which the information is raised, but it does not carry out an analysis of the situation. In this regard we can make the following considerations:

Spanish legislation requires three informative phases to take place in order to access an induced abortion. This information, provided to the woman, pursues a different purpose in each phase. Using words from the explanatory memorandum of Royal Decree 825/2017, dated 25 June, it is about general information about the methods of interruption, the centres where it can be carried out and the procedures and conditions.

In a second stage, when the woman initially opts for the interruption of pregnancy regulated in article 14 of the law, it is oriented to the protection of maternity, offering information on state aid and rights related to pregnancy and maternity, and information on the centres where counselling can be obtained.

Finally, the third and final phase corresponds to the medical information immediately prior to the provision of written consent, in the terms of articles 4 and 10 of Law 41/2002, dated 14 November, Regulating the Autonomy of the Patient and Rights and Obligations Regarding Information and Clinical Documentation.

Once the woman is informed, she will express her consent by signing a document that must state what her decision was, that is, what method she has chosen.

Therefore, when the woman goes to an accredited centre requesting a voluntary interruption of pregnancy, the centre must inform about the different methods (regardless of whether that particular centre practices it or not), with the obligation to inform the woman in which centres or clinics the method chosen by her is practised.

And that information, in addition, in accordance with article 5, section 5 of RD 825/2010, dated 25 June, must be delivered personally to the pregnant woman concerned. In no case may the information be provided by telephone or by electronic or telematic means. Nor can it be sent by mail.

Regardless of the method used to perform an induced abortion, it can only be performed in accredited public or private health centres. The requirements that are demanded of the centres in which VIPs are carried out are the same for public and private centres.

There is no standard that classifies, distinguishes, or differentiates between pregnancy termination centres. The law does not make any difference between a voluntary interruption of pregnancy whether pharmacologically or instrumentally, for the purposes of accreditation of the centres. The only difference it makes is that of gestation of less than fourteen weeks and that does not imply high risk and that of more than fourteen weeks or high risk, demanding different requirements for the accreditation of the clinics according to the aforementioned assumptions, but there is no reference in the Law in relation to the type of intervention or the method followed to practice the Interruption.

To guarantee access to the provision of voluntary interruption of pregnancy, RD 831/2010, dated 25 June, was legislated. Thus, in its explanatory memorandum its states: *This Royal Decree seeks to ensure equality and quality of care in the provision of voluntary interruption of pregnancy, so that all women are guaranteed equal access to the provision regardless of where they reside, in accordance with the provisions of article 19 of Organic Law 2/2010, dated 3 March, on sexual and reproductive health and the voluntary interruption of pregnancy. The regulation contained in this royal decree is issued under the provisions of article 149.1.16 of the Spanish Constitution.*

The Ministry of Health has carried out a public consultation to modify the aforementioned RD to use the pharmacological method in unwanted pregnancies that do not exceed nine weeks of gestation. Regarding the request for additional information in the context of the COVID-19 crisis, in order to assess the suitability of the measures taken to limit the spread of the virus in the population, as well as the measures taken to treat the sick. Since the beginning of the pandemic and the notification by the World Health Organization, on 4 January 2020, of the existence of a conglomerate of pneumonia cases, without deaths, in Wuhan (Hubei province) and following the declaration of said Organisation of a global pandemic, there has been in Spain, until the date of delivery of these ALLEGATIONS on 30 June 2021, and according to the data provided by the Ministry of Health: 3,792,642 confirmed cases of Covid-19 disease, with more than 80,000 deaths to date.

The pandemic has exacerbated the problems that public health had previously, weakened in terms of personnel, especially due to the reduction in health spending from 6.9% to 5.9% of Gross Domestic Product (GDP) between 2011 and 2019.

- Territorial differences have worsened since access to the benefits of the public health system is not the same throughout Spain. In the Basque Country spending per inhabitant and year is at least 1,809 euros and in Madrid 1,230 euros. In comparison with the European Union (EU) the expenditure is 2,292 euros per inhabitant per year, and in Spain it is 1,568.03 euros.
- Public primary care has been particularly hit with shrinking importance in health budgets, which has prevented it from adequately performing its function.
- During the pandemic, delays in appointments have worsened, health centres have been closed and there is hardly any face-to-face care. Right now, reinforcing its function is urgent so that the diagnosis and treatment of people with Covid-19 can be carried out, while continuing to care for patients with other conditions.
- In public health workplaces, the pandemic has confirmed the lack of professionals and the excessive temporality. According to a union study, it is necessary to increase the workforce by 62,045 employees and reduce temporary employment rates that currently affect about 4 out of every 10 professionals, standing at 36%.
- The pandemic and budget restrictions have also had serious consequences on the health of health workers: physical and mental health. The excessive workloads they have assumed during the Covid-19 crisis have exhausted medical and nursing staff, other health professional categories, such as ambulance drivers, cleaning staff, etc.

- The lack of protective equipment at the beginning of the pandemic, due to the lack of a reserve fund for medical supplies, made Spain the country in Europe with the most infected professionals, who even asked for help in from those around them, to manufacture "Personal Protective Equipment", with rubbish bags.

- Another deficiency that the pandemic has revealed has been the lack of public beds that led to extreme situations such as denying hospital care to the elderly, or harrowing situations in which photographic reports showed patients "lying on the floor" in the corridors of certain hospitals.

- Of the total of elderly people evaluated as "dependent persons", more than 55,000 have died without being treated in the year of Covid-19, from March 2020 to March 2021. 152 recognised dependants died every day in the year mentioned.

- 232,243 dependants were neglected in the time period mentioned in the previous paragraph, within the Autonomous Communities of: Catalonia, Madrid, Andalusia, and Castille and Leon, those that neglected their elderly the most. This calculation is figures of elderly “recognised dependants”, the figure of the unrecognised being unknown, but with an increase in neglect being sensed of above 68%, which is the percentage of “recognised neglected dependants” in the aforementioned Autonomous Communities.

- Problems in primary care were also exacerbated by insufficient "trackers and insufficient public health surveillance devices". The Autonomous Communities most affected, such as Madrid, Catalonia and Andalusia, saw their problems aggravated, due to the disconnection of the “trackers with the health centres”. This has gotten worse when the health centres themselves started to vaccinate since they increased this function to the detriment of others to attend to Covid-19, and the neglect of other types of diseases increased, which has even led to deaths due to such lack of care.

- The most notorious was that of a 48-year-old woman from Burgos, who was not treated for colon cancer after making numerous calls to primary care at her local health centre and not giving her a face-to-face appointment for three months. By the time she was attended, it was too late.

STORM “FILOMENA”

The year 2021 began with a meteorological phenomenon called “Storm Filomena”. This aggravated the situation for health and Covid-19 patients.

Professionals saw how the saturation of patients increased and transport services for the patients did not reach hospitals.

Despite the forecast of the meteorologists, there was no type of action by the Government and especially the Government of the Community of Madrid, one of the most affected Autonomous Communities, to prevent the effects of the storm on transport.

Only two emergency medical helicopters were enabled, by SUMMA 112, of the Government of the Community of Madrid.

No salt was added to the entrance roads to Madrid (Capital, and the rest of the

Autonomous Community of Madrid). Snow removal machines were not made available or bought or brought from other territories.

Many health professionals, due to their enormous effort and responsibility, were walking for 2 to 3 hours to get to the hospital or health centres, to care for the sick.

Older people, many in a situation of absolute loneliness, saw how their needs could be alleviated thanks to the solidarity of citizens, who formed support and collaboration groups among neighbours.

The start of vaccination was affected by this storm with problems with supplies, due to lack of prevention when carrying out care work on the roads in advance.

Some homeless people were found dead under the snow, without being able to be treated.

NEED FOR MEASURES TO BE TAKEN FOR OLDER PEOPLE IN RELATION TO COVID-19

Regarding the measures adopted as a result of the crisis produced by Covid-19, it is evident that the pandemic has not ended, and therefore, within the framework of the Territorial Council of Social Services and the System for Autonomy and Dependency Attention, and the Advisory Committee where both unions and business organisations are represented, on 18 June, a Working Group on residences and Covid-19 was launched in order to propose and coordinate measures to address outbreaks.

Fundamentally, the contents and a common framework of contingency plans for all residential centres were established. This minimum was standardised and guaranteed in all residential centres. And data and good practices were collected on the management and protocols that were adopted during the first wave.

The unions consider it necessary to protect the elderly during this health crisis:

- Strengthening the home help service, since in the event of another potential quarantine, it must be guaranteed that users of social services who cannot leave their homes have the appropriate support from home social services.

We consider that in the face of an emergency situation, it is not only necessary to guarantee the home help service; but also, to strengthen it and prioritise the care of the most vulnerable users, in need of personal care and without a support network.

Even many people, who in principle have not needed the support network of social services, now and due to a possible situation of isolation and confinement, they can become a vulnerable population and need this service.

Therefore, it is essential to reinforce and guarantee the care, support, food and essential needs of daily life aimed primarily at the elderly, disabled and dependent, regardless of having previously been users. And therefore, the consequent reinforcement of hiring to guarantee this attention.

- Strengthening the telecare service to facilitate communication, for people who live alone and who are over 65 years of age, in the face of their possible isolation in the event of confinement.
- In a possible scenario of closure of care establishments, such as day centres, adequate and public home care must be guaranteed; reinforcing and

guaranteeing the care, support, food and essential needs of daily life aimed primarily at the elderly, disabled and dependent.

- The current residential model is neither adapted to the profile of the users nor is it adequate enough, as has been discovered as a result of Covid-19, so from our position of responsibility, we consider that it is necessary to commit to a structural reform of the residential model that guarantees a care centred on the person, that is integral and continuous, promoting their autonomy and enhancing their capacities, according to the preferences and desires of their life project.

- Adopting contingency plans in residences to guarantee the adoption of security measures to avoid the massive spread of the virus, both for workers and users, and thus reduce the number of infections and deaths. In addition, it must be guaranteed that the care offered is dignified, sufficient and appropriate to their needs, guaranteeing its quality and the well-being of the elderly.

- Guaranteeing that hospital referral protocols for users of nursing homes do not take into account age but rather health criteria, and the elimination of any age discrimination, which entails possible instructions not to admit older people with Covid- 19 from residences.

- Conducting an audit on what happened in nursing homes during the pandemic.

- Guaranteeing the attention and care of people in a situation of dependency, since the limitations of a state of alarm can complicate the provision of certain services.
- Developing health care protocols to care for people in a situation of dependency, in any service of the System for Personal Autonomy and Care of Dependent Adults and especially in residential centres.
- Guaranteeing that, in no case, the suspension of the activity of any of the face-to-face services of the System for Personal Autonomy and Care of Dependent Adults may mean the non-provision of the service. In this case, the care and attention of the dependent person will be guaranteed through the structuring of a home care system.

- Regulating and enhancing the figure of the personal assistant.

- Committing to professionalism in the social services sector and, especially, in the System for Personal Autonomy and Care of Dependent Adults, together with the increase in the workforce.

During the previous state of alarm, the qualifications that are going to be required of workers who provide personal assistance service or home help assistant tasks were made more flexible. This exceptional measure opened the possibility of hiring as personnel for the home help service or as personal assistant, people who do not have the required qualifications for each of them, as long as there are no jobseekers with the qualifications that are required.

The haste in covering emergency situations for the recipients of these services, let us not forget that they need the most basic care needs, makes us doubt that the prior practical training is sufficient and adequate.

Therefore, we may be talking about a loss in the quality of the services provided, of deficient services, since people not trained for these functions may be carrying them out and we must not forget that in the end what is at stake is the health and life of users.

- The service ratios must be more adequate, both in terms of service hours per professional, and the number of users per professional, which will have a positive impact on both the care of users of social services and the working conditions of workers.

- Allocating an extraordinary fund for the hiring of qualified and accredited personnel, to guarantee this attention and committing on quality employment in social services, and especially in the System for Personal Autonomy and Care of Dependent Adults.

III) ON COMPLIANCE WITH ARTICLE 12: THE RIGHT TO SOCIAL SECURITY.

1) IN RELATION TO THE LEVEL OF PROTECTION OF THE SOCIAL SECURITY SYSTEM IN RELATION TO BENEFITS FOR SICKNESS.

The Committee concludes that the situation in Spain does not comply with Article 12 § 1 of the 1961 Charter, considering that the amount of unemployment benefit paid to the unemployed without dependants is insufficient. The Committee previously concluded -Conclusions XX-2 (2013)- that the minimum level of sickness benefits was inadequate. In the report, the authorities explain that disability or sickness benefits are not subject to a minimum linked to the national benchmark indicator for social benefits, but rather that it corresponds to 60% (from the 4th to the 20th day of sick leave) or 75% (from the 21st day) of the regulatory base level, which will be at least the minimum wage, which in turn means that the benefits are higher than the national benchmark indicator for social benefits.

This situation continues.

A) BENEFITS IN CASE OF WORK ACCIDENT AND OCCUPATIONAL ILLNESS: Exclusion of professional qualification from the contingency in the event of death after five years from the date of the work accident.

Art. 217.2 of the General Law on Social Security, determines who will be the causative subjects, with the following wording:

> *2. Those who are recognised by such contingencies as having died, having an absolute permanent disability or being a disabled person as a result of an accident at work or occupational illness.*

"If the assumption provided for in the preceding paragraph does not occur, it must be proven that the death was due to a work accident or occupational illness. ***In the event of an accident at work, said proof will only be admitted if the death had occurred within the five years following the date of the accident.*** *In case of occupational illness, such proof will be admitted regardless of the time elapsed.*

That a certain period of time is the one that determines the contingency of death caused by an accident, requiring proof, and limiting it to said period, leaves workers defenceless, who sometimes have numerous difficulties in knowing how the events occurred, because they are classified as a common contingency, and if more than five

years elapse between the accident and death, regardless of other circumstances that allow determining a direct causal link with the accident, such as the progressive worsening or deterioration of the injury, the situation is very complicated.

The time limit for the classification of the work accident in case of death:

- Access to survivor benefits can be impeded if the minimum contribution periods required are not met.

- In any case, it entails a reduction in the amount of the benefit.

B) BENEFITS IN CASE OF WORK ACCIDENT AND OCCUPATIONAL ILLNESS: Lack of automatic update; and delay in updating the scale of benefits for non-disabling permanent injuries.

Art. 201 of the General Law on Social Security states that: "***Injuries, mutilations and deformities of a definitive nature, caused by accidents at work or professional illnesses that****, without constituting a permanent disability in accordance with the provisions of the previous chapter,* ***involve a decrease or alteration of the physical integrity of the worker*** *and appear in the scale annexed to the provisions of implementation of this law, will be compensated, only once, with the lump sums that are determined therein, by the entity that was obliged to pay permanent disability benefits, all without prejudice to the right of the worker to continue at the service of the company".*

In this regard and in implementation of the foregoing, **Order ESS/66/2013, dated 28 January, which updates the lump sum of compensation for injuries, mutilations and deformities of a definitive and non-invalidating nature, indicates the purpose of this scale**: "*The scale to which the aforementioned legal provision refers was established by the Order dated 15 April 1969, modified by the Order dated 5 April 1974. Subsequently, the Order dated 11 May 1988 revised certain amounts thereof, in order to suppress existing discrimination based on gender.* ***The Order dated 16 January 1991 updated the amounts in accordance with the evolution of the Consumer Price Index (CPI) corresponding to the period 1974 to 1990, and Order TAS/1040/2005, dated 18 April, did the same as according to the evolution of the CPI between 1991 and 2004".***

The fifty-sixth additional provision of the consolidated text of the General Social Security Law, incorporated by Law 27/2011, dated 1 August, on the updating, adaptation and modernisation of the Social Security system, establishes that this Ministry will proceed to update the amounts, according to the scale, of non-disabling permanent injuries, derived from professional contingencies recognised by Social Security. ***This update implies an increase of 19.7 percent, equivalent to the evolution of the CPI from December 2004 to December 2011.***

From 2013 to present, which includes the period 2016-2019, the amount of benefits for non-disabling permanent injuries has not been updated, and previously in a temporary period of more than 20 years, only on 3 occasions.

- Failure to update benefits for non-disabling permanent injuries derived from work-related accidents or occupational disease may be inconsistent with art. 36 in relation to articles 65.10 or 66.8, of the European Code of Social Security, insofar as they

establish the review of benefits as a result of significant variations in the general level of earnings that result from also significant variations in the cost of living.

2) IN RELATION TO THE LEVEL OF PROTECTION OF THE SOCIAL SECURITY SYSTEM IN RELATION TO UNEMPLOYMENT BENEFITS.

In relation to the level of protection against unemployment, we can make the following considerations.

A) Exclusion of Household Employees from unemployment protection (contributory and welfare).

This exclusion is expressly made in art. 251 d) of the General Law on Social Security.

People who provide their salaried services as employees and household employees, do not have recognised unemployment protection in any of its forms (contributory unemployment benefit, or unemployment benefit).

The legislator has not addressed unemployment protection for this group, however, the possibilities of establishing a special adapted unemployment protection scheme, which complies with the minimum standards of the European Code of Social Security, should have been produced.

This lack of protection against the contingency of unemployment, has remained unchanged since Decree 2346/1969, dated 25 September, which regulates the Special Regime of Social Security of the Domestic Service as an integral regime of the Social Security System.

The situation is also indirectly discriminatory since the group of domestic employees is predominantly female.

- The situation is susceptible to inconsistency with article 22.2 in fine, of the European Code of Social Security, there has been no effort to progressively raise the level of protection of said group in this matter, and agreement 189 of the International Labour Organization (ILO) has not even been ratified by Spain.

So discriminatory is the situation that a totally pejorative and discriminatory language is still maintained in the Civil Code that says the following, in the first section of Chapter III of the Civil Code, art. 1584: **"The domestic servant destined to the personal service of their master, or their family, for a determined period of time, may be dismissed before the expiration of the term; but, if the master dismisses the servant without just cause, they must compensate them by paying them the salary earned and the salary of fifteen days more. The master will be believed, unless proven otherwise: 1. On the amount of the domestic servant's salary. 2. On the payment of the wages earned in the current year".**

This regulation should be repealed immediately, as well as the related regulation that uses similar language, since the Civil Code is from 1889, and despite the reforms that have taken place, this regulation continues in force.

Exclusion of workers under 45 years of age without the right to a contributory benefit from unemployment assistance protection.

Art. 274.3 of the General Law on Social Security establishes an unemployment assistance benefit for salaried persons lacking a basic level of resources, who are not entitled to a contributory unemployment benefit due to lack of the minimum contribution period of one year, but that prove, however, 3 months of contributions and family responsibilities, or 6 months of contributions without family responsibilities.

- Workers under 45 years of age are excluded from unemployment assistance protection due to their age, even though they could prove 6 months of contributions and not exceeding the minimum level of resources.

The situation is liable to be inconsistent with article 22.2 in fine, of the European Code of Social Security

Insufficiency of the amount of the contributory unemployment benefit from the 180th day.

Arts. 270. 2 and 273 of the General Law on Social Security and arts. 4 and 8 of Order TMS/83/2019, dated 31 January, determine that from the 180th day of unemployment benefit, the unemployed worker has the right to receive a benefit equivalent to 50% of its regulatory base. However, from this amount it is possible to deduct the 4.7% destined to the Social Security contribution, so that the final amount of the benefit reaches only 45.3% of their contribution base. This amount is within the limits of the provision established in accordance with art. 22 of the European Code of Social Security. Its amount being low and unsatisfactory in most cases.

Art. 17.4 of Royal Decree-Law 20/2012, dated 13 July, proceeded to reduce the amount of the benefit by modifying the percentage applicable to the regulatory base of the benefit, which went from 60% to 50%; while the sole repeal provision. 2.a) of Law 28/2011, repealed the benefit of the 35% reduction in the contribution paid by the worker.

B) Insufficiency of the general amount of unemployment benefit.

In 2018 and given the insufficient regulation in the General Social Security Law, the Government proposed to combine the aid to the unemployed into one without considering a comprehensive reform of unemployment protection, and without improving coverage, and benefits being just a patch to health care protection.

At the Social Dialogue Table for an Employment Impact Plan, nothing important was raised and the social partners demanded that measures be taken to prevent leaving the people who had access to them without protection.

We support the repeal of the cuts in unemployment benefits made by the Government in 2012 and the need to reorder and strengthen the set of unemployment benefits.

In addition, the reform with the creation of the *RED* system: only allows the exchange of information and documents between the General Treasury of the Social Security and users via the INTERNET and does not respond to the request to include in the social dialogue the necessary reform of unemployment protection, which may result in a reduction of coverage, or a spending cut, hurting the majority of beneficiaries.

The only aid included besides that in the system is 430 euros (four hundred and thirty euros) also for all recipients and does not consider their situation or whether they have

family dependants or not.

With the new proposal, both the elderly and those under 45 with family responsibilities (some 188,500 beneficiaries according to the Public State Employment Service, in 2018) would lose between 1 and 3 months of maximum benefits, while those over 45 without family responsibilities would lose 9 months of maximum benefits.

Those under 45 without family responsibilities, who for the first time are recognised to have the right to five months of welfare benefits, are the only ones for whom there is improvement, but they would be severely limited by the requirement of having exhausted a previous contributory benefit of at least 12 months of duration (which implies between 3 and 3.5 years of contribution period).

Those who do not meet this requirement are still not entitled to any assistance.

The proposal made to the unions is so difficult to fulfil that it is unclear how it would be accessed. What is clear is that beneficiaries with insufficient contribution periods, that of the majority of young people and other groups would lose out.

A) Insufficient amount of unemployment benefits due to the loss of a part-time job.

Art. 278 of the General Law on Social Security, in section 1 in relation to the amount of unemployment benefit in part-time work, states that: (…) In the case of unemployment due to loss of a part-time job, said amount will be received in proportion to the hours previously worked in the cases provided for in sections 1.a), 1.b) and 3 of article 274 of the General Law on Social Security.

Art. 274.1 of the General Law on Social Security establishes a non-contributory or assistance benefit for workers who have lost their jobs. To be a beneficiary of this benefit, a requirement is to have no income greater than 75% of the monthly official minimum wage (article 275.2). 75% of the monthly official minimum wage for the year 2019 is equivalent to 675 euros.

Art. 278 refers to the amount of the non-contributory unemployment benefit:

In the case of full-time workers, the amount of the unemployment benefit is 80 percent of the monthly Public Index of Multiple Purpose Income in force at all times. During 2019, 80% of the IPREM was equivalent to €430.27.

In the case of part-time workers who are in any of the situations of art. 274.1 a) and b) and 3 of the General Law on Social Security. Specifically working people who:

- Have exhausted the contributory unemployment benefit and have family responsibilities.

- Have exhausted the contributory unemployment benefit, are more than 45 years old and without family responsibilities.

- Have terminated their employment contract without the right to contributory unemployment benefit and prove at least:

  *three months of contributions with family dependants

*six months of contributions without family dependants;

- the amount of unemployment benefit is set in proportion to the hours previously worked, regardless of the loss of earnings that may have occurred, so that if the worker had a day equivalent to 50% of the full-time shift and received 800 euros for this reason, the amount of unemployment benefit would be 215.14 euros.

Prior to the legal reform transacted by art. 17.9 of Royal Decree-Law 20/2012, dated 13 July, the amount of unemployment benefit for part-time workers was equivalent to 80% of the IPREM.

- The rules for calculating the unemployment benefit for part-time workers generate a double penalty:

- To the possible insufficiency of the amount of the general unemployment benefit addressed in the previous point with respect to the amount resulting from the calculation base and the applicable rate for the calculation of the benefit, the following is added:
- The reduction of the amount of the subsidy based on the percentage of hours likely to generate a disproportionate negative treatment that may incur in inconsistency with respect to article 22.2 in relation to article 67 c) and 66.7 of the European Code of Social Security, where the base salary of an ordinary unskilled worker corresponding to a normal number of hours of work is established as the basis for calculating the benefit, to which a rate of no less than 45% is applicable.

- There is no evidence of an effort to raise the level of protection in this area, which has distinctly decreased over time.

B) Disproportionality of the penalty for loss of unemployment benefits due to omission of information.

Article 299 of the General Law on Social Security establishes the obligation of the beneficiaries of unemployment benefits to notify the concurrence of any of the causes of suspension provided for in articles 271 and 279 of the General Law on Social Security.

The improper collection of a benefit entails the suspension of the benefit and the obligation of the beneficiary to return the amount corresponding to the period in which the cause of suspension occurs.

In addition, article 25.3 of the Law on Violations and Sanctions in the Social Order considers not notifying the Benefits Management Entity of the cause of suspension of the benefit as a serious violation. This violation carries the complete loss of the benefit as a sanction (art. 47.1.b of the Law on Violations and Sanctions in the Social Order).

This sanction does not allow modulations, and is applied when the violation is verified,

regardless of the concurrent circumstances, whether it is a lack of communication, or a delay in communication, whether the action of the beneficiary was intentional, was due to recklessness, or ignorance. Likewise, it does not take into account the period of unemployment protection that remains to be received, with it being cancelled in its entirety.

This sanction, of loss of the validly recognised right, is not subject to the criterion of proportionality, beyond the discretionary assessment of the Administration on the concurrence of cause in the lack of communication or delay in communication, which may be inconsistent with the Article 68 of the European Code of Social Security insofar as it only provides for the suspension of benefits for as long as the cause of suspension concurs, except for permanent causes that imply the lack of legal requirements, and in case of unemployment, the abandonment of placement services.

3) IN RELATION TO THE LEVEL OF PROTECTION OF THE SOCIAL SECURITY SYSTEM IN RELATION TO BENEFITS FOR OLD AGE.

A) Reduction of the regulatory base for retirement pensions and permanent disability benefits for part-time workers through the application of the gap integration system.

Art. 248.2 of the General Law on Social Security also establishes in relation to part-time contracts that (…). *"For the purposes of calculating retirement and permanent disability pensions derived from common illness,* ***the integration of the periods during which there has been no obligation to contribute will be carried out with the minimum contribution base from among those applicable at any given time, corresponding to the number of contracted hours in the last term****".*

In the case of workers who at some point in their working life have provided part-time services, subsequently generating empty contribution periods that must be used to calculate the regulatory base of the retirement benefit, the integration of gaps with the base minimum contribution rate operates through a percentage reduction equivalent to the working day worked in the part-time job prior to the contribution gap, regardless of:

- the amount of their contribution through part-time work,
- the duration of part-time work prior to the contribution gap, the exceptional nature of this contractual modality in their working life, and the duration of the contribution gap.

Therefore, the last part-time contract prior to the contribution gap may disproportionately condition the amount of the retirement and permanent disability benefit.

- The system of integration of contribution gaps in the part-time contract may reduce disproportionately compared to the reduction that already operates for a full-time worker, in the terms indicated above, the amount of the permanent disability benefit, which together with the system calculation of the regulatory base indicated in the previous point, may sharpen the distance between the regulatory base with respect to

the total of the previous profit of the beneficiary, generating a possible inconsistency with articles 25, 56 and 65 of the European Code on Social Security.

4) IN RELATION TO THE LEVEL OF PROTECTION OF THE SOCIAL SECURITY SYSTEM IN RELATION TO THE BENEFIT FOR FUNERAL EXPENSES.

A) Insufficiency of the amount of the death benefit.

Art. 218 of the General Law on Social Security indicates with regards to Death Benefit: "The death of the deceased will entitle the person who has supported them to receive an immediate death benefit to meet burial expenses. *It will be presumed, unless proven otherwise, that said expenses have been fulfilled in this order: by the surviving spouse*".

This rule is implemented by Art. 30 of Decree 3158/**1966, dated 23 December**. **Amount of the benefit:** "The death benefit referred to in article one hundred and fifty-nine of the Law on Social Security will consist of the one-time payment of a benefit of the following amount:

a) ***Five thousand pesetas****, when the beneficiary is one of the relatives of the deceased to which the aforementioned article refers.*

The **tenth additional provision of Law 40/2007 dated 4 December**. **Review and update of the amount of the benefit, the second repealing provision of Law 48/2015, dated 29 October, on General State Budgets for 2016, *and the repeal of the tenth additional provision of Law 40/2007***, *dated 4 December, of measures in the matter of Social Security, have made it that from* the year 1967 to the year 2007, the amount of death benefit has been set at 30 euros and in 2016 the amount of the benefit was set at 46.5 euros, without having subsequently been updated or revised.

However, since 1967, when the amount of death benefit was set at an amount equivalent to €30, until 2019, the Consumer Price Index has experienced an increase of more than 2400%, consequently the economic equivalent.

5) IN RELATION TO THE LEVEL OF PROTECTION OF THE SOCIAL SECURITY SYSTEM IN RELATION TO NON-TAX DISABILITY AND OLD AGE BENEFITS.

A) Insufficiency of the amounts of non-contributory pensions.

Arts. 363, 364, 366, 369 and 370 of the General Law on Social Security in relation to the beneficiaries of the non-contributory disability pension, as well as **Appendix I, II, 3) of Royal Decree-Law 28/2018, dated 28 December, for the revaluation of public pensions and other urgent measures in social, labour and employment matters**.

Article 363 of the General Law on Social Security recognises the non-contributory disability benefit for people lacking a level of economic resources, who do not pay contribution periods, or demonstrate insufficient contribution periods to generate the right to contributory benefit.

In addition, article 369 of the General Law on Social Security recognises the non-contributory retirement benefit for people who have reached the age of 65 and who lack a level of economic resources.

The amount of both pensions is set at 5,488 (five thousand four hundred and eighty-eight) euros per year. The criteria used to quantify non-contributory retirement and permanent disability pensions are unknown.

- The method of setting the amounts of non-contributory pensions may be inconsistent with articles 28, 56 and 67 of the European Code of Social Security, insofar as it links the quantification of the benefit to the salary of an ordinary non-qualified adult male worker from the industrial sector.

B) Exclusion of people with family responsibilities from the right to non-contributory pensions.

Additionally, the regulations set forth two filters to assess the lack of resources of the beneficiary of old-age or disability pensions:

- On the one hand, it requires that the beneficiary's own and individual income to not exceed a maximum income level.

- On the other hand, it is required that the income of the family unit as a whole to not exceed a maximum income.

In this way, the benefit may be denied when the income of the applicant considered individually exceeds the maximum level of individual income, even if the family unit as a whole proves to have a lack of income. That is, the calculation of family unit income only operates to limit access to benefits, as well as the amount of benefits; but the lack of income of the family unit as a whole is ruled out as an element for the recognition of right to benefits, despite the fact that the family may be in charge of the beneficiary. If the beneficiary individually considered exceeds the resource limit, the right to benefits is denied, regardless of whether the apportionment of the resources of the family unit that depends on the beneficiary entails a reduction in their individual income and highlights the lack of family unit resources.

- The fact that the resources of the family unit only operate as a restriction of the right to the benefit and to limit its amount may be inconsistent with art. 67 of the European Code on Social Security insofar as the benefit must also be sufficient to ensure the beneficiary's family's healthy and suitable living conditions.

6) REQUESTS FOR ADDITIONAL INFORMATION ON ANY IMPACT OF THE COVID-19 CRISIS ON SOCIAL SECURITY COVERAGE AND ON ANY SPECIFIC MEASURE TAKEN TO COMPENSATE OR MITIGATE A POSSIBLE NEGATIVE IMPACT: THE DIFFICULTIES FOR THE RECOGNITION OF OCCUPATIONAL ILLNESS FOR HEALTH AND SOCIAL HEALTH PERSONNEL DIRECTLY EXPOSED TO THIS RISK.

Since February 2021, the Covid-19 disease has been recognised as an occupational disease for healthcare and social healthcare personnel.

ON COMPLIANCE WITH ARTICLE 14: RIGHT TO THE BENEFITS OF SOCIAL SERVICES.

IN RELATION TO SECTION 1 OF ARTICLE 14

REQUIRED INFORMATION

a) Explains how and to what extent the functioning of social services has been maintained during the Covid-19 crisis and if specific measures have been taken in light of possible future crises.

Although the Government approved a series of measures known as the “Social Shield” in the first wave of Covid-19 and during the state of alarm, with the aim of protecting the most vulnerable social groups from the social consequences of this disease, we have been able to verify how the pandemic has subject to political will, and after months of "truce", epidemiological data have forced the extension of these measures.

The UGT and CCOO effectively consider it necessary to adopt measures that allow reducing the upward trend in the number of cases of affected people, and thereby avoid the levels of overload of the health system that were reached during the first wave of the pandemic, with worrying epidemiological levels.

Levels that not only affect the health system and its health coverage, both in primary and hospital care, but also strain the social services system and its set of benefits and services, which were considered essential services during the previous state of alarm, to, in this way, guarantee their coverage to the target population of the same and in the face of social emergency situations that were being experienced.

Social services, more than ever, are essential since we are facing an unprecedented health and social emergency situation and therefore from our position of responsibility, we believe that the government must commit to strengthening the social services system with the aim of achieving social reconstruction, a more egalitarian society and social cohesion. Once again, the most damaging effects and the worst consequences are being suffered by the most vulnerable people.

For this, we consider the following to be essential:

GUARANTEEING A VIRUS-FREE ENVIRONMENT

- Social services were considered essential services in this crisis, similar to health personnel. This means that the professionals of these services should be provided as a priority with protective equipment to prevent their infection and the infection of users.

This is especially important, due to the impossibility of maintaining the safety distance to prevent the spread of the virus, due to the peculiarities in the provision of the service, with the consequent exposure to a possible infection.

- Continuous carrying out of virus detection tests for all the people who are working in as well as to those who join these services, and in the same way, it is urgent to carry out these tests to the users to protect the health of the professionals and other people receiving the services.

- Adopting the protection measures recommended by the Ministry of Health, which must be adopted both by the workers of the centre, as well as by residents, users and visitors.

GUARANTEEING THE PROVISIONS OF SOCIAL SERVICES

The competent public administrations must reinforce, reorganise and implement the necessary initiatives, in collaboration with the social partners, with the aim of planning services and organising the most appropriate resources to guarantee quality and continuous care.

- Paying special attention to family units with minors, single-parent families, to

situations of unwanted loneliness of older people, people at risk of exclusion, dependency, or disability, in order to guarantee their basic and security needs, their periodic social-health follow-up, checking their state of health and adopting whatever preventive measures are necessary.

- Expanding the coverage of the Minimum Integration Income, both in term of the number of users and in the financial amount, with the consideration of right being subjective, facilitating access to it and speeding up its processing, so that income is guaranteed, almost immediately after the emergence of the state of need, and that allow the coverage of the needs of their recipients and of the members of the cohabitation unit.

- Strengthening the inspection of Social Services, establishing specific commitments for action by the competent Public Administrations to this end.

- Increasing the budget credit for social services, to reinforce the government's social shield in the face of the Covid-19 crisis. It is urgent to reverse the budget cuts stemming from previous financial crises, which have resulted in a reduction in the intensity of social services and their quality; and to be able to face extraordinary situations stemming from Covid-19. Specifically, this loan should be used to serve the most vulnerable people and families, such as the elderly, people in a situation of dependency, people with disabilities, single-parent families, child poverty, homeless people, degraded neighbourhoods and segregated settlements.

- Developing social-health coordination between Social Services and the National Health System to offer comprehensive care to people who need long-term care.

- Supporting families with children in a situation of poverty and social exclusion by increasing the financial allocations destined for the financing of aid that guarantee the basic right to food of children in a vulnerable situation that are particularly affected by this social and health crisis.

- Expanding the aid program for the school canteens, guaranteeing its continuity in the face of the possibility of closing them and in periods where school activity is suspended. The goal is that no child is without this food.

- Guaranteeing food, in case of quarantine, to those minors who are in a vulnerable situation, either by receiving them directly in their homes (catering, home shopping), or outside of it (opening of a school centre, collection of menus in established businesses).

- Breaking the digital divide for those families and schoolchildren who have neither the resources nor the skills to use computer equipment and telematic channels, guaranteeing the delivery of electronic devices and internet access.

IN RELATION TO SECTION 2 OF ARTICLE 14 ESC

REQUIRED INFORMATION

a) Providing information on user participation in social services ("co-production"), in particular on how such participation is guaranteed and promoted in legislation, budget allocations and decision-making at all levels and in the design and

implementation and practical fulfilment of services. Co-production is understood here as social services that work together with people who use the services on the basis of key principles such as equality, diversity, access and reciprocity.

Add, when referring to the participants in the Social Inclusion Network "… and the social partners" since we are represented in it in all its organs, that is, in the plenary session, in the permanent commission and in the different working groups. Specifically, the UGT and CCOO trade union organisations and the business organisations Spanish Confederation of Business Organisations and Spanish Confederation of Small and Medium-Sized Enterprises:

"Although job placement programs are primarily the responsibility of the Ministry of Labour and Social Economy, within the scope of the General Directorate of Family Diversity and Social Services, together with the Administrative Unit of the European Social Fund, a Social Inclusion Network is promoted and led in which the social and employment services of all the autonomous communities actively participate, in addition to all the ministries with protective action, social agents, the Third Sector and social partners. The European Commission is part of the Network, as it is a network co-financed by the European Social Fund".

IN RELATION TO ARTICLE 4 of the Additional Protocol - The right of the elderly to social protection.

Despite the programs and the introduction of policies related to health, social security, social services and well-being, due to the progressive ageing of the population, there is no comprehensive policy that addresses the rights of the elderly across the board.

The National Strategy for the Elderly for Active Ageing and its Good Treatment 2018-2021, prepared via the Institute for the Elderly and Social Services and with the participation of the State Council for the Elderly, was never approved. A strategy that had already been delayed since the Second World Assembly on Ageing in 2002, and that developed the Guidelines of the European Union (EU), in compliance with the provisions of the Declaration of the Council of the European Union (EPSCO), dated 6 December 2012, in which Member States are urged to follow the Guidelines that are to guide active ageing and solidarity between generations.

Another of the government initiatives in the period in question, the Comprehensive Plan for Alzheimer's and other forms of Dementia (2019-2023), is an essential instrument to address this disease as a public health issue; with the development of specific lines of action.

For us, the development of this plan is correct, although our participation in the State Group on Dementia should be carried out and be fundamental, since it is in charge of directing this plan, in which different systems of social protection such as the health system, social services, social security and the workplace.

In addition, a specific social-employment and legal protection model is established for family caregivers that incorporates measures such as time for care in the home environment, protection of the right to work, specific fiscal measures, which we request the discontinuation of this model.

Regarding the protection of the elderly in a situation of dependency, the current application of Law 39/2006, on the Promotion of Personal Autonomy and Care for Dependent People is necessary, increasing the intensity of services and the amount of benefits and establishing compatibility between some of them.

At the beginning of 2018, our proposals for the revision of the law were presented to the Institute for the Elderly and Social Services, fundamental to restoring this model of protection distorted through Royal Decree-Law 20/2012, dated 13 July, of measures to guarantee budget stability and promotion of competitiveness, which included a series of budget cuts that have meant cuts in rights.

1) On the impact of energy poverty and its particular incidence in the context of the Covid-19 crisis.

The Government's report refers in general terms to the fact that some measures have been taken during the pandemic to ensure energy supplies, as indicated in its reply to the questionnaire in the 33rd report, (page 143) indicating that social, economic, social and health services measures have been taken that, although not directly linked to the Ministry of Social Rights, are measures to favour the care of people and families in vulnerable situations, such as: Aid and support for habitual residence, interruption of evictions, support for landlords and tenants, ensuring supplies, support for employment, support for self-employed workers, workers who have lost or suspended their employment, etc...

However, new measures are necessary to address energy poverty in Spain, given the extent of the problem.

Between 3.5 and 8 million people are in a situation of energy poverty in Spain, according to the National Strategy against Energy Poverty 2019-2024 approved by the Ministry of Environment in 2019. The data for the four main indicators of this strategy are as follows (table 1):

- 8 million people have an energy expenditure disproportionate to their income.
- 5.3 million people limit their energy needs below what would be desirable to maintain a minimum level of comfort. This is so-called hidden energy poverty
- 3.5 million people cannot keep their homes at a suitable temperature.
- 3.6 million people have had delays in paying expenses related to their main residence, including energy supplies

Table 1. Energy poverty indicators

	Population	
	No.	**%**
Disproportionate energy expenditure (*)	8,049,511	17.3%
Hidden energy poverty (**)	5,350,831	11.5%
Have had delays in paying expenses related to the main residence in the last 12 months (***)	3,673,830	7.8%

Cannot afford to keep home at a suitable temperature (****)	3,579,630	7.6%

(*) (**) Source: National Strategy against Energy Poverty, Ministry of Environment. Percentage data from the Family Budget Survey, 2017, National Institute for Statistics. To estimate the number of affected people, the population recognised by the National Institute for Statistics as of 1/1/2017, 46,528,966, has been taken as a base. Data from 2017 are used because the Ministry of Environment document "Update of Indicators of the National Strategy against Energy Poverty" (November 2020) does not include the percentage of the population affected by each indicator in 2019, only the percentage of households, which is obviously less than that of affected people.

(***) (****) Source: National Institute for Statistics, Survey of Living Conditions, 2019. The National Institute for Statistics offers the data as a percentage of the population. The number of people who represent these percentages has been estimated from the 47,100,396 inhabitants calculated by the National Institute for Statistics offers in the first half of 2019.

Although the National Institute for Statistics offers has not yet published figures on energy expenditure during the pandemic, it is reasonable to think that households increased their energy consumption by having to spend more time in their homes, in a period in which their income decreased due to the deterioration of the labour market. In January 2021, there were 738,969 people made temporarily redundant and 3,964,353 unemployed, 710,500 more than in January 2020. During the pandemic, households without any type of labour income (wages, pensions, or unemployment benefit) increased by 10% compared to 2019 to 622,000, according to the latest Labour Force Survey data.

In addition, a new way of calculating electricity was enacted as of 1 June **2021**, in such a way that all domestic customers with power of up to 15 kW will have a mandatory time-differentiated rate in 3 periods, with stable rates disappearing.

This means that in the most expensive hourly section the electricity rate has shot up by 300%, which is the one that affects families the most since it runs from 10:00 to 14:00 and from 18:00 to 22.00.

The rate is reduced on weekend nights from 00:00 to 06:00, the determination of said rate being absurd, for household spending.

Four days prior to the date of presentation of these ALLEGATIONS, the Government has lowered the VAT on electricity rates from 21% to 10%, temporarily until the end of the year. Which is certainly not a great help for many families whose energy poverty has already caused serious consequences.

The CCOO and UGT have been requested measures that effectively address energy poverty, such as developing mechanisms to avoid the supply cut in the most vulnerable households and improve the discounted rate.

Measures that affect structural factors of energy poverty such as high energy prices in Spain or improving the energy efficiency of buildings are also necessary.

Improve the electricity and heating social discount

The electricity social discount should reach more people since at present its coverage, 1.1 million people according to the National Commission of Markets and Competition, is much lower than the population that the government itself estimates is affected by energy poverty. Likewise, the heating social discount, an annual amount granted to the beneficiaries of the electricity social discount to meet other energy costs, must have more public funding and not be subject to budget availability.

There is still no data to know the effectiveness of the measures approved in September 2020 through Royal Decree 30/2020, through which the right to receive the electricity social discount is recognised for the households most affected by the economic consequences of the pandemic: those with at least one member unemployed, made temporarily redundant or whose working hours have been reduced due for care reasons. This right expires on 30 June 2021.

Other similar measures applied during the state of alarm have excessively low coverage levels that should be analysed by public administrations. This is the case of the extension of the right to receive, for a maximum of six months, the social discount by self-employed workers who have ceased their activity or have seen their turnover

reduced as a result of Covid-19, regulated in article 28 of Royal Decree 11/2020, dated 31 March 2020. The data published by the National Commission of Markets and Competition in its Electrical Indicators Bulletin show a maximum number of beneficiaries of 4,900 between May and September 2020.

Ban on cutting supplies

After the end of the extension of the prohibition of electricity, water and gas cuts for all homes that has been in force between 14 March and 30 September, the unions have asked that the precautionary principle be included in Spanish legislation on energy poverty. This principle consists of making it impossible for companies to cut off any supply until social services can certify that it is not a vulnerable family.

In this sense, the situation experienced in the Cañada Real Galiana de Madrid, with families who have been without electricity for more than three months in the midst of a pandemic and cold snap, points to the convenience of establishing mechanisms to guarantee a vital minimum supply of energy to the most vulnerable households.

Lowering the price of gas and electricity

Gas and electricity prices for Spanish households are among the highest in the 27 European countries, occupying the sixth and fifth positions respectively in the European ranking in this matter, according to the latest Eurostat data [1]. In addition, Spanish households pay 21% VAT on necessities while, according to Eurostat, in other neighbouring countries such as Greece the VAT on natural gas for households is 5.3%.

AND, THEREFORE, THE TRADE UNIONS CONFEDERATIONS: CONFEDERACION SINDICAL DE COMISIONES OBRERAS (CCOO) AND UNIÓN GENERAL DE TRABAJADORES Y TRABAJADORAS DE ESPAÑA (UGT) present to the European Committee of Social Rights the previous observations and ALLEGATIONS in response to the Report presented by the Government of Spain, with interest in verifying:

- **The reiteration of the breaches of the Government of Spain.**
- **The insufficiency of information provided by the Government of Spain, in relation to the indicated aspects, in all the sections that give rise to this report.**
- **Failure to comply with the European Social Charter in the aspects referenced in each of the previous sections and in all the articles to which these ALLEGATIONS refer.**

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[1] Electricity price statistics, Eurostat, November 2020. Natural gas price statistics, Eurostat, November 2020.

And that the necessary measures are adopted to ensure the labour and social rights guaranteed by said instruments.