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EUROPEAN SOCIAL CHARTER

Responses to the ECSR additional questions
on the
2nd National Report on the implementation of the European
Social Charter

submitted by

THE GOVERNMENT OF SPAIN

Articles 2, 3, 4, 5, 6, and 20

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RESPONSE OF THE GOVERNMENT OF SPAIN TO THE REQUEST FOR ADDITIONAL INFORMATION OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

In connection with the request for additional information made by the European Committee of Social Rights in the course of the examination of the second national report submitted by the Government of Spain, the following supplementary information is provided, concerning Articles 2.1, 3.1, 3.3 and 5 of the Revised European Social Charter.

Article 2. The right to just conditions of work

Article 2(1) concerning reasonable daily and weekly working hours.

The Committee requests information as to whether inactive on-call periods, during which no work is actually performed, are remunerated, in particular in the case of inactive on-call periods spent away from the employer's premises, and, where applicable, what rules apply as regards remuneration.

In this regard, the settled case-law of the Supreme Court has established a clear distinction between three (3) concepts: (i) effective working time, (ii) presence time, and (iii) on-call or availability time.

In this sense, the key aspect, according to this doctrine which remains in force, is whether the worker is obliged to remain in a place designated by the employer or whether, on the contrary, the worker may freely organise his or her time. As can be seen from the decisions cited below, a period may be regarded as presence time only where there is an obligation of physical presence in a place determined by the employer, even where no effective work is performed.

This is the point on which the case-law currently in force turns. By contrast, where the arrangement involves on-call reachability or availability duties, in which the worker need only be reachable by the employer and to attend work when necessary, but without any obligation to remain in a specific place and without any relevant restriction on his or her freedom of movement, such periods cannot be regarded either as effective working time or as presence time, but merely as periods of availability and rest.

The aforementioned doctrine is reiterated in numerous judgments¹, which insist that **the mere obligation to remain reachable, without the imposition of a specific place or an**

¹ Judgments of the Supreme Court of 27 January 2009 -which serves as a reference for the later ones-, of 2 December 2020, of 18 April 2023; Judgment of the National High Court (Audiencia Nacional) of 27 April 2015 -which expressly rules on the concept of presence time-; or, among others, of the High Court of Justice of Castilla-La Mancha of 21 April 2021.



intense restriction of personal freedom, does not convert the on-call period into working time or presence time. Only on-call duties performed on-site or involving an obligation to remain in a determined place may be regarded as presence time.

Finally, it is appropriate to recall some of the legal grounds set out in the aforementioned judgments;

- **Judgment of the Supreme Court of 27 January 2009, Appeal No. 27/2008:** The Supreme Court draws a clear distinction between effective working time, presence time and on-call time. It thus holds that, for an on-call period to be regarded as presence time, the worker must be at the employer's disposal at the place designated by the latter. In this sense, it concludes:

"Reference is even made in this regard, in the sixth legal ground, to the testimony of the pilot Mr. Rafael, who acknowledged that during on-call periods he spent the night at home, had dinner with his family, etc., leading his normal life with the limitations inherent in a service of this nature. This is precisely what the difference between presence time and on-call time consists of, in accordance with the doctrine referred to in the preceding ground: in on-call arrangements it is possible, in principle, for the worker to retain, albeit with limitations, certain personal or family options, which are excluded by the more onerous restrictions inherent in presence time".

- **Judgment of the National High Court (Audiencia Nacional) of 27 April 2015, Appeal No. 74/2015 (upheld by the Supreme Court in its Judgment of 18 November 2016, Appeal No. 234/2015).** In that case, the question at issue was whether the system of off-site on-call duties of the company Iberia should be regarded as presence time, the Chamber concluding that this situation does not constitute presence time but rest time, except where the worker is called and provides the service.

In this sense, the Chamber, emphasising that the worker is not obliged to remain in a place designated by the employer, enjoying freedom of movement -although reachable-, held that this is not presence time and, therefore, that the weekly limit of 20 hours laid down in Royal Decree 1561/1995 of 21 September on special working hours is not exceeded:

"In principle, the definition of presence time contained in the aforementioned regulatory provision² would appear to include on-call duties without service, since it is time during which the worker is at the employer's disposal without performing effective work, by reason of on-call or stand-by duties. However, it must be borne in mind that we are

² The Labour Chamber of the National High Court was referring to Article 8.1 of Royal Decree 1561/1995 of 21 September on special working hours.



speaking of "presence" time (which the Real Academia Española de la Lengua defines as "personal attendance or the state of a person who is before another or others, or in the same place as them"), which suggests that the situations concerned must have as their common denominator the worker's remaining at the place indicated by the employer, his freedom of movement being ruled out. This is what occurs when the worker is at the employer's disposal without performing effective service on journeys without service, breakdowns, meals en route, etc. And it is also what occurs during on-call duties that must be performed at the workplace. What occurs is that, alongside the latter, it is also possible to establish a system of on-call reachability duties, which is precisely what the on-call system is based on, in which the worker may remain in the place of his choice, without prejudice to being in a position to report to the workplace within a reasonable reaction time -which is logical given that this is an on-call duty -. [...]

"The Court³ holds that, <<as regards the presence hours allegedly performed in excess, it must be said, having regard to the content of the third finding of fact and to Article 8.1 of Royal Decree 1561/1995 (EDL 1995/15657), that these are not hours of presence at the centre, but hours in which (...) the claimant is located by means of a mobile telephone in order to attend to any service should the circumstances so require, and although it is true that this availability, which is not one of presence but of on-call reachability, should merit some kind of remuneration, it is no less true that the applicable Collective Agreement does not provide for it, without its having to be regarded or remunerated as presence hours by according it the same value as the hours of presence at the centre, since, as has been said, these are not such presence hours but rather on-call absence in order to be able to attend to the service in those cases -presumably exceptional or, in any event, much less frequent than those to be attended to during the period of physical presence at the centre- in which the circumstances so require owing to the insufficiency of the personnel assigned to each of the three rotating shifts established in the undertaking>>. To the same effect, Judgment of the High Court of Justice of the Valencian Community of 10 June 2008 (appeal 3464/2007). [...]

It should be recalled that Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 (EDL 2003/198134), concerning certain aspects of the organisation of working time, distinguishes between two broad categories: working time and rest time (Article 2). The former comprises "any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice"; and rest time is "any period which is not working time". Now, the CJEU Judgment of 3 October 2000 (Case C-303/98, SIMAP) also distinguishes between on-call duties under a reachability regime, without presence at the health centre, and those carried out under a regime of physical presence: only the latter

³ In this case, the Labour Chamber of the National High Court was referring to the Judgment of the High Court of Justice of the Valencian Community of 17 September 2003, Appeal No. 624/2001.



must be regarded as working time. Conversely, on-call reachability duties constitute a rest period. The CJEU Judgment of 9 September 2003 (Case C-151/02, Jaeger) reaches the same conclusion". [...]

"In accordance with the doctrine set out in the preceding legal ground, the first claim contained in the operative part of the application must be dismissed, rejecting the notion that the waiting time for activation of the on-call service may be characterised as presence time".

In light of the case-law set out above, it may be concluded that periods of **stand-by on-call duty during which the worker remains away from the workplace and performs no effective work**, without being subject to an obligation to remain in a determined place or to restrictions that objectively and considerably limit his or her ability to freely manage his or her time, **do not have the status of working time for the purposes of labour legislation**. In particular, the mere obligation to remain reachable and available in order to attend, where appropriate, to a possible call from the employer does not, in itself, mean that the entire on-call period must be counted as working time.

Likewise, where during such periods there is no effective provision of services or an obligation to remain that would allow them to be classified as **presence time**, such periods cannot be regarded as such either. The classification must be carried out having regard to the specific conditions under which the on-call duty is performed and, in particular, to the degree of intensity of the limitations imposed on the worker during the availability period, in accordance with the criteria established by national and European case-law.

As regards its **remuneration regime**, the fact that these stand-by on-call periods do not have the status of working time or presence time **does not mean that they must necessarily be performed without financial compensation**. The remuneration of availability constitutes a matter distinct from the legal classification of the period for the purposes of computing working time and rest, and regard must be had, first and foremost, to the provisions of the **specific rules applicable to each particular situation** and, where appropriate, the **collective bargaining agreement or the employment contract**.

Thus, collective bargaining may establish **specific financial compensation for mere availability or reachability**, by means of formulas such as availability allowances, stand-by on-call allowances or analogous remuneration items. In such cases, the amount received specifically remunerates the obligation assumed by the worker to remain available and to attend, where appropriate, to the employer's requirements, **without such compensation implying that the entire availability period must be remunerated as if it were effective working time or presence time**.



Consequently, a distinction must be drawn between, on the one hand, **the stand-by on-call period in which there is no effective provision of services**, which, where the aforementioned conditions are met, does not constitute working time or presence time and, on the other hand, **the period during which the worker is actually required and provides services** and shall receive the remuneration provided for the service actually performed.

Article 3. The right to safe and healthy working conditions

Article 3(1) health and safety and the working environment

The Committee requests information on the content and implementation of national policies relating to psychosocial risks or to new and emerging risks in connection with jobs involving situations of stress or trauma at work.

First, it should be noted that the Spanish legal framework on occupational risk prevention is not indifferent to psychosocial risks. On the contrary, the provisions in force are formulated in broad and all-encompassing terms, beginning with Act 31/1995 of 8 November on the Prevention of Occupational Risks, which makes it possible to protect workers' health in all its dimensions, including mental health. That is to say, **the occupational safety and health prevention rules** of the Spanish legal system **encompass protection against all work-related health risks, including psychosocial risks.**

The effective protection of health, understood in a broad sense, constitutes a right of the worker and a corresponding duty of the employer within the framework of employment relations and, specifically, in the field of occupational risk prevention. Accordingly, **the general obligations in force** laid down in Act 31/1995 of 8 November, in the Regulation on Prevention Services, approved by Royal Decree 39/1997 of 17 January, and in the other implementing legislation **are fully enforceable and, therefore, directly applicable to psychosocial risks.**

Notwithstanding the sufficiency of the current framework to require employers to address psychosocial risks, Spain is pursuing a line of regulatory reinforcement in this area. The Spanish Occupational Safety and Health Strategy 2023-2027, approved by the Council of Ministers on 14 March 2023, identifies new economic and social trends, as well as the digital and climate transition, as generating new or emerging risks that affect the safety and health of workers. In this context, **in 2024 a social dialogue round table was set up for the review and amendment of Act 31/1995 of 8 November and of the Regulation on Prevention Services.**



The social partners took part in that round table, that is, the most representative employers' and trade union organisations, and **one of the main tasks was to strengthen the protection of workers against psychosocial risks.**

As a result of that social dialogue process, and following the prior public consultation procedure, a **Draft Bill amending Act 31/1995 of 8 November on the Prevention of Occupational Risks; the consolidated text of the Workers' Statute Act, approved by Royal Legislative Decree 2/2015 of 23 October; and the Regulation on Prevention Services, approved by Royal Decree 39/1997 of 17 January** was drafted.

This legislative project **provides for updating the aforementioned rules so that they expressly incorporate psychosocial risks**, since these risks, especially the emerging ones arising from new forms of work organisation and digitalisation, significantly affect the health and well-being of workers, making it important for the legislation to integrate them explicitly and effectively into preventive action.

The draft bill was submitted to the public hearing and consultation procedure. The period for submitting contributions began on 17 March 2026 and ended on 8 April 2026.

Notable advances envisaged in this legislative project include the following:

- It introduces **expressly** protection against psychosocial risks into the general provisions of Act 31/1995 of 8 November on the Prevention of Occupational Risks, in particular Articles 4, 14, 15 and 16, and into the Regulation on Prevention Services, in particular Article 4 thereof.
- **It separates the preventive disciplines** of ergonomics and applied psychosociology.
- It incorporates into the Spanish legal system the requirements of Convention No. 190 of the International Labour Organization on the elimination of violence and harassment in the world of work, which provides for the obligation to take into account, in the management of occupational safety and health, **violence and harassment, as well as the associated psychosocial risks.**
- It amends Article 4 of the consolidated text of the Workers' Statute Act, concerning workers' labour rights, to include the right to physical and moral integrity and to protection against violence and any type of harassment.



- It provides that, within one year of its entry into force, a **specific implementing regulation on the protection of the safety and health of workers against psychosocial risks** will be adopted (fourth final provision, paragraph 2).

Furthermore, the National Institute for Occupational Safety and Health is providing technical advice in the preparation of two legislative projects directly related to new and emerging risks: the draft Royal Decree on the protection of workers against the effects of climate change in the workplace and the draft Royal Decree on the protection of safety and health against risks related to exposure to psychosocial factors during work.

From the perspective of the application and monitoring of regulatory compliance, the Labour and Social Security Inspectorate has a campaign, carried out throughout the national territory, focused on workers' exposure to psychosocial risks. The importance of this campaign has increased year after year.

Particularly relevant is the approval of **Technical Criterion 104/2024 of the Labour and Social Security Inspectorate** in this area, the aim of which is to guide and harmonise inspection activity in three main areas: the preventive management of psychosocial risks by undertakings; the response of the public Inspectorate service to complaints lodged for harassment or other types of violence; and the investigation of harm to workers' health arising from exposure to these risks.

This Technical Criterion not only serves as a guide for the activity of the Labour and Social Security Inspectorate. As a public document accessible through the Inspectorate's website, it has also become a reference tool for the management of these risks by undertakings. In addition, it was approved following consultation with, and the participation of, the social partners, through the General Council of the Labour and Social Security Inspectorate, as well as the labour authorities present on the Governing Council, the governing body of the State Agency for the Labour and Social Security Inspectorate.

As regards the planning of inspection activities, the Labour and Social Security Inspectorate takes into account the jobs with the highest risk of exposure to psychosocial factors. To this end, it collaborates with the National Institute for Occupational Safety and Health, which provides the State Agency, on a biennial basis, with the activities that are a priority for directing the Inspectorate's preventive and planned action.

This information is also provided by differentiating sectors of activity according to whether their workforce is predominantly female or male, with the aim of integrating the gender perspective from the planning stage of inspection activity. Since 2025, the information has been provided broken down by each province of the Spanish territory, which makes it



possible to identify the activities or jobs with the highest level of exposure to psychosocial risks in a manner adapted to the socio-labour reality of each territory.

The future relevance of this campaign is reflected, first, in the Spanish Occupational Safety and Health Strategy 2023-2027, which provides that “the campaigns of the Labour and Social Security Inspectorate on musculoskeletal disorders and psychosocial risks will be strengthened, with a special focus on work-related stress, concentrating on activities in which these risks are most frequent”. To this end, collaboration is envisaged with the National Institute for Occupational Safety and Health and with the technical bodies of the autonomous communities, in order to determine the priority activities on which to intensify oversight.

Secondly, the Strategic Plan of the Labour and Social Security Inspectorate 2025-2027 includes actions aligned with the Spanish Strategy and other innovative measures, such as the reference to the incidence of psychosocial risks on the right to digital disconnection and the prioritisation of the investigation of harm to health, even where classified as minor, linked to exposure to these risks.

Therefore, the actions of the State Agency for the Labour and Social Security Inspectorate are aligned with the European Union Strategic Framework 2021-2027 and with the Spanish Occupational Safety and Health Strategy 2023-2027, placing mental health on the same level as the physical health of workers.

Article 3(3) of Revised Charter (Article 3(2) of 1961 Charter) Enforcement of health and safety health regulations

The Committee requests information on the specific measures adopted to ensure oversight of the application of safety and health standards by the Labour Inspectorate or other competent authorities with respect to self-employed workers, including information on inspections and their results, as well as awareness-raising activities aimed at informing these workers of their rights.

In this regard, it should be specified that, under Spanish occupational safety and health legislation, self-employed workers, as such, are not liable parties in the same terms as employers, except in cases relating to the coordination of business activities.

Notwithstanding this, the Labour and Social Security Inspectorate does carry out actions relating to self-employed workers in the field of safety and health, even if they do not always end in the imposition of administrative liability. These actions make it possible to verify



relevant preventive situations, to issue requirements and to act especially in areas where self-employed activity is carried out in concurrence with other parties or in production environments subject to specific preventive obligations.

The available data for the most recent year are as follows:

- In 2025 a total of **4,016 service orders or inspection proceedings** were completed, with an overall result of **436 infringements** and **2,279 requirement notices**.
- In 2026 -from January to July- **2,785 service orders or inspection proceedings** have been completed, with a provisional total of **377 infringements** and **1,261 notices requiring the remedying of deficiencies**.

The largest number of actions concentrates on safety conditions at workplaces, followed by investigation reports on occupational accidents and occupational diseases, personal protection methods and the coordination of business activities.

As regards information, diagnosis and awareness-raising activities relating to self-employed workers, the National Institute for Occupational Safety and Health has reported the existence of two actions currently under way or carried out within the framework of its powers:

- The first consists of a situational study or diagnosis of the self-employed working population, concerning its socio-demographic profile and its occupational accident rates. This activity is carried out periodically, on a biennial basis.
- The second consists of a situational study or diagnosis of occupational diseases among the self-employed working population. This project falls within the Second Action Plan of the Spanish Occupational Safety and Health Strategy. Specifically, it is included in line of action number 4.2, focused on “improving the protection of self-employed workers”, which includes, as measure number 149, that of “improving knowledge of the occupational diseases of self-employed workers” and calls on the National Institute for Occupational Safety and Health to carry out a study on this matter.

Consequently, although the Spanish legal regime establishes a differentiated position for self-employed workers as regards preventive administrative liability, there are inspection actions relating to this group, with specific data on proceedings, infringements and requirements, as well as technical activities of diagnosis and knowledge carried out by the National Institute for Occupational Safety and Health, in particular on occupational accident rates and occupational diseases.



Article 5. Right to organize

The Committee requests information as to whether national legislation recognises freedom of association and the right to form and join trade unions for digital platform workers, whatever their legal status or professional classification.

In this regard, it should be noted that Act 12/2021 of 28 September, amending the consolidated text of the Workers' Statute Act, approved by Royal Legislative Decree 2/2015 of 23 October, in order to guarantee the labour rights of persons engaged in delivery work within the scope of digital platforms, established that the existence of an employment relationship is not precluded by the fact that the employer's powers may be exercised in various ways and, increasingly, through the algorithmic management of the service and the determination of working conditions by means of a digital platform.

To that end, a new twenty-third additional provision was introduced into the consolidated text of the Workers' Statute Act, allowing the true nature of the relationship to be assessed through the introduction of a presumption of employment affecting persons who provide services consisting of the delivery or distribution of any consumer product or merchandise, on behalf of employers that exercise the business powers of organisation, direction and control directly, indirectly or implicitly, through the algorithmic management of the service or of working conditions, by means of a digital platform.

Specifically, the twenty-third additional provision of the consolidated text of the Workers' Statute Act provides as follows: *"Pursuant to the provisions of Article 8.1, the activity of persons who provide remunerated services consisting of the delivery or distribution of any consumer product or merchandise, on behalf of employers that exercise the business powers of organisation, direction and control directly, indirectly or implicitly, through the algorithmic management of the service or of working conditions by means of a digital platform, is presumed to be included within the scope of this Act. This presumption does not affect the provisions of Article 1.3 of this legislation. [...]"*

Therefore, where, in accordance with the provisions of the aforementioned twenty-third additional provision, persons who provide services through a digital platform fall within the scope of application of the consolidated text of the Workers' Statute Act, they **enjoy the same individual and collective labour rights as the rest of the employed workers**, without the use of a digital platform as an instrument for the organisation, direction and control of the provision of services entailing any limitation or exclusion of such rights.

In particular, Article 4.1 of the consolidated text of the Workers' Statute Act recognises for workers, with the content and scope laid down for each of them by their specific rules, the following basic rights: work and the free choice of profession or trade; **freedom of trade**



union association; collective bargaining; the adoption of collective dispute measures; the right to strike; the right of assembly; and information, consultation and participation in the undertaking.

Consequently, digital platform workers who have the status of employed workers hold, on equal terms with other workers, the right to freedom of association and, in particular, the rights to establish and join trade unions recognised in Organic Act 11/1985 of 2 August on Freedom of Association.

As regards persons working on a self-employed basis in the context of digital platforms, they may join trade union organisations that have already been established, but they may not establish trade unions whose specific purpose is the protection of their interest as self-employed workers. For the defence and promotion of their specific interests as self-employed persons, they may establish associations under civil law. All of the foregoing is in accordance with the provisions of Article 3.1 of the aforementioned Organic Act on Freedom of Association.

Finally, reference must be made to the fact that work is currently under way on the preparation of a legislative project for the transposition into the Spanish legal system of Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, and, prior to the preparation of the project, a public consultation has been conducted with the aim of gathering the views of the most representative parties and organisations potentially affected by the future legislation. The period for making contributions in this public consultation procedure began on 31 July 2026 and ran until 14 August 2026, both inclusive.

The transposition of the Directive requires undertaking a series of amendments to Spanish labour legislation that would affect matters of a different nature, such as the proper classification of the platform work relationship, the rights relating to algorithmic transparency and the rights recognised as regards the protection of personal data at work. Moreover, the transposition of the Directive must be carried out in a manner respectful of the obligations established in the Convention concerning Decent Work in the Platform Economy (Convention No. 193), which constitutes the first international treaty regulating platform work. The Convention sets as its objective the protection of workers against precariousness. To that end, it **recognises basic labour rights, guarantees the exercise of freedom of association**, collective bargaining and protection against discrimination, forced labour and child labour, social protection and risk prevention, and it regulates employers' obligations as regards algorithmic transparency.