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# The Working Poor in Latin America: Causes, Factors, Dynamics and the Provision of Income Guarantees

Eleonora Peliza \*

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**Abstract:** This paper explores the complex and dynamic causes that give rise to the working poor phenomenon in Latin America. The purpose is to analyse the underlying factors that contribute to the proliferation of this problem at a regional level and propose efficient policy measures to guarantee income and revert this phenomenon.

**Keywords:** *Latin America; Poverty; Working poor; Productivity gaps; Informality.*

## 1. Introduction: Purpose of this Paper

Over the last decades, there has been a global trend in the increase of poverty and different ways of inequality, which has been aggravated by the pandemic.<sup>1</sup> By the end of 2022, more than 700 million workers lived in moderate poverty and 214 million were extremely poor, i.e., having income of less than 1.90 United States dollars a day per individual in parity conditions of purchasing power.<sup>2</sup>

Most notably, in Latin America, 32.1% of the total region's population lives in poverty, and 13.1% is in extreme poverty, which equals 201 and 86 million people, respectively. These figures are even aggravated if people under 18 years old are taken into consideration: 45.4% are poor and 18.5% are extremely poor. Unfortunately, these data and figures are translated into a deeply disturbing reality: 21% of the Latin American population (approximately 117.3 million people) and more than 50% of the Caribbean population (13.9 million

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<sup>1</sup> Vertical inequalities – among the rich and the poor – and horizontal inequalities among different groups of society.

<sup>2</sup> ILO, *World Employment and Social Outlook, Trends 2023*.

people) cannot afford a healthy diet (Food and Agriculture Organization of the United Nations [FAO]).

From a dynamic perspective, work has been considered the main driver to escape from poverty and social exclusion.<sup>3</sup> In fact, poverty has been traditionally associated with the lack of income due to unemployment. However, the general idea that relates poverty to a situation of unemployment and inactivity has been under discussion. Particularly, given that working is the main source of subsistence/income, if not the only source for most of the global population. In fact, labour income accounts for an average of 80% of total income in the households of our region- it may be asserted that these inequalities arise from unequal access to work and the in-work poverty, i.e., poverty of people who have jobs.

For a significant part of the Latin American population, working for remuneration is no guarantee of a way out of poverty or extreme poverty, due to the conditions under which it is performed.<sup>4</sup>

This way, poverty is in great part a problem for working people in the region: a third part of the people who live in extreme or moderate poverty have jobs. The proliferation of different kinds of precarious jobs, the lack of full and productive employment, inadequate macroeconomic and tax policies, the lack of sustainable industrial policies and a structural ineffective transformation of economies, are multi-factor causes of poverty and inequality faced by the region.

Specifically, this paper intends to explore the complex and dynamic causes that give rise to the working poor phenomenon in Latin America<sup>5</sup>. Our purpose is to analyse and understand the underlying factors that contribute to the proliferation of this problem at a regional level and propose efficient policy measures to guarantee income to revert this phenomenon.

## 2. Concepts and Methodology

Even though studies about inequality and poverty have always considered occupational dynamics, the concept of working poor is relatively new. In

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<sup>3</sup> In addition to being the main driver for poverty eradication and for the creation, exacerbation or mitigation of inequality, work is a fundamental mechanism for building autonomy and identity, upholding dignity and expanding the scope of citizen action; it is also the main avenue for social and economic integration (ECLAC, 2010, 2012a and 2014)

<sup>4</sup> ABRAMO, CECCHINI MORALES, *Social programs, poverty eradication and labor inclusion Lessons from Latin America and the Caribbean* ECLAC.

<sup>5</sup> For this purpose, we will consider it to analyse the data obtained in the ILO Labour Estimates for the region and ECLAC. Ten countries of the region: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Paraguay, Peru, Dominican Republic and Uruguay.



agreement with Philippe Auvergnon<sup>6</sup>, we should point out that the term “working poor” is not a legal concept itself but refers to a social phenomenon characterized by people who despite working and receiving a salary, their lifestyle is below the poverty line.

It is certainly a hybrid concept that combines the analysis of the labour market with the study of poverty. This way, we are facing a phenomenon that may be analysed from several perspectives, given the combination of factors and elements ranging from the *labour environment*—low salaries, job quality, segmentation—, the *economy*, the distribution of wealth and the impact on the development-*social security*, the efficiency of social protection and tax redistribution instruments and, above all, *sociology*, poverty and social exclusion. The relevance of the study of this “new type of poverty” does not only consist of the quantitative increase in Occidental countries, but also, and in particular, the sociological expansion to segments that have historically been part of the middle-class sector, but that, either due to new sociological realities or because of the new dynamics of labour markets, fall into poverty or are at risk of falling into poverty and social exclusion.<sup>7</sup>

Who are considered the working poor for this paper? The poverty phenomenon is generally addressed from a two-fold analytical approach: an absolute and a relative one. From an absolute approach, poverty is defined as the impossibility of satisfying a series of basic needs related to material subsistence (i.e., lack of sufficient resources to live). From a relative approach, poor people are those who do not achieve an acceptable standard of living for the society where they live. This phenomenon may also be analysed from two points of view: a collective aspect and a family aspect, related to household income and individual income, which emphasizes the individual needs of the worker, in comparison to their income. From the collective/family perspective, a household is considered poor when total income is insufficient to cover a basket of goods and services to satisfy the basic food and non-food needs of a household. They are active workers who live in poor households. From this perspective, it is considered that a worker who belongs to a poor household is poor, even though their work income is sufficient to satisfy their basic needs. From the individual analysis, poor workers are those active workers whose income is lower than a certain line. A worker may even be considered poor if their work income is below the individual poverty line, regardless of whether they belong to a poor household. In our case, we will use the methodology

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<sup>6</sup> AUVERGNON, P. “The working poor phenomenon: revealing functions and tendencies of social law” *Rev. Latinoamericana de derecho social*. [online].14, pp.43-78. ISSN 2448-7899

<sup>7</sup> CALVO GALLEGOS, F. *Trabajadores Pobres y Pobreza de los ocupados. Una primera aproximación*, TEMAS LABORALES Núm 134/2016. Pages 63-106.

used by the Economic Commission for Latin America and the Caribbean (ECLAC) and the ILO. This way, we will take into consideration both the household characteristics of the working poor as their individual characteristics, the specific impact of poverty on different groups of workers, characterized by their personal attributes, and according to the composition of the households where they live. The working poor are all those active workers who live in a poor household, even if their income is sufficiently high to cover their own basic needs.

### 3. Poverty in the Region: Factors and Dynamics

The phenomenon of the working poor<sup>8</sup> is not entirely new in the region. In the 70s, The Regional Employment Program for Latin America and the Caribbean (PREALC) already raised concerns about this reality<sup>9</sup> which nowadays is even worse because of the constant increase of unemployment, underemployment, informality, the process of precarious labour conditions<sup>10</sup>, and the consequences of the pandemic and the impact of inflation.

As we have already explained, there are multiple factors, either of social, economic, family, individual, demographic or gender nature related to in-work poverty. By way of example, it has been pointed out that Latin America is associated with poverty both in general terms and in terms of work, in children and teenagers of less than 15 years old in their homes. The presence of minors at home reduces the possibility of escaping from poverty and increases the possibility of falling into it. There are also several studies about in-work poverty and the association with causes or dynamics that influence its shaping about ethnicity, race, age, territory, disability, immigration status, gender, sexual orientation, etc. Specifically, without disregarding the influence and incidence of other well-known factors that will be analysed in this paper, there are factors and dynamics that are considered conclusive for the proliferation of the workers' problem in the region.

We will refer to: a) The characteristics of the production system and productivity gaps: structural heterogeneity given by the productive and technological gaps among predominant economic units and low labour productivity. b) The characteristics of the labour market: heterogeneity and

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<sup>8</sup> Working poor in USA, precarious, vulnerable, atypical, low salaries in France and Germany.

<sup>9</sup> PREALC, "La política de empleo en América Latina: lecciones de la experiencia de PREALC", in *El Trimestre Económico*, vol. 41, No. 164(4), pages 917-936.

<sup>10</sup> MUÑIZ TERRA, L, "Nuevos y viejos escenarios en el mundo laboral latinoamericano *El mundo del trabajo en América Latina. Trabajo, empleo, calificaciones profesionales, relaciones de trabajo e identidades laborales*" compiled by Julio César Neffa; Enrique de la Garza Toledo; Leticia Muñoz Terra. - 1a ed. - Buenos Aires: Latin American Council of Social Sciences (CLACSO): CAICYT).

segmentation of the occupational structure<sup>11</sup>, informality, underemployment and labour precarious conditions; c) Lack of education and basic employment qualifications, given the evident relation between the workers' educational level and poverty. d) Economic aspects such as the almost non-existent economy growth and high levels of inflation: Latin America is one of the regions that most struggles for long-term growth and that has the highest levels of inflation, which affects salary and, in particular, the food component of the market basket, as well as the most vulnerable middle-income social class.

a) Characteristics of the productive system. Structural heterogeneity. Productive and technological gaps. Low labour productivity

The Latin American productive structure is characterized by having a structural heterogeneity<sup>12</sup> caused by the productive and technological asymmetries among companies, i.e., the coexistence of social classes with very different productivity. Some people suggest that this heterogeneity is a consequence of how the Latin American economy is inserted into the global market and its capacity to promote a change in technical change among different sectors and production areas.<sup>13</sup>

The economic structure of the main Latin American countries is made up of a) a primitive sector, having productivity levels and income per habitant that merely allow subsistence; b) an intermediate sector, consisting of industries with productivity levels similar to the average productivity level of the national system; c) a modern social class, including exporters, which operates with productivity levels equal or higher than the average level of developed economies.

For instance, as opposed to what happened in the United States over the last thirty years, Latin America has not registered a structural change in the manufacturing sector. On the contrary, industries leading growth in the region have always been those which intensively work on natural resources, and this has caused a pure increase in productivity. Most developed countries have successfully modified their productive structure by moving towards

<sup>11</sup> The hypothesis of labour market segmentation has been analyzed for several years and there are some papers on this regard (Reich, 2009 Segmented labor markets and labor mobility. Edward Elgar Publishing)

<sup>12</sup> A heterogeneous productive structure exists when there are sectors, areas or activities in which productivity is high or "normal", while in some others productivity is scanty, several times inferior to the first one."

<sup>13</sup> CAICYT- CONICET, *Trabajo y Sociedad. Sociología del trabajo- Estudios culturales- Narrativas sociológicas y literarias* NB - Núcleo Básico de Revistas Científicas Argentinas (Caicyt-Conicet) No 29, Invierno 2017, Santiago del Estero, Argentina ISSN 1514-6871-

technological sectors, changing the business model of their companies<sup>14</sup>. Since the 2008 crisis, the region has experienced an increase in the proportion of workers of low productivity sectors, which has also triggered a more uneven distribution of wages.

In addition, as opposed to central economies (USA, Canada, Japan, Germany, France, etc.) that, over the last decades have shown a trend towards homogenization, Latin America economies have enhanced heterogeneity, resulting from more and more sectors cutting off from the rest of the economy. Some authors explain that the development of the transnational (modern) sector is directly or indirectly boosted to the detriment of national sectors – middle and primitive – in the region, which gives rise to underemployment, unemployment and an unequal distribution of income<sup>15</sup>.

The information on the Latin American productive structure under analysis and the employment information evidence that the sectors where productivity grows take a very scarce portion of total employment. This means that few workers are benefiting from the increase in wages, and the remaining ones are still working in sectors where productivity and wages are low.

Low productivity and labour competitiveness: As most people subsist thanks to being part of the labour market, the grounds for this wrongful operation are the mechanisms that link production and employment dimensions. Productive employment has been defined as such employment yielding sufficient returns to labour to permit a worker and his/her dependents a level of consumption above the poverty line<sup>16</sup>. Labour productivity, which is generally expressed as the relation between the total value of goods and services produced in a country and labour supplies used in this production, is one of the most significant mechanisms to communicate growth of well-being. The relation between wages and productivity is an accurate key factor of the quality of life of working people, as well as the distribution of income between work and capital, also known as remuneration paid to factors of production.<sup>17</sup>

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<sup>14</sup> ECLAC Collection. *Time for equality: closing gaps, opening trails. Structural heterogeneity and productivity gaps: from fragmentation to convergence.*

<sup>15</sup> CHENA, P. *Heterogeneidad estructural y distribución del ingreso. El pasaje del estructuralismo latinoamericano al neo estructuralismo.* Revista ciencia y universidad (35), 6-30. En Memoria Académica.

<sup>16</sup> Vid. ILO, <https://www.ilo.org/global/topics/decent-work/lang-es/index.htm>

<sup>17</sup> GONZÁLEZ MATA, E. LÓPEZ CABRERA J. And. CABRAL TORRES, “Relación entre productividad laboral y remuneraciones: un análisis de proximidad espacial a nivel estatal en la industria manufacturera en México, 2004, 2009, 2014 y 2019”, serie Estudios y Perspectivas-Sede Subregional de la ECLAC en México, N° 197 (LC/TS.2022/44; LC/MEX/TS.2022/3), Ciudad de México, Economic Commission for Latin America and the Caribbean (ECLAC), 2022.

The ILO has already warned that, in the region, the product per worker is similar to the figure achieved in 1980<sup>18</sup>, which means the possibility of progress is the same as two decades ago, explaining the reasons why Latin American labour markets do not yield sufficient profits.

At a macroeconomic level, productivity is generated within the companies and it is where we may find several of their most important key factors, in particular, those related to the labour market. For this reason, another factor that affects the working poor phenomenon is driven by the characteristics of the predominant economic units in our region. What does this mean? It means that companies for which the working poor work are also “poor” companies: they carry out activities with quite low labour productivity, or related to family strategies of subsistence. Low productivity of informal and formal units is not merely a consequence of the workers’ basic qualifications (to which we will refer below), but also that such productive units are inefficient and barely profitable, either because of a low or inexistent use of capital, inadequate and obsolete technology, difficulties to access to supplies and competition with formal companies. Without innovation, there is no demand for training, and without a qualified workforce, it is hard to launch innovation processes that include all workers<sup>19</sup>. This way, it is evident that these productive units can only generate low income for those who work there, both for owners and their dependents. In our region, a worker produces a production level of around 10,500 US dollars per year, an amount that would be sufficient to afford an average monthly remuneration of a bit more than 430 dollars, assuming half of the production is directed to workforce and the other half to factors of production. Average remuneration in other developed countries or regions, such as the United States, Japan or Europe is much higher than in Latin America, especially because production is organized in such a manner that the outcome per worker exceeds 40,000 and even 50,000 dollars per year. For instance, in the US, almost 70% of production is directed to compensate the workforce.

- b) Characteristics of the labour market: occupational heterogeneity and segmentation. Informality, underemployment and labour precarious conditions

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<sup>18</sup> It is usually considered that the productivity analysis is only interested in production agents. However, there is no international evidence about the conclusive role played by labour productivity in the creation of prosperity and development, in addition to its inverse relation with poverty in countries, measured through the most common approach, the real product index per worker.

<sup>19</sup> ILO (2004) Labour Overview Lima: ILO/Regional Office for Latin America and the Caribbean, 2004.

The lack of occupational homogeneity and the two-fold structure of the labour market is associated with the presence of two big sectors: primary and secondary sectors. There are different labour segments with job positions of different quality. The primary segment comprises the “good” jobs (high wages, stability, opportunity to progress, entertainment, etc.), whereas the secondary segment is made up of the “bad” jobs (low wages, instability, lack of opportunities to progress, etc.).

The presentation of the 2023 Labour Overview of Latin America and the Caribbean has recently evidenced that “*the most urgent labour problem for the region is the employment quality and the insufficient labour and total income yielded by workers and their families*”. In fact, the market is one of the main factors that impact on poverty levels of a country<sup>20</sup> and those factors are related to labour precarious conditions associated with informal employment.

The structural components developed by ECLAC concluded that the informal sector is a result of the pressure exercised by the surplus of workforce offers and the poor creation of job positions, particularly good ones. Therefore, the heterogeneity of the economic structure is translated into a situation of labour heterogeneity.<sup>21</sup>

This divided structure of the Latin American labour market and the lower levels of remuneration in comparison with more developed countries have always been traditionally associated with informality and labour precarious conditions. Given the incidence of this phenomenon, many people agree that informality is now a structural feature of the Latin American economy.<sup>22</sup>

53.1% of Latin American workers work under informal conditions<sup>23</sup>. This way, absolute poverty and relative inequality of labour income are associated with structurally unsatisfactory labour markets<sup>24</sup>, so there is a large gap in the region in the income distribution, in particular, the distribution of remuneration originating from the notable differentiation of occupational structure. It has also been pointed out that labour informality is also a “phenomenon of small companies”. In our region, most workers do not have social protection and

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<sup>20</sup> BECCARIA, L., MAURIZIO, R., FERNÁNDEZ, A. L. Y MONSALVO, A. L. *Dynamics of Poverty, labor Market and Public Policies in Latin America. Poverty and Economic Policy Research Network*. PMMA Working Paper 2011-0.

<sup>21</sup> [https://www.ilo.org/santiago/publicaciones/reflexiones-trabajo/WCMS\\_729999/lang-es/index.htm](https://www.ilo.org/santiago/publicaciones/reflexiones-trabajo/WCMS_729999/lang-es/index.htm)

<sup>22</sup> BERTRANOU, F., CASANOVA L., JIMÉNEZ M. *Informality and employment quality in Argentina: Country case study on labour market segmentation* h f

<sup>23</sup> ESPEJO A. *Informalidad laboral en América Latina: propuesta metodológica para su identificación a nivel subnacional*. Documentos de Proyectos (LC/TS.2022/6), Santiago, Economic Commission for Latin America and the Caribbean .

<sup>24</sup> [https://www.ilo.org/global/publications/books/WCMS\\_507516/lang-es/index.htm](https://www.ilo.org/global/publications/books/WCMS_507516/lang-es/index.htm)

have low wages, generally working for companies having less than five workers.

It is worth mentioning that the high levels of informality are a consequence of a great number of companies and individuals opting for being excluded from formal regimes<sup>25</sup>, which implies questioning the State and its capacity to enforce rules. Indeed, informality has been considered a cultural phenomenon. It has also been held that the informal sector in countries of the region is translated into exclusion and escape factors<sup>26</sup>. Regarding the first factor of exclusion, authors have stated that the workers or companies are pushed towards informality, due to the exclusion of basic and essential social benefits. Concerning the escape factor, it is considered that the workers or companies assess the cost-benefit ratio of the convenience of being part of the formal sector or not. Other more critical authors argue that the growth of the informal sector is mainly a consequence of the inefficiencies of social policies and the expansion of non-contributing social protection programs that would work as an incentive for workers to choose labour informality, by providing social benefits without the need to contribute to the social security system<sup>27</sup>. In other words, businessmen and workers, and citizens in general make an “analysis” of the cost-benefit ratio as to whether it is convenient to be included in formal regimes and, based on the socio-labour reality of the region, they evidently prefer not to do it.

On top of this, two fundamental aspects arising from informality should not be disregarded:

The first one is that, as the formal economy evolves, the informal economy also does, and what matters is the relation to which one grows with respect to the other. The ILO Labour Overviews for the region over the last decade accurately reveal that, when the unemployment rate slows down, the creation of new job positions arises first in the informal sector rather than in the formal sector of companies.

An example of what we have been saying is what happened during the second half of the year 2020, in the middle of the pandemic, that informal employment was exacerbated with greater force.<sup>28</sup> Once the pandemic was

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<sup>25</sup> Hirschman's notion of exit. <http://tecnicasavanzadas.sociales.uba.ar/wp-content/uploads/sites/156/2012/03/BM-2007-Informalidad.-Escape-y-exclusion.pdf>

<sup>26</sup> PERRY, G., O. ARIEAS, O. FAJNZYLBER, W. MALONEY, A. MASON Y J. SAAVEDRA CHANDUVI *Informalidad: escape y exclusión*. Washington D.C. 2007 World Bank.

<sup>27</sup> ESPEJO A. *Informalidad laboral en América Latina: propuesta metodológica para su identificación a nivel subnacional* Documentos de Proyectos (LC/TS.2022/6), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).

<sup>28</sup> MAURIZIO, R. *Technical Note: Employment and informality in Latin America and the Caribbean: an insufficient and unequal recovery*.

over in 2022, the modest recovery of labour markets was driven by informal occupations, which represented around 40 to 80% of job positions created in the region<sup>29</sup>. The ILO Labour Overviews for the region over the last decade reveal that when the employment rate drops, the creation of new job positions arises in the informal sector instead of the formal sector of companies. In addition, the informal sector expanded, especially among young people, given that the informal sector is the gateway to the labour market.

The second aspect is that *informality is the alternative to unemployment for the poor sector*<sup>30</sup>: the so-called informal economy or sector takes up plenty of workers that otherwise would not have the possibility of having a formal job, moving to the queue of the unemployed. In many of the countries of the region, working in the so-called informal economy is not a *choice*, but a way of living and escaping from the calamity of unemployment. As Beccaria and Maurizio remark, in a context of insufficient demand for employment, companies from the formal sector have “factual” facilities to hire wage earners without obeying labour rules, in addition to making working conditions even worse for job positions, which has direct consequence in the income and segmentation of the labour market. Informal wage earners represent 30% of the total urban employment of the region and half of the informal employment, ranging from 17% (Chile) to more than 40% (Bolivia, Ecuador, Guatemala, Mexico, Nicaragua, Paraguay and Peru).

In our region, there are more and more occupations, somehow associated with medium and big-sized companies of the formal sector that, even though they cannot be considered strictly informal, do not have the precarious conditions features or signs such as a certain period or part-time working schedules, zero-hour contracts or job positions related to platform economies. Even though these new forms of working are still limited in the region, they all have a degree of insecure income or remunerations lower than other workers with similar qualifications, which makes them more likely to fall into poverty or low-income situations<sup>31</sup>. Expressed differently, these new forms or systems of employment which cannot be standardized (economies of temporary occupations), cannot be differentiated from predominant precarious and informal forms of employment.

The other group comprising 53.1% of informal employment is made up of independent informal workers, which are calculated at around an average 23,1% of urban employment. Such number varies with figures ranging from

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<sup>29</sup> ILO, *Labour Overview Latin America and the Caribbean, 2022*.

<sup>30</sup> Vid. [https://www.ilo.org/santiago/publicaciones/reflexiones-trabajo/WCMS\\_729999/lang--es/index.htm](https://www.ilo.org/santiago/publicaciones/reflexiones-trabajo/WCMS_729999/lang--es/index.htm)

<sup>31</sup> *ILO Blog, Poverty, inequality and the “working poor” phenomenon.*



less than 22% (in Argentina, Brazil, Chile and Uruguay) to more than 35% (in Bolivia, Colombia, Peru, Dominican Republic and the Bolivarian Republic of Venezuela). From the beginning of the 21<sup>st</sup> century, there has been a gradual increase in self-employment, which was higher than most of the countries of our region. The greatest numbers have been in Argentina, Colombia, Costa Rica, Peru and Venezuela.

Salary penalty, informality, underemployment and poverty: the relation between precarious jobs, informality and poverty is a long-time concept: 80% of poor workers work under informal conditions<sup>32</sup>. The Regional Director of the ILO has also remarked that, according to the ILO overviews, “*informal workers have around 3 and 4 times more probabilities of being poor than formal workers, and also explain that around 70 and 90 per cent of total employment poverty*”<sup>33</sup>. Informality entails a “*salary penalty*” that is reflected in lower labour income per hour for workers under these conditions, which ranges between 20 and 35% in countries with available data. This means that the less amount of labour income an informal worker earns with respect to other worker carrying out the same duties in the formal sector, how much it stops earning, is the amount this worker loses for being an informal worker in comparison to its formal counterpart.

Salary penalty associated with labour informality: If we only consider the aggregate informal workers, for instance, in Argentina, workers of the informal sector represent monthly incomes 65% lower than the ones received by employed people of the formal sector in the whole country.<sup>34</sup> During the pandemic, all countries of the region were affected by labour poverty, even though such countries with the highest levels of informality were greater affected, such as Colombia and Peru, which reached labour poverty levels of more than 60 and 40%<sup>35</sup> at the worst moment of the pandemic.

As pointed out by Poy, the heterogeneity of the economic-occupational structure reproduces a harsh pattern of socio-labour inequality, which has direct consequences on the family capacity for subsistence<sup>36</sup>. Informal non-wage earners represent most of the active workers, followed by informal wage earners. Informal non-wage earners represent the greatest part of the poor active workers, varying depending on the country. For instance, in Argentina, 2

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<sup>32</sup> MAURIZIO, R. *Jornadas de análisis de mercado de trabajo, políticas de formalización y transición justa (ILO-Chile Office)*

<sup>33</sup> [https://www.ilo.org/americas/sala-de-prensa/WCMS\\_867505/lang-es/index.htm](https://www.ilo.org/americas/sala-de-prensa/WCMS_867505/lang-es/index.htm)

<sup>34</sup> [https://www.memoria.fabce.unlp.edu.ar/art\\_revistas/pr.6298/pr.6298.pdf](https://www.memoria.fabce.unlp.edu.ar/art_revistas/pr.6298/pr.6298.pdf)

<sup>35</sup> IBD “2023 Latin American and Caribbean Macroeconomic Report”, IBD.

<sup>36</sup> POY, S. *Heterogeneidad laboral y procesos de empobrecimiento de los hogares en Argentina* Problemas del Desarrollo. Revista Latinoamericana de Economía, vol. 51, núm.. 201, abril-junio 2020.

of every 5 poor workers are informal non-wage earners. In Brazil, this figure represents half of them and in Paraguay, 3 of every 4 poor workers are informal non-wage earners.

Regarding informal wage earners, the proportion of labour poverty is around 22% in Brazil, 28% in Argentina, and 19% in Paraguay. Considering wage earners and informal non-wage earners, they represent 73% of labour poverty in Brazil, 68% in Argentina and 94% in Paraguay. Finally, we cannot ignore that there is a portion of formal workers living in poor households. In Argentina, 32% of poor workers are formal workers, in Brazil, 27%, and in Paraguay around 6%.

Underemployment: The last special labour overview published by the ILO reveals that the impact of poverty is even greater for part-time workers in relation to those who work full-time or who work more than 45 hours per week. In Argentina and Brazil, the probability of living in poverty is even higher when part-time employment is involuntary. The lack of sufficiently long working schedules arising from low wages has negative effects on the workers' capacity to gain enough income so as not to live in poverty.

Everything that has been explained and described shows that inequality in income cannot be explained without having an understanding of the quality and productivity of job positions among the different productive industries, which is projected in also very unequal earnings among workers, capital and work, and the heterogeneity of occupational and productive structure causes more poverty. It has been explained that the persistence of occupations linked to the micro-informal sector and the insufficient demand for employment of quality has caused "selective processes of poverty" that would affect households having a workforce assigned to such job positions.<sup>37</sup>

### c) Basic employment qualifications

Latin America is the region of the world with the highest educational gaps<sup>38</sup>, one of them is the quality and relevance of education, which causes high levels of income inequality.<sup>39</sup> Education and professional training are conclusive factors for labour income and its unequal distribution. There is a correlation between the educational level of workers and poverty. Even though there have been some advances over the last 20 years, especially in access to primary and secondary school education, there are still a lot of pending challenges.

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<sup>37</sup> POY. S. Op. Cit f

<sup>38</sup> UNESCO-ECLAC, (2021) *Education in the time of COVID-19*.

<sup>39</sup> ILO, *The future of vocational training in Latin America and the Caribbean: overview and strengthening guidelines*.

These inequalities are associated with differences in the educational offer regarding: a) content and quality: there is a tendency for training only about basic skills: literacy skills and mathematics; b) infrastructure, the size of schools, building conditions; c) the faculty's education, and d) the results of learning acquired by students. The above proves the result of the P.I.S.A. (*Programme for International Student Assessment* of the Organization for Economic Co-operation and Development, OECD). The average grade of Asiatic countries is more than 20% higher than countries of Latin America and the Caribbean.<sup>40</sup>

This way, the level of the Latin American workforce skills is still low in comparison to developed countries. In most of the countries of the region, the population with basic skills is still predominant in the adult population. Only Argentina, Chile and Panama have levels similar to the average of the OECD. The low level of skills and capabilities entails problems of employability and productivity: companies require skills and capabilities that human resources do not have. Productivity in Latin America is 0.76% about the average total productivity of the United States. This means that using the same number of resources (workforce and capital), the production of our region would be approximately 25% lower than in the United States.<sup>41</sup> It is a vicious circle, workers with limited training are those who are mostly employed in low-productivity facilities. These characteristics are also present in those who work in the formal sector but under precarious conditions. Ultimately, the greatest inequality in the developing world would arise from the greatest differentiation in the job offers in terms of productivity, which is also based exclusively on human resources.

Poverty associated with such low remuneration is not only the result of informality and labour precarious conditions but also of low levels of workers' qualification of the region. By way of example, we can quote the cases of Argentina, Brazil and Paraguay. In 2021, the portion of poor workers with basic education was around 30.5% in Argentina, 21.3% in Brazil and 29.3% in Paraguay, whereas the impact of poverty on workers with complete higher education was 8.4% in Argentina, 2% in Brazil and 4.3% in Paraguay<sup>42</sup>.

d) Almost non-existent growth of the Economy in the long term. Impact of inflation.

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<sup>40</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000374615>

<sup>41</sup> CRESPI G., FERNÁNDEZ ARIAS, STEIN E., IBD, *Rethinking Productive Development: Sound Policies and Institutions for Economic Transformation*.

<sup>42</sup> ILO *Labour Overview Latin America and the Caribbean 2022*.

Even though Latin America is in the process of recovering its economy after the pandemic, it is one of the world regions that is having more difficulties growing in the long term. The ECLAC has estimated Latin America's economic growth at a rate of 2.7% per year<sup>43</sup>, which means 16 countries of the region, that is to say, half of the countries, by the end of 2022 had not recovered the GDP level they had before the pandemic. Figures for the third two quarters of 2023 confirmed the economy slowing down, which evidences that the regional GDP has been at a standstill for more than 5 quarters. By 2023, an average GDP of only 1.7% is expected, and by 2024, a slight increase of the growth rate of 1.5%.

It has also been said that “Latin America and the Caribbean’s low growth may be aggravated by the negative effects of an intensification of climate shocks, if the investments that countries need in climate change adaptation and mitigation are not made.”<sup>44</sup> If this slow level of growth is kept, the regional economy would take more than 30 years to double its size, which means that the Latin Americans’ standard of living (product per habitant) could just double in more than 100 years at this rate<sup>45</sup>.

As a consequence, this low growth of economic activity entails a slowdown of employment growth, estimated at 1.9% in 2023 and 1.1% in 2024. With respect to employment quality, given that workers are hired in less productive industries that are related to poverty and social vulnerability, which in turn has a direct impact on income. In 2019, the percentage of people living with less than USD 5 was 28% and 16% with USD 3.1 per day.

As we have pointed out, the pandemic aggravated the tendencies towards this worsening: in 2020, in spite of the policies taken to hold back the pandemic effects, social indicators were also aggravated, 34% of Latin Americans lived with less than USD 5 per day, and the figure raised to 20% for those who earned less than USD 3.1. The Gini coefficient reflected the highest rating of the decade: 0.52 in 2020. In 2023, around 18% of the population lives with less than USD 3.1 per day. As we have stated, the poverty levels of the region have exceeded the levels from one decade ago<sup>46</sup>.

It is also observed that, in many Latin American countries, economic growth does not necessarily encourage the creation of new quality jobs and,

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<sup>43</sup> Vid. ECLAC *Economic Survey of Latin America and the Caribbean 2022: Trends and challenges of investing for a sustainable and inclusive recovery*

<sup>44</sup> Vid. <https://www.cepal.org/es/comunicados/economias-america-latina-caribe-mantendran-bajos-niveles-crecimiento-2023-2024>

<sup>45</sup> That would be the case if the population growth rate is low, which does not happen because of the demographic boom experienced in the region.

<sup>46</sup> IBD (2023) *Latin American and the Caribbean Macroeconomic Report, coordinated by Arturo Galindo, Victoria Nuguer. Preparing the Macroeconomic Terrain for Renewed Growth.*

consequently, does not allow improving the people's well-being. This phenomenon has been called the paradox of growth without well-being (Easterling paradox) (ILO 2004)<sup>47</sup>. Above all, at the beginning of this century, there has been macroeconomic growth in most Latin American economies that was not translated into greater well-being for their populations, which proves that something is not working. The ILO and ECLAC already affirmed that regional poverty is mostly linked to the trajectory of the outcome per worker rather than the production itself. In other words, the Easterling paradox observed in the region over the last decades is related to the fact that the outcome per worker has not sufficiently recovered after the drop experienced over the 80s. It should be understood that economic growth (population growth) does not necessarily reduce poverty. The outcome growth is merely a required condition to reduce poverty. The evolution of the outcome per worker is most closely related to poverty.

**Inflation:** Inflation is a regressive tax that undoubtedly has a negative effect on poverty and the operation of the labour market. A consistent increase in prices, mainly food and energy, gives room to more poverty, given that inflation reduces available income and real wages when nominal wages grow at a slower rate than prices. When inflation increases, even though nominal income remains steady, the purchasing power for goods and services is shrunk.

Since 2019, it has been seen that there has been more and more poverty, and that increase is strictly associated with price rises in the consumer price and energy prices indexes (the food inflation rate has increased 30% from February 2020 and the consumer price index increased 18%, so the poorest households were the ones mostly affected because they depend on a greater extent of labour income, which were deeply harmed by inflation).

Also, since the second semester of 2020, due to several causes (the pandemic, the conflict between the Russian Federation and Ukraine, the monetary issuance to finance different aid programs, tax incentives and other external factors), inflation has gone up in all countries of the region, and it reached its highest peak since the 2008 financial crisis. The annual inflation rate for the average country of the region reached 9.6% in July 2022, in comparison to 7.6% (values that have not been registered since 2002).

Likewise, income may decrease during an inflation crisis as a response to adjustments in the labour market. When there is less real income of households, people must work more hours to keep the same consumption level. This is how the inflation level has increased the labour and household poverty levels. Workers are working longer and longer work shifts to keep their consumption level.

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<sup>47</sup> *Vid.* ILO Labour Overview for Latin American and the Caribbean 2004.

Along this line of reasoning and the IBD estimates, inflation rates would trigger an increase in poverty by 2.4% and extreme poverty by 2.5% by 2023, which means taking almost 13.8 million and 14 million people to poverty and extreme poverty.

Even though it is extremely necessary to restrain inflation in the region, it also means taking risks, as certain tightening monetary policies to keep inflation steady may negatively affect labour markets in the short term because the economy is slowed down as an inevitable result of reducing expenses, which slow down the economy and probably also generate more unemployment. Recent factual evidence shows that income decreases for all workers given that in countries with a high informality level, a monetary tightening policy reduces income from informal workers to a greater extent than formal workers.

At the same time, it has been warned that the monetary shock generates a change from formality to informality. Even though income decreases for all formal and informal workers, workers placed in the lowest segment of informality suffer relatively more than their formal counterparts.<sup>48</sup>

#### **4. Challenges and Proposals**

Over the last decades, there have been different attempts in the region to revert these phenomena and dynamics to speed up growth and reduce poverty. That being said, it should be considered that it is not possible to reduce poverty in the long term without decent work. To reduce the working poor phenomenon in the region, it is crucial to fight against informality, promote labour productivity, secure financial support and public investment, access to education and training for the development of new capabilities and skills and encourage professional technical education.

- Combating informality and promoting productivity:

For the purpose of eradicating the dynamics giving rise to the working poor phenomenon in the region, it is extremely urgent to revert to labour informality, which comprises old and new types of employment, related to the impact of technology that, as we have seen, are crucial elements of the matrix of low income and social inequality. There are simply no magic tricks to reduce informality, comprehensive and tailored strategies are needed, which have to be designed in accordance with companies' productivity levels, workers'

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<sup>48</sup> GOMES, D., IACHAN F., RUHE A, Y SANTOS CEZAR. (2023) “*Monetary Policy and Labor Markets in a Developing Economy.*” Inter-American Bank of Development, 2023 Washington, DC.

qualifications, tax conditions and pre-existing rules<sup>49</sup>. The formalization process takes time and requires multiple and several interventions in several areas.<sup>50</sup>

It is essential to create adequate conditions, and reinforce people's capacity to afford a standard of living through quality jobs and, for that purpose, a "global approach" is necessary to put an end to the expansion of informality. Discussions should also involve authorities, companies and unions to design regimes that promote formal employment, encouraging incorporation into the formal system and fostering decent work, as a mechanism to overcome poverty.

The ILO Recommendation 204 about Transition from the Informal to the Formal Economy<sup>51</sup> recognizes that "*most people enter the informal economy not by choice*". It also establishes certain working rules for governments, called 12 "Guiding Principles" that may serve as a guideline for different policies that may be addressed for a transition from informality to formality. It also points out that the transition to formality requires designing coherent, integrated and tailored strategies, highlighting that the key elements for a transition should include macroeconomic policies that promote employment, enhance productivity and facilitate structural transformation processes; trade, industrial, tax, sector and infrastructure policies that promote employment, policies and institutes for the labour market, education and skills development policies and measures to facilitate the school-to-work transition and from unemployment or inactivity to work. These policies are aligned with the 8<sup>th</sup> Sustainable Development Goal to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Another of the challenges to face the causes and factors that give rise to the working poor phenomenon is to progress to modify the characteristics of the productive matrix. Low productivity of a significant part of economic units hampers the generation of sufficient aggregate value for the development of formal employment. Besides, the expansion of labour informality in economic units of low productivity facilities that highly productive companies hire workers under informal conditions.<sup>52</sup>

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<sup>49</sup> CARDENAS M., FERNANDEZ C., RASTEL A, and ZAMORA D. *Consideraciones para el diseño de políticas fiscales para reducir la informalidad en América Latina y el Caribe*. IBD 2022.

<sup>50</sup> SALAZAR-XIRINACHS, J.M. AND. CHACALTANA J. *Informality in Latin America and the Caribbean: Why does it persist and how can it be addressed?* ILO Regional Office for Latin America and the Caribbean, based in Lima. Programme for the Promotion of Formalization in Latin America and the Caribbean, FORLAC.

<sup>51</sup> [https://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--relconf/documents/meetingdocument/wcms\\_379098.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_379098.pdf)

<sup>52</sup> [https://www.ilo.org/buenosaires/eventos-y-reuniones/WCMS\\_861136/lang-es/index.htm](https://www.ilo.org/buenosaires/eventos-y-reuniones/WCMS_861136/lang-es/index.htm)

In fact, the existence and persistence of productivity gaps in almost the entire productive system of the region explain the external restraint to economic growth and the relative lack of strategic sectors of highly complex technology, capable of more quickly disseminating the technical change to the entire productive system. To revert this reality, it is essential to design productive development policies that are focused on enhancing innovation and developing new companies in key industries, where it is essential to give more importance to knowledge-intensive sectors (Hirschman, 1958; Von Hippel, 1976, Lundvall, 1985, 1992)<sup>53</sup>.

Following Bourguignon, we will mention that the changes in the poverty rate are not only associated with changes in the average income, but also transformation of its distribution, so it is necessary to combine growth and distribution policies because the composition of the productive system is not neutral for the development process.

As it has already been suggested<sup>54</sup>, the industrial policy shall combine horizontal and sectorial actions, the first ones with the purpose of raising productivity levels of all the productive system, facilitating access to long-term financing, promoting investment in research, developing and innovation, granting subsidies to the workforce education and training and the second ones focused on the development of strategic activities capable of increasing the generation of currencies and promoting a productive framework with greatest inter-sector chains. By way of example, we can quote some initiatives carried out in Brazil, Ecuador, Mexico and Peru that had the purpose of developing value chains that linked informal sectors of those productive chains to formal ones, subjecting public acquisitions to the formalization of jobs by supplier companies. At a microeconomic level, Mexico and Brazil have elaborated business development services, as well as the financing and dissemination of technologies aimed at improving management and increasing the company's productivity and competitiveness.

- Financial support and public investment

For all that, it is necessary to have financial support and public investment. It has been said that “*there is no industrial policy without a credit policy*”, given that supporting financial instruments are a necessary pillar for the technological and productive development. It is necessary to promote investment in infrastructure through public investment, given that the evidence shows that

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<sup>53</sup> [https://www.argentina.gob.ar/sites/default/files/futuros\\_de\\_la\\_matriz\\_productiva\\_editado.pdf](https://www.argentina.gob.ar/sites/default/files/futuros_de_la_matriz_productiva_editado.pdf)

<sup>54</sup> ECLAC, 2021 Foro Universitario del Futuro, Abeles Villafañe, Robert, Coordinators. *El futuro de la matriz productiva argentina: consensos y nuevas perspectivas.*



when investment in infrastructure is backed up with mechanisms to increase efficiency, there is a positive impact on the poorest' income (Cavalo Powell 2019)<sup>55</sup>. Financial support shall also be the means to foster policies that promote bonding and transferring technology between small and medium-sized companies, universities and institutes and the creation of education and training institutes to tend towards productivity and quality at work and innovation.

- Access to social protection and security

The extension of access and protection for social security are considered key factors for many countries of the region to reduce labour poverty. In effect, to revert the working poor phenomenon, strong social protection systems are needed, that are capable of giving a response based on solidarity principles that help to satisfy people's needs over their lifetime: through a basic level of protection (ILO 2019)<sup>56</sup> that is supplemented by contributing social insurance regimes.

It is also necessary to adopt protection systems for new labour models, which imply more precarious conditions and income, as the types of atypical employment, platform workers and self-employed workers.

Over the last two decades, countries of Latin America and the Caribbean have launched several social programs directed to overcome poverty, increasing the number of non-contributing social protection programs, among which we can refer to programs of transfers subject to income, labour and productive inclusion programs and social pensions. We can also outline policies carried out in Argentina, Uruguay and Colombia (special taxpayer regimes) and Brazil (MEI), that were intended to expand the scope of working people who contribute to social security. These mechanisms and policies are directed to active workers in micro-companies (self-employed workers, regular or domestic service workers).

However, as it has already been said, a case-by-case analysis shall be made taking into account the actual effectiveness. Some authors have stated that social policy may unintentionally generate incentives to informality and, consequently, aggravate labour poverty. This may be the case of conditional and non-conditional transfers for people under poverty and vulnerability conditions, given that many laws provide that monetary allowances are lost once a person gets a formal job providing sufficient income.

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<sup>55</sup> *Vid.* CAVALLO E. and POWELL A. *Building Opportunities for Growth in a Challenging World*, IBD, 2019.

<sup>56</sup> *Vid.* ILO *Work for a brighter future: Global Commission on the Future of Work*, 2019.

The negative effect in the case of monetary transfers has also been remarked, for instance, in Argentina, Colombia and Uruguay<sup>57</sup>. It has been said that it is a good policy to develop assistance programs for formal employment that reward those who are under formal systems, in comparison to many current social assistance programs that generally withdraw monetary transfers once the person gets a formal job.

Access to education for new capabilities and skills. Professional technical education. As it has already been said, there is a high poverty rate in the region associated with low levels of workers' qualifications. In fact, there is an evident link between schooling levels and poverty rate: the lowest educational level, the greatest tendency towards labour poverty. For this reason, it is vital to secure education and professional technical training policies. Policies shall also guarantee that there is a public and quality education offer, which is intended to provide lifelong learning, with more flexible educational systems, with "entrances" and "exits" according to the different needs. So, one of the main critical aspects is to identify and characterize skills that have to promote educational programs and training programs in our region to overcome this reality.

To answer these questions, Latin American States have been questioning their educational and teaching guidelines in socio-political, institutional and pedagogical contexts. Skill-based teaching, which is pedagogical by nature, has to be arranged with a curricular organization based on institutional skills and an educational policy focused on the socio-political skills model<sup>58</sup>.

For this purpose, it is necessary to make solid public-private alliances between the educational and productive sectors to project the evolution of the labour demand in the long term and, accordingly, the answers of training and educational systems to these future perspectives. A positive example was the enrolment expansion in public universities and high-school professional

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<sup>57</sup> Vid. CÁRDENAS, FERNÁNDEZ RASTELETTI, ZAMORA, *Consideraciones para el diseño de políticas fiscales para reducir la informalidad en América Latina y el Caribe*, Inter-American Bank of Development. The authors point out that the *Universal Allowance per Child* (Argentine) that provides monetary transfers to households with minor children, *reduced formalization in 7.4 pp, among those who were part of the program in comparison to those who did not. In Uruguay, a program of conditional transfers led to reductions of around 6 pp in the formal workforce participation among all program beneficiaries and 8.7 pp among single mothers.* They also remark that there are examples of negative effects related to non-contributing benefits in Colombia and Chile. *The subsidized health regime in Colombia raised the probability of informality in around 20 pp. Something similar happened in Chile with the 2008 social security reform, which improved the pension of people who have not saved enough. The reform reduced participation of workers older than 40 years in the formal labour market by 4.1% and the probability of becoming part of the formal regime of men and women older than 56 and 65, in 3.2 pp and 2.8 pp, respectively.*

<sup>58</sup>OEI, (2020), *Insights about education in Ibero-America. Skills for the 21st century in Ibero America.*

training entities from 2002-2016 in Brazil that allowed public institutes of professional technical education to increase from 140 to 600, doubling enrolment rates from 558,000 in 2002 to more than a million in 2016.<sup>59</sup> In Brazil, we can mention the National Service of Industrial Education (SENAI), which is the biggest professional and technological education institute in Latin America. The SENAI convenes more than 2.3 million Brazilian workers per year. It is a state-owned entity that provides support to 28 industrial areas and the main program beneficiaries are workers, young people and adults from the industry and trade<sup>60</sup>. This type of training has allowed us to address vulnerabilities, such as reconversion (*upskilling and reskilling*) in a context of so much automatization of occupations and labour insertion of elderly people (generally older than 45 years old)<sup>61</sup>. The teaching of skills, in particular, is key to achieving labour insertion of better quality, and for new generations to acquire skills and capabilities that will be required by the labour market in the future.

## 5. Conclusions

As it has been evidenced, some different factors and dynamics cause and impact the working poor phenomenon. Even though the factors remarked in this paper are mere indicators, we can have an overview of the noticeable vulnerability of Latin American workers. Labour poverty is translated into underdevelopment and it is a symptom of inefficient labour and management policies.

It also reflects the inefficient State as a well-being manager. The creation of decent work is still a great structural challenge for Latin America and the Caribbean. To revert this phenomenon, it should be taken into consideration that poverty cannot be reduced permanently without decent work. The 2020 Sustainable Development Agenda expresses an agreement upon the need to

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<sup>59</sup> MERCADANTE, A., “Educação e capacitação técnica e profissional no Brasil”, *Documentos de Projetos* (LC/TS.2019/44). Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).

<sup>60</sup> For the modernization of technical assistance and education in the industry, the SENAI hired the Fraunhofer IPK institute from Berlin, which transferred knowledge about teaching in planification and the creation of innovation centres. There are more than 130 projects contracted for the education of new skills and capabilities, which led to the restructuring of 28 training institutes. Some companies of the automobile industry of Brazil have been partners of the SENAI from the beginning to solve the demand for new skills by agreeing upon learning rules. Vid. PELIZA, SARDEGNA, *Formación profesional y educación para nuevas competencias como política pública en América Latina*, ADAPT 2023.

<sup>61</sup> SMECK, OVIEDO AND FISZBEIN, *Dual Education in Latin America: Challenges and Opportunities. Inter-American Dialogue, 2020*”.

foster more inclusive societies, supportive of securing to “leave no one behind” in the path towards Development.

It has been said that 10,000 billion dollars are needed to eradicate extreme and moderate poverty by 2030 in the region. However, it would be naïve to consider that this goal may only be achieved with income transfers.<sup>62</sup>

The working poor phenomenon may not be battled if the economy does not generate room for investment and business development, so it is essential to create and strengthen competitive small and medium-sized companies given their capacity to rapidly generate jobs.<sup>63</sup> Policies to improve the operation of labour markets are also needed. The solution to this problem requires much more than available resources, social security policies and income substitution.

As we have already said, real social justice requires time and structural changes in society, so it is pivotal to apply a “global” approach, always considering that employment is the master key towards equality.

During his 1936 acceptance speech for presidential renomination, Franklin Roosevelt said: “Liberty requires opportunity to make a living - a living decent according to the standard of the time, a living which gives man not only enough to live by, but something to live for. True individual freedom cannot exist without economic security and independence. Necessitous men are not free men “Those words are as transcendental then, as they are today.

## 6. Bibliography

AUVERGNON, PHILIPPE, (2012). *The working poor phenomenon: revealing functions and tendencies of social law*, Revista latinoamericana de Derecho Social n.14, pp.43-78. ISSN 2448-7899.

BECCARIA, L., MAURIZIO, R., FERNÁNDEZ, A. L. Y MONSALVO, A. L. (2011). *Dynamics of Poverty, labour Market and Public Policies in Latin America. Poverty and Economic Policy*. Research Network. PMMA Working Paper 2011-0.

BERTRANOU, F, CASANOVA L., JIMÉNEZ M. (2013): *Informality and employment quality in Argentina: Country case study on labour market segmentation*.

CAICYT- CONICET, (2017) *Trabajo y Sociedad. Sociología del trabajo- Estudios culturales- Narrativas sociológicas y literarias NB - Núcleo Básico de Revistas Científicas Argentinas (Caicyt-Conicet) No 29, Invierno 2017, Santiago del Estero, Argentina ISSN 1514-6871-*

<sup>62</sup> <https://www.un.org/sustainabledevelopment/es/poverty/>

<sup>63</sup> Open Department Plan Fénix, School of Economics, Universidad de Buenos Aires, <https://vocesenelfenix.economicas.uba.ar/boy-mas-que-nunca-es-necesario-formular-e-implementar-politicas-de-empleo-de-calidad/>

- CARDENAS MAURIDIO, FERNANDEZ CRISTINA, RASTEL ALEJANDRO ZAMORA DIEGO,(2021): Consideraciones para el diseño de políticas fiscales para reducir la informalidad en América Latina y el Caribe.
- CASTELLÓ-CLIMENT, A. Y R. DOMÉNECH (2014). “Human Capital and Income Inequality: Some Facts and Some Puzzles”, Documento de Trabajo N° 12/28, BBVA Research, Madrid.
- ECLAC, (2019) (Social programs, poverty eradication and labor inclusion Lessons from Latin America and the Caribbean
- ECLAC, (2021) Foro Universitario del Futuro, ABELES VILLAFANE, ROBERT, COORDINADORES. El futuro de la matriz productiva argentina: consensos y nuevas perspectivas.
- ESPEJO ANDRES, (2022) Informalidad laboral en América Latina: propuesta metodológica para su identificación a nivel subnacional Documentos de Proyectos (LC/TS.2022/6), CEPAL,
- GALLEGO, FRANCISCO. (2016) Trabajadores Pobres y Pobreza de los ocupados. Una primera aproximación. Rev. TEMAS LABORALES Núm. 134/2016. Pages 63-106.
- GOMES, D., IACHAN F., RUHE A (2023) “Monetary Policy and Labor Markets in a Developing Economy.” Inter-American Bank of Development, 2023 Washington, DC.
- IBD, (2019) Building Opportunities for Growth in a Challenging World, coordinated by Eduardo Cavallo and Andrew Powell.
- IBD (2023) Latin American and the Caribbean Macroeconomic Report, coordinated Preparing the Macroeconomic Terrain for Renewed Growth.
- ILO (2004) Labour Overview Lima: ILO/Regional Office for Latin America and the Caribbean, 2004.
- ILO (2018), The future of vocational training in Latin. America and the Caribbean: overview and strengthening guidelines.
- ILO, (2022) Labour Overview Latin America and the Caribbean
- ILO, World Employment and Social Outlook, Trends 2023.
- KLEIN, B. W. Y RONES, P. L., A Profile of the Working Poor, Monthly Labor Review, (1989), p. 3;
- MARIO, A.; GARCÍA, A. (2013). Informalidad laboral, pobreza y regiones: Un análisis desde la coyuntura argentina. Revista de estudios regionales y mercado de trabajo (9), 107-125
- MUÑIZ TERRA, LETICIA, (2009) “Nuevos y viejos escenarios en el mundo laboral latinoamericano El mundo del trabajo en América Latina. Trabajo, empleo, calificaciones profesionales, relaciones de trabajo e identidades laborales” compiled by Julio Cesar Neffa; Enrique de la Garza Toledo; Leticia Muñoz Terra. - 1a ed. - Buenos Aires: Latin American Council of Social Sciences. CAICYT,
- PONTHIEUX, S., Les travailleurs pauvres : identification d'une catégorie, en Travail, genre et sociétés, 2004/1, p. 9

- Poy, S., (2020) *Heterogeneidad laboral y procesos de empobrecimiento de los hogares en Argentina Problemas del Desarrollo*. Revista Latinoamericana de Economía, vol. 51, Núm. 201, abril-junio 2020.
- PREALC (1974). *La política de empleo en América Latina: lecciones de la experiencia de PREALC*. in El Trimestre Económico, vol. 41, No. 164(4), pages 917-936.
- PREBISCH, R. (1949). *El desarrollo económico de la América Latina y algunos de sus principales problemas*, Documento E/CN.12/89, Santiago de Chile, Naciones Unidas.
- SOUZA, P. Y V. TOKMAN (1978). “*Distribución del ingreso, pobreza y empleo en áreas urbanas*”, en El Trimestre Económico, vol. 45, N° 179(3) (julio-septiembre), pp. 737-766.
- SALAZAR-XIRINACHS, J.M. CHACALTANA (2018), *Informality in Latin America and the Caribbean: Why does it persist and how can it be addressed?* ILO Regional Office for Latin America and the Caribbean, based in Lima. Programme for the Promotion of Formalization in Latin America and the Caribbean, FORLAC.
- UNESCO-ECLAC, (2020) *Education in the time of COVID-19*, available at: <https://www.cepal.org/en/publications/45905-education-time-covid-19>

### Online References

- <https://www.bloomberglinea.com/2023/03/14/estas-son-diez-consecuencias-de-la-alta-informalidad-laboral-en-america-latina/>
- <https://www.cepal.org/es/noticias/cepal-trabajar-garantiza-superar-la-pobreza-america-latina-caribe>
- [https://www.ilo.org/wcmsp5/groups/public/@americas/@ro-lima/@ilo-buenos\\_aires/documents/publication/wcms\\_248462.pdf](https://www.ilo.org/wcmsp5/groups/public/@americas/@ro-lima/@ilo-buenos_aires/documents/publication/wcms_248462.pdf)
- [http://www.scielo.org.ar/scielo.php?script=sci\\_arttext&pid=S2545-77562021000200055](http://www.scielo.org.ar/scielo.php?script=sci_arttext&pid=S2545-77562021000200055).

# Health and Work: The Italian Perspective on a Relationship in Need of a Review

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**Abstract:** In the context of the new great transformation, occupational health and work are increasingly overlapping, among others, because of new workplaces, remote work, and new working arrangements. In this context, labour law research has engaged in the challenging task of reviewing the ever-fluid notion of work organisation, pointing to major differences between labour market insiders and outsiders. This paper focuses on a review of the link between occupational and work, which concerns the relationship between individuals and work. It is important to update the current social security model, especially about concepts such as ‘occupational risk’ or ‘work-related risk’, which should now consider the dynamics of transitional labour markets, which has been aptly referred to as ‘risk society’. These new risks and the progress made in medicine poses questions concerning the need for a new social security system that keeps up with post-industrial society.

**Keywords:** *Labour Law; Work; Italy; Occupational Health; Safety.*

## 1. Health and Work: A Long-standing Link

Legal research into the relationship between health and work is now well established, gathering momentum in Italy and elsewhere as a result of the economic and social changes triggered by the First Industrial Revolution. It is safe to argue that the first attempts to ensure employee protection – through legislation or collective solidarity – focused precisely on the health-related issues arising out of unregulated industrialisation and its detrimental effects.

A part of the literature has labelled this phenomenon ‘quiet genocide’, with the patchwork legislation put forward to deal with it that was poorly enforced, because ‘standing and watching’ seemed to be the watchword. These laws were

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mostly concerned with health and safety in the context of highly dangerous and unhealthy production and work settings, in which the number of deadly accidents and injuries was far higher than that reported by official statistics. One reason for this discrepancy was that these incidents were seen as more resounding – and therefore more socially relevant – than occupational diseases, which took longer to manifest.

Despite the close link between health and work, it was only in 1929 that a compulsory insurance against occupational diseases was envisaged in Italian legislation. This was done through Royal Decree No. 928, which entered into force on 1 January 1934, 35 years after the measures put forward against occupational injuries. The provisions concerning insurance against both occupational diseases and injuries were subsequently brought together in Royal Decree No. 1765 of 17 August 1935.

For a long time, lawmakers in Italy and overseas only encouraged mutual support taking place voluntarily to face the issues above, in line with the liberal ideology of the period. However, as early as the nineteenth century – a few years after the proclamation of the unity of Italy – the Advisory Committee for Work and Social Welfare was established. Initially set up for reasons of public order, the Committee was later tasked with laying down the first legislation governing the insurance against occupational injuries in Italy. The underlying assumption of this law – which is still deeply rooted in today's academic and public debate – was that occupational injuries and diseases were unavoidable events, so putting them down to fatality had long been seen as a way to justify them.

This approach gave rise to the legal problem of identifying more specific criteria to assess the social costs resulting from occupational diseases and injuries. Concurrently, an increasing awareness started to make inroads whereby a new provision was necessary to face an issue that could no longer be dealt with through civil law or legal complaints lodged by workers becoming disabled or victims' families to seek damages. One reason for this state of affairs was that, in many cases, it was impossible to attribute responsibility. While the rule of thumb was to regard the employer contractually responsible, this new legislation – which underwent a long and winding drafting process – also stressed the social dimension (what today we would call 'a systemic response'<sup>1</sup>) of the link between health and work. In other words, the attempt was to protect 'working people' – or, rather, 'people living off their work' –

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<sup>1</sup> It seems that social security at the time was in its infancy. On this point, see *Social Insurance and Allied Services*, Report presented to Parliament by Command of His Majesty, London, 1942, esp. pp. 35-43, where it was hoped that a shift would take place from workers' mere compensation schemes to a 'Unified Plan of Social Security'.



from occupational risks, irrespective of whether they would take place. What followed is well known, namely the establishment of wide legislation which, according to relevant research, establishes “clear obligations for employers in terms of occupational health based on Public Law and regardless of workers’ behaviours”<sup>2</sup>. By way of example, pursuant to Article 2087 of the 1942 Civil Code, workers are not held responsible as long as they comply with the provisions laid down in companies’ health and safety regulations<sup>3</sup>. When attempting to harmonise Occupational Health and Safety (OHS) legislation and the rules put in place in the Civil Code, a further clarification was added on the fact that, in the context of the employment relationship, the principle of prevention should be adopted, in line with the Italian Constitution. This implied the obligation to ensure employee safety in the employment contract<sup>4</sup> – an aspect which is given priority over any form of compensation – by adopting “necessary provisions or measures depending on one’s work, experience and skills, to prevent or reduce work-related risks and to promote the health of the population and the integrity of the environment”<sup>5</sup>. However, if we consider Italy’s production – which mostly consists of small- and medium-sized companies with high rates of illegal gangmastering and unregulated outsourcing particularly affecting migrant workers – this massive and advanced set of rules is not fully implemented in practice<sup>6</sup>. One reason for this is “the drastic decrease in employee participation in OHS issues”<sup>7</sup>, perhaps due to the economic crisis and its consequences on remuneration and employment, which were the aspects prioritised by trade unions. As a result, rhetoric prevailed over the genuine promotion of a culture of security<sup>8</sup>.

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<sup>2</sup> See L. BARASSI, *Il diritto del lavoro*, cit., p. 235.

<sup>3</sup> See, L. BARASSI, *Il diritto del lavoro*, p. 234, who argues that “any measures would be ineffective without sound information aimed at raising awareness among workers”.

<sup>4</sup> See, P. ALBI, *Adempimento dell’obbligo di sicurezza e tutela della persona. Art. 2087*, Giuffrè, 2008, pp. 125-149.

<sup>5</sup> Art. 2, par. 1, lett. n, d.lgs. n. 81/2018. On the principle of prevention and its scope of application, see, S. BUOSO, *Principio di prevenzione e sicurezza sul lavoro*, Giappichelli, 2020.

<sup>6</sup> In relation to trade union and legal achievement at the end of the 1970s, see G. BERLINGUER, *La salute nelle fabbriche*, De Donato, 1969, pp. XXII and XXXI.

<sup>7</sup> See S. RENGA, *Modello sindacale di tutela della salute nei luoghi di lavoro dal dopoguerra agli anni Novanta*, in *LD*, 1994, p. 636.

<sup>8</sup> See M. RUSCIANO, “Retorica”, “cultura” ed “effettività” della sicurezza del lavoro, in P. PASCUCCI (ed.), *Il testo unico sulla sicurezza del lavoro*, Grafica e Stampa Studio Centrone, 2007, pp. 149-153. See also P. PASCUCCI, *Prevenzione, organizzazione e formazione. A proposito di un recente libro sulla sicurezza sul lavoro*, in *DSL*, 2016, pp. 64-65.

## 2. State of the Art and Limits of Labour Law Research and the Contribution of Industrial Relations Actors. Legal Rules Protecting Work and the Constitutional Value of Health

In the context of this paper, it is not possible to go through the 100 years of events that led to the legal and institutional framework governing the intertwining between health and work, and through the implementation of specific organisational models. This would also mean considering the ever-changing relationship between people at work, their workplace (the ‘risk community’, which can also include people not directly operating at the company) and the relevant risk factors. In a similar vein, it is beyond our expertise to provide an impact assessment of constantly-evolving work, which is however important to go beyond a purely illustrative description of OHS legislation, the effectiveness of which is often questioned<sup>9</sup>.

For the purposes of this research, it is enough to say that little has changed in relation to the way the link between health and work is conceived of. In other words, while great strides have been made concerning OHS legislation – also thanks to the implementation of EU rules – there are two scenarios in which the relationship between health and work is prioritised when labour law and industrial relations are considered. The first is concerned with health conditions leading to inability to work – be it temporary, permanent or partial – and the relative measures adopted by the parties (e.g., suspension of the employment relationship, prohibition of dismissal, the establishment of a period during which workers cannot be terminated, on-call duty, higher levels of mobility as a ground for termination) also in terms of economic support (e.g., sickness and disability benefits, supplementary income, funds for home care services). The second is about the employer’s obligation to ensure healthy workplaces and, should a dangerous incident arise, to assess the possible causal link in order to apply rules for compensation (e.g., failing to comply with security duties, occupational diseases, health damage). As a result of this state of affairs, the protection of health “as a fundamental right of the individual and as a collective interest” (Article 32 of the Italian Constitution) in the context of the employment relationship is understood by labour lawyers as a mere analysis of the legal rules used by lawmakers and industrial relations actors to strike a balance between the interests at play<sup>10</sup> and of relevant case law. This is certainly the case with occupational health featuring high levels of formalism – i.e., this

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<sup>9</sup> On this point, U. ROMAGNOLI, *Il lavoro in Italia*, il Mulino, 1995, p. 184, is still widely referred to, as he referred to OHS legislation as being as “intimidating as a mouse’s roar”.

<sup>10</sup> With reference to the “suitability” of the techniques used to balance the “interests arising in the context of one’s disease”, see R. DEL PUNTA, *La sospensione del rapporto di lavoro. Malattia, infortunio, maternità, servizio militare. Artt. 2010-2011*, Giuffrè, 1992, p. 21.

means understanding the causal link between rules and their compliance to assess whether sanctions should apply – which is also used to evaluate if the employer’s powers should be limited in terms of work organisation and production processes. Examples of the way this approach is used include: risk prevention, workplace management, risk identification, work equipment, personal protection equipment (PPE), biological and physical agents, the threshold limit values for dangerous substances, and health surveillance. This approach is also applied to the concept of ‘disease’, which fails to include today’s concept of ‘health’. Labour lawyers are therefore required to apply the same criteria to assess the dangerous incident, its effect on the employment relationship, the parameters to determine the period during which the worker cannot be dismissed, the procedures making termination unlawful and, more generally, compensation and social security rights. Significantly, legislation states that the notion of ‘health’ – as applied in labour law and industrial relations – is wider than that of ‘disease’, for the former indicates ‘physical, mental, and social well-being, not consisting merely of the absence of a disease or infirmity’<sup>11</sup>. Consequently, labour lawyers do not deal with all aspects concerning compliance with legislation related to occupational health or protection in the event of a disease. These aspects are attended to by doctors, labour psychologists and organisational experts.

If these are the limits of labour law research and the contribution of industrial relations actors – we must agree with the outstanding work of a scholar of the twentieth century related to the concept of ‘disease’ in the context of the employment relationship. He argues that “hiding behind technicalities” explains why legal sciences have devoted “limited attention” to the link between health and work<sup>12</sup>. It is also not surprising that workers’ health and safety is delegated to external consultants whose highly specialised contribution is poorly integrated with the company’s culture and its organisational processes (e.g., technology used, people involved, power relations, operational systems and procedures, training). What has been said above should also consider that currently reference is mostly made to salaried workers, so the plethora of OHS rules applying to this form of employment is difficult to implement to an increasing number of workers who are hired by the company on a casual basis.

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<sup>11</sup> Art. 2, par. 1, lett. *o*, d.lgs. n. 81/2008.

<sup>12</sup> See R. DEL PUNTA, *op. cit.*, pp. 21-22.

### 3. Health and Work in the Context of the New Great Transformation: Demography, Technology and the Ecological Transition

In considering the current ecological transition, it is only right – though not completely new – to analyse occupational health against the wider background of environmental health, to link what happens in workplaces and elsewhere and vice versa. This approach is well known to both industrial relations actors and labour lawyers, especially in relation to the environmental risks that have characterised all industrialisation processes and that created tensions between one's right to health and to work.

Adopting an ecological transition perspective seems to confirm the arguments that the new great transformation<sup>13</sup> has eroded the cultural paradigms and principles that were peculiar to industrial society, giving way to “risk society”<sup>14</sup>. In the latter, widespread technology and economic rationality produce many risks for humanity (e.g., pollution, diseases, pandemics, and accidents) blurring the boundaries between natural and technological disasters<sup>15</sup> and, therefore, the ideal dividing line between nature and society<sup>16</sup>.

A different approach should be used when discussing the impact of industrialisation processes on the labour market and the decline of manufacturing, with the latter witnessing a significant decrease in terms of people employed in Italy (from 8,228 million in 1970 to 4,682 million in 2020). While reducing the number of jobs and making the boundaries between professional and private life increasingly fuzzy, this process has also given rise to a substantial body of legal research into the new risks to people's health<sup>17</sup>. As a result, it was possible to point out<sup>18</sup> the negative consequences for health and well-being well before the digital transition and the changes brought about by the Fourth Industrial Revolution. These changes were caused by a combination of the following: unstable employment, automation, atypical working hours, endemic unemployment, low salaries and labour market polarisation.

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<sup>13</sup> This conceptualisation is widespread today and refers to Polanyi's theories (1944) – see F. SEGHEZZI, *La nuova grande trasformazione. Lavoro e persona nella quarta rivoluzione industriale*, ADAPT University Press, 2017.

<sup>14</sup> U. BECK, *La società del rischio. Verso una seconda modernità*, Carocci, 2013.

<sup>15</sup> See M. TIRABOSCHI, *Prevenzione e gestione dei disastri naturali (e ambientali): sistemi di welfare, tutele del lavoro, relazioni industriali*, in *q. Rivista*, 2014, pp. 573-605.

<sup>16</sup> U. BECK, *op. cit.*, p. 105.

<sup>17</sup> See M. TIRABOSCHI, *Nuovi modelli della organizzazione del lavoro e nuovi rischi*, cit.

<sup>18</sup> See P. ICHINO, *The Changing Structure and Contents of the Employer's Legal Responsibility for Health and Safety at Work in Post-Industrial Systems*, in *IJCLLR*, 2006, esp. pp. 609-610.

This research perspective – which is widespread in Anglo-Saxon countries but little known in Italy – has also considered the links between the lower relevance of trade unions and collective bargaining and people’s health, pointing to major differences between labour market insiders and outsiders<sup>19</sup>. This aspect further confirms the relationship between good working conditions and workers’ well-being, which goes beyond trade unions’ identification of risk factors and prevention in workplaces, paving the way for novel forms of integration between occupational and public health.

Defining psychosocial risks as an emerging phenomenon<sup>20</sup> might be an overstatement, particularly if one considers the considerable research characterising the first stages of the Industrial Revolution. Those studies were intended to point out that working conditions were detrimental to people’s health but also alienating because new production processes turned individuals into ‘inert cogs’, similar to machines<sup>21</sup>.

However, the new attention brought to this issue points to an increasing awareness of people’s health in the workplace, of which traditional ‘injuries’ are only one side of the coin. Work-related, health problems are tricky because of the time needed to manifest, the establishment of the causal nexus between work and the possible disease, especially in the case of atypical working schemes. These working arrangements fail to take into account the modern legal interpretation of the notion of ‘health’, which goes beyond occupational diseases.

Consideration shall also be given to those situations leading up to increasing discomfort and vulnerability, which can be found in the labour market. Directly or indirectly, they result from people’s work and in many cases represent the tip of the iceberg as their origins are still under-researched<sup>22</sup>. Significantly, advances in occupational medicine have focused on strenuous jobs and ‘differential mortality’, namely the link between one’s life expectancy and the type of work, also taking into account employment status and contractual arrangements. Consequently, the major legal implications for OHS

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<sup>19</sup> An analysis covering 33 countries from 1981 to 2018 is provided in L. SOCHAS, A. REEVES, *Does Collective Bargaining Reduce Health Inequalities between Labour Market Insiders and Outsiders?*, in *Socio-Economic Review*, 2022, pp. 1-36.

<sup>20</sup> This is the approach taken by EU institutions and the relevant literature. See L. LEROUGE (ed.), *Risques psychosociaux au travail. Etude comparée Espagne, France, Grèce, Italie, Portugal*, L’Harmattan, 2009, e L. LEROUGE, *Les risques psychosociaux en droit: retour sur un terme controversé*, in *DS*, 2014, pp. 152-164. See the literature review provided in V. SUHARD, M.O. SAFON, *Santé et travail. Bibliographie thématique*, Centre de documentation de l’Irdes, 2020, pp. 5-65.

<sup>21</sup> See the literature review referred to in *Una lezione dal passato per inquadrare il tema dei rischi psicosociali*, in M. TIRABOSCHI (ed.), *op. cit.*, vol. I, pp. 197-236.

<sup>22</sup> The arguments put forward in S. GRAMMENOS, *Illness, Disability and Social Inclusion*, Eurofound, 2003, p. 1 are still relevant.

should be considered against the backdrop of the digital revolution, platform work, nanotechnology, collaborative robotics, artificial intelligence, and remote working<sup>23</sup>.

While contributing to substantial research on this topic<sup>24</sup>, making use of a technical approach risks being of little use<sup>25</sup> if no consideration is given to the evolution of the notions of ‘health’ and ‘work’ underpinning the new great transformation of work.

In the context of this evolution, occupational health and public health are increasingly overlapping, among others because of new workplaces, remote work, and new working schemes.

In considering current technological changes, labour law research has engaged in the challenging task of reviewing the ever-fluid notion<sup>26</sup> of ‘work organisation’. Drawing on the insights of Montuschi<sup>27</sup>, work organisation is now understood as the foundation for an effective prevention model against health and safety risks. Yet some other aspects need to be considered that are seriously impacting the labour market, for instance, those produced by demographic changes. They contribute to altering the perception of technological development and its effects on work and its risk factors (also in organisational terms) to the point that the traditional system of protection and the link between health and work as understood by labour law scholars and industrial relations actors is now being questioned.

For instance, demographic changes include the increasing participation of women in the labour market – which in Italy is still lower than in other European countries – and the massive presence of immigrants in the workforce, which call for a review of the prevention system. Further aspects to consider are the fact that people are staying longer at work and that the workforce is averagely older than in the past – here, employee grading systems do not help workers to change work and tasks as time passes by – leading to higher public expenditure on welfare systems.

The ageing of the population has been long investigated by labour law research. Yet the focus has been on the protection supplied to senior workers

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<sup>23</sup> See F. CARNEVALE, *La salute e la sicurezza dei lavoratori in Italia. Continuità e trasformazioni dalla Prima Rivoluzione industriale a quella digitale*, cit., pp. 117-130, and L. LEROUGE (ed.), *La numérisation du travail: enjeux juridiques et sociaux en santé au travail*, L'Harmattan, 2021.

<sup>24</sup> See the literature review provided in L. CASANO, F. SEGHEZZI (eds.), *Le trasformazioni del lavoro: un percorso di lettura*, in M. TIRABOSCHI (ed.), *op. cit.*, vol. II.

<sup>25</sup> One example of this is the pointless distinction between a model based on prevention and the other based on precaution when discussing technological risks, the long-term impact of which are still unknown.

<sup>26</sup> See P. PASCUCCI, *Il Testo Unico sulla salute e sicurezza sul lavoro: spunti di riflessione (a fronte dei cambiamenti in atto) e proposte di modifica*, in M. TIRABOSCHI (ed.), *op. cit.*, vol. I, pp. 499-518.

<sup>27</sup> Cfr. L. MONTUSCHI, *Diritto alla salute e organizzazione del lavoro*, cit.

against possible forms of discrimination and the economic incentives allocated to prevent them from being pushed out of the labour market, which is not always related to skill obsolescence due to growing technological development. Only rarely is the question dealt with taking into account the specific problems concerning senior workers' safety and the risk of occupational diseases. Nevertheless, this approach is based on the traditional notion of 'time', 'length of service' and 'work' understood as salaried employment. The underlying assumption is that the problem for senior workers is the relationship between work and the reduced capacity to work, but this might depend also on qualitative factors and not only on the time needed to perform work (e.g., type of job, employment status, health status, personal motivations, working climate, company policies related to mature workers), as well as on the difficulty of engaging in occupational transitions in today's labour market. Senior workers are therefore seen as a vulnerable category. The alternative to their early exit from the labour market as a way to reduce costs is often the widespread recourse to part-time working schemes or policies of 'generational handover'.

Investigating OHS from a legal perspective is necessary if one looks at demographic trends, i.e., the impact of low natality rates on the labour market and the welfare system, which calls for measures promoting active ageing and the employability of senior and retired workers.

What is still missing is a cultural perspective – which should develop in line with the evolution of life expectancy and societal changes – which challenges the assumption that senior workers are no longer able to work, promoting the idea that ageing is not a disease.

Today's Italian labour market has changed in terms of structure and composition. According to the National Institute of Statistics (ISTAT), the number of workers in the 50–64-year-old age group has doubled in the last twenty years – from 4,358,000 in 2002 to 6,008,000 in 2012, reaching 8,327,000 in 2022. This means that approximately one out of three workers (36%) are older than 50 years old, with all the problems that this entails in relation to what has been said so far.

For example, one issue that needs attention is chronic diseases, which do not necessarily cause disability or the inability to work. According to the Ministry of Health, 26% of people in the 50–64-year-old age group are affected by a chronic disease (6% of them have more than one). As of 2019, out of a total population of more than 13,000,000 people, 3,400,000 people in the 50–64-year-old age group and 2,300,000 people in the 18–49-year-old age group suffer from a chronic disease.

Mental illnesses also need more consideration. According to the World Health Organisation (WHO) 970,000,000 people (13% of the population) suffer from

mental issues, which affect their social and working lives in different respects<sup>28</sup>. Yet these statistics fail to capture the entire picture. Malaise, discomfort, and depression are increasingly widespread among people without taking the form of certified illnesses that need medical treatment. Significantly, recent studies in occupational medicine and work organisation go beyond the notion of ‘diversity management’<sup>29</sup>, placing more emphasis on neurodiversity in order to strike a balance between productivity and inclusion<sup>30</sup>.

Consequently, the focus cannot be only on certified illnesses, occupational health, economic incentives and retraining targeting senior workers. The important issue to consider is how to proactively manage an increasingly diverse workforce in relation to their psycho-physical status, or in the event of a non-disabling condition that may affect workers’ employability, productivity, motivation, participation and fulfilment of a company’s goals if no measures are taken.

Arguably, it is at this stage that labour law scholars can provide their most significant contribution, for instance, to ensure that the constitutional principle of equality is applied examining each situation on a case-by-case basis.

This approach would also consider workers’ relationships with their work environment and would be more in line with the notion of ‘health’ provided by the WHO in 1948, which includes physical, mental and social well-being. Demographic changes should not only entail ‘active ageing’ policies. Rather, they should prompt a review of the link between health and working conditions, promoting workers’ employability which cannot be ensured by technical solutions<sup>31</sup> and one-size-fits-all policies.

#### 4. Health and Work Today

Labour law scholars are not tasked with dealing with complex medical issues and healthcare policy questions that call for a review of the link between health and work and led many to refer to the notion of ‘Total Worker Health’. This concept involves initiatives aimed at bringing together occupational health and employee well-being, which is generally understood, and refers to the

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<sup>28</sup> *World Mental Health Report: Transforming Mental Health for All*, World Health Organization, 2022, p. 40, and the taxonomy therein.

<sup>29</sup> Cfr. M. BOMBELLI, A. LAZAZZARA, *Superare il Diversity Management. Come alcune terapie rischiano di peggiorare le malattie organizzative*, in *Sociologia del Lavoro*, 2014, pp. 169-188.

<sup>30</sup> Cfr. B. BLACKBURN, *Managing Neurodiversity in Workplaces*, in *Occupational Medicine*, 2023, pp. 57-58.

<sup>31</sup> Cfr. I. SALMON, J.-Y. JUBAN, E. ABORD DE CHATILLON, *Il est temps pour la gestion des âges de prendre sa retraite: une revue de littérature*, in *Recherche en Sciences de Gestion-Management Sciences-Ciencias de Gestión*, 2022, pp. 127-150.



awareness that work can benefit health in terms of active ageing, which for many has now become a necessity.<sup>32</sup>

Nevertheless, the arguments put forward thus far should prompt us to go beyond the significant evolution – in terms of legal interpretation and case law – of outdated rules which were intended for economies and societies which no longer exist or are slowly disappearing.

This is true if one also considers the recent trends in anthropology, psychology and occupational medicine, which tell us that the legal problems to be faced are not only those resulting from the already-known tensions between public or company policies concerning Total Worker Health and their harmonisation with workers' private lives.

Managing these issues through legal rulings or by amending existing legislation to adapt to novel health and safety issues – e.g., an older and more vulnerable workforce – is not enough and poses sustainability issues for people at work. This is the case if we apply the conclusions reached through interdisciplinary analyses to the labour law sphere, namely that “workers are all different from one another”<sup>33</sup> and that all people are highly vulnerable<sup>34</sup>, so targeted responses are needed.

As a result, policies related to work-life balance and those concerning equal opportunities need a review, prioritising a work-health-life balance<sup>35</sup> to concretely adapt work to individuals and not vice versa, as rightly referred to in protection legislation<sup>36</sup>.

A case in point is oncological diseases, which are increasingly widespread among the population. In Italy, let t, par. 1 of Article 46 of Legislative Decree No. 276/2003 and Article 12-bis that was added to Act no. 61/2000 established that workers diagnosed with a tumour and a limited ability to work (also because of life-saving therapies) had the right to convert their full-time

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<sup>32</sup> See I. TABTI-SALMON, *De la “gestion des âges” à la “gestion de l’employabilité et des parcours par la santé au travail”: le cas français: une analyse renouvelée des pratiques de gestion des ressources humaines*, Université Grenoble Alpes, 2019, who points out how in Western societies the issue of the ageing of the workforce is still seen mostly from a purely economic perspective, i.e., in terms of costs and risks for the social model.

<sup>33</sup> C. MARDON, S. VOLKOFF, *Emploi des “seniors” et conditions de travail: une étude statistique comparative entre pays d’Europe*, in *Perspectives Interdisciplinaires sur le Travail et la Santé*, 2011, p. 16.

<sup>34</sup> Cfr. F. CEMBRANI, *La vulnerabilità ed il mito (ripensato) dell’autonomia razionale*, in *Rivista Italiana di Medicina Legale*, 2022, p. 940.

<sup>35</sup> This is demonstrated by wellness-at-work practices in Anglo-Saxon countries. See M. TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in *q. Rivista*, 2015, pp. 713-717.

<sup>36</sup> Cfr. Art. 6, par. 2, let. d, Council Directive 89/391/EEC of 12 June 1989.

job into a part-time one<sup>37</sup>. Although this provision was introduced in many collective agreements, the associations of people with oncological conditions report that only a limited number of them (some 7%) made use of this working arrangement.

Reasons for this state of affairs include the rigidity of this tool, which does not provide flexible working hours or different places of work; social and cultural issues (the stigma of being a worker with oncological conditions and their willingness to be active); the reduced remuneration resulting from working part-time, which is not enough to cover the additional costs needed for treatment.

A further example, which is particularly significant in social terms and for the impact it has on many employment relationships, is chronic diseases, which also include mental illnesses. This is a health condition that also affects people who are still at work. While the legal solutions provided are effective in the context of individual employment relationships, they present some shortcomings when the relationship between health and work is looked at more comprehensively. These solutions include, among others, part-time work, leave of absence, an extension of the period during which sick workers cannot be dismissed, reasonable accommodations, priority when asking for flexible working schemes, and protection against discriminatory practices.

#### ***4.1. Shifting from a 'Time-based' Labour Market to Transitional Labour Markets: The Ever-poor Responses of Legal and Industrial Relations Systems***

It should be stressed that we do not want to argue that norms and decisions cannot be used to solve some practical cases – especially in the event of dismissal. Yet the limited amount of case law on this topic shows that adjustments made to current legislation to accommodate this category of workers are often challenged in courthouses, with sick workers who are then required to bear an extra burden.

It seems clear that the solutions put forward fail to provide a systemic response focusing on protection and assistance but also on the review of concepts such as 'presence at work', 'work', and 'proper fulfilment of one's duties'<sup>38</sup> that need to take into account individual conditions. These much-awaited changes, which are required due to the new developments in the world of work, struggle to

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<sup>37</sup> For further information, see M. TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., pp. 710-713.

<sup>38</sup> Striking a balance between productivity and work fairness and sustainability is one of the arguments that I made in M. TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., pp. 681-726.

come to fruition<sup>39</sup>. This step change would be based on the evolution of the concepts of ‘health’ and ‘work’<sup>40</sup>, that in the transitional markets include different occupational and personal statuses that merge to include many lifecycles and professional transitions. This view tries to move on from the approach typical of the twentieth century, during which a neat separation was in place between private and professional life and between productive and reproductive work<sup>41</sup>, so individuals were regarded merely as workers and not as individuals at work. Workers were therefore paid according to their efficiency and productivity. This was made possible thanks to certain changes involving temporary work derogating from common law, which in industrial society could be handled by suspending the employment relationship.

If the individual is placed centre-stage, what is needed is a life-cycle perspective, whereby rewarding mechanisms should no longer concern remuneration based on the hours worked but should bring together three dimensions: meaningful and decent work; a standard of living that can satisfy material needs; the freedom to engage in labour market transitions<sup>42</sup>.

The underlying idea of this new regulation of work is to protect workers’ professional development by combining OHS and career mobility, considering a social perspective that makes labour market more supportive than in the past. This is a radically different perspective from the current one, which challenges the assumptions that adjustments can still be made concerning costs and quantity rather than job content and quality<sup>43</sup>. Evidently, this perspective requires establishing a system of control of labour markets based on

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<sup>39</sup> A comparative analysis which – save for Northern European countries – shows similarities with the Italian case, see M. AKGÜÇ (ed.), *Continuing at Work. Long-term Illness, Return to Work Schemes and the Role of Industrial Relations*, ETUI, 2021. A recommendation to sectoral-level collective bargaining to lay down measures that also consider the ageing workforce and its health problems is provided in *Emploi des seniors: agir sur tous les leviers*, Institut Montaigne, 2022, pp. 45-47.

<sup>40</sup> A medical perspective is provided in F. OGUNDIPE, *What is work?*, in *Occupational Medicine*, 2023, p. 114, who argues that: «gone are the days when most workers were grateful to have any job and were largely beholden to their employers as they depended heavily on them for sustenance and livelihood. An almost undetectable shift has taken place where workers now view work as an entitlement, and where the locus of control has radically shifted from the employer to the employed».

<sup>41</sup> See M. TIRABOSCHI, *Persona e lavoro tra tutele e mercato. Per una nuova ontologia del lavoro nel discorso giuslavoristico*, ADAPT University Press, 2019.

<sup>42</sup> G. DELAUTRE, D. GARDINER, S. VERICK, *Moving towards a life course perspective to labour market transitions: approaches and challenges*, Background Paper Series of the Joint EU-ILO Project Building Partnerships on the Future of Work, 2021; *Building Partnerships on the Future of Work*, European Commission, ILO, 2021.

<sup>43</sup> Cf. B. GAZIER, F. BRUGGEMAN (ed.), *Restructuring work and employment in Europe. Managing change in an era of globalisation*, Edward Elgar, 2008.

participation and a proactive view of work-related risks – also from workers’ representatives – which sometimes are affected by cultural, political and organisational issues.

A systemic analysis conducted on a significant number of collective agreements concluded in Italy from 2002 onwards<sup>44</sup> underlines the poor solutions put forward by the Italian system of industrial relations. In our country, the link between health and work is dealt with mostly from an OHS perspective, focusing on employee health and those legal adjustments which can be effective in the context of individual employment relationships, which however fail to provide a bigger picture.

It is worth recalling that in some cases, private and public initiatives have combined to deal with the link between health and work more systemically. Examples include employee welfare agreed upon in collective bargaining and complementary healthcare, the latter being a distinctive trait of Italy’s most effective collective agreements. Healthcare funds provide additional services to those already supplied by national healthcare<sup>45</sup>.

In his pioneering study conducted in the mid-seventies to establish the correlation between the new provisions contained in the Workers’ Statute and the increase in sick leave reported by statistics, Ichino concluded that “so-called ‘absenteeism’ has been regarded as a new and more subtle tool to generate conflict: in other words, workers are seen as less willing to sacrifice their own interests to prioritise business needs”<sup>46</sup>.

In all likelihood, this argument concerned a different social and demographic context than that of today. At the time, Italy was a vibrant country looking at the future with hope after the war while experiencing the first economic boom of the sixties and benefitting from the 1968 movements. Yet some emerging trends could be seen – which were common to most Western countries and became more marked following the pandemic – whereby people focused more on their personal needs, an aspect that entailed some tensions between people and work.

While the 1970 Workers’ Statute extended the notion of ‘freedom to get sick’<sup>47</sup> helping workers to benefit from it in both legal and economic terms, today the

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<sup>44</sup> Cfr. the chapter on the link between non-occupational health and work in collective bargaining contained in *Welfare for People. Sesto rapporto ADAPT sul welfare occupazionale e aziendale in Italia*, ADAPT University Press, 2023.

<sup>45</sup> On the main trends of complementary healthcare in the context of collective bargaining, see the analysis conducted on 58 national collective agreements laid down in *Welfare for People. Quinto rapporto ADAPT sul welfare occupazionale e aziendale in Italia*, ADAPT University Press, 2022, pp. 156-195.

<sup>46</sup> P. ICHINO, *Malattia, assenteismo e giustificato motivo di licenziamento*, in RGL, 1976, I, p. 259.

<sup>47</sup> P. ICHINO, *Malattia, assenteismo e giustificato motivo di licenziamento*, p. 267.

link between work and health can also be reviewed because of more advanced social and cultural conditions. As said, the traditional legal and healthcare framework only considers health from a technical point of view, i.e., whether a disease or an occupational disease exists.

Things seem to be changing today also in light of the recent reform of Article 41 of the Italian Constitution, which now includes poor health among the limitations to entrepreneurship, reviewing the link between ethical and social relationships (Title II of the Constitution) and strictly economic relationships (Title III of the Constitution).

To conclude our reasoning, which considered the origins of the current system of social security, it can be argued that it is necessary to examine the link between health and work from a more general perspective and not only take into account individual employment relationships. This means investigating demographic changes along with the new developments in the labour market, taking into consideration occupational transitions and lifecycles so that employability should also involve an ongoing evaluation of people's health. By updating the legal rules governing social security, it will be possible to strike a balance between employers' and workers' needs, also in consideration of new economic costs and the changing relationship between people and work.

It is the evolution of the notion of 'health' and 'work' which calls for a new economic and social order that must be different from that in place in industrial society. This is the approach taken by Italian legislation, which aims to protect people not only in their capacity as workers but as individuals, thus considering their health, education, family life and social needs<sup>48</sup>.

In this respect, the doubts about a possible increase in the labour costs for the employer can be banished in the long run by implementing measures promoting public health and active ageing to deal with issues that today undermine the sustainability of healthcare and welfare systems and national competitiveness, due to the massive resources needed to support them. These resources could be allocated to companies for the promotion of new organisational models – e.g., reasonable accommodations – of course taking into account priorities and responsibilities. Also, in consideration of the flexible rules laid down in Article 2087 of the Italian Civil Code, a new mindset is making inroads in modern work settings which are particularly challenging for workers in terms of involvement and productivity, whereby “the only legal

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<sup>48</sup> See M. PERSIANI, *Valutazioni politiche e soluzioni legislative del problema giuridico della malattia nelle sue connessioni con il lavoro*, cit., p. 45. His arguments were later on taken up by P. ICHINO, *Malattia, assenteismo e giustificato motivo di licenziamento*, cit., p. 273.

limitations to promote the worker's efficiency concerns their health protection"<sup>49</sup>.

Arguably, bringing together occupational health and public health and encouraging a more comprehensive application of the prevention principle by adapting work to individuals – irrespective of the seriousness of their disability – calls for a review of a major aspect, namely the assumption that employers' decisions cannot be challenged. This is perhaps the cause of what French sociologists define 'the divorce between life and work'<sup>50</sup> which is also the reason why many workers seek more autonomy at work.

Employee participation in organisational changes reduces their disaffection with work, while top-down decisions without consultation give rise to dissatisfaction, also in terms of engagement, loyalty and productivity<sup>51</sup>. In turn, the latter increases the likelihood of resignations and absenteeism<sup>52</sup>.

## 5. Concluding Remarks and Some Insights for Future Research into Industrial Relations and Social Security Law: The Need to Take an Overall View

The challenges outlined above which will be faced by industrial relations and welfare systems call for further analysis to review the link between health and work, which in the end concerns the relationship between individuals and work. As rightly stated by Polanyi, "Labour is only another name for a human activity which goes with life itself, which in its turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life, be stored or mobilized"<sup>53</sup>.

<sup>49</sup> P. ICHINO, *La responsabilità contrattuale del datore di lavoro in materia di mobbing e straining*. In relation to the differences in individual productivity resulting from recent technological innovations, he argues that "in white-collar work, it is mainly mental health which is at risk. And the highest level of occupational stress, which leads to health-related risks, differs from one worker to another".

<sup>50</sup> Cfr. F. DUPUY, *Le travail et la vie: les raisons d'un divorce*, in *www.lagrandeconversation.com*, 1 May 2023.

<sup>51</sup> M. BEATRIZ, *op. cit.*, p. 5. See also B. AUST ET AL., *How Effective are Organizational-Level Interventions in Improving the Psychosocial Work Environment, Health, and Retention of Workers? A Systematic Overview of Systematic Reviews*, in *Scandinavian Journal of Work Environ Health*, 2023, pp. 1-15. The analysis of 957 primary studies and 52 systematic reviews reveal that the work environment and workers' health can be significantly improved with measures concerning organisation.

<sup>52</sup> Cfr. T. COUTROT, C. PEREZ, *Quand le travail perd son sens. L'influence du sens du travail sur la mobilité professionnelle, la prise de parole et l'absentéisme pour maladie: Une analyse longitudinale avec l'enquête Conditions de travail 2013-2016*, DARES, Document d'Études, 2021, n. 249.

<sup>53</sup> K. POLANYI, *The Great Transformation. The Political and Economic Origins of Our Time*, Beacon Press, 2001, p. 72. See also E. RENAULT, *Le travail et ses Problèmes. Biologie, sociologie et politique chez*

It remains to be seen whether collective bargaining can provide a ‘protection tool’ ensuring better management of chronic diseases in the context of the employment relationship, to be negotiated with aspects concerning labour flexibility and productivity. Nevertheless, it might be possible to develop a new way to perform work in light of the changes taking place in society and production settings. Work should therefore be assessed, also in the context of collective bargaining, in subjective terms, considering labour sustainability in a given context.

While reviewing the link between health and work by taking on an overall view, it is important to update the current social security model, especially about concepts such as ‘occupational risk’ or ‘work-related risk’, which should now consider the dynamics of transitional labour markets, which has been aptly referred to as ‘risk society’.

If the advent of manufacturing and large-sized companies marked the “birth of labour law”<sup>54</sup> which intended to protect workers from “an uncertain future” due to a possible lack of work<sup>55</sup>, it is also true that the risks for “working people”, or rather, for “people living off their work”<sup>56</sup> have changed considerably. The risks regarded by today’s lawmakers as legally relevant, that is, those for which legal protection can be granted, are few and far between when compared to those that might affect people of working age, and sometimes fall outside the responsibilities of the parties to the employment relationship.

These new risks and the progress made in medicine – especially in consideration of the new link between health and work – pose questions concerning the need for a new social security system that keeps up with post-industrial society. The need for innovation can be exemplified in the current distinction between work-related accidents and occupational diseases, which is

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*John Dewey*, Vrin, 2022, p. 203, and H. MARCUSE, *On the Philosophical Foundation of the Concept of Labor in Economics*, in *Telos*, 1973, pp. 9-37 and 22. The author highlights how economic theory has affected the idea of labour in society (and therefore also in law) to the point that a reconsideration of a philosophical nature of the concept of labour is needed that goes beyond economics, since “all economic theories fail to recognize the full factual content of labour”.

<sup>54</sup> F. SANTORO-PASSARELLI, *Spirito del diritto del lavoro*, cit., p. 1071.

<sup>55</sup> F. SANTORO-PASSARELLI, *Spirito del diritto del lavoro*, cit., pp. 1074-1075, who argues that this discipline “makes use of a refined technique” made up of public-law and private-law rules, aimed at governing “a system of checks and balances”. On the notion of ‘social security remuneration’, see M. PERSIANI, *Il sistema giuridico della previdenza sociale*, Cedam, 2010, p. 210.

<sup>56</sup> See *Protecting All: Risk Sharing for a Diverse and Diversifying World of Work*, World Bank, 2019, particularly the table concerning the «principal drivers of disruption in the world of work and their impact on the standard employment relationship» (p. 40).

illustrative of an old-fashioned approach to the issue<sup>57</sup>. As always, the economic and social sustainability of systems that protect people from new risks should be given priority, because this concerns individuals and communities alike, as well as the production fabric. The problem arises as to who should bear the ‘cost’ of this protection<sup>58</sup>, in a society in which the needs of ‘industrious citizens’ should replace those of ‘industrial citizens’<sup>59</sup>, thus regarding individuals not only as dehumanised entities.

Consequently, the teachings of Santoro-Passarelli regarding the risks and needs in the context of social security in Italy still bear relevance today<sup>60</sup>. Equally relevant is the cultural perspective of those labour law scholars arguing that those principles laid down in the Italian Constitution – which have not yet translated into effective protection – produced a change in the function of the social security system. This state of affairs calls for the need to “face the issues resulting from the clash between new reasons inspiring current social security and the old model based on traditional concepts”<sup>61</sup>. Drawing on those who already paved the way for the modernisation of the Italian system of social security<sup>62</sup>, it can be stressed that the Italian Constitution refers to social security protection as a form of ‘solidarity involving all citizens’, therefore moving on from a merely economic approach.

Consequently, it is a more innovative view of the principles laid down in Articles 1,2,3,32 and 41 of the Italian Constitution that prompts us to go beyond the legal perspective – which still takes an old-fashioned approach to notions such as ‘disease’ and ‘occupational health’ – and to take an overall view when looking at the link between health and work, without considering individual employment relationship only.

<sup>57</sup> See D. RODRIGUEZ, *Sulla necessità di superare le nozioni disgiunte di infortunio sul lavoro e di malattia professionale. Verso una concezione unitaria di malattia da lavoro*, in RIMP, 2015, pp. 449-462.

<sup>58</sup> Reference is made to G. CALABRESI, *The Costs of Accidents*, Yale University Press, 1970, who considers costs and responsibilities but also social justice. See pp. 24-26 and pp. 301-308.

<sup>59</sup> On the application of the concept of “industriousness” in the modernisation of selective-access social security system that is still labour-driven, see P. BOZZAO, *La tutela previdenziale del lavoro discontinuo. Problemi e prospettive del sistema di protezione sociale*, Giappichelli, 2005, pp. 230-247. Here the proposal by Romagnoli was put forward (*Il diritto del secolo. E poi?*, in DML, 1999, pp. 239-240) whereby labour law should be “the law of industrious citizens rather than of industrial citizens”.

<sup>60</sup> F. SANTORO-PASSARELLI, *Rischio e bisogno nella previdenza sociale*, in *Rivista Italiana di Previdenza Sociale*, 1948, pp. 177-196, and the criticisms levelled by D. GAROFALO, *Rileggendo Rischio e bisogno nella previdenza sociale di F. Santoro Passarelli*, cit.

<sup>61</sup> M. PERSIANI, *Valutazioni politiche e soluzioni legislative del problema giuridico della malattia nelle sue connessioni con il lavoro*, cit., p. 56.

<sup>62</sup> M. PERSIANI, *A cinquanta anni dal Testo Unico degli infortuni sul lavoro: profili costituzionali*, cit. p. 579.



In an ever-changing world of work, where the line between occupational health and public health is increasingly blurred<sup>63</sup>, this view appears to be the only way to move on from an old-fashioned approach, which dates back to the Industrial Revolution and can still be found in public debate and labour law research. This approach focuses on occupational safety, somehow disregarding health<sup>64</sup>, understood in terms of prevention and not only in terms of treatment<sup>65</sup>. This seems to be a modern way to understand work which, in line with the constitutional principles, considers demographic changes and the ageing of the population while protecting the health of all citizens. This is not just about individual rights, but it is concerned with common interests in a society that still claims to be based on work and therefore needs to deal with issues that are different from those in place in the industrial period.

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<sup>63</sup> Some arguments for the French case, which also apply more generally, have been made in COUR DES COMPTES, *Les politiques publiques de prévention en santé au travail dans les entreprises*, December 2022, p. 12 (and pp. 47 and 54). It is stated that: «Broadening the perspective would mean, for example, not taking a narrow view of the cost of the risk, i.e., those dealing with occupational accidents and disease, taking into account the financial consequences of a deteriorated working situation ».

<sup>64</sup> I have attempted to investigate this issue starting from trade union campaigns on OHS. See M. TIRABOSCHI, *Nuovi modelli della organizzazione del lavoro e nuovi rischi*, cit.

# Spain's Government Response and Preparedness for the COVID-19 Pandemic: Lessons Learned on How Best to Ensure a Safe and Healthy Working Environment

Iván Williams Jiménez \*

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## Abstract:

The Covid-19 pandemic presented huge challenges for essential workers and for the global workforce as a whole. As the true burden on human capital continues to be unravelled, national systems are now in the process of identifying the gaps and learning from experiences so as to be able to better understand the occupational impact when managing future epidemics, pandemics or public health crisis. This paper, based on the Spanish pandemic performance response, provides an analysis of how OSH regulatory frameworks responded to the circumstances of key workers during this exceptional period. The review assesses OSH-related interventions and exposes deficiencies in response to this public health emergency, through an examination of legislative and regulatory enforcement, the country's preparedness and resilience, as well as the roles and interventions from central government, devolved administrations, regional and local authorities with a responsibility on OSH.

**Keywords:** *Occupational safety and health; Essential workers; Covid-19 pandemic; Pandemic preparedness.*

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## 1. Background to the OSH system

### 1.1. Introduction

The Spanish occupational safety and health framework is based around Law 31/95, the Prevention of Workplace Risks Law (Prevención de Riesgos Laborales) that aims to protect workers regarding occupational risks and set standards on the work environment. This law comprises 54 Articles and amounts to a comprehensive codification of health and safety law. It brought the Spanish system into line with European Union law, mainly through EEC Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work. It constitutes a general framework, complemented by a significant number of statutory regulations that set out specific obligations in other technical fields of occupational safety and health (OSH).

Spain is based on a decentralised system divided into 17 autonomous communities. Each of these communities has its own government and Parliament. There are also 52 provinces and more than 8,000 municipalities. When it comes to the articulation of legislative developments, there are two levels of legislation in the Spanish system: the law of the central state and rules created by the autonomous communities. National OSH regulations are executed by the 17 autonomous communities through their own OSH specialists in Ministries and OSH institutes.

This national and regional separation requires an efficient level of coordination and collaboration to succeed not only in tackling key OSH challenges, but also in managing historical issues such as the worrying figures relating to the segments of the workforce who are in the informal economy, in undeclared forms of work, or not registered with social security authorities. This was the case for professions such as those in digital labour platforms with a significant concentration of essential workers, many in forms of undeclared work and lacking from the implementation of OSH risk prevention and management systems.<sup>1,2</sup> This had a knock-on effect for workers employed in essential services, as, according to the European Commission,<sup>3</sup> more than 80 per cent of

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<sup>1</sup> Stephany, F. et al. 'Distancing bonus or downscaling loss? The changing livelihood of US online workers in times of COVID-19'. *Journal of Economic and Human Geography*, Vol. 111, No 3, pp. 561-573. 2020.

<sup>2</sup> ILO. *World employment and social outlook: the role of digital labour platforms in transforming the world of work*. ILO Flagship Report. 2021. Available at: [https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms\\_771749.pdf](https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_771749.pdf)

<sup>3</sup> European Commission. *Factsheet on Undeclared Work – Spain*. <https://ec.europa.eu/social/ajax/BlobServlet?docId=18178&langId=en>

undeclared work detected in 2015 was found in four economic sectors: hospitality and restaurants (34.4 per cent); services (25.2 per cent – including professional services (12.4 per cent) and education, healthcare, sport and leisure services (10.4 per cent)); retail trade (13.1 per cent); and construction (7.5 per cent). Agriculture accounts for a further 6.5 per cent of cases.

The Spanish public health system has perpetuated a series of structural issues since the 2008 global financial recession:

- The public health system is of a fragmented nature, with key responsibilities transferred, as a result of the institutional division into 17 health regions, leaving restricted room for manoeuvre and weakening the capacity of the Ministry of Public Health.
- There has been a historical deficiency in investment in the public health system in comparison with similar countries in the European region.

There are other figures that play a key role in the overall continuity of the system. The Ministry of Employment and Social Economy (Ministerio de Trabajo y Economía Social, MITES) is primarily responsible for health and safety. The National Institute for Occupational Safety and Health (Instituto Nacional de Seguridad y Salud en el Trabajo, INSST) is the scientific and technical body of the state general administration, whose mission is the promotion of improvements in health and safety conditions. The Spanish worker compensation system works through a hybrid division between public and private sectors. Compensation is organised by Mutual Insurance Societies for Accidents at Work (Mutuas de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social, MATEPSS), which are private entities with dependence from the Ministry of Employment and Social Security. They are responsible for insuring against work-related accidents, injuries and occupational diseases as well as providing risk prevention support and awareness of occupational safety and health. The Labour and Social Security Inspectorate (Inspección de Trabajo y Seguridad Social, ITSS) is a national public service with general responsibility for labour, industrial relations and health and safety at work. The enforcement authority oversees both the monitoring and supervising the correct application of health and safety rules.

### *1.2. Special Characteristics of the Spanish Occupational Safety and Health Regulatory Framework*

The overall decentralised structure of health and safety at work in Spain relies on a significant number of provisions applied from European law under the umbrella of a complex regional hierarchy in which many of the regions implement their own laws. The basic Spanish law is set out in a general statute,

supplemented by numerous regulations covering specific aspects of health and safety.

Prior to the occupational safety and health law, Spain had adopted the International Labour Organization Convention 155 in June 1981. This contributed to the setting of standards on the level of provisions and protections on occupational safety and health. This instrument, together with the support of the transposition of the European Framework Directive, required fit-for-purpose legislative frameworks.

When it comes to specific attributions to the number of essential workers, the OSH regulatory framework classifies as vulnerable workers the following groups: pregnant and lactating workers, young workers and professions operating in hazardous environments and activities (for example, working at height and in confined spaces). During the pandemic there was a remarkable amendment to the term “vulnerable worker”<sup>4</sup>. It was now to include groups vulnerable to the coronavirus, namely those affected by lifelong conditions such as diabetes and cardiovascular diseases, or those living with hypertension, chronic lung disease, cancer, immune deficiency, or who were pregnant or aged above 60 years old.

The new system did not make a distinction with workers classed as essential, nor did it apply to domestic workers, self-employed workers without workers under their management, public service workers, the police and armed forces, customs officers, as well as civil protection officers and forensics in case of severe risk or disaster. Public health legislative frameworks, such as the *Ley General de Salud Pública 33/2011*<sup>5</sup>, provides some level of protection to healthcare workers. On a similar note, *Royal Decree 258/1999*<sup>6</sup> establishes minimum occupational safety and health conditions and medical coverage for seafarers.

Several factors have converged, clearly damaging the ability of the system to face traditional workplace safety issues and unprecedented challenges such as the Covid-19 pandemic. Among these are the short period of time for the Spanish OSH law to consolidate (27 years since its inception). Other structural issues include the abuse of outsourcing practices, low uptake from small and medium-sized enterprises (SMEs) and the flawed institutional approach from public authorities to regulate the commercialisation of this function. The

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<sup>4</sup> Ministerio de Sanidad. Procedimiento de actuación para los servicios de prevención de riesgos laborales frente a la exposición al SARS-CoV-2. Madrid, June 2022.

<sup>5</sup> Ley 33/2011, de 4 de octubre, General de Salud Pública. BOE» núm. 240, de 05/10/2011. <https://www.boe.es/buscar/act.php?id=BOE-A-2011-15623>

<sup>6</sup> Real Decreto 258/1999, de 12 de febrero, por el que se establecen condiciones mínimas sobre la protección de la salud y la asistencia médica de los trabajadores del mar. BOE» núm. 47, de 24 de febrero de 1999. <https://www.boe.es/buscar/doc.php?id=BOE-A-1999-4527>

strong territorial dimension and the historically ineffective decentralised system of OSH regulators were placed under stress in their ability to apply policy responses (through national and regionally led measures) and adapt to the unexpected challenges of the Covid-19 crisis. This happened at a time when the key public institutions were facing a declining trend in capacity-building and human resources, affecting the national OSH body and the labour inspectorate authority, which has one of the lowest ratios in Europe of inspectors (1 per 19,000 workers, against the International Labour Organization recommendation of 1 per 10,000 in industrialised countries). This issue was shared by the regional labour and OSH counterparts, who have also lacked the staff and funding necessary for conducting OSH inspections effectively. Measures to reverse this situation did not prove successful. Among these were the creation of a specific Management Unit<sup>7</sup> to deal with the impact of Covid-19 in work and a spectrum of temporary labour regulation proceedings.

National governments, regions and municipalities implemented a series of interventions at national and sub-national levels, in many cases partially redundant measures during transition stages of alarm, de-escalation and the spread of new coronavirus variants. Other measures had a strong economic protection remit, such as the approval of a new minimum income scheme (Ingreso Mínimo Vital – IMV) entering into force on 15 June 2020, and the introduction of temporary employment adjustment schemes (ERTEs – Expedientes de Regulación Temporal de Empleo) that helped to protect unemployment and business continuity. ERTEs were also extended to sectors considered essential that had suffered a reduction in revenue due to confinement measures.

## 2. The OSH system and the Covid-19 pandemic

### 2.1. Initial Work-Related Steps in Tackling the Pandemic

The first confirmed case of SARS-CoV-2 in Spain was reported on 31 January 2020. The main governmental initiative to tackle this issue consisted of a batch of Royal Decrees (*Real Decreto-ley 6/2020*, 10 Marzo<sup>8</sup>, *por el que se adoptan determinadas medidas urgentes en el ámbito económico y para la protección de la salud*

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<sup>7</sup> La Inspección de Trabajo y Seguridad Social crea una Unidad de Gestión específica para afrontar la incidencia del COVID-19 en el ámbito laboral, available at: <http://prensa.mitramiss.gob.es/WebPrensa/noticias/laboral/detalle/3753>.

<sup>8</sup> Real Decreto-ley 6/2020, 10 Marzo, por el que se adoptan determinadas medidas urgentes en el ámbito económico y para la protección de la salud pública. BOE» núm. 62, de 11/03/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3434>.

*pública*; Real Decreto-ley 8/2020<sup>9</sup>, 17 March, *de medidas urgentes extraordinarias para hacer frente al impacto económico y social de la Covid-19*) that went alongside the declaration of a state of alarm on 13 March.<sup>10</sup>

On 29 March, the Government announced the closure of non-essential workplaces until 9 April 2020, including compulsory paid leave from 30 March until 9 April 2020. On 22 April, it approved the right of employees who had to take care of dependent family members to adapt their working conditions and reduce working hours under specific circumstances due to Covid-19. Measures involving temporary derogations from working time and leave provisions<sup>11</sup> were one of the measures to ensure the smooth functioning of essential services.

On 10 June, the Spanish Government published several urgent measures in relation to the prevention, containment and coordination of the health crisis caused by Covid-19, to take effect on expiration of the declaration of alarm. The key OSH measures to be applied to workplaces can be summarised in the following measures,<sup>12</sup> and complemented by existing occupational safety and health regulations. Protocols for cleaning, ventilation and disinfection, a set of hygiene measures for workers, interventions addressing organisational issues (minimum safety distance, changes in location of workstations or staggering shift patterns), reducing the number of employees and clients in common areas, phased return-to-work strategies and facilitating telework were all possible.

While many of these measures had a general approach, there were others that included a more specific prevention and hygiene focus by targeting essential sectors of activity (health facilities, educational settings, the social care sector, retail spaces, hotel and accommodation, hospitality and so on).

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<sup>9</sup> Real Decreto-ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19. BOE» núm. 73, de 18/03/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3824>

<sup>10</sup> Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por la covid-19. «BOE» núm. 67, de 14 de marzo de 2020. <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-3692>

<sup>11</sup> Eurofound, 2020b, Long-term care workforce: Employment and working conditions, Publications Office of the European Union, Luxembourg, available at: <https://www.eurofound.europa.eu/publications/customised-report/2020/long-term-care-workforce-employment-and-working-conditions>.

<sup>12</sup> Real Decreto-ley 21/2020, 9 Junio, de medidas urgentes de prevención, contención y coordinación para hacer frente a la crisis sanitaria ocasionada por el Covid-19. <https://www.boe.es/boe/dias/2020/06/10/pdfs/BOE-A-2020-5895.pdf>

An important distinction was made (and further clarified by the labour inspectorate<sup>13</sup>) on how to implement these measures practically in workplaces. This was based on workplaces that were previously exposed to and had experienced risks of a biological nature. These included the health and social care sector, in which SARS-CoV-2 was added to the risk group of biological agents (covered by Royal Decree 664/1997<sup>14</sup>) to be covered by prevention and risk management strategies. On the other hand, a distinction was made with those workplaces that had to apply the guidance and recommendations from the public health authority to avoid the spread of infections, but didn't have previous experience with work-related risks of a biological nature.

One of the issues in relation to the previously exposed list of measures was the mandatory or voluntary remit of the advice provided. The most significant weakness concerned the low level of compliance with the suggested public health rules when workers were affected. While the enforcement prerogative to monitor compliance with this batch of measures was initially given to the labour inspectorates, employment, labour and OSH proceedings and compliance inspections were suspended throughout the declared states of alarm. This decision to not to support businesses to stay on top of health and safety guidance and therefore trust on the employers and employee's good faith was seen as an obstacle to their ability to tackle health and safety issues.

To correct these deficiencies, the Ministry of Public Health published a series of mandatory rules for workplaces and prevention services which added to an employer's pre-existing duty to regularly monitor working conditions and activities to detect potentially dangerous situations and risks. Some of these measures entailed the evaluation of the specific risk of coronavirus exposure through risk management and prevention strategies, providing adequate information and training to workers and establishing tailored occupational health surveillance and monitoring to the prevention services.

## *2.2. Strengthened Occupational Safety and Health Measures*

One of the most controversial measures in the occupational safety and health regulatory framework is the entitlement of employees to stay away from work

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<sup>13</sup> Dirección del Organismo Estatal Inspección de Trabajo y Seguridad Social. Criterio Operativo nº 102/2020 Sobre medidas y actuaciones de la Inspección de Trabajo y Seguridad Social relativas a situaciones derivadas del nuevo Coronavirus (SARS-CoV-2). <https://documentacion.eu/criterios/criterio-operativo-102-2020-inspeccion-de-trabajo-coronavirus.pdf>

<sup>14</sup> Real Decreto 664/1997, de 12 de mayo, sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo. BOE» núm. 124, de 24/05/1997. <https://www.boe.es/buscar/act.php?id=BOE-A-1997-11144>



in the hypothetical case of being at risk of serious and imminent danger in the workplace or by returning to work. In light of the Covid-19 guidance given, employees could action the right to refuse to attend work on health and safety grounds. Exercising that right required an effective breach on the employer's legal duty to protect their workforce from any health and safety risks. In discharging this duty, employers would have to take proactive steps by carrying out or updating risk assessments, and mitigating the risks identified from the pandemic.

In the practice it has proven complex for employees to justify staying away from their activity, or to refuse returning to their workplace, when either subjectively or objectively they consider that the performance of their duty carries a serious and imminent risk to their lives, health, or welfare. Under this premise, workers can challenge the managerial decision by claiming compensation for damages on the provisions of the existing occupational safety and health framework. Here the notion of "serious and imminent" occupational risk gains relevance.<sup>15</sup> This threat to the worker's safety and health needs to be tangible (the severity of damage and imminent risk of infection by Covid-19). In reality, this has yet to be interpreted by the lawmaker and jurisdiction in the case of workers (or their representatives, where they exist) deciding to stop their activity or not returning to the workplace when required. For employers who demonstrate effective organisational and prevention measures that lead to the assurance of a safe working environment (for instance, by minimising the risk of infection) the burden of proof will be on the worker to provide evidence that the system compromised their health and safety.

### *2.3. Recognition of Covid-19 as an Occupational Disease and its Impact on Different Professional Groups*

In relation to reporting duties, employers have a general duty to record occupational accidents and diseases which prevent an employee from working for more than one day. Written notice of occupational accidents and diseases which have harmed workers' health must be provided to the competent labour authorities. This disclosure duty suffered some important alterations during the course of the public health crisis.

In the early stages of the pandemic the coronavirus was classified as a common disease for economic compensation and social coverage purposes. This was

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<sup>15</sup> Monereo, J. Rivas, P. Moreno, M. Vila, F. Álvarez, J. Salud y asistencia sanitaria en España en tiempos de pandemia Covid-19. 2021. Aranzadi.

swiftly changed by the articulation of Royal Decree 13/2020<sup>16</sup>, 7 April, that accepted the definition of work-related accident for cases in which the spread of the infection was part of the work-related activity. This inclusion – that also had to be ratified by the operating prevention service – only affected health and social care workers who contracted SARS-CoV-2 virus, from the official declaration of the pandemic by the World Health Organization until the easing of public health prevention measures. This recognition had the same level of social security coverage as that established for occupational diseases.<sup>17</sup> Even more interesting is the fact that prior to this formal recognition and the availability of specific guidance on the issue, the public health authority<sup>18</sup> recommended following the advice from bodies such as the Occupational Safety and Health Administration in the United States (OSHA) when classifying the level of SARS-CoV-2 occupational exposure.

Protection and compensation attributed for other non-health and social care-related professions were provided by the classification of Covid-19 as a common disease. On this basis, the Government established that the preventive isolation or infection of employees due to Covid-19 should be considered a temporary incapacity for accidents at work – regardless of whether the employees were infected during their work-related activity or during their personal time. This qualified the employees to claim sick leave benefits for occupational hazards. This decision was made despite the classification of the very acute respiratory syndrome coronavirus (SARS-CoV-2) that induces coronavirus-19 disease, as a group 3 biological agent.<sup>19</sup>

This arrangement should not stop pursuing employer responsibilities in the case of work-related accidents, claims for compensation or damages caused by the activity, social security surcharges and the prosecution of a potential offence to workers' health and safety. That said, the reality for workers' ability to challenge the non-classification of a common disease as an occupational disease is certainly complex.

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<sup>16</sup> Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario. BOE» núm. 98, de 08/04/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4332>

<sup>17</sup> Real Decreto-ley 3/2021, 2 Febrero, por el que se adoptan medidas para la reducción de la brecha de género y otras materias en los ámbitos de la Seguridad Social y económico. BOE núm. 29, de 3 de febrero de 2021. <https://www.boe.es/buscar/act.php?id=BOE-A-2021-1529>

<sup>18</sup> Revista seguridad y salud en el trabajo. Prevención de riesgos laborales frente a COVID-19. Número 103, June 2020.

<sup>19</sup> Orden TES/1180/2020, 4 December, por la que se adapta en función del progreso técnico el Real Decreto 664/1997, 12 May, sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo. <https://www.boe.es/boe/dias/2020/12/10/pdfs/BOE-A-2020-15871.pdf>

#### 2.4. Tailored Measures for Essential Workers

Much focus has been placed on the scaling-up the occupational safety and health of hospital worker capacities. In countries such as Spain, primary health care delivered the first line of response and care in communities during the early phase of the health crisis. This trend was replicated in many parts of Europe where family doctors and primary care nurses are usually the first point of contact for healthcare. This system has been under-funded and understaffed for a long time. Many of the staff have been developing their functions on temporary working arrangements. While the pandemic made the resulting frailties in the system more visible, this did not have a counter-effect in the number of regulations improving their working conditions. The Ministry of Public Health reacted to this situation by publishing a technical document<sup>20</sup> for primary healthcare workers on 28 February 2020, which included a series of recommendations and prevention measures when dealing with patients. During this period there were many workers who had not received OSH training or information from their management on how to improve the way they coped with the infection.

Just over 41 per cent of all Spanish workers are employed in critical industries,<sup>21</sup> with these jobs representing about 43 per cent and 41 per cent of total female and male employment, respectively. Focusing on the healthcare sector, women represent an approximate 66 per cent of the total workforce, with 84 per cent in nursing jobs.<sup>22</sup> According to the Working Population Survey (EPA), published by the Spanish Statistics Institute (INE), women make up 74 per cent in the joint health and social care sectors. With the pandemic, women in these sectors saw an unprecedented rise in workload, health risk and challenges to work-life balance. Other popular measures implemented in other countries such as mandatory vaccination for health workers were not particularly welcomed in Spain. While many regions demanded this approach, this was not required as the levels of vaccination with these, and other workers have been high in comparison with other countries. Other interventions were driven by economic imperatives but had a positive effect on the levels of work intensification and workload in particular sectors.

<sup>20</sup> Public Health Ministry. *Documento técnico Manejo en atención primaria y domiciliaria del COVID-19*. June 2020. [https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Manejo\\_primaria.pdf](https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Manejo_primaria.pdf)

<sup>21</sup> Spanish labour force survey (Spanish National Statistical Institute or INE, 2019, second quarter. ESADE. Covid-19 and gender inequality in Spain. April 2020.

<sup>22</sup> Instituto Nacional de Estadística. *Working Population Survey*. National Statistics Institute <https://www.ine.es/up/rTBuNOB2i5>

This was the justification behind easing the temporary and flexible hiring of workers in agriculture (intervention of a temporary nature – 07 April–30 September 2020 approved by the Council of Ministers – Royal Decree-Law 13/2020<sup>23</sup>), approving a temporary set of urgent measures in agricultural employment, to guarantee the availability of labour to meet the needs of agriculture and farming industries. These measures favoured the temporary hiring of workers in the agricultural sector by establishing extraordinary measures to make employment more flexible, to ensure the maintenance of agrarian activity, during the state of alarm. To accompany the initiative, the European Commission strengthened the guidance available<sup>24</sup> for this high-risk group – considering how poor occupational safety and health was rampant during this period at an EU level – by calling on Member States to raise awareness of health and safety requirements affecting seasonal workers.

As an aside, the Spanish Government was publicly reprimanded<sup>25</sup> for hiring seasonal workers from Morocco for strawberry picking without providing adequate basic health and safety provisions or health insurance coverage. At a time when the demand for an effective food supply chain was huge, seasonal workers (many of them migrant) suffered death, infections, and outbreaks. Contributing factors included the geographical isolation of the work, poor health and hygiene measures, precarious contracts and social security protection and harsh working conditions.

Other measures had a regional dimension. The regional government of Madrid developed economic grants with the objective of helping manufacturing companies<sup>26</sup> (extractive industries, supply of electricity, gas, steam and air conditioning, water supply, sanitation activities, waste management, activities related to transport and so on) to adapt workplaces to Covid-19 and other agents and elements harmful to workers' health. Businesses in these industries had to implement novel adaptation strategies or acquire equipment for non-disposable protection. Aid was also granted for activities to manufacture equipment, elements, computer programs and consumables for protection

<sup>23</sup> Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario. BOE» núm. 98, de 08/04/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4332>

<sup>24</sup> European Commission. Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak (16 July 2020). Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (30 March 2020). Brussels.

<sup>25</sup> United Nations. Human rights. *España mantuvo a trabajadores migrantes completamente desprotegidos durante la pandemia, dice experto de la ONU*. June 2020. <https://news.un.org/es/story/2020/06/1476662>

<sup>26</sup> Eurofound (2021), *Aid to industrial companies in the Community of Madrid*, case ES-2020-44/1898 (measures in Spain), COVID-19 EU PolicyWatch, Dublin, <http://eurofound.link/covid19eupolicywatch>

against Covid-19 and for treatment of the disease, and for protection against other agents and elements harmful to the health of workers and the population in general.

### *2.5. Adequate Control Measures Including Adapted Work Arrangements, Engineering Controls, PPE.*

Policies aimed to reduce workers' exposure to Covid-19 in the workplace involved, on the one hand, the adoption of individual protection equipment and, on the other, the adoption of guidelines and specific orientations established by health and safety at work authorities.<sup>27</sup> Many of the control measures and engineering controls were proposed in the document published by the Ministry of Public Health<sup>28</sup> in the guidance provided to prevention services on how to manage the OSH impacts of the pandemic. These recommendations and the supporting document for their interpretation were replicated at regional level.<sup>29</sup>

While the shift to employees working remotely or from home falls apart from the remit of this review, the significant impact of this legislative development and its amplified effects cannot be disregarded. With that in mind, it is fair to state that the most significant change in Spain triggered through legislative developments was in relation to the implementation of novel long-term legislation for remote working, initially introduced on 12 April 2020 Preference for remote work - Teleworking arrangements, together with the urgent measures on teleworking in public administrations (Royal Decree-Law 29/2020<sup>30</sup>) that build the framework for a future Royal Decree to regulate telework for public services, later known as 'Urgent measures on teleworking in public administrations' (24 September 2020).

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<sup>27</sup> Ramos (2021): IZA COVID-19 Crisis Response Monitoring: Spain (December 2021).

<sup>28</sup> Subdirección General de Sanidad Ambiental y Salud Laboral. Ministerio de Sanidad. Procedimiento de actuación para los servicios de prevención de riesgos laborales frente a la exposición al nuevo coronavirus (SARS-CoV-2). Junio 2022. [https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Proteccion\\_Trabajadores\\_SARS-CoV-2.pdf](https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Proteccion_Trabajadores_SARS-CoV-2.pdf)

<sup>29</sup> Recomendaciones de prevención en el trabajo frente al coronavirus ISSGA, Galicia o el Compendio de directrices (IAPRL, Principado de Asturias). April, 2020.

<sup>30</sup> Real Decreto-ley 29/2020, de 29 de septiembre, de medidas urgentes en materia de teletrabajo en las Administraciones Públicas y de recursos humanos en el Sistema Nacional de Salud para hacer frente a la crisis sanitaria ocasionada por la COVID-19. BOE» núm. 259, de 30/09/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-11415#:~:text=Ayuda-Real%20Decreto%20de%2029%2F2020%2C%20de%2029%20de%20septiembre,de%2030%2F09%2F2020.>

The health crisis caused by Covid-19 forced different public administrations to dedicate all their personal and material resources to guaranteeing the essential operation and provision of public services by their employees remotely. For this to happen, a prerequisite was an assessment of the risks of teleworking. Also required was an assessment of the tasks assigned, the corresponding evaluation and preventive planning, as well as training in the digital skills necessary for the provision of the service.

The new Royal Decree-Law 28/2020<sup>31</sup> to regulate remote working in Spain granted remote workers the same rights as those who carry out their activities on the company's premises. It is based on voluntarism and the agreement of workers and employers. Briefly speaking, under the new legislation, any employee who works from home more than 30 per cent of the time (approx. 1.5 days per week) in a three-month period is considered a remote worker. A key element of Spain's remote working law is the requirement for employer and employee to sign a 'remote working agreement', setting out how remote work will proceed.

This regulatory development was a positive outcome of a tripartite social dialogue and placed Spain at the forefront of many jurisdictions<sup>32</sup> during the economic and social crisis caused by the Covid-19 pandemic, despite the historical lack of a flexible working culture.

While an overarching principle of the law is that remote employees need to be protected with the same rights as traditional office employees, including OSH protections, in the reality this has not been effectively articulated in the regulation. Under the remote working law employers must also consider the health, safety and wellbeing of remote workers, paying special attention to physical, ergonomic and mental health risks stemming from isolation and stress as well as organisational risks (communication). Employers are therefore required to conduct home-office risk assessments. Increasingly, protection can be extended to regulate the lack of a work-life balance or to deal with toxic control, monitoring or surveillance practices that can have a negative impact on the health and wellbeing of the employee.

As a result of these developments, the national OSH body published a set of technical criteria that recommended the incorporation of teleworking into an OSH management system, together with the integration of prevention aspects for departments directly involved in the design and management of teleworking-associated positions in the business.

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<sup>31</sup> Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia. BOE» núm. 253, de 23/09/2020. <https://www.boe.es/boe/dias/2020/09/23/pdfs/BOE-A-2020-11043.pdf>

<sup>32</sup> Eurofound (2020), *Regulation of remote work, case ES-2020-39/1321 (measures in Spain)*, COVID-19 EU PolicyWatch, Dublin, <http://eurofound.link/covid19eupolicywatch>

On the matter of personal protective equipment (PPE), Spain like many other jurisdictions applies a general protection system in which PPE must be suitable for the work to be performed and properly adapted for that purpose. PPE must be used where risks cannot be avoided or adequately limited by technical methods or procedures. Employers must provide appropriate equipment and ensure not only its effective use but also adequate training on its use in different scenarios (for example, the control of infectious diseases). The required competence, training and awareness were rather poor, and many healthcare workplaces had to react by providing the basics, instead of having a more fit-for-purpose framework with practical stress-testing exercises in clinical settings, or by adapting health workers' educational curriculum to the evolving healthcare needs. To some extent, this infringed existing laws and the basic principles of prevention as indicated in occupational safety and health Law 31/1995<sup>33</sup>, as well as the Royal Decree 664/1997<sup>34</sup>, for biological risk.

It would not be fair to put all the blame on the PPE deficiencies. There were other contributing factors to the staggering figures of healthcare workers becoming infected. These included human resources shortages, issues in relation to diagnostic testing, poor investment in occupational health internal and external services, irregularly updating of practical training, or not incorporating lessons learned from previous experiences (for example, SARS and MERS which caused hospital-acquired outbreaks affecting healthcare workers). As reported in April 2020 by the European Centre for Disease Prevention and Control (ECDC), Spain led the world in numbers of healthcare workers infected with Covid-19,<sup>35</sup> despite the known under-reporting practices. Another contributing factor to the numbers of infections among healthcare professionals<sup>36</sup> was due to emerging contradictory measures at governmental level. In the early stages of the pandemic, the Ministry of Public Health did not recommend testing asymptomatic healthcare professionals with mild or no symptoms or testing them when in contact with confirmed cases. Other preventive measures specific for this sector were not widely implemented or recommended, such as reviewing different options for setting up a triage

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<sup>33</sup> Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales. BOE» núm. 269, de 10/11/1995. <https://www.boe.es/buscar/act.php?id=BOE-A-1995-24292>

<sup>34</sup> Real Decreto 664/1997, de 12 de mayo, sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo. BOE» núm. 124, de 24/05/1997. <https://www.boe.es/buscar/act.php?id=BOE-A-1997-11144>

<sup>35</sup> El País. España es el país con más contagios entre el personal sanitario. April 2020. <https://elpais.com/sociedad/2020-04-24/espana-es-el-pais-con-mas-contagios-entre-el-personal-sanitario.html>

<sup>36</sup> *The bmj opinion*. Widespread covid-19 infection among Spanish healthcare professionals did not occur by chance. June 2020. <https://blogs.bmj.com/bmj/2020/06/01/widespread-covid-19-infection-among-spanish-healthcare-professionals-did-not-occur-by-chance/>

service, based on the circumstances of the healthcare facility to prevent the transmission of SARS-CoV-2 to patients and healthcare workers.

Like several other countries, Spain struggled to secure an adequate supply of personal protection gloves, suits, and face masks for health workers early in the pandemic. Not surprisingly, there were cases of healthcare professionals filing lawsuits for workers whose safety was put at risk by not being supplied the proper PPE to treat patients during the first months of the pandemic. Outcomes of one claim confirmed that the shortage of personal protection suits created “a serious safety and health danger for all health workers, especially for doctors due to their direct exposure to the risk of contagion.” The ruling said that the region’s health administration had failed to meet its duty to protect the doctors “from the moment it knew of the existence of Covid-19 and, in particular after the declaration of a national state of emergency.”

With regard to vaccinations, Spain is known for having one of the highest vaccination rates in the European Union. One of the cornerstones of Spain’s effective vaccine uptake among workers is the historic trust in the public health system and the well-regarded professionals. Added to this is the fact that within the population (including the working population) there have been low levels of vaccine hesitancy. It should be noted that in Spain vaccinations are not compulsory either for health workers or even for employees who provide services in direct contact with elderly people. A similar principle applies to mandatory testing in the workplace, which was considered as a disproportionate measure.

The government vaccination strategy initially covered health and social care workers, army and security forces as well as the education sector (primary and secondary schools). Outside this prioritisation were other groups such as agriculture or transport workers. Employers may request some information on vaccination status only with the general aim of adopting measures to ensure health and safety in the workplace.

### *2.6. Sector-orientated Guidance*

Both nationally and regionally, health and safety guidelines have been updated or are in the process of being revised to fully address the specific challenges of work in the era of Covid-19. Many of these instructions and the guidance coming from the Ministry of Public Health suffered a notable delay in publication, which made them reactive once the state of alarm was formally declared.



On 4 March 2020, the Spanish Ministry for Employment published a practical guide in relation to implications of Covid-19 at a workplace level<sup>37</sup>. This set of recommendations based its principles on existing Spanish law and mandatory regulations regarding the prevention of occupational hazards. It included a series of recommendations for preventive measures, the implementation of teleworking as a temporary organisational measure and the total or partial suspension of activity for businesses. The latter could be made either by the decision of the Health Authorities or due to economic, technical, organisational or production reasons covered by *force majeure*.

As the pandemic evolved, a stronger focus was placed on the role of prevention services as a catalyst of information. Guidance for the prevention services on the management of occupational safety and health<sup>38</sup> was binding for companies and prevention services throughout the state of alarm. The guidance included an obligation for these services to compile, register and verify records of workers being infected (clusters and outbreaks at a workplace level), and to disclose this information to the public health authorities so that they could decide on isolation and quarantine measures. The guidance also recommended a risk-based approach based on the type of industry or activity, adapting the prevention measures to the particular outcomes from the risk assessment process. It should be noted that coordination between the public health authorities and the prevention services was inadequate in practice, as it did not incorporate a fluid and constant communication.

Another important document was the *Guidance for the management of vulnerabilities and occupational risk in the health and social care sector*<sup>39</sup> that established a hierarchy of risk, from low exposure (such as general public exposure) to the highest level that entailed health and social care workers performing their tasks close to sources of aerosol generation (CPR, intubation and so on). The document also made this distinction for non-healthcare workers exposed to direct interactions with symptomatic persons. Under this new guidance, companies and employers have to update their health and safety regulations to reflect new guidelines and ensure that all changes are communicated to employees.

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<sup>37</sup> Ministerio de Trabajo y Economía Social. Guía para la actuación en el ámbito laboral en relación al nuevo coronavirus. March, 2020. [https://www.mites.gob.es/ficheros/ministerio/inicio\\_destacados/Gua\\_Definitiva.pdf](https://www.mites.gob.es/ficheros/ministerio/inicio_destacados/Gua_Definitiva.pdf)

<sup>38</sup> Ministry of Public Health. Plan de respuesta temprana en un escenario de control de la pandemia por Covid-19. July 2020. <https://www.sanidad.gob.es/gabinetePrensa/notaPrensa/pdf/13.07130720131534059.pdf>

<sup>39</sup> Instituto Nacional de Seguridad y Salud en el Trabajo. Directrices de buenas prácticas en el sector de servicios sociales. Medidas para la prevención de contagios del SARS-CoV-2. Madrid, Mayo, 2020.

It is also worth noting that not all the guidance provided had a safety remit. During the Covid-19 mandatory containment, the Spanish Government launched an information campaign on stopping gender-based and domestic violence.<sup>40</sup> This included sharing resources and information for victims, with the ability for victims to go out into the street to seek out help without sanction. This was followed up by other regional awareness initiatives to prevent the effects of gender-based violence, work-related violence and harassment to essential workers such as healthcare workers, those working in clinical settings, security forces, hospitality and retail workers or delivery workers.

As for essential services, there were tailored examples of best practice from the Spanish National Occupational Safety and Health Institute, *Best practice guidelines in the manufacturing sector*<sup>41</sup>, that collected a non-exhaustive set of measures and recommendations to guarantee the protection of workers' health and safety. Similar initiatives took place at a regional level, such as the prevention guidance for different industries (food and drink, textile) from Madrid, Cantabria, and the Basque country.

There were also cases of guidance targeting a particular audience, vulnerable workers (for example, those with pre-existing health conditions or who are of an age that makes them susceptible to serious complications from Covid-19).

One complex policy loophole referred to the extent of employees' right to refuse to return to work because of the threat posed by the coronavirus. Article 21 of the occupational safety and health law guarantees that in situations involving serious and imminent risk to workers' health and safety, workers have a right not to fulfil the work. Arguably, an employee's belief (even if justified) that they would be exposed to potential danger is not enough on its own. Employers must demonstrate a plausible inability to manage and eradicate risk. Throughout the state of alarm, further guidance facilitated the adoption of specific measures such as the decision of the company or employees to interrupt the activity. In practice, however, this right was not exerted.

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<sup>40</sup> International Labour Organization. *In the face of a pandemic: Ensuring safety and health at work*. Geneva: ILO 2020.

<sup>41</sup> Instituto Nacional de Seguridad y Salud en el Trabajo. *Directrices de buenas practicas en el sector industrial*. Madrid, Junio 2020.

**Table 1. Example of sector specific guidance for agriculture, farming and seasonal workers<sup>42</sup>**

Authority	Guidance
European Agency for Safety and Health at Work	Covid-19: Back to workplace
National Institute of Occupational Safety and Health	Best practice guidance for the agricultural and farming sector
Ministry of Agriculture and Fishery	Practical guidance for the agricultural and fishing industry
Institute of Public and Occupational Health, Navarra	Covid-19 prevention recommendations for agricultural, farming and food industries use
Agriculture, farming and rural development office (Castilla and León)	Covid-19 guidelines for rural and food manufacturing settings
Institute of Public and Occupational Health, Navarra	Prevention guidelines, basic guidance, and safety protocols against Covid-19; Prevention guidelines for seasonal workers in agricultural settings
EFFAT (Trade Union European Federation for food and drink, agriculture, and tourism) and GEOPA-COPA (Employer European Group of agriculture companies),	Joint declaration of the European social partners of agriculture – GEOPA-COPA and EFFAT – on the deployment of seasonal workers from European countries in the European Union
Aragonés Institute of Occupational Safety and Health (ISSLA)	Standards of practice for the prevention of coronavirus in agricultural settings
PROEXPORT, CCOO Industria, UGT	Rules of procedure against coronavirus AGRO
Regional Andalusian office for agriculture, farming, fishing and sustainable development.	Guidance for prevention and control of COVID-19 in agricultural industries for seasonal workers
Ministry of Public Health	Acuerdo de 28 de julio de 2020, del Consejo de Gobierno – Guidance for prevention and control of Covid-19 in agricultural industries for seasonal workers

### *2.7. The Role of Prevention Services under the Spotlight*

The Spanish OSH framework relies on the foundations of the prevention and awareness prerogatives from the prevention services. While prevention services are considered key in the Spanish system for ensuring OSH compliance and

<sup>42</sup> Instituto Nacional de Seguridad y Salud en el Trabajo. *Prevención de riesgos laborales vs. COVID-19 - Compendio no exhaustivo de fuentes de información*. Madrid, June 2020.

better practice, the institutions behind this public/private service have rather tenuous links to innovative regulatory approaches.<sup>43</sup>

These services were severely under-staffed, despite the reported contribution<sup>44</sup> of a million hours by healthcare professionals and 2 million hours of technical advice by OSH professionals under external prevention services during the critical March–May 2020 period. Yet these figures were not sufficient to have a positive impact on the vast Spanish business landscape. The overwhelming spectrum of small and medium-sized enterprises in the Spanish labour market makes this an essential service, as these companies lack internal OSH capacity. In this context, the protection of the health and safety of the workforce derives from the service provided by these external entities. While many have a national reach, their potential to improve working conditions was often diffused as they had to adapt their approaches and responsibilities to decentralised levels of compliance required by the different autonomous communities.

Prior to the pandemic, the ability of these services to provide good quality services to the enormous number of companies had already been called into question. (In some regions an OSH practitioner must manage a portfolio of 250 companies.) This, in addition to other issues, such as the lack of flexibility and coordination in the way they performed their operations, poor health surveillance and occupational health (OH) expertise, the commercialisation and externalisation of services, and their associated bureaucracy, made them lag behind in providing effective protection to workers and business continuity. This certainly goes against the overarching prevention principle as stipulated in the occupational safety and health Law.

It is worth noting that while the requirement for external prevention services is to have the necessary facilities, material, and human resources to properly carry out the preventive activities (bearing in mind the type, extent and frequency of the services they must provide), in reality this was unachievable. National and regional governments placed an excessive burden on their capacity to carry out their prevention activity by imposing an endless number of responsibilities. These ranged from investigation and reporting duties in outbreaks to delivering a proactive strategy for tracing contacts or searching for potential cases. They also included increasing their activity in risk management practices and monitoring safety and hygiene measures to make workplaces Covid-secure. In

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<sup>43</sup> European Agency for Safety and Health at Work. *Improving compliance with occupational safety and health regulations: an overarching review*. European Risk Observatory. Bilbao, 2021.

<sup>44</sup> Servicios de Prevención ajenos ASPA-ANEP. El valor de los Servicios de Prevención Ajenos y los profesionales de la Prevención. April, 2020. <https://www.aspaprevencion.com/wp-content/uploads/2020/10/El-valor-de-los-SPA..pdf>

the longer term this approach proved unsustainable, creating a burden on the services and significant levels of workload for the OSH professionals employed in these services.

### 3. Conclusions

The Covid-19 pandemic brought a large-scale loss of life and human suffering, with key workers being exposed to higher mortality rates than non-key workers, as a result of their greater exposure to the virus. It also tested the Spanish collective capacity to guarantee safe and healthy working conditions to this segment of the workforce. It is for that reason that it will be vital to incorporate lessons learned from the mistakes and failures in order to strengthen national-level response to the essential workforce. We are not there yet, and for opaque reasons. In August 2020, scientific experts<sup>45</sup> urged the Spanish Central Government and regional governments to independently evaluate different aspects of the Covid-19 response to identify areas where public health, the health and social care system and others would need to be improved, following the approach used by the World Health Organization, the All-Party Parliamentary Group model used in the UK, or national inquiries.<sup>46</sup> The publication of this independent review<sup>47</sup> suffered a significant delay and only saw the light in December 2023. The report recommended improvements on the coordination of the key OSH bodies and called for the recognition of OSH prevention and occupational health services as essential to the economy and the labour market, as well as the development of workplace mental health programmes for healthcare workers.

While this review has highlighted a wide spectrum of public health and employment-related measures to tackle the impacts of the pandemic, this did not have a positive effect on the number of specific OSH interventions for key workers. Countries like Spain as well as many other Member States of the

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<sup>45</sup> García-Basteiro A, Alvarez-Dardet C, Arenas A et al. The need for an independent evaluation of the COVID-19 response in Spain. *Lancet*. 2020; 396: 529-530

<sup>46</sup> García-Basteiro AL, Legido-Quigley H; 20 signatories. Evaluation of the COVID-19 response in Spain: principles and requirements. *Lancet Public Health*. 2020 Nov;5(11):e575. doi: 10.1016/S2468-2667(20)30208-5. Epub 2020 Sep 21. PMID: 32971009; PMCID: PMC7505572.

<sup>47</sup> Equipo de Planificación y Coordinación de la evaluación. Evaluación COVID-19. Evaluación del desempeño del sistema nacional de salud español frente a la pandemia de COVID-19. Lecciones de y para una pandemia Madrid, 30 abril 2023. [https://www.sanidad.gob.es/areas/alertasEmergenciasSanitarias/alertasActuales/nCov/documentos/EVALUACION\\_DEL\\_DESEMPEÑO\\_DEL\\_SNS\\_ESPAÑOL\\_FRENTE\\_A\\_LA\\_PANDEMIA\\_DE\\_COVID-19.pdf](https://www.sanidad.gob.es/areas/alertasEmergenciasSanitarias/alertasActuales/nCov/documentos/EVALUACION_DEL_DESEMPEÑO_DEL_SNS_ESPAÑOL_FRENTE_A_LA_PANDEMIA_DE_COVID-19.pdf)

European region<sup>48</sup> seem to remain sceptical about their internal capacity to carry out tailored discretionary policies on OSH. One reason for this situation is probably given by the European regulatory system, in which the European Commission calls on Member States to update and draw up their national OSH systems. Community directives on OSH set only minimum requirements. Member States need to lead the process of introducing laws that ensure a higher level of protection for workers. In practice it is not common to see Member States developing novel legislative requirements or applying stricter rules for the protection of workers when transposing EU directives into national law.

This “light touch” approach to legislative developments makes it difficult for governments to embark on targeted-reaching labour and occupational safety and health reforms, even during the course of a public health crisis. A representative example of this can be seen on the lack of OSH improvements for essential workers, linked to unclear employment status and non-standard working arrangements that are common in workers employed in digital labour platforms (for example, the Spanish “riders law”). On the contrary, an element that was clearly missed from a public policy standpoint was the development of measures to strengthen and expand the key public institutions as authorities on a particular remit or area.

#### 4. Recommendations

This paper resulted in the following list of recommendations and suggestions.

(a). Barriers in the management of the intensified job demands and the mental workloads of essential workers. Having one of the highest percentages of healthcare workers infected with SARS-CoV-2 precipitated responses of anxiety, depression and acute stress<sup>49</sup> among the workforces. This was not due just to organisational or work-related factors, with many healthcare workers being blamed or subjected to violence by members of the public due to the stigma<sup>50</sup> attached to the virus at the beginning of the pandemic. Health and social care workers also shared similar stressors, with high levels of physical and emotional fatigue, overload, tension, and anxiety.

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<sup>48</sup> European Trade Union Institute. *Hesamag*. Special report: workplaces in a pandemic. Autumn, Brussels, 2021.

<sup>49</sup> García-Fernández, L., Romero-Ferreiro, V., López-Roldán, P. D., Padilla, S., Calero-Sierra, I., Monzó-García, M., Pérez-Martín, J., and Rodríguez-Jimenez, R. (2020). Mental health impact of COVID-19 pandemic on Spanish healthcare workers. *Psychological medicine*, 1–3. Advance online publication. <https://doi.org/10.1017/S0033291720002019>

<sup>50</sup> International Labour Organization. In the face of a pandemic: Ensuring safety and health at work. Geneva: ILO 2020. English edition.

In many cases, mental exhaustion and work intensification manifested in insomnia, anxiety, post-traumatic stress, depression, job uncertainty burnout and mental load. Even though issues such as the initial lack of protective resources and professional training seem to have been resolved, the levels of emotional fatigue have not improved and job demands continue to be overwhelming.<sup>51</sup> This is mainly for frontline healthcare professionals due to their increased workload, the difficulty of the work tasks and traumatic events resulting from the pandemic.<sup>52</sup> Examples of these deficits could be seen when some categories of essential workers were required to carry out new tasks and functions<sup>53</sup> without adequate training and familiarisation. For instance, healthcare workers were moved to different departments and sometimes deployed to new working environments (e.g. Isabel Zendal Covid-19 specific hospital) that required the adaptation to new and additional tasks at a really fast pace.

All these issues have clearly shown the need for public institutions to engage more effectively in strategies for improving workplace mental health issues and the psychological distress of essential of the health workforce and of other essential workers.<sup>54</sup> in addition to the management of work-related psychosocial risks, for frontline healthcare workers and essential workers. This needs to be more explicitly reaffirmed at a policy level, as the current regulatory framework makes no specific mention of psychosocial risks (though they are implicitly included in the main body of legislation), but it also requires a more holistic approach to potentially recognise anxiety, depression, and burnout as occupational diseases<sup>55</sup> for labour-intensive workers.

While developments such as the novel technical criteria<sup>56</sup> from the labour inspectorate for the management of work-related psychosocial risks are

<sup>51</sup> Molina-Mula, J., González-Trujillo, A., Perelló-Campaner, C., Tortosa-Espínola, S., Tera-Donoso, J., Otero De la Rosa, L. and Romero-Franco, N. *The emotional impact of COVID-19 on Spanish nurses and potential strategies to reduce it*, Collegian, 2021.

<sup>52</sup> Molina-Mula, J., González-Trujillo, A., Perelló-Campaner, C., Tortosa-Espínola, S., Tera-Donoso, J., Otero De la Rosa, L. and Romero-Franco, N. *The emotional impact of COVID-19 on Spanish nurses and potential strategies to reduce it*, Collegian, 2021. ISSN 1322-7696, <https://doi.org/10.1016/j.colegn.2021.12.004>.

<sup>53</sup> Samek Lodovici, M. et al., 2022, Revaluation of working conditions and wages for essential workers, Publication for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. January, 2022.

<sup>54</sup> European Commission. Expert Panel on effective ways of investing in Health, supporting the mental health of health workforce and other essential workers. Luxembourg, 2021.

<sup>55</sup> Walsh, M. Mental health in the Digital World of Work. European Parliament Committee on Employment and Social Affairs. Brussels, February 2022.

<sup>56</sup> Inspección de trabajo y seguridad social. Criterio para la gestión de riesgos psicosociales. December, 2021.

welcomed, they do not have a particular focus on essential industries and their complexities. More overarching frameworks such as the update of the EU strategic framework on health and safety at work for 2021-2027 in light of the Covid-19 pandemic are also not expected to be a game-changer in the protection of essential workers mental health and wellbeing. Other developments such as the recent ISO 45003 will still take time to settle within businesses, which is another reason why a more overarching approach is required.

(b). The profusion of conflicting and confusing guidance and regulations. As previously exposed, there was a profusion of Royal Decrees from the ministry of Public Health and the numerous versions of the updated documents (such as the *Prevention services conduct procedure against the coronavirus*, which had 12 different versions in a short period of time) when providing guidelines for worker safety. Mixed messages, the lack of one common voice, sudden policy changes and information overload contributed to some confusion between employers and employees, especially since the rules seem to be in constant flux, changes, and updates. The rules from national public bodies often contradicted others from regional authorities. This made that on many occasions workers employed in high-risk industries were forced to fulfil their tasks without taking into account the serious health and safety implications. On other occasions, issues in relation to mixed messages led to questions about who was leading the efforts the health and safety of workers.

The more proactive involvement of health and safety representatives, membership associations employing essential workers or occupational safety and health professionals could have helped to not only lead on effective public health-related communications but interpret the content of the guidance or legislative developments and therefore reduce the exposed ambiguity.

(c). Return to work and rehabilitation of essential workers dealing with long Covid: an excuse for inaction. Millions of workers across Europe were hit by the Covid-19 pandemic,<sup>57</sup> thousands fatally and many more with serious, debilitating and often long-term effects, reporting prolonged and significant disability. From those cases, it is still uncertain how many essential workers are in the process or will struggle to recover from the infection, or that will incur in longer term disabling symptoms. This situation, known as long Covid or post-Covid syndrome, can place severe limitations on these workers' ability and capacity to perform their job functions or to return to work in a sustainable way.

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<sup>57</sup> European Federation of Public Service Unions. Oates, Andrea. Covid as an occupational disease. September 2021.



The Spanish Public Health Ministry reviewed the operational guidance for the prevention services, including for the first-time OSH procedures, risk management mitigation and adaptation strategies for dealing with long Covid cases in public services and private businesses. This will be of critical importance for workers classed as essential, as many have been forced out of work without the needed support. The role of occupational health professionals will become important in the rehabilitation process, with support and guidance on flexible arrangements and workplace adaptations as part of the return-to-work process. On this matter, some authors point out to the need for more holistic supportive practices through a robust safety net<sup>58</sup> that includes a combination of '*sick leave, family leave, disability benefits, and workplace protections and flexibilities*'.

(d). The perils for better work-life balance and workplace wellbeing. The pandemic has produced a still-to-be-determined impact on employees who, due to guardianship and care reasons, had children, elder or dependent relatives to take care of. Despite the availability of some economic measures, such as the entitlement to a reduction in working hours of up to 100 per cent with the employee's salary being reduced in proportion to the reduction in working hours, these measures were not sustainable over time. Some of them also clashed with long-established cultural attitudes and the lack of family-friendly working environments in particular for essential industries.

Women - more likely to workplace exposure to the coronavirus due to many working in essential positions such as the healthcare sector – struggled with children home schooling issues and caregiving for parents or loved ones. To face this disproportionate burden on female workers some countries opted to allow the children of essential workers to use childcare facilities. This was not the case in Spain due to the closure of all childcare facilities and schools during the second quarter of 2020. This decision made conditions for essential workers and those working remotely especially hard, particularly for women.<sup>59</sup> For this reason, the concept of flexible working needs to be better integrated into legislative development strategies and businesses management systems and practices, by prioritising workers employed in functions classed as essential. This needs to be done by nurturing an inclusive approach that goes against a one-sided flexibility approach suitable only for office-based workers or remote workers. This will help other essential workers who have struggled to enjoy any

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<sup>58</sup> Davis HE, Assaf GS, McCorkell L, Wei H, Low RJ, Re'em Y, Redfield S, Austin JP, Akrami A. Characterizing long COVID in an international cohort: 7 months of symptoms and their impact. *EClinicalMedicine*. 2021 Aug;38:101019. doi: 10.1016/j.eclinm.2021.101019. Epub 2021 Jul 15. PMID: 34308300; PMCID: PMC8280690.

<sup>59</sup> Farre, L., Fawaz, Y., Gonzalez, L., Graves, L. (2020), *How the COVID-19 Lockdown Affected Gender Inequality in Paid and Unpaid Work in Spain*, IZA DP 12434.

form of flexibility to achieve stable, secure, and sustainable employment. While the focus of work-life balance issues has been placed on office-based positions, essential workers suffered an endless amount of issues that impacted in their ability to balance family and work life, from seafarers and transport workers being outside their homes for long periods of time, to healthcare workers that had to leave their accommodation due to stigma or to find alternative accommodation during the outbreak to avoid infection of their relatives, or the case of social care workers<sup>60</sup> that were obliged to stay at their care centres to avoid exposing to elder residents to the risk of infection. The effect of these circumstances came as part of the job reason why they have not been an object of study by the legislator.

(e). Public administration deficits and institutional weaknesses. The public health crisis has illustrated the poor role of prevention services. Rather than leading and enhancing OSH advice and practice, they have played a more passive role that has exposed their weaknesses. From an institutional perspective, the pandemic has also put in the spotlight the lack of investment and human resources in the national labour inspectorate and the relaxed approach to improving OSH capacity-building of the different administrations, from national to local.

There was a reactive approach by the different public administrations with a strong involvement in the national prevention system or the delivery of OSH-related measures (Labour and Social Security Inspectorates, Autonomous Communities, Foundation for Occupational Risks Prevention, National Commission of Safety and Health at Work and National Institute of Safety and Health at Work). This did not facilitate the development and strengthening of cross-collaboration and participation mechanisms and the exchange of key information in a timely and effective manner. Particularly at field level, the occupational safety and health system, that heavily relies on the work carried out by internal practitioners or outsourced specialists for health and safety, have increased the demand from companies to completely or partially outsource the responsibility to external professionals and services. Conversely, this peak on the use of these services has not led to a true embedded compliance culture. The purpose of these contractual relationships has been utilised more as an instrument to avoid occupational safety and health liability and compliance breaches.

On a similar note, the public institutional system had difficulties when integrating occupational health into the public health structure. To this extent,

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<sup>60</sup> BBC News, 2020, Spain lockdown: How domestic workers became prisoners, available at: <https://www.bbc.com/news/av/world-54895114>.

the review has exemplified several coordination issues between the public health and labour ministries at both national and regional level.

(f). Working conditions of civil servants and other public employees. While the impacts on health professionals have been extensively studied, little is known about other essential public worker groups, such as police forces, army forces, civil servants, bus drivers, firefighters, and education staff. This was particularly challenging for professions that are not used to adopting, integrating, and implementing prevention and risk management strategies or contingency plans to deal with occupational issues.

With Spain leading Europe in terms of the largest share of temporary employees, the case of the nearly 700,000 public sector workers employed on temporary contracts was certainly distressing. The use of temporary employment in the Spanish public administration system is widespread at all levels (including general administration, autonomous communities, and local bodies) covering a wide spectrum of contractual arrangements (contract workers, provisional employees, temporary substitutes). Many of these contracts were of a short fixed-duration term lasting less than a week or a month (even for workers employed in healthcare). The national, regional and local institutional abuse arising from the use of successive fixed-term employment contracts or relationships for civil servants had a toll on the health and safety of these workers, leading to a lack of protection and the erosion of OSH basic rights. This public health crisis proved that the universality characteristic of the occupational safety and health regulatory framework is not fit for purpose and can leave behind some workers such as those in temporary arrangements.

A solution to this situation can be given by improving the working conditions and more specifically to safeguard the occupational safety and health of essential workers employed in public services (cleaners, call-centre workers, outsourced care workers, security guards and so on) through sustained changes in public procurement processes and in collective bargaining coverage<sup>61</sup>. In such manner 100 members of the European Parliament<sup>62</sup> have claimed for public contracts, procurement and tenders to only go for those companies that have robust collective agreements with their workers in place, and that commit to decent work principles rather than cutting prices over labour provisions.

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<sup>61</sup> European Parliament. Equal times. Procuring decent work: changing the rules of public procurement can deliver lasting improvements for essential workers. <https://www.equaltimes.org/procuring-decent-work-changing-the?lang=en#.YiIvTnrP02y>

<sup>62</sup> UniGlobal Europe. Over 100 MEPS call for public contracts to only go to decent work employers. November 2021. Brussels. <https://www.uni-europa.org/news/procuringdecentwork-updated-list-of-mep-endorsements/>

(g). Protection of seasonal and agency workers. The Covid-19 crisis has shed light on the poor working conditions as well as occupational safety of seasonal and agency workers employed in essential services and industries. Spain, and other countries of the European region such as Germany, Italy, France and Poland, employs high numbers of migrant seasonal agricultural and farming workers. The increasing demands of these services, together with pre-existing labour shortages on the sector made that several categories of essential workers experienced an increased workload<sup>63</sup>, with deteriorating working conditions. The Spanish labour market, known for having a strong dependence and over-reliance on agency workers, did not see a robust effort from temporary employment agencies (*empresas de trabajo temporal*, ETTs) to make adequate OSH provisions to workers employed in essential services. The European Parliament and the European Commission have highlighted the need for better evidence on the employment, health and safety conditions of seasonal workers. This includes the role of temporary work agencies, recruitment agencies and other intermediaries and subcontractors. The aim is to identify protection gaps, including OSH.

This is of the utmost importance given that recent research from the Organization for Economic Co-operation and Development indicates that on average migrant workers account for 14 per cent of key workers across Europe<sup>64</sup> and that, in most regions, migrants are as likely to work in key professions<sup>65</sup> as native-born citizens. This issue must be a priority for national governments and agencies of the European Union, including the European Labour Authority, EU-OSHA and EUROFOUND.

Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Institution of Occupational Safety and Health. This work was carried out on an independent capacity and some of the outcomes of this study contributed to the International Labour Organization's World Employment and Social

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<sup>63</sup> Eurofound, 2020a, COVID-19: Policy responses across Europe, Publications Office of the European Union, Luxembourg, available at: <https://www.eurofound.europa.eu/publications/report/2020/covid-19-policy-responses-across-europe>.

<sup>64</sup> OECD. Policy Responses to Coronavirus (COVID-19). *COVID-19 and key workers: What role do migrants play in your region?* 26 November 2020.

<sup>65</sup> European Trade Union Institute. Staunton, B. *Hesamag*. Europe's undocumented workers in a time of pandemic. Autumn, Brussels, 2021.

Outlook 2023: The value of essential work<sup>66</sup> and an accompanying working paper OSH and the COVID-19 pandemic: A legal analysis<sup>67</sup>.

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<sup>66</sup> World Employment and Social Outlook 2023: The value of essential work. Geneva: International Labour Office, 2023.

<sup>67</sup> Cooney, Sean, & Pasqualetto, Olívia de Quintana Figueiredo, & Radoslavova, Tzvetomira, & Spieler, Emily, & Jiménez, Iván Williams, 2023. "OSH and the COVID-19 pandemic a legal analysis," ILO Working Papers 995232593502676, International Labour Organization.

# The Case of ‘Breque dos Apps’: Civil Society’s Support for Digital Platform Workers

Ricardo Sousa and Raphaela Portilho<sup>1</sup>

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## Abstract

This paper intends to contribute to legal research by demonstrating how platform workers organized themselves in Brazil to demand better working conditions and, based on “Breque dos Apps”, verify what lessons can be learned and replicated by future movements with similar goals. The use of social networks was fundamental to engage the category and civil society in favor of “Breque dos Apps”, making it possible to bypass mechanisms traditionally associated with collective bargaining to achieve some concessions in favor of couriers.

**Keywords:** *Breque dos Apps; Civil society; Collective mobilization; Delivery couriers; Work on digital platforms.*

## Introduction

The “Breque dos Apps” (an expression that can be freely translated as “break on the apps”) is a social movement that occurred in Brazil, and was organically organized by workers who provided services to food delivery apps/digital

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platforms (like iFood, Uber Eats and Rappi), and unfolded in two different moments: July 1st and July 25th, 2020.

At first glance, this movement may be perceived as having the nature of a strike. However, it is difficult to make this association from a legal point of view, since the legal concept of a “strike” is connected to the legal concept of “employee”. There is a great debate about the classification of delivery app couriers as employees, a theme that will be developed later on. These workers— delivery app couriers or delivery men and women—decided to organize a movement in protest against several working conditions generally associated with the most precarious forms of work and the absence of social protection measures. The scenario under which those workers already were became worsened by the Covid-19 pandemic, which represented both a health and an economic crisis for many countries. During this time, the possibility of working with food delivery apps/digital platforms became the main—if not the only—source of income for a large number of Brazilians. This situation then led to an increase in the number of couriers waiting to provide services and, consequently, increased the competition between them, resulting in a decrease in the amounts paid as delivery fees, beyond all risks associated with working in precarious conditions aggravated by the context of a pandemic.

As mentioned earlier, a fundamental issue within this analysis is the fact that there is a debate over the legal framework of digital platform/app workers in Brazil. Scholars and courts have not yet achieved a consensus over whether they should be considered employees—and thus receive all the social protection conferred by the Brazilian Consolidation of Labor Laws—or self-employed/autonomous workers, a different category not entitled to said framework of social protection.

Consequently, they are not able to collectively organize themselves through unions. Thus, they are prevented from obtaining the legal protection conferred to strike movements, since in Brazil unions are the only entities legally authorized to organize strikes.

Therefore, the main objective of this study is to analyze how the movement was organized to overcome the legal barrier arising from the fact that self-employed/ autonomous workers cannot organize themselves through unions.

To investigate what are the lessons left by the strategy adopted by the organizers of “Breque dos Apps”, the following main research question is proposed: is “Breque dos Apps” a representation of new forms of protest and solidarity-based responses oriented towards the protection of platform workers, thus able to provide broader lessons to be learned about how they may be organized?

The referred main research question is supported by three secondary ones, notably aimed at investigating: (i) what were the workers’ claims; (ii) if there

was support from civil society to the workers; (iii) how the companies in the delivery platform business reacted to the organization of the workers.

Regarding the methodological approach, the study applies theoretical qualitative research conducted through documental and bibliographic review techniques, based on the analysis and interpretation of data obtained mainly from literature and documents related to the themes.

This study intends mainly – but not exclusively – to contribute to the legal literature by demonstrating how platform workers organized themselves in Brazil to demand better working conditions and, based on the movement they arranged, known as “Breque dos Apps”, verify what lessons can be extracted and reproduced in favor of future movements with similar goals.

### **1. The Issue Regarding the Legal Framework of Platform Workers in Brazil<sup>2</sup>**

As explored by these authors in previous work (Portilho & Sousa, 2023), there is a fundamental issue underlying the movement known as “Breque dos Apps”, which is whether or not digital platforms/app workers may be legally categorized as employees in Brazil.

To address this issue, it is essential to understand that the Brazilian legislation has certain requirements to consider someone as an employee, that is, one of the subjects of the so-called employment relationship. This is not a mere technical detail, as it is the characterization of the employment relationship that brings all the labor and social protection that derives from this quality.

Thereby, every employee is a worker, but not every worker is an employee. According to Article 3 of the Brazilian Consolidation of Labor Laws of 1943 (known in Portuguese by the acronym CLT), someone is considered an employee when it is an individual who provides services of a non-continuous nature to an employer, under his/her dependence and in return for a salary.

Thus, the essential requirements of an employee are: natural person; not eventuality; onerousness; subordination—fundamental element; business risks must be entirely borne by the employer (according to some authors).

Under the terms proposed by Sérgio Pinto Martins (2023, p.103), an employee can be defined as an individual who provides services of a continuous nature to an employer, under his/her subordination, personally, and upon payment of salary.

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<sup>2</sup> The ideas developed and updated in this section were previously worked on in a previous paper. Therefore, it is recommended to read: Portilho, Raphaela Magnino Rosa and Sousa, Ricardo José Leite de. (2023). Social Rights and Work on Digital Platforms in Brazil: The Case of “Breque dos Apps”. *Sociology Study*, May-June 2023, Vol. 13, No. 3, doi: 10.17265/2159-5526/2023.03.



Although all requirements are relevant, the most important one is subordination: basically, it refers to the idea that an employee works under the employer's dependence. But another question then arises: What kind of subordination? For instance, is this dependence an economic one, a technical one or a legal one?

Scholars and courts have long since concluded that the requirement is legal subordination: the employee's subordination comes from the law. The employer gives the employee the rules and guidelines regarding how to carry out the provision of services. Thus, the employee does not have autonomy to conduct these services:

Subordination is the obligation that the employee has to comply with the orders determined by the employer as a result of the employment contract. It is the legal status in which the employee regards the employer. It is the object of the employment contract. Subordination is submission of the employee to the power of direction of the employer. (Martins, 2023, p. 100, our translation).

Absent the legal subordination, there is no employment relationship. It is important to consider that in this case there might be (self-employed/autonomous) work, but not employment. This is the background regarding the current debate on qualifying digital platform workers as employees or autonomous/self-employed workers.

For those who consider them autonomous/self-employed, allegedly there would not be any trace of subordination in the relationship between workers and digital platforms. The context would be the one represented by the idea of self-management: workers have the autonomy to conduct the provision of services, i.e., choose how, how much and what hours to work. Based on this argument, companies behind apps/digital platforms have been presenting themselves as mediators between supply and demand, denying the subordination and employment relationships in this intermediation.

Nevertheless, there is a counterpoint, known as algorithmic subordination (Fincato & Wünsch, 2020; Carelli, 2020). The idea defends that there is control over the work performed by those workers. However, this control would not be made by a person, but defined by a logical, finite and defined sequence of instructions—an algorithm. This new form of work control unfolds via technological tools, such as apps.

As mentioned before, there is no consensus in Brazil on whether to qualify digital platform workers as employees or as autonomous workers. Since they are currently not legally qualified as employees, they are constantly exposed to revolving around the idea of precarious work, such as poor working conditions; lack of social protection; and not being able to collectively organize

themselves through unions (the alternative for collective organization being the so-called civil associations, which have different prerogatives).

Due to the growing use of digital platforms in the provision of services around the world, the phenomenon known as “uberization” began to be observed. It is about a new way of managing, organizing and controlling work which asserts itself as a global trend, representing a new form of control and management of work, presenting it as an organizing trend that eliminates rights and turns workers into subordinated self-managers, available for work, used as just-in-time workers (Abilio, 2019).

Although other companies are using the same approach, the pioneering and early global success of Uber caused this type of relationship to be named after the company.

The workers providing delivery services to digital platforms in the food sector are just one category of workers of digital platforms submitted to the phenomenon of “uberization”. This is an extremely precarious category and they are at the center of the “Breque dos Apps” movement. Thus, after this brief context, this paper shall focus on the “Breque dos Apps” episode, mainly addressing its background and core claims.

## 2. The “Breque dos Apps” Movement: Background and Claims<sup>3</sup>

The collective movement of workers of digital platforms (applications), mainly those related to food and goods delivery, such as iFood, Rappi and Uber Eats, known as “Breque dos Apps”, traces back to two dates in July 2020 (July 1st and July 25th).

The action is somehow comparable to a strike and aimed to give visibility to the precarious working conditions to which these workers were subjected. Even though these conditions have been inherent to the provision of this kind of work since the very beginning, the context derived from the pandemic of the new coronavirus caused a significant impact and made this issue a matter of public debate.

The Covid-19 disease was classified by the World Health Organization (WHO) as a pandemic on March 11, 2020. Subsequently, countries around the globe were called upon to take coordinated measures to preserve people’s health and prevent infections and, ultimately, deaths. (OPAS, 2020). For instance, at that

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<sup>3</sup> The authors have developed some of the ideas addressed in this section on a previous work. For further information: Portilho, Raphaela Magnino Rosa and Sousa, Ricardo José Leite de. (2023). Social Rights and Work on Digital Platforms in Brazil: The Case of “Breque dos Apps”. *Sociology Study*, May-June 2023, Vol. 13, No. 3, doi: 10.17265/2159-5526/2023.03.

time several countries recommended social distancing, encouraging people to stay at their homes as much as they could.

In this context, activities that were previously practiced in different places, such as work and study, were transferred to people's homes and carried out remotely, transforming everyone's routine into a new reality. Thus, the provision of various "in-person" services was interrupted and both public and private spaces for collective coexistence were closed. Among them, were commercial establishments, such as those belonging to the food sector, like bars, restaurants and snack bars.

In Brazil, the pandemic also signified the maintenance of a high level of informality in the labor market, which was already observing high rates in previous years. Official data provided by the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística acronym IBGE — IBGE, 2018) informality rate in Brazil was around 40.8% in 2017, the year in which the Brazilian Labor Reform was approved by the Parliament. According to the results of the Continuous National Household Sample Survey, released by the same institute on August 12, 2022, the informality rate in the country was currently 40.0% (IBGE, 2022).

In addition, an increase in unemployment rates was also observed, since several activities were discontinued due to the global economic impacts and, consequently, jobs were lost. Without the possibility of immediate reabsorption by the market, there was an even greater increase in the informalization of work and other elements of precariousness, such as outsourcing, subcontracting, flexibilization, part-time work and sub-proletarianization (Costa, 2020).

Since a relevant part of the population was complying with social isolation and constricted to remote work and study regimes, the demand for the provision of delivery services, mainly food delivery experienced growth. Notably, this kind of service then became essential for consumers as well as for businesses operating in the food sector, such as restaurants and bars. Without it, the maintenance of those economic activities would be nearly impossible (Brail, 2020). Therefore, businesses had to adapt quickly to remain operating, either by starting to provide delivery options or by increasing their once residual delivery service, making it the main activity.

Thus, during this time and within the aforementioned context, the possibility of working with food delivery digital platforms/apps became the main—if not the only—source of income for a large number of Brazilian workers. This had a double effect: more couriers available to provide services and, consequently, more competition between them. This combination of factors resulted in a decrease in the amount paid from delivery fees.

Even though the couriers were perceived as fundamental to the operation of this gear, they remained in highly precarious working conditions and were paid an extremely low amount in exchange for their services. In addition, they were being exposed to various risks, including the risk of contagion by the disease and its possible consequences, for instance: lack of social protection due to the time of leave, loss of source of income, chain of contagion in the family, risk of developing comorbidities and, ultimately, risk of death. It is worth remembering that at the time vaccines were not available to the public and contagious/death rates were very high.

In the first months of the Covid-19 pandemic in Brazil, companies in the app delivery business, such as iFood and Rappi, acted timidly, at maximum, to mitigate the risk of contagion for couriers. As a result, the Brazilian Public Prosecution of Labor Office filed a public civil action against the platforms with a request for provisional/urgent remedy in April 2020, aiming to ensure the adoption of minimal health, social and labor measures in favor of the couriers.

The preliminary injunction was granted by Judge Elizio Luiz Perez, who determined the adoption of a series of measures to guarantee the health and safety of couriers, whose compliance should take place within 48 hours. Otherwise, a fine would be applied as a penalty. Among these measures, the following stand out: provide sufficient information and guidance to reduce the risk of contamination as much as possible; distribute protective products and equipment, such as alcohol gel and masks, free of charge; provide and accredit spaces for cleaning vehicles, backpacks, helmets and jackets; guarantee financial assistance of at least one minimum wage for the worker eventually contaminated, and also for workers who are part of the so-called risk group for the disease (BRASIL, 2020a).

Although it did not address the matter of any recognition of an employment relationship between couriers and platforms, the court decision under discussion recognized that: (i) business companies centralize and organize digital platforms and, therefore, make the connection between couriers and the third parties (consumers); (ii) the right to reduce work risks based on health, safety and hygiene standards is constitutionally guaranteed to workers; (iii) the nature of the activities provided by the platforms entails strict liability in the event of damage being caused to service providers (BRASIL, 2020a).

Immediately, the business company that owns the iFood platform filed a writ of mandamus, succeeding in halting the effects of the injunction, after the decision of Judge Dóris Ribeiro Torres Prina. The Judge based her decision on three central arguments: (i) there would be no employment relationship between the platforms and the couriers, who would be mere users of their services; (ii) the measures intended by the Public Prosecution of Labor Office

could have the effect of preventing the full execution of the services provided by the platforms, which, due to the context of social isolation, were essential; (iii) given that the digital platforms did not cause the pandemic, these requirements would be inappropriate, as the measures would be complex and the deadline to implement them very short (BRASIL, 2020b).

iFood claimed that it was already complying with some of the measures, such as the distribution of alcohol and the creation of the Solidarity and Protection Fund to guarantee financial aid for contaminated couriers, although in amounts and scope below what the first instance decision determined.

Amauri Alves, Lorena Marques Bagno and Nicolle Gonçalves comment that the platform's reaction was more an attempt to maintain a good reputation with the public than to guarantee the health and safety of workers, also drawing attention to the possibility that this assistance was result of an attempt to conform the category and avoid greater insurgencies of these workers against their working conditions (Alves, Marques Bagno, & Gonçalves, 2020). It is observed that these attempts proved to be unsuccessful since the couriers organized themselves around the "Breque dos Apps" stoppages.

Returning to the lesson of Allyson Mascaro (2020), for whom the reaction of business companies within the capitalist system tends to be a minimal response to maximum demands, the authors infer that, in this case, even the minimum seems excessive for those who do not want to have any liability over the provision of services received (Alves et al., 2020).

As seen, it is important to emphasize that digital platform workers in Brazil, the category in which app delivery people fall, are often supporters of discourses of overvaluation of entrepreneurship and free market exacerbation. In this context, supported by the idea of self-management at work, they tend to be resistant to the idea of regulating the activity they perform, and, consequently, to the precepts of unionism and the defense of labor laws (Delgado & Carvalho, 2020; Desgranges & Ribeiro, 2021; Abilio, 2019).

Faced with the situation resulting from the pandemic, which revealed even more clearly the levels of precariousness of this work regime, this dominant mentality in the category began to be questioned (Desgranges & Ribeiro, 2021). Many couriers began to expose the reality of their daily lives on social networks, starting a wave of reflection on existing vulnerabilities and the need to demand improvements.

This movement culminated in the stoppage/"strike" of the activities of couriers in several Brazilian cities on two occasions during the month of July 2020. This stoppage became known as the "Breque dos Apps" and had the support of trade union movements and civil society, which promoted the issue on social networks.

The “Breque dos Apps” that took place on July 1, 2020, was the first national manifestation of app delivery couriers. The couriers had the objective of paralyzing the delivery applications for one day, so that their claims could be amplified and considered, in the wake of what comments Ricardo Lourenço Filho:

The name chosen for the mobilization was “Breque dos Apps”, an expression that alludes to the digital platforms that offer delivery services to the market, such as iFood, Uber Eats and Rappi. The reality faced in carrying out delivery activities led application workers to gather and organize collectively. The difficulties, associated with the long hours, the risk of accidents, the low wages, were accentuated during the pandemic time. (Lourenço Filho, 2020, p. 80, our translation)

Among the strategies that were applied, some may be highlighted: pickets and motorcycle motorcades; incentives for couriers to stay offline in the applications; face-to-face demonstrations in the streets; and transmissions through social networks. The demands were related to aspects of that working relationship that reflected the precarious conditions to which the couriers were subjected (Lourenço Filho, 2020).

In short, the claims were: an increase in delivery fees per km traveled; raising the minimum delivery fee; the end of blocks carried out by the applications considered improper by the couriers and reactivation of the registrations of blocked couriers; granting insurance against theft and accidents; granting paid leave to workers infected during the pandemic; distribution of personal protective equipment, including those capable of helping to prevent the spread of the coronavirus, such as protective masks and alcohol gel; in addition to the end of the scoring system, which could imply an increase or decrease in remuneration for the service.

Essentially, the “Breque dos Apps” can be perceived as a movement in search of recognition and, above all, guarantees of carrying out a service in dignified conditions. From the perception that the applications were prospering in their profits at the expense of the inherent precariousness that involves the work of delivery, which was boosted by the wide availability of manpower for the performance of this activity, it is noted that the mobilization turned to the struggle to ensure minimum conditions of dignified subsistence for workers who often are hungry while delivering meals to app users (Braga & Santana, 2020).

It was in this context that an important leadership emerged, normally seen as the “face” of the movement and one of its creators, that is, the courier Paulo Lima, known as “Galo” or “Galo de Luta”, who founded the “Antifascists Couriers” in the city of São Paulo.

In an interview for the newspaper *El País*, Galo says that the collective, which today brings together couriers from several cities in the country, traces back to the night of his birthday, on March 21, 2020. He was working and the tire on his motorcycle went flat, making it impossible for him to complete a delivery in progress. The situation led to the digital platform/app to which he was providing the service blocking him, which was the trigger for the courier: "That's when I thought 'enough, bro, I'm going to report these guys around'. They don't explain why they block you, they tell you to read the contract and say they don't have to explain anything, no" (Oliveira, 2020, s/p, our translation).

In the same month, Galo wrote a petition demanding that the digital platforms/apps provide breakfast, lunch and dinner, in addition to hygiene kits for couriers. Some of his colleagues reacted with criticism, understanding his claims as part of an ideological field they did not intend to be recognized with: "When I went to talk to my colleagues, some told me to go to Cuba, saying they weren't starving, that what they wanted was to earn more to buy their own food", he recalls. Gradually, he gained support and strengthened his movement, which has already raised, for example, the average earning of this risky activity: 963 reais per month for 12 hours of work per day (Oliveira, 2020, s/p, our translation).

This reaction on the part of couriers indicates a phenomenon that scholars dedicated to studying uberization of work have already argued: despite the category's heterogeneity, which already makes collective organization difficult, Brazilian digital platform/app workers often adhere to the discourse of individual entrepreneurship, which is guided by the neoliberal rationality once deeply analyzed by Pierre Dardot and Christian Laval (2016).

According to the anthropologist Rosana Pinheiro-Machado (2022), the scenario is worsened by the existence of a significant identification of a large part of those workers with anti-democratic extreme right-wing ideologies and the consequent rejection of agendas historically associated with the left, such as labor, unionism and social assistance. The author states that:

The biggest problem to be faced is political. A significant part of the new precarious forms of work via platforms comes with an ideological component attached—and this component is profoundly anti-democratic. It is as if the work package came with a political plug-in installed, without the worker having necessarily chosen that product. Work and politics have always gone hand in hand. Work alienates, but it is also a terrain of resistance. However, coexistence between people is increasingly scarce in the 21st century, giving way to functions performed in isolated and intermittent ways, mediated by platforms and obscure algorithms that encourage hyper-individualization, competition and what researcher Fernanda Bruno calls rationality algorithmic: the individual who blames himself for the failure, even in the face of a non-

transparent pricing policy of the platforms. (Pinheiro-Machado, 2022, s/p, our translation)

In a recent participation in the Podcast “Mano a Mano” (2023), hosted by Brazilian rapper Mano Brown, from Racionais MCs, in which he was joined by Thiago Torres, better known as “Chavoso da USP” (student of Social Sciences, speaker and YouTuber), Galo rejected the framing of traditional political spectrums, emphasizing that he is neither from the right wing nor from the left wing, “but from below”. Mainly because he realized, after the success of the protests and the emergence of his leadership, that the approach with people traditionally linked to the left-wing was causing the effect of distancing him from delivery couriers and, consequently, from the real problems he faced as part of the category.

Nevertheless, reflecting on Liberalism and the idea of Minimum State, he stated that it remains very difficult to deal with the resistance of his peers regarding the social agenda, but that he is learning to step back in certain aspects and to respect the timing of things. Galo quotes as an example precisely the fact that many couriers do not want an employment card under the terms of the CLT, as they consider the employment relationship to be harmful. Asked by Mano Brown about tax discounts that are applied to employees and the possible impact of this on the income of couriers, Galo says that the discount would be lower than what currently already occurs: “what happens is a feeling of power. Delivery guy never had 5 thousand reais in his account, but now he does. But he doesn’t calculate the motorcycle’s performance, how much he spends on gasoline, food, the cost of repairs when the motorcycle breaks down... If he does this calculation, he will see that he earns less than the minimum wage and does not have paid vacations, thirteenth salary, he has no rights, he does not have any assistance [...] and if he has an accident, the partners get together, buy a piece of meat, a crate of beer and a bag of coal, they make a raffle and help the brother who is at home [...] The category does this, it is organized in WhatsApp groups and it works, that’s how it has worked. Today there are cooperatives that are WhatsApp groups, you see. Today I am already backing out of this idea of defending the CLT employment card, even if it hurts a lot, because I need to meet with them and understand what solution will come up from there, not bringing a solution from outside and such... That shouldn’t have been from outside, but it was splashed outside”. (Mano a Mano, 2023, our transcription and translation). Thiago Torres, on his part, added that the problem is the employment status because nowadays people do not want to be someone’s employee. According to him, “People want that false sensation provided by the application that you do not have a boss” (Mano a Mano, 2023, our transcription and translation).



This scenario explains, in part, two interesting characteristics commonly associated with the “Breque dos Apps”. The first is the fact that the couriers did not reach a consensus on claiming recognition of the employment relationship with the digital platforms, which, ultimately, would attract the protective legal regime of employees, moving from an (alleged) relationship of autonomy for the recognition of a relationship of legal subordination, according to the terms and parameters indicated on the first section of this paper.

The second characteristic relates to the very choice of the movement’s name: “Breque” and not “Strike”, a term that is historically, technically and legally used to refer to the phenomenon of mobilization and collective resistance of workers identified as employees. The term “breque”, in turn, alludes to the idea of blocking or stopping deliveries, and its “choice represents the intention to achieve a new form of organization and collective action” (Lourenço Filho, 2020, p. 82, our translation).

The group led by Galo started to attend anti-fascist protests and draw the attention of the press with the agenda of the anti-fascist couriers. Some of his videos went viral, especially one in which he denounced the difficulty of carrying food on his back on an empty stomach.

It has been argued that the main achievement of the movement known as the “Breque dos Apps” in July 2020 was to put the problems faced by the category in the spotlight, exposing the reality of the precariousness of work performed under these conditions in Brazil (Portilho & Sousa, 2023).

As stated by Andreia Galvão (2020), the “Breque dos Apps” constituted a truly historic milestone for the collective organization of precarious workers and emerged as the main progressive demand movement in recent years. Hence the enthusiastic reception on the part of unions, researchers, parties and left-wing militants, who saw in the movement, despite its heterogeneity, a sense of collectivity and the emergence of a new paradigm for the struggle. This reasoning is also shared by Gabriela Neves Delgado and Bruna Carvalho:

Amidst all this context of demands of the digital age, app workers played a historic role in the fight for the rights of the category, based not only on the Brazilian Constitution, but also on international guidelines for the protection of work. Tired, but still mobilized, they sparked a national movement against the new model of labor exploitation in the 21st century, denouncing the state of vulnerability and precariousness of workers on digital platforms. Powerful, the “Breque dos Apps” spread from end to end, strengthening ties of solidarity, collective agendas and the right of resistance. (Delgado & Carvalho, 2020, s/p, our translation)

In the same sense, Ricardo Lourenço Filho (2020) commented that the “Breque dos Apps” gave visibility to the organization of couriers through the formation of collectives, such as “Antifascists Couriers”, as well as the idea of thinking about fairer ways of executing the delivery work.

For the aforementioned author, the choice of this form of collective organization, as an alternative to the unions that are traditionally used, signals the intention, conscious or not, to think about new institutional forms of representation for this type of work, different from the traditional legal regime of employment relationship provided and regulated by the Brazilian Consolidation of Labor Laws.

### **3. The Fundamental Support from Civil Society**

Movements of social revolt arise “from a crisis in living conditions that makes everyday existence unsustainable for most people” (Castels, 2013, p. 161, our translation). In that regard, it is possible to infer that the tension between couriers and delivery platforms reached its peak in Brazil with the movement known as “Breque dos Apps”.

However, the movement articulated and carried out by the couriers themselves would not have caused as much social and media impact if disregarded how it was received by civil society.

Before analyzing the reaction of civil society to the movement articulated by couriers, especially that of consumers, it is important to take into consideration the role played by two phenomena that contributed to the “Breque dos Apps” being possible: communicative capitalism and social networks.

According to Dean (2008, p. 104), communicative capitalism is a late form of capitalism, in which core values for democracy are materialized in networked communication technologies, including the collective exercise of political dimension acts.

Undertaking a critical analysis regarding the concept of communicative capitalism based on what was exposed by Dean, Sartoretto (2020, p. 63-64, our translation) notes that political participation in this context should be understood as “collective action capable of influencing short-term institutional and social changes in the long term”, through engagement with collective social actors within the scope of civil society, such as social movements or spontaneous mobilizations.

Sartoretto (2020, p. 64) goes on to clarify that an example of collective social participation within the scope of communicative capitalism was precisely the “Breque dos apps”, in which couriers mobilized on the streets and on social networks to give visibility to their demands, while trying, at the same, to initiate a collective dialogue with state institutions to guarantee rights to themselves.

Thus, the class struggle, which has been inherent to capitalism since its origins, is also disputed with the mediation of network communication technologies, which brings us to the second phenomenon that needs to be analyzed: the role played by social networks – in particular Twitter, Youtube and Instagram – in the viability of “Breque dos Apps”, as well as in the way that civil society received and perceived the movement.

Desgranges and Ribeiro (2021, p. 191) state that in contemporary society leisure, work and relationships are mediated by communication software companies, which is why digital platforms are the scene of claims, protests and narrative disputes, which also involve struggles against the precariousness of work in favor of delivery apps, as was the “Breque dos Apps”.

As seen, Paulo Galo, along with other members of the courier category, founded the group Antifascists Couriers and, as the group’s spokesperson became a recurring figure in major media newspapers, on YouTube channels and in lives promoted on digital platforms.

Based on this, the “Breque dos Apps” movement had its origin and its organization through digital media, using tools from platforms such as Instagram, Twitter and Facebook to disseminate its agendas and call workers to the act, gaining proportion throughout Brazil and giving visibility to the category and its claims. (Barbosa, 2022, p. 161).

At this point, it is possible to start verifying how this visibility impacted not only the category of workers but also civil society, which ended up raising its support in favor of the movement.

Desgranges and Ribeiro conducted research “looking for a dense analysis of the network produced by app delivery people on YouTube and Instagram, aiming to understand how the “Breque dos Apps” mobilizations were conducted” (2021, p. 191), based on the extraction and observation of 1162 publications on the Instagram app and 50 videos on the YouTube platform (2021, ditto).

According to the authors, some past experiences of popular demonstrations with a strong social nature promoted through social networks anticipated the “Breque dos Apps” event. The first event they reference is the protests that took place after the death of George Floyd, a black man, shot by a white police officer in early 2020. Although the Black Lives Matter movement in the US dates back to 2013, the death of George Floyd was the trigger for the hashtag #blacklivesmatter going viral and, thus, taking thousands of people to the streets in protest against police violence and the state’s structural racism, integrating street and digital actions at the same time, through mass publications using the aforementioned hashtag (Desgranges & Ribeiro, 2021, p. 196).

In Brazil, the integration of social networks and street protests during the COVID-19 pandemic was also present in an act organized by anti-fascist supporters of football clubs, who protested against the ineffectiveness of the Brazilian government in facing the pandemic. This demonstration took place six days before the first “Breque dos Apps”, reaching a lot of visibility in the Brazilian media (Desgranges & Ribeiro, 2021, p. 196).

The feasibility of organizing protests through social networks and the visibility they achieved, both in Brazil and in other countries, were fertile ground for “Breque dos Apps” to take place, as it was the first Brazilian manifestation of app delivery couriers.

The Instagram profile @tretanotrampo was one of the main tools for disseminating the movement’s demands, through posts also aimed at consumers, seeking their engagement.

# Industrial Relations and Social Partnership in Wage Regulation in Ukrainian Industries

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## Abstract

This article explores the assessment of the rate of development of social partnership in the regulation of wages in Ukraine, as well as its relationship with the material well-being of employees. The rates of development of the social partnership in the regulation of wages in seven industries were assessed. The evaluation results showed that none of the studied industries was in the clusters with high and above-average social partnership development rates. The analysis showed a high positive correlation between the social partnership's development rate and the material well-being of employees. Each of the studied industries has inherent best practices for developing remuneration policies based on social partnership. Policymakers and social parties should examine and disseminate best practices in developing remuneration policies. It becomes a crucial practice for strengthening trust in the institution of social partnership and the ability of parties to create the conditions for decent work.

**Keywords:** *Industrial Relations, Social Partnership, Social Dialogue, Wages, Collective Agreements.*

## 1. Introduction

Social partnership plays an essential role in the regulation of industrial relations. It involves employment, wages, social security, work schedules, health and safety, and working conditions. Wages and social security occupy a special place among these issues. Remuneration of employees plays a crucial role in creating the proper conditions for the reproduction of the workforce, the professional development of employees, and the provision of adequate

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living standards (Alsos, Nergaard & Van Den Heuvel<sup>1</sup>; Hirsch<sup>2</sup>; Shambaugh et al.<sup>3</sup>). The amount of remuneration determines a person's ability to meet needs, improve intellectual, professional, and cultural levels, and maintain health and efficiency. Remuneration remains an important tool for encouraging employees to improve performance and achieve goals (Blumkin et al.<sup>4</sup>; Katovich & Maia<sup>5</sup>; Ozturk et al.<sup>6</sup>).

Social partnership is an effective form of regulation of industrial relations as it promotes employment and security (Marginson & Galetto<sup>7</sup>) and ensures equitable distribution of income (Villanueva<sup>8</sup>). The social partnership maintains the balance of interests of the parties (Karynov et al.<sup>9</sup>), respect for the rights of citizens (Lévesque et al.<sup>10</sup>), and facilitates the resolution of conflicts (Turner<sup>11</sup>). Social partnership is the basis for building a democratic society, an effective means of implementing a fair socio-economic policy, and reducing the number and severity of social and labor conflicts.

The development of social dialogue, including through the strengthening positions of all social actors, is one of the main areas covered by the concept of decent work (Anker et al.<sup>12</sup>; Ghai<sup>13</sup>; Bonnet, Figueiredo & Standing<sup>14</sup>; Somavia<sup>15</sup>; Tsymbaliuk & Shkoda<sup>16</sup>).

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<sup>1</sup> K. Alsos, K. Nergaard, & A. Van Den Heuvel, *Collective bargaining as a tool to ensure a living wage. Experiences from the Nordic countries, Transfer: European Review of Labor and Research*, 25, Is. 3, (2019): 351-365.

<sup>2</sup> D. Hirsch, *The 'living wage' and low income: Can adequate pay contribute to adequate family living standards? Critical Social Policy*, 38, Is. 2, (2018): 367-386.

<sup>3</sup> J. Shambaugh, et al. Thirteen facts about wage growth. The Hamilton Project, 2017.

<sup>4</sup> T. Blumkin, H. Pinhas, & R. Zultan, *Wage Subsidies and Fair Wages, European Economic Review*, 127, (2020).

<sup>5</sup> E. Katovich, & A. Maia, *The relation between labor productivity and wages in Brazil, Nova Economia*, 28, Is. 1, (2018): 7-38.

<sup>6</sup> M. Ozturk et al., *How effective are labor wages on labor productivity? An empirical investigation on the construction industry of New Zealand, Technological and Economic Development of Economy*, 26, Is. 1, (2020): 258-270.

<sup>7</sup> P. Marginson & M. Galetto, *Engaging with flexibility and security: Rediscovering the role of collective bargaining, Economic and Industrial Democracy*, 37, Is. 1, (2016): 95-117.

<sup>8</sup> E. Villanueva, *Employment and wage effects of extending collective bargaining agreements. IZA World of Labor, Institute of Labor Economics (IZA)*. Is. 136, 2015.

<sup>9</sup> C. Karynov et al., *Concept, essence and significance of social partnership in the general history of law, Journal of Positive School Psychology*, 6, Is. 6, (2022): 4821-4824.

<sup>10</sup> C. Lévesque et al., *Corporate Social Responsibility and Worker Rights: Institutionalizing Social Dialogue Through International Framework Agreements, Journal of Business Ethics*, 153, (2018): 215-230.

<sup>11</sup> L. Turner, *Social Partnership in Germany: Lessons for U.S. Labor and Management, ILR Articles and Chapters*, 1993.

<sup>12</sup> R. Anker et al., *Measuring decent work with statistical indicators: Working Paper*. International Labor Office, Geneva. Is. 2, 2002.

Assessments of the current state of industrial relations in Ukraine, the implementation of negotiation procedures, the role of social parties, and the content of collective agreements indicate that, despite the presence of essential practices of negotiating and concluding collective agreements, the institution of social partnership is only in the emerging phase. It is characterized by underdeveloped institutional features.

Despite the widespread practice of collective bargaining at the sectoral level and the high level of coverage of employees by collective agreements at the micro-level in various industries, it is impossible to determine unequivocally the effectiveness of social partnership in ensuring decent work. The effectiveness of social partnership should be analyzed using not only traditional quantitative indicators but also qualitative ones. It is also essential to assess the fulfillment of commitments by the social parties, as this builds the level of employees' trust in social dialogue and social partnership.

This paper, therefore, intends to assess quantitatively and qualitatively the rate of development of social partnership in wage regulation at the sectoral level. It adopts a broader set of indicators compared with existing practices. This paper is structured in the following sections. A literature review focuses on understanding social partnership and its role in the regulation of industrial relations, current trends and problems in collective bargaining. The research methodology and analysis procedures are then presented. Based on the set of indicators illustrated, the paper provides comparative analyses of social dialogue and collective agreements of various industries and a correlation between the rate of development of the social partnership and the material well-being of employees.

## 2. Literature review

Social partnership is a system of relations in the social and labor sphere in the process of realizing the socio-economic rights of the social parties (Trunova<sup>17</sup>). It is directed at harmonizing and protecting the interests of employers and

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<sup>13</sup> D. Ghai, *Decent work: Concept and indicators*, *International Labor Review*, 142, Is. 2, (2003): 113-145.

<sup>14</sup> F. Bonnet, J. Figueiredo, & G. Standing, *A family of decent work indexes*, *International Labor Review*, 142, Is. 2, (2003): 213-238.

<sup>15</sup> J. Somavia Address in the International Labor Conference, ILO (Geneva), 87th Session, 1.06.1999.

<sup>16</sup> S. Tsybaliuk & T. Shkoda, *Labor remuneration in the healthcare sector of Ukraine in terms of decent work concept*, *Employee Relations*, 44, Is.1, (2022): 191-209.

<sup>17</sup> H. Trunova, The concept of social partnership at the present stage, *Scientific Bulletin of Chemivtsi University*, 282, (2005): 59-62.

employees (Kolot & Pavlovska<sup>18</sup>). The system of social partnership includes institutions and mechanisms, as well as relations, aimed at maintaining the balance of the interests of employers and employees and facilitating their mutually acceptable decisions for achieving individual and social goals (Nelipa<sup>19</sup>).

Even though collective bargaining and concluding agreements are fundamental and most visible forms of social partnership, social partnership is a broader concept and can be implemented in other forms, such as joint consultations and resolution of labor conflicts, participation of representatives of the social parties in the social partnership bodies, control over the implementation of collective agreements, participation of employees in the distribution of incomes and the management of social insurance funds (Hetmantseva<sup>20</sup>; Kolot & Pavlovska<sup>21</sup>).

According to existing literature, social partnership is an effective tool for ensuring working conditions, occupational safety, and health (Kovač<sup>22</sup>), wage (Bosch<sup>23</sup>) and gender equality (Deakin et al.<sup>24</sup>, Madhav & Sankaran<sup>25</sup>, Villanueva<sup>26</sup>), social security (Frandsen<sup>27</sup>), and diversity policies (Cornet & Fatoux<sup>28</sup>). The social partnership supports sustainable development

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<sup>18</sup> A. Kolot & O. Pavlovska, Social partnership as an institution for the formation of consolidated social responsibility: theoretical foundations, *Social economy*, Is. 1, (2013): 81-90.

<sup>19</sup> D. Nelipa, Problems of institutionalisation of social partnership in Ukraine, *Scientific Notes of the I.F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine*, Is. 40, (2008): 197-205.

<sup>20</sup> N. Hetmantseva, Social partnership as a way to integrate the interests of social actors, *Entrepreneurship, Economy and Law*, Is. 3, (2016): 82-86.

<sup>21</sup> A. Kolot & O. Pavlovska, Social partnership as an institution for the formation of consolidated social responsibility: theoretical foundations, *Social economy*, Is. 1, (2013): 81-90.

<sup>22</sup> C. Kovač, *Social partnership in occupational safety and health*, *Safety engineering*, 7, Is. 2, (2017): 85-91.

<sup>23</sup> G. Bosch, *Shrinking collective bargaining coverage, increasing income inequality: A comparison of five EU countries*, *International Labor Review*, 154, Is. 1, (2015): 57-66.

<sup>24</sup> S. Deakin et. al., *Are litigation and collective bargaining complements or substitutes for achieving gender equality? A study of the British Equal Pay Act*, *Cambridge Journal of Economics*, 39, Is. 2, (2015): 381-403.

<sup>25</sup> R. Madhav & K. Sankaran, *Gender Equality and Social Dialogue in India. Working Papers, id:7237. eSocialSciences*, 2015.

<sup>26</sup> E. Villanueva, Employment and wage effects of extending collective bargaining agreements, *IZA World of Labor, Institute of Labor Economics (IZA)*, Is. 136, (2015).

<sup>27</sup> B.R. Frandsen, *The effects of collective bargaining rights on public employee compensation: evidence from teachers, firefighters, and police*, *ILR Review*, 69, Is. 1, (2015): 84-112.

<sup>28</sup> A. Cornet & F. Fatoux, *Trade Unions and Social Dialogue: A Challenge for Diversity Management. Management and Diversity. International Perspectives on Equality, Diversity and Inclusion*, 4, (2017): 231-254.



(Galgóczy<sup>29</sup>) and economic growth (Teague & Donaghey<sup>30</sup>; Uhlerová<sup>31</sup>). Collective bargaining relates to various aspects of the activity of enterprises: company performance (Braakmann & Brandl<sup>32</sup>), the culture of industrial relations (Signoretti<sup>33</sup>), industrial climate (Prins, Stuer, & Gielens<sup>34</sup>), and productivity (Lucifora & Origo<sup>35</sup>; Brandl & Braakmann<sup>36</sup>).

Despite the effectiveness of social partnership and collective bargaining in regulating industrial relations, researchers point to an erosion of collective bargaining institutions (Hyman<sup>37</sup>), reduced employee involvement in trade unions (Bernaciak<sup>38</sup>; Gumbrell-McCormick & Hyman<sup>39</sup>), a low level of trust in trade unions (Culpepper & Regan<sup>40</sup>), a weakening of collective bargaining in general (Addison et al.<sup>41</sup>; Stanojević, Mrčela & Breznik<sup>42</sup>; Távora & González<sup>43</sup>;

<sup>29</sup> B. Galgóczy, *Just transition on the ground: Challenges and opportunities for social dialogue*, *European Journal of Industrial Relations*, 26, Is. 4, (2020): 367-382.

<sup>30</sup> P. Teague & J. Donaghey, *Why has Irish Social Partnership Survived?* *British Journal of Industrial Relations*, 47, (2009): 55-78.

<sup>31</sup> M. Uhlerová, *The role of trade unions and social dialogue during the crisis: the case of Slovakia*. *Central European Journal of Labor Law and Personnel Management*, 1, (2020): 61-76.

<sup>32</sup> N. Braakmann, & B. Brandl, *The Efficacy of Hybrid Collective Bargaining Systems: An Analysis of the Impact of Collective Bargaining on Company Performance in Europe*, MPR A Paper, 2016.

<sup>33</sup> A. Signoretti, *Analysis of Italian medium-sized enterprises' collective bargaining from an international perspective: Evidence from the manufacturing sector*, *Economic and Industrial Democracy*, 37, Is. 4, (2016): 716-738.

<sup>34</sup> P. Prins, D. Stuer & T. Gielens, *Revitalizing social dialogue in the workplace: the impact of a cooperative industrial relations climate and sustainable HR practices on reducing employee harm*, *The International Journal of Human Resource Management*, 31, Is. 13, (2020): 1684-1704.

<sup>35</sup> C. Lucifora & F. Origo, *Performance-Related Pay and Firm Productivity: Evidence from a Reform in the Structure of Collective Bargaining*, *ILR Review*, 68, Is. 3, (2015): 606-632.

<sup>36</sup> B. Brandl & N. Braakmann, *The effects of collective bargaining systems on the productivity function of firms: An analysis of bargaining structures and processes and the implications for policy making*, *Industrial Relations*, 52, (2021): 218-236.

<sup>37</sup> R. Hyman, *What future for industrial relations in Europe?* *Employee Relations*, 40, Is. 4, (2018): 569-579.

<sup>38</sup> M. Bernaciak, *Coming full circle? Contestation, social dialogue and trade union politics in Poland. Rough waters – European trade unions in a time of crises*, *European Trade Union Institute*, (2017): 161-183.

<sup>39</sup> R. Gumbrell-McCormick & R. Hyman *Trade unions in Western Europe: Hard times, hard choices*. Oxford University Press, 2013.

<sup>40</sup> P.D. Culpepper & A. Regan, *Why don't governments need trade unions anymore? The death of social pacts in Ireland and Italy*, *Socio-Economic Review*, 12, Is. 4, (2014): 723-745.

<sup>41</sup> J.T. Addison et. al., *The demise of a model? The state of collective bargaining and worker representation in Germany*, *Economic and Industrial Democracy*, 38, Is. 2, (2017): 193-234.

<sup>42</sup> M. Stanojević, A.K. Mrčela, & M. Breznik, *Slovenia at the crossroads: Increasing dependence on supranational institutions and the weakening of social dialogue*, *European Journal of Industrial Relations*, 22, Is. 3, (2016): 281-294.

<sup>43</sup> I. Távora & P. González, *Labor market regulation and collective bargaining in Portugal during the crisis: Continuity and change*, *European Journal of Industrial Relations*, 22, Is. 3, (2016): 251-265.

Rodríguez, Rojo & Lucio<sup>44</sup>), and its traditional forms in particular (Anner, Fischer-Daly & Maffie<sup>45</sup>) in different countries under the influence of different factors. These problems are mainly explained by the weak organizational capacities of the social parties and, especially, of the state (Mailand & Due<sup>46</sup>). Collective bargaining has partly lost its ability to reduce wage inequality in many countries as a result of declining labor power against that of management (Doellgast & Benassi<sup>47</sup>). Difficulties in collective wage bargaining in EU countries pushed trade unions to seek assistance from the state to stabilize wage regulation (Arnholtz, Meardi & Oldervoll<sup>48</sup>). The core trend in regulating industrial relations is the decentralization of collective bargaining that is observed in Germany, the Netherlands, and Denmark (Ibsen & Keune<sup>49</sup>), Italy (Pallini<sup>50</sup>), Lithuania (Blažienė, Kasiliauskas & Guobaitė-Kiršlienė<sup>51</sup>), Finland (Jonker-Hoffrén<sup>52</sup>), Greece (Zisimopoulos, Fagogenis & Economakis<sup>53</sup>), Spain (Rocha<sup>54</sup>; Rodríguez, Rojo & Lucio<sup>55</sup>), and France (Amable<sup>56</sup>).

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<sup>44</sup> C.J.F. Rodríguez, R.I. Rojo & M.M. Lucio, *Austerity and collective bargaining in Spain: The political and dysfunctional nature of neoliberal deregulation*, *European Journal of Industrial Relations*, 22, Is. 3, (2016): 267-280.

<sup>45</sup> M. Anner, M. Fischer-Daly & M. Maffie, *Fissured Employment and Network Bargaining: Emerging Employment Relations Dynamics in a Contingent World of Work*, *ILR Review*, 74, Is. 3, (2020): 689-714.

<sup>46</sup> M. Mailand & J. Due, *Social dialogue in Central and Eastern Europe: Present state and future development*, *European Journal of Industrial Relations*, 10, Is. 2, (2004): 179-197.

<sup>47</sup> V. Doellgast & C. Benassi, *Collective bargaining*, *Handbook of Research on Employee Voice*, (2020): 239-258.

<sup>48</sup> J. Arnholtz, G. Meardi & J. Oldervoll, *Collective wage bargaining under strain in northern European construction: Resisting institutional drift?* *European Journal of Industrial Relations*, 24, Is. 4, (2018): 341-356.

<sup>49</sup> C. Ibsen & M. Keune, *Organised Decentralisation of Collective Bargaining: Case studies of Germany, Netherlands and Denmark*, *OECD Social, Employment and Migration Working Papers*. No. 217, OECD Publishing, Paris, 2018.

<sup>50</sup> M. Pallini, *Italian Industrial Relations: Toward a Strongly Decentralized Collective Bargaining*, *Comparative Labor Law & Policy Journal*, 38, Is. 1, (2016): 1-12.

<sup>51</sup> I. Blažienė, N. Kasiliauskas & R. Guobaitė-Kiršlienė, *Lithuania: will new legislation increase the role of social dialogue and collective bargaining?* *Collective Bargaining in Europe: towards an endgame* / edited by Müller, T., Vandaele, K. & Waddington, J. Brussels: *European Trade Union Institute*, 2, (2019): 381-401.

<sup>52</sup> P. Jonker-Hoffrén, *Finland: goodbye centralised bargaining? The emergence of a new industrial bargaining regime*, *Collective bargaining in Europe: towards an endgame*, 1. Brussels, ETUI, (2019): 197-215.

<sup>53</sup> I. Zisimopoulos, K. Fagogenis & G. Economakis, *Decentralization of collective bargaining system in Greece: between dismantling, survival and restoration*, *Proceedings of the International Conference of Political Economy*, June 25-28, 2019, Istanbul, Turkey, (2019): 249-259.

<sup>54</sup> F. Rocha, *Strengthening the decentralisation of collective bargaining in Spain. Between the legal changes and real developments. Multi-employer bargaining under pressure*, *Decentralisation trends in five European countries*, Brussels, European Trade Union Institute, (2018): 225-261.

Regardless of the scientific discourse on the issue of social and labor relations, the problems of social partnership and collective bargaining in wage regulation remain insufficiently studied and need more theoretical and methodological studies. A limited number of studies contain indicators for assessing social dialogue and social partnership. Most researchers (Lawrence & Ishikawa<sup>57</sup>; Hayter & Stoevska<sup>58</sup>; Oberfichtner & Schnabel<sup>59</sup>) analyzed social dialogue using two groups of indicators: trade union density rate and collective bargaining coverage rate. Kenworthy & Kittel<sup>60</sup> suggested measuring social dialogue based on the following indicator categories: associational structure, wage-setting arrangements, participation in public policy, and company-level employee representation. For assessing social partnership, Danylevych & Poplavska<sup>61</sup> suggest using the potential of wages as the possibility to ensure not only the reproduction of labor but also professional development and the improvement of the quality of human capital.

Therefore, the issues of developing tools for assessing the development of social partnership in wage regulation at various levels remain relevant. There is still a lack of research on the impact of social partnership and collective bargaining on material well-being, quality of working life, and the degree of social protection of employees.”

### 3. Method

To assess the rate of development of the social partnership in wage regulation, a set of indicators with established standards is proposed, and methodological principles for calculating individual and integrated indices are developed. The set of indicators with established standards is given in Table 1.

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<sup>55</sup> C.J.F. Rodríguez, R.I. Rojo & M.M. Lucio, *Austerity and collective bargaining in Spain: The political and dysfunctional nature of neoliberal deregulation*, *European Journal of Industrial Relations*, 22, Is. 3, (2016): 267-280.

<sup>56</sup> B. Amable, *The Political Economy of the Neoliberal Transformation of French Industrial Relations*, *ILR Review*, 69, Is. 3, (2016): 523-550.

<sup>57</sup> S. Lawrence & J. Ishikawa, *Social Dialogue Indicators: Trade Union Membership and Collective Bargaining Coverage*, *Statistical Concepts, Methods and Findings*, *International Labor Office Working Paper No. 59*, 2005.

<sup>58</sup> S. Hayter & V. Stoevska, *Social Dialogue Indicators*, *International Statistical Inquiry 2008-09 Technical Brief*. Geneva: ILO, 2011.

<sup>59</sup> M. Oberfichtner & C. Schnabel, *The German Model of Industrial Relations: (Where) Does It Still Exist?* *Jahrbücher für Nationalökonomie und Statistik*, 239, Is. 1, (2019): 5-37.

<sup>60</sup> L. Kenworthy & B. Kittel, *Indicators of Social Dialogue: Concepts and Measurements*, *ILO Working Paper No. 5*, Available at SSRN, 2003.

<sup>61</sup> N. Danylevych, O. Poplavska, *Social responsibility and social partnership in the 4th industrial revolution context: case of Ukraine*. *REVESCO. Revista de Estudios Cooperativos*, 135, 2020.

**Table 1. Set of indicators with established standards for assessing the rate of development of social partnership in wage regulation at the sectoral level**

Indicators	Standard
1. The availability of a sectoral agreement	yes
2. Recognition of the agreement as a legal act of social partnership by all parties	yes
3. Timeliness of concluding a sectoral agreement	yes
4. Designation of officials responsible for implementing provisions	yes
5. Regulation of norms on remuneration according to the legislation, %	→ max (100)
6. Number of obligations of social parties	→ max
7. The ratio of the number of specific obligations to the total number of obligations of the social parties on wages and social security according to the sectoral agreement, %	→ max (100)
8. Obligations to wage growth in the sectoral agreement	→ max (≥110)
9. Obligations to increase the share of wages in gross expenditures	Yes
10. Share of basic salary in the remuneration according to the sectoral agreement, %	→ max (>60)
11. The ratio of the basic wage of the worker of the 1st category and the minimum wage provided by law according to the sectoral agreement, %	→ max (≥110)
12. Range of 6-category tariff scale for workers (maximum if there are several tariff scales) according to the sectoral agreement	≥2
13. Range of salary scale for managers and specialists (maximum if there are several salary scales) according to the sectoral agreement	≥4
14. The difference between the basic salaries of workers and specialists of two related categories according to the sectoral agreement, %	≥10
15. Use of analytical methods for assessing positions and jobs during the development of tariff and salary scales according to the sectoral agreement	Yes
16. Use of flexible remuneration systems according to the sectoral agreement	Yes
17. Compliance of the list, amount, and procedure for payment of additional payments and increases to the legal norms and norms of the general agreement	Yes
18. Obligations to implement stock options and profit-sharing plans in enterprises of industry according to the sectoral agreement	Yes
19. Obligations of the social parties to introduce social packages in enterprises of industry according to the sectoral agreement	Yes
20. Obligations of the social parties to introduce social insurance programs in enterprises of industry (number of insurance programs) according to the sectoral agreement	yes (→ max)
21. Obligations of the social parties on providing gender equality in wages according to the sectoral agreement	Yes
22. The rate of coverage of employees by collective agreements on the organizational level in the industry, %	→ max (100)

Source: Compiled by the Authors, 2023.

In February 2021, an expert survey method was used to verify the reliability of the indicators. 13 scientists and professionals in industrial relations were selected as the experts. The expert survey was conducted in the form of a questionnaire. Experts assessed the significance of indicators on a scale from 0 to 7. Table 2 contains the main characteristics of experts.

**Table 2. Characteristics of experts**

Characteristic	Number of experts
Profession	
Lecture	8
Scientist	3
Professional	2
Total	13
Academic status	
Professor	3
Associate Professor	6
None	4
Total	13
Degree	
DSc	5
PhD	6
None	2
Total	13
Work experience	
From 10 to 20 years	6
More than 20 years	7
Total	13

Source: compiled by the authors, 2023.

Different methodological approaches to the calculation of individual indices (I<sub>i</sub>) for various indicators depending on their specifics, units of measurement, and standards are proposed. Individual indices (I<sub>i</sub>) for indicators for which the established standards have the wording “yes” or “no” are determined in the following order:

- if the actual value of a certain indicator does not meet the established standard, the unit index (I<sub>i</sub>) of this indicator is 0;
- if the actual value of a certain indicator meets the established standard, the unit index (I<sub>i</sub>) of this indicator is equal to 1.

If the agreement does not specify the percentage of increase in individual indicators, which reflects the commitment of the social parties to increase indicators (increase in average wages, etc.), the index for this indicator is reduced by half: it equals 0.5.

For the rest of the indicators, the individual indices ( $I_i$ ) are determined according to the standardization procedure:

$$I_i = \frac{[X_{\text{actual}} - X_{\text{min}}]}{[X_{\text{max}} - X_{\text{min}}]}, \quad (1)$$

where  $X_{\text{actual}}$  is the actual value of the indicator achieved in a selected industry;

$X_{\text{min}}$  - the lowest value for an indicator among the studied industries;

$X_{\text{max}}$  - the highest value for an indicator among the studied industries.

The integrated index of the rate of development of the social partnership in wage regulation at the sectoral level ( $K$ ) is determined by the formula

$$K = \frac{\sum_{i=1}^n I_i}{n}, \quad (2)$$

where  $n$  is the number of indicators.

The value of the integrated index can be in the range of 0 to 1.

Ranges of values of the development rate of the social partnership in wage regulation at the sectoral level:

$$\text{If } K \in \left\{ \begin{array}{l} [0,8; 1] \\ [0,6; 0,8) \\ [0,4; 0,6) \\ [0,2; 0,4) \\ [0; 0,2) \end{array} \right\}, K \in \left\{ \begin{array}{l} \text{high rate} \\ \text{above-average rate} \\ \text{average rate} \\ \text{below-average} \\ \text{low rate} \end{array} \right\} \quad (3)$$

Comparative analysis of the development of the social partnership in wage regulation was carried out in the following industries: machine-building and instrument-making, chemical and petrochemical, aviation, energy and electrical power, oil and gas, mining and metallurgy, and coal.

Criteria for creating a sample of industries:

- availability of signed sectoral collective agreements;
- representation of industries with a high level of sales revenue and employees.

Studied industries have signed sectoral agreements:

- Sectoral agreement of the machine-building and instrument-making industry for 2016-2020;
- Sectoral agreement of the chemical and petrochemical industry for 2017-2020;
- Sectoral agreement of the aviation industry for 2019-2020;
- Sectoral agreement of the energy and electric power industry for 2016-2018;
- Sectoral agreement of the oil and gas industry for 2012-2014;
- Sectoral agreement of the mining and metallurgical industry for 2011-2012;
- Sectoral Agreement of the coal industry (signed in 2001).

#### **4. Results**

##### ***4.1. Analysis of the Social Partnership in Wage Regulation in Industries***

One of the criteria for creating the sample of industries to analyze the development level of social partnership in wage regulation is the availability of a sectoral agreement. As for this criterion, all studied industries meet the established standard, as they have signed sectoral agreements.

A good tool that obliges to comply with the rules of the sectoral agreement is the recognition of the agreement as a legal act of social partnership by all parties.

Analysis of the agreements of the studied industries showed that some of them stipulate that they are legal acts. It applies to the following agreements: the Sectoral agreement of the chemical and petrochemical industry for 2017-2020 (article 1.2), the Sectoral agreement of the energy and electric power industry for 2016-2018 (article 1.6), and the Sectoral agreement of the oil and gas industry for 2012-2014 (article 1.5). It is positive evidence concerning determining the legal nature of these agreements and the development of the social partnership.

At the same time, both the legislation (article 9 of the Law of Ukraine “On Collective Agreements and Contracts” (Parliament of Ukraine<sup>62</sup>) and sectoral agreements themselves stipulate that their provisions do not apply to enterprises that did not participate in the negotiation and signing of them. Therefore, despite considering sectoral agreements as legal acts by the parties, they cannot be esteemed as such, as their provisions are not binding for all enterprises in the industries.

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<sup>62</sup> Parliament of Ukraine. On Collective Agreements and Contracts. The Law of Ukraine, dated 01.07.1993, № 3356.

The following important indicator of assessing the development of the social partnership is the timeliness of concluding a sectoral agreement.

At the time of the study, all studied sectoral agreements expired for the period they signed. Three sectoral agreements (in the machine-building and instrument-making, chemical and petrochemical, and aviation industries) expired in 2020.

As for the rest of the agreements, according to the period for which they were signed, they expired more than three years ago. The sectoral agreement of the coal industry was signed in 2001 without a specific time of validity.

Nevertheless, at the time of the study, the provisions of such sectoral agreements remain in force under the Law of Ukraine “On Collective Bargaining Agreements” (Parliament of Ukraine<sup>44</sup>).

In addition, the social parties periodically make changes following legislative changes and the norms of the general agreement, which is regularly renegotiated, although also often “too late”.

The delay of negotiations and extensions of sectoral agreements is usually due to the difficulty of reaching a joint agreement on some issues by the social parties, especially on wages and social security.

The practice of extending the validity of collective agreements that have already expired is widespread at various levels. However, the provisions of collective agreements are now outdated and do not reflect the current socio-economic situation, especially the presence of the lockdown restrictions, the spread of non-traditional forms of employment (remote, home-based work), forced downtime, unpaid leave, the need to ensure occupational safety during the pandemic of COVID-19 and war.

The untimely negotiations negatively characterize collective bargaining in wage regulation. It doesn't contribute to the development of social partnership and social dialogue.

The next indicator for assessing the development of the social partnership is the designation of officials responsible for implementing provisions by the sectoral agreement.

On the positive side, all agreements of the studied industries provide for a procedure for monitoring and reporting on the implementation of the regulations of the agreement, although some of them do not specify a clear procedure and deadlines for reporting.

One of the best practices is the procedure of control and reporting provided by the Sectoral Agreement of the chemical and petrochemical industry for 2017-2020. According to the procedure, enterprises submit information on the progress of the agreement implementation twice a year: for the first half of the year — until August 1 of the current year, and for the second half of the year — until March 1 of the following year. Reports on the implementation of the



agreement are discussed twice a year at joint meetings of the commissions, and if necessary, at a joint meeting of the board of the Ministry and the Presidium of the Central Council of the trade union.

Of all the analyzed agreements, only the sectoral agreements of the oil and gas industry and the coal industry specify the responsible persons. The sectoral agreement of the mining and metallurgical industry provides for the approval of the persons responsible for the agreement implementation within one month of signing the agreement. As for the rest of the agreements, they contain a standard expression that the parties are responsible for implementing the provisions, without specifying the officials.

The lack of provisions on the designation of officials responsible for implementing provisions may lead to non-compliance with provisions by the parties, reducing the effectiveness of the sectoral agreement as a legal act of social partnership. This, in turn, may lead to a decline in confidence in social partnership as a tool for regulating industrial relations, and wages in particular. The next indicator for assessing the development of the social partnership is the regulation by a sectoral agreement of norms on remuneration according to the legislation, in particular, the Law of Ukraine “On Collective Agreements and Contracts”.

The results of the assessment of the regulation of norms on remuneration according to the legislation by sectoral agreements in the studied industries are given in Table 3.

**Table 3. Regulation of Remuneration under Legislation, by Sectoral Agreements in the Industries Examined**

	Assessment (yes, no, partially)						
	Sectoral agreement of the machine-building and instrument-making industry for 2016-2020	Sectoral agreement of the chemical and petrochemical industry for 2017-2020	Sectoral agreement of the aviation industry for 2019-2020	Sectoral agreement of the energy and electric power industry for 2016-2018	Sectoral agreement of the oil and gas industry for 2012-2014	Sectoral agreement of the mining and metallurgical industry for 2011-2012	Sectoral agreement of the coal industry
Norms, which should be regulated by the sectoral agreement according to the Law of Ukraine «On Collective Agreements and Contracts»							
1. Minimum wage guarantees per the qualification based on a	-	-	-	-	-	-	-

unified wages scale							
2. Minimum amounts of additional payments and increases, taking into account the specifics, work conditions of professional groups and categories of employees	+	+	+	+	+	+	+
3. Minimum social guarantees, compensations, benefits	+	+	+	+	+	+	±
4. Utilities and amenities, medical, cultural services	±	+	+	+	+	+	+
5. Rehabilitation and recreation	±	+	+	+	+	+	+
6. Conditions for the growth of wage funds	±	-	+	±	+	+	+
7. Inter-qualification (inter-job) ratios in labor remuneration	+	+	+	+	+	+	+
8. Ensuring equal rights and opportunities for women and men	+	+	+	-	-	+	-
Percentage of norms regulated by the sectoral agreement, %	50	75	87.5	62.5	75	87.5	62.5

Source: Compiled by the authors, 2023.

According to this indicator, the best provisions are declared in sectoral agreements of the aviation industry and the mining and metallurgical industry, which regulate 87.5% of the norms provided by the law. The worst situation is in the coal and machine-building and instrument-making industries: only half of the norms on wages are regulated by sectoral agreements.

All sectoral agreements regulate the minimum amounts of additional payments and increases, considering the specifics, and work conditions of professional groups, and categories of employees.

Also, all sectoral agreements contain tariff scales and salary plans, and therefore the norm on the settlement of inter-qualification (inter-job) ratios in labor remuneration is fully implemented. However, no sectoral agreement provides a unified wage scale for all categories and occupational groups of workers in the industry.

Sectoral agreements of the studied industries fully/partially regulate such issues of wages and social security as minimum social guarantees, utilities, rehabilitation, recreation, medical, and cultural services.

The practice of duplicating legislative norms and norms of the general agreement by sectoral agreements cannot be considered positive. Enterprises

are obliged to comply with legal norms, regardless of whether the sectoral agreement provides them. In this regard, we consider that sectoral agreements should include only those rules that expand the list of guarantees and incentives or offer higher payments.

The practice of appealing to the regulation of relevant norms by collective agreements at enterprises is widespread, which indicates the processes of decentralization of collective wage bargaining from the sectoral to the organizational level.

The number of obligations of the social parties is an important indicator. A comparison of the number of obligations on wages and social security in the agreements of studied industries is given in Table 4.

**Table 4. Comparison of the Number of Obligations on Wages and Social Security in the Agreements of the Industries Examined**

Agreements	Number of joint commitments / parties agreed	The number of obligations of the employers	The number of obligations of the trade unions	The total number of obligations
Sectoral agreement of the machine-building and instrument-making industry for 2016-2020				
wage obligations	8	18	2	28
social security obligations	6	1	3	10
total number	14	19	5	38
Sectoral agreement of the chemical and petrochemical industry for 2017-2020				
wage obligations	-	26	-	26
social security obligations	-	21	-	21
total number	-	47	-	47
Sectoral agreement of the aviation industry for 2019-2020				
wage obligations	1	35	6	42
social security obligations	-	34	9	43
total number	1	69	15	85
Sectoral agreement of the energy and electric power industry for 2016-2018				
wage obligations	5	33	2	40
social security obligations	-	21	6	27
total number	5	54	8	67
Sectoral agreement of the oil and gas industry for 2012-2014				
wage obligations	2	38	3	43
social security obligations	20	17	3	40
total number	22	55	6	83
Sectoral agreement of the mining and metallurgical industry for 2011-2012				
wage obligations	3	23	3	29
social security obligations	5	20	7	32
total number	8	43	10	61
Sectoral agreement of the coal industry				
wage obligations	2	39	1	42
social security obligations	6	7	3	16
total number	8	46	4	58

Source: compiled by the authors, 2023.

According to the data in Table 4, agreements in the aviation industry and oil and gas industry contain the largest number of obligations and the smallest number – in the agreement of the machine-building and instrument-making industry. If we analyze the number of obligations in terms of specific subjects of industrial relations, we see that there are too many joint agreements of the parties in the sectoral agreement of the oil and gas industry. This practice cannot be considered successful in terms of the personification of those responsible for the implementation of the obligations.

It is necessary to pay attention to the small number or absence (in the agreement of the chemical and petrochemical industry) of trade union obligations, which undermines their role in regulating wages. In this respect, the best practice in the aviation industry can be considered, as the sectoral agreement provides for a maximum (15) number of trade union obligations on wages. However, the share of trade union obligations in the total number remains very small at 18%.

The ratio of the number of specific obligations to the total number of obligations of the social parties on wages and social security according to the sectoral agreements is given in Table 4.

**Table 5. Ratio of the number of specific obligations to the total number of obligations of the social parties on wages and social security according to the sectoral agreements**

Agreements	Specific obligations		General obligations	
	number	% of the total	number	% of the total
Sectoral agreement of the machine-building and instrument-making industry for 2016-2020	22	58	16	42
Sectoral agreement of the chemical and petrochemical industry for 2017-2020	42	89	5	11
Sectoral agreement of the aviation industry for 2019-2020	72	85	13	15
Sectoral agreement of the energy and electric power industry for 2016-2018	56	84	11	16
Sectoral agreement of the oil and gas industry for 2012-2014	63	76	20	24
Sectoral agreement of the mining and metallurgical industry for 2011-2012	53	87	8	13
Sectoral agreement of the coal industry	43	74	15	26

Source: compiled by the authors, 2023.

According to the given data, the most successful in this indicator is the practice in the chemical and petrochemical industries and the mining and metallurgical industry. Among the least successful is the practice of regulating wages in the

machine-building and instrument-making industry, where only 58% of commitments are specific.

Some provisions of sectoral agreements are vague, and generic, and do not contain specific mechanisms for implementing the commitments. There is a lack of personification of responsible persons.

The following group of indicators characterizes the specific wage commitments of the social parties. The first indicator is the obligations of the parties to wage growth in the sectoral agreement.

The highest growth rates of wages are declared in the sectoral agreement of the oil and gas industry – 125% annually based on the financial capabilities of enterprises, but not below the level established by the general agreement. The agreement provides for an increase in wages by at least 16% annually after its expiration. Because the agreement was signed for 2012-2014, the rule of 16 per cent growth in average wages annually is now in force.

The sectoral agreement of the mining and metallurgical industry provides for an annual increase in average wages of at least 18% provided based on the rising efficiency of production.

The parties of the agreement of the aviation industry have pledged to raise wages by at least 10% above official inflation, twice a year. Thus, among the studied industries, the obligations of the parties to this agreement are the highest (considering the term of the agreement, the amount, and the frequency of wage increases).

Sectoral agreements of the machine-building and instrument-making, and the coal industries provide for the obligation to increase the basic wage taking into account the growth of the minimum wage at the legislative level.

The sectoral agreement in the energy and electric power industry also does not specify the size of the increase in wages. The agreement defines the factors that should affect wage growth: macroeconomic indicators set by the government, labor market conditions, financial resources, production and financial and economic indicators of the enterprise, the norms of the general agreement, and current legislation.

The sectoral agreement of the chemical and petrochemical industry does not contain obligations of the social parties to increase wages, which reduces the effectiveness of the agreement as a tool to ensure decent work, including decent wages.

The next important indicator is the obligation to increase the share of wages in gross expenditures.

More than half of the sectoral agreements (in the machine-building and instrument-making, aviation, energy and electric power, and oil and gas industries) contain commitments of the parties to increase the share of wages in gross expenditures.

At the same time, only the sectoral agreement of the aviation industry specifies the target indicators of the share of wages in gross expenditures: industrial enterprises reaching at least 25%, and research, design, and technology enterprises — at least 30%.

The lack of target indicators does not contribute to the proper implementation of obligations by the parties, especially by the employers.

The following group of indicators characterizes the commitment of the social parties to regulate basic wages. A comparison of the obligations of the social parties to regulate the basic wage according to the sectoral agreements is given in Table 6.

**Table 6. Comparison of obligations of the social parties to regulate the basic wage according to the sectoral agreements**

Agreements	Share of basic salary in the remuneration, %	The ratio of the basic wage of the worker of the 1st category and the minimum wage provided by law, %	Range of 6-category tariff scale for workers (maximum if there are several tariff scales)	Range of salary scale for managers and specialists (maximum if there are several salary scales)
Sectoral agreement of the machine-building and instrument-making industry for 2016-2020	70	100	2.0	3.3
Sectoral agreement of the chemical and petrochemical industry for 2017-2020	60	120	2.18	3.14
Sectoral agreement of the aviation industry for 2019-2020	65-70	150	2.2	3.0
Sectoral agreement of the energy and electric power industry for 2016-2018	70	130	2.7	8.0
Sectoral agreement of the oil and gas industry for 2012-2014	70	135	1.8	4.71
Sectoral agreement of the mining and metallurgical industry for 2011-2012	60	105	1.81	2.91
Sectoral agreement of the coal industry	70	there is no data for 2021	2.7	7.03

Source: compiled by the authors, 2023.



As for the share of basic salary in the remuneration, all agreements of the studied industries set this indicator at the level of 60-70%. It is a good practice, as the basic salary is a constant, stable part of the remuneration for work that the employer must pay employees if the monthly norm of working hours is completed. The high share of the basic salary allows for meeting the needs of workers in safety and security.

As for the ratio of the basic wage of the worker of the 1st category and the minimum wage provided by law, the aviation industry is in the lead on this indicator. The sectoral agreement of the aviation industry stipulates the basic wage of the worker of the 1st category at the level of 150% of the minimum wage provided by law. The lowest value of this indicator is in the sectoral agreement in the machine-building and instrument-making industry – 100%.

The sectoral agreement of the coal industry contains old data in monetary units for 2001, which does not allow for assessing the effectiveness of this indicator in current socio-economic conditions.

Regarding the ranges of tariff scale for workers, as shown in Table 6, sectoral agreements of oil and gas, mining, and metallurgical industries contain tariff scales for remuneration of workers with a range of less than 2. Sectoral agreements in the machine-building and instrument-making, chemical and petrochemical, aviation, and mining and metallurgical industries contain salary scales for managers and specialists with ranges of less than 4.

Such tariff and salary scales do not allow for objective differentiation of the basic salary depending on the complexity of duties and work, level of responsibility, and the importance of certain positions and professions for the company and industry. Such remuneration systems do not perform a motivational function, as they do not encourage employees to improve their skills, grow professionally, or perform more complex and responsible work.

The next indicator is the difference between the basic salaries of workers and specialists of two related categories. This difference must be at least 10%, so-called the sensitivity threshold, which is the minimum difference. The difference in the size of salaries below the sensitivity threshold does not allow considering the difference in the complexity of duties, in the level of responsibility, thus ensuring objective differentiation of basic salary.

The analysis showed that none of the agreements in the studied industries includes tariff and salary scales which provide the sensitivity threshold to the basic salary of all categories and occupational groups of employees. It means that none of the wage systems regulated by the agreements of the studied industries provides an objective differentiation of the basic salary.

The analysis of sectoral agreements also showed that none of them employs analytical methods for assessing positions and jobs during the development of tariff and salary scales. The lack of appropriate tools for measuring the

complexity and importance of work and responsibilities does not allow for designing effective remuneration systems.

Effective remuneration systems are flexible. They allow individualizing the basic salary depending on the competencies of employees, their achievements, work experience (as an indicator of their loyalty to the enterprise), and work results.

The analysis of agreements in the studied industries showed that agreements of the energy, electrical, and coal industries contain flexible remuneration systems. It is a positive practice in terms of encouraging employees to improve competencies and performance and stay longer in the enterprise or industry. However, these agreements do not develop criteria for establishing the basic salary of employees within the developed ranges. The agreements also do not contain recommendations for managers of enterprises to develop such criteria to prevent the subjectivity of managers in setting the basic salary of employees within the ranges.

The next indicator for assessing the development of the social partnership is the compliance of the list, amount, and procedure for payment of additional payments and increases to the legal norms and norms of the general agreement.

The analysis of agreements of the studied industries showed that the list, amounts, and procedures for payment of additional payments and increases comply with the legal norms and norms of the general agreement. A comparative analysis has shown that they are practically identical, except for certain industry-specific payments. Although sectoral agreements may contain additional obligations of the social parties on wages and higher amounts of various benefits, almost all agreements duplicate the list of additional payments and increases provided by the general agreement.

The following indicator reflects the spread of stock options and profit-sharing plans. Stock options and profit-sharing plans increase employees' involvement in the performance and collective results, team spirit, and loyalty to the company, and, consequently, reduce staff turnover. It, in turn, contributes to the development of corporate culture, the core values of which are recognition of the importance of each employee, teamwork, and loyalty to the enterprise. The lack of obligations of the social parties to implement such plans does not contribute to the development of the social partnership.

Among the studied industries, no agreement provides for obligations or recommendations for employers to implement stock options and profit-sharing plans. The obligation of the social parties to introduce social packages and social insurance programs is also an important indicator.

The analysis showed that only the agreement of the aviation industry provides for the introduction of social packages in enterprises. Although other ones do

not contain such obligations, they include a significant number of provisions for providing various social benefits to employees (Table 3). The commitment of the social parties to the social security of workers indicates that management not only seeks to maximize profits but also attaches great importance to meeting the social needs of employees, creating decent working conditions, and preserving and enriching human capital. It also shows that employers understand the importance of social benefits for developing long-term partnerships with employees. The assessment of the parties' obligations to implement social insurance programs in the enterprises of the studied industries is given in Table 7.

**Table 7. The assessment of the parties' obligations to implement social insurance programs in the enterprises of the studied industries**

Agreements	Insurance programs				Total number
	medical	pension	Accident	unemployment	
Sectoral agreement of the machine-building and instrument-making industry for 2016-2020	-	-	-	-	0
Sectoral agreement of the chemical and petrochemical industry for 2017-2020	+	-	+	+	3
Sectoral agreement of the aviation industry for 2019-2020	+	+	+	-	3
Sectoral agreement of the energy and electric power industry for 2016-2018	+	+	-	-	2
Sectoral agreement of the oil and gas industry for 2012-2014	-	+	-	-	1
Sectoral agreement of the mining and metallurgical industry for 2011-2012	+	+	+	-	3
Sectoral agreement of the coal industry	-	-	-	-	0

Source: compiled by the authors, 2023.

According to the data in Table 7, only two agreements (in the machine-building and instrument-making and the coal industries) do not contain obligations of providing insurance programs for employees. The most common insurance programs are medical and pension. Unemployment

insurance is not widespread: only the agreement of the chemical and petrochemical industry provides this type of insurance.

The next indicator is the obligations of the social parties on providing gender equality in wages. The importance of this indicator is related to Ukraine's integration into the European community which requires the development of all social institutions and processes on democratic principles that prevent any discrimination, including one related to gender. In this regard, social partnership institutions should introduce tools that eliminate any discrimination and help reduce the gender pay gap. According to the data in Table 3, not all agreements contain obligations of the social parties to ensure equal rights and opportunities for women and men, and therefore gender equality in wages. The absence of such commitments negatively characterizes the state of social partnership development. The next indicator is the rate of coverage of employees by collective agreements on the organizational level. The rate of coverage of employees by collective agreements is given in Table 8. It should be noted that the State Statistics Service of Ukraine provides statistical information on industries according to the national classification of economic activities. In this regard, in Table 8 names of industries are slightly different from the names contained on the website of the service. In addition, the State Statistics Service of Ukraine<sup>63</sup> does not publish data separately for the aviation industry, and the data are provided for the transport industry as a whole. According to the data, there is a high rate of coverage of employees by collective agreements in the studied industries: more than the average in the economy of Ukraine. The highest coverage rate is in the aviation industry (96.4%), and the lowest is in the mining and metallurgical industry (78.9%).

**Table 8. Rate of coverage of employees by collective agreements on the organizational level in 2021**

Industries	Number of employees covered by collective agreements on the organizational level, % of the number of full-time employees
Economy of Ukraine	71.8
Machine-building and instrument-making industry	79.8
Chemical and petrochemical industry	80.8
Aviation industry	96.4
Energy and electric power industry	92.1
Oil and gas industry	94.5
Mining and metallurgical industry	78.9
Coal industry	94.9

Source: compiled according to data (State Statistics Service of Ukraine, 2020).

<sup>63</sup> State Statistics Service of Ukraine. Statistical information.

#### *4.2. Calculation of an Integrated Index of the Development Rate of the Social Partnership in Wage Regulation*

The initial information for the calculation of an integrated index of the development rate of the social partnership in wage regulation is given in Table 9.

**Table 9. Initial Information for the Calculation of an Integrated Index of the Development Rate of the Social Partnership in Wage Regulation**

Indicators	Standard	X max	X min
1	Yes	-	-
2	Yes	-	-
3	Yes	-	-
4	Yes	-	-
5	→ max (100)	87.5	50
6	→ max	85	38
7	→ max (100)	89	58
8	→ max ( $\geq 110$ )	121	116
9	Yes	-	-
10	→ max ( $> 60$ )	70	60
11	→ max ( $\geq 110$ )	150	100
12	$\geq 2$	6.35	1.8
13	$\geq 4$	8.0	2.91
14	$\geq 10$	-	-
15	Yes	-	-
16	Yes	-	-
17	Yes	-	-
18	Yes	-	-
19	Yes	-	-
20	yes (→ max)	3	0
21	Yes	-	-
22	→ max (100)	96.4	78.9

Source: compiled by the authors, 2023.

The calculation of an integrated index of the development rate of the social partnership in wage regulation in the studied industries is given in Table 10.

**Table 10. Calculation of an Integrated Index of the Development Rate of the Social Partnership in Wage Regulation in the Industries Considered**

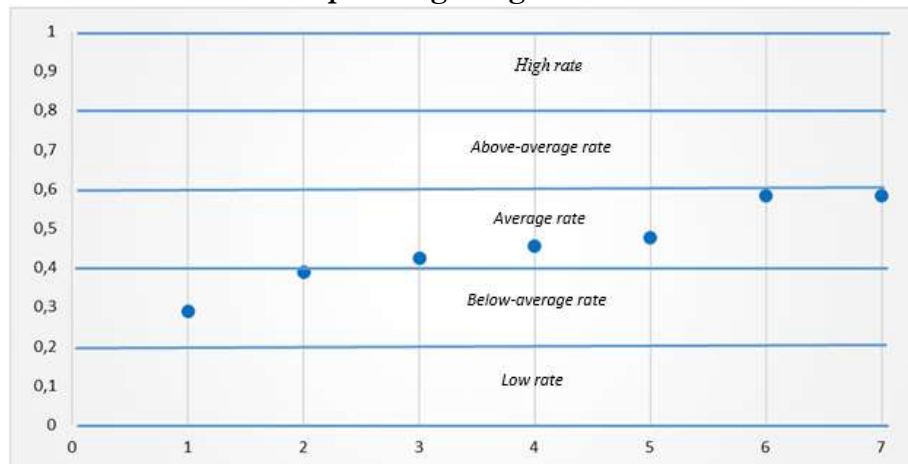
Indicators	Individual indices (Ii)						
	Machine-building and instrument-making	Chemical and petrochemical industry	Aviation industry	Energy and electric power industry	Oil and gas industry	Mining and metallurgical industry	Coal industry
1	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
2	0.0000	1.0000	0.0000	1.0000	1.0000	0.0000	0.0000
3	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
4	0.0000	1.0000	0.0000	0.0000	0.0000	1.0000	1.0000
5	0.0000	0.6667	1.0000	0.3333	0.6667	1.0000	0.3333
6	0.0000	0.1915	1.0000	0.6170	0.9574	0.4894	0.4255
7	0.0000	1.0000	0.8710	0.8387	0.5806	0.9355	0.5161
8	0.5000	0.0000	1.0000	0.5000	0.5000	0.5000	0.5000
9	1.0000	0.0000	1.0000	1.0000	1.0000	0.0000	0.0000
10	1.0000	0.0000	0.5000	1.0000	1.0000	0.0000	1.0000
11	0.0000	0.4000	1.0000	0.6000	0.7000	0.1000	0.0000
12	0.2222	0.4222	0.4444	1.0000	0.0000	0.0111	1.0000
13	0.0766	0.0452	0.0177	1.0000	0.3536	0.0000	0.8094
14	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
15	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
16	0.0000	0.0000	0.0000	1.0000	0.0000	0.0000	1.0000
17	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
18	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
19	0.5000	0.5000	1.0000	0.5000	0.5000	0.5000	0.5000
20	0.0000	1.0000	1.0000	0.6667	0.3333	1.0000	0.0000
21	1.0000	1.0000	1.0000	0.0000	0.0000	1.0000	0.0000
22	0.0514	0.1086	1.0000	0.7543	0.8914	0.0000	0.9143
Integrated index	0.2886	0.4243	0.5833	0.5823	0.4765	0.3880	0.4545

Source: compiled by the authors

### ***4.3. Clustering of Industries according to the Development Rate of the Social Partnership in Wage Regulation***

The clustering of industries according to the development rate of the social partnership in wage regulation is shown in Fig. 1.

**Figure 1. Clustering of Industries according to the Rate of Development of the Social Partnership in Wage Regulation**



Source: compiled by the authors, 2023. Note: 1 – Machine-building and instrument-making, 2 – Mining and metallurgical industry, 3 – Chemical and petrochemical industry, 4 – Coal industry, 5 – Oil and gas industry, 6 – Energy and electric power industry, 7 – Aviation industry.

The evaluation results showed that none of the studied industries is in the clusters with high and above-average social partnership development rates. Most of them are at an average rate. The chemical, petrochemical, and coal industries found themselves in a cluster with a below-average rate.

The situation in the aviation and energy and electric power industries is the most favorable concerning developing the social partnership in wage regulation. The lowest rate has the machine-building and instrument-making industry.

Each of the studied industries has at least five indicators of an individual index at the level of the maximum value (1.0000). The largest number of indicators with the maximum values of individual indices was recorded in the aviation industry — 11, which is 50% of the total. Most industries have maximum values of individual indices for 5-6 indicators. This indicates that each of the studied industries has its own best practices for the development and implementation of remuneration policies based on social partnership, which should be extended to the other industries.

At the same time, all studied industries have at least six indicators with individual indices of zero value, which indicates the presence of weaknesses in wage policies. The machine-building and instrument-making industry have the most indicators with the minimum value of indices – 12, which is more than 50% of the total. The energy and electric power industry has the lowest

number of indicators with zero values of individual indices – 6, which is still too high.

Policymakers and social parties (employers' organizations, trade unions) should focus primarily on the indicators with the lowest, including zero values of individual indices.

#### ***4.4. Assessment of the Impact of the Social Partnership Development on the Material Well-being of Employees***

We propose to assess the material well-being of employees in the studied industries by the following indicators:

- 1) wage growth rates in the industry during 2018-2020;
- 2) the ratio of average wages in the industry to the average rate of wages in the economy;
- 3) the share of the basic salary in the wage fund of the industry;
- 4) arrears of wages per 1 employee in the industry;
- 5) the ratio of women's wages to men's wages.

Indicators that characterize material well-being in the studied industries are given in Table 11.



**Table 11. Indicators that Characterize Material Well-being in the Industries Selected**

	Wage growth rates in the industry during 2018-2020, %	The ratio of average wages in the industry to the average wage in the economy in 2020	The share of the basic salary in the wage fund of the industry, %	Arrears of wages per 1 employee in the industry as of 01.01.2021	The ratio of women's wages to men's wages, %
Machine-building and instrument-making	128	0.94	54.7	5711.87	78.8
Chemical and petrochemical industry	141	1.07	60.3	1668.59	77.6
Aviation industry	61	1.87	53.7	443.05	89.7
Energy and electric power industry	155	1.44	55.3	165.43	80.6
Oil and gas industry	135	1.45	50.1	1853.01	61.5
Mining and metallurgical industry	126	1.2	55.3	1193.28	76.7
Coal industry	129	1.35	42	3310.64	47.2

Source: compiled by the authors, 2023.

To calculate an integrated index of the material well-being of employees in the industry, we use the method of assessing an integrated index of the development rate of the social partnership in wage regulation. The individual index of the indicator of arrears of wages is calculated by the formula

$$I_i = \frac{[X_{actual} - X_{max}]}{[X_{min} - X_{max}]} \quad (4)$$

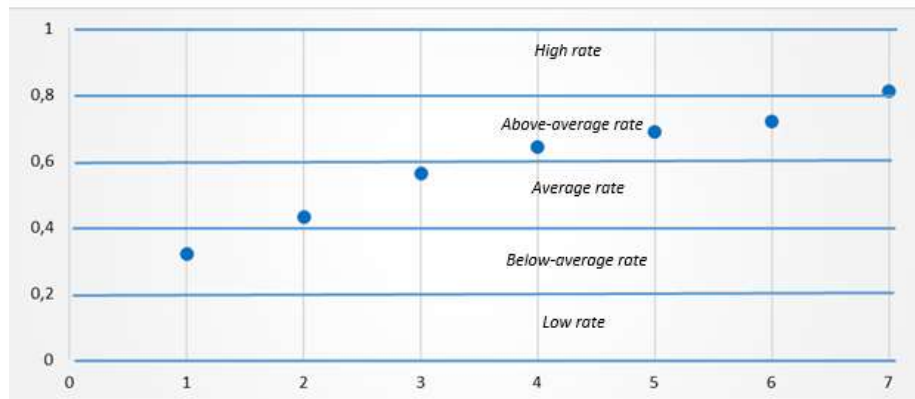
To calculate the individual indices for other indicators that characterize the material well-being we used formula (1). The results of calculating the integrated index of the employees' material well-being in the studied industries are given in Table 12.

**Table 12** The results of calculating the integrated index of the employees' material well-being in the studied industries

Indicator	Single index						
	Machine-building and instrument-making	Chemical and petrochemical industry	Aviation industry	Energy and electric power industry	Oil and gas industry	Mining and metallurgical industry	Coal industry
1	0.7128	0.8511	0.0000	1.0000	0.7872	0.6915	0.7234
2	0.0000	0.1398	1.0000	0.5376	0.5484	0.2796	0.4409
3	0.6940	1.0000	0.6393	0.7268	0.4426	0.7268	0.0000
4	0.0000	0.7290	0.9499	1.0000	0.6957	0.8147	0.4329
5	0.7435	0.7153	1.0000	0.7859	0.3365	0.6941	0.0000
Integrated index	0.4301	0.6870	0.7179	0.8101	0.5621	0.6413	0.3194

Source: compiled by the authors, 2023.

The clustering of industries according to the value of the employees' material well-being is shown in Fig. 2.

**Figure 2. Clustering of Industries According to the Value of Employees' Material Well-Being**

Source: compiled by the authors. Note: 1 – Coal industry, 2 – Machine-building and instrument-making, 3 – Oil and gas industry, 4 – Mining and metallurgical industry, 5 – Chemical and petrochemical industry, 6 – Aviation industry, 7 – Energy and electric power industry.

According to the integrated index of the material well-being value, the studied industries differ considerably. The energy and electric power industry is in the cluster with a high rate of material well-being, and the coal industry has a below-average value. The classification of industries according to the development rate of the social partnership and the employees' material well-being is given in Table 13.

**Table 13. Classification of Industries according to the Development Rate of the Social Partnership and Employees' Material Well-being**

The rate of material well-being	The development rate of the social partnership in wage regulation				
	Low	Below average	Average	Above average	High
Low	-	-	-	-	-
Below average	-	-	coal industry	-	-
Average	-	machine-building and instrument-making	oil and gas industry		
Above average	-	mining and metallurgical industry	chemical and petrochemical industry, aviation industry	-	-
High	-	-	energy and electric power industry	-	-

Source: compiled by the authors, 2023.

The correlation coefficient calculated between the social partnership's development rate and employees' material well-being is equal to 0.59. It indicates a high positive correlation between these indicators. Thus, we can state that the development of the social partnership in wage regulation has a positive effect on the level of employees' material well-being in general.

We also assessed the impact of the development rate of the social partnership on separate indicators that characterize the rate of material well-being. The tightest positive correlations are with the following ones:

The ratio of average wages in the industry to the average wage in the economy (correlation coefficient equals 0.87);

Arrears of wages (more precisely their absence) per 1 employee (correlation coefficient — 0.82).

There is a low positive correlation between the development rate of the social partnership and the ratio of women's wages to men's ones (correlation coefficient equals 0.17). The social partnership can have little effect on reducing the gender pay gap.

There is almost no relationship between the development rate of the social partnership and the share of basic wages in the wage fund (the correlation coefficient is 0.09).

A low negative correlation is between the development rate of the social partnership and the wage growth rates in the industry (correlation coefficient equals -0.27).

## 5. Discussion

It is necessary to note some limitations of this study. While the degree of fulfillment of obligations by social parties is an important indicator, the practice of publishing reports by the social parties on the implementation of commitments included in sectoral agreements in Ukraine is absent. It is impossible to check the degree of implementing obligations of a general (non-specific) nature. Fulfillment of some obligations should be studied separately at each enterprise in the industry. However, we made the evident conclusion that social parties have fulfilled not all commitments. We made this conclusion based on the fact that all agreements contain obligations of parties to solve problems with arrears of wages. However, the analysis of the data of the State Statistics Service of Ukraine showed that all industries had wage arrears. Due to the lack of complete information on the extent to which the social parties comply with the provisions of sectoral agreements, this indicator was not taken into account when calculating the integrated index.

We have accepted in the methodology for assessing the development rate of the social partnership in wage regulation that the proposed indicators are equivalent. However, it would be reasonable to determine the significance of indicators using the expert method, which should be the next area of research and improvement of the methodology.

Essential indicators that characterize the employees' material well-being, and in particular the fair income distribution, are indicators of estimating wage differentiation — Gini and decile coefficients. Due to the lack of statistical information on these indicators by industries, we did not consider them when assessing the correlation between the development rate of the social partnership and the employees' material well-being.

The research methodology on the development rate of the social partnership can be changed and adapted according to the research purposes and tasks, information base, and target priorities of the social and economic development of industries. Due to the decentralization of regulation of industrial relations, it is also necessary to adapt the methodology for studying developing social partnerships at the micro-level.

The developed methodology focuses on assessing the rate of development of traditional industrial relations and does not consider such current trends in the labor market as non-standard (precarious) employment, work from home, or remote work, and therefore the specifics of industrial relations and remuneration of such employees.

## 6. Conclusions

As a result of the assessment of the development rate of the social partnership in wage regulation in industries, positive and negative characteristics were identified.

Among the positive characteristics are recognition of the agreement as a legal act of social partnership by all parties; the existence of a procedure for monitoring and reporting on the implementation of the social parties' obligations; the presence in some agreements of the parties' obligations to increase the share of wages in gross expenditures, to introduce social packages and social insurance programs at enterprises; high level of coverage of employees by collective agreements.

Characteristics that negatively describe social partnership in the studied industries include delays in signing sectoral agreements; lack of personification of responsible officials for implementing provisions in most sectoral agreements; unregulated part of the norms on the remuneration according to the legislation; low share of trade union commitments; a significant share of general (non-specific) obligations of the social parties; unsatisfactory differentiation of the basic salary; the limited practice of using modern remuneration systems, employee participation in *stock options and profit-sharing plans*.

The evaluation results showed that none of the studied industries is in the clusters with high and above-average social partnership development rates. Most of them are at an average rate. The situation in the aviation and energy and electric power industries is the most favorable concerning developing the social partnership in wage regulation. Each of the studied industries has inherent best practices for developing remuneration policies based on social partnership.

The analysis showed a high positive correlation between the social partnership's development rate and employees' material well-being. Thus, we can state that the development of the social partnership in wage regulation has a positive effect on the level of material well-being of employees in general.

The tightest positive correlations are between the development rate of the social partnership and such indicators as the ratio of average wages in the

industry to the average wage in the economy and arrears of wages (more precisely their absence) per 1 employee.

This study showed a fairly high potential effectiveness of social partnership instruments in regulating wages at the sectoral level. Policymakers and social parties (organizations of employers, trade unions) should study and disseminate best practices in developing and implementing policies of wages regulation based on social partnership, which is crucial for strengthening trust in the institution of social partnership and the ability of parties to create the conditions for decent work.

## 7. References

Addison, J.T. et. al. The demise of a model? The state of collective bargaining and worker representation in Germany. *Economic and Industrial Democracy*, 38, Is. 2, (2017): 193-234. <https://doi.org/10.1177/0143831X14559784>.

Alsos, K., Nergaard, K. & Van Den Heuvel, A. Collective bargaining as a tool to ensure a living wage. Experiences from the Nordic countries. *Transfer: European Review of Labor and Research*, 25, Is. 3, (2019): 351-365. <https://doi.org/10.1177/1024258919861202>.

Amable, B. The Political Economy of the Neoliberal Transformation of French Industrial Relations. *ILR Review*, 69, Is. 3, (2016): 523-550. <https://doi.org/10.1177/0019793916630714>.

Anker, R. et. al. Measuring decent work with statistical indicators: Working Paper. International Labor Office, Geneva. Is. 2, 2002. [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_079089.pdf/](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079089.pdf/) (Accessed on 19 March 2022)

Anner, M., Fischer-Daly, M. & Maffie, M. Fissured Employment and Network Bargaining: Emerging Employment Relations Dynamics in a Contingent World of Work. *ILR Review*, 74, Is. 3, (2020): 689-714. <https://doi.org/10.1177/0019793920964180>.

Arnholtz, J., Meardi, G. & Oldervoll, J. Collective wage bargaining under strain in northern European construction: Resisting institutional drift? *European Journal of Industrial Relations*, 24, Is. 4, (2018): 341-356. <https://doi.org/10.1177/0959680118790816>.

Bernaciak, M. Coming full circle? Contestation, social dialogue and trade union politics in Poland. Rough waters – European trade unions in a time of crises. European Trade Union Institute, (2017): 161-183. <https://www.etui.org/sites/default/files/07%20Contestation%2C%20social%20dialogue%20Poland.pdf>.

- Blažienė, I., Kasiliauskas, N. & Guobaitė-Kiršlienė, R. Lithuania: will new legislation increase the role of social dialogue and collective bargaining? *Collective Bargaining in Europe: towards an endgame* / edited by Müller, T., Vandaele, K. & Waddington, J. Brussels: *European Trade Union Institute*, 2, (2019): 381-401. <https://epublications.vu.lt/object/elaba:42892992/>.
- Blumkin, T., Pinhas, H. & Zultan, R. Wage Subsidies and Fair Wages. *European Economic Review*, 127, (2020). <https://doi.org/10.1016/j.euroecorev.2020.103497>.
- Bonnet, F., Figueiredo, J. & Standing, G. A family of decent work indexes. *International Labor Review*, 142, Is. 2, (2003): 213-238. <https://doi.org/10.1111/j.1564-913X.2003.tb00259.x>.
- Bosch, G. Shrinking collective bargaining coverage, increasing income inequality: A comparison of five EU countries. *International Labor Review*, 154, Is. 1, (2015): 57-66. <https://doi.org/10.1111/j.1564-913X.2015.00226.xm>.
- Braakmann, N. & Brandl, B. *The Efficacy of Hybrid Collective Bargaining Systems: An Analysis of the Impact of Collective Bargaining on Company Performance in Europe*. MPRA Paper, 2016. <https://mpra.ub.uni-muenchen.de/70025/>.
- Brandl, B. & Braakmann, N. The effects of collective bargaining systems on the productivity function of firms: An analysis of bargaining structures and processes and the implications for policy making. *Industrial Relations*, 52, (2021): 218-236. <https://doi.org/10.1111/irj.12325>.
- Cornet, A. & Fatoux, F. Trade Unions and Social Dialogue: A Challenge for Diversity Management. *Management and Diversity. International Perspectives on Equality, Diversity and Inclusion*, 4, (2017): 231-254. <https://doi.org/10.1108/S2051-233320160000004012>.
- Culpepper, P.D. & Regan, A. Why don't governments need trade unions anymore? The death of social pacts in Ireland and Italy. *Socio-Economic Review*, 12, Is. 4, (2014): 723-745. <https://doi.org/10.1093/ser/mwt028>.
- Danylych, N., Poplavska, O. Social responsibility and social partnership in the 4th industrial revolution context: case of Ukraine. *REVESCO. Revista de Estudios Cooperativos*, 135, 2020. <https://dx.doi.org/10.5209/reve.69185>.
- Deakin, S. et. al. Are litigation and collective bargaining complements or substitutes for achieving gender equality? A study of the British Equal Pay Act. *Cambridge Journal of Economics*, 39, Is. 2, (2015): 381-403. <https://doi.org/10.1093/cje/bev006>.
- Doellgast, V. & Benassi, C. Collective bargaining. *Handbook of Research on Employee Voice*, (2020): 239-258. <https://doi.org/10.4337/9781788971188.00022>.
- Frandsen, B.R. The effects of collective bargaining rights on public employee compensation: evidence from teachers, firefighters, and police. *ILR Review*, 69, Is. 1, (2015): 84-112. <https://doi.org/10.1177/0019793915603068>.

- Galgóczi, B. Just transition on the ground: Challenges and opportunities for social dialogue. *European Journal of Industrial Relations*, 26, Is. 4, (2020): 367-382. <https://doi.org/10.1177/0959680120951704>.
- Ghai, D. Decent work: Concept and indicators. *International Labor Review*, 142, Is. 2, (2003): 113-145. <https://doi.org/10.1111/j.1564-913X.2003.tb00256.x>.
- Gumbrell-McCormick, R., & Hyman, R. Trade unions in Western Europe: Hard times, hard choices. Oxford University Press, 2013.
- Hayter, S. & Stoevska, V. Social Dialogue Indicators. International Statistical Inquiry 2008-09 Technical Brief. Geneva: ILO, 2011.
- Hetmantseva, N. Social partnership as a way to integrate the interests of social actors. *Entrepreneurship, Economy and Law*, Is. 3, (2016): 82-86.
- Hirsch, D. The 'living wage' and low income: Can adequate pay contribute to adequate family living standards? *Critical Social Policy*, 38, Is. 2, (2018): 367-386. <https://doi.org/10.1177/0261018317729469>.
- Hyman, R. What future for industrial relations in Europe? *Employee Relations*, 40, Is. 4, (2018): 569-579. <https://doi.org/10.1108/ER-02-2018-0056>.
- Ibsen, C. & Keune, M. Organised Decentralisation of Collective Bargaining: Case studies of Germany, Netherlands and Denmark. OECD Social, Employment and Migration Working Papers. No. 217, OECD Publishing, Paris, 2018. <https://doi.org/10.1787/f0394ef5-en>.
- Jonker-Hoffrén, P. Finland: goodbye centralised bargaining? The emergence of a new industrial bargaining regime. *Collective bargaining in Europe: towards an endgame*, 1. Brussels, ETUI, (2019): 197-215.
- Karynov, C. et al. Concept, essence and significance of social partnership in the general history of law. *Journal of Positive School Psychology*, 6, Is. 6, (2022): 4821-4824.
- Katovich, E. & Maia, A. The relation between labor productivity and wages in Brazil. *Nova Economia*, 28, Is. 1, (2018): 7-38. <https://doi.org/10.1590/0103-6351/3943>.
- Kenworthy, L. & Kittel, B. Indicators of Social Dialogue: Concepts and Measurements. ILO Working Paper No. 5, Available at SSRN, 2003. <http://dx.doi.org/10.2139/ssrn.907429>.
- Kolot, A. & Pavlovska, O. Social partnership as an institution for the formation of consolidated social responsibility: theoretical foundations. *Social economy*, Is. 1, (2013): 81-90.
- Kovač, C. Social partnership in occupational safety and health. *Safety engineering*, 7, Is. 2, (2017): 85-91.
- Lawrence, S. & Ishikawa, J. Social Dialogue Indicators: Trade Union Membership and Collective Bargaining Coverage, Statistical Concepts, Methods and Findings. International Labor Office Working Paper No. 59, 2005. <http://dx.doi.org/10.2139/ssrn.908206>.



- Lévesque, C. et al. Corporate Social Responsibility and Worker Rights: Institutionalizing Social Dialogue Through International Framework Agreements. *Journal of Business Ethics*, 153, (2018): 215-230. <https://doi.org/10.1007/s10551-016-3370-9>.
- Lucifora, C. & Origo, F. Performance-Related Pay and Firm Productivity: Evidence from a Reform in the Structure of Collective Bargaining. *ILR Review*, 68, Is. 3, (2015): 606-632. <https://doi.org/10.1177/0019793915570876>.
- Madhav, R. & Sankaran, K. Gender Equality and Social Dialogue in India. Working Papers, id:7237. eSocialSciences, 2015. <https://ideas.repec.org/p/ess/wpaper/id7237.html>.
- Mailand, M., & Due, J. Social dialogue in Central and Eastern Europe: Present state and future development. *European Journal of Industrial Relations*, 10, Is. 2, (2004): 179-197. <https://doi.org/10.1177/095968010404419>.
- Marginson, P. & Galetto, M. Engaging with flexibility and security: Rediscovering the role of collective bargaining. *Economic and Industrial Democracy*, 37, Is. 1, (2016): 95-117. <https://doi.org/10.1177/0143831X14538850>.
- Nelipa, D. Problems of institutionalisation of social partnership in Ukraine. Scientific Notes of the I.F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine, Is. 40, (2008): 197-205.
- Oberfichtner, M. & Schnabel, C. The German Model of Industrial Relations: (Where) Does It Still Exist? *Jahrbücher für Nationalökonomie und Statistik*, 239, Is. 1, (2019): 5-37. <https://doi.org/10.1515/jbnst-2018-0158>.
- Ozturk, M. et al. How effective are labor wages on labor productivity? An empirical investigation on the construction industry of New Zealand. *Technological and Economic Development of Economy*, 26, Is. 1, (2020): 258-270. <https://doi.org/10.3846/tede.2020.11917>.
- Pallini, M. Italian Industrial Relations: Toward a Strongly Decentralized Collective Bargaining. *Comparative Labor Law & Policy Journal*, 38, Is. 1, (2016): 1-12.
- Parliament of Ukraine. On Collective Agreements and Contracts. The Law of Ukraine, dated 01.07.1993, № 3356. <https://zakon.rada.gov.ua/laws/show/3356-12>.
- Prins, P., Stuer, D. & Gielens, T. Revitalizing social dialogue in the workplace: the impact of a cooperative industrial relations climate and sustainable HR practices on reducing employee harm. *The International Journal of Human Resource Management*, 31, Is. 13, (2020): 1684-1704. <https://doi.org/10.1080/09585192.2017.142309>.
- Rocha, F. Strengthening the decentralisation of collective bargaining in Spain. Between the legal changes and real developments. Multi-employer bargaining under pressure. Decentralisation trends in five European countries. Brussels, European Trade Union Institute, (2018): 225-261.

- Rodríguez, C.J.F., Rojo R.I. & Lucio, M.M. Austerity and collective bargaining in Spain: The political and dysfunctional nature of neoliberal deregulation. *European Journal of Industrial Relations*, 22, Is. 3, (2016): 267-280. <https://doi.org/10.1177/0959680116643433>.
- Shambaugh, J. et al. Thirteen facts about wage growth. The Hamilton Project, 2017. [https://www.hamiltonproject.org/assets/files/thirteen\\_facts\\_wage\\_growth.pdf](https://www.hamiltonproject.org/assets/files/thirteen_facts_wage_growth.pdf).
- Signoretti, A. Analysis of Italian medium-sized enterprises' collective bargaining from an international perspective: Evidence from the manufacturing sector. *Economic and Industrial Democracy*, 37, Is. 4, (2016): 716-738. <https://doi.org/10.1177/0143831X14552201>.
- Somavia J. Address in the International Labor Conference, ILO (Geneva), 87th Session, 1.06.1999. [http://www.ilo.org/public/libdoc/ilo/P/09605/09605\(1999-87\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09605/09605(1999-87).pdf).
- Stanojević, M., Mrčela, A.K. & Breznik, M. Slovenia at the crossroads: Increasing dependence on supranational institutions and the weakening of social dialogue. *European Journal of Industrial Relations*, 22, Is. 3, (2016): 281-294. <https://doi.org/10.1177/0959680116643205>.
- State Statistics Service of Ukraine. Statistical information. <http://ukrstat.gov.ua>.
- Távora, I. & González, P. Labor market regulation and collective bargaining in Portugal during the crisis: Continuity and change. *European Journal of Industrial Relations*, 22, Is. 3, (2016): 251-265. <https://doi.org/10.1177/0267323116643210>.
- Teague, P. & Donaghey, J. Why has Irish Social Partnership Survived? *British Journal of Industrial Relations*, 47, (2009): 55-78. <https://doi.org/10.1111/j.1467-8543.2008.00706.x>.
- Trunova, H. The concept of social partnership at the present stage. *Scientific Bulletin of Chernivtsi University*, 282, (2005): 59-62.
- Tsybaliuk, S. & Shkoda, T. Labor remuneration in the healthcare sector of Ukraine in terms of decent work concept. *Employee Relations*, 44, Is.1, (2022): 191-209. <https://doi.org/10.1108/ER-10-2020-0477>.
- Turner, L. Social Partnership in Germany: Lessons for U.S. Labor and Management. *ILR Articles and Chapters*, 1993. <https://hdl.handle.net/1813/76106>.
- Uhlerová, M., The role of trade unions and social dialogue during the crisis: the case of Slovakia. *Central European Journal of Labor Law and Personnel Management*, 1, (2020): 61-76.

Villanueva, E. Employment and wage effects of extending collective bargaining agreements. IZA World of Labor, Institute of Labor Economics (IZA). Is. 136, 2015.

Zisimopoulos, I., Fagogenis, K. & Economakis, G. Decentralization of collective bargaining system in Greece: between dismantling, survival and restoration. *Proceedings of the International Conference of Political Economy*. June 25-28, 2019, Istanbul, Turkey, (2019): 249-259.

# 'Rights and Obligations' Approach in the Labour Markets of European Countries

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## Abstract

The paper analyses the functioning of the rights and obligations approach in the labour markets of European countries. After decades of labour market policies being aimed at the reduction of unemployment rates, more and more attention is being paid to labour force activation and rights and obligations approach. The conditionality of rights with obligations is based on the normative framework that regulates the rights and obligations of the unemployed and inactive. The analysis of the functioning of the rights and obligations approach, in this paper, is based on the comparison of the eligibility criteria for unemployment benefits, defined and calculated by the OECD and the calculated share of inactive persons registered in the employment offices of European countries.

**Keywords:** *Rights and obligations approach; activation policies in the labour market; eligibility criteria for unemployment benefits; Republic of Croatia; Labour Force Survey microdata.*

## 1. Introduction

Labour market policy has historically been primarily aimed at reducing unemployment with active labour market policy measures (ALMP). However,

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in recent decades, more and more attention has been paid to the activation of the workforce and the rights and obligations approach. The conditionality of rights with obligations is based on the normative framework governing the rights and obligations of the unemployed and inactive.<sup>1</sup>

Increasing orientations towards activation strategies<sup>2</sup> came after decades of extensive investment in active and passive policies. It became clear that such efforts were unsustainable. In addition to budget constraints, several meta-analyses<sup>3</sup> have shown numerous counter effects of ALMPs whereby the most expensive and ineffective interventions are those that "finance" exit from the labour market.

The "rights and obligations approach" has taken its turn in a number of countries. Papers in this context deal with the effectiveness of meetings with an employment counsellor,<sup>4</sup> as well as the effectiveness of a combination of

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<sup>1</sup> The terminology of labour market interventions in this paper is according to the methodology of Eurostat ("Labour market policy statistics, Methodology 2018", Bruxelles: European Commission.

<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8126&furtherPubs=yes> ). According to this methodology, labour market policies include active and passive interventions. Active policy interventions include labour market services and measures (ALMP), such as training or employment incentives, while the most prominent passive policy intervention is unemployment benefits. Passive labour market policy has a role in ensuring income during unemployment, and active in increasing employability and integration in the labour market.

<sup>2</sup> See in: P. Tergeist, D. Grubb, *Activation Strategies and the Performance of Employment Services in Germany, the Netherlands and the United Kingdom*, OECD Social, Employment and Migration Working Papers, 2006, No. 42, OECD Publishing, Paris, <https://doi.org/10.1787/341116536484>; OECD Employment Outlook 2007, Paris: OECD; OECD Employment Outlook 2013, Paris: OECD; OECD Employment Outlook 2015, Paris: OECD

<sup>3</sup> For instance: A. Dar, Z. Tzannatos, *Active labor market programs: a review of the evidence from evaluations*, Social Protection Discussion Paper Series, 1999, 9901. Washington, D.C.: World Bank; J.P. Martin, D. Grubb, *What works and for whom: a review of OECD countries' experiences with active labour market policies*, Swedish Economic Policy Review, 8(14), 2001, 9-56.; D. Card, J. Kluve, A. Weber, *Active labor market policy evaluations: a meta-analysis*, NBER Working Paper, 2010, 16173. Cambridge, MA: National Bureau of Economic Research; D. Card, J. Kluve, A. Weber *What Works? A Meta Analysis of Recent Active Labor Market Program Evaluations*, Journal of the European Economic Association, European Economic Association, 2018, vol. 16(3), pages 894-931.

<sup>4</sup> For instance: J.M. Pedersen, M. Rosholm, M. Svarer, *Experimental Evidence on the Effects of Early Meetings and Activation*, IZA Discussion Paper, 2012, 6970. Bonn: Institute for the Study of Labor.; S.T. Nyland Brodersen., S. Dimova, S., M. Rosholm, *Do caseworker meetings matter (in the long run)? A cyclical view of almps and individual labor market outcomes*, In *Essays on Job Search Assistance and Labor Market Outcomes* (PhD thesis of S. T. Nyland Brodersen), 2014, Denmark: Aarhus University.; J. Maibom, M. Rosholm, M. Svarer, *Experimental Evidence on the Effects of Early Meetings and Activation*, Scandinavian Journal of Economics, 2017, 00(00), 1-31.

job search monitoring and sanctions,<sup>5</sup> but also the performance of employment offices<sup>6</sup>. In the past twenty years, the OECD has intensively monitored the level of strictness of eligibility criteria for unemployment benefits.<sup>7</sup> In other words, it developed an analytical concept of measuring or quantifying the normative framework that governs the implementation of active and passive policies.

The objective of this paper is to provide an assessment of the functioning and implementation of rights and obligations approach across the European countries.<sup>8</sup> More detailed analysis and explanation of the results is based on the example of the Republic of Croatia. Namely, the correct implementation of rights and obligations is particularly important for labour markets which, despite the increase in demand for labour force, are still characterized by a high share of those who are able to work but are inactive. The best example of this can be seen in the labour market of the Republic of Croatia, which is characterized by a low labour market participation rate that varies very little,

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<sup>5</sup> For instance: P. Dolton, D. O'Neill, *The Long-Run Effects of Unemployment Monitoring and Work-Search Programs: Experimental Evidence from the United Kingdom*, *Journal of Labor Economics*, 2002, 20(2), 381-403; OECD Employment Outlook 2005, Paris: OECD; W. Eichhorst, R. Konle-Seidl, *Contingent Convergence: A Comparative Analysis of Activation Policies*, Discussion Paper, 2008, 3905, Bonn: Institute for the Study of Labor.

<sup>6</sup> For instance: *OECD Employment Outlook*, 2005; Tergeist and Grubb, 2006; A. Nunn, T. Bickerstaffe, B. Mitchel, *International review of performance management systems in Public Employment Services*, Research Report, 2010, 616. Department for Work and Pensions.

<sup>7</sup> See: D. Venn, *Eligibility Criteria for Unemployment Benefits: Quantitative Indicators for OECD and EU Countries*, *OECD Social, Employment and Migration Working Papers*, 2012, No. 131, OECD Publishing, Paris: OECD. <https://doi.org/10.1787/5k9h43kgkvr4-en>; H. Immervoll, S. Scarpetta, S. *Activation and employment support policies in OECD countries. An overview of current approaches*, *IZA Journal of Labor Policy*, 2012, Vol. 1/1, p. 9, <http://dx.doi.org/10.1186/2193-9004-1-9>. Bonn: Institute for the Study of Labor.; K. Langenbucher, *How demanding are eligibility criteria for unemployment benefits, quantitative indicators for OECD and EU countries*, *OECD Social, Employment and Migration Working Papers*, 2015, No. 166, OECD Publishing, Paris: OECD. <https://doi.org/10.1787/5jrxtk1zw8f2-en>; H. Immervoll, C. Knotz, *How demanding are activation requirements for jobseekers*, *OECD Social, Employment and Migration Working Papers*, 2018, No. 215, OECD Publishing, Paris: OECD. <https://doi.org/10.1787/2bdfecca-en>; H. Immervoll, C. Knotz, I. *Otmani Activity-related eligibility conditions for receiving unemployment benefits*, *OECD Report to the European Union*, 2020, Paris: OECD.

<sup>8</sup> Member states of the European Union and the United Kingdom (UK), Switzerland, Norway and Iceland.

regardless of the labour market trends,<sup>9</sup> and at the same time, has one of the strictest eligibility criteria in the world.<sup>10</sup>

The paper uses a unique and for the first time applied calculation applicable to large number of countries' assessment. The calculation is performed with Labour Force Survey (LFS) microdata obtained by Eurostat.<sup>11</sup> The main research question is do the systems and the legal frameworks governing the conditionality of rights with obligations for the unemployed and inactive in European countries actually and in practice allow individuals to be inactive, not search for a job, not comply with the obligations and at the same time be registered with the employment offices and benefit of certain rights?

The methodology of the analysis is based on a comparison of the coefficient of eligibility criteria for unemployment benefits as defined by the OECD,<sup>12</sup> and the levels of inactive persons registered at the employment offices of European countries, which are calculated based on the LFS microdata.

The most accurate description of this research is an exploratory study. The findings of this work can serve as a starting and useful point for further research into this highly interesting and relevant topic, but it is impossible to accurately assess the functioning of such a broad approach.

The paper consists of two main parts. The first part provides insight into the labour market developments and policies that preceded the rights and obligations approach as well as the practical aspects of the approach, implementation, basic procedure, core components and impact, while the Annex provides examples of the most prominent activation policies implemented worldwide. This chapter explains the current trends in measuring and quantification of the normative framework that governs the system of rights and obligations and proposes an assessment of the functioning. It answers the main research question of the paper. The second part proposes an

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<sup>9</sup> For the last decade Croatia had one of the lowest levels of labour force participation rate among EU27, i.e. in 2014 it was 71%, at the same time the average for EU27 was 76,4% and OECD 77,5%. In 2019 Croatia had was 71,3%, EU27 average was 78,3% and OECD 79,3% (age group 20-64). Source OECD.Stat, accessed 2.4.2023.

<sup>10</sup> Croatia's overall score of the OECD indicator is 4.17, with only one country (Malta) having higher score (4.33). Source: OECD.stat

<sup>11</sup> Access and use of microdata of the Labour Force Survey (LFS), for the purposes of this paper, was approved based on the scientific research project RPP 103/2020-LFS.

<sup>12</sup> The coefficient of eligibility criteria for unemployment benefits is based on a series of works, firstly by the ones done by Danish Ministry of Finance, author Hasselpflug in 1998, 2005 (Danish Ministry of Finance, *Availability Criteria in selected OECD countries*, Working Paper, 1998, no. 6; S. Hasselpflug, S. *Availability criteria in 25 countries*, Working Paper, 2005,12/2005. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. <https://doi.org/10.17848/tr07-022>), then Venn (2012), Langenbucher (2015), Immervoll and Knotz (2018, 2020).

explanation of the results of the second part, as it illustrates the reasons for the outcome of the individual example of the Republic of Croatia. Additionally, it provides detailed evidence of the impact of the strictness of criteria on the labour market outcomes in the Republic of Croatia.

## **2. Application of the Rights and Obligations Approach and Workforce Activation**

### ***2.1. Rights and Obligations Approach as a basis for the Activation***

The strive for labour activation is not new. Individuals’ reliance and dependence on the State had often occurred over the years as a consequence of certain employment policies. The first example of such intervention, that directly created jobs, can be traced back to the 1930’s in the United States during the Great Recession. According to most authors,<sup>13</sup> it was the first large-scale intervention in the labour market.

Another policy from the past that brought even greater dependence on the state was the one from the seventies and eighties of the last century. This was again encouraged by the high unemployment. At that time, intending to decrease labour supply, governments encouraged workers of a certain age to retire early.<sup>14</sup> This resulted in the withdrawal from the labour market of, we might say an “army” of people still capable of work.<sup>15</sup>

In 1994, the OECDs Jobs Study<sup>16</sup> had for the first time emphasised the harmfulness of social benefits and the potential of incentives to work.<sup>17</sup> They promoted directing resources from passive to active. European Union has also, with the European Employment Strategy, in 1997 identified rebalancing from

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<sup>13</sup> For instance: P. Auer, Ü. Efendioglu, J. Leschke *Active Labour Market Policies Around the World: Coping with the Consequences of Globalization*, 2008, 2nd ed. Geneva: International Labour Organisation.; M. Auerback, *Time For a New “New Deal”*, UTIP Working Paper 2009, No. 56, University of Texas;

J. Zubovic, J. Subic, *Reviewing Development of Active Labour Market Policies and the Evaluation Techniques, The role of labour markets and human capital in the unstable environment*, Karta Graphic Publishing House, 2011, Available at SSRN: <https://ssrn.com/abstract=2173496>.

<sup>14</sup> Auer, Efendioglu and Leschke, 2008; Zubović and Šubić, 2011.

<sup>15</sup> Theory that started this initiative originates from the year 1851. when the paper of Henryja Mayhewa, „London Labour and the London Poor“ was published. This work introduced „Lump of labour theory theory“, according to which unemployment can be reduced by reducing working hours, that the amount of jobs in the labour market is fixed and the retirement of older workers can free up places for young workers (In detail in: A.H. Munnell, Y. Wu, *Do Older Workers Squeeze Out Younger Workers? Discussion Paper*, 2013, No. 13-011.)

<sup>16</sup> *The OECD Jobs Study: Facts, Analysis, Strategies*, 1994, Pariz: OECD.

<sup>17</sup> Eichhorst and Konle-Seidl, 2008.



passive to active labour market policies as one of the most important objectives. Many authors<sup>18</sup> cite this preference as the beginning of the activation paradigm. By the mid-1990s, most countries implemented some form of workfare and a system of benefits conditionality (Sengenberger, 2011).<sup>19</sup> Social protection systems have been more and more used to increase employability and opportunities to find a job and “break the circle of poverty” rather than as pure income insurance.

However, it became clear that it was not enough to redirect funds from passive to active ones<sup>20</sup> and the strategies began to emphasize the interaction of social policy systems, labour market institutions, and passive and active labour market policies.<sup>21</sup> This implied the coordination of the policies that provide different levels of benefits - the integration and coordination of employment offices and social security institutions, and increasing the scope of beneficiaries whose rights are conditioned by obligations.

The conditioning of rights with obligations is described by some authors as activation.<sup>22</sup> It encourages sanctions if an unemployed person does not want to be active, accept a job whenever possible, or participate in ALMP. It also obliges responsible behaviour through monitoring and sanctions. Rights and obligations approach presents a narrower sense of the activation because activation has been found to act on two sides.<sup>23</sup>

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<sup>18</sup> For instance: Martin and Grubb (2001), Auer, Efendioglu and Leschke (2008), Zubović and Šubić (2011) and J.P. Martin, *Activation and Active Labour Market Policies in OECD Countries: Stylized Facts and Evidence on their Effectiveness*, IZA Policy Paper, 2014, br. 84. Bonn: Institute for the Study of Labor.

<sup>19</sup> W. Sengenberger, *Beyond the measurement of unemployment and underemployment: the case for extending and amending labour market statistics*, 2011, Geneva: International Labour Office.

<sup>20</sup> More details in: C. Pignatti, E. Van Belle *Better together: Active and passive labour market policies in developed and developing economies*, *Research department Working paper*, 2018, No.37, Geneva: International Labour Organisation.

<sup>21</sup> More details in: Martin and Grubb, 2001; Martin, 2014.

<sup>22</sup> E.g. Eichhorst and Konle-Seidl, 2008.

<sup>23</sup> For instance: J. Kluge *The Effectiveness of European Active Labor Market Policy*, *IZA Discussion Paper* 2006, 2018. Bonn: Institute for the Study of Labor; S. Carcillo, D. Grubb, *From Inactivity to Work: The Role of Active Labour Market Policies*, *OECD Social, Employment and Migration Working Papers*, 2006, No. 36, <https://doi.org/10.1787/687686456188>. Paris: OECD; Eichhorst and Konle-Seidl, 2008; C. M. Knotz, *Measuring the 'new balance of rights and responsibilities' in labor market policy: A quantitative overview of activation strategies in 20 OECD countries*, *ZeS-Arbeitspapier*, 2012, No. 06/2012, Zentrum für Sozialpolitik, Univ. Bremen, Bremen; P.S. Martins, S.P. Costa *Reemployment and Substitution Effects from Increased Activation: Evidence from Times of Crisis*, IZA DP 2014, No. 8600, Bonn: Institute for the Study of Labor.

These two sides are often called positive and negative activation<sup>24</sup> or enabling and binding elements.<sup>25</sup> Most authors tend to call them the “carrot and stick” strategy.<sup>26</sup>

Positive activation provides participation in the ALMP, job search assistance, advise, work pay, employment incentives, childcare, etc. Negative activation, such as stricter conditions for receiving benefits, job search, sanctioning, action plan, or workfare, are subjects of conditioning rights with obligations.<sup>27</sup> Such activation represents rights and obligations approach.<sup>28</sup> Negative activation is also the most criticized. First, it can make one accept a bad job, under the slogan “Better a poor job than no job at all”.<sup>29</sup> Second, low wages allow employers not to invest in workers, productivity and innovation, thereby ignoring the long-term development of the labour market and the economy. Third, conditioning by job search hardly works when there is a small number of vacancies,<sup>30</sup> and fourth, there are groups to which conditioning is simply not applicable, and who must have adjusted access to the labour market.

In general, labour force activation approach has introduced two major changes to the labour market. First, the rights that come with unemployment are not unconditional but are increasingly conditioned by the behaviour of the unemployed. Second, a new objective has been introduced, which is to

<sup>24</sup> Sengenberger, 2011 and in G. Bonoli, *The Origins of Active Social Policy, Labour Market and Childcare Policies in a Comparative Perspective*, 2013, First Edition.

<sup>25</sup> Eichhorst and Konle-Seidl, 2008 and Knotz, 2012.

<sup>26</sup> For instance: Kluve, 2006; Sengenberger, 2011; B. K. Graversen, J. C. van Ours, *How to Help Unemployed Find Jobs Quickly: Experimental Evidence from a Mandatory Activation Program*, IZA Discussion Papers, 2006, 2504, Bonn: Institute for the Study of Labor and P. Arni, G.J. van den Berg, R. Lalive, *Treatment versus Regime Effects of Carrots and Sticks*, IZA Discussion Papers, 2015, br. 9457. Bonn: Institute for the Study of Labor.

<sup>27</sup> For instance: Eichhorst and Konle-Seidl, 2008, table 7; G. Bonoli, *The political economy of active labour market policy*, Working Papers of the Reconciliation of Work and Welfare in Europe, 2010, REC-WP 01/2010, Edinburgh; T. Weishaupt, *From the Manpower Revolution to the Activation Paradigm: Explaining Institutional Continuity and Change in an Integrating Europe*, 2011, Amsterdam University Press and Knotz, 2012.

<sup>28</sup> In that context I. Lødemel and H. Trickey (ed.) in *An offer you can't refuse*. Policy Press, 2000, Bristol, outlined one of the first grouping of countries based on the implementation of rights and obligations – into *work first* approach, that is also called *anglo saxon* and *train first*, the *scandinavian*, *human resources first* (Eichhorst and Konle-Seidl, 2008).

<sup>29</sup> Sengenberger, 2011.

<sup>30</sup> H. Immervoll, H. *Minimum-Income Benefits in OECD Countries: Policy Design, Effectiveness and Challenges*, IZA Discussion Papers, 2009, 4627, Bonn: Institute for the Study of Labor and OECD, 2015. However, G. Van den Berg, B. Van der Klaauw, B. in their *Counseling and Monitoring of Unemployed Workers: Theory and Evidence from a Controlled Social Experiment*, *International Economic Review*, 2006, 47 (3), p. 895-936., proved that activation has positive effects even during lack of demand in the labour market, because people tend to search for work in more formal way, the one that can be monitored.

maximize economic activity and increase employment.<sup>31</sup> Since it operates on the obligation and conditionality of benefits, the best effects are achieved where previously there was no conditionality of benefits at all.<sup>32</sup>

## ***2.2. Functioning of the Rights and Obligations Approach in Practice***

The basic procedure, or the central point of the rights and obligations approach, operates on the same principle in most countries. Labour market services intervention plays the most important and central role because the rules are implemented through contact with employment counsellors with the unemployed.

This intervention includes mediation, information and referral, as well as counselling and job search assistance, individual action plans, monitoring of the unemployed and if necessary sanctioning.<sup>33</sup>

One of the most important components is sanctioning, which usually occurs if, during the monitoring, it is determined that the unemployed person is not fulfilling his obligations. The most common form of sanction is the loss of the unemployment benefits. For this reason, most countries have based their initial conditionality on unemployment benefits, which is also simpler. However, unemployment benefits have a limited duration, when they expire it is no longer possible to condition. That is why some beneficiaries simply substitute unemployment benefits with social benefits, which then take over the negative impact on participation in the labour market.<sup>34</sup>

The sanctions depend on the strictness and explicitness of the normative framework, but also the employment counsellors. Müller and Steiner<sup>35</sup> argue that imposing sanctions is more effective than reducing benefits for everyone. There are some obstacles, such as economic factors. Recession and a large increase in unemployment can reduce the impact of sanctions.

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<sup>31</sup> Knotz, 2012.

<sup>32</sup> OECD, 2005.

<sup>33</sup> In more detail: A. Ostrovidov Jakšić, T. Rogić Lugačić, T. *Usluge tržišta rada, Revija za socijalnu politiku*, 2022, 29 (2), p. 229-256. <https://doi.org/10.3935/rsp.v29i2.1748>

<sup>34</sup> See: S. Markussen, K. Roed *Leaving Poverty Behind? The Effects of Generous Income Support Paired with Activation*, *IZA Discussion Papers*, 2014, 8245, Bonn: Institute for the Study of Labor.

It was only in recent decades, and only in some countries, that the conditioning was imposed for all the workforce (s. Eichhorst and Konle-Seidl, 2008, table 4). This approach is expected to be adopted by more countries, especially because of the spread of non-standard employment. Not everyone will be entitled to unemployment benefits, so many will find "safety net" in other benefits (Immervoll, 2009).

<sup>35</sup> K. Müller, V. Steiner, V. *Imposed Benefit Sanctions and the Unemployment-to-Employment Transition: The German Experience*, *IZA Discussion Papers*, 2008, 3483, Bonn: Institute for the Study of Labor.

However, in practice, a very small number of beneficiaries are being sanctioned.<sup>36</sup> The main problem with sanctions is the implementation of the regulation. For example, in France, it was expected from employment counsellors to report if they observed that a person receiving unemployment benefits was not searching for a job, but in practice, this rarely worked. A similar pattern was observed in Finland and Greece.<sup>37</sup> Formal strictness is an unreliable source of data for the actual behaviour of job seekers and the control of employment offices.<sup>38</sup>

Here, it is also necessary to mention the very important threat effect. The indication and anticipation of possible sanctions also play a major role.<sup>39</sup> This effect works in two directions - on the one hand, people want to avoid participation in the program by any means, so they are eager to find any job. On the other hand, finding a job faster prevents the loss of human capital that can occur because of long-term unemployment.<sup>40</sup>

### **2.3. Assessment of the Functioning of the Rights and Obligations**

As indicated, the legal frameworks for obtaining and receiving unemployment benefits operate on a similar principle in most countries. In the last decade, the OECD has begun to quantify, or measure, the strictness of the legal framework governing the strictness of benefit eligibility around the world.

<sup>36</sup> More precisely in the nineties, that share was no more than 10% of the unemployed benefit recipients that did not comply with the rules (Venn, 2012).

<sup>37</sup> See: R.G. Sultanam, A.G. Watts, *Career Guidance in Public Employment Services across Europe*, *International Journal for Educational and Vocational Guidance*, 2006, 6, 29–46.

<sup>38</sup> See Immervoll and Scarpetta, 2012.

In Netherland in the period from 1987. to 1994. the number of sanctioned beneficiaries of the unemployment benefits grew from 27.000 to 140.000. In 1995. there was a new institution with 200 employees founded with the purpose of controlling and monitoring the public spending on social security (from: *OECD Employment Outlook 2000.*, Paris: OECD).

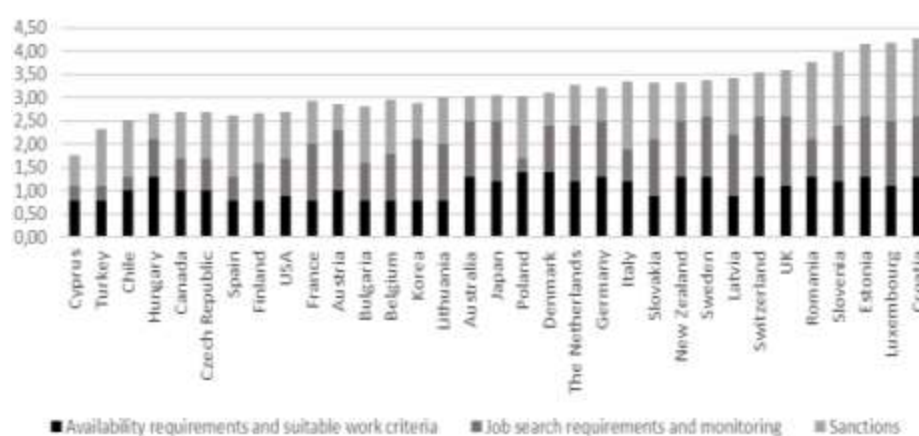
<sup>39</sup> For example, in Switzerland, a sanction warning was sent and it increased exit from unemployment by 25%, but the sanction itself by 20% (more details in: R. Lalive, J.C. Van Ours, J. Zweimüller, *The Effect of Benefit Sanctions on the Duration of Unemployment!*, *Journal of the European Economic Association*, 2005, 3 (6), 1386-1417). Therefore, mild sanctions have the same effect as strong ones. Using the example of the Norwegian reform, K. Røed, L. Westlie in *Unemployment Insurance in Welfare States: The Impacts of Soft Duration Constraints*, *Journal of the European Economic Association*, 2012, 10 (3), str. 518-554, analyzed people's behavior related to the loss of benefits and concluded that it is not the sanction that matters, but the fact that the sanction exists.

<sup>40</sup> Finding a job faster can also lead to better-paying jobs later and is especially effective for employees in the undeclared economy (see in: Eichhorst and Konle-Seidl, 2008; Martins and Costa 2014 or M. Csillag, A. Adamecz-Völgyi *Early activation and employment promotion*. Directorate-General for Employment, Social Affairs and Inclusion, 2018, Bruxeless: European Commission).

The strictness criteria relate more to the passive labour market policy, especially the unemployment benefits but also cover certain provisions of the active policy, namely those which impose obligations to actively job search, participation in ALMP, or to accept a job offer. Therefore, it can be said that this indicator is the main indicator of conditioning rights with obligations.<sup>41</sup>

The first initiative in creating this comprehensive indicator was two studies by the Danish Ministry of Finance, one from 1998 and the other from 2005, by Hesselplüg. OECD continued supplementing the indicator with Venn's work (2012), then Langenbucher (2015) and Immervoll and Knotz (2018 and 2020).

**Graph 1. Levels of Strictness of Eligibility**



Source: Own elaboration, 2024.

According to the papers mentioned above, the strictness of the criteria increased. For example, in 1999 only six countries demanded active job search reporting<sup>42</sup> and in 2017 only 10% did not have this obligation in their system.<sup>43</sup>

<sup>41</sup> The indicator entails three sub-indicators, each with different number of items and weights in overall indicator. First sub-indicator “Availability requirements and suitable work criteria” includes following items: Availability during ALMP participation, Requirements for occupational mobility, Requirements for geographical mobility and Other valid reasons. Second sub-indicator “Job search requirements and monitoring procedures” includes Frequency of job-search activities and Documentation of job-search activities. Finally, third sub-indicator “Sanctions” includes Sanctions for voluntary resignation from employment, Sanctions for refusals of job offers, Sanctions for repeated refusals of job offers, Sanctions for refusals to participate in ALMPs and Sanction for repeated refusals to participate in ALMPs (in more detail in Immervoll, Knotz and Otmani 2020).

<sup>42</sup> Martin and Grubb, 2001.

<sup>43</sup> Immervoll and Knotz, 2018.

However, it is not possible to identify the exact pattern in that context between the countries. Some countries, such as the Netherlands and Denmark, have high amounts of unemployment benefits and strict availability requirements, and others, such as the UK and Ireland, have low amounts of benefits and strict availability requirements. What is characteristic is that, for example, the conditions for active job search are stricter in Continental countries and lenient in Mediterranean countries. In contrast, Eastern European countries generally have stricter sanctioning criteria, those which impose the total loss of benefits rather than the suspension to a certain period.

What is also important is the level of application of the rules in practice. As indicated by Venn (2012), this indicator has a relatively large deficiency related to the method of implementation, whereby large differences can arise between the *de jure* and *de facto* strictness of the criteria.

The terminology of the normative framework may also prove to be a problem. For example, German law previously stated that “all means must be used to put an end to unemployment” and French law that “one must be permanently and effectively searching for a job”.<sup>44</sup> This at first seems strict, but these provisions make it difficult to sanction someone for a single act, such as not applying for a job vacancy. Later, both countries specified bit more thoroughly these conditions, Germany with an integration agreement and France with an obligation for job seekers to provide evidence of their job-search actions.<sup>45</sup> The absence of explicit rules on job search, the rules that are difficult to implement in practice, or sanctions that are rarely applied, do not make sense. Unclear legislation puts too much responsibility on counsellors.<sup>46</sup> In most countries, there is a provision for refusal of job acceptance and loss of benefits, but often the implementation of these provisions depends on the discretion of the counsellor.<sup>47</sup>

Having in mind the previous paragraphs, we tried to assess the efficiency and the approximate implementation of the normative framework governing rights and obligations on the base of an additional indicator. Therefore, the methodology of the assessment will be focused on the comparison between the levels of strictness of benefit eligibility criteria, calculated by the OECD and the share of inactive persons registered in the employment offices, derived from the LFS microdata. This methodology, which is applicable to a large

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<sup>44</sup> OECD, 2000.

<sup>45</sup> Hasselplflug, 2005.; Venn, 2012.; Langenbucher, 2015.

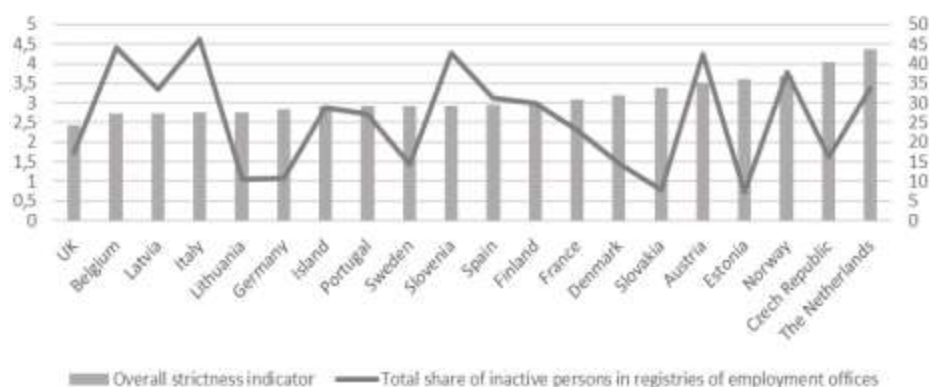
<sup>46</sup> OECD, 2000.

<sup>47</sup> Immervoll, 2009.

number of countries' assessments, uses the differences between two labour market data sources.<sup>48</sup>

The approach derives from a logical presumption that if one is inactive, that person is not searching for a job. But if that person is at the same time registered at the employment office, that means that the person is not fulfilling its obligations, but is not being sanctioned either. Levels of those exercising certain rights but not fulfilling obligations, those that should but are not being sanctioned will be compared with the levels of eligibility strictness, across Europe, calculated by OECD. The aim is to see if there is any connection between the two variables: the levels of strictness and the levels of those who should but are not being sanctioned.

**Graph 2. Overall Strictness Indicator and Total Share of Inactive Persons in the Registries of Employment Offices in 2004**



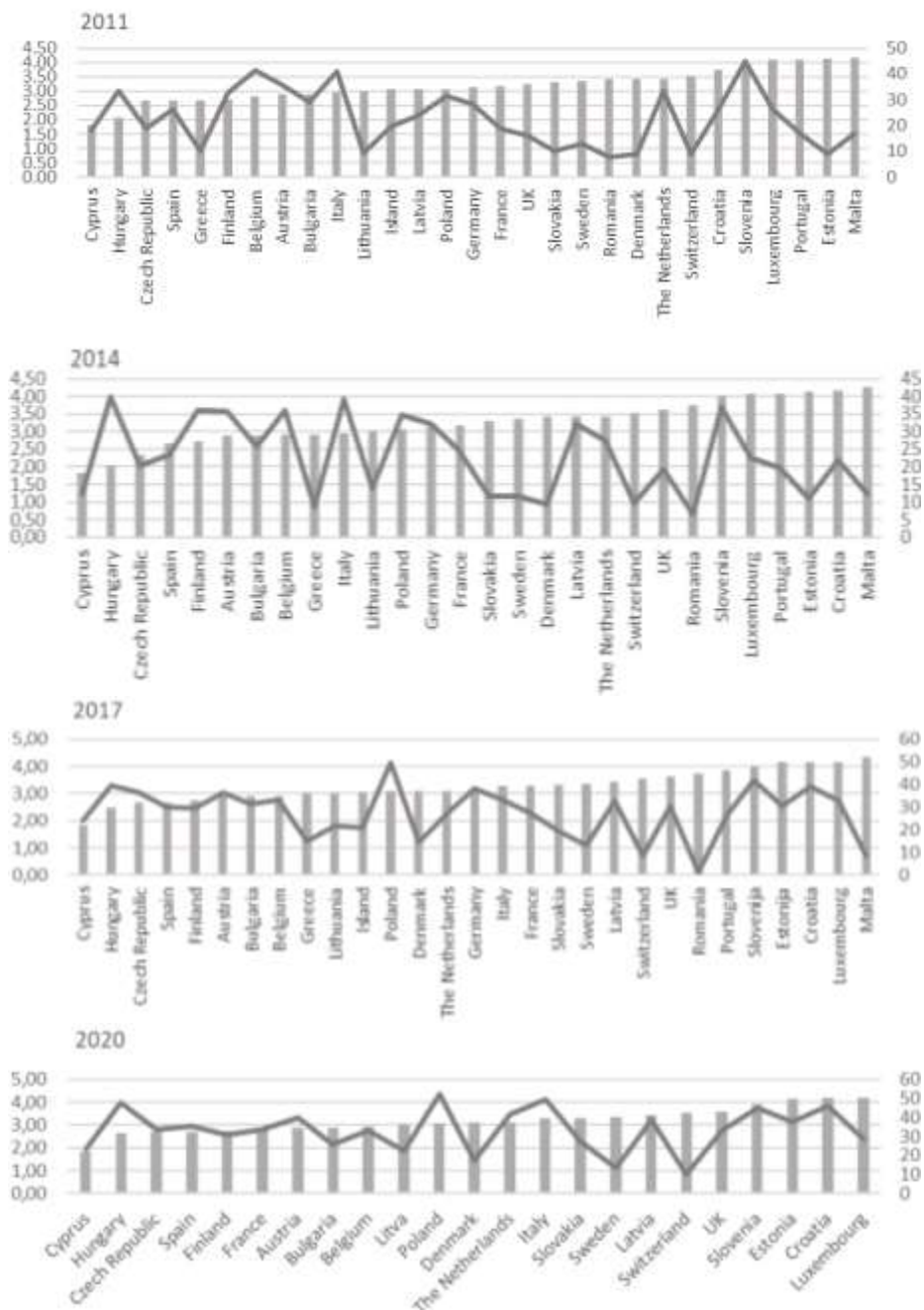
Source: OECD.Stat, accessed, 1.10.2022. and LFS microdata, authors calculation.

<sup>48</sup> The differences between the two main data sources on the labor market (LFS and registered unemployment) result from a different definition of a person's status on the labor market. LFS gives a more realistic picture of the unemployed and inactive, while registered unemployment also includes individuals who have other motives for being registered, which are not necessarily related to employment but to certain rights. Data on the shares of such individuals, obtained from the LFS microdata were calculated after basic data processing according to the needs of this analysis - in the age category, those younger than 15 and older than 74 were excluded. Main variables of the calculation are "Register" and "Ilostat". „Register“ variable indicates whether or not somebody is registered in the employment office/service and „Ilostat“ indicates persons status, is someone employed, unemployed or inactive. Basic tabulation of those two variables provides the information on the level of inactive persons registered in the employment office/service of a certain country. Calculations were obtained using Microsoft Excell and the Stata application, version 16.

The assumption would be that the stricter the criteria the lower the level of inactive persons registered at the employment office and *vice versa*. However, if we observe the graphical imaging (graphs 2 to 6) of the two variables, the level of strictness and the levels of inactive persons registered in employment offices it is clear the two do not have a clear connection. The same applies to all the observed periods.



**Graphs 3, 4, 5 and 6. Overall Strictness Indicator (Columns) and Total Share of Inactive Persons in Registries of Employment Offices (Lines) for 2011., 2014., 2017, and 2020**



Furthermore, if we observe this connection in more detail, we get the same results. Table 1 presents the results of the calculations of correlation coefficients for each possible combination of the sub-criterion of the indicator and the share of individuals who are inactive with regard to their status with the employment office. Correlations in the table were performed between the variables for all countries, the same as in graphs 3, 4, 5 and 6. The results indicate no connection. The correlation coefficients were calculated considering all possible combinations in the total number of persons registered in the employment office and in the overall total number of inactive persons. There is no link between the level of inactive persons registered at the employment offices of European countries and the level of strictness of the criteria.<sup>49</sup> Of course, this approach has its deficiencies. First, the level of strictness changes very little, and when it does change, that change is extremely small, the impact of which can only be visible in a few years. Secondly, the macro level only observes the movement of these two variables in general, but the system might differ to a certain extent depending on the individual country.<sup>50</sup> Most importantly strictness indicator does not measure the level of application of the rules in practice.

So, the methodology used in this paper gave us only a rough overview of the comparison of the two variables. The fact is that the normative framework bears a great deal of responsibility for many labour market outcomes. However, the causes themselves, the individual institutes, that may seem insignificant but can have a huge impact, are sometimes difficult to detect. As the OECD reports have regularly highlighted, certain institutes are difficult to measure, given that many countries do not have them incorporated into the conditioning system. Also, there are numerous factors of influence, such as inherited culture, specific rights, intentional or accidental lack of a crucial institute or simply a situation of adaptation both by the system and a certain group.

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<sup>49</sup> As part of this analysis, changes in the shares of inactive persons were also observed in comparison with changes in the level of strictness for individual countries and for five observed reference periods, however, no link was identified, as well.

<sup>50</sup> Availability of the data also depends on that same issue. In example for UK there is no data on the inactive persons that are not beneficiaries of unemployment benefits, only the ones that receive unemployment benefits, for the Netherlands it is the opposite. For Malta data on the registered persons in the employment offices dates from 2009, and Ireland does not have that data, the same as the Bulgaria. Rumania does not have the data only for 2020, and the data for Germany for the year 2011 were not taken into consideration (for total number of inactive) due to the fact that for that year numbers were significantly different that for all other years.

**Table 1. Correlation coefficients of the levels of strictness of eligibility criteria and the share of inactive persons**

Year	Sub-indicator	Shares of inactive persons within the registries of the employment offices			Shares of inactive persons in total workforce			
		Beneficiaries of the unemployment benefits	Non beneficiaries of the unemployment benefits	Total share	Beneficiaries of the unemployment benefits	Non beneficiaries of the unemployment benefits	Total share	Not registered at the employment offices
2004	Availability requirements	0.0348	0.0983	0.0012	0.0635	0.0476	0.0018	0.0034
	Job search requirements and monitoring	0.0095	0.0094	0.0089	0.0483	0.0147	0.1319	0.121
	Sanctions	4E-06	0.0536	0.0008	0.1065	0.126	0.0003	2E-05
	Total	0.0782	0.0183	0.0059	0.0216	0.0046	0.0071	0.0057
2011	Availability requirements	0.0372	0.004	0.0251	0.0837	0.0015	0.0217	0.0161
	Job search requirements and monitoring	0.0994	0.0195	0.0535	0.0004	0.058	3E-05	0.0004
	Sanctions	0.0252	0.0088	0.0089	0.0111	0.0009	5E-06	0.0057
	Total	0.0496	0.0045	0.034	0.0426	0.0018	0.0065	0.0121
2014	Availability requirements	0.0322	0.0027	0.0192	0.1094	0.0066	0.0156	0.0132
	Job search requirements and monitoring	0.0925	0.0238	0.0478	2E-05	0.0038	7E-05	0.0004
	Sanctions	0.006	0.0113	0.017	0.0557	0.0069	0.0259	0.039
	Total	0.098	0.035	0.0768	0.0743	0.0003	0.0217	0.0256
2017	Availability requirements	0.0003	0.0025	0.0083	0.0701	0.0019	0.0067	0.004
	Job search requirements and monitoring	0.041	0.0224	0.0291	0.0017	0.0006	8E-06	8E-05
	Sanctions	0.0053	0.0019	2E-06	0.1115	0.0015	0.0211	0.0297
	Total	0.0103	0.0069	0.0217	0.0824	8E-05	0.0151	0.0168
2020	Availability requirements	0.0076	0.0047	0.0054	0.1957	0.0006	0.0284	0.0275
	Job search requirements	0.067	0.0125	0.1385	0.0005	0.0024	0.0001	5E-05

	and monitoring							
	Sanctions	0.0683	0.0849	0.1297	1E-04	0.0003	9E-05	3E-05
	Total	0.0329	0.0735	0.0165	0.0026	0.0118	0.008	0.0084

Source: OECD.Stat, <https://stats.oecd.org/> accessed, 1.10.2022. and LFS microdata, calculations of the authors.

### 3. Explanation of the Apparent Lack of Impact of the Strictness on the Labour Market Outcomes of European Countries Based on a Detailed Analysis of the Republic of Croatia

The results obtained can be explained on the example of the functioning of the rights and obligations approach in a particular country. Namely, for a detailed analysis of the normative framework and the functioning of rights and obligations approach in practice, it is required to have a detailed knowledge of the system in a particular country. In this context, this was possible only for the Republic of Croatia, since the authors are well equated with the functioning of Croatian system. The same analysis for all countries of the European Union and beyond would nevertheless require an intensive engagement of national experts and would present a comprehensive analysis that goes beyond the scope of a single paper.

In the Republic of Croatia, the unemployment benefits coverage is relatively low, the benefits are not generous, and still, there is a large share of people that are registered in the employment office, compared to the (former) EU 28 average.<sup>51</sup> Namely, just like in other countries, in Croatia, in addition to unemployment benefits, people can be registered for other reasons, such as meeting the requirements for receiving guaranteed minimum income<sup>52</sup>, participation in ALMP, or simply for no reason. In any case, everyone who is registered must search for work.

This analysis of Republic of Croatia is like the previous one, but more comprehensive and detailed. It includes exact data on the share of sanctioned persons from the registries of the Croatian Employment Service (CES) over the years. Another difference is the comprehensive and detailed analysis that was performed on the normative framework of rights and obligations according to the

<sup>51</sup> In 2019, the share of unemployed people not receiving benefits that were registered at the CES for a period of 3 to 5 months was 62.8%, while the average of EU 28 countries was 29.2%. For the period of 12 to 17 months the share for Croatia was 78.5%, and EU 28 37.5%. Source: Eurostat, accessed 29 November 2021.

<sup>52</sup> According to the Social Welfare Act (Official Gazette 157/13 - 19/22), the normative framework that regulates the guaranteed minimum income, one of the main conditions for receiving the guaranteed minimum income for people that are capable of work is registration (listing) at the CES and the corresponding job search obligations.

established criteria for awarding and receiving benefits. This method provided us with answers as to whether the system is that strict or whether it allows individuals in Croatia to exercise rights without fulfilling obligations.

The Republic of Croatia joined the previously described OECD calculation in 2014.<sup>53</sup> According to this calculation, Croatia was placed in the group of countries with the strictest requirements for unemployment benefits. The levels of strictness for Croatia were the same as in the calculations from 2018 and 2020.

However, if all the acts of the normative framework are analysed in detail, the assessment of the Republic of Croatia needs to be corrected for several criteria. These criteria are the key to understanding and identifying the main deficiencies of the normative framework and can contribute to the explanation of the functioning of the system of rights and obligations in the Republic of Croatia.

The analysis was based exclusively on the relevant normative framework.<sup>54</sup> According to the recalculation based on the coefficients,<sup>55</sup> Croatia's total level of strictness drops from 4.17 to 3.63, bringing it closer to the average of other countries. In detail, the correction of grades refers to the following items of sub-criteria:

- availability to accept a job or search for a job while participating in the ALMP (from 2 to 1), because no provision of the relevant Law or Rulebook has so far prescribed, nor does it prescribe, that a person must be available to search for or accept employment while participating in ALMP;
- justified reasons for refusal of employment (from 5 to 1), because the number of reasons has increased over the years with the changes in the normative framework and eventually 5 or more reasons have been prescribed;<sup>56</sup>

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<sup>53</sup> Langenbucher, 2015.

<sup>54</sup> Labour Market Law Official Gazette 118/18 -18/22 and Rulebook on active job search and availability for work OG 28/2019.

<sup>55</sup> Detailed calculation of weighting of individual items of the overall strictness indicator is based on the table from Immervoll and Knotz, 2018, page 26.

<sup>56</sup> According to the first Law (Law on mediation in employment and rights during unemployment OG 80/08), the exemption referred to a mother with a child up to the age of 7, a single parent with a child up to the age of 10, and other. In addition, the Rulebook on active job search and availability for work OG 96/2002 ever since the first version (related to the first, 2002 Law), in its III. Part - Availability for work (then Article 12) states that "an unemployed person is considered to be at a disposal to CES even outside of his place of temp. or perm. residence, if he informs the CES of his temporary absence outside of his place of temp. or perm. residence due to - 1. illness and hospital treatment, 2. moving, 3. death of spouse, parents, child, brothers, sisters, spouse's parents, 4. natural disasters, 5. personal reasons up to 18 days a year". With the next edition of the Rulebook the „movement“ was removed. With the 2017 edition of the rulebook there were additional reasons – sickness and care provision of an underage child with the confirmation by the competent family medicine doctor. Version from 2019 added also pregnancy, 45 days before the day of expected birth and participation in activities related to employment.

- the frequency of active job search monitoring (from 4 to 2), although, according to the ratings assigned, individual consultations are stated as a method of checking active job search: active job search, according to the current definition, does not specify the activities of applying to open vacancies. The description of active job search provides a general indication of activities that include the submission of applications and activities that are in fact aimed at increasing employability.<sup>57</sup> This can be confirmed especially if we compare the Croatian definition of active job search with the definition of active job search by the EU Commission for the LFS.<sup>58</sup>

- documentation of job search activities (from 3 to 2), because the Job Search Diary was removed from the normative framework in 2017 (originally this obligation was introduced by amendment in the Rulebook from 2014).

Therefore, according to the current definition of the Law and the Rulebooks, there are no prescribed criteria for the availability of search or acceptance of a job during participation in the ALMPs. There are several reasons for refusing the offered employment, and the job search check is irregular or *ad hoc*. Job search activities are vaguely defined and activities that could objectively be called as active job search, such as responding to a certain number of vacancies, are not listed. At the same time some other activities are prescribed, activities that, do not present active job search. Additionally, the obligation to submit the Job Search Diary was abolished in 2017.

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<sup>57</sup> Article 11 of the Law stipulates that an unemployed person is considered to be actively searching for a job if: he/she carries out activities to establish a professional action plan (or an agreement for inclusion in the labor market from Article 24), and if performs activities determined by a professional plan (an agreement for inclusion). Also, Law generally includes submission of applications to employers or advertisements and responding to vacancies and advertisements. In contrast, Article 3 of the Rulebook outlines job search activities, and among other includes activities that are aimed at increasing employability - participation in group information, individual consultations, professional guidance process, defining and implementing the activities and goals of the Professional Plan (Agreement) and similar.

<sup>58</sup> Definition for the purpose of the LFS (Commission Regulation (EC) No 1897/2000 of 7 September 2000 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the operational definition of unemployment, Official Journal of the European Union L (228), 18–21. : Annex 1, Article 1, paragraph c and Annex II, Points 8, 9, 10 and 11) clearly defines methods of active job search, it also stipulates that "The wording of the question must avoid that only a continuous search throughout the entire reference period is considered as a sufficient condition of job search.", that the "contact with the public employment office to find work" is „distinct from the administrative renewal of a registration to claim unemployment benefits (when this was not preceded by a spell of employment or inactivity). It is also distinct from the assistance provided by the employment office to improve the employability of the registered unemployed person“ and that the “Job search methods are enumerated until at least three active methods have been mentioned“.

Therefore, the legal framework that prescribes rights and obligations is lacking in the focal part that defines the activities and proof of job search. This makes it impossible to sanction someone for not searching for a job, regardless of the level of strictness of the criteria and the severity of the sanction. Related to that, the sanctioning provisions in Croatia are as strict as possible and presuppose a complete loss of benefits, rather than just a temporary suspension, as is the case in most countries. It is precisely this maximum stringency that calls into question the effectiveness of the provisions themselves, making it less likely that people will be sanctioned and deprived of benefits for non-compliance.

The deficiencies of the normative framework are also apparent from the graphical imaging (graph 7). This, detailed overview of the functioning of the rights and obligations is obtained from a combination of LFS microdata and data on shares of sanctioned people from the CES Statistics, which is regularly published on the CES website.<sup>59</sup> We will compare the chronological sanctioning from the CES registry (deregistered for not reporting and non-compliance with legal provisions), and the shares of inactive persons in the CES registry.<sup>60</sup> The information on the shares of inactive persons registered in CES is derived with the same method as described above (footnote number 47). Thus, when we compare the development dynamics of the shares of people who were sanctioned in the total number of people in the CES records of a certain year (Y-axis) and the shares of people in the records who were inactive (X-axis), the pattern is visible ( $R^2=0.7255$ ).

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<sup>59</sup> Available here: <https://statistika.hzz.hr/>.

Due to the data range of the CES database dating back to 2004, the period from 2004 to 2019 will be taken into account in the entire section.

<sup>60</sup> According to the reasons for deregistration from the CES records in 2014, the main reason, apart from employment, became "failure to comply with statutory provisions", replacing the previous main reason, which was more general - "deregistration from the records and failure to report." Basically, main reason of deregistration, the sanctioning remained the same, just got a new, more official title.

**Graph 7. Linear regression of the shares of inactive people in the registry of CES and shares of sanctioned people in the total number of CES registry for the years**



Regression is performed with the end year of 2019 due to provision of more realistic image of the labour market situation, taking into consideration the circumstances caused by COVID-19 epidemic in 2020. Source: CES stat. and LFS microdata, authors calculation.

Shares of sanctioned people were in line with the shares of inactive ones throughout the years. In another words, the system of rights and obligations generally works. Inactive people are being sanctioned (deregistered from the CES registry).

However, if we do a much more detailed comparison, we will get different results (table 2). Yes, the increase in the share of inactive people followed the level of the ones that were sanctioned, however, those were not the same people. The inactive ones were not necessarily sanctioned.

This, more detailed comparison was based on some basic socio-economic variables that are available in both CES and LFS data sources (gender, age, education, and duration of unemployment).<sup>61</sup> It showed that predominantly these are not the same people.

<sup>61</sup> Correlation coefficients in the table number two are calculated for each of 15 compared variables within categories (gender, age, education, and duration of unemployment), between levels of sanctioned and inactive people registered in CES and for the period from 2004 to 2019.



**Table 2. Correlation coefficients - sanctioned and inactive registered in CES for 15 compared variables for the period from 2004 to 2019**

Category	Variable	(R <sup>2</sup> )
Gender	Male	0.4092
	Female	0.4092
Age	15 - 24 years	0.5033
	25 - 34 years	0.0505
	35 - 44 years	0.0011
	45 - 54 years	0.0408
	55 - 65 years	0.7469
Level of education	Lower secondary education	0.1222
	Upper secondary and post secondary non tertiary	0.0738
	Tertiary education	0.5854
Duration of unemployment, period from the last employment	0 - 5 months	0.0801
	6 months – 1 year	0.0757
	1 - 2 years	0.0143
	2 - 4 years	0.0882
	4 years and more	0.1323

Source: CES stat. and LFS microdata, calculation of the authors.

The LFS microdata gave us information about the description of people who were inactive and were registered in CES. That's how we found out, for example, that in 2019, the age group from 25 to 34 years of age had the highest rate of inactive people - 17.37%. On the other hand, the CES statistics provided us with information on how many, for example, were those in 2017 with tertiary education that were sanctioned due to non-compliance to legal obligations (10.66%). Finally, comparisons of the development dynamic of inactive and sanctioned levels over the years gave us the level of similarity

between the values of these variables through the coefficient of determination (R<sup>2</sup>).

Results of the 15 variables compared indicate that only 4 have a medium relationship (highly educated within the education category, male and female, and age from 15 to 24), while only one has a strong relationship (age group from 55 to 65 age).

The system of rights and obligations seemingly works, but in practice the situation is different. This can entail the persons exercising certain rights, like unemployment benefits, are being "spared" of sanctions and the assumption is that the ones being sanctioned are actually the ones that don't bear any real loss of certain rights from those sanctions. This conclusion is in fact the same as the one described in Ostrovidov Jakšić and Rogić Lugarić (2022).<sup>62</sup>

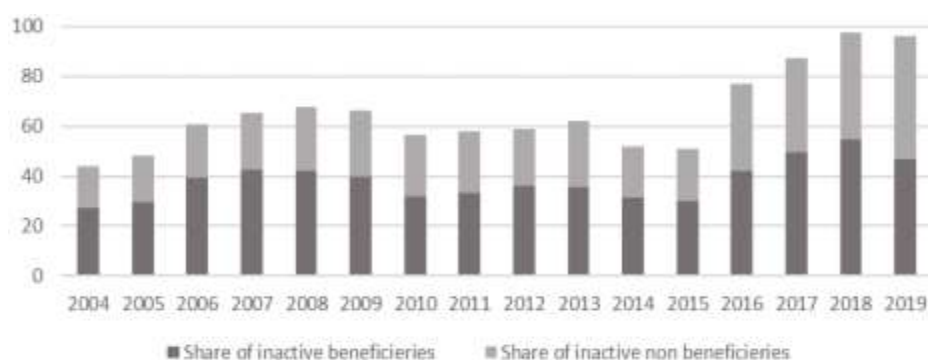
Another way that we could observe the impact of the rights and obligations system in Croatian labour market are the chronological changes in the levels of inactive persons in the records of the CES. The normative framework and subsequently the eligibility criteria for receiving benefits, has undergone numerous changes over the years. Those changes can be traceable by a change in the levels of inactive persons in CES registry (Graph 8).

The first major change in the normative framework took place in 2002, with the introduction of conditioning rights with obligations of active job search and availability for work. In that initial period, in 2004 and 2005 the share of inactive persons in the records of the CES was the lowest.

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<sup>62</sup> Which was gained by comprehensive qualitative research on employment counsellors employed in CES.

**Graph 8. Share of inactive beneficiaries and non-beneficiaries of unemployment benefits registered at CES for the years**



Source: LFS microdata, authors calculation.

The next, relatively bigger change was in 2014. Then the regular monthly reports were abolished, and individual consultations by phone or e-mail and the Job Search Diary were introduced. This, on one hand, relaxed the criteria, and on the other, tightened them. These changes coincide with the decline in the share of inactive in 2014 and 2015.

After those years the share of inactive in the registry of CES started to increase and was higher and higher, which can also be explained by the removal of Job Search Diary from the normative framework, that occurred in 2017. In the last three observed years, when the legal framework governing rights and obligations was relaxed - there was a significantly higher number of inactive persons registered in CES.<sup>63</sup>

The trends in the shares of inactive people in the records of CES showed us that in the period of a less strict normative framework, there was a significantly greater number of inactive people registered in CES compared to the initial period when the rights and obligations approach was first introduced.

Finally, normative frameworks governing rights and obligations can have a significant impact on the workforce. Even the provisions that may be

<sup>63</sup> In this respect, it should be clarified that based on the data, the indicated shares of inactive persons registered in CES are much more related to changes in the normative framework than to economic trends and the unemployment rate. For example, in 2018 the unemployment rate was 8.5%, and in 2008 it was 8.7% - almost at the same level. At the same time the share of inactive people registered in CES in 2008 was significantly lower than in 2018. Likewise, in 2005 the unemployment rate was 13% and in 2016 it was 13.3%, again almost the same. While the share of the inactive people was in 2016 again significantly higher. Additional example is for the years of 2006 and 2017, with unemployment rates of 11.5% and 11.3%. Similarly in 2017 the share of inactive people registered in CES was still significantly higher.

considered to have a minor impact can have a very significant impact. In the Republic of Croatia, this framework affects the activity of the labour force, in a way that allows people to be inactive. People manage, and adapt the existing regulations to their own needs. In the absence of explicit rules, the rules that are difficult to implement in practice or sanctions that are rarely applied, are meaningless (OECD, 2000).

#### **4. Conclusion**

The rights and obligations approach has evolved in response to certain unsustainable labour market policies. Decades of intervention and investment in active and passive labour market policies have led to a change in the discourse toward the unemployed. It has become clear that the most expensive interventions are those that finance exit from the labour market.

In the last decades, research has focused on measuring and quantifying the normative framework of the strictness of eligibility criteria for receiving unemployment benefits, i.e. the rules governing rights and obligations approach.

This indicator showed that the normative frameworks of many countries are either not explicit enough or the rules are not applied in practice. The number of countries has not provided adequately designed labour market regulations and services to ensure that this conditioning is properly implemented. Rules on the rights and obligations are there, but in practice only a small number of people are being sanctioned.

Calculations in this paper have shown that this indicator is not related to the share of inactive persons registered in the employment offices. This makes no sense if we consider that rights and obligations generally operate on the same principle in all countries. Registration at the employment office is the predominant condition for exercising certain rights that are conditional on job search. However, if that person is in the register and not searching for a job (and is not covered by one of the prescribed exemptions), it means that that person is not fulfilling the obligations and should be sanctioned. On the one hand, this is possible if the normative framework is vague or non-explicit. On the other hand, a seemingly minor oversight by the legislator, such as omitting evidence of active job searching, is sufficient, and consequently the counsellors have no tools to sanction someone. In any case, the above said points to the fact that the implementation of the normative framework of rights and obligations, is not being implemented properly.

The best example of this can be found in the Republic of Croatia. According to the OECD analysis, the Croatian legal framework is rated as one of the strictest in the world. However, a detailed analysis of all previous laws and

regulations gave us a slightly different picture. Croatia has somewhat milder criteria for job search and monitoring and in general, the criteria have softened over the years. The current normative framework is deficient in the main part that defines activities and evidence of job search, which makes it impossible to sanction non-searching, regardless of the level of strictness of the criteria for sanctioning.

The system of rights and obligations in Croatia has some influence on the level of activity of the workforce, in a way that allows people to be inactive. This is only a partial contribution and of course, the normative framework is not solely responsible for the lower rate of the active labour force in Croatia, but if the normative framework allows individuals not to search for a job while at the same time possibly enjoying certain rights, this impact is certain.

The assumption is that the situation is the same or similar in other countries, which is why the correlation results of the share of inactive and the level of strictness of eligibility criteria showed that there is apparently no link. Of course, there are links, the normative framework governing rights and obligations unquestionably has a major impact on the labour market of a particular country. However, differences in national legal frameworks and enforcement at national level make it very difficult, if not impossible, to generalise the impact of the strictness of eligibility criteria on the labour market.

What is possible is the identification of the main obstacles and deficiencies that make it difficult and/or perhaps impossible to implement the legislative framework properly and create the appearance of a strict system that is in fact not.

## 5. Annex - Examples of the most prominent activation policies

**Table 3. Examples of the most prominent activation policies**

The **Danish** example of activation is, along with the UK one, the most frequently cited in the literature.<sup>64</sup> They were as among the first to introduce, as early as the 1980s, stricter conditions for job-searching, receiving benefits and more intensive activation.<sup>65</sup> The activation was further refined over the years with a work-first approach<sup>66</sup> and efforts to increase the profitability of work, introduced through in-work benefits as well as tailored ALMP.<sup>67</sup>

**Sweden** had exceptionally high rates of sick leave between 1994 and 2006.<sup>68</sup> At that time amounts for sickness and other family benefits have been reduced<sup>69</sup> and large investments in ALMP have been replaced by smaller, more targeted and more effective programmes.<sup>70</sup> Direct job creation measures have been used less and less, the usage of training increased<sup>71</sup> and more attention was directed to job search assistance<sup>72</sup> with an emphasis on individualised assistance.<sup>73</sup> However, in the 2008 recession, the rise in unemployment tightened job-search conditions. If a person did not get a job within 100 days, they had to accept a job with a lower salary and up to 10% of the remuneration.<sup>74</sup> Work-first approach has been increasingly used and the cost-effectiveness of work has increased.<sup>75</sup>

<sup>64</sup> For instance: Kluge, 2006; Bonoli, 2010; Weishaupt, 2011; OECD, 2005; T. Wilthagen, T. Flexicurity Practices, *Journal of Economic Perspective*, 2007, 11(3), str. 37-54; K. Røed, *Active Unemployment Insurance, IZA Policy Paper*, 2012, No. 41; Bonn: Institute for the Study of Labor.; and W. Eichhorst, A. Hemerijck, *Welfare and employment: a European dilemma?, IZA Discussion Papers*, 2008, No. 3870, Bonn: Institute for the Study of Labor. <http://nbn-resolving.de/urn:nbn:de:101:1-20081216249>

<sup>65</sup> I. Møller, Hornemann, J. Lind, Activation for what purpose?, Working Papers Socialt Arbete, 2005:1; Paper presented at VIII Congresso uso-Afro-Brasiliero Coimbra, 16-18 Sept 2004.

<sup>66</sup> Eichhorst and Konle - Seidl, 2008.

<sup>67</sup> B. Quade, C. O’Leary, O. Dupper, *Activation from Income Support in the US* in: W. Eichhorst, O. Kaufmann, R. Konle-Seidl (ED.) *Bringing the Jobless into Work? Experiences with Activation Schemes in Europe and the US*. 2008, Berlin: Springer.

<sup>68</sup> J. Huo, M. Nelson, J.D. Stephens, *Decommodification and activation in social democratic policy: resolving the paradox*, *Journal of European Social Policy*, 2008, 18 (1): 5–20. doi:10.1177/0958928707084449.

<sup>69</sup> Eichhorst and Hemerijck, 2008.

<sup>70</sup> L. Calmfors, A. Forslund, M. Hemstrom, *Does active labour market policy work? Lessons from Swedish experiences*, *Swedish Economic Policy Review*, 2001, 85(2001), str. 61-124.

<sup>71</sup> Weishaupt, 2011.

<sup>72</sup> Bonoli, 2010.

<sup>73</sup> Kenworthy, 2010.

<sup>74</sup> Bonoli, 2010.

The **Norwegian** switch-over to activation has been described extensively by Lødemel.<sup>76</sup> It's a universal social security system that since the early 1990s has been conditioned on job assistance. This system was more like an American workfare than a European activation, except that the emphasis was on building human capital. The 2007 reform created one-stop-shop agencies linking social welfare institutions and employment offices, allowing better access to ALMPs. Compared with other countries, also rich in natural resources, Norway has shown great caution in spending on ALMP, with priority given to long-term objectives. The public works were not used even during the recession.

The **USA**, which is the main representative of this model, leads the way in obligations by providing minimal alternatives to employment. They combine low benefits with strict conditions and a small number of compensation services.<sup>77</sup> The 1996 reform made the most drastic changes in social policies. They introduced the activation of the workforce and the maximum duration of social assistance of 5 years for the entire life of the beneficiary, with mandatory workfare or participation in training.<sup>78</sup> This was followed by a sharp decline in the number of beneficiaries.<sup>79</sup> It is the policy of the USA from the nineties that is often described as an example of reform.<sup>80</sup> It is because of their rigorous measures, reduction of the number of beneficiaries per counsellor, reduction of state benefits,<sup>81</sup> and inclusion in the labour market of groups that previously received social benefits and were not actively working, and without a valid reason, such as single parents.<sup>82</sup>

The activation Restart Program in the **UK** was already introduced in 1986. As part of this programme the unemployed, after six months of not being able to

<sup>75</sup> Weishaupt, 2011.

<sup>76</sup> I. Lødemel, Workplace with stipend: public works, activation, workfare or ALMP? Peer Review on "Activation measures in times of crisis: the role of public works Riga, Latvia, 26 – 27 April, 2012, Mutual Learning Programme.

<sup>77</sup> Knotz, 2012.

<sup>78</sup> Kenworthy, 2010.

<sup>79</sup> OECD, 2005.

<sup>80</sup> For instance: D. Bloom, C. Michalopoulos, *How welfare and work policies affect employment and income: A synthesis of research*. 2001, New York: Manpower Demonstration Research Corporation and R. Moffitt, Welfare Reform: The US Experience. Johns Hopkins University; Revision of a paper prepared for the Economic Council of Sweden conference, "From Welfare to Work," Stockholm, May 7, 2007.

<sup>81</sup> In Bloom and Michalopoulos, 2001.

<sup>82</sup> Carcillo and Grubb, 2006.

find a job, had to go through compulsory counselling during which they would have to prove their efforts in job searching.<sup>83</sup> In 1989, they introduced the conditioning of benefits with active job search.<sup>84</sup> The workfare policy was adopted<sup>85</sup>, benefits were reduced, conditions were tightened, and the profitability of work increased with in-work benefits.<sup>86</sup> Direct job creation programs practically disappeared.<sup>87</sup> In the 1990s, the work first programmes were dominating, job search assistance<sup>88</sup> and the duration of unemployment benefits were cut from a year to six months.<sup>89</sup> New Deal, one of the most famous activation programs ever, was launched in 1997. The program aimed to strengthen job-searching skills for young people, and the main elements of activation were intensive counselling and job search.<sup>90</sup> The criteria, which were even stricter than in Restart, increased the chances of employment by 20%, while the social benefit outweighed the cost of the program.<sup>91</sup> In the late 1990s, reforms to fight poverty began with institutes such as the minimum wage and guaranteed minimum income.<sup>92</sup> The new approach was based on rights and obligations, increasing employability, and all to reduce poverty by relying on work.<sup>93</sup>

In **Germany**, the efforts to reduce dependence on benefits and the activation of the long-term unemployed<sup>94</sup> started at the beginning of this century. Those were the so-called “The Hartz reforms”. The reforms have been preventively activating - increasing the supply of work through better services, counselling, stricter conditions for job search, salary incentives, profiling of beneficiaries,

<sup>83</sup> H. Siebert, *Labor Market Rigidities: At the Root of Unemployment in Europe*, *Journal of Economic Perspectives*, 1997, 11(3), str. 37-54.

<sup>84</sup> Table, 4.3 in *OECD Employment Outlook 2003*. Paris: OECD

<sup>85</sup> Y. Kazepov, S. Sabatinelli, S. *Minimum income and social integration: Institutional arrangements in Europe*, *Working Paper Fighting Social Exclusion*, 2006, STEP Portugal, Geneva: International Labour Organisation.

<sup>86</sup> Eichhorst and Konle-Seidl, 2008.

<sup>87</sup> N. Meager, Labour market policy and what works: The UK experience, Lessons from the Work Programme LMC-UCD Geary Joint Conference: 6th February 2017.

<sup>88</sup> Ibid.

<sup>89</sup> Siebert, 1997.

<sup>90</sup> Eichhorst and Hemerijck, 2008 and Weishaupt, 2011.

<sup>91</sup> J. Van Reenen, J. *Active Labor Market Policies and the British New Deal for the Young Unemployed in Context* in D.R. Blundell and R.B. Freeman (ed.) *Seeking a Premier Economy: The Economic Effects of British Economic Reforms, 1980-2000*, 2004, Cambridge, MA: National Bureau of Economic Research, pp. 461-496.

<sup>92</sup> Eichhorst and Hemerijck, 2008 and Weishaupt, 2011.

<sup>93</sup> Eichhorst and Hemerijck, 2008.

<sup>94</sup> Eichhorst and Hemerijck, 2008.



introducing an individual action plan, flexibilising the labour market, encouraging part-time work<sup>95</sup>, and shortening duration and reducing the number of benefits.<sup>96</sup>

Temporary employment agencies were introduced, but the most important was the merge of social assistance and assistance for the long-term unemployed.<sup>97</sup> Employment counsellors were then better able to access information on benefit recipients and available jobs, and they were also able to apply active job search conditions, resulting in reduced benefits for many.<sup>98</sup> The German version emphasised the so-called case management, individual approach.<sup>99</sup> By the middle of that decade, in 2005, with Hartz's IV. Law, Germany abandoned conservative insurance of living standards and turned to a more universal Anglo-Saxon form of rights with obligations that provide only essential needs, which, according to Eichhorst and Konle-Seidl from 2008, together with the Danish active period of the nineties, made it the most drastic example of reform.

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<sup>95</sup> Eichhorst and Hemerijck, 2008 and S. Zirra, J. Buchkremer, *Activation Reforms in Continental and Southern Europe Impacts of the European Employment Strategy on Exclusive Employment Regimes in Germany, Italy and France First Draft. Working Paper*, International Conference, May 15th-16th, 2008 in Nuremberg, Germany “Activation” policies on the fringes of society: a challenge for European welfare states organized by the “Institute for Employment Research (IAB)” and the “Political Sociology” Section of the German Sociological Association.

<sup>96</sup> Kenworthy, 2010.

<sup>97</sup> Bonoli, 2010.

<sup>98</sup> Kenworthy, 2010.

<sup>99</sup> Weishaupt, 2011.

# Are Temporary Work Programmes for Intra EU Migrants Ethically Justified?

Kamile Botyriute \*

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## Abstract

Temporary labour migration has become a major component of global migratory flows and global economic development. The upward trajectory of temporary labour migrants points to an increasing reliance of contemporary economies on foreign temporary labour. This issue has been extensively discussed at the policy level as well as in academia. The focus, however, has been on the socioeconomic perspectives regarding the advantages and disadvantages of temporary labour migration, while little attention has been given to the normative aspects of this expanding phenomenon. This paper aims to apply arguments from liberal theories of justice to find ethical justifications either in favour of or against the expansion of temporary labour migration, specifically in the intra-EU temporary labour migration setting.

**Keywords:** *Temporary labour migration; Global Justice; Individual Agency; Political Philosophy; Europe.*

## 1. Introduction

Temporary labour migration has become a prominent global phenomenon, widely discussed at the policy level as well as in academia. Increasingly, the problems of temporary work migration are considered separately from the general topic of migration, in order to address them. It is widely agreed that temporary labour migration entails a specific form of migration, whereby individuals work abroad for a limited duration

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without the intention of settling in the host country permanently, aiming to reap certain benefits before returning to their home country<sup>1</sup>. Although temporary work programmes are widespread throughout the world, the precise extent of the phenomenon is unknown, and international organisations agree that there is a lack of comprehensive data on the numbers and types of temporary work schemes<sup>2</sup>.

Nevertheless, contemporary economies tend to rely on the international migrants to perform temporary, and, in many cases, seasonal work. According to the OECD data, temporary labour migration reported an upward trend that has also continued in 2019, before the global pandemic hit in 2020, resulting in reduced labour migration flows in the OECD area<sup>3</sup>. The main categories of labour migration included posted workers within the EU/EFTA, working holidaymakers and seasonal workers<sup>4</sup>. However, according to more recent estimates, the number of international seasonal workers in the OECD countries continued to grow even in 2020 and 2021<sup>5</sup>, while in 2022 temporary labour migration to the OECD countries was above the pre-pandemic levels of 2019<sup>6</sup>. The increasing instances of temporary labour migration, in addition to economic and policy concerns, also raise the question of whether these programmes are ethical enough to continue expanding them.

Bearing in mind that the circumstances of temporary work programmes for international migrants vary significantly between regions and countries, this paper will focus on intra-EU temporary labour migration. According to Nuti<sup>7</sup>, intra-EU temporary labour migration has a distinctive characteristic as compared to different temporary work programmes across the globe. Intra-EU migration effectively includes many rights that

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<sup>1</sup> F. Mieres, C. Kuptsch, *Temporary Labour Migration: Unpacking Complexities – Synthesis Report*, International Labour Organization, 2022; A. Nuti, *Temporary Labour Migration within the EU as Structural Injustice*, in *Ethics & International Affairs*, 2018, vol. 32, n. 2, 203-225.

<sup>2</sup> D. Costa, P. Martin, *Temporary Labour Migration Programs: Governance, Migrant Worker Rights, and Recommendations for the UN Global Compact for Migration*, Economic Policy Institute, 2018; European Commission, Directorate-General for Migration and Home Affairs, *Temporary and Circular Migration – Empirical Evidence, Current Policy Practice and Future Options in EU Member States*, Publications Office of the European Commission, 2011; OECD, *Capturing the Ephemeral: How Much Labour Do Temporary Migrants Contribute in OECD Countries?*, in *International Migration Outlook 2019*, OECD Publishing, 2019.

<sup>3</sup> OECD, *International Migration Outlook 2020*, OECD Publishing, 2020.

<sup>4</sup> Ibidem.

<sup>5</sup> OECD, *International Migration Outlook 2022*, OECD Publishing, 2022.

<sup>6</sup> OECD, *International Migration Outlook 2023*, OECD Publishing, 2023.

<sup>7</sup> A. Nuti, *op. cit.*

are commonly advocated for in research into temporary work migrants, such as the importance of facilitating easier border crossings and granting temporary migrant workers the same rights enjoyed by permanent residents<sup>8</sup>. In this way, the intra-EU temporary migration model could be seen as ethically justifiable, particularly when compared with the temporary labour migration observed elsewhere. For example, a recent report by the United Nations Human Rights Office indicates that temporary migrant workers in the Asia-Pacific region are “usually excluded from pathways to permanent stay or citizenship” and even experience dire violations on human rights.<sup>9</sup> Within the EU, the borders are already open, and intra-EU migrants also have more protection and enjoy more rights as holders of EU citizenship in relation to the migrants from non-EU countries. Nevertheless, even with these rights and relatively high protection, many temporary work placements within the EU are far from being regarded as just. Media and scholarly literature suggest that temporary international workers within the EU are continuously exposed to exploitation, marginalisation, and conditions of vulnerability<sup>10</sup>, an aspect which raises policy concerns for those who want to practically improve the working conditions for the migrants within the EU as well as ethical concerns on whether these programmes are intrinsically just.

In this paper, the issues concerning temporary labour migration within the EU will be discussed, from both an empirical and normative perspective. The first section of this research will cover the empirical data and the general landscape of intra-EU temporary work programmes. The aim of this section is to see to what extent temporary work programmes participate in the labour market in the EU as well as whether the numbers of temporary labour migration programmes change over the years. The remaining sections will be devoted to the normative approach towards temporary labour migration, referring to the most common and applicable claims for distribution and recognition as presented by global justice proponents as well as to individual agency and the ability to voluntarily construct one’s life plan – another important liberal requirement for justifiable policies and actions concerning labour migration. To address

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<sup>8</sup> Ibidem.

<sup>9</sup> United Nations, ‘*We Wanted Workers, but Human Beings Came*’: *Human Rights and Temporary Labour Migration Programmes in and from Asia and the Pacific*, United Nations Human Rights Office of The High Commissioner, 2022.

<sup>10</sup> Focus on Labour Exploitation, *The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper*, 2019; D. Sporton, ‘*They Control My Life: the Role of Local Recruitment Agencies in East European Migration to the UK*’, in *Population, Space and Place*, 2013, vol. 19, 443-458; A. Nuti, *op. cit.*

these normative claims, the reasoning will be based on scholarly works and notions presented by Lenard and Straehle<sup>11</sup> as well as Ottonelli and Torresi<sup>12</sup> while also referring to other research and policy studies by international organisations and media news.

## 2. Temporary Work Programmes within the EU

The European Union is characterised by the right of its citizens to freely move and reside in any of the Member States. Among other purposes of free movement, pursuing better employment opportunities is one of the most common. Mobility within the European Union is considered highly beneficial for strengthening the efficiency of European labour markets by meeting the demands of one country while using the supply (or oversupply) of another<sup>13</sup>.

Temporary labour migration programmes (TLMP) (sometimes also referred to as circular or guest worker programmes) are widespread throughout the EU. At the individual level, these programmes are aimed at “pursuing the benefits of working in a host country for a time before returning to one’s country of origin”<sup>14</sup>. In the institutional context, these programmes are established in order “to add workers temporarily to a country’s labour force without adding permanent immigrants to the population”<sup>15</sup>. Initially, these definitions presuppose that both sides are gaining many benefits from TLMP. The migrants have opportunities to pursue financial benefits while working in a host country that would perhaps be unavailable in the home country. The governments of the hosting countries, on the other hand, can fill labour shortages in different sectors without facing an increase in the numbers of permanent migrants<sup>16</sup>.

The empirical data shows that these benefits are widely acknowledged within the EU. According to International Labour Organization (ILO), while the majority of temporary labour migrants working in the EU comes from non-EU states, there were still an estimated 1.6M persons in 2020 who held EU citizenship and temporarily worked outside the

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<sup>11</sup> P. T. Lenard, C. Straehle, *Temporary Labour Migration, Global Redistribution, And Democratic Justice, in Politics, Philosophy & Economics*, 2012, vol. 11 n. 2, 206–230.

<sup>12</sup> V. Ottonelli, T. Torresi, *When is Migration Voluntary?*, in *The International Migration Review*, 2013, vol. 47 n. 4, 783–813.

<sup>13</sup> A. Nuti, *op. cit.*

<sup>14</sup> Ibidem.

<sup>15</sup> D. Costa, P. Martin, P., *op. cit.*

<sup>16</sup> P. T. Lenard, C. Straehle, *op. cit.*

country of their usual residence<sup>17</sup>. These numbers are also an outcome of an upward trend that increased by 20% over a five-year period, demonstrating an increasing number of intra-EU temporary labour migration in the region. Based on the Eurostat<sup>18</sup> data in 2020, the highest share of temporary employees born in another EU Member State in the total country's workforce were observed in Spain (27.0%), the Netherlands (19.3%) and Italy (18.3%). In comparison, Central and Eastern Member States recorded the lowest shares of foreign-EU temporary workers. Although the COVID-19 pandemic resulted in a slight decrease of intra-EU temporary workers within the region, some countries recorded an increase in the share of temporary employees born in another EU Member State in 2022, including the Netherlands (28.6%), Croatia (26%) and Finland (18%)<sup>19</sup>. While the distribution of temporary workers may depend on the laws, compensation and general working conditions in each Member State, the data illustrate the extent and importance of temporary work and temporary labour migration for today's European labour markets. A high share of temporary work whether among employees born in another EU Member State, employees born outside the EU and native-born employees, together with other forms of non-standard employment signify new and specific economic relationships, sometimes also referred to as the gig economy, characterised by a fragmented work environment, short-term contracts, lower labour costs and erosion of long-term individual life plans.

EU labour law directives (such as the Working Time Directive or the Work-Life Balance Directive and others), which have been gradually adopted over a span of nearly twenty years through such frameworks as Treaty of Lisbon, cover two main policy areas: working conditions and informing and consulting workers. Most of the directives are aimed at establishing minimum standards for working conditions and equal treatment of workers, while other instruments aim to inform workers

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<sup>17</sup> International Labour Organization, *Fair employment conditions for migrant workers in the EU—How to provide better support services for migrants?*, 2020, [https://www.ilo.org/budapest/whats-new/WCMS\\_757579/lang--de/index.htm](https://www.ilo.org/budapest/whats-new/WCMS_757579/lang--de/index.htm) (Accessed April 17, 2024).

<sup>18</sup> Eurostat, *Migrant integration: temporary employment*, 2021, <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210526-1> (Accessed April 17, 2024)

<sup>19</sup> Eurostat, *Temporary employees as percentage of the total number of employees, by sex, age and country of birth (%)*, 2023, <https://data.europa.eu/data/datasets/l57mjxgnwqvwlkqsgea5qw?locale=en> (Accessed April 17, 2024).

about transfers of companies, collective redundancies and other<sup>20</sup>. Meanwhile, the EU Member States are responsible for incorporating these directives into their legal systems, enforcing the rules, and having discretion to expand on minimum protection measures. However, according to an in-depth analysis of the scope of EU labour law provided by the EU's Policy Department for Economic, Scientific and Quality of Life Policies, as standard employment relationships are declining, the workers in various non-standard contracts, including temporary employment, are left without adequate protection under the current EU labour law framework,<sup>21</sup> resulting in policy and ethical issues related to temporary work programmes.

### 3. Global Justice and Temporary Work Programmes in the EU

The most common normative stance introduced in the debate on migration, whether temporary or permanent, is the theory of global justice. Global justice addresses the issue of just distribution of opportunities, benefits and burdens across the globe<sup>22</sup>. The cosmopolitan global justice theorists are primarily concerned with individual human beings, the issue of global inequality and the responsibilities that the more affluent might entail for those who are impoverished.

Proponents of the global justice theory are committed to lessening the global inequalities that divide the wealthier countries from the poorer.<sup>23</sup> They propose different solutions to such a problem: some scholars suggest giving citizens of poorer nations the resources so they could meet their needs and access their capabilities. However, the most common claim is for more open borders in a sense that immigration should be considered as treatment for global injustices. According to this line of reasoning, those who lack sufficient opportunities and protection at home should be able to migrate to the countries where their needs and opportunities would be realised.

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<sup>20</sup> European Commission, *Labour Law*, Available from: <https://ec.europa.eu/social/main.jsp?catId=157&langId=en#:~:text=Labour%20law%20defines%20your%20rights,%2C%20transfers%20of%20companies%2C%20etc> (Accessed April 17, 2024).

<sup>21</sup> Z. Boudalaoui-Buresi, M. Szpejna, *The Scope of EU Labour Law: Who is (not) Covered by Key Directives?*, European Parliamentary Research Service, 2020.

<sup>22</sup> A. Choudhary, *Global justice*, In A. Farazmand (ed.), *Global Encyclopedia of Public Administration, Public Policy, and Governance*, Springer, 2018.

<sup>23</sup> P. T. Lenard, C. Strachle, *op. cit.*

Temporary work programmes respond to the demands of the global justice theory. Economically disadvantaged migrants can cross borders in search of better employment opportunities, even if it is on a temporary basis. Financial gains from these programs benefit not only individuals who are subject to guest-work but also the societies at home, as remittance flows made by guest workers contribute significantly to the home economies and help redistribute wealth on a global level.<sup>24</sup>

However, Lenard and Strachle<sup>25</sup> argue that just temporary labour programs should permit temporary workers to attain citizenship in time. The authors invoke the principle of liberal democracy, which stresses that all individuals should have the right to participate fully and equally in the political life of the society where they reside for extended period. The principle implies that individuals subjected to TLMP should have access to more rights, including the right to apply for citizenship. *Temporariness* of such work programmes should be underlined not in the status of the worker, but rather in their obligation to remain employed in a specific sector for a limited period<sup>26</sup>. And as long as the requirement for temporary work programmes to enable their participants to obtain citizenship and become full-fledged members in the host country over time is met, the authors deem these programmes as just means to respond to unequal global wealth distribution.

Considering the intra-EU temporary work programmes and the fundamental rights under the EU law, the requirements for just TLMP could be presumed to have been met. The EU Charter of Fundamental Rights guarantees freedom of movement and the right to freely reside in any of the countries within the EU<sup>27</sup>. EU citizens are encouraged to move, with the promise of equal treatment with the nationals of the host state, “including in the sphere of social rights and access to the welfare state”<sup>28</sup>. In fact, the equal treatment promise for the intra-EU migrants contrasts with the situation of non-EU migrants as non-EU migrants may be

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<sup>24</sup> J. N. Francois, N. Ahmad, A. Keinsley, A. Nti-Addae, *Remittances Increase GDP with Potential Differential Impacts Across Countries*, World Bank Blogs, 2022, <https://blogs.worldbank.org/peoplemove/remittances-increase-gdp-potential-differential-impacts-across-countries> (Accessed April 17, 2024); N. S. Shirazi, S. A. Javed, D. Ashraf, *Remittances, Economic Growth and Poverty: A Case of African OIC Member Countries*, in *The Pakistan Development Review*, 2018, vol. 57 n. 2, 121–143.

<sup>25</sup> P. T. Lenard, C. Strachle, *op. cit.*

<sup>26</sup> *Ibidem.*

<sup>27</sup> European Union, *Charter of Fundamental Rights of The European Union*, in *Official Journal of the European Union*, 2000, C364/1.

<sup>28</sup> S. Martu, P. Minderhoud, *Struggles over social rights: Restricting access to social assistance for EU citizens*, in *European Journal of Social Security*, 2023, vol. 25 n. 1, 3-19.



subject to suspicion or scrutiny from authorities, and their presence may require justification, such as obtaining visas or permits<sup>29</sup>. Furthermore, under certain conditions, including a period of legal residence, language proficiency, and other criteria, the right to freely reside in any of the Member State can eventually lead to eligibility for citizenship through naturalisation. If, as Lenard and Straehle argue<sup>30</sup>, the right to apply for citizenship in a host country is what impedes temporary work programmes from becoming just, then the intra-EU temporary labour migration could be seen as overcoming this barrier. And, according to the global justice advocates, TLMP within the EU could be ethically justified. Nevertheless, the intra-EU temporary migrant workers are still subject to unfairness and a position of vulnerability. Short-term employment that is offered to migrants is usually low-salary work in low-skilled or seasonal work sectors<sup>31</sup>. Studies suggest that these workers are provided with part-time and hazardous employment circumstances with some of the contracts not even lasting the period that was promised at the beginning<sup>32</sup>. The same studies also highlight an important and worrying trend: the shortening of temporary work contracts. In the context of pre-Brexit UK, during the “earlier periods of unskilled mass migration, several years rather than days was the norm for temporary employment”<sup>33</sup>. Besides the fact that these conditions point to the vulnerable and economically unstable position of temporary workers, the shortening of work contracts to weeks or even days also poses significant challenges for the possibility to apply and obtain citizenship, which in many cases require foreign nationals to reside in the host country for years before being eligible to apply.

The prolonged periods between jobs, coupled with temporary employment that often involves frequent periods of economic inactivity, may also expose foreign EU citizens to the risk of expulsion from the host country. This comes as a result of the interest of the EU Members States in protecting their social assistance systems from exploitation<sup>34</sup>. Thus, despite the rhetoric of equality, the right for EU citizenship tends to

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<sup>29</sup> Ibidem.

<sup>30</sup> P. T. Lenard, C. Straehle, *op. cit.*

<sup>31</sup> S. Amo-Agyei, *The Migrant Pay Gap: Understanding Wage Differences Between Migrants and Nationals*, International Labour Organization, 2020.

<sup>32</sup> D. Sporton, *op. cit.*

<sup>33</sup> Ibidem.

<sup>34</sup> A. Simola, *Lost in Administration: (Re)Producing Precarious Citizenship for Young University-Educated Intra-EU Migrants in Brussels*, in *Work, Employment and Society*, 2018, vol. 32 n. 3, 458-474; S. Martu, P. Minderhoud, *op. cit.*

favour those who are engaged in economic activities and less those who are not<sup>35</sup>. Simola even applies the concept of “precarious citizenship” to the context of intra-EU migration, referring to those individuals who are unable to obtain access to permanent citizenship status<sup>36</sup>. She argues that the employment-related conditionality approach in determining EU migrants’ rights becomes complicated under the conditions of widespread insecure employment contracts<sup>37</sup>. With access to social rights and eventually to citizenship linked to having continuous employment, temporary labour migration programmes even for the EU citizens may be an obstacle for accessing formal rights in another European country.

The prospects of acquiring national citizenship in a host country within the EU, although theoretically feasible, can be quite challenging in reality. Many temporary work contracts, particularly in seasonal sectors, do not require applicants to be proficient in the local language. Language barriers not only complicate migrants’ ability to seek assistance in case of violation of rights or any other injustices and navigate the foreign labour market in search of alternative employment<sup>38</sup>, but they also hinder the possibility of attaining citizenship, since a strong command of the local language is a prerequisite for the application process.

Other studies suggest that migrants experience discrimination and marginalisation in a host country, which, combined with a limited knowledge of local language, compel them to seek out individuals with whom they share ethnicity and a common language<sup>39</sup>. This pattern of behaviour leads to social stratification which in turn harms both the receiving society in terms of integration and also the migrants who “lack a clear footing” in the hosting society as well as “the sense of belonging”<sup>40</sup>. Even after migrants finally attain the receiving state’s citizenship, they still face many obstacles that prevent them from fully integrating into the society. For example, unequal opportunities in a labour market or cultural exclusion, an aspect which separates newcomers from local people.

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<sup>35</sup> C. R. O’Brien, *Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights*, in *Common Market Law Review*, 2016, vol. 53 n. 4, 937-977.; S. Martu, P. Minderhoud, *op. cit.*

<sup>36</sup> A. Simola, *op. cit.*

<sup>37</sup> *Ibidem.*

<sup>38</sup> A. Nuti, *op. cit.*

<sup>39</sup> A. Bermudez, L. Oso, *Recent Trends in Intra-EU Mobilities: The Articulation Between Migration, Social Protection, Gender and Citizenship Systems*, in *Ethnic and Racial Studies*, 2020, vol. 43 n. 14, 2513-2530; A. Nuti, *op. cit.*

<sup>40</sup> A. Bermudez, L. Oso, *op. cit.*

Therefore, while the EU allows seemingly unrestricted temporary labour migration between its Member States, the acquisition of citizenship, which, as Lenard and Straehle argue<sup>41</sup>, is a crucial requirement for justifiable TLMP, can often be hindered. Temporary workers may be unable to obtain other EU Member States citizenship due to the typical requirement of several years of residency in the host country, the proficiency of the local language and the status of economic activity.

#### 4. Individual Agency, Life Plans and Intra-EU Temporary Work Programmes

Individual moral agency is another important argument presented by liberal theories of justice that significantly pertains to the ethics of temporary work migration. According to the argument for individual agency, individuals, in this context labour migrants, should be regarded as autonomous and rational actors who strive to maximise their own utility. They exercise their freedom to choose the means to achieve their goals and make voluntary decisions regarding whether or not to migrate.

Ottonelli and Torresi<sup>42</sup> devote notable attention to the notion of *voluntariness* in the context of temporary (which might as well be applied to permanent) migration. They argue that only voluntary migration can be considered as just and in order to be considered as voluntary it should fulfil a series of necessary conditions. Most importantly, migrants should not be coerced into the decision to move abroad and their choice to migrate should be seen as part of their life plan that might entail important long-term goals for the agent. However, this “exercise of their agency”<sup>43</sup> also has to be accompanied with the possibilities to exit the contract, especially in the case of any offences. In addition, agents should also have access to the adequate information about the choices they make as well as a range of options to choose from<sup>44</sup>.

EU citizens have a relatively wide range of options they can choose from. All of the countries within the EU are open for them, many of which offer different temporary work programmes varying in length and the amount of compensation. The quality of opportunities at home in almost all of Member States is quite good as well, as compared to some non-EU countries, where the alternatives to migration involve extremely challenging living conditions and, in some cases, even experiences of

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<sup>41</sup> P. T. Lenard, C. Straehle, *op. cit.*

<sup>42</sup> V. Ottonelli, T. Torresi, *op. cit.*

<sup>43</sup> V. Ottonelli, T. Torresi, *op. cit.*

<sup>44</sup> *Ibidem.*

serious human rights abuses and harm<sup>45</sup>. Moreover, there are numerous organisations and media agencies within the EU dedicated to informing prospective temporary and other type of workers about the challenges and issues they may face while working in a foreign country (for example, European Agency for Safety and Health at Work).

However, even though the agency and *voluntariness* of migrants are seemingly respected in the context of the intra-EU TLMP, particularly when compared to the situation of migrants from non-EU countries, some aspects of these programmes raise moral concerns. Regarding the *voluntariness* aspect of temporary labour migration, while the European free movers seem to be able to choose whether to migrate or not, the increasingly changing European labour markets, with the growing number and reliance on temporary, fixed-term contracts<sup>46</sup> seem to preclude the (migrant) workers from the alternative choice of permanent employment contracts, which would endow the workers with more stability and security. While permanent employment offers workers greater rights and benefits, temporary contracts are increasingly prevalent in various fields and sectors<sup>47</sup>, even in those where long-term projects, expertise, and relationship-building are necessary. The inability to obtain a permanent and stable work contract may also be a reason to migrate to another country where the prospects of a more stable employment position and overall economic security are more promising<sup>48</sup>. According to the survey presented in a study on “Young people and temporary employment in Europe”<sup>49</sup>, the main reason among the European youth for choosing temporary employment across the (at the time) 28 EU Member States and Norway was indicated as the inability to find a permanent position. In

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<sup>45</sup> A. d’Angelo, B. Blitz, E. Kofman., N. Montagna, *Mapping Refugee Reception In the Mediterranean: First Report of the Evi-Med Project*, 2017, available at: [www.mdx.ac.uk/evimed](http://www.mdx.ac.uk/evimed)

<sup>46</sup> A. Broughton, M. Green, C. Rickard, S. Swift, W. Eichhorst, V. Tobsch, I. Magda, P. Lewandowski, R. Keister, D. Jonaviciene, N. Elena, R. Martín, D. Valsamis, F. Tros, *Precarious Employment In Europe: Patterns, Trends And Policy Strategies*, European Parliament, 2016.

<sup>47</sup> N. Yates, N. Wintour, *Temporary Labour Migration: Two Studies on Workers’ Perspectives and Actions*, International Labour Organization, 2012.

<sup>48</sup> M. Becic, M. Matic, D. Jasprica, *The Role of Precarious Employment in Emigration Flows from Croatia*, in *Montenegrin Journal of Economics*, 2019, vol. 15 n. 4, 173-182; S. Marcu, *The limits to mobility: Precarious work experiences among young Eastern Europeans in Spain*, in *Environment and Planning A: Economy and Space*, 2019, vol. 51 n. 4, 913-930; K. Botyriūtė, *Employment Precarization and Skilled Labour Migration in Western EU Countries*, in *European Integration Studies*, 2023, vol. 1 n. 17, 153-164.

<sup>49</sup> M. Matsaganis, N. Rabemifara, T. Ward, *Young People and Temporary Employment in Europe*, Eurofound, 2013.

addition, this subset within the study was categorised as involuntary temporary employment. This example illustrates that *voluntariness* within the European temporary labour migration is not fully realised. However, the *voluntariness* in this case lies in the type of employment position that the workers are forced to choose involuntarily rather than in the decision to migrate for temporary employment-related reasons.

Furthermore, temporary work contracts, whether for foreign or local workers (but particularly for a foreigner), have notable negative consequences for an individual's life plan. Contemporary economies appear to be increasingly relying on temporary work in sectors that could function effectively with permanent contracts. The 2017 study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs on the extent and nature of precarious employment types showed that EU Member States are continuously and expansively rely on fixed-term work and variable working hours arrangements<sup>50</sup>. These types of work are also defined as *precarious* implying "instability, lack of protection, insecurity and social or economic vulnerability" that accompany workers in precarious job positions.<sup>51</sup> What implications does such a job position have for an individual's life plan? Primarily, temporary workers are unable to effectively plan their long-term goals, as fixed-term contracts lack the necessary security. Some contracts are extremely short, lasting only 1-2 months<sup>52</sup>, leaving workers in a constant state of concern about their financial future and whether they will have employment after the contract ends. Plans for family life, particularly for women who, as indicated in the literature on precarious jobs, are also more affected by the temporary work contracts<sup>53</sup>, must be postponed due to the financial instability and insecurity that dictate the available choices for individuals. Contemporary labour *temporariness* and precariousness also lead to constant moving between cities as well as countries in search for employment, which also interferes with the long-term life plans and sometimes leads to job

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<sup>50</sup> A. Koukiadaki, I. Katsaroumpas, *Temporary Contracts, Precarious Employment, Employees' Fundamental Rights and EU Employment Law*, European Parliament, 2017.

<sup>51</sup> Ibidem.

<sup>52</sup> D. Costa, P. Martin, *Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration*, Economic Policy Institute, 2018, <https://www.epi.org/publication/temporary-labor-migration-programs-governance-migrant-worker-rights-and-recommendations-for-the-u-n-global-compact-for-migration/> (Accessed April 17, 2024).

<sup>53</sup> S. Buckingham, C. Fiadzo, V. Dalla Pozza, L. Todaro, C. Dupont, K. Hadjivassiliou, *Precarious Work From a Gender and Intersectionality Perspective, and Ways to Combat It*, European Parliament, 2020.

displacement<sup>54</sup>. Finally, temporary jobs require workers to make numerous adjustments to their goals and aspirations, whereas a better and more stable work environment could potentially yield different outcomes.

The individual choice approach can be challenged as it relies on subjective perspective of workers about their employment situation. How they regard their employment position depends on how they perceive choices available to them as well as the system as a whole<sup>55</sup>. The study about the Australian youth in creative industries and their subjective experiences of precarious labour show that young workers who entered an already casualised labour market view it as the new norm and normalise insecure employment conditions<sup>56</sup>. Such workers voluntarily accept their precarious positions as they regard it as an inescapable path towards their desired careers. Yet, one could again argue whether these workers truly exercise their autonomy or whether such pre-existing labour market conditions pressure these agents into incorporating the new, even precarious, norms in their value systems.

Hence, the increasing *temporariness* and precariousness of the European labour market significantly hamper the *voluntariness* aspect of justifiable temporary work programmes. The decision to temporarily migrate for employment reasons could be deemed as involuntary, as the more desirable option of permanent employment is often unattainable due to limited opportunities. Yet, in such a case, temporary employment contracts rather than migration itself is creating more concerns for the justification of the intra-EU TLMP.

## 5. Conclusions

European Union guarantees the freedom of movement, which also includes free mobility for work related reasons. The EU legal framework also sets minimum standards for working conditions and equal treatment as well as provides information and consulting on labour landscape within the EU. In theory, the EU's labour migration programmes positively respond to the global justice demand for more open borders, equal treatment, and the possibility to attain citizenship of the host country

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<sup>54</sup> S. Marcu, *op. cit.*

<sup>55</sup> A. Broughton, M. Green, C. Rickard, S. Swift, W. Eichhorst, V. Tobsch, I. Magda, P. Lewandowski, R. Keister, D. Jonaviciene, N. Elena, R. Martín, D. Valsamis, F. Tros, *op. cit.*

<sup>56</sup> G. Morgan, J. Wood, P. Nelligan, *Beyond the Vocational Fragments: Creative Work, Precarious Labour and the Idea of 'Flexploitation'*, in *The Economic and Labour Relations Review*, 2013, vol. 24 n.3, 397–415.

over time. However, in reality, obtaining the other Member States citizenship may be complicated amid employment-related conditionality approach to EU migrants' rights and ability to obtain citizenship. Widely spread forms of non-standard employment and frequent periods of economic inactivity significantly hinder access to formal rights.

Furthermore, as many temporary work programmes, especially seasonal work, do not require to know the language of the host country – a requirement before applying for citizenship – and are typically characterised by a short duration, this also precludes access to citizenship. In addition, the language barrier hampers the possibility to participate in the foreign society, while it may also lead to marginalisation and discrimination of foreign workers. These serious issues with temporary labour migration require diligent policy action to ensure that intra-EU TLMP are ethically justifiable.

Moreover, temporary labour migration significantly affects individual life plan and agency, another requirement for ethically justified TLMP. Many instances suggest that TLMP have negative consequences on an individual life plan as temporary work itself falls under precarious employment conditions, leading to instability, insecurity and vulnerability as well as inability to adequately project individual long-term goals. The prevalence of temporary contracts precludes individuals to secure a permanent job position. The inability to choose better employment options leads to the involuntary choice of accepting temporary employment. As a result, individual agency is denied due to an indirectly coerced choice to do a fixed-term labour.

This paper does not want to suggest that temporary work programmes should be completely abandoned because they create more precarious work conditions. Some jobs are temporary in nature, for example, seasonal work that ends with the harvest, suggesting that they cannot be replaced by something inherently different. However, the current trend of the expansion of fixed-term work to a wide range of sectors and the shortening of contract duration seem to be superfluous and even raising serious ethical concerns from the individual agency perspective. What precludes from achieving an ethically justified temporary labour migration is not only the institutional treatment of migrants, but also deficiencies of the European labour markets. Therefore, fair migration and fair employment must be regarded as interconnected issues.







# Adapt International Network



**ADAPT** is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at [www.adapt.it](http://www.adapt.it).

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