

OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 7, No. 3, September - October 2018



ADAPT
www.adapt.it
UNIVERSITY PRESS

Scientific Directors

Lauren Appelbaum (USA), Greg Bamber (Australia), Stuart M. Basefsky, (United States), Daria V. Chernyaeva (Russia), Richard Croucher (United Kingdom), Maurizio del Conte (Italy), Tomas Davulis (Lithuania), Tayo Fashoyin (Nigeria), József Hajdu (Hungary), Ann Hodges (USA), Richard Hyman (United Kingdom), Maarten Keune (The Netherlands), Chris Leggett (Australia), Guglielmo Meardi, (United Kingdom), Shinya Ouchi (Japan), Massimo Pilati (Italy), Valeria Pulignano (Belgium), Michael Quinlan (Australia), Juan Raso Delgue (Uruguay), Raúl G. Saco Barrios (Peru), Alfredo Sánchez Castaneda (Mexico), Malcolm Sargeant (United Kingdom), Jean-Michel Servais (Belgium), Silvia Spattini (Italy), Michele Tiraboschi (Italy), Anil Verma (Canada), Stephen A. Woodbury (USA)

Joint Managing Editors

Malcolm Sargeant (Middlesex University, United Kingdom)
Michele Tiraboschi (University of Modena and Reggio Emilia, Italy)

Editorial Board

Lilli Casano (Italy), Emanuele Ferragina (United Kingdom), Antonio Firinu (Italy), Valentina Franca (Slovenia), Erica Howard (United Kingdom), Karl Koch (United Kingdom), Attila Kun (Hungary), Felicity Lamm (New Zealand), Cristina Lincaru (Romania), Nikita Lyutov (Russia), Merle Muda (Estonia), Boaz Munga (Kenya), Peter Norlander (USA), John Opute (UK), Eleonora Peliza (Argentina), Daiva Petrylaite (Lithuania), Aidan Regan (Ireland), Marian Rizov (United Kingdom), Salma Slama (Tunisia), Barbara Winkler (Austria), Machilu Zimba (South Africa)

Language Editor

Pietro Manzella (ADAPT Senior Research Fellow)

Book Review Editor

Peter Norlander (UCLA Anderson School of Management)

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 7, No. 3 September - October 2018

@ 2018 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@ 2018 ADAPT University Press**.

One Story is Good, till Another One is Told.¹ Multi-Utility Companies in Spain, their Evolution and the Laws that Helped their Explosive Growth during the 2008 Crisis

David Acosta-Rosero ²

Abstract Purpose –The aim of this paper is to create a picture of the evolution the Multi-Utility Companies in the Spanish economy, using the changes in Labour Law to create a context within which this phenomenon can be explained.

Design/methodology/approach – The paper is composed of a two-part analysis: The first stage considers the changes in the regulations surrounding the evolution of Multi-Utility companies in Spain during the 2008 crisis period. The second component of this study deal with the evolution in the potential number of companies working under the Multi-Utility model.

Findings – The paper contributes with evidence that shows an increase in the number of enterprises that are most commonly associated with types of economic activities Multi-Utility Companies are registered under.

Research limitations/implications – The nature of the subject of study currently has a tenuous conceptualization and legal definition, factor that limited the amount of official information available.

Originality/value – The study presents a review of the changes in the legal framework, analysing existing Labour Law literature, jurisprudence, and enacted acts, in order to provide some context for the evolution of Multi-Utility Companies.

Paper type - Analytical Paper.

Keywords: *MUC, Spain, Labour Law*

¹ Aesop, *The Man and the Lion*, in *Aesop's Fables*, (ed.) G. Townsend, Wisehouse Classics, Sweden, 2015.

² David Acosta-Rosero, Social Economy PhD. Candidate, IUDESCOOP, Universidad de Valencia, which is Part of the Research Group "INCLUSIVE" GIUV2017-351. Email address: davidacosta.da@gmail.com. This paper was prepared as part of the project "Fundamental Rights on the era of digital subordinate work" DER2017-83488-C4-3-R.

1. Introduction

The new, or not so new, business reality has pushed companies to find inventive ways to cut costs, improve efficiencies and enhance margins. Subcontracting is a common tool now-a-days, and it can easily be found in all industries and all sizes of enterprises. Looking to satisfy the need for transient labour or the desire to outsource part of the operation of a corporation, the Multi-utility Companies (MUC) have jumped into the labour arena, taking up the market by a storm and leaving their mark.

This article is an attempt to understand the phenomenon these types of companies represent, and starts with a general conceptualization and a brief description of their humble beginnings. Next, the changes in the labour legal framework, where these companies operate, is illustrated, taking special consideration to point out the introduction of laws that could be counted as contributing factors for their rapid expansion. Diving even deeper into the Workers' Statute, two of the articles that are most relevant to the function and justification of being of the Multi-Utility Companies, are analysed. They are Article 42 and 43, and they define the context where subcontracting can exist.

Later, the focus is shifted towards the consequences that have been seen to the rights of the workers that are part of some of these enterprises, the mechanics and methods utilized to bypass legal requirements, and the social response of Unions and Associations aimed to stop those abuses.

The final section is an inductive analysis that spans from 2008 to 2017 - including the period of crisis-, aimed to present the evolution of the number of the MUC by means of tracking the amount of companies with the same type of "main" economic activity most commonly associated with these enterprises.

2. What are Multi-Utility Companies (MUC)?

Outsourcing can be done in several ways, making it possible for a company to externalize specific activities to a separate company and saving money by doing so. The common options are specialized service providers, but, what if instead of hiring several companies with specific expertise you could hire a "jack-of-all-trades" or "do-it-all" company. Then you would be hiring a *Multi-Utility Companies (MUC)*.

The question 'What are multi-utility companies or "MUC"?' is an inquiry to which the exact answer has been the focus of much speculation, but it is safe to say that the term refers to an enterprise that performs several activities specially tailored to fulfil, generally, the peripheral labour needs of another company. Those services include but are not limited to: cleaning, call-centre

agents, security, office administration, among others. In words of Esteves-Segarra Multi-Utility Companies “are characterized first and foremost by the versatility of their social object. Therefore, they are not entities sorted by their technical occupation to one activity, but is precisely their professional and lucrative activity the one that is shaped to accommodate the object of the contract it is tending to.”³

Until 1999, a company looking to save on labour costs would turn to a TWA (Temporary Work Agency) for staff. But, following that year’s legislative changes that toughened the rules for the TWA⁴, using their services became as expensive as hiring regular staff. Here is where MUC took advantage of some legal loopholes found in the Workers’ Statute⁵ surrounding the subcontracting phenomenon, and quickly filled the gap left by the TWA. This was the spark that ignited the voracious growth surrounding these enterprises, which -as we will later see- even expanded throughout the period of deep economic uncertainty that Spain lived at the beginning of the decade.

3. Some of the (legal) Reasons for the Expansion of the MUC

The tumultuous crisis Spain lived in the last decade saw many changes and reforms that affected the way business was done. The economic challenges, shifting demographics and external pressures gave birth to a wide assortment of measures that affected all aspects of the Spanish Welfare State, but more relevantly, the rules associated with labour market. Here we will go over the most impactful changes in the legislation, and how they helped laid the foundation for a more favourable structure that fostered the growth of the Multi-Utility Companies.

In June 16, RDL (Royal Decree-Law) 10/2010⁶ was introduced, which among its virtues allows for the reduction the costs of dismissal and speeds up recruitment. It enables the identification, through collective agreements, of the

³ A. Esteve-Segarra, *La selección del convenio colectivo en empresas multiservicios. A propósito de la STS de 17 de marzo de 2015, rcud. 1464/2014*, Universidad de Valencia, 2015, Not available in English

⁴ Law 29/1999 imposes the requirement for TWA workers to have the same remuneration and collective agreements protections as the workers of the client company they are providing services to.

⁵ The articles most relevant to the modus operandi of these companies are: Art. 43 WS (Workers’ Statute) faintly describes an illegal and a legal cession of workers. Art. 42 WS sanctions the possibility of subcontracting services. Art. 15.1a WS allows for the interpretation that the duration of a work contract can be linked to a commercial contract between companies.

⁶ Spain, *Royal Decree-Law 10/2010 of 16 June 2010 on urgent measures to reform the labour market [Real Decreto - Ley 10/2010, de 16 de junio, de medidas urgentes para la reforma del mercado laboral]*, BOE, n.147, June 16, 2010, Not available in English.

activities that are essential to the company. This particular point is one of the key factors in concerning the MUC. A company looking to reduce costs -via outsourcing- would want to reduce its staff and replace it with temporary labour, hence being more flexible to the demands of the market. According to art. 42 WS, a company that wishes to subcontract another one to cover or help out with the production or execution of its “primary activity”⁷, must be certain that the contracting company has fulfilled its Social Security obligations. Even further, the hiring company will be solidarily responsible if the contracting company fails to meet those obligations. All of this does not apply to those companies hired to perform other service that are not the main activity of the client company. That means that the client company is not responsible for the labour security of those workers involved in the peripheral needs of the client company. Compared to the TWA workers, the MUC workers are a cheaper and more flexible alternative.

Another change this bill brought is related with the length of the work contract (art. 15.1 WS) for those employed by the subcontracted company. The understanding that a commercial contract is limited to a specific length of time, has been reason to link the work service contract to the duration of the commercial contract. In other words, if a company is hired to provide a service for a specific period of time, the worker that performs that service is hired only for the time that the contract between the two companies lasts. Even though the cancellation of the original commercial contract was seen as an immediate cause to end the service contract with the worker, the Supreme Court has ruled the process inadmissible. To bypass this constrain the MUC must resort to use a different legal tool in order to dismiss those workers If the commercial contract falls through. That tool was also provided in this RDL in the form of modifications to arts. 51.1 and 52 WS, in which the dismissals due to economic, technical, organizational or production reasons is stated as permissible. The end of a commercial contract would fall under one or all of the justifications aforementioned, making it legal to dismiss any worker in the payroll.

The bill also allows the employer to change certain work conditions such as the distribution of work hours, a scheme similar to “the so-called German model of reduction of working hours on economic grounds is introduced: 10% to 70% of the working hours may be reduced (full-time work may become part-time work). In this case, dismissed employees are entitled to unemployment benefits in accordance with the working conditions set in their previous

⁷ The concept of the “primary activity” or “main activity” will be the subject of further discussion in a later section concerning the subcontracting of labour.

contract”⁸. This can be justified under the same principle of economic, technical, organizational or production reasons mentioned before. The areas that can be affected are: work day, schedule and distribution of working time, shift work regime, pay and salary systems, work and performance systems, and functions (art. 41 WS)⁹.

The following year another legal tool came into action. RDL 7/2011, this bill brought potentially the most powerful and meaningful change to the legal landscape to the MUC. It, among other things, gives priority to the enterprise agreements over the sector agreements, in regards to collective bargaining¹⁰. This means that what has been agreed by the company and its workers takes precedence above any other collective agreement including those negotiated by Unions for entire business sectors.

When talking about collective bargaining, identifying the sector agreement that must be applied to a MUC is very important, but often enough it is very hard to do, due to the plethora of activities that it could be engaged in at any given time. As with any other type of company, these agreements set the minimum legal benefits in regards with salary, work hours, dismissals, etc. In the case of MUCs an apparent shift of perspective from “the main activity” to the “activity of expertise” has taken place, which allow the usage of agreements that would match the type of services performed for each specific and separate commercial contract. In contrast with TWA, the application of the collective agreement of the client company, does not need to be applied. By having as many agreements as contracts, the MUC can apply different conditions to workers that would otherwise have access to higher standards if they were hired directly by the client companies. If a MUC wishes to avoid having to deal with the interpretation of what sector agreement is supposed to be applied, the company agreement seems to be the main tool used to escape the more protectionist responsibilities those sector agreements could provide. Not surprisingly, the company agreements tend to have lower Union representation when negotiated¹¹ hence lower standards and protection for workers.

A parenthesis is necessary at this point to mention some of the elements of the social protection Collective agreements are meant to provide. These main factors that can be negotiated by means of a company agreement, and that have a precedence over any other type of collective (sector) agreement are: a)

⁸ J. Lladós Villa, T. Freixes, *The Impact of the Crisis on Fundamental Rights across Member States of the EU. Country Report on Spain*, European Parliament - Directorate General for Internal Policies, 2015, 1-131

⁹ Spain, *op. cit.*, 3

¹⁰ Lladós Villa, Freixes, *op. cit.*, 4

¹¹ A. Vicente Palacio, *Empresas multiservicios y precarización del empleo: el trabajador subcedido*. Atelier, Barcelona, 2016.

wages and supplements including those related with company to company profits, losses and results, b) overtime pay and shift work specific wages, c) scheduled work hours and the distribution of labour time, shift work arrangements and vacation planning allocation, d) professional classification tailored to suit specific company's needs, e) the conditions of the types of work contracts that are affected by collective bargaining, f) policies to enhance personal / work life balance, and e) any other policy that could be negotiated in accordance with Article 83.2 WS¹².

Going back to the legislative changes that affected the landscape for Multi-utility Companies, in 2012, new measures were introduced. In regards to Temporary Work and Labour Brokering agencies, they are now allowed to be "for-profit", and even serve for the procurement of workers for the Public Sector thanks to the introduction of RDL 3/2012.¹³ This bill also allows for the suspension of contracts due to production, economic or organizational losses including those hired by government agencies and organizations. In the case of dismissal of public servants based on "economic reasons", budgetary deficiencies can be used to justify said lay-offs¹⁴, condoned by adding an additional disposition to the Workers' Statute.¹⁵ Adding to this, if a company wanted to dismiss staff skipping the regular or legal procedures, the reparations monies to be payed to the fired employee were also diminished. The compensation packages went from 45 days of pay per year of service, with a maximum of 45 monthly payments, to 33 days of pay per year of service, with a maximum of 24 monthly payments.

The collective dismissal procedure for private companies saw changes too. Previously, a Labour Adjustment Plan -process of negotiation supervised by the Ministry of Labour and Social Security, with the presence of the Workers'

¹² Article 83.2 refers to the capability that national or regional Unions and Workers' Associations have in order to negotiate clauses associated with the structure of collective agreements (interprofessional or to a specific sector) and, if necessary, the rules to solve disputes relevant to those agreements. But, the application of the company agreement over any other type of collective negotiation, as stated in Art. 84, can effectively cancel out the points negotiated by Unions and Workers' Associations via Art. 83.2. Spain, *Legislative Royal Decree 2/2015 of 23 October, by which the Consolidated Text of the Law of Workers' Statutes is approved* [Real Decreto Legislativo 2/2015 de 23 de Octubre, por el cual se aprueba el Texto Refundido de la Ley del Estatuto de los Trabajadores], BOE, n. 255, October 24, 2015, Not available in English.

¹³ Spain, *Royal Decree-Law 3/2012 of 10 February 2010 on urgent measures to reform the labour market* [Real Decreto - Ley 3/2012, de 10 de Febrero, de medidas urgentes para la reforma del mercado laboral], BOE, n. 36, February 10, 2012. Not available in English.

¹⁴ A. Vicente Palacio, *El Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral. Una breve presentación de la reforma en el ámbito del derecho individual*, *Revista General de Derecho del Trabajo y de la Seguridad Social*, Spain, 2012, n.31, 258-315.

¹⁵ FEMP, *Análisis del Decreto Ley 3/2012, de 10 de Febrero, de medidas urgentes para la reforma del mercado laboral*, Madrid, 2012.

representatives- was required. With the introduction of this Bill, the collective dismissal process can be expedited unilaterally by the employer without the intervention or supervision of government representatives.¹⁶

This Royal Decree Law also suspended the automatic conversion of temporary contracts into fixed-term contracts by modifying art 15.5 WS, measure that was introduced the previous year in RDL 10/2011 of the 26 of August 2011. Before this modification, any worker employed for more than 24 months out of 30, under one or more temporary contracts in the same company, would acquire the status of permanent worker. This right is no longer available, effectively making it harder to become a “permanent” worker, with all the rights and stability it entails.

Among other “benefits” of this reform, telecommuting is now legal, greater flexibility is added by modifying the occupational system, and companies can unilaterally assign up to 5% of working hours to other professional categories. But, with all the tools presented to allow for internal flexibility, Martínez Veiga¹⁷ points out that only 1 in 10 of the companies decided to make use of “soft” flexibilizing measures, such as schedule or pay adjustments, while more than double the amount of companies (25%) preferred “hard” measures such as dismissals; the trend and preference for employers in cases of economic stress is still aimed towards the use of “hard” measures.

And to boost job creation, a one-year-probation-period contract was created to support entrepreneurs. This figure (contract) has generated a heated debate, even reaching the Social Rights European Tribunal. The justice institution has declared that such type of mechanism violates the European Social Rights Chart, international Treaty of which Spain is an endorser -even if it is only the core articles of the chart.¹⁸

Some of these legislative changes might partially explain the massive increase in unemployment, the disregard for collective bargaining agreements, the skyrocketing increase in many different types of companies, among other social consequences that could contribute to the rise in the Risk of Poverty index or the increase in the GINI coefficient. But that is a subject that will not be discussed now.

On the other hand, what we can state is that the changes in the law provided not only tools for companies to thin out and legally get rid of employees, but the transition provided a well defined route on how to do it. Chronologically

¹⁶ Lladós Villa, Freixes, *op. cit.*, 4.

¹⁷ U. Martínez Veiga, *La Reforma Laboral De 2012 Y El Aumento Del Despido Y Desempleo En España.* in *Revista Andaluza De Antropología*, vol. 11, no. Trabajo y Culturas del Trabajo en la Globalidad Hegemónica, 2016, 44-66.

¹⁸ M. B. Cardona Rubert, *La situación del Estado Español en relación al cumplimiento de la Carta Social Europea*, in *Revista de Derecho Social*, 2015, no. 69, 103-114.

speaking, the identification of the segments that were not essential in the company was the first step, followed by the critical change from a Sector agreement to a company agreement, were a cause of the decrease, in many cases, of the standards for workers. After, firing workers got easier and cheaper, while hiring workers got incentives, even if those workers had part-time contracts or service contracts -of the latter some were tied to mercantile contracts. Effectively, the consequence was a revolving door where workers could be fired and then rehired with lowered benefits and uncertain stability. The changes that occurred to the Workers' Statute were far reaching, and it is now necessary to dive a little deeper into two important Articles, when speaking about outsourcing. Those are Article 42, and article 43.

4. Art. 42 WS: Subcontracting for Specific Works and Services;¹⁹ Worker Protection or an Open Door for Segregation?

It is important start by mentioning that the Spanish Constitution (art. 38) allows for freedom of enterprise, including the ability to organize the structure and labour of the company, which in turn allows to contract or subcontract labour, a practice that is permitted in art. 42 of the Workers' Statute. This management tool is implemented by means of a commercial contract where a company -public or private- hires another company to perform a specific deed or to provide a service for a certain clearly stated price. In this contract both companies retain their economic and legal autonomy. It is not necessary for the hiring company to be the recipient of the work or services performed by the hired company²⁰, in other words, the subcontracted company can offer its services “for” the hiring company, not just “to” it.

As noted in a previous section, this article provides protection to the subcontracted worker performing duties that are considered to be those part of the main activity of the client company. So far in paper, this falls in line with the same type of rhetoric used to curb the abuse of temporary workers, as it was seen in the 1990s, even though it does not go as far as to delineate a need for the subcontracting company to match the benefits that the workers of the client company have, requirement that Temporary Work Agencies need to comply.

Article 42 WS rules over the subcontracting of all industries with exception of the construction industry. Due to the compartmentalized nature that the

¹⁹ Spain, *op. cit.*, 5

²⁰ J. G. Arbós, *Análisis de las contratas y subcontratas como reflejo de la descentralización productiva*, in *Revista Jurídica Universidad Autónoma de Madrid*, Madrid, Jul. 2016, vol. 0, no. 1, 149-180.

industry can exhibit, and specific law²¹ was drafted to regulate the subcontracting of labor for specific jobs and services.

In regards to the rest of industries, Art. 42 WS compels a client company looking to subcontract labour for their main activity to check if the company it is hiring has a good record and is up to date with its Social Security and wages obligations. Furthermore, the hiring company is made to be solidarily responsible for the Social Security payments of the subcontracted workers, if the contracted company is not able to fulfil this commitment. Wage-wise, the same responsibility is extended effectively creating a safety net for the workers involved.

Furthermore, the workers of the contracted company, their representatives, and the Social Security Treasury must be made aware in writing, prior to the start of the tasks, of the name, fiscal identification and address of the company that the services are going to be performed for. Equally important, is the responsibility of the client company and the contracted company to inform their workers' representatives of the intention of contracting another company, specifying its name, the reason and length of the contract, the place where it will take place, the number of subcontracted workers to be posted in the main site, and what safety measures are to be taken. This information must be recorded and made available by the client company to its workers' representatives, if the worksite is going to be shared with subcontracted workers. By doing so, the workers of the hiring company can, if they deem necessary, converse, discuss, and take steps to resolve any potential conflict that may arise.

In turn, to allow the subcontracted workers to have a voice regarding their labour conditions, if they have no legal representation, their concerns can be directed to the Workers' Representatives of the client company while they share the same worksite. And even if the former have representatives, those can in turn meet with the representatives of the latter in order to discuss and coordinate their labour activities. The responsibilities of the representatives are those stated in the law or in the applicable collective agreement.

As mentioned before when describing the evolution of Multi-Utility Companies, Art. 42 protects only those subcontracted workers that perform tasks related to the "main activity" of the client company, considering it as the core or primary driver of the production process. In words of the Supreme Court:

²¹ Spain, *Law 32/2006 of 18 October (Consolidated text last modified on 23 December 2009) on the regulation of subcontracts in the Construction sector [Ley 32/2006, de 18 de Octubre (Texto consolidado, última modificación el 23 de diciembre de 2009). reguladora de la subcontratación en el sector de la construcción]*, BOE, n. 250 December 23, 2009. Not available in English.

It could be considered the main activity as the “indispensable” one, in such a way that it groups within the concept, besides the ones that are comprised within the company’s productive cycle, all others that are necessary for the organization of work. This encompasses complementary tasks [...] it could be interpreted that only are integrated in the concept those intrinsic activities, in a way where only those tasks that are part of the productive cycle of a company will be understood as its ‘main activity’. This entails that non “core” tasks are excluded from this concept [...] If it is required that works and services of contracted and subcontracted companies must match the main activity of the hiring company, is because the lawmaker is thinking of a reasonable limitation that excludes a favourable interpretation of any company activity. It is obvious that the first interpretation nullifies the effect of the mandate of Article 42 WS which has no other goal than to reduce the possible responsibility of the hiring company and, is because of this, ‘we are to adhere to the interpretation that presents the main activity as the one that encompasses the nuclear works and services of the hiring company²²

This determination leaves aside (unprotected from any solidary responsibility from the client company) those subcontracted workers performing activities dimmed “supplementary” - even if they are necessary for the correct development of the “main activity” of the company-, concept that has been interpreted by court ruling²³. In contrast to TWA, this protection does not include or imply a homologation of benefits to match those enjoyed by the workers of the client company. The work conditions for the subcontracted employees are determined by the collective agreements of their own company or by the sector agreement applicable to it.

This leads to the conclusion that subcontracting is a tool that can be used to lessen the costs associated with Social Security and negotiated benefits for the client company, while the subcontracted company does not have to subscribe to potentially higher sector standards while working for the client company²⁴. The same conclusion has clearly been reached by managers, business owners and entrepreneurs all over the country, as exemplified by the rise in numbers of Multi-Utility Companies -section to be discussed later in this work.

An active debate is taking place in regards with the practice of unequal treatment of workers performing the same job due to the externalization and segmentation of enterprise functions. Article 42, inadvertently or not, leaves a door wide open for bypassing the, otherwise, required responsibility to provide

²² Own translation of the *Supreme Tribunal Sentence 3996/2016 of 21 of July 2017*. (STS 3996/2016 del 21 de julio de 2016). Not available in English.

²³ A. Ginès i Fabrellas, *Externalización productiva y elusión de compromisos laborales. La necesidad de revisar la normativa europea en materia de subcontratación y sus consecuencias laborales*, in *Relaciones Laborales y Derecho del Empleo*, Mar. 2016, vol. 4, n. 1, 1-20.

equal treatment, equal wages and equal work conditions to people performing the same tasks in the same company, or similar. As Fabrellas writes “First of all, it can generate - as it effectively happens in practice- substantial wage and contract differences between the workers of the main company and the workers hired by the subcontracted company - specially in the lower zones of the productive chain.”²⁵

Art 42 WS provides no barriers for a company to subcontract parts of its structure -except for those mentioned in section 1 and 2 of the article, which aim to dissuade from hiring companies that might not be up to date with the obligation to the Social Security system²⁶- rendering the practice as legal, as long said relationship between companies does not devolve into an illegal transfer for workers, subject treated by Article 43 WS. In essence, subcontracting is legal if the contracted company gets to keep, inside the client company, its economic responsibilities, considered as such the ability to freely organize the labour of its employees (command, distribute tasks, and decide how to use its resources to achieve its goals) without the interference of the client company²⁷.

Written as the first point under “*Section 2. Guaranties due to employer change*”, contradictorily, Art. 42 WS does not imply or express, in a technical sense, a change of employer when it describes and outlines contracting and subcontracting to other companies²⁸. Even Though Art. 42 WS provides for the option of restructuring a company by means of subcontracting, it does not exonerate the responsibility of the “main employer”²⁹, which, in the case of the subcontracted employee would, theoretically, be the contracted company and not the client company. In other words, the worker’s employer should be the one that hires that person - providing that there is a “real productive organization”- even if the service that he or she is hired to do takes place in a different location.

Subcontracting as an organizational phenomenon is not limited to the participation of companies within the private sector, but it is consistent

²⁴ Ibidem.

²⁵ Ibidem.

²⁶ J. Gárate Castro, *Algunas cuestiones laborales y de seguridad social de la descentralización productiva por medio de contratos de obras y servicios, en especial, de las que corresponden a la “propia actividad” (referencias al empleo de esta fórmula de descentralización productiva por parte de las administraciones públicas)*, in J. Gárate Castro (ed.), *Las relaciones laborales en las administraciones locales*, Fundación Democracia y Gobierno Local, Barcelona, 2004, 153-192.

²⁷ L. M. Munín Sánchez, *La cesión ilegal de trabajadores y su delimitación de las legítimas contrataciones*, in *Anuario da Facultade da Dereito da Universidade da Coruña*, 2011, n.15, 289-298.

²⁸ J. L. Moreno Perez, *La subcontratación como instrumento de descentralización productiva y su incidencia jurídico-laboral*, in *Revista Direito das Relações Sociais e Trabalhistas*, 2016, n.1, vol.2, 136-169.

²⁹ Ibid.

practice among institutions of the public sector as well. In order to grant better efficiency and flexibility to the delivery of public services, many functions of some public entities have been taken out of the scope of influence of the legal framework that presides over the public administration, and have been placed among those that deal with the commercial.³⁰ It is common to find public institutions where contracts for cleaning and maintenance have been awarded to Multi-Utility Companies, or call centres manned by external companies.

In general, every sector of the economy has taken advantage of the capability to subcontract, and potentially replace, parts of any company at lower costs. This has not gone unnoticed by entrepreneurs who have jumped at the opportunity and quickly filled the gaps of those corporations (public or private).

5. Art. 43 WS. Transfer of Workers³¹; A Hazy Boundary

Here is where things can take a twist. Even though the practice of using the figure of subcontracts to rearrange the efficacy of a company and thus saving on labour costs and other responsibilities related to human resources management is legal, there is a fine line between subcontracting and the illegal transfer of workers. Article 43 of the Workers' Statute outlines that only duly approved Temporary Work Agencies will have the power to transfer workers to a client company -renting labour for a specific amount of time, with all the requirements associated with the use of an approved TWAs-. Furthermore, it defines an illegal transfer of workers as a situation where any or all of the following circumstances are present: a) when a service contract is celebrated with the sole object of making labour available from the subcontracted company to the client company; b) when the subcontracting company has no productive activity or lacks its own stable organization; c) when the subcontracting company lacks the means necessary to fulfil its activity; and, d) when the subcontracting company does not perform the tasks embedded in its role as employer³².

³⁰ J. L. Moreno Perez, *Repercusiones laborales de los diversos instrumentos de privatización y reversión de servicios públicos*, in *Temas Laborales*, 2016, n.135, 251-307.

³¹ Spain, *op. cit.*, 5.

³² Art. 1.2 of the Workers' Statute defines the employer as any physical or legal person, o community of property that receive the services of the persons that Art. 1.1 WS refers to, as well as those persons hired to be transferred to client companies by legal TWA. Art. 1.1. WS defines a worker as a person that voluntarily provides remunerated services employ by others and inside an organizational setting, and under the direction of another physical or legal person, that is known as the employer. From these two articles the conclusion is that the employer's tasks are: a) to provide a remuneration for the services it receives from a worker; b) provide an organizational setting for the worker; and, c) provide direction to the worker. Spain,

This article also penalizes the illegal transfer of workers by making the client company and the subcontracting company solidarily liable for any obligation to the worker or any responsibility to the Social Security system, apart from any other penalty that might be imposed by law. On the other hand, the worker subject to an illegal transfer can choose to become a full time worker of either of the companies involved in the transfer, with all the benefits that any other worker in the chosen company would enjoy. It is important to note that, in contrast with Article 42 WS, this protection is not limited to certain areas of subcontracting due to the fact that there is no mention of the “main activity” its the redaction. Hence, the protection can be extended to any illegally transferred worker, being an example the Supreme Court Sentence 1378/2015 of 17 of March 2015³³. This case involves Technical Engineering firms and a worker performing his duties as a driver, activity which is not considered to be part of the “core” of the enterprises economic processes.

The article, which clearly states the need to utilize a TWA in order to transfer labour, unfortunately leaves a gap wide open that has been masking the use of other forms of labour management, such as subcontracting other companies, to provide for the needed or wanted transfer of labour. As mentioned before, subcontracting services is not illegal according to Art. 42 WS, but it can be used to hide unlawful labour transfers. This unlawful practice has sparked a renewed debate that puts into consideration the concept of the triangular labour relationship -client company / worker / subcontracted company³⁴.

A rapid growth of phenomenon has been seen, especially due to the development of new forms of labour that require little to no infrastructure, such as those jobs related to intangible production (software, customer service, management, to name a few). Considering these types of companies and industries, which might need no physical infrastructure to survive and thrive, the line gets blurry when defining a “real productive organization” vs. a fake one, especially when referring to companies that provide more than just one service³⁵.

To identify the difference between the two situations (legal subcontracting and illegal transfer of labour), identifying the employer responsibilities of the subcontracted company within the client company is a must. If the worker has to report to and is directed by a representative of the company he or she has

op. cit., 5.

³³ *Supreme Tribunal Sentence 1378/2015 of 17 of March 2015. (STS 1378/2015 del 17 de Marzo de 2015)*. Not available in English.

³⁴ M. L. Pérez Guerrero, M. Rodríguez-Piñero Royo, *El artículo 43 del Estatuto de los Trabajadores: Empresas de trabajo temporal y cesión de trabajadores*, in *Revista del Ministerio de Trabajo y Asuntos Sociales*, Madrid, 2005, no. 58, 185-220.

³⁵ *ibid.*

been hired into (the subcontracting company), and not to a representative of the client company, then we can say that there is a real organization in the subcontracting company. Failure from the subcontracted company to exercise its power of direction accounts for a flaw in the contract, and thus incurring in an illegal transfer for labour³⁶. The subcontracted company must, as well, be able to provide for the necessary “structure” in order to fulfil the service it was hired for. Otherwise, if the structure is not clear or if it is dependant of the client company, then we can say that the structure is not independent from the client company, hence it becomes an illegal labour transfer^{37 38}. The same can be added to the “tools and facilities” necessary for the delivery of the service or the execution of the tasks required of the workers.

The Supreme Court (Tribunal Supremo) has stated that “the line that divides legal subcontracting and pseudo-subcontracting, or illegal transfer for workers disguised as a works-contract or services-contract is drawn according to the doctrine of the ‘actual employer’, having to assess the performance of the employer’s position, not in a general way, but in relation with concrete employee that makes the claim”.³⁹

In other words, if a worker is hired by Company A, and this company fulfils its obligations as an employer (provides remuneration -including those obligations related to Social Security and collective agreements-, direction, structure, and the means to perform the tasks assigned), then the worker is considered to be working for Company A, even if Company A provides services for Company B via the use of a commercial contract. If Company A fails to fulfil any or all of its obligations -wilfully or not- then the worker can be considered to be part of an illegal transfer of labour, and is entitled to choose to work for either Company A or Company B. Summarizing, in order to avoid an illegal transfer of labour, the company that hired the worker must provide for remuneration, structure and direction.

An example can be taken from the Supreme Court Auto 672/2018, of 16 of January,⁴⁰ where it was decided to deny the appeal to an earlier Sentence related to illegal transfer of labour, corroborating the presence of the unlawful act.

³⁶ A. Montoya Melgar, *El poder de dirección del empresario en las estructuras empresariales complejas*, in *Revista del Ministerio de Trabajo y Asuntos Sociales*, Madrid, 2004, n. 48, 135-145.

³⁷ *Supreme Tribunal Sentence 4919/2012 of 19 of June 2012. (STS 4919/2012 del 19 de junio de 2012)*. Not available in English.

³⁸ *Supreme Tribunal Sentence 1187/2012 of 25 of January 2012. (STS 1187/2012 del 25 de enero de 2012)*, Not available in English.

³⁹ *Supreme Tribunal Auto 9599/2017 of 4 of October 2017. (ATS 9599/2017 del 4 de October de 2017)*. Not available in English.

⁴⁰ *Supreme Tribunal Auto 692/2018 of 16 of January 2018. (ATS 692/2018 del 16 de Enero de 2018)*. Not available in English.

The logic used in the decision for this *Auto* was based on the outlining of the figure of the real employer and its responsibilities. In this particular case a Multi-Utility Company, hired to provide services part of the main activity of the hiring company, fails to provide a real business structure for its employees. The workers of the MUC were integrated in the process of the main business activity, having no specific separation from the workers of the client company in said productive scheme. Also, the subcontracting company was supposed to lease the use to the machinery from the hiring company, but by not having records of any transactions referred to this exchange, the MUC was effectively not providing the equipment necessary to fulfil service and had to rely on the hiring company's own equipment. Furthermore, a Directive Official of the hiring company was the person in charge of issuing orders and ensure quality control for the processes the subcontracted company was engaged in, evidently, this means that the organizational structure of the MUC is embedded within client company's own configuration. According to the facts brought forward to the Supreme Court, a clear breach of the Article 43 of the Workers Statute took effect in this particular situation, leading to an illegal transfer of Labour from a MUC to a manufacturing company.

Another of such examples is evident in the Supreme Court *Auto* 11030/2017⁴¹, in which this tribunal decides to uphold a previous sentence passed down from the Superior Court of the Valencian Community in 2016, in regards to the illegal transfer of labour from a MUC to an airport authority. In this case the workers of the MUC -clearly differentiated by their uniforms - were hired to provide information services to passengers, a role core to the activity of the airport authority. They were also using the equipment and facilities of the client company. Additionally, the MUC had two people to control and direct the workers, but the latter were also taking commands directly from the airport authority's staff. The Supreme Court decided that the rule of the inferior courts is justified, and reiterates that the lack of organizational structure and command from the MUC, when providing services to another company, is considered an illegal transfer or labour. Similar case can be found in the Supreme Court *Auto* 461/2017 of January 11, 2017⁴² involving another MUC and a different Airport Authority, which yielded the same results as the former *Auto*. Other notable Supreme Court cases, among many others from different Superior Courts involving MUC engaging in illegal labour transfers, are: STS 4941/2016 of 10 October 2016,⁴³ ATS 5587/2015

⁴¹ *Supreme Tribunal Auto 11030/2017 of 7 of November 2017. (ATS 11030/2017 del 7 de Noviembre de 2017)*. Not available in English.

⁴² *Supreme Tribunal Auto 461/2017 of 11 January 2017. (ATS 461/2017 del 11 de Enero de 2017)*. Not available in English.

⁴³ A worker, hired by a MUC, performed services for various companies but it was deemed

of 30 of April 2015⁴⁴, ATS 9933/2015 of 10 of November 2015.⁴⁵

It is evident in the articles previously seen that there are loopholes, some big enough to hide illegal practices within the standard process of subcontracting. In the case of MUC, Art. 42 and Art. 43 WS, which represent the legal cornerstone of their productive model, have been used in some cases to slip through the cracks of the legal fabric of workers' rights.

6. Not So Smart Anymore: The Flaw of Company Agreements in Multi-Utility Companies

There is no denying that these types of companies provide valuable services to companies looking to restructure their business model, but not all MUC are playing by the rules. The importance of the collective agreement to establish the work conditions within a company, was already mentioned; and, it was noted too that the legal changes mentioned above gave prevalence to the company agreement over sector agreements.

Some companies took advantage of this fact and pushed through agreements that were aimed to lower the conditions of their workers. To illustrate a scenario this scheme could be applied to, first, a company was formed with a very small number of employees. Those employees elected a workers representative. Then the company and the workers representative would negotiate and sign a collective agreement. So far that is considered to be a pretty standard procedure, and in most cases it works to create better conditions, but the example brought forward quite different. The workers representative turned out to be the financial director of the company, and this company grew from 7 employees in 2012, when the agreement was approved and sent to the authorities, to over 3600 employees in 2015. Before going on a hiring spree, the company would change its name from Doctus to Adecco, and the document signed provided for monthly salaries ranging from 650 to 912 Euros per month⁴⁶.

that the hiring company was only making the available the labour of the worker, rather than providing a structure for that labour to be performed. *Supreme Tribunal Sentence 4941/2016 of 26 of October 2016. (STS 4941/2016 de 26 de Octubre de 2016)*. Not available in English.

⁴⁴ The administrative tasks of a client company were performed by a worker hired by a MUC, but the client company provided the organizational structure, by means of issuing orders, and the physical infrastructure needed for the job. *Supreme Tribunal Auto 5587/2015 of 30 of April 2015. (ATS 5587/2015 de 30 de Abril de 2015)*. Not available in English.

⁴⁵ Cleaners were hired to perform housekeeping duties in Hotel, using the infrastructure and tools provided by the hotel, under the command structure of the hotel staff. *Supreme Tribunal Auto 9933/2015 of 10 of November 2015. (ATS 9933/2015 de 10 de Noviembre de 2015)*. Not available in English.

⁴⁶ R. Mendez, A. Blanco, D. Grasso, *Reyes de la Precariedad: así bunden los salarios los multiservicios*

This is but one example on how these types of negotiations were being made and applied. In the Autonomous Community of Navarra it is estimated that the average loss of yearly income for the MUC workers, compared to the sector agreements stipulations, sits at €8.713,00 (Salaries decreased from 14% to 51%), while number of hours increased by 100 per year.⁴⁷ The number of workers affected by the application of company agreements instead of sector ones is approximately 16.700 distributed in over 1.500 companies. These enterprises mainly deal in the activities of: Retail, Transport and Logistics, Hospitality, and Services (cleaning, landscaping, call-centres, administration, etc.).⁴⁸

But, this technique worked only for a limited time, due to the actions of the mayor Unions, who brought the issue to the courts. In a Supreme Court Auto previously mentioned (ATS 9933/2015 of 10 of November 2015), the ruling favoured the workers by acknowledging that in this instance there was an illegal transfer of labour, as defined by Article 43 WS. But what is now worth noting is that this pronouncement also highlighted the practice Multi-Utility Companies have been famous -or rather infamous- for, which is cutting costs associated with an enterprise's peripheral activities by lowering labour standards for externalized workers. The Auto provides a clear example and goes as far as to state that: "...the Court understands that the intention is to have cleaners perform the duties of housekeepers, lowering the work conditions of those who provide that service, due to the fact that the contracted activity is not cleaning of the common elements of the hotel, but the completion of those activities that according to the hospitality collective agreement are to be executed by housekeepers with a higher wage, which can even be deduced from the service leasing contract that makes reference to housekeepers in its Fourth Numeral, truly hiring housekeepers instead of cleaners, but under the category of cleaners to avoid the application of the hospitality collective agreement so they can be payed a lower wage and to decrease their labour conditions."⁴⁹

In recent years, Trade Unions and Worker Associations have also brought these types of practices into the spotlight, and so far they have succeeded by

con la reforma laboral, in *El Confidencial*, 2016, Available at https://www.elconfidencial.com/empresas/2016-12-30/precariado-reforma-laboral-empresas-multiservicios-convenios_1308910/ (Accessed on September 7, 2017).

⁴⁷Gabinete Técnico, *Condiciones Laborales En Las Empresas Multiservicios. Actuaciones Para Combatir La Precarización*, UGT - Navarra, May 2017, 1-21.

⁴⁸ Ibid.

⁴⁹ *Supreme Tribunal Auto 9933/2015 of 10 of November 2015. (ATS 9933/2015 de 10 de Noviembre de 2015)*. Not available in English.

repealing over 40 of those agreements.⁵⁰ In most cases the main issue with these company agreements is not the type of conditions that they pose, but rather a technical flaw that has been uncovered. Negotiations lacked, from the workers' side, a real representative presence due to the fact that the agent bargaining for the workers -brought from only one workcentre- would only be able to stand for the interest of one work location, and even if the company had national reach⁵¹.

This seems contradictory to what is now stated in law, so we ask: If the company agreement has preponderance over the sector agreement, why aren't these collective negotiations valid (even if they are ethical or not)? Well, the devil is in the details, and in this case the limitation is set by Article 63 WS. This article explains that the negotiation power of the workers' representative is limited to the work location he or she is representing. A committee can be appointed to represent several work locations through a collective agreement provision, but this committee cannot be instituted right away on the first collective agreement. This seems to have been the point that many of the new MUC missed. Another point to take in consideration is that, even if there is a legally formed committee formed to negotiate for several work locations, any new work location would not be included in the scope of the reach of said negotiations, effectively leaving any new contracts that a MUC could have -performing duties for new companies at their facilities- outside of the company's collective agreement⁵². This is noted on the ruling of the Supreme

⁵⁰ Trade Unions(UGT and FeSMC) have managed to bring to the courts and successfully nullify 44 company agreements between 2012 and 2016 belonging to: Adaptalia Especialidades de Externalización, S.L.; Activa Innovación y Servicios; Alliance Outsourcing, S.L.; Alterna BPO, S.L.; AltoCu Servicios Integrales, S.L.; Aniser Facility, S.L.U.; APC Bussines Proyect, S.L.; Avanza Externalización de Servicios, S.A.; Bercose, S.L.; Citius Outsourcing Enterprise, S.L.; Clarosol Facilities SLU (formerly known as Intecons S.A.); CPM Expertus Field Marketing SAU; Denbolan Outsourcing, S.L.; Doctus España, SAU (Adecco Outsourcing S.A.); Duna Tecnics S.A.; ELA Hiermor Asociados SLU; ESC Servicios Generales, S.L. (Prosegur); Exeo Gestión Integral SLU; Experius, Consultores en Selección y Formación, S.L.; Expertus Multiservicios, S.A.; Expertus Servicios Hoteleros, S.L.; Externa Team, S.L.; Fidelis Servicios Integrales, S.L.; Fissa Servicios Auxiliares, S.L.; Grupo Constant Servicios Empresariales, SLU; GSA Soluciones Empresariales, SLU; Hottelia Externalización S.L.; Iman Corporation, S.A. (Grupo Iman); Initial Facilities Services, S.A.; J2Y Serhotel Outsourcing, SLU; Jobs Management, S.L.U.; Lloyd Outsourcing, S.L.; Mantrol Servicios, S.L.; Mediterranea Merch S.L.; Merchanservis, S.A.; Risk Steward, S.L.; SGE Quality Services S.L.; Sherco al Detalle, S.L.; Sial Servicios Auxiliares, S.L.; SPN Empauxer, S.L.; Stock Uno Grupo de Servicios, S.L.; Translimp Contract Services, S.A.; Tuntac Invest, S.L.; Úrsula Consulting, SLU. From UGT and FeSMC, *Empresas multiservicios, o cómo precarizar el empleo*. In *Informe del Gabinete Técnico de FeSMC-UGT*, UGT-FeSMC, 2016, 1-61.

⁵¹ Vicente Palacio, *op. cit.*, 4.

⁵² *Ibidem*.

Court (STS 3286/2015 of 10 of June 2015) that not only describes and upholds the nullification of an illegal collective agreement but, also sets precedent regarding the capacity of companies with only one work centre to negotiate agreements with national influence. The Court states: “to convene a nationwide collective agreement it is necessary for the company to have work centres in more than one Autonomous Community and, in addition, that in the negotiations all the workers’ representatives of those centres are present”.⁵³

7. Up, up we go. Evolution of “Multi-Utility” Companies

The MUC phenomenon has been on the rise in the last decade, but, without an accurate definition, how do we measure the number of these types of enterprises? That is a challenge since the wide arrange of possible activities that these entities perform might disguise their true numbers. Taking and inductive approach helped us find a way to create a general landscape of the scope of action of the MUC. The catalogue system (CNAE – European Activity Classification) used by the INE (National Statistics Institute of Spain) is the tool used to identify the type of companies we are dealing with. Even though it is restrictive in scope, it provides clear data that can help us create, at least, a partial picture of the reality of these enterprises.

To guide us in the process of identification, we considered as a starting point the analysis of real enterprises known to be MUC. To do so we analysed the findings of the 2016 study published by FeSMC-UGT Technical Board⁵⁴. Therein a list composing of 214 collective agreements of multi-utility companies was made public. Taking the company names of each of these negotiations, we dug into the nature of their primary activity, as logged in the National Mercantile Registry.

The finding of this enquiry gave us results for 209 out of the 214. Tabulating the number of activity types, we found 30 different ones⁵⁵ that are actively used

⁵³ *Supreme Tribunal Sentence 3286/2015 of 10 of June 2015. (STS 3286/2015 del 10 de junio de 2015)*. Not Available in English.

⁵⁴ UGT and FeSMC, *op. cit.*, 16.

⁵⁵ The 30 commercial activities associated with the collective agreements of the companies we looked at, as defined by the CNAE Rev 2, are: 26 - Manufacture of computer, electronic and optical products, 33 - Repair and installation of machinery and equipment, 41 - Construction of buildings, 43 - Specialized construction activities, 46 - Wholesale trade, except of motor vehicles and motorcycles, 49 - Land transport and transport via pipelines, 52 - Warehousing and support activities for transportation, 53 - Postal and courier activities, 58 - Publishing activities, 59 - Motion picture, video and television program production, sound recording and music publishing activities, 63 - Information service activities, 68 - Real estate activities, 69 - Legal and accounting activities, 70 - Activities of head offices; management consultancy activities, 71 - Architectural and engineering activities; technical testing and analysis, 73 -

to describe the companies there involved. But what was truly notable was to find that only 6 economic activities represent over 77% of the total number of collective agreements.

The table below shows the six Activities, as described by the CNAE that are most popular among the companies considered to be MUC, grouping 165 of the 213 collective agreements examined.

Table 1. Number and percentage of Collective agreements by Main Activity (CNAE)

Main Activity (CNAE)	Agreements	Percentage
74 Other Professional, scientific and technical activities	13	6.10
78 Employment activities	17	7.98
80 Security and Investigation activities	23	10.80
81 Services to buildings and landscape activities	68	31.92
82 Office administrative, office support and other business support activities	34	15.96
96 Other personal services activities	10	4.69
Total	165	77.46

Source: Own table based on the company types of the collective agreements listed by FeSMC-UGT Technical Board (2016)⁵⁶.

Almost a third (31.92%) of the negotiations we analysed concerned companies

Advertising and market research, 74 - Other professional, scientific and technical activities, 77 - Rental and leasing activities, 78 - Employment activities, 80 - Security and investigation activities, 81 - Services to buildings and landscape activities, 82 - Office administrative, office support and other business support activities, 84 - Public administration and defense; compulsory social security, 85 - Education, 88 - Social work activities without accommodation, 89 - Mining and quarrying n.e.c., 93 - Sports activities and amusement and recreation activities, 94 - Activities of membership organizations, 96 - Other personal service activities, 97 - Activities of households as employers of domestic personnel.

⁵⁶ UGT and FeSMC, *op. cit.*, 16.

whose main activity is Building Services and Landscaping Activities, followed by Office Administration Activities (15.96%), Security Activities (10.80%), Labour Activities (7.98%), Other Professional Activities (6.10%), and, Other Personnel Services (4.69%).

Given the fact that these companies perform many various roles, and taking into consideration that those activities are offered – in many cases- to other companies to complement the “non productive” needs that affect their efficiency and productivity, we were curious to see how these types of companies fared during the economic downturn that the Spanish economy experienced over the last decade. So, we looked into the evolution of these specific types of companies from 2008 to 2017.

The result was that all of these economic activities have seen a meteoric increase in the number of enterprises that claim to provide those services, ranging anywhere from about 13% to an astonishing 70% in the brief period of 9 years. Unfortunately, due to the nature of the MUCs many more might be mislabelled and not accounted for within the scope of peripheral services. Also it is important to underline the inductive nature of the study.

The data presented here was made available, after some digging, in the INE's (National Statistics Institute of Spain) database⁵⁷; unfortunately the economic activities are only tracked from 2008 on. As it was previously mentioned the story of the MUC goes all the way back to 1999, and diving into the early history of Multi-Utility Companies would, at this moment, divert us from the period of study.

In table 2, we see the total annual number of active companies for each sector previously mentioned. They vary widely, depending on the activity from 2890 - with the fewest- to 101,094 -with the most- in the first year. What they do have in common is that their numbers have increased in a nine year period.

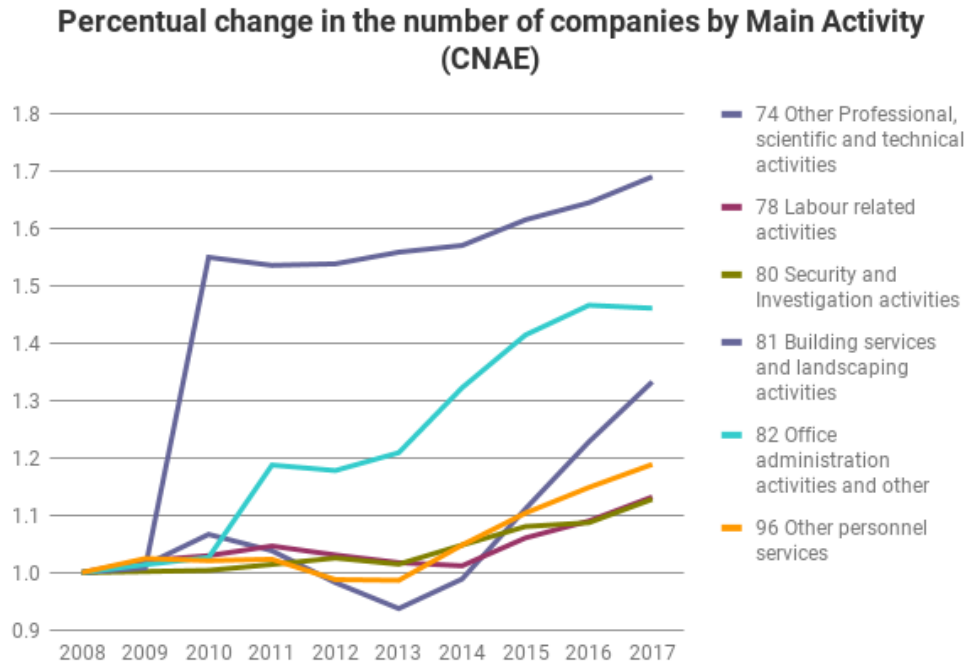
⁵⁷ Instituto Nacional de Estadísticas (National Statistics Institute – Spain) www.ine.es.

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
74 Other Professional, scientific and technical activities	39,188	39,710	41,830	40,631	38,371	36,634	38,524	43,245	48,304	53,369
78 Labour related activities	4,444	4,536	4,576	4,653	4,580	4,519	4,494	4,713	4,852	5,056
80 Security and Investigation activities	2,890	2,895	2,901	2,931	2,964	2,932	3,030	3,128	3,149	3,278
81 Building services and landscaping activities	25,703	25,906	39,960	39,401	39,504	40,308	40,781	42,610	43,877	45,869
82 Office administration activities and other enterprise support activities	67,071	67,995	68,854	79,961	79,192	81,663	90,930	99,301	104,450	103,915
96 Other personnel services	101,094	103,570	103,196	103,431	99,767	99,635	105,781	111,689	116,679	121,379

Own table based on information taken from the (INE) National Statistics Institute of Spain (2017).

Overall, there are upward trends as shown in Graph 1 and we see those sectors are clearly more robust by the end of the period shown there. The information presented in Graph 1 represents the growth percentage from one year to the next. Even though the raw data ranges shown in Table 2 are massively different, the growth trend is very comparable among this activity lines.

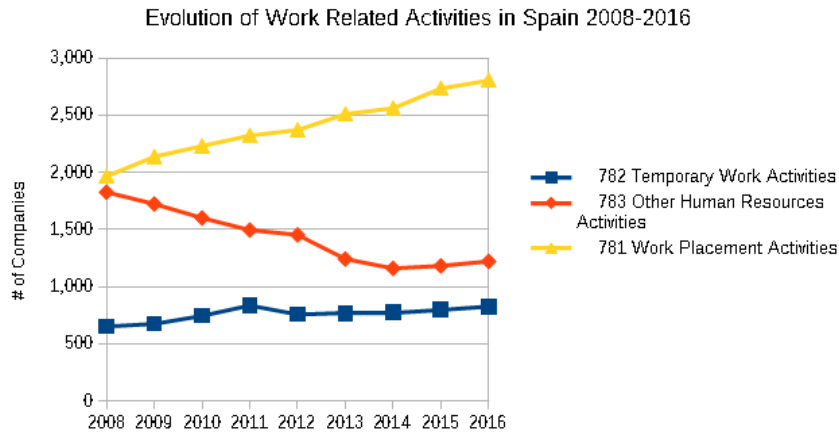
Graph 1



Own graph created using data from INE. The starting point is “1” representing the 100% of the companies by each “Main Activity”. Every decimal represents a percentage point.

Then talking about the companies that provide labour, interesting trends emerge. In Graph 1 we saw that employment related activities saw a modest 9% increase from 2008 to 2016. But when we open up the activity and analyze the sub groups that form that category we notice that 782 Temporary Work agencies have had a minimal growth, consistent with what was mentioned earlier in this document. Also, 783 Other Human Resources Activities, the more traditional ones, have shrunk in a significant way. But, the 781 Work Placement Activities agencies managed to multiply and generate an upward trend that keeps on going year after year, from around 2000 to somewhere in the neighborhood of 2800 (40%) in the same period of time (2008 – 2016).

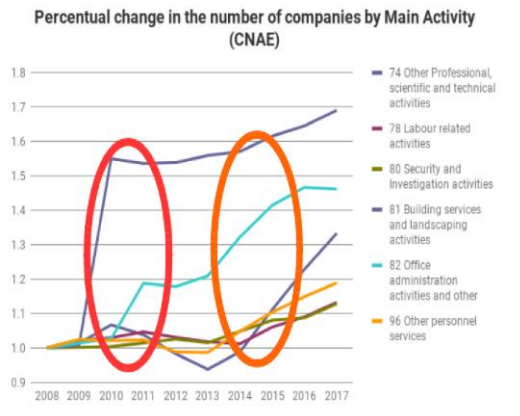
Graph 2. Evolution of Work related activities in Spain 2008-2016



Source: Own graph created with data from INE

But, what is important to notice is that there are 2 clear sections of interest. The first one goes from 2009 to 2011 and shows a clear spike in the numbers of 4 of these activities. And the second one, between 2013 and 2015, where all of them register a boost in their numbers. The latter trend is persistent until 2017 for all except one of the activities analyzed.

Graph 3: % Change in the No. of Companies by Main Activity (CNAE)



Own graph created using data from INE. The starting point is “1” representing the 100% of the companies by each “Main Activity”. Every decimal represents a percentage point. Coloured circles represent the moments of greater expansion for companies by “Main Activity”

The question then is: What happened in the country to provide such a fertile ground for these types of enterprises to flourish? This enquiry has to be set against the backdrop of the economic situation of the country. The red circle represents the beginning of the most intense period of the economic crisis the country has experienced in the last 15 years. With soaring unemployment (20.11% in 2009 climbing to 22.56% in 2011)⁵⁸, and even with a contraction in the GDP of more than 3 percentage points and in 2009⁵⁹ alone, the creation of companies in those activity lines exploded. A total of 26,396 new enterprises were created during this period of time using one of the Main Activities above mentioned.

The orange circle represents the period in which all the activity lines increase (38,995 new companies were created) and is known among the official voices as the beginning of the period of recovery. Unemployment dropped from 25.73% in 2013 to 20.90% in 2015, a trend that is constant until today. In addition, GDP dropped in 2013 but miraculously climbed back up in 2015 to levels almost comparable to the pre-crisis levels of 2007. All of this was cause for celebration among government officials. But, there is a little more to it.

The GINI Coefficient⁶⁰ and the Poverty Risk data⁶¹ show a different picture. Both of which seem to be at their peak in the period comprised within the purple circle (2013 – 2015).

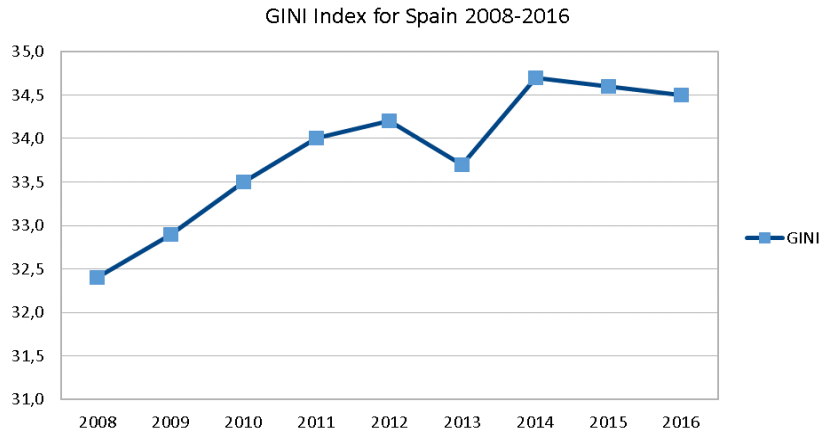
⁵⁸ National Statistics Institute (INE in Spanish).

⁵⁹ Ibidem.

⁶⁰ Ibidem.

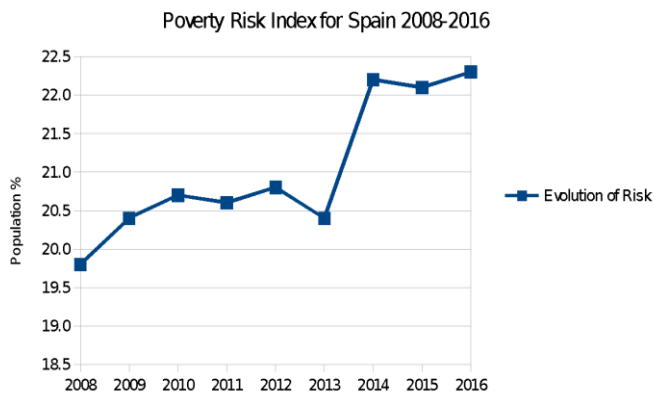
⁶¹ Ibidem.

Graph 4. GINI Index for Spain 2008-2016



Source: Own graph created with data from INE.

Graph 5. Poverty risk in Spain 2008 - 2016.



Source: Own graph created with data from INE.

Then a question pops up again, what happened that allowed these companies to multiply, even though the country was facing serious social, labour and economic issues? The answer might be too complex, but we can factor in powerful changes in the Spanish legislation that contributed to this phenomenon.

5. Conclusion

New types of enterprises are appearing constantly, adaptive, ever evolving with the times and swing of the increasingly interconnected and global economy. Multi-Utility Companies are nothing but a product of the times and circumstances. They, as other organizational structures before them, are tools used to streamline the productive processes of other enterprises by means of shedding off the “unproductive” bits and keeping the “productive” parts.

The expansion of these enterprises is unprecedented, specially taking into consideration the thought economic Spain has gone through in the last decade. Their impact in the labour market and on the society as a whole is yet to be determined, but it must be noted that the rise of their numbers coincide with the rise of two of the main societal wellness -or lack there of- indicators: Risk of Poverty and GINI index.

The legal changes that took place at the beginning of the decade in the labour protection contained in the Workers' Statute became the scaffolding necessary, or at least a big contributing factor, for the increase in numbers and relevance of this type of company. By allowing dismissals to be easier to accomplish - without government oversight, and for a myriad of reasons-, in addition to the identification of the “main activity” of a company, paired with the lack of protection for those workers subcontracted to perform tasks not related to it, provided the opportunity for client companies to be less exposed to the “risks” associated with Social Security responsibilities, and allowed them to bypass potentially expensive sector agreements. The modifications acted on both, the legal market, and the MUC. The thinning of the client companies created the demand for the external services; also, the same dismissal process could be used by Multi-Utility Companies to get rid of their payroll once their commercial contracts were done.

Another critical piece of the puzzle to understand the functioning of these companies is embedded in the newly acquired relevance of the Company Agreement over the Sector Agreement. Worker conditions are no longer delineated by the intricacies of consultation and negotiation processes that could involve large parts of the society, instead, the company is bestowed a higher bargaining power to set standards, especially in the case of companies with poor workers' representation or Union presence. But, in some cases this power was overreaching. Even if the texts in these agreements were not used to better the situation for the workers - but sometimes going as far as providing less protection and pay than other workers performing the same tasks- the nature itself of these types of companies makes it hard for them to utilize effectively the Company Agreement.

Subcontracting has been and will be a powerful tool for business owners,

providing flexibility and independence to the companies that hire external help. It is ludicrous to assume that it will stop any time soon, but it is important to notice that it could evolve into a situation where the question becomes “Who is the real employer?” and evolves into “who is responsible for the well-being and conditions of the workers?”. That is a theme to explore in these new types of enterprises.

In essence, profits and economic growth are necessary and desirable but they should not be enshrined and uplifted with the diminishment of labour and social rights. Why does it always come down to the rights of the enterprise versus the rights of the individual? To find a balance between the sustainability of a productive structure, of a national economy, and the protection of the hard fought rights of the those that make up society as a whole, that is the crux of our current situation.

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.

For more information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.

